

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9431 HOUSE STATE AFFAIRS

1 Page 4, lines 16 and 17:

2 Delete "CERTAIN SECTIONS. Sections 2, 4, 5, and 9 of this Act take"

3 Insert "SECTION 2. Section 2 of this Act takes"

4 Page 4, line 25:

5 Delete all material and insert:

6 "** Sec. 7. Sections 1 and 3 - 5 of this Act take effect October 1, 1997."

7 Page 4, line 26:

8 Delete "If secs. 2, 4, 5, and 9 of this Act take effect under sec. 10 of this Act, they
9 take"

10 Insert "If sec. 2 of this Act takes effect under sec. 6 of this Act, it takes"

Revision Date: _____ Dept. Affected: Revenue
 Title: Increase Tobacco Taxes CRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Representative James
 Requestor: (H) STA COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	30.0	30.0	30.0	30.0	30.0	30.0
TRAVEL	0.5	0.5	0.5	0.5	0.5	0.5
CONTRACTUAL	6.5	1.5	1.5	1.8	1.5	1.5
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	4.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	41.5	32.5	32.5	32.8	32.5	32.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	28,938.8	43,408.2	43,408.2	50,262.3	50,262.3	50,496.6
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	41.5	32.5	32.5	32.8	32.5	32.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	41.5	32.5	32.5	32.8	32.5	32.5

Estimate of any current year (FY97) cost \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Brett Fried, Economist Phone: 465-3682
 Division: Income and Excise Audit Division Date: January 17, 1997
 Approved by Commissioner: Wilson L. Condon Date: January 17, 1997
 Agency: Department of Revenue

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Alaska Department of Revenue
Income and Excise Audit Division

Increase Tobacco Taxes

HB 52

0-LS0127\E

January 17, 1997

Page 2 of 5

DRAFT BILL ANALYSIS

Section 1 increases the School Fund portion of the cigarette tax rate by \$1.00 per pack of 20; from 2.5 mills per cigarette (\$.05 per pack) to 52.5 mills per cigarette (\$1.05 per pack) through FY 2000. Combining this rate with the 12 mills per cigarette (\$.24 per pack) levied under AS 43.50.190, which goes to the General Fund, the total tax rate on a pack of cigarettes would increase from \$.29 to \$1.29. After June 30, 2000 the School Fund portion increases to 64.5 mills per cigarette (\$1.29 per pack) so the total tax rate on a pack of cigarettes increases from \$1.29 to \$1.53 through FY 2003. After June 30, 2003 the School Fund portion increases to 76.5 mills per cigarette (\$1.53 per pack) so the total tax rate on a pack of cigarettes increases from \$1.53 to \$1.77 through FY 2006. After June 30, 2006 the school fund portion increases to 88.5 mills (\$1.77) plus an additional 12 mills (\$.24) during each succeeding three-year period.

Section 2 This section only takes effect if section 1 of this act is ruled unconstitutional (see section 10). If so, the statute would be amended back to how it was prior to the bill passage.

Section 3 directs the Department of Revenue to give public notice of changes in cigarette tax rates under AS 43.50.090 at the time these tax rates are changed.

Section 4 This section only takes effect if section 1 is ruled unconstitutional (see section 10). If so, this section increases the General Fund portion of the cigarette tax rate by \$1.00 per pack of 20; from 12 mills per cigarette (\$.24 per pack) to 62 mills per cigarette (\$1.24 per pack) through FY 2000. Combining this rate with the 2.5 mills per cigarette (\$.05 per pack) levied under AS 43.50.090, which is dedicated to the School Fund, the total tax rate on a pack of cigarettes would increase from \$.29 to \$1.29. After June 30, 2000 the General Fund portion increases to 74 mills per cigarette (\$1.48 per pack) so the total tax rate on a pack of cigarettes increases from \$1.29 to \$1.53 through FY 2003. After June 30, 2003 the General Fund portion increases to 86 mills per cigarette (\$1.72 per pack) so the total tax rate on a pack of cigarettes increases from \$1.53 to \$1.77 through FY 2006. After June 30, 2006 the General Fund portion increases to 86 mills (\$1.96) plus an additional 12 mills (\$.24) during each succeeding three-year period.

Alaska Department of Revenue
Income and Excise Audit Division

Increase Tobacco Taxes

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Section 5 This section only takes effect if section one is ruled to be unconstitutional (see section 10). If so, this section directs the Department of Revenue to give public notice of changes in cigarette tax rates under AS 43.50.190 at the time these tax rates are changed.

Section 6 increases the tobacco products tax rate from 25% to 100% of the wholesale price of the tobacco products.

Section 7 creates a new section under AS 43.50 (AS 43.50.365) to increase the tobacco product tax rate applied to the wholesale price by the Anchorage CPI on July 1 of each even numbered year. The starting point of the index is January 1, 1998.

Section 8 creates a new section under AS 43.50 (AS 43.50.380) to direct the Department of Revenue to give public notice of changes in tobacco product tax rates under AS 43.50.365 at the time these tax rates are changed.

Section 9 This section only takes effect if section 1 is ruled unconstitutional (see section 10). If so, this section repeals the public notice provision for changes in the cigarette tax rates under AS 43.50.090 that were made in section 3 of this bill.

Section 10 provides for sections 2, 4, 5 and 9 of this Act only taking effect if dedication of the proceeds of the cigarette tax to the School Fund is found to be unconstitutional.

Section 11 establishes an effective date of October 1, 1997 for sections 1, 3, and 6-8 of this act.

Section 12 establishes an effective date of which ever of the following comes later: (1) when a court enters a final judgement that the amendment under section 1 of this act is unconstitutional or (2) when the time for appeal has expired or upon entry of a final order on the appeal that section 1 is unconstitutional.

OPERATING EXPENDITURES

Department of Revenue is requesting operating funds to cover ½ the costs of a Revenue Auditor III position. With such a large increase in taxes due the state (increase from \$17 to \$50 million annually), the department anticipates increased taxpayer noncompliance.

Alaska Department of Revenue
Income and Excise Audit Division

Increase Tobacco Taxes

HB 52

0-LS0127AE

January 17, 1997

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With significantly higher levels of tax, it is possible that taxpayers will look for loopholes or other methods of tax avoidance. This position will be responsible for ensuring that all taxpayers are identified and that taxpayers are filing and paying the proper amount of tax. The projected annual salary costs for the ½ portion of this position comes to \$30.0. This amount would be used to fill a currently vacant auditor position.

The department is also requesting one time FY 98 funding of \$5.0 for contractual funds to cover costs of public notice of rate increases, forms revisions and postage, and \$4.0 for equipment (\$3.5 for computer costs and \$.5 for office equipment). The recurring costs will be \$2.5 to cover travel, contractual and supplies, except for FY 01 where an addition \$.3 will be necessary to cover public notice of the tax rate increase.

REVENUE COLLECTED

The attached spreadsheet details revenue projections from rate increases in this bill.

Alaska Department of Revenue
Income and Excise Audit Division
Projected Revenue Increases from Change in Tobacco Tax Rates

Increase Tobacco Taxes
 HB 52
 O-LS0127E
 January 17, 1997
 Page 5 of 5

	FY 98*	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Cigarettes							
<i>Elasticity Factor</i>	-18.5%	0.0%	0.0%	-23.0%	0.0%	0.0%	-27.4%
Consumption (packs of cigarettes)	28,625,595 *	42,938,393	42,938,393	40,587,562	40,587,562	40,587,562	38,249,415
Rate	\$1.29	\$1.29	\$1.29	\$1.53	\$1.53	\$1.53	\$1.77
Cigarette Tax	\$36,927,017	\$55,390,527	\$55,390,527	\$62,068,369	\$62,068,370	\$62,068,370	\$67,701,465
Less 1.0% Commission	(369,270)	(553,905)	(553,905)	(620,684)	(620,684)	(620,684)	(677,015)
Net Cigarette Tax	\$36,557,747	\$54,836,622	\$54,836,622	\$61,447,685	\$61,447,686	\$61,447,686	\$67,024,450
FY 97 Projected Cigarette Tax	(10,083,937) *	(15,125,905)	(15,125,905)	(15,125,905)	(15,125,905)	(15,125,905)	(15,125,905)
Net Cigarette Tax Increase	\$26,473,810	\$39,710,717	\$39,710,717	\$46,321,780	\$46,321,781	\$46,321,781	\$51,898,545
Increase to School Fund	\$26,473,810	\$39,710,717	\$39,710,717	\$46,321,780	\$46,321,781	\$46,321,781	\$51,898,545
Tobacco Products							
<i>Elasticity Factor</i>	-18.5%	0.0%	0.0%	-19.0%	0.0%	-20.7%	0.0%
Consumption (Whole. Pr. 1996 \$)	\$3,591,648 *	\$5,387,473	\$5,387,473	\$5,314,097	\$5,314,097	\$5,240,722	\$5,240,722
Rate	100%	100%	100%	106%	106%	112%	112%
Tobacco Products Tax	\$3,591,648	\$5,387,473	\$5,387,473	\$5,632,943	\$5,632,943	\$5,869,609	\$5,869,609
Less 1.0% Commission	(35,916)	(53,875)	(53,875)	(56,329)	(56,329)	(58,696)	(58,696)
Net Tobacco Products Tax	\$3,555,732	\$5,333,598	\$5,333,598	\$5,576,614	\$5,576,614	\$5,810,912	\$5,810,912
FY 97 Projected Tob. Prod. Tax	(1,090,715)	(1,636,073)	(1,636,073)	(1,636,073)	(1,636,073)	(1,636,073)	(1,636,073)
Net Tobacco Prod. Tax Increase	\$2,465,016	\$3,697,525	\$3,697,525	\$3,940,541	\$3,940,541	\$4,174,839	\$4,174,839
Increase to General Fund	\$2,465,016	\$3,697,525	\$3,874,810	\$3,874,810	\$4,006,350	\$4,006,350	\$4,119,043
Cigarette and Tob. Products							
Net Cigarette and Tobacco Tax	\$40,113,479 *	\$60,170,220	\$60,170,220	\$67,701,312	\$67,701,313	\$67,937,978	\$73,571,073
Net Clg. and Tob. Increase	\$28,938,827 *	\$43,408,242	\$43,408,242	\$50,262,321	\$50,262,322	\$50,496,621	\$56,073,386

*Note: The bill's effective date results in the tax increase covering 8 months in FY 98.

HB

55

Sponsor Statement

CS HB 55(TRA)

"An Act relating to the fiscal operations of the Alaska Railroad Corporation and providing for an effective date."

The Alaska Railroad has been a symbol of Alaska's history since the early 1920's and has been operating under state ownership after being transferred from the federal government in 1985. While the railroad has continued to provide rail service for Alaska, no single financial or capital plan has been established for the railroad or its parent quasi-state owned corporation. During this 12 year span the corporation has had little state oversight. Currently, the Alaska Railroad Corporation(ARRC) is the only state owned corporation not under the Executive Budget Act (AS 37.07).

CS for House Bill 55 will make one change to the railroad and the corporation. The bill will place the Alaska Railroad under the Executive Budget Act. After numerous audit requests, OMB procurement investigations, and many Legislative Budget & Audit Committee hearings spurred by concerned community councils, the LB&A committee recommended and approved introduction of House Bill 55.

If enacted the bill will provide ARRC with the proper financial management exercised by the Governor and the Legislature by bringing the railroad corporation under AS 37.07. Under the Executive Budget Act, the railroad can apply for appropriation from the legislature to fund the operating, capital and debt service expenditures of the corporation.

Article IX of the State of Alaska Constitution states that no state entity can appropriate money without the approval of the legislature. Under the Executive Budget Act, legal questions as to the constitutionality of the Alaska Railroad Corporation to appropriate money will be put to rest.

Enactment of CS HB 55 will strengthen the financial integrity of the Alaska Railroad Corporation by securing sound procurement practices, strong financial management, and sensible Alaskan resident plans for expansion and service.

Other state corporations placed under the Executive Budget Act have benefited greatly. For example, Alaska Housing Finance Corporation was placed under the Executive Budget Act in 1995. AHFC's recent audits show high profits while maintaining a stellar service for Alaska's housing needs. Up 30% from four years ago, AHFC received a perfect score of 100% in the Federal Department of Housing & Urban Development's (HUD's) annual evaluation of the agency. HUD's perfect score recognizes that AHFC has initiated annual budgeting procedures that resulted from the Executive Budget Act review.

Concerns that politics will impede the ability of the Alaska Railroad to operate are unfounded. Under CS HB 55, the Chief Executive and the Alaska Railroad Board will still make the budgetary, capital, and operational decisions of the railroad. The ARRC board would formulate the budget while the legislature only has the opportunity to appropriate an aggregate amount. The nickel & diming that occurs with state agencies does not occur with the Permanent Fund Corporation or the Alaska Housing Finance Corporation nor would it occur with the Alaska Railroad Corporation. However, a process of communication would be established between the ARRC and the state which currently does not exist.

The CS HB 55 does not seek to privatize the railroad or in any other way diminish its existence as a public corporation of the state. The railway has become an integral part of Alaska's economy and folklore. Consequently, CS HB 55 is the right step forward to enhance the future of the railroad.

The legislation will not address every facet of the Alaska Railroad nor is it meant to. CS HB 55 will give Alaskans the ability to manage their railroad through the system of checks and balances only offered by a strong democracy and an open door policy.

MEMORANDUM

TO: Honorable Al Adams, Chairman
House Finance Committee
Alaska State Legislature

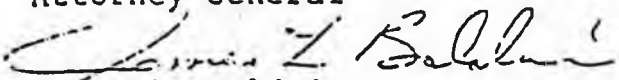
DATE: May 26, 1984

FILE NO: 366-575-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Appropriation of
Alaska Railroad
revenue


By: James L. Baldwin
Assistant Attorney General

Luann Cutler, on your behalf, has requested our opinion whether revenues of the Alaska Railroad must be appropriated before expenditure. Under the provisions of the Alaska Railroad Transfer Act (45 U.S.C. § 1207 -- 45 U.S.C. § 1214), "revenues generated by the state-owned railroad shall be retained and managed by the state-owned railroad for railroad and related purposes," 45 U.S.C. § 1207(a)(5).

This constitutes a dedication of revenue mandated by federal law. Even if a revenue source is dedicated for a specific purpose, amounts may not be expended by an agency within the executive branch from that revenue source unless appropriated by law. Alaska Const. art. IX, §§ 12, 13; see also, Kelley v. Hammond, C.A. No. 77-4, 1st Jud. Dist. (Alaska 1977). The important distinction of a validly dedicated revenue source is that money may not be expended for a purpose other than the Alaska Railroad, not necessarily that the money may be expended without appropriation.

We acknowledge that if the railroad's function is assigned to a public corporation which is established as a political subdivision of the state, an argument can be made that railroad revenue is not a part of the state treasury, much the same as the revenues collected by municipal corporations. If this view is adopted in Alaska, railroad revenues could be expended without appropriations. To date, this view has been repudiated at the superior court level. Kelley v. Hammond, C.A. No. 77-4, 1st Jud. Dist. (Alaska 1977).

We hope this opinion answers your question.

JLB/mg

LEGAL SERVICES

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 7, 1997

SUBJECT: Alaska Railroad Corporation (HB 55)

TO: Representative Terry Martin
Attn: Christopher Knight

FROM: Tamara Brandt Cook *TBC*
Director

You has asked me whether the Alaska Railroad Corporation may constitutionally spend revenue it generates without an appropriation. The corporation is exempted from a number of laws under AS 42.40.920(b), including the Executive Budget Act. It is far from certain to me that an exemption from the Executive Budget Act necessarily means that money involved in the exemption may be spent without an appropriation. To the extent that the state constitution requires an appropriation before money is spent, that requirement controls.

The federal Alaska Railroad Transfer Act contains a provision dedicating revenue generated by the railroad to railroad purposes. I am not convinced that a dedication of revenue, however valid under Article IX, sec. 7, places that revenue outside of the appropriation requirement of Article IX, sec. 13. It is possible that a court could conclude that, while revenue may be used only for railroad purposes, before it is so used it must be appropriated. In short, the legislature may still have the right and constitutional obligation to review proposed railroad expenditures and determine whether money will be spent for a particular railroad purpose, rather than another railroad purpose, and in what amount. The Attorney General's office has likewise concluded that a good probability exists that revenue of the Alaska Railroad Corporation is subject to appropriation before expenditure. (Memorandum, 366-575-84, May 26, 1984, copy attached)

It has been argued that money of a public corporation (like the Alaska Railroad Corporation) with an existence independent from the state is not in the state treasury and, therefore, not subject to appropriation. The Attorney General has, however, concluded that money in one public corporation (AHFC) is subject to appropriation to the extent that it is unencumbered. (Informal Opinion, 366-463-85, April 24, 1985, copy attached) That opinion was cited by the Alaska Supreme Court with approval and the court has specifically recognized that money appropriated from AHFC must be counted as "available for appropriation" for purposes of applying Art. IX, sec. 17, relating to the budget reserve fund. (*Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994) footnotes 11 and 23) This conclusion of the court necessarily

Representative Terry Martin

February 7, 1997

Page 2

presupposes that the legislature does, indeed, have the power to make appropriations from AHFC's unencumbered assets. If revenues of that public corporation are subject to appropriation, it would seem quite likely that the revenues of the Alaska Railroad Corporation would also be treated as subject to appropriation by the court.

TBC:pl

97-030.plm

Enclosures

Auditor Observations

The Alaska Railroad Corporation has been under the "legislative microscope" for the last few years. The Audit Division has conducted five audits of the corporation since 1992 and has one audit in progress and another pending. Of those seven audits, two deal with rail operations, and five involve the corporation's management of real estate.

During the interim, the Legislative Budget and Audit Committee also pursued a greater understanding of the corporation and its assets. We believe that it is important that the Legislature understand the operation of the corporation and be aware of issues that impact its operation. The Legislative Budget and Audit Committee appears to be the appropriate vehicle currently available to provide that oversight.

The Alaska Railroad Corporation finds itself in an unenviable position. On one hand, it is operating under a statutory mandate to generally manage the corporation on a self-sustaining basis. On the other hand, as a corporation wholly owned by the State, the corporation must be held to certain standards of openness and public accountability. It is in this vein that we often find ourselves at odds with the corporation. We believe that as long as the corporation is owned by the public, public accountability must come first.

We also believe that the corporation can be run in an efficient manner and still uphold those public accountability standards. Management by corporate officers and policy direction by the board of directors should strive for the appropriate balance. In our opinion, we have seen recent signs of improvement in this effort by the board, primarily through our contact with the chairman. We are hopeful that the appointment of a new chief executive officer will further foster these goals.

Without going into great detail on issues we remain concerned about regarding the Alaska Railroad Corporation, we offer these summary observations and would be happy to discuss them further with any member or committee of the Legislature. They are in no particular order of significance.

- The corporation's budget is not subject to the Executive Budget Act. We see no reason why the corporation should be exempt or even whether constitutionally, it can be. Similarly, significant federal funds have been received by the corporation for capital rehabilitation and improvements without any legislative oversight.
- The corporation has shown a profit for the last two fiscal years (calendar year end). Total net income for 1996 (unaudited) and 1995 was \$8.0 million and \$7.9 million, respectively. The net income from operations represented \$4.0 million and \$4.1 million, respectively. Approximately half of the corporation's income is generated from management of its real estate. The majority of this real estate is considered non-rail use property.

**Legislative Auditor's Observations
January, 1997**

- A much talked about concern is deferred maintenance, however, little is factually known about the extent or estimated cost of that maintenance. We believe that a serious discussion needs to take place. It is possible, or even likely, that without the federal funding authorized the last two years (\$10 million per year) the railroad's income statement would look significantly different. Neither the financial statements nor the notes to the financial statements reflect any estimate of the amount of deferred maintenance.
- An observation that is important to understanding the fragile nature of the corporation's financial health is its dependence on two major customers. As disclosed in the notes to the financial statements for 1995, these two customers accounted for 45% of the corporation's revenue. The corporation's existence is dependent on those two customers.
- Through a combination of statute and corporation rules, the salary of railroad employees is confidential and therefore can not be disclosed to the public. Statute provides that the corporation may by rule designate and withhold public disclosure of matters of a privileged or proprietary nature. Statute goes on to describe matters as including personnel records. Corporation rules include salary as a personnel record.
- Alaska Statute 42.40.260(b) requires the annual report of the corporation to include an analysis of potential sale arrangements whereby the corporation may be transferred into private ownership. The corporation has not pursued sale discussions with potential or interested buyers. The corporation has gone so far as to notify interested parties that the Board of Directors is not interested in selling the railroad.
- Statute requires the corporation to have an annual performance audit conducted by a recognized railroad expert to assure that the railroad is being managed and operated effectively and efficiently. There are two reports generated from this review. A confidential report is produced for the use of railroad management. A public version of the report is issued that does not go into nearly as much detail. We recommend that the legislature annually request a confidential briefing on the detail version of the performance report.

REPRESENTATIVE
TERRY MARTIN
VICE-CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature



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716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504
JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182

The Honorable Tony Knowles
Governor of Alaska
State Capitol
Juneau, Alaska 99801

April 14, 1997

Dear Governor Knowles:

I have received your letter of April 10, pertaining to the Alaska Railroad and legislation currently under consideration that would affect the railroad. I appreciate your response to my earlier letter.

I was gratified that in your final paragraph, you state that you "have serious concerns that further statutory requirements will hamper its (ARRC's) autonomy and its ability to fulfill the railroad's mission without state financial assistance." You very well should have concerns, but they should be directed at the flip side of this question. That is, the ARRC has had far too much autonomy for a government-owned entity. It is my concern that we may one day find ourselves in serious jeopardy because railroad managers, making decisions as a business, obligate the people of Alaska as a whole.

I would not presume to tell you what you should do or how you should approach this question that the Legislative Budget and Audit Committee has posed in the public debate. However, the enclosed information should give you some idea of what's worrying some legislators. This includes discussions by both Governor Sheffield's attorney general at the time and Legislative legal services more recently of the constitutionality of the budgeting scheme designed by the Legislature for the ARRC. Also included is a summary of observations from the Legislative Auditor, whose duty it has been to audit certain functions and actions of the ARRC. I would also draw your attention to the fact that the ARRC is fighting eight separate Municipality of Anchorage zoning violations, using as its defense that it is an exempt state agency. At the same time, it is being sued for not following proscribed public procedures for the disposal of state property, an action it defends by claiming it is a private business.

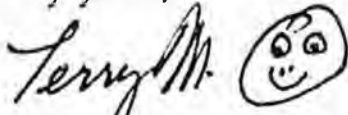
In closing, let me acknowledge that, yes, the letter forwarded on to you was a draft. So is the enclosed draft of a letter written for the signature of Mr. Dana



Governor Tony Knowles
April 14, 1997
Page 2

Pruhs. This one is evidently intended to drum up the grassroots support needed to protect the status quo at the ARRC. But I have to ask why is Mr. Sheffield going to these great lengths? What does he have to be afraid of? While he may defend himself by claiming neither this letter nor the one to you was ever accepted, the fact of the organization is that these letters would not have been drafted if someone at the ARRC was not keen on having them or something like them. The whole thing smacks of a soon-to-be-orchestrated campaign, paid for with public funds. Again, I ask the question I asked in my earlier letter: What is your policy regarding the use of state funds to attempt to steer a legitimate legislative debate?

Sincerely yours,



Rep. Terry Martin

enclosures: AG's opinion of May 26, 1984
Legal Services opinion of February 7, 1997
Auditor's observations of January 1997

cc: Attorney General Bruce Botelho
Senate President Mike Miller
House Speaker Gail Phillips
Senator Drue Pearce, Co-chair, Senate Finance
Senator Bert Sharp, Co-chair, Senate Finance
Representative Mark Hanley, Co-chair, House Finance
Representative Gene Therriault, Co-chair, House Finance
Senator Randy Phillips, Chair, Legislative Budget & Audit

TONY KNOWLES
GOVERNOR

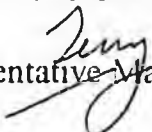


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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 10, 1997

The Honorable Terry Martin
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative  Martin:

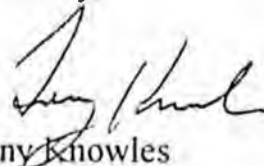
I have not received the letter purportedly written by Bill Sheffield, Chairman of the Alaska Railroad, referred to in your letter to me of March 3. It was not on letterhead and was clearly marked "Draft." I don't know how you came to have a copy, but I do not intend to respond to issues raised in a letter which I did not receive.

I can, however, certainly appreciate your distress at anyone urging me to veto a bill in which you have obviously invested considerable time and interest. I have not publicly commented on what action I might take should this bill reach my desk, nor is it my practice to announce my intention to veto a bill prior to what hopefully will be full and meaningful input, discussion, and debate in the Legislature.

However, as you know, I did veto a bill last year which called for a time-consuming study of the railroad's assets and possible sale procedures. I think the Railroad has been a success which can be attributed to the independent management and financial structure designed by the Legislature in the enabling legislation. Studies have continued to demonstrate the soundness of the railroad's performance in meeting its statutory mandates.

I realize that the bill you are now supporting, HB 55, is a different approach to the railroad than last year's bill. I do have serious concerns that further statutory requirements will hamper its autonomy and its ability to fulfill the railroad's mission without state financial assistance.

Sincerely,



Tony Knowles
Governor

February 28, 1997

Name
Address
Town

Dear [NAME]:

For the second year in a row, politicians are taking a run at one of Alaska's real success stories: The Alaska Railroad. First they wanted to sell it to an Outside company. Now they're trying to put this profitable operation under control of the bureaucrats, and cripple its ability to pay its own way.

What they can't or won't admit is that the Railroad makes money, supports itself, and spurs economic growth primarily because there are no politicians involved in its operation. Let's keep it that way.

The federal government built the Alaska Railroad more than 80 years ago as a way to open up and develop Southcentral and the Interior. In 1985, it was a government railway hampered by federal bureaucracy from fulfilling its potential. When the United States decided to sell the line, Alaska wisely stepped in and purchased this vital transportation corridor -- with three major conditions: Run the Railroad like a business, make sure it pays it own way, and keep it Alaskan.

The Alaska Railroad Corporation has done that over the last 12 years, earning a record profit in 1995 and 1996. With a mission of service and profit, the Railroad has been a creative and active business partner and an engine of growth. All without subsidy: The Alaska Railroad hasn't taken a nickel of state money to operate or maintain itself.

Now, two bills in the Alaska Legislature would drag the Railroad into the state budget bureaucracy, and pull thousands of acres of prime business real estate into the state land bureaucracy. This is progress?

The first bill would put the Railroad into the same budget cycle -- with the same cumbersome and lengthy political process -- as state government agencies. At first glance, it's an appealing idea, especially when the rest of the state's public corporations -- the Permanent Fund, Alaska Housing Finance, and the state development bank -- operate under that system.

But the Alaska Railroad is not a passive lender or portfolio manager. It's a service business that must react to market changes and customer demand as it happens -- now, when you need it -- not when the Legislature has time to look into it. The measures before the legislature right now make it harder to sign contracts, and add a time-consuming political process to your commercial or community business with the Railroad.

The second bill would take several thousand acres of developable real estate along the line and move it into the hands of the state Department of Natural Resources. Not only would that limit the opportunities for development, it would limit the Railroad's ability to generate the revenue that makes it a self-sustaining operation.

Taken together, the current bills, if passed, would cripple an Alaska institution that has been an engine of growth for the territory and the state for more than 80 years. Help us keep the bureaucrats and politicians out of the management of the Railroad. By joining Friends of Alaska's Railroad, you can send the message to Juneau that we want to stick to the basics: Run the Railroad like a business, keep it self-sustaining, and keep it Alaskan.

As a member, you will receive updates on legislation affecting the Railroad's ability to do business, with information about whom you need to contact in Juneau and how you can reach them. You will also ensure that your voice as a business person, community leader, or concerned Alaskan will be heard over the din of politicians intent on more government in Alaska's business.

Sincerely,

Dana Pruhs
Chair
Friends of Alaska's Railroad

Cheryl - 265-2414

off net for
RR (Gov. Bill
Sheffield
& Blainey)

ADSLA

265-2491

~~#1 Some on Speaker Phone~~

Others - Call our # 1-800
565-3743

- Then we will put them
on the off net if
possible.

05/06/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
08:36:35 PARTICIPANT LIST (TESTIFIERS ONLY) BY:JNU
TCN:70736 SCHEDULED FOR:05/06/97 08:00 TO 10:00 FOR:ALL

PUBLIC HEARING HOUSE STATE AFFAIRS

LOCATION:ANCHORAGE

HB 55 JEFF LOWENFELS TESTIFY

LOCATION:FAIRBANKS

HB 55 MR. DONALD MCPHEE TESTIFY

HB 55 MR. DENNIS WILFER TESTIFY

HB 55 MR. DAVE JOHNSON TESTIFY

HB 55 MR. JOHN WILLIAMS TESTIFY

HB 55 MR. JOSEPH FIELDS TEST.

LOCATION:MATSU

HB 55 MR. ERNEST W. BRANNON TESTIFY

OFF NET

- 1) PHYLLIS JOHNSON
- 2) BILL SHEFFIELD
- 3) BILL HUPPERICH
- 4) BYRON HENSHAW

FAIR BANKS

HB 55 CHARLIE BODDY TESTIFY

HB 55 JOHN PINKLEY TEST.

Alaska Railroad Corporation Those Testifying on HB55

✓ Governor Bill Sheffield, Chairman, Alaska Railroad Corporation (Cell Phone In Whittier)

Phyllis Johnson, Vice President and General Counsel, Alaska Railroad Corporation

Bill Hupprich, Associate General Counsel, Alaska Railroad Corporation

✓ Brad Phillips, Phillips Cruises (Cell Phone In Whittier)

Jeff Lowenfels, Chairman, Commonwealth North and Yukon Pacific Corporation

Johne Binkley, Railroad Board Member and Former State Senator

Dennis Brandon, Vice President, Cook Inlet Region Inc.

Dennis Wilfer, CNR Pipe (Fairbanks)

Ernie Brannon, Former Mayor, Mat-Su Borough

Don McPhee, Fairbanks

Steve Mahay, Talkeetna

Maragret Branson, Seward

Frank Chapados, Fairbanks

Susie Keller, Talkeetna

John Sims, Fairbanks

Dale Lindsey, Railroad Board Member, Seward

Robert Cacy, Chief Stewart, Alaska Railroad Workers

Ed Rivera, President, Alaska Railroad Workers

Byron Henshaw, General Chairman, International Association of Machinists and
Aerospace Workers

ALASKA RAILROAD CORPORATION

P.O. Box 107500, Anchorage, Alaska, 99510

FACSIMILE COVER SHEET

**TO: Patrick Lounsbury
Representative Jeannette James Aide**

**FROM: Bill Sheffield
Chairman, ARRC Board of Directors

Executive Offices**

DATE: May 6, 1997

No. of Pages (Including cover sheet) 2

If you have any questions or problems with transmittal, please call (907)265-2414.

Our FAX number is (907) 268-1456

MESSAGE:

Attached are the names of several people who would like to testify on HB55 today. Thank you.

Confidentiality Notice

This transmission is intended only for the use of the person to whom it is addressed and may contain information that is privileged and confidential. If you are not the intended recipient, you are hereby notified that any disclosure, distribution, or copying of this transmission or the information in it is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone, return the original, and retain no copies. Thank you.

Our phone number is (907) 265-2403. Our fax number is (907) 268-1456.

Phyllis Johnson - Legal Council.
Bell Huppfrage - Assoc Gen
Council.

Set up off-net

MAHAY'S RIVERBOAT SERVICE



May 3, 1997

Representative James
State of Affairs Committee

Dear Representative James:

This letter is in regards to House Bill 55. I believe that if this bill is passed it would eventually destroy the profitability of the Alaska Railroad.

I have been working partners with the Alaska Railroad for the past twelve years and wish to see operations remain as they stand.

Please be of help in seeing that this bill is defeated.

Sincerely,

Steve Mahay
Owner/CEO/President

"Serving Sportfishermen Since 1977"

Box 705 • Talkeetna, Alaska 99676 • (907) 733-2223 • Fax (907) 733-2712

MARGARET A. BRANSON
P.O. BOX 271
SEWARD, AK 99664
907-224-3212

REPRESENTATIVE JEANETTE JAMES
HOUSE STATE AFFAIRS

RE: HB 55

ONCE AGAIN I MUST REGISTER MY OPPOSITION TO A BILL WHICH ATTEMPTS TO IMPOSE UNNECESSARY AND UNDESIRABLE RESTRICTIONS ON THE ALASKA RAILROAD.

THIS BILL IS DIAMETRICALLY AGAINST THE STATED MAJORITY DESIRES TO "PRIVATIZE" CORRECTIONS, THE MARINE HIGHWAY, SCHOOLS AND OTHER STATE SERVICES.

THIS BILL WOULD RESTRICT THE ABILITY OF THE ALASKA RAILROAD TO BORROW MONEY OR TO PLAN OPERATIONS BEYOND A YEAR AT A TIME.

THE RAILROAD IS A MATTER OF GREAT PRIDE TO THE MAJORITY OF ALASKANS AND THIS CONTINUING EFFORT TO TRY TO HAMPER ITS OPERATION IS EGREGIOUS.

PLEASE NOTE THAT I AM ALSO OPPOSED TO THE COMPANION BILL SB42.

AGAIN, TO PUT THE RAILROAD UNDER THE EXECUTIVE BUDGET ACT IS CONTRARY TO THE INTENT WHEN THE RAILROAD BECAME STATE OWNED, IS UNNECESSARY AND MOST UNPRODUCTIVE.

*Thank you
Margaret A. Branson*

MAY 03 '97 08:16 SEWARD MARINE SVCS.
MARGARET ANDERSON
P. O. Box 87
Seward, Alaska 99664

P.1/1

FAX NUMBER - 224-3809

PHONE - (907) 224-5571

COMPANY OR INDIVIDUAL: LEGISLATURE OF THE STATE OF ALASKA
FACSIMILE NUMBER: (907) 465 2381
DOCUMENTS TRANSMITTED: HOUSE BILL NO. 55 (TRA)
NUMBER OF PAGES INCLUDING COVER: 1
DATE & TIME FACSIMILE SENT: 8:30 A.M. 5-3-97
INDIVIDUAL SENDING FACSIMILE: MARGARET ANDERSON

OTHER NOTES: OPPOSE HOUSE BILL # 55

1. TO PRIVATIZE ALASKA RAILROAD IS NOT IN THE BEST INTERESTS OF THE STATE OF ALASKA
2. THE PRESENT ADMINISTRATION IS OPERATING THE RAILROAD in a FISCALLY RESPONSIBLE MANNER.
3. ECONOMIC DEVELOPMENT OPPORTUNITIES WILL BE GREATLY DIMINISHED.
4. IT IS NOT IN THE BEST INTERESTS OF THE STATE OF ALASKA TO SUBJECT THE ALASKA RAILROAD TO THE FLUCTUATIONS OF THE ANNUAL STATE BUDGET DEBATES.
5. THE ALASKA RAILROAD BELONGS TO ALL THE PEOPLE OF THE STATE OF ALASKA AND SHOULD REMAIN SO.

REPRESENTATIVE
TERRY MARTIN
VICE-CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature



MAY 15 - JAN 15 258-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182

MEMORANDUM

TO: Representative Jeannette James, Chair
House State Affairs

FM: Representative Terry Martin *TJM*

DATE: February 26, 1997

RE: Scheduling of House Bill 55

Introduced at the request of the LB&A Committee, CS for House Bill 55(Trans) would give the Legislature and the Governor budgeting power with regards to the Alaska Railroad Corporation. At your earliest convenience could you please schedule CS HB 55(Trans), an act relating to the Alaska Railroad Corporation(ARRC) and the Executive Budget Act, for a committee hearing.

Currently, the ARRC is the only state owned agency, i.e. corporation not under AS 37.07, the Executive Budget Act. If you have any questions please feel free to call me or my aid Chris Knight at ext. 6587. Thank you for your time and I look forward to hearing from you soon.



FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB55(TRA)

1997 LEGISLATIVE SESSION

Revision Date: 25-Feb-97 Dept Affected: Natural Resources
 Title: An Act relating to the fiscal operation of BRU: Resource Development
the Alaska Railroad Corporation and to land acquired... Component: Land Development
 Sponsor: - Rules by Request of LB&A
 Requestor: (H)STA Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ none

POSITIONS

FULL-TIME				0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact for the Division of Land associated with the Transportation committee substitute for HB55.

Prepared by: Jane Angvik, Director *[Signature]* Phone: 269-8503
 Division: Land Date: 2/25/97
 Approved by Commissioner: *[Signature]* Date: 2-25-97
 Agency: Natural Resources

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB55(TRA)

1997 LEGISLATIVE SESSION

Revision Date: 25-Feb-97 Dept Affected: Natural Resources
 Title: "An Act relating to the fiscal operation of the BRU: Management and Administration
Alaska Railroad Corporation and to land acquired ... Component: Information Resource Management
 Sponsor: Rules by Request of LB&A
 Requestor: ~~HB55A~~ H(97A) Component Serial No. 427

(Thousands of Dollars)

Expenditures/Revenues	FY98	FY99	FY00	FY01	FY02	FY03
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

(Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ none

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact for the Information Resource Management component associated with the Transportation committee substitute for HB55.

Prepared by: Carol Carroll, Director *Carol Carroll* Phone: 465-4730
 Division: Support Services Date: 25-Feb-97
 Approved by Commissioner: *Carol Carroll for Tom Alby* Date: 2-25-97
 Agency: Natural Resources

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 55 (TRA)

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>"...relating to the fiscal operations of the Alaska Railroad Corporation and providing for an effective date."</u>	BRU: <u>Civil Division</u>
Sponsor: <u>House Rules Committee by request of LB&A</u>	Component: <u>General Legal Services</u>
Requester: <u>House Transportation</u>	COMPONENT SERIAL NO. <u>2087</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CSHB 55 (TRA) will have no fiscal impact for the Department of Law.

Prepared by: <u>Fred Fisher</u> <i>Fred Fisher</i>	Phone: <u>465-3672</u>
Division: <u>Administrative Services Division</u>	Date: <u>2/25/97</u>
Approved by Commissioner: <u>Bruce M. Botelho</u> <i>Bruce M. Botelho for</i>	Date: <u>2/25/97</u>
Agency: <u>Department of Law</u>	

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HB

65

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 13, 1997

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2/20/97

The STATE AFFAIRS Committee considered:

HB 65

HOUSE BILL NO. 65

PARTIAL-BIRTH ABORTIONS

"An Act relating to partial-birth abortions."

recommends it be replaced with the following committee substitute _____
[] the same title
[] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[✓] fiscal note(s) Admin

[] fiscal note(s) _____

[✓] zero fiscal note(s) HSS

[] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Janette James</i>	✓			
<i>Thomas A. Ruff</i>		✓		
<i>Mark Deery</i>	✓			
<i>Fred Dixon</i>	✓			
<i>Bill Green</i>	✓			
<i>Lu. N. Miller</i>			✓	

CHAIR'S SIGNATURE Janette James

Alaska State Legislature House of Representatives

COMMITTEE ASSIGNMENTS:

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MILITARY & VETERANS AFFAIRS, CHAIRMAN
COMMUNITY & REGIONAL AFFAIRS
RESOURCES
INTERNATIONAL TRADE / TOURISM
LEGISLATIVE COUNCIL



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FAX 694-8949

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-3777
FAX (907) 465-2819

SPONSOR STATEMENT HB 65

Partial-birth abortions, which typically occur in late-term pregnancies, involve the following steps: First, the abortionist locates the baby's leg and pulls it into the birth canal; Second, the entire baby is delivered except the head; Third, scissors are inserted into the live baby's head and the hole enlarged; Fourth, a suction catheter is inserted into the hole and the baby's brains are sucked out, thereby collapsing the skull; Finally, the dead baby is completely removed.

In testimony before the US House of Representatives Judiciary Committee, Nurse Shafer described her experience of partial-birth abortions as follows:

"...His little fingers were clasping together. He was kicking his feet. All the while his little head was still stuck inside. [The doctor takes] a pair of scissors and insert[s] them into the back of the baby's head. Then he opened the scissors up. Then he stuck the high-powered suction tube into the hole and sucked the baby's brains out."

This gruesome and hideous procedure, which but for a few centimeters would be punishable as infanticide, would be outlawed by HB 65, as unworthy of civilized people. Such behavior coarsens our society, undermines people's trust in the medical profession, and blurs the legal distinction between abortion and homicide.

HB 65 makes it a felony for a person to perform a partial-birth abortion, except where necessary to save the life of the mother. While leaving intact the right to all other types of abortion procedures, HB 65 punishes the abortionist but not the mother.

Partial-birth abortions are not something that we need in the State of Alaska. Your support of HB 65 is urged.



Representative Pete Kott



Alaska State Legislature House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE, CHAIRMAN
MILITARY & VETERANS AFFAIRS, CHAIRMAN
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SECTIONAL ANALYSIS HB 65

Section 1: Makes partial-birth abortions illegal, except where necessary to save the life of the mother; exempts the mother from prosecution; defines "partial-birth abortion as the act of partially vaginally delivering a living fetus before killing it and completing the delivery.



Representative Pete Kott



Alaska State Legislature House of Representatives

COMMITTEE ASSIGNMENTS:

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PHONE (907) 465-3777
FAX (907) 465-2819

TO: Representative Jeannette James
Chair
House State Affairs Committee

FROM: Representative Pete Kott
Chair
House Rules Committee

DATE: January 16, 1996

RE: Hearing Request; HB 65

I respectfully request that you schedule, at your earliest convenience, HB 65 for a hearing before the House State Affairs Committee. I enclose herewith a copy of the bill, a Sponsor Statement, a Sectional Analysis, and some backup material. Fiscal notes have been ordered from the Department of Law, the Court System, the Department of Corrections, and the Department of Public Safety.

HB 65 would prohibit partial-birth abortions in the State of Alaska, except where necessary to save the life of the mother. All other forms of abortion remain unaffected by this bill, and mothers are specifically exempted from prosecution.

I request that the hearing be teleconferenced from Anchorage, Fairbanks, and the Mat-Su.

Thank you for your kind consideration of this matter.



Representative Pete Kott



IRENE S. LOHKAMP, M.D.
BOARD CERTIFIED IN FAMILY PRACTICE



1200 AIRPORT HEIGHTS DRIVE, SUITE 278
ANCHORAGE, ALASKA 99508
TELEPHONE: (907) 272-3368
FAX: (907) 272-0269

February 16, 1997

Regarding: H.B. 65

Dear Representative Kott:

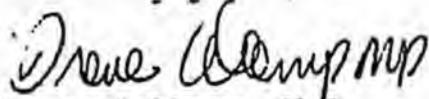
I am a physician in private practice specializing in family medicine. I agree that partial birth abortions should be outlawed in Alaska as stated in Section 18.16.050. This is not the only method available for inducing abortion in the 2nd and 3rd trimester.

As you already know, this procedure is used in late term pregnancy just prior to and beyond gestational age viability. It probably is not successful earlier because the baby's sinews are too delicate to tolerate the traction required to pull the lower extremities and trunk out of the uterus and vaginal canal. The baby is intentionally rotated into breach position, extracted through the birth canal, with the head last remaining within the canal (often forcibly held within) to perform the cranial evacuation that terminates the baby's life functions.

This procedure has met with profound controversy by medical professionals and the general public alike because of its shocking violence and appearance of being infanticide. This procedure is not the sole method of achieving late term abortion. There are other methods available which have been practiced for many years before this procedure was developed. These are as safe, and possibly safer, for the mother. Banning partial birth abortions would still preserve the health of the mother and be protective of her rights.

Please sustain a ban on partial birth abortion in Alaska.

Sincerely yours,


Irene Lohkamp, M.D.

AMERICAN MEDICAL NEWS
Published by the AMA ↘

American Medical
NEWS

Published by the American Medical Association 515 North State Street/Chicago, Illinois 60610/(312) 464-5000
Barbara Bolsen, Editor

July 11, 1995

The Hon. Charles T. Canady
Chairman, Subcommittee on the Constitution
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Bldg.
Washington, D.C. 20515-6216

Material on
Dr. Martin
Haskell

Dear Representative Canady:

We have received your July 7 letter outlining allegations of inaccuracies in a July 5, 1993, story in American Medical News, "Shock-tactic ads target late-term abortion procedure."

You noted that in public testimony before your committee, AMNews is alleged to have quoted physicians out of context. You also noted that one such physician submitted testimony contending that AMNews misrepresented his statements. We appreciate your offer of the opportunity to respond to these accusations, which now are part of the permanent subcommittee record.

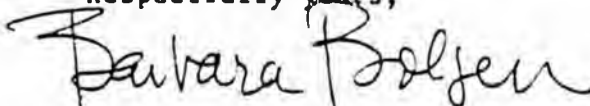
AMNews stands behind the accuracy of the report cited in the testimony. The report was complete, fair, and balanced. The comments and positions expressed by those interviewed and quoted were reported accurately and in context. The report was based on extensive research and interviews with experts on both sides of the abortion debate, including interviews with two physicians who perform the procedure in question.

We have full documentation of these interviews, including tape recordings and transcripts. Enclosed is a transcript of the contested quotes that relate to the allegations of inaccuracies made against AMNews.

Let me also note that in the two years since publication of our story, neither the organization nor the physician who complained about the report in testimony to your committee has contacted the reporter or any editor at AMNews to complain about it. AMNews has a longstanding reputation for balance, fairness and accuracy in reporting, including reporting on abortion, an issue that is as divisive within medicine as it is within society in general. We believe that the story in question comports entirely with that reputation.

Thank you for your letter and the opportunity to clarify this matter.

Respectfully yours,



Barbara Bolsen
Editor

Attachment

American Medical News transcript - page 1

Relevant portions of recorded interview with Martin Haskell, MD:

AMN: Let's talk first about whether or not the fetus is dead beforehand...

Haskell: No it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress -- intrauterine stress during, you know, the two days that the cervix is being dilated. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. And so in my case, I would think probably about a third of those are definitely are (sic) dead before I actually start to remove the fetus. And probably the other two-thirds are not.

AMN: Is the skull procedure also done to make sure that the fetus is dead so you're not going to have the problem of a live birth?

Haskell: It's immaterial. If you can't get it out, you can't get it out.

AMN: I mean, you couldn't dilate further? Or is that riskier?

Haskell: Well, you could dilate further over a period of days.

AMN: Would that just make it... would it go from a 3-day procedure to a 4- or a 5-?

Haskell: Exactly. The point here is to effect a safe legal abortion. I mean, you could say the same thing about the D&E procedure. You know, why do you do the D&E procedure? Why do you crush the fetus up inside the womb? To kill it before you take it out?

Well, that happens, yes. But that's not why you do it. You do it to get it out. I could do the same thing with a D&E procedure. I could put dilapan in for four or five days and say I'm doing a D&E procedure and the fetus could just fall out. But that's not really the point. The point here is you're attempting to do an abortion. And that's the goal of your work, is to complete an abortion. Not to see how do I manipulate the situation so that I get a live birth instead.

AMN, wrapping up the interview: I wanted to make sure I have both you and (Dr.) McMahon saying 'No' then. That this is misinformation, these letters to the editor saying it's only done when the baby's already dead, in case of fetal demise and you have to do an autopsy. But some of them are saying they're getting that information from NAF. Have you talked to Barbara Radford or anyone over there? I called Barbara and she called back, but I haven't gotten back to her.

Haskell: Well, I had heard that they were giving that information, somebody over there might be giving information like that out. The people that staff the NAF office are not medical people. And many of them when I gave my paper, many of them came in, I learned later, to watch my paper because many of them have never seen an abortion performed of any kind.

AMN: Did you also show a video when you did that?

American Medical News transcript - page 2

Haskell: Yeah. I taped a procedure a couple of years ago, a very brief video, that simply showed the technique. The old story about a picture's worth a thousand words.

AMN: As National Right to Life will tell you.

Haskell: Afterwards they were just amazed. They just had no idea. And here they're rabid supporters of abortion. They work in the office there. And...some of them have never seen one performed...

Comments on elective vs. non-elective abortions:

Haskell: And I'll be quite frank: most of my abortions are elective in that 20-24 week range... In my particular case, probably 20% are for genetic reasons. And the other 80% are purely elective...

FACT SHEET: PARTIAL-BIRTH ABORTIONS MEDICALLY NECESSARY?

Those who oppose the Partial Birth Abortion Ban Act (HR 1833) sometimes claim that partial birth abortions are necessary to preserve a mother's health or future ability to have children. The medical evidence to the contrary is overwhelming:

-- Dr. Pamela E. Smith, Director of Medical Education, Department of Obstetrics and Gynecology, Mt. Sinai Hospital, Chicago testified before the U.S. Senate: "There are absolutely no obstetrical situations encountered in this country which require a partially delivered human fetus to be destroyed to preserve the life or health of the mother." [Senate hearing record, p. 82]

--Dr. Earlan R. Giles, a professor of "high-risk" obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures up until "viability" In sworn testimony in the U.S. Federal District Court for the Southern District of Ohio (Nov. 13, 1995), Professor Giles said:

[After 23 weeks], I don't think there are any maternal conditions that I'm aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated. In my experience for 20 years, one can deliver these fetuses either vaginally, or by Cesarean section for that matter, depending on the choice of the parents with informed consent. . . . But there's no reason these fetuses cannot be delivered intact vaginally after a miniature labor, if you will, and be at least assessed at birth and given the benefit of the doubt. [transcript, p. 240]

...
And I cannot think of a fetal condition or malformation, no matter how severe, that actually causes harm or risk to the mother of continuing the pregnancy. I guess one extremely rare example might be a partial hydatidiform mole. But that's a one in a million situation. In most cases mothers [are] carrying an abnormal fetus such as with Down's syndrome, anencephaly, the absence of a brain itself, dwarfism. Other severe even lethal chromosome abnormalities, those mothers if you follow their pregnancy have no higher risk of pregnancy complications than for any other mother who's progressing to term for a delivery. [transcript 241-42]

--Some claim partial birth abortion is needed when a baby suffers from severe hydrocephalus (enlargement of the head due to excess fluid on the brain). But an eminent authority on such

matters, Dr. Watson A. Bowes, Jr., professor of obstetrics and gynecology at the University of North Carolina, and co-editor of the *Obstetrical and Gynecological Survey*, wrote to Congressman Canady:

Critics of your bill who say that this legislation will prevent doctors from performing certain procedures which are standard of care, such as cephalocentesis (removal of fluid from the enlarged head of a fetus with the most severe form of hydrocephalus) are mistaken. In such a procedure a needle is inserted with ultrasound guidance through the mother's abdomen into the uterus, and then into the enlarged ventricle of the brain (the space containing cerebrospinal fluid). Fluid is then withdrawn which results in reduction of the size in the head so that delivery can occur. This procedure is not intended to kill the fetus. and, in fact, is usually associated with the birth of a live infant.

--Dr. James Jones, chairman of the department of obstetrics and gynecology at the New York Medical College, has stated that he "can't think of any situation where you would have to carry out a specific, direct attack on the fetus." With regard to the partial birth procedure, he said that he "can't imagine that being an indicated procedure for the saving of a life or well-being of the mother." [*Catholic New York*, 5/2/96]

--In an article in the *American Medical News* ["Outlawing abortion method." 11/20/1995]. Dr. Warren Hern, late-term abortion provider and author of the nation's most widely used textbook on late-term abortions said of the partial birth procedure: "You really can't defend it. . . . I would dispute any statement that this is the safest procedure to use." He noted that turning the fetus to a breech position is "potentially dangerous," and added: "You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that."

--The American Medical Association's legislative council voted unanimously to recommend that the AMA endorse the Partial Birth Abortion Ban Act. While the entire AMA remained neutral on the act, the council concluded that the procedure is "not a recognized medical technique." "almost does not exist in the medical literature." and is a "basically repulsive" procedure. [*Congress Daily*, 10/10/95, p. 1].

June 1996

PHACT

Physicians' Ad Hoc Coalition for Truth

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"...They will rip your bodies to shreds and you could never have another baby even though the baby you were carrying couldn't live."

-- President Clinton, as to why partial birth abortion must remain available.

The Physicians' Ad-hoc Coalition for Truth (PHACT) about partial-birth abortion brings together experts in the fields of obstetrics and gynecology, perinatology and fetal and maternal medicine for one purpose: to bring the medical facts to bear on the public policy debate over partial-birth abortion.

As practitioners and teachers of a medical specialty that must, at all times, be responsible for the well-being of two patients -- mother and child -- we feel compelled to take this course of action in order to counter the very widespread and dangerous misstatements, misperceptions and outright distortions surrounding this procedure.

The most serious such distortion is the claim, now endorsed by President Clinton, that a partial-birth abortion can be *medically necessary* to protect the health of a woman carrying a child diagnosed with severe genetic disabilities, and to also protect that woman's future fertility and ability to carry other children.

There is no medical basis for such an assertion. Given the many potential risks the procedure entails for the mother, far from ever being medically indicated, partial-birth abortion is actually *counter-indicated*. Far from ever being a medical necessity, partial-birth abortion is not even a procedure recognized by the medical community, including the American College of Obstetricians and Gynecologists. Statements by practitioners of partial-birth abortion indicate that the vast majority of such procedures are elective in nature. There is only one reason to ever consider the partial-birth abortion procedure "necessary:" to ensure the delivery of a dead child rather than a living one.

Because of the dangers posed to women, the distortions regarding the so-called "medical necessity" of partial-birth abortion must not be allowed to stand. Already we have seen the harm done to women by other false statements made by those who defend partial-birth abortions. Proponents of partial-birth abortion have claimed, for example, that the anesthesia given the woman kills the child in her womb even before the procedure begins. Though leading experts in the field of anesthesiology have repeatedly denounced this claim, the media have repeated it often enough to frighten some pregnant women in need of surgery. The medical community's efforts to dispel this lie have gone largely unreported.

As members of the Physicians' Ad-hoc Coalition for Truth (PHACT) about Partial-Birth Abortion, we will take every opportunity presented to correct the misinformation and educate the public as to the medical facts regarding the partial-birth abortion procedure. We ask our fellow professionals in the field of journalism and communications in particular to give these facts the attention they deserve by reporting them in a clear, evenhanded and objective fashion.

7/24/96

PHACT

Physicians' Ad Hoc Coalition for Truth

FOUNDING MEMBERS

Hon. Tom A. Coburn, M.D.
Obstetrician/Gynecologist
Member, U.S. House of
Representatives (OK-2)

Nancy Romer, M.D.
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Clinical Professor, Ob/Gyn
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SCIENCE FACT VS. SCIENCE FICTION:

DOCTORS REPORT THE MEDICAL FACTS ABOUT PARTIAL-BIRTH ABORTION

"People deserve to know that the partial-birth abortion is never medically indicated either to save the health of a woman or preserve her future fertility."

-- Dr. Nancy Romer, FACOG, Chairman, Dept. of Obstetrics and Gynecology, Miami Valley Hospital, Ohio

(Following are highlights from a July 24 Congressional Briefing by the Physicians' Ad-hoc Coalition for Truth (PHACT) about partial-birth abortion):

On the Claimed "Medical Necessity" of this Procedure:

"I am insulted to be told that I am tearing women's bodies apart by not doing this procedure. I am not. ...As physicians, we can no longer stand by while abortion advocates, the President of the United States and newspapers and television shows continue to repeat false medical claims to members of Congress and to the public."

-- Dr. Nancy Romer

"This procedure is currently not an accepted medical procedure. A search of medical literature reveals no mention of this procedure and there is no critically evaluated or peer review journal that describes this procedure. ...There is currently also no peer review or accountability of this procedure. It is currently being performed by a physician with no obstetric training in an outpatient facility behind closed doors and no peer review."

-- Dr. Nancy Romer

On Claims that Unborn Children with Certain Disabilities Must be Aborted by the Partial-Birth Method to Preserve Their Mother's Health or Fertility.

In vetoing the Partial-Birth Abortion Ban, President Clinton showcased the stories of 5 women who, he said "had to make a life-saving -- certainly, health saving -- but still tragic decision" to have partial-birth abortions, given the severe disabilities suffered by the children they carried. He said that "their own lives, their health, and in some cases their capacity to have children in the future were in danger" on account of these children. Six weeks later, the President defended the necessity of partial-birth abortion on the grounds that, without it, these women would be "eviscerated," their bodies "ripped...to shreds and you could never have another baby, even though the baby you were carrying couldn't live." The conditions suffered by the aborted children included: hydrocephalus, polyhydramnios, Trisomy 13, and anencephaly.

Responding to these specific claims, medical experts from PHACT made clear:

1. "[T]hese are honest women who were sadly misinformed and whose decision to have a partial birth abortion was based on a great deal of misinformation."

-- Dr. Joseph DeCook

2. "[T]he presence of *fetal disabilities or fetal anomalies* are not a reason to have a termination of pregnancy to preserve the life of the mother."

-- Dr. Curtis Cook

3. Regarding "a *genetic abnormality* where there is an extra chromosome or a *Trisomy*...These abnormalities do not pose a risk to the mother per se, do not require early delivery, and can be safely delivered vaginally by methods that we use on a regular basis."

-- Dr. Curtis Cook

4. Regarding "*hydrocephalus*...excessive cerebral-spinal fluid... that causes a very large-shaped head in proportion to the rest of the body. ...These patients can be safely delivered by cesarean section. They can even be delivered safely vaginally. We can do that by first decompressing some of the fluid around the baby's head. ...Again, the baby can be delivered safely, without a risk to the mother, and without a risk to her fertility."

-- Dr. Curtis Cook

5. Regarding "*polyhydramnios*...an excessive amount of amniotic fluid around the baby. ...They can be delivered vaginally, safely, and in the need for it in such situations, a cesarean section can be performed."

-- Dr. Curtis Cook

On Claims for the "Safety" of the Partial-Birth Abortion Procedure

-- "[The procedure] sounds like science fiction. It ought to be science fiction!"

-- "It is a maverick medical procedure made up by maverick doctors for the purpose of delivering a dead fetus."

-- Dr. Joseph DeCook

1. "Dilation [forcible opening] of the cervix" -- the first step -- risks creating the condition of "incompetent cervix," which is "the main cause of subsequent infertility." It also risks "infection of the mother" given that the uterus is a "non-sterile environment" exposed by dilation.

-- Dr. Joseph DeCook

2. "Podalic version" -- reaching into the uterus to pull the baby feet first through the cervix -- the second step -- is a very dangerous procedure, "frightening" because of the chance that it might "rupture" or "tear the uterus." This is the "reason this was abandoned 30 or more years ago."

There is also the danger of "perforating the uterus" with the instrument used to grab the baby's leg.

-- Dr. Joseph DeCook

3. The third step of partial-birth abortion -- "putting the scissors through the cortical magnum, spread them and out comes the brain" -- is extremely dangerous given that this step exposes "sharp shards of bone," which, if scraped against the uterus, with its "immense blood supply" would cause "deep shock in 3 or 4 minutes" and would "totally pump out [the mother's] blood supply in ten minutes."

-- Dr. Joseph DeCook

PHACT

DATE: July 24, 1996
CONTACT: 703/683-5004

MEDIA ADVISORY

Physicians' Ad Hoc Coalition for Truth

PHYSICIANS' CONGRESSIONAL BRIEFING TODAY IN ADVANCE OF PARTIAL BIRTH ABORTION VETO OVERRIDE

President Clinton has publicly endorsed the medical conclusion that women carrying children diagnosed with certain severe genetic abnormalities have no medical choice but partial birth abortion. He has stated that without partial birth abortion, a mother of such a child risks having her body ripped "to shreds," with the result that "you can never have another baby even though the baby you were carrying couldn't live."

Nancy Romer, M.D.
Fellow, American College of
Obstetricians & Gynecologists
Clinical Professor, Ob/Gyn
Wright State University
Chairman, Dept. of Ob/Gyn,
Miami Valley Hospital, OH

Women who've been in this situation, yet did not have the partial birth abortion, are concerned about the President's medical misstatements and inaccurate claims, which are potentially dangerous to women and their children. These women will also brief Congressional Members.

Pamela Smith, M.D.
Director of Medical Education
Dept. of Obstetrics & Gynecology
Mt. Sinai Medical Center,
Chicago, IL
Member, Association of
Professors of Ob/Gyn

WHAT: Leading doctors in the fields of obstetrics and perinatology have formed the Physicians' Ad-hoc Coalition for Truth (PHACT) about Partial Birth Abortion. Physicians from the coalition will brief members of Congress on the medical facts regarding the procedure: that partial birth abortion is *never* medically indicated for women, even in cases of severe fetal abnormality; it is not even a procedure recognized by the medical community or the American College of Obstetricians and Gynecologists (ACOG).

James Jones, M.D.
Professor/Chair, Ob/Gyn
New York Medical College
Chair, Ob/Gyn
St. Vincent's Hospital &
Medical Center, NYC

WHO: Members from PHACT who will conduct the briefing are **Dr. Curtis Cook**, Maternal Fetal Medicine, Buttersworth Hospital, Michigan State College of Human Medicine; **Dr. Nancy Romer**, fellow ACOG, clinical professor in Dept. of Ob/Gyn at Wright State University School of Medicine, and Chair, Dept of Ob/Gyn of Miami Valley Hospital (both in Dayton, OH); **Dr. Joseph L. DeCook**, Fellow, American College of Obstetricians and Gynecologists, Grand Rapids, MI.

Curtis R. Cook, M.D.
Maternal Fetal Medicine
Butterworth Hospital
Michigan State College of
Human Medicine

The physicians will be joined by five women who found they were carrying children with conditions incompatible with life outside the womb, such as anencephaly, Trisomy, encephaloceles and body stalk anomaly. None of these women had an abortion, and none suffered serious health consequences or saw their fertility impaired. They will share their personal experiences, and release correspondence to President Clinton seeking a meeting to correct the President's medical misstatements.

Joseph L. DeCook, M.D.
Fellow, American College of
Obstetricians & Gynecologists

William Stalter, M.D.
Clinical Associate Professor,
Obstetrics & Gynecology
Wright State University, OH

Representatives **Charles Canady (R-FL)**, author of the Partial Birth Abortion Ban Act, and **Tom Coburn (R-OK)**, himself a practicing ob/gyn, will host the briefing.

Bernard Nathanson, M.D.
Visiting Scholar
Center for Clinical &
Research Ethics
Vanderbilt University

WHEN: Wednesday, July 24, 1996, 2 - 3 p.m

WHERE: Room 2237 Rayburn House Office Building

CONTACT: Gene Tarne or Michelle Powers (703) 683-5004

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Doctors deny health value of late abortions

By Julia Duin
THE WASHINGTON TIMES

President Clinton is preaching medical nonsense by claiming that a form of late-term abortion protects a mother's health or fertility, three physicians said yesterday.

"So many physicians like myself watch in disbelief as false medical facts about partial-birth abortions get circulated in the public square," Dr. Nancy Romer, a Dayton, Ohio, obstetrician, said at a briefing to announce the founding of the Physicians Ad-hoc Coalition for Truth (Phact).

"In fact," she said, "there's a lot of evidence they may do harm to women."

Phact, to be based in Alexandria, aims to counteract pro-choice claims about partial-birth abortion, in which a doctor delivers an unborn child feet first up to its neck, punctures the skull and sucks out the brain.

She and two Michigan doctors said they were most incensed by the president's claim that such abortions are medically necessary for mothers of deformed children.

Mr. Clinton made this argument in his April 10 veto statement on the Partial Birth Abortion Ban Act. The ceremony featured five women who said they underwent such abortions for health reasons.

"These were honest women who were sadly misinformed," said Dr. Joseph DeCook, a Grand Rapids, Mich., obstetrician. "There is no literature that testifies to the safety of partial-birth abortion. It's a maverick procedure devised by maverick doctors who wish to deliver a dead fetus."

Instead of protecting a woman's fertility, such abortions endanger it by using methods that could lead to an infection, causing sterility, Dr. DeCook said.

He also said that drawing out the child in a breech position "is a very dangerous procedure, and you could tear the uterus." He said a ruptured uterus could cause the mother to bleed to death in 10 minutes.

The puncturing of the child's skull also produces bone shards that could puncture the uterus.

"It sounds like science fiction," Dr. DeCook said. "It's not taught in any residency program in the country."

Joining the doctors were five women who said they elected not to abort when they discovered they were carrying deformed children.

Among them was Whitney Goin, who was with her husband, Bruce. The Orlando, Fla., couple arrived holding their 10-month-old son, Andrew, whom doctors offered to abort when they learned he would be born with several vital organs outside his body.

The child, who cooed and gurgled while Mrs. Goin spoke, has undergone many painful surgeries and eight blood transfusions, she said, as the organs, one by one, have been inserted into his body.

"The worst-case scenarios that were painted by the doctors did not come to fruition, and we are thankful that our son was allowed the opportunity to fight," she said. "My ability to have more children was not affected at all."

The other four women, who have requested a meeting with the president, displayed photos of children who died.

Several said their conditions were similar to those of the women with whom Mr. Clinton spoke.

NANCY G. ROMER, M.D.

1126 South Main Street

Dayton, Ohio 45409

Telephone 222-0297

Douglas Johnson
National Right to Life

May 28, 1996

Dear Mr. Johnson,

This is in reference to our conversation in regards to the 60 Minutes program on late term abortions. Lisa Binns of 60 Minutes called me on Friday April 26 and we spoke for approximately 45 minutes. I made several points in regard to late term abortions:

1. A handicapped fetus is not a threat to the mother's life. Ms. Binns suggested that a fetus with anencephaly has a higher risk of intrauterine death and this presents a risk to the mother. I told her that intrauterine fetal death under any circumstances is not a medical emergency and can be treated in a few days. Once the fetus dies partial birth abortion ban does not apply.

2. If a mother has a serious medical condition what is required is separation of the fetus from the mother not fetal death. This can be accomplished in several ways, either through induction of labor or cesarean section.

3. There are safe alternatives to partial birth abortion. I FAXed her a copy of Dr. Warren Hearn's article where he described his method of second trimester terminations. He injects the fetal heart with digoxin on day two to allow fetal death. On day three he documents fetal death and again now that the fetus is dead the law no longer applies. I can fax this article to you if you do not have it.

While I was out of the country May 1-10 Ms. Binns called to speak to me. I returned her call on May 14. She said she had a quick question. "Do you personally know of any physicians who would electively terminate a healthy fetus in a healthy mother past viability." I answered yes that I personally had a patient that Dr. Haskell had done an abortion on at 26 weeks. She argued that was not really viable and we debated viability. She then asked "Do you personally know of any physician who terminated a healthy fetus in a healthy mother at term?" I said Dr. McMahon had reported terminating babies with cleft lip and cleft palate. She suggested these were not healthy. I said they were not PERFECT but arguably healthy. Then I said "So what your asking is do I personally know of

any physician who has terminated a PERFECT baby in a PERFECT mother at term? The answer is no."

I hope this is of some help to you and apologize for taking so long to respond. If I can be of further help or answer any questions please don't hesitate to call.

Sincerely,



Nancy G. Romer, M.D.

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PHACT

Physicians' Ad Hoc Coalition for Truth

January 29, 1997

Fredric D. Frigoletto, Jr. M.D.
President of the Executive Board.
American College of Obstetricians and Gynecologists

Dear Dr. Frigoletto:

FOUNDING MEMBERS

Hoa Tom A. Coburn, M.D.
Family Practitioner, Obstetrician
Member, U.S. House of
Representatives (OR-2)

Nancy Romer, M.D.
Fellow, American College of
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Clinical Professor, Ob/Gyn
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Communications Counsel:
Gunn Tarnø, Michelle Powers

We write to you on behalf of the hundreds of doctors nationwide who are members of the Physicians' Ad hoc Coalition for Truth (PHACT). PHACT was formed to address expertly one issue: partial-birth abortion. While the coalition includes physicians from all medical specialties, the vast majority of its members are obstetricians and gynecologists. Of these, a sizeable number are also Fellows of the American College of Obstetricians and Gynecologists (ACOG).

With this in mind, we are writing to express our surprise and concern over a recent statement issued by ACOG, dated January 12, 1997, on the subject of partial-birth abortion. Surprise, because those of us who are fellows were never informed that ACOG was even investigating this subject, with the goal of issuing a public statement, presumably on behalf of us and the others within ACOG's membership. And concern, because the statement that was issued, by endorsing a practice for which no recognized research data exist, would seem to be violating ACOG's own standards.

Let us address the latter concern -- content -- first.

The statement correctly notes at the outset that the procedure in question is not recognized in the medical literature. The same, it should be noted, can be said of the name you have chosen to call it -- "Intact Dilatation and Extraction," or "Intact D&X" -- and all the other names proponents of this procedure have concocted for it. We have closely followed the issue of partial-birth abortion -- again, it is the *only* issue PHACT addresses -- and the term Intact Dilatation and Extraction is new to us and would appear to be unique to you. The late Dr. James McMahon, until his death a leading provider of partial-birth abortions, called them "Intact Dilatation and Evacuation (Intact D&E)" while another provider, Dr. Martin Haskell of Ohio, calls them "Dilatation and Extraction (D&X)." Planned Parenthood, for example, calls them D&X abortions, while the National Abortion Federation prefers Intact D&E, so there is no agreement, even among proponents of this procedure, as to what to call it. Indeed, in its January, 1996 newsletter, ACOG then referred to it as "intact dilatation (sic) and evacuation." Your new coinage would seem to be a combination of these various "names" floating about, but to what end is not clear. What is clear is that none of these terms, including your own "Intact D&X" can be found in any of the standard medical textbooks or databases.

It is wrong to say, as your statement does, that descriptions, at least the description in last year's Partial-Birth Abortion Ban Act, are "vague" and "could be interpreted to include elements of many recognized" medical techniques. The description in the federal legislation is very precise as to what is being proscribed and is based on Dr. Haskell's own descriptions. Moreover, the legislation is so worded as to clearly distinguish the procedure being banned from recognized obstetric techniques, and recognized abortion techniques, such as D&E, which would be unaffected by the proposed ban.

By far, however, the most disturbing part of ACOG's statement is the assertion that "An 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 the mother."

On what possible basis does ACOG make this rather astounding assertion?

Many of our members hold teaching positions or head departments of obstetrics and gynecology or perinatology at universities and medical centers. To our knowledge there are no published peer-reviewed safety data regarding the procedure in question. It is not taught as a formally recognized medical procedure. We can think of no data that could possibly support such an assertion. If ACOG or its "select panel" has such data, we would, as teachers and practicing ob/gyns, certainly like to review it.

The best that your statement does to back this claim is the very vague assertion that "other data show that second trimester transvaginal instrumental abortion is a safe procedure." While this may be true, it is, as surely you must be aware, totally beside the point. Such data may exist regarding, e.g., second trimester D&E abortion, but this is irrelevant to the fact that no similar data, at least to our knowledge, exists with respect to partial-birth abortion (or, as you prefer, "intact D&X" or whatever other medical-sounding coinage supporters of this procedure may use). To include such an assertion that can only refer to second trimester abortion procedures other than partial-birth is deceptive and misleading at best.

ACOG clearly recognizes that in no circumstances is partial-birth abortion the only option for women. In other words, ACOG agrees that there are other, *medically recognized*, and standard procedures available to women other than partial-birth abortion. Given ACOG's acceptance of this medical fact, your claim that a totally unrecognized, non-standard procedure, for which no peer-reviewed data exist, can nonetheless be the safest and most appropriate in certain situations, simply defies understanding.

If ACOG is truly committed to standing by this claim, then it would appear to be violating its own standards by recommending the use of a procedure for which no peer-reviewed studies or safety data exist.

In contrast, our research of the subject leads us to conclude that there are no obstetrical situations that would necessitate or even favor the medically unrecognized partial-birth abortion procedure as the safest or most appropriate option. Indeed, we have concerns that this procedure may itself pose serious health risks for women.

Ordinarily, we would agree that the intervention of legislative bodies into medical decision making is usually inappropriate. However, when the medical decision making *itself* is inappropriate, and may be putting women at risk by subjecting them to medically unrecognized procedures, then the intervention of a legislative body, such as the U.S. Congress, may be the only way to protect mothers and infants threatened by the partial-birth abortion procedure.

In addition to these concerns over the content of the statement, we are also concerned as to the procedure by which it came to be issued.

As mentioned, the vast majority of PHACT members are specialists and sub-specialists (i.e. perinatologists) in obstetrics and gynecology, and many of these are also fellows of ACOG. After them, our membership consists largely of family practitioners and pediatricians. Former Surgeon General C. Everett Koop, perhaps the nation's leading pediatric surgeon, has been associated with PHACT and his public statements on partial-birth abortion are in agreement with PHACT. Our membership is open to any doctor, regardless of his or her political views on the larger question of abortion rights, precisely because our focus is strictly on the medical realities that relate to this procedure. (In fact, doctors who are pro-choice have publicly stated their opposition, on medical grounds, to the use of this abortion method).

We cannot recall receiving any notification whatsoever that the American College of Obstetricians and Gynecologists was even reviewing the issue of partial-birth abortion toward the end of issuing a statement of policy. We cannot recall ever being informed that ACOG was going to convene a "select panel" to accomplish this. We find it unusual that PHACT, a coalition of doctors formed for no other reason than to investigate medical claims made about partial-birth abortion, was not invited to participate in these deliberations. Those of us who are fellows of ACOG were kept completely in the dark as to what ACOG's leadership was doing in regard to this issue.

In truth, this statement is the product of a panel -- whose membership ACOG has not made public -- that was working behind closed doors and with no real participation from ACOG's membership itself. In crafting this statement, ACOG simply ignored its own members. There is the danger that in issuing this statement, ACOG is giving the larger public the impression that the statement somehow represents the thinking of its members on this subject. It does not. ACOG members had no knowledge of this statement until it was issued as a *fait accompli*.

In conclusion, this statement clearly does *not* represent a consensus among the nation's obstetricians and gynecologists as to the safety or appropriateness, under any circumstances, of the partial-birth abortion method. We ask you to provide the medical data, research and all other relevant materials which could possibly have led to such an assertion. We ask that you also make available the names of those on the select panel who arrived at such a conclusion. We would also ask that the leadership of ACOG officially withdraw this statement until the matter at issue -- partial-birth abortion -- has been subject to a thorough and open discussion among the members of ACOG and those doctors in related specialties who have significant knowledge regarding this issue. We look forward to your response.

Sincerely:

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Partial-Birth Abortion: It's the *Only* Correct Term

By Douglas Johnson
NRLC Federal Legislative Director

You may have read in the paper that President Clinton vetoed a bill "outlawing late-term abortions" or "banning a medical procedure called intact dilation and evacuation." But actually, Congress never passed such a bill.

Rather, Congress passed . . . and President Clinton vetoed . . . a bill to ban partial-birth abortion (unless necessary to save a mother's life). The bill (HR 1833) defines partial-birth abortion, for purposes of the U.S. criminal code, as "an abortion in which the person performing the abortion partially vaginally delivers a *living* fetus before killing the fetus and completing the delivery." [emphasis added]

The bill does *not* contain any reference to the gestational age of the fetus/baby. From available evidence, it appears that the partial-birth abortion method is generally used after 20 weeks (4½ months) -- often much later. However, there are indications that the method at times has been used earlier . . . and the bill bans the practice of partial-birth abortion at any point in pregnancy.

The phrase "outlawing late-term abortions" is doubly misleading, because "methods of "late-term" abortion, other than the partial-birth method, would be unaffected by HR 1833.

In the interests of objectivity, the press should use the term that Congress has defined as a matter of law -- *partial-birth abortion*. That is the practice that the press has followed on other controversial issues. For example, most media outlets refer to the 1993 congressional ban on certain "assault weapons," even though manufacturers of such weapons and opponents of the ban use other terminology to refer to some or all of the firearms affected by that legislation.

Some opponents of HR 1833 insist that anyone writing about the bill should say that it bans a procedure "known medically as intact dilation and evacuation." But when journalists comply with this demand, they do so at the expense of accuracy. The bill itself makes no reference

whatever to "intact dilation and evacuation" abortions. More importantly, the term "intact dilation and evacuation" is *not* equivalent to the class of procedures banned by the bill.

The term "intact dilation and evacuation" was invented by the late Dr. James McMahon. When HR 1833 was introduced in June, 1996, the term did not appear in the standard medical textbooks and databases, nor does it appear anywhere in the standard textbook on abortion methods, *Abortion Practice* by Dr. Warren Harn.

It is clearly inaccurate to equate "intact dilation and evacuation" procedures with the abortions banned by HR 1833. In his writings, Dr. McMahon used the term "intact dilation and evacuation" to cover any procedure that resulted in an intact cadaver. This included partial-birth abortion procedures -- but it also included procedures to remove the bodies of babies who had died *natural* deaths in utero, and procedures to remove the bodies of babies who had been *deliberately* killed in utero, neither of which is a partial-birth abortion as defined by the bill.

[The term "intact dilation and evacuation" should not be confused with "dilation and evacuation" (D&E), which is a procedure commonly used to perform second-trimester abortions, involving *dismemberment* of the baby *while still in the uterus*. The bill does not apply to this method at all.]

Because "intact dilation and evacuation" is not a standard, clearly defined medical term, the House Judiciary Constitution Subcommittee legal staff (which drafted the bill under Congressman Canady's supervision) rejected it as useless for purposes of defining a criminal offense. Indeed, it is worse than useless -- a criminal statute that relied on such a term would be stricken by the federal courts as "void for vagueness."

The term chosen by Congress, partial-birth abortion, is in no sense misleading. In sworn testimony in an Ohio lawsuit on Nov. 8, 1996, Dr. Martin Haskell -- who has done over 1,000 partial-birth abortions, and who authored the 1992

instructional paper that touched off the national controversy over the procedure -- explained that he first learned of the method when a colleague "described very briefly over the phone to me a technique that I later learned came from Dr. McMahon where they internally grab the fetus and rotate it and accomplish . . . be somewhat equivalent to a breech type of delivery." [emphasis added]

Dr. Haskell said that he "coined" the term "dilation and extraction" (D&E) to refer to this method of abortion. However, Dr. Haskell also used the same term to apply to procedures to remove babies already dead . . . which are not partial-birth abortions. The term "dilation and extraction" does not appear in medical dictionaries.

Some journalists cite the National Abortion Federation (NAF) as "authority" for the assertion that "intact dilation and evacuation" is the "medical" term for the procedure that HR 1833 would ban. NAF is a lobbying organization for abortionists and abortion clinics that pay their dues.

NAF has a history of disseminating blatant misinformation with respect to partial-birth abortions. In a tape-recorded 1993 interview with *American Medical News*, Dr. Haskell specifically rebutted several of the claims that were being made by NAF officials at that time (e.g., NAF falsely claimed that the fetuses are dead *before* being "extracted," that the procedures were done mainly in extreme medical cases, etc.). Dr. Haskell explained: "Well, I had heard that they were giving that information . . . The people that staff the NAF office are not medical people . . . Here they're rabid supporters of abortion. They work in the office there. And . . . some of them have never seen one performed . . ."

When questioned about Dr. Haskell's recorded remarks, Barbara Radford, at that time the executive director of NAF, "acknowledged that the information her group was quoted as providing was inaccurate," *American Medical News* reported (July 5, 1993).

In summary, it is a strange kind of "objectivity" that sets aside the term for a criminal offense that has been adopted and explicitly defined by the U.S. Congress, and substitutes a non-equivalent, pseudo-medical term promoted by the very special-interest group that would be "regulated" by the legislation.

The Wall Street Journal, 10/14/96

Letters to the Editor

Abortions of Healthy Babies

Alexander Sanger's Oct. 2 Letter to the Editor in response to our Sept. 19 editorial-page article is a perfect example of why we, as doctors, felt the need to establish the Physician's Ad Hoc Coalition for Truth (PHACT) to correct the many medical distortions surrounding the partial-birth abortion procedure.

Mr. Sanger's charge that the term "partial-birth abortion" is "made up" and appears nowhere in the medical literature is equally true of the term he prefers: "intact dilation and evacuation." Contrary to his assertion, this is not the medical term for partial-birth abortion. Rather, it was coined by the late Dr. James McMahon, until his recent death a leading provider of partial-birth abortions. In contrast, another leading partial-birth abortion provider, Dr. Martin Haskell of Ohio, has his own personal name for this technique—"D&X," for "Dilation and Extraction." What both terms have in common is that neither appear in any standard medical textbook, dictionary or database. Neither do they appear in the nation's standard textbook on abortion methods, "Abortion Practice" by Dr. Warren Hern (in fact, Dr. Hern has expressed reservations as to the safety of the procedure that would be banned by H.R. 1833).

Thus, because the term "intact dilation and evacuation" is not a standard medical term, and because Dr. McMahon's idiosyncratic usage of it was so broad as to cover procedures not affected by the language of H.R. 1833 (e.g. removal of children who have died naturally or been killed in utero), it is inappropriate both to use the term in the legislation and to equate so-called "intact D&E" abortion with "partial-birth" abortions. In crafting legislation to ban this particular procedure, it was crucial to employ terminology distinguishing it from techniques that are standard in abortion practice. The term "partial birth-abortion" encompasses both legislative and descriptive concerns.

Mr. Sanger asks, "What would they recommend" if the mid-trimester uterus needs emptying? Every medical school and every training program in America would agree that amniocentesis and/or cephalocentesis followed by induction of labor with prostaglandin or pitocin is the

accepted Standard of Care—the most physiologic and safest method of mid-trimester delivery. It is by far preferable to partial-birth abortion, a two-and-a-half-day, potentially dangerous procedure unsupported by any safety data in the medical literature.

In fact, we would ask Mr. Sanger to produce evidence of safety or preference for the "intact D&E" procedure over existing and proven safe procedures. ("Intact D&E" should not be confused with "dilation and evacuation" [D&E], a procedure commonly used in second-trimester abortions involving the dismemberment of the fetus in utero and which is, of course, unaffected by H.R. 1833).

As to Mr. Sanger's charge that we "irresponsibly advance the argument" that most partial-birth abortions are "purely elective," we do not: Dr. Haskell does. In an interview with American Medical News, Dr. Haskell volunteered the information that of the partial-birth abortions he performs, "80 percent are purely elective." In materials he submitted to Congress, Dr. McMahon included "indica-

tions" such as maternal depression, young age of mother, sickle cell trait, and a host of other conditions associated with the birth of perfectly normal infants. No partial-birth abortion is ever medically indicated, and recent investigative reports by the Washington Post and the Bergen (N.J.) Record confirm what PHACT and other supporters of H.R. 1833 have been saying all along: Most partial-birth abortions are performed on healthy mothers with healthy babies.

Finally, Mr. Sanger's assertion that anencephaly and "400 other types of catastrophic anomalies" cannot be detected prior to 20 weeks is categorically false. Many of us make our living detecting just such anomalies in ultrasound examinations performed between 16 and 20 weeks' gestation.

We again stand by our statement that there is no obstetrical situation that requires the willful destruction of a partially delivered baby to protect the life, health or future fertility of a woman.

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CURTIS R. COOK, M.D.,
PAMELA E. SMITH, M.D.,
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Physicians' Ad Hoc Coalition for Truth
Alexandria, Va.

Partial-birth abortion is a moral matter of the most obvious kind. The effort to sterilize it with a technical name is itself reprehensible. The demands of morality are most apparent where the order of nature is clearest and hence most clearly demands respect. It may be that morality has a bad name partly because the natural order has been too long obscured by the pretensions of technology. But defiled technology is increasingly becoming recognized for the idol that it really is, and nowhere can the frustrated order and intentions of nature—from the Latin *nascor*, "to be born"—be more manifest than in a human birth brutally cut off in its very moment of accomplishment. This is more true, not less, when the name given to the act betrays studied coldness. (Is this not what we elsewhere refer to as being "cold blooded"?) One should be no more surprised at finding an "emotional charge" in the name used here than with the names of those new highly exalted crimes known as "rape" and "incest."

It should also be noted in reply to Mr. Sanger that this discussion is not, in its most important aspect, about the consequences or circumstances of partial-births abortion, although both friends and foes of abortion often speak as if it were. The essential issue here is the intrinsic character of the procedure itself. If nothing can be weighed, judged and named according to its intrinsic character, then nothing can be weighed, judged or named at all.

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The Wall Street Journal, Thursday, September 19, 1996, A22

Partial-Birth Abortion Is Bad Medicine

By NANCY ROMER, PAMELA SMITH,
CURTIS R. COOK AND JOSEPH L. DECOOK

The House of Representatives will vote in the next few days on whether to override President Clinton's veto of the Partial Birth Abortion Ban Act. The debate on the subject has been noisy and rancorous. You've heard from the activists. You've heard from the politicians. Now may we speak?

We are the physicians who, on a daily basis, treat pregnant women and their babies. And we can no longer remain silent while abortion activists, the media and even the president of the United States continue to repeat false medical claims about partial-birth abortion. The appalling lack of medical credibility on the side of those defending this procedure has forced us—for the first time in our professional careers—to leave the sidelines in order to provide some sorely needed facts in a debate that has been dominated by anecdote, emotion and media stunts.

Since the debate on this issue began, those whose real agenda is to keep all types of abortion legal—at any stage of pregnancy, for any reason—have waged what can only be called an orchestrated misinformation campaign.

First the National Abortion Federation and other pro-abortion groups claimed the procedure didn't exist. When a paper written by the doctor who invented the procedure was produced, abortion proponents changed their story, claiming the procedure was only done when a woman's life was in danger. Then the same doctor, the nation's main practitioner of the technique, was caught—on tape—admitting that 80% of his partial-birth abortions were "purely elective."

Then there was the anesthesia myth. The American public was told that it wasn't the abortion that killed the baby, but the anesthesia administered to the mother before the procedure. This claim was immediately and thoroughly denounced by the American Society of Anesthesiologists, which called the claim "entirely inaccurate." Yet Planned Parenthood and its allies continued to spread the myth, causing needless concern among

our pregnant patients who heard the claims and were terrified that epidurals during labor, or anesthesia during needed surgeries, would kill their babies.

The latest baseless statement was made by President Clinton himself when he said that if the mothers who opted for partial-birth abortions had delivered their children naturally, the women's bodies would have been "eviscerated" or "ripped to shreds" and they "could never have another baby."

That claim is totally and completely false. Contrary to what abortion activists would have us believe, partial-birth abortion is never medically indicated to protect a woman's health or her fertility. In fact, the opposite is true: The procedure can pose a significant and immediate threat to both the pregnant woman's health and her fertility. It seems to have escaped anyone's attention that one of the five women who appeared at Mr. Clinton's veto ceremony had five miscarriages after her partial-birth abortion.

Consider the dangers inherent in partial-birth abortion, which usually occurs after the fifth month of pregnancy. A woman's cervix is forcibly dilated over several days, which risks creating an "incompetent cervix," the leading cause of premature deliveries. It is also an invitation to infection, a major cause of infertility. The abortionist then reaches into the womb to pull a child feet first out of the mother (internal podalic version), but leaves the head inside. Under normal circumstances, physicians avoid breech births whenever possible; in this case, the doctor intentionally causes one—and risks tearing the uterus in the process. He then forces scissors through the base of the baby's skull—which remains lodged just within the birth canal. This is a partially "blind" procedure, done by feel, risking direct scissor injury to the uterus and laceration of the cervix or lower uterine segment, resulting in immediate and massive bleeding and the threat of shock or even death to the mother.

None of this risk is ever necessary for any reason. We and many other doctors

across the U.S. regularly treat women whose unborn children suffer the same conditions as those cited by the women who appeared at Mr. Clinton's veto ceremony. Never is the partial-birth procedure necessary. Not for hydrocephaly (excessive cerebrospinal fluid in the head), not for polyhydramnios (an excess of amniotic fluid collecting in the woman) and not for trisomy (genetic abnormalities characterized by an extra chromosome). Sometimes, as in the case of hydrocephaly, it is first necessary to drain some of the fluid from the baby's head. And in some cases, when vaginal delivery is not possible, a doctor performs a Caesarean section. But in no case is it necessary to partially deliver an infant through the vagina and then kill the infant.

How telling it is that although Mr. Clinton met with women who claimed to have needed partial-birth abortions on account of these conditions, he has flat-out refused to meet with women who delivered babies with these same conditions, with no damage whatsoever to their health or future fertility!

Former Surgeon General C. Everett Koop was recently asked whether he'd ever operated on children who had any of the disabilities described in this debate. Indeed he had. In fact, one of his patients—"with a huge omphalocele [a sac containing the baby's organs] much bigger than her head"—went on to become the head nurse in his intensive care unit many years later.

Mr. Koop's reaction to the president's veto? "I believe that Mr. Clinton was misled by his medical advisers on what is fact and what is fiction" on the matter, he said. Such a procedure, he added, cannot truthfully be called medically necessary for either the mother or—he scarcely need point out—for the baby.

Considering these medical realities, one can only conclude that the women who thought they underwent partial-birth abortions for "medical" reasons were tragically misled. And those who purport to speak for women don't seem to care.

So whom are you going to believe? The activist-extremists who refuse to allow a little truth to get in the way of their agenda? The politicians who benefit from the activists' political action committees? Or doctors who have the facts?

Dr. Romer is clinical professor of obstetrics and gynecology at Wright State University and chairman of obstetrics and gynecology at Miami Valley Hospital in Ohio. Dr. Smith is director of medical education in the department of obstetrics and gynecology at Chicago's Mt. Sinai Medical Center. Dr. Cook is a specialist in maternal fetal medicine at Butterworth Hospital, Michigan State College of Human Medicine. Dr. DeCook is a fellow of the American College of Obstetricians and Gynecologists. The authors are founding members of the Physicians' Ad Hoc Coalition for Truth, which now has more than 300 members.

Why Defend Partial-Birth Abortion?

By C. Everett Koop

THANOVER, N.H. The debate in Congress about the procedure known as partial-birth abortion reveals deep national uneasiness about abortion 23 years after the Supreme Court legalized it. As usual, each side in the debate shades the statistics and distorts the facts. But in this case, it is the abortion-rights advocates who seem inflexible and rigid.

The Senate is expected to vote today on whether to join the House in overriding President Clinton's veto of a bill last April banning partial-birth abortion. In this procedure, a doctor pulls out the baby's feet first, until the baby's head is lodged in the birth canal. Then, the doctor forces scissors through the base of the baby's skull, suctions out the brain, and crushes the skull to make extraction easier. Even some pro-choice advocates wince at this, as when Senator Daniel Patrick Moynihan termed it "close to infanticide."

The anti-abortion forces often imply that this procedure is usually

Pro-choicers twist the medical facts.

performed late in the third trimester on fully developed babies. Actually, most partial-birth abortions are performed late in the second trimester, around 26 weeks. Some of these would be viable babies.

But the misinformation campaign conducted by the advocates of partial-

birth abortion is much more misleading. At first, abortion-rights activists claimed this procedure hardly ever took place. When pressed for figures, several pro-abortion groups came up with 500 a year, but later investigations revealed that in New Jersey alone 1,500 partial-birth abortions are performed each year. Obviously, the national annual figure is much higher.

The primary reason given for this procedure — that it is often medically necessary to save the mother's life — is a false claim, though many people, including President Clinton, were misled into believing this. With all that modern medicine has to offer, partial-birth abortions are not needed to save the life of the mother, and the procedure's impact on a woman's cervix can put future pregnancies at risk. Recent reports have concluded that a majority of partial-birth abortions are elective, involving a healthy woman and normal fetus.

I'll admit to a personal bias: In my 30 years as a pediatric surgeon, I operated on newborns as tiny as some of these aborted babies, and we corrected congenital defects so they could live long and productive lives.

In their strident effort to protect partial-birth abortion, the pro-choice people remind me of the gun lobby. The gun lobby is so afraid of any effort to limit any guns that it opposes even a ban on assault weapons, though most gun owners think such a ban is justified.

In the same way, the pro-abortion people are so afraid of any limit on abortion that they have twisted the truth to protect partial-birth abortion, even though many pro-choice Americans find it reasonable to ban the procedure. Neither AK-47's nor partial-birth abortions have a place in civil society.

Both sides in the controversy need to straighten out their stance. The pro-life forces have done little to help prevent unwanted pregnancies, even though that is why most abortions are performed. They have also done little to provide for pregnant women in need.

On the other side, the pro-choice forces talk about medical necessity and under-represent abortion's prevalence: each year about 1.6 million babies have been aborted, very few of them for "medical necessity." The current and necessarily graphic debate about partial-birth abortion should remind all of us that what some call a choice, others call a child.

C. Everett Koop was Surgeon General from 1981 to 1989.

Some Second Thoughts on Partial-Birth Abortions

From "A New Look At Late-term Abortion," by syndicated columnist Richard Cohen, September 24, 1996: [In a June, 1995 column] I also was led to believe that these late-term abortions were extremely rare and performed only when the life of the mother was in danger or the fetus irreparably deformed. I was wrong... my Washington Post colleague David Brown looked behind the purported figures and purported rationale for these abortions and found something other than medical crises of one sort or another. After interviewing doctors who performed late-term abortions and surveying the literature, Brown-- a physician himself-- wrote: "These doctors say that while a significant number of their patients have late abortions for medical reasons, many others-- perhaps the majority-- do not".... In the latter stages of pregnancy, the word abortion does not quite suffice; we are talking about the killing of the fetus-- and, too often, not for any urgent medical reason....Late-term abortions once seemed to be the choice of women who, really, had no other choice. The facts now are different. If that's the case, then so should be the law.

From a column by Newsweek Senior Editor Jonathan Alter, "The Flight Over Partial-Birth Abortion Illustrates the Practical Limits of Unflinching Principle," October 7, 1996: When the partial-birth-abortion debate took shape last year, pro-choice groups insisted the procedure was extremely rare. The number 500 to 600 was tossed around, with the president and others explaining that it was reserved for heart-wrenching cases involving women whose tests show severely deformed fetuses or whose health was at risk. Not so. When deemed medically appropriate, it is used much more commonly-- perhaps several thousand times a year... The Washington Post surveyed physicians and found that most of those patients receiving partial-birth abortions were young, poor, single women without health problems. They simply wanted abortions, and in the second trimester it is sometimes the recommended procedure, though pro-life former surgeon general C. Everett Koop says this type of abortion is never truly medically necessary. If progressives listen raptly to Koop on tobacco, they at least owe him a hearing on obstetrics.

From "Sustaining Partial-Birth Abortion," an editorial in the Wall Street Journal for September 26, 1996: Partial-birth abortion is about pregnancies from the fifth month onward, and as such puts us into a different realm of political, medical and cultural concerns.... When the partial-birth abortion matter first arose in the House, choice advocates such as Planned Parenthood asserted that the procedure-- making an incision or punctured hole in the skull and withdrawing the contents so that the collapsed head can be pulled through the cervix-- was "extremely rare and done only when the woman's life is in danger or in cases of extreme fetal abnormality." That turns out to be untrue. No official records are kept on later-term abortions. But to their credit some newspapers have produced stories on a little-discussed area of the abortion business without the heavy reporter bias that normally attends this subject. Last week Ruth Padawer of the Record newspaper of Bergen County, N.J., reported that a clinic in Englewood said it used the method in about half the 3,000 abortions it did between weeks 20 and 24.... We entirely doubt that most Americans would support abortions past 20 weeks for no better purpose than birth control. Releasing a baby for adoption is always an honored alternative, especially given the disgusting nature of such abortion procedures.

Partial-Birth Abortions: A Closer Look

By Douglas Johnson
NRLC Federal Legislative Director

September 11, 1996

The final version of the Partial-Birth Abortion Ban Act (HR 1833) was approved by the U.S. Senate by a vote of 54-44 on December 7, 1995, and by the U.S. House of Representatives on March 27, 1996, by a vote of 286-129. On April 10, 1996, President Clinton vetoed the bill. The House is expected to vote on whether to override the veto on or about September 19, 1996. If two-thirds of the House votes to override, the Senate also will vote on whether to override.

Opponents of the bill, including President Clinton and his subordinates, have propagated a number of myths regarding the partial-birth abortion procedure and the bill. These myths include the assertions that partial-birth abortions are very rare and are performed only in extreme circumstances involving serious fetal deformities or threat to the life of the mother; that the bill would jeopardize the lives or health of some women; and that anesthesia given to the mother kills the fetus/baby or renders her pain-free before the procedure is performed. Some of this misinformation — especially the claim that the procedure is used mostly in cases of severe "fetal deformity" -- has been uncritically adopted as factual by some journalists, columnists, and editorialists.

Yet, these claims are contradicted by the past writings and recorded statements of doctors who have performed thousands of partial-birth abortions, and by other available documentation, including authoritative medical information gathered by the House Judiciary Committee and the Senate Judiciary Committee. This factsheet relies heavily upon such primary sources. For copies of documents cited here, contact the NRLC Federal Legislative Office at (202) 626-8820, fax (202) 347-3668.

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PARTIAL-BIRTH ABORTIONS: A CLOSER LOOK, 3

• **What is a partial-birth abortion, and what is the Partial-Birth Abortion Ban Act (HR 1833)?**

The Partial-Birth Abortion Ban Act (HR 1833) would prohibit performance of a **partial-birth abortion**, except in cases (if there are any) in which the procedure is necessary to save the life of a mother. The complete text of the bill is attached to this factsheet.

The bill defines a "partial-birth abortion" as "an abortion in which the person performing the abortion partially vaginally delivers a *living fetus* before killing the fetus and completing the delivery." [emphasis added] Abortionists who violate the law would be subject to both criminal and civil penalties, but no penalty could be applied to the woman who obtained such an abortion.

This procedure is generally used *beginning at* 20 weeks (4½ months) into pregnancy, and "routinely" to at least 24 weeks (5½ months). It has often been used much later-- even into the ninth month. The *Los Angeles Times* accurately and succinctly described this abortion method in a June 16, 1995 news story:

The procedure requires a physician to extract a fetus, feet first, from the womb and through the birth canal until all but its head is exposed. Then the tips of surgical scissors are thrust into the base of the fetus' skull, and a suction catheter is inserted through the opening and the brain is removed.

In 1992, Dr. Martin Haskell of Dayton, Ohio, wrote a paper that described in detail, step-by-step, how to perform the procedure. ["Dilation and Extraction for Late Second Trimester Abortion."] Dr. Haskell is a family practitioner who has performed over 1,000 such procedures in his walk-in abortion clinics. **Anyone who is seriously seeking the truth behind the conflicting claims regarding partial-birth abortions would do well to start by reading Dr. Haskell's paper, and the transcripts of the explanatory interviews that Dr. Haskell gave in 1993 to two medical publications, *American Medical News* (the official AMA newspaper) and *Cincinnati Medicine*.** [All are available from NRLC.]

Here is how Dr. Haskell explained a key part of the abortion method:

With a lower [fetal] extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities. The skull lodges at the internal cervical os [the opening to the uterus]. Usually there is not enough dilation for it to pass through. The fetus is oriented dorsum or spine up. At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and "hooks" the shoulders of the fetus with the index and ring fingers (palm down)... [T]he surgeon takes a pair of blunt curved Metzenbaum

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scissors in the right hand. He carefully advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.... [T]he surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening. The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents." ["Dilation and Extraction for Late Second Trimester Abortion." pages 30-31.]

Dr. Haskell also wrote that he "routinely performs this procedure on all patients 20 through 24 weeks LMP [i.e., from 4½ to 5½ months after the last menstrual period] with certain exceptions," these "exceptions" involving complicating factors such as being more than 20 pounds overweight. Dr. Haskell also wrote that he used the procedure through 26 weeks [six months] "on selected patients." [p.28] He added, "Among its advantages are that it is a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia." (p. 33).

In sworn testimony in an Ohio lawsuit on Nov. 8, 1995, Dr. Haskell explained that he first learned of the method when a colleague

described very briefly over the phone to me a technique that I later learned came from Dr. [James] McMahon where they internally grab the fetus and rotate it and accomplish-- be *somewhat equivalent to a breech type of delivery*. [emphasis added]

Dr. James McMahon, who died in 1995, used essentially the same procedure *thousands* of times, and to a much later point in pregnancy-- even into the ninth month. Other abortionists also employ the procedure, as discussed below.

● **Aren't "third trimester" abortions rare? At what stage in pregnancy do partial-birth abortions occur? Are these babies "viable"?**

It appears that the substantial majority of partial-birth abortions are performed late in the *second* trimester -- that is, before the 27-week mark -- but usually after 20 weeks (4½ months). There is compelling evidence that the overwhelming majority of these pre-week-27 partial-birth abortions are performed for purely "social" reasons.

In an attempt to "filter out" this documentation, many opponents of the bill attempt to narrow the debate to only *third-trimester* partial-birth abortions procedures -- that is, to abortions performed beginning in the 27th week [seventh month] of pregnancy. Some journalists and commentators have readily adopted this "filter." **However, there is really**

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no non-ideological justification for adopting this "third trimester" demarcation. It has no basis in the text of the Partial-Birth Abortion Ban Act (HR 1833), which bans partial-birth abortion at *any point* in pregnancy. Nor, contrary to some popular misconceptions, is there any basis in current Supreme Court constitutional doctrine or in neo-natal medical practice for adopting a "third trimester" demarcation.

Under the Supreme Court's doctrine, "viability" is regarded as the constitutionally significant demarcation. In *Planned Parenthood v. Casey* (1992), the Supreme Court explicitly disavowed the "trimester framework" of *Roe v. Wade* (1973), and reaffirmed that "viability" is (in the Court's view) the constitutionally significant demarcation. "Viability" is the point at which a baby born prematurely can be sustained by good medical assistance. **Currently, many babies are "viable" a full three weeks before the "third trimester." Therefore, most partial-birth abortions kill babies who are already "viable," or who are at most a few days or weeks short of viability.¹**

(Even at 20 weeks, the baby is seven inches long on average. And, as discussed below, at a March 21 congressional hearing leading medical authorities testified that the baby by this point is very sensitive to painful stimuli.)

At least one partial-birth abortion specialist, the late Dr. James McMahan, regularly performed the procedure *even after* 26 weeks-- even into the ninth month. In 1995, Dr. McMahan submitted to the House Judiciary Constitution Subcommittee a graph and explanation that explicitly showed that he aborted *healthy* ("not flawed") babies *even in the third trimester (after 26 weeks of pregnancy)*. Dr. McMahan's own graph showed, for example, that at 29 or 30 weeks, *one-fourth* of the aborted babies had no "flaw" however slight. Underneath the graph, Dr. McMahan offered this explanation:

After 26 weeks, those pregnancies that are not flawed are still non-elective. They are interrupted because of maternal risk, rape, incest, psychiatric or pediatric indications. [chart and caption reproduced in June 15 hearing record, page 109]

In an interview with Constitution Subcommittee Counsel Keri Harrison, Dr. McMahan

¹According to the landmark survey of neonatal units in the National Institute of Child Health and Human Development Neonatal Research Network, conducted in 1987 and 1988 by Dr. Maureen Heck, et al, babies born at 23 weeks had on average a 23% chance of survival, rising to 34% at 24 weeks, and 54% at 25 weeks. See "Very Low Birth Weight: Outcomes of the National Institute of Child Health and Human Development Neonatal Network," *Pediatrics*, May 1991.

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explained that "pediatric indication" referred to underage mothers, not to any medical condition of the mother or the baby.

● Is the baby alive when she is pulled feet-first from the womb?

American Medical News reported in 1993, after conducting interviews with Drs. Haskell and McMahon, that the doctors "told *AM News* that the majority of fetuses aborted this way are alive until the end of the procedure." On July 11, 1995, *American Medical News* submitted the transcript of the tape-recorded interview with Dr. Haskell to the House Judiciary Committee. The transcript contains the following exchange:

American Medical News: Let's talk first about whether or not the fetus is dead beforehand.

Dr. Haskell: No it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress-- intrauterine stress during, you know, the two days that the cervix is being dilated [to permit extraction of the fetus]. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. **And so in my case, I would think probably about a third of those are definitely are [sic] dead before I actually start to remove the fetus. And probably the other two-thirds are not.**

In an interview quoted in the Dec. 10, 1989 *Dayton News*, Dr. Haskell conveyed that the scissors thrust is usually the lethal act: "When I do the instrumentation on the skull... it destroys the brain tissue sufficiently so that even if it (the fetus) falls out at that point, it's definitely not alive," Dr. Haskell said. [For further evidence on this issue, see the next section.]

Brenda Pratt Shafer, a registered nurse from Dayton, Ohio, stood at Dr. Haskell's side while he performed three partial-birth abortions in 1993. In testimony before the Senate Judiciary Committee (Nov. 17, 1995), Shafer described in detail the first of the three procedures-- which involved, she said, a baby boy at 26½ weeks (over 6 months). According to Mrs. Shafer, the baby was alive and moving as the abortionist

delivered the baby's body and the arms-- everything but the head. The doctor kept the baby's head just inside the uterus. The baby's little fingers were claspings and unclaspings, and his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks that he might fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp.

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Under HR 1833, in any case in which a baby dies *before* being partly removed from the uterus -- whether of natural causes or by an action of an abortionist -- the subsequent removal of that baby is *not* a **partial-birth abortion** as defined by the bill.

• **Does anesthesia given to the mother kill the baby?**

Many prominent defenders of partial-birth abortion have publicly insisted that the unborn babies are killed by anesthesia given to the mother, *prior to* being "extracted" from the womb. For example, syndicated columnist Ellen Goodman wrote in November, 1995, that if you listened to supporters of the ban, "You wouldn't even know that anesthesia ends the life of such a fetus before it comes down the birth canal." NARAL President Kate Michelman said, "The fetus, is, before the procedure begins, the anesthesia that they give the woman already causes the demise of the fetus. That is, it is not true that they're born partially. That is a gross distortion, and it's really a disservice to the public to say this." [KMOX-AM, St. Louis, Nov. 2, 1995]

Likewise, Planned Parenthood distributed to Congress a "fact sheet" signed by Dr. Mary Campbell, Medical Director of Planned Parenthood of Metropolitan Washington, which stated, "The fetus dies of an overdose of anesthesia given to the mother intravenously....This induces brain death in a fetus in a matter of minutes. Fetal demise therefore occurs at the beginning of the procedure while the fetus is still in the womb."

However, when this statement was read to Dr. Norig Ellison, the president of the 34,000-member American Society of Anesthesiologists (ASA), he testified, "There is absolutely no basis in scientific fact for that statement....I think the suggestion that the anesthesia given to the mother, be it regional or general, is going to cause brain death of the fetus is without basis of fact." [Senate Judiciary Committee hearing record J-104-54, Nov. 17, 1995, p. 153]

Subsequently, in attempting to defend their "fetal demise" claims, pro-abortion advocacy groups disseminated new claims that the late Dr. James McMahon had utilized exceptionally massive doses of narcotic anesthesia before performing his abortions, and that these massive doses would indeed kill a fetus. But in testimony before the House Judiciary Constitution Subcommittee on March 21, 1996, Dr. David J. Birnbach, president-elect of the Society for Obstetric Anesthesia and Perinatology, testified:

In order to cause fetal demise, it would be necessary to give the mother dangerous and life-threatening doses of anesthesia." [...] Although there is no evidence that this massive dose will cause fetal demise, there is clear evidence that this excessive dose could cause maternal death. [House Judiciary Committee hearing record no. 73, pages 140, 142]

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• Since the baby is still alive when "extracted" from the womb, does she feel pain?

Dr. Norig Ellison, president of the American Society of Anesthesiologists (ASA), wrote to the Senate Judiciary Committee:

Drugs administered to the mother, either local anesthesia administered in the paracervical area or sedatives/analgesics administered intramuscularly or intravenously, will provide little-to-no analgesia [pain relief] to the fetus. [Senate Judiciary Committee, Nov. 17, 1995 hearing record, page 226]

On March 21, 1996, the House Judiciary Subcommittee on the Constitution conducted a public hearing on "The Effects of Anesthesia During a Partial-Birth Abortion." Four leading experts in the field testified that the fetuses/babies who are old enough to be "candidates" for partial-birth abortion possess the neurological equipment to respond to painful stimuli, whether or not the mother has been anesthetized. Opponents of the bill were unable to produce a single medical witness willing to testify in support of the claims that anesthesia kills the fetus or renders the fetus insensible to pain. [See House Judiciary Committee Hearing Record No. 73, March 21, 1996.]

Dr. Jean A. Wright, associate professor of pediatrics and anesthesia at the Emory University School of Medicine in Atlanta, testified that recent research shows that by the stage of development that a fetus could be a "candidate" for a partial-birth abortion (20 weeks), the fetus "is more sensitive to pain than a full-term infant would be if subjected to the same procedures." Prof. Wright testified. These fetuses have "the anatomical and functional processes responsible for the perception of pain." and have "a much higher density of Opioid (pain) receptors" than older humans, she said.

Dr. David Birnbach, president-elect of the Society for Obstetric Anesthesia and Perinatology, testified. "Having administered anesthesia for fetal surgery, I know that on occasion we need to administer anesthesia directly to the fetus because even at these early ages the fetus moves away from the pain of the stimulation." [hearing record, page 288]

At a hearing before the same panel on June 15, 1995, Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, testified. "The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain." After analyzing the partial-birth procedure step-by-step for the subcommittee, Prof. White concluded: "Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure." [House Judiciary Committee hearing No. 31, June 15, 1995, page 70.]

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Prof. Jean Wright concluded, "This procedure, if it were done on an animal in my institution, would not make it through the institutional review process. The animal would be more protected than this child is." [hearing record, page 286]

• Does the bill contain an exception for life-of-the-mother cases?

HR 1833 explicitly provides that the ban "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," if "no other medical procedure would suffice for that purpose."

[Some pro-abortion advocacy groups have insisted that exception does not apply to disorders associated with pregnancy, since "pregnancy" per se is not a disorder or disease. House Judiciary Committee Chairman Henry J. Hyde (R-Il.) commented that this reading "is absurdly convoluted, and violates standard principles of statutory construction." In a June 7 letter, even President Clinton has acknowledged that the bill "provides an exception to the ban on this procedure only when a doctor is convinced that a woman's life is at risk."]

Under HR 1833, an abortionist could not be convicted of a violation of the law *unless the government proved, beyond a reasonable doubt, that the abortion was not covered by this exception.* (In addition, of course, the government would have to prove, beyond a reasonable doubt, all of the other elements of the offense-- that the abortionist "knowingly" partly removed a baby from the womb, that the baby was still alive, and that the abortionist then killed the baby.)

It is noteworthy that none of the five women who appeared with President Clinton at his April 10 veto ceremony required a partial-birth abortion because of danger to her life. As one of the women, Claudia Crown Ades, said in a tape-recorded April 12 radio interview on WNTM (Mobile, AL):

"My procedure was elective. That is considered an elective procedure, as were the procedures of Coreen Costello and Tammy Watts and Mary-Dorothy Line and all the other women who were at the White House yesterday. All of our procedures were considered elective." [Complete tape recording available on request.]

[Two of the women said that if their babies had died natural deaths within their wombs, it could have placed them at risk. But the removal of a baby who dies a natural death, whether by foot-first extraction or in any other manner, is not an abortion and has nothing to do with the bill. Professor Watson Bowes, Jr., of the University of North Carolina, co-editor of the *Obstetrical and Gynecological Survey*, has stated that weeks would pass between the baby's natural demise and the development of any resulting risk to the mother.]

● **What reasons has President Clinton given for vetoing HR 1833?**

On December 7, 1995, before the Senate had even voted on final passage of the bill, chief opponent Sen. Barbara Boxer (D-Ca.) took the floor to make an unqualified statement that President Clinton would veto the bill. On December 8, White House Press Secretary Michael McCurry said unequivocally that the President would veto the bill because "it would represent an erosion of a woman's right to choose."

However, when President Clinton next publicly addressed the issue in a February 28 letter to key members of Congress (after a national poll found 71% support for the ban), he took a different tone, although the legal bottom line was unchanged. Mr. Clinton wrote of having "studied and prayed about this issue... for many months," of finding the procedure "very disturbing," and of seeking "common ground... that respects the views of those--including myself-- who object to this particular procedure," while defending *Roe v. Wade*. But the "common ground" that Mr. Clinton proposed tracked the language offered by Sen. Boxer on December 7, and endorsed by the National Abortion and Reproductive Rights Action League (NARAL) as a "pro-choice vote." The Boxer/NARAL amendment would have allowed partial-birth abortion to be performed without any limitation whatever until "viability," and also "after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman." (The Senate rejected this gutting amendment.)

The Boxer/Clinton language must be read in the light of *Doe v. Bolton*, the 1973 companion case to *Roe v. Wade*, in which the Supreme Court said that "health" must encompass "all factors-- physical, emotional, psychological, familial and the woman's age-- relevant to the well-being of the patient." Given this expansive definition of "health," adding the word "serious" has no legal effect, since Mr. Clinton proposes to leave entirely up to each abortionist to decide whether "depression" or some other "health" concern is "serious."

In a June 7 letter to leaders of the Southern Baptist Convention, Mr. Clinton said that he favored banning the procedure with an exception for "cases where a woman risks death or serious damage to her health," but not for cases involving "youth" or "emotional stress." But in his formal veto message on the bill, Mr. Clinton referred to a "health" exception as required by *Roe v. Wade*. Mr. Clinton, a former teacher of constitutional law, knows full well that these two positions are inconsistent, because if *Roe/Doe* applies to partial-birth abortions, then even after "viability," the exception must indeed cover "emotional" health.

In his June 7 letter, President Clinton asserted that "the medical community... broadly supports the continued availability of this procedure where a woman's serious health interests are at stake." However, the American Medical Association (AMA) Legislative Council voted *unanimously* to recommend endorsement of the bill, with one member

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explaining that the procedure was "not a recognized medical technique." (The full AMA Board of Trustees was divided on the bill and ultimately took "no position.") Of the five medical doctors who serve in Congress, four voted for the bill, including the only family practitioner/gynecologist.

● How often are partial-birth abortions performed?

There are at least 164,000 abortions a year after the first three months of pregnancy, and 13,000 abortions annually after 4½ months, according to the Alan Guttmacher Institute (*New York Times*, July 5 and November 6, 1995), which is an arm of Planned Parenthood. These numbers should be regarded as *minimums*, since they are based on *voluntary reporting* to the AGI. (The Centers for Disease Control reported that in 1993, over 17,000 abortions were performed at 21 weeks and later-- and the CDC acknowledges that the reports that it receives are incomplete.)

No one really knows how many late abortions are done by the partial-birth procedure. The Center for Reproductive Law and Policy told *The New York Times*, "The number of procedures that clearly meet the definition of partial birth abortion is very small, probably only 500 to 1,000 a year." (March 28, 1996) Even if such figures were accurate, the legislation would be urgently needed. If a new virus swept through neo-natal units and killed 500 or 1,000 premature babies, it would be a top news story -- not dismissed as too "rare" to be of consequence. For each human being at the pointed end of the scissors, a partial-birth abortion is a 100% proposition.

Moreover, the numbers may be considerably higher-- perhaps thousands per year. Dr. Martin Haskell and the late Dr. James McMahon spent years trying to convince other abortionists of the merits of the procedure -- that was the purpose of Dr. Haskell's 1992 instructional paper (see page 3), which was distributed by the National Abortion Federation, a lobbying group for abortion clinics. For years, Dr. McMahon was director of abortion instruction at the Cedar-Sinai Medical Center in Los Angeles. In addition, he invited other doctors to visit his abortion clinic for a period of days to learn the procedure. Also, *The New York Times* reported on Nov. 6, 1995:

"Of course I use it, and I've taught it for the last 10 years," said a gynecologist at a New York teaching hospital who spoke on condition of anonymity. "So do doctors in other cities."

It is not known how many other abortionists have adopted the method, but a few have made themselves known. On March 19, 1996, Dr. William Rashbaum of New York City wrote a letter to Congressman Charles Canady (R-Fl.), stating that he has performed 19,000 late-

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term "procedures," and that he has performed the procedure that HR 1833 would ban "routinely since 1979. This procedure is only performed in cases of later gestational age."

In 1995, Dr. Martin Haskell filed a lawsuit challenging a state abortion-regulation law. In that proceeding, two other doctors filed affidavits affirming that they perform the same procedure as Dr. Haskell -- and that's just in Ohio.

● For what reasons are late-term abortions usually performed?

There is no evidence that the reasons for which late-term abortions are performed by the partial-birth abortion method are any different, in general, than the reasons for which late-term abortions are performed by other methods -- and it is well established that the great majority of late-term abortions do not involve any illness of the mother or the baby. They are purely "elective" procedures-- that is, they are performed for purely "social" reasons.

In 1987, the Alan Guttmacher Institute (AGI), an affiliate of the Planned Parenthood Federation of America (PPFA), collected questionnaires from 1,900 women who were at abortion clinics procuring abortions. Of the 1,900, "420 had been pregnant for 16 or more weeks." These 420 women were asked to choose among a menu of reasons why they had not obtained the abortions earlier in their pregnancies. Only two percent (2%) said "a fetal problem was diagnosed late in pregnancy," compared to 71% who responded "did not recognize that she was pregnant or misjudged gestation," 48% who said "found it hard to make arrangements," and 33% who said "was afraid to tell her partner or parents." The report did not indicate that any of the 420 late abortions were performed because of maternal health problems. ["Why Do Women Have Abortions?," *Family Planning Perspectives*, July/August 1988.]

Also illuminating is an 1993 internal memo by Barbara Radford, the executive director of the National Abortion Federation, a "trade association" for abortion clinics:

There are many reasons why women have late abortions: life endangerment, fetal indications, *lack of money or health insurance, social-psychological crises, lack of knowledge about human reproduction, etc.* [emphasis added]

Likewise, a June 12, 1995, National Abortion Federation letter to members of the House of Representatives noted that late abortions are sought by, among others, "very young teenagers...who have not recognized the signs of their pregnancies until too late," and by "women in poverty, who have tried desperately to act responsibly and to end an unplanned pregnancy in the early stages, only to face insurmountable financial barriers."

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In her article about late-term abortions, based in part on extensive interviews with Dr. McMahon and on direct observation of his practice (*Los Angeles Times Magazine*, January 7, 1990), reporter Karen Tumulty concluded:

If there is any other single factor that inflates the number of late abortions, it is youth. Often, teen-agers do not recognize the first signs of pregnancy. Just as frequently, they put off telling anyone as long as they can.

According to Peggy Jarman, spokeswoman for Dr. George Tiller, who specializes in late-term abortions in Wichita, Kansas:

About three-fourths of Tiller's late-term patients, Jarman said, are teen-agers who have denied to themselves or their families they were pregnant until it was too late to hide it. [*Kansas City Star*]

• For what reasons are *partial-birth* abortions usually performed?

Some opponents of HR 1833, such as NARAL and the Planned Parenthood Federation of America (PPFA), have persistently disseminated claims that the partial-birth abortion procedure is employed only in cases involving extraordinary threats to the mother or grave fetal disorders. For example, NARAL President Kate Michelman wrote in a Scripps Howard News Service op ed published June 16, 1996, "Late-term abortions are only used under the most compelling of circumstances-- to protect a woman's health or life or because of grave fetal abnormality....nearly all abortions are performed in the first trimester." PPFA said in a press release that the partial-birth abortion procedure is "done only in cases when the woman's life is in danger or in cases of extreme fetal abnormality." (Nov. 1, 1995)

However, claims such as these are inconsistent with the writings and recorded statements of the three doctors who are most closely identified with the procedure: Dr. Martin Haskell, Dr. James McMahon, and Dr. David Grundmann.

Reasons for Partial-Birth Abortions: Dr. Martin Haskell

In his 1992 paper, Dr. Martin Haskell, who has performed over 1,000 partial-birth abortions, described the procedure as "a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia." Dr. Haskell, a family practitioner who operates three abortion clinics, wrote that he "routinely performs this procedure on **all** patients 20 through 24 weeks" (4½ to 5½ months) pregnant [emphasis added], except on women who are more than 20 pounds overweight, have twins, or have certain other complicating factors.

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For information on why Dr. Haskell adopted the method, the 1993 interview in *Cincinnati Medicine* is very instructive. Dr. Haskell explained that he had been performing dismemberment abortions (D&Es) to 24 weeks:

But they were very tough. Sometimes it was a 45-minute operation. I noticed that some of the later D&Es were very, very easy. So I asked myself why can't they all happen this way. You see the easy ones would have a foot length presentation, you'd reach up and grab the foot of the fetus, pull the fetus down and the head would hang up and then you would collapse the head and take it out. It was easy. . . . Then I said, "Well gee, if I just put the ultrasound up there I could see it all and I wouldn't have to feel around for it." I did that and sure enough, I found it 99 percent of the time. Kind of serendipity.

In 1993, the *American Medical News*-- the official newspaper of the AMA-- conducted a *tape-recorded* interview with Dr. Haskell concerning this *specific* abortion method, in which he said:

And I'll be quite frank: most of my abortions are elective in that 20-24 week range. . . . In my particular case, probably 20% [of this procedure] are for genetic reasons. And the other 80% are purely elective.

In a lawsuit in 1995, Dr. Haskell testified that women come to him for partial-birth abortions with "a variety of conditions. Some medical, some not so medical." Among the "medical" examples he cited was "agoraphobia" (fear of open places). Moreover, in testimony presented to the Senate Judiciary Committee on November 17, 1995, ob/gyn Dr. Nancy Romer of Dayton (the city in which Dr. Haskell operates one of his abortion clinics) testified that three of her own patients had gone to Haskell's clinic for abortions "well beyond" 4½ months into pregnancy, and that "none of these women had any medical illness, and all three had normal fetuses."

Brenda Pratt Shafer, a registered nurse who observed Dr. Haskell use the procedure to abort three babies in 1993, testified that one little boy had Down Syndrome, while the other two babies were completely normal and their mothers were healthy. [Nurse Shafer's testimony before the House Judiciary subcommittee, with associated documentation, is available on request to NRLC.]

Reasons for Partial-Birth Abortions: Dr. James McMahon

The late Dr. James McMahon performed thousands of partial-birth abortions, including the third-trimester abortions performed on the five women who appeared with President Clinton

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at his April 10 veto ceremony. Dr. McMahon's general approach is illustrated by this illuminating statement in the July 5, 1993 edition of *American Medical News*:

"[A]fter 20 weeks where it frankly is a child to me, I really agonize over it because the potential is so imminently there. I think, 'Gee, it's too bad that this child couldn't be adopted.' On the other hand, I have another position, which I think is superior in the hierarchy of questions, and that is: 'Who owns the child?' It's got to be the mother."

In June, 1995, Dr. McMahon submitted to Congress a detailed breakdown of a "series" of over 2,000 of these abortions that he had performed. He classified only 9% (175 cases) as involving "maternal [health] indications," of which the most common was "depression."

Dr. Pamela E. Smith, director of Medical Education, Department of Obstetrics and Gynecology, Mt. Sinai Hospital, Chicago, gave the Senate Judiciary Committee her analysis of Dr. McMahon's 175 "maternal indication" cases. Of this sample, 39 cases (22%) were for maternal "depression," while another 16% were "for conditions consistent with the birth of a normal child (e.g., sickle cell trait, prolapsed uterus, small pelvis)," Dr. Smith noted. She added that in one-third of the cases, the conditions listed as "maternal indications" by Dr. McMahon really indicated that the procedure itself would be seriously risky to the mother.

Of Dr. McMahon's series, another 1,183 cases (about 56%) were for "fetal flaws," but these included a great many non-lethal disorders, such as cleft palate and Down Syndrome. In an op ed piece written for the *Los Angeles Times*, Dr. Katherine Dowling, a family physician at the University of Southern California School of Medicine, examined Dr. McMahon's report on this "fetal flaws" group. She wrote:

Twenty-four were done for cystic hydroma (a benign lymphatic mass, usually treatable in a child of normal intelligence). Nine were done for cleft lip-palate syndrome (a friend of mine, mother of five, and a colleague who is a pulmonary specialist were born with this problem). Other reasons included cystic fibrosis (my daughter went through high school with a classmate with cystic fibrosis) and duodenal atresia (surgically correctable, but many children with this problem are moderately mentally retarded). Guess they can't enjoy life, can they? In fact, most of the partial-birth abortions in that [McMahon] survey were done for problems that were either surgically correctable or would result in some degree of neurologic or mental impairment, but would not harm the mother. Or they were done for reasons that were pretty skimpy: depression, chicken pox, diabetes, vomiting. ["What Constitutes A Quality Life?," *Los Angeles Times*, Aug. 28, 1996]

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Over one-third of McMahon's 2,000-abortion "series" involved neither fetal nor maternal health problems, however trivial.

In Dr. McMahon's interviews with *American Medical News* and with Keri Harrison, counsel to the House Judiciary Subcommittee on the Constitution, Dr. McMahon freely acknowledged that he performed **late second trimester** procedures that were "elective" even by *his* definition ("elective" meaning without fetal or maternal medical justification).

After 26 weeks, Dr. McMahon claimed that all of his abortions were "non-elective" -- but his definition of "non-elective" was very expansive. His written submission stated:

"After 26 weeks [six months], those pregnancies that are not flawed are still non-elective. They are interrupted because of maternal risk, rape, incest, psychiatric or pediatric indications." [emphasis added] ["Pediatric in 'ications" was Dr. McMahon's terminology for young teenagers.]

Reasons for Partial-Birth Abortions: Dr. David Grundmann

Dr. David Grundmann, the medical director for Planned Parenthood of Australia, has written a paper in which he explicitly states that he uses the partial-birth abortion procedure (he calls it "dilatation and extraction") as his "method of choice" for abortions done after 20 weeks (4½ months), and that he performs such abortions for a broad variety of social reasons. [This paper, "Abortion After Twenty Weeks in Clinical Practice: Practical, Ethical and Legal Issues," and associated documentation, is available from NRLC.]

Dr. Grundmann himself described the procedure in a television interview as "essentially a breech delivery where the fetus is delivered feet first and then when the head of the fetus is brought down into the top of the cervical canal, it is decompressed with a puncturing instrument so that it fits through the cervical opening."

In the 1994 paper, Dr. Grundmann listed several "advantages" of this method, such as that it "can be performed under local and/or twilight anesthetic" with "no need for narcotic analgesics," "can be performed as an ambulatory out-patient procedure," and there is "no chance of delivering a live fetus." Among the "disadvantages," Dr. Grundmann wrote, is "the aesthetics of the procedure are difficult for some people; and therefore it may be difficult to get staff." (Dr. Grundmann also wrote that "abortion is an integral part of family planning. Theoretically this means abortions at any stage of gestation. Therefore I favor the availability of abortion beyond 20 weeks.")

Dr. Grundmann wrote that in Australia, late-second-trimester abortion is available "in many

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major hospitals, in most capital cities and large provincial centres" in cases of "lethal fetal abnormalities" or "gross fetal abnormalities," or "risk to maternal life," including "psychotic/suicidal behavior." However, Dr. Grundmann said, his Planned Parenthood clinic *also* offers the procedure after 20 weeks for women who fall into five additional "categories": (1) "minor or doubtful fetal abnormalities," (2) "extreme maternal immaturity i.e. girls in the 11 to 14 year age group," (3) women "who do not know they are pregnant," for example because of amenorrhea [irregular menstruation] "in women who are very active such as athletes or those under extreme forms of stress i.e. exam stress, relationship breakup...," (4) "intellectually impaired women, who are unaware of basic biology...," (5) "major life crises or major changes in socio-economic circumstances. The most common example of this is a planned or wanted pregnancy followed by the sudden death or desertion of the partner who is in all probability the bread winner."

• Is a partial-birth abortion ever the only way to preserve a mother's physical health?

President Clinton and pro-abortion advocacy groups have made strenuous efforts to persuade the public that partial-birth abortions are necessary to protect the lives or health of pregnant women, and many journalists have uncritically accepted this claim at face value. However, these claims are coming under increasingly sharp challenge from prestigious medical experts, and from women who have given birth to babies in circumstances such as those cited by President Clinton.

The sort of cases highlighted by President Clinton-- third-trimester abortions of babies with disorders incompatible with sustained life outside the womb-- account for a small fraction of all the partial-birth abortions. Confronted with identical cases, most specialists would never consider executing a breech extraction and puncturing the skull. Instead, most would deliver the baby alive, sometimes early, without jeopardy to the mother-- usually vaginally-- and make the baby as comfortable as possible for whatever time the child has allotted to her.

In an interview published in the August 19 edition of *American Medical News*, former Surgeon General C. Everett Koop said, "I believe that Mr. Clinton was misled by his medical advisors on what is fact and what is fiction in reference to late-term abortions. Because in no way can I twist my mind to see that the late-term abortions as described-- you know, partial birth, and then destruction of the unborn child before the head is born-- is a medical necessity for the mother. It certainly can't be a necessity for the baby."

Dr. Koop, a world-renown pediatric surgeon, was asked by the *American Medical News*

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reporters whether he had ever "treated children with any of the disabilities cited in this debate? For example, have you operated on children born with organs outside of their bodies?" Dr. Koop replied, "Oh, yes indeed. I've done that many times. The prognosis usually is good. There are two common ways that children are born with organs outside of their body. One is an omphalocele, where the organs are out but still contained in the sac... the first child I ever did, with a huge omphalocele much bigger than her head, went on to develop well and become the head nurse in my intensive care unit many years later."

In addition, in the summer of 1996, an organization called Physicians' Ad Hoc Coalition for Truth (PHACT) began circulating material directly challenging President Clinton's claims. As of early September, PHACT reportedly consisted of over 230 physicians, mostly professors and other specialists in obstetrics, gynecology, and fetal medicine. In an advertisement published in August, the PHACT physicians said:

Congress, the public-- but most importantly women-- need to know that partial-birth abortion is never medically indicated to protect a mother's health or her future fertility.

The PHACT doctors also referred directly to the specific medical conditions that affected some of the women who appeared with President Clinton at his April 10 veto ceremony, such as hydrocephalus (excessive fluid in the head), and commented:

We, and many other doctors across the United States, regularly treat women whose unborn children suffer these and other serious conditions. Never is the partial-birth procedure medically indicated. Rather, such infants are regularly and safely delivered live, vaginally, with no threat to the mother's health or fertility.

At a July 24 briefing on Capitol Hill, PHACT member Dr. Curtis Cook, an ob/gyn perinatologist with the West Michigan Perinatal and Genetic Diagnostic Center (616-391-3681), said that partial-birth abortion

is never necessary to preserve the life or the fertility of the mother, and may in fact threaten her health or well-being or future fertility. In my practice, I see these rare, unusual cases that come to most generalists' offices once in a lifetime-- they all come into our office. We see these every day....The presence of fetal disabilities or fetal anomalies are not a reason to have a termination of pregnancy to preserve the life of the mother-- they do not threaten the life of the mother in any way....[and] where these rare instances do occur, they do not require the death of the baby or the fetus prior to the completion of the delivery.

Also present at the July 24 briefing were several women who, while pregnant, had learned

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that their unborn babies were afflicted with conditions similar or identical to those cited by President Clinton, but who gave birth to their babies alive. One of the women, Jeannie French of Oak Park, Illinois, distributed a July 17 letter that she and several other women sent to President Clinton, asking for a meeting so that he could learn about the medical alternatives to partial-birth abortion. Ms. French wrote:

In recent months, I have had the opportunity to get to know many women who've carried and given birth to children with fatal conditions from anencephaly, encephaloceles, Trisomy 18, hydrocephaly, and even a rare disease called body stalk anomaly, in which internal organs develop outside a baby's body. We gave birth to our children knowing that their serious physical disabilities might not allow them to live long.... You say that partial-birth abortion has to be legal for cases *like ours*, because women's bodies would be 'ripped to shreds' by carrying their very sick children to term. By your repeated statements, you imply that partial-birth abortion is the *only or the most desirable response to children suffering severe disabilities like our children...* This message is so wrong!... Will you meet with us personally, and hear our stories?

Ms. French got a brief letter of response from two White House scheduling aides, who said that "the tremendous demands on the President will not give him the opportunity to speak with you and your group.... Your continued interest and support are deeply appreciated."

● **What about President Clinton's statement that for some women, the only alternative to partial-birth abortion is to "rip your body to shreds"?**

President Clinton has repeatedly justified his veto by referring to cases in which the baby suffers from advanced hydrocephaly (head enlargement). Speaking in Milwaukee on May 23, President Clinton suggested that Bob Dole or others who would deny a partial-birth abortion in such cases are saying "it's okay with me if they ripped your body to shreds and you could never have another baby."

But this is medical nonsense. Medical specialists commonly deal with cases of severe hydrocephaly by a procedure called cephalocentesis, in which a needle is used to withdraw the excess fluid (but *not* the brain), reducing the head size so that normal delivery of a live baby can occur. An eminent authority on such matters, Dr. Watson A. Bowes, Jr., professor of ob/gyn (maternal and fetal medicine) at the University of North Carolina, who is co-editor of the *Obstetrical and Gynecological Survey*, wrote to Congressman Charles Canady:

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Critics of your bill who say that this legislation will prevent doctors from performing certain procedures which are standard of care, such as cephalocentesis (removal of fluid from the enlarged head of a fetus with the most severe form of hydrocephalus) are mistaken. In such a procedure a needle is inserted with ultrasound guidance through the mother's abdomen into the uterus and then into the enlarged ventricle of the brain (the space containing cerebrospinal fluid). Fluid is then withdrawn which results in reduction of the size in the head so that delivery can occur. This procedure is not intended to kill the fetus, and, in fact, is usually associated with the birth of a live infant.

(Note: Cases of hydrocephaly accounted for less than 4% of Dr. McMahan's partial-birth abortions, according to his submission to the House Judiciary Committee.)

● **What about the small minority of cases that *do* involve "serious fetal deformity"?**

It is true that *some* partial-birth abortions -- a small minority -- involve babies who have grave disorders that will result in death soon after birth. But these unfortunate members of the human family deserve compassion and the best comfort-care that medical science can offer-- not a scissors in the back of the head. In some such situations there are good medical reasons to deliver such a child early, after which natural death will follow quickly.

Dr. Harlan Giles, a professor of "high-risk" obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures up until "viability." However, in sworn testimony in the U.S. Federal District Court for the Southern District of Ohio (Nov. 13, 1995), Prof. Giles said:

[After 23 weeks] I do not think there are any maternal conditions that I'm aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated. In my experience for 20 years, one can deliver these fetuses either vaginally, or by Cesarean section for that matter, depending on the choice of the parents with informed consent. . . . But there's no reason these fetuses cannot be delivered intact vaginally after a miniature labor, if you will, and be at least assessed at birth and given the benefit of the doubt. [transcript, page 240]

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In a partial-birth abortion, the abortionist dilates a woman's cervix for three days, until it is open enough to deliver the entire baby breech, except for the head. When *American Medical News* asked Dr. Martin Haskell why he could not simply dilate the woman a little more and remove the baby without killing him, Dr. Haskell responded:

The point here is you're attempting to do an abortion... not to see how do I manipulate the situation so that I get a live birth instead. [*American Medical News* transcript]

Under closer examination, it becomes clear that in some cases, the primary reason for performing the procedure is not concern that the baby will die in utero, but rather, that he/she will be *born alive*, either with disorders incompatible with sustained life outside the womb, or with a *non-lethal* disability. (Again, in Dr. McMahon's table of partial-birth abortions performed for "fetal indications," the largest category was for Down Syndrome.)

Viki Wilson, whose daughter Abigail died at the hands of Dr. McMahon at 38 weeks, said:

I knew that I could go ahead and carry the baby until full term, but knowing, you know, that this was futile, you know, that she was going to die... I felt like I needed to be a little more in control in terms of her life and my life, instead of just sort of leaving it up to nature, because look where nature had gotten me up to this point. [NAF video transcript, page 4.]

Tammy Watts, whose baby was aborted by Dr. McMahon in the 7th month, said:

I had a choice. I could have carried this pregnancy to term, knowing everything that was wrong. [Testimony before Senate Judiciary Committee, Nov. 17, 1995]

Claudia Crown Ades, who appeared with President Clinton at the April 10 veto, said:

My procedure was elective. That is considered an elective procedure, as were the procedures of Coreen Costello and Tammy Watts and Mary Dorothy-Line and all the other women who were at the White House yesterday. All of our procedures were considered elective. [Quotes from taped appearance on WNTM, April 12, 1996]

In a letter opposing HR 1833, one of Dr. McMahon's colleagues at Cedar-Sinai Medical Center, Dr. Jeffrey S. Greenspoon, wrote:

As a volunteer speaker to the National Spina Bifida Association of America and the Canadian National Spina Bifida Organization, I am familiar with the burden of raising a significantly handicapped child. . . . The burden of raising one or two abnormal children is realistically unbearable. [Letter to Rep. Hyde, July 19, 1995]

● Is there a more "objective" term for the procedure than "partial-birth abortion"?

Some opponents of the Partial-Birth Abortion Ban Act (HR 1833) insist that anyone writing about the bill should say that it bans a procedure "known medically as intact dilation and evacuation." But when journalists comply with this demand, they do so at the expense of accuracy. The bill itself makes no reference whatever to "intact dilation and evacuation" abortions. More importantly, the term "intact dilation and evacuation" is *not* equivalent to the class of procedures banned by the bill.

The bill would make it a criminal offense (except to save a woman's life) to perform a "partial-birth abortion," which the bill *would define— as a matter of law—* as "an abortion in which the person performing the abortion partially vaginally delivers a *living* fetus before killing the fetus and completing the delivery." [emphasis added]

In contrast, the term "intact dilation and evacuation" was invented by the late Dr. James McMahon, and until recently, was idiosyncratic to him. It appeared in no standard medical textbook or database, nor anywhere in the standard textbook on abortion methods, *Abortion Practice* by Dr. Warren Hern. Because "intact dilation and evacuation"² is not a standard, clearly defined medical term, the House Judiciary Constitution Subcommittee staff (which drafted the bill under Congressman Canady's supervision) rejected it as useless for purposes of defining a criminal offense. Indeed, it is worse than useless-- a criminal statute that relied on such a term would be stricken by the federal courts as "void for vagueness."

Although there is no clear definition of the term, we know enough to say that it is inaccurate to *equate* "intact dilation and evacuation" abortions with the procedures banned by HR 1833, since in his writings Dr. McMahon clearly used the term "intact dilation and evacuation" so broadly as to cover certain procedures which would *not* be affected at all by HR 1833 (e.g., removal of babies who are killed entirely in utero, and removal of babies who have died entirely natural deaths in utero). Indeed, at least one of the specific women highlighted by opponents of HR 1833 had various types of "intact D&E" abortion procedures that were *not* covered by HR 1833's definition of "partial-birth abortion."

²The term "*intact* dilation and evacuation" should not be confused with "dilation and evacuation," which is a procedure commonly used in second-trimester abortions, involving *dismemberment* of the fetus/baby *while still in the uterus*. The bill does not apply to "dilation and evacuation" abortions at all.

CORRECTION

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