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seeking an abortion of a nonviable fetus. 120 L Ed 2d, at 715.

"During the second period, in which the baby is viable, the constitutional standard is different. As stated by the court, in quoting from Roe: '...subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.' Casey, 120 L Ed 2d, at 716.

"To summarize: First, the state has a substantial interest in potential human life which extends throughout the pregnancy. Second, prior to viability, the state can not place an undue burden on the right to pregnancy, which means placing a substantial obstacle in the path of a woman seeking an abortion. Third, after viability, the state may regulate abortion, and even prohibit them, except where necessary to protect the life or health of the mother.

"Since partial birth abortions span the last part of the pre-viability stage and into the viability stage, HB 65 is specifically designed to cover both stages. Hence, it must be analyzed with respect to both standards. HB 65 more than meets these standards.

"First, with respect to pre-viability abortions, HB 65 does not place an undue burden on the right to chose an abortion. That is to say, it does not place a substantial obstacle, either by intent or in effect, in the path of a woman seeking an abortion. After all, it does not proscribe abortions per se. It merely makes one particular form of abortion, and a particularly egregious form at that, illegal. All other forms of abortion remain open to pregnant women. The fact that this does not place a substantial obstacle in the path of women seeking abortion is clear. The Director of Public Health in Alaska testifying before the State Affairs Committee a couple of weeks ago testified that partial birth abortions, as defined by the bill, have not been performed in Alaska. Thus, the question must be asked: Does HB 65, which proscribes a procedure which, thus far, is not done in Alaska, place a substantial obstacle in the path of a woman seeking an abortion? The answer, by definition, is clearly no. The procedure is not available anyway.

"In that regard, can it really be a substantial obstacle to require abortionists to conform to the standards of abortion practice already present and accepted by practitioners in Alaska. That, to my mind, is no obstacle at all, let alone a substantial one.

"In short, all options presently available to women to obtain abortions remain unaffected. There is no obstacle, and thus, the first standard---that which applies to pre-viability stage---is clearly satisfied.

"The second standard, which applies to viable babies, is also

satisfied. As I previously indicated, during the period of viability, the Supreme Court recognizes that the state may regulate or even proscribe abortions, except where necessary to preserve the life or health of the mother. HB 65 does not ban abortions during this period; it merely bans a particular procedure. Thus, it is more of a regulation of abortion than a proscription. And, the state is free to regulate, except where necessary to preserve the life and health of the mother. HB 65 contains an express exception applicable to the life of the mother. It does not mention health. However, it does not need to expressly mention health for the following reasons:

"First, all forms of abortion present in Alaska remain in effect. If the mother's health requires an abortion, she continues to have recourse to those procedures. Her health is protected.

"Second, even when partial birth abortions become available in Alaska, their ban would not adversely impact maternal health. The Committee was provided with voluminous material clearly establishing that fact. For instance, as Dr. Pamela Smith, who is the Director of Medical Education, Department of Obstetrics and Gynecology at Mt. Sinai Hospital in Chicago, testified before the US 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'. Similarly, Dr. James Jones, who is chairman of the Department of Obstetrics and Gynecology at the New York Medical College, stated, regarding partial-birth abortions, that he 'can't imagine that being an indicated procedure for the saving of a life or well-being of the mother.' Although the America Medical Association (AMA) has remained neutral on the issue, its Legislative Council voted unanimously to recommend that the AMA endorse the federal partial birth ban. In so doing, it stated that the procedure is basically repulsive and is not a recognized medical technique. Again, the former Surgeon General of the United States, Dr. C. Everett Koop stated: '...In no way can I twist my mind to see that the late-term abortion 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.' Similarly, Dr. Warren Hern, who wrote the Horn Book on late term abortions, stated in an article in <u>American Medical News</u>: 'You really can't defend it... I would dispute any statement that this is the safest procedure to use.' He stated further: 'You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that.'

"I won't bore you with more opinions. There are plenty in the materials that have been provided. The point is that partial-birth abortions are not necessary for the health of the mother.

"In summary, the Legislature can conclude that partial birth abortions are not necessary to preserve the health of the mother,

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and indeed may even be inimical to the health of the mother. No express exception is needed, since all other procedures remain available.

"Thus, both the pre-viability and the post-viability standards required by Casey are satisfied. That being the case, all that is required is that there be some rational basis for HB 65. And, there are several permissible state interests that are advanced by HB 65. Indeed, the State has compelling interests in preventing such procedures. Let me suggest but a few.

"First, delivering a baby just to the very cusp of constitutional personhood and then killing it, just inches away from being completely born, is cruel. Indeed, Dr. Isada, who spoke against HB 65 before the House State Affairs Committee, described one aspect of partial birth abortion---sticking scissors into the baby's skull---as gruesome. The state has a very strong interest in protecting human life from such cruel and gruesome actions. If the state can prevent cruelty to animals, it certainly can do the same thing for human life.

TAPE 97-33, SIDE A
Number 000

"Second, partially delivering a baby ---or, I should say almost entirely delivering a baby---and then killing it tends to mix the roles of obstetrician and abortionist. The former are healers, and they are perceived as such by the general public. Abortionists, in the overwhelming number of cases, ---for instance I refer you to Dr. Haskill's statement that 80% of his partial birth abortions are elective---are not healers. They perform some other function. By mixing these two opposing roles, there is great danger that public confidence in the medical profession will be undermined.

"Third, bringing a baby right to the very edge of complete birth and then sucking its brains out is inherently disrespectful of human dignity.

"Fourth, the state has a legitimate and compelling interest in drawing a clear distinction between legal abortion and infanticide. Partial birth abortions blur that distinction. Furthermore, it may be noted that the difference between a viable baby who has just emerged from the womb and a viable baby who is almost out of the womb is negligible. But for a few inches they are the same. To permit the killing of one and forbid the killing of the other is ludicrous and will breed disrespect for the law. So fine a distinction, carrying such dire consequences, can not but be scoffed at by Alaska's people.

"Hence, in my opinion, partial birth abortions are fully constitutional under the guidelines established by the United States Supreme Court. I would like to turn now to some of the

specific arguments that have been made thus far against the constitutionality of HB 65.

"First, it has been argued that HB 65 creates an undue burden because partial birth abortions are the safest alternative. This, of course, is an assertion of fact, and the alleged fact is extremely dubious. This Committee has been provided with an abundance of materials indicating that partial birth abortions are not necessary for maternal health and further indicating that partial birth abortions, in themselves, present a risk to maternal health.

"It also has been argued that the Supreme Court, in Planned Parenthood v. Danforth, held unconstitutional an abortion statute which proscribes the use saline amniocentesis, in part because such a prohibition would force women to use more dangerous methods. On the surface, this argument has a certain appeal. After all, HB 65, like Danforth, involves the proscription of a defined abortion procedure. However, Danforth is clearly distinguishable, on at least three grounds. First, HB 65, unlike the Danforth statute, does not force women to use procedures which are less safe than partial birth abortions. Second, the Danforth court emphasized that the proscribed method was the most prevalent available, and that another safe method was not yet available. Here, with HB 65, the proscribed method is not yet used in Alaska and other, safe, methods are available. Third, Danforth predates Casey and thus its analysis focused on whether the statute advanced maternal health. This was during the period in which states' interest in protecting potential human life was undervalued. Casey changed all of that. Now, unlike when Danforth was decided, it is recognized that the state's interest in human life may be asserted throughout pregnancy. HB 65 does just that, and it may be expected that the right to assert that interest would be weighed in any constitutional challenge. Danforth, quite simply, is distinguishable.

"In the past it also has been argued that the only Court to review a ban similar to HB 65 invalidated it, because for some women the prohibited procedure would be safer than other available techniques. The case is Women's Medical Professional Corp v. Voinovich, 911 F. Supp. 1051 (S.D. Ohio 1995). The Court in that case, within the context of deciding whether to issue a preliminary injunction and prior to a full trial, held that D&X was safer than other methods; and, because D&X was more available than induction methods, which require hospitalization, a proscription on D&X was a substantial burden. The Court in that case was certainly entitled to make its findings. This Committee has an equal right to make findings of fact, and ample evidence has been presented to it to base a contrary finding concerning safety. Moreover, this Committee reasonably can not find, given the previous testimony of the Public Health Director, that partial birth abortions are more prevalent than any other methods in Alaska. In Alaska, partial

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birth abortions, thus far, have not been performed. Our state, fortunately, seems to lag behind the rest of the United States in adopting undesirable conduct.

"It also has been argued that the definition of partial-birth abortions is overbroad because it could encompass procedures other than partial birth abortions. It is true that statutes which are so broad as to sweep within their coverage not only properly proscribed acts but also constitutionally protected acts are unconstitutional. The definition employed in HB 65, however, is not of that nature. It does not overlap other alternative methods. They are clearly distinct and clearly outside the coverage of HB 65. It is also argued that the definition is vague. Vague statutes, particularly those that impose criminal liabilities, are unconstitutional. However, HB 65's definition is not vague. It is clear and precise. It establishes definitively what is proscribed. Persons of common intelligence easily can understand what is prohibited and thus there will not be a chilling effect. Proponents of this argument may have in mind the definition used in the statute examined by the court in Voinovich. There, the court---and I think quite rightly--- concluded that there was an overlap and that the statute was vague. But, the definition of D&X employed in that case does not in the slightest resemble HB 65's definition. I can quote the Ohio definition for you. 'The termination of a human pregnancy by purposely inserting a suction device into the skull of a fetus to remove the brain. "Dilation and extraction procedure" does not include either the suction curettage procedure of abortion or the suction aspiration procedure of abortion.' The court found that this definition overlaps normal D&E procedure (because both may involve inserting a suction device into the skull) and because D&E is not excluded as suction curettage or suction aspiration. Further, the Voinovich Court noted that in analyzing statutes for vagueness, the absence of a mens rea requirement is somewhat persuasive. In fact, it relied on this concept in finding another portion of the Ohio law unconstitutionally vague. In HB 65, it may be noted that there is an express mens rea.

"Concerns regarding vagueness are misplaced. This bill does not resemble, in any respect, the statute considered by the Voinovich court. It is clear and precise, and it does not overlap any other abortion procedure. It is such as to apprise people of common intelligence what is being prohibited, and there is no reason to believe that it will have a chilling effect on constitutionally protected acts. Finally, since it is clear, there is no danger of arbitrary or discriminatory enforcement.

"Finally, it is argued that the privacy clause of the Alaska Constitution would be violated by HB 65. The Alaska Supreme Court has not yet decided an abortion case using this constitutional provision. What we do know is that, although the right is broader than the privacy right found by the US Supreme Court in the US

Constitution, it is not absolute. And, certainly, the right to privacy is not violated when an alleged infringement is justified by a legitimate and compelling governmental interest.

"Although the Alaska Constitution's right of privacy is deemed to be broader than that of the United States Constitution, it does not reach everywhere and cover all things. Essentially there is a two step analysis that is required. First, it must be determined if the conduct in question is within the scope of the amendment. Then, and only then, it must be determined if the alleged infringement bears a fair and substantial relation to a compelling governmental interest.

"First, does partial-birth abortions fall within the scope of the amendment? The Alaska Supreme Court has determined that this issue is resolved by answering two questions: (1) Does the person have an actual (that is, subjective) expectation of privacy concerning the conduct? (2) Is the expectation one that society is prepared to recognize as reasonable? If both questions are answered in the affirmative, the conduct falls within the scope of the privacy amendment. Hilbers v Muni. of Anchorage, 611 P. 2d 31 (1980).

"In Alaska, as with the rest of the United States over the last quarter century, many people have been conditioned to perceive abortion as part of the culture. Indeed, the Casey Court made much of that fact in discussing whether or not it would be appropriate to abandon the central tenants of Roe. Given this state of affairs, it would not surprise me that some would have a subjective expectation a privacy right to engage in even this gruesome procedure. But, is subjective expectation something that we as a society are prepared to recognize as reasonable? I think not. In my opinion, for the reasons I have discussed at length in this testimony, society is not even close to recognizing as reasonable any such assertion of a privacy right to obtain a partial-birth abortion. Hence, this procedure falls outside the scope of the amendment.

"Even assuming, arguendo, that partial-birth abortions are within the scope of Alaska's constitutional right to privacy, society's hands are not tied. As previously stated, the right is not absolute. An alleged 'infringement' is permissible if it bears a fair and substantial relationship to a compelling governmental interest.

"I respectfully submit to you that Alaska has a compelling state interest in protecting babies, who are almost born, who are mostly outside the bodies of their mothers, from having their brains sucked out. I also submit that the government has a compelling interest in protecting public confidence in the medical profession by not blurring the roles of healer and abortionist. I also suggest to you that the government has a compelling interest in protecting the almost born from this cruel, gruesome, and

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undignified death. Accordingly, HB 65 does not run afoul Alaska's right to privacy.

"In conclusion, HB 65 will pass constitutional muster."

Number 960

BACHAR BEN'ISRAEL testified via teleconference from Moose Creek in support of HB 65. She stated that she was confused about when this type of abortion would be conducted in regards to how developed the fetus was. She said she was appalled to understand that this procedure was conducted on full term babies after delivery, that the procedure involved the suctioning of brain tissue and stated that this was beyond her imagination. Unless a mother's life is in danger this procedure should not be allowed and added that it reminded her of the undesirable during the Nazi Holocaust.

Number 1101

AMY SKILBRED, Alaska Civil Liberties Union, came forward to testify in opposition to HB 65. She referred to her testimony entitled, "State Interference In Private Medical Decisions." She noted that some of those present have children and that she has two children. She spoke to a baby's pre-term development by stages and the fact that parents look forward to birthing this child, along with all the anticipation involved, fixing up the nursery, etc. She asked those present to imagine going in for a routine prenatal visit and finding out that the unborn child they treasure will not live long after it is born, if it will survive this long. With this tragic news barely understood it is then advised with the mother's condition, age or medical history that terminating the pregnancy is recommended. What if then they learn that the medical procedure, with possibly the lowest risk in that mother's specific medical circumstances, is not an option, not an option because it is against the law. Imagine how the mother and family will feel at a moment like this, the moment that a law not based on science but on politics prohibits an individual and their doctor from using the best medical procedure under the circumstance. This moment is a dangerous moment for our democracy.

MS. SKILBRED continued that all citizens of this country and state have a constitutional right to privacy. It is hard to think of privacy more profound than a patient's right to choose his or her course of treatment in a medical emergency. HB 65 would violate this most fundamental right by replacing a doctor's medical advise and a patient's decision whether or not to follow that advise with politically motivated statutes. A law substituting religious beliefs for science, a law penned and promoted by those who would place compassion for a child that cannot live over concern for a mother's health. Surely those whose compassion lies with the unborn can understand the suffering a mother feels when she is loosing a child she wanted and loved, or a father for that matter.

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Compounding this trauma is the fear of imminent danger to a woman's own body. This is a perilous situation for women, when they are loosing a child that they carry. This is an excruciating situation, physically and emotionally.

MS. SKILBRED noted that to further complicate this situation with some arbitrary and vague statutory prohibition is simply unconscionable. To deny appropriate medical treatment in this situation is a violation of the mother's rights, her rights as an individual, as a patient and as an American. Our courts have refused to allow such a profound violation of individual privacy rights. Neither will this violation of individual rights stand. Indeed, very similar attempts have failed. Nevertheless, she urged the committee at this point to stop this dangerous interference with medical treatment before it moves one step closer to passage.

MS. SKILBRED offered that one of the things people should consider is if this legislation was to pass and a suit is brought against a doctor for using such a procedure in Alaska she asked what happens to the patient's privacy rights then. When the state decides to prosecute a treating physician, if laws such as HB 65 allows state prosecution of a doctor performing a medical procedure, the patient and the patient's once confidential, medical record and medical history are destined to become exhibit one. How else will a court determine if a doctor prosecuted by the state under this bill before them was performing a procedure that was necessary.

Number 1380

REPRESENTATIVE GREEN asked if the baby's head were to slip beyond the cervical control, is the doctor still entitled to drive the scissors into its skull.

MS. SKILBRED stated that she was not a doctor and she thought the way in which the procedure has been publicized any normal person would think it gruesome. They are not taking about healthy Gerber Babies who are just about to be delivered that are eight and 1/2 months along even if the birth mother did not want it.

Number 1468

CHAIRMAN GREEN stated that he thought it had to do with the mother's health rather than the baby. He understood the procedure that as long as the baby's head is still cervically preventing it from being born, if in fact "that wasn't that type, for example, I've talked to some people who had their babies on the way to the hospital. They delivered so quickly that you might not be able to stop the baby's birth even though you've made a breach condition." If the baby is born, this situation has gone beyond the need to help the mother. He asked what happens once the baby is viable.

MS. SKILBRED responded that these procedures are usually induced.

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This isn't a situation where someone is on their way to have a baby, but they are in the hands of a physician before the process is induced. She can't respond to some of these questions in part as opposed to what the sponsor has stated, the bill's wording is vague. If the process is really D&X's, then it's D&X's, if it's really D&E's, then it's D&E's. It isn't clear from this bill what the process is.

Number 1526

REPRESENTATIVE PORTER stated that any malpractice case is not a patient's privacy subject to being violated.

MS. SKILBRED stated that she believed it could be.

Number 1540

REPRESENTATIVE BERKOWITZ stated that in a civil situation, when a patient brings suit against a doctor and puts at issue the treatment, the doctor/patient confidentiality is breached. This is a circumstance where essentially the state is prosecuting, the state is charging a doctor. There is not necessarily collusion between the state and the woman who has had the abortion. In which case, the doctor wouldn't be entitled, because of confidentiality, to prepare their case.

MS. SKILBRED added that the woman may not want to participate in a case like that.

Number 1584

REPRESENTATIVE CROFT noted that in previous testimony it was stated that the exception was to protect the life and the health of the mother. This law just says life. He asked in her opinion and the organization she represents, is it constitutional if it doesn't say "or health."

MS. SKILBRED responded that she could provide him with a written response at a later time. She said that this might address one of the issues, it might not address all the constitutional issues that this bill might have.

Number 1650

CHAIRMAN GREEN asked that if this legislation is intended to protect the life of the mother, it was his understanding, that breach condition babies are a very high risk birth as compared to the normal, head first birth. It seemed to him that when a doctor goes in and manipulates the baby from the normal head down position into a feet down position, that doctor is creating a breach condition which increases the risk of damage, he thought that they were working in the wrong direction, literally. They are incurring

a higher risk by inverting the baby. It seemed to him that this was not unlike trying to take a Christmas tree out the door the wrong way. He didn't know how this could be considered in the best interest of the mother.

MS. SKILBRED responded that they could either decide that doctors based on their knowledge, training and abilities are not the people who should decide what is in the best interest of their patient, but a legislative body should decide what's in the best interest of a woman or they could decide that doctors who have the information about a woman's condition, her age, her health, her medical background, are the ones who are best suited to decide what procedure should be used. She respectfully suggested that they should leave it to the doctors to decide. There are numerous law suits against doctors for not doing the right thing, but she didn't think Alaska should legislate what the procedures are that doctors should use.

Number 1700

CHAIRMAN GREEN asked if she could think of any other type of manipulation that would be preferable to invert the baby for delivery, rather than to try...

MS. SKILBRED stated that after having vaginally delivered two children she said it would be an uncomfortable situation to do anything but the way children should be born. She didn't know that someone would be better off having a caesarean birth to pull out what might be a viable but soon to die baby. She thought they should look at the mother as well and to let her, along with her physician make a decision.

Number 1750

CHAIRMAN GREEN stated that the reason he asked was that one of his daughters has two children, the first one, a girl, was five and 1/2 pounds. Because she was in a breach position and unable to be turned around, they took the baby caesarean because of the risk of trying to deliver in the wrong direction. Her physician felt that even a baby nearly half as big in the wrong direction was a higher risk than a caesarean section. It seemed incongruous to him that a doctor would reverse a normal situation in the interest of protecting the mother.

MS. SKILBRED again stated that she wasn't a physical but that a doctor in this situation might decide that this is in the best interest of the mother. She noted that a caesarean section is major surgery.

Number 1847

DR. PETER NAKAMURA, Director, Division of Public Health, Department

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of Health and Social Services came forward to testify on HB 65. He stated that the primary problem with the bill is that they're legislating medical practice, a clinical practice. They're not deciding here whether an abortion should be done or not done. He thought that the bill says they're at the point where a determination is made and an abortion will take place, now what procedure should be used. This is a decision which should be left between a physician and their patient. This is not something that should be legislated. Each situation is different. He outlined these for the committee.

DR. NAKAMURA stated that if an abortion is needed to be performed then there are all types of patients. There may be a patient who has an underlying medical problem like a heart condition and perhaps this is the reason an abortion had to take place since the stress of delivery would have been too great. The patient might have leukemia or another terminal illness. It would be necessary to abort because of chemotherapy treatments. Once a decision is made then the doctor needs to decide which is the safest procedure for this child. The most difficult and complicated procedure is to allow a pregnancy to go to term. There are a large number of complications in this instance. If an abortion is decided upon a procedure needs to be established. Saline injections have been used to induce labor, but is traumatic on the patient, takes a longer time and has other complications. He noted these complications.

DR. NAKAMURA noted that another option could be a C-Section but this is major surgery where the patient has to be anesthetized, hospitalized and an operation is performed to remove the fetus. There are other ways an abortion can be induced, such as with chemicals, or through the use of hormones. Quite often hormones don't work because in the early stages of pregnancy, the uterus doesn't respond which means that the patient is left in a hospital or in an uncomfortable situation for a longer duration of time until another choice for a procedure is taken. It takes a large amount of medication to induce labor at this early stage, prior to the viability of the fetus and quite frequently it fails. The doctor is best able to determine when this viability is. The definition under the previous statutes was 150 days.

DR. NAKAMURA addressed the options of either D&X or D&E. Both of these procedures are somewhat similar in that the doctor dilates the cervix, then the non-viable fetus is extracted. This is a pretty traumatic procedure. The D&X procedure is one that was designed to be more physiologically acceptable to many patients because sometimes the mother would still like to hold the fetus. If the fetus doesn't have a genetic abnormality it would still look like a baby. It was for this purpose that this procedure was designed.

DR. NAKAMURA paraphrased a statement to respond to which was,

"Partial birth abortions are cruel and gruesome." He stated that it's also cruel and gruesome to subject the mother to an additional stress that she doesn't have to be exposed to, such as other procedures or for instance in the case of a child with significant genetic defects. If it is known that the fetus will not survive and the mother is required to go to full term and deliver. This would be pretty cruel and gruesome in itself. All abortions are kind of gruesome but there's a purpose for them to take place, sometimes it's psychological and sometimes it's physical.

DR. NAKAMURA again referred to an argument against this procedure and stated that if they look at the fact that partial birth abortions as inherently disrespectful of the dignity accorded human life, he said he wasn't sure how to respond to that one. He thought in this case they're talking about whether an abortion should be done or not be done. As stated previously, the comparable procedures can actually be more gruesome than a D&X in itself. He assumed that the bill relates to D&X because he's heard so often the description of a needle stuck into the back of the brain and the contents aspirated.

Number 2163

CHAIRMAN GREEN again asked if this procedure was ultimately for the protection of the mother.

DR. NAKAMURA responded that yes, this procedure was for the protection of the mother.

Number 2238

CHAIRMAN GREEN asked if this could happen in the case of a normal baby.

DR. NAKAMURA noted that this wouldn't be the case if it's going to be called an abortion. Once the baby is viable this procedure would not be undertaken unless it's to save the life of the mother. He said this decision would be made between the physician and the mother. He couldn't imagine a situation where this procedure would be used unless it happened to be an instance of a hydro-cephalic infant and to preserve the health and the future ability of this mother to have babies. Then this procedure might be used.

CHAIRMAN GREEN noted his concern that if this is going to be a demise of the baby to save the mother's life, he asked why the baby would have to be aborted if it's healthy, it sounds like it would still fit this category, but if it does have to be killed, to be killed in this manner, the doctor is saying that unless it's a hydro-cephalic there are other ways that might be more traumatic to the mother.

DR. NAKAMURA stated that if the mother is pregnant and the infant

is viable, the only time that this baby would be aborted would be to save the life of the mother or perhaps prevent a significant, serious, harmful affect on her health.

CHAIRMAN GREEN added that the first consideration might be whether the baby is viable to save both.'

Number 2306

DR. NAKAMURA responded yes, he would assume so. A caesarean could be a choice. He went on to paraphrase the statement that partial birth abortion tends to blur the distinction between constitutional persons and non-persons and between infanticide and legal abortions. He stated that he didn't know what is meant by this statement. He also quoted, "A partial birth abortion, because of their gruesome nature and because they incorporate two separate roles of physicians and the role of the healer and the role of the abortion, tend to undermine the public confidence in the medical profession." He noted that the reason the physicians are doing these abortions is that in the past, prior to the time that they were made legal, they were done by others. When they were done by others there was a lot of unfortunate outcomes. He noted a hospital in Texas that only administered to woman with complications from illegal abortions.

Number 2412

REPRESENTATIVE PORTER asked in regards to the distinction between a D&E and a D&X, on the second page of the bill, line 13, he said he didn't have any problem with this language and asked if it would eliminate a D&E.

DR. NAKAMURA responded that it would eliminate almost everything. He stated that he had never done an abortion. He needed to ask other physicians what this language meant. To them it means that this virtually could eliminate all abortions because there is no way they can assure that a baby will not be delivered, even during a suction aspiration of a fetus and not be alive. In reality it could eliminate all abortions.

REPRESENTATIVE CROFT stated that he'd like to get more to the point of these procedures being done either pre-viable or viable for a malformed baby or to protect the life of a healthy mother, but he stated that if they would have the doctor return, these questions could wait.

TAPE 97-33, SIDE B
Number 000

DEBRA JOSLIN, Chair, District 35, Republican Party of Alaska, testified next via teleconference from Delta Junction. She shared a story of a woman who gave birth to a child with multiple

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impairments. After many surgeries this child is alive and well, lives in Alaska and is a joy to his mother. If this woman was asked if this child should not have lived, the answer would have been no. When this child was born there was no such thing as legalized abortion, or partial birth abortions. If there had been that option, if the doctors has presented this option, the woman might have consented to this procedure.

MS. JOSLIN referred to an article in the "Wall Street Journal," titled, "Partial Birth Abortion is Bad Medicine," written by several obstetric-gynecologists. This article contains some of the truths about partial birth abortions. She said she would send this article to the committee.

Number 0043

BARBARA RAWALT, Financial Chair, District 35, Republican Party of Alaska, testified next via teleconference from Delta Junction. She added that she was also testifying as a parent and as a grandparent. She urged passage of HB 65. She referred to testimony by Mr. Fitzsimmons, the oft quoted pro-choice spokesman, who supported both the variety and the necessity of this procedure and recently admitted that his previous statements were a lie. He admitted that this procedure is not rare, it affects not just a few hundred woman as previously stated, but 300,000 to 500,000 women per year in the United States who have this procedure done. As to the necessity, he stated that this procedure was not limited to hopelessly deformed babies as was previously stated, but that most of these procedures were performed on an elective basis, on healthy babies.

MS. RAWALT urged the committee to vote yes on HB 65 in order to stop this barbarous procedure.

Number 0191

SHARYLEE ZACHARY announced that she had submitted written testimony to the committee. She referred to Section 1, (6) and (7), which states how this procedure undermines the public confidence in the medical profession. She believed that a majority of medical physicians and health care providers are honest, upright and have the sincere desire to help and heal people. However, the medical profession has "cut it's own throat" in the area of "credibility." It has allowed many physicians to perform unjustified abortions and then look the other way when those same doctors falsify the patient's records with statements about it being a medical necessity, when in fact the abortion was done as an elective procedure. In other words this is a pre-arranged convenience for the mother and a financial benefit for the doctor and/or the clinic.

MS. ZACHARY said, in the last year or two, several medical

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professionals have given national testimony that there are just a few cases of partial birth abortions which have been done to save the lives of the mother. The media has gone overboard in emphasizing that testimony and unfortunately many people have believed those doctors. The media and certain politicians have also largely ignored those people providing testimony regarding the thousands of unnecessary partial birth abortions.

MS. ZACHARY said, in the past few weeks, a prominent physician has brought forth testimony that he lied. She questioned how we could trust doctors and other health care professionals, who know this to be true and yet keep quiet. If this is their ethic, in this area, what is to keep them from falsifying other areas of medical care for the sake of convenience and financial gain.

Number 0289

KATHLEEN HOFFMAN testified next via teleconference from Kenai. She appreciated all the work the committee had done on HB 65 as we surely want to rid our state of this partial birth abortion. She referred to an infant that she worked with when she was in nurse's training. She is in favor of HB 65.

Number 0358

VIRGINIA PHILLIPS, testified as a Spokesperson for American Indians and Alaska Natives, National Right to Life. She stated that she is the Chair, District 2, Republican Party of Alaska testified next via teleconference from Sitka. She was appalled what this procedure did to the woman. It is ridiculous to say that it is necessary for the life or health of the mother, there are other easier things to do to get rid of the baby. This procedure needs to be outlawed. If people attempted to do this procedure on a rat, animal rights activists would say it was inhumane. She asked for humane treatment of women and to stop them from being victimized by the partial birth abortion.

TERESA LUNDY, Medical Transcriptionist, testified next via teleconference from Sitka. She is speaking for the (Indisc.) community in Sitka because a lot of people couldn't attend the meeting today. She questioned the ability of people from the medical community to defend and endorse this abortion procedure. She referred to earlier testimony on the D & X procedure and testimony that the D & E procedure had to do with taking the non-viable infant and aborting the child. She reminded the witness that he is misinformed; the D & E procedure is a gruesome dismemberment type of abortion procedure. After a period of time the baby tissue becomes toughened as the baby develops. She referred to written testimony on the D & X extraction method by Dr. Martin Haskell. The doctor invented this D & X procedure because it was an alternative to dismemberment.

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MS. LUNDY asked the committee to endorse HB 65. It is imperative that the Alaska Legislature set the standard to not allow this abortion procedure in this state. She was concerned that there was no ethical concern regarding abortion. Eliminating partial birth abortions does not interfere with reproductive rights or right to privacy concerns. She urged the committee to see that ethical standards were set in stone by passing HB 65.

Number 0358

SALLY APOXIDAK testified next via teleconference from MatSu. She was appalled about today's testimony. She asked the committee to look at the bigger picture in terms of abortion. She was in favor of the contents of HB 65.

Number 0612

ART HIPPLER, Executive Director, Alaska Right to Life, testified next via teleconference from MatSu. He referred to the testimony given by Mr. Dozier. His organization supports HB 65. He offered $500, out of his pocket, to the first person who provides unambiguous evidence of one single case where this procedure was medically necessary to save the life or the fertility of the mother.

ERNIE LINE testified next via teleconference from MatSu. He said there have been no partial birth abortion procedures performed in Alaska, according to Mr. Dozier. He assumed that the committee knew how many doctors in Alaska were qualified to perform this procedure.

CHAIRMAN GREEN said he did not know. When he asked if this information was known by other members of the committee or witnesses, no one answered.

MR. LINE completely agreed with the doctor who testified that legislators should not practice medicine. He asked the committee, before they pass HB 65 or SB 12, to consider the women who might need to abort these fetal anomalies or else to provide for them when they are infant anomalies.

Number 0769

NIKKI SULLIVAN said she done post abortion counseling and provided education for women who have been through the abortion experience. She has had national training in Denver at the Post Abortion Counseling and Education Institute. She referred to testimony about the protection of the mother and the viability of the baby. These women suffer the same degree of trauma after the abortion as they experience during the abortion. She could not think of anything more traumatic than a partial birth abortion. She is a proponent of informed consent, every woman has the right to know

what is going on with her body and what an abortion consists of.

Number 0884

KRISTIN HOCK informed the committee that she was eight and half months pregnant. She was not planning to terminate this pregnancy, but if she chose to, then she would have a legal right to do so in some states. If we propose partial birth abortions for convicts, who are on death row, there would be an outcry saying it was cruel and inhumane treatment, it did not respect people and their dignity. She referred to the U.S. Constitution and urged the committee to value the right of protection of life and liberty by banning partial birth abortions.

Number 1009

TRICIA BONNEY, Nurse, said the whole purpose for partial birth abortions is for the mother's health. She said the argument, regarding infant anomalies, is not viable in opposing HB 65. She said this procedure is not taught in medical schools, and questioned how it could be considered a necessary medical procedure. She felt this procedure was inhumane and referred to previous testimony against partial birth abortions. She urged the committee to support HB 65.

Number 1149

TOM GORDY agreed with the testimony given by Mr. Dozier and said more facts have come out this week about partial birth abortions. People who support abortion will lie to keep things going. He was here to speak against this procedure; called partial birth abortions by Congress or D & X, short for dilation and extractions, others have called it D & E, but medical literature does not have a name for it because it is not a recognized legitimate medical procedure. He said there are probably no doctors qualified to do this procedure as it is not a licensed procedure.

MR. GORDY said he would like to call it partial birth infanticide. He referred to a nurse who worked for Dr. Haskell, the doctor who invented this procedure and her experience of watching this procedure. This woman had originally supported abortion, but has changed her stance since seeing this procedure. This procedure is the murdering of a defenseless baby.

MR. GORDY referred to a woman who had complications in her pregnancy in the sixth month, which is the time when Dr. Haskell says he performs most of these procedures. Labor was induced, the baby was treated in the neo-natal unit of the hospital and is alive today. He said a mother's life does not need to be threatened, the baby can be pulled out and survive outside of the mother through care and nurturing.

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MR. GORDY testified that 300 physicians, primarily obstetricians, united to oppose this procedure after President Clinton opposed the partial birth abortion ban. They declared that it is never medically necessary. Dr. Haskell said that 80 percent of partial birth abortions are elective. Dr. McMann, who has performed 2,000 partial birth abortions, said 22 percent of the partial birth abortions that he has performed for maternal indications were for depression, not for physical threats.

MR. GORDY stated that this procedure is morally and ethically wrong. It is time to say, no, to this type of cruel procedure. He urged the committee to pass HB 65.

Number 1475

DAVE ROGERS, Lobbyist, Alaska Woman's Lobby, said his organization opposes HB 65. They acknowledged that information and beliefs on this subject are contradictory, but wanted to present information to the committee. Partial birth abortion is not a medical term, the procedure that is being addressed in HB 65 is call dilation and extraction of D & X, or sometimes called intact dilation and extraction. This procedure is used in the second and third trimesters. Doctors, who they have talked to, have said they have rarely met a patient who did not want, and was not completely bonded to their baby by the third trimester, nor have they known a health care provider who was not equally concerned about the health of the baby in the third trimester. This procedure is not a procedure to be undertaken lightly. Many involve wanted pregnancies that go tragically wrong when a woman's life or physical health is endangered and the fetus develops abnormalities which will cause them to die just before, during or just after life. Finally, this procedure is the safest available for some women. It carries lower risks of pervading the uterus, lacerating the cervix and the birth canal or causing maternal hemorrhage than certain alternative procedures. They were also told that D & X is less physically stressful and less toxic than other methods.

MR. ROGERS said, if these findings are valid, this proper medical procedure, which may be the safest and most appropriate choice among several techniques in some cases, should not be the subject of a restrictive law which will take away from the physician's exercise of discretion and unduly burden a woman's right to chose, by arbitrarily and narrowly limiting her access to the procedures her doctors consider best for her.

MR. RODGERS said, as is always the case in this arena, professional judgement and individual consideration must govern actions taken over the broad and complex spectrum of medical possibilities. Families and their physicians must be permitted to make the difficult decisions posed by the situation. He said HB 65 is unnecessary, can hurt Alaskan women and only serves to further polarize concerned Alaskans. For these reasons the Alaskan Women's

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Lobby strongly opposes HB 65.

Number 1661

SID HEIDERSDORF suggested that the baby is turned around, to be delivered feet first, so that it will not scream before the procedure is completed. He referred to Mr. Fitzsimmons and a New York Times article which quoted him as saying that he lied, because telling the truth would damage the abortion rights cause. He felt Mr. Fitzsimmons told the truth because he realized he was defending the indefensible. He felt that people who are supporting partial birth abortions were defending it because if you face the truth it will somehow collapse the abortion edifice. Abortion is supported by the Supreme Court decision and there is little that the state could do. This is a step the state could take to acknowledge that there is some kind of justifiable restrictions which could be placed on certain abortion procedures.

MR. HEIDERSDORF asked the committee not to be influenced by arguments that the state should stay out of medical practice. He reminded the committee of the practices of doctors in Nazi Germany and said there are certain things that should be outlawed. In every profession there are certain amount of people that operate on the fringes; they must be controlled and guided by state laws. He did not care how many of these things were done and what they are done for. This procedure must simply not be allowed. If we want to maintain some type of claim to be civilized, we have to take some steps to control things that are happening which should clearly be condemned.

Number 1917

REPRESENTATIVE BERKOWITZ referred to the analogy and felt it was an unfair comparison to make and was outside the bounds of this discussion. There is common ground, there should be debate about issues like this, but when you invoke issues that are hateful as that one, you destroy the possibility of dialogue.

MR. HEIDERSDORF used this point to attempt to show that within his lifetime, he has seen this situation occur in a civilized society where we say this should have been stopped. Because people testified that the state should stay out of medical practice, he felt it was a legitimate thing to show his point of view that there are certain procedures that should be stopped.

Number 2098

CHAIRMAN GREEN closed public testimony.

REPRESENTATIVE PORTER said, it would be helpful in his understanding of this bill, if someone could explain the difference between a D & C, a D & E and a D & X. He referred to Section 2(c)

and said he thought it described what he thought was a partial birth abortion. If this was done with the intent to expose a portion of a live fetus outside the body of the mother and then terminate it, he thought it would eliminate the things that Dr. Nakamura was referring to.

REPRESENTATIVE CROFT asked if it was the intention to have this bill apply to pre-viable fetuses.

REPRESENTATIVE KOTT answered, yes. He felt this was clear in the opening statement. He added that some of the discussion handled by Dr. Nakamura was premature in addressing certain issues.

REPRESENTATIVE KOTT said he wanted to make some comments on today's testimony and would try to respond to Representative Porter's concerns. Clearly, an abundance of information has been presented regarding this particular practice, whether it is used in the state or not. He had no evidence to show that it would be done in this state, this bill is a preventative measure. The definition of the procedure in Section 2(c) was extracted from the Congressional version of a similar bill. This definition is not something that he created, it is not a novel idea. This language was formed by a number of scholarly individuals in the medical community as well as the legal profession. He felt this definition was extremely clear about what it is that we are attempting to prohibit.

REPRESENTATIVE KOTT referred to letters from Dr. Thompson and Dr. Ritter (Ph.) who are premier experts in the field of obstetrics. These doctors have not performed any abortions. He expressed concern with Dr. Nakamura's testimony as he has not..."

TAPE 97-34, SIDE A
Number 0000

REPRESENTATIVE KOTT continued...he said it was just brought to his attention that the committee did not have Dr. Thompson's letter, but Dr. Lokiemp's (Ph.) and Dr. Ritter's (Ph.) letter, two premier experts in the field. He would also provide a letter from Dr. Riederer, a Juneau practitioner. All three of them have concluded that there are other procedures as safe as this particular measure. It alarms him when testimony commences with, "I spoke with an abortionist, a medical doctor." It gives more credence to the situation when you have actual testimony, in the written form or in person, where the person who articulates their own experience. He questioned those sources, the qualifications of the person who testifies. He referred to the question of whether the state should invoke legislative authority on how the medical community practices by saying it has been done in the past. In some circumstances, the best solution to a medical problem would be for the doctor to assist in a suicide that is not condoned in the state. So, we are, in fact, evoking some practices and eliminating others in the state.

Number 0227

CHAIRMAN GREEN said if you get ten doctors in the room and how you might get ten different opinions. He asked why there was such a disparity in opinion. Some say this procedure is absolutely necessary to protect the life of the mother, others say there are other ways.

REPRESENTATIVE KOTT answered that it is a perplexing problem and he would want to turn to the experts in the field. There is a substantial amount of literature by people who have performed this procedure and have in many cases testified, under oath. He assumed they were telling the truth, he gave them the benefit of the doubt. He thought in those types of cases, you have to turn to the experts for the truth. There is an abundance of information that suggests that this particular procedure is not the only procedure that is available to save the life of the mother.

Number 0444

CHAIRMAN GREEN referred to testimony that this procedure was done to save the life of the mother or because of severe abnormalities and then there was testimony saying that 80 percent of these would live normal, happy lives if they lived. He asked who wasn't telling the truth.

REPRESENTATIVE KOTT said you have testimony from one side that has hands-on experience and the other side from a group which most of the experience comes from a second party or from reading the literature. He said the committee would have to draw their own conclusions why there is this wide disparity between what is being said.

REPRESENTATIVE CROFT expressed curiosity of why HB 65 does not allow the procedure to be performed to protect the health of the mother. He referred to the sponsor's statement that he was more comfortable with written testimony and pointed out a letter from Sherrie Richey, the first and only Alaskan perinatologist. Perinatology is a specialty in maternal fetal medicine. She says that partial birth abortion is a procedure virtually always chosen because it is the safest way to terminate a pregnancy complicated by lethal fetal abnormality or a life threatening maternal complication. He did not mean to get into a debate, but we have conflicting medical evidence about whether this is the safest procedure for the health of the mother. He asked what the difficulty was with allowing the expert, the person treating that woman, to determine if this is required to protect her health. For the legislature to make a determination outlawing it and not allowing an exception for the health is our, not completely informed, decision that it can never be the best method to protect the health.

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Number 0640

REPRESENTATIVE KOTT said that when you get into the definition of what constitutes protecting the health of the mother, you discover, at least in the literature that he has researched, that it opens up a pandora's box. About anything you can conceive as being unhealthy, can be used to protect the mother's health.

REPRESENTATIVE CROFT clarified that he is concerned that the health issue would be chosen to allow for an elective procedure.

REPRESENTATIVE KOTT felt that, in many cases, it would be the case. He reminded the committee that the American Medical Association's legislative council voted unanimously to ban this particular procedure. He stated that he is not the expert, he is turning to the experts. The association is a group of qualified people who make various decisions and express them.

REPRESENTATIVE CROFT said, in order for this legislation to go out without any proviso for the health of the mother, he had to be absolutely convinced that this is never a procedure that could best protect the mother's health. If it could be the best procedure, then we ought to allow it to be. When there is conflicting testimony, he would leave it to those people to determine what is best.

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HOUSE JUDICIARY STANDING COMMITTEE
March 10, 1997
1:20 p.m.

HB 65 - PARTIAL-BIRTH ABORTIONS

Number 151

THEDA PITTMAN testified to via teleconference from Anchorage, Alaska. She made reference to the statement made by Mr. Dozier, legislative aide to Representative Pete Kott, relating to the court cases he cited. Ms. Pittman advised members that the compound of his presentation was a report on the cases themselves and what he said was actually quite good; however, one would have to "tear the paper" off at that point; discard his editorial comments and actually compare the casework to the bill in order to understand the many, many problems of HB 65.

MS. PITTMAN stated that essentially, although it was possible to ban an abortion after viability, it would be necessary to take into account that the court cases provided that the determination of viability must rest with the doctor. And also the determination of the danger to the life or the health of the woman must rest with the doctor, and that the particular procedure must rest with the doctor, as well.

MS. PITTMAN stated that as for viability, abortion was not performed on a healthy woman with a healthy fetus. She noted that the editorial comments on the bill created the illusion that in the seventh, eighth or ninth month, a pregnant woman would get up one morning and suddenly decide not to be pregnant. After viability, abortions were not preformed on healthy women, with a healthy fetus; hence, there was no need for HB 65.

Number 267

CHAIRMAN GREEN advised members public testimony would now be closed on HB 65. He asked that the prime sponsor, Representative Pete Kott address the committee.

Number 342

REPRESENTATIVE PETE KOTT, Prime Sponsor, HB 65, advised members that Representative Porter had previously requested information regarding the various methods of partial-birth abortion. He advised members one method was the suction curettage/aspiration, which was a method typically employed during the first trimester; however, had been used up to the 15th week of pregnancy. Representative Kott explained that the abortionist mechanically dilates the opening of the uterus, inserts a vacuum device into the uterus, and removes the baby through negative suction.

REPRESENTATIVE KOTT explained that a second type was known as D & E, which stood for dilation and evacuation. The cervix was dilated slowly, over a one or two day period, by the insertion of laminaria, and a suction curettage is inserted through the cervix and the baby is removed. He noted that frequently, the baby's head and torso were too large to be removed in that manner, and consequently, the abortionist dismembers the baby by the use of suction curettage or forceps. Representative Kott expressed that sometimes the size of the head, because it was too hard to be removed in the womb, would be decompressed either by crushing it, or inserting a suction device and removing the contents, which then allows for its removal. He added that that was a common second trimester abortion. Representative Kott stated that again, with both procedures he had mentioned, there was no life.

REPRESENTATIVE KOTT advised members that the third method was what was termed installation/induction procedures, where the abortionist injects a substance, usually a saline solution, or combination of prostogladen and urea. He explained that that was injected into the amniotic cavity, or prostogladen suppositories placed into the vagina. The mother then goes into labor, and the dead fetus is expelled.

Number 571

CHAIRMAN GREEN noted that Representative Kott was making reference to a "dead fetus", and asked if those method were only used if the fetus was dead, or did the procedure, itself, kill the fetus.

REPRESENTATIVE KOTT advised members that the fetus, he would suspect in some circumstance, would already be dead; however, the intent was to extract, or eliminate a fetus or pregnancy of a woman.

REPRESENTATIVE KOTT advised members that the fourth method involved a hysterectomy, which was a caesarian section preformed before term, or hysterotomy, which was the removal of the entire uterus. He pointed out that those methods were seldom used.

REPRESENTATIVE KOTT informed members that the last method was dilation/extraction, known as D & X. He explained that dilators were inserted in the cervix for two days, and on the third day, the abortionist removes the dilators and ruptures the membranes, which he suspected was a rupture of the water bag, and with the use of forceps, the baby was delivered, except for the head; scissors would be inserted in the baby's skull, and spread in order to make the opening larger, at which time a suction catheter was inserted and the contents of the skull evacuated. Representative Kott advised members that with the skull depressed, the baby would be completely delivered. He expressed that as noted by the court, the primary distinction between the D & X procedure, and the D & E procedure, was that the D & E procedure resulted in dismemberment

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and piece by piece removal of the fetus from the uterus, and the D & X procedure resulted in a fetus being removed, basically, in tact except for a portion of the skull contents, which would be suctioned out after the head was placed next to the opening of the uterus. Representative Kott explained that the D & X procedure was a more broad term, coined by Dr. McMahon, as killing the baby, or fetus, and then removing it, often times head first, as opposed to what Dr. Haskell had coined as a partial birth procedure, where the baby was actually spun around and delivered feet first. He pointed out that the fetus, in both cases, would be dead, which was where they got into the difference of the D & X procedure, as coined by Dr. Haskell.

REPRESENTATIVE KOTT stated that it could be noted that the term D & X, as used by the court in Voinovich, was not a recognized medical term. He pointed out that again, it was coined by Dr. James McMahon, who used it to describe procedures, not within the definition of partial-birth abortion, as used in the proposed legislation.

REPRESENTATIVE KOTT advised members that the definition of partial-birth abortion, as used in HB 65, did not overlap with other abortion methods. He noted that with suction curettage-aspiration, the baby was not partially vaginally delivered and then killed. Representative Kott explained that with the D & E procedure, the baby was partially delivered before it was killed. HB 65 required that before the procedure fell within the scope of the bill. With installation type methods, the baby would be vaginally delivered, but only after the death in the womb. He noted that in rare cases, the baby survived delivery, and therefore could not be legally killed because that would result in a substantial problem for the abortionist.

REPRESENTATIVE KOTT explained that HB 65, by way of contrast, required that the abortionist partially, vaginally, deliver a live fetus and then kill the baby before complete delivery of the fetus. He noted that with the hysterectomy and hysterotomy procedure, there was no vaginal delivery, partially or otherwise.

REPRESENTATIVE KOTT expressed that as stated by Dr. Joseph Riederer, who was the premier expert in Juneau who had delivered 2000 plus Juneau babies, that "The proposed definition of the bill is specific, and no other medical procedure would be restricted or affected by banning partial-birth abortion. The language is clear and specific." Representative Kott noted that was a quote from the Doctor's written testimony.

Number 988

CHAIRMAN GREEN asked if the baby was dead before it was removed if that would be a D & X procedure, and if still alive when the body of the fetus came out and actually had the shears inserted in the

head, if that was a different procedure.

REPRESENTATIVE KOTT stated that that was what Dr. Haskell coined as a D & X, which was later referred to, and coined now as partial-birth abortion, and not to be confused with Dr. McMahon's procedure.

CHAIRMAN GREEN asked if the procedure only dealt with dead fetuses.

REPRESENTATIVE KOTT agreed that it did.

Number 1033

REPRESENTATIVE BRIAN PORTER explained that that entire body of information was what he wanted in order to make sure he understood prior to voting on the proposed legislation. He noted that the definition of partial-birth abortion, that appeared in the bill, excluded, and was not meant to include in any way, any of the other procedures described by Representative Kott. Representative Porter stated that only when a portion of the physical fetus was exposed, outside of the mother's body, and a live fetus, that it was then killed and the extraction completed.

REPRESENTATIVE KOTT advised members that would be correct. Representative Kott pointed out that there were particular views of resident experts around the state, who had all suggested that the procedure used was not a medical necessity for the purpose of the health of the mother. He added that the particular practice used, could not be found in any medical books, or medical school teachings. Representative Kott stated that as far as he knew, the practice was not being utilized in the state of Alaska, and the proposed legislation was a preemptive strike to ensure that it would not occur. He pointed out that HB 65 would not restrict as woman's right to choice.

Number 1170

CHAIRMAN GREEN advised members that if they would only expect to see the procedure take place in order to protect the life of the mother, that he could not understand why one would be able to go in and forcibly turn the baby around, so that it would come out feet first, and insert the scissors after the baby was essentially delivered. He stated it appeared to him that delivery, in that procedure, was basically completed, and then the baby would be killed, rather than delivering it normally. Chairman Green expressed that he had a real problem with that.

Number 1212

REPRESENTATIVE CROFT noted that a member of the public who testified on HB 65, bet committee members $500, that the procedure was never necessary to save the life of the mother. He asked

Representative Kott if that was a true and accurate statement.

REPRESENTATIVE KOTT stated that in his opinion, he did not believe it was based on the various medical reviews he had researched.

REPRESENTATIVE CROFT asked if the procedure was necessary in order to save the health of the mother.

REPRESENTATIVE KOTT felt that if the procedure was used to save the health of the mother, it would dilute the entire intent, because he felt there was a broad definition of health. He noted that arguably, anyone who performed the procedure under that guise, could legitimately establish, before the court, that there was a health issue.

REPRESENTATIVE CROFT advised members that was part of his confusion. He understood Mr. Dozier's testimony, and the testimony of Representative Kott, to be that because the procedure was never necessary to save the health of the mother, that a health exception was not necessary. And if it was believed that the procedure was never necessary to save the life of the mother, why was that exception included.

REPRESENTATIVE KOTT reiterated that it was his humble opinion that the procedure was not necessary to save the life of the mother, based on the literature from the experts who had written commentary on the procedure.

REPRESENTATIVE CROFT pointed out that the draft committee substitute states members were being asked to adopt language which stated, "partial-birth abortions are not necessary to preserve the life, or health of pregnant women." He expressed that if they made that legislative finding, why was the exception included at all.

GEORGE DOZIER, Legislative Aide to Representative Kott, advised members that the reason for including the finding, was because HB 65 mirrored the definition as set out in the federal legislation that had been vetoed. He noted that that legislation had been re-introduced, and suspected that in light of events over the past couple of weeks, that it would stand a much better chance of not being vetoed this time. Mr. Dozier explained that by including the life provision in the proposed legislation, it would make Alaska statutes consistent with what he felt would be federal law.

Number 1400

REPRESENTATIVE CON BUNDE advised members that he was troubled with the same contradiction of the findings. He noted that not many legislators were doctors, and it was found that it was not necessary to preserve life, and then it states that the procedure could not be done unless it was necessary to save life, which to him, was an absolute contraction. Representative Bunde pointed out

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that either the legislature did not know what it was talking about, and that finding should be removed, or it would be necessary to delete Section 2; one or the other.

REPRESENTATIVE PORTER advised members that it would be his intent to support the removal of Section 1 because he did not feel any of that section supported the proposed legislation, and had ramifications past the intent of HB 65 that he did not want to contemplate.

REPRESENTATIVE PORTER stated with respect to Section 2, he felt he could support if he understood it correctly. He advised members he would be interested in hearing from the sponsor, or Mr. Dozier, what impact the wording of Roe, regarding the phrase, "the life or health of the mother", would have on leaving some reference for health in the proposed legislation.

MR. DOZIER advised members that Roe was a case which involved the prohibition of, basically, all types of abortions. He explained that subsequent cases, including Casey, also involved an absolute prohibition of all types of abortion, in certain circumstances. Mr. Dozier pointed out that both cases indicated that the states could regulate abortions, except as necessary to preserve the life, and health of the mother.

MR. DOZIER advised members that the proposed legislation, unlike Roe and Casey, did not involve a prohibition of abortion, per sa, even for a short period of time, such was the case in Voinovich. Mr. Dozier explained that HB 65 prohibited the use of one particular procedure, and consequently, the life and health of the mother was already protected by what was already in place.

CHAIRMAN GREEN noted that Representative Porter had suggested the removal of Section 1, with Section 2, then, becoming Section 1. He asked Mr. Dozier if he saw any adversity if that amendment was offered and should pass.

REPRESENTATIVE KOTT reminded members that the draft committee substitute had not yet been adopted by the committee, and if Representative Porter would like to strike Section 1, the draft committee substitute could be set aside and adopt the original bill because that did not have the Section 1 language as was in the draft proposal. He advised members that he did not feel striking Section 1 would be substantially detrimental to the bill, adding that he felt it would add some credence if there was a challenge before the courts at some later point in time.

REPRESENTATIVE CROFT moved to adopt CSHB 65 (JUD), Version B, as the committee's working document.

REPRESENTATIVE JEANNETTE objected.

REPRESENTATIVE ROKEBERG agreed with the position expressed by Representative Porter. He asked if members voted against adoption of the draft committee substitute, would that bring them back to the original version, or the State Affairs committee substitute.

CHAIRMAN GREEN suggested that they adopt the draft committee substitute and then move on to strike Section 1.

REPRESENTATIVE KOTT stated that it was his belief that the original bill before members did not include Section 1 of the committee substitute.

CHAIRMAN GREEN clarified that if the draft committee substitute was not adopted, that they would be, then, considering the original bill, HB 65, Version E.

REPRESENTATIVE ROKEBERG supported Representative Porter's position, and also pointed out that there was other language in the findings that he felt could generate some undue discussion. He advised members that he would be voting against the adoption of the draft committee substitute.

REPRESENTATIVE CROFT advised members that he also had trouble with the legislative findings; however, he would prefer to start, and would vote to start from the draft committee substitute, and then decide whether or not they wanted to amend it to remove Section 1, and amend Section 2 in other respects. He noted that while the language was inconsistent on the life or health provision, between Sections 1 and 2, he thought the findings brought out an important aspect of the bill. Representative Croft pointed out that even with just the life part, they were in effect, finding that partial-birth abortions were not necessary to preserve the health of pregnant women, when it is not allowed as an exception. He felt the finding clarified what was actually being done. Representative Croft stated that he would like to keep the findings in, for discussion purposes, and possibly at the end of deliberations, members might decide to remove them.

REPRESENTATIVE PORTER felt that if the bill included the exception relating to the life of the mother, he did not feel it was appropriate to have a finding that it was an unnecessary conclusion, noting that there were no doctors on the panel. Representative Porter advised members that the reason he was hesitant about all of the findings, was that they all appeared to have the potential to be interpreted as a position on abortion, as opposed to a position on partial-birth abortion. Representative Porter stated that from that standpoint, he did not believe they added any benefit to the intent of the proposed legislation.

Number 1861

REPRESENTATIVE JAMES agreed that the findings were not relevant to

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the issue. She stated that in reading the original bill, it was very clear to her what it meant, and felt it was totally sufficient in its form. For that reason, she would be voting against adoption of the draft committee substitute.

CHAIRMAN GREEN requested a roll call vote: In favor: Representatives Croft, Berkowitz and Green. Opposed: Representatives Bunde, Porter, Rokeberg and James. Adoption of CSHB 65(JUD) failed, 4 to 3.

CHAIRMAN GREEN pointed out that members would now have before them the original version of HB 65.

Number 1929

REPRESENTATIVE CROFT advised members that the findings that were not adopted, stated that the legislature found the procedure was not necessary to save the life or health of the mother. He expressed that it was clearly inconsistent the way it was, and the committee chose not to adopt it. However, he felt they could have consistently adopted it as an implicit finding that they would make to say, "The legislature finds that these procedures are not necessary to save the health of the mother.", either that, or the health of the mother was not important to them, which he felt the second would be unlikely.

REPRESENTATIVE CROFT advised members that what they were saying, being non-doctors, was that the procedure was not necessary to save the health of the mother. He stated that Mr. Dozier said as much, although in his written presentation, he stated that Roe had an exception where the life and health of the mother was threatened, and that Casey, specifically said that "the state may prescribe abortion, except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother". Representative Croft expressed that that was the federal standard that was adopted by Casey. Because health was not included in the version the committee adopted, he would offer, with the permission of the Chair, two amendments, of which one would place "health" back in the bill, and the second would limit the prohibition to the third trimester.

REPRESENTATIVE CROFT felt that what upset most people, and it did him, was the idea that those partial-birth abortions would be done on healthy women, with healthy babies in the third trimester, that would be ended with no medical justification. He saw no justification for that. Representative Croft pointed out that the bill before them, the original version, had no limitation in that direction; that it applied to any abortion from the first week of pregnancy and did not provide an exception for health.

REPRESENTATIVE CROFT stated that if Roe and Casey specifically said you would have to provide protection for the life or health of the

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mother, that they would be doing something clearly unconstitutional by enacting something that soley protected life. He noted that Mr. Dozier disagreed, and the reason he had requested a copy of his written statement, was because he wanted to inquire more into what the rationale was for leaving it off. Representative Croft stated that Mr. Dozier stated that because the state had never conducted the procedure, it could not be necessary to save health. He noted that Mr. Dozier could clarify, if necessary; however, read from the prepared statement as follows: "Thus, the question must be asked, does HB 65, which prescribes a procedure, which thus far is not done in Alaska, place a substantial obstacle in the path of a woman seeking an abortion. The answer by definition is no." In other words, Representative Croft stated, that because it had never been needed in the state, it never could be needed in the state.

REPRESENTATIVE CROFT pointed out that there were many medical procedures not done in the state of Alaska. For example, he believed that complicated open heart surgery was not done in Alaska. Representative Croft did not feel any member of the committee, member of the legislature, or any rationale person would say there was no time that procedure was not necessary to preserve someone's health, or in some cases, life. To him, the argument simply confused whether the state had ever done it, with whether it could ever be necessary. Representative Croft pointed out that it was clearly unconstitutional for the early portions of the pregnancy, and did fit with what the federal constitution required in the late portions, in Casey.

REPRESENTATIVE CROFT expressed that the second rationale related for excluding health, that members could just conclude from what they know and through testimony they heard, that it was not. He stated that even setting aside the argument that it had not been done, in the state, so it could not ever need to be done, he did not consider a good argument. Representative Croft pointed out that members could say that, "we, as seven non-doctors" would conclude that a woman never needed the procedure to preserve her health. He felt that judgment was best left to the doctor and the patient. Representative Croft noted; however, that there was also substantial testimony which went the other way. He stated that the only way they could delete the "of health" language was if members were convinced, to a moral certainty, that it never was. Representative Croft explained that as a non-doctor, he would have difficulty ever having that level of certainty, adding that there was certainly enough conflicting information to say that, in some professional opinions, including some that treat women in Alaska, that it sometimes was necessary. Because Representative Croft did not know the answer, he felt the exception should be included in the bill

REPRESENTATIVE PORTER advised members that they had been discussing legislative findings, and pointed out that there were not any, which was just established by a vote. He stated that the reference

to what the legislature intended by those findings was off the table, and irrelevant.

Number 2300

REPRESENTATIVE CROFT moved to amend HB 65, page 1, line 6, following the first occurrence of "life", insert: or health, and following the word "mother", delete [whose life], and insert who.

REPRESENTATIVE PORTER objected for the purpose of discussion.

REPRESENTATIVE CROFT advised members that it was a constitutional requirement, that they were simply acting unconstitutionally if the language was not included. He added that secondly, they would also be acting dispassionately if the proposed legislation would not allow a woman, whose pregnancy was going to cause her health problems, to make the choice of what to do, based on the sound medical judgment that she could obtain, that the legislature would be acting cruelly. Representative Croft stated that to his knowledge, the partial-birth procedure was not in the state of Alaska, but if it were, and the judgment of the woman and her health professional determined it was needed, that it could be done in the state. He noted that the reason members discuss legislative findings, though out of the present version, was that by not including health, members would be substituting their judgment for the judgment of health professionals, which would result in saying, "The constitution requires that you be given the right to protect your life or health, but we've done the work for you, because we found out that this is never needed for health." Representative Croft pointed out that members did not have the qualifications to do that, and would not be aware of the individual situation, and did not know enough about all the medical generalities, or specifics of a diagnosis.

REPRESENTATIVE CROFT stated that more importantly, why were they not doing that with life. He advised members that if they were as confident that the procedure was never necessary to protect life, why was that exception included. Representative Croft suggested that it was because there were situations where that would be needed.

Number 2408

REPRESENTATIVE PORTER spoke against the proposed amendment. He advised members that he came with an open question in his mind regarding the issue of including "health" in the bill to make it constitutional. He pointed out that he was satisfied with the explanation given by Mr. Dozier that that portion of the decision in Roe, must have to do with the life or health, was on a different plane, which was precisely why he did not want the findings to be a part of the proposed legislation. Representative Porter pointed out that they were only dealing with partial-birth abortions, and

he felt it was a distinct enough separation from the issues of Roe to make a consideration of the life of the mother; not the general term "health" that could be one word that would subvert the entire intent of the proposed legislation, to not be unconstitutional at all. For those reasons, Representative Porter would vote against Amendment 1.

Number 2465

REPRESENTATIVE BERKOWITZ hoped that Representative Porter was still maintaining an open mind. He noted that he had asked Legislative Legal what they had to say about that issue, and they stated that in relation to the "health" amendment, ... [Tape auto-reverse to Side B].

TAPE 97-35, SIDE B

Number 000

REPRESENTATIVE BERKOWITZ .... quote by Legislative Legal: ..."contain exceptions, based not only on preserving the pregnant woman's life, but also her health." Representative Berkowitz stated that Legislative Legal had a more objective perspective than Mr. Dozier, because, with all due respect, Mr. Dozier was an advocate on behalf of proposed legislation. He pointed out that comments in the past on the efficacy of good lawyering, would say that there was a difference between saying that health was a constitutional requirement, and health was not a constitutional requirement.

REPRESENTATIVE PORTER stated that he would like to see the Legislative Legal opinion; however, not having had the opportunity to read the document, with only one sentence being referred to, that it would be difficult to respond to.

REPRESENTATIVE BERKOWITZ advised members he would have been happy to have provided the information to members, but he had only just recently received it.

CHAIRMAN GREEN called a five minute recess for the purpose of providing committee members a copy of the document Representative Berkowitz referred to. The meeting recessed at 2:09 p.m., and was reconvened at 2:11 p.m.

Number 079

CHAIRMAN GREEN pointed out that members had reviewed the document referred to by Representative Berkowitz, and asked if there was any other discussion of committee members.

REPRESENTATIVE ROKEBERG wondered if Mr. Dozier would want to comment on the memorandum, because he felt it was an opinion of

defensibility, more than a constitutional issue.

CHAIRMAN GREEN asked that Mr. Dozier approach the witness table.

REPRESENTATIVE ROKEBERG further stated that the opinion was not only defensible, but constitutional, and that was the issue before members, as to whether the word and concept of "health" was a fatal defect in the draft of the legislation. He asked that Mr. Dozier respond if the absence of the word "health" would be constitutionally defensible, or if it was a constitutional flaw, and not defensible.

MR. DOZIER expressed that he had not yet read the opinion provided by Legislative Legal; however, in his opinion, the absence of the word "health" was very defensible. He pointed out that members would have to look at the specific procedure that the bill addressed, by using two different standards. One was the viability standard, or the pre-viability standard, and the other standard was the period after which the baby became viable. Mr. Dozier advised members that in the pre-viability stage of the pregnancy, that determining whether or not a given regulation was constitutional, or not, that one would have to look whether there was an undue burden. He pointed out that the Supreme Court had defined that very explicitly to mean placing a substantial obstacle in the path of a women who was attempting to make a decision about abortion.

MR. DOZIER pointed out that "health" was already protected, in the state of Alaska, and if abortion was needed to preserve a woman's health, that the proposed legislation would not take anything from that; there was no substantial obstacle. He noted that that was the pre-viability stage. The viability stage of the pregnancy had a different test, which was even more lenient to governmental regulations, and one could say, "no abortions at all, period. Can't use abortion practice A, procedure B, procedure C;" et cetera, et cetera, as long as there was an exception for health and the life of the mother. Mr. Dozier advised members that in the case before them, they were not doing that. What members would be endorsing, was that the particular procedure referred to in the bill, could not occur in the state of Alaska. Mr. Dozier continued to point out that everything in place would remain in place and, consequently, a provision for the health of a mother currently existed.

Number 230

REPRESENTATIVE BERKOWITZ stated that it appeared to him that if there already was provision for health of the mother, that there should be no objection to reinserting "health of the mother" back into the bill. He expressed that that was done, at a regular time, to reaffirm what the legislative intent was. Representative Berkowitz felt it was important that HB 65 reflect the present legislature would not do anything to jeopardize the health, or the

life, of a pregnant mother. He thought that by including the word "health", they would being underscoring what Mr. Dozier conceded was already a part of present law.

Number 255

CHAIRMAN GREEN expressed that there were two attorney members on the House Judiciary Committee, and those members, having consulted with several other attorneys, that it appeared that the issue was a decision matter, rather than a requirement. He noted that he could understand the reason for including the language for health purposes, and could understand the desire to not include it because of the possibility that it would create a confusion, if not an absolute problem. Chairman Green stated that what he would like to enter into the record, was that it was an opinion, and a matter of conjecture among attorneys, just as the procedure itself, was a matter of conjecture among the medical people. Chairman Green pointed out that members had heard from influential people, and high ranking members of the medical profession, who had stated that it was absolutely not necessary. Friday, the committee heard from Dr. Nakamura, who stated that he thought there could be times when it might be necessary.

CHAIRMAN GREEN felt that what the committee was faced with was a conjectural situation, as to whether or not "health" should be included in the proposed legislation, as well as the "life endangerment; and whether or not the particular procedure addressed, would be the only ramification to protect the mother's life. His feeling on the issue was that neither were necessary.

CHAIRMAN GREEN stated that if the House Judiciary Committee, and the present legislature, wanted to pass a ban on the procedure addressed in HB 65, through an avenue of escape because of the necessity for the protection of the life only; not for health, or psychologic reasons, et cetera; that it would certainly be in the purview of the legislature to do so, adding that he felt it would withstand legal muster.

REPRESENTATIVE BUNDE felt that one of the concerns that people had who were particularly opposed to partial-birth abortion, or any abortive procedure, was that a woman might choose to undergo the procedure on a whim, or because it could cause her some mental distress, or whatever. He thought that by adding the word "health", after "life" on line 6, in both instances, would read; "mother whose life, or health is endangered by the physical disorder, illness or injury, ...". Representative Bunde pointed out that they were not considering a notion where someone could claim mental duress; but a serious health problem.

CHAIRMAN GREEN countered Representative Bunde's analogy regarding non-medical, and stated that ulcers were also a result of stress which was a physical disorder that could be brought about by the

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attitude of a mother.

REPRESENTATIVE BUNDE expressed that it had been found that ulcers were brought on by a particular bacteria, not by stress; however understood the point Chairman Green was making.

CHAIRMAN GREEN stated that it was yet conjectural, that there was an attitude that prevailed among the medical profession, that if one could keep their spirits up, one would heal faster.

REPRESENTATIVE ROKEBERG expressed his appreciation of the discussion that was taking place. He stated that while sitting, indulging in medical expertise, members should know what they were talking about when, obviously, they did not; however, stated that that was okay, and that's why they were where they there.

REPRESENTATIVE ROKEBERG advised members that in reviewing the record and considering the testimony provided by Dr. Coop [Ph], that said he saw no reason for the procedure if, in fact, the health of the mother was jeopardized, that there were other alternatives. He further stated that while reading the testimony of Dr. Ritche, which reflected that only in the case of a very complicated pregnancy, if there was lethal fetal abnormality, or life threatening, maternal medical complication, that the procedure under discussion would not even be contemplated from a medical view point. Representative Rokeberg expressed that if there were no other arguments that might overcome his concern relating to the constitutionality of omitting the word "health", that he would be voting against the amendment.

Number 468

REPRESENTATIVE JAMES advised members that she was completely comfortable with existing language, and pointed out that the intent of Roe v. Wade, which indicated that law could not prohibit abortion, because of the life or health of the mother, was not included in the proposed legislation because it dealt with one specific procedure. She advised members that she would also vote against the amendment.

CHAIRMAN GREEN asked if the objection was still maintained on the adoption of Amendment 1. Representative Porter and Rokeberg maintained their objection, and a roll call vote was taken. In favor: Representatives Bunde, Croft and Berkowitz. Opposed: Representatives Porter, Rokeberg, James and Chairman Green. Amendment 1 failed adoption, 4 to 3.

Number 507

REPRESENTATIVE CROFT moved to adopt Amendment 2; page 1, line 11, following the word "means", delete [an], and page 1, line 11, following the word "means", insert, a third trimester.

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Representative Porter objected.

REPRESENTATIVE CROFT explained that the issue that had been the most troubling for everyone, and the most troubling for him, was the idea that a partial-abortion procedure could be done on a healthy baby in the late stages of the pregnancy. Amendment 2 would address that specific concern, making it illegal when done in the third trimester. Representative Croft felt the amended language would go a long way towards curing the constitutional concerns. He pointed out that none of the committee members were experts, even the attorney members, but stated that in his humble opinion, without both of the amendments, or certainly without either one, he would confidently tell the committee that the law would not be upheld in a court of law, if enacted in its present form, and would be overturned as a violation of constitutional rights.

CHAIRMAN GREEN asked if Representative Kott found, through his research, that there was viability earlier than the start of the third trimester.

REPRESENTATIVE KOTT advised members that was what he discovered during his research of the entire issue, that there was viability prior to the beginning of the seventh month.

CHAIRMAN GREEN stated that if the bill was enacted in its present form, that there could be viable babies/fetus, that would be subject to the type of abortion addressed in the bill.

REPRESENTATIVE KOTT advised members that would be correct. He added that he felt the bill would withstand constitutional muster without Amendment 2. Representative Kott noted that they now had two conflicting views, as he suspected there would be many conflicting views, depending on who a person talked to, and what side of the issue they stood on.

REPRESENTATIVE BERKOWITZ reiterated that the bill was unconstitutional in its present form, and he was fully confident that when it got to the courts, which it would, the courts would confirm that position.

Number 662

REPRESENTATIVE JAMES pointed out that this was her fifth legislative session, and she had been a member of the House Judiciary Committee for two years. She expressed that while sitting on the House Judiciary Committee, she had seen legal opinions submitted on both sides of an issue; it is constitutional, it is not constitutional. Representative James provided an example whereby the legislature passed legislation that would phase out the longevity bonus program. Two legal opinions were presented, with one stating that it would definitely be unconstitutional, and the

other said it was not. That law was challenged, went to court, and was found to be constitutional. Representative James felt that to second guess the courts on the issue before members, was not the issue. The issue before her was whether or not to prohibit a gruesome procedure, and whether or not it would make good sense to allow it to occur, where a baby is partially delivered, and then killed before completely taken from the uterus. That, to her, was not acceptable, and she felt members had heard plenty of testimony that indicated there were other methods. Representative James pointed out that they had just heard testimony which reflected that the procedure was used as an elective on healthy babies, and that was what HB 65 was attempting to do; to prohibit the use of that specific procedure for electives.

REPRESENTATIVE JAMES stated with respect to Amendment 2, separating it to the third trimester would not necessarily address viability. She did not believe viability could be separated by saying, "third trimester". Representative James pointed out that viability in court cases prior to now, had a different connotation than a third trimester. She expressed that she would be voting against Amendment 2.

REPRESENTATIVE PORTER maintained his objection to adoption of Amendment 2.

CHAIRMAN GREEN requested a roll call vote. In favor: Representatives Bunde, Croft and Berkowitz. Opposed: Representatives Porter, Rokeberg, James and Chairman Green. Amendment 2 failed adoption, 4 to 3.

Number 1000

REPRESENTATIVE JAMES moved to report CSHB 65(JUD) out of committee, with individual recommendations and attached fiscal notes. Representative Bunde objected.

REPRESENTATIVE BUNDE advised members that he had a great deal of empathy for a number of the folks who had testified who were pro-life, and felt disenfranchised because of Roe v. Wade. He did not feel, at any time, that the legislation before them would address that case, or change anything. Representative Bunde expressed that from that point of view, those people deserved some level of comfort that their point of view was being addressed.

REPRESENTATIVE BUNDE pointed out that the other side of that argument did not accomplish much, because it would not get to Roe v. Wade, and for those who viewed the proposed legislation as the first step to make abortion illegal, was a delusion. Representative Bunde recognized that it was unfortunate that some of the issues members had to face had heavy, philosophical connotations. He expressed that as in many of those other issues, it came down, for him, to practical application; what would he do

if he were in those shoes. Representative Bunde stated that for him, if his wife were to face a life-threatening pregnancy, he would absolutely want her, and counsel her to have access to an abortion to save her life. He stressed that he would not trade his wife for an unborn child; personal, philosophical statement.

CHAIRMAN GREEN asked if Representative Bunde was speaking to partial-birth abortion, or abortions, in general.

REPRESENTATIVE BUNDE stated that he was speaking to any abortion.

CHAIRMAN GREEN asked that he keep his comments to the issue of partial-birth abortion, which was what the bill was addressing.

REPRESENTATIVE BUNDE stated that if a partial-birth abortion was what it would take to save his wife's life, he would accept it, and encourage it. However, he stated that when he did that, he was allowing himself that privilege, and he would then have to allow other people their philosophical approach to the situation, and how they would make those decisions. Representative Bunde advised members that he was sympathetic, and understanding of those who felt that abortion was wrong, partial-birth abortion. Having said all that, Representative Bunde expressed that he would not keep the bill from moving forward; however, pointed out that if enacted, and was challenged, overturned by the courts, or appeared at all in any way to challenge Roe v. Wade, that he would work against it.

CHAIRMAN GREEN asked if there was anyone else that wished to discuss the issue of partial-birth abortion.

REPRESENTATIVE JAMES felt it was very important, that when making a decision of the type of legislation presently before the committee, that it was a specific procedure that would become illegal. And a specific procedure that was very gruesome, and according to all of the testimony, and all of the investigations that she had had the ability to read and understand, was that it was not a necessary procedure. She expressed that they had included the caveat, that in case it was a procedure necessary to save the life of the mother, that it was a procedure that could be used. Representative James advised members that she agreed with Representative Bunde, that the life of the mother was over and above the life of an unborn child. However, stated that in any event, she felt they should not stray from the fact, that what the proposed legislation did was restrict one specific abortion procedure, and not in any way, shape or form, reduce any ability for anyone to get an abortion under current conditions. Representative James felt it was very important to make that clear.

REPRESENTATIVE BERKOWITZ stated that during testimony, members had heard a lot of what he considered as being fairly sanctimonious, moralizing about abortion, in general; however, he would restrict his comments soley to the question of what he termed, late term

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abortions because that was the procedure that was at issue. He felt members, unwillingly, become the vehicles for inflammatory language which served to divide people of good will by succumbing to terms with something like partial-birth abortion. Representative Berkowitz pointed out that it was a procedure, a medical procedure, and doctors, every doctor he'd known, took a Hippocratic oath, not to do anything that would jeopardize the health or well being of a person. It seemed to him that when members circumscribe the procedures available to a doctor, they would be limiting the ability of a doctor to treat a patient. Representative Berkowitz stressed that he knew of no other procedure the state of Alaska had banned, much less, attached a C felony to. Representative Berkowitz felt they were taking an undo step forward; it was not a question in his mind of just limiting a medical procedure, it was also chipping away at abortion rights. He believed that was an unfortunate step to take, and was sorry members were being used as a vehicle for something that was divisive, pointing out that it was a procedure that had never been performed in the state of Alaska. Yet, it would cause a great deal of consternation, in the general public, and a great deal of outcry, because people felt so passionately about it. Representative Berkowitz stated that rather than letting a symbolic bill just die on the vine, the members had chosen to go forward with it, and he regretted that and would be voting against passage of the bill.

CHAIRMAN GREEN reminded members that there were drugs used in other places, and procedures used in foreign countries that were not acceptable in the state of Alaska, so he thought to limit a specific abortion procedure, would not create a problem of attempting to decide whether it would one's spouse, or the baby that lived. He stated that if it was necessary in order to protect the mother, that he would never, ever trade his wife for an unborn child. Chairman Green noted that, by the same token, he would not sacrifice that child on a "maybe" diagnosis, because he would also hold the life of the child in high regard. Chairman Green reiterated that they were not addressing the issue of abortion, but one specific procedure that would be banned in the state. He expressed that that was what members should keep focused on, not the total idea of abortion.

Number 1200

CHAIRMAN GREEN noted that there had been objection, and asked if the objection was maintained. The objection was maintained, and Chairman Green requested a roll call vote: In favor: Representatives Bunde, Porter, Rokeberg, James and Chairman Green. Opposed: Representatives Croft and Berkowitz. CSHB 65(JUD) was moved out of the House Judiciary Committee by a vote of 5 to 2.

REPRESENTATIVE BUNDE expressed that he had a bill up in the House Finance Committee, and asked that he be excused.

Alaska State Legislature
House of Representatives

COMMITTEE ASSIGNMENTS:

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

INTERIM:
10928 EAGLE RIVER ROAD, SUITE 141
EAGLE RIVER, AK 99577
PHONE (907) 694-8944
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:

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RESOURCES
INTERNATIONAL TRADE / TOURISM
LEGISLATIVE COUNCIL

INTERIM:
10928 EAGLE RIVER ROAD, SUITE 141
EAGLE RIVER, AK 99577
PHONE (907) 694-6946 45
FAX 694-6949

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

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

SENATE COMMITTEE REPORT

DATE: 3/21/97

FURTHER: Judiciary

DATE TURNED IN TO OFFICE: 4/1/97

State Affairs Committee considered HOUSE BILL NO. 65 am

"An Act relating to partial-birth abortions."

P H Ø FN's

and recommends:

[ ] be replaced with ____ CS ____________________(______)

[ ] adopt **previous** ___ CS ____________________(______)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ________________ Committee

[ ] further referral to the ________________ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical change
[ ] new: SCR#______

SIGNING DO PASS	DP	OTHER RECOMMEND do not pass - Public Testimony r allowed - should be returnd to st. affairs for a public hearing.			
Mike Miller	✓	[signature]			
[signature] Ward Ward	✓				
		[signature] MACKIE	✓ NR		
CHAIR: [signature]	✓				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS (House) FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Health + Social Services		✓	
DOA		✓	

[ ] **APPROPRIATION -- no fiscal note**   Previous Committee Report(s)   *seal notes accompanying Governor's bill

ALASKA STATE LEGISLATURE
HOUSE BILL NO. 65

HISTORY IN THE HOUSE

1997

1/13 Read first time and referred to: STA JUD

2/21 STA RPT CS( ) ___New Title
4 DP 1 DNP 1 NR Ø AM
1 FN 1 0FN ___ Previous FN

3/12 Jud RPT CS( ) ___New Title
2 DP 1 DNP 3 NR Ø AM
___ FN ___ 0FN 1 Previous FN
1 0FN

___ RPT CS( ) ___New Title
___ DP ___ DNP ___ NR ___ AM
___ FN ___ 0FN ___ Previous FN

3/19 Read second time
CS( ) Adopted

3/19 Amended

3/19 Held - Advance 3/20

3/20 Advanced

3/20 Read third time

Return to second for specific amendment

3/20 PASSED
Yeas 24
Nays 10
Excused 6
Absent Ø

EFD Same ___ or
Yeas
Nays
Excused
Absent

___ Intent adopted

Reconsideration
Reconsideration not taken up

PASSED ON RECON.
Yeas
Nays
Excused
Absent

EFD Same ___ or
Yeas
Nays
Excused
Absent

___ Intent adopted

3/20 Reported correctly engrossed
Signed by Speaker, to the Senate

Suzi Lowell
Chief Clerk of the House

HISTORY IN THE SENATE

1997

3/21 Read first time and referred to: STA, JUD

___ RPT(___) CS ___DP ___NR ___DNP ___AM
___New Title ___Same Title ___Previous FN
___FN ___0FN To___

___ RPT(___) CS ___DP ___NR ___DNP ___AM
___New Title ___Same Title ___Previous FN
___FN ___0FN To___

___ RPT(___) CS ___DP ___NR ___DNP ___AM
___New Title ___Same Title ___Previous FN
___FN ___0FN To___

___ Rules Calendar(___) CS ___AM ___Other
___New Title ___Same Title ___Previous FN
___FN ___0FN

Read second time

___ CS Adopted (___) ___New Title
___Amended ___Advanced

Read third time

___ Letter of Intent adopted
___ Return to second for specific amendment

PASSED
Yeas
Nays
Excused
Absent

EFD Same ___ or
Yeas
Nays
Excused
Absent

Reconsideration
Reconsideration not taken up

PASSED
Yeas
Nays
Excused
Absent

EFD Same ___ or
Yeas
Nays
Excused
Absent

Reported correctly engrossed
Signed by President, to the House

Secretary of the Senate

HOUSE STATE AFFAIRS STANDING COMMITTEE
February 6, 1997
8:00 a.m.

* HOUSE BILL NO. 65
"An Act relating to partial-birth abortions."

- BILL POSTPONED

ADDITIONAL
INFORMATION FOR
HB 65

HOUSE STATE AFFAIRS STANDING COMMITTEE
February 20, 1997
8:21 a.m.

HB 65 - PARTIAL-BIRTH ABORTIONS

The first order of business to come before the House State Affairs Standing Committee was HB 65, "An Act relating to partial-birth abortions."

Number 027

REPRESENTATIVE PETE KOTT, Alaska State Legislature, stated the intent of HB 65 was clear. There were comments made during the testimony that needed to be clarified, especially the comments surrounding the constitutionality of the bill by the attorney general's staff. He called on George Dozier, Jr., Legislative Assistant to Representative Pete Kott, to cover the finer points of the bill.

Number 045

GEORGE DOZIER, JR., Legislative Assistant to Representative Pete Kott, stated that the House State Affairs Standing Committee took testimony from two attorneys regarding the constitutionality of the bill. Janet Crepps, The Center for Reproductive Law and Policy, indicated that HB 65 was "patentably unconstitutional." Kristen Bomengen, Department of Law, indicated that the bill was unconstitutional. "Madame Chair, I am confident that both of these individuals testified in good faith, and honestly and sincerely believed that they are correct in their assessment of HB 65." Mr. Dozier, Jr. was equally confident that both of these attorneys in their assessment were incorrect. House Bill 65 was not unconstitutional either under the federal constitution or the state constitution.

MR. DOZIER, JR. explained that the Fourteenth Amendment included a right to privacy, and that this right was broad enough to encompass a woman's decision to obtain an abortion. The court also held that the right to decide to have an abortion was not absolute. The right was limited by the legitimate interest of the state or to protect potential human life. The Roe v. Wade court indicated th the state could not interfere with a woman's decision to obtain an abortion during the first-trimester. However, after the first-trimester it could regulate to protect the woman's health, and after viability the state could regulate or proscribe abortion, except where necessary for the life or health of the mother. The Roe court specifically and expressly rejected an argument that "a pregnant woman is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she chooses."

MR. DOZIER, JR. further explained that the court found the state had a substantial interest in potential human life in the Planned Parenthood v. Casey case. The interest extends throughout the pregnancy. The court also found that the opinions subsequent to the Roe v. Wade case undervalued the state's interest in potential human life. Consequently, the Casey court rejected the rigid trimester system established by the Roe court. It instead divided the pregnancy into two periods: pre-viability and viability. The

Casey court indicated that during the pre-viability period the states could not place an "undue burden" on a woman's right to decide to terminate a pregnancy. The Casey court defined the term "undue burden" as regulations that either had the purpose or the effect of placing a substantial obstacle in the path of a woman seeking the abortion of a non-viable fetus. The Casey court indicated that "subsequent to viability the state in promoting its interest in the potentiality of human life may if it chooses regulate and even proscribe abortion, except where necessary, in appropriate medical judgement for the preservation of the life or the health of the mother." In summary: First, the state had a substantial interest in potential human life that extends throughout a pregnancy. Second, prior to viability the state could not place an undue burden on the right to pregnancy, which means placing a substantial obstacle in the path of a woman seeking an abortion. Third, after viability the state could regulate abortion or even prohibit abortion, except where necessary for the life or the health of the mother.

MR. DOZIER, JR. further stated that since partial-birth abortions span the last part of the pre-viability stage and extended all the way through the viability stage, HB 65 was designed to cover both periods. Hence, it must be analyzed with regards to both standards. He declared, "With all due respect, House Bill 65 more than meets those standards". House Bill 65 did not place an undue burden on the right to choose an abortion. It did not place a substantial obstacle either by intent, or in effect, in the path of women seeking abortions. It did not proscribe abortion, per say. It merely made one particular type of an abortion illegal. And, "I may add, a particularly egregious form." He further stated, "All other forms of abortion remain open to pregnant women." As the testimony from Dr. Peter Nakamura, Department of Health and Social Services, indicated, partial-birth abortions have not been performed in Alaska and would probably never be performed in the state. Thus, "Does House Bill 65, which prescribes an abortion which is not done in Alaska, place a substantial obstacle in the path of women seeking abortions in Alaska?" The answer by definition was, "No." The procedure was simply not available anyway. Was it really a substantial obstacle to require abortionists to conform to the standards already present and accepted? he wondered "That to my mind is no obstacle at all, let alone a substantial one." In short, all of the options presently available to women to obtain an abortion remain unaffected. Therefore, the first standard, applied to pre-viability pregnancies, was clearly satisfied.

MR. DOZIER, JR. further explained the second standard that applied to viable babies was also satisfied. He reiterated, the Supreme Court recognized that the state could regulate or even proscribe an abortion, except where necessary to preserve the life or health of the mother. House Bill 65 did not ban an abortion during this period, it merely banned a particular procedure. Therefore, it was more of a regulation than a proscription. House Bill 65 also contained an expressed exception applicable to the life of the mother. It did not mention the health of the mother for the following reasons: All forms of abortions presently in Alaska remain in effect, and a ban would not adversely impact the health of the mother as numerous evidence indicates. There were no

obstetrical situations which require a partial-birth abortion to preserve the life or the health of the mother. In addition, Representative Kott indicated that the American Medical Association (AMA) voted-unanimously-to recommended the endorsement of the federal partial-birth ban. "In so doing it stated that the procedure was repulsive and is not a recognized medical technique." The former Surgeon General, C. Everett Koop, stated that "in no way can I twist my mind to see the late-term abortion 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." He reiterated partial-birth abortions were not necessary for the health of the mother.

MR. DOZIER, JR. further stated that the legislature could conclude that partial-birth abortions were not necessary to preserve the health of the mother, and indeed could be inimicable to the health of the mother. Therefore, the pre-viability and the post-viability standards required by the Casey decision were satisfied. In addition, there were several permissible and compelling state interests that were advanced by HB 65. He cited, the cruelty and the gruesome act of sticking scissors into a baby's head. The state had a very strong interest in protecting human life from such cruel and gruesome actions. He also cited, a partial-birth abortion tended to mix the roles of physician and abortionist. A physician was considered a healer, while an abortionist was not considered a healer. He was concerned that in mixing these two opposing roles there would be a great danger that public confidence in the medical profession would be undermined. He also cited, a partial-birth abortion was inherently disrespectful of human life and dignity. In addition, the state had a vital interest in drawing a clear distinction between a legal abortion and infanticide. The partial-birth abortion blurred that distinction. "In my opinion, partial-birth abortions are fully constitutional under the guidelines established by the United States Supreme Court."

MR. DOZIER, JR. turned to the arguments made by Ms. Janet Crepps and Ms. Kristen Bomengen. Ms. Crepps argued that HB 65 created an undue burden because partial-birth abortions were the safest procedure. He called that statement questionable. The committee members had been provided with an abundance of materials indicating that partial-birth abortions were not necessary for the health of the mother and actually presented a risk to her. Ms. Crepps also argued that the Supreme Court in the Planned Parenthood v. Danforth case held that the use of saline amniocentesis was unconstitutional because it forced the doctor to use a more dangerous method. And, HB 65 involved the proscription of a defined abortion procedure like in Danforth . However, Danforth he stated, was clearly distinguishable on three different grounds. First, HB 65 did not force women to use procedures that were less safe than partial-birth abortions. Second, the Danforth court emphasized that the proscribed method was the most prevalent available. In HB 65 the proscribed method was not even used in Alaska and other safe methods were available. Third, the Danforth court predated the Casey court; therefore, the analysis focused on whether the state advanced maternal health. The Casey court changed all that. Now, it is recognized that the state's interest could be asserted

throughout a pregnancy. He declared, "House Bill 65 does just

that. And, it may be expected that the right to assert that interest by the state would be weighed in any constitutional challenge. Danforth , quite simply, is distinguishable." Ms. Crepps further argued that the only court to review or ban a similar procedure in HB 65 invalidated it because for some women the prohibited procedure would be safer than other available procedures that was in the Women's Medical Professional Corporation v. Voinovich court case. The court held that D&X was safer than other methods and because it was more available than induction methods, its proscription was a substantial burden and therefore, unconstitutional. The House State Affairs Standing Committee had ample evidence to base a decision on safety. "Indeed the only medical testimony presented suggesting a need for a D&X procedure or partial-birth was presented by two doctors who clearly were not talking about partial-birth abortions. They appeared to be talking about late-term abortions in general." Moreover, the House State Affairs Standing Committee could not find, given the testimony of the Public Health Director, that partial-birth abortions were more prevalent than any other method in the state of Alaska. "In Alaska partial-birth abortions are simply not being done right now." Finally, Ms. Crepps argued that the privacy clause of the Alaska State Constitution would be violated by HB 65. "I don't know how she can be so certain about this," he declared. The Alaska Supreme Court had not yet decided an abortion case using this constitutional provision. The right was broader than the privacy right found by the court in the U.S. Constitution, but it was not absolute. And, "Certainly the right to privacy is not violated when an alleged abridgement is justified by a legitimate and compelling governmental interest." He stated, the government had a compelling interest to protect almost-born babies and to protect public confidence in the medical profession by not blurring the roles of physicians and abortionists. The government also had a compelling interest to protect the almost-born from this cruel, gruesome and undignified death.

MR. DOZIER, JR. stated that Ms. Bomengen argued that the D&X procedure was the safest method; so, it was subject to constitutional challenge. He reiterated that there was amble evidence presented to the committee members that indicated D&X was not the safest procedure. Ms. Bomengen also argued that the definition was broad because it could encompass procedures other than partial-birth abortions. The definition in HB 65 does not overlap alternative methods. Ms. Bomengen also argued that the definition was vague. The definition in HB 65 is clear and precise. It establishes definitively what is proscribed, and persons of common intelligence can easily understand what is prohibited. "Thus there will not be a chilling affect. I think Ms. Bomengen has in mind a definition that was used in the statute examined by the court in Voinovich back in Ohio." The court, quite rightly, concluded that there was an overlap and that the statute was vague. But, the definition employed in the Ohio case does not resemble the definition in HB 65. "The termination of a human pregnancy by purposefully inserting a suction devise into the skull of a fetus to remove the brain, dilation and extraction procedure does not include either (indisc.--coughing) procedure of abortion of the suction aspiration procedure of abortion." The court found

that this definition overlapped a normal D&E procedure because both involved inserting a section devise into the skull. Furthermore,

the absence of the mental component of a criminal statute was somewhat persuasive. In HB 65 there was no expressed mental component; the required state of mind was knowingly. Ms. Bomengen's concerns regarding vagueness were misplaced. House Bill 65 does not resemble, in any respect, the statute considered by the Voinovich court. House Bill 65 was clear, precise and did not overlap any other abortion procedure. Finally, because it is clear there is no danger of arbitrary or discriminatory enforcement.

MR. DOZIER, JR. concluded that in his judgement House Bill 65 would pass constitutional muster.

Number 465

REPRESENTATIVE ETHAN BERKOWITZ asked Mr. Dozier to distinguish between a partial-birth abortion and a late-term abortion?

Number 470

MR. DOZIER, JR. replied that a partial-birth abortion could be either a pre-viable or a post-viable abortion. A partial-birth abortion could be a late-term abortion also. House Bill 65 did not proscribe late-term abortions; it only proscribed a certain procedure.

Number 476

REPRESENTATIVE BERKOWITZ stated that Mr. Dozier, Jr. indicated the two doctors that testified described a late-term abortion.

Number 478

MR. DOZIER, JR. replied, "Yes." That was what they had in mind. Dr. Nakamura also indicated that they were referring to late-term abortions.

Number 486

REPRESENTATIVE BERKOWITZ stated that the doctors who would be guided by this law were confused thereby satisfying the vagueness issue. He asked Mr. Dozier, Jr. to respond.

Number 490

MR. DOZIER, JR. referred the committee members to page 1, lines 11-13, and read "(c) In this section, 'partial-birth abortion' means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery." He asked Representative Berkowitz what was unclear about that definition?

Number 499

REPRESENTATIVE BERKOWITZ replied that the doctors who were to be guided by the law and who testified interpreted it as a ban on

their procedures that they had practiced. Yet, Mr. Dozier, Jr. indicated that the procedures that they practiced did not constitute a partial-birth abortion. Yet, the fact that they were

confused chilled their actions. Therefore, the bill was void for vagueness.

MR. DOZIER, JR. wondered if that was a question or a comment.

Number 509

CHAIR JAMES asked Representative Berkowitz if his comment was also his position?

REPRESENTATIVE BERKOWITZ replied that was his question.

CHAIR JAMES stated that Mr. Dozier, Jr. already answered that question. He believed it was very clear. She asked Representative Berkowitz if he believed it was unclear?

Number 512

REPRESENTATIVE BERKOWITZ replied he believed it was unclear. He believed if the bill was rewritten it could be clearer.

Number 514

CHAIR JAMES asked Representative Berkowitz to explain what was not clear.

Number 515

REPRESENTATIVE BERKOWITZ replied there were several issues unclear. First, the legal history that Mr. Dozier, Jr. recited described the procedures in terms of pre-viability and viability thereby injecting the new term "living." Second, doctors who were to be guided by the statute interpreted it in such a way that their actions would be banned thereby creating a chilling effect.

Number 526

REPRESENTATIVE BERKOWITZ asked Mr. Dozier, Jr. why the term "living" was not being used and instead the terms "pre-viability" and "viability?"

Number 530

MR. DOZIER, JR. replied because the term "viability" was irrelevant to what was being proscribed in HB 65. The bill was constitutional regardless of whether it was applied to a pre-viable fetus or a viable fetus.

MR. DOZIER, JR. further stated that there were certain practical difficulties when applying a partial-birth abortion early on. For example, the fetal tissue would be too tender to manipulate.

Number 545

REPRESENTATIVE BERKOWITZ asked Mr. Dozier, Jr. if there was a legal

definition of the term "living?"

Number 547

MR. DOZIER, JR. replied he thought Representative Berkowitz was suggesting that the definition was too vague because the bill did not define the term "living." A statute passed constitutional due process muster if it was certain enough so that it would apprise people of common intelligence of what was being made illegal. "I don't think that there is a doctor alive, let alone a man, woman, or child alive in the United States that doesn't know what living is. I don't think that living is necessary to be defined." For example, the bill would not apply to a dead fetus in a mother's womb. But, if the fetus was still alive and partially delivered vaginally then killed, the bill applied.

Number 565

REPRESENTATIVE BERKOWITZ stated Mr. Dozier, Jr. indicated that the Voinovich court made finding of fact.

Number 566

MR. DOZIER, JR. replied, "Yes, I did."

REPRESENTATIVE BERKOWITZ further stated that the court indicated the partial-birth procedure was safe or could be the safest method.

Number 569

MR. DOZIER, JR. replied, "I don't believe that the court actually made that determination." The case was a request for an injunction. The court had to decide if it was likely that once this matter went to a full trial that the plaintiff would prevail in court. The court issued the injunction. He did not know if the issue went to full trial, however. The legal history was not available.

Number 587

REPRESENTATIVE BERKOWITZ said he misunderstood when Mr. Dozier, Jr. stated, "In all candor the finding of fact." He asked Mr. Dozier, Jr. for a copy of his testimony.

MR. DOZIER, JR. replied he did not have a copy of his testimony; he was referring to written notes only.

REPRESENTATIVE BERKOWITZ stated his written notes would be fine.

MR. DOZIER, JR. replied he had private notations written on the pages.

Number 596

CHAIR JAMES stated she would not compel Mr. Dozier, Jr. to give Representative Berkowitz his notes. A tape recording of the meeting was available.

REPRESENTATIVE BERKOWITZ stated he did not care to have his private notes. A computer print out would be fine.

CHAIR JAMES stated her decision had been made. She reiterated a

tape recording of the meeting was available.

REPRESENTATIVE BERKOWITZ noted for the record the cooperation of Mr. Dozier.

Number 602

REPRESENTATIVE MARK HODGINS moved that HB 65 move from the committee with the attached fiscal note(s) and individual recommendations.

Number 604

REPRESENTATIVE BERKOWITZ objected.

REPRESENTATIVE BERKOWITZ stated that the bill as it was written constituted an unwarranted governmental intrusion that abridged the rights of Alaskan women, doctors and families. This was not an abortion issue, it was a medical issue. In addition, testimony before the U.S. Congress indicated the medical necessity for this procedure. And, no one disputed the gruesome fashion of this procedure. There was no testimony, however, before the House State Affairs Standing Committee that indicated this was how the procedure was performed. The sponsor relied on the testimony of Nurse Shafer, of which, information indicated that her credibility was questionable. He found it difficult that the committee members would accept, without question, the testimony given in another body. Moreover, this issue was also a question of faith. There were many different position of faith. He read a list of churches that supported this type of procedure. "For me this was a question of faith in that I have faith in the constitution. And, I believe the constitution adequately circumscribes the procedures that are in question here." He urged the committee members to make a fair inquiry into what this issue was about. He reiterated this was not a question of an abortion, but of a medical procedure. He further stated that if the bill was well written there were ways he could support it. He also stated that this was a reason why a dialogue needed to occur between the members of the majority and the minority; there were middle grounds and alternatives.

Number 654

CHAIR JAMES asked Representative Berkowitz if he was insinuating that the dialogue did not happen?

Number 655

REPRESENTATIVE BERKOWITZ replied, "I just caution that when the minority is silenced it tends to result in a tyranny of the majority."

Number 658

CHAIR JAMES asked Representative Berkowitz if he was suggesting that the minority was silenced?

Number 660

REPRESENTATIVE BERKOWITZ replied, "I fell that I have been silenced in this committee." And, he also felt that given proper time he could have elicited testimony that would have helped him to rewrite the bill.

CHAIR JAMES replied let's get back to the point. Let's get back to Representative Berkowitz's distress of the bill.

REPRESENTATIVE BERKOWITZ further stated that the bill was void for vagueness. It would not pass constitutional muster. It endangered the health and well being of Alaskan women unnecessarily. It was not even practiced here in Alaska. "I think this is an exercise in political grand standing that we ought not be engaged in."

The record reflected the arrival of Representative Al Vezey at 9:00 a.m.

Number 664

CHAIR JAMES stated that she would vote to pass the bill out of the committee because it prohibited a gruesome procedure that was available when the life of the mother was at stake. The bill only prohibited the procedure when it was elected by the mother. It did not necessarily involve a threat to life of the mother.

CHAIR JAMES called for a roll call vote. Representatives James, Dyson, Hodgins, Ivan and Vezey voted in favor of the motion. Representative Berkowitz voted against the motion. House Bill 65 was so moved from the House State Affairs Standing Committee.

HOUSE JUDICIARY STANDING COMMITTEE
March 5, 1997
1:05 p.m.

HOUSE BILL NO. 65
"An Act relating to partial-birth abortions."

- SCHEDULED BUT NOT HEARD

HOUSE JUDICIARY STANDING COMMITTEE
March 7, 1997
1:08 p.m.

HB 65 - PARTIAL-BIRTH ABORTIONS

Number 1404

CHAIRMAN GREEN indicated that the committee would consider HB 65, "An Act relating to partial-birth abortions." He noted that this was a procedure to abort a child before it clears the birth canal by the insertion of a sharp instrument, probably scissors into the back of a skull. He added that version B of this bill, dated 3/4/97 was before the committee.

Number 1451

REPRESENTATIVE PETE KOTT came forward to testify on HB 65 as sponsor to this legislation. He stated that this legislation was a fairly simple measure and it does one thing. It prohibits what has been termed "partial birth abortions" from occurring in Alaska. Partial birth abortions involve a series of steps which are horrible, unconscionable and smacks in the face of hideousness. He stated that these techniques are gruesome and he noted that he had provided written documentation of the same, along with the sponsor statement. He stated that the technique enumerated in the sponsor statement was obtained from a Dr. Martin Haskell enumerated in a 1992 paper provided to the National Abortion Federation. This bill does not in any way restrict abortions from occurring in Alaska but rather a type of procedure that is used.

REPRESENTATIVE KOTT stated that partial birth abortions occur anywhere from nineteen weeks through to full term. "Essentially one relies on the cervical entrapment of the head to help keep the baby in place while the insertion is made to complete the process." He stated that the committee has before it a committee substitute that he felt captured the intent of the legislature as it relates to this particular measure. He felt that enough substantiating documentation provided by members of the medical community that suggest that this procedure is not a necessity to save the life of a mother. "There will also be some discussion on whether or not the procedure is performed in an abundance of the cases. I think that you will hear and bear out some facts that this is not a procedure that is rarely used. In fact, just this past week, with I believe with the reintroduction of a bill in Congress, a Ron Fitzsimmons, the Executive Director for the National Coalition of Abortion Providers, said that he mislead the public because he feared the truth would damage the abortion rights cause. This was in relationship to the number of times this procedure was used and the reasons for using it."

Number 1745

GEORGE DOZIER, Aide to Representative Kott, came forward to testify on HB 65. He read a statement into the record.

"At the outset, I would like to discuss, just briefly, federal constitutional requirements in the abortion context. As everyone

knows, the seminal case addressing the constitutionality of abortion in the United States is Roe v. Wade , 410 US 113. Generally, the Court held as follows:

"1. The fourteenth amendment includes a right to privacy, and this right is broad enough to include the right to obtain an abortion. Roe , 410 US, at 177.

"2. This right is not absolute and may be limited by states' legitimate interest in safeguarding women's health, maintaining proper medical standards, and protecting potential human life. Roe , 410 US, at 177.

"3. Applying these principles, the Court arrived at the fol conclusions. During the first trimester, the state, essent may not interfere in a woman's decision to obtain an aborti Roe , 410 US, at 183. From the end of the first trimester state may regulate abortion to safeguard the health of the From the point of viability, the state may proscribe aborti except where necessary to preserve the life and health of t mother. Roe , 410 US, at 183.

"4. It may be noted that the Roe Court specifically and expressly rejected an argument that a pregnant woman is '...entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she chooses.' Roe , 410 US, at 177.

"The most recent Supreme Court opinion discussing abortion is Planned Parenthood v. Casey , which can be found at 505 U.S. 833; 120 L Ed 2d 674 (1992). In Casey , the Court found that states have a substantial interest in potential human life, and that this extends throughout the pregnancy. Casey , 120 L Ed 2d, at 714. Indeed, this interest is characterized as 'profound'. Casey , 120 L. Ed 2d, at 715. The Court found that its opinions subsequent to Roe had undervalued this interest of states in potential human life, 120 L Ed 2d, at 711, and as a consequence, it rejected the rigid trimester system first articulated in Roe . Casey , 120 L Ed 2d, at 710. Instead, it divided pregnancies into two periods---pre-viability and viability.

"According to the Casey Court, during that first period, in which the baby is not viable, states may not place an 'undue burden' on a woman's right to decide whether to terminate a pregnancy. It defined 'undue burden' as regulations that have the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. 120 L Ed 2d, at 715.

"During the second period, in which the baby is viable, the constitutional standard is different. As stated by the court, in quoting from Roe : '...subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.' Casey , 120 L Ed 2d, at 716.

"To summarize: First, the state has a substantial interest in potential human life which extends throughout the pregnancy. Second, prior to viability, the state can not place an undue burden

on the right to pregnancy, which means placing a substantial obstacle in the path of a woman seeking an abortion. Third, after viability, the state may regulate abortion, and even prohibit them, except where necessary to protect the life or health of the mother.

"Since partial birth abortions span the last part of the pre-viability stage and into the viability stage, HB 65 is specifically designed to cover both stages. Hence, it must be analyzed with respect to both standards. HB 65 more than meets these standards.

"First, with respect to pre-viability abortions, HB 65 does not place an undue burden on the right to chose an abortion. That is to say, it does not place a substantial obstacle, either by intent or in effect, in the path of a woman seeking an abortion. After all, it does not proscribe abortions per se. It merely makes one particular form of abortion, and a particularly egregious form at that, illegal. All other forms of abortion remain open to pregnant women. The fact that this does not place a substantial obstacle in the path of women seeking abortion is clear. The Director of Public Health in Alaska testifying before the State Affairs Committee a couple of weeks ago testified that partial birth abortions, as defined by the bill, have not been performed in Alaska. Thus, the question must be asked: Does HB 65, which proscribes a procedure which, thus far , is not done in Alaska, place a substantial obstacle in the path of a woman seeking an abortion? The answer, by definition, is clearly no. The procedure is not available anyway.

"In that regard, can it really be a substantial obstacle to require abortionists to conform to the standards of abortion practice already present and accepted by practitioners in Alaska. That, to my mind, is no obstacle at all, let alone a substantial one.

"In short, all options presently available to women to obtain abortions remain unaffected. There is no obstacle, and thus, the first standard---that which applies to pre-viability stage---is clearly satisfied.

"The second standard, which applies to viable babies, is also satisfied. As I previously indicated, during the period of viability, the Supreme Court recognizes that the state may regulate or even proscribe abortions, except where necessary to preserve the life or health of the mother. HB 65 does not ban abortions during this period; it merely bans a particular procedure. Thus, it is more of a regulation of abortion than a proscription. And, the state is free to regulate, except where necessary to preserve the life and health of the mother. HB 65 contains an express exception applicable to the life of the mother. It does not mention health. However, it does not need to expressly mention health for the following reasons:

"First, all forms of abortion present in Alaska remain in effect. If the mother's health requires an abortion, she continues to have recourse to those procedures. Her health is protected.

"Second, even when partial birth abortions become available in Alaska, their ban would not adversely impact maternal health. The

Committee was provided with voluminous material clearly

establishing that fact. For instance, as Dr. Pamela Smith, who is the Director of Medical Education, Department of Obstetrics and Gynecology at Mt. Sinai Hospital in Chicago, testified before the US 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'. Similarly, Dr. James Jones, who is chairman of the Department of Obstetrics and Gynecology at the New York Medical College, stated, regarding partial-birth abortions, that he 'can't imagine that being an indicated procedure for the saving of a life or well-being of the mother.' Although the America Medical Association (AMA) has remained neutral on the issue, its Legislative Council voted unanimously to recommend that the AMA endorse the federal partial birth ban. In so doing, it stated that the procedure is basically repulsive and is not a recognized medical technique. Again, the former Surgeon General of the United States, Dr. C. Everett Koop stated: '...In no way can I twist my mind to see that the late-term abortion 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.' Similarly, Dr. Warren Hern, who wrote the Horn Book on late term abortions, stated in an article in American Medical News : 'You really can't defend it... I would dispute any statement that this is the safest procedure to use.' He stated further: 'You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that.'

"I won't bore you with more opinions. There are plenty in the materials that have been provided. The point is that partial-birth abortions are not necessary for the health of the mother.

"In summary, the Legislature can conclude that partial birth abortions are not necessary to preserve the health of the mother, and indeed may even be inimical to the health of the mother. No express exception is needed, since all other procedures remain available.

"Thus, both the pre-viability and the post-viability standards required by Casey are satisfied. That being the case, all that is required is that there be some rational basis for HB 65. And, there are several permissible state interests that are advanced by HB 65. Indeed, the State has compelling interests in preventing such procedures. Let me suggest but a few.

"First, delivering a baby just to the very cusp of constitutional personhood and then killing it, just inches away from being completely born, is cruel. Indeed, Dr. Isada, who spoke against HB 65 before the House State Affairs Committee, described one aspect of partial birth abortion---sticking scissors into the baby's skull---as gruesome. The state has a very strong interest in protecting human life from such cruel and gruesome actions. If the state can prevent cruelty to animals, it certainly can do the same thing for human life.

TAPE 97-33, SIDE A
Number 000

"Second, partially delivering a baby ---or, I should say almost

entirely delivering a baby---and then killing it tends to mix the roles of obstetrician and abortionist. The former are healers, and they are perceived as such by the general public. Abortionists, in the overwhelming number of cases, ---for instance I refer you to Dr. Haskill's statement that 80% of his partial birth abortions are elective---are not healers. They perform some other function. By mixing these two opposing roles, there is great danger that public confidence in the medical profession will be undermined.

"Third, bringing a baby right to the very edge of complete birth and then sucking its brains out is inherently disrespectful of human dignity.

"Fourth, the state has a legitimate and compelling interest in drawing a clear distinction between legal abortion and infanticide. Partial birth abortions blur that distinction. Furthermore, it may be noted that the difference between a viable baby who has just emerged from the womb and a viable baby who is almost out of the womb is negligible. But for a few inches they are the same. To permit the killing of one and forbid the killing of the other is ludicrous and will breed disrespect for the law. So fine a distinction, carrying such dire consequences, can not but be scoffed at by Alaska's people.

"Hence, in my opinion, partial birth abortions are fully constitutional under the guidelines established by the United States Supreme Court. I would like to turn now to some of the specific arguments that have been made thus far against the constitutionality of HB 65.

"First, it has been argued that HB 65 creates an undue burden because partial birth abortions are the safest alternative. This, of course, is an assertion of fact, and the alleged fact is extremely dubious. This Committee has been provided with an abundance of materials indicating that partial birth abortions are not necessary for maternal health and further indicating that partial birth abortions, in themselves, present a risk to maternal health.

"It also has been argued that the Supreme Court, in Planned Parenthood v. Danforth , held unconstitutional an abortion statute which proscribes the use saline amniocentesis, in part because such a prohibition would force women to use more dangerous methods. On the surface, this argument has a certain appeal. After all, HB 65, like Danforth , involves the proscription of a defined abortion procedure. However, Danforth is clearly distinguishable, on at least three grounds. First, HB 65, unlike the Danforth statute, does not force women to use procedures which are less safe than partial birth abortions. Second, the Danforth court emphasized that the proscribed method was the most prevalent available, and that another safe method was not yet available. Here, with HB 65, the proscribed method is not yet used in Alaska and other, safe, methods are available. Third, Danforth predates Casey and thus i analysis focused on whether the statute advanced maternal health. This was during the period in which states' interest in protecting

potential human life was undervalued. Casey changed all of that. Now, unlike when Danforth was decided, it is recognized that the state's interest in human life may be asserted throughout

pregnancy. HB 65 does just that, and it may be expected that the right to assert that interest would be weighed in any constitutional challenge. Danforth , quite simply, is distinguishable.

"In the past it also has been argued that the only Court to review a ban similar to HB 65 invalidated it, because for some women the prohibited procedure would be safer than other available techniques. The case is Women's Medical Professional Corp v. Voinovich , 911 F. Supp. 1051 (S.D. Ohio 1995). The Court in that case, within the context of deciding whether to issue a preliminary injunction and prior to a full trial, held that D&X was safer than other methods; and, because D&X was more available than induction methods, which require hospitalization, a proscription on D&X was a substantial burden. The Court in that case was certainly entitled to make its findings. This Committee has an equal right to make findings of fact, and ample evidence has been presented to it to base a contrary finding concerning safety. Moreover, this Committee reasonably can not find, given the previous testimony of the Public Health Director, that partial birth abortions are more prevalent than any other methods in Alaska. In Alaska, partial birth abortions, thus far , have not been performed. Our state, fortunately, seems to lag behind the rest of the United States in adopting undesirable conduct.

"It also has been argued that the definition of partial-birth abortions is overbroad because it could encompass procedures other than partial birth abortions. It is true that statutes which are so broad as to sweep within their coverage not only properly proscribed acts but also constitutionally protected acts are unconstitutional. The definition employed in HB 65, however, is not of that nature. It does not overlap other alternative methods. They are clearly distinct and clearly outside the coverage of HB 65. It is also argued that the definition is vague. Vague statutes, particularly those that impose criminal liabilities, are unconstitutional. However, HB 65's definition is not vague. It is clear and precise. It establishes definitively what is proscribed. Persons of common intelligence easily can understand what is prohibited and thus there will not be a chilling effect. Proponents of this argument may have in mind the definition used in the statute examined by the court in Voinovich . There, the court---and I think quite rightly--- concluded that there was an overlap and that the statute was vague. But, the definition of D&X employed in that case does not in the slightest resemble HB 65's definition. I can quote the Ohio definition for you. 'The termination of a human pregnancy by purposely inserting a suction device into the skull of a fetus to remove the brain. "Dilation and extraction procedure" does not include either the suction curettage procedure of abortion or the suction aspiration procedure of abortion.' The court found that this definition overlaps normal D&E procedure (because both may involve inserting a suction device into the skull) and because D&E is not excluded as suction curettage or suction aspiration. Further, the Voinovich Court noted that in analyzing statutes for vagueness, the absence of a

mens rea requirement is somewhat persuasive. In fact, it relied on this concept in finding another portion of the Ohio law unconstitutionally vague. In HB 65, it may be noted that there is an express mens rea.

"Concerns regarding vagueness are misplaced. This bill does not resemble, in any respect, the statute considered by the Voinovich court. It is clear and precise, and it does not overlap any other abortion procedure. It is such as to apprise people of common intelligence what is being prohibited, and there is no reason to believe that it will have a chilling effect on constitutionally protected acts. Finally, since it is clear, there is no danger of arbitrary or discriminatory enforcement.

"Finally, it is argued that the privacy clause of the Alaska Constitution would be violated by HB 65. The Alaska Supreme Court has not yet decided an abortion case using this constitutional provision. What we do know is that, although the right is broader than the privacy right found by the US Supreme Court in the US Constitution, it is not absolute. And, certainly, the right to privacy is not violated when an alleged infringement is justified by a legitimate and compelling governmental interest.

"Although the Alaska Constitution's right of privacy is deemed to be broader than that of the United States Constitution, it does not reach everywhere and cover all things. Essentially there is a two step analysis that is required. First, it must be determined if the conduct in question is within the scope of the amendment. Then, and only then, it must be determined if the alleged infringement bears a fair and substantial relation to a compelling governmental interest.

"First, does partial-birth abortions fall within the scope of the amendment? The Alaska Supreme Court has determined that this issue is resolved by answering two questions: (1) Does the person have an actual (that is, subjective) expectation of privacy concerning the conduct? (2) Is the expectation one that society is prepared to recognize as reasonable? If both questions are answered in the affirmative, the conduct falls within the scope of the privacy amendment. Hilbers v Muni. of Anchorage , 611 P. 2d 31 (1980).

"In Alaska, as with the rest of the United States over the last quarter century, many people have been conditioned to perceive abortion as part of the culture. Indeed, the Casey Court made much of that fact in discussing whether or not it would be appropriate to abandon the central tenants of Roe . Given this state of affairs, it would not surprise me that some would have a subjective expectation a privacy right to engage in even this gruesome procedure. But, is subjective expectation something that we as a society are prepared to recognize as reasonable? I think not. In my opinion, for the reasons I have discussed at length in this testimony, society is not even close to recognizing as reasonable any such assertion of a privacy right to obtain a partial-birth abortion. Hence, this procedure falls outside the scope of the amendment.

"Even assuming, arguendo , that partial-birth abortions are within

the scope of Alaska's constitutional right to privacy, society's hands are not tied. As previously stated, the right is not absolute. An alleged 'infringement' is permissible if it bears a fair and substantial relationship to a compelling governmental interest.

"I respectfully submit to you that Alaska has a compelling state interest in protecting babies, who are almost born, who are mostly outside the bodies of their mothers, from having their brains sucked out. I also submit that the government has a compelling interest in protecting public confidence in the medical profession by not blurring the roles of healer and abortionist. I also suggest to you that the government has a compelling interest in protecting the almost born from this cruel, gruesome, and undignified death. Accordingly, HB 65 does not run afoul Alaska's right to privacy.

"In conclusion, HB 65 will pass constitutional muster."

Number 960

BACHAR BEN'ISRAEL testified via teleconference from Moose Creek in support of HB 65. She stated that she was confused about when this type of abortion would be conducted in regards to how developed the fetus was. She said she was appalled to understand that this procedure was conducted on full term babies after delivery, that the procedure involved the suctioning of brain tissue and stated that this was beyond her imagination. Unless a mother's life is in danger this procedure should not be allowed and added that it reminded her of the undesirable during the Nazi Holocaust.

Number 1101

AMY SKILBRED, Alaska Civil Liberties Union, came forward to testify in opposition to HB 65. She referred to her testimony entitled, "State Interference In Private Medical Decisions." She noted that some of those present have children and that she has two children. She spoke to a baby's pre-term development by stages and the fact that parents look forward to birthing this child, along with all the anticipation involved, fixing up the nursery, etc. She asked those present to imagine going in for a routine prenatal visit and finding out that the unborn child they treasure will not live long after it is born, if it will survive this long. With this tragic news barely understood it is then advised with the mother's condition, age or medical history that terminating the pregnancy is recommended. What if then they learn that the medical procedure, with possibly the lowest risk in that mother's specific medical circumstances, is not an option, not an option because it is against the law. Imagine how the mother and family will feel at a moment like this, the moment that a law not based on science but on politics prohibits an individual and their doctor from using the best medical procedure under the circumstance. This moment is a dangerous moment for our democracy.

MS. SKILBRED continued that all citizens of this country and state have a constitutional right to privacy. It is hard to think of privacy more profound than a patient's right to choose his or her

course of treatment in a medical emergency. HB 65 would violate this most fundamental right by replacing a doctor's medical advise and a patient's decision whether or not to follow that advise with politically motivated statutes. A law substituting religious beliefs for science, a law penned and promoted by those who would place compassion for a child that cannot live over concern for a

mother's health. Surely those whose compassion lies with the unborn can understand the suffering a mother feels when she is loosing a child she wanted and loved, or a father for that matter. Compounding this trauma is the fear of imminent danger to a woman's own body. This is a perilous situation for women, when they are loosing a child that they carry. This is an excruciating situation, physically and emotionally.

MS. SKILBRED noted that to further complicate this situation with some arbitrary and vague statutory prohibition is simply unconscionable. To deny appropriate medical treatment in this situation is a violation of the mother's rights, her rights as an individual, as a patient and as an American. Our courts have refused to allow such a profound violation of individual privacy rights. Neither will this violation of individual rights stand. Indeed, very sim lar attempts have failed. Nevertheless, she urged the committee at this point to stop this dangerous interference with medical treatment before it moves one step closer to passage.

MS. SKILBRED offered that one of the things people should consider is if this legislation was to pass and a suit is brought against a doctor for using such a procedure in Alaska she asked what happens to the patient's privacy rights then. When the state decides to prosecute a treating physician, if laws such as HB 65 allows state prosecution of a doctor performing a medical procedure, the patient and the patient's once confidential, medical record and medical history are destined to become exhibit one. How else will a court determine if a doctor prosecuted by the state under this bill before them was performing a procedure that was necessary.
Number 1380

REPRESENTATIVE GREEN asked if the baby's head were to slip beyond the cervical control, is the doctor still entitled to drive the scissors into its skull.

MS. SKILBRED stated that she was not a doctor and she thought the way in which the procedure has been publicized any normal person would think it gruesome. They are not taking about healthy Gerber Babies who are just about to be delivered that are eight and 1/2 months along even if the birth mother did not want it.

Number 1468

CHAIRMAN GREEN stated that he thought it had to do with the mother's health rather than the baby. He understood the procedure that as long as the baby's head is still cervically preventing it from being born, if in fact "that wasn't that type, for example, I've talked to some people who had their babies on the way to the hospital. They delivered so quickly that you might not be able to stop the baby's birth even though you've made a breach condition." If the baby is born, this situation has gone beyond the need to

help the mother. He asked what happens once the baby is viable.

MS. SKILBRED responded that these procedures are usually induced. This isn't a situation where someone is on their way to have a baby, but they are in the hands of a physician before the process is induced. She can't respond to some of these questions in part as opposed to what the sponsor has stated, the bill's wording is

vague. If the process is really D&X's, then it's D&X's, if it's really D&E's, then it's D&E's. It isn't clear from this bill what the process is.

Number 1526

REPRESENTATIVE PORTER stated that any malpractice case is not a patient's privacy subject to being violated.

MS. SKILBRED stated that she believed it could be.

Number 1540

REPRESENTATIVE BERKOWITZ stated that in a civil situation, when a patient brings suit against a doctor and puts at issue the treatment, the doctor/patient confidentiality is breached. This is a circumstance where essentially the state is prosecuting, the state is charging a doctor. There is not necessarily collusion between the state and the woman who has had the abortion. In which case, the doctor wouldn't be entitled, because of confidentiality, to prepare their case.

MS. SKILBRED added that the woman may not want to participate in a case like that.

Number 1584

REPRESENTATIVE CROFT noted that in previous testimony it was stated that the exception was to protect the life and the health of the mother. This law just says life. He asked in her opinion and the organization she represents, is it constitutional if it doesn't say "or health."

MS. SKILBRED responded that she could provide him with a written response at a later time. She said that this might address one of the issues, it might not address all the constitutional issues that this bill might have.

Number 1650

CHAIRMAN GREEN asked that if this legislation is intended to protect the life of the mother, it was his understanding, that breach condition babies are a very high risk birth as compared to the normal, head first birth. It seemed to him that when a doctor goes in and manipulates the baby from the normal head down position into a feet down position, that doctor is creating a breach condition which increases the risk of damage, he thought that they were working in the wrong direction, literally. They are incurring a higher risk by inverting the baby. It seemed to him that this was not unlike trying to take a Christmas tree out the door the

wrong way. He didn't know how this could be considered in the best interest of the mother.

MS. SKILBRED responded that they could either decide that doctors based on their knowledge, training and abilities are not the people who should decide what is in the best interest of their patient, but a legislative body should decide what's in the best interest of a woman or they could decide that doctors who have the information

about a woman's condition, her age, her health, her medical background, are the ones who are best suited to decide what procedure should be used. She respectfully suggested that they should leave it to the doctors to decide. There are numerous law suits against doctors for not doing the right thing, but she didn't think Alaska should legislate what the procedures are that doctors should use.

Number 1700

CHAIRMAN GREEN asked if she could think of any other type of manipulation that would be preferable to invert the baby for delivery, rather than to try...

MS. SKILBRED stated that after having vaginally delivered two children she said it would be an uncomfortable situation to do anything but the way children should be born. She didn't know that someone would be better off having a caesarean birth to pull out what might be a viable but soon to die baby. She thought they should look at the mother as well and to let her, along with her physician make a decision.

Number 1750

CHAIRMAN GREEN stated that the reason he asked was that one of his daughters has two children, the first one, a girl, was five and 1/2 pounds. Because she was in a breach position and unable to be turned around, they took the baby caesarean because of the risk of trying to deliver in the wrong direction. Her physician felt that even a baby nearly half as big in the wrong direction was a higher risk than a caesarean section. It seemed incongruous to him that a doctor would reverse a normal situation in the interest of protecting the mother.

MS. SKILBRED again stated that she wasn't a physician, but that a doctor in this situation might decide that this is in the best interest of the mother. She noted that a caesarean section is major surgery.

Number 1847

DR. PETER NAKAMURA, Director, Division of Public Health, Department of Health and Social Services came forward to testify on HB 65. He stated that the primary problem with the bill is that they're legislating medical practice, a clinical practice. They're not deciding here whether an abortion should be done or not done. He thought that the bill says they're at the point where a determination is made and an abortion will take place, now what procedure should be used. This is a decision which should be left

between a physician and their patient. This is not something that should be legislated. Each situation is different. He outlined these for the committee.

DR. NAKAMURA stated that if an abortion is needed to be performed then there are all types of patients. There may be a patient who has an underlying medical problem like a heart condition and perhaps this is the reason an abortion had to take place since the stress of delivery would have been too great. The patient might

have leukemia or another terminal illness. It would be necessary to abort because of chemotherapy treatments. Once a decision is made then the doctor needs to decide which is the safest procedure for this child. The most difficult and complicated procedure is to allow a pregnancy to go to term. There are a large number of complications in this instance. If an abortion is decided upon a procedure needs to be established. Saline injections have been used to induce labor, but is traumatic on the patient, takes a longer time and has other complications. He noted these complications.

DR. NAKAMURA noted that another option could be a C-Section but this is major surgery where the patient has to be anesthetized, hospitalized and an operation is performed to remove the fetus. There are other ways an abortion can be induced, such as with chemicals, or through the use of hormones. Quite often hormones don't work because in the early stages of pregnancy, the uterus doesn't respond which means that the patient is left in a hospital or in an uncomfortable situation for a longer duration of time until another choice for a procedure is taken. It takes a large amount of medication to induce labor at this early stage, prior to the viability of the fetus and quite frequently it fails. The doctor is best able to determine when this viability is. The definition under the previous statutes was 150 days.

DR. NAKAMURA addressed the options of either D&X or D&E. Both of these procedures are somewhat similar in that the doctor dilates the cervix, then the non-viable fetus is extracted. This is a pretty traumatic procedure. The D&X procedure is one that was designed to be more physiologically acceptable to many patients because sometimes the mother would still like to hold the fetus. If the fetus doesn't have a genetic abnormality it would still look like a baby. It was for this purpose that this procedure was designed.

DR. NAKAMURA paraphrased a statement to respond to which was, "Partial birth abortions are cruel and gruesome." He stated that it's also cruel and gruesome to subject the mother to an additional stress that she doesn't have to be exposed to, such as other procedures or for instance in the case of a child with significant genetic defects. If it is known that the fetus will not survive and the mother is required to go to full term and deliver. This would be pretty cruel and gruesome in itself. All abortions are kind of gruesome but there's a purpose for them to take place, sometimes it's psychological and sometimes it's physical.

DR. NAKAMURA again referred to an argument against this procedure and stated that if they look at the fact that partial birth

abortions as inherently disrespectful of the dignity accorded human life, he said he wasn't sure how to respond to that one. He thought in this case they're talking about whether an abortion should be done or not be done. As stated previously, the comparable procedures can actually be more gruesome than a D&X in itself. He assumed that the bill relates to D&X because he's heard so often the description of a needle stuck into the back of the brain and the contents aspirated.

Number 2163

CHAIRMAN GREEN again asked if this procedure was ultimately for the protection of the mother.

DR. NAKAMURA responded that yes, this procedure was for the protection of the mother.

Number 2238

CHAIRMAN GREEN asked if this could happen in the case of a normal baby.

DR. NAKAMURA noted that this wouldn't be the case if it's going to be called an abortion. Once the baby is viable this procedure would not be undertaken unless it's to save the life of the mother. He said this decision would be made between the physician and the mother. He couldn't imagine a situation where this procedure would be used unless it happened to be an instance of a hydro-cephalic infant and to preserve the health and the future ability of this mother to have babies. Then this procedure might be used.

CHAIRMAN GREEN noted his concern that if this is going to be a demise of the baby to save the mother's life, he asked why the baby would have to be aborted if it's healthy, it sounds like it would still fit this category, but if it does have to be killed, to be killed in this manner, the doctor is saying that unless it's a hydro-cephalic there are other ways that might be more traumatic to the mother.

DR. NAKAMURA stated that if the mother is pregnant and the infant is viable, the only time that this baby would be aborted would be to save the life of the mother or perhaps prevent a significant, serious, harmful affect on her health.

CHAIRMAN GREEN added that the first consideration might be whether the baby is viable to save both.'

Number 2306

DR. NAKAMURA responded yes, he would assume so. A caesarean could be a choice. He went on to paraphrase the statement that partial birth abortion tends to blur the distinction between constitutional persons and non-persons and between infanticide and legal abortions. He stated that he didn't know what is meant by this statement. He also quoted, "A partial birth abortion, because of their gruesome nature and because they incorporate two separate roles of physicians and the role of the healer and the role of the

abortion, tend to undermine the public confidence in the medical profession." He noted that the reason the physicians are doing these abortions is that in the past, prior to the time that they were made legal, they were done by others. When they were done by others there was a lot of unfortunate outcomes. He noted a hospital in Texas that only administered to woman with complications from illegal abortions.

Number 2412

REPRESENTATIVE PORTER asked in regards to the distinction between

a D&E and a D&X, on the second page of the bill, line 13, he said he didn't have any problem with this language and asked if it would eliminate a D&E.

DR. NAKAMURA responded that it would eliminate almost everything. He stated that he had never done an abortion. He needed to ask other physicians what this language meant. To them it means that this virtually could eliminate all abortions because there is no way they can assure that a baby will not be delivered, even during a suction aspiration of a fetus and not be alive. In reality it could eliminate all abortions.

REPRESENTATIVE CROFT stated that he'd like to get more to the point of these procedures being done either pre-viable or viable for a malformed baby or to protect the life of a healthy mother, but he stated that if they would have the doctor return, these questions could wait.

TAPE 97-33, SIDE B
Number 000

DEBRA JOSLIN, Chair, District 35, Republican Party of Alaska, testified next via teleconference from Delta Junction. She shared a story of a woman who gave birth to a child with multiple impairments. After many surgeries this child is alive and well, lives in Alaska and is a joy to his mother. If this woman was asked if this child should not have lived, the answer would have been no. When this child was born there was no such thing as legalized abortion, or partial birth abortions. If there had been that option, if the doctors has presented this option, the woman might have consented to this procedure.

MS. JOSLIN referred to an article in the "Wall Street Journal," titled, "Partial Birth Abortion is Bad Medicine," written by several obstetric-gynecologists. This article contains some of the truths about partial birth abortions. She said she would send this article to the committee.

Number 0043

BARBARA RAWALT, Financial Chair, District 35, Republican Party of Alaska, testified next via teleconference from Delta Junction. She added that she was also testifying as a parent and as a grandparent. She urged passage of HB 65. She referred to testimony by Mr. Fitzsimmons, the oft quoted pro-choice spokesman, who supported both the variety and the necessity of this procedure

and recently admitted that his previous statements were a lie. He admitted that this procedure is not rare, it affects not just a few hundred woman as previously stated, but 300,000 to 500,000 women per year in the United States who have this procedure done. As to the necessity, he stated that this procedure was not limited to hopelessly deformed babies as was previously stated, but that most of these procedures were performed on an elective basis, on healthy babies.

MS. RAWALT urged the committee to vote yes on HB 65 in order to stop this barbarous procedure.

Number 0191

SHARYLEE ZACHARY announced that she had submitted written testimony to the committee. She referred to Section 1, (6) and (7), which states how this procedure undermines the public confidence in the medical profession. She believed that a majority of medical physicians and health care providers are honest, upright and have the sincere desire to help and heal people. However, the medical profession has "cut it's own throat" in the area of "credibility." It has allowed many physicians to perform unjustified abortions and then look the other way when those same doctors falsify the patient's records with statements about it being a medical necessity, when in fact the abortion was done as an elective procedure. In other words this is a pre-arranged convenience for the mother and a financial benefit for the doctor and/or the clinic.

MS. ZACHARY said, in the last year or two, several medical professionals have given national testimony that there are just a few cases of partial birth abortions which have been done to save the lives of the mother. The media has gone overboard in emphasizing that testimony and unfortunately many people have believed those doctors. The media and certain politicians have also largely ignored those people providing testimony regarding the thousands of unnecessary partial birth abortions.

MS. ZACHARY said, in the past few weeks, a prominent physician has brought forth testimony that he lied. She questioned how we could trust doctors and other health care professionals, who know this to be true and yet keep quiet. If this is their ethic, in this area, what is to keep them from falsifying other areas of medical care for the sake of convenience and financial gain.

Number 0289

KATHLEEN HOFFMAN testified next via teleconference from Kenai. She appreciated all the work the committee had done on HB 65 as we surely want to rid our state of this partial birth abortion. She referred to an infant that she worked with when she was in nurse's training. She is in favor of HB 65.

Number 0358

VIRGINIA PHILLIPS, testified as a Spokesperson for American Indians and Alaska Natives, National Right to Life. She stated that she is

the Chair, District 2, Republican Party of Alaska testified next via teleconference from Sitka. She was appalled what this procedure did to the woman. It is ridiculous to say that it is necessary for the life or health of the mother, there are other easier things to do to get rid of the baby. This procedure needs to be outlawed. If people attempted to do this procedure on a rat, animal rights activists would say it was inhumane. She asked for humane treatment of women and to stop them from being victimized by the partial birth abortion.

TERESA LUNDY, Medical Transcriptionist, testified next via teleconference from Sitka. She is speaking for the (Indisc.) community in Sitka because a lot of people couldn't attend the

meeting today. She questioned the ability of people from the medical community to defend and endorse this abortion procedure. She referred to earlier testimony on the D & X procedure and testimony that the D & E procedure had to do with taking the non-viable infant and aborting the child. She reminded the witness that he is misinformed; the D & E procedure is a gruesome dismemberment type of abortion procedure. After a period of time the baby tissue becomes toughened as the baby develops. She referred to written testimony on the D & X extraction method by Dr. Martin Haskell. The doctor invented this D & X procedure because it was an alternative to dismemberment.

MS. LUNDY asked the committee to endorse HB 65. It is imperative that the Alaska Legislature set the standard to not allow this abortion procedure in this state. She was concerned that there was no ethical concern regarding abortion. Eliminating partial birth abortions does not interfere with reproductive rights or right to privacy concerns. She urged the committee to see that ethical standards were set in stone by passing HB 65.

Number 0358

SALLY APOXIDAK testified next via teleconference from MatSu. She was appalled about today's testimony. She asked the committee to look at the bigger picture in terms of abortion. She was in favor of the contents of HB 65.

Number 0612

ART HIPPLER, Executive Director, Alaska Right to Life, testified next via teleconference from MatSu. He referred to the testimony given by Mr. Dozier. His organization supports HB 65. He offered $500, out of his pocket, to the first person who provides unambiguous evidence of one single case where this procedure was medically necessary to save the life or the fertility of the mother.

ERNIE LINE testified next via teleconference from MatSu. He said there have been no partial birth abortion procedures performed in Alaska, according to Mr. Dozier. He assumed that the committee knew how many doctors in Alaska were qualified to perform this procedure.

CHAIRMAN GREEN said he did not know. When he asked if this

information was known by other members of the committee or witnesses, no one answered.

MR. LINE completely agreed with the doctor who testified that legislators should not practice medicine. He asked the committee, before they pass HB 65 or SB 12, to consider the women who might need to abort these fetal anomalies or else to provide for them when they are infant anomalies.

Number 0769

NIKKI SULLIVAN said she done post abortion counseling and provided education for women who have been through the abortion experience. She has had national training in Denver at the Post Abortion

Counseling and Education Institute. She referred to testimony about the protection of the mother and the viability of the baby. These women suffer the same degree of trauma after the abortion as they experience during the abortion. She could not think of anything more traumatic than a partial birth abortion. She is a proponent of informed consent, every woman has the right to know what is going on with her body and what an abortion consists of.

Number 0884

KRISTIN HOCK informed the committee that she was eight and half months pregnant. She was not planning to terminate this pregnancy, but if she chose to, then she would have a legal right to do so in some states. If we propose partial birth abortions for convicts, who are on death row, there would be an outcry saying it was cruel and inhumane treatment, it did not respect people and their dignity. She referred to the U.S. Constitution and urged the committee to value the right of protection of life and liberty by banning partial birth abortions.

Number 1009

TRICIA BONNEY, Nurse, said the whole purpose for partial birth abortions is for the mother's health. She said the argument, regarding infant anomalies, is not viable in opposing HB 65. She said this procedure is not taught in medical schools, and questioned how it could be considered a necessary medical procedure. She felt this procedure was inhumane and referred to previous testimony against partial birth abortions. She urged the committee to support HB 65.

Number 1149

TOM GORDY agreed with the testimony given by Mr. Dozier and said more facts have come out this week about partial birth abortions. People who support abortion will lie to keep things going. He was here to speak against this procedure; called partial birth abortions by Congress or D & X, short for dilation and extractions, others have called it D & E, but medical literature does not have a name for it because it is not a recognized legitimate medical procedure. He said there are probably no doctors qualified to do this procedure as it is not a licensed procedure.

MR. GORDY said he would like to call it partial birth infanticide. He referred to a nurse who worked for Dr. Haskell, the doctor who invented this procedure and her experience of watching this procedure. This woman had originally supported abortion, but has changed her stance since seeing this procedure. This procedure is the murdering of a defenseless baby.

MR. GORDY referred to a woman who had complications in her pregnancy in the sixth month, which is the time when Dr. Haskell says he performs most of these procedures. Labor was induced, the baby was treated in the neo-natal unit of the hospital and is alive today. He said a mother's life does not need to be threatened, the baby can be pulled out and survive outside of the mother through care and nurturing.

MR. GORDY testified that 300 physicians, primarily obstetricians, united to oppose this procedure after President Clinton opposed the partial birth abortion ban. They declared that it is never medically necessary. Dr. Haskell said that 80 percent of partial birth abortions are elective. Dr. McMann, who has performed 2,000 partial birth abortions, said 22 percent of the partial birth abortions that he has performed for maternal indications were for depression, not for physical threats.

MR. GORDY stated that this procedure is morally and ethically wrong. It is time to say, no, to this type of cruel procedure. He urged the committee to pass HB 65.

Number 1475

DAVE ROGERS, Lobbyist, Alaska Woman's Lobby, said his organization opposes HB 65. They acknowledged that information and beliefs on this subject are contradictory, but wanted to present information to the committee. Partial birth abortion is not a medical term, the procedure that is being addressed in HB 65 is call dilation and extraction of D & X, or sometimes called intact dilation and extraction. This procedure is used in the second and third trimesters. Doctors, who they have talked to, have said they have rarely met a patient who did not want, and was not completely bonded to their baby by the third trimester, nor have they known a health care provider who was not equally concerned about the health of the baby in the third trimester. This procedure is not a procedure to be undertaken lightly. Many involve wanted pregnancies that go tragically wrong when a woman's life or physical health is endangered and the fetus develops abnormalities which will cause them to die just before, during or just after life. Finally, this procedure is the safest available for some women. It carries lower risks of pervading the uterus, lacerating the cervix and the birth canal or causing maternal hemorrhage than certain alternative procedures. They were also told that D & X is less physically stressful and less toxic than other methods.

MR. ROGERS said, if these findings are valid, this proper medical procedure, which may be the safest and most appropriate choice among several techniques in some cases, should not be the subject of a restrictive law which will take away from the physician's exercise of discretion and unduly burden a woman's right to chose,

by arbitrarily and narrowly limiting her access to the procedures her doctors consider best for her.

MR. RODGERS said, as is always the case in this arena, professional judgement and individual consideration must govern actions taken over the broad and complex spectrum of medical possibilities. Families and their physicians must be permitted to make the difficult decisions posed by the situation. He said HB 65 is unnecessary, can hurt Alaskan women and only serves to further polarize concerned Alaskans. For these reasons the Alaskan Women's Lobby strongly opposes HB 65.

Number 1661

SID HEIDERSDORF suggested that the baby is turned around, to be delivered feet first, so that it will not scream before the

procedure is completed. He referred to Mr. Fitzsimmons and a New York Times article which quoted him as saying that he lied, because telling the truth would damage the abortion rights cause. He felt Mr. Fitzsimmons told the truth because he realized he was defending the indefensible. He felt that people who are supporting partial birth abortions were defending it because if you face the truth it will somehow collapse the abortion edifice. Abortion is supported by the Supreme Court decision and there is little that the state could do. This is a step the state could take to acknowledge that there is some kind of justifiable restrictions which could be placed on certain abortion procedures.

MR. HEIDERSDORF asked the committee not to be influenced by arguments that the state should stay out of medical practice. He reminded the committee of the practices of doctors in Nazi Germany and said there are certain things that should be outlawed. In every profession there are certain amount of people that operate on the fringes; they must be controlled and guided by state laws. He did not care how many of these things were done and what they are done for. This procedure must simply not be allowed. If we want to maintain some type of claim to be civilized, we have to take some steps to control things that are happening which should clearly be condemned.

Number 1917

REPRESENTATIVE BERKOWITZ referred to the analogy and felt it was an unfair comparison to make and was outside the bounds of this discussion. There is common ground, there should be debate about issues like this, but when you invoke issues that are hateful as that one, you destroy the possibility of dialogue.

MR. HEIDERSDORF used this point to attempt to show that within his lifetime, he has seen this situation occur in a civilized society where we say this should have been stopped. Because people testified that the state should stay out of medical practice, he felt it was a legitimate thing to show his point of view that there are certain procedures that should be stopped.

Number 2098

CHAIRMAN GREEN closed public testimony.

REPRESENTATIVE PORTER said, it would be helpful in his understanding of this bill, if someone could explain the difference between a D & C, a D & E and a D & X. He referred to Section 2(c) and said he thought it described what he thought was a partial birth abortion. If this was done with the intent to expose a portion of a live fetus outside the body of the mother and then terminate it, he thought it would eliminate the things that Dr. Nakamura was referring to.

REPRESENTATIVE CROFT asked if it was the intention to have this bill apply to pre-viable fetuses.

REPRESENTATIVE KOTT answered, yes. He felt this was clear in the opening statement. He added that some of the discussion handled by Dr. Nakamura was premature in addressing certain issues.

REPRESENTATIVE KOTT said he wanted to make some comments on today's testimony and would try to respond to Representative Porter's concerns. Clearly, an abundance of information has been presented regarding this particular practice, whether it is used in the state or not. He had no evidence to show that it would be done in this state, this bill is a preventative measure. The definition of the procedure in Section 2(c) was extracted from the Congressional version of a similar bill. This definition is not something that he created, it is not a novel idea. This language was formed by a number of scholarly individuals in the medical community as well as the legal profession. He felt this definition was extremely clear about what it is that we are attempting to prohibit.

REPRESENTATIVE KOTT referred to letters from Dr. Thompson and Dr. Ritter (Ph.) who are premier experts in the field of obstetrics. These doctors have not performed any abortions. He expressed concern with Dr. Nakamura's testimony as he has not..."

TAPE 97-34, SIDE A
Number 000

REPRESENTATIVE KOTT continued...he said it was just brought to his attention that the committee did not have Dr. Thompson's letter, but Dr. Lokiemp's (Ph.) and Dr. Ritter's (Ph.) letter, two premier experts in the field. He would also provide a letter from Dr. Riederer, a Juneau practitioner. All three of them have concluded that there are other procedures as safe as this particular measure. It alarms him when testimony commences with, "I spoke with an abortionist, a medical doctor." It gives more credence to the situation when you have actual testimony, in the written form or in person, where the person who articulates their own experience. He questioned those sources, the qualifications of the person who testifies. He referred to the question of whether the state should invoke legislative authority on how the medical community practices by saying it has been done in the past. In some circumstances, the best solution to a medical problem would be for the doctor to assist in a suicide that is not condoned in the state. So, we are, in fact, evoking some practices and eliminating others in the state.

Number 0227

CHAIRMAN GREEN said if you get ten doctors in the room and how you might get ten different opinions. He asked why there was such a disparity in opinion. Some say this procedure is absolutely necessary to protect the life of the mother, others say there are other ways.

REPRESENTATIVE KOTT answered that it is a perplexing problem and he would want to turn to the experts in the field. There is a substantial amount of literature by people who have performed this procedure and have in many cases testified, under oath. He assumed they were telling the truth, he gave them the benefit of the doubt. He thought in those types of cases, you have to turn to the experts for the truth. There is an abundance of information that suggests that this particular procedure is not the only procedure that is available to save the life of the mother.

Number 0444

CHAIRMAN GREEN referred to testimony that this procedure was done to save the life of the mother or because of severe abnormalities and then there was testimony saying that 80 percent of these would live normal, happy lives if they lived. He asked who wasn't telling the truth.

REPRESENTATIVE KOTT said you have testimony from one side that has hands-on experience and the other side from a group which most of the experience comes from a second party or from reading the literature. He said the committee would have to draw their own conclusions why there is this wide disparity between what is being said.

REPRESENTATIVE CROFT expressed curiosity of why HB 65 does not allow the procedure to be performed to protect the health of the mother. He referred to the sponsor's statement that he was more comfortable with written testimony and pointed out a letter from Sherrie Richey, the first and only Alaskan perinatologist. Perinatology is a specialty in maternal fetal medicine. She says that partial birth abortion is a procedure virtually always chosen because it is the safest way to terminate a pregnancy complicated by lethal fetal abnormality or a life threatening maternal complication. He did not mean to get into a debate, but we have conflicting medical evidence about whether this is the safest procedure for the health of the mother. He asked what the difficulty was with allowing the expert, the person treating that woman, to determine if this is required to protect her health. For the legislature to make a determination outlawing it and not allowing an exception for the health is our, not completely informed, decision that it can never be the best method to protect the health.

Number 0640

REPRESENTATIVE KOTT said that when you get into the definition of what constitutes protecting the health of the mother, you discover,

CORRECTION

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Rev. 6/98

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at least in the literature that he has researched, that it opens up a pandora's box. About anything you can conceive as being unhealthy, can be used to protect the mother's health.

REPRESENTATIVE CROFT clarified that he is concerned that the health issue would be chosen to allow for an elective procedure.

REPRESENTATIVE KOTT felt that, in many cases, it would be the case. He reminded the committee that the American Medical Association's legislative council voted unanimously to ban this particular procedure. He stated that he is not the expert, he is turning to the experts. The association is a group of qualified people who make various decisions and express them.

REPRESENTATIVE CROFT said, in order for this legislation to go out without any proviso for the health of the mother, he had to be absolutely convinced that this is never a procedure that could best protect the mother's health. If it could be the best procedure, then we ought to allow it to be. When there is conflicting

testimony, he would leave it to those people to determine what is best.

HOUSE JUD BASIS -22 - 03/07/97

HOUSE JUD BASIS -22 - 03/07/97

HOUSE JUDICIARY STANDING COMMITTEE
March 10, 1997
1:20 p.m.

HB 65 - PARTIAL-BIRTH ABORTIONS

Number 151

THEDA PITTMAN testified to via teleconference from Anchorage, Alaska. She made reference to the statement made by Mr. Dozier, legislative aide to Representative Pete Kott, relating to the court cases he cited. Ms. Pittman advised members that his presentation was a report on the cases themselves and what he said was actually quite good; however, one would have to "tear the paper" off at that point; discard his editorial comments and actually compare the casework to the bill in order to understand the many, many problems of HB 65.

MS. PITTMAN stated that essentially, although it was possible to ban an abortion after viability, it would be necessary to take into account that the court cases provided that the determination of viability must rest with the doctor. And also the determination of the danger to the life or the health of the woman must rest with the doctor, and that the particular procedure must rest with the doctor, as well.

MS. PITTMAN stated that as for viability, abortion was not performed on a healthy woman with a healthy fetus. She noted that the editorial comments on the bill created the illusion that in the seventh, eighth or ninth month, a pregnant woman would get up one morning and suddenly decide not to be pregnant. After viability, abortions were not preformed on healthy women, with a healthy fetus; hence, there was no need for HB 65.

Number 267

CHAIRMAN GREEN advised members public testimony would now be closed on HB 65. He asked that the prime sponsor, Representative Pete Kott address the committee.

Number 342

REPRESENTATIVE PETE KOTT, Prime Sponsor, HB 65, advised members that Representative Porter had previously requested information regarding the various methods of partial-birth abortions. He advised members one method was the suction curettage/aspiration, which was a method typically employed during the first trimester; however, had been used up to the 15th week of pregnancy. Representative Kott explained that the abortionist mechanically dilates the opening of the uterus, inserts a vacuum device into the uterus, and removes the baby through negative suction.

REPRESENTATIVE KOTT explained that a second type was known as D & E, which stood for dilation and evacuation. The cervix was dilated slowly, over a one or two day period, by the insertion of laminaria, and a suction curettage is inserted through the cervix and the baby is removed. He noted that frequently, the baby's head and torso were too large to be removed in that manner, and

consequently, the abortionist dismembers the baby by the use of suction curettage or forceps. Representative Kott expressed that sometimes the size of the head, because it was too hard to be removed in the womb, would be decompressed either by crushing it, or inserting a suction device and removing the contents, which then allows for its removal. He added that that was a common second trimester abortion. Representative Kott stated that again, with both procedures he had mentioned, there was no life.
REPRESENTATIVE KOTT advised members that the third method was what was termed installation/induction procedures, where the abortionist injects a substance, usually a saline solution, or combination of prostogladen and urea. He explained that that was injected into the amniotic cavity, or prostogladen suppositories placed into the vagina. The mother then goes into labor, and the dead fetus is expelled.

Number 571

CHAIRMAN GREEN noted that Representative Kott was making reference to a "dead fetus", and asked if those method were only used if the fetus was dead, or did the procedure, itself, kill the fetus.

REPRESENTATIVE KOTT advised members that the fetus, he would suspect in some circumstance, would already be dead; however, the intent was to extract, or eliminate a fetus or pregnancy of a woman.

REPRESENTATIVE KOTT advised members that the fourth method involved a hysterectomy, which was a caesarian section preformed before term, or hysterotomy, which was the removal of the entire uterus. He pointed out that those methods were seldom used.

REPRESENTATIVE KOTT informed members that the last method was dilation/extraction, known as D & X. He explained that dilators were inserted in the cervix for two days, and on the third day, the abortionist removes the dilators and ruptures the membranes, which he suspected was a rupture of the water bag, and with the use of forceps, the baby was delivered, except for the head; scissors would be inserted in the baby's skull, and spread in order to make the opening larger, at which time a suction catheter was inserted and the contents of the skull evacuated. Representative Kott advised members that with the skull depressed, the baby would be completely delivered. He expressed that as noted by the court, the primary distinction between the D & X procedure, and the D & E procedure, was that the D & E procedure resulted in dismemberment and piece by piece removal of the fetus from the uterus, and the D & X procedure resulted in a fetus being removed, basically, intact except for a portion of the skull contents, which would be suctioned out after the head was placed next to the opening of the uterus. Representative Kott explained that the D & X procedure was a more broad term, coined by Dr. McMahon, as killing the baby, or fetus, and then removing it, often times head first, as opposed to what Dr. Haskell had coined as a partial birth procedure, where the baby was actually spun around and delivered feet first. He pointed out that the fetus, in both cases, would be dead, which was where they got into the difference of the D & X procedure, as coined by Dr. Haskell.