

**NLWJC - Kagan**

**DPC - Box 070 - Folder-001**

**Legislative Materials - Draft**

**Legislative Language [1]**

[draft]

May 15, 1996

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

We are writing to you as Members of Congress who share your view that abortion should be legal, safe and rare. We understand your veto of the Partial-Birth Abortion Ban legislation because, although the bill spoke to the issue of cases involving the life of the woman, it had no exception for cases in which, in the best medical judgment of the doctor, the procedure is necessary to avert serious adverse health consequences to the woman.

However, we believe that the question of when late-term abortions may be performed to protect a woman's health must still be resolved. Members of the House of Representatives tried to offer an amendment to allow the procedure when it is necessary to avert serious, adverse health consequences to a woman. But the sponsor and the Republican majority in the House would not allow it.

We want to work with you to honestly and effectively define the medically necessary situations in which such abortions may be performed. To do this, we must have a medically sound definition of what constitutes serious adverse health consequences to a woman.

We are asking you to seek the counsel of medical professionals in defining a health exception to a partial-birth abortion ban that would allow the procedure when it may be necessary to protect a woman from serious adverse health consequences.

Our nation needs a thoughtful, medically-based effort to address this issue. We urge you to convene such an effort and offer you our support.

Sincerely,

Jack:

Attached are:

1. The best language I could come up with in half an hour.
2. Language that Martha Foley just gave me which is taken from the Boxer Amendment. The language is what Boxer used for post-viability abortions. (Recall that she protected all pre-viability abortions.) It is insufficient for our purposes, but I give it to you because Martha and/or Leon may think it's about what we agreed to.
3. A copy of the bill so you can see how the amendments fit in.

Elena

P.S. I'm not sure how much of a rush people in the chief of staff's office think this is. I'll be on Capitol Hill until around 2:30.

Draft

The prohibition in Section 1531(a) of Title 18, United States Code, shall not apply to any case where, in the medical judgment of the attending physician, an abortion or the election of the particular method of abortion described in Section 1531(b) of Title 18, United States Code, is necessary to preserve the life of the woman or avert serious health consequences to the woman.

The prohibition in section 1531 (a) of Title 18, U.S.C., shall not apply to any abortion if, in the medical judgment of the attending physician, the abortion (or, in the case of pre-viability abortions, the abortion or election of particular method of abortion) is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

**DRAFT**

The prohibition in section 1531 (a) of Title 18, United States Code, shall not apply to any abortion if, in the medical judgment of the attending physician, the abortion (or, in the case of pre-viability abortions, the abortion or election of particular method of abortion) is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

Language from Boxer

The prohibition in section 1531 (a) of Title 18, United States Code, shall not apply to any abortion performed where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

06/12/95 MON 14:08 FAX

08/12/98 MON 13:20 FAX 202 228 3748

SUB CONSTITUTION

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MLC.

104TH CONGRESS  
1ST SESSION

# H. R. \_\_\_\_\_

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## IN THE HOUSE OF REPRESENTATIVES

Mr. CANADY of Florida introduced the following bill; which was referred to  
the Committee on \_\_\_\_\_

---

### A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Partial-Birth Abortion  
5 Ban Act of 1995".

6 **SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.**

7 (a) IN GENERAL.—Title 18, United States Code, is  
8 amended by inserting after chapter 78 the following:

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H.L.C.

1                   **"CHAPTER 74—partial-birth abortions**

2                   **"Sec.**  
3                   **"1681 Partial-birth abortions prohibited**

4                   **"§1681 Partial-birth abortions prohibited.**

5                   **"(a) Whoever, in or affecting interstate or foreign**  
6                   **commerce, knowingly performs a partial-birth abortion**  
7                   **and thereby kills a human fetus shall be fined under this**  
8                   **title or imprisoned not more than two years, or both.**

9                   **"(b) As used in this section, the term 'partial-birth**  
10                   **abortion' means an abortion in which the person perform-**  
11                   **ing the abortion partially vaginally delivers a living fetus**  
12                   **before killing the fetus and completing the delivery.**

*Definition*

13                   **"(c)(1) The mother, father, and if the mother has**  
14                   **not attained the age of 18 years at the time of the abor-**  
15                   **tion, the maternal grandparents of the fetus, may in a civil**  
16                   **action obtain appropriate relief.**

17                   **"(2) Such relief shall include—**

18                   **"(A) money damages for all injuries, psycho-**  
19                   **logical and physical, occasioned by the violation of**  
20                   **this section; and**

21                   **"(B) statutory damages equal to three times**  
22                   **the cost of the partial-birth abortion;**  
23                   **even if any party consented to the performance of an abor-**  
24                   **tion.**

25                   **"(d) A woman upon whom a partial-birth abortion**  
26                   **is performed may not be prosecuted under this section for**

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ILL.G.

1 a conspiracy to violate this section, or an offense under  
2 section 2, 3, or 4 of this title based on a violation of this  
3 section.

4 “(e) It is an affirmative defense to a prosecution or  
5 a civil action under this section, which must be proved by  
6 a preponderance of the evidence, that the partial-birth  
7 abortion was performed by a physician who reasonably be-  
8 lieved—

9 “(1) the partial-birth abortion was necessary to  
10 save the life of the woman upon whom it was per-  
11 formed; and

12 “(2) no other form of abortion would suffice for  
13 that purpose.”

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

“74. Partial-birth abortions ..... 1881”.

One Hundred Fourth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday,  
the third day of January, one thousand nine hundred and ninety-six*

An Act

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

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Partial-Birth Abortion Ban Act of 1995".

**SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.**

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

**"CHAPTER 74—PARTIAL-BIRTH ABORTIONS**

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

**"§ 1531. Partial-birth abortions prohibited**

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

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

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

"(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain

appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

"(2) Such relief shall include—

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

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

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

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

"74. Partial-birth abortions ..... 1531".

*Bice Emerson*

*Speaker of the House of Representatives*

*pro Tempore*

*Strom Thurmond*

*Vice President of the United States and*

*President of the Senate*

*pro Tempore*

Language from Boxer

post-v abortion or  
pre-v abortion or choice  
of method of abortion

The prohibition in section 1531 (a) of Title 18, United States Code, shall not apply to any ~~post-viability~~ abortion performed where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert <sup>a</sup> serious adverse health consequences to the woman, or to any ~~pre-viability~~ abortion performed where, in the judgment of the attending physician, ~~the method of abortion or the use of a particular method of abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.~~

The prohibition in section 1531 (a) of Title 18, United States Code, shall not apply to any abortion performed after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

The prohibition in section 1531 (a) of Title 18, United States Code, shall not apply to any abortion performed where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

The prohibition in section 1531 (a) of Title 18, United States Code, shall not apply to any abortion performed after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

THE WHITE HOUSE  
WASHINGTON

January 25, 1996

TO: Tracey Thornton  
Peter Jacoby  
Judy Gold  
Debbie Fine  
James Castello  
Elena Kagan  
Nancy Ann Min  
Martha Foley

FR: Jeremy Ben-Ami

RE: HR 1833

FYI re: House vote on HR 1833

<b>DEMOCRATS WHO MIGHT SWITCH THEIR VOTE ON CANADY/SMITH</b>	<b>DEMOCRATS WHO ARE LONG SHOTS ON SWITCHING THEIR VOTE</b>	<b>REPUBLICANS WHO MIGHT SWITCH THEIR VOTE ON CANADY/SMITH</b>
Bill Hefner (NC) Patrick Kennedy (RI) James Moran (VA) Lewis Payne (VA) John Dingell (MI) Floyd Flake (NY) Thomas Foglietta (PA) Harold Ford (TN) Richard Gephardt (MO) Blanche Lincoln (AR) Charlie Rose (NC) James Traficant (OH)	Bart Gordon (TN) David Minge (MN) Earl Pomeroy (ND) John Tanner (TN)	Charles Bass (NH) Michael Castle (DE) Bob Franks (NJ) Susan Molinari (NY) Bill Zeff (NH) Amo Houghton (NY) VOTED PRESENT

O:\BAI\BAISS.C56

S.L.C.

*P.H.O.*

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To clarify the application of certain provisions with respect to abortions where necessary to preserve the life or health of the woman.

IN THE AMENDMENT No. 3083 at Sess.

By *Boxer* .....

To a To *HR 3083* ..... birth

*HR 1933* .....

Refer

and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. BOXER

Viz:

*At the end of the amendment, add the following*

- 1 On page 2, line 9, add after the period the following
- 2 new sentence: "The ~~prohibition in Section 501~~ *prohibition in Section 501* shall not apply to
- 3 any abortion performed prior to the viability of the fetus,
- 4 or after viability where, in the medical judgment of the
- 5 attending physician, the abortion is necessary to preserve
- 6 the life of the woman or avert serious adverse health con-
- 7 sequences to the woman."

*(a) of Title 18, United States Code,*

*Handwritten scribble*

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To perfect the pending amendment providing a life-of-the-mother exception.

IN THE SENATE

1st Sess.

AMENDMENT No. 3081

By Dole .....

To S. 1833 .....

to amend as 3090 .....

Referred to \_\_\_\_\_

Or

ted

AMENDMENT intended to be proposed by MR. DOLE

Vis:

To <sup>IN</sup> perfect the pending amendment, strike all after the word "This" and insert in lieu thereof the following:

paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, [provided that no other medical procedure would suffice for that purpose.]

**THIS PARAGRAPH SHALL BECOME EFFECTIVE ONE DAY AFTER ENACTMENT**

*Handwritten initials*

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide a life-of-the-mother exception.

IN THE \_\_\_\_\_ S., 1st Sess.

AMENDMENT NO. 3080

By *Smith* .....

To *5/18/73* .....

Referred .....

.....  
SPO:VMM 04-03-82

rinted

AMENDMENT intended to be proposed by MR. SMITH

Viz:

On page 2, at the end of line 9, insert the following:

This paragraph does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.

*Same as Dole*

Final

As Passed by the Senate	1
121st General Assembly	4
Regular Session	5
1995-1996	6
REPRESENTATIVES LUEBBERS-BATCHELDER-GARDNER-SWEENEY-SUSTER-MOTTL-	7
JOHNSON-O'BRIEN-TROY-KRUPINSKI-COLONNA-WINKLER-WESTON-HAINES-	8
JAMES-BUCHY-WACHTMANN-SINES-LOGAN-AMSTUTZ-CERA-FOX-BLESSING-	9
MAIER-THOMPSON-SHOEMAKER-VERICH-NETZLEY-GRENDELL-KASPUTIS-	10
WISE-SCHUCK-VESPER-BATEMAN-KREBS-CORE-WHITE-TIBERI-MYERS-	11
OGG-MASON-SCHULER-MOTTLEY-JACOBSON-BRADING-PADGETT-	12
VAN VYVEN-SCHURING-HOOD-JORDAN-CAREY-HODGES-HOTTINGER-	13
METZGER-HARRIS-TAYLOR-ROMAN-OLMAN-GARCIA-	14
SENATORS DIX-HOWARD-B. JOHNSON-DRAKE-SUHADOLNIK-FINAN-CARNES-	15
GAETH-CUPP-SNYDER-KEARNS	16
	17

A B I L L

To amend section 2305.11 and to enact sections 19  
 2307.51, 2307.52, 2919.15, 2919.16, 2919.17, and 20  
 2919.18 of the Revised Code ~~to prohibit~~ 21  
~~performing or attempting to perform a dilation~~ 22  
~~and extraction procedure, to create a cause of~~ 23  
~~action against the person who performs or~~ 24  
~~attempts to perform a dilation and extraction~~ 25  
~~procedure, to create the offenses of terminating~~ 27  
~~or attempting to terminate a human pregnancy~~ 28  
~~after viability and failure to perform viability~~ 29  
~~testing, and to create a cause of action against~~ 30  
~~a person who commits the offense of terminating~~ 31  
~~or attempting to terminate~~

... to terminate a human pregnancy 32  
after viability. 33

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: 35

Section 1. That section 2305.11 be amended and sections 37  
2307.51, 2307.52, 2919.15, 2919.16, 2919.17, and 2919.18 of the 38

Revised Code be enacted to read as follows: 39

Sec. 2305.11. (A) An action for libel, slander, malicious 41  
prosecution, or false imprisonment, an action for malpractice 42  
other than an action upon a medical, dental, optometric, or 43  
chiropractic claim, or an action upon a statute for a penalty or 44  
forfeiture shall be commenced within one year after the cause of 45  
action accrued, provided that an action by an employee for the 46  
payment of unpaid minimum wages, unpaid overtime compensation, or 47  
liquidated damages by reason of the nonpayment of minimum wages 48  
or overtime compensation shall be commenced within two years 49  
after the cause of action accrued. 50

(B)(1) Subject to division (B)(2) of this section, an 52  
action upon a medical, dental, optometric, or chiropractic claim 53  
shall be commenced within one year after the CAUSE OF action 54  
accrued, except that, if prior to the expiration of that one-year 55  
period, a claimant who allegedly possesses a medical, dental, 56  
optometric, or chiropractic claim gives to the person who is the 57  
subject of that claim written notice that the claimant is 58  
considering bringing an action upon that claim, that action may 59  
be commenced against the person notified at any time within one 60  
hundred eighty days after the notice is so given. 61

(2) Except as to persons within the age of minority or of 63  
unsound mind, as provided by section 2305.16 of the Revised Code: 64

(a) In no event shall any action upon a medical, dental, 66  
optometric, or chiropractic claim be commenced more than four 67  
years after the occurrence of the act or omission constituting 68  
the alleged basis of the medical, dental, optometric, or 69  
chiropractic claim. 70

(b) If an action upon a medical, dental, optometric, or 72  
chiropractic claim is not commenced within four years after the 73  
occurrence of the act or omission constituting the alleged basis 74  
of the medical, dental, optometric, or chiropractic claim, then, 75  
notwithstanding the time when the action is determined to accrue 76  
under division (B)(1) of this section, any action upon that claim 77

is barred. 78

(C) A civil action for unlawful abortion pursuant to 80  
 section 2919.12 of the Revised Code or, a civil action authorized 82  
 by division (H) of section 2317.56 of the Revised Code, A CIVIL 83  
 ACTION PURSUANT TO DIVISION (B)(1) OR (2) OF SECTION 2307.51 OF 84  
 THE REVISED CODE FOR PERFORMING A DILATION AND EXTRACTION  
 PROCEDURE OR ATTEMPTING TO PERFORM A DILATION AND EXTRACTION 86  
 PROCEDURE IN VIOLATION OF SECTION 2919.15 OF THE REVISED CODE,  
 AND A CIVIL ACTION PURSUANT TO DIVISION (B)(1) OR (2) OF SECTION 87  
 2307.52 OF THE REVISED CODE FOR TERMINATING OR ATTEMPTING TO 88  
 TERMINATE A HUMAN PREGNANCY AFTER VIABILITY IN VIOLATION OF 89  
 DIVISION (A) OR (B) OF SECTION 2919.17 OF THE REVISED CODE shall 91  
 be commenced within one year after the PERFORMANCE OR INDUCEMENT 92  
 OF THE abortion, WITHIN ONE YEAR AFTER THE ATTEMPT TO PERFORM OR 93  
 INDUCE THE ABORTION IN VIOLATION OF DIVISION (A) OR (B) OF 94  
 SECTION 2919.17 OF THE REVISED CODE, WITHIN ONE YEAR AFTER THE 95  
 PERFORMANCE OF THE DILATION AND EXTRACTION PROCEDURE, OR, IN THE 96  
 CASE OF A CIVIL ACTION PURSUANT TO DIVISION (B)(2) OF SECTION 98  
 2307.51 OF THE REVISED CODE, WITHIN ONE YEAR AFTER THE ATTEMPT TO  
 PERFORM THE DILATION AND EXTRACTION PROCEDURE. 99

(D) As used in this section: 101

(1) "Hospital" includes any person, corporation, 103  
 association, board, or authority that is responsible for the 104  
 operation of any hospital licensed or registered in the state, 105  
 including, but not limited to, those which are owned or operated 106  
 by the state, political subdivisions, any person, any 107  
 corporation, or any combination thereof. "Hospital" also 108  
 includes any person, corporation, association, board, entity, or 109

authority that is responsible for the operation of any clinic 110  
that employs a full-time staff of physicians practicing in more 111  
than one recognized medical specialty and rendering advice, 112  
diagnosis, care, and treatment to individuals. "Hospital" does 113  
not include any hospital operated by the government of the United 114  
States or any of its branches. 115

(2) "Physician" means any A person who is licensed to 117  
practice medicine and surgery or osteopathic medicine and surgery 118  
by the state medical board OR A PERSON WHO OTHERWISE IS 119  
AUTHORIZED TO PRACTICE MEDICINE AND SURGERY OR OSTEOPATHIC 120  
MEDICINE AND SURGERY IN THIS STATE. 121

(3) "Medical claim" means any claim that is asserted in 123  
any civil action against a physician, podiatrist, or hospital, 124  
against any employee or agent of a physician, podiatrist, or 125  
hospital, or against a registered nurse or physical therapist, 126  
and that arises out of the medical diagnosis, care, or treatment 127  
of any person. "Medical claim" includes derivative claims for 128  
relief that arise from the medical diagnosis, care, or treatment 129  
of a person. 130

(4) "Podiatrist" means any person who is licensed to 132  
practice podiatric medicine and surgery by the state medical 133  
board. 134

(5) "Dentist" means any person who is licensed to practice 136  
dentistry by the state dental board. 137

(6) "Dental claim" means any claim that is asserted in any 139  
civil action against a dentist, or against any employee or agent 140  
of a dentist, and that arises out of a dental operation or the 141  
dental diagnosis, care, or treatment of any person. "Dental 142  
claim" includes derivative claims for relief that arise from a 143  
dental operation or the dental diagnosis, care, or treatment of a 144  
person. 145

(7) "Derivative claims for relief" include, but are not 147  
limited to, claims of a parent, guardian, custodian, or spouse of 148  
an individual who was the subject of --

... or any medical diagnosis, care, 149  
or treatment, dental diagnosis, care, or treatment, dental 150  
operation, optometric diagnosis, care, or treatment, or 151  
chiropractic diagnosis, care, or treatment, that arise from that 152  
diagnosis, care, treatment, or operation, and that seek the 153  
recovery of damages for any of the following: 154

(a) Loss of society, consortium, companionship, care, 156

assistance, attention, protection, advice, guidance, counsel, 157  
instruction, training, or education, or any other intangible loss 158  
that was sustained by the parent, guardian, custodian, or spouse; 159

(b) Expenditures of the parent, guardian, custodian, or 161  
spouse for medical, dental, optometric, or chiropractic care or 162  
treatment, for rehabilitation services, or for other care, 163  
treatment, services, products, or accommodations provided to the 164  
individual who was the subject of the medical diagnosis, care, or 165  
treatment, the dental diagnosis, care, or treatment, the dental 166  
operation, the optometric diagnosis, care, or treatment, or the 167  
chiropractic diagnosis, care, or treatment. 168

(8) "Registered nurse" means any person who is licensed to 170  
practice nursing as a registered nurse by the state board of 171  
nursing. 172

(9) "Chiropractic claim" means any claim that is asserted 174  
in any civil action against a chiropractor, or against any 175  
employee or agent of a chiropractor, and that arises out of the 176  
chiropractic diagnosis, care, or treatment of any person. 177  
"Chiropractic claim" includes derivative claims for relief that 178  
arise from the chiropractic diagnosis, care, or treatment of a 179  
person. 180

(10) "Chiropractor" means any person who is licensed to 182  
practice chiropractic by the chiropractic examining board. 183

(11) "Optometric claim" means any claim that is asserted 185  
in any civil action against an optometrist, or against any 186  
employee or agent of an optometrist, and that arises out of the 187  
optometric diagnosis, care, or treatment of any person. 188  
"Optometric claim" includes derivative claims for relief that 189

arise from the optometric diagnosis, care, or treatment of a 190  
person. 191

(12) "Optometrist" means any person licensed to practice 193  
optometry by the state board of optometry. 194

(13) "Physical therapist" means any person who is licensed 196  
to practice physical therapy under Chapter 4755. of the Revised 197

Code. 198

Sec. 2307.51. (A) AS USED IN THIS SECTION: 200

(1) "DILATION AND EXTRACTION PROCEDURE" HAS THE SAME 203  
MEANING AS IN SECTION 2919.15 OF THE REVISED CODE.

(2) "FRIVOLOUS CONDUCT" HAS THE SAME MEANING AS IN SECTION 205  
2323.51 OF THE REVISED CODE.

(B)(1) A WOMAN UPON WHOM A DILATION AND EXTRACTION 207  
PROCEDURE IS PERFORMED IN VIOLATION OF DIVISION (B) OF SECTION 209  
2919.15 OF THE REVISED CODE HAS AND MAY COMMENCE A CIVIL ACTION 211  
FOR COMPENSATORY DAMAGES, PUNITIVE OR EXEMPLARY DAMAGES IF 212  
AUTHORIZED BY SECTION 2315.21 OF THE REVISED CODE, AND COURT 213  
COSTS AND REASONABLE ATTORNEY'S FEES AGAINST THE PERSON WHO 214  
PERFORMED THE DILATION AND EXTRACTION PROCEDURE. 215

(2) A WOMAN UPON WHOM A DILATION AND EXTRACTION PROCEDURE 217  
IS ATTEMPTED IN VIOLATION OF DIVISION (B) OF SECTION 2919.15 OF 219  
THE REVISED CODE HAS AND MAY COMMENCE A CIVIL ACTION FOR 220  
COMPENSATORY DAMAGES, PUNITIVE OR EXEMPLARY DAMAGES IF AUTHORIZED 221  
BY SECTION 2315.21 OF THE REVISED CODE, AND COURT COSTS AND 222  
REASONABLE ATTORNEY'S FEES AGAINST THE PERSON WHO ATTEMPTED TO 224  
PERFORM THE DILATION AND EXTRACTION PROCEDURE.

(C) IT IS AN AFFIRMATIVE DEFENSE IN A CIVIL ACTION 226  
COMMENCED PURSUANT TO DIVISION (B)(1) OR (2) OF THIS SECTION THAT 227  
ALL OTHER AVAILABLE ABORTION PROCEDURES WOULD POSE A GREATER RISK 228  
TO THE HEALTH OF THE WOMAN UPON WHOM THE DILATION AND EXTRACTION 230  
PROCEDURE WAS PERFORMED OR ATTEMPTED TO BE PERFORMED THAN THE 231  
RISK POSED BY THE DILATION AND EXTRACTION PROCEDURE THAT WAS 232  
PERFORMED OR ATTEMPTED TO BE PERFORMED.

(D) IF A JUDGMENT IS RENDERED IN FAVOR OF THE DEFENDANT IN 234

A CIVIL ACTION COMMENCED PURSUANT TO DIVISION (B)(1) OR (2) OF 236  
THIS SECTION AND THE COURT FINDS, UPON THE FILING OF A MOTION 238  
UNDER SECTION 2323.51 OF THE REVISED CODE, THAT THE COMMENCEMENT 239  
OF THE CIVIL ACTION CONSTITUTES FRIVOLOUS CONDUCT AND THAT THE  
DEFENDANT WAS ADVERSELY AFFECTED BY THE FRIVOLOUS CONDUCT, THE 240  
COURT SHALL AWARD IN ACCORDANCE WITH SECTION 2323.51 OF THE 241

REVISED CODE REASONABLE ATTORNEY'S FEES TO THE DEFENDANT. 242

Sec. 2307.52. (A) AS USED IN THIS SECTION: 244

(1) "FRIVOLOUS CONDUCT" HAS THE SAME MEANING AS IN SECTION 246  
2323.51 OF THE REVISED CODE. 247

(2) "VIABLE" HAS THE SAME MEANING AS IN SECTION 2919.16 OF 249  
THE REVISED CODE. 250

(B)(1) A WOMAN UPON WHOM AN ABORTION IS PURPOSELY 252  
PERFORMED OR INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED IN 254  
VIOLATION OF DIVISION (A) OF SECTION 2919.17 OF THE REVISED CODE 255  
HAS AND MAY COMMENCE A CIVIL ACTION FOR COMPENSATORY DAMAGES, 256  
PUNITIVE OR EXEMPLARY DAMAGES IF AUTHORIZED BY SECTION 2315.21 OF 258  
THE REVISED CODE, AND COURT COSTS AND REASONABLE ATTORNEY'S FEES 259  
AGAINST THE PERSON WHO PURPOSELY PERFORMED OR INDUCED OR 260  
ATTEMPTED TO PERFORM OR INDUCE THE ABORTION IN VIOLATION OF 261  
DIVISION (A) OF SECTION 2919.17 OF THE REVISED CODE. 262

(2) A WOMAN UPON WHOM AN ABORTION IS PURPOSELY PERFORMED 264  
OR INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED IN VIOLATION 265  
OF DIVISION (B) OF SECTION 2919.17 OF THE REVISED CODE HAS AND 267  
MAY COMMENCE A CIVIL ACTION FOR COMPENSATORY DAMAGES, PUNITIVE OR 268  
EXEMPLARY DAMAGES IF AUTHORIZED BY SECTION 2315.21 OF THE REVISED 270  
CODE, AND COURT COSTS AND REASONABLE ATTORNEY'S FEES AGAINST THE 271  
PERSON WHO PURPOSELY PERFORMED OR INDUCED OR ATTEMPTED TO PERFORM 272  
OR INDUCE THE ABORTION IN VIOLATION OF DIVISION (B) OF SECTION 273  
2919.17 OF THE REVISED CODE. 274

(C) IF A JUDGMENT IS RENDERED IN FAVOR OF THE DEFENDANT IN 277  
A CIVIL ACTION COMMENCED PURSUANT TO DIVISION (B)(1) OR (2) OF 278  
THIS SECTION AND THE COURT FINDS, UPON THE FILING OF A MOTION 279  
UNDER SECTION 2323.51 OF THE REVISED CODE, THAT THE COMMENCEMENT 280

IF THE CIVIL ACTION CONSTITUTES FRIVOLOUS CONDUCT AND THAT THE 281  
DEFENDANT WAS ADVERSELY AFFECTED BY THE FRIVOLOUS CONDUCT, THE 282  
COURT SHALL AWARD IN ACCORDANCE WITH SECTION 2323.51 OF THE 283  
REVISED CODE REASONABLE ATTORNEY'S FEES TO THE DEFENDANT. 284

Sec. 2919.15. (A) AS USED IN THIS SECTION, "DILATION AND 287  
EXTRACTION PROCEDURE" MEANS THE TERMINATION OF A HUMAN PREGNANCY 288

BY PURPOSELY INSERTING A SUCTION DEVICE INTO THE SKULL OF A FETUS 289  
TO REMOVE THE BRAIN. "DILATION AND EXTRACTION PROCEDURE" DOES 290  
NOT INCLUDE EITHER THE SUCTION CURETTAGE PROCEDURE OF ABORTION OR 292  
THE SUCTION ASPIRATION PROCEDURE OF ABORTION.

(B) NO PERSON SHALL KNOWINGLY PERFORM OR ATTEMPT TO 295  
PERFORM A DILATION AND EXTRACTION PROCEDURE UPON A PREGNANT 296  
WOMAN.

(C)(1) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE UNDER 298  
DIVISION (B) OF THIS SECTION THAT ALL OTHER AVAILABLE ABORTION 300  
PROCEDURES WOULD POSE A GREATER RISK TO THE HEALTH OF THE 301  
PREGNANT WOMAN THAN THE RISK POSED BY THE DILATION AND EXTRACTION 302  
PROCEDURE.

(2) NOTWITHSTANDING SECTION 2901.05 OF THE REVISED CODE, 304  
IF A PERSON CHARGED WITH A VIOLATION OF DIVISION (B) OF THIS 305  
SECTION PRESENTS PRIMA FACIE EVIDENCE RELATIVE TO THE AFFIRMATIVE 306  
DEFENSE SET FORTH IN DIVISION (C)(1) OF THIS SECTION, THE 307  
PROSECUTION, IN ADDITION TO PROVING ALL ELEMENTS OF THE VIOLATION 308  
BY PROOF BEYOND A REASONABLE DOUBT, HAS THE BURDEN OF PROVING BY 309  
PROOF BEYOND A REASONABLE DOUBT THAT AT LEAST ONE OTHER AVAILABLE 310  
ABORTION PROCEDURE WOULD NOT POSE A GREATER RISK TO THE HEALTH OF 311  
THE PREGNANT WOMAN THAN THE RISK POSED BY THE DILATION AND 312  
EXTRACTION PROCEDURE PERFORMED OR ATTEMPTED TO BE PERFORMED BY 313  
THE PERSON CHARGED WITH THE VIOLATION OF DIVISION (B) OF THIS 314  
SECTION.

(D) WHOEVER VIOLATES DIVISION (B) OF THIS SECTION IS 317  
GUILTY OF PERFORMING AN UNLAWFUL ABORTION PROCEDURE, A FELONY OF 318  
THE FOURTH DEGREE. 319

(E) A PREGNANT WOMAN UPON WHOM A DILATION AND EXTRACTION 322

PROCEDURE IS PERFORMED OR ATTEMPTED TO BE PERFORMED IN VIOLATION 323  
OF DIVISION (B) OF THIS SECTION IS NOT GUILTY OF AN ATTEMPT TO 325  
COMMIT, COMPLICITY IN THE COMMISSION OF, OR CONSPIRACY IN THE 326  
COMMISSION OF A VIOLATION OF THAT DIVISION.

Sec. 2919.16. AS USED IN SECTIONS 2919.16 TO 2919.18 OF 329  
THE REVISED CODE: 330

(A) "FERTILIZATION" MEANS THE FUSION OF A HUMAN SPERMATOZOOM WITH A HUMAN OVUM.

(B) "GESTATIONAL AGE" MEANS THE AGE OF AN UNBORN HUMAN AS CALCULATED FROM THE FIRST DAY OF THE LAST MENSTRUAL PERIOD OF A PREGNANT WOMAN.

(C) "HEALTH CARE FACILITY" MEANS A HOSPITAL, CLINIC, AMBULATORY SURGICAL TREATMENT CENTER, OTHER CENTER, MEDICAL SCHOOL, OFFICE OF A PHYSICIAN, INFIRMARY, DISPENSARY, MEDICAL TRAINING INSTITUTION, OR OTHER INSTITUTION OR LOCATION IN OR AT WHICH MEDICAL CARE, TREATMENT, OR DIAGNOSIS IS PROVIDED TO A PERSON.

(D) "HOSPITAL" HAS THE SAME MEANINGS AS IN SECTIONS 2108.01, 3701.01, AND 5122.01 OF THE REVISED CODE.

(E) "LIVE BIRTH" HAS THE SAME MEANING AS IN DIVISION (A) OF SECTION 3705.01 OF THE REVISED CODE.

(F) "MEDICAL EMERGENCY" MEANS A CONDITION THAT A PREGNANT WOMAN'S PHYSICIAN DETERMINES, IN GOOD FAITH AND IN THE EXERCISE OF REASONABLE MEDICAL JUDGMENT, SO COMPLICATES THE WOMAN'S PREGNANCY AS TO NECESSITATE THE IMMEDIATE PERFORMANCE OR INDUCEMENT OF AN ABORTION IN ORDER TO PREVENT THE DEATH OF THE PREGNANT WOMAN OR TO AVOID A SERIOUS RISK OF THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE PREGNANT WOMAN THAT DELAY IN THE PERFORMANCE OR INDUCEMENT OF THE ABORTION WOULD CREATE.

(G) "PHYSICIAN" HAS THE SAME MEANING AS IN SECTION 2305.11 OF THE REVISED CODE.

(H) "PREGNANT" MEANS THE HUMAN FEMALE REPRODUCTIVE CONDITION, THAT COMMENCES WITH FERTILIZATION OF EGGING

DEVELOPING FETUS. 370

(I) "PREMATURE INFANT" MEANS A HUMAN WHOSE LIVE BIRTH 373  
OCCURS PRIOR TO THIRTY-EIGHT WEEKS OF GESTATIONAL AGE.

(J) "SERIOUS RISK OF THE SUBSTANTIAL AND IRREVERSIBLE 375  
IMPAIRMENT OF A MAJOR BODILY FUNCTION" MEANS ANY MEDICALLY 376  
DIAGNOSED CONDITION THAT SO COMPLICATES THE PREGNANCY OF THE 377

WOMAN AS TO DIRECTLY OR INDIRECTLY CAUSE THE SUBSTANTIAL AND 378  
IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION, INCLUDING, 379  
BUT NOT LIMITED TO, THE FOLLOWING CONDITIONS: 380

- (1) PRE-ECLAMPSIA; 382
- (2) INEVITABLE ABORTION; 384
- (3) PREMATURELY RUPTURED MEMBRANE; 386
- (4) DIABETES; 388
- (5) MULTIPLE SCLEROSIS. 390

(K) "UNBORN HUMAN" MEANS AN INDIVIDUAL ORGANISM OF THE 392  
SPECIES HOMO SAPIENS FROM FERTILIZATION UNTIL LIVE BIRTH. 393

(L) "VIABLE" MEANS THE STAGE OF DEVELOPMENT OF A HUMAN 396  
FETUS AT WHICH IN THE DETERMINATION OF A PHYSICIAN, BASED ON THE 397  
PARTICULAR FACTS OF A WOMAN'S PREGNANCY THAT ARE KNOWN TO THE 398  
PHYSICIAN AND IN LIGHT OF MEDICAL TECHNOLOGY AND INFORMATION 399  
REASONABLY AVAILABLE TO THE PHYSICIAN, THERE IS A REALISTIC 400  
POSSIBILITY OF THE MAINTAINING AND NOURISHING OF A LIFE OUTSIDE  
OF THE WOMB WITH OR WITHOUT TEMPORARY ARTIFICIAL LIFE-SUSTAINING 401  
SUPPORT. 401

Sec. 2919.17. (A) NO PERSON SHALL PURPOSELY PERFORM OR 404  
INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION UPON A 405  
PREGNANT WOMAN IF THE UNBORN HUMAN IS VIABLE, UNLESS EITHER OF 406  
THE FOLLOWING APPLIES:

(1) THE ABORTION IS PERFORMED OR INDUCED OR ATTEMPTED TO 408  
BE PERFORMED OR INDUCED BY A PHYSICIAN, AND THAT PHYSICIAN 409  
DETERMINES, IN GOOD FAITH AND IN THE EXERCISE OF REASONABLE 410  
MEDICAL JUDGMENT, THAT THE ABORTION IS NECESSARY TO PREVENT THE 411  
DEATH OF THE PREGNANT WOMAN OR A SERIOUS RISK OF THE SUBSTANTIAL 412  
AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE 413

PREGNANT WOMAN.

(2) THE ABORTION IS PERFORMED OR INDUCED OR ATTEMPTED TO 415  
BE PERFORMED OR INDUCED BY A PHYSICIAN AND THAT PHYSICIAN 417  
DETERMINES, IN GOOD FAITH AND IN THE EXERCISE OF REASONABLE  
MEDICAL JUDGMENT, AFTER MAKING A DETERMINATION RELATIVE TO THE 420  
VIABILITY OF THE UNBORN HUMAN IN CONFORMITY WITH DIVISION (A) OF 421

SECTION 2919.18 OF THE REVISED CODE, THAT THE UNBORN HUMAN IS NOT 422  
VIABLE.

(B)(1) EXCEPT AS PROVIDED IN DIVISION (B)(2) OF THIS 425  
SECTION, NO PHYSICIAN SHALL PURPOSELY PERFORM OR INDUCE OR  
ATTEMPT TO PERFORM OR INDUCE AN ABORTION UPON A PREGNANT WOMAN 426  
WHEN THE UNBORN HUMAN IS VIABLE AND WHEN THE PHYSICIAN HAS 427  
DETERMINED, IN GOOD FAITH AND IN THE EXERCISE OF REASONABLE 428  
MEDICAL JUDGMENT, THAT THE ABORTION IS NECESSARY TO PREVENT THE 429  
DEATH OF THE PREGNANT WOMAN OR A SERIOUS RISK OF THE SUBSTANTIAL 430  
AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE 431  
PREGNANT WOMAN, UNLESS EACH OF THE FOLLOWING CONDITIONS IS 432  
SATISFIED:

(a) THE PHYSICIAN WHO PERFORMS OR INDUCES OR ATTEMPTS TO 435  
PERFORM OR INDUCE THE ABORTION CERTIFIES IN WRITING THAT THAT 436  
PHYSICIAN HAS DETERMINED, IN GOOD FAITH AND IN THE EXERCISE OF 437  
REASONABLE MEDICAL JUDGMENT, THAT THE ABORTION IS NECESSARY TO 438  
PREVENT THE DEATH OF THE PREGNANT WOMAN OR A SERIOUS RISK OF THE 439  
SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY  
FUNCTION OF THE PREGNANT WOMAN. 440

(b) THE DETERMINATION OF THE PHYSICIAN WHO PERFORMS OR 443  
INDUCES OR ATTEMPTS TO PERFORM OR INDUCE THE ABORTION THAT IS 444  
DESCRIBED IN DIVISION (B)(1)(a) OF THIS SECTION IS CONCURRED IN 446  
BY AT LEAST ONE OTHER PHYSICIAN WHO CERTIFIES IN WRITING THAT THE 447  
CONCURRING PHYSICIAN HAS DETERMINED, IN GOOD FAITH, IN THE 448  
EXERCISE OF REASONABLE MEDICAL JUDGMENT, AND FOLLOWING A REVIEW  
OF THE AVAILABLE MEDICAL RECORDS OF AND ANY AVAILABLE TESTS 449  
RESULTS PERTAINING TO THE PREGNANT WOMAN, THAT THE ABORTION IS 450  
NECESSARY TO PREVENT THE DEATH OF THE PREGNANT WOMAN OR A SERIOUS

RISK OF THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR 452  
BODILY FUNCTION OF THE PREGNANT WOMAN.

(c) THE ABORTION IS PERFORMED OR INDUCED OR ATTEMPTED TO 455  
BE PERFORMED OR INDUCED IN A HEALTH CARE FACILITY THAT HAS OR HAS 456  
ACCESS TO APPROPRIATE NEONATAL SERVICES FOR PREMATURE INFANTS. 457

(d) THE PHYSICIAN WHO PERFORMS OR INDUCES OR ATTEMPTS TO 460

12

PERFORM OR INDUCE THE ABORTION TERMINATES OR ATTEMPTS TO 461  
TERMINATE THE PREGNANCY IN THE MANNER THAT PROVIDES THE BEST 462  
OPPORTUNITY FOR THE UNBORN HUMAN TO SURVIVE, UNLESS THAT 463  
PHYSICIAN DETERMINES, IN GOOD FAITH AND IN THE EXERCISE OF  
REASONABLE MEDICAL JUDGMENT, THAT THE TERMINATION OF THE 466  
PREGNANCY IN THAT MANNER POSES A SIGNIFICANTLY GREATER RISK OF 467  
THE DEATH OF THE PREGNANT WOMAN OR A SERIOUS RISK OF THE  
SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY 468  
FUNCTION OF THE PREGNANT WOMAN THAN WOULD OTHER AVAILABLE METHODS 469  
OF ABORTION.

(e) THE PHYSICIAN WHO PERFORMS OR INDUCES OR ATTEMPTS TO 472  
PERFORM OR INDUCE THE ABORTION HAS ARRANGED FOR THE ATTENDANCE IN 473  
THE SAME ROOM IN WHICH THE ABORTION IS TO BE PERFORMED OR INDUCED 474  
OR ATTEMPTED TO BE PERFORMED OR INDUCED OF AT LEAST ONE OTHER 475  
PHYSICIAN WHO IS TO TAKE CONTROL OF, PROVIDE IMMEDIATE MEDICAL 476  
CARE FOR, AND TAKE ALL REASONABLE STEPS NECESSARY TO PRESERVE THE 477  
LIFE AND HEALTH OF THE UNBORN HUMAN IMMEDIATELY UPON THE UNBORN 478  
HUMAN'S COMPLETE EXPULSION OR EXTRACTION FROM THE PREGNANT WOMAN. 479

(2) DIVISION (B)(1) OF THIS SECTION DOES NOT PROHIBIT THE 482  
PERFORMANCE OR INDUCEMENT OR AN ATTEMPTED PERFORMANCE OR 483  
INDUCEMENT OF AN ABORTION WITHOUT PRIOR SATISFACTION OF EACH OF 484  
THE CONDITIONS DESCRIBED IN DIVISIONS (B)(1)(a) TO (e) OF THIS 486  
SECTION IF THE PHYSICIAN WHO PERFORMS OR INDUCES OR ATTEMPTS TO 487  
PERFORM OR INDUCE THE ABORTION DETERMINES, IN GOOD FAITH AND IN 488  
THE EXERCISE OF REASONABLE MEDICAL JUDGMENT, THAT A MEDICAL 489  
EMERGENCY EXISTS THAT PREVENTS COMPLIANCE WITH ONE OR MORE OF 490  
THOSE CONDITIONS.

(C) FOR PURPOSES OF THIS SECTION

PRESUMED THAT AN UNBORN CHILD OF AT LEAST TWENTY-FOUR WEEKS OF 494  
GESTATIONAL AGE IS VIABLE.

(D) WHOEVER VIOLATES THIS SECTION IS GUILTY OF TERMINATING 497  
OR ATTEMPTING TO TERMINATE A HUMAN PREGNANCY AFTER VIABILITY, A 498  
FELONY OF THE FOURTH DEGREE.

(E) A PREGNANT WOMAN UPON WHOM AN ABORTION IS PERFORMED OR 501

INDUCED OR ATTEMPTED TO BE PERFORMED OR INDUCED IN VIOLATION OF 502  
DIVISION (A) OR (B) OF THIS SECTION IS NOT GUILTY OF AN ATTEMPT 503  
TO COMMIT, COMPLICITY IN THE COMMISSION OF, OR CONSPIRACY IN THE 504  
COMMISSION OF A VIOLATION OF EITHER OF THOSE DIVISIONS. 505

Sec. 2919.18. (A)(1) EXCEPT AS PROVIDED IN DIVISION 508  
(A)(3) OF THIS SECTION, NO PHYSICIAN SHALL PERFORM OR INDUCE OR 509  
ATTEMPT TO PERFORM OR INDUCE AN ABORTION UPON A PREGNANT WOMAN 510  
AFTER THE BEGINNING OF HER TWENTY-SECOND WEEK OF PREGNANCY 511  
UNLESS, PRIOR TO THE PERFORMANCE OR INDUCEMENT OF THE ABORTION OR 512  
THE ATTEMPT TO PERFORM OR INDUCE THE ABORTION, THE PHYSICIAN 513  
DETERMINES, IN GOOD FAITH AND IN THE EXERCISE OF REASONABLE 514  
MEDICAL JUDGMENT, THAT THE UNBORN HUMAN IS NOT VIABLE, AND THE 515  
PHYSICIAN MAKES THAT DETERMINATION AFTER PERFORMING A MEDICAL 516  
EXAMINATION OF THE PREGNANT WOMAN AND AFTER PERFORMING OR CAUSING 517  
THE PERFORMING OF GESTATIONAL AGE, WEIGHT, LUNG MATURITY, OR 518  
OTHER TESTS OF THE UNBORN HUMAN THAT A REASONABLE PHYSICIAN 519  
MAKING A DETERMINATION AS TO WHETHER AN UNBORN HUMAN IS OR IS NOT 520  
VIABLE WOULD PERFORM OR CAUSE TO BE PERFORMED. 521

(2) EXCEPT AS PROVIDED IN DIVISION (A)(3) OF THIS SECTION, 524  
NO PHYSICIAN SHALL PERFORM OR INDUCE OR ATTEMPT TO PERFORM OR 525  
INDUCE AN ABORTION UPON A PREGNANT WOMAN AFTER THE BEGINNING OF 526  
HER TWENTY-SECOND WEEK OF PREGNANCY WITHOUT FIRST ENTERING THE 527  
DETERMINATION DESCRIBED IN DIVISION (A)(1) OF THIS SECTION AND 529  
THE ASSOCIATED FINDINGS OF THE MEDICAL EXAMINATION AND TESTS 530  
DESCRIBED IN THAT DIVISION IN THE MEDICAL RECORD OF THE PREGNANT 531  
WOMAN. 532

(3) DIVISIONS (A)(1) AND (2) OF THIS SECTION DO NOT 533  
PROHIBIT A PHYSICIAN FROM PERFORMING OR INDUCING OR ATTEMPTING TO 534  
PERFORM AN ABORTION UPON A PREGNANT WOMAN 535

... WHOSE A PREGNANT WOMAN AFTER THE 537  
BEGINNING OF HER TWENTY-SECOND WEEK OF PREGNANCY WITHOUT MAKING 538  
THE DETERMINATION DESCRIBED IN DIVISION (A)(1) OF THIS SECTION OR 539  
WITHOUT MAKING THE ENTRY DESCRIBED IN DIVISION (A)(2) OF THIS 541  
SECTION IF A MEDICAL EMERGENCY EXISTS. 542

(B) WHOEVER VIOLATES THIS SECTION IS GUILTY OF FAILURE TO 545

PERFORM VIABILITY TESTING, A MISDEMEANOR OF THE FOURTH DEGREE. 546

Section 2. That existing section 2305.11 of the Revised 548  
Code is hereby repealed. 549

Section 3. The General Assembly declares that its intent 551  
in enacting sections 2307.51 and 2919.15 and in amending section 552  
2305.11 of the Revised Code in this act is to prevent the 553  
unnecessary use of a specific procedure used in performing an 554  
abortion. This intent is based on a state interest in preventing 556  
unnecessary cruelty to the human fetus.

Section 4. The General Assembly declares that, in using 558  
the phrase "serious risk of the substantial and irreversible 559  
impairment of a major bodily function" in sections 2919.16 and 560  
2919.17 of the Revised Code, as enacted by this act, it is the 561  
intent of the General Assembly that the phrase be construed 562  
according to the interpretation given to that phrase in Planned 564  
Parenthood v. Casey, 112 S.Ct. 2791, 2822 (1992), and Planned 565  
Parenthood v. Casey, 947 F. 2d 682, 699-702 (3rd Cir. 1991). 566

United States Code, to ban partial-birth abortions; as follows:

On page 2, at the end of line 9, insert the following: "This paragraph does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose."

#### DOLE AMENDMENT NO. 3081

Mr. DOLE proposed an amendment to amendment No. 3080 proposed by Mr. SMITH to the bill, H.R. 1833, supra; as follows:

In the pending amendment, strike all after the word "This" and insert in lieu thereof the following: "paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose."

This paragraph shall become effective one day after enactment.

#### PRYOR (AND OTHERS) AMENDMENT NO. 3082

Mr. PRYOR (for himself, Mr. CHAFEE, and Mr. BROWN) proposed an amendment to the bill, H.R. 1833, supra; as follows:

At the appropriate place, insert the following new section:

#### SEC. APPROVAL AND MARKETING OF PRESCRIPTION DRUGS.

(a) APPROVAL OF APPLICATIONS OF GENERIC DRUGS.—For purposes of acceptance and consideration by the Secretary of an application under subsections (b), (c), and (j) of section 505, and subsections (b), (c), and (n) of section 512, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (b), (c), and (j), and 360b (b), (c), and (n)), the expiration date of a patent that is the subject of a certification under section 505(b)(2)(A) (ii), (iii), or (iv), section 505(j)(2)(A)(vii) (II), (III), or (IV), or section 512(n)(1)(H) (ii), (iii), or (iv) of such Act, respectively, made in an application submitted prior to June 8, 1995, or in an application submitted on or after that date in which the applicant certifies that substantial investment was made prior to June 8, 1995, shall be deemed to be the date on which such patent would have expired under the law in effect on the day preceding December 8, 1994.

(b) MARKETING GENERIC DRUGS.—The remedies of section 271(e)(4) of title 35, United States Code, shall not apply to acts—

(1) that were commenced, or for which a substantial investment was made, prior to June 8, 1995; and

(2) that became infringing by reason of section 154(c)(1) of such title, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103-465, 108 Stat. 4983).

(c) EQUITABLE REMUNERATION.—For acts described in subsection (b), equitable remuneration of the type described in section 154(c)(3) of title 35, United States Code, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103-465; 108 Stat. 4983) shall be awarded to a patentee only if there has been—

(1) the commercial manufacture, use, offer to sell, or sale, within the United States of an approved drug that is the subject of an application described in subsection (a); or

(2) the importation by the applicant into the United States of an approved drug or of active ingredient used in an approved drug that is the subject of an application described in subsection (a).

(c) APPLICABILITY.—The provisions of this section shall govern—

(1) the approval or the effective date of approval of applications under section 505(b)(2), 505(j), 507, or 512(n), of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (b)(2) and (j), 357, and 360b(n)) submitted on or after the date of enactment of this Act; and

(2) the approval or effective date of approval of all pending applications that have not received final approval as of the date of enactment of this Act.

#### BOXER AMENDMENT NO. 3083

Mrs. BOXER proposed an amendment to amendment No. 3083 proposed by Mr. PRYOR to the bill, H.R. 1833, supra; as follows:

At the end of the amendment, add the following new sentence: "The prohibition in section 1531(a) of title 18, United States Code, shall not apply to any abortion performed prior to the viability of the fetus, or after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman."

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON FINANCE

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet Tuesday, December 5, 1995, beginning at 10 a.m. in room SD-215, to conduct a hearing on the Organization for Economic Cooperation and Development [OECD] Shipbuilding Subsidies Agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BENNETT. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Tuesday, December 5, at 9:30 a.m. for a hearing on S. 88, Local Empowerment and Flexibility Act of 1995.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### SUBCOMMITTEE ON THE ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Subcommittee on the Administrative Oversight and the Courts of the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, December 5, 1995, at 10 a.m. in the Senate Dirksen Building, room 226, to hold a hearing on S. 984, the Parental Rights and Responsibilities Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADDITIONAL STATEMENTS

##### GLAXO WELLCOME

• Mr. FAIRCLOTH. Mr. President, I want to applaud a dramatic new commitment by Glaxo Wellcome, a North Carolina-based pioneer pharmaceutical

research company whose contributions to medicine and biotechnology have helped to make the American health care industry the most innovative and productive in the world.

Glaxo Wellcome has just received approval from the Food and Drug Administration for its latest drug, Epivir, an aggressive new treatment for AIDS. Epivir received FDA approval in less than 5 months, but the advent of this new treatment is the result of years of hard work and millions of dollars invested by Glaxo Wellcome.

The firm also announced that it has set itself the goal of bringing an unprecedented three new medicines to market each year by the beginning of the next century. This is an enormous endeavor. It will require threefold increase in Glaxo Wellcome's research and development productivity.

The merger of Glaxo and Burroughs Wellcome produced an enormous portfolio of research and development projects. To ensure the most efficient integration of the two firms, the entire portfolio was reviewed according to rigorous standards. The resulting R&D portfolio now includes 50 major research projects and 93 development projects. These projects run the gamut from cardiovascular disease and cancer to the neurosciences. Significant resources are being committed to projects involving the respiratory system, anti-viral infection, the central nervous system and other areas. Together, Glaxo Wellcome's total R&D spending for 1996 will exceed \$1.9 billion.

That's good news for the millions of Americans who suffer from life threatening diseases for which there is currently no known treatment. Good news also for their families, their employers, and their neighbors. This massive investment in the future of American health care is good news for all of us.

Pioneering the next "miracle drug" is not easy. It costs, on average, 12 years and \$350 million to develop just one new pharmaceutical. Only one in 5,000 compounds tested in a laboratory ever finds its way onto pharmacy shelves. And only a third of those ever earns full return on the vast investment of time, money, and thought made to discover it.

Because of the costly pioneering research of pharmaceutical companies like Glaxo Wellcome, American consumers have access to the next generation of pharmaceuticals and state-of-the-art medical treatments. Taxpayers also benefit because of the savings to be realized in future health care costs. Pioneers like Glaxo Wellcome hold our best hope for the discovery of breakthrough medicines in the future. I salute Glaxo Wellcome for deepening its commitment to the future of American medicine. •

##### THE NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

• Mr. JOHNSTON. Mr. President, on November 28, 1995, President Clinton

MLC.

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104TH CONGRESS  
1ST SESSION

# H. R. \_\_\_\_\_

## IN THE HOUSE OF REPRESENTATIVES

Mr. CANADY of Florida introduced the following bill; which was referred to  
the Committee on \_\_\_\_\_

### A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Partial-Birth Abortion  
5 Ban Act of 1995".

6 **SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.**

7 (a) IN GENERAL.—Title 18, United States Code, is  
8 amended by inserting after chapter 78 the following:

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H.L.G.

1 "CHAPTER 74—partial-birth abortions

2 "Sec.  
3 "1691 Partial-birth abortions prohibited

4 "§1691 Partial-birth abortions prohibited.

5 "(a) Whoever, in or affecting interstate or foreign  
6 commerce, knowingly performs a partial-birth abortion  
7 and thereby kills a human fetus shall be fined under this  
8 title or imprisoned not more than two years, or both.

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

*Definition*

13 "(c)(1) The mother, father, and if the mother has  
14 not attained the age of 18 years at the time of the abor-  
15 tion, the maternal grandparents of the fetus, may in a civil  
16 action obtain appropriate relief.

17 "(2) Such relief shall include—

18 "(A) money damages for all injuries, psycho-  
19 logical and physical, occasioned by the violation of  
20 this section; and

21 "(B) statutory damages equal to three times  
22 the cost of the partial-birth abortion;  
23 even if any party consented to the performance of an abor-  
24 tion.

25 "(d) A woman upon whom a partial-birth abortion  
26 is performed may not be prosecuted under this section for

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U.S.S.

1 a conspiracy to violate this section, or an offense under  
2 section 2, 3, or 4 of this title based on a violation of this  
3 section.

4       “(e) It is an affirmative defense to a prosecution or  
5 a civil action under this section, which must be proved by  
6 a preponderance of the evidence, that the partial-birth  
7 abortion was performed by a physician who reasonably be-  
8 lieved—

9               “(1) the partial-birth abortion was necessary to  
10 save the life of the woman upon whom it was per-  
11 formed; and

12               “(2) no other form of abortion would suffice for  
13 that purpose.”

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

“74. Partial-birth abortions ..... 1881”.

Wald  
Edwards  
Baker  
Romer  
Wood

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To perfect the pending amendment providing a life-of-the-mother exception.

IN THE SENATE

AMENDMENT NO. 3081

1st sess.

By *Dr. [Signature]*

To *5-18-73*

*to amend art. 3080*

Referred to \_\_\_\_\_

.....

Or

.....

led

AMENDMENT intended to be proposed by MR. DOUG

Vis:

~~to perfect~~ <sup>the</sup> pending amendment, strike all after the word "this" and insert in lieu thereof the following:

paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.

**THIS PROVISION SHALL BECOME EFFECTIVE ONE DAY AFTER ENACTMENT**

21

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To provide a life-of-the-mother exception.

IN YRE

g., 1st Sess.

AMENDMENT No. 3080

By Smith

To 5/19/73

Referred \_\_\_\_\_

.....

SP:WBI 00-01km

Printed

AMENDMENT intended to be proposed by MR. SMITH

Viz:

On page 2, at the end of line 9, insert the following:

This paragraph does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.

IB

## Union Calendar No. 138

104TH CONGRESS  
1ST SESSION

# H. R. 1833

[Report No. 104-267]

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

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### IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1995

Mr. CANADY of Florida (for himself, Mrs. VUCANOVICH, Mr. HALL of Ohio, Mr. HYDE, Mr. INGLIS of South Carolina, Mr. GOODLATTE, Mr. SMITH of Texas, Mrs. SMITH of Washington, Mr. WELDON of Florida, Mr. SMITH of New Jersey, Mr. CHRISTENSEN, Mr. DORNAN, Mr. HILLEARY, Mr. BUNNING of Kentucky, Mr. CHABOT, Mr. EMERSON, Mr. HAYWORTH, Mr. LARGENT, Mr. WALSH, Mr. KNOLLENBERG, Mr. TALENT, Mr. WATTS of Oklahoma, Mrs. SEASTRAND, Mr. BARTON of Texas, Mr. BRYANT of Tennessee, Mr. YOUNG of Arkansas, Mr. LEWIS of Kentucky, Mr. STEARNS, and Mr. MCINTOSH) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 27, 1995

Additional sponsors: Mr. STENHOLM, Mr. BARCIA, Mr. BLILEY, Mr. PETERSON of Minnesota, Mr. HOSTETTLER, Mr. HOLDEN, Mrs. CHENOWETH, Mr. VOLKMER, Mr. MANZULLO, Mr. KLINK, Mr. SCARBOROUGH, Mr. TAUZIN, Mr. HASTERT, Mr. LIPINSKI, Mr. ISTOOK, Mr. BURTON of Indiana, Mr. HUTCHINSON, Mr. GUTKNECHT, Mr. DOOLITTLE, Mr. BARTLETT of Maryland, Mr. TIAHBT, Mr. CRANE, Mr. SHADEGG, Mr. COLLINS of Georgia, Mr. BARRETT of Nebraska, Mr. MCDADE, Mr. MASCARA, Mr. SALMON, Mr. BONO, Mr. GRAHAM, Mr. HUNTER, Mr. SOLOMON, Mr. UNDERWOOD, Mr. WICKER, Mr. WAMP, Mr. ORTIZ, Mr. TAYLOR of North Carolina, Mr. TAYLOR of Mississippi, Mr. ENSIGN, Mrs. CUBIN, Ms. ROS-LEHTINEN, Mr. BOEHNER, Mr. THORNBERRY, Mr. HASTINGS of Washington, Mr. LIGHTFOOT, Mr. PORTMAN, Mr. HAYES, Mr. DIAZ-BALART, Mr. CRAPO, Mrs. WALDHOLTZ, Mr. PAXON, Mr. MCCOLLUM, Mr. BACHUS, Mr. BROWNBACK, Mr. RAHALL, Mr. BAKER of Louisiana, Mr. BARR, Mr. PARKER, Mr. HERGER, Mr. RADANOVICH, Mr. RIGGS, Mr. SAM JOHNSON of Texas, Mr. MANTON, Mr. DEAL of Georgia, Mr. DELAY, Mr. POMBO, Mr. SOUDER, Mr. DICKEY, Mr. BE-

REUTER, Mr. STOCKMAN, Mr. McCRERY, Mr. OBERSTAR, Mr. WHITFIELD, Mr. COBURN, Mr. ROEMER, Mr. BUNN of Oregon, Mr. MICA, Mr. CALVERT, Mr. BUYER, Mr. FUNDERBURK, Mr. STUMP, Mr. MYERS of Indiana, Mr. KINGSTON, Mr. CALLAHAN, Mr. WALKER, Mr. WOLF, and Mr. NEUMANN

SEPTEMBER 27, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

# A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "~~Partial-Birth Abortion~~  
5 ~~Ban Act of 1995~~".

6 **SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.**

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

9 **~~CHAPTER 74—PARTIAL-BIRTH ABORTIONS~~**

*"Sec.*

*"1531 Partial-birth abortions prohibited.*

10 **~~§ 1531 Partial-birth abortions prohibited~~**

11 *"(a) Whoever, in or affecting interstate or foreign*  
12 *commerce, knowingly performs a partial-birth abortion*  
13 *and thereby kills a human fetus shall be fined under this*  
14 *title or imprisoned not more than two years, or both.*

1       “(b) As used in this section, the term ‘partial-birth  
 2 abortion’ means an abortion in which the person perform-  
 3 ing the abortion partially vaginally delivers a living fetus  
 4 before killing the fetus and completing the delivery.

DEF

5       “(c)(1) The mother, father, and if the mother has  
 6 not attained the age of 18 years at the time of the abor-  
 7 tion, the maternal grandparents of the fetus, may in a civil  
 8 action obtain appropriate relief.

9       “(2) Such relief shall include—

10           “(A) money damages for all injuries, psycho-  
 11 logical and physical, occasioned by the violation of  
 12 this section; and

13           “(B) statutory damages equal to three times  
 14 the cost of the partial-birth abortion,  
 15 even if any party consented to the performance of an abor-  
 16 tion.

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

22       “(e) It is an affirmative defense to a prosecution or  
 23 a civil action under this section, which must be proved by  
 24 a preponderance of the evidence, that the partial-birth

1 abortion was performed by a physician who reasonably be-  
2 lieved—

3 “(1) the partial-birth abortion was necessary to  
4 save the life of the woman upon whom it was per-  
5 formed; and

6 “(2) no other form of abortion would suffice for  
7 that purpose.”

8 (b) ~~CLERICAL AMENDMENT.~~—The table of chapters  
9 for part I of title 18, United States Code, is amended by  
10 inserting after the item relating to chapter 73 the follow-  
11 ing new item:

“74. Partial-birth abortions ..... 1531”

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19 “§ 1531. Partial-birth abortions prohibited

20 “(a) Whoever, in or affecting interstate or foreign com-  
21 merce, knowingly performs a partial-birth abortion and  
22 thereby kills a human fetus shall be fined under this title  
23 or imprisoned not more than two years, or both.

1       “(b) As used in this section, the term ‘partial-birth  
2 abortion’ means an abortion in which the person perform-  
3 ing the abortion partially vaginally delivers a living fetus  
4 before killing the fetus and completing the delivery.

5       “(c)(1) The father, and if the mother has not attained  
6 the age of 18 years at the time of the abortion, the maternal  
7 grandparents of the fetus, may in a civil action obtain ap-  
8 propriate relief, unless the pregnancy resulted from the  
9 plaintiff’s criminal conduct or the plaintiff consented to the  
10 abortion.

11       “(2) Such relief shall include—

12               “(A) money damages for all injuries, psycho-  
13 logical and physical, occasioned by the violation of  
14 this section; and

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

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

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23 a civil action under this section, which must be proved by  
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“74. Partial-birth abortions ..... 1531”.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

November 1, 1995  
(House)

## STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 1833 -- Partial-Birth Abortion Ban Act of 1995  
(Rep. Canady (R) FL and 115 others)

The President believes that the decision to have an abortion should be between a woman, her conscience, her doctor, and her God. He believes that legal abortions should be safe and rare. The President has long opposed late term abortions except where they are necessary to protect the life of the mother or where there is a threat to her health, consistent with the law. The Supreme Court has ruled that "Roe forbids a state from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health." Therefore, the Administration cannot support H.R. 1833 because it fails to provide for consideration of the need to preserve the life and health of the mother, consistent with the Supreme Court's decision in Roe v. Wade.

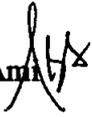
### Pay-As-You-Go Scoring

H.R. 1833 would affect both direct spending and receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimate of this bill is zero.

THE WHITE HOUSE  
WASHINGTON

April 9, 1996

NOTE TO MELANNE VERVEER  
BETSY MYERS  
ELENA KAGAN  
JENNIFER KLEIN  
DEBBIE FINE  
JUDY GOLD

From: Jeremy Ben-Ami 

Subject: HR1833 Floor debate

FYI, attached are Rep. Johnson's floor remarks. They are not especially helpful. However, also note on the second page Rep. Becerra's remarks. His wife is apparently a high-risk ob-gyn, and he quotes ACOG's position for the record.

I don't think this is too useful to include for the President's briefing. Let me know if you disagree.

whether it be chemical poisoning or suction, dismemberment of a baby, in this case a partially delivered baby killed with brain suction, this must be brought to the forefront so the people know exactly what is going on.

I hope the President says to the bill that he will sign it. I hope he signs it. It is not likely. He will have earned the legacy of being the abortion President. What a tragic, what a pathetic legacy to be the abortion President, especially a man who once in his past used to be pro-life.

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am sorry the gentleman would not yield. I wanted to point out it does say it was the Conference of Catholic Bishops that created that poster.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Hawaii [Mrs. MINK].

(Mrs. MINK of Hawaii asked and was given permission to revise and extend her remarks.)

Mrs. MINK of Hawaii. Mr. Speaker, it is really tragic, tragic that the personal problems and the anxieties of women who face these very, very difficult decisions that must be made with respect to their health and their safety and the integrity of their family and to have those tragic circumstances of a person's life be used under these circumstances to advance this political goal of trying to do away with abortion.

But I think that the debate clearly points out that what is being attempted here is a denunciation of the rights of women that have been created by the U.S. Supreme Court. That is what is at stake here.

It is not this procedure that is used so few times out of necessity, but it is the principle of interfering with the doctor and the women that require this procedure, taking away that right of a woman to make this difficult decision, taking away the right of a woman to consult with her physician about what needs to be done, allowing the Congress of the United States to make these decisions. I think that is the most reprehensible thing we could even think of.

We talk about getting big government off of the backs of people. Well, let us concentrate about what we are trying to do today. We are trying to take away the rights of reproductive freedom that the Supreme Court has established, which the courts have said we must not interfere, and this is what is before us today, and that is why this Congress must oppose it. That is why this bill must never become law. It is trying to dictate to the doctors how to practice and criminalize their profession. I think it is outrageous.

Mrs. SCHROEDER. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas [Ms. JACKSON-LEE], a distinguished member of the Committee on the Judiciary.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentlewoman for yielding this time to me.

I am not a criminal, Mr. Speaker. And I am ashamed that what we are doing today may, in fact, makes innocent women, women who love children, criminals. Coreen Costello, Mary-Dorothy Lines, Claudia Ades, Viki Wilson, Tammy Watts, and Vikki Stella, all women who offered their most personal stories about wanting to conceive and to have a loving child and yet coming upon a physical and debilitating need to have a medical procedure.

Today we have legislation that will not cover all cases where a woman's life is in danger. The bill will not provide a health exception. H.R. 1833 creates obstacles to medical research, and tragically the life exception will not protect women. Criminals, we are making. Women, their families, their physicians. This is not the way to go.

In order to suggest that those of us who rise to support the rights of women do not have a love of a higher authority, how shameful. This is a bad bill. It does not help this country. It does not help women, and it certainly does not help the love we have for our children.

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

Mr. Speaker, I want to respond to a point that was made a few moments ago about this bill criminalizing the activities of women and making criminals of women. That is simply not true.

I would suggest that before Members come to the floor to speak about the bill, they might want to read the bill. The bill says clearly a woman upon whom a partial-birth abortion is performed may not be prosecuted under this section.

Mr. Speaker, I reserve the balance of my time.

□ 1930

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from New York [Mrs. MALONEY].

Mrs. MALONEY. Mr. Speaker, I rise in opposition to H.R. 1833. In yet another attempt to roll back a woman's right to choose, to roll back Roe versus Wade, and make all abortions illegal, choice opponents are putting forward legislation which could endanger a woman's life and her ability to have children in the future.

How odd that the majority party would describe itself as family friendly. Plain and simple, the supporters of this bill feel it is more important to save a doomed fetus than the life of a mother and her ability to have children in the future.

Coreen Costello is the mother of two. The Dole amendment would not have allowed her to use this procedure. Coreen Costello said in front of the Senate in her testimony that she would have taken any child that God gave her, regardless of any handicap. But her child was a child that could not live. Fortunately for Coreen and her family, her doctor was able to save her

life and her fertility. She is now expecting her next child.

But what about the women who come after Coreen? What will happen to them, their health, their lives, their families, if this life-saving procedure is outlawed? Congress has no place in their decisions and no place in their tragedies.

Mrs. SCHROEDER. Mr. Speaker, I yield 3 minutes to the gentlewoman from Connecticut [Mrs. JOHNSON].

Mrs. JOHNSON of Connecticut. Mr. Speaker, I thank the gentlewoman from Colorado for yielding me time.

If your daughter and son-in-law were faced with the extraordinary tragedy of discovering extreme fetal deformity late in pregnancy or a life threatening development with abortion being the only alternative, would you, would you, each individual Member of this body, want her to have available to her the procedure that was the least threatening to her life and the most protective of her future reproductive capability and the most respectful of the need for the parents to be and their living children to mourn their tragic loss?

Consider the experience of Coreen Costello. Mrs. Costello and her husband hold strong pro-life views, but were suddenly faced with the terrible and painful truth of the problems with her pregnancy. Specialists had determined that the baby had a lethal neurological disorder. Doctors at Cedars-Sinai told the Costellos that their daughter would not live, and due to the amniotic fluid pooling in Mrs. Costello's uterus, as well as the baby's position, there was a serious risk of a ruptured uterus. Natural birth or an induced labor were impossible. Coreen Costello then considered a caesarean section, but the doctors at her hospital were adamant that the risk to her health and life were simply too great.

She and her husband chose not to risk leaving their other children motherless by opting for a D&E procedure. Because of the safety of the procedure, Coreen is now pregnant again.

What right have we here in Congress on this floor to say to this family that you should have risked mom's life and ignored your doctor's advice? By what authority do we tell these women that we know more in each of their cases than their own physicians?

It is ironic that some of you here are advocating legislation that would assure that managed care plans guaranteed physicians the right to tell women all the medical possibilities for treatment, and yet you will legislate here tonight the denial to women of America who face terribly tragic, painful, personal circumstances of the right to have the medical procedure that in truth is safest for them and most protective of their reproductive capability, assures them to the maximum extent possible that they will have more children in their future.

Men of the House of Representatives, women who are Members of Congress,

if it were your daughter, would you not want her life and reproductive hopes and dreams protected? Of course you would. Do not do this shortsighted, mean-spirited, terrible thing to women in our Nation.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentlewoman from North Carolina [Mrs. MYRICK].

Mrs. MYRICK. Mr. Speaker, I honestly believe that a lot of the problems we have today in society stem from the fact that we have no regard for human life. You can call me old-fashioned, but I believe every individual born into this world is special, needed and important.

You know, our forefathers shared this philosophy when they wrote in our Declaration of Independence that we are endowed by our Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.

I ask that we consider the difference. A doctor performs a painful, cruel, partial abortion one day, and it is accepted. And then the next day, if that same mother gave birth to the same age child and then she killed her child, she would be charged with murder. Only a few hours separates these two acts, but one is considered justified and accepted, even promoted, and the other is considered unjust. There is something wrong with our society today if we continue to justify such an unjust procedure.

Mrs. SCHROEDER. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Speaker, I know that there are some Members of Congress who believe they know everything about everything, but maybe once in awhile Members of this body might want to show a little humility. We are discussing a procedure which, as I understand it, is used in .01 of 1 percent of abortions, a situation which occurs only under the most tragic circumstances.

Day after day we hear from our conservative friends about how the big, bad Government should leave people alone and get off of the backs of people. I would urge our conservative friends to heed that advice on this occasion.

This is a tragic circumstance. Let the woman, let her family, let the physician make that decision, not the politicians in Congress.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Missouri [Mr. VOLKMER].

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

Mr. VOLKMER. Mr. Speaker, I rise today in strong support of H.R. 1833, the Partial Birth Abortion Ban Act. Today's battle for the rights of the unborn differ from previous prolife and proabortion debates. Yes, this debate today will not stop all abortions. It will only stop one procedure, the partial birth abortion. It brings to light

the fact that when a woman and her unborn child have this type of procedure, that only the woman leaves the operating room.

Mr. Speaker, I think we are all forgetting one thing: A third trimester baby has a very good chance of living, if it was allowed to be born without interference. I urge my colleagues who might otherwise not support a prolife piece of legislation to support this legislation, which simply and narrowly protects against partial birth abortions.

This debate is not about a woman's right to choose, because there are other options. This debate today is about putting an end to a procedure that kills a child just a few inches from full birth.

Mrs. SCHROEDER. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. BECERRA] a distinguished member of the Committee on the Judiciary and also the spouse of a distinguished physician.

Mr. BECERRA. Mr. Speaker, I thank the gentlewoman for yielding me time.

Mr. Speaker, I am confused. The debate I am hearing from that side has nothing to do with the medical procedure that it seems we are trying to ban. I continue to hear people talk about how we are conducting abortions on babies that otherwise would be able to survive; if the pregnancy were to go to term, we would have a living baby. When in fact, as my wife who happens to be a high-risk obstetrician-gynecologist who deals specifically with women who have difficult pregnancies, has said, this is not a procedure where you are talking about a fetus that will go to term and where you will have a healthy baby born. This is a procedure that is used when it is fairly clear that the baby has no chance to live, and to allow the pregnancy to go to term would jeopardize the health and perhaps the life of the woman. So it seems like the debate is not really on point.

Now, let me read something that came from the American College of Obstetricians and Gynecologists, those doctors that are asked to perform these types of procedures and to protect the women involved.

They state:

The college finds very disturbing any action by Congress that would supersede the medical judgment of trained physicians and that would criminalize medical procedures that may be necessary to save the life of a woman. Moreover, in defining what medical procedures doctors may or may not perform, the bill employs terminology that is not even recognized in the medical community, demonstrating why congressional opinion should never be substituted for professional medical judgment.

Mr. Speaker, I think that states it best. We have people here who are trying to impose their opinion on a medical profession where technical, highly sophisticated, highly trained individuals are being asked to perform lifesaving procedures.

It does not make sense. We should stay out of this. We should let a woman

make that very difficult choice of what type of procedure she would need to preserve her health and her life, and perhaps have a chance to have a pregnancy that will be able to go to term.

Mr. Speaker, I would urge Members to seriously consider voting strongly against this particular bill, because it does not do what the proponents say.

Mrs. SCHROEDER. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore (Mr. ROGERS). The gentlewoman from Colorado is recognized for 2½ minutes.

Mrs. SCHROEDER. Mr. Speaker, as a woman, when I am with my doctor, I want that doctor focused on my health, and not on their criminal liability. What this bill does is it will focus any doctor on steering away from what they think might be best for the patient, because they could serve 2 years in prison or they could have a criminal record, or on and on and on.

Mr. Speaker, I think every citizen thinks that that is a zone of privacy. This Congress has never interfered in that zone of privacy between a family and their physician. Today, for the first time, if this bill becomes law, we will be moving to make an act criminal by a doctor. I much more trust my doctor than I do Members of this body. I am sorry to say, so I get very angry when I hear some of the things that have been said here.

I have heard people talk about "inhuman, brutal, gruesome, terrible." We have seen the drawings. The drawings were not done by the American College of Gynecologists and Obstetricians. They do not support this bill. They were done, as they say rightfully, by the Catholic Conference of Bishops. Now, they have the right to make their case here, but, please, again, I think most Americans trust their doctors to make those difficult decisions.

We have heard about pain, we have heard about everything. I sat through those hearings. The anesthesiologists who testified said that there is pain in everything. There is pain in birth. So if we are just going to outlaw anything that is painful, we are going to be a very busy Congress. What they were saying is what happened, some of the advocates were misstating anesthesiology procedures. That is possible, because people here are not doctors.

□ 1945

But they were not supporting the bill. They were just trying to set the record straight. Bottom line, as the gentlewoman from Kansas said, these are in very tragic circumstances. Only .01 percent of all abortions would be affected by this. These are basically a handful of doctors, and thank goodness a handful of families. But I must say as one who has been there, one who almost lost her life, I would be terribly resentful of this happening, and I never thought it could happen to me, so I say to people, please, please, I know this is a difficult issue.

Anything you cannot explain, anything that is difficult to explain, people hesitate to vote against. But please

Wednesday, December 6, 1995

# Daily Digest

## Senate

### Chamber Action

*Routine Proceedings, pages S18037-S18116*

**Measures Introduced:** Three bills and one resolution were introduced, as follows: S. 1450-1452, and S. Con. Res. 34. *Pages S18099-S18100*

**Measures Reported:** Reports were made as follows: H.R. 665, to control crime by mandatory victim restitution, with an amendment in the nature of a substitute. (S. Rept. No. 104-179) *Page S18099*

**Measures Passed:**

**Housing for Older Persons Act:** By 94 yeas to 3 nays (Vote No. 590), Senate passed H.R. 660, to amend the Fair Housing Act to modify the exemption from certain familial status discrimination prohibitions granted to housing for older persons, after agreeing to a committee amendment in the nature of a substitute. *Pages S18063-71*

**Flag Desecration:** Senate began consideration of a motion to proceed to the consideration of S.J. Res. 31, proposing an amendment to the Constitution of the United States authorizing the Congress and the States to prohibit the physical desecration of the flag of the United States. *Pages S18037-49, S18056-57, S18059-63, S18086-87*

A motion was entered to close further debate on the motion to proceed to consideration of the resolution and, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, a vote on the closure motion will occur on Friday, December 8, 1995. *Page S18086*

**Partial-Birth Abortion Ban:** Senate resumed consideration of H.R. 1833, to amend title 18, United States Code, to ban partial-birth abortions, taking action on amendments proposed thereto, as follows: *Pages S18071-86*

**Pending:**

(1) Smith Amendment No. 3080, to provide a life-of-the-mother exception. *Pages S18071-86*

(2) Dole Amendment No. 3081 (to Amendment No. 3080), of a perfecting nature. *Pages S18071-86*

(3) Pryor Amendment No. 3082, to clarify certain provisions of law with respect to the approval and marketing of certain prescription drugs. *Page S18071*

(4) Boxer Amendment No. 3083 (to Amendment No. 3082), to clarify the application of certain provisions with respect to abortions where necessary to preserve the life or health of the woman. *Page S18071*

(5) Brown Amendment No. 3085, to limit the ability of deadbeat fathers and those who consent to the mother receiving a partial-birth abortion to collect relief. *Pages S18071-72*

A unanimous-consent agreement was reached providing for further consideration of the bill and amendments pending thereto, on Thursday, December 7, 1995. *Page S18072*

**Federal Reporting Requirements:** Senate concurred in the amendment of the House to S. 790, to provide for the modification or elimination of Federal reporting requirements, with a further amendment proposed thereto, as follows: *Pages S18106-14*

Dole (for McCain/Levin) Amendment No. 3086, to make certain technical corrections to the House amendment. *Page S18114*

**Appointments:**

**Commission for the Preservation of America's Heritage Abroad:** The Chair, on behalf of the President pro tempore, pursuant to Public Law 99-83, appointed the following individuals to the Commission for the Preservation of America's Heritage Abroad: Rabbi Chaskel Besser, of New York, E. William Crotty, of Florida, and Ned Bandler, of New York. *Page S18115*

**Messages From the President:** Senate received the following messages from the President of the United States.

Transmitting the report on the administration of export controls; referred to the Committee on Banking, Housing, and Urban Affairs. (PM-100). *Pages S18098-99*

**Messages From the President:** *Pages S18098-99*

**Messages From the House:** *Page S18099*

**Measures Referred:** *Page S18099*

**Measures Placed on Calendar:** *Page S18099*

**Measures Read First Time:** *Page S18114*

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To provide a life-of-the-mother exception.

IN THE

g., 1st Sess.

AMENDMENT No 3080

By *Smith*.....

e,

To *5 1833*.....

Referred .....

.....

GPO : 1994 84-476 (rnc)

rinted

AMENDMENT intended to be proposed by MR. SMITH

Viz:

On page 2, at the end of line 9, insert the following:

This paragraph does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To perfect the pending amendment providing a life-of-the-mother exception.

IN THE SENATE

1st Sess.

AMENDMENT No 3081

By *Dole* .....

To *S. 1833* .....

*to amend no. 3080* .....

Referred to \_\_\_\_\_

GPO : 1994 64-476 (mac)

Or

ted

AMENDMENT intended to be proposed by MR. DOLE

Viz:

~~To perfect~~ <sup>*IN*</sup> the pending amendment, strike all after the word "This" and insert in lieu thereof the following:

paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.

*This paragraph shall be inserted in section 101 of the Act (P.L. 101-203) to read:*

O:\BAI\BAI95.C56

S.L.C.

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To clarify the application of certain provisions with respect to abortions where necessary to preserve the life or health of the woman.

IN THE \_\_\_\_\_ AMENDMENT No. 3083 \_\_\_\_\_ 1st Sess.

By Boxer.....

To a To amdt no. 3082..... birth

H.R. 1233.....

GPO : 1994 84-476 (mac)

Referr \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. BOXER

Viz: At the end of the amendment, add the following

- 1 ~~On page 2, line 9, add after the period the following~~
- 2 new sentence: "The ~~preceding sentence~~ prohibition in Section 1531 (a) shall not apply to
- 3 any abortion performed prior to the viability of the fetus,
- 4 or after viability where, in the medical judgment of the
- 5 attending physician, the abortion is necessary to preserve
- 6 the life of the woman or avert serious adverse health con-
- 7 sequences to the woman."

of Title 18, United States Code,

O:\BAI\BAIS5.C44

S.L.C.

*Handwritten signature: Hank Brown*

*Handwritten initials: MB*

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To limit the ability of dead beat dads and those who consent to the procedure to collect relief as provided for in this section.

IN THE

AMENDMENT No 3085

.st Sess.

By *Brown* .....

To a: To *H.R. 1833* .....

l-birth

.....

.....

Referr

GPO : 1984 66-475 (max)

and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BROWN

Viz:

- 1 On page 2, line ~~10~~<sup>14</sup>, strike "(c)(1) The father," and
- 2 insert the following: "(c)(1) The father, if married to the
- 3 mother at the time she receives a partial-birth abortion
- 4 procedure,".