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**Abortion Partial Birth - Notes and  
Memos**

Abortion - partial birth -  
notes + memos

THE WHITE HOUSE  
WASHINGTON

July 23, 1998

**MEMORANDUM TO:**

The President  
The Vice President  
Erskine Bowles  
Paul Begala  
Bruce Reed  
Elena Kagan

**FROM:** Rahm Emanuel

**SUBJECT:** Poll from Geoffrey Garin

Thought you may find the attached poll interesting.

## **CONFIDENTIAL MEMORANDUM**

**TO:** Rahm Emanuel  
**FROM:** Geoffrey Garin  
**DATE:** July 22, 1998  
**RE:** The Partial Birth Abortion Override

Recent polling we have conducted for the Center on Reproductive Law and Policy shows clearly that playing defense (or, worse yet, just being silent) in the partial birth abortion debate is a dangerous proposition, because it gives the other side too much freedom to define their position as mainstream and the President's position as "radical."

More importantly, our polling also shows there is a surprising opportunity here to turn the tables on the other side by going on the offensive and aggressively attacking their position – specifically, their opposition to any exception to the partial birth abortion ban for cases involving serious harm to the woman's health – as being extreme. Based on our polling, here is how we should be drawing the battle lines on this matter:

*The partial birth abortion ban as drafted and passed by the anti-choice forces in Congress is an extreme measure because it doesn't provide exceptions for serious harm to the woman's health. If enacted, this law would lead to undue government interference in medical decisions that should be left up to women and their doctors, because in its current form this law would put women at risk by forcing them to use a more dangerous abortion procedure to avoid serious harm to their health than the one their doctor would otherwise have recommended.*

*This problem is compounded by the fact that recent court decisions and medical interpretations (from the College of Obstetricians and Gynecologists, among others) suggest the law in its current form would ban the safest procedures to protect a woman's health throughout the pregnancy.*

*A reasonable ban on partial birth abortion would include an exception for serious harm to the woman's health. The ban as passed by Congress is an extreme measure that fails to provide for this common sense exception – because its supporters are more interested in gaining political support from powerful, conservative groups that basically oppose a woman's right to choose in all forms.*

Key findings from our research include the following:

1. By 64-24, voters say they favor the proposal in Congress that would ban partial birth abortions and make them illegal except when necessary to save the life of the mother. **However, voters say by 65% to 23% there should be an exception to the ban in cases when “the woman’s doctor determines that the procedure is necessary to prevent serious harm to the woman’s health.”** Even among those who strongly favor a partial birth abortion ban, 63% say there should be an exception for preventing serious harm to the woman’s health.

2. When told that Congress has passed a bill banning partial birth abortions except when necessary to save the life of the woman, but President Clinton vetoed the ban because it doesn’t allow for any exceptions in cases when the procedure is necessary for preventing serious harm to the woman’s health, voters say they agree with the President rather than Congress on this matter by 44% to 34%. Democrats support the President by 58% to 24%, and Independents support his position by 47% to 30%. Republicans support the congressional position by 51% to 25%; pro-choice Republicans are evenly divided (38% Clinton, 34% Congress).

3. When asked what their reaction would be if their member of Congress opposed making any exceptions to the partial birth abortion ban for cases when the procedure is needed to prevent serious harm to the woman’s health, 45% say they would be *less* like to vote for that member, while just 18% say they would be more likely to vote for someone as a result of this position. Pro-choice Republicans split 48% to 20% against a member of Congress who opposes the health exception.

4. When voters are read some criticisms of the congressional ban, two-thirds of voters rate six of them as causing them very or fairly serious concerns. These include: (1) this law represents government interference in personal and difficult medical decisions that should be left up to women, their families, and their doctors

(55% very serious, 20% fairly serious); (2) by passing this law, politicians and government would be putting women at risk by forcing them to use a more dangerous abortion procedure than the one their doctor would have otherwise recommended (53% very serious, 20% fairly serious); (3) this law is so extreme that it doesn't provide exceptions for serious harm to the woman's health (52% very serious, 25% fairly serious); and, (4) this law is a deceptive measure by politicians to focus public attention on the difficult subject of late-term abortion, while actually banning safe and legal procedures throughout pregnancy(46% very serious, 22% fairly serious).

5. The political motivations of the authors of this extreme version of the partial birth abortion ban can be attacked with great credibility. By 59% to 19%, voters say that politicians who are trying to impose more restrictions on abortion are mainly concerned with gaining support for powerful conservative religious groups, rather than with protecting unborn life.

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Abortion - partial birth -  
notes + memos

THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
5/14/97

May 13, 1997

'97 MAY 13 PM 5:41

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED  
ELENA KAGAN

SUBJECT: DASCHLE AND FEINSTEIN AMENDMENTS

I fully agree - no one can  
seriously say D. women's  
stop for non-abortion w/  
out human damage  
lets do it now

B.C

As you know, the Senate is taking up the Partial Birth Abortion Act (HR 1122) this afternoon. We expect Senator Daschle and Senator Feinstein to offer substitute amendments during the course of the debate. We recommend that you send a letter to Congress indicating that you would accept either of these substitute proposals. John Hilley and Rahm strongly agree, believing that a letter of this kind will help prevent a veto override on this issue. The proposed letter is attached; if you agree to send it, we will put it into final form for your signature.

Background

Both the Feinstein and the Daschle amendments prohibit post-viability abortions generally. They thus differ in two crucial ways from HR 1122: (1) they apply to all procedures, including but not limited to the "partial birth" procedure, and (2) they apply only to abortions performed after the fetus has become viable.

Both amendments impose civil, rather than criminal, penalties. Feinstein's would fine the physician up to \$10,000 for a violation. Daschle's would result in a fine of up to \$100,000, or suspension or revocation of the doctor's medical license (and in the case of a second or subsequent offense, \$250,000 or revocation of the license).

Most critically, both amendments contain a health exception, though of different kinds. The Feinstein legislation would exempt an abortion if, "in the medical judgment of the attending physician, the abortion is necessary to . . . avert serious adverse health consequences to the woman." This language is essentially identical to the language you have used in calling for a health exception to the Partial Birth Act. The Daschle language is more stringent. It exempts an abortion when the physician "certifies that continuation of the pregnancy would . . . risk grievous injury to [the mother's] physical health." "Grievous injury" is then defined as "a severely debilitating disease or impairment specifically caused by the pregnancy, or an inability to provide necessary treatment for a life-threatening condition."

The five women you spoke with before your last year's veto would fall within even the Daschle exception, assuming the truth of their accounts. Each said that her doctor advised her that an abortion was necessary to prevent a risk of grave physical harm -- for example, of serious

damage to her reproductive system. Daschle himself believes that his bill protects such women, and is willing to refer to these women when he offers his amendment. You should be aware, however, of a slight chance that one of the choice groups will persuade one or more of these women to oppose the Daschle bill on the ground that it would not protect women in her situation.

The American College of Obstetricians and Gynecologists today endorsed the Daschle amendment, stating that it "provides a meaningful ban [on post-viability abortions] while assuring women's health is protected." (ACOG took no position on the Feinstein amendment, which the group rightly views as a less serious proposal.) The AMA has refused to take a position on any of the pending legislative proposals, but yesterday issued a study (1) expressing skepticism about the need to use the "partial birth" procedure, but stating that doctors must retain discretion to use medical judgment in selecting procedures, and (2) stating that post-viability abortions are almost never necessary to save a woman's life or prevent serious harm to her health, given the alternative at this stage of delivering the fetus.

The choice groups (somewhat reluctantly) support the Feinstein language, but oppose the Daschle proposal. They argue that the stringency of Daschle's health exception -- including its limitation to cases of physical harm -- undermines the comprehensive protections announced in Roe regarding the health of the woman. The Office of Legal Counsel of the Justice Department similarly believes that both the Daschle and the Feinstein amendments, properly read, violate Roe because they countenance tradeoffs involving women's health. (OLC thinks, however, that a court might be able to interpret the Feinstein amendment so narrowly as to avoid this problem.)

John Hilley believes that a letter from you supporting the Daschle amendment is of crucial importance in sustaining a veto. He worries that if the Daschle amendment goes down to a decisive defeat, many Senators who previously supported you will switch and vote for HR 1122. He thinks a letter of endorsement from you will strengthen the prospects for the Daschle amendment.

### Recommendation

We recommend that you endorse the Daschle amendment in order to sustain your credibility on HR 1122 and prevent Congress from overriding your veto. You have spent many months calling on Congress to pass a bill that contains a sufficiently protective, but also appropriately confined, health exception -- as you said in a letter to the Cardinals, not a health exception that "could be stretched to cover most anything," but a health exception that "takes effect only where a woman faces real, serious adverse health consequences." Especially given ACOG's endorsement of the Daschle amendment, it will be difficult for you to make the case that Daschle's language does not adequately safeguard women's health. In these circumstances, declining to support the amendment will weaken your position and increase the chance that Congress will override your veto.

# DRAFT

Dear Senators Daschle and Feinstein:

I am writing to express support for your amendments prohibiting late-term abortions. If Congress were to substitute either of these amendments for the current H.R. 1122, I would sign the legislation.

As you know, I have long opposed late-term abortions, and I continue to do so except where necessary to save the life of a woman or prevent serious harm to her health. When I was Governor of Arkansas, I signed into law a bill that barred third-trimester abortions, with an appropriate exception for life or health. And last year, I made clear that I would sign such a bill at the federal level.

Your amendments, though differing in detail, both meet the standards I have set for such legislation. The amendments contain exceptions that will adequately protect the lives and health of the small group of women in tragic circumstances who need an abortion at a late stage of pregnancy to avert death or great injury. At the same time, the amendments prohibit any late-term abortions performed for elective reasons. This balance is an appropriate one, which I -- and, I believe, most Americans -- would gladly make the nation's law.

Sincerely,

THE PRESIDENT HAS SEEN  
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THE WHITE HOUSE  
WASHINGTON

~~copy to Bruce~~  
Then file - Abusive-partial birth -  
notes + memos

'97 APR 11 PM 4:03

Copied  
Hilley  
Kagan  
Thornton  
COS

April 10, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: John Hilley *John Hilley*  
Elena Kagan  
Tracey Thornton

SUBJECT: "Partial-Birth" Abortion

Any possibility  
we can go any  
distance to support  
the Baschler bill in  
its ~~structure~~ *structure* *form*  
work pointing out  
would reduce abortion uncertainty  
partial birth abortions -

ALTERNATIVES TO THIS PROCEDURE

You have asked whether the so-called partial-birth procedure is ever necessary to save the life of a woman or avert serious harm to her health. Considerable medical uncertainty surrounds this question. The doctors of the women you met with believed the procedure was necessary to prevent serious injury, and other doctors have said that the procedure, in certain circumstances, is or may be the safest one to use. Still other doctors have disputed that health considerations ever demand use of the procedure. *BS*

Perhaps the most reliable opinion is from the American College of Obstetricians and Gynecologists (ACOG), which issued a statement in January addressing the procedure. (ACOG, like most other medical groups, calls the procedure an intact dilatation and extraction or intact D&X.) According to the statement, "A select panel convened by ACOG could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of the woman." (Emphasis in original.) The statement then went on: "An intact D&X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision." In sum, doctors have other options, but those other options may be more risky or otherwise more undesirable from a medical standpoint.

Other groups of doctors, with a greater stake in the abortion controversy, have taken more definitive positions. The Society of Physicians for Reproductive Choice and Health issued a statement last month saying that "in complex obstetrical situations, dilatation and extraction is the safest procedure to use. It carries the least risk of bleeding, perforation, infection or trauma to the birth canal." On the other hand, a group of mostly pro-life physicians called PHACT has written that "there are absolutely no obstetrical situations requiring the destruction of a partially delivered

fetus," and indeed that the procedure involves serious risks of maternal hemorrhage, uterine rupture, and infection.

A recent article in the "New York Times" noted that the partial-birth procedure is only one of three procedures (all of them "pretty gruesome," as one doctor quoted in the article said) that can be used to end pregnancies after 20 weeks. The article reported that three of the twelve abortion specialists interviewed generally prefer the procedure on the ground that it poses less risk of uterine perforation. The article also noted that one doctor who does not usually use the procedure has done so on particular occasions because "the woman's anatomy or the fetus's size demanded it."

Given the state of medical evidence on this subject, an exception for women who need the procedure to prevent serious harm is appropriate. Such an exception would enable the attending doctor -- the person with the most relevant knowledge -- to make the complex decision whether the procedure is in fact medically necessary in a given set of circumstances. The uncertainties surrounding this issue, however, caution against your making any estimates of the number of women whose health, without this procedure, would be at risk of serious harm. Any such estimates, however large or small, would be difficult to support.

## HOUSE CONSIDERATION

On March 20 the House passed a bill identical to the one you vetoed last year (H.R. 1122) by a vote of 295-136, five (5) votes more than the two-thirds necessary to override a veto when all Members are present and voting. Since the September 1996 veto override vote in the House, only three Members -- all Republicans -- switched their votes from supporting your veto to supporting the legislation ( Representatives Shays (R-CT), Freylinghausen (R-NJ) and Sue Kelly (R-NY). They all indicated that an abortion rights advocate's recent statement that he lied about the number and circumstances of late-term abortions influenced their switch. All 73 Republican freshmen voted for the bill, and 22 of the 42 freshmen Democrats voted against it.

Two different alternatives were offered during the House debate on the floor. The first was a Hoyer (D-MD)/Greenwood (R-PA) substitute which would ban all post-viability abortion procedures with an exception if the woman's life were in jeopardy or if she faced "serious adverse health consequences" without the procedure. The Hoyer/Greenwood substitute was ruled non-germane by the House parliamentarian and a motion to appeal that ruling failed by a vote of 265-165. A second motion to recommit, offered by Congressman Frank (D-MA), would have amended the underlying bill to provide a health exception where the procedure is performed to spare a woman "serious adverse long-term physical health consequences." This health exception would have applied to both pre- and post-viability abortions using the "partial birth" method. That motion failed 149-282.

Opponents of these two alternatives argued that both health exceptions were either overly broad, and therefore would not prevent any procedures, or unnecessary, because there is no instance where this specific procedure is medically necessary to protect the health of the mother. House Judiciary Committee Chairman Henry Hyde, one of the leading proponents of the legislation, has gone even further in publicly stating that, while he will trade "a life for a life," he will "never trade life for health." Given Mr. Hyde's position, which has broad support in the Republican caucus, it is extremely unlikely that any late-term abortion measure that contains even a very narrow health exception will pass the House.

## SENATE CONSIDERATION

You will recall that last September the Senate failed by nine (9) votes to override your veto of this legislation (57-41). Senator Lott has indicated that "partial birth" will be on the floor when he has the votes to override a veto, but Senator Daschle is preparing for consideration at any time this month.

The Senate dynamic is somewhat different from the House. First, in his leadership role, Senator Daschle has taken a personal interest in trying to find a compromise that will pass and is also consistent with Roe vs. Wade. Both Senators Daschle and Mikulski recently spoke out strongly in a Democratic caucus meeting that Members should not make up their minds about this issue until after they have considered an alternative being crafted by Senator Daschle (discussed below).

To date, only one Senator who voted against the "partial birth" abortion ban last year has publicly announced that he intends to switch his vote to support the ban -- Senator Hollings, who is up for reelection in '98 and whose state of South Carolina recently enacted a "partial birth" ban (March 1997). Other states that have recently enacted similar bans are listed below.

For his part, Senator Daschle thoroughly understands this area and intends to cast a wide net to try to capture what he regards as the center here. He has held a number of meetings with his colleagues on both sides of the aisle and they have encouraged him to continue his efforts. His aim is to try to construct language that gets the votes to pass the Senate and he is talking to Senators personally to see what it will take to secure those votes. Senator Daschle also recognizes, though, that if he is unsuccessful in getting a majority vote, he still must get a strong vote on his alternative in order to keep enough Members voting to sustain the veto.

The Daschle alternative would ban all abortions after fetal viability unless the mother's life or health is truly endangered. The health exception is being drafted to cover three categories of medically diagnosable conditions based on their severity: (1) disease or illness related to the pregnancy itself, such as serious heart damage or severe hypertension; (2) inability to treat aggressive cancers or life-threatening conditions such as non-Hodgkin's lymphoma, breast cancer, leukemia or diabetes complications ; and (3) injury or loss of function such as paralysis, uterine rupture or future fertility. These categories set parameters to cover circumstances connected

rupture or future fertility. These categories set parameters to cover circumstances connected directly to continuation of the pregnancy but the ultimate decision of which conditions fit within these categories is left to the physician's best judgement. In terms of the sanctions, like the Republican bill, Daschle's alternative also provides for criminal penalties where the ban is violated. [Daschle one-pager attached]

There may be a series of targeted amendments offered as well that will be designed to focus attention on the health issue. For example, amendments could list specific health conditions that would be excepted like breast cancer or diabetes. Another approach would be an amendment that would require that the procedure most protective of a woman's health be used. These would be constructed as message-type amendments to be used only if necessary.

Basically, there are six (6) pro-choice Republicans very much in play for Daschle to pick-up on his compromise: Campbell, Chafee, Collins (ME), Jeffords, Snowe and Specter. Senator Snowe, who has been working closely with Daschle, has indicated that Hutchison (TX), Roth and Stevens are also possible pick-ups but they are long-shots. Daschle has asked Snowe to continue to work her Republican colleagues. With these Republican numbers, Daschle will have to get almost all 45 Democrats in order for his alternative to pass. During the last Congress, four (4) Democrats currently serving voted against a Boxer amendment (Hoyer/Greenwood-type language) which would have applied the ban post-viability only with a health exception: Breaux, Ford, Reid (NV) all three (3) pro-life and Conrad (mixed voting record on abortion). The pro-life Democrats will be the most difficult for Daschle to convince to vote for his alternative because of the strongly held pro-life view that there should be no exception for a woman's health. Both Reid and Breaux are up for reelection in '98. New Senators Landrieu and Cleland will require some work to get their support. In terms of pro-choice and mixed-voting-record Democrats who supported overriding your veto -- Biden, Conrad, Dorgan, Leahy, and Moynihan -- most, if not all, of them will vote for the Daschle alternative. Biden, Dorgan and Leahy voted for the Boxer amendment and Moynihan was absent the day of the vote.

Much of the outcome here depends on the procedural posture under which this compromise arises. While we do not know what that situation will be when the Senate takes this matter up, we can be sure that if the Republicans believe that the Daschle alternative actually has a chance of passing, they will demand at least a separate up or down vote on the underlying Republican bill and there would also be an up or down vote on Daschle. If both pass, both would go into conference with the House-passed bill that you vetoed last year, and we certainly cannot predict what the outcome would be of this conference which would be under the exclusive control of the Republicans. It is likely that they would simply come back with the bill you previously vetoed since most House Republicans, lead by Messrs. Hyde and Canady, are unlikely to accept any measure which contains a health exception. Another possibility is that they would keep both Daschle and the vetoed bill together but further narrow the health exception in the Daschle alternative. **Keep in mind though that the Daschle health exception only applies to abortions after viability. This means that, if they combine the Daschle alternative with the Republican bill, the Republican bill would control in cases where the "partial birth"**

**procedure is performed before viability and therefore, in such instances, there would only be an exception for the life of the mother but not her health.**

Procedurally, Daschle's vote count will be higher if Members are able to cast votes on both his alternative and on the underlying Republican bill -- there will be a lot of folks who would vote for both. Members like those who voted for the Boxer amendment and also supported an override would fit into this category. Leahy, Biden, Specter, Campbell and Dorgan are examples. In addition, both Cleland and Landrieu are candidates for voting for both versions. Hollings is obviously in this category now as is freshman Senator Tim Johnson (D-SD) who voted to override your veto when he was in the House. A measure which contained both the Daschle alternative and the underlying Republican bill would probably have the votes to pass the Senate.

Another component of this mix is the strong, unabashed pro-choice wing which includes Members like Boxer, Feinstein and Moseley-Braun. Bolstered by the pro-choice lobby, this group has warned Senator Daschle that they will not support his alternative if the health exception is too narrowly drawn. While this group is not a large one, the vote situation is so tenuous that Daschle does not have a vote to spare on his alternative. For now, he is continuing to canvas other Members and when he has a better idea of his vote count, he will be able to determine the best course of action to take with regard to this group. The language in the alternative is still fairly fluid and changes can be made to accommodate these Members; but in the end, this group will have to come back into the fold. Of course, there is absolutely no danger of any Senators in this group voting to override a veto.

Mention should also be made of Members who are up for re-election in 1998. Senator Harkin has painted for a number of these Democrats -- most notably Senators Murray, Dodd, and Feingold -- a very dire description of how his vote to sustain your veto played in his '96 race. As for Dodd, and to some degree Lieberman, another concern is the fact that moderate House Republican Chris Shays (CT) switched and voted to support the measure. The pro-life community is spending a substantial amount of money running TV ads in certain key states. But countering the Harkin experience is Senator Durbin's '96 race; Durbin has told a number of Members that what matters most is how they talk about this issue.

If the Daschle alternative does not pass, the question becomes which supporters of his alternative will vote for final passage of the Republican bill? As previously pointed out, a strong Daschle vote just shy of passing will likely help in much the same way the Boxer vote happened last year -- 47 Senators voted for her amendment and 41 voted to sustain the veto.

Finally, the ultimate success of Daschle's effort either in passing or getting veto override strength depends a great deal on the rhetorical battle that will become much more intense as this bill goes to the floor. So far, unlike the House, Senate Republicans have not been able to publicly unnerve the Daschle bloc. This is due more than anything to the hard work being put into this effort by Senator Daschle and his team. The fact that the effort has become a Leadership driven initiative is also critical. So the proponents' argument that the recent exposure of the "lies" told by the pro-

choice lobby should cause Senators to reevaluate their position is being countered by the Daschle camp with the fact that, unlike the Daschle alternative, the Republican bill would not stop a single abortion; it would merely result in abortion by other methods, all of which pose a greater risk to the woman's health. By contrast, the alternative would outlaw these late-term abortions entirely no matter what the method and thereby actually reduce the number of abortions in this country without putting women at unacceptable risk. Finally, the Daschle approach permits the argument that even if Congress overrides your veto, the Republican bill will be struck down because its pre-viability restrictions significantly intrude upon the essential holding of the Roe vs. Wade decision. Enactment of the Daschle alternative allows Congress to pass a comprehensive, constitutional ban to stop unnecessary abortions of viable fetuses and is a ban that you would sign.

**STATES THAT HAVE RECENTLY ENACTED PROCEDURE SPECIFIC BANS**

Georgia : "Partial-Birth" Ban (March 1997)

Michigan: "Partial-Birth" Ban (June 1997); legal challenge filed

Mississippi: "Partial-Birth" Ban (March 1997)

Ohio: "Dilation and Extraction" Ban (August 1995); enjoined by Federal district court and appeal filed with 6th circuit

South Carolina: "Partial-Birth" Ban (March 1997)

South Dakota: "Partial-Birth" Ban (March 1997)

Utah: "Partial-Birth" and "Dilation and Extraction" and "Saline Abortion" Bans (March 1996)

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

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

The bipartisan alternative to S. 6 would ban all abortions after fetal viability (when the fetus can sustain survivability outside the womb with or without life support) unless the mother's life or health is truly endangered. The health exception to the comprehensive ban is being written to cover only very rare situations that arise from complications of the pregnancy itself, such as serious heart damage (cardiomyopathy), severe hypertension (pre-eclampsia), and, as in the cases of some women carrying severely deformed fetuses, uterine rupture and other injuries; from pre-existing conditions that become very dangerous, such as complications from diabetes (blindness, amputation); or from newly diagnosed diseases, such as aggressive cancers (acute leukemia or breast cancer) that require treatment that cannot be given during pregnancy.

### **Constitutional Parameters Limiting Government Restriction of Abortion**

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

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

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

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

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

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

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

## HOUSE CONSIDERATION

On March 20 the House passed a bill identical to the one you vetoed last year (H.R. 1122) by a vote of 295-136, five (5) votes more than the two-thirds necessary to override a veto when all Members are present and voting. Since the September 1996 veto override vote in the House, only three Members -- all Republicans -- switched their votes from supporting your veto to supporting the legislation ( Representatives Shays (R-CT), Freylinghausen (R-NJ) and Sue Kelly (R-NY). They all indicated that an abortion rights advocate's recent statement that he lied about the number and circumstances of late-term abortions influenced their switch. All 73 Republican freshmen voted for the bill, and 22 of the 42 freshmen Democrats voted against it.

Two different alternatives were offered during the House debate on the floor. The first was a Hoyer (D-MD)/Greenwood (R-PA) substitute which would ban all post-viability abortion procedures with an exception if the woman's life were in jeopardy or if she faced "serious adverse health consequences" without the procedure. The Hoyer/Greenwood substitute was ruled non-germane by the House parliamentarian and a motion to appeal that ruling failed by a vote of 265-165. A second motion to recommit, offered by Congressman Frank (D-MA), would have amended the underlying bill to provide a health exception where the procedure is performed to spare a woman "serious adverse long-term physical health consequences." This health exception would have applied to both pre- and post-viability abortions using the "partial birth" method. That motion failed 149-282.

Opponents of these two alternatives argued that both health exceptions were either overly broad, and therefore would not prevent any procedures, or unnecessary, because there is no instance where this specific procedure is medically necessary to protect the health of the mother. <sup>a health exception</sup> <sup>powerfully explained</sup> This <sup>opposition to</sup> position has been ~~best summarized~~ by Judiciary Committee Chairman Henry Hyde, one of the leading proponents of the legislation. He has publicly stated that while he will trade "a life for a life," he will "never trade life for health." Given Mr. Hyde's position, which has broad support in the Republican caucus, it is extremely unlikely that any late-term abortion measure that contains even a very narrow health exception will pass the House.

## SENATE CONSIDERATION

You will recall that last September the Senate failed by nine (9) votes to override your veto of this legislation (57-41). Senator Lott has indicated that "partial birth" will be on the floor right after the recess.

The Senate dynamic is somewhat different from the House. First, in his leadership role, Senator Daschle has taken a personal interest in trying to find a compromise that will pass and is also consistent with Roe vs. Wade. Both Senators Daschle and Mikulski recently spoke out strongly in a Democratic caucus meeting that Members should not make up their minds about this issue until after they have considered an alternative being crated by Senator Daschle (discussed below).

To date, only one Senator who voted to sustain your veto has publicly announced that he intends

to switch his vote to support an override -- Senator Hollings, who is up for reelection in '98 and whose state of South Carolina recently enacted a "partial birth" abortion ban (March 1997). Other states that have recently enacted similar bans are listed below.

For his part, Senator Daschle thoroughly understands this area and intends to cast a wide net to try to capture what he regards as the center here. He has held a number of meetings with his colleagues on both sides of the aisle and they have encouraged him to continue his efforts. His aim is to try to construct language that gets the votes to pass the Senate and he is talking to Senators personally to see what it will take to secure those votes. Senator Daschle also recognizes, though, that if he is unsuccessful in getting a majority vote, he still must get a strong vote on his alternative in order to keep enough Members voting to sustain the veto.

The Daschle alternative would ban all abortions after fetal viability unless the mother's life or health is truly endangered. This health exception is being drafted to cover only very rare situations that arise from complications of the pregnancy itself, such as serious heart damage, severe hypertension and, as in the cases of some women carrying severely deformed fetuses, uterine rupture and other injuries; from pre-existing conditions that become very dangerous, such as complications from diabetes or from newly diagnosed diseases that require treatment that cannot be given during pregnancy. The alternative would also provide for criminal penalties where the ban is violated.

Basically, there are six (6) pro-choice Republicans very much in play for Daschle to pick-up on his compromise: Campbell, Chafee, Collins (ME), Snowe and Specter. Senator Snowe, who has been working closely with Daschle, has indicated that Roth and Stevens are also possible pick-ups but they are long-shots. Daschle has asked Snowe to continue to work her Republican colleagues. With these Republican numbers, Daschle will have to get almost all 45 Democrats in order for his alternative to pass. During the last Congress, four (4) Democrats currently serving voted against a Boxer amendment (Hoyer/Greenwood-type language) which would have applied the ban post-viability only with a health exception: Breaux, Ford, Reid (NV) all three (3) pro-life and Conrad (mixed voting record on abortion). These 3 pro-life Democrats will be the most difficult for Daschle to convince to vote for his alternative. In addition, new Senators Landrieu and Cleland will require some work to get their support. In terms of pro-choice and mixed-voting-record Democrats who supported overriding your veto -- Biden, Conrad, Dorgan, Leahy, and Moynihan -- most, if not all, of them will vote for the Daschle alternative. Biden, Dorgan and Leahy voted for the Boxer amendment and Moynihan was absent the day of the vote.

Much of the outcome here depends on the procedural posture under which this compromise arises. While we cannot predict what that situation will be when the Senate takes this matter up, we can be sure that if the Republicans believe that the Daschle alternative has a chance of actually passing, they will demand at least an up or down vote on the underlying Republican bill and there would also be an up or down vote on Daschle. If both pass, both would go into conference with the House-passed bill that you vetoed last year. We cannot predict what the outcome would be of this conference which would be under the exclusive control of the Republicans. It is likely that they would simply come back with the bill you previously vetoed

since most House Republicans, lead by Messrs. Hyde and Canady, are unlikely to accept any measure which contains a health exception. Another possibility is that they would keep both Daschle and the vetoed bill together but further narrow the health exception in the Daschle alternative. **Keep in mind though that the Daschle health exception only goes to abortions after viability. This means that, if they combine the Daschle alternative with the Republican bill, the Republican bill would control in cases where the "partial birth" procedure is performed before viability and therefore, in such instances, there would only be an exception for the life of the mother but not health.**

Procedurally, Daschle's vote count will be higher if Members are able to cast votes on both his alternative and on the underlying Republican bill -- there will be a lot of folks who would vote for both. Members like those who voted for the Boxer amendment and also supported an override would fit into this category. Leahy, Biden, Specter, Campbell and Dorgan are examples. In addition, both Cleland and Landrieu are candidates for voting for both versions. Hollings is obviously in this category now as well. A measure which contained both the Daschle alternative and the underlying Republican bill would probably have the votes to pass the Senate.

Another component of this mix is the strong, unabashed pro-choice wing which includes Members like Boxer, Feinstein and Moseley-Braun. Bolstered by the pro-choice lobby, this group has warned Senator Daschle that they will not support his alternative if the health exception is too narrowly drawn. While this group is not a large one, the vote situation is so tenuous that Daschle does not have a vote to spare on his alternative. For now, he is continuing to canvas other Members and when he has a better idea of what his vote count, he will be able to determine the best course of action to take with regard to this group. The language in the alternative is still fairly fluid and changes can be made to accommodate these Members; but in the end, this group will have to come back into the fold. Of course, there is absolutely no danger in any Member of this group voting to override a veto.

Mention should also be made of Members who are up for re-election in 1998. Senator Harkin has painted for a number of these Democrats a very dire description of how his vote to sustain your veto played in his '96 race -- most notably Senators Murray, Dodd, and Feingold. As for Dodd and to some degree Lieberman, another issue for these Members is the fact that moderate House Republican Chris Shays switched and voted to support the measure. The pro-life community is spending a substantial amount of money running TV ads in certain key states. But countering the Harkin experience is Senator Durbin's '96 race; he has told a number of Members that what matters most is how they talk about this issue.

If the Daschle alternative does not pass, the question becomes which supporters of his alternative will vote for final passage of the Republican bill? As previously pointed out, a strong Daschle vote just shy of passing will likely help in much the same way the Boxer vote happened last year -- 47 Senators voted for her amendment and 41 voted to sustain the veto.

Finally, the ultimate success of Daschle's effort either in passing or getting veto override strength depends a great deal on the rhetorical battle that will become much more intense when they

return. So far, unlike the House, Senate Republicans have not been able to publicly unnerve the Daschle bloc. This is due more than anything to the hard work being put into this effort by Senator Daschle and his team. The fact that the effort has become a Leadership driven initiative is also critical. So the proponents' argument that the recent exposure of the "lies" told by the pro-choice lobby should cause Senators to reevaluate their position is being countered by the Daschle camp with the fact that, unlike the Daschle alternative, the Republican bill would not stop a single abortion; it would merely result in abortion by other methods, all of which pose a greater risk to the woman's health. By contrast, the alternative would outlaw these late-term abortions entirely no matter what the method and thereby actually reduce the number of abortions in this country without putting women at unacceptable risk. Finally, the Daschle approach permits the argument that even if Congress overrides your veto, the Republican bill will never become law because it will be struck down by the Court as unconstitutional. Enactment of the Daschle alternative allows Congress to pass a comprehensive, constitutional ban to stop unnecessary abortions of viable fetuses and is a ban that you would sign.

#### **STATES THAT HAVE RECENTLY ENACTED PROCEDURE SPECIFIC BANS**

Georgia : "Partial-Birth" Ban (March 1997)

Michigan: "Partial-Birth" Ban (June 1997); legal challenge filed

Mississippi: "Partial-Birth" Ban (March 1997)

Ohio: "Dilation and Extraction" Ban (August 1995); enjoined by Federal district court and appeal filed with 6th circuit

South Carolina: "Partial-Birth" Ban (March 1997)

South Dakota: "Partial-Birth" Ban (March 1997)

Utah: "Partial-Birth" and "Dilation and Extraction" and "Saline Abortion" Bans (March 1996)

Abortion - partial birth -  
notes



Patricia F. Lewis

03/04/97 01:13:53 PM

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Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: Abortion

I talked to the reporter with *Our Sunday Visitor*. She said Doug Johnson, National Right to Life Committee, was making his remarks based on what Leon said in December.

What I said, as you advised, was that the President has never said that needed to be in the bill. He has said many times that he would sign this bill, if it contained an exception in cases where the procedure is necessary to save a woman's life or prevent serious harm to her health.

Thanks for the help.

Abortion-partial birth -  
notes + memos

THE WHITE HOUSE  
WASHINGTON

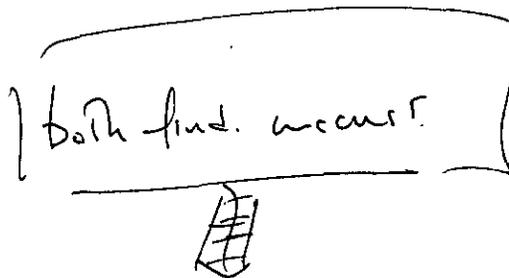
MEMORANDUM FOR: SYLVIA MATTHEWS  
JOHN PODESTA  
RAHM EMANUEL  
JOHN HILLEY  
MELANNE VERVEER  
VICKI RADD  
CHUCK RUFF

FROM: BRUCE REED  
ELENA KAGAN

SUBJECT: LATE TERM ABORTION LETTER

Attached is a draft letter from the President stating his support for the Daschle and Feinstein amendments. Assuming the President signs off, we recommend sending the letter as soon as possible.

Both find. occurs.



Dear Senators Daschle and Feinstein:

I am writing to express support for your amendments prohibiting late-term abortions. If Congress were to substitute either of these amendments for the current H.R. 1122, I would sign the legislation.

As you know, I have long opposed late-term abortions, and I continue to do so except where necessary to save the life of a woman or prevent serious harm to her health. When I was Governor of Arkansas, I signed into law a bill that barred third-trimester abortions, with an appropriate exception for life or health. And last year, I made clear that I would sign such a bill at the federal level.

Your amendments, though differing in detail, both meet the standards I have set for such legislation. The amendments contain exceptions that will adequately protect the lives and health of the small group of women in tragic circumstances who need an abortion at a late stage of pregnancy to avert death or great injury. At the same time, the amendments prohibit any late-term abortions performed for elective reasons. This balance is an appropriate one, which I -- and, I believe, most Americans -- would gladly make the nation's law.

Sincerely,

No real coming together in caucus  
wide divergence of subst + p/v views.

Members looking to us for guidance

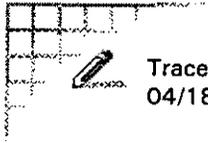
letter may be helpful - to get D to win  
if it doesn't win, there may be landslide  
toward Santorum.

comprehension  
protection - s concerned in  
the basic Roe protection w/ p.  
the health of the mother.

inquiries

OCC - will take pos that any  
exception which doesn't fully  
protect w/s health

Aburke - Gabriel birth -  
notes + memos



Tracey E. Thornton  
04/18/97 11:04:49 AM

Record Type: Record

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

cc: John L. Hille/WHO/EOP, Elisa Millsap/WHO/EOP, John Podesta/WHO/EOP

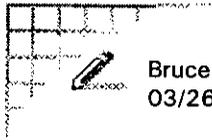
Subject: Late-term

We're hearing that late-term is likely to come up within the next two weeks in the Senate -- after chemical weapons and comp/flex time -- which would put it on the floor about the first week of May. The President's comments on our memo went to trying to get Catholic support for the Daschle approach. I've been talking to Daschle's folks about this and they're happy to help us with ideas. John (Hart) I told Caroline Fredrickson you may call (224-9531). In any case, we need some feedback from this process as we go forward on the hill. Let me know...

Message Sent To:

John P. Hart/WHO/EOP  
Elena Kagan/OPD/EOP  
Sylvia M. Mathews/WHO/EOP  
Ann F. Lewis/WHO/EOP  
Nicole R. Rabner/WHO/EOP  
Jennifer L. Klein/OPD/EOP  
Barbara D. Woolley/WHO/EOP

Abortifacient - partial birth -  
notes + memos



Bruce N. Reed  
03/26/97 10:05:33 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: Re: attached 

That looks pretty good. We should probably let him know that the number of women whose health is potentially at risk here is very small -- not the few hundred he said at the press conference -- and that principles more than lives are what's at stake. That won't make him feel any better.

That Times story was really gruesome.

**DRAFT**  
**DRAFT**  
**DRAFT**  
**ALTERNATIVES TO THIS PROCEDURE**

You have asked whether the so-called partial-birth procedure is ever necessary to save the life of a woman or avert serious harm to her health. Considerable medical uncertainty surrounds this question. The doctors of the women present during your veto believed the procedure was necessary for this reason, and other doctors agree that the procedure, in certain circumstances, is the safest one to use. Still other doctors dispute that health considerations ever demand use of the procedure.

Perhaps the most reliable opinion is from the American College of Obstetricians and Gynecologists (ACOG), which issued a statement in January addressing the procedure, which it calls intact dilatation and extraction (intact D&X). According to the statement, "A select panel convened by ACOG could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of the woman." (Emphasis in original.) The statement then went on: "An intact D&X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision." In sum, doctors have other options, but those other options may be more risky or otherwise more undesirable from a medical standpoint.

Other groups of doctors, with a greater stake in the abortion controversy, have taken more definitive positions. The Society of Physicians for Reproductive Choice and Health issued a statement last month saying that "in complex obstetrical situations, dilatation and extraction is the safest procedure to use. It carries the least risk of bleeding, perforation, infection or trauma to the birth canal." On the other hand, a group of mostly pro-life physicians called PHACT has written that "there are absolutely no obstetrical situations requiring the destruction of a partially delivered fetus," and indeed that the procedure involves serious risks of maternal hemorrhage, uterine rupture, and infection.

A recent article in the New York Times notes that the partial-birth procedure is only one of three procedures (all of them "pretty gruesome," as one doctor says) that can be used to end pregnancies after 20 weeks. The article reports that three of the twelve abortion specialists interviewed for the article generally prefer the procedure on the ground that it poses less risk of uterine perforation. The article also notes that one doctor who does not usually use the procedure has done so on occasion because "the woman's anatomy or the fetus's size demanded it."

Given the state of medical evidence on this subject, your longstanding position seems the appropriate one. That position would leave to doctors themselves the complex decision whether the procedure is medically necessary in a given set of circumstances. Allowing the medical community to make clearly medical decisions in this way is the only certain way to protect the health of women.

~~It is important to note, however, that the number of women who need this procedure to prevent injury to their health is very uncertain, and you should, therefore, exercise caution in estimating the number of women whose health, without this procedure, would be at risk of serious harm.~~

to prevent serious injury

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a

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seriously

Abortion -  
partial birth -  
notes + memos

→ health exception

Partial  
birth  
notes

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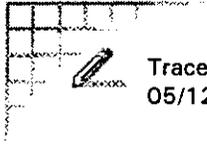
Post ✓

no  
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Pre - ✓

allowed

Anti-Partial Birth -  
notes + memos



Tracey E. Thornton  
05/12/97 05:43:27 PM

Record Type: Record

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

cc:

Subject: late-term

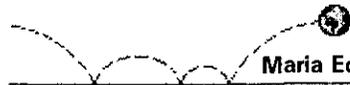
Okay...Boxer is okay with letter supporting both her and Daschle but her staff is outraged at the notion that we might Daschle ("women not covered/unconstitutional"). She will not support Daschle but hasn't decided what her level of opposition will be.

Message Sent To:

---

Elena Kagan/OPD/EOP  
William P. Marshall/WHO/EOP  
Sara M. Latham/WHO/EOP  
Jennifer L. Klein/OPD/EOP  
Ann F. Lewis/WHO/EOP

Abortion-Partial Birth -  
Notes + memos

 **Maria Echaveste**

05/14/97 11:33:46 AM

Record Type: Record

To: John Podesta/WHO/EOP, Rahm I. Emanuel/WHO/EOP

cc: Sylvia M. Mathews/WHO/EOP, Sara M. Latham/WHO/EOP, Elena Kagan/OPD/EOP

Subject: Late-term/Daschle Amendment

John/Rahm--Even if a decision gets made within the one/two hours on the Daschle amendment issue, it would still be very useful if we could arrange for you a meeting or conference call with some key women's groups on this abortion issue. Clearly if a call or meeting could be done before a decision were made--that would be the best, but even if shortly after, it will help with damage control. (While we all anticipate that our friends are not going to be violently criticizing, there will still be severe disappointment.)

Abortion - partial birth -  
notes + memos

THE WHITE HOUSE  
WASHINGTON

May 13, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED  
ELENA KAGAN

SUBJECT: DASCHLE AND FEINSTEIN AMENDMENTS

As you know, the Senate is taking up the Partial Birth Abortion Act (HR 1122) this afternoon. We expect Senator Daschle and Senator Feinstein to offer substitute amendments during the course of the debate. We recommend that you send a letter to Congress indicating that you would accept either of these substitute proposals. John Hilley and Rahm strongly agree, believing that a letter of this kind will help prevent a veto override on this issue. The proposed letter is attached; if you agree to send it, we will put it into final form for your signature.

Background

Both the Feinstein and the Daschle amendments prohibit post-viability abortions generally. They thus differ in two crucial ways from HR 1122: (1) they apply to all procedures, including but not limited to the "partial birth" procedure, and (2) they apply only to abortions performed after the fetus has become viable.

Both amendments impose civil, rather than criminal, penalties. Feinstein's would fine the physician up to \$10,000 for a violation. Daschle's would result in a fine of up to \$100,000, or suspension or revocation of the doctor's medical license (and in the case of a second or subsequent offense, \$250,000 or revocation of the license).

Most critically, both amendments contain a health exception, though of different kinds. The Feinstein legislation would exempt an abortion if, "in the medical judgment of the attending physician, the abortion is necessary to . . . avert serious adverse health consequences to the woman." This language is essentially identical to the language you have used in calling for a health exception to the Partial Birth Act. The Daschle language is more stringent. It exempts an abortion when the physician "certifies that continuation of the pregnancy would . . . risk grievous injury to [the mother's] physical health." "Grievous injury" is then defined as "a severely debilitating disease or impairment specifically caused by the pregnancy, or an inability to provide necessary treatment for a life-threatening condition."

The five women you spoke with before your last year's veto would fall within even the Daschle exception, assuming the truth of their accounts. Each said that her doctor advised her that an abortion was necessary to prevent a risk of grave physical harm -- for example, of serious

damage to her reproductive system. Daschle himself believes that his bill protects such women, and is willing to refer to these women when he offers his amendment. You should be aware, however, of a slight chance that one of the choice groups will persuade one or more of these women to oppose the Daschle bill on the ground that it would not protect women in her situation.

The American College of Obstetricians and Gynecologists today endorsed the Daschle amendment, stating that it “provides a meaningful ban [on post-viability abortions] while assuring women’s health is protected.” (ACOG took no position on the Feinstein amendment, which the group rightly views as a less serious proposal.) The AMA has refused to take a position on any of the pending legislative proposals, but yesterday issued a study (1) expressing skepticism about the need to use the “partial birth” procedure, but stating that doctors must retain discretion to use medical judgment in selecting procedures, and (2) stating that post-viability abortions are almost never necessary to save a woman’s life or prevent serious harm to her health, given the alternative at this stage of delivering the fetus.

The choice groups (somewhat reluctantly) support the Feinstein language, but oppose the Daschle proposal. They argue that the stringency of Daschle’s health exception -- including its limitation to cases of physical harm -- undermines the comprehensive protections announced in Roe regarding the health of the woman. The Office of Legal Counsel of the Justice Department similarly believes that both the Daschle and the Feinstein amendments, properly read, violate Roe because they countenance tradeoffs involving women’s health. (OLC thinks, however, that a court might be able to interpret the Feinstein amendment so narrowly as to avoid this problem.)

John Hilley believes that a letter from you supporting the Daschle amendment is of crucial importance in sustaining a veto. He worries that if the Daschle amendment goes down to a decisive defeat, many Senators who previously supported you will switch and vote for HR 1122. He thinks a letter of endorsement from you will strengthen the prospects for the Daschle amendment.

### Recommendation

We recommend that you endorse the Daschle amendment in order to sustain your credibility on HR 1122 and prevent Congress from overriding your veto. You have spent many months calling on Congress to pass a bill that contains a sufficiently protective, but also appropriately confined, health exception -- as you said in a letter to the Cardinals, not a health exception that “could be stretched to cover most anything,” but a health exception that “takes effect only where a woman faces real, serious adverse health consequences.” Especially given ACOG’s endorsement of the Daschle amendment, it will be difficult for you to make the case that Daschle’s language does not adequately safeguard women’s health. In these circumstances, declining to support the amendment will weaken your position and increase the chance that Congress will override your veto.

# DRAFT

Dear Senators Daschle and Feinstein:

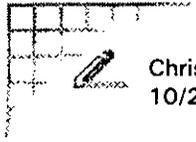
I am writing to express support for your amendments prohibiting late-term abortions. If Congress were to substitute either of these amendments for the current H.R. 1122, I would sign the legislation.

As you know, I have long opposed late-term abortions, and I continue to do so except where necessary to save the life of a woman or prevent serious harm to her health. When I was Governor of Arkansas, I signed into law a bill that barred third-trimester abortions, with an appropriate exception for life or health. And last year, I made clear that I would sign such a bill at the federal level.

Your amendments, though differing in detail, both meet the standards I have set for such legislation. The amendments contain exceptions that will adequately protect the lives and health of the small group of women in tragic circumstances who need an abortion at a late stage of pregnancy to avert death or great injury. At the same time, the amendments prohibit any late-term abortions performed for elective reasons. This balance is an appropriate one, which I -- and, I believe, most Americans -- would gladly make the nation's law.

Sincerely,

*Abortion - Partial birth - notes + memos*



Christopher C. Jennings  
10/22/97 08:19:10 PM

Record Type: Record

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

cc:

Subject: Satcher update

David Satcher was reported out of the Labor and Human Resources Committee by 12-5 vote. The vote makes it very possible that we could have a confirmed Surgeon General by the time Congress goes home for the winter.

There appears to be one major issue that might get in the way. Prior to the vote, Senator Coats made a big deal about Dr. Satcher supporting the President's position on the partial birth issue. Rich Tarplin and I are somewhat concerned that some of the right-leaning Republicans may, once again, take the opportunity to use the final Senate floor vote on Dr. Satcher's confirmation as a vehicle to hit the President again on this issue. Worse case scenario, of course, is the politics of partial birth has the impact of delaying the final vote until next year.

At this point, we may be being overly paranoid/cautious, but we felt -- at the very least -- we should be prepared to answer questions on this issue one more time. I assume it would be a reiteration of the President's position, which of course Dr. Satcher supports, and a criticism that certain members are -- once again -- trying to politicize "America's doctor" and delay the valuable service he can provide. If we hear anything new on this front, we will advise immediately...

cj

Message Sent To:

John Podesta/WHO/EOP  
Sylvia M. Mathews/WHO/EOP  
Bruce N. Reed/OPD/EOP  
John L. Hilley/WHO/EOP  
Elena Kagan/OPD/EOP  
Joshua Gotbaum/OMB/EOP  
FOLEY\_M @ A1 @ CD @ LNGTWY  
Janet Murguia/WHO/EOP  
Michael D. McCurry/WHO/EOP  
Barry J. Toiv/WHO/EOP

Abortion - partial birth -  
notes + memos

**PETER G. JACOBY**

05/29/97 03:27:36 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: Recent POTUS statements on late term

As you may know, the House is tentatively scheduled to consider the Senate amendments to the late term bill next Thursday. My question is whether the POTUS or any other Administration official has (officially) reiterated our veto threat following the Senate's adoption of the AMA-sponsored amendments. If so do we have paper to send to the Hill or if not perhaps a new SAP is in order. ]  
Peter

