BRIEFING

MEMORANDUM FOR MARIA ECHAVESTE

FROM: Laura Efurd
Office of Public Liaison

RE: Meeting with women groups on late-term abortion bill, S. 1692

DATE\TIME: Tuesday, October 19th, 3:00 pm

LOCATION: Room 100, OEOB

ATTENDEES: Maria Echaveste, Deputy Chief of Staff
Ann Lewis, Counselor to the President
Sylvia Matthews, Deputy Director, OMB (still awaiting confirmation)
Nicole Rabner, DPC
Lauren Supina, Director, Women's Office, OPL

Representatives of women's organizations
(see attached list of those invited)

PURPOSE: The purpose of this meeting is to give the women's organizations an opportunity to talk with high level White House staff about the upcoming debate on S. 1692, the Partial-Birth Abortion Ban of 1999.

BACKGROUND: Senate Leadership has indicated that they may take S. 1692 later this week, when they complete action on Campaign Finance Reform. In anticipation of this debate, we have proposed a meeting with some women's groups who have been most active on this issue to give them an opportunity to discuss with White House staff the current situation on the Hill, and provide their views on how the debate will go this year. This will be an informal meeting to share information.

FORMAT:

- Opening – Maria Echaveste
- Self Introductions of organization representatives (optional)
- Turn over discussion to women's groups
- Discussion

TALKING POINTS:

- As we all know, Senate Majority Leader Trent Lott has indicated that he may bring up the Late Term abortion bill this week, following campaign finance reform.

- Our position on this bill has not changed. As you all were key in the previous debates on this issues, we want to keep in touch with you as this bill moves forward.

- We would like to hear from on the status of the bill in the Senate and how it compares to previous debates on this issue and discuss your strategy for this year's vote,

ATTACHMENTS:

1) List of invitees (list of confirmed attendees will be provided by COB)
2) Draft SAP and Draft Statement

List of Invitees
Meeting with Women's Groups
Late Term Abortion Bill
October 19, 1999

*Denotes confirmed attendee

Joanne Hustead*
National Partnership for Women and Families
202-986-2647

Marsha Greenberger
National Women's Law Center
202-588-5180

Allison Herwitt*
NARAL
202-973-3000

Sana Schtasel*
Center for Reproductive Law and Public Policy
202-530-2975

Jodie Leu*
Planned Parenthood
DC office # is 202-785-3351

Maureen Britell
National Abortion Federation
202-667-5881

Nancy Zirken*
National Ass'n of University Women
202-785-7700

Julie Burton
Voters for Choice.
202-944-5080

Patricia Ireland*
Jan Erickson*
NOW

Alice Cohan*
Fund for Feminist Majority

DRAFT -- NOT FOR RELEASE

October 18, 1999 (Sena

S. 1692 - Partial-Birth Abortion Ban Act of 1999
(Sen. Santorum (R) PA and 43 cosponsors)

S. 1692 contains the same serious flaws as H.R. 1833 and H.R. 1122, virtually identical bills that were passed during the 104th and 105th Congresses and vetoed by the President on April 10, 1996, and October 10, 1997, respectively.

The President will veto S. 1692 for the reasons he expressed in his veto message of April 10, 1996, which is attached. **[see below]**

* * * * * * * * * *

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Pellicci) in consultation with the DPC (Rabner), CoS (Bernstein), WHLA (Thornton), HD (Garcia), and the Justice Department (per Patty First).

Background

The proposed position is identical to that taken during the 104th and 105th Congresses on virtually identical legislation. S. 1692, like the previous two bills, fails to address the President's primary concern that the prohibition on this type of abortion procedure not apply when the attending physician considers the procedure necessary to preserve the health of the woman. (The bill only would allow this type of abortion in cases where it is needed to save the life of the woman.)

During the 104th Congress, H.R. 1833 passed the House by a vote of 286-129, and the Senate by a vote of 54-44. During the 105th Congress, H.R. 1122 passed the House by a vote of 296-132, and the Senate by a vote of 64-36.

S. 1692 was placed on the Senate calendar earlier this month without committee action. To date, there is no House companion bill.

Description of S. 1692

S. 1692 would ban under most circumstances a certain type of late-term abortion procedure, known medically as intact dilation and extraction, which the bill calls a "partial-birth abortion". S. 1692 defines the term partial-birth abortion to mean any "abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery."

S. 1692 would allow a partial-birth abortion in cases where it is needed "to save the life of a mother whose life is endangered by a physical disorder, illness, or injury." The bill does not include an exception for cases in which the woman's health is threatened.

S. 1692 would subject doctors and others who perform the procedure to civil and criminal fines and/or up to two years of imprisonment. The bill would allow the father, if married to the woman at the time of the procedure, and certain other family members to sue the individual performing the procedure for damages. S. 1692 would exempt women who obtain such abortions from any criminal penalties.

Pay-As-You-Go Scoring

S. 1692 could increase 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 estimates that the net pay-as-you-go effect of this bill would be zero.

LEGISLATIVE REFERENCE DIVISION DRAFT
10/15/99 - 4:00 p.m.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release April 10, 1996

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 1833, which would prohibit doctors from performing a certain kind of abortion. I do so because the bill does not allow women to protect themselves from serious threats to their health. By refusing to permit women, in reliance on their doctors' best medical judgment, to use this procedure when their lives are threatened or when their health is put in serious jeopardy, the Congress has fashioned a bill that is consistent neither with the Constitution nor with sound public policy.

I have always believed that the decision to have an abortion generally should be between a woman, her doctor, her conscience, and her God. I support the decision in Roe v. Wade protecting a woman's right to choose, and I believe that the abortions protected by that decision should be safe and rare. Consistent with that decision, I have long opposed late-term abortions except where necessary to protect the life or health of the mother. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health.

The procedure described in H.R. 1833 has troubled me deeply, as it has many people. I cannot support use of that procedure on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available.

There are, however, rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her against serious injury to her health. In these situations, in which a woman and her family must make an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected.

In the past several months, I have heard from women who

desperately wanted to have their babies, who were devastated to learn that their babies had fatal conditions and would not live, who wanted anything other than an abortion, but who were advised by their doctors that this procedure was their best chance to avert the risk of death or grave harm which, in some cases, would have included an inability to ever bear children again. For these women, this was not about choice -- not about deciding against having a child. These babies were certain to perish before, during or shortly after birth, and the only question was how much grave damage was going to be done to the woman.

I cannot sign H.R. 1833, as passed, because it fails to protect women in such dire circumstances -- because by treating doctors who perform the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. This bill, in curtailing the ability of women and their doctors to choose the procedure for sound medical reasons, violates the constitutional command that any law regulating abortion protect both the life and the health of the woman. The bill's overbroad criminal prohibition risks that women will suffer serious injury.

That is why I implored Congress to add an exemption for the small number of compelling cases where selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse consequences to her health. The life exception in the current bill only covers cases where the doctor believes that the woman will die. It fails to cover cases where, absent the procedure, serious physical harm, often including losing the ability to have more children, is very likely to occur. I told Congress that I would sign H.R. 1833 if it were amended to add an exception for serious health consequences. A bill amended in this way would strike a proper balance, remedying the constitutional and human defect of H.R. 1833. If such a bill were presented to me, I would sign it now.

I understand the desire to eliminate the use of a procedure that appears inhumane. But to eliminate it without taking into consideration the rare and tragic circumstances in which its use may be necessary would be even more inhumane.

The Congress chose not to adopt the sensible and constitutionally appropriate proposal I made, instead leaving women unprotected against serious health risks. As a result of this Congressional indifference to women's health, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

WILLIAM J. CLINTON

THE WHITE HOUSE,
April 10, 1996.

###

[redacted]

Nicole R. Rabner

10/15/99 02:54:27 PM

Record Type: Record

To: Laura Efurd/WHO/EOP@EOP

cc: Ruby Shamir/OPD/EOP@EOP
Subject: Re: Meeting with Women's Group on Late Term Abortion Bill.

My thoughts for the women's groups to invite to this meeting:

Judy Lichtman, National Partnership for Women and Families
202-986-2647

Marsha Greenberger, National Women's Law Center
202-588-5180

Kate Michaelman, NARAL
202-973-3000

Janet Benshoo (phoenetic), Center for Reproductive Law and Public Policy
(Janet works out of the NY office, but Sona Shtasel is a good contact in theirn DC ofc at 202-530-2975)

Gloria Felt, Planned Parenthood
(Gloria works from the NY office; their DC office # is 202-785-3351)

Vicky Saporta, National Abortion Federation
202-667-5881

Nancy Zirken, National Ass'n of University Women
202-785-7700

ACLU
(I'm not sure whom to invite from here, but Kate Engustian has been recommended as someone to call to ask -- 202-544-1681)

I defer to Marybeth on whether to add or subtract, but these are my thoughts. Thanks for putting this together.

Nicole

Senate revisits abortion debate

Defeats alternative on partial-birth ban

ASSOCIATED PRESS

The Senate, reopening an emotional debate on a bill that would ban partial-birth abortion, rejected an alternative yesterday that offered a broad exception for women whose pregnancies endangered their health.

Supporters of the stronger bill argued that the alternative, defeated by a 61-38 vote, would permit late-term abortions in virtually any circumstance.

"This is about infanticide," said Sen. Rick Santorum, Pennsylvania Republican and chief sponsor of a stricter version. "This is a baby who is all but born and then killed."

Democrats contended Mr. Santorum's bill was unconstitutional and designed to boost GOP election prospects next year.

"We all know . . . this is the third time the president will veto this bill," said its chief opponent, Sen. Barbara Boxer, California Democrat. "Why go through this if not for politics?"

The two had a testy exchange in which Mrs. Boxer chided Mr. Santorum over his sex's experience of parenthood.

Mr. Santorum was asking Mrs. Boxer on the Senate floor about her definition of when a child is "born." In partial-birth abortions, a fetus is partially pulled out of the birth canal before its brain is suctioned and its skull crushed.

"So you would accept the fact that once the baby is separated from the mother, that baby cannot be killed?" Mr. Santorum asked.

"Define 'separated,' " Mrs. Boxer said.

"In other words, no part of the baby is inside the mother," Mr. Santorum said.

"You mean the baby is birthed and in its mother's arms?" Mrs. Boxer asked.

"I don't know in the mother's arms. Let's say in the obstetrician's hands," Mr. Santorum said.

"I had two babies," Mrs. Boxer said.

"I had six," Mr. Santorum replied.

"You didn't have any," Mrs. Boxer said. "Your wife had."

"We did together," Mr. Santorum said.

"I gave birth, and I can tell you I know when the baby was born," Mrs. Boxer said.

The alternative offered by Sen. Richard J. Durbin, Illinois Democrat, would have stopped all abortions after fetuses can survive outside the womb, except in cases where two independent doctors certify a woman's life was at risk or she faced "grievous injury" to physical health.

Republicans called the proposal an attempt to permit the procedure in almost all cases because pregnancy itself can be construed a threat to a woman's health.

Mr. Santorum's bill, the Partial Birth Abortion Act of 1999, would make it a felony punishable by a fine and/or a two-year prison term unless the procedure is "necessary to save the life of a mother whose life is endangered by a physical disorder, illness or injury." The mother could not be prosecuted under the measure.

A vote is expected today. The Senate has been unable to override vetoes by President Clinton in each of the last two Congresses.

The bill has little chance of becoming law. Senior Senate Republican aides who spoke on the condition of anonymity acknowledged that Mr. Santorum's bill would probably fall short of the two-thirds majority required to override Mr. Clinton's expected veto.

It has sparse support in the courts. Thirty states have passed partial-birth abortion bans, but lower courts in two-thirds of those states have struck down or prevented the activation of those laws.

• *Dave Boyer contributed to this article.*

The Washington Times
THURSDAY, OCTOBER 21, 1999

Daschle accuses GOP of racial bias

Sees 'pattern' developing in Moseley-Braun nomination

By Dave Boyer
THE WASHINGTON TIMES

Senate Minority Leader Tom Daschle said yesterday that former Sen. Carol Moseley-Braun, President Clinton's ethically troubled nominee to become ambassador to New Zealand, is the "latest victim" of Republican animosity toward minorities.

Mr. Daschle, South Dakota Democrat, also cited Senate Republican rejection of black Clinton judicial nominee Judge Ronnie White two weeks ago and Republican resistance to the Community Reinvestment Act as examples of the Republicans' "anti-minority sentiment."

"There's a pattern here," Mr. Daschle told reporters. "The pattern started, of course, with Ronnie White. ... The array of anti-minority sentiment expressed almost each week now by Republicans is historic. I have never seen a party become this defiant when it comes to protecting minority rights in my time in public life."

John Czwartacki, spokesman for Senate Majority Leader Trent Lott, said Mr. Daschle's accusations are ludicrous.

"Playing politics with race doesn't help heal any wounds," Mr. Czwartacki said. "It only reopens them."

Mrs. Moseley-Braun's nomination ran into trouble this week when Sen. Jesse Helms, North Carolina Republican and chairman of the Foreign Relations Committee, said he will investigate "serious charges of ethical misconduct" before allowing her nomination to go forward. She was the first black woman elected to the Senate in 1992.

Mr. Helms and Mrs. Moseley-Braun clashed six years ago on the Senate floor over the Confederate battle flag.

"Carol Moseley-Braun is just the latest victim of increasing sentiment expressed by an increasing number of Republican senators that I think is very dangerous for this country and very, very harmful to the progress we've made on minority rights over many decades," Mr. Daschle said.

"There is an apparent lack of sensitivity to minorities in this country when, regardless of whether one is a woman, an African-American, or an Hispanic American, you have more trouble getting nominated and you have more trouble getting a business loan."

Asked if he was calling Republican senators racists, Mr. Daschle replied, "I'm not calling them racist, but I am simply saying this: It raises some very serious questions about the perception, the attitude of some on the other side when it comes to minorities."

Mr. Czwartacki said some Republicans who voted against Judge White didn't know he was black, and he said Senate Republicans are working with the administration this week on the Community Reinvestment Act, which encourages investment in inner cities. He criticized Democrats for blaming racism in such cases.

"There's a term for that and we call it 'racial profiling,'" Mr. Czwartacki said. "I thought we were trying to get away from that."

When Judge White was defeated and Democrats blamed racism, Rep. J.C. Watts Jr., Oklahoma Republican and the only black Republican in Congress, said Democrats were guilty of a double standard. He said Democrats don't object to bias against conservative minorities and that the complaints about Judge White's case "cheapens" real examples of discrimination.

The Washington Times
THURSDAY, OCTOBER 21, 1999

Total Pages: 5

LRM ID: RJP195

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

URGENT

Thursday, October 14, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference
OMB CONTACT: Robert J. Pellicci
E-Mail: Robert_J._Pellicci@omb.eop.gov
PHONE: (202)395-4871 FAX: (202)395-6148
SUBJECT: **Executive Office of the President Statement of Administration Policy on S1692 Partial Birth Abortion**

DEADLINE: **3:00 P.M. Friday, October 15, 1999**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Senate floor consideration of S. 1692 could occur as early as next week.

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LRM ID: RJP195 **SUBJECT:** Executive Office of the President Statement of Administration Policy on S1692 Partial Birth Abortion

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RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: **Robert J. Pellicci Phone: 395-4871 Fax: 395-6148**
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ **(Date)**

_____ **(Name)**

_____ **(Agency)**

_____ **(Telephone)**

The following is the response of our agency to your request for views on the above-captioned subject:

_____ **Concur**

_____ **No Objection**

_____ **No Comment**

_____ **See proposed edits on pages** _____

_____ **Other:** _____

_____ **FAX RETURN of** _____ **pages, attached to this response sheet**

DRAFT – NOT FOR RELEASE

DRAFT

October 14, 1999
(Senate)

S. 1692 - Partial-Birth Abortion Ban Act of 1999
(Sen. Santorum (R) PA and 43 cosponsors)

S. 1692 contains the same serious flaws as H.R. 1833 and H.R. 1122, virtually identical bills that were passed during the 104th and 105th Congresses and vetoed by the President on April 10, 1996 and October 10, 1997, respectively.

The President will veto S. 1692 for the reasons he expressed in his veto message of April 10, 1996, which is attached.

* * * * * * * * * *

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release April 10, 1996

TO THE HOUSE OF REPRESENTATIVES:

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In the past several months, I have heard from women who desperately wanted to have their babies, who were devastated to learn that their babies had fatal conditions and would not live, who wanted anything other than an abortion, but who were advised by their doctors that this procedure was their best chance to avert the risk of death or grave harm which, in some cases, would have included an inability to ever bear children again. For these women, this was not about choice -- not about deciding against having a child. These babies were certain to perish before, during or shortly after birth, and the only question was how much grave damage was going to be done to the woman.

I cannot sign H.R. 1833, as passed, because it fails to protect women in such dire circumstances -- because by treating doctors who perform the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. This bill, in curtailing the ability of women and their doctors to choose the procedure for sound medical reasons, violates the constitutional command that any law regulating abortion protect both the life and the health of the woman. The bill's overbroad criminal prohibition risks that women will suffer serious injury.

That is why I implored Congress to add an exemption for the small number of compelling cases where selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse consequences to her health. The life exception in the current bill only covers cases where the doctor believes that the woman will die. It fails to cover cases where, absent the procedure, serious physical harm, often including losing the ability to have more children, is very likely to occur. I told Congress that I would sign H.R. 1833 if it were amended to add an exception for serious health consequences. A bill amended in this way would strike a proper balance, remedying the constitutional and human defect of H.R. 1833. If such a bill were presented to me, I would sign it now.

I understand the desire to eliminate the use of a procedure that appears inhumane. But to eliminate it without taking into consideration the rare and tragic circumstances in which its use may be necessary would be even more inhumane.

The Congress chose not to adopt the sensible and constitutionally appropriate proposal I made, instead leaving women unprotected against serious health risks. As a result of this Congressional indifference to women's health, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

WILLIAM J. CLINTON

THE WHITE HOUSE,
April 10, 1996.

# # #

AMA Drops Support Of 'Partial-Birth' Abortion Legislation

HEALTH

BACKERS OF legislation to ban so-called partial-birth abortions were dealt a blow Wednesday when the American Medical Association rescinded its endorsement of the bill while it was being debated on the Senate floor.

The organization broke with much of the rest of the medical community and backed the bill in 1997 after lengthy negotiations with the bill's sponsor, **Sen. Rick Santorum**, R-Pa.

But after much of the AMA's leadership was ousted following an unrelated matter, a management audit by the firm Booz Allen & Hamilton found that the association had erred in endorsing the measure.

According to the *New York Times*, the audit found that the AMA "ignored its own decision-making procedures" and that leaders of the organization were "manipulated by Republican members of Congress."

A statement issued by AMA Trustee John Nelson dated Tuesday said: "The current version of Sen. Santorum's bill subjects physicians to criminal prosecution. For this reason, we do not support the bill."

The bill's language, however, is identical to the language in the measure the AMA endorsed in the last Congress.

Backers of the measure still hope this will be the year the Senate finally produces the two-thirds majority for the bill needed to override a promised presidential veto.

President Clinton has twice vetoed earlier versions of the measure because it does not include an exception allowing the procedure to be used to protect the pregnant woman's health.

The House has twice voted to override, but the veto has twice been sustained by the Senate.

— *BY JULIE ROVNER*

Political Roundup

Second GOP Candidate Eyes Moore Seat In Kan.

■ STATE REP. PHILL KLINE this week jumped into the race for the GOP nomination for the seat held by freshman **Rep. Dennis Moore**, D-Kan.

Kline, 39, a conservative who has served in the Kansas House since 1993, is the second Republican to announce a bid for the 3rd District seat.

Greg Musil, an attorney and Overland Park City Council president, announced he was running last month.

This is not the first time Kline has run for Congress. In 1986 he ran from the 2nd District, losing to then-**Rep. Jim Slattery**, D-Kan.

Other possible candidates are Jeff Colyer, an Overland Park plastic surgeon, and Gary Morsch of Olathe, a physician who is the founder of the Heart to Heart International relief organization.

Moore, the first Democrat to represent the 3rd District in 38 years, ousted GOP **Rep. Vince Snowbarger** with 52 percent of the vote last year. Snowbarger said he has decided against running for the seat in 2000.

Contest To Take On Grams Gets More Crowded

■ STATE SEN. STEVE KELLEY Wednesday entered what is becoming a crowded field seeking the Democratic nomination to challenge **Sen. Rod Grams**, R-Minn., next year, the *Associated Press* reported.

Kelley, a first-term legislator, is an attorney at a Minneapolis law firm — where he has focused on the area of commercial litigation. He has specialized in technology issues in the legislature, and Wednesday gave an announcement speech using notes on a computer set up as a sort of TelePrompTer a few feet away from him.

The race for the Democratic nomination already includes prominent trial attorney Michael Ciresi, former U.S. Attorney David Lillehaug, University of Minnesota physician Steven Miles and former Minneapolis alderman Dick Franson.

In addition, state Sen. Jerry Janezich said Wednesday he is 70 percent leaning toward getting in, and former **Rep. Tim Penny**, D-Minn., also may run.

Kelley said he does not yet know yet whether he will run in the primary if he does not get the party endorsement at the Democratic-Farmer-Labor convention next summer. Miles and Lillehaug say they will run only with the endorsement; Ciresi plans to run in the primary.

Poll: Bush, McCain In Statistical Dead Heat In Arizona

■ A NEW POLL RELEASED by the Behavior Research Center of Arizona showed **Sen. John McCain**, R-Ariz., in a statistical dead heat with Texas Gov. George W. Bush in the Arizona presidential primary next February.

Of 502 registered voters polled between Oct. 13-17, Bush garnered 35 percent while McCain got the nod from 31 percent. Sixteen percent were undecided. Bush's lead is within the poll's 4.5 point error margin.

Malcolm (Steve) Forbes and Elizabeth Dole, who dropped out of the race Wednesday, both received 6 percent, while Patrick Buchanan picked up 3 percent.

A poll conducted by Northern Arizona University earlier this month found 39 percent of Arizona Republicans preferred McCain to 28 percent for Bush. That poll's error margin was 5.7 points.

GAO Calls For Better Study of Bio-Terrorism Threat

DEFENSE The federal government has invested billions of dollars into preparing for biological and chemical terrorism in the United States — but cannot effectively plan for combating attacks without a thorough study of the risks, the GAO told a House panel Wednesday.

GAO Assistant Comptroller Henry Hinton said the intelligence community has estimated the extent of foreign terrorist threats, but the FBI has yet to review the threat of domestic attacks.

"A national level assessment of the risk of chemical and biological terrorism, based on analyses on both the foreign and domestic origin threats, could help determine the requirements and priorities for combating terrorism and target resources where most needed," Hinton said.

House Government Reform National Security, Veterans' Affairs and International Relations Subcommittee Chairman Christopher Shays, R-Conn., said terrorist groups intent on attacks present great threats, but said the government should not respond by overreacting to every threat.

"Vulnerability alone is an inadequate measure, drawing scarce resources in a thousand directions," Shays said. "Preparing for every worst case scenario is neither practical nor affordable." He said that as threats to the United States change, "federal programs, not known for flexibility or adaptability, will need to change as well."

In a September report, the GAO recommended Attorney General Reno instruct the FBI to conduct a "formal, authoritative intelligence threat assessment" of biological and chemical weapon attacks.

The GAO study reported that while a Japanese religious sect attracted great attention when it used lethal sarin gas in 1995 to kill 12 people in a Tokyo subway, less publicized attacks have also occurred.

Hinton said that biological and chemical agents are potentially very dangerous, but noted the most lethal weapons are harder to produce.

"Terrorists face serious technical and operational challenges at different stages of the process of producing and delivering most chemical and all biological agents," Hinton testified.

The Clinton administration in FY2000 has proposed spending $10 billion for counterterrorism programs, $3 billion more than in FY99.

But some of the programs — such as a national stockpile of drugs and vaccines for a biological or chemical weapons attack — have not been proven effective, the GAO concluded.

"Without valid threat and risk assessments, we question whether stockpiling [medical supplies] is the best approach for investing in medical preparedness," the report stated.

The Wednesday hearing was the fifth in a series Shays has held to consider how to fight terrorism in the United States and abroad.

— *By Mark Wegner*

Congress This Week

Today

Senate Committees

Armed Services

Kosovo Lessons

Full committee hearing on the lessons learned from military operations and relief efforts in Kosovo. ***Witnesses:*** Defense Secretary Cohen; and Henry Shelton, chairman, Joint Chiefs of Staff. 106 DSOB. 9:30 a.m.

Commerce

NTIS

Science, Technology and Space Subcommittee hearing to review NTIS's current mission under the Commerce Department. ***Witnesses:*** **Rep. Thomas Davis**, R-Va.; and Robert Mallett, deputy secretary, Commerce Department. 253 RSOB. 2:30 p.m.

Energy and Natural Resources

Pending Legislation

National Parks, Historic Preservation, and Recreation Subcommittee hearing on S.1365, to amend the National Preservation Act, to extend the authorization for the Historic Preservation Fund and the Advisory Council on Historic Preservation; S.1434, to amend the National Historic Preservation Act to reauthorize that Act; and H.R.834, to extend the authorization for the National Historic Preservation Fund. 366 DSOB. 2 p.m. **(Rescheduled from Oct. 19.)**

Finance

Medicare Proposal

Full committee markup of the Balanced Budget Adjustment Act. 215 DSOB. 10 a.m. **(New.)**

WTO

International Trade Subcommittee hearing on the U.S. trade negotiating objectives for services at the Seattle WTO ministerial meeting. ***Witnesses:*** David Aaron, undersecretary, international trade, Commerce Department; and Deputy Trade Representative Susan Esserman. 215 DSOB. 2 p.m. **(Revised.)**

Foreign Relations

Child Labor

Full committee hearing on the International Labor Organization Convention for Elimination of the Worst Forms of Child Labor, Treaty Doc. 106-5. ***Witnesses:*** **Sen. Tom Harkin**, D-Iowa; and Labor Secretary Herman. 419 DSOB. 10:30 a.m.

Governmental Affairs

Postal Nominations

Full committee hearing on nominations of U.S. Postal Services governors. 628 DSOB. 10 a.m.

Health, Education, Labor and Pensions

FDA Modernization

Full committee hearing on legislation to modernize the FDA. ***Witness:*** Jane Henney, commissioner, FDA. 430 DSOB. 10 a.m.

URGENT VOTE TODAY

TO: Reproductive Health Staff
FROM: Allison Herwitt, Director Government Relations
Terri McCullough, Legislative Representative
DATE: October 21, 1999
RE: HARKIN SENSE OF THE SENATE RESOLUTION

On Thursday, October 21, the Senate will vote on Senator Harkin's non-binding resolution, "Sense of Congress Concerning *Roe v. Wade."* **NARAL urges Senators to support the Harkin Resolution and will score this vote in our 1999 Congressional Record on Choice.**

The Harkin Resolution reaffirms the deeply held principles espoused by the U.S. Supreme Court in the 1973 *Roe v. Wade* decision. In *Roe,* the Court recognized that the constitutional right of privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Roe* decriminalized abortion, " vindicat[ing] the right of the physician to administer medical treatment according to his professional judgment...."

This landmark Supreme Court decision struck a careful balance between the right of women to choose abortion in the early stages of pregnancy and the states' interest in protecting potential life after viability. *Roe* stated that prior to fetal viability, the abortion decision must reside with the woman, to be made in consultation with her doctor and within the context of her own religious beliefs. After fetal viability, *Roe* allows states to ban abortion as long as the woman's life and health are protected.

In the years before *Roe*, an estimated 1.2 million women resorted to illegal abortions annually, despite the known hazards "of frightening trips to dangerous locations in strange parts of town; of whiskey as an anesthetic; of 'doctors' who were often marginal or unlicensed practitioners, sometimes alcoholic, sometimes sexually abusive; unsanitary conditions; incompetent treatment; infection; hemorrhage; disfiguration; and death." It is estimated that as many as 5,000 women died yearly from illegal abortion before *Roe*.

> *"Someone gave me the phone number of a person who did abortions and I made the arrangements. I borrowed about $300 from my roommate and went alone to a dirty, rundown bungalow in a dangerous neighborhood in east Los Angeles. A greasy looking man came to the door and asked for the money as soon as I walked in. He*

told me to take off all my clothes except my blouse; there was a towel to wrap around myself. I got up on a cold metal kitchen table. He performed a procedure, using something sharp. He didn't give me anything for the pain — he just did it. He said that he had packed me with some gauze, that I should expect some cramping, and that I would be fine. I left."

— Polly Bergen, discussing the illegal abortion in the 1940s that rendered her infertile and nearly proved fatal.

Since the legalization of abortion in 1973, the safety of abortion has increased dramatically.

* The most important effect of the legalization of abortion on public health in the United States was the near elimination of deaths from the procedure. Between 1973 and 1990, the number of deaths per 100,000 legal abortions declined more than tenfold. By 1990, the risk of death from legal abortion had declined to 0.3 deaths per 100,000. The American Medical Association's Council on Scientific Affairs credits the shift from illegal to legal abortions as an important factor in this decline.

* Roe not only established women's reproductive freedom, but also was central to women's continued progress toward full and equal participation in American life. In the 26 years since Roe, the variety and level of women's achievements have reached unprecedented levels. As the Supreme Court observed in 1992, "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."

Attached is more information on the 1973 Supreme Court decision. If you have further questions please contact Allison Herwitt at 973-3003, or Terri McCullough at 973-3047.

ROE V. WADE AND THE RIGHT TO CHOOSE

"At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."[1]

U.S. Supreme Court Justices O'Connor, Kennedy and Souter
Planned Parenthood of Southeastern Pennsylvania v. Casey

Abortion in the United States Before *Roe*

When *Roe v. Wade* was decided in January 1973, abortion except to save a woman's life was banned in nearly two-thirds of the states.[2] Laws in most of the remaining states contained only a few additional exceptions.[3] It is estimated that each year 1.2 million women resorted to illegal abortion,[4] despite the known hazards "of frightening trips to dangerous locations in strange parts of town; of whiskey as an anesthetic; of 'doctors' who were often marginal or unlicensed practitioners, sometimes alcoholic, sometimes sexually abusive; unsanitary conditions; incompetent treatment; infection; hemorrhage; disfiguration; and death."[5]

The Constitutional Development of the Right to Privacy

During the half century leading up to *Roe*, the Supreme Court decided a series of significant cases in which it recognized the existence of a constitutionally protected right to privacy that keeps fundamentally important and deeply personal decisions concerning "bodily integrity, identity and destiny" largely beyond the reach of government interference.[6] Citing this concern for autonomy and privacy, the Court struck down laws severely curtailing the role of parents in education, mandating sterilization, and prohibiting marriages between individuals of different races.[7]

Important aspects of the right to privacy were established in *Griswold v. Connecticut*,[8] decided in 1965, and in *Eisenstadt v. Baird*, decided in 1972.[9] In these cases, the Supreme Court held that state laws that criminalized or hindered the use of contraception violated the right to privacy. Having recognized in these cases "the right of the individual to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget

a child,"[10] the Court held in *Roe* that the right to privacy encompasses the right to choose whether to end a pregnancy.[11]
The Court has reaffirmed this holding on multiple occasions throughout the past 25 years,[12] noting in 1992 that "[t]he soundness of this . . . analysis is apparent from a consideration of the alternative."[13] Without a privacy right that encompasses the right to choose, the Constitution would permit the state to override not only a woman's decision to terminate her pregnancy, but also her choice to carry the pregnancy to term.[14]

The *Roe* Compromise

Although *Roe* invalidated restrictive abortion laws that disregarded women's right to privacy, the Court recognized a state's valid interest in potential life.[15] That is, the Court rejected arguments that the right to choose is absolute and always outweighs the state's interest in imposing limitations.[16] Instead, the Court issued a carefully crafted decision that brought the state's interest and the woman's right to choose into balance.

The Court held that a woman has the right to choose abortion until fetal viability, but that the state's interest generally outweighs the woman's right after that point.[17] Accordingly, after viability -- the time at which it first becomes realistically possible for fetal life to be maintained outside the woman's body -- the state may ban any abortion not necessary to preserve a woman's life or health.[18]

25 Years of *Roe*: A Better Life for Women

By invalidating laws that forced women to resort to back-alley abortion, *Roe* was directly responsible for saving women's lives. It is estimated that as many as 5000 women died yearly from illegal abortion before *Roe*.[19] Since the legalization of abortion in 1973, the safety of abortion has increased dramatically. The number of deaths per 100,000 legal abortion procedures declined more than five-fold between 1973 and 1991.[20] In addition, *Roe* has had a positive impact on the quality of many women's lives. Although most women welcome pregnancy, childbirth and the responsibilities of raising a child at some period in their lives, few events can more dramatically constrain a woman's opportunities than an unplanned child. Because childbirth and pregnancy substantially affect a woman's "educational prospects, employment opportunities, and self-determination," restrictive abortion laws narrowly circumscribed women's role in society and hindered women from defining their paths through life in the most basic of ways.[21] In the 25 years since *Roe*, the variety and level of women's achievements have reached unprecedented levels. The Supreme Court recently observed that "

[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."[22]

Into the New Millennium: What Will the Next 25 Years Bring?

In 1992, the Court rendered its most important decision in the abortion area since *Roe*. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Court reaffirmed *Roe*, while at the same time sharply restricting its protections. The *Casey* Court abandoned the strict scrutiny standard of review and adopted a less protective standard that allows states to impose restrictions as long as they do not "unduly burden" a woman's right to choose. Under this new standard, the Court approved state obstacles that it had previously found to violate the right to privacy and effectively invited states to impose barriers on women's access to abortion.[23] Indeed, today states are enforcing more restrictions that impede women's access to safe, legal abortion than at any time since *Roe* was decided twenty-five years ago.[24]

It seems inevitable that great strides will be made in the next millennium in science, technology, athletics, communication, and in numerous other fields of human endeavor. What is less clear is whether proponents of women's reproductive health and freedom will be able to move forward in the 21st century -- to secure better access to effective methods of contraception, comprehensive sexuality education, and quality health and child care -- or will remain locked in a struggle against further deterioration of the right to choose ostensibly secured by *Roe* a quarter century ago.

It is past time for the nation to develop policies that secure access to abortion, make abortion less necessary, and improve reproductive health. Our nation must commit resources to prevent unintended pregnancy by promoting sexuality education, family planning and healthy childbearing. Only then will the promise of *Roe* be fulfilled.

January 8, 1998

NOTES:

1. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992).
2. *Roe v. Wade*, 410 U.S. 113, 118-119 n.2 (1973).
3. *See, e.g.*, Calif. Health & Safety Code §§ 25950-25955.5 (Supp. 1972); Colo. Rev. Stat. Ann. §§ 40-2-50 to 40-2-53 (Cum. Supp. 1967); Del. Code Ann., Tit. 24, §§ 1790-1793 (Supp. 1972); N.M. Stat. Ann. §§ 40A-5-1 to 40A-5-3 (1972) .
4. Richard Schwarz, *Septic Abortion* (Philadelphia: J.B. Lippincott Co., 1968), 7; Willard Cates, Jr., "Legal Abortion: The Public Health Record," *Science*, vol. 215 (Mar. 1982): 1586.
5. Walter Dellinger and Gene B. Sperling, "Abortion and the Supreme Court: The Retreat from *Roe v. Wade*," 138 *University of Pennsylvania Law Review* 83, 117 (Nov. 1989).
6. *Casey*, 505 U.S. at 927 (Blackmun, J., concurring and dissenting).
7. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Loving v. Virginia*, 388 U.S. 1 (1967).
8. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

9. *Eisenstadt v. Baird*, 405 U.S. 438 (1972).
10. *Eisenstadt*, 405 U.S. at 453 (emphasis omitted).
11. *Roe*, 410 U.S. at 153.
12. *See, e.g., Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983); *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986).
13. *Casey*, 505 U.S. at 859.
14. *Casey*, 505 U.S. at 859.
15. *Roe*, 410 U.S. at 159.
16. *Roe*, 410 U.S. at 153-54.
17. *Roe*, 410 U.S. at 163-65.
18. *Roe*, 410 U.S. at 163-64.
19. Schwarz, *Septic Abortion*, 7.
20. Lisa M. Koonin et al., "Abortion Surveillance -- United States, 1993 and 1994," *CDC Surveillance Summaries, Morbidity and Mortality Weekly Report*, vol. 46, no. SS-4, (Aug. 8, 1997): 96.
21. *Casey*, 505 U.S. at 928 (Blackmun, J., concurring and dissenting)
22. *Casey*, 505 U.S. at 856.
23. *Casey*, 505 U.S. at 881-87.
24. *Who Decides? A State-by-State Review of Abortion and Reproductive Rights, 1998* (Washington, D.C.: The NARAL Foundation/NARAL, 1998), v.

OFFICE OF THE VICE PRESIDENT
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FAX COVER SHEET

To: Nicole Baker

Fax: 6-2878

From: ___ Kay Casstevens ___ David Thomas

___ Paul Thomell ___ Billy Glunz

Joel

Pages: ___ (including cover sheet)

Comments: _____

This transmission may contain certain information that is sensitive or confidential in nature. Its contents are exclusively intended for the person (s) identified above.

6-3878
514-9149

PBA definition Version Beta 2
10/19/99

(b)(1) As used in this section, the term 'partial-birth abortion' means an abortion in which the person performing the abortion deliberately and intentionally (a) delivers through the vagina some portion of an intact living fetus until the fetus is partially outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the fetus while the fetus is partially outside the body of the mother; and (b) performs the overt act that kills the fetus while the intact living fetus is partially outside the body of the mother.

THE AMENDED SANTORUM BILL REMAINS UNCONSTITUTIONAL

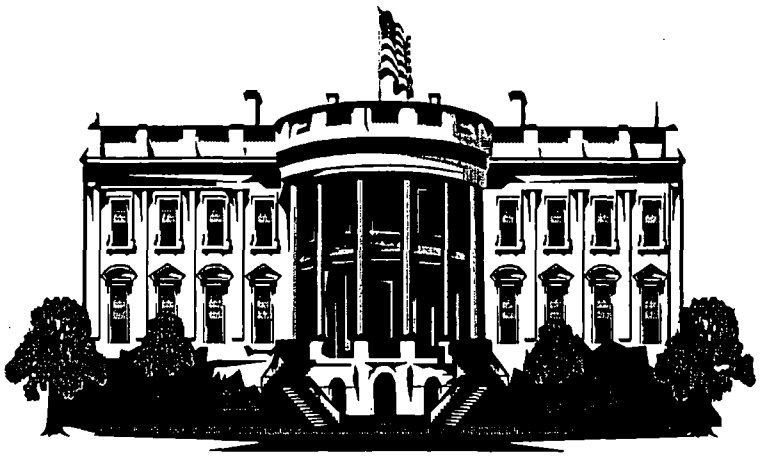
The proposed amendment to S. 1692 entirely fails to cure the constitutional defects in the Santorum bill. The bill continues to endanger women's health and to deprive them of their constitutional rights by banning safe, common, pre-viability abortions. Virtually every court in the nation to have considered similar bans has found them to be unconstitutional.

The amended version of S. 1692 remains unconstitutional for the following reasons:

- The bill continues to impose an unconstitutional undue burden on women's right to choose by reaching safe and common abortion procedures performed before fetal viability. The bill continues to contain no reference to gestational age whatsoever.

- The bill further endangers women's health by failing to include a constitutionally-mandated exception to protect the health of the pregnant woman, and by including only a constitutionally inadequate life exception.

- The bill impermissibly attempts to micro-manage surgical procedures, thereby undermining the health of women, intruding on the doctor-patient relationship, and interfering with pregnant women's right to medical self-determination.



FAX COVER SHEET

DOMESTIC POLICY COUNCIL
THE WHITE HOUSE
WASHINGTON, DC 20502
PHONE: 202/456-5696 • FAX: 202/456-2878

DATE: 10/19 NUMBER OF PAGES (INCL. COVER): 8

FROM: Nicole Rabner

TO: Joel Wiginton

FAX: 66468

COMMENTS: Joel, attached are the 3 call sheet ~~letters~~ from last session — I'll forward my draft shortly for this memo.

THE PRESIDENT HAS SEEN
5-15-97

'97 MAY 14 AM 9:33

FG001-08

THE WHITE HOUSE

WASHINGTON

May 14, 1997

RECOMMENDED TELEPHONE CALL

TO: SENATOR BREAUX

DATE: ON OR BEFORE NOON MAY 15, 1997

RECOMMENDED BY: SUSAN BROPHY, LEGISLATIVE AFFAIRS SB
TRACEY THORNTON, LEGISLATIVE AFFAIRS

PURPOSE: TO ASK THE SENATOR TO SUPPORT THE DASCHLE ALTERNATIVE ON LATE-TERM ABORTION

BACKGROUND:

5/15/97
Call made
Per Betty
Currie, Leg
Affairs informed
C. Church
cc's
Brophy
Thornton

On March 20, 1997, the House of Representatives passed a bill identical to the one you vetoed last year by a vote of 295-136, a veto-proof margin. The Senate will vote on the Daschle substitute tomorrow as well as a Feinstein-Boxer substitute to the underlying bill sponsored by Senator Santorum (R-PA).

Both substitutes would ban all post-viability abortions with exceptions for life and health of the mother. The differences between them go to the definition of health. The Daschle alternative contains a very strict definition of health making it unlawful to abort a viable fetus unless the physician certifies that continuation of the pregnancy would threaten the mother's life or risk grievous injury to her health. Grievous injury does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated. Senator Daschle intends to cover a mental health condition only when it manifests itself in some serious physical way. The Feinstein-Boxer exception covers "serious adverse health consequences to the woman".

TOPICS OF DISCUSSION:

1. Tell Senator Beaux that you recognize and respect the fact that he is pro-life and that you would never ask him to

do anything that would in any way compromise his position. But say that you really believe that Daschle's alternative is a pro-life position since it would actually prevent abortions of viable fetuses. A simple ban on one procedure will not stop a single abortion; it would merely result in abortion by other methods, all of which may pose a greater and therefore unacceptable risk to the woman's health.

2. Tell him that while you will not yield on the issue of protecting the health of the mother, you are supporting Daschle's very strict definition of health in hopes of bringing this matter to closure -- neither side is happy with Daschle's alternative. Ask him to vote for Daschle so that we can begin to bring this divisive matter to a close once and for all. Say that the Senate's acceptance of the Daschle approach will send a signal that it time to find a moderate solution to this issue which includes a total ban while protecting the life and great injury to the health of the woman.

CONTACT PERSON AND TELEPHONE NUMBERS(S): Senator Breaux
202-543-9011 or White House Operator

DATE OF SUBMISSION: May 14, 1997

ACTION:

THE PRESIDENT HAS SEEN
5-16-97

FG001-08

THE WHITE HOUSE
WASHINGTON

MAY 14, 1997

RECOMMENDED TELEPHONE CALL

TO: SENATOR HOLLINGS

DATE: ON OR BEFORE NOON MAY 15, 1997

RECOMMENDED BY: SUSAN BROPHY, LEGISLATIVE AFFAIRS
TRACEY THORNTON, LEGISLATIVE AFFAIRS

PURPOSE: TO ASK THE SENATOR TO SUPPORT THE DASCHLE ALTERNATIVE ON LATE-TERM ABORTION

BACKGROUND: On March 20, 1997, the House of Representatives passed a bill identical to the one you vetoed last year by a vote of 295-136, a veto-proof margin. The Senate will vote on the Daschle substitute tomorrow as well as a Feinstein-Boxer substitute to the underlying bill sponsored by Senator Santorum (R-PA).

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South Carolina recently passed a ban on "partial-birth" abortions and Senator Hollings announced that he would switch his vote to override your veto since his state passed a

similar law. He has also indicated that he will not support the Daschle alternative but Senator Daschle thinks he might be persuaded to vote for his alternative.

TOPICS OF DISCUSSION:

1. Tell Senator Hollings that you respect his decision to reflect South Carolina's statute on "partial-birth" by supporting Santorum's bill, but let him know that supporting either Senator Daschle or Feinstein is obviously not inconsistent with his position. Indicate that enactment of either alternative allows Congress to pass a comprehensive ban that actually stops abortions of viable fetuses; it is a ban that is constitutional and it is a ban that you would sign.

2. Tell him that while you will not yield on the issue of protecting the health of the mother, you are supporting both Feinstein's approach as well as Daschle's very strict definition of health in hopes of bringing this matter to closure -- neither side is happy with Daschle's alternative. If he is unwilling to vote for Feinstein, ask him to vote for Daschle so that we can begin to bring this divisive matter to a close once and for all. Say that the Senate's acceptance of the Daschle approach will send a signal that it time to find a moderate solution to this issue which includes a total ban while protecting the life and preventing great injury to the health of the woman.

CONTACT PERSON AND TELEPHONE NUMBERS(S): Senator Hollings
202-244-1114 or White House Operator

DATE OF SUBMISSION: May 14, 1997

ACTION:

THE WHITE HOUSE

WASHINGTON

MAY 14, 1997

RECOMMENDED TELEPHONE CALL

TO: SENATOR BOXER

DATE: ON OR BEFORE NOON MAY 15, 1997

RECOMMENDED BY: SUSAN BROPHY, LEGISLATIVE AFFAIRS
TRACEY THORNTON, LEGISLATIVE AFFAIRS

PURPOSE: TO THANK THE SENATOR FOR HER LEADERSHIP IN OPPOSING THE SANTORUM BILL ON "PARTIAL-BIRTH ABORTION" AND TO ASK HER TO CONSIDER VOTING FOR DASCHLE IF HER ALTERNATIVE DOES NOT PREVAIL

BACKGROUND: On March 20, 1997, the House of Representatives passed a bill identical to the one you vetoed last year by a vote of 295-136, a veto-proof margin. The Senate will vote on the Daschle substitute tomorrow as well as a Feinstein-Boxer substitute to the underlying bill sponsored by Senator Santorum (R-PA).

Both substitutes would ban all post-viability abortions with exceptions for life and health of the mother. The differences between them go to the definition of health. The Daschle alternative contains a very strict definition of health making it unlawful to abort a viable fetus unless the physician certifies that continuation of the pregnancy would threaten the mother's life or risk grievous injury to her health. Grievous injury does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated. Senator Daschle intends to cover a mental health condition only when it manifests itself in some serious physical way. The Feinstein-Boxer exception covers "serious adverse health consequences to the woman".

5/15/97
Call made
per Betty
Currie -
Reg Hfrs -
C. Cleveland
Brophy

Senator Daschle's approach is not supported by the pro-choice movement because of its narrow health definition. Senator Boxer has privately indicated her very strong reservations about the Daschle alternative but she has not said that she will vote against it. She is concerned that the women who were here when you vetoed the bill may not be covered under Daschle. We have told her that we believe they would be and have asked Daschle to make that clear in his remarks on the floor.

TOPICS OF DISCUSSION:

1. Tell Senator Boxer that you are very grateful for her work to protect a woman's right to choose. Say that we would not have been able to hold the line as we have so far were it not for her courage and the strength of her convictions. Ask for her assessment of the vote situation in the Senate.

2. She may tell you that Daschle is leaning towards voting for Santorum if Daschle's alternative does not pass. Let her know that you had a conversation with Senator Daschle earlier today and he did not raise that possibility with you. Tell her that you are concerned about the veto override vote and that you know how difficult this matter is for many of her colleagues. Tell her that you think it is important to pass either her alternative or Daschle's so that at least there are two different bills, one in the Senate recognizing the need to protect the mother's health and the other an extreme House measure that will be vetoed. Tell her she should vote for Daschle's alternative if her's does not pass.

CONTACT PERSON AND TELEPHONE NUMBERS(S): Senator Boxer
202-547-1015 or White House Operator

DATE OF SUBMISSION: May 14, 1997

ACTION:

aherwitt@naral.org
10/18/99 06:16:00 PM

Record Type: Record

To: Nicole R. Rabner@eop

cc:
Subject: pba materials

Nicole -- attached are three documents I think will be helpful to you. The document named pbasen.ele is our target list. You may have to scroll down to get to the columns with the names. It looks like we have a solid 34 against Santorum and we will likely get Edwards and Lincoln which brings us to exactly our last veto override vote of 36-64.

The anti's have a solid 63 and they will probably get Bayh. We have heard a rumor that Landrieu may be getable -- but that would mean she will have to switch her vote from last year. I think its a long shot, but worth a try. It would be great to have a "high level" white house person call those three offices (Edwards, Lincoln, Landrieu).

As we said on the phone, right now the only alternative we know of will be the Durbin substitute. His amendment, as you will see in the side-by-side, is a post-viability ban with exceptions to protect the woman's life and serious grievous injury to her physical health. The Durbin amendment also requires a two doctor certification that the abortion was needed. Please note that the pro-choice groups will all mostly oppose the Durbin substitute because not only is the "health" exception too narrow (and thus on its face in violation of Roe), the two doctor certification constitutes an undue burden on the right to choose because it makes access to health care that much more difficult. This is especially true for rural women when one considers that 86% of counties in the US don't have an abortion provider.

Also, it is our understanding that Boxer & Feinstein will probably introduce what was their substitute amendment last year, this year as a free standing bill. The Boxer/Feinstein language is also a post-viability ban with exceptions to protect a woman's life and serious adverse health consequences. (NARAL did score this vote in 1997 as a pro-choice alternative).

We will be in touch about the timing tomorrow. If you can't open or print any of these documents, please call me and I will have them faxed to you.

Allison & Sharon

****DO NOT DISTRIBUTE****

SENATE PBA TARGET LIST

PRO (34)	LIKELY PRO (2)	UNDECIDED (0)	LIKELY ANTI (1)	ANTI (63)

Akaka (D-HI) Baucus (D-MT) ***Bingaman (D-NM)*** Boxer (D-CA) *****Bryan (D-NV)*** *****Chafee (R-RI)*** Cleland (D-GA) Collins (R-ME) Dodd (D-CT) Durbin (D-IL) Feingold (D-WI) ***Feinstein (D-CA)*** Graham (D-FL) Harkin (D-IA) Inouye (D-HI) ***Jeffords (R-VT)*** ***Kennedy (D-MA)*** ***Kerrey (D-NE)*** Kerry (D-MA) ***Kohl (D-WI)*** *****Lautenberg (D-NJ)*** ***Lieberman (D-CT)*** Levin (D-MI) Mikulski (D-MD) Murray (D-WA) Reed (D-RI) ***Robb (D-VA)*** Rockefeller (D-WV) ***Sarbanes (D-MD)*** Schumer (D-NY) ***Snowe (R-ME)*** Torricelli (D-NJ) Wellstone (D-MN) Wyden (D-OR)	Edwards (D-NC) Lincoln (D-AR)		Bayh (D-IN)	***Abraham (R-MI)*** Allard (R-CO) ***Ashcroft (R-MO)*** Bennett (R-UT) Biden (D-DE) Bond (R-MO) Breaux (D-LA) Brownback (R-KS) Bunning (R-KY) ***Burns (R-MT)*** ***Byrd (D-WV)*** Campbell (R-CO) Cochran (R-MS) ***Conrad (D-ND)*** Coverdell (R-GA) Craig (R-ID) Crapo (R-ID) Daschle (D-SD) ***DeWine (R-OH)*** Domenici (R-NM) Dorgan (D-ND) Enzi (R-WY) Fitzgerald (R-IL) ***Frist (R-TN)*** ***Gorton (R-WA)*** Gramm (R-TX) ***Grams (R-MN)*** Grasley (R-IA) Gregg (R-NH) Hagel (R-NE) ***Hatch (R-UT)*** Helms (R-NC) Hollings (D-SC) Hutchinson (R-AR) ***Hutchison (R-TX)*** Inhoffe (R-OK) Johnson (D-SD) ***Kyl (R-AZ)*** Landrieu (D-LA) Leahy (D-VT) ***Lott (R-MS)*** ***Lugar (R-IN)*** *****Mack (R-FL)*** McCain (R-AZ) McConnell (R-KY) *****Moynihan (D-NY)*** Murkowski (R-AK) Nickles (R-OK) Reid (D-NV) Roberts (R-KS) ***Roth (R-DE)*** ***Santorum (R-PA)*** Sessions (R-AL) Shelby (R-AL) Smith (R-NH) Smith (R-OR) Specter (R-PA) Stevens (R-AK) ***Thomas (R-WY)*** Thompson (R-TN) Thurmond (R-SC) Voinovich (R-OH) Warner (R-VA)

NARAL -10/13/99 - ***Bold Italic*** indicates seat up for re-election in 2000. ** Indicates a Member retiring in 2000.

FEDERAL COURTS OVERWHELMINGLY AGREE: BANS ON ABORTION PROCEDURES ARE UNCONSTITUTIONAL

In 19 of 21 states, courts considering challenges to so-called "partial-birth" abortion bans have partially or fully enjoined the laws (AK, AZ, AR, FL, GA, ID, IL, IA, KY, LA, MI, MO, MT, NE, NJ, OH, RI, WI, WV).

Bans on so-called "partial-birth" abortion are unconstitutional for three main reasons: they constitute an "undue burden" on a woman's right to choose in violation of Planned Parenthood v. Casey, 505 U.S. 833 (1992); they are vague and overbroad because the phrase "partial-birth" abortion is a political term, not a medical one, and it is unclear to what procedures it applies; and, in the absence of an exception permitting the procedure when necessary to protect a woman's health, they pose a dangerous restriction on the availability of health care.

Here is what the Nation's federal judges have to say about so-called " partial-birth" abortion bans:

- The Hon. John G. Heyburn, II, U.S. District Court for the Western District of Kentucky (nominated by President Bush):

  "By adopting a considerably less precise definition of a partial birth abortion, the legislature not only defined the terms of its prohibition, but also said a lot about its own collective intent. Though the Act calls itself a partial birth abortion ban, it is not. The title is misleading, both medically and historically. . . . A few [legislators] seem to disregard the constitutional arguments and push for language which they believed would make abortions more controllable." Eubanks v. Stengel, 28 F. Supp. 2d 1024, 1036 (W.D. Ky. 1998).

Indeed, especially in light of the three unanimous Eighth Circuit decisions striking down bans in Arkansas, Iowa, and Nebraska — decisions handed down on September 24, 1999 — the unconstitutionality of so-called "partial-birth" abortion bans seems clear. In the face of such well-settled precedent, it is surprising that members of Congress would continue to advocate for such a ban.

BANS ON ABORTION PROCEDURES ARE VAGUE AND OVERBROAD, UNDULY BURDENING THE RIGHT TO CHOOSE

Courts consistently have held that so-called "partial-birth" abortion bans are unconstitutional precisely because they are so ill-defined that they effectively eliminate the safest and most common forms of abortion.

- The Hon. Richard S. Arnold, former Chief Judge, U.S. Court of Appeals for the

Eighth Circuit (nominated by President Carter), writing on behalf of himself and the Hon. Roger L. Wollman, Chief Judge, U.S. Court of Appeals for the Eighth Circuit (nominated by President Reagan), and the Hon. Paul A. Magnuson, Chief Judge, U.S. District Court for the District of Minnesota (nominated by President Reagan), sitting by designation:

"In interpreting the statute, it is our duty to give it a construction, if reasonably possible, that would avoid constitutional doubts. We cannot, however, twist the words of the law and give them a meaning they cannot reasonably bear. . . . [The Act] prohibit[s] the most common procedure for second-trimester abortions and, in doing so, imposes an undue burden on a woman's right to choose to have an abortion." Carhart v. Stenberg, 1999 WESTLAW 753919 at *7 (8th Cir. Sept. 24, 1999).

- The Hon. Donald L. Graham, U.S. District Judge for the Southern District of Florida (nominated by President Bush):

"The broad language contained in the Act serves only to heighten the confusion. The legislature's choice of broad terminology fails to give physicians adequate notice of which medical procedures are prohibited. Moreover, the Act must meet a higher standard of certainty because it directly effects a woman's constitutional right to an abortion and imposes criminal penalties. The Act fails to meet this higher standard." A Choice for Women v. Butterworth, 54 F. Supp. 2d 1148, 1159 (S.D. Fla. 1998).

- The Hon. Ronald R. Lagueux, Chief Judge, U.S. District Court for the District of Rhode Island (nominated by President Reagan):

"[T]his Court finds that 'substantial portion' is vague and does not provide doctors with sufficient guidance to know what the Legislature has made illegal. [Thus, the law] places an undue burden on a woman's ability to receive an abortion." Rhode Island Medical Society v. Whitehouse, 1999 WL 683846 (D.R.I. Aug. 30, 1999).

- The Hon. Charles P. Kocoras, U.S. District Judge for the Northern District of Illinois (nominated by President Carter):

"[The Act] has the potential effect of banning the most common and safest abortion procedures. . . . To ensure that her conduct does not fall within the statute's reach, the physician will probably stop performing [all] such procedures. . . . Because the standard in [the Act] effectively chills physicians from performing most abortion procedures, the statute is an undue burden on a woman's constitutional right to seek an abortion before viability." Hope Clinic v. Ryan, 995 F. Supp. 847 (N.D. Ill. 1998).

- The Hon. G. Thomas Porteous, U.S. District Court for the Eastern District of Louisiana (nominated by President Clinton):

  "[T]he Act now in question advances neither maternal health or potential life and clearly would create undue burdens on a woman's right to choose abortion. At most, the Act may force women seeking abortions to accept riskier or costlier abortion procedures which nevertheless result in fetal death." Causeway Medical Suite v. Foster, 43 F. Supp. 2d 604, 612 (E.D. La. 1999).

- The Hon. Gerald E. Rosen, U.S. District Court for the Eastern District of Michigan (nominated by President Bush):

  "[T]he language of . . . the [ ] statute is hopelessly ambiguous and not susceptible to a reasonable understanding of its meaning. Physicians looking to its language for direction as to what procedures are proscribed by the law simply cannot know with any degree of confidence what conduct may give rise to criminal prosecution and license revocation." Evans v. Kelley, 977 F. Supp. 1283, 1311 (E.D. Mich. 1997).

ABORTION BANS ARE UNCONSTITUTIONAL WITHOUT AN EXCEPTION PROTECTING THE HEALTH OF THE WOMAN

Courts across the Nation have ruled that, in the absence of an exception to protect the woman's health, so-called "partial-birth" abortion bans are unconstitutional.

- The Hon. Richard A. Posner, Chief Judge, U.S. Court of Appeals for the Seventh Circuit (nominated by President Reagan), writing for himself and the Hon. Iliana Diamond Rovner, U.S. Court of Appeals for the Seventh Circuit (nominated by President Bush), with the Hon. Daniel A. Manion, U.S. Court of Appeals for the Seventh Circuit (nominated by President Reagan), dissenting:

  "[The state] is taking chances of unknown magnitude with the health of pregnant women. This the Supreme Court's decisions do not permit. Those decisions require that maternal health be the physician's paramount concern." Planned Parenthood of Wisconsin v. Doyle, 162 F.3d 463 (7th Cir. 1998).

- The Hon. Anne E. Thompson, Chief Judge, U.S. District Court for the District of New Jersey (nominated by President Carter):

  "Reviewing the Act in light of Roe and Casey, the Court finds . . . that it imposes an undue burden on a woman's constitutional right to terminate her pregnancy. . . . [T]he Act proscribes "partial-birth abortions" without providing a health or

adequate life exception." "[S]tates may not proscribe an abortion procedure, before or after viability, without providing an exception for when such procedure is necessary, in a physician's medical judgment, to preserve the physical or mental health of the woman." Planned Parenthood of Central New Jersey v. Verniero, 41 F. Supp. 2d 478, 499 (D.N.J. 1998).

- The Hon. Richard Bilby, Senior District Judge, U.S. District Court for the District of Arizona (nominated by President Carter):

  "[T]he fact that the Act does not provide an exception where the proscribed conduct is in the best interest of the health of a woman is an additional reason to find that the Act is unconstitutional." Planned Parenthood of Southern Arizona, Inc. v. Woods, 982 F. Supp. 1369, 1378 (D. Ariz. 1997).

- The Hon. G. Thomas Porteous, U.S. District Court for the Eastern District of Louisiana (nominated by President Clinton):

  "Without the maternal health exception, the Act may leave a woman in deteriorating health related to her pregnancy the 'untenable choice' between undergoing a more dangerous procedure in her already fragile condition, 'continuing her pregnancy in the face or unknown risks and health concerns' . . ., or waiting until her death is imminent to have recourse to otherwise banned procedures. . . . The state may not constitutionally restrict a woman to such dangerous options at any stage of pregnancy." Causeway Medical Suite v. Foster, 43 F. Supp. 2d 604, 613-14 (E.D. La. 1999).

- The Hon. Charles P. Kocoras, U.S. District Court for the Northern District of Illinois (nominated by President Carter):

  "There is no exception to the ban when the woman's health is endangered, when the woman suffers from conditions or illnesses other than those enumerated, such as mental conditions or disorders, or when the woman's health is endangered by the pregnancy itself or is compromised by the alternative abortion procedure. . . . As such, [the Act] is clearly unconstitutional." Hope Clinic v. Ryan, 995 F. Supp. 847 (N.D. Ill. 1998).

COMPARISON OF PROPOSED SENATE ABORTION BANS

	Santorum	Boxer-Feinstein	Daschle	Durbin
Nature of ban	Prohibits so-called " partial-birth" abortion (" PBA").	Post-viability abortion ban.	Post-viability abortion ban.	Post-viability abortion ban.
Definitions	PBA defined as abortion in which physician "partially vaginally delivers a living fetus before killing the fetus and completing delivery." Defines "partially delivers" as " delivers into the vagina a living fetus, or a substantial portion thereof."	Not applicable.	Not applicable.	Not applicable.
Scienter	Requires knowledge and intent.	Requires knowledge.	Requires knowledge.	Requires knowledge and intent.
Penalty	Civil and criminal penalties.	Civil penalties and/or referral to state licensing authority.	Civil penalties and/or referral to state licensing authority.	Civil penalties and/or referral to state licensing authority.
Certification	Not applicable.	Official initiating action must certify to the court that 30 days notice was given to state Attorney General; and that he or she believes that action by the U.S. is in the public interest and is necessary to secure substantial justice.	Official initiating action must certify to the court that 30 days notice was given to Governor, state Attorney General, and state medical licensing board; and that he or she believes that action by the U.S. is in the public interest and is necessary to secure substantial justice.	Both attending physician and second, independent physician must certify that continuing pregnancy would threaten life of mother or risk grievous injury to her physical health. Official initiating action must certify to the court that 30 days notice was given to Governor, state Attorney General, and state medical licensing board; and that he or she believes that action by U.S. is in the public interest and necessary to secure substantial justice.

Exceptions	No health exception. Exception for an abortion " necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury."	Exceptions for life of and " serious adverse health consequence to" the woman.	Exceptions for life of woman and situation that would "risk grievous injury" to a woman's physical health, defined as severely debilitating disease or impairment caused by pregnancy or inability to provide necessary treatment for life-threatening condition.	Exceptions for life, risk of grievous injury to health of mother, or for medical emergency when followed by post-abortion certification establishing the emergency. " Grievous injury" defined as severely debilitating disease or impairment caused by pregnancy or inability to provide necessary treatment for a life-threatening condition.
Regulatory involvement	Can seek state Medical Board hearing to determine if necessary to save woman's life.	Mandates HHS regulations requiring attending physician to certify medical necessity of procedure.	Mandates HHS regulations requiring attending physician to certify medical necessity; and mandates state licensing board to adopt regulations for revocation or suspension of license.	Mandates HHS regulations requiring attending physician to certify medical necessity; certification of second, independent physician; and certification by attending physician of medical emergency if applicable, all under penalty of perjury. Mandates state licensing board to adopt regulations for revocation or suspension of license.
Immunity	Cannot prosecute woman.	Cannot prosecute woman.	Cannot prosecute woman.	Cannot prosecute woman.

THE WHITE HOUSE
Office of Legislative Affairs, Senate Liaison

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Fax Cover Sheet

To: Nicole Rabner

From:
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- ___ Caroline Fredrickson
- X Joel Wiginton
- ___ Mike Williams
- ___ Marty Hoffmann
- X Hildy Kuryk
- ___ Bobby Conner

Fax: 456-2818 Phone: _____

Date: _____ Pages including cover sheet: 9

Message: Here are the Feinstein and Daschle partial Birth abortion amendments from the 105th. If questions pls call.

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Post-Viability Abortion Restriction Act (Introduced in the Senate)

S 481 IS

105th CONGRESS

1st Session

S. 481

To prohibit certain abortions.

IN THE SENATE OF THE UNITED STATES

March 19, 1997

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

A BILL

To prohibit certain abortions.

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 `Post-Viability Abortion Restriction Act'.

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

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

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

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

violation of this section.

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DASCHLE (AND OTHERS) AMENDMENT NO. 289 (Senate - May 15, 1997)

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Mr. DASCHLE (for himself, Ms. **Snowe,** Ms. **Mikulski,** Mrs. **Murray,** Ms. **Landrieu,** Ms. **Collins,** Mr. **Lieberman,** and Mr. **Kennedy**) proposed an amendment to the bill, H.R. 1122, supra; as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.
This Act may be cited as the `Comprehensive Abortion Ban Act of 1997'.

SEC. 2. FINDINGS.
Congress makes the following findings:

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

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

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

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

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

(6) Even when it is necessary to terminate a pregnancy to save the life or health of the mother, every medically appropriate measure should be taken to deliver a viable fetus.

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

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

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

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

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

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

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

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DASCHLE (AND OTHERS) AMENDMENT NO. 289 (Senate - May 15, 1997)

SEC. 3. ABORTION PROHIBITION.
(a) **In General:** Title 18, United States Code, is amended by inserting after chapter 73 the following:

`CHAPTER 74--ABORTION PROHIBITION

`Sec.

`1531. Prohibition.

`1532. Penalties.

`1533. State regulations.

`1534. Rule of construction.

`1531 Prohibition.
`(a) **In General:** It shall be unlawful for a physician to abort a viable fetus unless the physician certifies that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.
`(b) **Grievous Injury:**

`(1) **In general:** For purposes of subsection (a), the term `grievous injury' means--

`(A) a severely debilitating disease or impairment specifically caused by the pregnancy; or

`(B) an inability to provide necessary treatment for a life-threatening condition.

`(2) **Limitation:** The term `grievous injury' does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.
`(c) **Physician:** In this chapter, 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, except that any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs an abortion in violation of subsection (a) shall be subject to the provisions of this section.
`(d) **No Conspiracy:** No woman who has had an abortion after fetal viability may be prosecuted under this section for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of title 18, United States Code.

`1532 Penalties.
`(a) **Action by Attorney General:** The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General may commence a civil action under this chapter in any appropriate United States district court to enforce the provisions of this chapter.

`(b) **Relief**:

`(1) **First offense**: Upon a finding by the court that the respondent in an action commenced under subsection (a) has knowingly violated a provision of this chapter, the court shall notify the appropriate State medical licensing authority in order to effect the suspension of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding $100,000, or both.

`(2) **Second offense**: If a respondent in an action commenced under subsection (a) has been found to have knowingly violated a provision of this chapter on a prior occasion, the court shall notify the appropriate State medical licensing authority in order to effect the revocation of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding $250,000, or both.

`(3) **Hearing**: With respect to an action under subsection (a), the appropriate State medical licensing authority shall be given notification of and an opportunity to be heard at a hearing to determine the penalty to be imposed under this subsection.
`(c) **Certification Requirements**: At the time of the commencement of an action under subsection (a), the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General shall certify to the court involved that, at least 30 calendar days prior to the filing of such action, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney involved--

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DASCHLE (AND OTHERS) AMENDMENT NO. 289 (Senate - May 15, 1997)

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

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

`1533 Regulations.
`(a) **Regulations of Secretary for Certification:**

`(1) **In general:** Not later than 60 days after the date of enactment of this chapter, the Secretary of Health and Human Services shall publish proposed regulations for the filing of certifications by physicians under section 1531(a).

`(2) **Requirement**: The regulations under paragraph (1) shall require that a certification filed under section 1531(a) contain--

`(A) a certification by the physician (on penalty of perjury, as permitted under section 1746 of title 28) that, in his or her best medical judgment, the abortion involved was medically necessary pursuant to such section; and

`(B) a description by the physician of the medical indications supporting his or her judgment.

`(3) **Confidentiality**: The Secretary of Health and Human Services shall promulgate regulations to ensure that the identity of the mother described in section 1531(a) is kept confidential, with respect to a certification filed by a physician under section 1531(a).
`(b) **Action by State**: A State, and the medical licensing authority of the State, shall develop regulations and procedures for the revocation or suspension of the medical license of a physician upon a finding under section 1532 that the physician has violated a provision of this chapter. A State that fails to implement such procedures shall be subject to loss of funding under title XIX of the Social Security Act.

`1534 Rule of Construction.

`(1) **In general**: The requirements of this chapter shall not apply with respect to post-viability abortions in a State if there is a State law in effect in the State that regulates, restricts, or prohibits such abortions to the extent permitted by the Constitution of the United States.

`(2) **State law**: In paragraph (1), the term `State law' includes all laws, decisions, rules or regulations of any State, or any other State action having the effect of law.'.
(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. Prohibition of post-viability abortions

1531'.

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LRM ID: RJP195

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

URGENT

Thursday, October 14, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference
OMB CONTACT: Robert J. Pellicci
E-Mail: Robert_J._Pellicci@omb.eop.gov
PHONE: (202)395-4871 FAX: (202)395-6148
SUBJECT: **Executive Office of the President Statement of Administration Policy on S1692 Partial Birth Abortion**

DEADLINE: **3:00 P.M. Friday, October 15, 1999**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Senate floor consideration of S. 1692 could occur as early as next week.

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LRM ID: RJP195 **SUBJECT:** Executive Office of the President Statement of Administration Policy on S1692 Partial Birth Abortion

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RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: **Robert J. Pellicci Phone: 395-4871 Fax: 395-6148**
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ **(Date)**

_____ **(Name)**

_____ **(Agency)**

_____ **(Telephone)**

The following is the response of our agency to your request for views on the above-captioned subject:

_____ **Concur**

_____ **No Objection**

_____ **No Comment**

_____ **See proposed edits on pages** _____

_____ **Other:** _____

_____ **FAX RETURN of** _____ **pages, attached to this response sheet**

DRAFT – NOT FOR RELEASE

DRAFT

October 14, 1999
(Senate)

S. 1692 - Partial-Birth Abortion Ban Act of 1999
(Sen. Santorum (R) PA and 43 cosponsors)

S. 1692 contains the same serious flaws as H.R. 1833 and H.R. 1122, virtually identical bills that were passed during the 104th and 105th Congresses and vetoed by the President on April 10, 1996 and October 10, 1997, respectively.

The President will veto S. 1692 for the reasons he expressed in his veto message of April 10, 1996, which is attached.

* * * * * * * * * * *

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release April 10, 1996

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 1833, which would prohibit doctors from performing a certain kind of abortion. I do so because the bill does not allow women to protect themselves from serious threats to their health. By refusing to permit women, in reliance on their doctors' best medical judgment, to use this procedure when their lives are threatened or when their health is put in serious jeopardy, the Congress has fashioned a bill that is consistent neither with the Constitution nor with sound public policy.

I have always believed that the decision to have an abortion generally should be between a woman, her doctor, her conscience, and her God. I support the decision in Roe v. Wade protecting a woman's right to choose, and I believe that the abortions protected by that decision should be safe and rare. Consistent with that decision, I have long opposed late-term abortions except where necessary to protect the life or health of the mother. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health.

The procedure described in H.R. 1833 has troubled me deeply, as it has many people. I cannot support use of that procedure on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available.

There are, however, rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her against serious injury to her health. In these situations, in which a woman and her family must make an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected.

In the past several months, I have heard from women who desperately wanted to have their babies, who were devastated to learn that their babies had fatal conditions and would not live, who wanted anything other than an abortion, but who were advised by their doctors that this procedure was their best chance to avert the risk of death or grave harm which, in some cases, would have included an inability to ever bear children again. For these women, this was not about choice -- not about deciding against having a child. These babies were certain to perish before, during or shortly after birth, and the only question was how much grave damage was going to be done to the woman.

I cannot sign H.R. 1833, as passed, because it fails to protect women in such dire circumstances -- because by treating doctors who perform the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. This bill, in curtailing the ability of women and their doctors to choose the procedure for sound medical reasons, violates the constitutional command that any law regulating abortion protect both the life and the health of the woman. The bill's overbroad criminal prohibition risks that women will suffer serious injury.

That is why I implored Congress to add an exemption for the small number of compelling cases where selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse consequences to her health. The life exception in the current bill only covers cases where the doctor believes that the woman will die. It fails to cover cases where, absent the procedure, serious physical harm, often including losing the ability to have more children, is very likely to occur. I told Congress that I would sign H.R. 1833 if it were amended to add an exception for serious health consequences. A bill amended in this way would strike a proper balance, remedying the constitutional and human defect of H.R. 1833. If such a bill were presented to me, I would sign it now.

I understand the desire to eliminate the use of a procedure that appears inhumane. But to eliminate it without taking into consideration the rare and tragic circumstances in which its use may be necessary would be even more inhumane.

The Congress chose not to adopt the sensible and constitutionally appropriate proposal I made, instead leaving women unprotected against serious health risks. As a result of this Congressional indifference to women's health, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

WILLIAM J. CLINTON

THE WHITE HOUSE,
April 10, 1996.

# # #

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Partial-Birth Abortion Ban Act of 1999 (Placed on the Calendar in the Senate)

S 1692 PCS

Calendar No. 300

106th CONGRESS

1st Session

S. 1692

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

IN THE SENATE OF THE UNITED STATES

October 5, 1999

Mr. SANTORUM (for himself, Mr. SMITH of New Hampshire, Mr. ABRAHAM, Mr. ASHCROFT, Mr. BROWNBACK, Mr. BURNS, Mr. CRAIG, Mr. DEWINE, Mr. ENZI, Mr. FRIST, Mr. GRAMM, Mr. GRASSLEY, Mr. HATCH, Mr. HUTCHINSON, Mr. KYL, Mr. MACK, Mr. MCCONNELL, Mr. NICKLES, Mr. SESSIONS, Mr. SMITH of Oregon, Mr. THURMOND, Mr. WARNER, Mr. BENNETT, Mr. LOTT, Mr. ALLARD, Mr. BOND, Mr. BUNNING, Mr. COCHRAN, Mr. CRAPO, Mr. DOMENICI, Mr. FITZGERALD, Mr. GORTON, Mr. GRAMS, Mr. HAGEL, Mr. HELMS, Mr. INHOFE, Mr. LUGAR, Mr. MCCAIN, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SHELBY, Mr. THOMAS, Mr. VOINOVICH, and Mr. COVERDELL) introduced the following bill; which was read the first time

October 6, 1999

Read the second time and placed on the calendar

A BILL

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 1999'.

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.

`Sec. 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. 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.

`(3) As used in this section, term `vaginally delivers a living fetus before killing the fetus' means

deliberately and intentionally delivers into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure the physician knows will kill the fetus, and kills the fetus.

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

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

`(e) 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:

1531'.

Calendar No. 300

106th CONGRESS

1st Session

S. 1692

A BILL

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

October 6, 1999

Read the second time and placed on the calendar

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S.1692
SPONSOR: Sen Santorum, Rick (introduced 10/05/99)

STATUS: Detailed Legislative Status

Senate Actions

Oct 5, 99:
Introduced in the Senate. Read the first time. Placed on Senate Legislative Calendar under Read the First Time.

Oct 6, 99:
Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 300.

The New York Times
FRIDAY, OCTOBER 22, 1999

By a Wide Margin, House Renews School Aid to the Poor

By ERIC SCHMITT

WASHINGTON, Oct. 21 — In a rare display of bipartisanship, the House voted overwhelmingly today to renew for five years the largest Federal program to help educate poor children.

Lawmakers agreed, by a vote of 358 to 67, to extend Title I, the Federal program that has spent more than $100 billion since its enactment in 1965 as a cornerstone of President Lyndon B. Johnson's Great Society. The program reaches 10 million of the nation's neediest children.

In a stinging rebuff to conservatives, the House rejected a voucher plan that could have given families of poor children $3,500 each to attend private schools if their public schools were failing academically or deemed unsafe. Opponents had expressed fears that vouchers would drain students — and, by extension, public money — away from public schools.

Education has become a battleground issue for candidates in the 2000 Presidential and Congressional campaigns, with Republican and Democratic rivals promising to increase Federal spending on education. The House bill would increase annual spending on the Title I program to $9.9 billion from $7.7 billion.

But unlike other hot political issues, like tax cuts or gun control, in which Democrats and Republicans have seen greater political advantage in confrontation than compromise, lawmakers largely buried their party differences today to show their support for education.

"They each want to preserve their role as the education party," said Vicki P. Rafel, vice president for legislation for the national Parent-Teacher Association.

The measure was the third major education bill the House has approved in a session defined by its lack of significant accomplishments. In April, Congress approved a bill that gave states and local schools more flexibility in how they spend more than $10 billion in Federal education money each year. In July, the House approved a $2 billion bill for teacher training and recruitment.

Broad bipartisan support for the bill today staved off efforts by conservatives to attach amendments allowing taxpayer-financed vouchers to private schools for students in academically failing public schools. Voucher plans would have drawn a sure veto from President Clinton, dooming the entire bill.

Moderate Republicans, led by Representative Bill Goodling of Pennsylvania, chairman of the House Committee on Education and the Workforce, had fended off voucher amendments in committee, and today joined virtually all Democrats to reject two voucher provisions, by votes of 257 to 166 and 271 to 153.

One plan offered by the House majority leader, Representative Dick Armey of Texas, would have set aside $500 million over five years to give annual vouchers of $3,500 each, redeemable at private schools, to 27,000 students at failing public schools.

"No child should be trapped in a school that's failing or unsafe," Mr. Armey said.

But opponents said the voucher plans would siphon taxpayer money away from public schools that need it the most, and would violate the constitutional separation of church and state, since many private schools are church-based.

Conservatives suffered another setback when a second Republican-backed bill, to allow states and schools to pool a wide array of Federal education grants into a lump sum that schools could use for any purpose, was watered down to a pilot program limited to 10 states.

Rare bipartisan support for what has become an important election issue.

The House tonight approved the measure, 213 to 208, but the outcome fell short of the votes necessary to override Mr. Clinton's veto threat of the bill, which the Administration says helps children who are neither poor nor low-achieving.

For the past several weeks, Republican moderates have been eager to show that they could produce a popular education bill free of the divisive voucher issue. The Title I program provides $300 to $1,500 a student to schools in almost every Congressional district, enabling principals to hire teachers for remedial classes and buy textbooks, among other things.

The bill, which is backed by the Clinton Administration, would require schools to compile new information about the performance of their students and their schools, and their teachers' qualifications. Much of this information is rarely disclosed publicly — for example, whether teachers are licensed or trained to teach the class to which they have been assigned.

It would also allow parents in failing schools to transfer their children to other schools in the same district — but only to those that are public.

Unlike the House, which is reauthorizing the 1965 Elementary and Secondary Education Act in pieces, including Title I, the Senate is wrestling with the entire bill at once. A draft is circulating in the Senate Health and Education Committee, and could be acted on by the end of the month.

In two days of floor debate, representatives this week jousted over the merits of Title I and to what extent it had succeeded in bridging the education gap between the nation's most disadvantaged and more affluent children.

"The results have been mixed," Representative George Miller, Democrat of California, said on Wednesday. "We have closed the gap to some extent between rich and poor, majority and minority students, but the gap remains wide and it remains open."

Critics complain that Congress has poured money into the program for 35 years with scant success.

"It is really a total failure," said Representative Ron Paul, Republican of Texas. "Yet the money goes up continuously."

Senate Votes to Ban a Controversial Abortion Procedure

By ALISON MITCHELL

WASHINGTON, Oct. 21 — The Senate voted 63 to 34 today to ban a particular kind of abortion procedure that its opponents call "partial birth" but fell slightly short of the votes that would be needed to override President Clinton's expected veto.

The passionate debate on the issue — with graphic charts, wrenching anecdotes and flashes of anger and emotion — has become a Senate ritual, enacted many times since 1995. But the Senate action was being closely watched as the first test of strength on the divisive social and political issue in the 106th Congress.

The bill's supporters had once hoped that last November's elections would bring them the extra votes to prevail. But today's vote for the ban indicated — if three absent Senators did not change their stand — that its advocates had picked up only one supporter since last year and would have 65 votes for an eventual override. That is two votes shy of the 67 that would be necessary.

Forty-nine Republicans and 14 Democrats voted for the ban, while 31 Democrats and 3 Republicans voted against it.

The bill would outlaw a kind of abortion in which, the bill's supporters say, a fetus is partly extracted feet first. An instrument is then inserted into the skull, and the brain is removed before the fetus is taken out. The procedure is used in the second and third trimester.

Since the ban first passed in 1995 and was vetoed by Mr. Clinton, abortion opponents have found that their focus on this procedure has been a successful political strategy for advancing their cause.

Various "partial birth abortion" bans have been enacted in up to 30 states. But lower courts in two-thirds of those states have either struck down the law or limited its implementation. The issue is widely expected to reach the Supreme Court.

The White House, in a statement, said that the bill "contains the same serious flaws" as past measures and that Mr. Clinton would veto it once again. The President has objected in

Stephen Crowley/The New York Times

Senator Tom Harkin, with Senator Barbara Boxer yesterday, successfully sponsored a nonbinding amendment in support of Roe v. Wade.

contain an exception to protect a woman's health. The bill's advocates argue that such an abortion is never medically necessary.

Senator Rick Santorum, Republican of Pennsylvania, led the fight for the ban. He said this type of abortion "is not like abortion, it is like infanticide," adding, "This is a baby that is all but born and then killed." He also tried to put the ban in a broader context, arguing that by allowing "this kind of execution," the Senate people that "violence is O.K."

Senator Peter G. Fitzgerald, Republican of Illinois, said: "If people were sticking scissors on the heads of puppies we would not abide it. In the name of common decency and humanity, I implore my colleagues not to let this happen to the young any longer."

Opponents called the bill unconstitutional and read letters from doctors and physician groups saying such a law would tie the hands of health-threatening pregnancies.

"Here we are in the Senate," said Senator Barbara Boxer, Democrat of California, "a hundred of us and not one of us an obstetrician, not one of us a gynecologist, deciding what procedures should or should not be used, and under what circumstances, in a matter that should be left to the medical profession, left to the families of this country, left to loving moms and dads."

Senator Olympia J. Snowe, Republican of Maine, told of a couple who learned they were expecting a child with such abnormalities that it could die in the womb. Should the Government, she asked, bar the woman from an abortion procedure "that will protect her health and her future fertility?"

Mr. Santorum, the chief sponsor of the ban, tried today to pick up the final votes for an override by altering the language of his bill in response to a recent ruling by the United States Court of Appeals for the Eighth Circuit that similar state laws in Arkansas, Iowa and Nebraska were so vaguely and broadly written that they were unconstitutional. Mr. Santorum defined the procedure as one used when an "intact living fetus" is delivered "partially outside of the mother."

But Ms. Boxer argued that even with this language, the law would still be unconstitutional.

Throughout the debate, the two sides strove for the middle ground and tried to make their opponents look extreme. Mr. Santorum said those opposing him were really saying that abortion should be performed "at any time, any place, any manner."

Several Democrats said supporters of the ban were actually intent on overturning Roe v. Wade, the landmark Supreme Court decision in 1973 that created a legal right to abortion. To make that point, Senator Tom Harkin, Democrat of Iowa, offered a nonbinding amendment voicing support for the 1973 decision, which narrowly passed 51 to 47.

The House, which has twice overridden the President's veto on this legislation, is expected to consider

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