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State of the Union Address to the 106th Congress,
Second Session

President William J. Clinton

January 27, 2000, Washington, D.C.

(3 copies)



STATE OF THE UNION

ADDRESS TO THE 106th CONGRESS



SECOND SESSION

President William J. Clinton

JANUARY 27, 2000 • WASHINGTON, D.C.

DAVID E. HASSELTINE

151 E. 1st Street #121
Mesa, Arizona 85201

'01 JAN 12 PM 2:47

4 January 2001

Ms. Lisel Loy
Assistant to the President and Staff Secretary
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Ms. Loy :

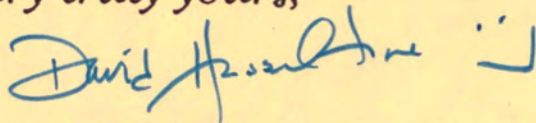
I just wanted to write you and thank you for your work for our Country and in helping others.

I am not sure what you be doing after you leave your present position, but you sure worked hard in this job. I appreciate it.

I would like to respectfully request an autographed photo and business card from you to remember your service.

Thank you very much and all the the best.

Very truly yours,


David E. Hasseltine

1/12/01

How do you want
to handle ? I don't
know
OK
H
C
—



Lisel Loy
assistant to the President
The White House
Washington, D.C.

20500

THE WHITE HOUSE
WASHINGTON

Date 12-23-00

To: NOLAN, NASH

CC: M. HALEY

From: The Staff Secretary / L. LOY

I HAVE DISCUSSED WITH JOHN
SENDING A MEMO SIMILAR
TO THE ATTACHED TO ALL
ADMINISTRATION OFFICIALS
WHO ARE
~~WORKING~~ RESIGNING. IT WOULD
SERVE AS FORMAL ACCEPTANCE
OF RESIGNATION; IT COULD COME
FROM BOB OR JOHN. PLEASE
REVIEW AND MAKE ANY EDITS /
CLARIFICATIONS. WE WOULD HOPE
TO SEND OUT ROUGHLY SAME TIME
AS LAST.

OK

JOHN KENNETH GALBRAITH
HARVARD UNIVERSITY
CAMBRIDGE, MASSACHUSETTS

July 12, 2000

Ms. Lisel Loy
The White House
Washington, D.C. 20500

Confidential

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: MM **DATE:** 11/10/71

20K-0910-5

Dear Ms. Loy:

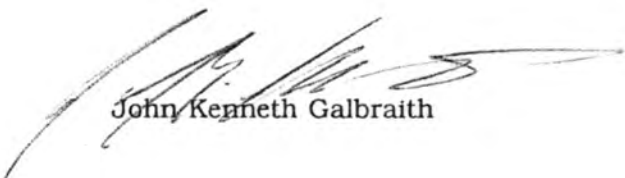
You will not doubt my pleasure in your call yesterday. I'm delighted, honored.

It occurs to me that I might add a word on my reference to the earlier award I mentioned. It was given freely at the end of World War II to civilians who had a major role with the armed forces -- I was a director of the United States Strategic Bombing Survey, which assessed the effect of the air attacks. We were civilians in uniform, I with rank of colonel.

I paid little attention to the award: my recollection is that I received it by mail in New York. Nor would there have been any other attention except that one night for amusement I wore the bar to a White House dinner. President Kennedy asked me what it was; I told him and he said, "Those were handed out at random." I've told of his response. It was, I trust, an unimportant matter.

My very great pleasure again.

Yours faithfully,


John Kenneth Galbraith



oam
THIS
DOCUMENT
WAS NOT
EXEMPTED
(N) 1.13.01

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

SUBJECT: U.S.-India Cooperation on Affordable Housing and
Community Development

In order to enlarge the framework for policy research studies on affordable housing and related community development, one of our most pressing domestic problems, and to strengthen relations with the State of India for the mutual benefit of the citizens of both countries, I hereby direct the Secretary of Housing and Urban Development to begin discussions with the Government of India on issues pertaining to affordable housing and community development, with the aim of establishing a binational commission to structure a cooperative exchange program in this field. The Secretary of Housing and Urban Development shall convene and chair the American side of this binational commission, and the membership should be composed of experts active in housing policy, mortgage markets, residential construction technology, economic development, neighborhood revitalization, and related fields of research and practice vital to the health and well-being of towns and cities. All activity undertaken pursuant to this memorandum shall be coordinated with the Department of State.

Lisel:

I took you at your word
on this one. It's exactly like
the Israel memo.

Dave

THE WHITE HOUSE
WASHINGTON

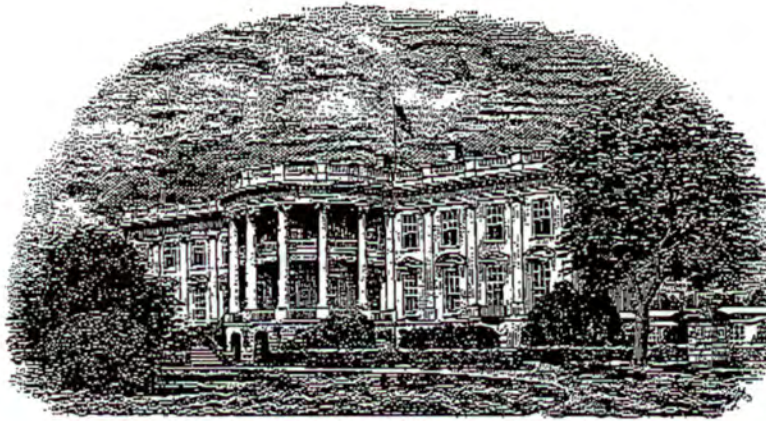
Date 8.11.00

To: BRADTKE, NSC

From: The Staff Secretary

ANY COMMENT?

cc: CLERKS



'00 AUG 4 AM 11:32

cc: Jack Lew,
FYI

The White House
OFFICE OF CABINET AFFAIRS

8/7/00

Copy sent to
Jack Lew -

Date:

8/4

To:

Lisel Loy

Fax:

x 62215

From:

Wendy Arends x67007

Pages:

(Including this cover sheet)

Comments:

Here we go again w/Hud...
~~collaborate~~

Let me know how we
should proceed...

Wendy



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

August 1, 2000

Memorandum

To: Thurgood Marshall, Jr., Secretary to the Cabinet, Cabinet Affairs

cc: Wendy Arends, Cabinet Affairs
Donald Camp, NSC

From: Jacquie Lawing, Chief of Staff *qm lawing*

Re: HUD travel to India; Memorandum from the President

I am writing regarding Secretary Cuomo's proposed visit to India in order to develop a cooperative relationship in the areas of housing and community development. It would be extremely helpful if we had a Memorandum from the President as a follow-up to the President's trip to India in March, 2000 for a HUD mission to India. The travel is tentatively scheduled to take place from August 28 - August 31.

As you know, there is precedence for this Memorandum: in June, 2000, President Clinton signed a Memorandum to the Secretary of State and the Secretary of Housing and Urban Development to establish a Binational Commission on Housing and Community Development in Israel to foster cooperation between the two countries. This follows on existing efforts with South Africa and China. The Israeli government has already sent a delegation to the U.S. to study housing, finance, and economic development. We are currently filling the positions for the Binational Commission to implement a substantive workplan with our counterparts in Israel.

Attached is a proposed Memorandum from the President that establishes a Binational Commission HUD could form with India to foster cooperation on affordable housing, poverty alleviation, and community development issues.

Please let me know what I can do to expedite the process needed to get the Memorandum signed by the President.

Thank you in advance for your help with this.

DRAFT**DRAFT****THE WHITE HOUSE****DATE****MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF HOUSING AND URBAN
DEVELOPMENT****SUBJECT: U.S.-INDIA COOPERATION ON AFFORDABLE HOUSING AND
COMMUNITY DEVELOPMENT**

In order to carry out the vision of President Clinton's recent mission to India to deepen the Indian-American partnership in tangible ways, and to enhance the framework for policy research studies on affordable housing and related community development, one of our most pressing domestic problems, and to strengthen relations with the State of India for the mutual benefit of the citizens of both countries, I hereby direct the Secretary of Housing and Urban Development to begin discussions with the Government of India on issues pertaining to affordable housing and community development, with the aim of establishing a Binational Commission to structure a cooperative exchange program in this field. The membership of this Binational Commission would be composed of experts from both government and the private sector active in housing policy, mortgage markets, urban management information systems, residential construction technology, neighborhood revitalization, and related fields of research and practice vital to the health and well-being of towns and cities. The Secretary of Housing and Urban Development shall convene and chair the American side of this Commission. All activity undertaken pursuant to this Memorandum shall be coordinated with the U.S. Department of State.

THE WHITE HOUSE

6.29.00

John Podesta

Lisel Loy

Attached are memoranda concerning pardons & commutations that are contemplated for July 4 (July 3 announcement).

If you need any additional information, let us know.

Beth Nolan
Meredith Cabe

Ann

THE WHITE HOUSE

WASHINGTON

June 29, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: BETH NOLAN *BN*
BRUCE LINDSEY
MEREDITH CABE *MC*

SUBJECT: Executive Clemency Applications

The attached memoranda submit information concerning petitions for executive clemency. The first submits 5 petitions for commutation of sentence, which we recommend you grant. The second submits 16 petitions for pardon, which we also recommend you grant. The third memorandum submits 313 petitions for commutation of sentence, which we recommend you deny.

In each case, our office concurs with the recommendation of the Department of Justice.

THE WHITE HOUSE
WASHINGTON

June 29, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: BETH NOLAN *Beth*
BRUCE LINDSEY
MEREDITH CABE *MC*

SUBJECT: Recommended Denial of Commutation of Sentence Requests

POTUS
approved
denial of 313
per
conversation
in Oval, 7/1,
w/ some
Lindsey
(w) 7.7.00

We have received the Justice Department's recommendations against commuting the sentences and/or remitting the fines of the petitioners listed below. After a review of the Department's memoranda concerning these cases, we have concluded that denial of these petitions is appropriate.

We will transmit your denial of the petitioners' requests for commutation of sentence and/or remission of fines in the following 313 cases unless you indicate that you want additional information on any of the cases listed. For your information, 3 are from Arkansas: Robbie Drake Cantrell, James Matthew Johnston, and Jim Taylor.

<u>Name</u>	<u>State</u>
Kenneth Edward Adomah	Virginia
Maximino Agaton-Rodriguez	Alaska
Luis Aguilar-Lua	California
Jesus Aguirre	New Mexico
Luis Alaniz-Cruz	Texas
Alejandro Pantoja Alejandro	Texas
Haywood George Alexander	Texas
William Holster Allen	Alabama
Horace Ambersley	New Jersey
a.k.a. Patrick Vanriel	
Erick Anchondo	New Mexico
Clement Hebbert Anderson	Florida
Gustavo B. Andrade	Texas
Daniel Gabriel Antinon-Holguin	Texas
Agustin Aponte-Merced	Puerto Rico

Jacinto Arambula	New York
Leobardo Arreola-Maldonado	Florida
Alejandro Ascencio-Tapia	Texas
Fidel Ayala-Puerta	Alaska
Eudrice Babel	New York
Adolfo Balderas-Rincon	Texas
Benjamin Garcia Baltazar	California
Estanislao Barajas-Madrigal	Texas
Felipe Barbosa-Rodriguez	Texas
Juan Carlos Barcenaz-Mejia	Texas
Juan Guillermo Blanco-Diaz	California
Johnny Pedro Blas	Wisconsin
Lucia Botero-Hoyas	Texas
Savino Braxton	Maryland
Jorge Briseno-Briseno	California
Donovan Leigh Brizzi	California
Kerry Brown	Missouri
Shawn L. Bryson	Ohio
John Edward Buglione	Oregon
Maria Elia Caballero	New Mexico
Alejandro Cabrera-Garcia	Puerto Rico
Francisco Cabrera -Garcia	Puerto Rico
Juan V. Cabrera-Montoya	Arizona
Nidia Candelo	Florida
Robbie Drake Cantrell	Arkansas
Pasquali Canzano	Florida
Juan Alberto Cardenas	California
Martin Antonio Cardenas-Cardenas	New Mexico
Oliverio Cardenas-Nogales	Texas
Francisco Carraccioli-Aguilera	Texas
Reyes Carranza-Santillan	Texas
Andres Carrasco-Aragon	Washington
Jose Jesus Carrillo-Garza	Texas
Jose Roberto Castellano-Anaya	Texas
Guadencio Castillo-Dominguez	Texas
Jose Guadalupe Cepeda	Florida

Robert B. Charles
Octavio Chavarria-Castillo
Saul Cisneros-Franco
Valentin Cisneros-Hernandez
Alan Clark

West Virginia
Texas
North Carolina
Washington
New York

Freddie L. Cody
Robert Conley
Martin Contreras-Espinoza
Gerardo Jesus Contreras-Franco
Ramon Contreras-Renteria

Ohio
Massachusetts
Texas
Texas
Texas

Jose Jaime Cornejo
Ancelmo Coronado-Martinez
Rafael Cortez-Flores
Javier Cortez-Gaviria
Tyrone Cromity

Texas
Texas
Texas
Florida
Ohio

Jose Jesus Cruces-Luna
David Hall Crum
Ceferino Cruz
Cesar Cruz
Justino Cruz-Baltazar

Utah
District of Columbia
Massachusetts
Florida
Texas

Gerardo Cuero
Constance Faye Cunningham
Michael Paul DeAngelo
Nathan D. Debrew
Virgilio De Hoyos-Rodriguez

Louisiana
Indiana
Wisconsin
North Carolina
Texas

Mario Deras-Martinez
Edwin Diaz
Eusebio Dishmey
Patrick Garfield Dixon
Tyrone Eaton

Texas
Florida
Virginia
Texas
South Carolina

Camilo A. Echeverri
Jeffrey Alphanso Edwards
Ivan Frederick Edwards
Reynel Uriostegui Estrada
Carlos Estrella

Texas
Florida
Georgia
Illinois
District of Columbia

Ty Evans
Stacy Donjell Ewings

Kentucky
North Carolina

Alphonso Farias-Lopez, a.k.a. Octavio Martinez-Olvera	Oregon
Jose Ulises Fernandez-Garcia	Texas
Luis A. Fiesco	Texas
Jennifer Alayne Fischer	Michigan
Juan Carlos Flores	Louisiana
Francisco Flores-Ambriz	Texas
Juan Raul Flores-Fava	Texas
Gilbert Gilly Fontanez	North Carolina
Shearine Forbes	Florida
Rodney R. Fulton	Illinois
Trinidad Gabaldon-Almance	Texas
Juan Jose Garces	Florida
Bienvenido Garcia	New York
Luis Carlos Garcia	Florida
Ernesto Garcia-Garza	Texas
Teodulo Garcia-Guerrero	Texas
Juan Antonio Garcia Resendez	Texas
Jesus Maria Garcia-Vasquez	Texas
Andres Garcia-Vela	Texas
Juan Fernando Garibaldi	Texas
Edgar Garzon-Villa	Florida
Jandelyn Denise Gates	Indiana
Lauro Gaytan-Cazares	Texas
David Gell	Maine
Jose A. Gonzalez	Texas
Rosendo Ortega Gonzalez	Texas
Margarito Gonzalez-Michel	North Carolina
Kenneth Renard Green	Virginia
David Guerrero	New York
Carlos Eduardo Guevara	Texas
Josefina Gutierrez	New Jersey
Jhon Edwin Gutierrez	Texas
Jihad Habib	Massachusetts
Ricky Eugene Hamilton	Texas
Jose Santos Hernandez-Castro	Texas
Eduardo Hernandez-Montes	Nevada

Felipe Herrera-Roldan
Claude James Howard

New Mexico
Alabama
Florida

Lorenza Hughes
Martins Idusuyi
Manzur Issa-Ruiz
Jesse James Jackson
Veronica Jackson

Michigan
Maryland
Florida
Alabama
District of Columbia

Ruben Javalera-Chavira
Thomas Speaks Jefferies
Terrance Andre Jefferson
Ines Jimenez-Bojorquez
James Matthew Johnston

Texas
District of Columbia
West Virginia
Arizona
Arkansas

Harry Jones
Eduardo Ernesto Joseph
Levester C. Kelly
Terry Antonio Leath
Fabio Lema

Connecticut
Washington
District of Columbia
North Carolina
Florida

Benito Lemus-Marines
Anthony Little
Raul Molina Lopez
Saul Roberto Lopez
Jose Luis Lopez-Lopez

California
Ohio
Florida
Texas
Texas

Sergio Lopez-Robles
Julian Lozano-Bernales
Jean L. Lubin
Keyuna Wynette Lynch
Orlando Gabriel Machado

Colorado
Texas
North Carolina
Virginia
Georgia

Benjamin Bernave Magana
Jhon Maldonado
Martin Barron Maldonado, Sr.
Carmen Gloria Marin-Montoya
Chad Marr

Arizona
Louisiana
Texas
Florida
North Carolina

Fredy Martinez
Angel Carlos Martinez
Juan Ramon Martinez
Raul Martinez-Becerra

Texas
California
Iowa
Texas

Ruben Martinez-Fereira

Florida

Raul Martinez-Lugo

Texas

Alberto Martinez-Martinez

Texas

Jorge Medina-Valle

California

Miguel Arias Mejia

Louisiana

Claudio Mella-Mezon

North Carolina

Lorenzo Mendoza-Medina

Texas

Eduardo Mendoza-Mena

Texas

Jorge Eliecer Millan-Florez

Florida

Luis Eduardo Moncayo-Zambrano

Louisiana

Edison Jose Montealegre

New York

Miguel Montenegro

Illinois

Pedro Montero

Rhode Island

Rudesindo Montoya

Virginia

Alvaro Jesus Morales

New York

Ricardo Moreno-Acosta

Texas

Nelson Morin-Hernandez

Texas

Gerardo Heribert Moriones-Duran

California

Stephanie Marie Narro

Texas

Alfredo Navarro-Valtiera

California

Gregory Nichols

Indiana

Sidney Shawn North

Virginia

Feliz Nufio-Ortiz

Texas

Jesus Armando Nunez-Elias

Texas

Felix Nwaebo

Maryland

Federico Ochoa-Olivares

California

Alonzo Ojeda-Avita

California

Robinson Olaniyan

New York

Juan Armando Olivarez

Texas

Manuel Ordonez-Mendoza

Texas

Adan Barragan Orosco

California

Ignacio Orozco

California

Agustin Jaime Ortiz-Arroyo

California

Raymond Jarman Osborne

Mississippi

Anna Maria Osorio

Florida

Juan Otero-Cammacho

Nebraska

Pedro Ozuna	Michigan
Marcelino Pacheco	Florida
Ruben Amauri Pacheco-Estrada	Texas
Jose Padilla Flores	Texas
Francisco Palacios	Florida
Carlos Alberto Patino-Rodriguez	Florida
Julio Cesar Paz-Valverde	California
Reginald Peacock	Ohio
Isauro Pena-Garza	Texas
Santiago Peralta	Texas
David F. Perdomo	Illinois
Gabriel J. Perdomo	Florida
Luis Perez	Massachusetts
Elias Gustavo Perez-Bernal	Texas
Jose Apolinar Perez-Martinez	Texas
Tirso Perez-Ocanas	Texas
Faustino Saul Pina-Chavez	Texas
Salvador Pineda-Zarate	Arizona
James Lamont Pitt	Virginia
Orbelin Portillo	Texas
Oji S. Pride	West Virginia
Fabian Quesada-Lozano	Florida
Jaime Quezada	Indiana
Benjamin Ramirez	Florida
Jorge Ramirez	Texas
Juan Jose Ramirez-Cervantes	Texas
David Ramirez-Martinez	Texas
Cristo Rey Ramirez-Pena	New York
Jose Antonio Ramirez-Ramirez	Texas
Rigoberto Alfaro Ramos	Texas
Richardo Ramos-Marcial	Washington
Marco Rangel-Huerta	California
Thurmond Wilford Rankin	North Carolina
Isaias Reyna-Reyna	Texas
Wilberto Riascos-Prado	Connecticut
Angel Rincon-Carrillo	Texas
Arturo Rios	Texas

Juan Manuel Rios-Calderon
Carlos Arturo Rivas
Aurelio Rodelo-Solis

Illinois
Louisiana
California

Miguel Martinez Rodriguez
Jose Nunez Rodriguez
Juan Gabriel Rodriguez-Claudio
Carlos Rodriguez-Cueto
Eduardo Rodriguez-Gonzalez

California
Puerto Rico
Texas
Texas
Texas

Artemio Rodriguez-Lara
Miguel Rodriguez-Martinez
Juan Ramon Rodriguez-Robles
Juan Hugo Rodriguez-Torres
Francisco Ronquillo-Silva

Texas
Texas
California
Texas
Texas

Julio Gomez Rosado
Juan Antonio Rosado-Rosario
Guillermo Ruiz
Hector Ruiz-Aguirre
Eva Inge Ruoss

New York
Ohio
Florida
New Mexico
Florida

Luther Ruth
Manuel Enrique Saenz
Luis Hernando Salas
Alejandro Samano-Carteno
Carlos Sanchez

Maryland
Florida
Texas
Texas
New Jersey

Aguillino Jose Sanchez
Juan Manuel Sanchez-Garcia
Eduardo Sanchez-Hernandez
Jorge Francis Sanchez-Leonor
Harold Sanchez-Restrepo

Rhode Island
Texas
Texas
Louisiana
California

Alberto Sanchez-Torres
Martin Sanchez-Vega
Jose Manuel Sandoval
Lazaro Santoyo-Garcia
Antonio Segura-Lopez

Texas
Texas
California
Texas
Texas

Argemiro Sierra-Pastrana

New York
Florida

Marie V. Siml
Jacqueline D. Smith

Ohio
District of Columbia

Carlos Socarras
Kim Pan Soo

Florida
Mariana Islands

Jose Guadalupe Soriano-Arguello
Josaphat Soto-Navarro
William Mack Spitzmiller
Rene St. Hillaire
Jesus Armando Suarez

Texas
Texas
Texas
New York
Texas

Cortez Dorian Dominie Sutton
Pedro Tapia-Hernandez
Walter Tasama
Jim Taylor
James E. Taylor

North Carolina
Illinois
Florida
Arkansas
Texas

Rodrigo Teshima-Jimenez
Terrence Thomas
Barry G. Thompson
Efrain Torres-Gonzales
Luz Mary Torres-Leon

Louisiana
Michigan
West Virginia
Washington
Florida

Mario Garcia Trevino
Gilberto Urcino-Zuales
Herman Uribe-Acosta
Antolin Valderrama-Hernandez
Jose Jesus Valdivia-Esqueda

Texas
Arizona
New York
Nevada
Texas

Abraham Valencia-Codognotto
Antonio Valencia-Mendoza
Luis Carlos Valenzuela
Armando Valenzuela-Molina
Hugo Gomez Varela

Louisiana
Washington
Texas
Texas
Texas

Tomas Varela-Andujo
Arturo Vega-Bonilla
Luis Velasquez
Teresa Velasquez-Orozco
Miguel Veras

Texas
California
New York
Florida
Maryland

Cesar Ivan Verdines
Vicenta Villarreal
Clifford Watson, Jr.
Benjamin West
James Lawrence Williams

Iowa
Texas
Ohio
Pennsylvania
Texas

Robert Walter Williams
Clive Wilson
Juan Zuniga Yanez
Rafael Yepes
Juan Antonio Yepes-Guerrero

Colorado
Florida
Texas
New York
California

Richard Young
Maria Del Carmen Zapata
Edward Gregory Zupancic

New York
New Jersey
Pennsylvania

DECISION:

DENY: _____

GRANT: _____

DISCUSS: _____

THE WHITE HOUSE
WASHINGTON

June 29, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: BETH NOLAN *BN*
BRUCE LINDSEY
MEREDITH CABE *MC*

SUBJECT: Favorable Pardon Recommendations

We have received the Justice Department's recommendations in favor of granting pardons after completion of sentence for the 16 petitioners listed below. We concur with the Justice Department's recommendation in each case.

For your information, 3 are from Arkansas: Madison Dow Kimball, Jr., Tammy Lawan Tallant, and Carl Dennis Warren.

NAME/DISTRICT	OFFENSE	RATIONALE
Carl Stanley Gilbreath N.D. Georgia (1971) Age: 54	Interstate transportation of a stolen motor vehicle (purchased a used, stolen pick-up truck at an auction in Alabama and drove it to his residence in Georgia). Sentenced to two years' probation.	Remoteness and relatively minor nature of offense; has led a law-abiding and stable life since conviction; very favorable character references, including law enforcement officials; expresses remorse; U.S. Attorney and sentencing judge do not object.

Claudette Dean Goodson (fka Claudette Goodson Findeisen) E.D. North Carolina (1986) Age: 36	Aiding and abetting the embezzlement of government funds (as a civilian sales clerk at a Marine Corps commissary, aided her supervisor in an embezzlement scheme by committing illegal void transactions at his instruction). Sentenced to five years' imprisonment (suspended in favor of five years' probation), ordered to pay a \$1,000 fine, and \$4,072 in restitution.	Offense appears to be an aberration in an otherwise law-abiding life, committed as youth (19), attributable to pressure from her supervisor; petitioner was rehired as a civilian clerk by the Marine Corps and has received promotions, awards, and superior performance ratings; very favorable character references; shows remorse; military prosecutor, U.S. Attorney, and probation officer support pardon.
Dane Robert Hessling S.D. Ohio (1987) Age: 52	Conspiring to distribute and to possess with intent to distribute cocaine (one count) and distribution and possession with intent to distribute cocaine (three counts) (participated in a cocaine-trafficking ring organized and headed by his brother). Sentenced to nine years' imprisonment (released after four) and three years' special parole (terminated early).	Voluntarily withdrew from drug ring before investigation; cooperated with authorities; offense appears to be an aberration in an otherwise law-abiding life, attributable to drug and alcohol abuse petitioner has since overcome; very favorable character recommendations; active in community and charitable endeavors; probation officer recommends pardon, U.S. Attorney and sentencing judge do not object.
Elwood Dwight Hopkins D. New Jersey (1962) Age: 61	Theft of government property and mutilation of coins (as an Air Force enlisted man, stole an aircraft power plant, a tool box, and a radio-car phone totaling approx. \$3,500 in value; filed approx. 35 pennies for use in soda machines). Sentenced to concurrent terms of 18 months' probation.	Remoteness and relatively minor nature of offense; voluntarily returned stolen items to authorities before he was a suspect; has lived a stable and productive life since conviction; favorable character recommendations; expresses remorse; seeks pardon to restore his firearms privileges.

Thomas Vernon Jones D. Wyoming (1982) Age: 63	Filing a false income tax return (underreported his income from business of managing the sale of cattle by auction and private agreement; lost tax revenue for the three-year period amounted to approx. \$21,900). Sentenced to three years' imprisonment (all but four months suspended; placed on two years' probation with special condition that he perform 500 hours of community service and cooperate with the IRS).	Has led a stable and productive life since conviction; tax and penalties paid in full by 1992; favorable character references including the Honorable Michael J. Sullivan, U.S. Ambassador to Ireland and former Governor of Wyoming, and retired U.S. Senator Alan K. Simpson; commendable involvement in community; seeks pardon as a sign of forgiveness and to restore firearms privileges; expresses genuine remorse; U.S. Attorney, sentencing judge, and probation officer recommend pardon.
Madison Dow Kimball, Jr. W.D. Arkansas (1983) Age: 55	Bank robbery (robbed a bank of approx. \$10,000 with an unloaded pistol). Sentenced to five years' probation and \$9,740.90 restitution.	Although never a suspect, voluntarily contacted the FBI and confessed his guilt; remoteness of offense, attributable to alcohol and drug abuse, which he has since overcome; has led a stable, law-abiding life since offense; commendable service in Air Force; favorable character recommendations; involvement in community, including drug and alcohol counseling; seeks pardon as sign of forgiveness; U.S. Attorney has no objection to pardon.

Cynthia Lou LeBlanc aka Cynthia Lou Gallagher N.D. Texas (1978) Age: 49	Conspiracy to distribute and possess methaqualone (participated in sale of approx. 3lbs. of methaqualone to an undercover DEA agent). Sentenced to two years' imprisonment and three years' special parole (later stricken from sentence).	Remoteness of offense, attributable to drug addiction petitioner has since overcome; has lived a law-abiding and productive life since offense; very favorable character recommendations; expresses genuine remorse; seeks pardon to restore her civil rights and for forgiveness; U.S. Attorney has no objection to pardon.
Peter Thomas Lipps C.D. California (1981) Age: 44	Possessing counterfeit money (placed bets at a racetrack using counterfeit \$100-bills). Sentenced to five years' probation (terminated early), including a condition of 800 hours of community service.	Has reestablished himself as a stable and law-abiding citizen; more than 15 years' honorable service in Army, where he received numerous decorations; favorable character recommendations; extensive involvement in community (far exceeded his mandatory hours of community service); expresses genuine remorse; seeks pardon as sign of forgiveness; U.S. Attorney recommends pardon, sentencing judge does not object.
John Carroll Michiaels N.D. Indiana (1989) Age: 36	Purloining and converting property of the U.S. EPA and aiding and abetting therein (while drunk, petitioner and co-worker broke into a trailer being used as a laboratory for an EPA study, stole two walkie talkies, and set the trailer on fire). Sentenced to five years' probation (terminated early) and ordered to pay \$4,800 in restitution.	Voluntarily confessed to crime and cooperated with authorities; offense appears to be an aberration in an otherwise stable, law-abiding, and productive life; very favorable character references, including law enforcement officials; seeks pardon for forgiveness and for family's sake; active in community/charitable organizations; U.S. Attorney recommends pardon, sentencing judge does not object.

Richard Edwin Sacchi M.D. Florida (1989) Age: 32	Conspiracy to possess cocaine with intent to distribute (as a 20-year old college student, served as the middleman for a proposed sale of two kilograms of cocaine to an undercover agent). Sentenced to 30 days' incarceration and three years' supervised release.	Offense appears to be an aberration in an otherwise law-abiding and productive life, attributable to immaturity; readily admitted involvement when caught; commendable academic and professional accomplishments since conviction; favorable character recommendations; seeks pardon to acquire construction contracts from the nuclear power industry and for family's sake; shows genuine remorse.
Horace Carroll Smith D. South Carolina (1992) Age: 77	Conspiracy to violate the federal securities laws (as an attorney, falsely certified information in an offering statement for the sale of municipal bonds). Sentenced to three years' probation, with the special condition of 600 hours' community service (terminated early).	Cooperated with authorities when discovered; offense appears to be an aberration in an otherwise law-abiding and productive life, attributable to negligence rather than malicious intent; significant involvement in community, including several years of service as member of S.C. House of Representatives and Senate; very favorable character references, including Robert E. McNair, former governor of S.C.; has been diagnosed with terminal medical condition; sentencing judge recommends pardon, U.S. Attorney and probation officer do not object.

Tammy Lawan Tallant E.D. Oklahoma (1989) Age: 35	Misprision of a felony (assisted with a methamphetamine-manufacturing operation run by her parents and then-husband; petitioner was initially convicted of two counts of drug conspiracy, but her conviction was reversed and remanded by the 10th Circuit). Sentenced to time served (approx. two years).	Minor role in offense, committed as youth subjected to familial pressure; favorable character recommendations; seeks clemency for improved employment opportunities and to adopt.
Carl Dennis Waren W.D. Arkansas (1980) Age: 55	Interstate transportation of stolen motor vehicles (as an employee of a construction company, participated in a theft ring that was responsible for the theft and sale of heavy construction equipment worth approx. \$250,000). Sentenced to six months in jail, five years' probation, and fined \$5,000.	Remoteness of offense; cooperated with authorities in investigation; prior to sentencing, voluntarily made restitution to purchasers of equipment; has led a law-abiding, stable, and productive life since conviction; remoteness of offense; very favorable character recommendations; involved in community; expresses remorse; seeks pardon to maintain his business licenses and to restore firearms privileges; probation officer recommends pardon, U.S. Attorney has no objection.

Robert Alexander Warr, Sr. D. South Carolina (1982) Age: 61	Making false statements regarding facts within the jurisdiction of the USDA (as the owner and operator of a tobacco warehouse, falsified various records to circumvent government tobacco allotment scheme). Sentenced to three months in jail and three years' probation.	Remoteness of offense, which is an aberration in an otherwise stable, law-abiding, and productive life; very favorable character recommendations, including law enforcement official; accepts responsibility and expresses genuine remorse; participates in charitable activities for other cancer patients; seeks pardon for forgiveness and for family's sake; probation officer recommends pardon, U.S. Attorney does not object.
James H. Wetzel, Jr. E.D. Louisiana (1981) Age: 53	Conspiracy to distribute cocaine (at the request of a high school friend who was working as a confidential informant, petitioner arranged for an acquaintance to sell approx. two ounces of cocaine). Sentenced to five years' probation, with the special condition that he perform eight hours of community service per week for two years (terminated early).	Offense appears to be an aberration, borne out of misplaced loyalty for a friend (and from which he did not profit), in an otherwise law-abiding and productive life; served 15 years in Marine Corps Reserve; favorable character recommendations; has continued active involvement in community; expresses genuine remorse; seeks pardon for forgiveness and for enhanced opportunities in securities field; probation officer recommends pardon.

Diane Mae Moseman Zeman E.D. New York (1981) Age: 42	Using the telephone to facilitate the importation of hashish oil (smuggled approx. seven ounces of hashish oil into the U.S. from Pakistan). Sentenced to five years' probation and a \$5,000 fine.	Remoteness of offense, which was committed while young (22), and appears to be an aberration in an otherwise law-abiding life; cooperated with authorities when discovered; relatively minor offense that would not likely be prosecuted today; favorable character recommendations; expresses genuine remorse; seeks pardon for family's sake; probation officer recommends pardon, U.S. Attorney in petitioner's home district does not object.
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DECISION:

GRANT: _____

DENY: _____

DISCUSS: _____

THE WHITE HOUSE
WASHINGTON

June 29, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: BETH NOLAN *BN*
BRUCE LINDSEY
MEREDITH CABE *MC*

SUBJECT: Five Requests for Commutation of Sentence

The Department of Justice has submitted reports recommending that you grant commutations of sentence in the following five cases. In each case, for reasons described more fully below, we concur with the Department and recommend that you commute the sentences of these petitioners. For your information, one petitioner, Amy Ralston Pofahl, is from Arkansas.

I. Amy Ralston Pofahl

A. Offenses

Amy Ralston Pofahl was convicted on February 27, 1992, in the Western District of Texas of conspiracy to distribute and possess with intent to distribute a controlled substance (MDMA, or "Ecstasy"), conspiracy to import that controlled substance, and money laundering. She was sentenced to 292 months in prison and five years' supervised release, and was fined \$10,000. She has served 110 months, and is projected for release in June 2012. She seeks commutation of her prison sentence and remission of her fine.

B. Background

Petitioner, now 40 years old, was raised in Mesquite, TX, and Charleston, AR. Her conviction stems from her involvement with the drug trafficking ring operated by her husband, Charles "Sandy" Pofahl. Petitioner met Sandy Pofahl in 1985, when she was 25 years old, and married him at the end of that year. MDMA was not yet illegal at the time the couple met, and both used the drug recreationally. Sandy Pofahl began manufacturing and distributing MDMA. Upon learning the drug was to become illegal in the U.S.,¹ he moved his operation to Germany and Guatemala.

In 1989, Sandy Pofahl and his associate, Morris Key, were arrested in Germany for violation of German drug laws. The two were convicted of "having intentionally merchandised

¹ MDMA became illegal in October 1986.

narcotics," and were sentenced by German courts to terms of six years and three months, and six years, respectively. Sandy Pofahl served four years of his sentence. While incarcerated, he was contacted by U.S. authorities, and began cooperating with the U.S. investigation of their drug activities. Because of his leadership position in the organization, his cooperation was deemed very valuable by U.S. prosecutors. Upon his return to the U.S., he pleaded guilty to making false declarations in a federal income tax return and to conspiring to distribute a controlled substance. He was sentenced to three years' imprisonment and five years' probation, and fined \$10,000. Because he was given credit for the time he served in a German prison, he served no additional time.

Amy Pofahl was arrested while her husband was still serving his sentence in Germany. She consistently refused to cooperate in the government's investigation of her husband's drug organization. At sentencing, the entire amount of MDMA that was found to be imported by the drug ring as a whole -- both before and after MDMA became illegal -- was attributed to petitioner, resulting in a sentencing guidelines range of 360 months to life, from which the court departed downward to 292 months. The court noted that the unusually high guideline range was inappropriate for a defendant like Pofahl with no prior criminal record.

The extent of Amy Pofahl's participation in her husband's drug operation is a matter of some dispute. According to her, and to several affidavits filed by members of the drug ring, she was substantially shielded from information regarding the nature and extent of the conspiracy once the drug became illegal, and the Justice Department reports that her participation was limited. Petitioner, however, did accompany her husband on several trips he made to Guatemala to oversee the set-up of his operation there. She also accompanied him to an MDMA tablet manufacturing facility in Texas where additional production for her husband's operation was completed. She provided MDMA to a former boyfriend who periodically requested large quantities of the drug to sell and who eventually became part of the larger operation.

Much of her conduct relevant to her conviction occurred after her husband was arrested in Germany. Sandy Pofahl sent coded faxes to petitioner, directing her to storage vaults and safety deposit boxes where he had hidden both drugs and money. Petitioner began to retrieve these contents. She collected money owed to Sandy Pofahl by other members of his drug operation for use in his defense, and directed the distribution of some of the drugs. At one point, she rented a car in Texas and asked a friend to drive it to California, where she then lived, with several items, including a bag of cash. Petitioner also reportedly used the money she retrieved for her own living expenses. When she learned Sandy Pofahl was cooperating with U.S. investigators, she wrote her husband to ask that he stop providing incriminating information about her to federal officials. She was also found in possession of several pieces of identification in a false name.

C. Grounds for Clemency

Several people have contacted the Department of Justice and the White House to express support for Amy Pofahl's petition, primarily because her sentence seems disproportionately long, particularly when compared to that of her husband. Among those are former Senators Dale Bumpers and David Pryor, Senator Blanche Lincoln, Representatives Jay Dickey, Nancy Pelosi,

Barbara Lee, Bob Filner, Eddie Bernice Johnson, Silvestre Reyes, Patsy Mink, John Tierney and James McGovern.

In her clemency application, petitioner argues that her sentence was disproportionate to the sentences served by the “kingpins” of the conspiracy, the role she played in the conspiracy, and the comparative harmfulness of MDMA when compared to drugs like heroin and cocaine.² She also argues that her role was minimal, and that her husband shielded her from the activity of the conspiracy. Finally, she asserts she had “an absolute right” to be resentenced, based upon Amendment 439, a clarification to the sentencing guidelines that was promulgated during the time of her direct appeal.³

The U.S. Attorney disputes petitioner’s claim of innocence, pointing to evidence that showed she was aware of the illegal activities of her husband’s drug operation. He agrees, however, that there is some merit to her argument that her counsel should have raised the issue of the amendment to the sentencing guidelines in petitioner’s direct appeal. He believes that a much smaller quantity of MDMA would ultimately have been attributed to petitioner for sentencing purposes, and that her sentence probably should have fallen between 151 and 235 months.⁴

D. Department of Justice Recommendation

Deputy Attorney General Holder recommends that you commute petitioner’s sentence based upon equitable considerations, rather than on petitioner’s assertions of innocence or of defects in her trial and appeals, or on speculative recalculation of her sentence.⁵ He believes that, although it is appropriate to take into account Sandy Pofahl’s cooperation with the government, and Amy Pofahl’s refusal to do so, the “extreme disproportion that exists between the relative culpability of petitioner and her husband and the sentences each has served for violating United States drug laws justifies your intervention as an equitable matter.” To date, Pofahl has served over 9 years for her actions, and her husband, who orchestrated the drug manufacturing and distribution network, served only four. Holder recommends you commute petitioner’s sentence to 120 months. With good-time credit, such a commutation would result in her immediate release from any form of confinement. He recommends you deny her request for remission of her fine and leave in tact her five-year period of supervised release.

² The Department of Justice believes this argument should be rejected. MDMA, or Ecstasy, is a Schedule I controlled substance under federal drug laws, as heroin and cocaine are. The dangers of the drug, which is widely used by teenagers and young adults, has received considerable attention in recent months.

³ The Justice Department points out that petitioner did not have an “absolute right” to resentencing. Still, Amendment 439 likely would have lowered the amount of MDMA that would have been attributed to petitioner, and, accordingly, the applicable sentencing guideline range.

⁴ The sentencing judge is opposed to commutation in this case. He believes the evidence presented at trial proves petitioner was more than minimally involved in the drug conspiracy. He also notes that her sentence was disproportionate to the sentences of her husband and the others involved because they fully cooperated with the government, whereas she did not.

⁵ For your consideration, the Department has provided information that could be used to recalculate her “relevant conduct” and therefore the guideline range that, in theory, should have applied to her sentencing. Their analysis of that information indicates she should have been sentenced to 188 months. Deputy Attorney General Holder reports that the Pardon Attorney would recommend you commute petitioner’s sentence to 188 months.

We concur, but recommend you simply commute her sentence to time served, leaving intact her period of supervised release and her fine.

II. Serena Denise Nunn

A. Offenses

Serena Denise Nunn was convicted in December 1989, in the District of Minnesota, of conspiracy to possess with intent to distribute cocaine, possession with intent to distribute cocaine and cocaine base, and aiding and abetting the attempt to possess with intent to distribute cocaine. She was sentenced to 188 months in prison and five years' supervised release. She has served approximately 125 months in prison (including presentence incarceration) and is projected for release in August 2003. She seeks commutation of her sentence.

B. Background

At the time of her arrest, Serena Nunn was 19 years old. She has no other criminal record. Although she had been successful in high school, editing the student newspaper, serving as a cheerleader and homecoming queen, she was forced to leave college after one year due to financial constraints. She began dating "Monte" Nunn¹, whose father, "Plukey" Duke, ran a cocaine distribution ring that was, at that time, the largest in Minnesota. Monte Nunn transported and sold cocaine for his father. The evidence at trial showed that Serena Nunn participated minimally in the activities of the drug ring: she took and received messages about drug transactions, made calls on behalf of Monte Nunn demanding payments for drugs, made deliveries, and counted proceeds from drug sales. A search of her house revealed 6.5 grams of cocaine and 4 grams of cocaine hidden in her bedroom.² When arrested, she denied knowing Monte Nunn.

Petitioner was indicted along with 20 members of Duke's organization. The majority of those indicted, at all levels of involvement in the conspiracy, were given the opportunity to plead guilty in exchange for their cooperation. Petitioner was not offered that opportunity, and proceeded to trial with 5 codefendants, including Duke.

C. Grounds for Clemency

The sentencing judge in Serena Nunn's case, Judge David S. Doty, strongly recommends that you commute her sentence. He reports that his letter regarding Nunn is the only letter he has written in support of a commutation petition since his appointment to the bench in 1987 by President Reagan. He recommends commutation for two reasons: (1) he is procedurally barred from correcting an error in her sentence that, if corrected, would result in her immediate release;

¹ Petitioner and her then-boyfriend coincidentally share the same last name.

² Further evidence of her participation was adduced in an attempt to revoke her bond. Apparently, petitioner had a conversation in which she and another member of the drug ring discussed killing "snitches." The government alleged that she was threatening a potential witness. That contention was rejected by the District Court because she "was merely stating her view about what should be done to informants. There is no suggestion that [she] intended to take any action herself."

and (2) the unfairness of the application of the mandatory-minimum sentencing guidelines to Nunn's case. He now believes he should have sentenced Nunn to 151 months.³ Under that sentence, Nunn would presently be eligible for placement in a halfway house. He also writes that "[i]f mandatory-minimum sentencing did not exist, no judge in America, including me, would have ever sentenced Ms. Nunn to 15 years in prison based on her role in the conspiracy, her age, and the fact that she had no prior criminal convictions before the instant offense."

The Department of Justice also reports that others who were indicted with Nunn were offered plea bargains and were not charged with crimes that carried mandatory minimum sentences. Those defendants, who had equal if not more substantial roles in the conspiracy, received much lower sentences -- ranging from 1 to 7 years. This disparity prompted Senior Circuit Judge Heaney (in the direct appeal of one of Nunn's codefendants) to criticize the government's charging decisions in the case.⁴ The government itself considered Nunn to be among the least culpable members of the conspiracy, but she was not given even the opportunity to cooperate. By contrast, one of the leaders of the conspiracy with an extensive criminal record⁵ was permitted to plead guilty in exchange for testimony. He was sentenced to 10 years in prison and was released after 6 ½ years. Further, a more minor figure in the conspiracy, with a role comparable to Nunn's (and, presumably, with information of similar value to offer in exchange for a plea) was allowed to plead guilty to an offense that did not carry a mandatory minimum. He was sentenced to 54 months in prison, and served approximately four years.

The U.S. Attorney does not concede that Nunn's sentence was unfair or incorrectly calculated, but nonetheless does not object to commutation.

While in prison, Nunn has received an Associate of Arts degree from Rio Salado Community College, where she was placed on the Dean's Honor Roll, and is working towards her college degree at Arizona State University. Because of the University's residency requirements, she will have to discontinue her coursework for two years if she is not able to attend regular classes starting in December.

D. Department of Justice Recommendation

Deputy Attorney General Holder believes that the unfairness of Nunn's sentence, particularly when compared to those of others in the conspiracy who were equally or more substantially involved, presents a more compelling basis for equitable relief than Judge Doty's recalculation of the appropriate guideline range. Based upon "the disparity of petitioner's sentence with her co-defendants, the length of time she has already served, the strong support of

³ Judge Doty believes he should not have accepted the assertion in the presentence report that Nunn "obstructed justice during the investigation." Had he rejected that contention, Nunn would have been sentenced within a range of 151 to 188 months; he writes he is "confident that [he] would have sentenced Ms. Nunn to 151 months."

⁴ Judge Heaney wrote:

These cases involved twenty-four defendants, the vast majority of whom were convicted of drug-trafficking crimes. From my review of the record, it is clear that there is a great disparity in sentence length among defendants with similar degrees of involvement in the drug ring. The sentencing disparity results not from decisions made by the district judge, but from the charging decisions and plea bargains made by the prosecutor.

⁵ Marvin McCaleb had prior convictions for manslaughter, forcible rape, and possession to distribute cocaine.

the sentencing judge, and the qualified support of the United States Attorney,” Holder recommends you commute her sentence.

We concur, and recommend you commute her sentence to a time period that would effect her immediate release, leaving intact the five-year period of supervised release.

III. Shawndra Lanese Mills

A. Offense

Shawndra Lanese Mills, 26 years old and the mother of two daughters, was convicted in January 1993 of one count of conspiracy to possess with the intent to distribute cocaine. She was sentenced to a 10-year mandatory minimum sentence. She has petitioned for commutation of that sentence.

B. Background

The offense for which Mills was convicted occurred when she was 19 years old and served as a drug courier for her then-boyfriend. Drug agents arrested Mills in the Cincinnati airport when a search of her bag revealed 5 kilograms of cocaine. She pled guilty and cooperated fully with the authorities. She identified a co-conspirator traveling on her flight, who was later arrested; the main supplier of the drug conspiracy; and her boyfriend, a middleman. She admitted to having made a prior trip as a courier, carrying one half kilogram of cocaine to St. Louis. Despite petitioner’s cooperation and acceptance of responsibility that entitled her to a reduction in her offense level, and therefore in the applicable sentencing guideline range, she received the mandatory minimum sentence of 120 months for offenses involving five or more kilograms of cocaine.

C. Grounds for Clemency

As of June 2000, Mills has served approximately 96 months and is projected for release in May 2001. The U.S. Attorney recommends you commute Mills’s sentence based on the disparity in sentencing between her and her co-defendant, Johnny Jackson. Although Jackson was more culpable and a target of investigation prior to his arrest,¹ the government allowed him to plead to the same offense as Mills, and filed a motion for reduction of sentence on his behalf. Jackson’s cooperative plea agreement with the government prevented Mills from entering into a similar agreement. As a result, Jackson received a far lesser sentence of 30 months’ incarceration.

The U.S. Attorney notes that, had the “Safety Valve” provision existed at the time of petitioner’s sentencing, petitioner likely would have been sentenced to 87 months, the low end of the applicable sentencing guideline range, rather than to the 10-year mandatory minimum. This

¹ Jackson himself has confirmed petitioner’s limited role in the drug conspiracy.

provision allows judges, in appropriate cases such as petitioner's, to sentence a defendant below a mandatory minimum that may be unduly harsh.

Petitioner expresses genuine remorse for her offense, which appears attributable in part to her young age and financial struggles in supporting her family. While incarcerated, she has participated in educational programs, including GED and parenting classes, and has earned outstanding evaluations.

D. Department of Justice Recommendation

Deputy Attorney General Holder recommends that you commute Mills's sentence based upon the inequity that resulted in sentencing her and her co-defendant. Her co-defendant, who had a much more substantial role in the drug operation, received a sentence that was 90 months shorter than Mills's. Defendants like Mills, a 19 year-old two-time courier with no other criminal record, can now be sentenced below mandatory minimums because of the institution of the "safety valve" provision. The U.S. Attorney has recommended that her sentence be commuted to 87 months, a term shorter than that she has already served. Accordingly, Holder recommends that you commute her sentence to time served, leaving intact the five-year period of supervised release.

We concur in the Justice Department's recommendation.

IV. Louise Cain House

A. Offense

Louise Cain House, 63 years old, was convicted in May 1994 of engaging in a continuing criminal enterprise. She was sentenced to 180 months in prison and five years' supervised release. She has petitioned for commutation of her sentence.

B. Background

The offense for which House was convicted arose from her involvement with a heroin-trafficking ring that operated in the St. Louis, Missouri, area in 1991 and 1992. Petitioner served as a supplier of heroin that she obtained from her source, Elizabeth Logan. Petitioner was arrested in October 1991 after purchasing 148.7 grams of heroin from Logan.

House and 24 codefendants, including Logan, were indicted for multiple drug-trafficking offenses. Petitioner cooperated immediately with authorities, and, along with all of the codefendants except Elizabeth Logan, pleaded guilty. She testified at Logan's trial, which resulted in conviction. Based on her substantial assistance, the government filed a motion asking the District Court to sentence House to a prison term below the statutory minimum of 20 years and the applicable sentencing guideline range of 240 to 262 months. The court granted the government's motion and sentenced petitioner to 180 months in prison and three years' supervised release.

Logan, deemed the most culpable of the defendants, was convicted of conspiracy to distribute and possess with intent to distribute heroin, and was originally sentenced to 235 months' imprisonment. The Court of Appeals, however, held that the government failed to establish more than one kilogram of heroin could be attributed to Logan for sentencing purposes. It remanded her case to the District Court for resentencing within the guideline range of 151 to 188 months. Logan was then sentenced to 188 months. Because Logan's ultimate sentence was only eight months longer than petitioner's sentence, the government explored whether petitioner had additional information that might justify a government motion for reduction of her sentence. She did not.

C. Grounds for Clemency

As of June 2000, petitioner has served approximately 90 months of her sentence, including time spent in presentence incarceration, and is projected for release in December 2005. Both the U.S. Attorney for the Eastern District of Missouri and the sentencing judge recommend that you commute petitioner's sentence to remedy the unfairness that resulted in the sentencing of petitioner and of her more culpable co-defendant, Logan.

The U.S. Attorney points to petitioner's valuable cooperation, stating, "we believe that Mrs. House's decision to cooperate and testify had a major impact in the decision of the 24 (sic) other defendants to plead guilty."¹ He believes a commutation "would fairly and justly address the sentencing objectives but also appropriately reward Mrs. House for her cooperative efforts with law enforcement" and recommends immediate release. The sentencing judge also supports commutation of petitioner's sentence, but recommends her sentence be commuted to 120 months.

Now 63 years old and suffering from chronic health problems, petitioner seeks a commutation in order to be reunited with her family and to assist with the upbringing of her grandchildren and great-grandson. According to the Bureau of Prisons, she has made an "excellent adjustment" while incarcerated and has received several outstanding work performance ratings.

D. Department of Justice Recommendation

Deputy Attorney General Holder believes a sentence reduction is warranted in House's case as a matter of fairness. Her cooperation with the government was substantial and effective, leading to convictions of 24 other individuals. Both the prosecutors and the judge intended her sentence to be significantly shorter than that of Logan, who is considered the most culpable member of the drug organization. Holder believes commuting her sentence to time served, retaining the 3-year period of supervised release, is appropriate in light of her age, health, and extent of cooperation with the government.

We concur in the Justice Department's recommendation.

¹ The Assistant U.S. Attorney who prosecuted House and her co-defendants stated that petitioner "placed herself in a great risk situation" by assisting the prosecution. He opined that petitioner provided "much greater help" than any other cooperating defendant with whom he had ever worked.

V. Alain Orozco

A. Offense

Alain Orozco (aka Allan Jene Velasquez) was convicted in November 1990 of conspiring to manufacture, distribute, and possess with intent to distribute cocaine and cocaine base, and of making false statements to the FBI. He was sentenced to a total of 151 months' imprisonment and five years' supervised release. He has petitioned for commutation of his sentence.

B. Background

The offenses for which Orozco was convicted arose from his involvement in supplying large quantities of powdered cocaine to a drug-trafficking ring in Georgia run by Miriam Ledesma. Throughout 1989, petitioner, who was then 19 years old, transported powdered cocaine from his residence in Miami, Florida, to Ledesma, who in turn cooked it into crack cocaine and distributed it. On December 19, 1989, petitioner was arrested at Ledesma's house, after police executed a search warrant and found crack, loaded firearms, and \$46,400 in cash on the premises.

When arrested, petitioner falsely claimed to be Allan Velazquez, who, in reality, is a cousin of petitioner's. He maintained that false identity through initial court proceedings, until the FBI completed a fingerprint check and discovered his true identity. He also falsely told arresting officers that he had no prior arrests and provided them with false names for his relatives.

Petitioner pleaded guilty pursuant to an agreement whereby the government agreed, among other things, to request a downward departure from the sentencing guidelines if it determined that he had provided substantial assistance to its investigation. Although petitioner provided information to federal agents (including information concerning Armando Rodriguez, the source of petitioner's cocaine), the government failed to request the downward departure, in part because it could not use some of the information at the time. The information concerning Rodriguez in particular could not be used because he could not be located.

In 1996, however, Rodriguez was brought to trial. Although he could not be assured he would receive the originally-promised sentence reduction in exchange, petitioner offered valuable testimony as a government witness at Rodriguez's trial.

C. Grounds for Clemency

After Rodriguez's trial, the government filed a motion seeking to reduce petitioner's sentence in recognition of his post-sentencing cooperation. Had the government been successful, petitioner's sentence would have been reduced to 115 months. Although the District Court denied the government's motion for lack of jurisdiction, it noted "[petitioner's] case cries out for relief. If it were discretionary, I would do something." The Court of Appeals affirmed the lower court's decision, but also noted the need for relief:

Although we do not believe that the explicit terms of Rule 35(b) permit us to accord relief to Orozco, we agree with the district judge that this case demonstrates a factual situation that Congress should consider when it next contemplates revision of this rule. That is, we hope that Congress will address the apparent unforeseen situation presented in this case where a convicted defendant provides information to the government prior to the expiration of the jurisdictional, one-year period from sentence imposition, but that information does not become useful to the government until more than a year after sentence imposition.¹

The U.S. Attorney requests that you commute Orozco's sentence based upon his unrewarded cooperation with the government.

The petitioner's offense appears to be the culmination of his growing up in a one-parent family (his mother died when he was 11) involved in the drug trade. He asserts that after 10 years in prison, he has prepared himself for a "new life away from the old one." He has successfully completed a drug abuse treatment program, earned a GED, and receives good work reports.

D. Department of Justice Recommendation

Deputy Attorney General Holder likewise recommends that you commute Orozco's sentence. He believes commutation is warranted both as a matter of fairness to petitioner and as support for future law enforcement efforts to obtain cooperation. As of June 2000, petitioner has served 126 months of his sentence. His projected release date is December 24, 2000. Although commuting Orozco's sentence at this point will only serve to shorten his time in a halfway house, Holder recommends commuting his sentence to time served, leaving intact the five-year period of supervised release.

We concur in the Justice Department's recommendation.

DECISION:

GRANT: _____

DENY: _____

DISCUSS: _____

¹ United States v. Orozco, 160 F.3d 1309, 1316 n. 13 (11th Cir. 1998).

THE WHITE HOUSE
WASHINGTON

6/24/61-

Jake Simmons
caught this on its
way back to the
Army. Do you want
to staff it to
leg & to correspondence
for an interim
reply?

Whoever answers
should probably coordi-
nate w/ Helen Castleman.
-LAURA.

THE WHITE HOUSE
WASHINGTON

ID 7318145

26 Sep 00
DATE

AGENCY LIAISON'S TRACKED REFERRAL

TO: DOD - attention Danny Donnelly

INCOMING INQUIRY FROM: The Honorable Kent Conrad

TO: ☒ PRESIDENT CLINTON ☐ MRS. CLINTON

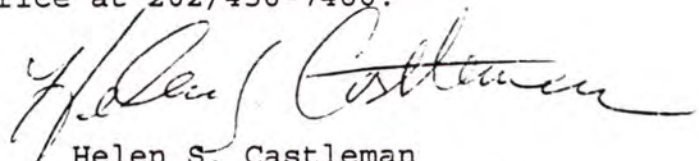
ACTION REQUESTED: ☒ DIRECT RESPONSE TO WRITER/CALLER
☐ ANY APPROPRIATE ACTION

Please return the original inquiry, this referral form and a copy of your written response or your telephone report to the following address:

Mrs. Helen S. Castleman
Director, Agency Liaison
Room 592, OEOB
The White House
Washington, D.C. 20502

Thank you for your help and cooperation in getting this tracked inquiry returned to the White House. Prompt action is requested.

If you have any questions, call my office at 202/456-7486.


Helen S. Castleman
Director, Agency Liaison

United States Senate

WASHINGTON, DC 20510-3403

June 26, 2000



The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500-0005

Dear Mr. President:

I write to urge you to award the Medal of Honor to Theodore Roosevelt, former President of the United States and Colonel of the First U.S. Volunteer Cavalry Regiment, the Rough Riders.

It has come to my attention that the Defense Department recently forwarded to you a positive recommendation for this long overdue award. As you know, the Army was prompted to this action by legislation that authorized you to award our nation's highest military decoration to Theodore Roosevelt. I cosponsored this measure, which was passed unanimously by both Houses of Congress. As you know, both Congress and the Army conducted an exhaustive and comprehensive review of the historical record and circumstances of Theodore Roosevelt's superlatively outstanding bravery at the Battle of San Juan Hill on July 1, 1898, during the Spanish-American War. Your endorsement of the Defense Department's recommendation would ensure that this inspiring icon and deserving Army officer receives the recognition to which our nation's military, numerous historians, and millions of Americans strongly believe he is rightfully entitled.

I admit to a special interest in the former President, known affectionately as Teddy or TR. Roosevelt spent what he described as among the best years of his life in the North Dakota Badlands and often said that he never would have been president had it not been for his time in my state. Most historians agree that it was in North Dakota that President Roosevelt developed an ability to present himself as a leader of the entire nation, not simply a son of the East Coast.

Perhaps more importantly, it was in North Dakota that TR fine-tuned his appreciation for the outdoors. As president, Roosevelt did so much to preserve our natural resources for the American people, and we North Dakotans are proud of what our State contributed to the development of TR. We are also proud that many Rough Riders serving under him in Cuba hailed from North Dakota. Today, the only National Park to bear this great conservationist's name is in North Dakota. As a North Dakotan, I will take special pride, as I believe all North Dakotans will, when you award our nation's highest military decoration to one so clearly deserving of this honor.

Again, Mr. President, I hope you will approve the Defense Department's recommendation with an expeditiousness your predecessor TR would appreciate. In awarding the Medal of Honor to TR, your name will forever be associated with this great American hero.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent Conrad", with a stylized, sweeping flourish at the end.

KENT CONRAD
United States Senate

KC:wdsr

THE WHITE HOUSE

WASHINGTON

July 10, 2000

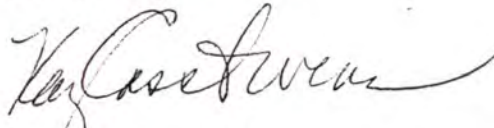
Dear Senator Conrad:

Thank you for your letter to the President supporting the posthumous nomination of President Theodore Roosevelt for the Congressional Medal of Honor. You can be assured that his nomination will receive the utmost consideration.

I am happy to assist you with this matter. Please do not hesitate to contact me if you have any questions.

Best wishes.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay Casstevens".

Kay Casstevens
Deputy Assistant to the President
and Deputy Director for
Legislative Affairs

The Honorable Kent Conrad
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

July 13, 2000

MEMORANDUM FOR HELEN CASTLEMAN
AGENCY LIAISON

FROM: KAY CASSTEVENS
LEGISLATIVE AFFAIRS

SUBJECT: CONGRESSIONAL MEDAL OF HONOR

Attached is a copy of a letter sent to the President from Sen. Kent Conrad (D-ND). I would appreciate your consideration of this posthumous recommendation of President Theodore Roosevelt for the Congressional Medal of Honor.

Thank you very much for your assistance in this matter. If you have any questions, please feel free to call Courtney Crouch at 456-7500.

Enclosure

**THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

ID# 421622
PAGE 1

DATE RECEIVED: 07/03/2000

NAME OF CORRESPONDENT: THE HONORABLE KENT CONRAD

SUBJECT: URGES THE PRESIDENT TO AWARD THE MEDAL OF HONOR TO THEODORE ROOSEVELT

		ACTION		DISPOSITION		
ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
LEGISLATIVE AFFAIRS	CHARLES "CHUCK" BRAIN	ORG	2000/07/03	CC	A	00/07/10
ACTION COMMENTS						
<i>Agency Liaison</i> <i>Helen Castleman</i> <i>[Signature]</i>						
ACTION COMMENTS: _____						

ACTION COMMENTS: _____						

ACTION COMMENTS: _____						

COMMENTS BATCH #421620

ADDITIONAL CORRESPONDENTS: 0

MEDIA: LETTER

INDIVIDUAL CODES:

REPORT CODES:

USER CODES:

ACTION CODES:

A - APPROPRIATE ACTION
C - COMMENT/RECOMMENDATION
D - DRAFT RESPONSE
F - FURNISH FACT SHEET
I - INFO COPY/NO ACT NECESSARY
R - DIRECT REPLY W/ COPY
S - FOR SIGNATURE

DISPOSITION CODES:

A - ANSWERED
B - NON-SEPC-REFERRAL
C - COMPLETED
S - SUSPENDED

OUTGOING CORRESPONDENCE:

TYPE RESP = INITIALS OF SIGNER
CODE = A
COMPLETED = DATE OF OUTGOING

REFER QUESTIONS AND ROUTING UPDATES TO RECORDS MANAGEMENT (ROOM 72, OEOB) EXT-62590

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

8-10-00

John asked that
this be sent ^{to}
^{for the President}
Maria ASAP - S. + Ron
called - I said
to send - Fern
brought me a copy.

MM Cul

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

STENBERG, ATTORNEY GENERAL OF NEBRASKA,
ET AL. v. CARHART

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

No. 99–830. Argued April 25, 2000– Decided June 28, 2000

The Constitution offers basic protection to a woman's right to choose whether to have an abortion. *Roe v. Wade*, 410 U. S. 113; *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833. Before fetal viability, a woman has a right to terminate her pregnancy, *id.*, at 870 (joint opinion), and a state law is unconstitutional if it imposes on the woman's decision an "undue burden," *i.e.*, if it has the purpose or effect of placing a substantial obstacle in the woman's path, *id.*, at 877. Postviability, the State, in promoting its interest in the potentiality of human life, may regulate, and even proscribe, abortion except where "necessary, in appropriate medical judgment, for the preservation of the [mother's] life or health." *E.g., id.*, at 879. The Nebraska law at issue prohibits any "partial birth abortion" unless that procedure is necessary to save the mother's life. It defines "partial birth abortion" as a procedure in which the doctor "partially delivers vaginally a living unborn child before killing the . . . child," and defines the latter phrase to mean "intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the [abortionist] knows will kill the . . . child and does kill the . . . child." Violation of the law is a felony, and it provides for the automatic revocation of a convicted doctor's state license to practice medicine. Respondent Carhart, a Nebraska physician who performs abortions in a clinical setting, brought this suit seeking a declaration that the statute violates the Federal Constitution. The District Court held the statute unconstitutional. The Eighth Circuit affirmed.

Held: Nebraska's statute criminalizing the performance of "partial birth abortion[s]" violates the Federal Constitution, as interpreted in

Syllabus

Casey and Roe. Pp. 3–27.

(a) Because the statute seeks to ban one abortion method, the Court discusses several different abortion procedures, as described in the evidence below and the medical literature. During a pregnancy's second trimester (12 to 24 weeks), the most common abortion procedure is "dilation and evacuation" (D&E), which involves dilation of the cervix, removal of at least some fetal tissue using nonvacuum surgical instruments, and (after the 15th week) the potential need for instrumental dismemberment of the fetus or the collapse of fetal parts to facilitate evacuation from the uterus. When such dismemberment is necessary, it typically occurs as the doctor pulls a portion of the fetus through the cervix into the birth canal. The risks of mortality and complication that accompany D&E are significantly lower than those accompanying induced labor procedures (the next safest mid-second-trimester procedures). A variation of D&E, known as "intact D&E," is used after 16 weeks. It involves removing the fetus from the uterus through the cervix "intact," *i.e.*, in one pass rather than several passes. The intact D&E proceeds in one of two ways, depending on whether the fetus presents head first or feet first. The feet-first method is known as "dilation and extraction" (D&X). D&X is ordinarily associated with the term "partial birth abortion." The District Court concluded that clear and convincing evidence established that Carhart's D&X procedure is superior to, and safer than, the D&E and other abortion procedures used during the relevant gestational period in the 10 to 20 cases a year that present to Carhart. Moreover, materials presented at trial emphasize the potential benefits of the D&X procedure in certain cases. Pp. 3–10.

(b) The Nebraska statute lacks the requisite exception "for the preservation of the . . . health of the mother." *Casey, supra*, at 879 (joint opinion). The State may promote but not endanger a woman's health when it regulates the methods of abortion. Pp. 11–19.

(i) The Court rejects Nebraska's contention that there is no need for a health exception here because safe alternatives remain available and a ban on partial-birth abortion/D&X would create no risk to women's health. The parties strongly contested this factual question in the District Court; and the findings and evidence support Dr. Carhart. Pp. 13–14.

(ii) Nebraska and its supporting *amici* respond with eight arguments as to why the District Court's findings are irrelevant, wrong, or applicable only in a tiny number of instances. Pp. 14–15.

(iii) The eight arguments are insufficient to demonstrate that Nebraska's law needs no health exception. For one thing, certain of the arguments are beside the point. The D&X procedure's relative rarity (argument (1)) is not highly relevant. The State cannot pro-

Syllabus

hibit a person from obtaining treatment simply by pointing out that most people do not need it. And the fact that only a "handful" of doctors use the procedure (argument (2)) may reflect the comparative rarity of late second term abortions, the procedure's recent development, the controversy surrounding it, or, as Nebraska suggests, the procedure's lack of utility. For another thing, the record responds to Nebraska's (and *amici*'s) medically based arguments. As to argument (3), the District Court agreed that alternatives, such as D&E and induced labor are "safe," but found that the D&X method was *safer* in the circumstances used by Carhart. As to argument (4)—that testimony showed that the statutory ban would not increase a woman's risk of several rare abortion complications—the District Court simply relied on different expert testimony than the State. Argument (5)—the assertion of *amici* Association of American Physicians and Surgeons et al. that elements of the D&X procedure may create special risks—is disputed by Carhart's *amici*, including the American College of Obstetricians and Gynecologists (ACOG), which claims that the suggested alternative procedures involve similar or greater risks of cervical and uterine injury. Nebraska's argument (6) is right—there are no general medical studies documenting the comparative safety of the various abortion procedures. Nor does the Court deny the import of the American Medical Association's (AMA) recommendation (argument (7)) that intact D&X not be used unless alternative procedures pose materially greater risk to the woman. However, the Court cannot read ACOG's qualification that it could not identify a circumstance where D&X was the "only" life- or health-preserving option as if, according to Nebraska's argument (8), it denied the potential health-related need for D&X. ACOG has also asserted that D&X can be the most appropriate abortion procedure and presents a variety of potential safety advantages. Pp. 15–18.

(iv) The upshot is a District Court finding that D&X obviates health risks in certain circumstances, a highly plausible record-based explanation of why that might be so, a division of medical opinion over whether D&X is generally safer, and an absence of controlled medical studies that would help answer these medical questions. Given these circumstances, the Court believes the law requires a health exception. For one thing, the word "necessary" in *Casey*'s phrase "necessary, in appropriate medical judgment, for the . . . health of the mother," 505 U. S., at 879, cannot refer to absolute proof or require unanimity of medical opinion. Doctors often differ in their estimation of comparative health risks and appropriate treatment. And *Casey*'s words "appropriate medical judgment" must embody the judicial need to tolerate responsible differences of medical opinion. For another thing, the division of medical opinion signals uncer-

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tainty. If those who believe that D&X is a safer abortion method in certain circumstances turn out to be right, the absence of a health exception will place women at an unnecessary risk. If they are wrong, the exception will simply turn out to have been unnecessary. Pp. 18–19.

(c) The Nebraska statute imposes an “undue burden” on a woman’s ability to choose an abortion. See *Casey*, *supra*, at 874 (joint opinion). Pp. 20–27.

(i) Nebraska does not deny that the statute imposes an “undue burden” if it applies to the more commonly used D&E procedure as well as to D&X. This Court agrees with the Eighth Circuit that the D&E procedure falls within the statutory prohibition of intentionally delivering into the vagina a living fetus, or “a substantial portion thereof,” for the purpose of performing a procedure that the perpetrator knows will kill the fetus. Because the evidence makes clear that D&E will often involve a physician pulling an arm, leg, or other “substantial portion” of a still living fetus into the vagina prior to the fetus’ death, the statutory terms do not distinguish between D&X and D&E. The statute’s language does not track the medical differences between D&E and D&X, but covers both. Using the law’s statutory terms, it is impossible to distinguish between D&E (where a foot or arm is drawn through the cervix) and D&X (where the body up to the head is drawn through the cervix). Both procedures can involve the introduction of a “substantial portion” of a still living fetus, through the cervix, into the vagina— the very feature of an abortion that leads to characterizing such a procedure as involving “partial birth.” Pp. 20–21.

(ii) The Court rejects the Nebraska Attorney General’s arguments that the state law does differentiate between the two procedures— *i.e.*, that the words “substantial portion” mean “the child up to the head,” such that the law is inapplicable where the physician introduces into the birth canal anything less than the entire fetal body— and that the Court must defer to his views. The Court’s case law makes clear that the Attorney General’s narrowing interpretation cannot be given controlling weight. For one thing, this Court normally follows lower federal-court interpretations of state law, *e.g.*, *McMillian v. Monroe County*, 520 U. S. 781, 786, and rarely reviews such an interpretation that is agreed upon by the two lower federal courts. *Virginia v. American Booksellers Assn., Inc.*, 484 U. S. 383, 395. Here, the two lower courts both rejected the Attorney General’s narrowing interpretation. For another, the Court’s precedent warns against accepting as “authoritative” an Attorney General’s interpretation of state law where, as here, that interpretation does not bind the state courts or local law enforcement. In Nebraska, elected

Syllabus

county attorneys have independent authority to initiate criminal prosecutions. Some present prosecutors (and future Attorneys General) might use the law at issue to pursue physicians who use D&E procedures. Nor can it be said that the lower courts used the wrong legal standard in assessing the Attorney General's interpretation. The Eighth Circuit recognized its duty to give the law a construction that would avoid constitutional doubt, but nonetheless concluded that the Attorney General's interpretation would twist the law's words, giving them a meaning they cannot reasonably bear. The Eighth Circuit is far from alone in rejecting such a narrowing interpretation, since 11 of the 12 federal courts that have interpreted on the merits the model statutory language on which the Nebraska law is based have found the language potentially applicable to abortion procedures other than D&X. Regardless, were the Court to grant the Attorney General's views "substantial weight," it would still have to reject his interpretation, for it conflicts with the statutory language. The statutory words, "substantial portion," indicate that the statute does not include the Attorney General's restriction— "the child up to the head." The Nebraska Legislature's debates hurt the Attorney General's argument more than they help it, indicating that as small a portion of the fetus as a foot would constitute a "substantial portion." Even assuming that the distinction the Attorney General seeks to draw between the overall abortion procedure itself and the separate procedure used to kill an unborn child would help him make the D&E/D&X distinction he seeks, there is no language in the statute that supports it. Although adopting his interpretation might avoid the constitutional problem discussed above, the Court lacks power to do so where, as here, the narrowing construction is not reasonable and readily apparent. *E.g., Boos v. Barry*, 485 U. S. 312, 330. Finally, the Court has never held that a federal litigant must await a state-court construction or the development of an established practice before bringing the federal suit. *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U. S. 750, 770, n. 11. But any authoritative state-court construction is lacking here. The Attorney General neither sought a narrowing interpretation from the Nebraska Supreme Court nor asked the federal courts to certify the interpretive question. Cf. *Arizonaans for Official English v. Arizona*, 520 U. S. 43. Even were the Court inclined to certify the question now, it could not do so because certification is appropriate only where the statute is "fairly susceptible" to a narrowing construction, see *Houston v. Hill*, 482 U. S. 451, 468–471, as is not the case here. Moreover, the Nebraska Supreme Court grants certification only if the certified question is determinative of the cause, see *id.*, at 471, as it would not be here. In sum, because all those who perform abortion procedures using the D&E method must

Syllabus

fear prosecution, conviction, and imprisonment, the Nebraska law imposes an undue burden upon a woman's right to make an abortion decision. Pp. 21–27.

192 F. 3d 1142, affirmed.

BREYER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, and GINSBURG, JJ., joined. STEVENS, J., filed a concurring opinion, in which GINSBURG, J., joined. O'CONNOR, J., filed a concurring opinion. GINSBURG, J., filed a concurring opinion, in which STEVENS, J., joined. REHNQUIST, C. J., and SCALIA, J., filed dissenting opinions. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA, J., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 99–830

DON STENBERG, ATTORNEY GENERAL OF
NEBRASKA, ET AL., PETITIONERS v.
LEROY CARHART

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[June 28, 2000]

JUSTICE BREYER delivered the opinion of the Court.

We again consider the right to an abortion. We understand the controversial nature of the problem. Millions of Americans believe that life begins at conception and consequently that an abortion is akin to causing the death of an innocent child; they recoil at the thought of a law that would permit it. Other millions fear that a law that forbids abortion would condemn many American women to lives that lack dignity, depriving them of equal liberty and leading those with least resources to undergo illegal abortions with the attendant risks of death and suffering. Taking account of these virtually irreconcilable points of view, aware that constitutional law must govern a society whose different members sincerely hold directly opposing views, and considering the matter in light of the Constitution's guarantees of fundamental individual liberty, this Court, in the course of a generation, has determined and then redetermined that the Constitution offers basic protection to the woman's right to choose. *Roe v. Wade*, 410 U. S. 113 (1973); *Planned Parenthood of Southeastern Pa. v.*

Opinion of the Court

Casey, 505 U.S. 833 (1992). We shall not revisit those legal principles. Rather, we apply them to the circumstances of this case.

Three established principles determine the issue before us. We shall set them forth in the language of the joint opinion in *Casey*. First, before “viability . . . the woman has a right to choose to terminate her pregnancy.” *Id.*, at 870 (joint opinion of O’CONNOR, KENNEDY, and SOUTER, JJ.).

Second, “a law designed to further the State’s interest in fetal life which imposes an undue burden on the woman’s decision before fetal viability” is unconstitutional. *Id.*, at 877. An “undue burden is . . . shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” *Ibid.*

Third, “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.” *Id.*, at 879 (quoting *Roe v. Wade*, *supra*, at 164–165).

We apply these principles to a Nebraska law banning “partial birth abortion.” The statute reads as follows:

“No partial birth abortion shall be performed in this state, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.” Neb. Rev. Stat. Ann. §28–328(1) (Supp. 1999).

The statute defines “partial birth abortion” as:

“an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and com-

Opinion of the Court

pleting the delivery." §28–326(9).

It further defines "partially delivers vaginally a living unborn child before killing the unborn child" to mean

"deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child."
Ibid.

The law classifies violation of the statute as a "Class III felony" carrying a prison term of up to 20 years, and a fine of up to \$25,000. §§28–328(2), 28–105. It also provides for the automatic revocation of a doctor's license to practice medicine in Nebraska. §28–328(4).

We hold that this statute violates the Constitution.

I

A

Dr. Leroy Carhart is a Nebraska physician who performs abortions in a clinical setting. He brought this lawsuit in Federal District Court seeking a declaration that the Nebraska statute violates the Federal Constitution, and asking for an injunction forbidding its enforcement. After a trial on the merits, during which both sides presented several expert witnesses, the District Court held the statute unconstitutional. 11 F. Supp. 2d 1099 (Neb. 1998). On appeal, the Eighth Circuit affirmed. 192 F. 3d 1142 (1999); cf. *Hope Clinic v. Ryan*, 195 F. 3d 857 (CA7 1999) (en banc) (considering a similar statute, but reaching a different legal conclusion). We granted certiorari to consider the matter.

B

Because Nebraska law seeks to ban one method of aborting a pregnancy, we must describe and then discuss

Opinion of the Court

several different abortion procedures. Considering the fact that those procedures seek to terminate a potential human life, our discussion may seem clinically cold or callous to some, perhaps horrifying to others. There is no alternative way, however, to acquaint the reader with the technical distinctions among different abortion methods and related factual matters, upon which the outcome of this case depends. For that reason, drawing upon the findings of the trial court, underlying testimony, and related medical texts, we shall describe the relevant methods of performing abortions in technical detail.

The evidence before the trial court, as supported or supplemented in the literature, indicates the following:

1. About 90% of all abortions performed in the United States take place during the first trimester of pregnancy, before 12 weeks of gestational age. Centers for Disease Control and Prevention, Abortion Surveillance—United States, 1996, p. 41 (July 30, 1999) (hereinafter Abortion Surveillance). During the first trimester, the predominant abortion method is “vacuum aspiration,” which involves insertion of a vacuum tube (cannula) into the uterus to evacuate the contents. Such an abortion is typically performed on an outpatient basis under local anesthesia. 11 F. Supp. 2d, at 1102; Obstetrics: Normal & Problem Pregnancies 1253–1254 (S. Gabbe, J. Niebyl, & J. Simpson eds. 3d ed. 1996). Vacuum aspiration is considered particularly safe. The procedure’s mortality rates for first trimester abortion are, for example, 5 to 10 times lower than those associated with carrying the fetus to term. Complication rates are also low. *Id.*, at 1251; Lawson et al., Abortion Mortality, United States, 1972 through 1987, 171 Am. J. Obstet. Gynecol. 1365, 1368 (1994); M. Paul, et al., A Clinicians Guide to Medical and Surgical Abortion 108–109 (1999) (hereinafter Medical and Surgical Abortion). As the fetus grows in size, however, the vacuum aspiration

Opinion of the Court

method becomes increasingly difficult to use. 11 F. Supp. 2d, at 1102–1103; *Obstetrics: Normal & Problem Pregnancies*, *supra*, at 1268.

2. Approximately 10% of all abortions are performed during the second trimester of pregnancy (12 to 24 weeks). *Abortion Surveillance* 41. In the early 1970's, inducing labor through the injection of saline into the uterus was the predominant method of second trimester abortion. *Id.*, at 8; *Planned Parenthood of Central Mo. v. Danforth*, 428 U. S. 52, 76 (1976). Today, however, the medical profession has switched from medical induction of labor to surgical procedures for most second trimester abortions. The most commonly used procedure is called "dilation and evacuation" (D&E). That procedure (together with a modified form of vacuum aspiration used in the early second trimester) accounts for about 95% of all abortions performed from 12 to 20 weeks of gestational age. *Abortion Surveillance* 41.

3. D&E "refers generically to transcervical procedures performed at 13 weeks gestation or later." American Medical Association, Report of Board of Trustees on Late-Term Abortion, App. 490 (hereinafter AMA Report). The AMA Report, adopted by the District Court, describes the process as follows.

Between 13 and 15 weeks of gestation:

"D&E is similar to vacuum aspiration except that the cervix must be dilated more widely because surgical instruments are used to remove larger pieces of tissue. Osmotic dilators are usually used. Intravenous fluids and an analgesic or sedative may be administered. A local anesthetic such as a paracervical block may be administered, dilating agents, if used, are removed and instruments are inserted through the cervix into the uterus to removal fetal and placental tissue. Because fetal tissue is friable and easily broken,

Opinion of the Court

the fetus may not be removed intact. The walls of the uterus are scraped with a curette to ensure that no tissue remains." *Id.*, at 490–491.

After 15 weeks:

"Because the fetus is larger at this stage of gestation (particularly the head), and because bones are more rigid, dismemberment or other destructive procedures are more likely to be required than at earlier gestational ages to remove fetal and placental tissue." *Id.*, at 491.

After 20 weeks:

"Some physicians use intrafetal potassium chloride or digoxin to induce fetal demise prior to a late D&E (after 20 weeks), to facilitate evacuation." *Id.*, at 491–492.

There are variations in D&E operative strategy; compare *ibid.* with W. Hern, *Abortion Practice* 146–156 (1984), and *Medical and Surgical Abortion* 133–135. However, the common points are that D&E involves (1) dilation of the cervix; (2) removal of at least some fetal tissue using nonvacuum instruments; and (3) (after the 15th week) the potential need for instrumental disarticulation or dismemberment of the fetus or the collapse of fetal parts to facilitate evacuation from the uterus.

4. When instrumental disarticulation incident to D&E is necessary, it typically occurs as the doctor pulls a portion of the fetus through the cervix into the birth canal. Dr. Carhart testified at trial as follows:

"Dr. Carhart: . . . The dismemberment occurs between the traction of . . . my instrument and the counter-traction of the internal os of the cervix

"Counsel: So the dismemberment occurs after you pulled a part of the fetus through the cervix, is that

Opinion of the Court

correct?

‘Dr. Carhart: Exactly. Because you’re using– The cervix has two strictures or two rings, the internal os and the external os . . . that’s what’s actually doing the dismembering. . . .

‘Counsel: When we talked before or talked before about a D&E, that is not– where there is not intention to do it intact, do you, in that situation, dismember the fetus in utero first, then remove portions?

‘Dr. Carhart: I don’t think so. . . . I don’t know of any way that one could go in and intentionally dismember the fetus in the uterus. . . . It takes something that restricts the motion of the fetus against what you’re doing before you’re going to get dismemberment.’” 11 F. Supp. 2d, at 1104.

Dr. Carhart’s specification of the location of fetal disarticulation is consistent with other sources. See *Medical and Surgical Abortion* 135; App. in Nos. 98–3245 and 98–3300 (CA8), p. 683, (testimony of Dr. Phillip Stubblefield) (“Q: So you don’t actually dismember the fetus in utero, then take the pieces out? A: No”).

5. The D&E procedure carries certain risks. The use of instruments within the uterus creates a danger of accidental perforation and damage to neighboring organs. Sharp fetal bone fragments create similar dangers. And fetal tissue accidentally left behind can cause infection and various other complications. See 11 F. Supp. 2d, at 1110; *Gynecologic, Obstetric, and Related Surgery* 1045 (D. Nichols & D. Clarke-Pearson eds. 2d ed. 2000); F. Cunningham et al., *Williams Obstetrics* 598 (20th ed. 1997). Nonetheless studies show that the risks of mortality and complication that accompany the D&E procedure between the 12th and 20th weeks of gestation are significantly lower than those accompanying induced labor procedures (the next safest midsecond trimester procedures). See

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Gynecologic, Obstetric, and Related Surgery, *supra*, at 1046; AMA Report, App. 495, 496; Medical and Surgical Abortion 139, 142; Lawson, 171 Am. J. Obstet. Gynecol., at 1368.

6. At trial, Dr. Carhart and Dr. Stubblefield described a variation of the D&E procedure, which they referred to as an "intact D&E." See 11 F. Supp. 2d, at 1105, 1111. Like other versions of the D&E technique, it begins with induced dilation of the cervix. The procedure then involves removing the fetus from the uterus through the cervix "intact," *i.e.*, in one pass, rather than in several passes. *Ibid.* It is used after 16 weeks at the earliest, as vacuum aspiration becomes ineffective and the fetal skull becomes too large to pass through the cervix. *Id.*, at 1105. The intact D&E proceeds in one of two ways, depending on the presentation of the fetus. If the fetus presents head first (a vertex presentation), the doctor collapses the skull; and the doctor then extracts the entire fetus through the cervix. If the fetus presents feet first (a breech presentation), the doctor pulls the fetal body through the cervix, collapses the skull, and extracts the fetus through the cervix. *Ibid.* The breech extraction version of the intact D&E is also known commonly as "dilation and extraction," or D&X. *Id.*, at 1112. In the late second trimester, vertex, breech, and traverse/compound (sideways) presentations occur in roughly similar proportions. Medical and Surgical Abortion 135; 11 F. Supp. 2d, at 1108.

7. The intact D&E procedure can also be found described in certain obstetric and abortion clinical textbooks, where two variations are recognized. The first, as just described, calls for the physician to adapt his method for extracting the intact fetus depending on fetal presentation. See Gynecologic, Obstetric, and Related Surgery, *supra*, at 1043; Medical and Surgical Abortion 136-137. This is the method used by Dr. Carhart. See 11 F. Supp. 2d, at 1105. A slightly different version of the intact D&E

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procedure, associated with Dr. Martin Haskell, calls for conversion to a breech presentation in all cases. See *Gynecologic, Obstetric, and Related Surgery, supra*, at 1043 (citing M. Haskell, *Dilation and Extraction for Late Second Trimester Abortion* (1992), in 139 Cong. Rec. 8605 (1993)).

8. The American College of Obstetricians and Gynecologists describes the D&X procedure in a manner corresponding to a breech-conversion intact D&E, including the following steps:

"1. deliberate dilatation of the cervix, usually over a sequence of days;

"2. instrumental conversion of the fetus to a footling breech;

"3. breech extraction of the body excepting the head; and

"4. partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus." American College of Obstetricians and Gynecologists Executive Board, *Statement on Intact Dilation and Extraction* (Jan. 12, 1997) (hereinafter *ACOG Statement*), App. 599–560.

Despite the technical differences we have just described, intact D&E and D&X are sufficiently similar for us to use the terms interchangeably.

9. Dr. Carhart testified he attempts to use the intact D&E procedure during weeks 16 to 20 because (1) it reduces the dangers from sharp bone fragments passing through the cervix, (2) minimizes the number of instrument passes needed for extraction and lessens the likelihood of uterine perforations caused by those instruments, (3) reduces the likelihood of leaving infection-causing fetal and placental tissue in the uterus, and (4) could help to prevent potentially fatal absorption of fetal tissue into the maternal circulation. See 11 F. Supp. 2d, at 1107. The

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District Court made no findings about the D&X procedure's overall safety. *Id.*, at 1126, n. 39. The District Court concluded, however, that "the evidence is both clear and convincing that Carhart's D&X procedure is superior to, and safer than, the . . . other abortion procedures used during the relevant gestational period in the 10 to 20 cases a year that present to Dr. Carhart." *Id.*, at 1126.

10. The materials presented at trial referred to the potential benefits of the D&X procedure in circumstances involving nonviable fetuses, such as fetuses with abnormal fluid accumulation in the brain (hydrocephaly). See 11 F. Supp. 2d, at 1107 (quoting AMA Report, App. 492 ("Intact D&X may be preferred by some physicians, particularly when the fetus has been diagnosed with hydrocephaly or other anomalies incompatible with life outside the womb")); see also Grimes, *The Continuing Need for Late Abortions*, 280 JAMA 747, 748 (Aug. 26, 1998) (D&X "may be especially useful in the presence of fetal anomalies, such as hydrocephalus," because its reduction of the cranium allows "a smaller diameter to pass through the cervix, thus reducing risk of cervical injury"). Others have emphasized its potential for women with prior uterine scars, or for women for whom induction of labor would be particularly dangerous. See *Women's Medical Professional Corp. v. Voinovich*, 911 F. Supp. 2d 1051, 1067 (SD Ohio 1995); *Evans v. Kelley*, 977 F. Supp. 2d 1283, 1296 (ED Mich. 1997).

11. There are no reliable data on the number of D&X abortions performed annually. Estimates have ranged between 640 and 5,000 per year. Compare Henshaw, *Abortion Incidence and Services in the United States, 1995-1996*, 30 *Family Planning Perspectives* 263, 268 (1998), with Joint Hearing on S. 6 and H. R. 929 before the Senate Committee on the Judiciary and the Subcommittee on the Constitution of the House Committee on the Judiciary, 105th Cong., 1st Sess., 46 (1997).

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II

The question before us is whether Nebraska's statute, making criminal the performance of a "partial birth abortion," violates the Federal Constitution, as interpreted in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992), and *Roe v. Wade*, 410 U. S. 113 (1973). We conclude that it does for at least two independent reasons. First, the law lacks any exception "for the preservation of the . . . health of the mother." *Casey*, 505 U. S., at 879 (joint opinion of O'CONNOR, KENNEDY, and SOUTER, JJ.). Second, it "imposes an undue burden on a woman's ability" to choose a D&E abortion, thereby unduly burdening the right to choose abortion itself. *Id.*, at 874. We shall discuss each of these reasons in turn.

A

The *Casey* joint opinion reiterated what the Court held in *Roe*; 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.*" 505 U. S., at 879 (quoting *Roe, supra*, at 164–165) (emphasis added).

The fact that Nebraska's law applies both pre- and postviability aggravates the constitutional problem presented. The State's interest in regulating abortion previability is considerably weaker than postviability. See *Casey, supra*, at 870. Since the law requires a health exception in order to validate even a postviability abortion regulation, it at a minimum requires the same in respect to previability regulation. See *Casey, supra*, at 880 (majority opinion) (assuming need for health exception previability); see also *Harris v. McRae*, 448 U. S. 297, 316 (1980).

The quoted standard also depends on the state regulations "promoting [the State's] interest in the potentiality of

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human life." The Nebraska law, of course, does not directly further an interest "in the potentiality of human life" by saving the fetus in question from destruction, as it regulates only a *method* of performing abortion. Nebraska describes its interests differently. It says the law "show[s] concern for the life of the unborn," "prevent[s] cruelty to partially born children," and "preserve[s] the integrity of the medical profession." Brief for Petitioners 48. But we cannot see how the interest-related differences could make any difference to the question at hand, namely, the application of the "health" requirement.

Consequently, the governing standard requires an exception "where it is necessary, in appropriate medical judgment for the preservation of the life or health of the mother," *Casey*, *supra*, at 879, for this Court has made clear that a State may promote but not endanger a woman's health when it regulates the methods of abortion. *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U. S. 747, 768–769 (1986); *Colautti v. Franklin*, 439 U. S. 379, 400 (1979); *Danforth*, 428 U. S., at 76–79; *Doe v. Bolton*, 410 U. S. 179, 197 (1973).

JUSTICE THOMAS says that the cases just cited limit this principle to situations where the pregnancy *itself* creates a threat to health. See *post*, at 33. He is wrong. The cited cases, reaffirmed in *Casey*, recognize that a State cannot subject women's health to significant risks both in that context, *and also* where state regulations force women to use riskier methods of abortion. Our cases have repeatedly invalidated statutes that in the process of regulating the *methods* of abortion, imposed significant health risks. They make clear that a risk to a women's health is the same whether it happens to arise from regulating a particular method of abortion, or from barring abortion entirely. Our holding does not go beyond those cases, as ratified in *Casey*.

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1

Nebraska responds that the law does not require a health exception unless there is a need for such an exception. And here there is no such need, it says. It argues that "safe alternatives remain available" and "a ban on partial-birth abortion/D&X would create no risk to the health of women." Brief for Petitioners 29, 40. The problem for Nebraska is that the parties strongly contested this factual question in the trial court below; and the findings and evidence support Dr. Carhart. The State fails to demonstrate that banning D&X without a health exception may not create significant health risks for women, because the record shows that significant medical authority supports the proposition that in some circumstances, D&X would be the safest procedure.

We shall reiterate in summary form the relevant findings and evidence. On the basis of medical testimony the District Court concluded that "Carhart's D&X procedure is . . . safer tha[n] the D&E and other abortion procedures used during the relevant gestational period in the 10 to 20 cases a year that present to Dr. Carhart." 11 F. Supp. 2d, at 1126. It found that the D&X procedure permits the fetus to pass through the cervix with a minimum of instrumentation. *Ibid.* It thereby

"reduces operating time, blood loss and risk of infection; reduces complications from bony fragments; reduces instrument-inflicted damage to the uterus and cervix; prevents the most common causes of maternal mortality (DIC and amniotic fluid embolus); and eliminates the possibility of horrible complications arising from retained fetal parts." *Ibid.*

The District Court also noted that a select panel of the American College of Obstetricians and Gynecologists concluded that D&X "may be the best or most appropriate procedure in a particular circumstance to save the life or

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preserve the health of a woman.” *Id.*, at 1105, n. 10 (quoting ACOG Statement, App. 600–601) (but see an important qualification, *infra*, at 14). With one exception, the federal trial courts that have heard expert evidence on the matter have reached similar factual conclusions. See *Rhode Island Medical Soc. v. Whitehouse*, 66 F. Supp. 2d 288, 314 (RI 1999); *A Choice for Women v. Butterworth*, 54 F. Supp. 2d 1148, 1153, 1156 (SD Fla 1998); *Causeway Medical Suite v. Foster*, 43 F. Supp. 2d 604, 613–614 (ED La. 1999); *Richmond Medical Center for Women v. Gilmore*, 11 F. Supp. 2d 795, 827, n. 40 (ED Va. 1998); *Hope Clinic v. Ryan*, 995 F. Supp. 2d 847, 852 (ND Ill. 1998), vacated, 195 F. 3d 857 (CA7 1999), cert. pending, No. 99–1152; *Voinovich*, 911 F. Supp. 2d, at 1069–1070; *Kelley*, 977 F. Supp. 2d, at 1296; but see *Planned Parenthood of Wis. v. Doyle*, 44 F. Supp. 2d 975, 980 (WD Wis.) vacated, 195 F. 3d 857 (CA7 1999).

2

Nebraska, along with supporting *amici*, replies that these findings are irrelevant, wrong, or applicable only in a tiny number of instances. It says (1) that the D&X procedure is “little-used,” (2) by only “a handful of doctors.” Brief for Petitioners 32. It argues (3) that D&E and labor induction are at all times “safe alternative procedures.” *Id.*, at 36. It refers to the testimony of petitioners’ medical expert, who testified (4) that the ban would not increase a woman’s risk of several rare abortion complications (disseminated intravascular coagulopathy and amniotic fluid embolus), *id.*, at 37; App. 642–644.

The Association of American Physicians and Surgeons et al., *amici* supporting Nebraska, argue (5) that elements of the D&X procedure may create special risks, including cervical incompetence caused by overdilatation, injury caused by conversion of the fetal presentation, and dangers arising from the “blind” use of instrumentation to

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pierce the fetal skull while lodged in the birth canal. See Brief for Association of American Physicians and Surgeons et al. as *Amici Curiae* 21–23; see also Sprang & Neerhof, Rationale for Banning Abortions Late in Pregnancy, 280 JAMA 744, 746 (Aug. 26, 1998).

Nebraska further emphasizes (6) that there are no medical studies “establishing the safety of the partial-birth abortion/D&X procedure,” Brief for Petitioners 39, and “no medical studies comparing the safety of partial-birth abortion/D&X to other abortion procedures,” *ibid.* It points to, *id.*, at 35, (7) an American Medical Association policy statement that “there does not appear to be any identified situation in which intact D&X is the only appropriate procedure to induce abortion,” Late Term Pregnancy Termination Techniques, AMA Policy H–5.982 (1997). And it points out (8) that the American College of Obstetricians and Gynecologists qualified its statement that D&X “may be the best or most appropriate procedure,” by adding that the panel “could identify no circumstances under which [the D&X] procedure . . . would be the only option to save the life or preserve the health of the woman.” App. 600–601.

3

We find these eight arguments insufficient to demonstrate that Nebraska’s law needs no health exception. For one thing, certain of the arguments are beside the point. The D&X procedure’s relative rarity (argument (1)) is not highly relevant. The D&X is an infrequently used abortion procedure; but the health exception question is whether protecting women’s health requires an exception for those infrequent occasions. A rarely used treatment might be necessary to treat a rarely occurring disease that could strike anyone— the State cannot prohibit a person from obtaining treatment simply by pointing out that most people do not need it. Nor can we know whether the fact

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that only a "handful" of doctors use the procedure (argument (2)) reflects the comparative rarity of late second term abortions, the procedure's recent development, Gynecologic, Obstetric, and Related Surgery, at 1043, the controversy surrounding it, or, as Nebraska suggests, the procedure's lack of utility.

For another thing, the record responds to Nebraska's (and *amici's*) medically based arguments. In respect to argument (3), for example, the District Court agreed that alternatives, such as D&E and induced labor, are "safe" but found that the D&X method was significantly *safer* in certain circumstances. 11 F. Supp. 2d, at 1125–1126. In respect to argument (4), the District Court simply relied on different expert testimony—testimony stating that "[a]nother advantage of the Intact D&E is that it eliminates the risk of embolism of cerebral tissue into the woman's blood stream." *Id.*, at 1124 (quoting Hearing on H. R. 1833 before the Senate Committee on the Judiciary, 104th Cong., 1st Sess., 260 (1995) (statement of W. Hern)).

In response to *amici's* argument (5), the American College of Obstetricians and Gynecologists, in its own *amici* brief, denies that D&X generally poses risks greater than the alternatives. It says that the suggested alternative procedures involve similar or greater risks of cervical and uterine injury, for "D&E procedures, involve similar amounts of dilatation" and "of course childbirth involves even greater cervical dilatation." Brief for American College of Obstetricians and Gynecologists et al. as *Amici Curiae* 23. The College points out that Dr. Carhart does not reposition the fetus thereby avoiding any risks stemming from conversion to breech presentation, and that, as compared with D&X, D&E involves the same, if not greater, "blind" use of sharp instruments in the uterine cavity. *Id.*, at 23–24.

We do not quarrel with Nebraska's argument (6), for Nebraska is right. There are no general medical studies

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documenting comparative safety. Neither do we deny the import of the American Medical Association's statement (argument (7))— even though the State does omit the remainder of that statement: "The AMA recommends that the procedure not be used *unless alternative procedures pose materially greater risk to the woman.*" Late Term Pregnancy Termination Techniques, AMA Policy H-5.982 (emphasis added).

We cannot, however, read the American College of Obstetricians and Gynecologists panel's qualification (that it could not "identify" a circumstance where D&X was the "only" life- or health-preserving option) as if, according to Nebraska's argument (8), it denied the potential health-related need for D&X. That is because the College writes the following in its *amici* brief:

"Depending on the physician's skill and experience, the D&X procedure can be the most appropriate abortion procedure for some women in some circumstances. D&X presents a variety of potential safety advantages over other abortion procedures used during the same gestational period. Compared to D&Es involving dismemberment, D&X involves less risk of uterine perforation or cervical laceration because it requires the physician to make fewer passes into the uterus with sharp instruments and reduces the presence of sharp fetal bone fragments that can injure the uterus and cervix. There is also considerable evidence that D&X reduces the risk of retained fetal tissue, a serious abortion complication that can cause maternal death, and that D&X reduces the incidence of a free floating fetal head that can be difficult for a physician to grasp and remove and can thus cause maternal injury. That D&X procedures usually take less time than other abortion methods used at a comparable stage of pregnancy can also have health advantages.

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The shorter the procedure, the less blood loss, trauma, and exposure to anesthesia. The intuitive safety advantages of intact D&E are supported by clinical experience. Especially for women with particular health conditions, there is medical evidence that D&X may be safer than available alternatives.” Brief for American College of Obstetricians and Gynecologists et al. as *Amici Curiae* 21–22 (citation and footnotes omitted).

4

The upshot is a District Court finding that D&X significantly obviates health risks in certain circumstances, a highly plausible record-based explanation of why that might be so, a division of opinion among some medical experts over whether D&X is generally safer, and an absence of controlled medical studies that would help answer these medical questions. Given these medically related evidentiary circumstances, we believe the law requires a health exception.

The word “necessary” in *Casey*’s phrase “necessary, in appropriate medical judgment, for the preservation of the life or health of the mother,” 505 U. S., at 879 (internal quotation marks omitted), cannot refer to an absolute necessity or to absolute proof. Medical treatments and procedures are often considered appropriate (or inappropriate) in light of estimated comparative health risks (and health benefits) in particular cases. Neither can that phrase require unanimity of medical opinion. Doctors often differ in their estimation of comparative health risks and appropriate treatment. And *Casey*’s words “appropriate medical judgment” must embody the judicial need to tolerate responsible differences of medical opinion— differences of a sort that the American Medical Association and American College of Obstetricians and Gynecologists’ statements together indicate are present here.

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For another thing, the division of medical opinion about the matter at most means uncertainty, a factor that signals the presence of risk, not its absence. That division here involves highly qualified knowledgeable experts on both sides of the issue. Where a significant body of medical opinion believes a procedure may bring with it greater safety for some patients and explains the medical reasons supporting that view, we cannot say that the presence of a different view by itself proves the contrary. Rather, the uncertainty means a significant likelihood that those who believe that D&X is a safer abortion method in certain circumstances may turn out to be right. If so, then the absence of a health exception will place women at an unnecessary risk of tragic health consequences. If they are wrong, the exception will simply turn out to have been unnecessary.

In sum, Nebraska has not convinced us that a health exception is “never necessary to preserve the health of women.” Reply Brief for Petitioners 4. Rather, a statute that altogether forbids D&X creates a significant health risk. The statute consequently must contain a health exception. This is not to say, as JUSTICE THOMAS and JUSTICE KENNEDY claim, that a State is prohibited from proscribing an abortion procedure whenever a particular physician deems the procedure preferable. By no means must a State grant physicians “unfettered discretion” in their selection of abortion methods. *Post*, at 14 (KENNEDY, J., dissenting). But where substantial medical authority supports the proposition that banning a particular abortion procedure could endanger women’s health, *Casey* requires the statute to include a health exception when the procedure is “necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.” 505 U. S., at 879. Requiring such an exception in this case is no departure from *Casey*, but simply a straightforward application of its holding.

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B

The Eighth Circuit found the Nebraska statute unconstitutional because, in *Casey's* words, it has the "effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." 505 U. S., at 877. It thereby places an "undue burden" upon a woman's right to terminate her pregnancy before viability. *Ibid.* Nebraska does not deny that the statute imposes an "undue burden" if it applies to the more commonly used D&E procedure as well as to D&X. And we agree with the Eighth Circuit that it does so apply.

Our earlier discussion of the D&E procedure, *supra*, at 5–7, shows that it falls within the statutory prohibition. The statute forbids "deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child." Neb. Rev. Stat. Ann. §28–326(9) (Supp. 1999). We do not understand how one could distinguish, using this language, between D&E (where a foot or arm is drawn through the cervix) and D&X (where the body up to the head is drawn through the cervix). Evidence before the trial court makes clear that D&E will often involve a physician pulling a "substantial portion" of a still living fetus, say, an arm or leg, into the vagina prior to the death of the fetus. 11 F. Supp. 2d, at 1128; *id.*, at 1128–1130. Indeed D&E involves dismemberment that commonly occurs only when the fetus meets resistance that restricts the motion of the fetus: "The dismemberment occurs between the traction of . . . [the] instrument and the counter-traction of the internal os of the cervix." *Id.*, at 1128. And these events often do not occur until after a portion of a living fetus has been pulled into the vagina. *Id.*, at 1104; see also Medical and Surgical Abortion 135 ("During the mid-second trimester, separation of the fetal corpus may occur when the fetus is drawn into

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the lower uterine segment, where compression and traction against the endocervix facilitates disarticulation”).

Even if the statute’s basic aim is to ban D&X, its language makes clear that it also covers a much broader category of procedures. The language does not track the medical differences between D&E and D&X— though it would have been a simple matter, for example, to provide an exception for the performance of D&E and other abortion procedures. *E.g.*, Kan. Stat. Ann. §65–6721(b)(1) (Supp. 1999). Nor does the statute anywhere suggest that its application turns on whether a portion of the fetus’ body is drawn into the vagina as part of a process to extract an intact fetus after collapsing the head as opposed to a process that would dismember the fetus. Thus, the dissenters’ argument that the law was generally intended to bar D&X can be both correct and irrelevant. The relevant question is *not* whether the legislature wanted to ban D&X; it is whether the law was intended to apply *only* to D&X. The plain language covers both procedures. A rereading of pages 5–10 of this opinion, as well as JUSTICE THOMAS’ dissent at pages 5–7, will make clear why we can find no difference, in terms of *this* statute, between the D&X procedure as described and the D&E procedure as it might be performed. (In particular, compare *post*, at 6–7, (THOMAS, J., dissenting), with *post*, at 7–10 (THOMAS, J., dissenting)). Both procedures can involve the introduction of a “substantial portion” of a still living fetus, through the cervix, into the vagina— the very feature of an abortion that leads JUSTICE THOMAS to characterize such a procedure as involving “partial birth.”

The Nebraska State Attorney General argues that the statute does differentiate between the two procedures. He says that the statutory words “substantial portion” mean “the child up to the head.” He consequently denies the statute’s application where the physician introduces into the birth canal a fetal arm or leg or anything less than the

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entire fetal body. Brief for Petitioners 20. He argues further that we must defer to his views about the meaning of the state statute. *Id.*, at 12–13.

We cannot accept the Attorney General's narrowing interpretation of the Nebraska statute. This Court's case law makes clear that we are not to give the Attorney General's interpretative views controlling weight. For one thing, this Court normally follows lower federal-court interpretations of state law. *McMillian v. Monroe County*, 520 U. S. 781, 786 (1997); *Brockett v. Spokane Arcades, Inc.*, 472 U. S. 491, 500, n. 9 (1985). It "rarely reviews a construction of state law agreed upon by the two lower federal courts." *Virginia v. American Booksellers Assn., Inc.*, 484 U. S. 383, 395 (1988). In this case, the two lower courts have both rejected the Attorney General's narrowing interpretation.

For another, our precedent warns against accepting as "authoritative" an Attorney General's interpretation of state law when "the Attorney General does not bind the state courts or local law enforcement authorities." *Ibid.*. Under Nebraska law, the Attorney General's interpretative views do not bind the state courts. *State v. Coffman*, 213 Neb. 560, 561, 330 N. W. 2d 727, 728 (1983) (Attorney General's issued opinions, while entitled to "substantial weight" and "to be respectfully considered," are of "no controlling authority"). Nor apparently do they bind elected county attorneys, to whom Nebraska gives an independent authority to initiate criminal prosecutions. Neb. Rev. Stat. Ann. §§23–1201(1), 28–328(5), 84–205(3) (1999 and Supp. 1999); cf. *Crandon v. United States*, 494 U. S. 152, 177 (1990) (SCALIA, J., concurring in judgment) ("[W]e have never thought that the interpretation of those charged with prosecuting criminal statutes is entitled to deference").

Nor can we say that the lower courts used the wrong legal standard in assessing the Attorney General's inter-

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pretation. The Eighth Circuit recognized its “duty to give [the law] a construction . . . that would avoid constitutional doubts.” 192 F. 3d, at 1150. It nonetheless concluded that the Attorney General’s interpretation would “twist the words of the law and give them a meaning they cannot reasonably bear.” *Ibid.* The Eighth Circuit is far from alone in rejecting such a narrowing interpretation. The language in question is based on model statutory language (though some States omit any further definition of “partial birth abortion”), which 10 lower federal courts have considered on the merits. All 10 of those courts (including the Eighth Circuit) have found the language potentially applicable to other abortion procedures. See *Planned Parenthood of Greater Iowa, Inc. v. Miller*, 195 F. 3d 386 (CA8 1999); *Little Rock Family Planning Services v. Jegley*, 192 F. 3d 794, 797–798 (CA8 1999); *Hope Clinic*, 195 F. 3d, at 865–871 (imposing precautionary injunction to prevent application beyond D&X); *id.*, at 885–889 (Posner, C. J., dissenting); *Rhode Island Medical Soc.*, 66 F. Supp. 2d, at 309310; *Richmond Medical Center for Women*, 55 F. Supp. 2d, at 471; *A Choice for Women*, 54 F. Supp. 2d, at 1155; *Causeway Medical Suite*, 43 F. Supp. 2d, at 614–615; *Planned Parenthood of Central N. J. v. Verniero*, 41 F. Supp. 2d 478, 503–504 (NJ 1998); *Eubanks v. Stengel*, 28 F. Supp. 2d 1024, 1034–1035 (WD Ky. 1998); *Planned Parenthood of Southern Arizona, Inc. v. Woods*, 982 F. Supp. 2d 1369, 1378 (Ariz. 1997); *Kelley*, 977 F. Supp. 2d, at 1317; but cf. *Richmond Medical Center v. Gilmore*, 144 F. 3d 326, 330–332 (CA4 1998) (Luttig, J., granting stay).

Regardless, even were we to grant the Attorney General’s views “substantial weight,” we still have to reject his interpretation, for it conflicts with the statutory language discussed at page 21, above. The Attorney General, echoed by the dissents, tries to overcome that language by relying on other language in the statute; in particular, the

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words "partial birth abortion," a term ordinarily associated with the D&X procedure, and the words "partially delivers vaginally a living unborn child." Neb. Rev. Stat. Ann. §28-326(9). But these words cannot help the Attorney General. They are subject to the statute's further *explicit statutory definition*, specifying that both terms include "delivering into the vagina a living unborn child, or a substantial portion thereof." *Ibid.* When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. *Meese v. Keene*, 481 U. S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); *Colautti v. Franklin*, 439 U. S. at 392-393, n. 10 ("As a rule, a definition which declares what a term 'means' . . . excludes any meaning that is not stated"); *Western Union Telegraph Co. v. Lenroot*, 323 U. S. 490, 502 (1945); *Fox v. Standard Oil Co. of N. J.*, 294 U. S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, *Sutherland on Statutes and Statutory Construction* §47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," *post*, at 20 (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction— "the child up to the head." Its words, "substantial portion," indicate the contrary.

The Attorney General also points to the Nebraska Legislature's debates, where the term "partial birth abortion" appeared frequently. But those debates hurt his argument more than they help it. Nebraska's legislators focused directly upon the meaning of the word "substantial." One senator asked the bill's sponsor, "[Y]ou said that as small a portion of the fetus as a foot would constitute a substantial portion in your opinion. Is that correct?" The sponsoring senator replied, "Yes, I believe that's correct." App. 452-453; see also *id.*, at 442-443 (same senator explaining "substantial" would "indicate that more than a

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little bit has been delivered into the vagina," *i.e.*, "[e]nough that would allow for the procedure to end up with the killing of the unborn child"); *id.*, at 404 (rejecting amendment to limit law to D&X). The legislature seems to have wanted to avoid more limiting language lest it become too easy to evade the statute's strictures— a motive that JUSTICE THOMAS well explains. *Post*, at 24–25. That goal, however, exacerbates the problem.

The Attorney General, again echoed by the dissents, further argues that the statute "distinguishes between the overall 'abortion procedure' itself and the separate 'procedure' used to kill the unborn child." Brief for Petitioners 16–18; *post*, at 13–14 (opinion of THOMAS, J.), 21 (opinion of KENNEDY, J.). Even assuming that the distinction would help the Attorney General make the D&E/D&X distinction he seeks, however, we cannot find any language in the statute that supports it. He wants us to read "procedure" in the statute's last sentence to mean "separate procedure," *i.e.*, the killing of the fetus, as opposed to a whole procedure, *i.e.*, a D&E or D&X abortion. But the critical word "separate" is missing. And the same word "procedure," in the same subsection and throughout the statute, is used to refer to an entire abortion procedure. Neb. Rev. Stat. Ann. §§28–326(9), 28–328(1)–(4) (Supp. 1999); cf. *Gustafson v. Alloyd Co.*, 513 U. S. 561, 570 (1995) ("[I]dentical words used in different parts of the same act are intended to have the same meaning" (internal quotation marks omitted)).

The dissenters add that the statutory words "partially delivers" can be read to exclude D&E. *Post*, at 12–13 (opinion of THOMAS, J.), 19–20 (opinion of KENNEDY, J.). They say that introduction of, say, a limb or both limbs into the vagina does not involve "delivery." But obstetric textbooks and even dictionaries routinely use that term to describe any facilitated removal of tissue from the uterus, not only the removal of an intact fetus. *E.g.*, Obstetrics:

Opinion of the Court

Normal & Problem Pregnancies, at 388 (describing "delivery" of fetal membranes, placenta, and umbilical cord in the third stage of labor); B. Maloy, *Medical Dictionary for Lawyers* 221 (3d ed. 1960) ("Also, the removal of a [fetal] part such as the placenta"); 4 *Oxford English Dictionary* 422 (2d ed. 1989) (to "deliver" means, *inter alia*, to "disburden (a woman) of the foetus"); Webster's Third New International Dictionary (1993) ("[D]elivery" means "the expulsion or extraction of a fetus and its membranes"). In any event, the statute itself specifies that it applies *both* to delivering "an intact unborn child" *or* "a substantial portion thereof." The dissents cannot explain how introduction of a substantial portion of a fetus into the vagina pursuant to D&X is a "delivery," while introduction pursuant to D&E is not.

We are aware that adopting the Attorney General's interpretation might avoid the constitutional problem discussed in this section. But we are "without power to adopt a narrowing construction of a state statute unless such a construction is reasonable and readily apparent." *Boos v. Barry*, 485 U. S. 312, 330 (1988); *Gooding v. Wilson*, 405 U. S. 518, 520–521 (1972). For the reasons stated, it is not reasonable to replace the term "substantial portion" with the Attorney General's phrase "body up to the head." See *Almendarez-Torres v. United States*, 523 U. S. 224, 237–239 (1998) (statute must be "genuinely susceptible" to two interpretations).

Finally, the law does not require us to certify the state law question to the Nebraska Supreme Court. Of course, we lack any authoritative state-court construction. But "we have never held that a federal litigant must await a state-court construction or the development of an established practice before bringing the federal suit." *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U. S. 750, 770, n. 11 (1988). The Attorney General did not seek a narrowing interpretation from the Nebraska Supreme

Opinion of the Court

Court nor did he ask the federal courts to certify the interpretive question. See Brief for State Appellants in Nos. 98–3245 and 98–3300 (CA8); cf. *Arizonans for Official English v. Arizona*, 520 U. S. 43 (1997). Even if we were inclined to certify the question now, we cannot do so. Certification of a question (or abstention) is appropriate only where the statute is “fairly susceptible” to a narrowing construction, see *Houston v. Hill*, 482 U. S. 451, 468–471 (1987). We believe it is not. Moreover, the Nebraska Supreme Court grants certification only if the certified question is “determinative of the cause.” Neb. Rev. Stat. §24–219 (1995); see also *Houston v. Hill*, *supra*, at 471 (“It would be manifestly inappropriate to certify a question in a case where . . . there is no uncertain question of state law whose resolution might affect the pending federal claim”). Here, it would not be determinative, in light of the discussion in Part II–A.

In sum, using this law some present prosecutors and future Attorneys General may choose to pursue physicians who use D&E procedures, the most commonly used method for performing previability second trimester abortions. All those who perform abortion procedures using that method must fear prosecution, conviction, and imprisonment. The result is an undue burden upon a woman’s right to make an abortion decision. We must consequently find the statute unconstitutional.

The judgment of the Court of Appeals is

Affirmed.

O'CONNOR, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 99-830

DON STENBERG, ATTORNEY GENERAL OF
NEBRASKA, ET AL., PETITIONERS v.
LEROY CARHART

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[June 28, 2000]

JUSTICE O'CONNOR, concurring.

The issue of abortion is one of the most contentious and controversial in contemporary American society. It presents extraordinarily difficult questions that, as the Court recognizes, involve "virtually irreconcilable points of view." *Ante*, at 1. The specific question we face today is whether Nebraska's attempt to proscribe a particular method of abortion, commonly known as "partial-birth abortion," is constitutional. For the reasons stated in the Court's opinion, I agree that Nebraska's statute cannot be reconciled with our decision in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992), and is therefore unconstitutional. I write separately to emphasize the following points.

First, the Nebraska statute is inconsistent with *Casey* because it lacks an exception for those instances when the banned procedure is necessary to preserve the health of the mother. See *id.*, at 879 (joint opinion of O'CONNOR, KENNEDY, and SOUTER, JJ.). Importantly, Nebraska's own statutory scheme underscores this constitutional infirmity. As we held in *Casey*, prior to viability "the woman has a right to choose to terminate her pregnancy." *Id.*, at 870. After the fetus has become viable, States may substantially regulate and even proscribe abortion, but

O'CONNOR, J., concurring

any such regulation or proscription must contain an exception for instances "where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." *Id.*, at 879 (quoting *Roe v. Wade*, 410 U. S. 113, 165 (1973)). Nebraska has recognized this constitutional limitation in its separate statute generally proscribing postviability abortions. See Neb. Rev. Stat. Ann. §28-329 (Supp. 1999). That statute provides that "[n]o abortion shall be performed after the time at which, in the sound medical judgment of the attending physician, the unborn child clearly appears to have reached viability, *except when necessary to preserve the life or health of the mother.*" *Ibid.* (emphasis added). Because even a postviability proscription of abortion would be invalid absent a health exception, Nebraska's ban on previability partial-birth abortions, under the circumstances presented here, must include a health exception as well, since the State's interest in regulating abortions before viability is "considerably weaker" than after viability. *Ante*, at 11. The statute at issue here, however, only excepts those procedures "necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury." Neb. Rev. Stat. Ann. §28-328(1) (Supp. 1999). This lack of a health exception necessarily renders the statute unconstitutional.

Contrary to the assertions of JUSTICE KENNEDY and JUSTICE THOMAS, the need for a health exception does not arise from "the individual views of Dr. Carhart and his supporters." *Post*, at 14 (KENNEDY, J., dissenting); see also *post*, at 35-36 (THOMAS, J., dissenting). Rather, as the majority explains, where, as here, "a significant body of medical opinion believes a procedure may bring with it greater safety for some patients and explains the medical reasons supporting that view," *ante*, at 19, then Nebraska cannot say that the procedure will not, in some circumstances, be "necessary to preserve the life or health of the

O'CONNOR, J., concurring

mother." Accordingly, our precedent requires that the statute include a health exception.

Second, Nebraska's statute is unconstitutional on the alternative and independent ground that it imposes an undue burden on a woman's right to choose to terminate her pregnancy before viability. Nebraska's ban covers not just the dilation and extraction (D&X) procedure, but also the dilation and evacuation (D&E) procedure, "the most commonly used method for performing previability second trimester abortions." *Ante*, at 27. The statute defines the banned procedure as "deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child." Neb. Rev. Stat. Ann. §28-326(9) (Supp. 1999) (emphasis added). As the Court explains, the medical evidence establishes that the D&E procedure is included in this definition. Thus, it is not possible to interpret the statute's language as applying only to the D&X procedure. Moreover, it is significant that both the District Court and the Court of Appeals interpreted the statute as prohibiting abortions performed using the D&E method as well as the D&X method. See 192 F. 3d 1142, 1150 (CA8 1999); 11 F. Supp. 2d 1099, 1127-1131 (Neb. 1998). We have stated on several occasions that we ordinarily defer to the construction of a state statute given it by the lower federal courts unless such a construction amounts to plain error. See, e.g., *Bishop v. Wood*, 426 U. S. 341, 346 (1976) ("[T]his Court has accepted the interpretation of state law in which the District Court and the Court of Appeals have concurred even if an examination of the state-law issue without such guidance might have justified a different conclusion"); *The Tungus v. Skovgaard*, 358 U. S. 588, 596 (1959). Such deference is not unique to the abortion context, but applies generally to state statutes addressing all areas of the law.

O'CONNOR, J., concurring

See, e.g., *UNUM Life Ins. Co. of America v. Ward*, 526 U. S. 358, 368 (1999) ("notice-prejudice" rule in state insurance law); *Brockett v. Spokane Arcades, Inc.*, 472 U. S. 491, 499 (1985) (moral nuisance law); *Runyon v. McCrary*, 427 U. S. 160, 181 (1976) (statute of limitations for personal injury actions); *Bishop v. Wood*, *supra*, at 346, n. 10 (city employment ordinance). Given this construction, the statute is impermissible. Indeed, Nebraska conceded at oral argument that "the State could not prohibit the D&E procedure." Tr. of Oral Arg. 10. By proscribing the most commonly used method for previability second trimester abortions, see *ante*, at 5, the statute creates a "substantial obstacle to a woman seeking an abortion," *Casey*, *supra*, at 884, and therefore imposes an undue burden on a woman's right to terminate her pregnancy prior to viability.

It is important to note that, unlike Nebraska, some other States have enacted statutes more narrowly tailored to proscribing the D&X procedure alone. Some of those statutes have done so by specifically excluding from their coverage the most common methods of abortion, such as the D&E and vacuum aspiration procedures. For example, the Kansas statute states that its ban does not apply to the "(A) [s]uction curettage abortion procedure; (B) suction aspiration abortion procedure; or (C) dilation and evacuation abortion procedure involving dismemberment of the fetus prior to removal from the body of the pregnant woman." Kan Stat. Ann. §65-6721(b)(2) (Supp. 1998). The Utah statute similarly provides that its prohibition "does not include the dilation and evacuation procedure involving dismemberment prior to removal, the suction curettage procedure, or the suction aspiration procedure for abortion." Utah Code Ann. §76-7-310.5(1)(a) (1999). Likewise, the Montana statute defines the banned procedure as one in which "(A) the living fetus is removed intact from the uterus until only the head remains in the uterus; (B) all or a part of the intracranial contents of the fetus

O'CONNOR, J., concurring

are evacuated; (C) the head of the fetus is compressed; and (D) following fetal demise, the fetus is removed from the birth canal." Mont. Code Ann. §50-20-401(3)(c)(ii) (Supp. 1999). By restricting their prohibitions to the D&X procedure exclusively, the Kansas, Utah, and Montana statutes avoid a principal defect of the Nebraska law.

If Nebraska's statute limited its application to the D&X procedure and included an exception for the life and health of the mother, the question presented would be quite different than the one we face today. As we held in *Casey*, an abortion regulation constitutes an undue burden if it "has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." 505 U. S., at 877. If there were adequate alternative methods for a woman safely to obtain an abortion before viability, it is unlikely that prohibiting the D&X procedure alone would "amount in practical terms to a substantial obstacle to a woman seeking an abortion." *Id.*, at 884. Thus, a ban on partial-birth abortion that only proscribed the D&X method of abortion and that included an exception to preserve the life and health of the mother would be constitutional in my view.

Nebraska's statute, however, does not meet these criteria. It contains no exception for when the procedure, in appropriate medical judgment, is necessary to preserve the health of the mother; and it proscribes not only the D&X procedure but also the D&E procedure, the most commonly used method for previability second trimester abortions, thus making it an undue burden on a woman's right to terminate her pregnancy. For these reasons, I agree with the Court that Nebraska's law is unconstitutional.

FYI

GINSBURG, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 99-830

DON STENBERG, ATTORNEY GENERAL OF
NEBRASKA, ET AL., PETITIONERS v.
LEROY CARHART

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[June 28, 2000]

JUSTICE GINSBURG, with whom JUSTICE STEVENS joins,
concurring.

I write separately only to stress that amidst all the emotional uproar caused by an abortion case, we should not lose sight of the character of Nebraska's "partial birth abortion" law. As the Court observes, this law does not save any fetus from destruction, for it targets only "a *method* of performing abortion." *Ante*, at 11-12. Nor does the statute seek to protect the lives or health of pregnant women. Moreover, as JUSTICE STEVENS points out, *ante*, at 1 (concurring opinion), the most common method of performing previability second trimester abortions is no less distressing or susceptible to gruesome description. Seventh Circuit Chief Judge Posner correspondingly observed, regarding similar bans in Wisconsin and Illinois, that the law prohibits the D&X procedure "not because the procedure kills the fetus, not because it risks worse complications for the woman than alternative procedures would do, not because it is a crueler or more painful or more disgusting method of terminating a pregnancy." *Hope Clinic v. Ryan*, 195 F. 3d 857, 881 (CA7 1999) (dissenting opinion). Rather, Chief Judge Posner commented, the law prohibits the procedure because the State legisla-

GINSBURG, J., concurring

tors seek to chip away at the private choice shielded by *Roe v. Wade*, even as modified by *Casey*. *Id.*, at 880–882.

A state regulation that “has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus” violates the Constitution. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 877 (1992) (joint opinion of O’CONNOR, KENNEDY, and SOUTER, JJ.). Such an obstacle exists if the State stops a woman from choosing the procedure her doctor “reasonably believes will best protect the woman in [the] exercise of [her] constitutional liberty.” *Ante*, at 1 (STEVENS, J., concurring); see *Casey*, 505 U.S., at 877 (“means chosen by the State to further the interest in potential life must be calculated to inform the woman’s free choice, not hinder it”). Again as stated by Chief Judge Posner, “if a statute burdens constitutional rights and all that can be said on its behalf is that it is the vehicle that legislators have chosen for expressing their hostility to those rights, the burden is undue.” *Hope Clinic*, 195 F. 3d, at 881.

STEIN & ASSOCIATES, P.C.
(A PROFESSIONAL CORPORATION)ATTORNEYS AT LAW
489 FIFTH AVENUE
29TH FLOOR
NEW YORK, NEW YORK 10017

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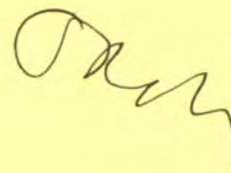
TEL (212) 883-0100
FAX (212) 883-0101**FAX TRANSMISSION COVER SHEET**

Date: August 2, 2000
To: Lisel Lloy
From: Mitchell Stein
Fax: 202-456-2215
Re: Western Cherokee
Sender: Abel Pierre

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August 2, 2000

Via Facsimile - 202-395-7289
Original by first-class mail

Mack Reid, Esq.
Executive Counsel Office
The White House
1600 Pennsylvania Avenue
Washington D.C., 20500

Re: Western Cherokee

Dear Mr. Reid:

Pursuant to the conversation with Mitchell Stein and at his direction, enclosed please find a copy of the materials directed to Ms. Lynn Cutler. We look forward to your review and acknowledgment of the legal authority indicated therein. Mr. Stein shall speak with Ms. Cutler directly about sponsorship.

Thank you.

Respectfully submitted,



Abel Pierre

cc: Ms. Lola Smith Scholl, Principle Chief (1-870-239-9974)
Dr. David Ross Youngwolf Wayahneetah (1-919-683-8369)
Mr. James Gillihan (1-605-673-4681)
Lisel Lloyd (1-202-456-2215)

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489 FIFTH AVENUE
29TH FLOOR
NEW YORK, NEW YORK 10017

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TEL (212) 883-0100
FAX (212) 883-0101

July 17, 2000

Via Facsimile - 202-456-2992
Original by first class mail

The Honorable William J. Clinton
President, United States of America
The White House
1600 Pennsylvania Avenue
The District of Columbia, 20500

Attn: Lisel Lloy, Staff Secretary

Re: Western Cherokee

Dear Mr. President:

It has been suggested that we bring the enclosed proposed Executive Order to Your Honorable attention by way of Ms. Lloy. Although the document is currently under review by Mary Smith, Esq., Office of Executive Counsel (after receiving it from Lynn Cutler), we wish you to know, personally, that we diligently and carefully prepared this document with full recognition of Presidential authority in today's climate. Perhaps you may take a brief moment to review the contents.

Indeed, the final two paragraphs are derived from your prior Executive Orders relating to Native American rights, and hence the order itself will not disrupt any vested land rights.

STEIN & ASSOCIATES, P.C.
TO: THE HONORABLE WILLIAM J. CLINTON
DATE: JULY 17, 2000
PAGE: -2-

Although you must hear this time and again, we are ready, willing, able and indeed, anxious to personally answer any questions you may have.

Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Stein', with a large, stylized initial 'M'.

Mitchell A. Stein.

cc: Ms. Lola Smith Scholl, Principle Chief (1-870-239-9974)
Dr. David Ross Youngwolf Wayahneetah (1-919-683-8369)
Mr. James Gillihan (1-605-673-4681)

STEIN & ASSOCIATES, P.C.
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NEW YORK, NEW YORK 10017

TEL (212) 883-0100
FAX (212) 883-0101

July 13, 2000

Via fax - 202-456-2461
Original by first class mail

Ms. Lynn Cutler
Office of the President
Room 106
The White House
Washington, D.C., N.Y. 20500

Re: Western Cherokee

Dear Ms. Cutler:

We are counsel to the Western Cherokee of Arkansas, Missouri, Kansas and Texas (hereinafter "Western Cherokee"), pursuant to engagement by Ms. Lola Smith Scholl, Principal Chief, Mr. Jim Gillihan, and Dr. David Ross Youngwolf Wayahneetah, as authorized representatives. We have been directed by our client to present for consideration the enclosed proposed Executive Order ("Proposed Order," Exhibit A).

Recognition of Presidential Authority

In recognition of the issues at hand and sensitive to, but not over-reaching the powers of the President, we have drafted language to accommodate this timely and appropriate subject. We have carefully studied applicable treaties with the Cherokee and anthropological information provided by our client, in order to ensure its accuracy. We have not requested, nor will we request, that the President grant or convey any specific land or land rights to the Western Cherokee, only that the Order follow the authority vested by 25 U.S.C. § 9, *et seq.*, and remain consistent with his prior Executive Orders.

STEIN & ASSOCIATES, P.C.
TO: MS. LYNN CUTLER
DATE: JULY 13, 2000
PAGE: -2-

The Treaty of 1835

The Treaty of 1835 establishes: (a) the identity of the Western Cherokee in the specific geographical location as a group with authority to enter into treaties; and (b) that their rights survive. The Order confirms these facts, thereby "carrying into effect the various provisions" of the Treaty. *Id.* A copy of the Treaty of 1835 is annexed hereto as Exhibit B.

Specific Language of the Order

There are four paragraphs in the Proposed Order. The first paragraph quotes the specific reservation of rights language from the Treaty of 1835 which establishes the two propositions indicated above. The second paragraph confirms the reservation of rights, indicates that authority for subsequent treaties must be established, and confirms the interpretation of language consistent with U.S. Supreme Court precedent. *See Minnesota, et al. v. Mille Lacs Band of Chippewa Indians, et al.*, 526 U.S. 172 (1999). The final two paragraphs contain disclaimer language consistent with Executive Order 13007, *Indian Sacred Sites*, May 24, 1996. (See Exhibit C.)

Consequences of Order

This acknowledgment of the reservation of rights will aid the Western Cherokee in preserving their identity and heritage, and will coincide with the President's commitment to Native American rights as an integral part of the social, political, and economic fabric of this country. Moreover, the Cherokee Constitution expressly bars gambling.

Conclusion

We respectfully seek your guidance and help in connection with the foregoing. Thank you for your assistance.

Respectfully submitted,



Mitchell A. Stein

fc: Ms. Lola Smith Scholl, Principal Chief (1-870-239-9974)
Dr. David Ross Youngwolf Wayahneetah (1-919-683-8369)

Exhibit A

Executive Order _____ of July __, 2000**Reservation of Native American Rights**

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Native American rights and heritage, **IT IS HEREBY ORDERED:**

Section 1. Rights In Existence in 1835. The Treaty with the Cherokee of 1835, concluded at New Echota, Georgia on December 29, 1835, between General William Carroll and John F. Schermerhorn as Commissioners of the United States, the "Chiefs Head Men and People of the Cherokee tribe of Indians," and two representatives of the Western Cherokee from Arkansas, Missouri, Kansas and Texas (the "Western Cherokee"), recognizes the Western Cherokee and reserves their rights, in accordance with the following language:

Whereas the Western Cherokees have appointed a delegation to visit the Eastern Cherokees to assure them of the friendly disposition of their people and their desire that the nation should again be united as one people and to urge upon them the expediency of accepting the overtures of the Government; and that, on their removal they may be assured of a hearty welcome and an equal participation with them in all the benefits and privileges of the Cherokee country west and the undersigned two of said delegation being the only delegates in the Eastern Nation from the West at the signing and sealing of the treaty lately concluded at New Echota between their Eastern brethren and the United States; and having fully understood the provisions of the same they agree to it in behalf of the Western Cherokees. *But it is expressly understood that nothing in this treaty shall affect any claims of the Western Cherokees on the United States.* [Emphasis added.]

Section 2. Effect of Reservation of Rights Provision. All rights of the Western Cherokee by cessation, articles of convention, and treaties prior to and succeeding the execution of the Treaty of 1835 are expressly reserved to the Western Cherokee and their descendants by the foregoing language. Subsequent treaties are binding upon them only to the extent that the Western Cherokee are verified, represented parties to those treaties. In accordance with the mandates of the United States Supreme Court, all ambiguous expressions shall be resolved in their favor.

Section 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. § 551(13)).

Section 4. This Order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, itself create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

William J. Clinton

THE WHITE HOUSE

July __, 2000

Exhibit B

TREATY WITH THE CHEROKEE, 1835.

Articles of a treaty, concluded at New Echota in the State of Georgia on the 29th day of Decr. 1835 by General William Carroll and John F. Schermerhorn commissioners on the part of the United States and the Chiefs Head Men and People of the Cherokee tribe of Indians.

WHEREAS the Cherokees are anxious to make some arrangements with the Government of the United States whereby the difficulties they have experienced by a residence within the settled parts of the United States under the jurisdiction and laws of the State Governments may be terminated and adjusted; and with a view to reuniting their people in one body and securing a permanent home for themselves and their posterity in the country selected by their forefathers without the territorial limits of the State sovereignties, and where they can establish and enjoy a government of their choice and perpetuate such a state of society as may be most consonant with their views, habits and condition; and as may tend to their individual comfort and their advancement in civilization.

And whereas a delegation of the Cherokee nation composed of Messrs. John Ross Richard Taylor Danl. McCoy Samuel Gunter and William Rogers with full power and authority to conclude a treaty with the United States did on the 28th day of February 1835 stipulate and agree with the Government of the United States to submit to the Senate to fix the amount which should be allowed the Cherokees for their claims and for a cession of their lands east of the Mississippi river, and did agree to abide by the award of the Senate of the United States themselves and to recommend the same to their people for their final determination.

And whereas on such submission the Senate advised "that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi river."

And whereas this delegation after said award of the Senate had been made, were called upon to submit propositions as to its disposition to be arranged in a treaty which they refused to do, but insisted that the same "should be referred to their nation and there in general council to deliberate and determine on the subject in order to ensure harmony and good feeling among themselves."

And whereas a certain other delegation composed of John Ridge Elias Boudinot Archilla Smith S. W. Bell John West Wm. A. Davis and Eszekiel West, who represented that portion of the nation in favor of emigration to the Cherokee country west of the Mississippi entered into propositions for a treaty with John F. Schermerhorn commissioner on the part of the United States which were to be submitted to their nation for their final action and determination:

And whereas the Cherokee people, at their last October council at Red Clay, fully authorized and empowered a delegation or committee of twenty persons of their nation to enter into and conclude a treaty with the United States commissioner then present, *at that place or elsewhere* and as the people had good reason to believe that a treaty would

TREATY WITH THE CHEROKEE, 1835.

the territorial line crosses Arkansas river, thence running from said north point south on the said territorial line where the said territorial line crosses Verdigris river; thence down said Verdigris river to the Arkansas river; thence down said Arkansas to a point where a stone is placed opposite the east or lower bank of Grand river at its junction with the Arkansas; thence running south forty-four degrees west one mile; thence in a straight line to a point four miles northerly, from the mouth of the north fork of the Canadian; thence along the said four mile line to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to that point on the Arkansas where the eastern Choctaw boundary strikes said river and running thence with the western line of Arkansas Territory as now defined, to the southwest corner of Missouri; thence along the western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to Grand river; thence up said Grand river as far as the south line of the Osage reservation, extended if necessary; thence up and between said south Osage line extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line will make seven millions of acres within the whole described boundaries. In addition to the seven millions of acres of land thus provided for and bounded, the United States further guaranty to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend:

Provided however That if the saline or salt plain on the western prairie shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees; And letters patent shall be issued by the United States as soon as practicable for the land hereby guarantied."

And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi the United States in consideration of the sum of five hundred thousand dollars therefore hereby covenant and agree to convey to the said Indians, and their descendants by patent, in fee simple the following additional tract of land situated between the west line of the State of Missouri and the Osage reservation beginning at the southeast corner of the same and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds the same shall be reserved and excepted out of the lands above granted and a pro rata reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

ARTICLE 3. The United States also agree that the lands above ceded by the treaty of Feb. 14 1833, including the outlet, and those ceded by this treaty shall all be included in one patent executed to the Cherokee nation of Indians by the President of the United States according to the provisions of the act of May 28 1830. It is, however, agreed that the military reservation at Fort Gibson shall be held by the United States. But should the United States abandon said post and have no further use for the same it shall revert to the Cherokee nation. The United States shall always have the right to make and establish such post and military roads and forts in any part of the Cherokee country, as they may deem proper for the interest and protection of the same

TREATY WITH THE CHEROKEE, 1835.

and the free use of as much land, timber, fuel and materials of all kinds for the construction and support of the same as may be necessary; provided that if the private rights of individuals are interfered with, a just compensation therefor shall be made.

ARTICLE 4. The United States also stipulate and agree to extinguish for the benefit of the Cherokees the titles to the reservations within their country made in the Osage treaty of 1825 to certain half-breeds and for this purpose they hereby agree to pay to the persons to whom the same belong or have been assigned or to their agents or guardians whenever they shall execute after the ratification of this treaty a satisfactory conveyance for the same, to the United States, the sum of fifteen thousand dollars according to a schedule accompanying this treaty of the relative value of the several reservations.

And whereas by the several treaties between the United States and the Osage Indians the Union and Harmony Missionary reservations which were established for their benefit are now situated within the country ceded by them to the United States; the former being situated in the Cherokee country and the latter in the State of Missouri. It is therefore agreed that the United States shall pay the American Board of Commissioners for Foreign Missions for the improvements on the same what they shall be appraised at by Capt. Geo. Vashon Cherokee sub-agent Abraham Redfield and A. P. Chouteau or such persons as the President of the United States shall appoint and the money allowed for the same shall be expended in schools among the Osages and improving their condition. It is understood that the United States are to pay the amount allowed for the reservations in this article and not the Cherokees.

ARTICLE 5. The United States hereby covenant and agree that the lands ceded to the Cherokee nation in the forgoing article shall, in no future time without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them: provided always that they shall not be inconsistent with the constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also, that they shall not be considered as extending to such citizens and army of the United States as may travel or reside in the Indian country by permission according to the laws and regulations established by the Government of the same.

ARTICLE 6. Perpetual peace and friendship shall exist between the citizens of the United States and the Cherokee Indians. The United States agree to protect the Cherokee nation from domestic strife and foreign enemies and against intestine wars between the several tribes. The Cherokees shall endeavor to preserve and maintain the peace of the country and not make war upon their neighbors they shall also be protected against interruption and intrusion from citizens of the United States, who may attempt to settle in the country without their consent; and all such persons shall be removed from the same by order of the President of the United States. But this is not intended to prevent the residence among them of useful farmers mechanics and teachers for the instruction of Indians according to treaty stipulations.

ARTICLE 7. The Cherokee nation having already made great progress in civilization and deeming it important that every proper and laudable inducement should be offered to their people to improve their condition as well as to guard and secure in the most effectual manner the rights guaranteed to them in this treaty, and with a view to illustrate the liberal and enlarged policy of the Government of the United States towards

TREATY WITH THE CHEROKEE, 1835.

the Indians in their removal beyond the territorial limits of the States, it is stipulated that they shall be entitled to a delegate in the House of Representatives of the United States whenever Congress shall make provision for the same.

ARTICLE 8. The United States also agree and stipulate to remove the Cherokees to their new homes and to subsist them one year after their arrival there and that a sufficient number of steamboats and baggage-wagons shall be furnished to remove them comfortably, and so as not to endanger their health, and that a physician well supplied with medicines shall accompany each detachment of emigrants removed by the Government. Such persons and families as in the opinion of the emigrating agent are capable of subsisting and removing themselves shall be permitted to do so; and they shall be allowed in full for all claims for the same twenty dollars for each member of their family; and in lieu of their one year's rations they shall be paid the sum of thirty-three dollars and thirty-three cents if they prefer it.

Such Cherokees also as reside at present out of the nation and shall remove with them in two years west of the Mississippi shall be entitled to allowance for removal and subsistence as above provided.

ARTICLE 9. The United States agree to appoint suitable agents who shall make a just and fair valuation of all such improvements now in the possession of the Cherokees as add any value to the lands; and also of the ferries owned by them, according to their net income; and such improvements and ferries from which they have been dispossessed in a lawless manner or under any existing laws of the State where the same may be situated.

The just debts of the Indians shall be paid out of any monies due them for their improvements and claims; and they shall also be furnished at the discretion of the President of the United States with a sufficient sum to enable them to obtain the necessary means to remove themselves to their new homes, and the balance of their dues shall be paid them at the Cherokee agency west of the Mississippi. The missionary establishments shall also be valued and appraised in a like manner and the amount of them paid over by the United States to the treasurers of the respective missionary societies by whom they have been established and improved in order to enable them to erect such buildings and make such improvements among the Cherokees west of the Mississippi as they may deem necessary for their benefit. Such teachers at present among the Cherokees as this council shall select and designate shall be removed west of the Mississippi with the Cherokee nation and on the same terms allowed to them.

ARTICLE 10. The President of the United States shall invest in some safe and most productive public stocks of the country for the benefit of the whole Cherokee nation who have removed or shall remove to the lands assigned by this treaty to the Cherokee nation west of the Mississippi the following sums as a permanent fund for the purposes hereinafter specified and pay over the net income of the same annually to such person or persons as shall be authorized or appointed by the Cherokee nation to receive the same and their receipt shall be a full discharge for the amount paid to them viz: the sum of two hundred thousand dollars in addition to the present annuities of the nation to constitute a general fund the interest of which shall be applied annually by the council of the nation to such purposes as they may deem best for the general interest of their people. The sum of fifty thousand dollars to constitute an orphans' fund the annual income of which shall be expended towards the support and education of such orphan children as are destitute of the means of subsistence. The sum of one hundred and fifty thousand dollars in addition to the present school fund of the nation shall constitute a permanent school fund, the interest of which shall be applied annually by the council of the nation for the support of

TREATY WITH THE CHEROKEE, 1835.

common schools and such a literary institution of a higher order as may be established in the Indian country. And in order to secure as far as possible the true and beneficial application of the orphans' and school fund the council of the Cherokee nation when required by the President of the United States shall make a report of the application of those funds and be shall at all times have the right if the funds have been misapplied to correct any abuses of them and direct the manner of their application for the purposes for which they were intended. The council of the nation may by giving two years' notice of their intention withdraw their funds by and with the consent of the President and Senate of the United States, and invest them in such manner as they may deem most proper for their interest. The United States also agree and stipulate to pay the just debts and claims against the Cherokee nation held by the citizens of the same and also the just claims of citizens of the United States for services rendered to the nation and the sum of sixty thousand dollars is appropriated for this purpose but no claims against individual persons of the nation shall be allowed and paid by the nation. The sum of three hundred thousand dollars is hereby set apart to pay and liquidate the just claims of the Cherokees upon the United States for spoliations of every kind, that have not been already satisfied under former treaties.

ARTICLE 11. The Cherokee nation of Indians believing it will be for the interest of their people to have all their funds and annuities under their own direction and future disposition hereby agree to commute their permanent annuity of ten thousand dollars for the sum of two hundred and fourteen thousand dollars, the same to be invested by the President of the United States as a part of the general fund of the nation; and their present school fund amounting to about fifty thousand dollars shall constitute a part of the permanent school fund of the nation.

ARTICLE 12. Those individuals and families of the Cherokee nation that are averse to a removal to the Cherokee country west of the Mississippi and are desirous to become citizens of the States where they reside and such as are qualified to take care of themselves and their property shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements and *per capita*; as soon as an appropriation is made for this treaty.

Such heads of Cherokee families as are desirous to reside within the States of No. Carolina Tennessee and Alabama subject to the laws of the same; and who are qualified or calculated to become useful citizens shall be entitled, on the certificate of the commissioners to a pre-emption right to one hundred and sixty acres of land or one quarter section at the minimum Congress price; so as to include the present buildings or improvements of those who now reside there and such as do not live there at present shall be permitted to locate within two years any lands not already occupied by persons entitled to pre-emption privilege under this treaty and if two or more families live on the same quarter section and they desire to continue their residence in these States and are qualified as above specified they shall, on receiving their pre-emption certificate be entitled to the right of pre-emption to such lands as they may select not already taken by any person entitled to them under this treaty.

It is stipulated and agreed between the United States and the Cherokee people that John Ross James Starr George Hicks John Gunter George Chambers John Ridge Elias Boudinot George Sanders John Martin William Rogers Roman Nose Situwake and John Timpson shall be a committee on the part of the Cherokees to recommend such persons for the privilege of pre-emption rights as may be deemed entitled to the same under the above articles and to select the missionaries who shall be removed with the nation; and that they be hereby

TREATY WITH THE CHEROKEE, 1835.

fully empowered and authorized to transact all business on the part of the Indians which may arise in carrying into effect the provisions of this treaty and settling the same with the United States. If any of the persons above mentioned should decline acting or be removed by death; the vacancies shall be filled by the committee themselves.

It is also understood and agreed that the sum of one hundred thousand dollars shall be expended by the commissioners in such manner as the committee deem best for the benefit of the poorer class of Cherokees as shall remove west or have removed west and are entitled to the benefits of this treaty. The same to be delivered at the Cherokee agency west as soon after the removal of the nation as possible.

ARTICLE 13. In order to make a final settlement of all the claims of the Cherokees for reservations granted under former treaties to any individuals belonging to the nation by the United States it is therefore hereby stipulated and agreed and expressly understood by the parties to this treaty—that all the Cherokees and their heirs and descendants to whom any reservations have been made under any former treaties with the United States, and who have not sold or conveyed the same by deed or otherwise and who in the opinion of the commissioners have complied with the terms on which the reservations were granted as far as practicable in the several cases; and which reservations have since been sold by the United States shall constitute a just claim against the United States and the original reservee or their heirs or descendants shall be entitled to receive the present value thereof from the United States as unimproved lands. And all such reservations as have not been sold by the United States and where the terms on which the reservations were made in the opinion of the commissioners have been complied with as far as practicable, they or their heirs or descendants shall be entitled to the same. They are hereby granted and confirmed to them—and also all persons who were entitled to reservations under the treaty of 1817 and who as far as practicable in the opinion of the commissioners, have complied with the stipulations of said treaty, although by the treaty of 1819 such reservations were included in the unceded lands belonging to the Cherokee nation are hereby confirmed to them and they shall be entitled to receive a grant for the same. And all such reservees as were obliged by the laws of the States in which their reservations were situated, to abandon the same or purchase them from the States shall be deemed to have a just claim against the United States for the amount by them paid to the States with interest thereon for such reservations and if obliged to abandon the same, to the present value of such reservations as unimproved lands but in all cases where the reservees have sold their reservations or any part thereof and conveyed the same by deed or otherwise and have been paid for the same, they their heirs or descendants or their assigns shall not be considered as having any claims upon the United States under this article of the treaty nor be entitled to receive any compensation for the lands thus disposed of. It is expressly understood by the parties to this treaty that the amount to be allowed for reservations under this article shall not be deducted out of the consideration money allowed to the Cherokees for their claims for spoliations and the cession of their lands; but the same is to be paid for independently by the United States as it is only a just fulfilment of former treaty stipulations.

ARTICLE 14. It is also agreed on the part of the United States that such warriors of the Cherokee nation as were engaged on the side of the United States in the late war with Great Britain and the southern tribes of Indians, and who were wounded in such service shall be entitled to such pensions as shall be allowed them by the Congress of the United States to commence from the period of their disability.

TREATY WITH THE CHEROKEE, 1835.

ARTICLE 15. It is expressly understood and agreed between the parties to this treaty that after deducting the amount which shall be actually expended for the payment for improvements, ferries, claims, for spoliations, removal subsistence and debts and claims upon the Cherokee nation and for the additional quantity of lands and goods for the poorer class of Cherokees and the several sums to be invested for the general national funds; provided for in the several articles of this treaty the balance whatever the same may be shall be equally divided between all the people belonging to the Cherokee nation east according to the census just completed; and such Cherokees as have removed west since June 1833 who are entitled by the terms of their enrolment and removal to all the benefits resulting from the final treaty between the United States and the Cherokees east they shall also be paid for their improvements according to their approved value before their removal where fraud has not already been shown in their valuation.

ARTICLE 16. It is hereby stipulated and agreed by the Cherokees that they shall remove to their new homes within two years from the ratification of this treaty and that during such time the United States shall protect and defend them in their possessions and property and free use and occupation of the same and such persons as have been dispossessed of their improvements and houses; and for which no grant has actually issued previously to the enactment of the law of the State of Georgia, of December 1835 to regulate Indian occupancy shall be again put in possession and placed in the same situation and condition, in reference to the laws of the State of Georgia, as the Indians that have not been dispossessed; and if this is not done, and the people are left unprotected, then the United States shall pay the several Cherokees for their losses and damages sustained by them in consequence thereof. And it is also stipulated and agreed that the public buildings and improvements on which they are situated at New Echota for which no grant has been actually made previous to the passage of the above recited act if not occupied by the Cherokee people shall be reserved for the public and free use of the United States and the Cherokee Indians for the purpose of settling and closing all the Indian business arising under this treaty between the commissioners of claims and the Indians.

The United States, and the several States interested in the Cherokee lands, shall immediately proceed to survey the lands ceded by this treaty; but it is expressly agreed and understood between the parties that the agency buildings and that tract of land surveyed and laid off for the use of Colonel R. J. Meigs Indian agent or heretofore enjoyed and occupied by his successors in office shall continue subject to the use and occupancy of the United States, or such agent as may be engaged specially superintending the removal of the tribe.

ARTICLE 17. All the claims arising under or provided for in the several articles of this treaty, shall be examined and adjudicated by such commissioners as shall be appointed by the President of the United States by and with the advice and consent of the Senate of the United States for that purpose and their decision shall be final and on their certificate of the amount due the several claimants they shall be paid by the United States. All stipulations in former treaties which have not been superseded or annulled by this shall continue in full force and virtue.

ARTICLE 18. Whereas in consequence of the unsettled affairs of the Cherokee people and the early frosts, their crops are insufficient to support their families and great distress is likely to ensue and whereas the nation will not, until after their removal be able advantageously to expend the income of the permanent funds of the nation it is therefore agreed that the annuities of the nation which may accrue under this

TREATY WITH THE CHEROKEE, 1835.

treaty for two years, the time fixed for their removal shall be expended in provision and clothing for the benefit of the poorer class of the nation: and the United States hereby agree to advance the same for that purpose as soon after the ratification of this treaty as an appropriation for the same shall be made. It is however not intended in this article to interfere with that part of the annuities due the Cherokees west by the treaty of 1819.

ARTICLE 19. This treaty after the same shall be ratified by the President and Senate of the United States shall be obligatory on the contracting parties.

ARTICLE 20. [Supplemental article. Stricken out by Senate.]

In testimony whereof, the commissioners and the chiefs, head men, and people whose names are hereunto annexed, being duly authorized by the people in general council assembled, have affixed their hands and seals for themselves, and in behalf of the Cherokee nation.

I have examined the foregoing treaty, and although not present when it was made, I approve its provisions generally, and therefore sign it.

Wm. Carroll,

J. F. Schermerhorn.

Major Ridge, his x mark,	[L. S.]	Te-gah-e-ke, his x mark,	[L. S.]
James Foster, his x mark,	[L. S.]	Robert Rogers,	[L. S.]
Tee-na-ah-ky, his x mark,	[L. S.]	John Gunter,	[L. S.]
Charles Moore, his x mark,	[L. S.]	John A. Bell,	[L. S.]
George Chambers, his x mark,	[L. S.]	Charles F. Foreman,	[L. S.]
Tab-yeske, his x mark,	[L. S.]	William Rogers,	[L. S.]
Archilla Smith, his x mark,	[L. S.]	George W. Adair,	[L. S.]
Andrew Ross,	[L. S.]	Elias Boudinot,	[L. S.]
William Linsley,	[L. S.]	James Starr, his x mark,	[L. S.]
Cae-to-hee, his x mark,	[L. S.]	Jesse Half-breed, his x mark,	[L. S.]

Signed and sealed in presence of—

Western B. Thomas, secretary.
Ben. F. Currey, special agent.
M. Wolfe Batman, first lieutenant, sixth
U. S. Infantry, disbursing agent.
Jon. L. Hooper, lieutenant, fourth Infantry.

C. M. Hitchcock, M. D., assistant surgeon,
U. S. A.
G. W. Carrey,
Wm. H. Underwood,
Cornelius D. Terhune,
John W. H. Underwood.

In compliance with instructions of the council at New Echota, we sign this treaty.

Stand Watie,
John Ridge.

March 1, 1836.

Witnesses:

Elbert Herring,
Alexander H. Everett,
John Robb,
D. Kurtz,

Wm. Y. Hansell,
Samuel J. Potts,
Jno. Little,
S. Rockwell.

Whereas the western Cherokees have appointed a delegation to visit the eastern Cherokees to assure them of the friendly disposition of their people and their desire that the nation should again be united as one people and to urge upon them the expediency of accepting the overtures of the Government; and that, on their removal they may be assured of a hearty welcome and an equal participation with them in all the benefits and privileges of the Cherokee country west and the undersigned two of said delegation being the only delegates in the eastern nation from the west at the signing and sealing of the treaty lately concluded at New Echota between their eastern brethren and the United States; and having fully understood the provisions of the same they agree to it in behalf of the western Cherokees. But it is expressly understood that nothing in this treaty shall affect any claims of the western Cherokees on the United States.

TREATY WITH THE CHEROKEE, 1835.

In testimony whereof, we have, this 31st day of December, 1835,
hereunto set our hands and seals.

James Rogers,

John Smith,

Delegates from the western Cherokees.

Test:

Ben. F. Currey, special agent.

M. W. Bateman, first lieutenant, Sixth Infantry,

Jno. L. Hooper, lieutenant, Fourth Infantry,

Elias Boudinot.

*Schedule and estimated value of the Osage half-breed reservations within the territory
ceded to the Cherokee west of the Mississippi, (referred to in article 5 of the foregoing
treaty,) viz:*

Augustus Clamont one section.....	\$6,000
James " " ".....	1,000
Paul " " ".....	1,800
Henry " " ".....	800
Anthony " " ".....	1,800
Rosalie " " ".....	1,800
Emilia D, of Mihanga.....	1,000
Emilia D, of Shemianga.....	1,300
	<u>\$15,000</u>

I hereby certify that the above schedule is the estimated value of the Osage reser-
vations; as made out and agreed upon with Col. A. P. Choteau who represented
himself as the agent or guardian of the above reserves.

March 14, 1835.

J. F. Schermerhorn.

Exhibit C

Federal Register / Vol. 61, No. 104 / Wednesday, May 29, 1996 / Presidential Documents

Presidential Documents

Executive Order 13007 of May 24, 1996

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has in-formed the agency of the existence of such a site.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely

affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

William J. Clinton

THE WHITE HOUSE,

May 24, 1996.

[FR Doc. 96-13597]

Page 26771-26772

STEIN & ASSOCIATES, P.C.

(A PROFESSIONAL CORPORATION)

ATTORNEYS AT LAW

489 FIFTH AVENUE

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NEW YORK, NEW YORK 10017

TEL (212) 883-0100

FAX (212) 883-0101

FAX TRANSMISSION COVER SHEET

Date: July 13, 2000
To: Ms. Lynn Cutler
From: Mitchell A. Stein
Fax: 202-456-2461
Re: Western Cherokee
Sender: Ruth Shockley

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MESSAGE:

Please see attached.

cc: Ms. Lola Smith Scholl, Principal Chief - 870-239-9974
Dr. David Ross Youngwolf Wayahneetah - 919-683-8369

STEIN & ASSOCIATES, P.C.
(A PROFESSIONAL CORPORATION)

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NEW YORK, NEW YORK 10017

TEL (212) 883-0100
FAX (212) 883-0101

FAX TRANSMISSION COVER SHEET

Date: July 13, 2000
To: Ms. Helen Castleman, Agency Liaison
From: Mitchell A. Stein, Esq.
Fax: 202-456-2461
Re: Western Cherokee
Sender: MAS

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MESSAGE:

Dear Ms. Castleman:

Per instruction of Jim Gillihan, attached is an additional copy of the letter faxed to Ms. Cutler.
Please assist.
Thank you.

7-25-00

Came in inter office mail

Send to Ben/chardt?

Yes

☒

No

cal

6
STAFF SECRETARY

STEIN & ASSOCIATES, P.C.
(A PROFESSIONAL CORPORATION)

ATTORNEYS AT LAW
489 FIFTH AVENUE
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NEW YORK, NEW YORK 10017

TEL (212) 883-0100
FAX (212) 883-0101

July 17, 2000

Via Fascimile - 202-456-2992
Original by first class mail

'00 JUL 25 PM3:41

The Honorable William J. Clinton
President, United States of America
The White House
1600 Pennsylvania Avenue
The District of Columbia, 20500

Attn: Lisel Lloy, Staff Secretary

Re: Western Cherokee

Dear Mr. President:

It has been suggested that we bring the enclosed proposed Executive Order to Your Honorable attention by way of Ms. Lloy. Although the document is currently under review by Mary Smith, Esq., Office of Executive Counsel (after receiving it from Lynn Cutler), we wish you to know, personally, that we diligently and carefully prepared this document with full recognition of Presidential authority in today's climate. Perhaps you may take a brief moment to review the contents.

Indeed, the final two paragraphs are derived from your prior Executive Orders relating to Native American rights, and hence the order itself will not disrupt any vested land rights.

STEIN & ASSOCIATES, P.C.
TO: THE HONORABLE WILLIAM J. CLINTON
DATE: JULY 17, 2000
PAGE: -2-

Although you must hear this time and again, we are ready, willing, able and indeed, anxious to personally answer any questions you may have.

Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Stein', with a large, sweeping initial 'M'.

Mitchell A. Stein.

cc: Ms. Lola Smith Scholl, Principle Chief (1-870-239-9974)
Dr. David Ross Youngwolf Wayahneetah (1-919-683-8369)
Mr. James Gillihan (1-605-673-4681)

STEIN & ASSOCIATES, P.C.
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July 13, 2000

Via fax - 202-456-2461
Original by first class mail

Ms. Lynn Cutler
Office of the President
Room 106
The White House
Washington, D.C., N.Y. 20500

Re: Western Cherokee

Dear Ms. Cutler:

We are counsel to the Western Cherokee of Arkansas, Missouri, Kansas and Texas (hereinafter "Western Cherokee"), pursuant to engagement by Ms. Lola Smith Scholl, Principal Chief, Mr. Jim Gillihan, and Dr. David Ross Youngwolf Wayahneetah, as authorized representatives. We have been directed by our client to present for consideration the enclosed proposed Executive Order ("Proposed Order," Exhibit A).

Recognition of Presidential Authority

In recognition of the issues at hand and sensitive to, but not over-reaching the powers of the President, we have drafted language to accommodate this timely and appropriate subject. We have carefully studied applicable treaties with the Cherokee and anthropological information provided by our client, in order to ensure its accuracy. We have not requested, nor will we request, that the President grant or convey any specific land or land rights to the Western Cherokee, only that the Order follow the authority vested by 25 U.S.C. § 9, *et seq.*, and remain consistent with his prior Executive Orders.

STEIN & ASSOCIATES, P.C.
TO: MS. LYNN CUTLER
DATE: JULY 13, 2000
PAGE: -2-

The Treaty of 1835

The Treaty of 1835 establishes: (a) the identity of the Western Cherokee in the specific geographical location as a group with authority to enter into treaties; and (b) that their rights survive. The Order confirms these facts, thereby "carrying into effect the various provisions" of the Treaty. *Id.* A copy of the Treaty of 1835 is annexed hereto as Exhibit B.

Specific Language of the Order

There are four paragraphs in the Proposed Order. The first paragraph quotes the specific reservation of rights language from the Treaty of 1835 which establishes the two propositions indicated above. The second paragraph confirms the reservation of rights, indicates that authority for subsequent treaties must be established, and confirms the interpretation of language consistent with U.S. Supreme Court precedent. *See Minnesota, et al. v. Mille Lacs Band of Chippewa Indians, et al.*, 526 U.S. 172 (1999). The final two paragraphs contain disclaimer language consistent with Executive Order 13007, *Indian Sacred Sites*, May 24, 1996. (See Exhibit C.)

Consequences of Order

This acknowledgment of the reservation of rights will aid the Western Cherokee in preserving their identity and heritage, and will coincide with the President's commitment to Native American rights as an integral part of the social, political, and economic fabric of this country. Moreover, the Cherokee Constitution expressly bars gambling.

Conclusion

We respectfully seek your guidance and help in connection with the foregoing. Thank you for your assistance.

Respectfully submitted,



Mitchell A. Stein

fc: Ms. Lola Smith Scholl, Principal Chief (1-870-239-9974)
Dr. David Ross Youngwolf Wayahneetah (1-919-683-8369)

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Exhibit A

Divider Title: _____

Executive Order ____ of July __, 2000

Reservation of Native American Rights

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Native American rights and heritage, **IT IS HEREBY ORDERED:**

Section 1. Rights In Existence in 1835. The Treaty with the Cherokee of 1835, concluded at New Echota, Georgia on December 29, 1835, between General William Carroll and John F. Schermerhorn as Commissioners of the United States, the "Chiefs Head Men and People of the Cherokee tribe of Indians," and two representatives of the Western Cherokee from Arkansas, Missouri, Kansas and Texas (the "Western Cherokee"), recognizes the Western Cherokee and reserves their rights, in accordance with the following language:

Whereas the Western Cherokees have appointed a delegation to visit the Eastern Cherokees to assure them of the friendly disposition of their people and their desire that the nation should again be united as one people and to urge upon them the expediency of accepting the overtures of the Government; and that, on their removal they may be assured of a hearty welcome and an equal participation with them in all the benefits and privileges of the Cherokee country west and the undersigned two of said delegation being the only delegates in the Eastern Nation from the West at the signing and sealing of the treaty lately concluded at New Echota between their Eastern brethren and the United States; and having fully understood the provisions of the same they agree to it in behalf of the Western Cherokees. ***But it is expressly understood that nothing in this treaty shall affect any claims of the Western Cherokees on the United States.*** [Emphasis added.]

Section 2. Effect of Reservation of Rights Provision. All rights of the Western Cherokee by cessation, articles of convention, and treaties prior to and succeeding the execution of the Treaty of 1835 are expressly reserved to the Western Cherokee and their descendants by the foregoing language. Subsequent treaties are binding upon them only to the extent that the Western Cherokee are verified, represented parties to those treaties. In accordance with the mandates of the United States Supreme Court, all ambiguous expressions shall be resolved in their favor.

Section 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. § 551(13)).

Section 4. This Order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, itself create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

William J. Clinton

THE WHITE HOUSE

July __, 2000

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Exhibit B

Divider Title: _____

TREATY WITH THE CHEROKEE, 1835.

Articles of a treaty, concluded at New Echota in the State of Georgia on the 29th day of Decr. 1835 by General William Carroll and John F. Schermerhorn commissioners on the part of the United States and the Chiefs Head Men and People of the Cherokee tribe of Indians.

WHEREAS the Cherokees are anxious to make some arrangements with the Government of the United States whereby the difficulties they have experienced by a residence within the settled parts of the United States under the jurisdiction and laws of the State Governments may be terminated and adjusted; and with a view to reuniting their people in one body and securing a permanent home for themselves and their posterity in the country selected by their forefathers without the territorial limits of the State sovereignties, and where they can establish and enjoy a government of their choice and perpetuate such a state of society as may be most consonant with their views, habits and condition; and as may tend to their individual comfort and their advancement in civilization.

And whereas a delegation of the Cherokee nation composed of Messrs. John Ross Richard Taylor Danl. McCoy Samuel Gunter and William Rogers with full power and authority to conclude a treaty with the United States did on the 28th day of February 1835 stipulate and agree with the Government of the United States to submit to the Senate to fix the amount which should be allowed the Cherokees for their claims and for a cession of their lands east of the Mississippi river, and did agree to abide by the award of the Senate of the United States themselves and to recommend the same to their people for their final determination.

And whereas on such submission the Senate advised "that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi river."

And whereas this delegation after said award of the Senate had been made, were called upon to submit propositions as to its disposition to be arranged in a treaty which they refused to do, but insisted that the same "should be referred to their nation and there in general council to deliberate and determine on the subject in order to ensure harmony and good feeling among themselves."

And whereas a certain other delegation composed of John Ridge Elias Boudinot Archilla Smith S. W. Bell John West Wm. A. Davis and Ezekiel West, who represented that portion of the nation in favor of emigration to the Cherokee country west of the Mississippi entered into propositions for a treaty with John F. Schermerhorn commissioner on the part of the United States which were to be submitted to their nation for their final action and determination:

And whereas the Cherokee people, at their last October council at Red Clay, fully authorized and empowered a delegation or committee of twenty persons of their nation to enter into and conclude a treaty with the United States commissioner then present, *at that place or elsewhere* and as the people had good reason to believe that a treaty would

TREATY WITH THE CHEROKEE, 1835.

the territorial line crosses Arkansas river, thence running from said north point south on the said territorial line where the said territorial line crosses Verdigris river; thence down said Verdigris river to the Arkansas river; thence down said Arkansas to a point where a stone is placed opposite the east or lower bank of Grand river at its junction with the Arkansas; thence running south forty-four degrees west one mile; thence in a straight line to a point four miles northerly, from the mouth of the north fork of the Canadian; thence along the said four mile line to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to that point on the Arkansas where the eastern Choctaw boundary strikes said river and running thence with the western line of Arkansas Territory as now defined, to the southwest corner of Missouri; thence along the western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to Grand river; thence up said Grand river as far as the south line of the Osage reservation, extended if necessary; thence up and between said south Osage line extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line will make seven millions of acres within the whole described boundaries. In addition to the seven millions of acres of land thus provided for and bounded, the United States further guaranty to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend:

Provided however That if the saline or salt plain on the western prairie shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees; And letters patent shall be issued by the United States as soon as practicable for the land hereby guarantied."

And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi the United States in consideration of the sum of five hundred thousand dollars therefore hereby covenant and agree to convey to the said Indians, and their descendants by patent, in fee simple the following additional tract of land situated between the west line of the State of Missouri and the Osage reservation beginning at the southeast corner of the same and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds the same shall be reserved and excepted out of the lands above granted and a pro rata reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

ARTICLE 3. The United States also agree that the lands above ceded by the treaty of Feb. 14 1833, including the outlet, and those ceded by this treaty shall all be included in one patent executed to the Cherokee nation of Indians by the President of the United States according to the provisions of the act of May 28 1830. It is, however, agreed that the military reservation at Fort Gibson shall be held by the United States. But should the United States abandon said post and have no further use for the same it shall revert to the Cherokee nation. The United States shall always have the right to make and establish such post and military roads and forts in any part of the Cherokee country, as they may deem proper for the interest and protection of the same

TREATY WITH THE CHEROKEE, 1835.

and the free use of as much land, timber, fuel and materials of all kinds for the construction and support of the same as may be necessary; provided that if the private rights of individuals are interfered with, a just compensation therefor shall be made.

ARTICLE 4. The United States also stipulate and agree to extinguish for the benefit of the Cherokees the titles to the reservations within their country made in the Osage treaty of 1825 to certain half-breeds and for this purpose they hereby agree to pay to the persons to whom the same belong or have been assigned or to their agents or guardians whenever they shall execute after the ratification of this treaty a satisfactory conveyance for the same, to the United States, the sum of fifteen thousand dollars according to a schedule accompanying this treaty of the relative value of the several reservations.

And whereas by the several treaties between the United States and the Osage Indians the Union and Harmony Missionary reservations which were established for their benefit are now situated within the country ceded by them to the United States; the former being situated in the Cherokee country and the latter in the State of Missouri. It is therefore agreed that the United States shall pay the American Board of Commissioners for Foreign Missions for the improvements on the same what they shall be appraised at by Capt. Geo. Vashon Cherokee sub-agent Abraham Redfield and A. P. Chouteau or such persons as the President of the United States shall appoint and the money allowed for the same shall be expended in schools among the Osages and improving their condition. It is understood that the United States are to pay the amount allowed for the reservations in this article and not the Cherokees.

ARTICLE 5. The United States hereby covenant and agree that the lands ceded to the Cherokee nation in the forgoing article shall, in no future time without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them: provided always that they shall not be inconsistent with the constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also, that they shall not be considered as extending to such citizens and army of the United States as may travel or reside in the Indian country by permission according to the laws and regulations established by the Government of the same.

ARTICLE 6. Perpetual peace and friendship shall exist between the citizens of the United States and the Cherokee Indians. The United States agree to protect the Cherokee nation from domestic strife and foreign enemies and against intestine wars between the several tribes. The Cherokees shall endeavor to preserve and maintain the peace of the country and not make war upon their neighbors they shall also be protected against interruption and intrusion from citizens of the United States, who may attempt to settle in the country without their consent; and all such persons shall be removed from the same by order of the President of the United States. But this is not intended to prevent the residence among them of useful farmers mechanics and teachers for the instruction of Indians according to treaty stipulations.

ARTICLE 7. The Cherokee nation having already made great progress in civilization and deeming it important that every proper and laudable inducement should be offered to their people to improve their condition as well as to guard and secure in the most effectual manner the rights guarantied to them in this treaty, and with a view to illustrate the liberal and enlarged policy of the Government of the United States towards

TREATY WITH THE CHEROKEE, 1835.

the Indians in their removal beyond the territorial limits of the States, it is stipulated that they shall be entitled to a delegate in the House of Representatives of the United States whenever Congress shall make provision for the same.

ARTICLE 8. The United States also agree and stipulate to remove the Cherokees to their new homes and to subsist them one year after their arrival there and that a sufficient number of steamboats and baggage-wagons shall be furnished to remove them comfortably, and so as not to endanger their health, and that a physician well supplied with medicines shall accompany each detachment of emigrants removed by the Government. Such persons and families as in the opinion of the emigrating agent are capable of subsisting and removing themselves shall be permitted to do so; and they shall be allowed in full for all claims for the same twenty dollars for each member of their family; and in lieu of their one year's rations they shall be paid the sum of thirty-three dollars and thirty-three cents if they prefer it.

Such Cherokees also as reside at present out of the nation and shall remove with them in two years west of the Mississippi shall be entitled to allowance for removal and subsistence as above provided.

ARTICLE 9. The United States agree to appoint suitable agents who shall make a just and fair valuation of all such improvements now in the possession of the Cherokees as add any value to the lands; and also of the ferries owned by them, according to their net income; and such improvements and ferries from which they have been dispossessed in a lawless manner or under any existing laws of the State where the same may be situated.

The just debts of the Indians shall be paid out of any monies due them for their improvements and claims; and they shall also be furnished at the discretion of the President of the United States with a sufficient sum to enable them to obtain the necessary means to remove themselves to their new homes, and the balance of their dues shall be paid them at the Cherokee agency west of the Mississippi. The missionary establishments shall also be valued and appraised in a like manner and the amount of them paid over by the United States to the treasurers of the respective missionary societies by whom they have been established and improved in order to enable them to erect such buildings and make such improvements among the Cherokees west of the Mississippi as they may deem necessary for their benefit. Such teachers at present among the Cherokees as this council shall select and designate shall be removed west of the Mississippi with the Cherokee nation and on the same terms allowed to them.

ARTICLE 10. The President of the United States shall invest in some safe and most productive public stocks of the country for the benefit of the whole Cherokee nation who have removed or shall remove to the lands assigned by this treaty to the Cherokee nation west of the Mississippi the following sums as a permanent fund for the purposes hereinafter specified and pay over the net income of the same annually to such person or persons as shall be authorized or appointed by the Cherokee nation to receive the same and their receipt shall be a full discharge for the amount paid to them viz: the sum of two hundred thousand dollars in addition to the present annuities of the nation to constitute a general fund the interest of which shall be applied annually by the council of the nation to such purposes as they may deem best for the general interest of their people. The sum of fifty thousand dollars to constitute an orphans' fund the annual income of which shall be expended towards the support and education of such orphan children as are destitute of the means of subsistence. The sum of one hundred and fifty thousand dollars in addition to the present school fund of the nation shall constitute a permanent school fund, the interest of which shall be applied annually by the council of the nation for the support of

TREATY WITH THE CHEROKEE, 1835.

common schools and such a literary institution of a higher order as may be established in the Indian country. And in order to secure as far as possible the true and beneficial application of the orphans' and school fund the council of the Cherokee nation when required by the President of the United States shall make a report of the application of those funds and he shall at all times have the right if the funds have been misapplied to correct any abuses of them and direct the manner of their application for the purposes for which they were intended. The council of the nation may by giving two years' notice of their intention withdraw their funds by and with the consent of the President and Senate of the United States, and invest them in such manner as they may deem most proper for their interest. The United States also agree and stipulate to pay the just debts and claims against the Cherokee nation held by the citizens of the same and also the just claims of citizens of the United States for services rendered to the nation and the sum of sixty thousand dollars is appropriated for this purpose but no claims against individual persons of the nation shall be allowed and paid by the nation. The sum of three hundred thousand dollars is hereby set apart to pay and liquidate the just claims of the Cherokees upon the United States for spoiliations of every kind, that have not been already satisfied under former treaties.

ARTICLE 11. The Cherokee nation of Indians believing it will be for the interest of their people to have all their funds and annuities under their own direction and future disposition hereby agree to commute their permanent annuity of ten thousand dollars for the sum of two hundred and fourteen thousand dollars, the same to be invested by the President of the United States as a part of the general fund of the nation; and their present school fund amounting to about fifty thousand dollars shall constitute a part of the permanent school fund of the nation.

ARTICLE 12. Those individuals and families of the Cherokee nation that are averse to a removal to the Cherokee country west of the Mississippi and are desirous to become citizens of the States where they reside and such as are qualified to take care of themselves and their property shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements and *per capita*; as soon as an appropriation is made for this treaty.

Such heads of Cherokee families as are desirous to reside within the States of No. Carolina Tennessee and Alabama subject to the laws of the same; and who are qualified or calculated to become useful citizens shall be entitled, on the certificate of the commissioners to a pre-emption right to one hundred and sixty acres of land or one quarter section at the minimum Congress price; so as to include the present buildings or improvements of those who now reside there and such as do not live there at present shall be permitted to locate within two years any lands not already occupied by persons entitled to pre-emption privilege under this treaty and if two or more families live on the same quarter section and they desire to continue their residence in these States and are qualified as above specified they shall, on receiving their pre-emption certificate be entitled to the right of pre-emption to such lands as they may select not already taken by any person entitled to them under this treaty.

It is stipulated and agreed between the United States and the Cherokee people that John Ross James Starr George Hicks John Gunter George Chambers John Ridge Elias Boudinot George Sanders John Martin William Rogers Roman Nose Situwake and John Timpson shall be a committee on the part of the Cherokees to recommend such persons for the privilege of pre-emption rights as may be deemed entitled to the same under the above articles and to select the missionaries who shall be removed with the nation; and that they be hereby

TREATY WITH THE CHEROKEE, 1835.

fully empowered and authorized to transact all business on the part of the Indians which may arise in carrying into effect the provisions of this treaty and settling the same with the United States. If any of the persons above mentioned should decline acting or be removed by death; the vacancies shall be filled by the committee themselves.

It is also understood and agreed that the sum of one hundred thousand dollars shall be expended by the commissioners in such manner as the committee deem best for the benefit of the poorer class of Cherokees as shall remove west or have removed west and are entitled to the benefits of this treaty. The same to be delivered at the Cherokee agency west as soon after the removal of the nation as possible.

ARTICLE 13. In order to make a final settlement of all the claims of the Cherokees for reservations granted under former treaties to any individuals belonging to the nation by the United States it is therefore hereby stipulated and agreed and expressly understood by the parties to this treaty—that all the Cherokees and their heirs and descendants to whom any reservations have been made under any former treaties with the United States, and who have not sold or conveyed the same by deed or otherwise and who in the opinion of the commissioners have complied with the terms on which the reservations were granted as far as practicable in the several cases; and which reservations have since been sold by the United States shall constitute a just claim against the United States and the original reservee or their heirs or descendants shall be entitled to receive the present value thereof from the United States as unimproved lands. And all such reservations as have not been sold by the United States and where the terms on which the reservations were made in the opinion of the commissioners have been complied with as far as practicable, they or their heirs or descendants shall be entitled to the same. They are hereby granted and confirmed to them—and also all persons who were entitled to reservations under the treaty of 1817 and who as far as practicable in the opinion of the commissioners, have complied with the stipulations of said treaty, although by the treaty of 1819 such reservations were included in the unceded lands belonging to the Cherokee nation are hereby confirmed to them and they shall be entitled to receive a grant for the same. And all such reservees as were obliged by the laws of the States in which their reservations were situated, to abandon the same or purchase them from the States shall be deemed to have a just claim against the United States for the amount by them paid to the States with interest thereon for such reservations and if obliged to abandon the same, to the present value of such reservations as unimproved lands but in all cases where the reservees have sold their reservations or any part thereof and conveyed the same by deed or otherwise and have been paid for the same, they their heirs or descendants or their assigns shall not be considered as having any claims upon the United States under this article of the treaty nor be entitled to receive any compensation for the lands thus disposed of. It is expressly understood by the parties to this treaty that the amount to be allowed for reservations under this article shall not be deducted out of the consideration money allowed to the Cherokees for their claims for spoliations and the cession of their lands; but the same is to be paid for independently by the United States as it is only a just fulfilment of former treaty stipulations.

ARTICLE 14. It is also agreed on the part of the United States that such warriors of the Cherokee nation as were engaged on the side of the United States in the late war with Great Britain and the southern tribes of Indians, and who were wounded in such service shall be entitled to such pensions as shall be allowed them by the Congress of the United States to commence from the period of their disability.

TREATY WITH THE CHEROKEE, 1835.

ARTICLE 15. It is expressly understood and agreed between the parties to this treaty that after deducting the amount which shall be actually expended for the payment for improvements, ferries, claims, for spoliations, removal subsistence and debts and claims upon the Cherokee nation and for the additional quantity of lands and goods for the poorer class of Cherokees and the several sums to be invested for the general national funds; provided for in the several articles of this treaty the balance whatever the same may be shall be equally divided between all the people belonging to the Cherokee nation east according to the census just completed; and such Cherokees as have removed west since June 1833 who are entitled by the terms of their enrolment and removal to all the benefits resulting from the final treaty between the United States and the Cherokees east they shall also be paid for their improvements according to their approved value before their removal where fraud has not already been shown in their valuation.

ARTICLE 16. It is hereby stipulated and agreed by the Cherokees that they shall remove to their new homes within two years from the ratification of this treaty and that during such time the United States shall protect and defend them in their possessions and property and free use and occupation of the same and such persons as have been dispossessed of their improvements and houses; and for which no grant has actually issued previously to the enactment of the law of the State of Georgia, of December 1835 to regulate Indian occupancy shall be again put in possession and placed in the same situation and condition, in reference to the laws of the State of Georgia, as the Indians that have not been dispossessed; and if this is not done, and the people are left unprotected, then the United States shall pay the several Cherokees for their losses and damages sustained by them in consequence thereof. And it is also stipulated and agreed that the public buildings and improvements on which they are situated at New Echota for which no grant has been actually made previous to the passage of the above recited act if not occupied by the Cherokee people shall be reserved for the public and free use of the United States and the Cherokee Indians for the purpose of settling and closing all the Indian business arising under this treaty between the commissioners of claims and the Indians.

The United States, and the several States interested in the Cherokee lands, shall immediately proceed to survey the lands ceded by this treaty; but it is expressly agreed and understood between the parties that the agency buildings and that tract of land surveyed and laid off for the use of Colonel R. J. Meigs Indian agent or heretofore enjoyed and occupied by his successors in office shall continue subject to the use and occupancy of the United States, or such agent as may be engaged specially superintending the removal of the tribe.

ARTICLE 17. All the claims arising under or provided for in the several articles of this treaty, shall be examined and adjudicated by such commissioners as shall be appointed by the President of the United States by and with the advice and consent of the Senate of the United States for that purpose and their decision shall be final and on their certificate of the amount due the several claimants they shall be paid by the United States. All stipulations in former treaties which have not been superseded or annulled by this shall continue in full force and virtue.

ARTICLE 18. Whereas in consequence of the unsettled affairs of the Cherokee people and the early frosts, their crops are insufficient to support their families and great distress is likely to ensue and whereas the nation will not, until after their removal be able advantageously to expend the income of the permanent funds of the nation it is therefore agreed that the annuities of the nation which may accrue under this

TREATY WITH THE CHEROKEE, 1835.

treaty for two years, the time fixed for their removal shall be expended in provision and clothing for the benefit of the poorer class of the nation: and the United States hereby agree to advance the same for that purpose as soon after the ratification of this treaty as an appropriation for the same shall be made. It is however not intended in this article to interfere with that part of the annuities due the Cherokees west by the treaty of 1819.

ARTICLE 19. This treaty after the same shall be ratified by the President and Senate of the United States shall be obligatory on the contracting parties.

ARTICLE 20. [Supplemental article. Stricken out by Senate.]

In testimony whereof, the commissioners and the chiefs, head men, and people whose names are hereunto annexed, being duly authorized by the people in general council assembled, have affixed their hands and seals for themselves, and in behalf of the Cherokee nation.

I have examined the foregoing treaty, and although not present when it was made, I approve its provisions generally, and therefore sign it.

Wm. Carroll,
J. F. Schermerhorn.

Major Ridge, his x mark,	[L. S.]	Te-gah-e-ske, his x mark,	[L. S.]
James Foster, his x mark,	[L. S.]	Robert Rogers,	[L. S.]
Tesa-ta-esky, his x mark,	[L. S.]	John Gunter,	[L. S.]
Charles Moore, his x mark,	[L. S.]	John A. Bell,	[L. S.]
George Chambers, his x mark,	[L. S.]	Charles F. Foreman,	[L. S.]
Tab-yeske, his x mark,	[L. S.]	William Rogers,	[L. S.]
Archilla Smith, his x mark,	[L. S.]	George W. Adair,	[L. S.]
Andrew Ross,	[L. S.]	Elias Boudinot,	[L. S.]
William Lassley,	[L. S.]	James Starr, his x mark,	[L. S.]
Cae-te-hee, his x mark,	[L. S.]	Jesse Half-breed, his x mark,	[L. S.]

Signed and sealed in presence of—

Western B. Thomas, secretary.	C. M. Hitchcock, M. D., assistant surgeon,
Ben. F. Currey, special agent.	U. S. A.
M. Wolfe Batman, first lieutenant, sixth	G. W. Currey,
U. S. Infantry, disbursing agent.	Wm. H. Underwood,
Jon. L. Hooper, lieutenant, fourth Infantry.	Cornelius D. Terhune,
	John W. H. Underwood.

In compliance with instructions of the council at New Echota, we sign this treaty.

Stand Watie,
John Ridge.

March 1, 1836.

Witnesses:

Elbert Herring,	Wm. Y. Hansell,
Alexander H. Everett,	Samuel J. Potts,
John Robb,	Jno. Little,
D. Kurtz,	S. Rockwell.

Whereas the western Cherokees have appointed a delegation to visit the eastern Cherokees to assure them of the friendly disposition of their people and their desire that the nation should again be united as one people and to urge upon them the expediency of accepting the overtures of the Government; and that, on their removal they may be assured of a hearty welcome and an equal participation with them in all the benefits and privileges of the Cherokee country west and the undersigned two of said delegation being the only delegates in the eastern nation from the west at the signing and sealing of the treaty lately concluded at New Echota between their eastern brethren and the United States; and having fully understood the provisions of the same they agree to it in behalf of the western Cherokees. But it is expressly understood that nothing in this treaty shall affect any claims of the western Cherokees on the United States.

TREATY WITH THE CHEROKEE, 1835.

In testimony whereof, we have, this 31st day of December, 1835,
hereunto set our hands and seals.

James Rogers,

John Smith,

Delegates from the western Cherokees.

Test:

Ben. F. Currey, special agent.

M. W. Batman, first lieutenant, Sixth Infantry,

Jno. L. Hooper, lieutenant, Fourth Infantry,

Elias Boudinot.

*Schedule and estimated value of the Osage half-breed reservations within the territory
ceded to the Cherokees west of the Mississippi, (referred to in article 5 on the foregoing
treaty,) viz:*

Augustus Clamont one section	\$6,000
James " " "	1,000
Paul " " "	1,300
Henry " " "	800
Anthony " " "	1,800
Rosalie " " "	1,800
Emilia D, of Mihanga	1,000
Emilia D, of Shemianga	1,300
	<u>\$15,000</u>

I hereby certify that the above schedule is the estimated value of the Osage reservations; as made out and agreed upon with Col. A. P. Choteau who represented himself as the agent or guardian of the above reservees.

J. F. Schermerhorn.

March 14, 1835.

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Exhibit C

Divider Title: _____

Presidential Documents

Executive Order 13007 of May 24, 1996

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has in-formed the agency of the existence of such a site.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely

affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforce-able rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

William J. Clinton

THE WHITE HOUSE,

May 24, 1996.

[FR Doc. 96-13597]

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