The American College of Obstetricians and Gynecologists

DEPARTMENT OF GOVERNMENT RELATIONS

DEPARTMENT FAX NUMBER: (202) 488-3985

DATE: December 5, 1996

TO: Todd Stern

FROM: Kathy Bryant, Associate Director Government Relations

RE: ~~Confidential info~~ - AMA

NUMBER OF PAGES (including this page): 5

RECIPIENT'S FAX NUMBER: 456-2215

COMMENTS:

IF THERE IS A TRANSMISSION PROBLEM, OR IF YOU WOULD LIKE TO SPEAK WITH SOMEONE AT ACOG, PLEASE CALL (202) 863-2509

409 12th Street, SW, Washington, DC 20024-2188 (202)638-5577

The
American
College of
Obstetricians and
Gynecologists

April 9, 1996

William Jefferson Clinton
The President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20100

Dear Mr. President:

The American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 37,000 physicians dedicated to improving women's health care, does not support HR 1833, the Partial-Birth Abortion Ban Act of 1995. The College finds very disturbing that Congress would take any action that would supersede the medical judgment of trained physicians and criminalize medical procedures that may be necessary to save the life of a woman. Moreover, in defining what medical procedures doctors may or may not perform, HR 1833 employs terminology that is not even recognized in the medical community -- demonstrating why Congressional opinion should never be substituted for professional medical judgment. Accordingly, ACOG supports your decision to veto this legislation.

Thank you for considering our views on this important matter.

Sincerely,

Ralph W. Hale MD

Ralph W. Hale, MD
Executive Director

409 12th Street, S.W. Washington, DC 20024-2188 (202)638-5577

CONFIDENTIAL, NOT FINAL, DO NOT COPY, DO NOT DISTRIBUTE

STATEMENT ON INTACT DILATATION AND EXTRACTION

The debate regarding legislation to prohibit a method of abortion, such as the legislation banning "partial birth abortion," and "brain sucking abortions," has prompted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

The American College of Obstetricians and Gynecologists (ACOG) believes the intent of such legislative proposals is to prohibit a procedure referred to as "Intact Dilatation and Extraction" (Intact D & X). This procedure has been described as containing all of the following four elements:

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.

Because these elements are part of common obstetric techniques, it must be emphasized that unless all four elements are present in sequence, the procedure is not an intact D & X.

Abortion intends to terminate a pregnancy while preserving the life and health of the mother. Where abortion is legal after 16 weeks, intact D & X is one method of terminating a pregnancy. The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

According to the Centers for Disease Control and Prevention (CDC) only 5.3% of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. Data show that second trimester transvaginal instrumental abortion is a safe procedure. The CDC does not collect data on the specific method of abortion, so it is unknown how many of this 5.3% were performed using intact D & X.

Terminating a pregnancy is indicated in some circumstances to save the life or preserve the health of the mother. Intact D & X is one of the methods available in some of these situations. However, a select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. Notwithstanding this conclusion, ACOG strongly believes that decisions about medical treatment must be made by the doctor, in consultation with the patient, based upon the woman's particular circumstances. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are critical to the lives and health of American women. The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and potentially dangerous.

AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 208
(I-96)

Introduced by: Pennsylvania Delegation

Subject: Termination of Late Term Pregnancies

Referred to: Reference Committee B
(Robert D. Burnett, MD, Chair)

Whereas, Abortion has typically been limited to pre-viable fetuses less than 24 weeks gestational age; and

Whereas, Termination of late term pregnancies may involve viable babies; therefore be it

RESOLVED, That the American Medical Association support a legal ban on the termination of late term pregnancies except where the fetus is nonviable or if the life of the mother is in extreme danger.

Fiscal Note: No significant fiscal impact

ACOG's Sub-hhk

Substitute Resolution 208

BE IT RESOLVED that the AMA only supports legislation regulating post-viability abortions if the rights of physicians, using their best medical judgment and consistent with state and federal law, to determine whether carrying the pregnancy to term would threaten the life or cause serious adverse health consequences to the mother is preserved.

'96 DEC 5 PM4:20

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409 12th Street, SW Washington, DC 20024-2188 (202)638-5577

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: DB DATE: 8/9/19

2019-0744-S

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April 9, 1996

William Jefferson Clinton
The President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20100

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Terminating a pregnancy is indicated in some circumstances to save the life or preserve the health of the mother. Intact D & X is one of the methods available in some of these situations. However, a select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. Notwithstanding this conclusion, ACOG strongly believes that decisions about medical treatment must be made by the doctor, in consultation with the patient, based upon the woman's particular circumstances. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are critical to the lives and health of American women. The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and potentially dangerous.

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Fiscal Note: No significant fiscal impact

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DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: QB DATE: 8/9/19

2019-07774-5

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/

2.1.1.6

(1) Talk to ACOG about implications for legisl'n

PJL - note

THE WHITE HOUSE

WASHINGTON
April 23, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN EK

SUBJECT: PARTIAL BIRTH LEGISLATIVE LANGUAGE

Below I offer a possible amendment to the partial birth abortion act, along with some notes on why I have framed the amendment in this way. I have not discussed this proposal with anyone from OLC. I am attaching a copy of the current bill, so that you can see how the proposed amendment fits.

> The prohibition in Section 1531(a) of Title 18, United States Code, shall not apply to any case where, in the medical judgment of the attending physician, the selection of the method of abortion defined in Section 1531(b)(1) of Title 18, United States Code, is necessary to [save the life of the woman] or avert a serious adverse consequence to her health.

1. I have bracketed the language on saving the life of the woman because the bill, as passed, already contains a life exception. We may wish to accept that exception, rather than asking Congress to replace it with our language. (If we do so, we might try to make our proposed health exception more parallel in language and structure to the current life exception, though I think this approach would pose real dangers.) I believe, however, that the life exception drafted above would be preferable to what now exists. Even more important, I think that as a matter of communications strategy, our proposal should encompass our whole position, allowing us to talk about life risks and serious health risks as integrally connected parts of a single approach to this issue.

2. I have chosen not to define or otherwise elaborate on the phrase "serious adverse consequence to health." There are, of course, may ways in which we could do so. We could require that the consequence be "physical" (not psychological)-- perhaps even referring to "major bodily functions." We could require that the consequence be "permanent" or "irreversible." Such requirements may help us to respond to the charge that the exception we are proposing creates a huge loophole. But they also will provoke the ire of the pro-choice groups and raise real constitutional questions. As to the latter, I suspect that Walter will vehemently object.

One compromise position is to leave the legislative language as is, but draft some legislative history suggesting that the

health exception should be construed narrowly. We might be able to do this in a way that addresses the "loophole" concern, while keeping the groups and Walter on board. Another possibility is to add some language suggesting the sorts of serious things that would be included within the exception -- for example, adding at the end of the proposed statutory language the phrase "including any impairment of her ability to bear children in the future." This approach may help us to explain what we do mean -- and thereby suggest, if only by implication, what we do not.

3. The proposed amendment would not try to change the bill's current definition of "partial-birth abortion." Many doctors have claimed that this definition, because it fails to use medically recognized terms, is unacceptably vague: it is unclear, on this view, whether or when the definition covers particular medical procedures. But I think we have to accept this part of the bill. If we attempt to fuss with it (and I am not sure I would even know how to do so), we will leave ourselves vulnerable to the charge of gutting the legislation.

4. Finally, just a word about how the proposed amendment will operate in both the pre-viability and the post-viability stages. You will note that the amendment uses the same language for both pre-viability and post-viability abortions (as does the current life exception in the bill): in both stages, the amendment is designed to allow a doctor to pick the partial-birth procedure, from among the abortion procedures available, when doing so (but only when doing so) is necessary either to save the life of the woman or to avert serious adverse consequences to her health.

This single standard, however, may sit on top of state law distinguishing between post-viability and pre-viability abortions generally; if so, the standard will come into play in one set of cases pre-viability and in another, smaller set post-viability. In the pre-viability stage, a woman can have an abortion for any reason at all; a doctor then can select the partial-birth method (rather than other methods) if that method is necessary to protect her life or serious health interests. In the few states that allow post-viability abortions generally, the exact same holds true. But in the more than forty states that allow post-viability abortions only for life or health reasons, a doctor can perform a partial-birth abortion only when two requirements are met: first, as is true in any post-viability case, the abortion itself must be necessary to save the woman's life or preserve her health; and second, the selection of the partial-birth procedure (as opposed to other procedures) must be necessary to protect her life or serious health interests.

1-9 Kathy Bryant

DJB - Daschle point partial birth

Daschle:

Bars post viab. w/ grave health excep'n
more restrictive than just "health"

not clear if include — fetal abnormalities infertility

Wrestling w/ sanction — crim'l?
or ~~disp~~ disciplinary bd?

"Although other options are avail
to save life or preserve health
of the mother, whether or not
intact D & X is the best or most
appropriate procedure in a particular
circumstance is a decision that must
be made. . ."

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409 12th Street, SW
Washington, D.C. 20024-2188

Kathy Bryant, JD
Associate Director
Government Relations
(202) 863-2511
Fax (202) 488-3985

KATHY J. BRYANT

11217 Ashley Drive Rockville, MD 20852 202-863-2511

November 5, 1996

Todd D. Stern
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Todd,

Marilyn Yager recommended that I contact you regarding my interest in pursuing a position with the Administration, HHS in particular. After more than 10 years with the American College of Obstetricians and Gynecologists, I am seeking new professional challenges and believe that an Administration position would offer such opportunities. In addition, to the partial birth abortion issue, I worked closely with Marilyn on a number of issues, including health care reform, Foster's Surgeon General nomination, liability reform, primary care and insurance coverage for postpartum care.

Our work on the partial birth issue demonstrated my knowledge of women's health issues and the politics surrounding them. I have a broad of the health field having had significant experience working on a variety of issues both during my tenure at ACOG and previously as a legislative attorney for the AMA. Particular areas of focus include managed care, consumer protections, medical liability, Medicaid, primary care, and reproductive issues. This substantive background combined with experience and skills in the areas of management, legislative strategy and analysis, and coalition building prepares me to serve this Administration.

Marilyn indicated that that your recommendations are taken seriously and that since you were pleased with our interactions you might be willing to assist me. I have enclosed my resume and curriculum vitae. I would welcome the opportunity to discuss this with you. Thank you for your assistance.

Sincerely,

Kathy J. Bryant

Enclosures

KATHY J. BRYANT, JD

Associate Director of Government Relations
American College of Obstetricians and Gynecologists

A seasoned government relations professional, Kathy Bryant directs the government relations activities of the American College of Obstetricians and Gynecologists (ACOG), a national medical organization whose more than 37,000 members are dedicated to improving women's health. Her ten-person department is responsible for influencing federal and state governmental policy relating to women's health. The Department also conducts programs to train ob-gyns to influence governmental policy, including an annual legislative workshop.

For the last two years her department has focused on the impact of managed care on women's health. As a result of a strategy to promote women's access to ob-gyns, ACOG achieved unprecedented success. Nineteen state bills were enacted. At the federal level, no legislation was enacted excluding ob-gyns from definitions of primary care. In addition, two-thirds of the members of each of the last two Congresses cosponsored resolutions supporting ob-gyns as primary care physicians. A Medicare provision limiting ob-gyn residency programs' role in primary care is being overturned.

Most recently ACOG attacked restrictions on insurance coverage on postpartum care. A significant victory was achieved when President Clinton signed legislation requiring insurers to cover adequate hospital stays following delivery, the first specific mandate on ERISA plans. Twenty-eight states also took governmental action to require insurers to provide such coverage.

Ms. Bryant speaks regularly on topics relating to women's health including managed care, liability and primary care. She also advises the White House on health care reform as it affects women's health.

Prior to joining ACOG more than ten years ago, Ms. Bryant was with the American Medical Association. Serving in both their Chicago and Washington offices, Ms. Bryant was responsible for drafting testimony, preparing legislative analysis, and working with legislative coalitions. She worked for the Iowa State Senate following graduating with distinction from the University of Iowa School of Law. Ms. Bryant received a bachelor's degree with high distinction from the same university, majoring in business administration with a focus on insurance and marketing. Ms. Bryant has been admitted to the bar in Iowa, Illinois, and the District of Columbia, and participates in activities of the American Bar Association.

Ms. Bryant serves as Secretary-Treasurer of the Society for the Advancement of Women's Health Research, an organization formed to assure that women are adequately represented in research. She also serves on the American Medical Association's Socioeconomic Policy Advisory Group. Ms. Bryant is prior Treasurer of Women in Government Relations, a professional organization dedicated to promoting opportunities for women in the government relations field.

KATHY J. BRYANT

11217 Ashley Drive Rockville, MD 20852 202-863-2511

Effective Association Manager

Conceived, developed support, and managed the transition of a major medical specialty from an entity that primarily monitored governmental actions to an organization that has a major influence on the development and enactment of legislation at the federal and state level. Accomplished with minimal additional staff or budget.

Designed and implemented process for involving membership in the establishment of government relations priorities that is being used as a model for association-wide priority setting.

Oversaw the financial development of small nonprofit association from an organization with a budget of $300,000 and no staff to one with revenues exceeding $1 million and 11 staff. Initiated financial procedures that resulted in approval on first audit, with only minor changes recommended. Implemented reserve policy.

Organized and conducted membership training on advocacy and public policy issues, including an annual legislative workshop, which attendees consistently rank as the best meeting of the year. Other training includes specific sessions for a variety of meetings, including a five-segment presentation on a cruise ship. Developed regional training sessions to allow doctors to share legislative experiences across state lines. Manage one-month Fellowships in Washington for selected members twice per year.

Achieved greater staff efficiency, developed candidates for advancement, and improved recruitment of talented and committed young women by reorganizing staff to include assistant lobbyist positions.

Advised and assisted small ob-gyn society in forming a Washington office, including designing the office and interviewing and advising on selection of first Director of Washington office.

Expanded programs involving membership in association activities.

Successful Legislative Strategist

Led team that conceived and implemented successful strategies to:

- reverse Clinton administration position on ob-gyns as primary care physicians in the approximately 30 days between public viewing of Clinton health care reform plan and its introduction
- enact first-ever specific benefit mandate applicable to ERISA health plans
- reverse final Health Care Financing Administration rule on primary care status of ob-gyn residency programs
- enact 19 state bills in 3 years affirming the primary care status of ob-gyns
- secure more than two-thirds of Members of the 103rd and 104th Congresses to cosponsor resolutions supporting ob-gyns as primary care physicians
- enact 29 state provisions on insurance coverage or women following delivery of a baby.

Experienced Health Policy Analyst

Drafted first major federal proposal for medical liability reform for Senator Orrin Hatch (R-UT) and actively participated in activities to make liability reform a national issue.

Consulted with President Clinton's Health Care Reform Task Force on women's health and liability provisions of his health care reform proposal.

Coordinated the development of association's health care reform proposal, including drafting extensive options paper and presenting to membership in many forums.

Frequent speaker on health policy topics including liability reform, managed care issues, women's health, and legislative advocacy. Respond to selected press inquiries on health policy topics on a regular basis.

Organized coalitions on liability reform, laboratory change, and government regulations on pregnancy counseling.

Presently serve on committee advising the AMA on health policy issues.

Employment History

American College of Obstetricians and Gynecologists 1986 - present

Direct Government Relations Activities. Manage the ten-person government relations activities of a major physician membership association. Work with organization's elected leaders to establish policies and goals, develop strategies for implementation in the legislative and administrative arenas at the federal and state level, oversee implementation of these strategies, and maintains relationships with key policymakers in government and other organizations. Responsible for organizing and producing membership training programs on advocacy and public policy issues.

American Medical Association 1981 - 1986

Legislative Attorney. Provided legal analysis and other assistance to lobbyists, including presentations on issues to Members of Congress, their staff, and other health care organizations. Coordinated liaison with medical specialty societies on governmental issues. Represented the AMA on selected coalitions. Staffed the government relations committee, which included providing legal analysis of issues, presentations on the issues and policy implications, and determining the appropriate policy position to further the Association's goals. Prepared Congressional testimony and drafted model bills.

Iowa State Senate 1979 - 1981

Research Analyst. Assisted state senators as they pursued official legislative duties. Provided analysis of issues and proposed legislation, worked with constituents and lobbyists, and prepared speeches.

Organizational Involvement

Society for the Advancement of Women's Health Research
Secretary-Treasurer 1993 - present
Board Member 1990 - present

American Medical Association 1990 - present
Socioeconomic Policy Advisory Group

American Bar Association 1984 - present
Emerging Issues Committee, Tort and Insurance Practice Section

Women in Government Relations - 1984 - present
Treasurer 1990 - 1992

Education

Juris Doctor/With Distinction 1980
University of Iowa School of Law

Bachelors of Business Administration (Insurance and Marketing)
With High Distinction 1977
University of Iowa School of Business

12-11 Kathy Bryant (301) 231-7293

AMA Study not resol'n
to ban -
probably not 'til June mtg.
~~Probably~~
scientific study

1) Not ~~totally~~ done deal since not released yet

2) ACOG not comfor. w/ choice groups
statements on health
pressure by choice groups to get
ACOG involved

3) One thing for me to say statement
increases chance of legislation
but helps for her to say UH agrees

- some pride to be honest even
if hurt

of the board & obgyns who looked
criticism is in definition of what one
only

(202) 638-5577
(301) 231-7293 (h)

Murphy Bryant 12-5

Statement by ACOG (releasing after BD mtg 11/6)

"However a select panel convened by ACOG could in no circumstances ~~xx~~ ~~that~~ under which this procedure as defined above would be the only option to save the life or preserve the health of the woman."

Doesn't look like BD members have it

ABMA next wk in Atlanta
results to ban all late term abortions except life of mother ACOG saying serious health exception

Monday 12-9 1st debate