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PLEASE READ BEFORE PROCEEDING INTO FOLDER

Weather
Today: Partly sunny. High 40. Low 25.
Tuesday: Partly sunny. High 33. Low 25
Details, Page B8

123RD YEAR No. 44

The Washington Post

MONDAY, JANUARY 24, 2000

Inside: Washington Business
Today's Contents on Page A2

25¢

Abortion and the Court—Again

THE SUPREME COURT has agreed to review a Nebraska law banning what abortion foes call "partial-birth abortion." The court had little choice in the matter, because the federal courts of appeals cannot seem to agree on whether such laws are constitutional. The U.S. Court of Appeals for the 8th Circuit struck down partial-birth bans in Nebraska, Arkansas and Iowa, while a sharply divided 7th Circuit upheld similar laws in Wisconsin and Illinois.

If the court puts aside the politics of abortion, the partial-birth laws present a pretty easy case; they cannot be reconciled with the Supreme Court's prior abortion holdings. Those earlier decisions grant women the right to abortion unless a pregnancy is so advanced that the fetus would be viable outside the mother. Prior Supreme Court cases thus permit states to ban late-term abortions, but even then such laws must contain exceptions allowing abortions if necessary to safeguard the life and health of the mother. So the partial-birth laws the court has now agreed to review fall short in two respects: They contain no exceptions for the health of the mother, and they don't restrict themselves to late-term abortions, either. This latter point is a source of confusion, because the laws do ban one particular procedure for carrying out late-term abortions, but they define the procedure in so broad a manner that many abortions performed earlier in pregnancy would be outlawed too.

The partial-birth controversy is frustrating because it has so little relevance to what should be the real objective of legislation in this area: the development of balanced and reasonable abortion policies within the framework of the court's prior holdings. As Chief Judge Richard Posner of the 7th Circuit observed last year in an angry dissent, the partial-birth statutes are not concerned with any real policy objective but with "making a statement in an ongoing war for public opinion, though an incidental effect may be to discourage some late-term abortions. The statement is that fetal life is more valuable than women's health." It is an unfortunate statement, and one squarely at odds with what the Supreme Court itself consistently has said.

Omaha World-Herald

Decide . . . Against Vagueness

Nebraska Attorney General Don Stenberg is right. The U.S. Supreme Court ought to review an appeals panel's ruling on the state's 1997 law that attempts to ban a type of controversial abortion. In one form or another, 30 states as well as Congress have attempted to write such legislation, and the question is too important to remain in legal limbo.

Beyond that, however, the editors of this page part company with Stenberg. He believes the law should be upheld. We believe that it is just what the original trial court said: unconstitutionally vague.

The problem is that in passing the law, the Legislature not only used the popular term "partial-birth abortion," which is not medically recognized; it also used descriptive terminology that could just as easily have applied to one of the most commonly used types of abortion. That kind, no matter what one may think of it, is plainly protected under the Supreme Court's landmark 1973 Roe vs. Wade decision.

We believe that most Americans at some level are uncomfortable with abortions. There are too many options available before such a choice to make it easy or casual, ever. But at the bottom line, within the constraints of Roe, it still ought to remain a decision between a woman and her doctor, ideally in consensus with the father. Nebraska's 1997 effort is at odds with that right.

Critics of the Nebraska law have said the vagueness was intentional - an end-run attempt to ban much more than just the troubling "partial-birth," or dilation and extraction, abortions. Maybe. Maybe not. We have no crystal ball that allows us to probe into legislators' thought processes. But for the purposes of this discussion, it doesn't matter. What matters is that the law is flawed.

The Supreme Court has not yet adjudicated any of these dozens of attempts to prohibit partial-birth abortions. That makes Nebraska's case important and possibly history-making. That is not especially a point of pride; nonetheless, a ruling next year would be timely and appropriate. When the justices are through, Nebraska legislators should be left with no doubt: They must attempt a narrower version or give it up. What they tried doesn't work.

This editorial appeared in the *Omaha World Herald* on November 18, 1999.

THE WALL STREET JOURNAL.

CXXXV NO. 12 EE/WO ★★★ MONDAY, JANUARY 17, 2000 INTERNET ADDRESS: http://wsj.com

High Court to Review Cases on Abortion, Whether Scouts Can Bar Homosexuals

By ROBERT S. GREENBERGER
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON – The Supreme Court is venturing into two of the nation's most contentious social issues: abortion and gay rights.

The court agreed to review whether states may ban the medical procedure known as partial-birth abortion, and whether the Boy Scouts of America may exclude homosexuals.

In what is likely to be its most important abortion ruling in several years, the high court will review a Nebraska law that bans the procedure, which involves partially extracting a fetus, legs first, through the birth canal, cutting and then draining the skull. Some 30 states have outlawed the procedure.

Offering a glimpse of the raw emotional content of the issue, Attorney General Don Stenberg of Nebraska said in his petition to the high court: "It shocks the conscience that in the United States of America a human child can be literally pulled from the womb and then cruelly killed by having his or her skull punctured and brains suctioned out."

On the other side, the Center for Reproductive Law and Policy, an abortion-rights group, said in a statement that the "vague wording" of the Nebraska statute under review "actually outlaws the safest and most common procedures used to perform abortions in this country." It added that, "this case will be our road map for women's reproductive choice in the 21st century."

The Nebraska ban was enacted by the state legislature on June 9, 1997. Three days later, LeRoy Carhart filed a complaint challenging the law's constitutionality. On July 2, 1998, a U.S. District Court in Nebraska enjoined enforcement of the law. The Eighth U.S. Circuit Court of Appeals, in St. Louis, agreed with the district court.

But shortly after the Nebraska courts invalidated the law, similar abortion laws were upheld by a U.S. Appeals Court in Chicago. Thus, the high court's decision to review the issue to resolve the conflict was expected. *(Stenberg vs. Leroy Carhart).*

In the case involving exclusion of homosexuals, the high court agreed to review a New Jersey Supreme Court decision that found that the Boy Scouts violated antidiscrimination law when it expelled James Dale, a gay assistant scoutmaster.

In urging the high court to take the case, the Boy Scouts said that, "known or avowed homosexuals are ineligible to serve because of Boy Scouts of America's beliefs regarding sexual morality, reflected in part in the 'morally straight' and 'clean' requirements of the [organization's] oath and law."

Mr. Dale's opposing brief said that by age 20, when he was forced out of the Boy Scouts, he had "spent more than half of his life as a member of the Boy Scouts and had won virtually every award available to a scout." In 1990, while a student at Rutgers University in New Jersey, Mr. Dale first publicly acknowledged in a newspaper article that he was gay. Days later, he was notified by the organization that he was being expelled. *(Boy Scouts of America vs. Dale).*

Weather
Today: Partly sunny, breezy. High 40. Low 34.
Sunday: Some sun, windy, mild. High 50. Low 28
Details, Page B10

123RD YEAR NO. 39

The Washington Post

SATURDAY, JANUARY 15, 2000

FI AL
Inside: Real Estate
Today's Contents on Page A2
25¢

Court Takes Cases On Abortion, Gays

'Partial Birth' Procedure, Boy Scouts at Issue

By JOAN BISKUPIC
Washington Post Staff Writer

Plunging into two of the most divisive issues in America today, the Supreme Court agreed yesterday to decide whether states can ban a type of late-term abortion and whether the Boy Scouts can exclude gays.

Yesterday's order, made public with a simple sheet of paper listing the case names, immediately transforms this court term into the most momentous in years and, as the presidential campaign heats up, moves two emotionally charged subjects to the political forefront.

In agreeing to review the constitutionality of bans on what opponents call "partial birth" abortion, the justices will for the first time since 1992 address a woman's right to end a pregnancy, a matter that has split the court and the country for three decades.

The case involves Nebraska's appeal of a lower court decision striking down its ban on "partial birth" abortion. "Dilation and extraction," as the procedure is known medically, involves dilating a pregnant woman's cervix to allow the fetus to partially emerge, after which the fetus is killed by inserting a suction tube into its skull and removing the contents.

While the high court is unlikely to use the Nebraska case to reopen the threshold question of whether a woman has a right to terminate a pregnancy, its ruling could determine how far states can go in overseeing various procedures and in dictating rules for women's access to abortions.

By a single vote eight years ago, the high court reaffirmed a constitutional right to abortion but gave states more leeway to impose regulations on the procedure. Since then, the subject has continued to confound the states (30 of which have passed laws banning "partial birth" abortion), Congress and the American people.

Yet if anything rivals abortion in the passion it stirs, it is the issue of gay rights. The justices said they would hear an appeal by the Boy Scouts of America of a New Jersey Supreme Court decision that the group cannot exclude a gay troop leader.

The state court ruled that the policy against gays violates state anti-discrimination law and said that because the Boy Scouts is traditionally such an open and large group, the organization cannot claim a constitutional freedom of association to keep gay people from being Scouts or leaders. In its appeal, the Scouts said the case goes to the core of an organization's freedom "to create and interpret its own moral codes"—in this case, an organization that has been part of American culture for nearly a century and has served 90 million boys. Nationally, most Boy Scout troops are sponsored by churches or synagogues, and an array of religious groups has joined in on both sides of the dispute.

The cases will be heard in April, and the rulings are expected by the end of June, when the justices recess for the summer. Both are likely to be closely decided, settled perhaps by a single vote. And as such, both will point up, just as the presidential race is in its final months, the importance of appointments to the bench and where the candidates stand on the issues.

Whoever wins the White House may get to name two or three new justices, including a new chief justice. William H. Rehnquist is 75 and has been on the bench for 28 years, 14 of them in the center chair. The only member who remains from the 1973 court, when the justices first held in *Roe v. Wade* that the Constitution protects a woman's right to abortion, Rehnquist has consistently voted against abortion.

Among the leading presidential candidates, George W. Bush and John McCain both favor banning "partial birth" abortion; Bill Bradley and Al Gore do not.

Initially, the drama will be at the high court, as the parties in these cases and their advocates weigh in. Eight years ago, when the justices took up abortion, they heard from scores of women's groups, physicians and health care workers, religious organizations and other outside groups with a stake in this enduring social dilemma.

"Whatever decision the court eventually makes, this case will be our road map for women's reproductive choice in the 21st century," said Janet Benshoof, president of the Center for Reproductive Law and Policy, which challenged the Nebraska law.

Nebraska officials see the case as equally important for the power of states and their role in protecting the unborn. "If a state cannot ban the partial-birth abortion/D&X procedure, there is effectively no limit on abortion at all," Nebraska Attorney General Don Stenberg told the justices.

But opponents of "partial birth" laws contend that they are so broadly worded they would prevent other types of abortion as well.

The 8th Circuit said that the way the Nebraska "partial birth" abortion ban was written, it would prohibit some of the most commonly used abortion procedures and, as a result, unconstitutionally restrict abortion methods protected by prior Supreme Court rulings. Using the language of the high court's 1992 decision, the 8th Circuit said the law puts an "undue burden" on women seeking to end their pregnancies.

In its decision last September, the 8th Circuit also struck down similar statutes in Arkansas and Iowa. A month later, the 7th Circuit upheld similar laws in Wisconsin and Illinois, which may have served as an incentive for the justices to take up the issue and resolve the conflicting rulings.

Ten states, including Virginia, asked the high court to take up Nebraska's appeal in *Stenberg v. Carhart*. Last fall, the Senate voted 63 to 34 for a national ban on such abortions, and the House is expected to take up the issue this year.

When the New Jersey Supreme Court ruled last August in the case of openly gay Scoutmaster James Dale, it became the first state high court to forbid the Scouts to discriminate based on sexual orientation and immediately galvanized both sides of the cultural debate.

The question before the justices is whether the requirement that a Boy Scout troop not exclude an openly gay assistant Scoutmaster violates the Scouts' First Amendment rights of free association and free speech.

The group, which serves close to 5 million boys aged 11 to 17, says there is no greater "intrusion" on a private organization that forcing it to accept people it doesn't want. The New Jersey court said such "free association" arguments do not apply because of the Scouts' tradition of "nonselectivity." It said that because the group is essentially a "public accommodation," it must abide by state laws that prohibit discrimination.

The Lambda Legal Defense and Education Fund, which represents Dale, had urged the justices not to take the Scouts' appeal in *Boy Scouts of America v. Dale*. After yesterday's announcement, staff attorney Evan Wolfson said, "The court now has a chance to hear that Scouting is about honesty, community service, self-reliance, and respect for others—not discrimination."

Staff researcher Madonna Lebling contributed to this report.

The New York Times

JANUARY 15, 2000

JUSTICES TO RULE ON LAW THAT BANS ABORTION METHOD

POLITICAL IMPACT LIKELY

Late-Term Procedure at Issue in Supreme Court Effort to Resolve a Judicial Split

By LINDA GREENHOUSE

WASHINGTON, Jan. 14 — Adding an abortion case to its docket for the first time in eight years, the Supreme Court agreed today to decide whether a Nebraska law banning a procedure that the state calls partial birth abortion is constitutional.

The justices plan to hear the case in April and decide it by early summer. The election-year ruling could have a substantial impact on the fractious politics of abortion, although it may not resolve questions about all the similar, but differently worded, prohibitions that 30 states have adopted in recent years.

The Nebraska law, which is broadly written and lacks an exception to protect the health of pregnant women, was declared unconstitutional last September by a federal appeals court, which also struck down similar laws in Iowa and Arkansas. Nearly simultaneously, a different appeals court upheld laws in Wisconsin and Illinois, creating the judicial conflict that the Supreme Court is acting quickly to resolve.

In their order late today granting Nebraska's appeal, the justices indicated that they were not interested in revisiting the basic question of the constitutional status of abortion. Nebraska had asked the court to reconsider its decisions establishing a right to abortion, but the justices granted review only on specific questions of whether the Nebraska law is consistent with those precedents.

Like the laws in other states, the Nebraska law applies to procedures used to terminate pregnancies of fetuses that cannot yet live outside the womb, up to about the 24th week of pregnancy. The procedures in question are used to terminate second-trimester pregnancies. At this stage of pregnancy, the Supreme Court ruled eight years ago in Planned Parenthood v. Casey, states may not place an "undue burden" on a woman's access to abortion.

In striking down the Nebraska law, the United States Court of Appeals for the Eighth Circuit, in St. Louis, said that because the Nebraska law would have the effect of prohibiting "the most common method of second-trimester abortion," it constituted an "undue burden" and meant that the court had a "duty to declare the statute invalid."

In his opinion for the appeals court, Judge Richard S. Arnold said that the term partial birth abortion, "though widely used by lawmakers and in the popular press, has no fixed medical or legal content."

The Nebraska law, which was passed in 1997 but has been blocked ever since from taking effect, contains this description of the abortion technique that it prohibits: "an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery."

The term "partially delivers" is in turn defined as "deliberately and intentionally delivering into the vagina a living unborn child or a substantial portion thereof."

The appeals court said the phrase "substantial portion" was the law's "crucial problem" because it meant that the prohibition applied to a range of procedures used quite early in pregnancy, in which a doctor pulls fetal parts from the uterus through the birth canal. Although Nebraska argued that its Legislature had not intended to ban this common procedure, known as dilation and evacuation, the appeals court said that "we cannot, however, twist the words of the law and give them a meaning they cannot reasonably bear."

In its Supreme Court appeal, Stenberg v. Carhart, No. 99-830, Nebraska argues that the appeals court should have adopted a narrower reading of the law to prohibit only a variant of a procedure known as intact dilation and extraction. In this procedure, which is used infrequently but has become widely known through its graphic depiction in Congressional debates on the issue, a more fully developed fetus is brought feet first through the birth canal, leaving the largest part, the head, inside the uterus. The skull is then collapsed and its contents suctioned to enable it to pass through the cervix.

While this procedure is often referred to as a late-term abortion, it takes place before fetal viability, up to about 24 weeks of pregnancy. Even under Roe v. Wade, the court has permitted states to ban abortions after viability, with exceptions for the pregnant woman's life and health. Moreover, most states have long had such prohibitions, which are not at stake in this case.

Dr. Leroy Carhart, the Bellevue, Neb., physician who challenged the state law, performs about 20 intact abortions a year, as well as many other abortions at earlier stages of pregnancy that the appeals court found would also be covered by the law. Doctors performing abortions generally seek to keep the fetus as intact as possible to avoid injury to the wall of the uterus.

Dr. Carhart's lawyer, Simon Heller of the Center for Reproductive Law and Policy in New York, said today that although he would have preferred that the Supreme Court let the lower court's decision stand, he thought that of all the cases on their way to the court, Nebraska's was the best for the court to have accepted because of a strong record compiled at trial on the safety and health reasons for the procedure.

"The campaign against partial birth abortion has simply been a campaign of deception orchestrated to demonize abortion in the eyes of the public," Mr. Heller said.

James Bopp Jr., general counsel of the National Right to Life Committee, said that even under Roe v. Wade, bans on the procedure could and should be upheld because the court's precedents on the right to abortion did not apply to "the killing of living infants who are only inches away from being fully born alive."

President Clinton has twice vetoed proposed federal laws banning the procedure. Last October, a law passed by the Senate for the third time was two votes short of the number needed to override the president's veto. The House of Representatives will take up the bill this year.

American Medical Association
Physicians dedicated to the health of America

Statement

For Response Only

October 21, 1999

"U.S. Senator Rick Santorum (R-PA) has reintroduced a bill that would ban intact dilatation and extraction. The American Medical Association (AMA) has previously stated our opposition to this procedure. We have not changed our position regarding the use of this procedure.

"The AMA has asked Sen. Santorum to remove the criminal sanctions from his bill, but such a change has not been made. For this reason we do not support the bill."

1101 Vermont Avenue, NW
Washington, DC 20005
202 789-7400

New York Times - December 7, 1998

The A.M.A.'s Partial Birth Fiasco

The American Medical Association blundered badly when it endorsed a Republican bill last year banning so-called partial birth abortion. That blunt conclusion, reached long ago by many doctors, has now been echoed by consultants the A.M.A. hired to investigate the debacle. Confronted with this finding, the organization has but one honorable path. It ought to use the gathering of its house of delegates this week in Honolulu to rescind its support for an abortion measure that intrudes on decisions best made by women and their doctors.

The report by the consulting firm of Booz Allen & Hamilton paints a devastating picture of a politically naïve organization so consumed by the desire to cut a deal and to protect the financial interests of doctors on Medicare issues that it "lost sight of its responsibility for making decisions which, first and foremost, benefit the patient and protect the physician-patient relationship." Trustees of the organization, rookies in the high-pressure game of Congressional negotiations, ended up supporting the legislation, the report notes, even after failing to win concessions to address valid concerns about placing doctors in legal jeopardy by criminalizing a medical procedure the legislation defines only vaguely.

Although the partial birth bill was vetoed by President Clinton, Congress, buttressed by the A.M.A position, came within three votes of overriding the veto. The bill's sponsors plan to introduce it again next spring. Moreover, the A.M.A.'s endorsement has helped encourage many state legislatures to impose partial birth bans of their own. In 18 states where such bans have been enacted, courts have blocked or severely limited their implementation, finding that the legislative definitions could cover the most commonly used abortion procedures, in violation of Roe v. Wade. Inevitably, the issue will reach the Supreme Court, where the position taken by the A.M.A. is bound to be influential. The group should correct its mistake on partial birth abortion before it causes more confusion and damage.

Inquiry Criticizes A.M.A. Backing of Abortion Procedure Ban

By ROBERT PEAR

WASHINGTON, Dec. 3-Investigators hired by the American Medical Association say that the organization ignored its own decision-making procedures, got swept up in politics and failed to protect the welfare of patients when it endorsed a Republican bill banning a specific abortion procedure last year.

In a scathing report, the investigators said that AMA trustees had abandoned the group's longstanding positions on abortion and rushed to embrace the bill even though it did not meet the criteria previously set by the association for such an endorsement.

The report, part of a larger investigation of the board of trustees, concludes that "the AMA blundered" in its handling of the bill to outlaw the procedure that opponents call "partial birth abortion." The trustees had been seeking concessions from Congress to make the bill more acceptable to doctors.

But the report said the association "set itself up for accusations of playing politics" because it announced its support for the abortion bill on the same day it asked Congress to shield doctors from deep cuts in Medicare spending.

"Rather than focusing on its role as steward for the profession and the public health," the report said, "the board got enmeshed in operational issues of lobbying and lost sight of its responsibility for making decisions which, first and foremost, benefit the patient and protect the physician-patient relationship."

The report, a "management audit" by Booz Allen & Hamilton, the consulting company, is based on scores of confidential documents and interviews with people at all levels of the association. The report will be discussed next week in Honolulu at a meeting of the AMA House of delegates, the 486-member policy-making body for the association. At that time, some doctors will press the association to rescind its endorsement of the abortion bill, which passed Congress but was vetoed by President Clinton.

The investigators expressed no views for or against abortion. But they cited the association's handling of the abortion bill as an example of serious flaws in its decision-making process. The report suggests that leaders of the association were manipulated by Republican members of Congress, and that the trustees were inexperienced and unable to deal with the intense political pressures surrounding their negotiations with Congress over the abortion bill in the spring of 1997.

"As the AMA became determined to cut a deal with the Congressmen," the report said, "the decision-making process began to reel out of the control of the AMA and into the control of the Congressmen on the other side of the negotiating table."

While the trustees negotiated directly with congressional sponsors of the legislation, they failed to consult adequately with the American College of Obstetricians and Gynecologists and other groups of medical specialists, the report said.

Some members of the association said they agreed with the auditors' findings. In the culture of the AMA, "political considerations often take precedence over the profession's needs," said a panel of doctors who studied the structure and governance of the organization, at the behest of the House of Delegates. The investigators from Booz Allen & Hamilton worked under the direct supervision of the doctors' panel.

The extraordinary self-examination was prompted by a fiasco in which the AMA last year agreed to endorse health care products of the Sunbeam Corp. in return for millions of dollars in royalty payments. Stung by charges of commercialism and conflict of interest, the doctors' group canceled the deal, and its chief executive resigned.

Supporters of the abortion bill repeatedly cite the AMA's endorsement as a reason for Congress and state legislatures to impose such restrictions, and many states have done so. The federal version was twice vetoed by President Clinton, in April 1996 and October 1997, but it is sure to come up again next year in Congress.

The bill would make it a crime for a doctor to perform a partial birth abortion, defined as a procedure in which a doctor "partially vaginally delivers a living fetus before killing the fetus and completing the delivery."

Supporters of the legislation say it is aimed at a specific late-term abortion procedure. But

judges have struck down similar language in state laws, saying it is so broad that it has the effect of banning abortion techniques widely used in earlier stages of pregnancy.

In July, for example, Judge Richard Kopf of the Federal District Court for Nebraska ruled that the state's ban on partial birth abortion was unconstitutionally vague because it did not give "fair warning" to doctors and patients about what conduct was prohibited.

"One simply cannot ascertain from the legislative history precisely what the Legislature wanted to ban," Kopf said. "We know the legislatorswanted to ban 'partial birth' abortions, but that term is unknown in medical circles."

Janet Benshoof, president of the Center for ReproductiveLaw and Policy, an abortion rights group, said courts had blocked or limited partial birth abortion laws in 18 states. At least six of the laws were modeled on the federal bill endorsed by the American Medical Association.

The audit report also makes these points:

¶Through the timing of its action on the abortion bill, "the AMA painted a picture of itself as primarily concerned about protecting the financial interests of physicians."

¶The trustees had "a general sense, based on national polls, that the American public was opposed to the partial birth abortion procedure," but the AMA did not survey its members to ascertain what would be in the best interest of patients and doctors.

¶The decision to support a ban on partial birth abortion "contradicted longstanding AMA policy" and deviated from positions reaffirmed by the house of delegates just five months earlier, in December 1996.

¶The association "appeared to get swept up by the high-profile nature of the issue" last year.

¶The AMA had well-established procedures to set policy in a "thoughtful, deliberative and democraticway," but disregarded them. Instead, it used a "crisis mode of policy-setting."

The trustees decided that they had to take a position on the abortion bill in May 1997, rather than wait for the house of delegates to consider the issue at its regularly scheduled meeting one month later.

As a result, the report says, "many doctors were outraged."

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 10, 1997

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 1122, which would prohibit doctors from performing a certain kind of **abortion**. I am returning H.R. 1122 for exactly the same reasons I returned an earlier substantially identical version of this bill, H.R. 1833, last year. My veto message of April 10, 1996, fully explains my reasons for returning that bill and applies to H.R. 1122 as well. H.R. 1122 is a bill that is consistent neither with the Constitution nor sound public policy.

As I have stated on many occasions, I support the decision in Roe v. Wade protecting a woman's right to choose. Consistent with that decision, I have long opposed late-term **abortions**, and I continue to do so except in those instances necessary to save the life of a woman or prevent serious harm to her health. Unfortunately, H.R. 1122 does not contain an exception to the measure's ban that will adequately protect the lives and health of the small group of women in tragic circumstances who need an **abortion** performed at a late stage of pregnancy to avert death or serious injury.

I have asked the Congress repeatedly, for almost 2 years, to send me legislation that includes a limited exception for the small number of compelling cases where use of this procedure is necessary to avoid serious health consequences. When Governor of Arkansas, I signed a bill into law that barred third-trimester **abortions**, with an appropriate exception for life or health. I would do so again, but only if the bill contains an exception for the rare cases where a woman faces death or serious injury. I believe the Congress should work in a bipartisan manner to fashion such legislation.

WILLIAM J. CLINTON

THE WHITE HOUSE,
October 10, 1997.

# # #

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

October 20, 1999
(Senate)

STATEMENT OF ADMINISTRATION POLICY

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

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

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

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

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release April 10, 1996

TO THE HOUSE OF REPRESENTATIVES:

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

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

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

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

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

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

That is why I implored Congress to add an exemption for the small

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

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

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

WILLIAM J. CLINTON

THE WHITE HOUSE,
April 10, 1996.

# # #

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 10, 1997

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 1122, which would prohibit doctors from performing a certain kind of abortion. I am returning H.R. 1122 for exactly the same reasons I returned an earlier substantially identical version of this bill, H.R. 1833, last year. My veto message of April 10, 1996, fully explains my reasons for returning that bill and applies to H.R. 1122 as well. H.R. 1122 is a bill that is consistent neither with the Constitution nor sound public policy.

As I have stated on many occasions, I support the decision in Roe v. Wade protecting a woman's right to choose. Consistent with that decision, I have long opposed late-term abortions, and I continue to do so except in those instances necessary to save the life of a woman or prevent serious harm to her health. Unfortunately, H.R. 1122 does not contain an exception to the measure's ban that will adequately protect the lives and health of the small group of women in tragic circumstances who need an abortion performed at a late stage of pregnancy to avert death or serious injury.

I have asked the Congress repeatedly, for almost 2 years, to send me legislation that includes a limited exception for the small number of compelling cases where use of this procedure is necessary to avoid serious health consequences. When Governor of Arkansas, I signed a bill into law that barred third-trimester abortions, with an appropriate exception for life or health. I would do so again, but only if the bill contains an exception for the rare cases where a woman faces death or serious injury. I believe the Congress should work in a bipartisan manner to fashion such legislation.

WILLIAM J. CLINTON

THE WHITE HOUSE,
October 10, 1997.

# # #

'Partial Birth' Deceptions

Once again a woman's right to choose abortion is under direct attack in Congress. The Senate is poised to vote today on the latest Congressional attempt to impose a national ban on so-called partial birth abortions. Billed by its proponents as a narrow targeting of a single late-term procedure, the measure is actually a backdoor attempt to severely constrict abortion rights throughout all stages of pregnancy.

This reality has not been lost on the courts. Since the Senate's last partial birth vote, there have been 11 court decisions on the legal merits of partial birth bans passed by different states. In all but one instance, the ban was blocked because of constitutional problems.

Just last month the United States Court of Appeals for the Eighth Circuit struck down partial birth statutes in Nebraska, Arkansas and Iowa. Two of the statutes included language nearly identical to the language of the Senate bill. Finding that the term "partial birth abortion" has no fixed medical or legal meaning, the court said that the vague laws placed an undue burden on abortion rights by outlawing even the safest and most common procedures used before fetal viability.

Of course, Republican leaders are well aware of what the courts have been saying. But that has not prevented them from forging ahead without holding a single hearing on the serious constitutional issues. The real goal here is to gain an edge in next year's election by forcing President Clinton to lift his veto pen for the third time. The nation's lawmakers should have more respect for the Constitution, women's rights and their own institution than to go along with such a dangerous and deceptive game.

Sustain the 'Partial Birth' Veto

A woman's right to abortion faces a critical test today in the Senate. The House has already voted to override President Clinton's principled veto last year of the latest Congressional attempt to ban so-called partial birth abortions. A Senate vote scheduled for this morning will determine whether this professedly narrow but actually far-reaching assault on abortion rights becomes the law of the land.

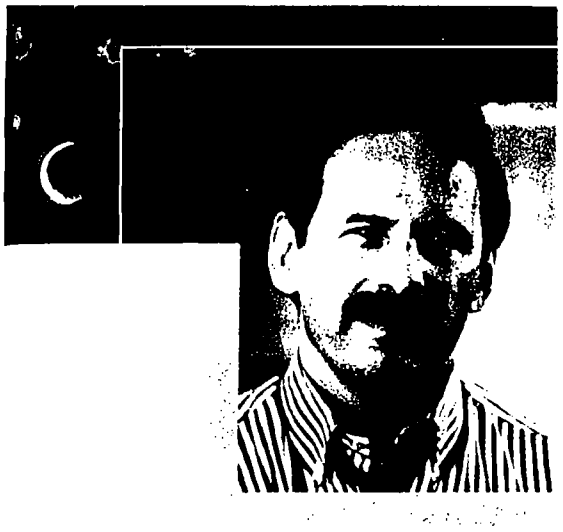
The latest head counts suggest that Mr. Clinton's veto will stand. But for Americans concerned about government intrusion into women's private medical decisions, this is a moment for nervousness. Two years ago, an effort to rally the required two-thirds of the chamber to override Mr. Clinton's veto of a similar bill fell short by just three votes — and that was before Mr. Clinton's Monica Lewinsky troubles and the Christian right's expensive lobbying campaign aimed at senators deemed susceptible to pre-election pressure. The Republican leadership, content to let the Christian Coalition's political strategy drive the Senate's schedule, has timed today's vote to coincide with the group's "Road to Victory" conference in Washington D.C.

Though promoted by its supporters as an attempt to outlaw a single controversial third-trimester procedure, known as intact dilation and extraction, the bill's reach actually is far broader. Its vague terms could be interpreted to prohibit the safest and most common abortion procedures used throughout a pregnancy, not just in the final three months, thus interfering with a woman's right to a first- or second-trimester abortion.

Indeed, six of seven court rulings on state measures that were modeled on the Congressional version have found significant constitutional defects, citing the Supreme Court's decision in Roe v. Wade. "The law is unconstitutionally vague and unduly burdensome on a woman's constitutional right to an abortion," explained Federal District Judge Robert Pratt when he enjoined an identically worded Iowa statute from going into effect two months ago.

Mr. Clinton was right to veto this crude attempt to narrow every woman's access to safe and legal abortions. Senators who care about preserving that access will vote to sustain the veto.

New York Times -- September 18, 1998



Stuart Taylor Jr.

WHEN ABORTION LAWS DEFY COMMON SENSE

Any parent who has rejoiced at seeing a sonogram showing the image of a second-trimester fetus knows how much it looks like a baby. And any parent who has seen a baby blossom into a vibrant teenage girl can imagine the agony of hearing her plead for help in aborting a pregnancy that she had hidden for three months. But any parent who would know with certainty what to say to that teenage girl must be smarter than I am.

Under "partial-birth" abortion laws adopted by many states, twice passed by Congress, and twice vetoed by President Clinton, one option would apparently be illegal: the most common (by far), and probably the safest, form of second-trimester abortion. That's the basis of three decisions issued on Sept. 24 by the U.S. Court of Appeals for the 8th Circuit, striking down "partial-birth" abortion laws in Nebraska, Iowa, and Arkansas.

The unanimous 8th Circuit rulings—written by a Carter appointee and joined by two Reagan appointees—are the latest in a line of opinions joined by some 26 judges, including 11 Reagan and Bush appointees, suggesting that "partial-birth" abortion laws are unconstitutional. Four judges thus far have suggested the contrary.

Right-to-life advocates have sold much of the public, and many legislators, on the myth that "partial-birth" abortion laws would outlaw only an especially gristy (and rare) way of killing third-trimester fetuses on the verge of birth.

False. Some 28 of the 30 state "partial-birth" abortion laws would ban certain procedures to abort fetuses at any stage of pregnancy—including fetuses that are not yet viable, and arguably including some in the first trimester. The laws except only abortions necessary to protect the life of the woman. And many of them threaten doctors with criminal penalties as harsh as life imprisonment for using abortion procedures that are morally indistinguishable from other procedures that would not be restricted.

Below I describe two abortion procedures used in the second and third trimesters. Both—indeed, *all* abortion procedures—are gruesome to contemplate. This may help account for the reluctance of some of us (including me, until now) to ponder in detail whether particular procedures should be banned.

Advocates of "partial-birth" abortion laws claim that they would restrict only an extremely rare procedure called dilation and extraction (D&X). It involves pulling the fetus, feet first, from the uterus, through the cervix, and into the vagina, except for the head; using scissors or another surgical instrument to rupture the skull; and then suctioning out the brain. The more the abortion debate has centered on this image of the dismemberment of nearly born babies—rather than on the plight of women with unwanted pregnancies—the better the right-to-life side has done in the court of public opinion.

Thus was Senator Daniel Patrick Moynihan, D-N.Y., for example, persuaded that "partial-birth" abortion is so "close to infanticide" that it should be outlawed. But if Moynihan thought he was voting to restrict only late-term abortions, he was misinformed. As the 8th Circuit held, "partial-birth" abortion has "no fixed legal or medical content." It means whatever a legislature defines it to mean. And under most definitions, these laws are very broad.

The laws in many states, and the measure that passed Congress in 1997, outlaw abortions in which the doctor kills the fetus after pulling any "substantial portion" from the uterus into the vagina.

And that, the 8th Circuit said, is precisely what doctors do, not only in D&X abortions but also in "dilation and evacuation" (D&E) abortions—the most com-

mon method in the second trimester. D&E abortions typically involve using forceps to pull an arm or a leg from the uterus into the vagina and then dismembering the fetus.

In striking down the three statutes, the 8th Circuit cited Supreme Court precedents, including the 1992 ruling in *Planned Parenthood vs. Casey* that a state may not place "a substantial obstacle in the path of a woman seeking an abortion" of any fetus that is not yet viable.

In an effort to dodge these precedents, those who defend "partial-birth" abortion laws in court have interpreted them as narrowly as possible, resorting to some bizarre distinctions. Thus, in disputing the view that "partial-birth" abortion laws (or some of them) would restrict D&E abortions, the laws' defenders argue that they would restrict only procedures in which fetuses are intentionally dismembered and killed *after* being pulled into the vagina (D&X)—and *not* procedures in which fetuses are dismembered and killed *while* being pulled into the vagina (D&E).

Think about that distinction.

A three-judge panel of the 8th Circuit showed that the Nebraska, Iowa, and Arkansas statutes in fact make no such distinction. Written by Judge Richard S. Arnold—a Carter appointee (and Little Rock friend of President Clinton's)—the three 8th Circuit opinions were joined by Chief Judge Roger L. Wollman of the 8th Circuit and Chief Judge Paul A. Magnuson of the U.S. District Court in Minnesota. Both are Reagan appointees.

The 8th Circuit left it to others to ponder why, as a matter of morality or common sense, the legality of an abortion should turn on where in the birth canal various parts of the fetus are located when it is killed.

Chief Judge Richard A. Posner of the U.S. Court of Appeals for the 7th Circuit tackled that question last November in a decision (now being reviewed by the full 7th Circuit) that preliminarily enjoined Wisconsin's "partial-birth" abortion statute.

IT'S A MYTH THAT "PARTIAL-BIRTH" ABORTION LAWS ARE CONFINED TO A RARE THIRD-TRIMESTER PROCEDURE.

"The constitutional right to an abortion carries with it the right to perform medical procedures that many people find distasteful or worse," wrote Posner, a Reagan appointee. "The singling out of the D&X procedure for anathematization seems arbitrary to the point of irrationality. Annexing the penalty of life imprisonment to a medical procedure that may be the safest alternative for women who have chosen abortion because of the risk that childbirth would pose to their health adds a note of the macabre to the Wisconsin statute."

I'm with Posner. I can well understand why some critics of *Roe* want to outlaw *any* procedure that destroys a fetus, especially in the later stages of pregnancy. I can't understand why the legality of an abortion should not turn on the safety of the procedure, or the health of the woman, or the stage of fetal development—but rather on exactly how far into the birth canal the fetus is pulled before being destroyed.

"No argument is made," as Posner wrote, "that if a fetus feels pain, the pain feels worse when the fetus is killed in the birth canal than when death occurs a moment earlier in the womb."

Posner also punctured the implausible claims that "partial-birth" abortion laws don't burden women seeking abortions, because an equally safe, legal alternative procedure is always available. If this were so, Posner wrote, the statute "cannot discourage abortions—cannot save any fetuses—but can merely shift their locus from the birth canal to the uterus."

Conversely, such a law "can save fetuses only by endangering pregnant women, since the only time a woman denied a partial birth abortion will decide to carry the fetus to term is when the alternative methods of abortion would pose a greater risk to her."

And if (as some evidence suggests) "partial-birth" abortion laws, in fact, would block some women from access to the safest abortion procedure, the laws also conflict with *Roe*'s holding that even post-viability abortions may not be restricted in ways that would endanger the woman's life *or health* (including emotional health).

None of this is in the Constitution, of course. That's why *Roe* is so hard to defend as an exercise in constitutional interpretation. But even if the Supreme Court was wrong to constitutionalize abortion in 1973, the question on the table is whether "partial-birth" abortion laws make any sense now.

To return to where I started: If I had a daughter who (after due consideration of all options) wanted a second-trimester abortion, I'd probably swallow my misgivings and help her get one. If the safest abortion procedure were illegal where we lived, I'd take her to another state, or another country. If the fetus were viable, I might feel differently. But even then, my main concern would be my daughter's health, including her mental health.

That's why I would not support a "partial-birth" abortion law, even if it was limited to viable fetuses—and why I see no sense in these laws as written, most of which would deny the safest abortion procedure to women at earlier stages of pregnancy. ■

CONFIDENTIAL MEMORANDUM

TO:	INTERESTED PARTIES
FROM:	PETER D. HART RESEARCH ASSOCIATES
DATE:	MARCH 23, 1999
RE:	RECENT SURVEY FINDINGS

Findings from the recent polling that we conducted for The Tides Foundation provide encouraging news for the pro-choice movement in terms of continued public support for pro-choice policies, pro-choice candidates, and the basic legal right to an abortion. More important, however, these results also identify several significant and largely unrealized opportunities for the pro-choice movement both to combat efforts by anti-choice legislators and groups and to advance a proactive, pro-choice agenda—and to do both using the values, principles, and beliefs that a solid majority of Americans consistently and enthusiastically embrace. In addition to these strategic insights, the survey results provide important information on developing messages and priorities with which to frame the abortion debate in today's political climate.

While there has been a fair amount of attention paid to the public's seemingly declining support for abortion rights in recent years, America firmly remains a pro-choice country. Indeed, six in ten (61%) voters rate "protecting a woman's right to choose" as a seven or higher on a ten-point scale of priorities for the federal government; and a solid majority (57%) of voters say that they favor pro-choice candidates for both Congress and governor, while just one-third (33%) would prefer pro-life candidates. Two challenges remain for the pro-choice community in the current political climate: 1) although a majority of Americans continue to express pro-choice beliefs on key measures, the intensity of pro-choice sentiment has shifted away from the most strongly pro-choice positions to more qualified demonstrations of support; 2) when it comes to taking action (such as voting), anti-choice voters are considerably more energized and mobilized than are pro-choice voters.

As the findings reveal, pro-choice organizations already enjoy a considerable advantage over anti-choice groups in the minds of American voters in terms of the values that each side represents and the qualities that each demonstrates with its actions. By decisive margins, voters attribute

positive characteristics, such as "respects the rights of individuals," to the pro-choice community and negative attributes, such as "takes extreme positions on issues too much of the time," to the anti-choice community.

Perhaps the most encouraging news emerging from this survey is that the pro-choice movement has an opportunity to use public opinion to combat anti-choice efforts. For example, on two high-profile issues—so-called "partial-birth" abortion and minors crossing state lines—pro-choice forces gain considerable ground and actually bring these issues back to a fairly even playing field when the argument is matched against the argument of anti-choice forces. Public opinion already favors a pro-choice position, in some cases by a decisive margin, on a variety of other anti-choice measures, such as prohibiting health insurance plans for federal government employees from covering many forms of prescription contraception and restricting even privately funded abortions at overseas U.S. military hospitals.

These survey findings also provide a strong rationale for the development of a proactive, pro-choice agenda; in fact, these results demonstrate that pro-choice groups and legislators are not confined to a narrow set of opportunities. A majority of Americans express support for six specific pro-choice initiatives, including federal funding for poor women to have access to abortion in cases in which a doctor determines that it is medically necessary, and restricting Internet information about doctors who perform abortions.

Finally, the results of this survey provide invaluable information for strategically framing the choice debate in the next millennium. With tremendous unanimity, voters express serious concerns about the anti-choice agenda and rally strongly around the values and principles that serve as cornerstones of the pro-choice movement. Paramount among these values is the idea of government interference in private decisions—in fact, concern about undue government intrusion mobilizes pro-choice constituencies and also reaches far inside the base of the anti-choice community. Increasingly in the debate over reproductive choice, voters respond less to the implications of "*who decides*" and more to the ramifications of "*who doesn't decide.*"

CONFIDENTIAL MEMORANDUM

TO: Members of Congress and Legislative Staff

FROM: Geoffrey Garin

DATE: September 8, 1998

RE: The Partial-Birth Abortion Override

Recent polling that we conducted for The Center on Reproductive Law and Policy clearly shows that the "partial-birth abortion" debate provides an important opportunity for the pro-choice movement to regain public support by exposing the anti-choice position as being extreme, deceptive, and unconstitutional.

Our polling demonstrates that the following statement supporting the President's veto of the "partial-birth abortion" ban is a powerful and winning argument.

> The "partial-birth abortion" ban as passed by the anti-choice forces in Congress should be opposed because it is extreme, deceptive, and unconstitutional.
>
> **The measure is extreme because it doesn't provide exceptions for serious harm to the woman's health.** If enacted, this law would lead to undue government interference in medical decisions that should be left up to women and their doctors, and would put women at risk by forcing them to use a more dangerous abortion procedure to avoid serious harm to their health than the one their doctor would otherwise have recommended.
>
> **This measure is deceptive.** The bill focuses attention on a single abortion procedure while banning the safest procedures to protect a woman's health throughout the pregnancy. Legal and medical experts agree that this is not a restriction on one, but potentially all, abortion procedures. In fact, the American College of Obstetricians and Gynecologists opposes this bill, saying that it is "inappropriate, ill-advised, and dangerous."
>
> **The measure is unconstitutional.** In 17 out of 18 cases, federal and state courts have ruled that this type of law violates the Constitution because it is worded so broadly and vaguely that it actually would ban the most commonly used abortion procedures.
>
> This measure is being sponsored by politicians who are interested in gaining political support from powerful, conservative groups that oppose a woman's right to choose in all forms, and in catering to these interests they are sponsoring an extreme, deceptive, and unconstitutional measure that deserves to be vetoed.

The findings demonstrate that elected officials have an opportunity to win public approval by opposing the "partial-birth abortion" bill. Once Americans learn more about the "partial-birth abortion" bill in Congress, their views shift dramatically. Key findings from our research include the following:

① When told that Congress had passed a bill banning "partial-birth abortions," except in cases when it is necessary to save the life of the woman, but that President Clinton vetoed the ban because it does not allow for any exceptions in cases when the procedure is necessary for preventing serious harm to the woman's health, Americans agree with the President rather than Congress on this matter by 44% to 34%. Democrats support the President by 58% to 24%, and independents support his position by 47% to 30%. Republicans support the Congressional position by 51% to 25%; pro-choice Republicans are divided evenly (38% Clinton, 35% Congress).

② Americans say by 65% to 23% that there should be an exception to the ban in cases when "the woman's doctor determines that the procedure is necessary to prevent serious harm to the woman's health." This represents a dramatic shift from the 64% to 24% margin of Americans who originally say they favor the proposal in Congress that would ban "partial-birth abortions" except when necessary to save the life of the woman. Even among those who strongly favor a ban on "partial-birth abortion," 63% say that there should be an exception for preventing serious harm to the woman's health.

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

④ When Americans are read criticisms of the Congressional ban, at least two-thirds rate the following as giving them very or fairly serious concerns: (1) this law represents government interference in personal and difficult medical decisions that should be left up to women, their families, and their doctors (55% very serious, 20% fairly serious); (2) by passing this law, politicians and government would be putting women at risk by forcing them to use a more dangerous abortion procedure than the one their doctor would have otherwise recommended (53% very serious, 20% fairly serious); (3) this law is so extreme that it does not provide exceptions for serious harm to the woman's health (52% very serious, 25% fairly serious); and, (4) this law is a deceptive measure by politicians to focus public attention on the difficult subject of late-term abortion, while actually banning safe and legal procedures throughout pregnancy (46% very serious, 22% fairly serious).

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

LAKE SOSIN SNELL PERRY
& ASSOCIATES, INC.

POLL CONDUCTED ON BEHALF OF EMILY'S LIST

Do you favor or oppose allowing medically-necessary late-term abortions to save the life and health of the mother or aren't you sure?

Favor 73%
Oppose 13%
Don't know.....14%

Lake Sosin Snell Perry & Associates designed and administered this survey which was conducted by phone using professional interviewers. The survey reached 1000 registered voters, ages 18 and older, who reported that they voted in the November 1996 elections for President. The survey was conducted between June 18 and June 23, 1997. Telephone numbers for the survey were drawn from a random digit dial sample (RDD). Respondents for interviewing were drawn randomly within households using the most recent birthday method. The sample was stratified geographically by state based on each state's rate of turnout in the 1992 general election adjusted for current registration. The data were weighted on education level, race, and religion to ensure the sample is an accurate reflection of the electorate. The total margin of error for this survey is +/- 3.1%.

Now I am going to read to you a list of bills designed to restrict access to abortion that were voted on by the U.S. Congress in the last year and a half. For each one, assume that a candidate for Congress favors that becoming law and tell me if the candidate's position makes you more or less likely to vote for that candidate. Here's the first one: **[READ ITEM]** Does the fact that a Congressional candidate supports that make you more or less likely to vote for that candidate? **[IF MORE/LESS LIKELY]** Does that make you much **[MORE/LESS]** likely to vote for that candidate or only somewhat **[MORE/LESS]** likely to vote for that candidate?

o Banning late-term abortion even in cases where the woman's health is endangered

	All Voters
Much more likely	8%
Somewhat more likely.....	12%
Somewhat less likely	27%
Much less likely	38%
(No Difference).....	7%
(Don't Know)	8%
TOTAL MORE LIKELY ...	20%
TOTAL LESS LIKELY ...	65%

These results are based on a survey conducted by Hickman-Brown Research of 500 likely voters in the United States. The sample was stratified to reflect geographic patterns of likely voters within the country, and was drawn according to standard Random Digit Dialing procedures. Telephone interviewing was conducted from July 29 to August 4, 1996, by professional interviewers. A minimum of three attempts on different days were used to reach the randomly selected households; random sampling within the selected households was employed to identify eligible respondents. With a confidence level of 95%, the margin of potential sampling error associated with a sample of 500 is 4.4%. This means that the results are within the specific range (pus or minus) that would have been obtained if all likely voters in the United States had been interviewed.

HICKMAN·BROWN
PUBLIC OPINION RESEARCH

Now I want you to think about the upcoming election for Congress. For the following description of candidates' positions on abortion, tell me which one you would be more likely to vote for. Which one of those two candidates would you personally be more inclined to vote for?

		Democrat		Independent		Republican	
	All Voters	Men	Women	Men	Women	Men	Women
A candidate who would **ban** late-term abortions even if the woman's health is in danger	30%	29%	26%	23%	33%	29%	35%
OR							
A candidate who would **not ban** late-term abortions if the woman's health is in danger	58	58	66	52	46	60	56
(Neither/Depends/Other/No Difference)	10	11	7	22	22	9	6
(Don't Know)	2	2	1	3	0	2	3

These results are based on a survey conducted by Hickman-Brown Research with 800 registered voters in the United States. The sample was stratified to reflect geographic patterns of registered voters within the country, and were drawn according to standard Random Digit Dialing procedures. Telephone interviewing was conducted October 23-26, 1995, by professional interviewers. A minimum of three attempts on different days were used to reach the randomly selected households; random sampling within the selected households was employed to identify eligible respondents. With a confidence level of 95%, the margin of potential sampling error associated with a sample of 800 is 3.5%. This means that the results are within the specified range (plus or minus) that would have been obtained if all registered voters in the United States had been interviewed.

NARAL
Reproductive Freedom & Choice

To: Reproductive Health Staff
From: Allison Herwitt, Director of Government Relations
Donna Crane, Legislative Representative
Date: March 6, 2000
Subject: ***Upcoming Hearing on Alleged Profiteering from Research Using Fetal Tissue***

On Thursday, March 9, the House Commerce Subcommittee on Health and the Environment will hold a hearing on the procurement of fetal tissue for research. The hearing is expected to air the allegation that some third-party fetal tissue procurement businesses are making a profit from their transactions. As the committee wades into these allegations, we expect some anti-choice lawmakers and activists – led by the anti-choice group Life Dynamics – also to make allegations that physicians are altering abortion procedures in order to obtain intact fetuses for donation to research. The ABC television program *20/20* is also scheduled to air a segment that includes allegations of illegal profiteering from fetal-tissue donation the evening before, March 8.

These practices, if true, are illegal, deplorable, and violate medical ethics. However, they are being raised in a political arena to sensationalize the debate about abortion in order to serve the larger agenda of curbing women's reproductive freedoms. **While the issues of reproductive choice and fetal tissue donation are – and should remain – separate, anti-choice members will be using these allegations to attack a woman's right to choose abortion.**

Following are key points concerning the relationship between elective abortions and the donation of fetal tissue to research:

- The donation of fetal tissue for research is a legal and ethical practice. Federal law allows a woman to donate aborted fetal tissue, which would be discarded otherwise, for scientific use, and sets out detailed guidelines to ensure that her decision is made freely, with proper information, and is free from conflicts of interest.

- The alleged profiteering to be aired during the hearing is illegal under federal law and punishable by fines, imprisonment, or both. If individual cases of wrongdoing are discovered, they should be investigated and prosecuted. Research using fetal tissue is important for advancing medical research and should not be jeopardized by unsubstantiated allegations or isolated instances of wrongdoing.

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- The accusations of illegal profiteering and altered abortion procedures were first raised in July 1999 by the anti-choice organization Life Dynamics, which advocates the end of abortion by any means necessary, including threats, intimidation, and violence.

- A stated goal of those opposed to both abortion and medical research is the full disclosure of all confidential information – including the names, addresses, and telephone numbers of every individual and organization in the chain of fetal tissue procurement – *thus exposing each to anti-choice harassment and violence*. Vigorous enforcement of existing state and federal laws is the responsible course of action. Allegations of wrongdoing should be brought directly to law-enforcement authorities so that prosecutions may occur if warranted.

Additional information about the donation of aborted fetal tissue for research is enclosed for your information. If you have any questions, please contact Allison Herwitt at 973-3003 or Donna Crane at 973-3047.

NARAL
Reproductive Freedom & Choice

FETAL TISSUE AND THE RIGHT TO CHOOSE

Background: In July 1999, an anti-choice group called Life Dynamics circulated a letter on Capitol Hill charging that physicians were altering abortion procedures in order to obtain intact fetuses for research using fetal tissue. Life Dynamics also claimed that the tissue was being sold for profit. Founded in 1992, Life Dynamics is dedicated to using "guerilla" methods to make abortion unavailable by any means necessary, including threats, harassment, intimidation, and violence. Life Dynamics' allegations found a sympathetic ear among some anti-choice members of Congress. In November 1999, shortly before adjourning for the year, Rep. Tom Tancredo (R-CO) authored a resolution directing Congress to conduct hearings on this alleged illegal profiteering; the hearing has now been scheduled for March 9, 2000 in the House Commerce Subcommittee on Health and the Environment. Life Dynamics has also publicized its allegations to the media, and as a result, the ABC television program *20/20* will air a segment on the topic of third-party fetal tissue procurement businesses on March 8, 2000. While the thrust of the *20/20* segment and the House Subcommittee's hearing will be to focus on the alleged third party fetal tissue procurement businesses, anti-choice lawmakers and advocacy groups— led by Life Dynamics— will use this opportunity to inflame the entire discussion of fetal tissue donation, and to embroil it in their larger anti-choice politics. The strategy of using sensationalistic rhetoric and images to inflame the abortion rights debate has been a long-term strategy and practice of anti-choice forces, most recently on display in the tactics against so-called "partial-birth" abortion.

Legal Parameters on Fetal Tissue Research: The NIH Revitalization Act of 1993 prohibits profiteering in the sale of fetal tissue for research. In addition, numerous state laws prohibit the sale of fetal tissue for profit, just as no profit is allowed in the organ donation and procurement process. Further, federal law mandates that a woman may choose to donate fetal tissue for research, and that such consent may be obtained only after she has made the decision to have the abortion. Other rules bar conflicts of interest among abortion providers and researchers. **NARAL supports and endorses federal and state laws banning profiteering, ensuring informed consent and barring conflicts of interest. Further, we believe that research should only proceed in harmony with legal and ethical guidelines on the donation**

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and use of fetal tissue for research. Violations of law should be prosecuted.

Benefits of Fetal Tissue Research: Fetal tissue has unique properties making it critical for research – cells can rapidly divide, grow and adapt to new environments.

Fetal tissue has yielded significant advances in the treatment of numerous diseases and medical conditions – from polio and rubella vaccines to treatments for Parkinson's disease.

If not over-regulated or threatened out of existence, fetal tissue research will likely assist progress in the treatment of other conditions facing Americans – spinal cord injuries, Alzheimer's, AIDS, cancer, diabetes, multiple sclerosis, birth defects, sickle cell anemia, leukemia, Huntington's, stroke, degenerative eye conditions, radiation poisoning, and others.

Allegations of illegal acts should be individually and thoroughly investigated and if proven, punished under the law. Critical research should not be jeopardized by allegations or isolated instances of illegality.

Fetal Tissue and the Right to Choose: Some anti-choice lawmakers will use the March 9, 2000 hearing in the House Commerce Subcommittee on Health and the Environment not only to spotlight the alleged abuses in the fetal tissue procurement field, but also to make sensational allegations about abortion procedures. The real agenda of many in Congress is not to investigate and prosecute violations of law concerning fetal tissue procurement – but to inflame the debate about abortion and demonize its practice.

> Anti-choice lawmakers will allege that women are not being given a fair opportunity to consent to the donation for research. Yet as a matter of law and practice, the decision to have an abortion is separate from the decision to donate fetal tissue. It is only after a woman decides and consents to have an abortion that she is presented with the option of donating the tissue to research. This is a matter of both ethics and law, which NARAL strongly supports.
>
> Anti-choice lawmakers will allege that doctors are altering procedures in order to obtain better fetal tissue specimens. This is patently illegal. Federal law explicitly prohibits anyone from attempting to influence the timing or method of terminating a pregnancy for research. Again, this is both an ethical and legal imperative, which NARAL strongly supports.

Anti-choice lawmakers will use the issue as a vehicle to revive allegations regarding so-called "partial-birth" abortion. Again, federal law prohibits anyone from attempting to influence the timing or method of terminating a pregnancy for research. Moreover, "partial-birth" abortion is a political term, not a medical term, which is unspecific to a single abortion procedure. So any proposed "solution" that would involve banning "partial-birth" abortion is misguided and threatening to women's health, as such bans encompass many safe abortion procedures throughout pregnancy.

Any problems relating to fetal tissue procurement or research must be distinguished from the right to choose.

Congressional Options:

Last year, during the Senate debate on so-called "partial-birth" abortion, Senator Bob Smith (R-NH) offered an amendment requiring any individual involved in fetal tissue research to disclose confidential information to the government. This would have included the disclosure of names and locations of anyone involved in the transfer of fetal tissue, from the clinic where the abortion is performed, to the truck driver, to the research scientist, university or pharmaceutical company. All could be targets of anti-choice harassment and violence. **The Congress must reject this option.** Although the Smith Amendment failed 46-51, it exposed how far anti-choice lawmakers are willing to take their campaign to inflame this important scientific process.

Vigorous enforcement of existing state and federal laws is the responsible course of action. Allegations of illegal activities should be brought directly to law enforcement authorities so that prosecutions may occur if warranted.

Conclusion:

As any investigation or inquiry into alleged abuses in fetal tissue procurement unfolds, we urge Members of Congress to refer wrongdoers to law enforcement officials without hindering life saving research, jeopardizing clinics providing valuable health services, or restricting a woman's right to choose.

NARAL
Reproductive Freedom & Choice

FETAL TISSUE RESEARCH AND CHOICE

The donation of fetal tissue for research is a legal and ethical practice. Profiteering is illegal.

- The NIH Revitalization Act of 1993 provides that "[I]t shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration..." Under this law, selling fetal tissue is a federal crime punishable by fines, imprisonment for up to ten years, or both. Similarly, the National Organ Transplant Act makes it unlawful for a person "to knowingly acquire, receive, or otherwise transfer any human organ," including fetal tissue, "for valuable consideration..." This law also permits the reimbursement for certain expenses related to fetal tissue donation (transportation, storage, preservation, etc.), just as it does for organ donation.

- Aborted tissue would be discarded if it were not donated, and legal guidelines require that a woman's decision to terminate a pregnancy is made first – and totally separately – from that of whether to donate tissue.

- When asked to review the appropriateness of research using fetal tissue, a National Institutes of Health panel recommended allowing such research, as long as sufficient protections for women and against conflicts of interest were enacted. (Their recommendations were written into the federal law that now governs research with fetal tissue.) The Institute of Medicine and National Academy of Sciences have also examined the issue and concluded similarly.

- Even those who may oppose abortion in the strongest possible way should support fetal tissue research. As bioethicist John Robertson argues: "In sum, fetal tissue transplants are practically and morally separate from decisions to end unwanted pregnancy." Further, Robertson says, "The disparate issues ... can be treated separately, so that ethical concerns and the politics of abortion do not impede the progress of important research."

Research using fetal tissue is an important component of medical science.

- Due to their capacity to divide rapidly, grow, and adapt to new environments, fetal cells hold unique promise for medical research. Research using fetal tissue has yielded significant advancements in the treatment of numerous diseases and medical conditions, including the development of polio and rubella vaccines. Research with fetal tissue promises to help treat many conditions such as spinal cord injury, cancer, Parkinson's disease, diabetes, multiple sclerosis, birth defects, sickle cell anemia, leukemia, AIDS,

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Alzheimer's, Huntington's, stroke, degenerative eye conditions, radiation poisoning, and others.

Federal law ensures that a woman's decision to donate is made freely, with proper information, and free from conflicts of interest.

- Federal law not only prohibits the sale of fetal tissue for profit, it also provides that:

  - the physician certify that the woman consented to have the abortion before consenting to donate the fetal tissue, ensuring the two decisions are made independently;
  - the woman certify that she donated the tissue without restriction and without knowledge of the identity of any transplant recipient;
  - no inducements – financial or otherwise – offered to terminate a pregnancy for purposes of research;
  - the woman be informed of any known medical risks associated with tissue donation;
  - the physician disclose any interest (s)he may have in the research to be conducted with the tissue;
  - the physician does not alter an abortion procedure in order to facilitate fetal tissue donation; and
  - the researcher receiving fetal tissue must certify (s)he had no part in any decisions regarding the timing, method, or procedures used for the abortion.

- Federal and state laws regarding fetal tissue donation have as their primary concerns the protection of women and assurance of humanitarian goals.

Attacking fetal tissue donations is the newest tactic in the overall strategy of demonizing abortion.

- If individual cases of wrongdoing are discovered, they should be investigated and prosecuted.

- The fact that Life Dynamics, a fringe anti-choice group, publicized its allegations to politicians and the media – and did not refer them directly to law-enforcement authorities - exposes their true intentions of using these charges to inflame the abortion debate.

- One goal of those opposed to both abortion and medical research is the full disclosure of all confidential information to the government - including the names, addresses, and telephone numbers, of every individual and organization in the chain of fetal tissue possession - *thus exposing each to anti-choice harassment and violence*. Affected entities could be research universities, pharmaceutical companies, biotechnology firms, hospitals, doctors, other medical personnel, and women themselves.

- A common tactic among anti-choice groups is to sensationalize the abortion debate and demonize doctors who perform abortions through the use of

incendiary rhetoric. Doctors who perform abortions are just that – doctors. They are bound by the same laws and medical ethical standards as are all other medical professionals. Like other physicians, they work hard every day to provide quality health care services to their patients. Abortion is a legal, private medical decision that should be made by women in consultation with their medical caregivers, not by the government or politicians.

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FETAL TISSUE RESEARCH: MOVING BEYOND ANTI-CHOICE POLITICS

Due to their capacity to rapidly divide, grow, and adapt to new environments, fetal cells hold unique promise for medical research into a variety of diseases and medical conditions.[1] In fact, fetal tissue research[2] in the 1950s was vital to medical research that led to the development of two life-saving vaccines — polio and rubella.[3] Despite this impressive history and the promise of fetal tissue research, federal funding of fetal tissue research was severely restricted in the late 1980s. Although President Clinton lifted the moratorium on funding for certain types of fetal tissue research in 1993,[4] the continued anti-choice attack on such promising medical research gravely damages the ability of doctors and patients to fight disease and battle serious medical conditions. Moreover, recent proposals to further regulate fetal tissue research threaten a woman's right to choose. This memo will discuss the importance of fetal tissue research, the history of anti-choice attacks against federal funding for such research, and existing laws governing fetal tissue research.

The Importance of Fetal Tissue Research

Fetal tissue research has yielded significant advancements in the treatment of numerous diseases and medical conditions. In particular, fetal neural cell transplants have demonstrated promise in the treatment of Parkinson's disease, a neuro-degenerative disorder affecting approximately 1.5 million people in the United States.[5] The transplantation of fetal neural cells into the brains of Parkinson's patients has allowed some patients to regain gait, speech, speed of movement, and quality of life.[6] Other examples of the potential benefits of fetal tissue research include:

- Continued research into the transplantation of fetal neural cells could lead to effective treatments for other neuro-degenerative disorders, including Alzheimer's and Huntington's disease.[7]
- Fetal nerve tissue has been used to treat spinal cord injury, holding promise to end certain types of paralysis.[8]

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- According to scientists at the 1997 Sixth International Neural Transplantation Meeting and the Institute of Medicine's 1994 report on fetal research, fetal tissue transplants may be useful in treating patients with diabetes, multiple sclerosis, birth defects, and radiation poisoning.[9]

- Georgetown University researchers found that fetal bone marrow was more effective for transplantation than either adult marrow or umbilical cord blood, and holds promise for the treatment of sickle cell anemia, leukemia, and AIDS.[10]

- Scientists in the United States are testing fetal retinal transplants as a treatment for macular degeneration which affects millions of people and is "the leading cause of old-age blindness in the United States." In addition, according to doctors in both India and the United States, fetal retinal transplantation has shown promise in treating retinitis pigmentosa, a disease afflicting approximately 100,000 Americans.[11]

Federal Funding for Fetal Tissue Research

Despite the overwhelming potential of fetal tissue research, federal funding for such research has been severely restricted due to anti-choice politics. Since the late 1980s, when fetal tissue transplantation research in the United States first received national attention, [12] anti-choice forces have used abortion politics to limit federal funding for such research. As a result, from the late 1980s to 1993, federal funding was extremely limited, despite the fact that a medical advisory panel found that fetal tissue research, within certain safety guidelines, was acceptable public policy.

- In 1988, the Department of Health and Human Services (DHHS) imposed an explicit moratorium on federal funding for fetal tissue transplantation research involving the use of tissue from induced abortions.[13]

- Thereafter, at the request of DHHS, the National Institutes of Health (NIH) formed an advisory panel to determine the appropriateness of fetal tissue research from induced abortions, including whether such research would encourage women to have abortions, as alleged by anti-choice forces. The NIH advisory committee found no empirical evidence to support this claim and, by a vote of 19-2, determined that fetal tissue research from induced abortions was acceptable public policy provided that the abortion decision was made separately from the decision to donate fetal tissue and that abortion procedures were not altered for the purpose of obtaining fetal tissue for transplantation or medical research.[14]

- In late 1989, however, Louis W. Sullivan, the Secretary of Health and Human Services, extended the ban on fetal tissue transplantation research from induced abortions indefinitely, bowing to pressure from the Bush Administration and Congress to avoid activities related to abortion.[15]

Due to this lack of federal support, researchers in the United States were unable to fully explore the potential of fetal tissue research. Although limited fetal tissue research occurred in the private sector, the federal ban inhibited the flow of private funds to such controversial research projects. Consequently, the United States was sidelined as other countries in Europe and Asia achieved medical advances in the treatment of disease through fetal tissue research. In addition, private sector research was conducted without the benefit of the scientific monitoring and oversight typically provided by the federal government.[16]

In 1990, Representative Henry Waxman (D-CA) introduced the Research Freedom Act, a bill designed to end the ban on federal funding for fetal tissue transplantation research and to prohibit the executive branch from imposing policy on the NIH.[17] Although the Act passed both houses of Congress, it was vetoed by President Bush, and the House failed to override the veto by a vote of 271-156.[18] In 1992, a second medical advisory panel, convened by the Institute of Medicine (IOM) and the National Academy of Sciences (NAS), met to assess the status of fetal research, including fetal tissue transplantation. At a subsequent conference, the panel stressed the need for federal funding to explore promising new areas of fetal research.[19] Responding to the long-standing recommendations of the scientific community, President Clinton issued an executive order in January 1993, immediately upon taking office, lifting the ban on federal funding for research involving transplantation of fetal tissue from induced abortions. In lifting the ban, President Clinton explained that it had "significantly hampered the development of possible treatments for individuals afflicted with serious diseases and disorders." In conjunction with the executive order, the administration also directed the NIH to develop guidelines for fetal tissue transplantation research.[20]

Anti-Choice Attacks on Fetal Tissue Research Continue

Although the ban on the use of federal funds for research involving transplantation of fetal tissue from induced abortions was lifted in the early 1990s, and Congress subsequently established guidelines to ensure that federal funding for fetal tissue research does not promote abortion,[21] anti-choice attacks continue to hamper the development of this research.

- In 1996, a bill to increase federal funding for Parkinson's disease research was unanimously passed in the Senate, but died in House committee even though a majority of House members were listed as co-sponsors.[22]

Anti-choice Representative Chris Smith (R-NJ) led the fight to defeat this bill by introducing a similar bill in the House to increase federal funding for Parkinson's research, but with language prohibiting the use of federal funds for fetal tissue research performed from induced abortions.[23]

- The Senate subsequently considered and approved an amendment to the FY98 Labor, Health and Human Services, Education, and Related Agencies Appropriations bill that established new research centers for Parkinson's disease and provided grants to scientists working in the field of Parkinson's research.[24] Senator Dan Coats (R-IN) introduced a second amendment to prohibit the use of federal funds for Parkinson's research on fetal tissue derived from an induced abortion. On September 4, 1997, the Coats amendment was defeated by a vote of 38-60.[25]

The General Accounting Office (GAO) issued a report in 1997 indicating that all federally funded fetal tissue transplantation projects were meeting established standards governing informed consent and fetal tissue acquisition,[26] and no complaints regarding fetal tissue research have been lodged with the NIH, the agency charged with the oversight of federally funded research, since the GAO report was issued.[27] Nonetheless, anti-choice attacks on fetal tissue research have continued. Most recently, the attacks have focused on alleged illegal profiteering from fetal tissue.

- In July 1999, Life Dynamics, an organization on the fringe of the anti-choice movement, circulated a letter to members of Congress alleging that physicians are altering their abortion procedures to obtain intact fetuses that can be sold for profit.[28] On October 21, 1999, in response to this letter, Senator Bob Smith (R-NH) offered an amendment to the so-called "Partial-Birth" Abortion Ban Act. This amendment would require entities conducting fetal tissue research to disclose confidential information to the government, including the names, addresses, and telephone numbers of any organization in the chain of fetal tissue possession – such as the health care clinic that performs the abortion, the fetal tissue procurement agency, and the company responsible for transporting the tissue to the research facility – **thereby exposing each link in the chain of possession to anti-choice harassment and violence**. As stated by Senator Boxer (D-CA), "I fear [that such a requirement] could escalate the violence at health care clinics all over this country." Senator Smith's amendment was defeated by a vote of 46-51.[29]

- In November 1999, again in response to the letter circulated by Life Dynamics, the House passed a resolution introduced by Representative Tom Tancredo (R-CO) by voice vote directing Congress to conduct hearings on alleged illegal profiteering from fetal tissue.[30] And, in February 2000, Senator Bob Smith (R-NH) requested approval from the Senate Judiciary Committee to subpoena five witnesses to testify

regarding allegations of illegal profiteering from fetal tissue. To support this request, Senator Smith asserted that the witnesses will establish "numerous illegal and immoral" practices in fetal tissue research, including that physicians are altering abortion procedures— and in some cases delivering live fetuses before killing them— to obtain fetal tissue for research; that physicians are not complying with established informed consent procedures for women donating fetal tissue; and that entities involved in fetal tissue procurement are illegally profiting from fetal tissue research.[31]

Federal Law Already Prohibits the Sale of Fetal Tissue

If the allegations regarding the sale of fetal tissue are true, such activities are punishable under existing federal law.

- The NIH Revitalization Act of 1993 provides that "[i]t shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce." 42 U.S.C.A. § 289g-2(a). The law defines "human fetal tissue" very broadly to include "tissue or cells obtained from a dead human embryo or fetus after a spontaneous or induced abortion, or after a stillbirth." 42 U.S.C.A. § 289g-1(g). Under this law, selling fetal tissue is a federal crime punishable by fines, imprisonment for up to ten years, or both. 42 U.S.C.A. § 289g-2(c). In order to permit reimbursement for legitimate expenses in cases of fetal tissue donation, however, the law specifies that "valuable consideration" does not include "reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue." 42 U.S.C.A. § 289g-2(d)(3).

- Similarly, the National Organ Transplant Act (NOTA) makes it unlawful for a person "to knowingly acquire, receive, or otherwise transfer any human organ," including fetal tissue, "for valuable consideration for use in human transplantation if the transfer affects interstate commerce." 42 U.S.C.A. § 274e(a), (c)(1). Under NOTA, selling fetal tissue for transplantation is a federal crime punishable by fines up to $50,000, imprisonment for up to five years, or both. 42 U.S.C.A. § 274e(b). This law also permits reimbursement for certain expenses related to fetal tissue donation. 42 U.S.C.A. § 274e(c)(2).

Numerous states have similar provisions prohibiting the sale of fetal tissue,[32] and federal law requires all federally funded fetal tissue research projects to comply with "any applicable State or local laws." 45 C.F.R. § 46.210.

Federal Law Establishes Additional Parameters for Fetal Tissue Collection

Federal law not only prohibits the sale of fetal tissue, it also regulates tissue collection in any fetal tissue transplantation research supported by federal funds.[33] Specifically, the law establishes guidelines to separate the decision to abort from the decision to donate, outlines informed consent procedures for women donating fetal tissue, contains safeguards against conflicts of interest, and prohibits changes in medical practice. In addition, many states have passed similar laws regulating fetal tissue collection.

- **Preventing undue influence on the decision to terminate a pregnancy**

  In particular, federal law states that fetal tissue from an induced abortion may be used for transplantation only if the attending physician completes a signed, written statement certifying that "the consent of the woman for the abortion was obtained prior to requesting or obtaining consent" for a fetal tissue donation. 42 U.S.C.A. § 289g-1(b)(2)(A)(i). Further, the law requires a signed, written statement from the woman confirming that she donated the fetal tissue without restriction and that she was not informed of the identity of any transplant recipients. 42 U.S.C.A. § 289g-1(b)(1)(A)-(C). Additionally, no inducements, financial or otherwise, may be offered to terminate a pregnancy for purposes of research. 45 C.F.R. § 46.206(b).[34]

- **Requiring informed consent**

  A woman must be informed of "any known medical risks to the woman or risks to her privacy that might be associated" with the tissue donation. 42 U.S.C.A. § 289g-1(b)(2)(C)(ii).[35]

- **Mandating disclosure of physician interest**

  Full disclosure is also required with regard to the "physician's interest, if any, in the research to be conducted with the tissue." 42 U.S.C.A. § 289g-1(b)(2)(C)(i).

- **Prohibiting changes in medical practice**

  Finally, federal law does not permit physicians to alter an abortion procedure to facilitate fetal tissue donation. The law stipulates that the attending physician must certify in writing that "no alteration of the timing, method, or procedures used to terminate the pregnancy was made solely for the purposes of obtaining the tissue." 42

U.S.C.A. § 289g-1(b)(2)(A)(ii). In addition, a researcher receiving fetal tissue must sign a statement indicating that he or she had no part in any decisions regarding the "timing, method, or procedures" used for abortion. 42 U.S.C.A. § 289g-1(c)(4); 45 C.F.R. § 46.206(a)(3)-(4).

Conclusion

Existing federal law regulating fetal tissue research should be vigorously enforced, and, if individuals or organizations are engaged in illegal activity, they should be prosecuted to the full extent of the law. However, fetal tissue research is too crucial to the lives and health of American families to fall victim to anti-choice politics. It is time to recognize the devastating consequences and lost potential from anti-choice obstruction of advances in fetal tissue research.

2/22/2000

Notes:

[1] Rachel B. Gold and Dorothy Lehrman, "Fetal Research Under Fire: The Influence of Abortion Politics," *Family Planning Perspectives*, vol. 21, no.1 (Jan./Feb. 1989): 7.

[2] Fetal tissue research involves the use of cells from dead fetuses that have been aborted. It does not involve taking tissue from live fetuses either in or ex utero. John A. Robertson, "Rights, Symbolism, and Public Policy in Fetal Tissue Transplants," *in Life Choices: A Hastings Center Introduction to Bioethics*, Joseph H. Howell and William F. Sale, eds. (Washington, D.C.: Georgetown University Press, 1995), 444. Fetal tissue from induced abortions is preferable to tissue from spontaneous abortions, or miscarriages, because it is easier to collect — most spontaneous abortions occur absent medical supervision — and because fetuses obtained from spontaneous abortions often contain genetic abnormalities. Daniel J. Garry et al., "Sounding Board: Are There Really Alternatives to the Use of Fetal Tissue from Elective Abortions in Transplantation Research?," *New England Journal of Medicine*, vol. 327, no. 22 (Nov. 1992): 1592, 1595; Gold and Lehrman, "Fetal Research Under Fire," 6-7. Fetal tissue research may involve (1) growing fetal cells in laboratory dishes to test the effects of drugs, viruses or other infections and/or (2) transplanting fetal cells into patients to combat disease. Conference Committee on Fetal Research and Applications, Division of Health Promotion and Disease Prevention, Institute of Medicine (IOM), *Fetal Research and Applications: A Conference Summary* (Washington, D.C.: National Academy Press, 1994), 6.

[3] Don Colburn, "The Fetus: Medicine, Law, Morality," *Washington Post*, Oct. 18, 1988, Z16; Gold and Lehrman, "Fetal Research Under Fire," 6-7.

[4] Memorandum for the Secretary of Health and Human Services, Federal Funding of Fetal Tissue Transplantation Research, 58 Fed. Reg. 7457 (Jan. 22, 1993).

[5] Gold and Lehrman, "Fetal Research Under Fire," 7; The National Parkinson Foundation, Inc., "What the Patient Should Know," <http://www.parkinson.org/pdedu.htm> (2/18/00); Carl T. Hall, "Solving the Parkinson's Puzzle: Scientists Report Promising Results in Research to Help Cure Disease," *San Francisco Chronicle*, Jan. 31, 2000, A6.

[6] Anne H. Chisholm, "Fetal Tissue Transplantation for the Treatment of Parkinson's Disease: A Review of the Literature," *Journal of Neuroscience Nursing*, vol. 28, no.5 (Oct. 1996): 329. In 1999, preliminary findings from the first federally funded trial studying fetal cell transplants and their effectiveness in treating Parkinson's disease indicate that, once implanted into the brains of Parkinson's patients, fetal cells "do grow and divide and provide some patients with relief," particularly patients under 60 years of age. "Fetal Cell Study Shows Promise for Parkinson's," *Los Angeles Times*, Apr. 22, 1999, A29.

[7] Garry et al., "Sounding Board," 1592; *see also* James E. Goddard, "The NIH Revitalization Act of 1993 Washed Away Many Legal Problems with Fetal Tissue Transplantation Research But a Stain Remains," *Southern Methodist University Law Review*, vol. 49 (Jan./Feb.1996): 375, 378; Nikki Melina Constantine Bell, "Regulating Transfer and Use of Fetal Tissue in Transplantation Procedures: The Ethical Dimensions," *American Journal of Law & Medicine*, vol. 20 (1994): 277, 278; Gold and Lehrman, "Fetal Research Under Fire," 7.

[8] Warren E. Leary, "Fetal Tissue Injected Into Injured Spinal Cord," *New York Times*, July 12, 1997; Sally Squires, "Spinal Cord Repair Research Yields Results," *Washington Post*, Sept. 22, 1992, Z06; Gold and Lehrman, "Fetal Research Under Fire," 7.

[9] Joan I. Samuelson, "Tissue Transplant Field Gaining Rapid Sophistication, Experts Say," *The Action Reporter* (Parkinson's Action Network), vol. 8, no. 1 (Apr. 1997): 2; IOM, *Fetal Research and Applications*, 7.

[10] Jennifer Rothacker, "Marrow From Fetuses Effective in Transplants," *Austin American-Statesman*, May 4, 1997, A7.

[11] Brenda Warner Rotzoll, "Abortion Foes Blast Use of Fetal Tissue," *Chicago Sun-Times*, Feb. 2, 1997, 10; "Fetal Retinal Cells Transplanted in Search for Eye Disease Cure," *Washington Post*, Feb. 1, 1997; Dick Kaukas, "Doctor Tries to Reverse Eye Ailment: Fetal Tissue Tested to Treat Blinding Disease," *Louisville Courier-Journal*, May 13, 1999, 1B; Richard A. Knox, "Fetal Tissue Reported to Aid Sight," *Boston Globe*, Nov. 18, 1996, C1.

[12] In 1985, American scientists first transplanted fetal cells into humans. Thereafter, a group of NIH scientists sought federal funds for Parkinson's disease research involving fetal tissue transplantation. Memorandum for the Secretary of Health and Human Services, Federal Funding of Fetal Tissue Transplantation Research, 58 Fed. Reg. 7457 (Jan. 22, 1993); Chrysso Barbara Sarkos, "The Fetal Tissue Transplant Debate in the United States: Where is King Solomon When You Need Him?," *Journal of Law and Politics*, vol. 7 (Winter 1991): 379, 401-03; Gold and Lehrman, "Fetal Research Under Fire," 9-10.

[13] Memorandum for the Secretary of Health and Human Services, Federal Funding of Fetal Tissue Transplantation Research, 58 Fed. Reg. 7457 (Jan. 22, 1993); IOM, *Fetal Research and Applications*, 9; Garry et al., "Sounding Board," 1592.

[14] Gold and Lehrman, "Fetal Research Under Fire," 10-11; Bell, "Regulating Transfer and Use of Fetal Tissue in Transplantation Procedures," 278-79.

[15] Memorandum for the Secretary of Health and Human Services, Federal Funding of Fetal Tissue Transplantation Research, 58 Fed. Reg. 7457 (Jan. 22, 1993); IOM, *Fetal Research and Applications*, 9; Garry et al., "Sounding Board," 1592; Sarkos, "The Fetal Tissue Transplant Debate," 413; Richard Lacayo, "Pro-Choice? Get Lost: Antiabortion Views are a Must at Health and Human Services," *Time Magazine*, Dec. 4, 1989, 43.

[16] John C. Fletcher, "The Suppression of Biomedical Research in the U.S.," *in The Politics of Abortion: The Impact on Scientific Research*, Bass and Howes, Inc., eds. (Washington, D.C.: NARAL Foundation, 1991), 9; *see also* IOM, *Fetal Research and Applications,* 1; Sarkos, "The Fetal Tissue Transplant Debate," 403-04; Joanna H. Kinney, "Restricting Donative Choice: Fetal Tissue Transplantation and Respect for Human Life," *Journal of Law and Health*, vol. 10 (1995-1996): 268-69.

[17] Research Freedom Act of 1990, H.R. 5456, 101st Cong. (Aug. 3, 1990).

[18] The Research Freedom Act went to President Bush as part of the National Institutes of Health Revitalization Amendments of 1992, H.R. 2507, 102nd Cong. (June 3, 1991). President Bush vetoed the bill, in part, because it permitted the use of fetal tissue from induced abortions, which, according to the White House, had the "potential for promoting and legitimizing abortion." President's Message to the House of Representatives Returning Without Approval the National Institutes of Health Revitalization Amendments of 1992, Weekly Comp. Pres. Doc., vol. 28 (June 23, 1992): 1132, 1133.

[19] IOM, *Fetal Research and Applications*, 51, 60-61.

[20] Memorandum for the Secretary of Health and Human Services, Federal Funding of Fetal Tissue Transplantation Research, 58 Fed. Reg. 7457 (Jan. 22, 1993); Office of the Secretary,

Department of Health and Human Services, "Notices: Actions Regarding Family Planning Projects, Transplantation of Human Fetal Tissue, and Importation of the Drug Mifepristine [sic]," 58 Fed. Reg. 7468 (Feb. 5, 1993); IOM, *Fetal Research and Applications*, 9.

[21] National Institutes of Health Revitalization Act of 1993, Pub. L. No. 103-43, §§ 111-12 (codified at 42 U.S.C.A. §§ 289g-1, 289g-2).

[22] The Parkinson's research bill, as originally introduced, died in Senate committee. Morris K. Udall Parkinson's Research, Assistance, and Education Act of 1995, S. 684, 104th Cong. (Apr. 6, 1995). However, the substantive provisions of the bill were incorporated into a bill related to the National Institutes of Health that passed the Senate by Unanimous Consent and then died in House Committee. National Institutes of Health Revitalization Act of 1996, S. 1897, 104th Cong. (Sept. 26, 1996); *see also* Letter from Honorable Christopher H. Smith, House of Representatives, to members of the House of Representatives (Apr. 3, 1997) (on file with NARAL).

[23] Parkinson's Research, Assistance, and Education Act of 1996, H.R. 3514, 104th Cong. (May 22, 1996).

[24] On November 13, 1997, the appropriations bill was enacted, including the funding for Parkinson's research. Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-78, 111 Stat. 1467. From FY98 to FY99, the total amount of funds appropriated for research on Parkinson's disease equaled $242.5 million. Letter from Lee Pushkin, Chief, Division of Budget Policy and Resource Analysis, Office of Financial Management, National Institutes of Health (Feb. 18, 2000) (on file with NARAL).

[25] 143 Cong. Rec. S8736 (daily ed. Sept. 3-4, 1997); *see also* National Abortion and Reproductive Rights Action League, Government Relations Department, *1997 Congressional Record on Choice* (Washington, D.C.: NARAL, 1997), 17.

[26] General Accounting Office (GAO), "NIH-Funded Research: Therapeutic Human Fetal Tissue Transplantation Projects Meet Federal Requirements," Report to the Chairman and Ranking Minority Members, Committee on Labor and Human Resources, U.S. Senate, and Committee on Commerce, House of Representatives (Mar. 10, 1997) (GAO/HEHS-97-61).

[27] 145 Cong. Rec. H11723-25 (daily ed. Nov. 9, 1999) (statement of Representative Lowey); Telephone Interview with Belinda Seto, Director of Office of Reports and Analysis, Office of the Director, Office of Extramural Research, National Institutes of Health (Feb. 17, 2000) (on file with NARAL).

[28] The letter circulated by Life Dynamics was written by J.C. Willke, M.D., the President of Life Issues Institute, Inc., an organization dedicated to "serving the educational needs of the pro-life movement." Letter from John C. Willke, President, Life Issues Institute, Inc., to Honorable Nita M. Lowey, United States House of Representatives, June 25, 1999 (on file with NARAL).

[29] 145 Cong. Rec. S12966-12970, 12985-89 (daily ed. Oct. 21, 1999) (fetal tissue transplantation disclosure amendment and statement of Senator Boxer).

[30] H. Res. 350, 106th Cong. (Nov. 9, 1999); 145 Cong. Rec. H11723-11728 (daily ed. Nov. 9, 1999) (enacted). During debate on the House floor, Representative Lowey (D-NY) explained her objection to the resolution stating, "[a]llegations of wrongdoing, if substantiated, should be investigated, not, my colleagues, brought to the floor of the House to inflame. This resolution is not needed in order for oversight hearings to be held." 145 Cong. Rec. H11725 (daily ed. Nov. 9, 1999).

[31] Letter from Brian Darling, Office of Senator Bob Smith, to Senate Judiciary Committee (Feb. 9, 2000) (on file with NARAL).

[32] Some states specifically prohibit selling, purchasing, or offering to sell or purchase human embryos, fetuses, or portions thereof. *See, e.g.*, Ark. Code Ann. § 20-17-802(c); Fla. Stat. Ann. § 873.05; La. Rev. Stat. Ann. § 9:122; Mo. Ann. Stat. § 188.036(5); Nev. Rev. Stat. § 451.015; Ohio Rev. Code Ann. § 2919.14; Okla. Stat. Ann. tit. 63, § 1-735; 18 Pa. Cons. Stat. Ann. § 3216(b)(3); Tenn. Code Ann. § 39-15-208(b); Tex. Penal Code Ann. § 48.02; Utah Code § 76-7-311(prohibiting sale or purchase of "unborn children"). Additionally, pursuant to the Uniform Anatomical Gift Act (UAGA), certain states have made it a crime to knowingly purchase or sell human body parts — including tissue — for transplantation or therapy. Ariz. Rev. Stat. Ann. § 36-849; Ark. Code Ann. § 20-17-610; Cal. Health & Safety Code § 7155; Conn. Gen. Stat. § 19a-280a; Haw. Rev. Stat. Ann. § 327-10; Idaho Code § 39-3411; Iowa Code Ann. § 142C.10; Minn. Stat. Ann. § 525.9219; Mont. Code Ann. § 72-17-302; Nev. Rev. Stat. § 451.590; N.M. Stat. Ann. § 24-6A-10; N.D. Cent. Code § 23-06.2-10; Ohio Rev. Code Ann. § 2108.12; R.I. Gen. Laws § 23-18.6-10; Vt. Stat. Ann. tit. 18, § 5246; *see also* N.Y. Pub. Health Law § 4307 (prohibiting sale of "any human organ" for use in transplantation); S.D. Codified Laws § 34-26-44 (same); W.V. Code § 16-19-7a (same); Wis. Stat. Ann. § 146.345 (same). Finally, some states that have adopted the UAGA prohibit the purchase or sale of a human body part for any reason. 755 Ill. Comp. Stat. Ann. § 50/8.1; N.H. Stat. Ann. § 291-A:11; Utah Code § 26-28-10; Va. Code § 32.1-289.1; Wyo. Stat. § 35-5-117.

[33] According to federal law, all federally funded fetal tissue transplantation projects must be conducted in accordance with applicable state and local laws. 42 U.S.C.A. § 289g-1(e); 45 C.F.R. § 46.210. Some states, however, prohibit experimentation on or transplantation of fetal tissue from an induced abortion. *See, e.g.*, Ariz. Rev. Stat. Ann. § 36-2302; Ind. Code Ann. § 16-34-2-6; La. Stat. Ann. § 40:1299.35.13 (*found unconstitutional by Margaret S. v. Edwards*, 794 F.2d 994 (5th Cir. 1986)); N.D. Cent. Code § 14-02.2-02; Ohio Rev. Code Ann. § 2919.14; Okla. Stat. Ann. § 1-735; S.D. Codified Laws § 34-23A-17.

[34] Certain state statutes contain similar provisions preventing improper influence on the decision to terminate a pregnancy. *See, e.g.*, Mass. Gen. Laws ch. 112, § 12J(a)(III); Mich. Comp. Laws § 333.2689; Mo. Ann. Stat. § 188.036; 18 Pa. Cons. Stat. Ann. § 3216(b).

[35] States may also require a woman's consent before tissue donation. *See, e.g.*, Ark. Code § 20-17-802(b)(2); 720 Ill. Comp. Stat. Ann. 510/12.1 (requiring written consent for experimentation on tissue that does "not result from an induced abortion"); Mass. Gen. Laws ch. 112, § 12J(a)(II); Mich. Comp. Laws § 333.2688; 18 Pa. Cons. Stat. Ann. § 3216(b)(1).

NARAL
Reproductive Freedom & Choice

LIFE DYNAMICS, INC. AND MARK CRUTCHER

Life Dynamics Incorporated (LDI), based in Denton, Texas, is an anti-choice group incorporated in 1992 by president Mark Crutcher.[1] In his 1992 book, *Firestorm: A Guerrilla Strategy for a Pro-Life America,* Crutcher envisions "an America where abortion may indeed be perfectly legal, but no one can get one."[2] Crutcher, who has said the anti-choice movement is "a war he intends to win," created LDI to serve as *Firestorm*'s "anti-abortion guerrilla campaign center," a base from which to further Crutcher's stated goal: "to make abortion unavailable **by any means necessary**" (emphasis added).[3] Crutcher and LDI use threats and intimidation to carry out their anti-choice agenda:

➢ LDI's hostile direct mail campaign is "designed to reinforce the stigma attached with abortion."[4]

- Seeking to deter the next generation of physicians from providing abortions, in 1993, LDI distributed a threatening "joke" booklet to more than 33,000 medical students. The booklet recommended that physicians who perform abortions should be shot, attacked by dogs, and buried in concrete. One medical student, who received the booklet the same day that Florida abortion provider Dr. David Gunn was murdered, stated, "'It was very upsetting. . . . [T]he jokes all describe ob-gyns who perform abortions as people who should be killed.'"[5]
- In 1999, LDI sent another such booklet, entitled "Quack the Ripper," to dozens of physicians and medical students in Canada and the U.S. The booklet contained cartoons mocking abortion providers and "play[ing] on their safety concerns." The cover of the booklet stated, "[I]f you're a doctor, resident, or med student, someone's out to get you."[6] Medical students and physicians who received the booklet found it "violent," "hostile," and "threatening"[7] – as one student said, "I felt like I'd been violated. . . . It was a direct attack on me."[8]

Such actions can only exacerbate the current shortage of abortion providers.[9]

➢ LDI's Abortion Malpractice ("AbMal") campaign seeks to provide lawyers with tools and strategies to sue abortion providers.[10] In Arizona, AbMal attorney John Jakubczyk has filed six abortion malpractice lawsuits against abortion provider Dr. Brian Finkel, none of which has been successful. Moreover, Dr. Finkel has never been sued by anyone but Jakubczyk. Nevertheless, these lawsuits have likely harmed Dr. Finkel's relationships

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with hospitals, health plans, and licensing bodies in other states, as well as his ability to obtain affordable insurance.[11] Clearly, such lawsuits are not, as AbMal lawyers advertise, a way to defend women against injury from abortion providers. Rather, as Mark Crutcher told *Life Advocate* magazine in 1994, this tactic is "an effective way to cripple the abortion business."[12]

➢ "Spies for Life," LDI's covert intelligence-gathering project, sends anti-choice spies to infiltrate abortion clinics in order to develop a database of information on abortion providers throughout the U.S.[13] LDI solicits information from the public "for use in their AbMal files," including health and fire department inspection reports and home addresses, telephone numbers, and photographs of abortion providers and clinic directors.[14]

Especially in light of continued violence against reproductive health clinics and the nationwide shortage of abortion providers, LDI's subversive tactics are cause for alarm.

Notes

[1] National Abortion Federation (NAF) and Planned Parenthood Federation of America (PPFA), "Profile: Mark Crutcher and Life Dynamics, Inc.," Mar. 1996 (factsheet), 1.
[2] Mark Crutcher, *Firestorm: A Guerrilla Strategy for A Pro-Life America* (Denton, Texas: Life Dynamics, Inc., July 1992), 35.
[3] NAF and PPFA, "Profile," 1 *citing* Crutcher, *Firestorm,* 82.
[4] Life Dynamics, Inc. (LDI), "Direct Mail Program" <http://www.ldi.org/directmail.htm> (2/4/00).
[5] Sandra G. Boodman, "The Dearth of Abortion Doctors: Stigma, Low Pay and Lack of Personal Commitment Erode Ranks," *Washington Post*, Apr. 20, 1993, Health sec., 7; Life Dynamics, Inc., *Bottom Feeder* (Lewisville, TX: Life Dynamics, Inc., 1993) (booklet on file with NARAL).
[6] Antonella Artuso, "Hate Mail Unnerving Abort Docs: Threatening Pamphlets," *Toronto Sun*, Mar. 3, 1999, 8; "MDs Receive Antiabortion Mail," *Toronto Globe and Mail*, Mar. 3, 1999, A7; Sonia Godambe, "Anti-Abortion Booklet Offends Michigan State U. Med Students," *Michigan State University State News*, Mar. 2, 1999.
[7] Godambe, "Anti-Abortion Booklet."
[8] David France, "Why I'd Risk My Life to Do Abortions," *Glamour,* Mar. 2000, 195.
[9] In 1996, 86 percent of U.S. counties had no known abortion provider. Between 1992 and 1996, the number of abortion providers in the U.S. declined by 14 percent. Stanley K. Henshaw, "Abortion Incidence and Services in the United States," *Family Planning Perspectives*, vol. 30, no. 6 (Nov./Dec. 1998), 263.
[10] NAF and PPFA, "Profile," 2.
[11] *Finkel v. Jakubczyk,* Nos. 1 CA-CV 99-0129, 1 CA-CV 99-0284 (Ariz. Ct. App. Dec. 21, 1999); Appellant's Petition for Review at 3, Finkel v. Jakubczyk (Ariz. Jan. 20, 2000).
[12] Paul deParrie, "The New Bad Kid On the Block," *Life Advocate,* Dec. 1994, 11.
[13] NAF and PPFA, "Profile," 2.
[14] DeParrie, "The New Bad Kid," 13.

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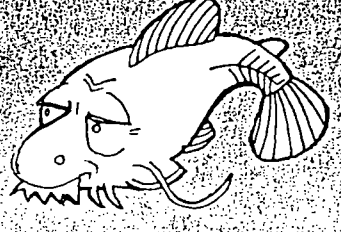

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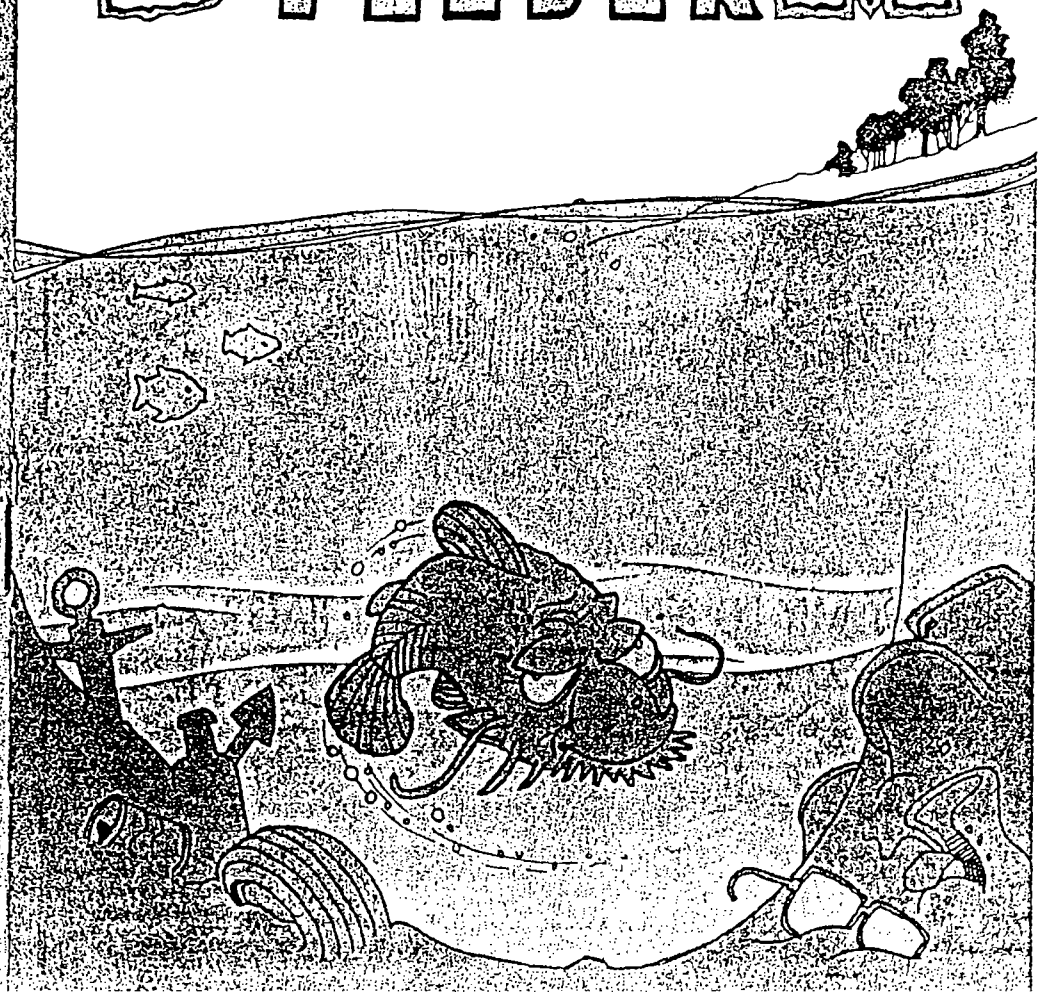


Q: WHY DO ABORTIONISTS ALWAYS HAVE STUPID LOOKS ON THEIR FACES?

A: THEY'RE STUPID.

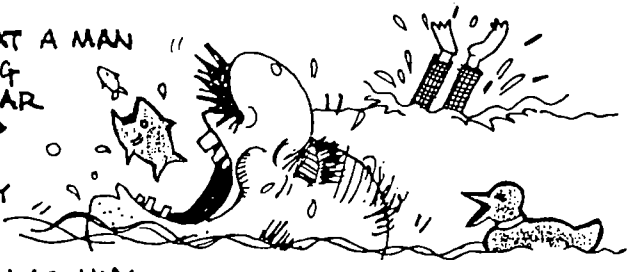
Q: WHY DO ABORTIONISTS WEAR HATS?
A: SO THEY KNOW WHICH END TO WIPE.

Q: WHY DID THE ABORTIONIST GIVE UP SNORTING COKE?

A: TOO HARD TO GET THE BOTTLE UP HIS NOSE.

A YOUNG MAN WAS WALKING BESIDE A DESERTED LAKE WHEN HE HEARD A CRY FOR HELP.

NOTICING THAT A MAN WAS FLAILING AROUND NEAR A CAPSIZED BOAT HE IMMEDIATELY RUSHED INTO THE WATER TO SAVE HIM.



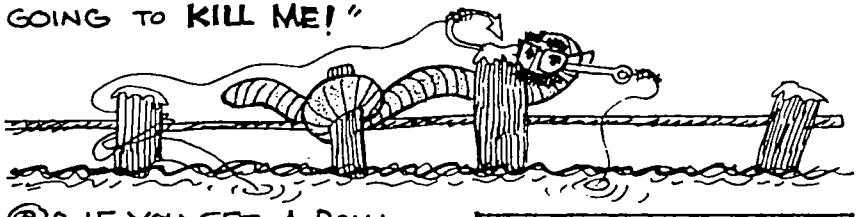
AFTER PULLING HIM TO SHORE THE YOUNG MAN RECOGNIZED THE PERSON HE RESCUED AS A LOCAL ABORTIONIST.

BEING NATURALLY APPRECIATIVE, THE ABORTIONIST SHOWED HIS GRATITUDE BY OFFERING TO BUY HIS RESCUER ANYTHING HE WANTED.

HEARING THAT, THE YOUNG MAN SAID THAT WHAT HE WOULD MOST LIKE IS A REALLY NICE FUNERAL.

ASTONISHED, THE ABORTIONIST ASKED, "WHY ON EARTH WOULD A PERFECTLY HEALTHY YOUNG MAN LIKE YOURSELF WASTE YOUR WISH ON A FUNERAL?"

"IT'S NOT A WASTE," HE SAID, "WHEN MY FATHER FINDS OUT I KEPT AN ABORTIONIST FROM DROWNING, HE'S GOING TO **KILL ME!**"



Q: IF YOU SEE A ROW OF FISHERMEN SITTING ON A PIER, HOW DO YOU TELL IF ONE OF THEM IS AN ABORTIONIST?

A: SIMPLE. JUST LOOK FOR A FISHING POLE WITH A WORM ON BOTH ENDS.

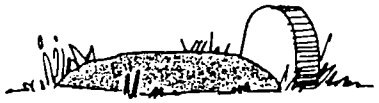
WHAT DO YOU CALL 2000 ABORTIONISTS CHAINED TO THE BOTTOM OF THE SEA?

NOT ENOUGH ABORTIONISTS.

ONE DAY, AN OLD MAN AND WOMAN WERE CHECKING OUT TOMBSTONE INSCRIPTIONS IN THE LOCAL CEMETARY WHEN THEY CAME ACROSS ONE THAT READ:

"Here lies an abortionist and an honorable man."

"GET A LOAD OF THAT, MA," SAID THE OLD MAN, "LAND'S SO SCARCE THESE DAYS THEY'RE HAVING TO BURY FOLKS TWO TO THE GRAVE!"

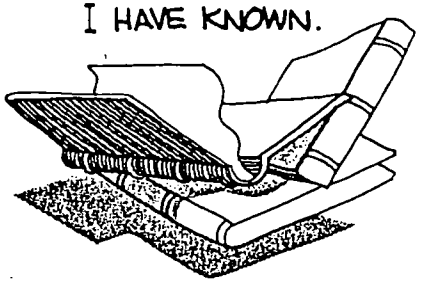


"While shopping in the cannibal supermarket a woman noticed that the price of hearts was $20.00 a pound. Complaining loudly to the butcher, she said, 'You're selling livers for $1.00 and brains for $2.00, where do you get off charging so much for hearts?'

'Ma'am' he explained, 'we get our hearts from abortionists. Do you have any idea how many abortionists we have to kill to get a pound of hearts?'"

THE FOUR SHORTEST BOOKS IN THE WORLD:

- FAMOUS JEWISH ASTRONAUTS
- TEN THOUSAND YEARS OF GERMAN HUMOR
- IRISH GOURMET COOKING
- ETHICAL ABORTIONISTS I HAVE KNOWN.



Q: WHAT DO YOU CALL A BUSLOAD OF ABORTIONISTS GOING OVER A CLIFF WITH ONE OF ITS SEATS UNOCCUPIED?

A: A CRYING SHAME.

Q: WHAT DO YOU GET WHEN YOU CROSS A PIG WITH AN ABORTIONIST?

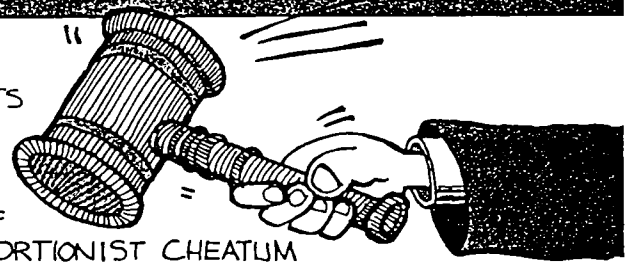
A: NOTHING. THERE ARE SOME THINGS EVEN A PIG WON'T EAT.

WHAT DOES AN ABORTIONIST HAVE TO DO TO CURE HIS BAD BREATH?

QUIT BITING HIS FINGERNAILS OR QUIT SCRATCHING HIS BUTT.

AN ABORTIONIST WAS SITTING ON A PARK BENCH WHEN HE NOTICED A NEARBY DOG WHO WAS BUSY LICKING HIS GENITALS. THE ABORTIONIST LEANED OVER TO THE GUY NEXT TO HIM AND SAID "GOD I WISH I COULD DO THAT." THE GUY REPLIED "WELL, I THINK YOU BETTER PET HIM A LITTLE BIT FIRST, HE LOOKS KIND OF MEAN."

AN ABORTION MILL OWNER PONDERED OVER A FEDERAL QUESTIONNAIRE THAT ASKED "HOW MANY EMPLOYEES DO YOU HAVE, BROKEN DOWN BY SEX?" HE ANSWERED "NONE THAT I KNOW OF. OUR MAIN PROBLEM IS ALCOHOL."



TWO ABORTIONISTS WERE SUING EACH OTHER. AT THE BEGINNING OF THE TRIAL, ABORTIONIST CHEATUM LEAPT TO HIS FEET AND SHOUTED, "STEELE! YOU'RE A LYING, STUPID, INCOMPETENT QUACK!"

FLUSHED WITH RAGE ABORTIONIST STEELE SHOT BACK, "AND YOU, CHEATUM, ARE A MINDLESS, NO TALENT, ARROGANT BAG OF WIND!"

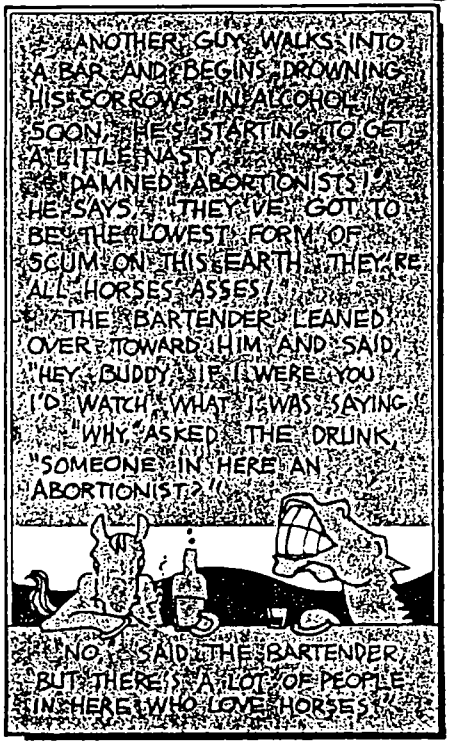
"WHY YOU S.O.B.!"

"THIMBLEWIT!"

BANGING HIS GAVEL, THE JUDGE SAID, "NOW THAT YOU TWO HAVE BEEN INTRODUCED, CAN WE GET ON WITH THE TRIAL?"

HOW DO YOU TELL IF AN ABORTIONIST HAS CLASS?
ALL THE WORDS ON HIS TATOO ARE SPELLED CORRECTLY.

Q: HOW MANY ABORTIONISTS DOES IT TAKE TO TAKE A BATH?
A: SIX. ONE TO LIE IN THE TUB, AND FIVE TO SPIT ON HIM.

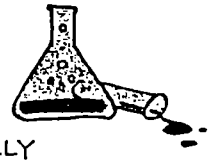


An abortionist walks into a bar carrying a duck under his arm. "Get that filthy pig out of my bar!" screams the owner.
"Well first off," said the abortionist, "He's not filthy and secondly, he's not a pig."
"I wasn't talking to you," replied the owner, "I was talking to the duck!"

DID YOU HEAR ABOUT THE ABORTIONIST WHO DIED EATING MOUNTAIN OYSTERS?

HE WAS DRAGGED TO DEATH BY A BULL.

WHAT DOES AN ABORTIONIST USE FOR A CONTRACEPTIVE?
HIS PERSONALITY.



Q: Why are more and more Medical Laboratories now using abortionists instead of rats for experimentation?
A: 1. THE LAB TECHNICIANS DON'T GET EMOTIONALLY ATTACHED TO ABORTIONISTS.
2. THERE ARE SOME THINGS THEY CAN'T GET THE RATS TO DO.

And then there was the abortionist who drank so much Fresca that he snowed in his pants.

HOW MANY ABORTIONISTS DOES IT TAKE TO UNSTOP A TOILET?

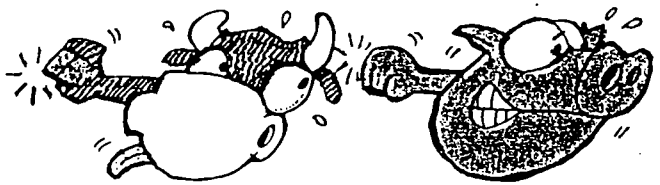
THREE. TWO TO HOLD HIS LEGS AND ONE TO DIVE AND SUCK.

AN ABORTIONIST, A JEW, AND A HINDU WERE DRIVING THROUGH THE COUNTRY WHEN THEIR CAR BROKE DOWN. HIKING TO A NEARBY FARM THEY DISCOVERED THAT THE LOCAL GARAGE WOULDN'T BE ABLE TO REPAIR IT UNTIL THE NEXT DAY.

THE FARMER SAID THEY WERE WELCOME TO STAY AT HIS HOUSE, BUT THAT HE ONLY HAD TWO BEDS AND ONE OF THEM WOULD HAVE TO SLEEP IN THE BARN.

HEARING THAT, THE JEW VOLUNTEERED TO GO SLEEP IN THE BARN. HOWEVER, A FEW MOMENTS LATER HE KNOCKED ON THE DOOR AND SAID THAT THERE WAS A PIG IN THE BARN AND HIS RELIGION PROHIBITED HIM FROM SLEEPING WITH PIGS.

THE HINDU SAID HE UNDERSTOOD, AND AGREED TO TAKE HIS PLACE. HOWEVER, A FEW MINUTES LATER HE TOO KNOCKED ON THE DOOR. HIS PROBLEM WAS THAT THERE WAS A COW IN THE BARN AND HIS RELIGION PROHIBITED HIM FROM SLEEPING WITH COWS.

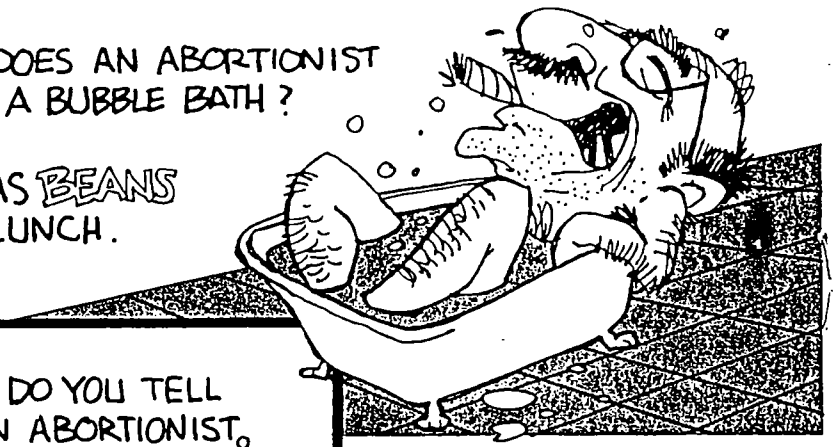


GRUMBLING, THE ABORTIONIST GOT UP AND STORMED OUT TO SLEEP IN THE BARN.

A FEW MOMENTS LATER, THE PIG AND THE COW KNOCKED ON THE DOOR...

HOW DOES AN ABORTIONIST TAKE A BUBBLE BATH?

HE HAS BEANS FOR LUNCH.



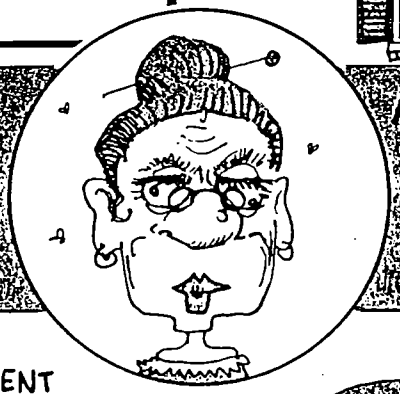
HOW DO YOU TELL IF AN ABORTIONIST IS LYING?

HIS MOUTH IS MOVING.

Q: HOW CAN AN ABORTIONIST BRIGHTEN UP A ROOM?

A: BY LEAVING IT.

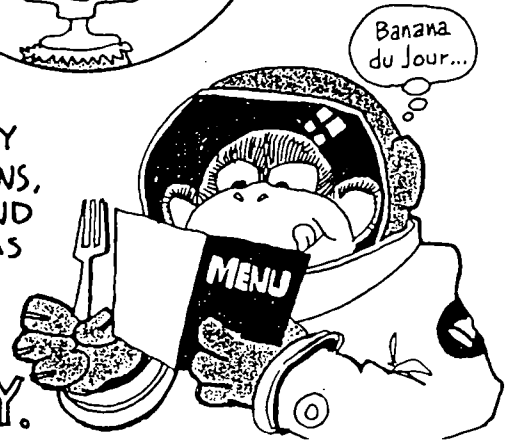
Q: WHAT IS THE MATING CALL OF THE FEMALE ABORTIONIST?



A "TAKE ME HOME. I'M DRUNK."

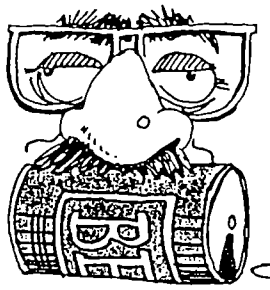
AN ABORTIONIST WENT ON A SPACE MISSION WITH A MONKEY. THE MONKEY HAD TO PUSH THE BUTTONS, ADJUST DIAL READINGS AND FILE REPORTS. WHAT WAS THE ABORTIONIST'S JOB?

FEED THE MONKEY.



WHY DO ABORTIONISTS HAVE SUCH LARGE NOSTRILS?

BECAUSE THEY HAVE FAT FINGERS.



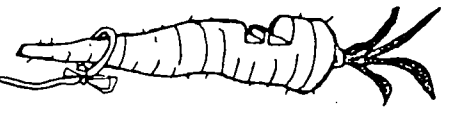
WHAT DO YOU CALL A BEER WITH A BOOGER IN IT?

AN ABORTIONIST'S MARTINI.

Then there was the abortionist who stepped in cow dung and thought he was melting.

Q: HOW MANY ABORTIONISTS DOES IT TAKE TO MAKE CHOCOLATE CHIP COOKIES?

A: TWO. ONE TO MIX THE BATTER, AND ONE TO SQUEEZE THE RABBIT.



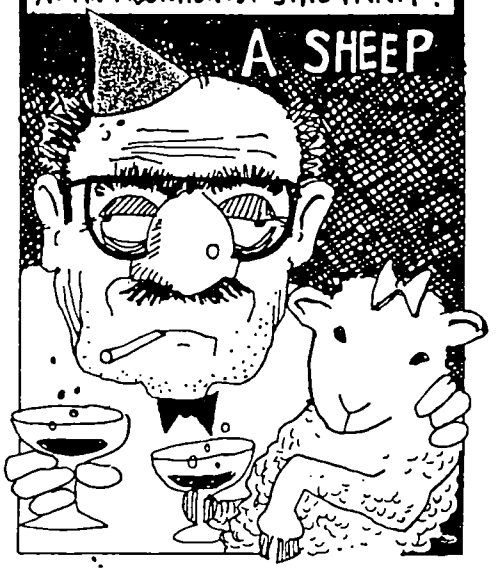
ASKING PEOPLE WHAT THEY THINK ABOUT ABORTIONISTS IS LIKE ASKING A FIRE HYDRANT WHAT IT THINKS ABOUT DOGS.

Q: WHAT DO YOU CALL AN ABORTIONIST WITH 1500 GIRLFRIENDS?

A: A SHEPHERD.

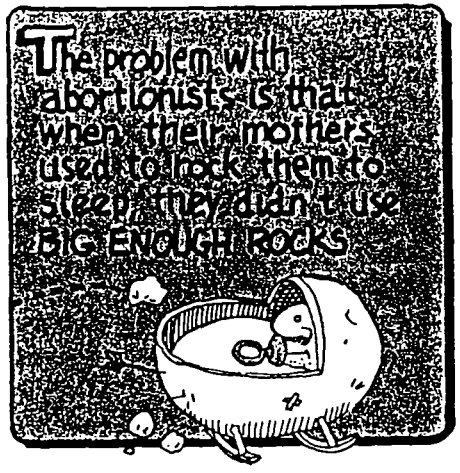
WHAT JUMPS OUT OF THE CAKE AT AN ABORTIONIST STAG PARTY?

A SHEEP



Q: HOW DOES AN ABORTIONIST TELL THE DIFFERENCE BETWEEN WEIRD SEX AND KINKY SEX?

A: WEIRD SEX IS WHEN THEY JUST USE A FEATHER. KINKY SEX IS WHEN THEY USE THE WHOLE CHICKEN.



Q: WHAT DOES AN ABORTIONIST SAY BEFORE PICKING HIS NOSE?

A: GRACE.

DID YOU HEAR ABOUT THE ABORTIONIST WHO PUT ODOR-EATERS IN HIS SHOES, WALKED THREE STEPS AND DISAPPEARED?

THE OFFICIAL MOTTO OF ABORTION COUNTRY:

Where the men are men, and the sheep are nervous.

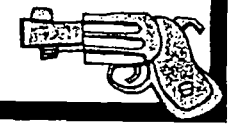
Q: IF A TALL SKINNY ABORTIONIST AND A SHORT FAT ABORTIONIST JUMP OFF A TWENTY STORY BUILDING AT THE EXACT SAME MOMENT, WHICH ONE WILL HIT THE GROUND FIRST?

A: WHO CARES?

Why does California have the most abortionists and New Jersey have the most toxic waste dumps?
Because New Jersey had first choice.

Q: WHAT WOULD YOU DO IF YOU FOUND YOURSELF IN A ROOM WITH HITLER, MUSSOLINI AND AN ABORTIONIST, AND YOU HAD A GUN WITH ONLY TWO BULLETS?

A: SHOOT THE ABORTIONIST TWICE.



THEN THERE WAS THE PREACHER WHO WAS DELIVERING A SERMON AND MADE A MISTAKE, REFERRING TO THE DEVIL AS THE FATHER OF ALL ABORTIONISTS INSTEAD OF THE FATHER OF ALL LIARS. BUT THE ERROR WAS SO INSIGNIFICANT THAT HE DIDN'T BOTHER TO CORRECT HIMSELF.

Q: WHAT DO YOU CALL AN ABORTIONIST WITH AN IQ OF 50?

A: GIFTED.

WHILE TAKING PAYMENT FROM A CUSTOMER, THE ABORTIONIST NOTICED THAT ONE OF THE $100 BILLS SHE HAD GIVEN HIM HAD A SECOND $100 BILL STUCK TO IT. OF COURSE, IMMEDIATELY AN ETHICAL QUESTION AROSE IN THE ABORTIONIST'S MIND: "DO I TELL MY PARTNER?"

An elementary school teacher was asking her first graders what their parents did for a living. One little girl said that her daddy was a piano player in a whorehouse, and had a part-time job singing the national anthem at cock fights. The teacher kept the little girl after class and asked her if that was really true.

"No," she admitted, "my daddy's an abortionist. But I could never say something like that in front of all my friends."

I ONCE MET AN ABORTIONIST WHO SAID HE COULD NAME ALL THE STATE'S CAPITALS. WHEN I ASKED HIM WHAT THE CAPITAL OF MONTANA WAS, HE SAID, "M."

Q: WHAT HAPPENS TO AN ABORTIONIST WHEN YOU GIVE THEM AN ENEMA?

A: THEIR EYES TURN CLEAR.

DID YOU HEAR ABOUT THE BIG SCREW-UP AT THE POSTAL SERVICE? THEY ISSUED A STAMP HONORING ABORTIONISTS, BUT HAD TO DISCONTINUE IT WHEN THEY DISCOVERED THAT EVERYONE WAS SPITTING ON THE WRONG SIDE.

WHAT HAS AN IQ OF SEVEN?

EIGHT ABORTIONISTS.

DID YOU HEAR ABOUT THE ABORTIONIST WHO **REFUSED** TO **LISTEN** TO **HIS CONSCIENCE?**

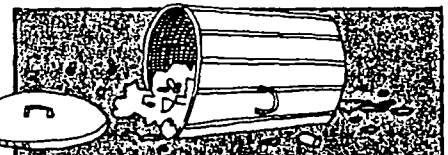
HE DIDN'T WANT TO TAKE ADVICE FROM A **TOTAL STRANGER.**

Q: IF SOMETHING WAS RUN OVER ON A HIGHWAY, HOW COULD YOU TELL IF IT WAS A SKUNK OR AN ABORTIONIST?

A: IF IT WAS A SKUNK, THERE'D BE SKID MARKS IN FRONT OF IT.

WHAT'S THE LAST THING THAT HAPPENS AT AN ABORTIONIST'S WEDDING?

THEY FLUSH THE PUNCH BOWL.

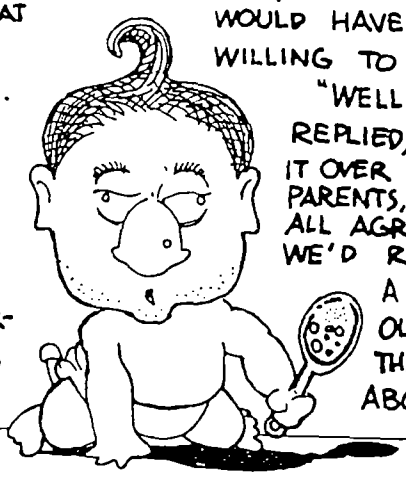


WHY DO THEY ALWAYS HAVE AN OPEN GARBAGE CAN AT AN ABORTIONIST'S WEDDING?

TO KEEP THE FLIES OFF THE ABORTIONIST.

AN ABORTIONIST HAPPENED TO ENCOUNTER A YOUNG WOMAN ONE DAY THAT HE HAD PREVIOUSLY HAD AN AFFAIR WITH. NOTICING THAT SHE WAS CARRYING A BABY THAT LOOKED A LITTLE LIKE HIM, HE ASKED WHETHER IT WAS INDEED HIS OR NOT. UPON HEARING HER SAY IT WAS, HE ASKED WHY SHE HAD NOT CONTACTED HIM, STATING THAT HE WOULD HAVE BEEN WILLING TO MARRY HER.

"WELL," SHE REPLIED, "I TALKED IT OVER WITH MY PARENTS, AND WE ALL AGREED THAT WE'D RATHER HAVE A BASTARD IN OUR FAMILY THAN AN ABORTIONIST."



Q: HOW DOES AN ABORTIONIST TAKE A SHOWER?

A: HE PEES INTO THE WIND.

TWO GAY ABORTIONISTS, ZEKE AND BRUCE, HAD THEIR CAR SIDE-SWIPED BY A HUGE SEMI. BADLY SHAKEN AND MAD AS HELL, ZEKE TOLD BRUCE TO GET OUT AND CONFRONT THE TRUCK DRIVER. "YOU JUST MARCH RIGHT UP THERE AND TELL HIM WE'RE GOING TO SUE, SUE, SUE!" HE SHRIEKED.

WHEN BRUCE DELIVERED THIS MESSAGE TO THE CAB OF THE TRUCK, THE BURLY DRIVER LEANED OUT AND BELLOWED, "SCREW YOU!"

"HEY, ZEKE," A NOW VERY EXCITED BRUCE SHOUTED, "HE WANTS TO SETTLE OUT OF COURT!"

AN ABORTIONIST INTRODUCED HIMSELF TO A NICE LOOKING WOMAN IN A BAR. AFTER A WHILE HE ASKED HER FOR A DATE.

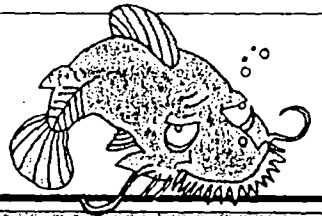
"I NEVER DATE ABORTIONISTS," SHE TOLD HIM. "HOW DO YOU KNOW I'M AN ABORTIONIST?" HE ASKED. "YOU HAVE B.O. AND YOU'RE WEARING YOUR BOOTS ON THE WRONG FEET."

HAVE YOU HEARD ABOUT THE FEMALE ABORTIONIST WHO FLUNKED HER DRIVER'S LICENSE TEST?

WHEN THE CAR STALLED, FROM FORCE OF HABIT SHE JUMPED INTO THE BACK SEAT.

Q: What's the difference between an abortionist and a cat fish?

A: One's an ugly, smelly, garbage eating bottom feeder, and the other one's a fish.



A SMALL-TOWN ABORTIONIST WHO SPENT ALL HIS MONEY ON HOOKERS, GAMBLING AND DRUGS, DIED ONE DAY WITHOUT EVEN LEAVING ENOUGH MONEY TO BURY HIM.

THE TOWNSPEOPLE DECIDED THAT THEY COULD BURY HIM IF EACH PERSON WOULD GIVE JUST TWENTY DOLLARS TOWARD THE FUNERAL.

WHEN APPROCHED TO DONATE, ONE CANTANKEROUS OLD MAN SHOVED $100 IN THE HAT.

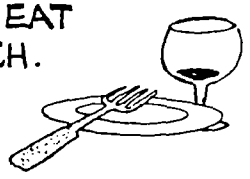
"HERE," HE SAID, "BURY FIVE OF THE BASTARDS."

Q: IF TARZAN AND JANE WERE ABORTIONISTS, WHAT WOULD CHEETAH BE?

A: THE SMARTEST OF THE THREE.

Q: WHAT'S THE DIFFERENCE BETWEEN SPINACH AND BOOGERS?

A: ABORTIONISTS DON'T EAT SPINACH.

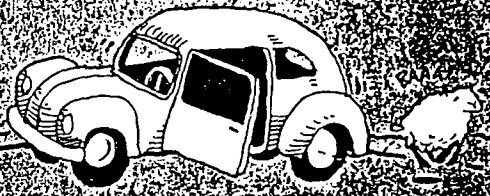


A MAN AT A BAR LEANS OVER TO THE DRUNK SITTING NEXT TO HIM AND ASKS WHETHER HE'S HEARD THE LATEST ABORTIONIST JOKE. "BEFORE YOU TELL IT," REPLIED THE DRUNK, "I WANT YOU TO KNOW THAT I'M AN ABORTIONIST."

"OH, OK," SAID THE MAN, "THEN I'LL TELL IT R-E-A-L S-L-O-W-L-Y SO YOU CAN KEEP UP."

Q: HOW DOES AN ABORTIONIST TURN ON THE LIGHT AFTER SEX?

A: BY OPENING THE CAR DOOR.



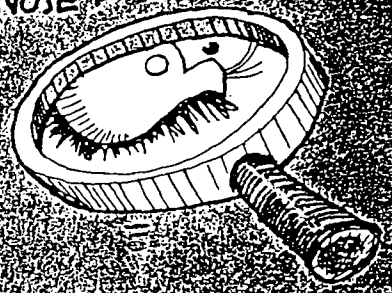
Q: WHAT HAPPENED WHEN THE ABORTIONIST SENT A PERSONAL PHOTO TO THE LONELY HEARTS CLUB?

A: A REPLY CAME BACK: "WE'RE NOT THAT LONELY."

What's black and brown and looks terrific on an abortionist?

A DOBERMAN.

WHAT DO YOU FIND INSIDE AN ABORTIONIST'S NOSE?



FINGERPRINTS

Q: WHAT DO YOU NEED WHEN YOU HAVE AN ABORTIONIST BURIED TO HIS NECK IN CONCRETE?

A: MORE CONCRETE.