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

Record Type: Record

To: Nicole R. Rabner@eop

cc:
Subject: pba materials

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

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

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

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

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

Allison & Sharon

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SENATE PBA TARGET LIST

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

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

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

FEDERAL COURTS OVERWHELMINGLY AGREE: BANS ON ABORTION PROCEDURES ARE UNCONSTITUTIONAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMPARISON OF PROPOSED SENATE ABORTION BANS

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

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

THE WHITE HOUSE
Office of Legislative Affairs, Senate Liaison

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Fax Cover Sheet

To: Nicole Rabner

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

Fax: 456-2818 Phone: ___

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

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

S 481 IS

105th CONGRESS

1st Session

S. 481

To prohibit certain abortions.

IN THE SENATE OF THE UNITED STATES

March 19, 1997

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

A BILL

To prohibit certain abortions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Post-Viability Abortion Restriction Act'.

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

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

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

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

violation of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

`CHAPTER 74--ABORTION PROHIBITION

`Sec.

`1531. Prohibition.

`1532. Penalties.

`1533. State regulations.

`1534. Rule of construction.

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

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

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

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

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

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

'(b) **Relief:**

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

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

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

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

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

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

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

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

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

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

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

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

`1534 Rule of Construction.

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

`(2) **State law**: In paragraph (1), the term `State law' includes all laws, decisions, rules or regulations of any State, or any other State action having the effect of law.'.
(b) **Clerical Amendment**: The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

`74. Prohibition of post-viability abortions

1531'.

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

URGENT

Thursday, October 14, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Robert J. Pellicci
E-Mail: Robert_J._Pellicci@omb.eop.gov
PHONE: (202)395-4871 FAX: (202)395-6148

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

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

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

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

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

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RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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

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

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

FROM: _____ **(Date)**

_____ **(Name)**

_____ **(Agency)**

_____ **(Telephone)**

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

_____ **Concur**

_____ **No Objection**

_____ **No Comment**

_____ **See proposed edits on pages** _____

_____ **Other:** _____

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

DRAFT – NOT FOR RELEASE

DRAFT

October 14, 1999
(Senate)

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

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

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

* * * * * * * * * * *

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release April 10, 1996

TO THE HOUSE OF REPRESENTATIVES:

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

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

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

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

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

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

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

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

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

WILLIAM J. CLINTON

THE WHITE HOUSE,
April 10, 1996.

# # #

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

S 1692 PCS

Calendar No. 300

106th CONGRESS

1st Session

S. 1692

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

IN THE SENATE OF THE UNITED STATES

October 5, 1999

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

October 6, 1999

Read the second time and placed on the calendar

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Partial-Birth Abortion Ban Act of 1999'.

SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

(a) IN GENERAL- Title 18, United States Code, is amended by inserting after chapter 73 the following:

`CHAPTER 74--PARTIAL-BIRTH ABORTIONS

`Sec.

`1531. Partial-birth abortions prohibited.

`Sec. 1531. Partial-birth abortions prohibited

`(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than two years, or both. This paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury. This paragraph shall become effective one day after enactment.

`(b)(1) As used in this section, the term `partial-birth abortion' means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

`(2) As used in this section, the term `physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: *Provided, however,* That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

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

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

`(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

`(2) Such relief shall include--

`(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

`(B) statutory damages equal to three times the cost of the partial-birth abortion.

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

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

`(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.'.

(b) CLERICAL AMENDMENT- The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

1531'.

Calendar No. 300

106th CONGRESS

1st Session

S. 1692

A BILL

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

October 6, 1999

Read the second time and placed on the calendar

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Bill Summary & Status for the 106th Congress

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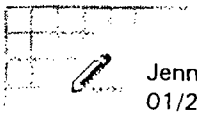
S.1692
SPONSOR: Sen Santorum, Rick (introduced 10/05/99)

STATUS: Detailed Legislative Status

Senate Actions

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

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



Jennifer L. Klein
01/24/99 01:18:50 PM

Record Type: Record

To: Matthew W. Pitcher/WHO/EOP

cc:
Subject:

Con letter --

Thank you for your thoughtful and heartfelt letter.

As you know, I have twice vetoed bills banning a particular procedure used in late-term abortions, because Congress would not include a limited exception in the bill for those few but tragic cases in which the procedure is necessary to save the life of a woman or to prevent serious harm to her health.

Then use rest of letter as you have it.

Pro letter --

Thank you for your letter regarding my veto of the so-called "partial birth abortion" ban. I appreciate your words of support.

Then use rest of letter as you have it, except change word "bill" to "bills" . Without having seen the letters, I would imagine that some of them are on HR 1833 and some are on HR 1122. The President vetoed these similar bills. You could either make sure the responses refer to the right bill number or you could simply make the letter apply to both.

Please feel free to call with any questions at 6-2599.

From: Matthew W. Pitcher on 01/12/99 01:13:57 PM

Record Type: Record

To: Jennifer L. Klein/OPD/EOP

cc:
Subject: Re: partial birth abortion form letters

We've divided them into "pro" and "con" (meaning the writer is either for or against partial birth abortion). The first draft below is the latest version of the "con" and the second, the "pro" version. Thanks!

Thank you for your thoughtful and heartfelt letter.

As you know, last year I vetoed H.R. 1833, the proposed late-term abortion ban, because Congress would not include a limited exception in the bill for those few but tragic cases in which the procedure is necessary to save the life of a woman or to prevent serious harm to her health; I will veto H.R. 1122 for the same reason.

I have never contended that this procedure, today, is always used in circumstances falling within this exception. To the contrary, the procedure may well be used in situations where a woman's serious health interests are not at risk. But I do not support such uses, I do not defend them, and, as I have stated repeatedly, I would sign appropriate legislation banning them. I know that many believe that any health exception will be so broad that it would negate the ban. That is not the kind of exception I support; instead I am asking for an exception that takes effect only when a woman faces real, serious adverse health consequences. I remain confident that Congress and this Administration, working together, could craft such an exception, and I regret the failure of recent good-faith efforts to reach a workable compromise.

I appreciate knowing your concerns on this complex and important issue.

Thank you for your message regarding my veto of H.R. 1833, the so-called "partial birth abortion ban." I appreciate your words of support.

H.R. 1833 presented a difficult and disturbing issue, one that I studied and prayed about for many months. In the end, I vetoed the bill because it fails to protect women from serious threats to their health. While I oppose use of the procedure on an elective basis, I do believe it should be available in the small number of compelling cases where its use, in the medical judgment of a woman's physician, is necessary to preserve her life or to avert serious damage to her health.

The problem with the bill Congress passed is that it provides an exception to the ban on this procedure only when a doctor believes that a woman's life is at risk, but not when the doctor believes she faces serious adverse health consequences. I could not accept a bill that fails to protect women at such a difficult time in their lives.

Thank you for letting me know how you feel. I am grateful for your encouragement.

I am writing to express my concern over the Congress's unprecedented effort in recent weeks to restrict safe reproductive choices for women. It is regrettable that some Members of Congress have chosen to pursue a series of initiatives designed to create a political issue at the risk of increasing unintended pregnancies and abortions and of compromising women's health and safety.

I have long said that I believe abortion should be safe, legal, and rare. All of the proposals being offered would restrict safe medical choices. Some would actually restrict access to family planning information and services and could have the perverse effect of increasing the number of unintended pregnancies and abortions. I urge the Congress to put partisan politics aside and instead put women's health and safety first.

In this context, I am heartened that the House defeated attempts to kill Congresswoman Lowey's amendment to require health plans participating in the Federal Employees Health Benefits Program to cover all FDA approved prescription contraceptives. The Lowey proposal will improve basic health care coverage for many women and help reduce unwanted pregnancies and the need for abortion. A bipartisan majority of the House acted in the interests of women's health when it beat back efforts to undermine this important proposal.

Congress unfortunately has not adopted this reasonable, health-oriented approach on other issues. First, I strongly object to the amendment to impose restrictions on international family planning programs. By prohibiting foreign non-governmental organizations from receiving United States funds if the organization uses any non-US government funds for abortion-related services or even advocates changes in abortion laws, the amendment jeopardizes funding to health care providers who are working to meet the growing demand for family planning and other critical health services in developing countries. The result of this amendment's provisions could be an increase in unintended pregnancies, abortions, and maternal and infant death.

Second, I find it deeply disturbing that the House would take the unprecedented step of intervening in the Food and Drug Administration's drug approval process by banning funding for the approval or testing of drugs such as RU-486. For years, the FDA has used vigorous testing and the highest scientific standards to protect public health. This amendment substitutes political ideology for sound science. It would restrict scientific research that can protect women's lives and offer them safe medical choices.

Third, I am disappointed that the House chose to reject the changes that I proposed to the Child Custody Protection Act. As my Administration conveyed to Congress, I would support properly crafted legislation that would make it illegal to transport minors across state lines for the purpose of avoiding parental involvement

requirements. I have repeatedly stated that I would sign a bill if it were amended to exclude close family members from criminal and civil liability and to ensure that individuals who provide only information, counseling, referral, or medical services to the minor cannot be subject to liability. As amended in this way, the legislation would prevent the circumvention of state parental involvement laws while ensuring healthy family communications. Unfortunately, the Congress has ignored these proposed changes, as well as those designed to address certain constitutional infirmities. In doing so, this Congress has demonstrated that it is not truly interested in passing legislation, but only in creating another partisan political issue.

Finally, Congress is again signaling that it will turn the difficult debate over so-called partial birth abortions into an opportunity to score political points, rather than to pass legislation restricting this procedure. I have long opposed late term abortions, and I believe that we generally should prohibit the use of this procedure. I have insisted, however, on exempting those few but tragic cases in which this procedure is necessary to save a woman's life or to protect her against serious injury to her health. I again call upon Congress to add such a narrow, tightly drawn exception to this bill, so that I can sign the legislation and put an end to all other uses of this procedure.

I urge Congress to move beyond ideology and political maneuvering, to abandon extremism, and to protect women's lives and health while reducing the need for abortions. Congress's current course would remove appropriate reproductive choices for women, seriously jeopardize their health, and very possibly increase the frequency of abortions. I will strongly oppose these efforts.

July 22, 1998

Dear Steny:

I am writing to express my concern over the Congress' plans to override my veto of H.R. 1122, a bill banning so-called partial birth abortions. In this vote, Congress is once again opting for partisanship over progress; it is turning the painful debate over this issue into an opportunity to score political points, rather than to pass legislation restricting this procedure.

The procedure addressed in H.R. 1122 poses a difficult and disturbing issue. I strongly believe that we generally should prohibit the use of this procedure. I have insisted, however, on exempting those few but tragic cases in which this procedure is necessary to save a woman's life or to protect her against serious injury. I again call upon Congress to add such a narrow, tightly drawn exception to this bill, so that I can sign the legislation and put an end to all other uses of this procedure.

The legislation that you have sponsored with Representative Greenwood -- which prohibits all late-term abortions, except those necessary to save the life of a woman or prevent serious harm to her health -- is also consistent with my principles. As you know, I have long opposed late-term abortions, and as Governor of Arkansas, I signed into law a bill that banned them, with an appropriate exception for life or health. If Congress were to pass your bill, I would sign it immediately.

Congress's refusal to consider such constructive proposals -- proposals that would put an end to inappropriate abortions while protecting women from death or serious injury -- prevents us from resolving these issues and moving forward. Similarly, Congress's recent votes restricting safe medical choices and access to family planning information and services stand in the way of progress on these issues. I urge Congress once again to move beyond ideology and political maneuvering and to protect the lives and health of women.

Sincerely,

The Honorable Steny Hoyer
House of Representatives
Washington, D.C. 20515

Lichtman Letter Insert

H.R. 1833 presented a difficult and disturbing issue, one which I studied and prayed about for many months. In the end, I vetoed the bill because it fails to protect women from serious threats to their health. While I oppose use of the procedure on an elective basis, I do believe it should be available in the small number of compelling cases where its use, in the medical judgment of a woman's physician, is necessary to preserve her life or avert serious damage to her health.

The problem with the bill Congress passed is that it provides an exception to the ban on this procedure only when a doctor believes that a woman's life is at risk, but not when the doctor believes she faces serious adverse health consequences. I could not accept a bill that fails to protect women like the ones who came to the White House April 10 and spoke with such heartfelt eloquence about their experiences.

Once again, I am grateful for your encouragement.

re: abortion

September 26, 2000

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: **HEATHER HOWARD**

CC: **MELANNE VERVEER**
SHIRLEY SAGAWA
ANN O'LEARY

SUBJECT: **Partial Birth Abortion and the Born Alive Infant Protection Act**

I wanted to provide you with background on the Born Alive Infant Protection Act, approved overwhelming by the House tonight.

BORN ALIVE INFANT PROTECTION ACT

It appears that partial birth may have been put on the back burner. The Supreme Court loss (and the fact that they would have to re-write it to include a health exception, which they would never accept) may have convinced anti-choice groups and members to drop it for now.

Instead, they are pursuing the "**Born Alive Infant Protection Act,**" which redefines "person" throughout the U.S. code to include infants who are "born alive" at any stage of development, and extends legal protections to them. "Born Alive" is defined as "complete expulsion" from the women "at any stage of development." The bill was marked up by the full Judiciary committee on July 26 and approved overwhelmingly by the House tonight.

Background

When it was first introduced, pro-choice groups and members didn't know what to make of the legislation. As you may recall, it took a couple years to really figure out what anti-choice groups were doing with partial birth. The sponsor is Rep. Canady, who is also the sponsor of partial birth, so of course everyone is skeptical. He claims that all he is attempting to do is prevent the murder of already born children, and not to restrict abortion. (He pointed to testimony about "botched abortions" in which fetuses allegedly survive an abortion and then are left to die). Neonatologists, however, testified in opposition to the bill, arguing that it might change the standard of care for premature babies and require "heroic measures." The bottom line during committee consideration was that it was hard to figure it out, and even harder to articulate opposition to.

At the Judiciary Committee mark-up, Rep. Jerry Nadler pressed Canady on the meaning of the bill, and was sufficiently comfortable with the response that he convinced all the Democrats, except for Rep. Mel Watt, to vote for the bill, and it was approved 22-1. The hope was that if everyone voted for it, it would deprive he Republicans of the issue.

But then it got more complicated. Last week, Hyde and Canady sent around an inflammatory dear colleague and a manager's amendment that included findings of fact and purpose language mischaracterizing this summer's Supreme Court partial birth decision, Carhart v. Stenberg. For example, the dear colleague stated: "[This legislation] is designed to . . . repudiate recent judicial expansions of the 'right to abortion' that place some such infants in increasing jeopardy." To some, this rhetoric confirmed that the sponsor's intentions were not benign.

House consideration

Today, the House considered the Born Alive Infant Protection Act, but without the inflammatory manager's amendment (pro-choice Republicans had objected to leadership over the inclusion of the language). The pro-choice groups opposed the bill but did not lobby, and will not score the vote – essentially giving members a pass. Only a few members spoke out against it: Nita Lowey, Carolyn Maloney, Mel Watt, and Nancy Johnson, and only 15 members voted against it.

- Nita Lowey argued that the bill was unnecessary and that members who wanted to protect the lives of infants should work for improved prenatal and postnatal care. She also pointed to the testimony of neonatologists, arguing that the bill would change the standard of care for babies born prematurely.
- Carolyn Maloney argued that the bill was an attempt to undermine Roe v. Wade.
- Mel Watt protested the process by which the bill was considered. He noted that although the legislation would amend the U.S. Code in over 15,000 places, there had been no systematic analysis of its impact.
- Nancy Johnson argued that 1) the bill was unnecessary, because infants "born alive," including those in the botched abortion stories anti-choice members cited, already have full protection under the law, and 2) the bill would place families with premature infants in a very difficult position by requiring "heroic measures" even if the infant were dying and prolonging its life would only cause pain.

Jerry Nadler, however, spoke in favor of the bill, arguing that the bill did not change current law. He called it a trap set by anti-choice members, and urged other members not to "take the bait." Opposing the bill, he contended, would allow anti-choice groups to argue that pro-choice members are extreme and do not support infants that are born alive.

In the Q&A developed by the White House, we attempted to avoid falling into the trap and downplayed the impact of the bill:

Q: What is the Administration's position on the Born Alive Infant Protection Act, which passed the House today?

A: It is our understanding that this bill merely restates current law regarding protections for newborns, and we therefore have no objection to it.