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Obstetricians Challenge Partial-Birth Abortion Ban

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Heard on All Things Considered

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The Supreme Court will hear arguments Wednesday in two cases challenging the Partial-Birth Abortion Ban Act, passed by Congress in 2003. A key part of the case for the ban's supporters is a congressional finding that the specific procedure described in the law is dangerous and never medically necessary. But since the law was passed three years ago, peer-reviewed medical studies have reached the opposite conclusion.

This isn't the first time the Supreme Court has considered a ban on the procedure that lawmakers call partial-birth abortion. Six years ago, on a 5 to 4 ruling, the justices struck down a ban passed by the Nebraska legislature. The majority said, among other things, that the law needed an exception allowing the procedure to be used not just to preserve the pregnant woman's life, but also her health.

That put sponsors of a similar federal ban, like Rep. Steve Chabot (R-OH), in a quandary. Adding a health exception was not something Chabot was willing to do.

"The problem with the health exception is we have a number of abortionists who have testified that any pregnancy is a risk to a woman's health," Chabot said. "So if you have a health exception in there, in essence, you have a phony partial-birth abortion ban."

Sponsors ultimately settled on a strategy they hoped would overcome the court's objections without adding a health exception.

"We had extensive medical testimony indicating that a partial-birth abortion is never medically necessary, and, in fact, is actually oftentimes harmful to the woman. And that's the reason we did not include a health exception," Chabot said.

Instead, the law includes a series of declarations, known as "findings." Among the findings: The procedure is unrecognized by the mainstream medical community; there have been no articles published in peer-reviewed journals that establish the procedure is superior to other abortion procedures; and the procedure threatens the pregnant woman's health.

But since the bill was written, much in the medical community has changed.

Dr. Stephen Chasen is an associate professor of obstetrics and gynecology at Cornell University's Medical School. He also heads the high-risk obstetrics unit at New York-Presbyterian Hospital on Manhattan's Upper East Side. Chasen says his patients come to him to have babies, not abortions, but that's not always possible.

"The reality is that the population we take care of, there are many high-risk patients. And unfortunately, not every pregnancy goes so well," Chasen says.

Like most of the medical community, Chasen says there's no such thing medically as a "partial-birth" abortion. Sponsors say the law bans a variation of the most common second-trimester abortion procedure, called dilation and evacuation, or D&E. In that variation, called intact D&E, or D&X, the fetus is removed whole except for the head, which is then compressed to allow it to pass through the birth canal.

The problem with the federal ban, Chasen says, is that he often doesn't know until he's in the operating room which procedure is most appropriate for the patient.

"If I have to consider what the government thinks every step of the way when I'm taking care of my patients, then it absolutely would threaten the health of my patients," he says.

Chasen is a plaintiff in one of the three lawsuits challenging the ban. He's also the lead author of a study published in 2004 in the *American Journal of Obstetrics and Gynecology*, which compared several hundred second-trimester abortions using both the traditional D&E method and the intact version. And he says that, contrary to the congressional declaration, the study showed the intact version of the procedure was not more dangerous.

"We basically found that the complication rates were similar between the two groups. The only severe complications we experienced in fact, were in what people would call the traditional D&E group, not the intact variation," Chasen said.

That study, however, did raise the question of whether women having the variation in which the fetus is basically removed intact would be more likely to deliver prematurely in a subsequent pregnancy. So Chasen and his colleagues did another study, published in the same journal in 2005. And they found it did not.

"We found that using whichever variant of D&E had no relation to subsequent births and [the procedure] wasn't associated with pre-term birth," he said.

Chasen also disputes another of the congressional findings: that the procedure is not taught in U.S. medical schools.

"I learned it here at an Ivy League medical school where I teach it. My other plaintiffs and experts testifying in these cases come from some of the top hospitals in the U.S., and are on the faculties of some of the top medical schools," Chasen says.

But Rep. Chabot, the sponsor of the law, says that doesn't make it right.

"This is a procedure that shouldn't be taught," Chabot says, because it's barbaric and gruesome and inhumane and we hope in the very near future is illegal."

That latter decision will be up to the Supreme Court, which is expected to hand down its decision sometime next year.

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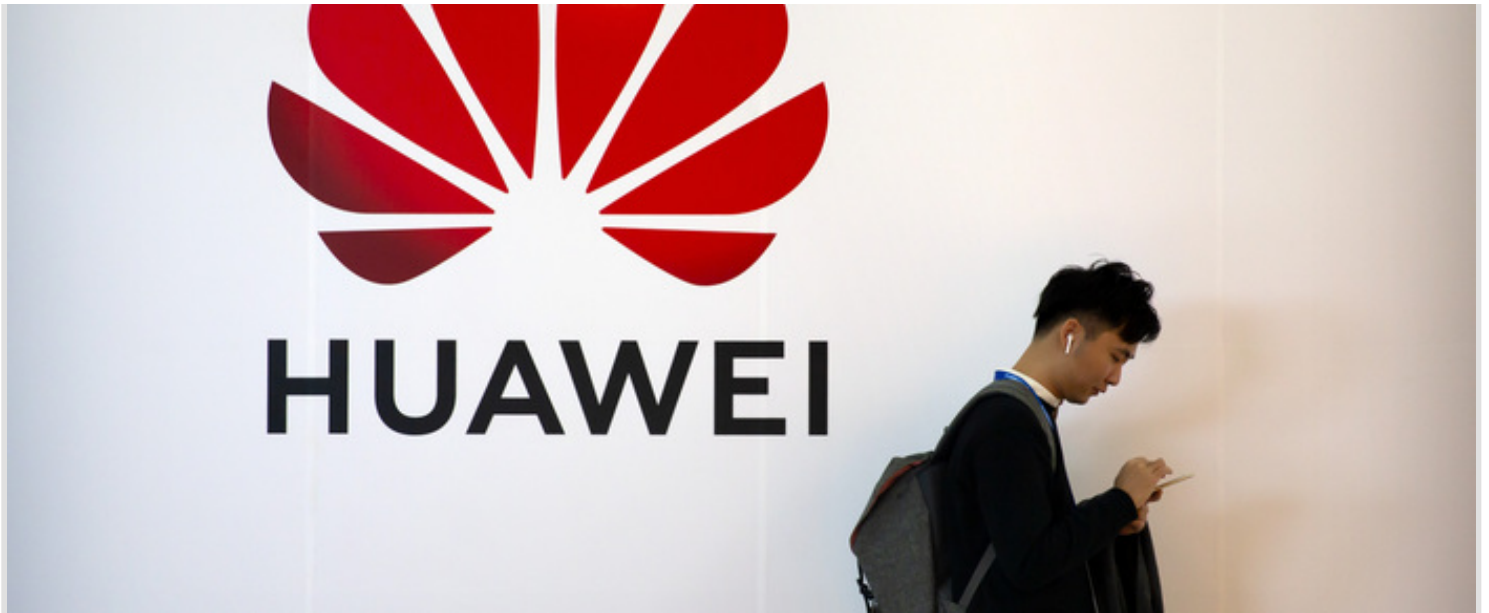
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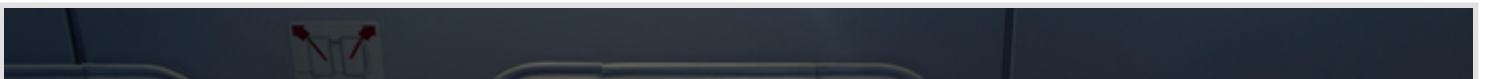
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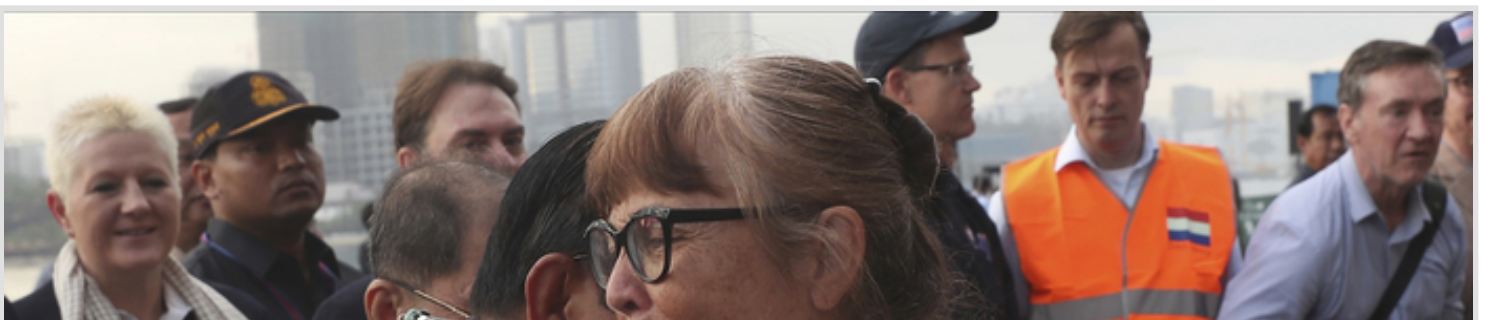
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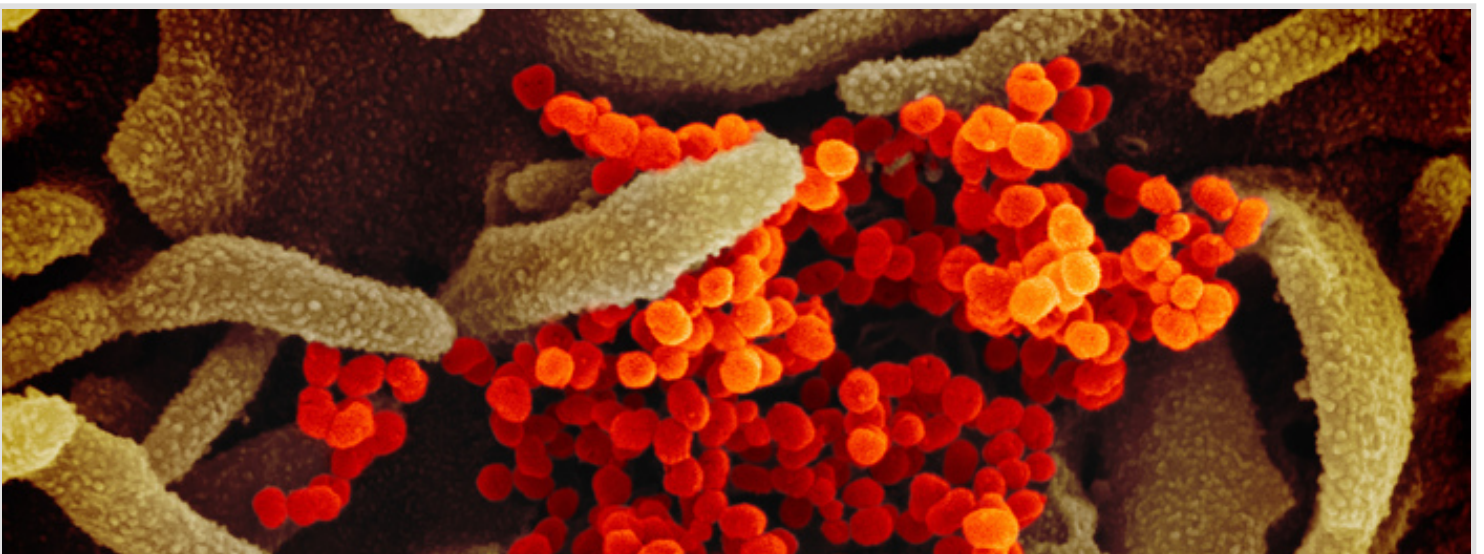
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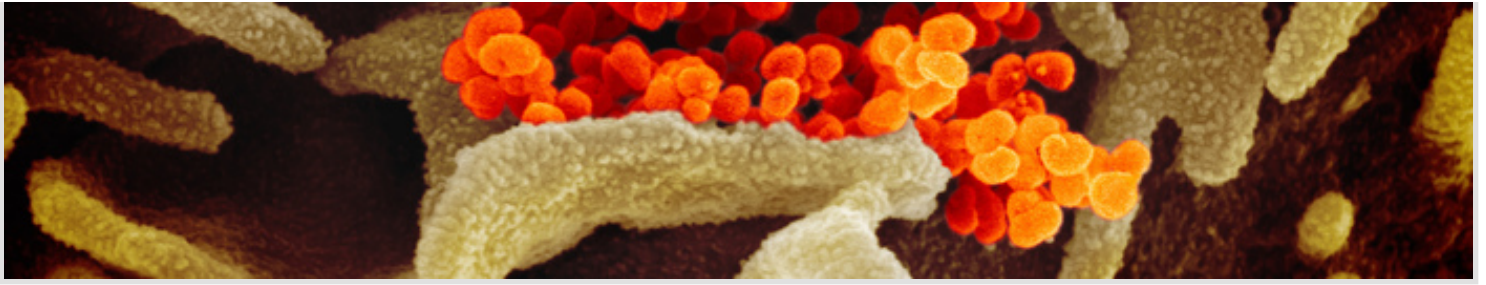




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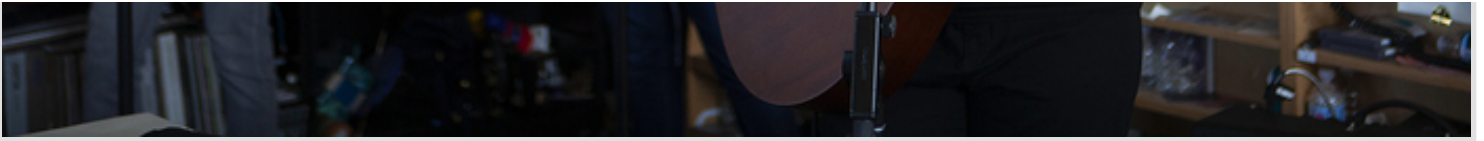


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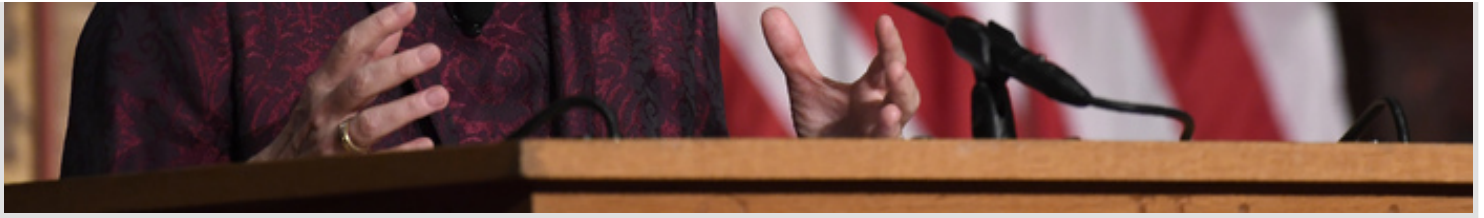
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