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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

A CHOICE FOR WOMEN; EDWARD R. WATSON, :  
M.D.; PRESIDENTIAL WOMEN'S CENTER; :  
MICHAEL BENJAMIN, M.D.; JAMES PENDERGRAFT, :  
M.D.; ORLANDO WOMEN'S CENTER; WOMEN'S :  
HEALTH CENTER IN ORLANDO; WOMEN'S HEALTH :  
CENTER IN DAYTONA BEACH; RALPH L. BUNDY, :  
M.D.; FEMINIST WOMEN'S HEALTH CENTER :  
IN TALLAHASSEE; NORTH FLORIDA WOMEN'S :  
HEALTH & COUNSELING SERVICES, INC.; :  
FLORIDA ASSOCIATION FOR PLANNED PARENTHOOD :  
AFFILIATES, INC.; BELLA DOE; NATIONAL :  
WOMEN'S POLITICAL CAUCUS OF FLORIDA; :  
FLORIDA WOMEN'S CONSORTIUM; ON BEHALF OF :  
THEMSELVES, THEIR STAFFS, AND THEIR PATIENTS, :

CASE No. 98-CIV 0774  
(J. GRAHAM)

Magistrate Judge: Brown

**AMENDED COMPLAINT**  
--CLASS ACTION

Plaintiffs, :

v. :

ROBERT A. BUTTERWORTH, in his official capacity :  
as Attorney General for the State of Florida, :

and :

KATHERINE FERNANDEZ RUNDLE, in her official :  
capacity as State Attorney for Florida's Eleventh :  
Judicial Circuit and as representative of the class :  
of State Attorneys for the State of Florida, :

Defendants. :

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MVC

1. Plaintiffs, by and through their undersigned attorneys, bring this complaint against the above-named defendants, their employees, agents, and successors in office, and in support thereof allege the following:

Preliminary Statement

2. This civil rights action challenges the constitutionality of House Bill (“HB”) 1227, as enacted by the Florida Legislature (hereinafter “the Act”), which renumbers and amends Florida Statutes section 390.001, amends Florida Statutes sections 390.001, 390.011, and 390.002, and creates Florida Statutes sections 390.011 and 390.0112. The Act, which bans so-called “partial-birth abortions,” is scheduled to take effect on the sixtieth day after adjournment of the current session of the Florida State Legislature. (A copy of the Act is attached hereto as Exhibit A.) Plaintiffs seek declaratory and injunctive relief against the Act because it violates the rights to privacy, bodily integrity and due process of law.

Specifically, the Act violates women’s right to privacy in three ways. First, the Act violates women’s right to privacy by restricting their choice of abortion method prior to viability, and by restricting their choice of the safest method of abortion after viability. Second, because of the Act’s broad scope, it has the purpose and effect of imposing an undue burden on a woman’s right to choose abortion pre-viability by prohibiting the most common methods of abortion. Third, the Act violates women’s right to privacy because it lacks an adequate medical emergency exception. The Act violates women’s right to bodily integrity, independently of any right to abortion, by preventing a woman, in consultation with her physician, from determining the course of her own medical treatment. The Act violates the Due Process Clause because the term “partial-birth

abortion” is not a medical term, and the Act’s vague provisions fail to give physicians or their employees fair warning of which abortion or obstetrical medical procedures are made criminal. The Act violates the Equal Protection Clause by preventing only women from choosing from medically appropriate health care treatment without substantial legitimate justification, thus discriminating against women on the basis of sex. As a result, the Act violates the rights of plaintiffs and their patients seeking abortion to privacy, liberty, life, due process, and equal protection guaranteed under the Fourteenth Amendment of the United States Constitution and 42 U.S.C. section 1983.

Jurisdiction and Venue

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

4. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

5. Venue is appropriate under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this district and because Defendant Katherine Fernandez Rundle resides in this district.

Parties

A. Plaintiffs

6. Plaintiff A Choice for Women, located in South Miami, provides a wide range of reproductive health care services including: abortions; post-abortion care; family planning; birth control; pregnancy testing; treatment of sexually transmitted diseases; pap smears; abortion, birth control, and alternative options counseling; diagnostic ultrasound

examinations; and referrals for appropriate medical or social services. A Choice for Women provides abortions up to twenty-two (22) weeks of pregnancy measured from the first day of the woman's last menstrual period (hereinafter referred to as "Imp"). A Choice for Women, its physicians, and its other staff fear criminal prosecution and civil liability under the Act. A Choice for Women sues on its own behalf, on behalf of its staff and physicians, and on behalf of its patients seeking abortions in Florida.

7. Plaintiff Edward R. Watson, M.D., is Medical Director of A Choice for Women. Dr. Watson is board-certified in obstetrics and gynecology ("OB/GYN") and is licensed to practice medicine in Florida. Dr. Watson provides an array of medical services, including abortions up to twenty-two (22) weeks Imp. Dr. Watson sues on his own behalf and on behalf of his patients seeking abortions in Florida.

8. Plaintiff Presidential Women's Center, located in West Palm Beach, provides a variety of reproductive health care services including: abortions; pregnancy testing; gynecological services; tubal ligations; and referrals for appropriate medical or social services. Presidential Women's Center provides abortions up to twenty-two (22) weeks Imp. Presidential Women's Center, its physicians, and its other staff fear criminal prosecution and civil liability under the Act. Presidential Women's Center sues on its own behalf, on behalf of its staff and physicians, and on behalf of its patients seeking abortions in Florida.

9. Plaintiff Michael Benjamin, M.D., is board-certified in OB/GYN and is licensed to practice medicine in Florida. Dr. Benjamin has a private obstetrical practice in Tamarac. Dr. Benjamin provides an array of medical services, including abortions up

to twenty-four (24) weeks Imp. Dr. Benjamin sues on his own behalf and on behalf of his patients seeking abortions in Florida.

10. Plaintiff James Pendergraft, M.D., a physician licensed to practice medicine in Florida, is the operating physician of the Orlando Women's Clinic. Dr. Pendergraft provides an array of medical services, including abortions up to twenty-four (24) weeks Imp. Dr. Pendergraft sues on his own behalf and on behalf of his patients seeking abortions in Florida.

11. Plaintiff Orlando Women's Center provides a range of reproductive health care services including: abortions; gynecological exams; family planning; and referrals for appropriate medical or social services. Orlando Women's Center provides abortions up to twenty-four (24) weeks Imp. Orlando Women's Center, its physicians, and its other staff fear criminal prosecution and civil liability under the Act. Orlando Women's Center sues on its own behalf, on behalf of its staff and physicians, and on behalf of its patients seeking abortions in Florida.

12. Plaintiff Women's Health Center in Orlando provides a variety of reproductive health care services including: abortions; family planning; birth control; gynecological exams; emergency contraception; and referrals for appropriate medical or social services. Women's Health Center in Orlando provides abortions up to thirteen-and-a-half (13.5) weeks Imp. Women's Health Center in Orlando, its physicians, and its other staff fear criminal prosecution and civil liability under the Act. Women's Health Center in Orlando sues on its own behalf, on behalf of its staff and physicians, and on behalf of its patients seeking abortions in Florida.

13. Plaintiff Women's Health Center in Daytona Beach provides a variety of reproductive health care services including: abortions; family planning; birth control; gynecological exams; emergency contraception; and referrals for appropriate medical or social services. Women's Health Center in Daytona Beach provides abortions up to thirteen-and-a-half (13.5) weeks Imp. Women's Health Center in Daytona Beach, its physicians, and its other staff fear criminal prosecution and civil liability under the Act. Women's Health Center in Daytona Beach sues on its own behalf, on behalf of its staff and physicians, and on behalf of its patients seeking abortions in Florida.

14. Plaintiff Ralph L. Bundy, M.D., is board-certified in OB/GYN and is licensed to practice medicine in Florida. Dr. Bundy provides an array of medical services, including abortions up to thirteen-and-a-half (13.5) weeks Imp. Dr. Bundy sues on his own behalf and on behalf of his patients seeking abortions in Florida.

15. Plaintiff Feminist Women's Health Center in Tallahassee provides a wide range of reproductive health care services including: abortions; pregnancy testing; Well Woman clinic; pap smears; pelvic exams; gynecological exams; STD check; HIV testing and pre- and post-testing counseling; screening for sickle cell, diabetes, and high blood pressure, family planning, birth control; morning after pill; and referrals for appropriate medical or social services. Feminist Women's Health Center in Tallahassee provides abortions up to twelve (12) weeks Imp. Feminist Women's Health Center in Tallahassee, its physicians, and its other staff fear criminal prosecution and civil liability under the Act. Feminist Women's Health Center in Tallahassee sues on its own behalf, on behalf of its staff and physicians, and on behalf of its patients seeking abortions in Florida.

16. Plaintiff North Florida Women's Health & Counseling Services, Inc., located in Tallahassee, provides a variety of reproductive health care services including: abortions; pregnancy testing; birth control; STD (sexually-transmitted disease) testing; morning after pill; HIV testing; estrogen replacement; blood testing; and referrals for appropriate medical or social services. North Florida Women's Health & Counseling Services, Inc. provides abortions up to fourteen (14) weeks Imp. North Florida Women's Health & Counseling Services, Inc., its physicians, and its other staff fear criminal prosecution and civil liability under the Act. North Florida Women's Health & Counseling Services, Inc. sues on its own behalf, on behalf of its staff and physicians, and on behalf of its patients seeking abortions in Florida.

17. Plaintiff Florida Association for Planned Parenthood Affiliates, Inc. is an organization comprised of eight Planned Parenthood affiliates located in Florida. The services provided by the individual Planned Parenthood affiliates vary and include the following (not all services are provided at each site): first trimester abortions; abortion referrals; prenatal care; gynecological exams; pregnancy testing; STD/HIV testing; birth control; emergency contraception; vasectomies; mid-life services; childbirth education; educational programs for professionals, schools and community groups; and referrals for appropriate medical or social services. The Florida Association for Planned Parenthood Affiliates sues on its own behalf, on behalf of its affiliates, on behalf of the staff and physicians of each of its affiliates, and on behalf of the patients of each of its affiliates who seek abortions or referrals for abortions in Florida.

18. Plaintiff Bella Doe is a resident of Clearwater, Florida. During her last pregnancy, Ms. Doe developed serious medical complications late in her pregnancy.

necessitating that she deliver pre-term, by cesarean section. Ms. Doe wishes to have another child. Her physician has informed her that during a second pregnancy, the same medical complications might occur, in which case she may risk total renal failure unless an abortion is performed. In those circumstances, Ms. Doe would need an abortion in order to avoid spending the rest of her life hooked up to a dialysis machine, but not in order to save her life. Ms. Doe sues on her own behalf.

19. Plaintiff National Women's Political Caucus of Florida is a membership organization currently comprised of approximately 1,000 members -- organizations and individuals -- in Florida. The National Women's Political Caucus of Florida supports women's right to choose and helps women obtain leadership roles in the public and private sectors. Its membership includes women who may be seeking to obtain an abortion in Florida now or in the future. The National Women's Political Caucus of Florida's institutional goal of supporting women's right to choose will be damaged if the challenged Act goes into effect in Florida. The National Women's Political Caucus of Florida is suing on its own behalf.

20. Plaintiff Florida Women's Consortium is a network of organizations and individuals committed to achieving full equality and empowerment for women. The Florida Women's Consortium represents thousands of women in Florida who are of child-bearing age, some of whom have physical conditions which might result in their health or life being jeopardized if they were unable to terminate a pregnancy. The Florida Women's Consortium's institutional goal of achieving full equality for women will be damaged if the challenged Act goes into effect in Florida. The Florida Women's Consortium is suing on its own behalf.



21. Plaintiff Florida National Organization for Women, Inc. ("Florida NOW") is a membership organization currently comprised of approximately 8,000 members in Florida. Florida NOW is dedicated to working to improve women's lives; its institutional goals include supporting the freedom of all women to make their own decisions concerning their complete reproductive health care. This includes access to safe, legal and affordable abortion. The membership of Florida NOW includes women who may be seeking to obtain an abortion in Florida now or in the future. Florida NOW's institutional goals referred to above will be damaged if the challenged Act goes into effect in Florida. The Florida National Organization for Women, Inc. is suing on its own behalf.

22. Plaintiffs' abortion patients include women whose pregnancies are complicated by severe or fatal fetal anomalies; women who are in need of abortion services to protect their health or lives; women who are pregnant as a result of rape or incest; and/or women who need abortions for a wide range of deeply personal reasons. These include patients who have a wide range of underlying medical conditions, all of which implicate choice of abortion method, including HIV positive status, drug abuse, obesity, diabetes, mental illness, hypertension and renal problems.

23. Plaintiffs utilize abortion techniques and procedures that may fall within the proscription of the Act. After the effective date of the Act, the plaintiffs intend to continue to provide the best possible care to its patients, which includes continuing to use the safest abortion or obstetrical procedures for each individual pregnant woman. The plaintiff physicians and the staff of the plaintiff clinics reasonably fear criminal prosecution and civil liability under the Act.

B. Defendants

24. Defendant Robert A. Butterworth is the Attorney General of the State of Florida. Pursuant to Article IV, Section 4, subdivision (c) of the Florida Constitution, he is the chief legal officer for the state. Defendant Butterworth, whose office is in Tallahassee, Florida, is sued in his official capacity, as are his agents and successors.

25. Defendant Katherine Fernandez Rundle is the State Attorney for the Eleventh Judicial Circuit of Florida. Pursuant to the Florida Constitution and Statutes, she is responsible for criminal enforcement of the challenged law in that judicial circuit. See Fla. Const., Art. V, § 17; Fla. Stat. § 27.02. Defendant Rundle is sued in her official capacity and as a class representative of all twenty State Attorneys in Florida.

Class Action Allegations

26. The maintenance of this lawsuit as a defendant class action is authorized by Rule 23(c)(1) of the Federal Rules of Civil Procedure. The defendant class is comprised of all State Attorneys in the State of Florida, who in their official capacity are responsible for enforcement of the Act. The defenses of the representative defendant are typical of the defenses of the class, and the representative defendant in her official capacity will fairly and adequately protect the interest of the class.

27. Questions of law and fact common among members of the class include whether the definition of partial-birth abortion and other terms of the Act are unconstitutionally vague; whether the Act violates a woman's decision to choose her own medical care, including a pre-viability abortion or a post-viability abortion necessary to preserve her life or health, including an abortion required in a medical emergency; and whether the Act imposes a substantial obstacle in the path of women choosing abortion.

28. The prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications, resulting in incompatible enforcement and incongruous standards of conduct for those persons performing abortions in Florida.

The Statutory Framework

29. Under the Act, “no physician shall knowingly perform a partial-birth abortion.” Fla. Stat. § 390.011(5)(a) (as re-numbered and amended by the Act). A “partial-birth abortion” is defined as “a termination of a pregnancy in which the physician performing the termination of pregnancy partially vaginally delivers a living fetus before killing the fetus and completing the delivery.” *Id.* § 390.011(5). (An “abortion” is defined as “the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.” Fla. Stat. § 390.011(a).)

30. The term “partial-birth abortion” is not a medical term and no medical textbook or article describes its scope or meaning. The Act does not contain any definition of the terms “partially,” or “vaginally delivers,” or “living.”

31. The Act's prohibition applies throughout pregnancy, both before and after the fetus is viable, i.e., that stage in pregnancy in which the fetus is capable of sustained, independent survival outside the womb (somewhere between 24 and 28 weeks of pregnancy).

32. The Act contains no exception for medical emergencies, e.g., for physicians treating women who are in the process of miscarrying or women carrying abnormal fetuses with heads too large to fit through the cervix, or women whose life or health is in danger and hence need an immediate pregnancy termination.

33. The Act provides only a single exception to its sweeping prohibition. The prohibition “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, provided that no other medical procedure would suffice for that purpose.” Fla. Stat. §390.0111(5)(c) (as re-numbered and amended by the Act).

34. Thus, the Act bans a “partial-birth abortion” both before and after viability even to save a woman’s life, if there is another possible procedure available, even if that other procedure is one which poses greater risks to the woman (e.g., major surgery).

35. Moreover, the Act criminally bans any “partial-birth abortion,” even if it is essential for preserving the woman’s health (such as when the head of a pre-viable hydrocephalic fetus is stuck in the birth canal or when the only other procedure available could impair a woman’s future fertility); and even if the alternative procedure would cause the woman more pain and expense, and/or the alternative procedure is much longer in duration and would incapacitate the woman.

36. Violation of the Act carries both criminal and civil penalties. Under the Act, “[a]ny person who willfully performs, or actively participates in” a partial-birth abortion commits a felony in the third degree. Fla. Stat. § 390.0111(10) (as re-numbered and amended by the Act). Third degree felonies are punishable by imprisonment for up to 5 years. Fla. Stat. § 775.082(3)(d). A physician is subject to disciplinary actions including revocation of his or her license if he or she is convicted or found guilty of a crime directly relating to the practice of medicine. Fla. Stat. § 458.331(1)(c), (2)(b).

37. The Act creates a civil cause of action for the “father” of the fetus (if he is married to the woman) and for the “maternal grandparents” of the fetus of a minor. Fla.

Stat. § 390.0111(11)(a) (as re-numbered and amended by the Act). Thus, the Act effectively requires parental consent for abortions for minors and husband consent for abortions for married women. The relief that can be obtained in such a civil action includes monetary damages for “all injuries, psychological and physical” and “[d]amages equal to three times the cost of the partial-birth abortion.” *Id.* § 390.0111(11)(b).

Because the Act does not delimit in any way the physical injuries that can be the subject of a civil action, a civil action could be brought by any of the above persons for injuries to the fetus.

38. The Act provides that “[a] woman upon whom a partial-birth abortion is performed” cannot be prosecuted for a conspiracy to violate the partial-birth abortion ban. *Id.* § 390.0111(5)(b). However, the Act does not exempt the woman from civil liability. *Id.* § 390.0111(11).

#### Procedural History of Enactment of the Act

39. The Act was passed by both houses of the Florida State Legislature during the 1997 Regular Session.

40. On May 23, 1997, the Governor of the State of Florida vetoed the Act; his veto message was conveyed to the Florida Secretary of State.

41. On November 3, 1997, Governor Chiles convened the Florida Legislature in Special Session, and the Secretary of State presented to the Florida House of Representatives all of the veto messages of the Governor and the corresponding vetoed bills. During this Special Session, neither the House nor the Senate acted on HB 1227.

42. On or about February 27, 1998, Governor Chiles petitioned the Supreme Court of Florida for a writ of mandamus or other appropriate writ directing the Clerk of

the House of Representatives to return, inter alia, the vetoed Act and the Governor's signed objections to the Act to the Department of State.

43. On March 3, 1998, the 1998 Regular Session of the Florida Legislature was convened. On March 4, 1998, the House of Representatives voted to override the Governor's 1997 veto of the Act.

44. After hearing oral argument on the Governor's petition for a writ of mandamus, the Florida Supreme Court issued an order on March 10, 1998, granting the House of Representatives' motion to continue the proceedings until fifteen days after the conclusion of the legislative session.

45. On March 11, 1998, the Florida Senate voted to override the Governor's 1997 veto of the Act.

46. On April 3, 1998, plaintiffs A Choice for Women and Edward R. Watson, M.D., filed with the Florida Supreme Court a writ quo warranto, challenging the Legislature's authority to override the Governor's veto of HB 1227.

#### Abortions in Florida

47. Abortion is one of the safest surgical procedures in the United States. In 1995, less than 0.3% of abortions resulted in complications requiring hospitalization, and the mortality rate was less than 0.6 per 100,000 abortions – less than penicillin. Abortion has both a lower morbidity (non-fatal complication) rate and a ten times lower mortality rate than carrying a pregnancy through childbirth.

48. The rates of abortion-related morbidity and mortality increase as a pregnancy advances. Accordingly, any delay in obtaining an abortion will increase the risk of harm to the woman.

49. Since 1973, abortion techniques have changed and evolved and abortions have become increasingly safe at every stage of gestation.

50. Most abortions in Florida are performed during the first trimester of pregnancy – more specifically, during the first twelve (12) weeks Imp. According to data compiled by the Office of Vital Statistics of the Florida Department of Health, 80,040 abortions were performed in Florida during 1996. Of those reported abortions, approximately 91% were performed during the first twelve (12) weeks Imp; approximately 9% were performed between thirteen (13) and twenty-four (24) weeks Imp; and fewer than 0.02% were performed after twenty-five (25) weeks Imp.

51. Abortions are performed after twelve (12) weeks Imp for a variety of compelling reasons and for women who have a variety of medical, social, psychological, and age-related situations. The woman may be suffering from a health problem that may or may not be caused by the pregnancy; the fetus may have been diagnosed with fatal or severe anomalies; the patient, because of a lack of resources, may have been unable to obtain health services at an earlier date; or the woman may have delayed the procedure for a wide range of other deeply personal, moral or conscientious reasons.

52. Although continued pregnancy presents higher risks to women's health and lives in general than abortion, the risks are even higher for women with preexisting conditions such as hypertension, obesity, heart disease, cancer, diabetes, lupus, and other physical and mental health disorders. Some women develop serious health problems because of their pregnancies, including gestational diabetes, preeclampsia, pregnancy-induced hypertension, and depression. Pregnancy presents particular health risks for young women.

53. In Florida, the vast majority of abortions are performed in settings other than hospitals. The cost of a hospital abortion is many times more than that of an abortion performed in an outpatient clinic.

54. The cost of an abortion increases as the pregnancy progresses; each week of continued pregnancy can increase the cost. Accordingly, if the Act delays a woman in obtaining an abortion, it will increase the cost of the procedure. For some women, the increased cost and delay will make the procedure impossible to obtain.

55. If women in Florida must go outside the state for an abortion they will be forced to travel significant distances to obtain such services. This travel will increase the cost of the procedure and will delay its performance, thus increasing the risk to the woman's health. Some women in these circumstances will be unable to obtain an abortion at all.

#### Abortion Methods

56. There are several methods of abortion used to terminate a pregnancy, both medical and surgical. The most appropriate abortion procedure for any given woman depends on a range of factors, including the woman's physical and mental health; any medical contraindications; the stage of pregnancy; the physician's experience and skill; the woman's prior surgical history; whether she wants to preserve her future fertility; whether it would be beneficial to remove the fetus intact to enable genetic testing; the woman's assessment of the alternative risks she wishes to undertake; and the cost of the procedure and location of the physician.

57. In the first trimester of pregnancy, up to fourteen (14) weeks Imp, suction curettage (also known as suction aspiration or vacuum aspiration) is used. In a suction



curettage procedure, the physician mechanically dilates the opening to the uterus by the use of metal rods, inserts a vacuum apparatus into the uterus, and removes the products of conception by the use of suction.

58. Two drugs, methotrexate and mifepristone, have been used for abortions up to nine (9) weeks Imp. Although these are nonsurgical methods, vacuum aspiration may be needed to complete the abortion.

59. Suction curettage is also used early in the second trimester, up through approximately sixteen (16) weeks Imp. After that, dilation and evacuation (“D&E”), including both the traditional and intact dilation and evacuation, are the surgical methods used. Medical abortions inducing labor using saline, urea or prostaglandin are used by some physicians after sixteen (16) weeks Imp. For later pregnancies (20 to 24 weeks), some physicians use a combination of surgical and medical methods, either intentionally or because a patient does not respond to one procedure.

60. In the traditional D&E procedure, the physician dilates the cervix, typically over twelve to thirty-six hours, with multiple intracervical osmotic dilators made of either laminaria (seaweed) or a synthetic agent. Next, using a combination of forceps, suction curettage, and sharp curettage, the physician disjoins and removes the fetus. The fetus may be removed intact. Typically, the calvarium (skull) is too large to pass through the cervix whole, and so must be compressed. The precise way in which physicians perform the D&E procedure varies by physician, depending upon the positioning and size of the fetus in the uterus, the stage of gestation, the woman's health, the skill of the physician and other individual considerations. When performing a D&E procedure, the physician usually does not know at what point during the procedure fetal demise has occurred.

After the cervix has been dilated, a D&E procedure takes approximately twenty to thirty minutes, and can be performed either in a clinic or hospital setting. While complications are rare, the most common complication of a D&E is uterine perforation.

61. The intact D&E procedure, also known as dilation and extraction ("D&X" or "intact D&X"), is a variant of the traditional D&E procedure. Among its advantages are that the procedure involves less use of surgical instruments in a woman's uterus and decreases the risk of incomplete removal of fetal tissue. In this variant, the cervix is gradually dilated and the fetus is removed intact. After a certain gestational age and in the case of some fetal abnormalities, the fetal head may be too large to pass through the cervix. To preserve the woman's cervix, the physician creates a small opening at the base of the skull and evacuates some of the contents, allowing the calvarium to pass through the cervical opening. Alternatively, once the fetus is partially extracted, the physician crushes the skull with forceps. The intact removal of the fetus is what distinguishes an intact D&E procedure from a traditional D&E procedure. After the cervix has dilated, an intact D&E procedure takes approximately twenty to thirty minutes, and can be performed in a clinic setting. (Hereinafter when discussed together, traditional D&E and intact D&E will be referred to as "the D&E procedures.")

62. The American College of Obstetricians and Gynecologists ("ACOG") has stated that intact D&E "may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision." (See Statement on Intact Dilatation and Extraction, ACOG Statement of Policy, Jan. 12, 1997, attached hereto as Exhibit B.)

63. The ACOG definition of intact D&E is limited to only those intact D&X abortions in which the physician has converted the fetus to a breech presentation.

64. The main alternative to the D&E procedures for post-first trimester procedures is the induction method of abortion, in which medications are used to induce pre-term labor. There are several ways of inducing labor, including instillation of urea into the amniotic sac or the use of prostaglandin. Labor typically lasts in excess of twelve hours, after which the fetus is expelled. This induced labor has all the potential risks and complications for women of labor and delivery at term.

65. Induction methods are contraindicated for some women who should not go through labor, e.g., for a woman whose fetus is lying crosswise in the uterus, who has an active pelvic infection, who previously had a classical Cesarean section, who is severely retarded and does not understand labor, or who is a very young teenager who cannot emotionally or physically handle the strain. For other women, such as women with ischemic cardio-vascular disease, diabetes, asthma, or renal disease, the medical agents used for induction may be contraindicated. If an induction is unsuccessful, the physician then must perform a D&E.

66. Traditional D&E and intact D&E account for the vast majority of abortions performed after the first trimester, and induction methods account for a small minority of abortions.

67. Another alternative post-first-trimester abortion method is hysterotomy, which is, in essence, a Cesarean section performed before term. It is more dangerous, however, than a Cesarean section because the uterus and the musculature surrounding it is thicker pre-term than it is at term, and the incision causes more bleeding. Hysterotomy may

cause uterine rupture in any future pregnancies, even before labor, and necessitates Cesarean section for any future births. A more extreme alternative procedure is hysterectomy, in which the uterus is completely removed, precluding future childbearing. Hysterotomy and hysterectomy are major surgical procedures that are no longer medically justifiable solely for pregnancy termination.

68. The suction curettage, D&E procedures, and the induction methods are considered by the medical community to be safe methods of terminating a pregnancy.

69. When induction is contraindicated for a woman, the suction curettage and D&E procedures are the only safe abortion procedures available to her after the first trimester of pregnancy and the D&E procedures are the only safe abortion procedures available to her after sixteen (16) weeks of pregnancy.

70. When providing abortions in the second trimester of pregnancy and thereafter, some physicians ensure fetal demise prior to the abortion procedure by injecting the fetus with a chemical substance (e.g., digoxin), through the woman's abdomen, using ultrasound guidance. Some physicians do not feel these injections are warranted, given the additional risks they may pose to some patients, and others do not feel they have the skill necessary to perform the injections. As with any medical procedure, the injection poses some risks.

71. The injections described above are more difficult under nineteen (19) weeks Imp. Some medical conditions, such as maternal obesity, fibroid, anterior placenta, or multiple pregnancies, also make the injections more difficult at any stage of pregnancy. Some women may refuse such injections.

The Effects of the Act on Women's Health and Access to Abortion

ENROLLED

1997 Legislature

CS/HB 1227, First Engrossed

1  
2 An act relating to termination of pregnancies;  
3 renumbering and amending s. 390.001, F.S.;  
4 revising provisions relating to consents  
5 required prior to a termination of pregnancy;  
6 prohibiting partial-birth abortion; providing a  
7 penalty; providing civil liability; providing  
8 for relief; renumbering s. 390.002, F.S.;  
9 amending s. 390.011, F.S.; expanding scope of  
10 definitions; defining "partial-birth abortion";  
11 providing an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Section 390.001, Florida Statutes, is  
16 renumbered as section 390.0111, Florida Statutes, and amended  
17 to read:

18 390.0111 ~~390.001~~ Termination of pregnancies.--

19 ~~(1) DEFINITIONS. As used in this section, unless the~~  
20 ~~context clearly requires otherwise:~~

21 ~~(a) "Physician" means a doctor of medicine or~~  
22 ~~osteopathic medicine licensed by the state under chapter 458~~  
23 ~~or chapter 459 or a physician practicing medicine or~~  
24 ~~osteopathic medicine in the employment of the United States or~~  
25 ~~this state.~~

26 ~~(b) "Approved facility" means:~~

- 27 ~~1. A hospital licensed by the state; or~~  
28 ~~2. A medical facility licensed by the Department of~~  
29 ~~Health and Rehabilitative Services pursuant to rules adopted~~  
30 ~~for that purpose, provided such rules shall require regular~~  
31 ~~evaluation and review procedures.~~

CODING: Words stricken are deletions; words underlined are additions.

A

ENROLLED

1997 Legislature

CS/HB 1227, First Engrossed

1           (1)~~(2)~~ TERMINATION IN THIRD ~~LAST~~ TRIMESTER; WHEN  
2 ALLOWED.--No termination of pregnancy shall be performed on  
3 any human being in the third ~~last~~ trimester of pregnancy  
4 unless:

5           (a) Two physicians certify in writing to the fact  
6 that, to a reasonable degree of medical probability, the  
7 termination of pregnancy is necessary to save the life or  
8 preserve the health of the pregnant woman; or

9           (b) The physician certifies in writing to the medical  
10 necessity for legitimate emergency medical procedures for  
11 termination of pregnancy in the third ~~last~~ trimester, and  
12 another physician is not available for consultation.

13           (2)~~(3)~~ PERFORMANCE BY PHYSICIAN REQUIRED.--No  
14 termination of pregnancy shall be performed at any time except  
15 by a physician as defined in s. 390.011 ~~this section~~.

16           (3)~~(4)~~ CONSENTS REQUIRED.--Prior to terminating a  
17 pregnancy, the physician shall obtain the written informed  
18 consent of the pregnant woman or, in the case of a mental  
19 incompetent, the written consent of her court-appointed  
20 guardian.

21           ~~(a) If the woman is married, the husband shall be~~  
22 ~~given notice of the proposed termination of pregnancy and an~~  
23 ~~opportunity to consult with the wife concerning the procedure.~~  
24 ~~The physician may rely on a written statement of the wife that~~  
25 ~~such notice and opportunity have been given, or he or she may~~  
26 ~~rely on the written consent of the husband to the proposed~~  
27 ~~termination of pregnancy. If the husband and wife are~~  
28 ~~separated or estranged, the provisions of this paragraph for~~  
29 ~~notice or consent shall not be required. The physician may~~  
30 ~~rely upon a written statement from the wife that the husband~~  
31 ~~is voluntarily living apart or estranged from her.~~

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1           ~~(b)~~ In the event a medical emergency exists ~~and the~~  
 2 ~~above requirements have not been complied with,~~ a physician  
 3 may terminate a pregnancy if he or she has obtained at least  
 4 one corroborative medical opinion attesting to the medical  
 5 necessity for emergency medical procedures and to the fact  
 6 that to a reasonable degree of medical certainty the  
 7 continuation of the pregnancy would threaten the life of the  
 8 pregnant woman.

9           (4)~~(5)~~ STANDARD OF MEDICAL CARE TO BE USED DURING  
 10 VIABILITY.--If a termination of pregnancy is performed during  
 11 viability, no person who performs or induces the termination  
 12 of pregnancy shall fail to use that degree of professional  
 13 skill, care, and diligence to preserve the life and health of  
 14 the fetus which such person would be required to exercise in  
 15 order to preserve the life and health of any fetus intended to  
 16 be born and not aborted. "Viability" means that stage of fetal  
 17 development when the life of the unborn child may with a  
 18 reasonable degree of medical probability be continued  
 19 indefinitely outside the womb. Notwithstanding the provisions  
 20 of this subsection, the woman's life and health shall  
 21 constitute an overriding and superior consideration to the  
 22 concern for the life and health of the fetus when such  
 23 concerns are in conflict.

24           (5) PARTIAL-BIRTH ABORTION PROHIBITED; EXCEPTION.--

25           (a) No physician shall knowingly perform a  
 26 partial-birth abortion.

27           (b) A woman upon whom a partial-birth abortion is  
 28 performed may not be prosecuted under this section for a  
 29 conspiracy to violate the provisions of this section.

30           (c) This subsection shall not apply to a partial-birth  
 31 abortion that is necessary to save the life of a mother whose

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1 life is endangered by a physical disorder, illness, or injury,  
2 provided that no other medical procedure would suffice for  
3 that purpose.

4 (6) EXPERIMENTATION ON FETUS PROHIBITED;  
5 EXCEPTION.--No person shall use any live fetus or live,  
6 premature infant for any type of scientific, research,  
7 laboratory, or other kind of experimentation either prior to  
8 or subsequent to any termination of pregnancy procedure except  
9 as necessary to protect or preserve the life and health of  
10 such fetus or premature infant.

11 (7) FETAL REMAINS.--Fetal remains shall be disposed of  
12 in a sanitary and appropriate manner and in accordance with  
13 standard health practices, as provided by rule of the  
14 Department of Health and ~~Rehabilitative Services~~. Failure to  
15 dispose of fetal remains in accordance with department rules  
16 is a misdemeanor of the second degree, punishable as provided  
17 in s. 775.082 or s. 775.083.

18 (8) REFUSAL TO PARTICIPATE IN TERMINATION  
19 PROCEDURE.--Nothing in this section shall require any hospital  
20 or any person to participate in the termination of a  
21 pregnancy, nor shall any hospital or any person be liable for  
22 such refusal. No person who is a member of, or associated  
23 with, the staff of a hospital, nor any employee of a hospital  
24 or physician in which or by whom the termination of a  
25 pregnancy has been authorized or performed, who shall state an  
26 objection to such procedure on moral or religious grounds  
27 shall be required to participate in the procedure which will  
28 result in the termination of pregnancy. The refusal of any  
29 such person or employee to participate shall not form the  
30 basis for any disciplinary or other recriminatory action  
31 against such person.



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1 (9) EXCEPTION.--The provisions of this section shall  
2 not apply to the performance of a procedure which terminates a  
3 pregnancy in order to deliver a live child.

4 (10) PENALTIES FOR VIOLATION.--Except as provided in  
5 subsection (7):

6 (a) Any person who willfully performs, or actively  
7 participates in, a termination of a pregnancy procedure in  
8 violation of the requirements of this section ~~commits is~~  
9 guilty of a felony of the third degree, punishable as provided  
10 in s. 775.082, s. 775.083, or s. 775.084.

11 (b) Any person who performs, or actively participates  
12 in, a termination of a pregnancy procedure in violation of the  
13 provisions of this section which results in the death of the  
14 woman ~~commits is guilty of a felony of the second degree,~~  
15 punishable as provided in s. 775.082, s. 775.083, or s.  
16 775.084.

17 (11) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;  
18 RELIEF.--

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

26 (b) In a civil action under this section, appropriate  
27 relief includes:

28 1. Monetary damages for all injuries, psychological  
29 and physical, occasioned by the violation of subsection (5).

30 2. Damages equal to three times the cost of the  
31 partial-birth abortion.

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1           Section 2. Section 390.002, Florida Statutes, 1996  
2 Supplement, is renumbered as section 390.0112, Florida  
3 Statutes.

4           Section 3. Section 390.011, Florida Statutes, is  
5 amended to read:

6           390.011 Definitions.--As used in this chapter act:

7           (1) "Abortion" means the termination of human  
8 pregnancy with an intention other than to produce a live birth  
9 or to remove a dead fetus.

10           (2) "Abortion clinic" or "clinic" means any facility  
11 in which abortions are performed other than a hospital or a  
12 physician's office which is not used primarily for the  
13 performance of abortions.

14           (3) "Department" means the Department of Health and  
15 Rehabilitative Services.

16           (4) "Hospital" means a facility licensed under chapter  
17 395.

18           (5) "Partial-birth abortion" means a termination of  
19 pregnancy in which the physician performing the termination of  
20 pregnancy partially vaginally delivers a living fetus before  
21 killing the fetus and completing the delivery.

22           ~~(6)~~<sup>(5)</sup> "Physician" means a physician licensed under  
23 chapter 458 or chapter 459 or a physician practicing medicine  
24 or osteopathy in the employment of the United States ~~or this~~  
25 ~~state.~~

26           ~~(7)~~<sup>(6)</sup> "Third trimester" means the weeks of pregnancy  
27 after the 24th week of pregnancy.

28           Section 4. This act shall take effect upon becoming a  
29 law.

30  
31



# ACOG *Statement of Policy*

As issued by the ACOG Executive Board

## STATEMENT ON INTACT DILATATION AND EXTRACTION

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

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

1. deliberate dilatation of the cervix, usually over a sequence of days;
2. instrumental conversion of the fetus to a footling breech;
3. breech extraction of the body excepting the head; and
4. partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus.

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

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

According to the Centers for Disease Control and Prevention (CDC), only 5.3% of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. A preliminary figure published by the CDC for 1994 is 5.6%. The CDC does not collect data on the specific method of abortion, so it is unknown how many of these were performed using intact D & X. Other data show that second trimester transvaginal instrumental abortion is a safe procedure.

continued...

B

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EXHIBIT B

**STATEMENT ON INTACT DILATATION AND EXTRACTION (continued)**  
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Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother. Intact D & X is one of the methods available in some of these situations. A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. An intact D & X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are critical to the lives and health of American women. The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.

Approved by the Executive Board  
January 12, 1997