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So-called "Partial Birth Abortion" Bans and Third Trimester Abortions

(Position Paper)

**Life and Liberty for Women
opposes all such bans.**

We believe that a desperate attempt to ban all abortions is deliberately being cloaked within these bans, a conclusion the U.S. Supreme Court validated in its rejection of one such ban in the summer of 2000.

We believe that the so-called PBA procedure, a.k.a., intact D&E, a.k.a., D&X, or any other medical abortion procedure, should not be taken out of the hands of qualified doctors and be subjected to a political and evangelical Christian referendum. We agree with the American College of Obstetricians and Gynecologists who declared, "The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous. The 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. The potential exists that legislation prohibiting specific medical practices, such as the intact D&E, may outlaw techniques that are critical to the lives and health of American women."

We believe that the deliberate lies, deception, and outright distortion that the anti-abortion movement has engaged in throughout this debate to achieve a total ban on all abortions, must be aggressively exposed.

We believe that Roe vs. Wade's legal and moral determination that prior to viability, even and especially within the late second trimester, a woman has a right to decide to terminate a pregnancy, for any reason, must be proudly stood and spoken for. **Life and Liberty for Women** believes it is here that the current abortion rights movement has failed in its defense of PBA, to the general public.

When the debate began in the early-mid 90's over so-called "partial birth abortion" bans, (PBA bans), both the abortion rights movement and the anti-abortion rights movement were on the same page. Both were speaking of abortions being performed in the third trimester, a.k.a., 7,8,9 month, a.k.a., post viability, and a.k.a., "late term". So when the abortion rights movement explained the reasons why an abortion would be performed in this time period, using this so-called procedure, or any other procedure, they said the reasons were only to preserve the health, including the future fertility and life of the woman. They described such situations as tragic and life threatening. They were absolutely correct.

The anti-abortion movement was, and continues to describe, a PBA's use in the emotional and inflammatory language of "killing a baby just moments before birth" implying a "healthy bouncing baby" would result if a D&X or intact D&E was not performed. That has never been true, never been the case in the third trimester and they know that. That rhetoric belies their true motivation and strategy for banning all abortions.

With a slight of hand, and the abortion rights movement somewhat asleep at the wheel, the anti-abortion movement began to discuss reasons for and numbers of abortions using this, and other abortion procedures that reflected a picture that was now inclusive of the second trimester. It does not take a rocket scientist to know or understand or even articulate the reasons for a second trimester abortion, which are very different than the reasons for an abortion in the third trimester. And it doesn't take a rocket scientist to compare the number of abortions performed overall with the number performed in the third trimester, and conclude that the anti-abortion has deliberately been deceptive about the truth and reality of abortions performed in the third trimester.

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First, let's talk about abortions done in the later part of the second trimester. It is critical to understand and keep in mind that anti-abortion supporters want to ban all abortions and see every abortion, regardless of when or why it is performed as wrong and immoral. It is not at all surprising then that they deliberately mesh the numbers and reasons for a late but still pre-viable second trimester abortion, with those of the third trimester. It makes for a great sound bite and it elicits the emotions from the public that they believe will best serve their agenda of banning all abortions. The end has always justified the means for the narrow-minded anti-abortion movement.

It must be said that there are many individuals, including some who are abortion rights supporters who would find unacceptable a late second trimester abortion for any other reason than a health and life risk to a woman. That is a personal judgment call. Every woman has the right to make that decision for herself based on her own set of religious and moral values and [Life and Liberty for Women](#) wholeheartedly supports that. [Life and Liberty for Women](#) proudly supports Roe vs. Wade; which declared that prior to viability the state could not step in to protect what is unviable fetal life, or life that can still only be defined as potential life. [Life and Liberty for Women](#) is proud of Roe vs. Wade which correctly placed trust in women to make their own judgment about when life begins based on their own set of religious and moral values and which honored and respected women as good moral beings who are very capable of making a good moral decision about an unintended pregnancy, whatever that decision ultimately is. Anti-abortion individuals and others are free to not have an abortion in the late second trimester because they believe it to be wrong, but anti-abortion individuals do not have the right to legislate such a personal religious and moral value upon any other woman.

It is important to understand the reasons why and under what circumstances abortions occur in the second trimester. There are four possibilities. First, you can have a healthy woman and a healthy fetus. [Life and Liberty for Women](#) stands tall and

proud for the right of any woman to decide to terminate her pregnancy, prior to viability, for any reason she deems is right for her life and the potential life she is responsible for. Here it is important to articulate the several reasons why a woman who wishes to terminate her pregnancy might wait so long. In 1987 a study by the Alan Guttmacher Institute found that 71% of women did not recognize that they were pregnant or had misjudged gestational age. Forty-eight percent had difficulty arranging for an abortion, particularly raising the money for an abortion. Thirty-three percent were afraid to tell their parents or partner, and 24% said they were having great difficulty deciding to have an abortion. These women were also more likely to be having personal health problems, fetal health problems, or to have suffered rape or incest.

Second, it is between 14 and 18 weeks before amniocentesis can begin to detect some serious and life threatening fetal anomalies. Consequently, it may be mid to late second trimester before an unhealthy fetus may be discovered. In this case there would be a healthy woman and an unhealthy fetus. A woman, in consultation with her physician, family, and clergy must be the one who makes the decision about continuing the pregnancy or terminating it.

Third, a woman who has a health issue, such as a heart condition, cancer, high blood pressure, diabetes, and others that may or may not have been apparent at the onset of pregnancy, but can complicate a pregnancy, especially as the pregnancy progresses, is also a very real possibility. Such a case may see a healthy fetus and an unhealthy woman or if the fetus is found to be unhealthy as well an unhealthy fetus and an unhealthy woman can be a reality. Again, it is essential that a woman, her physician, family, and clergy make a decision as to whether an abortion is best for her and the potential life she is responsible for and further, what procedure will best protect her health, future fertility, and life. Only those individuals know the facts and only they can call upon their own conscience and religious and moral value system to make such a heart wrenching decision.

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It is not at all surprising that the anti-abortion movement will not speak these truths and realities when they discuss second trimester abortions. Clouding these truths with emotional manipulation and lies better serves their agenda.

Next it is important to articulate the truth about what does and does not happen in the third trimester. After viability or in the third trimester, Roe vs. Wade gave the state the right to step in and deny a woman the right to terminate her pregnancy for any reason, in a clear and unequivocal support of protecting fetal life, with the only exception being the protection of a woman's health or life. **Life and Liberty for Women** firmly and proudly stands by such protection of fetal life. Currently 41 states and the District of Columbia have such protection of fetal life written into their state laws. When the anti-abortion movement says that Roe vs. Wade allows for abortion through all nine months of pregnancy for any reason, that is a lie. But it is a lie that feeds the emotion that manipulates public opinion in the so-called PBA ban debate and provides cover for an attempt to ban all abortions.

In the third trimester, a woman whose health, whose future fertility, or whose life is placed in jeopardy by the pregnancy, (by a fetus that is incompatible with life), is the only reason that that pregnancy can be terminated. It is also very important to realize that when a woman and her family are faced with such an awful tragedy and a horrific decision, this is a wanted pregnancy. This is not a woman who gets up one morning and decides she doesn't want to be pregnant. These are desperately wanted pregnancies but tragically fate has stepped in. This a fact, a reality that the anti-abortion movement will not admit to nor will they will deal with. To do so would get in the way of their emotional manipulation of the public. Banning all abortions through deceptive far-reaching and all encompassing language in a bill that is suppose to ban an abortion procedure that anti-abortion individuals have described in untrue inflammatory language, would not be possible if they faced these truths. These truths are vindicated by the stories of women who faced these tragedies

and by the actual number of 3rd trimester abortions.

In January of 2000 the Centers for Disease Control and Prevention (CDC) reported the latest statistics gathered on abortions performed in the United States. In 1997, the CDC said that 1,184,758 abortions were performed, the lowest level in two decades. Additionally, approximately 88% were performed during the first 12 weeks of pregnancy. In actual numbers that would mean that 1,042,587 were performed in the first 3 months of pregnancy or in the first trimester. That leaves approximately 14,217 that were performed after the first trimester.

The Alan Guttmacher Institute indicates that only 1% of abortions are performed at 21 weeks plus. In real numbers that is approximately 11,848 abortions. In 1997 the Alan Guttmacher Institute said that approximately four one-hundredths of one percent (.04%) are performed in the third trimester or after viability. In real numbers that would be approximately 474 abortions performed in the third trimester out of over 1 million abortions overall. Depending on the total number of abortions in a given year, where the high has been near 1.6 million, that would mean that anywhere between approximately 400-700 abortions a year out of one million plus, occurs in the 7,8, or 9th month. That hardly sounds like the "killing of healthy fetuses or babies just before birth because a woman doesn't want to be pregnant anymore."

Additionally, those statistics do not bear out the view of abortion providers that the anti-abortion rights movement portrays; that is uncaring, unconscionable, money hungry providers who would perform an abortion for any reason right up "to the moment of birth." In fact these statistics bear out exactly the opposite. That is another reason why **Life and Liberty for Women** believes the anti-abortion movement ignores or deliberately distorts and manipulates these statistics.

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Further, the stories of the women who testified before Congress in 1995, describing why they, their family and their physician decided on an intact D&E, a.k.a., D&X, to end a pregnancy that every one of these women say they very desperately wanted, would pull at anyone's heart strings.

Coreen Costello, a Republican woman and full-time mother of two, testified, "When I was seven months pregnant I was having premature contractions. During an ultrasound, the physician became very silent. My husband reassured me that we could deal with whatever was wrong. We had talked about raising a child with disabilities. We were willing to take whatever God gave us. My doctor informed me that they did not expect our baby to live. She was unable to absorb any amniotic fluid and it was puddling into my uterus. This poor precious child had a lethal neurological disorder and had been unable to move for almost two months. The movements I had been feeling had been nothing more than bubbles and fluid." Both Coreen and her husband were anti-abortion and terminating her pregnancy was not an option. "I wanted her to come on God's time. I did not want to interfere." However, as the pregnancy progressed, doctors discovered that the baby was "stuck in a transverse position. Due to swelling, her head was already larger than that of a full-term baby. Natural birth or induced labor was not possible. I considered a caesarean section, but experts at Cedars-Sinai Hospital were adamant that the risks to my health...were too great...the doctors all agreed that our only option was the intact D&E procedure." The procedure left Coreen well enough to become pregnant again. She since has given birth to a healthy son.

Vikki Stella learned that her fetus had nine severe abnormalities, including a fluid-filled cranium with no brain tissue at all. She was in her 32nd week of pregnancy, a pregnancy that was very much wanted. For Vikki, the safest procedure to protect her health and preserve her fertility was an intact D&E abortion. "As a diabetic...this surgery was...safer for me than induced labor or a c-section, since I don't heal as well as other people...I've been told mothers like me all want perfect babies...{my son} wasn't just imperfect - he was incompatible with life; the only thing that was keeping him alive was my body." Because Vikki's intact D&E preserved her fertility, she was able to have another child.

Finally, there was Viki Wilson, a RN from Fresno, California. She was a pediatric nurse and her husband, Bill, was an emergency room physician. In the 36th week of her third pregnancy, again a very much-wanted pregnancy, they learned what could only be described as devastating news. Their baby had encephalocele with severe microcephaly, with a large portion of the brain formed outside the skull, most of its tissue abnormal. Several doctors, including geneticists and perinatologists, told them, that the daughter they named Abigail could never survive outside her mother's womb, and that the 'healthy baby kicks' Viki had thought she felt were, in fact seizures caused by pressure as the baby's head had lodged in her pelvis. The specialists recommended the intact D&E as the best procedure for Viki. The Wilson's held a funeral for Abigail and a playground at their children's Catholic school is named in her honor. The Wilson's subsequently welcomed a baby son through adoption in December 1996.

There are many other stories like these. Every one of the 400-700 abortions performed in the third trimester, out of over one million total performed each year in this country, are as devastating, tragic, and painful as these three.

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When anti-abortion extremists, such as Gary Rogers, of the Colorado Pro-life Alliance, makes statements like "Why not just let the baby come out a few more inches and live," he has absolutely no idea what he is talking about, or more likely, he knows that that emotional but deceptive and misleading rhetoric makes for a great sound bite.

Whatever the the case, Rogers and others in the anti-abortion movement, who would say such, simply make a mockery of their claim to fame as "pro-lifers." Clearly, in the second trimester, even late second trimester, you are dealing with an unviable fetus. The fetus would not survive if "born" at this time during the pregnancy. So such a statement by Rogers applied in this scenario is ludicrous, wrong, manipulative, and deceptive and does absolutely nothing to further an honest discussion or debate on the issue.

Further, applying Rogers' statement to an abortion in the third trimester is just as ludicrous. As [Life and Liberty for Women](#) has pointed out, the fetuses under discussion in these scenarios are incompatible with life. If such a fetus is born alive, either vaginally or by c-section without endangering the woman's health, future fertility, or life, and that in and of itself would be the exception and not the rule, the fetus would not live but hours or days at best. It is essential to understand that c-sections before the due date of a fetus is dangerous and most often impossible, as the uterine wall has not thinned to make a safe c-section possible. Additionally, the complications caused by a fetus incompatible with life will make, not just a c-section impossible but a "normal" vaginal delivery impossible as well.

Rogers' statement would lead one to believe that not only are these abortions because a woman doesn't want to be pregnant but that leaving nature to take its course, the result would be a healthy bouncing baby and that simply is not true. It is not ever the case. Remember, if the fetus is healthy and the woman unhealthy, you are still talking about a very much-wanted pregnancy and without a doubt, the family and the doctor would wait until the very last moment to induce labor or take the baby through a c-section, so as to

give the fetus the best chance for survival they could. And in that instance, don't think for one minute that an intact D&E is being considered, because it is not. An intact D&E or D&X is considered when the fetus is incompatible with life, not when a fetus is healthy.

Finally, [Life and Liberty for Women](#) believes that every woman must have the right to make such difficult decisions for herself, in consultation with her doctor, her family, and her clergy. No abortion procedure should ever be banned from use. [Life and Liberty for Women](#) trusts doctors who are best qualified to make judgments about what procedure would be best to protect a woman's health, future fertility, and life, regardless of whether an abortion is being performed on a healthy woman and healthy, but pre-viable fetus in the second trimester, or in the third trimester after viability, where a fetus that is incompatible with life is under consideration. [Life and Liberty for Women](#) doesn't believe that any woman or family would want a Gary Rogers sitting in the room between them and their doctor telling them or their doctor which medical procedure is the best to protect her health, future fertility, or life, or which procedure, based on his set of religious and moral values is appropriate.

When consideration is given to the stark reality of the statistics and the stories of women, who desperately wanted their pregnancies to continue and ultimately produce a full term healthy baby, but were instead faced with tragic and unfair third trimester (late term) circumstances, the anti-abortion rhetoric rings hollow and it is exposed for the lie, deception, and manipulation it is.

The anti-abortion movement has outright lied to move forward an agenda to ban all abortions, regardless of when or why in a pregnancy they are performed. In fact, the anti-abortion movement ignores such distinctions because they do not serve their agenda. The anti-abortion movement has hoodwinked the public with their emotional rhetoric and manipulation of the truth.

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It should be pointed out here just how the anti-abortion movement expects a so-called "partial-birth abortion ban" to ban all abortions; what did the Federal and Supreme Courts find within those bans that led them to conclude that they would indeed ban all abortions.

The American College of Obstetricians and Gynecologist's statement on the U.S. Supreme Court Abortion Case: *Stenberg v. Carhar*, April 21, 2000 said, "Nebraska's so-called 'partial birth abortion' statute was signed into law on June 9, 1997 and attempts to ban certain types of abortion procedures. However, the Nebraska legislature drafted the ban with non-medical language that covers abortions in all stages of pregnancy, not just post-viability abortions."

The Federal District Court found that the Nebraska statute was unconstitutional for three reasons: 1) it prohibited Dr. Carhart from using intact dilation and extraction for the 10-20 women annually for whom it was the safest form of second-trimester termination; 2) it prohibited him from using dilation and evacuation for the approximately 190 women annually for whom it was the safest procedure; and 3) it used overly vague language that made it impossible to know what exactly was prohibited. On appeal, the Federal Court of Appeals found that the ban on dilation and evacuation procedures alone was sufficient to make the statute unconstitutional.

The Supreme Court held that Nebraska's law, as phrased, might criminalize another, more common procedure used primarily in second trimester abortions. Abortion providers also feared that anti-abortion prosecutors and judges in an attempt to push the envelope, would bring criminal cases against abortion providers for first trimester abortions using the vague language in the ban as their justification. [Life and Liberty for Women](#) also believes that would be an outcome of allowing this and other bans so vaguely worded to stand. We are convinced that the anti-abortion movement, without a doubt intends to use these bans to ban all abortions. Again, it

does not take a rocket scientist to figure that out that this is the ultimate goal.

Further, the Supreme Court once again, refused to let stand a ban on any type of abortion procedure or restriction that did not provide for both a health and life exception. This ban did not include a health exception. If the anti-abortion movement was truly interested in banning just this one so-called procedure as they claim, a health exception should pose no threat to that goal.

Finally, [Life and Liberty for Women](#) notes that the current abortion rights movement has been slow to set the record straight or stand proud and tall for a woman's right to terminate a second trimester, pre-viable abortion; even and especially when she and the fetus are deemed healthy, because she believes she could not at this time provide a quality of life for a child nor does she believe she could carry and give birth and then place her child up for adoption.

That is where [Life and Liberty for Women](#) will interject themselves. We will speak loudly to set the record straight and speak proudly for a woman's right, to terminate a pregnancy, without explanation or apology, up to the point of viability. We will defend providers and shout our trust in them as good moral beings and beings of conscience who have and who will follow the letter of the law, and who takes great care of their patients. And we will shout our respect and trust in women who are good moral beings too. We will repeat over and over until it is understood that whatever a decision a woman makes about an unintended pregnancy, she is making a good moral decision based on her own set of religious and moral values, as it well should be.

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