



## WASHINGTON NATIONAL OFFICE

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Director

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### **Oppose S.3, the So-Called "Partial Birth Abortion Ban Act of 2003"**

Dear Senator:

The ACLU urges you to oppose S.3, the so-called "Partial-Birth Abortion Ban Act of 2003" when it is considered on the Senate floor this week. Like similar bills that have been considered in previous Congresses, S.3 poses a grave threat to women's health because it outlaws safe abortion procedures. It also violates the Constitution.

Since the Senate last considered a bill banning so-called "partial-birth abortion," the Supreme Court has spoken unequivocally on these bans. In *Stenberg v. Carhart*, 530 U.S. 914 (2000), the Court made clear that so-called "partial-birth abortion" bans pose serious threats to women's health and violate the Constitution.

Some contend that S.3 -- the newest iteration of the ban -- is materially different from earlier versions and that it should therefore withstand constitutional scrutiny. This is not accurate. The bill continues to reach more than a single abortion procedure. In fact, it bans an array of safe abortion procedures, including the method most commonly used in the second trimester of pregnancy. And, the bill continues to lack an exception to protect women's health -- a requirement that is constitutionally compelled, as the Supreme Court made clear in *Stenberg*.

Like the ban invalidated in *Stenberg*, the language in S.3 applies to dilation and evacuation ("D&E") procedures, the most common abortion procedure performed in the second trimester. Such a ban on D&Es would pose a grave threat to women's health, as the Supreme Court recognized.

But even if it were true, as the bill's proponents claim, that S.3 covers only a single abortion procedure known to the medical community as "dilation and extraction" or "D&X" (also called "intact D&E"), it would still endanger women's health. A threat to women's health

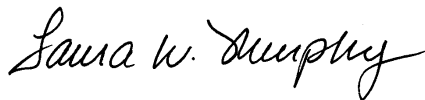
*always* results when a safe medical procedure is removed from the physician's array of options, as there will always be some woman for whom the banned procedure would be the safest.

And, contrary to the contentions in the findings of S.3, a wealth of medical evidence supports the conclusion that D&X is a safe procedure that may well be the safest option for some women. After hearing extensive expert medical testimony, every court in the country to reach the question but one has agreed with this conclusion. Moreover, the American College of Obstetricians and Gynecologists, the leading professional association of physicians who specialize in the health care of women, has concluded that D&X is a safe procedure that may be the safest option for some women. Relying on such medical evidence, the Supreme Court concluded in *Stenberg* that "significant medical authority supports the proposition that in some circumstances, D&X would be the safest procedure." *Stenberg*, 530 U.S. at 932. Indeed, the Court held that "a statute that altogether forbids D&X creates a significant health risk." *Id.* at 938.

Given the Supreme Court's clear ruling, the ACLU urges Senators who have supported legislation to ban so-called "partial-birth abortion" in the past to reconsider the issue.

The ACLU urges you to **oppose** S.3. It is a dangerous threat to women's health and an unconstitutional attack on reproductive freedom.

Sincerely,

A handwritten signature in black ink that reads "Laura W. Murphy". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Laura W. Murphy  
Director

A handwritten signature in black ink that reads "Greg Nojeim". The script is bold and cursive, with the first letters of the first and last names being capitalized and prominent.

Gregory T. Nojeim  
Associate Director and Chief Legislative Counsel