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Legislative Clerk  
Committee on Energy and Commerce  
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Judy Waxman’s Response to Additional Questions for the Record Following the September 17, 2015 hearing entitled “Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law.”

Question 1:

The Honorable Joseph R. Pitts

**In the majority opinion upholding the Partial-Birth Abortion Ban Act in 2007 Justice Kennedy quoted from the testimony of a nurse who witnessed this partial-birth method of abortion for killing a 26 week old unborn child.**

**“ Dr. Haskell went in with forceps and grabbed the baby’s legs and pulled them down into the birth canal. Then he delivered the baby’s body and the arms— everything but the head. The doctor kept the head right inside the uterus...**

**“ The baby’s little fingers were clasp ing and unclasp ing, and his little feet were kicking. Then the doctor stuck the scissors in the back of his head, and the baby’s arms jerked out, like a startle reaction, like a flinch, like a baby does when he thinks he is going to fall.**

**“ The doctor opened up the scissors, stuck a high-powered suction tube into the opening, and sucked the baby’s brains out. Now the baby went completely limp... .**

**“ He cut the umbilical cord and delivered the placenta. He threw the baby in a pan, along with the placenta and the instruments he had just used.’ ”**

**Do you believe that the procedure described here, partial-birth abortion, should be legal? If yes, do you believe this procedure is humane?**

A: The dissent in this case, written by Justice Ginsburg and joined by Justice Stevens, Justice Souter and Justice Breyer, stated:

“Today’s decision is alarming... It tolerates, indeed applauds, federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians and Gynecologists (ACOG). ...And, for the first time since Roe, the Court blesses a prohibition with no exception safeguarding a woman’s health.” 127 S. Ct. 1610, 1641 (2007).

I agree with this dissent. I believe it is critical and humane to protect a woman’s health and therefore the procedure should be legal.

Question 2:

The Honorable Joseph R. Pitts

In the [decision](#) upholding the partial-birth abortion ban act Justice Kennedy noted,

**“The evidence also supports a legislative determination that an intact delivery is almost always a conscious choice rather than a happenstance. Doctors, for example, may remove the fetus in a manner that will increase the chances of an intact delivery....Many doctors who testified on behalf of respondents, and who objected to the Act, do not perform an intact D&E by accident. On the contrary, they begin every D&E abortion with the objective of removing the fetus as intact as possible.”**

In the [first video](#) released by CMP Dr. Nucatola described the factor of intent as playing an important role in an abortionists’ use of abortion method. She said **“...the Federal Abortion Ban is a law and laws are up to interpretation. So there are some people who interpret it as intent. So if I say on Day 1 I do not intend to do this, what ultimately happens doesn’t matter. Because I didn’t intend to do this on Day 1 so I’m complying with the law.”**

**As an attorney, do you believe Dr. Nucatola’s reliance on ‘intent’ represents a valid legal approach?**

A: The “intent standard” comes from the Partial-birth Abortion Ban Act of 2003 which was introduced by then Senator Rick Santorum (R-PA) This law, 18 U.S.C. Section 1531 (a), defines a partial birth abortion “as an abortion in which a physician deliberately and *intentionally* vaginally delivers a living fetus...” (emphasis added)

Question 3:

The Honorable Joseph R. Pitts

**More than 9,000 Medicaid providers have been terminated by federal and state authorities in the past two decades for ethical, professional and competency reasons. Many have been terminated for failing to pay their school loans. Do you agree that the laws requiring health care professionals and other vocations to report child sexual abuse are good public policy and help prevent abuse? Additionally, do you agree that a health care professional failing to report sexual abuse of a minor is a serious issue? Do you agree that Planned Parenthood provider or any provider caught failing to report child sexual abuse should be terminated as a Medicaid provider?**

A: All mandatory reporters, as defined by state law, should report child sex abuses cases as required by state and federal law. Any remedy required by the law should be applied to all mandatory reporters in the same manner, consistent with all procedures required by law.

Question 4:

The Honorable Joseph R. Pitts

**Do you agree with the law that a Medicaid provider who has willfully overbilled the government for services or medications may be disqualified as provider? There are**

**44 state and federal Government audits of Planned Parenthood Medicaid billing practices that indicate overpayments to Planned Parenthood of at least \$8 million. Given that hundreds of other Medicaid providers have been terminated for fraudulent and abusive billing practices, would you agree with me that if Planned Parenthood was shown to have overbilled taxpayer millions of dollars, then that should be grounds for terminating PP as a Medicaid provider?**

A: Fraudulent billing practices should result in the remedies required by law to be applied to all providers found in violation in the same manner, consistent with all procedures required by law.

Question 5:

The Honorable Joseph R. Pitts

**You are aware that in a letter to Congress dated August 27, 2015 Cecile Richards acknowledged that PP clinics were receiving \$60 per specimen for baby body parts, correct? Are you aware of any attempt by Planned Parenthood or an affiliate to explain how it determined this amount reflects its actual costs for “transportation, packaging, storage or any other expenses associated with the procurement of these organs?”**

A: I do not have sufficient information to answer this question.

Question 6:

The Honorable Joseph R. Pitts

**In your testimony, a central assumption you seem to make is that current Medicaid law only permits suspension or termination following a felony conviction of a Medicaid provider. Do you disagree that federal circuit court decisions construing Medicaid law, together with statutes and regulations, form the body of law states and federal governments should follow when determining the rights of Medicaid providers?**

A: Federal and state statutes and regulations determine the rights of Medicaid providers. Judicial decisions only apply within the jurisdiction of the court.

Question 7:

The Honorable Joseph R. Pitts

**The Ninth Circuit in a 2009 decision, *Guzman v. Shewry*,<sup>1</sup> held, “The Medicaid statutes contain no explicit preemption language limiting the grounds upon which a state may suspend a provider from a state health care program” and that “nothing in the federal Medicaid statutes or regulations prevents a state from suspending a provider temporarily from a state health care program on the basis of an ongoing investigation for fraud or abuse.”**

**So isn’t it a fact that, under current law, states have the power to suspend a provider, pending an investigation, without a felony conviction? After all, isn’t the point of an investigation is that the investigator may have a suspicion of wrongdoing**

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<sup>1</sup> 552 F.3d 941, 949(2009).

**and wants to investigate the subject to gather more facts and either confirm its initial suspicion of wrongdoing, or conclude there is insufficient evidence of wrongdoing?**

A: States must follow current law with respect to mandatory and permissible exclusions after a determination of wrongdoing in accordance with 42 U.S.C. § 1396a(p). It should be noted that the *Guzman* case was an extraordinary situation where the defendant's actions put his patients' safety at risk.

Question 8:

The Honorable Joseph R. Pitts

**Q: If contraception is so inexpensive and widespread as you claim in your writing, why do you oppose religious liberty protections for employers regarding contraception choices?**

A: Ninety-nine percent of sexually active women in this country have used contraception at some point in their lives. The Affordable Care Act guarantees that women who have private health insurance are have comprehensive coverage of the contraceptive method that works for each of them. I believe that employees should not be denied this guarantee of coverage because of the employer's religious beliefs.