Mr. SMITH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PARTIAL-BIRTH ABORTION BAN ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 1833, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortions.

The Senate resumed the consideration of the bill.

Pending:

(1) Smith amendment No. 3080, to provide a life-of-the-mother exception.

(2) Dole amendment No. 3081 (to amendment No. 3080), of a perfecting nature.

(3) Pryor amendment No. 3082, to clarify certain provisions of law with respect to the approval and marketing of certain prescription drugs.

(4) Boxer amendment No. 3083 (to amendment No. 3082), to clarify the application of certain provisions with respect to abortions where necessary to preserve the life or health of the woman.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senator will suspend. The Senate will please come to order.

Mr. SMITH. Mr. President, I ask for the yeas and nays on the Boxer amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3081 TO AMENDMENT NO. 3080

Mr. SMITH. Mr. President, I now call for the regular order with respect to the Dole amendment.

The PRESIDING OFFICER. The Senator has that right. The pending question is the Dole amendment No. 3081 to the Smith amendment 3080.

Mr. SMITH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask for the yeas and nays on the Dole amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BROWN. Mr. President, I want to make it clear that my hope is to offer two amendments to this bill for consideration by the Senate. One would deal with the problem of a deadbeat father having standing to bring lawsuits, and the other one would deal with the question of who is civilly or criminally liable under the bill. At the appropriate time, with the concurrence of the sponsor of the bill, I will offer those amendments.

Mr. President, at the appropriate time I will try to offer those amendments for the Senate's consideration. I will make copies available in the RECORD.

Mr. President, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, it is my intention to offer an amendment concerning deadbeat dads. The amendment would make it clear that fathers who are deadbeat and do not marry the mother do not have the right to sue under this bill and thereby gather a financial bonanza. I circulated a draft of that amendment to the parties who are leading the debate on this bill.

I ask unanimous consent that I be allowed to offer that amendment without a second-degree amendment being in order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I may offer the amendment.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, I would ask that we go into a quorum.

Mr. BROWN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Will the Senator yield for a question before he begins? And I am fully supportive of his amendment, the way he is approaching it.

Mr. BROWN. I am happy to yield.

Mrs. BOXER. I just want to get on the record that it is not the Senator's intention to have his amendment voted on prior to the Boxer amendment and the Dole amendment but, rather, after the Boxer and the Dole amendments are disposed of?

Mr. BROWN. That is an accurate statement of my intention, and my hope would be that absent agreement, we would save my amendment until after the disposition of those two amendments.

The PRESIDING OFFICER. The Senator needs to make a request.

Mr. BROWN. Mr. President, I ask unanimous consent that no vote occur on the Brown amendment, which I am about to offer, until the Boxer and Dole amendments are disposed of.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mrs. BOXER. I thank my friend, and I wish him the best of luck with his amendment, which I will support.

Mr. BROWN. I ask unanimous consent that the pending amendment be temporarily set aside so that I may offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3085

(Purpose: To limit the ability of dead beat dads and those who consent to the procedure to collect relief as provided for in this section)

Mr. BROWN. Mr. President, I rise to offer an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. BROWN] proposes an amendment numbered 3085:

On page 2, line 14, strike ''(c)(1) The father,'' and insert the following: ''(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure,''.

Mr. BROWN. Mr. President, as drafted, the bill now extends the right to sue a physician and others involved in the partial-birth abortion process, to the father and other parties.

It is this Senator's belief that extending the right to sue under the bill to a father, who has assumed the responsibilities of fatherhood, is appropriate, but it is also my belief that to extend the privilege of standing and the potential enrichment it could convey to someone who has not assumed the real responsibilities of fatherhood would be a tragic mistake. To allow someone a financial windfall when they have not married the mother, when they have not lived up to their responsibilities in our society, would send exactly the wrong message. It would have the effect of granting possibly substantial financial remuneration to someone who has not been willing to meet his commitment to society or to meet the commitments of fatherhood. It would reward a deadbeat dad, something I believe is simply wrong. So this amendment makes it clear that someone who has not married the mother does not have the right to be enriched.

Mr. President, I think that sums up the amendment, and I hope the Senate will favorably consider it after it has had an opportunity to consider and dispose of the Dole and Boxer amendments.

I yield the floor.

Mr. SMITH. Mr. President, I just want to say to the Senator from Colorado that we support his amendment. We think it is a good amendment and

enhances the bill, and we are pleased to support it. I appreciate the fact that the Senator has offered it.

Mr. President, is the pending business the Smith-Dole amendment?

AMENDMENT NO. 3081

The PRESIDING OFFICER. It is the Dole amendment, which is a second-degree amendment to the Smith amendment, amendment 3081, I believe.

Mr. SMITH. I thank the Chair. That being the case, at this time I rise in very strong support of this pending amendment, Dole-Smith or Smith-Dole, life-of-the-mother exception amendment.

In addition, I also, in the course of my remarks, would be addressing another amendment that the Senate will be considering later this evening, which is the Boxer amendment, Senator BOXER's partial-birth abortion-on-demand amendment.

Mr. President, the underlying bill, H.R. 1833, which came to us from the House, bans what I have described as the brutal and inhumane partial-birth-abortion procedure. That is the only abortion procedure that it bans. Testimony to the contrary notwithstanding, this is the only abortion technique, the only abortion method that is banned under 1833. It includes an affirmative defense exception under which a physician would be subject to no penalty if that physician is able to demonstrate that he or she reasonably believed that the mother's life was in danger and no other medical procedure would suffice to save her life.

Obviously, Mr. President, a two-thirds majority of the House of Representatives believed that the affirmative defense provision of H.R. 1833 fully protected the life of the mother. It was an overwhelming vote in the House, and, of course, as we indicated yesterday, there were pro-choice Republicans, pro-choice Democrats, and pro-life Democrats and Republicans who supported overwhelmingly this legislation. So in spite of the fact that it has been called extremist, the truth of the matter is many people on all sides of the issue supported H.R. 1833 in the House.

In addition, as I have noted previously, the American Medical Association's Council on Legislation voted unanimously to endorse H.R. 1833 with the affirmative defense provision in it.

It is clear then, based on that decision, that the AMA Council also believed that the affirmative defense provision would fully protect any doctor who performed a partial-birth abortion if it was performed to save the mother's life when no other procedure was available to save the mother's life, even though, as we have indicated over and over in the testimony and debate in the Chamber of the Senate, we have not seen any witnesses who have come forth in the hearing who said that the mother's life was threatened. But, nevertheless, to be fair, we have put in this exception.

In spite of all that, a number of Senators have argued on the floor and have made the same point to me in private, frankly, that the affirmative defense approach may not give doctors who encounter an exceedingly life-endangering condition of the mother the sufficient latitude that they need. There is no medical evidence in the record produced as a result of the hearing on November 17 before the Judiciary Committee that the partial-birth-abortion procedure is ever necessary to save the life of the mother. As I said, there simply was no testimony. But Senators have expressed discomfort, as I said, in private to me, some wanting to vote for this but felt that they were not comfortable with the affirmative defense approach. In a good-faith effort to accommodate these concerns, last night Senator DOLE and I offered a life-of-the-mother exception amendment, and the new language which would be added immediately at the end of subsection (a) of the pending bill reads as follows:

> This paragraph shall not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, illness or injury, provided that no other medical procedure would suffice for that purpose.

Now, we heard some debate here last night from some as if to say a physical disorder would not cover the complications that may arise from a pregnancy where a partial-birth abortion would be performed.

Of course, that would be covered. We are playing semantic games. The intent is to cover this if, in fact, there is a need to protect the life of the mother, which at this point we have never seen any testimony before any of our committees.

The language of this Smith-Dole life-of-the-mother exception amendment is very clear. It could not be clearer. The first part of the amendment is designed to make certain that the exception only applies to cases in which the mother's life is genuinely, physically threatened by some physical disorder, physical illness, or physical injury.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

UNANIMOUS-CONSENT AGREEMENTS

Mr. SMITH. Mr. President, I ask unanimous consent that there be 90 minutes equally divided between myself and Senator BOXER for debate on the Dole amendment No. 3081 and the Boxer amendment No. 3082, and that following the conclusion or yielding back of time, the amendments be laid aside, and the votes occur first on the Dole amendment, to be followed immediately by a vote on the Boxer amendment on Thursday, December 7, with the time to be determined.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SMITH. I also ask unanimous consent that immediately following the disposition of the State-Justice-Commerce appropriations conference report, that there be 60 minutes to be equally divided in the usual form for closing debate on the two amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH. I further ask unanimous consent that if the Dole amendment No. 3081 is adopted, the Smith amendment No. 3080, as amended, be deemed agreed to without further action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH. Finally, I ask unanimous consent that immediately following the two back-to-back votes tomorrow, that Senator SMITH or his designee be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH. In light of this agreement, Mr. President, the leader has asked me to announce there will be no further votes this evening.

AMENDMENT NO. 3081

The second part of the Smith-Dole amendment is intended to ensure that in such dire emergency cases that we talked about, a partial-birth abortion could only be performed if it were the only medical procedure available to save the life of the mother. After all, as we all know now, the partial-birth abortion procedure is, first, brutal, and second, inhumane. It cannot possibly be justified except in a case of true self-defense when there is no other way—no other way—for a doctor to save the mother's life. In that case, self-defense is certainly legitimate and, of course, I would be supportive.

In sum, Mr. President, both Senator DOLE and I believe that this carefully drafted life-of-the-mother exception amendment is fully adequate. You will hear words to the contrary, but it is fully adequate to address the good-faith concerns of those Senators who are not satisfied with the affirmative defense provision in the underlying bill.

As I indicated, I am satisfied with it. But others are not, and I respect the fact that others are not and am willing therefore and have been willing, and Senator DOLE and others have been willing, to change it to clarify it more, to make sure there is no doubt that we support the life-of-the-mother exception.

We are satisfied that our language assures that this exception will not be abused by doctors who are not acting in good faith to save mothers' lives. We feel we have taken care of that in the amendment. Let me be very clear, Mr. President, as clear as I can be. Under the Smith-Dole amendment, no doctor could be convicted of violating the Partial-Birth Abortion Ban Act of 1995 unless the Government proved beyond a reasonable doubt that the doctor had performed a partial-birth abortion that was not covered—not covered—by this life-of-the-mother exception.

As I indicated, Mr. President, this Smith-Dole life-of-the-mother exception amendment fully satisfies—fully—any legitimate concerns that the affirmative defense provision of H.R. 1833

does not adequately protect any doctor that might act to protect the life of the mother where no other procedure is available. We have gone the extra mile by doing this, even though—even though—those of us that have put this amendment forth believe that the affirmative defense provision does, in fact, protect such doctors.

Mr. President, one of the Senators who has consistently made the argument that the affirmative defense provision does not protect doctors in life-saving situations is my colleague on the other side of the issue, the other side of the management here this evening, Senator BOXER. Last night after Senator DOLE and I offered our life-of-the-mother exception amendment, Senator BOXER responded by saying—I want to quote from the CONGRESSIONAL RECORD. ''Here we have it, an exception now for life of the mother. I think that is progress. I think that is progress, * * *.''

And in the spirit of comity, c-o-m-i-t-y, as opposed to comedy, I welcome Senator BOXER's positive remarks. Senator DOLE and I acted in good faith. We were pleased when she responded in good faith. But later in that same debate there was an about-face by the Senator from California.

I say this with the utmost respect. There was an abrupt change in tune. Here is what Senator BOXER had to say about the Smith-Dole life-of-the-mother exception amendment in the same debate a few minutes after the statement that I just read:

> This so-called life-of-the-mother exception that has been offered by my friend from New Hampshire, with Senator DOLE, is not—let me repeat—is not in any way a life-of-the-mother exception.

I am going to repeat those two lines. First, early in the debate, a quote from Senator BOXER:

> Here we have it, an exception now for the life of the mother. I think that is progress. I think that is progress.

And I welcome those remarks.

Then, later in the same debate, the same evening, quoting Senator BOXER:

> This so-called life-of-the-mother exception that has been offered by my friend from New Hampshire, with Senator DOLE, is not—let me repeat—is not in any way a life-of-the-mother exception.

So, if there is confusion on the part those who are trying to figure out what Senator BOXER's view is on this, then I certainly understand that confusion.

It is rather curious, is it not, that throughout the Senate's debate on this bill, the other side has repeatedly demanded a life-of-the-mother exception—repeatedly demanded a life-of-the-mother exception. Yet, when we offer one, we get praised for it, then the gears are switched and we are denounced.

I do not know what a flip-flop is, but if that is not one, I do not know what is.

Mr. President, after abruptly changing the position, we then get into rationalization. Then we hear the quote from Senator BOXER:

> So, yes, if a woman had diabetes or some other disease, there would be an exception. But if, in fact, the birth endangered her life, there would be no exception.

That just simply is not true. It simply is not true, and any reasonable person who looks at this amendment will see that it is not true, because it specifically provides for a life-of-the-mother exception.

This is bizarre. I mean it really is bizarre. I have been involved in a lot of debates. I have served in the Congress for 11 years—I served in the Senate for 5 and the House for 6—and I have been involved in debates on everything. You name it, I think I have debated it here somewhere. But I do not think I have ever heard a statement that was as quick a turnaround in the same debate as that.

And I guess my question is, what is the position of the Senator from California? What is the position of the spokesman on the other side of this issue? Is it that we have a life-of-the-mother exception or we do not? She said both. I am curious what the position is. Maybe we will hear it. I do not know.

I said last night if a complication resulting from a pregnancy is not a physical disorder, what is it? I am not a physician. I do not pretend to be a physician. I have never advocated being a physician. I have never said I was a physician, but if a physical disorder, a complication resulting from a pregnancy is not a physical disorder, I do not know what it is.

(Ms. SNOWE assumed the chair.)

Mr. SMITH. Let me reiterate that we can play games with words, we can play semantics and obfuscate and distort the issue, and that is exactly what is occurring here, but the truth of the matter is, this is a life-of-the-mother exception. The other side knows it, but that is not the agenda.

A perfectly normal pregnancy is not a disorder. That is what the agenda is. That is the agenda. They want the right to have an elective—elective—abortion, whether there is a life-of-the-mother exception or not. That is the agenda.

A perfectly normal pregnancy is not a disorder in the sense that some complications arise. It is not an illness, and it is not an injury. It is rather a perfectly normal and natural condition in which millions of women all over the country, all over the world, find themselves in at a given time. Sometimes, however, a woman develops a physical condition or a preexisting condition worsens as a result of the pregnancy and that physical condition poses a grave physical threat to her life.

That situation which I just described, where there is a threat to her life, clearly, in the words of the Smith-Dole amendment, is a physical disorder, and it is covered. To put it more simply, Madam President, normal pregnancy is a natural physical order. It is not a disorder, it is an order, a natural physical order, and a life-threatening pregnancy is a physical disorder.

In short, our amendment could not be clearer. This is a fully adequate, genuine life-of-the-mother exception. Period. And not only that, it is exactly what Senator BOXER repeatedly—over and over and over and over and over and over again—on the floor of this Senate prior to the hearing said that she wanted. ''I want the life-of-the-mother exception,'' she said. She said it again in the debate last night. We have it. Then she said we do not have it. First she said we have it, then we do not have it.

Let me say what I think is really going on here. I think that those on the other side, the Senator from California and others, know what this amendment is. They know, in fact, that it is a fully adequate, good-faith life-of-the-mother exception. That is what it is.

What I suspect that they might be afraid of is that the Senate's adoption of the Smith-Dole amendment will make it much more difficult to achieve the real objective. Let us talk about that real objective.

Do you know what the real objective is? To gut this bill. To gut the bill. To kill this bill with a life or health exception, which opens up big doors. The keyword is ''health.'' Everyone really knows in the abortion context what that really means. It means abortion on demand, but we are not talking, I say to my colleagues, about abortion on demand under any circumstances at all in this bill, except the partial-birth abortion. That is the only issue before us today. Nothing else.

Whether or not you support, some time between the 5th and 9th month of gestation, the opportunity for any woman to say—let us just use, for example, at 8½ months gestation, that this is a female child and ''I don't want it. Therefore, because I don't want it, because it is a female, I am going to abort it in the following manner: I'm going to allow a doctor to enhance, induce the delivery of everything except the head.'' So all parts of the child come out of the birth canal with the exception of the head. It is then restrained by the doctor. It is held. Delivery stops because the doctor forcefully stops the child from being born, and then the child is killed by using scissors to the back of the head, with no anesthesia, and a catheter to suck out the child's brains. That is what happens. That is the type of abortion we are talking about here. It is the only type of abortion that we are talking about here. I say to my colleagues, let us not talk about these issues now, such as deformities. We will talk about those later. Let us talk about a healthy female child that somebody decides they do not want only because it is a little girl—no other reason—and they abort it in the manner that I described. That is what the agenda is for those who oppose this amendment.

The Senate will consider, later this evening, this killer amendment. It is an amendment that is designed, again,

to gut the bill. You may as well call it the partial-birth abortion-upon-demand amendment. That is what it is. I know my colleagues in the House—good colleagues, who have strong views on this issue, pro-choice views, like SUSAN MOLINARI and PATRICK KENNEDY, a moderate Republican and a liberal Democrat—voted for this ban, because they were so incensed, outraged, horrified, and sickened by a process that would take the life of a child in this manner.

We have seen testimony, Madam President, of people who aborted children in this manner. This is what we are talking about. Let us not forget the manner, because that is what we are talking about—in this manner: by scissors and a catheter in the back of the neck, because they had Down's syndrome. We had testimony on that. My colleagues will recognize and I am sure many of us know that people with Down's syndrome are very productive people. It is very interesting that some of those same people who were staunch advocates for the Americans With Disabilities Act would not want to protect an innocent child who may be born with a disability. That is the height of hypocrisy. It just does not get any worse than that.

When one seriously examines the Boxer amendment, it becomes clear that the ''partial-birth abortion-on-demand amendment'' is what it is. It totally and completely removes all of the protections of the underlying bill from any baby who is not, in the sole judgment of the abortionist, viable. In other words, under the Boxer amendment, any abortionist who wants to use this brutal and inhumane partial-birth abortion procedure to kill an unborn child who is not yet viable—and viability occurs somewhere around 24 weeks—can do so with total impunity.

The amendment denies previable babies any protection at all. I have no doubt that Martin Haskell, the Nation's foremost partial-birth abortionist, would be very pleased, indeed, if this amendment were adopted. Do you know why he would be pleased? Because Dr. Haskell, by his own admission in statements—he refused to come and speak to the Senate—said he performed a thousand of these abortions like I just described—a thousand of them. Guess what, Madam President? Twenty percent—in other words, 200—were because the child had some medical deformity—Down's syndrome, or who knows—and 80 percent, or 800, by his testimony, were perfectly normal children, who were aborted selectively and electively by someone other than that child, that is for sure. That is what is going on in America. That is all I am trying to stop. That is all I am trying to do here.

I say to my colleagues, as I have said before, and to anybody listening, if you had a pet that you had to euthanize, put to sleep, would you do it by using scissors to insert a hole in the back of the head and suck the brains out of your puppy or your dog without anesthesia? Would you do that? You would be horrified if the local SPCA did that and that was in the paper tomorrow. You would be down there closing the place down, trying to adopt all the pets to get them away from there. That is what you would do. But this goes on. Every day a baby dies like this—in America, at least. We cannot stand here and stop it, with all of the problems we face in America today, such as balancing the budget, keeping the Government from closing down so people do not lose their jobs and are out of work for Christmas, deciding whether or not troops should go to Bosnia? We have to stand here and try to stop something as brutal as this, which should not even be happening? My God.

This amendment that the Senator from California has offered allows any partial-birth abortion on any viable baby. If you do not believe that, I would urge Senator BOXER, when she speaks, to say I will make an exception if it is a little girl, I will make an exception if it is healthy, I will make an exception if it has blue eyes, I will make an exception if it is a little boy, I will make an exception—let me hear it. You will not hear it. You will not hear it because that is not the agenda, because we use it in this cloudy term called the ''right to choose.''

We are going to see pictures of happy families from the Senator from California. But one picture that is not going to be in that happy family is that little baby who, yes, may have had Down's syndrome, who could be productive, or maybe a normal little girl. You will not see their picture in the happy family, because they did not get a chance to be a part of that happy family.

The post-viability language in the Senator's bill, like her pre-viability language, effectively removes all babies from the protection of this underlying bill. I want my colleagues to understand—and they all know my position on abortion. I believe life begins at conception and that life is sacred and should be protected. But that is not what we are debating today. We are debating one specific type of abortion, an abortion in which labor is induced and the child comes into the birth canal and it is executed with scissors and catheters, brutally, in late-term pregnancies. That is what we are talking about, nothing else. Do not be confused by the debate on something else because that is not what we are talking about.

So the Boxer amendment would essentially leave the judgment of whether a post-viability partial-birth abortion is necessary to protect the mother's health to the totally wide-open discretion of the abortion doctor. That, Madam President, is a prescription—to use a medical term—for abortion on demand.

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 24 minutes, 5 seconds.

Mr. SMITH. Madam President, to show more precisely why this amendment would gut the bill, let me focus on the legal meaning of the term ''health'' in the abortion context. The U.S. Supreme Court addressed that very question in the 1973 decision of Doe versus Bolton. ''Whether the health of the mother requires an abortion is a judgment,'' the Court said, ''to be made in the light of all factors—physical, emotional, psychological, the woman's age, and relevant to her well-being.''

That is very clearly stated. In other words, the Court has given the broadest, most liberal terms imaginable to the term ''health'' in the abortion context. As U.S. Court of Appeals Judge John Noonan said, ''. . . it would be a rare case where a doctor willing to perform an abortion would not be convinced that his patient's well-being required the abortion she asked for.''

I am not trying to get into the debate about when a woman's health is at risk. We have had testimony, and we have called for witnesses to come before the committee of the Senate. We have heard testimony in the House. We sought to find people who would come in here, physicians, from anywhere in America, to come in and testify and tell us, the Senate or the House, where there is a case where you would need to do this type of abortion to save the life of a woman. No one testified to that effect.

No one. They could not produce one. They could not even produce somebody that had a partial-birth abortion at the hearing we had, although they asked for the hearing.

The Senate, in recent votes, has rejected this massive health loophole when it decisively defeated the Mikulski medical necessity amendment with respect to abortion coverage under the federal employees health benefit plan a few weeks ago.

The Senate was not fooled then. The Senate will not be fooled now. This Boxer amendment would preserve the status quo, under which barbaric, cruel, and partial-birth abortion procedures are available on demand, a status quo under which a partial-birth abortionist like Dr. Haskell can freely take the lives of babies, like the Down's syndrome little boy that nurse Brenda Shafer saw him destroy.

Brenda Shafer, for those that missed the debate, was a nurse who witnessed a partial-birth abortion, a little boy who had Down's syndrome. She was horrified. She called his little face an angelic face. She said, ''I looked into that face and I walked out of that clinic.'' She was a pro-choice woman who believed in abortion, taught her daughters that, but not this type of abortion. She was horrified, as any ordinary, normal person would be.

My colleagues, all I am asking, in spite of my own personal feelings about this issue, all I am asking my colleagues to do today, all I am asking them to do is to vote to stop this single

horrible, disgusting type of abortion which is unnecessary.

The only circumstance under which such a hideous and cruel procedure could possibly be justified would be in a true, absolute case of self-defense where the doctor had no other way to save the mother's life.

That situation—were it ever to happen in a most extreme case anyone can imagine—is provided for under the life-of-the-mother exception amendment that I believe the Senate will adopt.

Stabbing an innocent, tiny baby through the skull and sucking her brains out—how can you justify that, in order to safeguard some vaguely defined expansive notion of the mother's health? How does it help the mother's health to do that?

If it is hydrocephalic, you can drain off the fluid. In the 1 out of 100 that Dr. Haskell performed that was hydrocephalic—the rest were something also, 80 percent elective.

I urge my colleagues, before you vote on this amendment, look at the Supreme Court's decision of health in the context as set forth in Doe versus Bolton. Health involves all factors: physical, emotional, psychological, and the woman's age relevant to her well-being.

In light of that definition, a vote for this is a vote for partial-birth abortion on demand because there just is not any reason why you could not have one under that definition. A health exception to this bill's ban on partial-birth abortions is, quite literally, an exception that would consume the rule.

In other words, in the abortion context, the word ''health'' in an exception, is a legal term of art, translated into plain English means abortion on demand.

I say, if that is not the case, then I ask my colleagues on the other side, including the Senator from California, to simply stand up and say, ''I would not support aborting a child by the partial-birth abortion method.''

If a woman came in and said, ''I am 8 months pregnant, Dr. Haskell. I have a single baby and I do not want it.'' I say she should not have that abortion. If the Senator from California should stand up and say that, we will have made progress. I hope she says it, but do not hold your breath. If she does not say it, we know what the real agenda is—abortion on demand, not just regular abortion.

This kind of abortion, scissors, catheter, something you would not do to your dog or your cat. You know you would not. You know you would not do it. There is no way that you would do it. Why would you do it to a child? Why would you allow it to be done to a child?

To be sure, Senator BOXER made a cosmetic attempt to narrow the definition of health by saying, ''Serious adverse health consequences to the woman.'' But the fact remains that under Senator BOXER's amendment, whether there is a serious adverse health consequence to the mother is left solely to the judgment of the attending physician. In other words, the sole medical judgment of the abortionist, the sole medical judgment of Dr. Haskell and his fellow birth abortionists.

The interesting point, all this talk of life of the mother, if it is your daughter and she is in that situation, or your wife, would you take her to an abortion clinic if her life was threatened or would you take her to a hospital? These are performed in abortion clinics. That is interesting, is it not?

In short, Madam President, this narrowing language does not narrow her health exception one iota. The words ''serious and adverse'' are so clearly subjective, vague and broad as to be utterly meaningless and provides no meaning. Senator BOXER's amendment remains the partial-birth abortion on demand amendment.

In conclusion, I urge my colleagues, I plead, plead, plead with my colleagues one time, let us end this one, horrible, disgusting type of abortion. Let us have the courage to do it. These little kids cannot stand up here on the floor of the Senate. They do not have anybody. They cannot stand here. The ones that are killed never get a chance to stand here. They are not going to be the first woman President. They are not going to be the first minority President. They will not be President of anything.

Do you know what their sin is? They happen to be in the womb of somebody who does not want them. That is their sin. If they were in the womb of somebody who wanted them after 8½ months, they would be allowed to be free and be born and live under the Constitution of the United States. That is their sin. That is their sin. We can do better than that in this country. We have more important things to do than that.

I yield the floor.

Mr. HELMS. First of all, Mr. President, I think all of us who understand this issue are grateful to the Senator from New Hampshire for his courage and his tenacity in standing up for the unborn, particularly those who have been and otherwise may be destroyed in the most gruesome and horrible way—a partial-birth abortion. I personally am indebted to Senator SMITH, and I admire him very much.

Mr. President, about a month ago, the Senate decided to send H.R. 1833, the Partial-Birth Abortion Ban Act, to the Judiciary Committee with instructions that Senator HATCH and his committee hold at least one hearing and then return the bill to the Senate calendar within 19 days.

The Judiciary Committee has held that hearing and despite the rehashed charges of opponents of this bill, the U.S. Senate can no longer shirk its responsibility. Senator DOLE, by offering a life-of-the-mother exemption to H.R. 1833, has offered a provision that preserves the innocent lives of babies but also answers charges that the original bill did nothing to preserve the lives of the mothers.

Mr. President, Senators have no more excuses. Senators must decide, and should decide soon, whether they will approve a gruesome procedure that is both inhuman and heartless. Senators have heard the partial-birth abortion procedure described. They have seen the graphic depictions. It can easily and factually be said, as Senator SMITH and I discussed when the bill first came to the Senate on November 7, that these innocent, tiny babies are just 3 inches from the protection of the law, only to be mercilessly deprived of their right to live and to love and to be loved.

Senators should also decide whether they will disregard the medical facts and enlightening testimony presented to the Judiciary Committee which confirmed what proponents of the original bill have argued in the House of Representatives and in the Senate—that the voices of tiny babies are being silenced so that a woman can continue to choose to have an abortion in the third trimester.

Let me add, if Senators miss this opportunity to criminalize partial-birth abortions, they will be thumbing their noses at the American public whose outcry against partial-birth abortions is overwhelming.

Mr. President, I was pleased as the House of Representatives listened to the American people and overwhelmingly passed the Partial-Birth Abortion Ban Act by a vote of 288–139 on November 1. If the Senate now follows, as it should, the House's example—and I sincerely hope that the Senate will—the burden then will shift to President Clinton who is more than ready, he says, to use his veto pen in order to appease the pro-abortion lobby unless weighty restrictions are added to the bill.

And that is where we stand today as the Senate has heard from the chorus of Senators, many of whom have taken their marching orders from the powerful abortion lobby. Opponents of the bill have done their best to explain the medical necessity of a procedure that legally allows a doctor to partially deliver a baby, feet-first from the womb, only to have his or her brains brutally removed via the doctor's instruments.

However, Mr. President, these objections by the bill's opponents are hollow attempts to whitewash a hideous wrong. For instance, they continue to persuade Senators that partial-birth abortions are medically necessary in order to preserve the health of pregnant women.

Of course, ask NARAL and the other proabortion groups to define a ''medically necessary'' situation and you'll hear a variety of answers including ''emotional stress,'' ''depression,'' or ''psychological indecision.'' NARAL even defined ''medically necessary'' abortions as ''a term which generally

includes the broadest range of situations for which a state will fund abortion.''—''Who Decides? A Reproductive Rights Issues Manual—1990''.

Mr. President, I suggest we ask the American people who are ringing the phones off the hooks of Senate offices whether they see eye to eye with NARAL and other pro-abortion groups. They are not fooled. They recognize these semantic games as a smokescreen to demand abortion at any time, for any reason.

More importantly, the medical evidence declares that this procedure is not needed to protect the health of the mother in a late-term crisis pregnancy. Don't take it from me. Take it from Dr. Pamela E. Smith, Director of Medical Education in the Department of Obstetrics and Gynecology at Chicago's Mount Sinai Hospital.

Dr. Smith, in her November 4 letter to me, states that assertions implying that a partial-birth abortion is needed to protect the health of a woman in a late-term complicated pregnancy is ''deceptive and patently untrue.'' Dr. Smith even goes as far to explain in her October 28 letter to Congressman CHARLES CANADY that such a procedure, in fact, presents medical risks to the patient.

In her testimony before the Judiciary Committee on November 17, Dr. Smith asks an important question that I wish every opponent of this bill would attempt to answer, and it is this:

> Why would a procedure considered to impose a significant risk to maternal health when it is used to deliver a baby alive, suddenly become the ''safe method of choice'' when the goal is to kill the baby?

Mr. President, I ask unanimous consent that Dr. Smith's letter from November 4, 1995, her letter from October 28, 1995, and her November 17 testimony before the Judiciary Committee be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Even Dr. Warren Hern—author of ''Abortion Practice,'' considered by the American Medical Association as the Nation's most widely used textbook on abortion standards and procedures—boldly disputes the safety of this late-term abortion, calling it ''potentially dangerous.''

Ask Dr. Hern what he thinks about partial-birth abortions as a safe option for late-term abortions. Let me repeat Dr. Hern's comments from a November 20 article in the American Medical News. He says, ''You really can't defend it,'' referring to a partial-birth abortion. He continues, ''I'm not going to tell somebody else that they should not do this procedure. But I'm not going to do it.''

Mr. President, I ask unanimous consent that the November 20, 1995, American Medical News article titled, ''Outlawing Abortion Method,'' be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. HELMS. Mr. President, allow me to address one more objection raised by opponents of this bill. In fact, the National Abortion Federation raised it with me in a November 3 letter, complete with pictures of severely abnormal babies. The NAF claims that it is the tragedy of deformed and abnormal babies that has produced a need for partial-birth abortions. Without this procedure, they portend, a pregnant woman's health will be threatened—Dr. Smith and other doctors have already refuted this point—and such abnormalities are ''incompatible with life.''

Now, Mr. President, nobody, in their right mind, would ever wish for a mother and father to face the heartbreaking experience of their newborn being delivered with a severe abnormality. Nobody would ever want a child to endure the physical and emotional scars of a physical deformity. Yet, for these reasons, they claim partial-birth abortions should remain legal.

Again, I disagree and ask opponents of the bill to consider the reasons given by Dr. Martin Haskell, a noted proponent and practitioner of partial-birth abortions, as to why this procedure is conducted. Dr. Haskell, in a 1993 interview with American Medical News, states that 20 percent are conducted for genetic reasons, and the other 80 percent are purely elective—purely to get rid of the child.

And according to materials presented to a House Judiciary subcommittee, the non-elective reasons given for a partial-birth abortion conducted by the late Dr. James McMahon included such ''flaws'' as a cleft palate. Are these the type of genetic reasons these babies suffer painful deaths?

Mr. President, the facts are in and I will not belabor them further. But they clearly prove that partial-birth abortions are unnecessary to preserve the health of a woman in a late-term complicated pregnancy. Simply put, a partial-birth abortion is another means for a woman to terminate her unwanted child very late in pregnancy.

I urge my colleagues, do not be deceived by the pro-abortion rhetoric which would have you believe that this cruel procedure is needed. Instead, listen to the advice of medical experts. Consider the outcry of the American people who recognize partial-birth abortions as inhuman and stand up for the most helpless and innocent human beings imaginable.

I thank the distunguished Senator from New Hampshire, and I admire him and the great work he has done. I yield the floor.

EXHIBIT 1

NOVEMBER 4, 1995.

U.S. Senate,
Washington, DC.

DEAR SENATOR: I am a medical doctor, board certified in the specialty of obstetrics and gynecology. I am also in the process of completing a master's in public health with enhanced analytical skills in maternal and child health at the University of Illinois at Chicago. For the past 15 years I have practiced in the inner city of Chicago and currently I am the Director of Medical Education in the Department of Obstetrics and Gynecology at Mt. Sinai Hospital; a member of the Association of Professors in Gynecology and Obstetrics; and the President Elect of the American Association of Profile Obstetricians and Gynecologists. It has recently been brought to my attention that on November 7th the Senate will consider the Partial Birth Abortion Ban. As a fellow citizen I urge you to support this legislation.

As you are probably aware the partial birth abortion procedure involves delivering a human fetus by breach extraction until only the head remains inside the birth canal. The practitioner then kills the baby by inserting a pair of scissors into the base of the skull and removing the baby's brains with a vacuum. This is the procedure the proposed bill seeks to ban.

Last week, despite a tremendous amount of medical misinformation given by the opponents of H.R. 1833, the Partial Birth Abortion Ban received strong support in its passage in the House. As this measure is now being presented for Senate consideration please be aware of the following medical facts:

1. Opponents insinuated that aborting a living human fetus is sometimes necessary to preserve the reproductive potential and/or life of the mother. Such an assertion is deceptive and patently untrue. Even if the fetus is grotesquely malformed, a living intrauterine pregnancy is not a health risk to its mother unless the woman suffers from extremely rare medical problems that would preclude pregnancy under any circumstances.

2. Partial birth abortion is a surgical technique devised by secluded abortionists in the unregulated abortion industry to save them the trouble of ''counting the body parts'' that are produced in dismemberment procedures. It is not a ''standard of care'' for anything. Equally important is the fact that the risks involved in dismemberment procedures and partial birth abortion include istrogenically produced cervical incompetence and uterine rupture. Medical alternatives (like prostaglendine) do not pose these risks but have the undesirable ''side effect'' of sometimes producing a living child. Women who were ''counseled'' by abortionists that they were submitting themselves to a procedure that was ''safe'' and that would insure their future reproductive potential were deceived and lied to. These women actually risked losing their uterus or their lives by submitting to these dangerous intrauterine extractions.

3. In breach extractions frequently the baby's head ''slips out.'' Since the practitioners of this procedure (who by their own reports up until 1993 had performed at least 3,000 of these procedures) have never reported a survivor you can be assured that some of these fetuses were constitutional persons who were murdered.

4. The baby is alive throughout the entire procedure until the scissors are jammed into the base of the skull.

5. There are absolutely no obstetrical situations encountered in this country which require a partially delivered human fetus to be destroyed to preserve the health of the mother.

Additionally, given the recent attempts by the ACGME to coerce OBGYN residents into becoming abortion providers, many profile and prochoice physicians in training are concerned that they will be forced to witness and/or participate in gruesome abortion

techniques. Most of these individuals support the decriminalization of abortion . . . but are extremely uncomfortable with procedures that destroy a life that is undeniably human.

I therefore urge you to consider these factors during the deliberations on this bill. The health status of women and children in this country can only be enhanced by banning partial birth abortions.

Sincerely,

PAMELA E. SMITH, M.D., FACOG.

OCTOBER 28, 1995.

Hon. CHARLES CANADY,

Chairman, Subcommittee on the Constitution, House Committee on the Judiciary, Washington, DC.

DEAR CONGRESSMAN CANADY: It has recently been brought to my attention that opponents of HR 1833 have stated that this particular abortion technique should maintain its legality because it is sometimes employed by physicians in the interest of maternal health. Such an assertion not only runs contrary to facts but ignores the reality of the risks to maternal health that are associated with this procedure which include the following:

1. Since the procedure entails 3 days of forceful dilatation of the cervix, the mother could develop cervical incompetence in subsequent pregnancies resulting in spontaneous second trimester pregnancy losses and necessitating the placement of a cerclage (stitch around the cervix) to enable her to carry a fetus to term.

2. Uterine rupture is a well known complication associated with this procedure. In fact, partial birth abortion is a ''variant'' of internal podalic version . . . a technique sometimes used by obstetricians in this country with the intent of delivering a live child. However, internal podalic version, in this country, has been gradually replaced by Cesarean section in the interest of maternal as well as fetal well being (see excerpts from the standard text Williams Obstetrics pages 520, 521, 865 and 866).

Furthermore, obstetrical emergencies (such as entrapment of the head of a hydrocephalic fetus or of a footling breech that has partially delivered on its own) are never handled by employing this abortion technique. Cephalocentesis, (drainage of fluid from the head of a hydrocephalic fetus) frequently results in the birth of a living child. Relaxing the uterus with anesthesia, cutting the cervix (Duhrssen's incision) and Cesarean section are the standard of care for a normal, head entrapped breech fetus.

There are absolutely no obstetrical situations encountered in this country which require a partially delivered human fetus to be destroyed to preserve the health of the mother. Partial birth abortion is a technique devised by abortionists for their own convenience . . . ignoring the known health risks to the mother. The health status of women in this country will thereby only be enhanced by the banning of this procedure.

Sincerely,

PAMELA E. SMITH, M.D.,

Director of Medical Education, Department of Obstetrics and Gynecology.

TESTIMONY OF PAMELA SMITH, M.D. ON H.R. 1833, THE PARTIAL-BIRTH ABORTION BAN ACT, U.S. SENATE JUDICIARY COMMITTEE, WASHINGTON, DC, NOVEMBER 17, 1995

Mr. Chairman, honorable members of the Judiciary Committee, my name is Pamela Eleashia Smith. I am a medical doctor, board-certified in the specialty of obstetrics and gynecology, having received my training at Cornell University, Yale University, the University of Chicago, and Mt. Sinai Hospital in Chicago.

For the past 15 years I have practiced in the inner city of Chicago. I am currently the Director of Medical Education in the Department of Obstetrics and Gynecology at Mt. Sinai Hospital; an Assistant Professor at the Finch University/Chicago Medical School; a member of the American College of Obstetrics and Gynecologists; and the President-elect of the American Association of Pro-Life Obstetricians and Gynecologists.

Honorable senators, before I testified on this legislation on June 15, before the House Judiciary Committee's Subcommittee on the Constitution, I went around and described the procedure of partial-birth abortion to a number of physicians and laypersons who I knew to be pro-choice. They were horrified to learn that such a procedure was even legal.

I believe that it is safe to say that until the recent publicity occasioned by the movement of this legislation, most physicians, including obstetrician-gynecologists, knew nothing of this technique as an abortion method. But the partial-birth abortion method is strikingly similar to the technique of internal podalic version, or fetal breech extraction. Breech extraction is a procedure that is utilized by many obstetricians with the intent of delivering a live infant in the management of twin pregnancies, or single-infant pregnancies complicated by abnormal positions of the pre-born infant.

I would invite the members of the subcommittee to review the drawings of the fetal breech extraction method that I have attached to my written testimony, reproduced from Williams Obstetrics, a standard textbook. Compare this with the partial-birth abortion procedure, as laid out step-by-step by Dr. Martin Haskell in his instructional paper, ''Dilation and Extraction for Late Second Trimester Abortion.'' (In that paper, Dr. Haskell says that he ''coined'' the term ''dilation and extraction.'' Neither that term nor the term now favored by opponents of H.R. 1833, ''intact dilation and evacuation,'' can be found in any standard medical literature. There is nothing whatever misleading about the term utilized in the bill, ''partial-birth abortion.'')

In a total breech extraction, the physician—frequently with the aid of ultrasound—grasps the lower extremities of the baby. With the bag of waters serving as a buffer and cervical wedge, the physician pulls the infant towards the cervix and vagina. To facilitate the delivery of the head by flexion, care is taken to maintain the baby's spine in a position that points towards the mother's bladder.

Depending upon the size of the infant, an attempt may be made to delivery the baby without rupturing the bag of waters. In such a case, the bag of waters facilitates delivery of the head by mechanically maintaining cervical dilation. Should the bag of waters rupture and the head become entrapped, it can be released by cutting the cervix, or a Cesarean section can be performed to deliver the baby abdominally.

Partial-birth abortions, which according to the physicians who perform them have been done on babies from the ages of 19 weeks to full term, represent a perversion of the above technique. In these procedures, one basically relies on cervical entrapment of the head, along with a firm grip, to help keep the baby in place while the practitioner plunges a pair of scissors into the base of the baby's skull. The scissors also creates an opening for the insertion of a suction curette to remove the baby's brains.

If, my chance, the cervix is floppy or loose and the abortionist does not keep a good grip, he may encounter the dreadful ''complication'' of delivering a live baby—undoubtedly, a constitutional ''person'' with an inalienable right to life. Thus, the practitioner must take great care to insure that the baby does not move those additional few inches that would transform its status from one of an abortus to that of a living human child.

Another brazen attempt to mislead the American public as to the reality of the pain experienced by the victims of this procedure is the assertion that the anesthesia kills the baby. Such a statement runs contrary to published reports made by abortion practitioners, is not consistent with basic principles of the pharmacology of drug distribution in the pregnant female, and violates common sense. Twenty-five percent of all pregnancies in this country are delivered by Cesarean section and many women receive potent narcotics to relieve their pain during labor. Yet it is essentially unheard of that a human fetus in labor dies secondary to anesthesia given to its mother.

I note that the American Society of Anesthesiologists issued the following statement recently:

Recent debate in the U.S. House of Representatives and Senate regarding late-term abortions has resulted in the distribution of misleading and potentially dangerous information to the public. The procedure, described in the media and during congressional debate, was developed by the late Dr. James T. McMahon. In testimony before Congress last June, Dr. McMahon incorrectly stated that the fetus dies from the anesthesia administered to the mother.

According to the president of the American Society of Anesthesiologists (ASA), Dr. Norig Ellison, the anesthesia administered to the mother in connection with such a procedure does not kill the fetus. Very little anesthesia crosses the placenta when general anesthesia is administered to the mother, and many pregnant women are safely anesthetized every day without ill effects to the fetus.

ASA is concerned that because of publicity given to Dr. McMahon's erroneous testimony, pregnant women may delay necessary and perhaps lifesaving medical procedures due to misinformation regarding the effect of anesthetics on the fetus.

Of course, if a baby really were dead, H.R. 1833 would not apply, since the definition of ''partial-birth abortion'' is ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus * * *''

The cruelty of this treatment of the human fetus is quite evident to those who do not avert their gaze or close their minds. But these abortion procedures also carry with them significant risks to maternal health.

Partial-birth abortion is not a standard of care for anything. In fact, partial-birth abortion is a perversion of a well-known technique used by obstetricians to delivery breech babies when the intent is to delivery the child alive. However, as the enclosed references in Williams ''Obstetrics'' readily document, this technique is rarely used in this country because of the well known associated risk of maternal hemorrhage and uterine rupture. The 19th edition of Williams ''Obstetrics'' states the following in regards to the safety of this method of breech delivery:

''Despite numerous attempts to defend or condemn this procedure, there is presently insufficient evidence to document its safety . . . There are few, if any indications for internal podalic version other than the delivery of a second twin. The possibility of serious trauma to the fetus and the mother during internal podalic version of a cephalic presentation is apparent . . .''

Why would a procedure that is considered to impose a significant risk to maternal

health when it is used to delivery a baby alive, suddenly become the ''safe method of choice'' when the goal is to kill the baby? And if abortion providers wanted to demonstrate that somehow this procedure would be safe in late-pregnancy abortions, even though its use has routinely been discouraged in modern obstetrics, why didn't they go before institutional review boards, obtain consent to perform what amounts to human experimentation, and conduct adequately controlled, appropriately supervised studies that would insure accurate, informed consent of patients and the production of valid scientific information for the medical community?

It is also noteworthy that even leading authorities on late-term abortion methodology have expressed the gravest reservations regarding this technique. Consider, for example, this excerpt from an article in the November 20 edition of American Medical News, the official newspaper of the American Medical Association.

''I have very serious reservations about this procedure,'' said Colorado physician Warren Hern, MD, the author of ''Abortion Practice,'' the nation's most widely used textbook on abortion standards and procedures. Dr. Hern specializes in late-term procedures . . . [O]f the procedure in question he says, ''You really can't defend it. I'm not going to tell somebody else that they should not do this procedure. But I'm not going to do it.''

Dr. Hern's concerns center on claims that the procedure in late-term pregnancy can be safest for the pregnant woman and that without this procedure women would have died. ''I would dispute any statement that this is the safest procedure to use,'' he said.

Turning the fetus to a breech position is ''potentially dangerous,'' he added. ''You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that.''

Dr. Hern said he could not imagine a circumstance in which this procedure would be safest. He did acknowledge that some doctors use skull-decompression techniques, but he added that in those cases fetal death has been induced and the fetus would not purposely be rotated into a breech position.

The behavior of the abortion industry in regards to this current controversy is chillingly reminiscent of the Tuskegee syphilis experiment conducted by medical and public health personnel over two decades ago. In this infamous study, poor black men were deceived and lied to and a known lifesaving treatment option was withheld so that the researchers could follow the ''natural course'' of the disease. Apparently some individuals in our country failed to learn a valuable lesson from this tragic chapter in our nation's recent history. Pregnant women should not be experimented upon under the guise of a deceptive rubric called ''choice.''

Furthermore, since the partial-birth abortion procedure requires three days of forceful dilation of the cervix, the mother could develop cervical incompetence in subsequent pregnancies, resulting in spontaneous second-trimester pregnancy losses and necessitating the placement of a cerclage (stitch around the bottom of the womb) to enable her to carry a baby to term. It is therefore a fact that this procedure represents a risk to future fertility of the patient. It does not represent the safest way for the patient to maintain her fertility, as abortion advocates proclaim.

Opponents of HR 1833 have also argued that ''decreasing the size of the fetal head to allow delivery'' is done to save the mother the risk of ''ripping and tearing'' the bottom of the womb. But in fact, the standard of care for handling a baby who is breech with an entrapped head at the cervix is not partial-birth abortion. Caphalocentesis (drainage of fluid from the head of a hydrocephalic fetus) frequently results in the birth of a living child. Relaxing the uterus with anesthesia, cutting the cervic (Duhrssen's incision), and Cesarean section are the recognized options in the medical community to deal with this obstetrical problem.

In short, there are absolutely no obstetrical situations encountered in this country which require a partially delivered human fetus to be destroyed to preserve the life or health of the mother.

Opponents of HR 1833 have similarly erroneously declared that the partial-birth abortion method is necessary to protect the ''emotional health'' of the mother. Certainly, I do not lightly dismiss the accounts of women and families who have experienced the anguish of learning, late in pregnancy, that their babies have serious or even lethal disorders. In my own years of practice and training, I have taken care of many women who were carrying babies with fatal fetal anomalies. My most recent such patient was a 19-year-old female who was pregnant for the third time. Her previous two pregnancies were remarkable for severe nausea and vomiting, and she delivered two children who died before they were two months old secondary to heart abnormalities. With her current pregnancy the patient was weak, dehydrated, and emotionally torn between the desire to bear a child and the horrible prospect of attending another funeral. Our clinic staff, all of whom are pro-life, counseled her on her options, supported her medically in the hospital, and respected her initial decision to terminate her pregnancy. However, the next day, the patient's nausea and vomiting receded, she changed her mind, and now intends to carry the baby to term.

Which brings to mind another erroneous insinuation presented by opponents of HR 1833: the assertion that as soon as a patient is discovered to have a fetus with an anomaly, the pregnancy must be aborted immediately because the baby has a high chance of dying before labor begins, representing a threat to the life of the mother. Such a claim is deceptive. It is often intended to sell the patient on the abortion option.

First of all, it is not the standard of care to immediately terminate the life of a living fetus just because that baby has abnormalities. What is appropriate is to inform the patient of your clinical suspicions, discuss with her all of the options, as well as the risks associated with terminating her pregnancy prematurely, and then develop a plan of management that respects the patient's values and emotional needs. Many women opt to continue such pregnancies.

Although it is highly unlikely that the partial-birth abortion procedure would ever be needed to save a woman's life, HR 1833 specifically states that the procedure would be allowed if the doctor ''reasonably believed'' that it was necessary to save the mother's life, and that no other procedure would suffice. Abortion providers, however, are fully aware that a lot of other procedures would suffice—but they are primarily interested in making sure that their job of terminating human life can be done according to their own convenience. With the partial-birth method of abortion, the provider is saved the trouble of assembling ''baby parts'' to make sure that nothing was left inside.

Earlier this year, the late Dr. James McMahon provided to the House Judiciary subcommittee a list of a self-selected sample of 175 cases in which he utilized the partial-birth procedure for so-called ''maternal indications.'' Of this list, one-third (33%) of the time the partial-birth procedure would be more appropriately classified as a contra-indication, because the mother already had medical problems that are associated with excessive bleeding, infection or a need to be delivered quickly. These conditions include eclampsia, abruptio placenta, amnionitis, premature rupture of membranes, incompetent cervix, and blood clotting abnormalities.

In addition, another 22% (39 cases) were for maternal ''depression,'' and 16% for conditions consistent with the birth of a normal child (e.g., sickle cell trait, prolapsed uterus, small pelvis).

Opponents of HR 1833 have also asserted that the term ''elective'' means that the doctor elects to do this procedure rather than to do some other one. I would invite any individual in this country to ask their doctor what the term ''elective surgery'' means. Or look the word up in the dictionary. It refers to procedures that are optional. In a tape-recorded 1993 interview with American Medical News, Dr. Martin Haskell explicitly distinguished between the 20 percent of his ''extraction'' procedures (as he calls them) that he said involved fetuses with genetic problems, and the 80 percent that are, in his words, ''purely elective.''

HR 1833 has already been immensely useful in educating the American public as to the need to keep a watchful eye, in the interest of maternal well being, on the activities of the abortion industry. Enactment of this legislation is needed both to protect human offspring from being subjected to a brutal procedure, and to safeguard the health of pregnant women in America.

EXHIBIT 2

[From the American Medical News, Nov. 20, 1995]

OUTLAWING ABORTION METHOD

(By Diane M. Gianelli)

WASHINGTON.—His strategy was simple: Find an abortion procedure that almost anyone would describe as ''gruesome,'' and force the opposition to defend it.

When Rep. Charles T. Canady (R, Fla.) learned about ''partial birth'' abortions, he was set.

He and other anti-abortion lawmakers launched a congressional campaign to outlaw the procedure.

Following a contentious and emotional debate, the bill passed by an overwhelming—and veto-proof—margin: 288–139. It marks the first time the House of Representatives has voted to forbid a method of abortion. And although the November elections yielded a ''pro-life'' infusion in both the House and the Senate, massive crossover voting occurred, with a significant number of ''pro-choice'' representatives voting to pass the measure.

The controversial procedure, done in second- and third-trimester pregnancies, involves an abortion in which the provider, according to the bill, ''partially vaginally delivers a living fetus before killing the fetus and completing the delivery.''

''Partial birth'' abortions, also called ''intact D&E'' (for dilation and evacuation), or ''D&X'' (dilation and extraction) are done by only a handful of U.S. physicians, including Martin Haskell, MD, of Dayton, Ohio, and, until his recent death, James T. McMahon, MD, of the Los Angeles area. Dr. McMahon said in a 1993 AMNews interview that he had trained about a half-dozen physicians to do the procedure.

The procedure usually involves the extraction of an intact fetus, feet first, through the birth canal, with all but the head delivered. The surgeon forces scissors into the base of the skull, spreads them to enlarge the opening, and uses suction to remove the brain.

The procedure gained notoriety two years ago, when abortion opponents started running newspaper ads that described and illustrated the method. Their goal was to defeat

an abortion rights bill then before Congress on grounds it was so extreme that states would have no ability to restrict even late-term abortions on viable fetuses. The bill went nowhere, but strong reaction to the campaign prompted anti-abortion activities to use it again.

* * * * *

MIXED FEELINGS IN MEDICINE

The procedure is controversial in the medical community. On the one hand, organized medicine bristles at the notion of Congress attempting to ban or regulate any procedures or practices. On the other hand, even some in the abortion provider community find the procedure difficult to defend.

''I have very serious reservations about this procedure,'' said Colorado physician Warren Hern, MD. The author of *Abortion Practice*, the nation's most widely used textbook on abortion standards and procedures, Dr. Hern specializes in late-term procedures.

He opposes the bill, he said, because he thinks Congress has no business dabbling in the practice of medicine and because he thinks this signifies just the beginning of a series of legislative attempts to chip away at abortion rights. But of the procedure in question he says. ''You really can't defend it. I'm not going to tell somebody else that they should not do this procedure. But I'm not going to do it.''

Dr. Hern's concerns center on claims that the procedure in late-term pregnancy can be safest for the pregnant women, and that without this procedure women would have died. ''I would dispute any statement that this is the safest procedure to use,'' he said.

Turning the fetus to a breech position is ''potentially dangerous,'' he added. ''You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that.''

Pamela Smith, MD, director of medical education, Dept. of Ob-Gyn at Mt. Sinai Hospital in Chicago, added two more concerns: cervical incompetence in subsequent pregnancies caused by three days of forceful dilation of the cervix and uterine rupture caused by rotating the fetus within the womb.

''There are absolutely no obstetrical situations encountered in the country which require a partially delivered human fetus to be destroyed to preserve the life of the mother,'' Dr. Smith wrote in a letter to Canady.

The procedure also has its defenders. The procedure is a ''well-recognized and safe technique by those who provide abortion care.'' Lewis H. Koplik, MD, an Albuquerque, N.M., abortion provider, said in a statement that appeared in the *Congressional Record*.

''The risk of severe cervical laceration and the possibility of damage to the uterine artery by a sharp fragment of calvarium is virtually eliminated. Without the release of thromboplastic material from the fetal central nervous system into the maternal circulation, the risk of coagulation problems, DIC [disseminated intravascular coagulation], does not occur. In skilled hands, uterine preformation is almost unknown,'' Dr. Koplik said.

Bruce Ferguson, MD, another Albuquerque abortion provider, said in a letter released to Congress that the ban could impact physicians performing late-term abortions by other techniques. He noted that there were ''many abortions in which a portion of the fetus may pass into the vaginal canal and there is no clarification of what is meant by 'a living fetus.' Does the doctor have to do some kind of electrocardiogram and brain wave test to be able to prove their fetus was not living before he allows a foot or hand to pass through the cervix?''

Apart from medical and legal concerns, the bill's focus on late-term abortion also raises troubling ethical issues. In fact, the whole strategy, according to Rep. Chris Smith (R, N.J.), is to force citizens and elected officials to move beyond a philosophical discussion of ''a woman's right to choose,'' and focus on the reality of abortion. And, he said, to expose those who support ''abortion on demand'' as ''the real extremists.''

Another point of contention is the reason the procedure is performed. During the Nov. 1 debate before the House, opponents of the bill repeatedly stated that the procedure was used only to save the life of the mother or when the fetus had serious anomalies.

Rep. Vic Fazio (D. Calif.) said, ''Despite the other side's spin doctors—real doctors know that the late-term abortions this bill seeks to ban are rare and they're done only when there is no better alternative to save the woman, and, if possible, preserve her ability to have children.''

Dr. Hern said he could not imagine a circumstance in which this procedure would be safest. He did acknowledge that some doctors use skull-decompression techniques, but he added that in those cases fetal death has been induced and the fetus would not purposely be rotated into a breech position.

Even some physicians who specialize in this procedure do not claim the majority are performed to save the life of the pregnant woman.

In his 1993 interview with AMNews, Dr. Haskell conceded that 80% of his late-term abortions were elective. Dr. McMahon said he would not do an elective abortion after 26 weeks. But in a chart he released to the House Judiciary Committee, ''depression'' was listed most often as the reason for late-term nonelective abortions with maternal indications. ''Cleft lip'' was listed nine times under fetal indications.

The accuracy of the article was challenged, two years after publication, by Dr. Haskell and the National Abortion Federation, who told Congress the doctors were quoted ''out of context.'' AMNews Editor Barbara Bolsen defended the article, saying AMNews ''had full documentation of the interviews, including tape recordings and transcripts.''

Bolsen gave the committee a transcript of the contested quotes, including the following, in which Dr. Haskell was asked if the fetus was dead before the end of the procedure.

''No it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress—intrauterine stress during, you know, the two days that the cervix is being dilated. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken.

''So in my case, I would say probably about a third of those are definitely dead before I actually start to remove the fetus. And probably the other two-thirds are not,'' said Dr. Haskell.

In a letter to Congress before his death, Dr. McMahon stated that medications given to the mother induce ''a medical coma'' in the fetus, and ''there is neurological fetal demise.''

But Watson Bowes, MD, a maternal-fetal specialist at University of North Carolina, Chapel Hill, said in a letter to Canday that Dr. McMahon's statement ''suggests a lack of understanding of maternal-fetal pharmacology. . . Having cared for pregnant women who for one reason or another required surgical procedures in the second trimester, I know they were often heavily sedated or anesthetized for the procedures, and the fetuses did not die.''

NEXT MOVE IN THE SENATE

At AMNews press time, the Senate was scheduled to debate the bill. Opponents were lining up to tack on amendments, hoping to gut the measure or send it back to a committee where it could be watered down or rejected.

In a statement about the bill, President Clinton did not use the word ''veto.'' But he said he ''cannot support'' a bill that did not provide an exception to protect the life and health of the mother. Senate opponents of the bill say they will focus on the fact that it does not provide such an exception.

The bill does provide an affirmative defense to a physician who provides this type of abortion if he or she reasonably believes the procedure was necessary to save the life of the mother and no other method would suffice.

But Rep. Patricia Schroeder (D, Colo.) says that's not sufficient. ''This means that it is available to the doctor after the handcuffs have snapped around his or her wrists, bond has been posted, and the criminal trial is under way,'' she said during the House debate.

Canady disagrees. ''No physician is going to be prosecuted and convicted under this law if he or she reasonably believes the procedure is necessary to save the life of the mother.''

ORGANIZED MEDICINE POSITIONS VARY

The physician community is split on the bill. The California Medical Assn., which says it does not advocate elective abortions in later pregnancy, opposes it as ''an unwarranted intrusion into the physician-patient relationship.'' The American College of Obstetricians and Gynecologists also opposes it on grounds it would ''supersede the medical judgment of trained physicians and . . . would criminalize medical procedures that may be necessary to save the life of a woman,'' said spokeswoman Alice Kirkman.

The AMA has chosen to take no position on the bill, although its Council on Legislation unanimously recommended support. AMA Trustee Nancy W. Dickey, MD, noted that although the board considered seriously the council's recommendations, it ultimately decided to take no position, because it had concerns about some of the bill's language and about Congress legislating medical procedures.

Meanwhile, each side in the abortion debate is calling news conferences to announce how necessary or how ominous the bill is. Opponents highlight poignant stories of women who have elected to terminate wanted pregnancies because of major fetal anomalies.

Rep. Nita Lowey (D. N.Y.) told the story of Claudia Ames, a Santa Monica woman who said the procedure had saved her life and saved her family.

Ames told Lowey that six months into her pregnancy, she discovered the child suffered from severe anomalies that made its survival impossible and placed Ames' life at risk.

The bill's backers were ''attempting to exploit one of the greatest tragedies any family can ever face by using graphic pictures and sensationalized language and distortions,'' Ames said.

Proponents focus on the procedure's cruelty. Frequently quoted is testimony of a nurse, Brenda Shafer, RN, who witnessed three of these procedures in Dr. Haskell's clinic and called it ''the most horrifying experience of my life.

''The baby's body was moving. His little fingers were clasping together. He was kicking his feet.'' Afterwards, she said, ''he threw the baby in a pan.'' She said she saw the baby move. ''I still have nightmares about what I saw.''

Dr. Hern says if the bill becomes law, he expects it to have ''virtually no significance'' clinically. But on a political level, ''it is very, very significant.''

''This bill's about politics,'' he said, ''it's not about medicine.''

Ms. MOSELEY-BRAUN. I thank the Senator from California for sharing time and I ask unanimous consent to be added as a cosponsor of her amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MOSELEY-BRAUN. Madam President, I continue to be astounded when I consider the extent to which a woman's constitutional right to choice has been taken away in this, the 104th Congress.

First came the Hyde amendment limiting a poor woman's reproductive choice because Government contributed to the payment of her health care. Then came the battle of parental notification, limiting very young women in their reproductive choices because of their age—not their condition. Then came the battle over military hospitals, limiting military women in their reproductive choices because they or their spouse chose to serve their country. Then came the battle over Federal health insurance, limiting Federal employees and their reproductive choices because they work for the Government.

Now, Madam President, the battle is over this legislation to fine or jail doctors who perform safe, legal, medical procedures, abortions for women who need them late in their pregnancy.

Madam President, today as it has been since the landmark 1973 Supreme Court decision of Roe v. Wade, the concept of reproductive freedom is under assault. Choice is a matter of freedom. Choice is a fundamental issue of the relationship of female citizens to their Government. Choice is a barometer of equality and a measure of fairness. Choice is central to our liberty.

While, Madam President, I do not believe in abortion personally, I do believe very strongly and fundamentally in the right to choose.

Today, the assault on reproductive choice has taken on a new ferocity. The procedure that has become the focus of this newest assault on choice is a very rare—which you have heard many times—a rare medical procedure used to terminate pregnancies late in the term when the life or health of the mother is at risk and/or when the fetus has severe—severe—abnormalities.

Only one or two doctors in the entire country perform this procedure, the procedure you have heard described. Yes; it is gruesome. But so is the circumstance. This procedure, however, although rare and even though it is gruesome, can be the most medically sound option for preserving the health and life of the woman whose life is at stake, the citizen whose life and liberty is at stake.

Madam President, H.R. 1833, the bill that this amendment relates to, is an unconstitutional, vague ban on the procedure that we have discussed here on the floor and is the vehicle for the newest assault on choice.

A doctor who performed an abortion, one of these late-term abortions, would face up to 2 years in prison and fines. The doctor and the house or the clinic where he or she worked would also be liable for civil action brought by the father of a fetus or the maternal parents of the woman, if she was under 18 years old.

As I said, this bill is vague. The definition of abortion as covered under this legislation is ''partial birth,'' a term used for its shock value, Madam President, not for its medical accuracy. There is no such medical term as partial birth.

Because doctors cannot agree on what this legislation is intended to ban, they are going to be frightened from performing legal abortions and medically necessary abortions because of the threat of civil or criminal prosecution.

This bill further provides no exception in cases where the banned procedure is used to save the life of the mother. Instead, a doctor would be required after being criminally charged to provide affirmative defense. We flip the whole presumption of innocence on its head and make a doctor provide an affirmative defense that he or she reasonably believed that no other method would save a woman's life.

Madam President, this is foolish and dangerous for us to do. The affirmative defense will result in doctors going to court and maybe even to jail for their efforts to save a citizen's life.

Madam President, even if a true life exception is substituted, there is no exception in this bill in cases where the health of the mother is endangered. It does not allow a doctor to do everything he or she can to protect the health and fertility of his or her patient.

Madam President, this bill is also the first time, to my knowledge, that Congress has attempted to tell a doctor what specific medical procedures he or she cannot perform. By choosing to arbitrarily prohibit one type of procedure and not others—and there are other options as has been discussed—by choosing just one type of procedure regardless of the effect on the life and health and the future reproduction options of the woman involved, this Congress will be micromanaging decisions that are best made in a physician's office.

If a doctor wants to perform an abortion that is covered by this bill, it is because he or she considers the procedure to be the most medically sound for the woman who is involved. Women are going to face life and health risks as well as the loss of fertility as they are forced—forced—to undergo even more hazardous procedures when their own life may be at stake.

Madam President, a couple weeks ago the Senate sent this bill to the Judiciary Committee for a hearing. At that hearing we were able to actually see firsthand some women and talk with some women who had made the hardest choice that any woman can make. Two of the women had the procedure that is referenced in this bill and one woman actually gave birth. All the women had agonized over the decision. It is, after all, the most intimate and most personal decision.

Before I talk about the constitutional policy implications of the legislation, I would like to retell the story of one of the women, Viki, from Naperville, IL. She was at that hearing a few weeks ago but did not have a chance to tell her story. I think it is important that her story be told, because I think she is a very brave person to come in this present environment and tell the story of what was a horrendous, heart-wrenching episode in her life.

Viki and her husband were expecting their third child. At 20 weeks she went for a sonogram and was told by her doctor that she and her baby were completely healthy. She named the baby boy Anthony. At 32 weeks, Viki took her two daughters with her to watch their brother on the sonogram. The technician did not say a word during the sonogram and asked Viki to come upstairs and talk with the doctor. She thought maybe it was because the baby was breech or there was another complication. She is a diabetic and any complication could be serious.

This is a picture of Viki and her family. It is a shame she did not get a chance to testify 2 weeks ago. The doctor at the time was too busy to see her, but called at 7 o'clock in the morning to say that the femurs, the leg bones, seemed a little short, but assured her there was a 99-percent chance that nothing was seriously wrong, but asked her to come in for a level 2 ultrasound.

Viki and her husband found out after the second ultrasound was performed that their child had no brain—no brain. There were eight abnormalities in all. Viki had to make the hardest decision of her life. This is how she explained it: ''I had to remove my son from life support—that was me.'' For Viki, the hardest thing for her as a parent, for any parent, to do is to watch a child be hurt. It is hard enough watching a child get teased at the bus station, much less make a decision such as she and her husband had to make.

The procedure that she underwent took four visits to the doctor. She received anesthesia on the first visit. Her son stopped moving on the first night. She knew at that point that he was gone. This was before the procedure to remove the actual fetus took place.

Having a D&E procedure was particularly important because Viki wanted to know if this was something she would pass to her two daughters. With a D&E an autopsy can be performed. It was an isolated situation, although tragic, and her girls will be able to have children of their own and not have the abnormalities that Viki faced with her son. Her D&E was the closest thing for her body to natural birth. She was able to preserve her fertility, and happily she is now, again, 30 weeks pregnant and

the baby that she is carrying looks fine.

This procedure, Madam President, that this Congress is talking about micromanaging to make illegal, saved this woman's ability to have other children, saved this family from having a child with no brain, born only to die moments after he came into this world.

Madam President, this is a true story about a real woman and a family handling an awful, horrible situation in the best way that it can. I know we have heard other stories. I think it is important that we put a real face on these stories because this is not some matter of abstract language. We have to talk about it in constitutional terms, and we have to talk about it in legal terms. We have to talk about it in medical terms. But the reality is this Congress is moving into the territory that we have no business in. I think it is important that we put a human face on it beyond the personal and constitutional implications.

I ask the Senator from California how much longer may I have?

The PRESIDING OFFICER. The Senator from California has 34 minutes.

Mrs. BOXER. Madam President, I yield 5 minutes to the Senator from Illinois.

Ms. MOSELEY-BRAUN. Under H.R. 1833 women will lose a constitutionally based right. Under Roe versus Wade and Planned Parenthood versus Casey, the Supreme Court standard is that a State may not prohibit post-viability abortions necessary to preserve the life or health of a woman. Under H.R. 1833/S. 939, the only recourse is an affirmative defense and even then, this is only for life.

In other words, if you wind up unable to have other children, if you wind up ruined for life, that is OK under this bill.

While H.R. 1833/S. 939 is focused on late-term abortions, doctors who perform early-term abortions by the loosely defined means covered by the bill are subject to the same liability. Choosing to have an abortion when the fetus is not yet viable is clearly a constitutionally protected right under Roe versus Wade. This bill changes that.

This assault on a woman's constitutional rights and this Congress' relentless attack on a woman's right to choose remind me of a famous poem by Martin Niemoller, a Protestant minister held in a German concentration camp for 7 years. I would like to again give you my own, more contemporary version of his parable. I call it ''The Assault on Reproductive Rights.''

First they came for poor women and I did not speak out—because I was not a poor woman

Then they came for the teenagers and I did not speak out—because I was no longer a teenager.

Then they came or women in the military and I did not speak out—because I was not in the military.

Then they came for women in the Federal Government and I did not speak out—because I did not work for the Government.

Then they came for the doctors and I did not speak out—because I was not a doctor.

Then they came for me—and there was no one left to speak out for me.

Madam President, the fight on this issue is a quintessential fight for freedom. The issue here is whether or not women who are living, breathing citizens of this United States will enjoy the constitutional protection to make the most personal of all decisions—the decision whether or not to reproduce, and whether or not to sacrifice their lives in cases such as that Viki and her family had to go through. That is what is at issue here.

I am not prepared—and I do not believe that it is appropriate—for us to substitute the judgment of the Government, the judgment of the Members of this body, for the judgment of these women, of their families, of their doctors, of their priests, of their pastors. I do not think that it is our business to get that involved in an intimate decision such as this—to tell a woman, no, you may not save your life, or protect your future fertility because some Congressman had an idea that he wanted to pass a law that restrains you in decisions about your own body and your own health. When Viki made the decision to remove her child from life support—her body, and that is what it was—she made a decision with the help of her husband and her doctor that only she could make. The Government has no right to intervene in this relationship between a woman and her body, her doctor, and her God.

It is for that reason that I oppose this legislation, and I support the Boxer amendment.

I would like to also clarify for the RECORD, to make clear that there is right now in this bill no exception, no exception for life of the mother, and that is why the Boxer amendment is so important.

Again, we have no right, I believe, to intervene in the relationship between a woman and her own body, a citizen, in behalf of the fetus that is not yet a citizen. Obviously, we would all want to see life. We all support the idea of a right to life. Of course someone has a right to life. But do not living have rights also? And is not this Constitution written for them? And if it is written for them, is it not inappropriate for this Congress to intervene in areas in which we are not expert and we do not have the capability? I mean, we have no right at all to legislate.

And with that, Madam President, I yield the floor to the Senator from California.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Before my colleague from Illinois leaves the floor, I thank her especially for the updated version of that very famous poem that came out of the Nazi era. Of course, the point is that we need to speak up when people are losing their rights, and sometimes it is a lonely battle and sometimes we may lose it. But I believe deeply that America has a heart and soul and that men and women of goodwill, if they truly listen to this debate, recognize what it is about, and that is what we do trust each other to make tragic, personal, private decisions? Or do we want to hand it over to Senators and Congresspeople?

Ms. MOSELEY-BRAUN. That is right.

Mrs. BOXER. That is what the Senator pointed out. And I come down, and the Senator from Illinois comes down, and I know my colleague presiding tonight comes down on the side of allowing families, families like this, families like Vikki Stella's from Illinois to make those awfully difficult decisions.

I also wish to thank my colleague for really reviewing for us all of the things that have happened to women in this Congress. Many people do not realize that. When she gave us that updated version of the poem, she pointed out the poor women on Medicaid who do not have really have the right to choose anymore because they cannot afford it. This Congress will not allow them to use their Medicaid insurance to cover their right to choose; women in the District of Columbia who happen to have the misfortune of having Senators and Congressmen tell them what to do; Federal employees, women who pay for their own health insurance, a great part of it, no longer can use that insurance; and now any woman in America, any woman in America of any income level in any circumstance is being hit in her heart by the Smith-Dole bill, and it is very hurtful.

I am glad to yield to my colleague.

Ms. MOSELEY-BRAUN. Will the Senator yield?

I never cease to find it a little amusing—I know this gets on some difficult ground in these debates, but most of this debate takes place with people who themselves have never been pregnant.

Mrs. BOXER. That is correct.

Ms. MOSELEY-BRAUN. Quite frankly, having been there—and as the Senator knows, everyone in this Chamber knows, there is nothing more important in my entire life than my son Matthew, but I can tell you I gained 40 pounds, my teeth started to rot, I wound up hospitalized three times. I mean, who has not been through this, who has not been through this who has actually been through a pregnancy? So who can relate to the tragedy and to the emotion and to the physical demand of being in Viki's shoes, being here, pregnant out to here. Remember what it was like when you were pregnant out to here? I was like that in June. It was miserable. Pregnant out to here, only to discover the child that you are carrying, that you have an identification with has no brain, and this legislation would force that child to be born?

I thank the Senator from California for yielding, but I say to you that I think it is also very important that

those who cannot be pregnant really should think twice before they talk about this issue.

I thank the Senator.

Mrs. BOXER. I say to my friend, she makes a very good point, because we hear men in this Chamber talk about the joys of birth and the travel through the birth canal, and, yes, we hope every pregnancy is a joyous, wonderful, problem-free moment for every single woman in this country, regardless of her status in the country.

Unfortunately, we know also that is not the case and sometimes the baby is not safe in the womb and sometimes the mother could contract a terrible disease such as cancer and is faced with a choice where, if she carries through with the pregnancy, she could lose her life. And to have people in this Chamber stand up and say they want to be in that living room, in that hospital room, in that family conversation, frankly, makes me feel sick because we were not elected to be part of this family or any other family. We have our own families. Let us take care of our own families. And let us take care of the larger American family. But do not get into the private lives of these people. You have no right to do that. Nobody voted for you to do that. And that is what this is about.

Coreen Costello, the woman I have talked about over these last couple of days, said it best. When she found out this tragic news, she fell to her knees and prayed. She is very religious, very religious. She is a conservative Republican. She does not believe in abortion. And she said the last thing I wanted at that moment was a politician telling me what to do. And yet this bill would deny the Coreen Costellos and the Viki Wilsons an option to save their life, to protect their fertility, and their health because a majority of men in this Senate decided they know better than Viki and Viki's husband and Viki's doctors. What arrogance of power. That is what this debate is all about.

Madam President, I would like to be told when I have 10 minutes remaining on my side.

I am proud to add as original cosponsors to the Boxer amendment Senator BROWN, Senator SPECTER, Senator MURRAY, Senator LAUTENBERG, and Senator SNOWE. I ask unanimous consent that that be made part of the RECORD. And of course, Senator MOSELEY-BRAUN, whom we have already added.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. I will open up this debate by saying I do not appreciate when my comments are taken out of context. When I heard about the so-called life-of-the-mother exception, which is absolutely not a life-of-the-mother exception, I was elated that the Senator from New Hampshire was admitting that those of us who said there was no life exception in his bill were right, he finally agreed with us.

When I looked at the amendment, it was entitled ''Life-of-the-Mother Exception.'' I thought it was going to read like all of the life-of-the-mother exceptions which are very straightforward and simply say notwithstanding anything in this bill, there is an exception for the life of the mother. But, no, when I finally read it, I realized, if you will, it is a partial life exception. And this is what I said on the same night.

I have now had an opportunity to read it.

Meaning the amendment.

I want everyone to know that it is really not an exception for the life of the mother because what it says is, essentially, that this procedure will be banned except it will not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, illness, or injury.

I say to my friend, this is not a life-of-the-mother exception. That is a pre-existing situation. So, yes, if a woman had diabetes or some other disease, there would be an exception, but if, in fact, the birth itself endangered her life there would be no exception.

That is what I said after I saw the amendment. So let us get that clear, folks. Let us argue about what the differences are here and not try to trap each other into putting a spin on what we are doing.

Now, of course, I say to my colleagues, vote for the Smith-Dole amendment because at least it will help save the life of three or four women out of the couple of hundred a year that find themselves in this circumstance. No problem—vote for it. But then vote for the Boxer-Brown-Specter-Murray-Lautenberg-Snowe-Moseley-Braun amendment because that addresses a true exception for the life of the mother and an exception when serious adverse health risks to the mother exist.

Madam President, as I have said since this debate started, ''partial-birth abortion'' is not a medical term. There is no such thing as a ''partial-birth abortion.'' No medical text defines ''partial-birth abortion.'' None of the doctors who gave testimony at the Judiciary Committee could define it. It is a made-up term. It is made up by the antichoice forces so that people will get their emotions going.

What is the picture that emerges when you say partial-birth abortion? It sounds like a baby is being born and all of a sudden the mother says, I change my mind. How ridiculous that is. The fact of the matter is, there is no such thing. It is a late-term abortion that is done in an emergency procedure in a tragic situation. And that is what they are going about banning here, a procedure that is used, that is the safest, doctors say, many doctors say, to save the life of the mother or protect her health, her future futility.

Now, another thing that has happened over the past few nights—I say to my friend from New Hampshire, he and I have done this now running, I think it is 3 nights running, plus we did it before when this first came up, plus we have been on national television debating each other on this—he uses the term ''abortionist.'' He uses the term ''abortionist.''

I again want to say as we debate this emotional issue, a doctor who performs an abortion is a doctor. A doctor who performs a legal medical procedure is a doctor, not an abortionist. That doctor also delivers many, many babies. That doctor is an ob-gyn and deserves respect. If you want to make abortion illegal, that is your right. That is your right. I applaud that right. But do not do it through the backdoor like this, and do not call a doctor who performs a legal procedure an abortionist.

Then there is mention this one doctor did not come to the hearing. He was invited. That is right. I put in the RECORD a letter from his lawyer. This doctor, his life has been threatened. He has been harassed. And we stand up on this floor and call a doctor an abortionist when we are having such an emotional debate.

I applaud Chairman HATCH of the Judiciary Committee who came down and made a speech on this and said, ''I endorse this bill. I support it. But I abhor violence.'' We have to resolve this as human beings with disagreements.

It does not help to raise emotion and attack a physician or a group of people who have chosen to be ob-gyn's who, by the way, vehemently oppose this bill, their organization, the American College of Obstetricians & Gynecologists. And, yes, we heard from one nurse who served 3 days in a clinic who was disputed by her supervisor, but who said this was a terrible procedure. And that is her right to believe that and to say that. But the American Nurses Association—and how many are in that association? Many thousands, and we will have that number tomorrow; many thousands—they absolutely oppose this legislation. These are nurses who want to help people live. They want to help people live.

Why on Earth would we ban a procedure that doctors have testified is necessary to save the life of the mother? Why would we do it? And who are we to do this? This is not a medical school. This is not an ethics panel of a medical school. This is not a board of doctors who sit around and discuss these issues and understand them. I repeat Senator KENNEDY's comment that he made in the Judiciary Committee: ''Some Senators are practicing medicine without a license.''

We are over our heads if we think we can sit here and because somebody got a drawing explaining the consequences of a procedure, a medical procedure. That is not our job. I do not know anyone who ran for the U.S. Senate who said, ''I'm an expert in medical procedures. Vote for me.''

We have heard the women's stories. We know how important this procedure was to real women and to their families. We then hear time and time again that many of these abortions were elective—elective. That is a medical term. That is a medical term. It refers to anything other than a life-saving abortion. So we bandy about words like

''elective'' without knowing what they mean. We talk about medical procedures as if we are physicians.

I have just learned that the American Nurses Association, they do not represent thousands of members; they represent 2.2 million nurses. So, yes, we had one nurse who served 3 days who came out against this procedure; and the American Nurses Association, who represents 2.2 million nurses, says, ''Please vote down this ill-conceived bill.''

This is not about sex selection or eye-color preferences. I resent the fact that the Senator from New Hampshire would attempt to make a statement that Senators who believe there ought to be a life and health exception for the mother support those kinds of abortions. I guess he does not understand the law of the land, Roe versus Wade, which says that subsequent to viability the State has an interest in protecting fetal life, and as long as it takes into consideration the life and health of the mother, the State can pass laws that certainly prohibit abortions for eye color or sex selection.

This debate is not about unwanted pregnancy. This is about wanted and loved babies, children planned and desired by their families, but something horrible happened in the end of the pregnancy, either to the woman in her health or to the fetus, anomalies incompatible with life.

I knew one woman who was diagnosed with cancer in the beginning of the last trimester of her pregnancy and was told if she carried the baby to term, she would die. She had to face that with her husband. They had other children. But she desperately wanted this child. In the end, they decided to save her life.

Who is this Senate to tell her she did the wrong thing? Who is this Senate to tell her doctor he cannot use a procedure that might save her life?

Viki Wilson has two other children. This is Viki Wilson. She is 39. Her husband is Bill. Do you know what he does? He is an emergency room physician. Do you know what she does? She is a registered nurse. These are their two children. John is 10 and Katie is 8. They happen to live in Fresno, CA. He saves lives in the emergency room. He exposes himself to great danger working there. She is a nurse. She saves lives. And Senators on this floor think they have a right to interfere with their personal decisions? What an outrage.

Their third child, Abigail—they gave her a name—was their baby. Her brain had formed two-thirds outside the head. I want to talk about her story.

The PRESIDING OFFICER (Mr. JEFFORDS). The Chair advises the Senator she has 10 minutes remaining.

Mrs. BOXER. Mr. President, it is a story that will move you. It is a story that was told to the Judiciary Committee, and while you are going to see posters of part of a woman's body drawn like a cartoon, as if a woman is simply a vessel, we are putting a face on this. We are putting a face on this.

We know that Viki's testimony moved the people who heard it.

Tammy Watt's daughter, McKenzie, had no eyes, six fingers, six toes and large kidneys which were failing. The baby had a mass growing outside of her stomach involving her bowel and bladder and affecting her heart and other major organs, and the doctor said they had to use the procedure that this bill will outlaw.

Because we are looking for Viki's story, we may tell it tomorrow. I am going to keep her face up here, and I am going to go on.

This bill criminalizes the late-term abortion procedure by placing the burden on the physician to persuade the judge or jury that ''no other medical procedure would suffice to save the life of the woman.''

That means a doctor using this procedure can be hauled into court, and I will tell you, the chamber of horrors begins.

Mr. President, I am going to close debate tonight, after my friend from New Hampshire has concluded his presentation, by reading Viki Wilson's story. But at this time, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH. Mr. President, I yield myself 11 minutes.

This is really an interesting debate, and I said last night, Viki Wilson's story is truly a tragedy and my heart goes out to Viki Wilson. I understand the difficulty and horrible situation that she went through.

But let me read a paragraph from Viki Wilson's testimony. Viki Wilson, before the Senate Judiciary Committee just recently:

> My daughter died with dignity inside my womb. She was not stabbed in the back of the head with scissors. No one dragged her out half alive and killed her. We would never have allowed that.

My bill, the bill that is on the floor before us, or the amendments, would not have precluded Viki Wilson from that procedure. Viki Wilson herself just admitted she would not have done that procedure.

I also want to respond to Senator BOXER on a couple of other points. She made much of the term ''elective procedure,'' as if somebody made it up on the floor when talking about abortion.

This is Dr. Harlan Giles' testimony in court where he says as follows:

> An elective abortion is a procedure carried out for a patient for whom there is no identifiable maternal or fetal indication; that is to say, the patient feels it would be in her best interest to terminate the pregnancy either on social, emotional, financial grounds, et cetera. If there are no medical indications from either a fetal or maternal standpoint, we refer to the termination as elective.

So I think that is pretty clear that I did not make it up and that it is accepted.

I am also looking at the Standard College Dictionary, published by Harcourt Brace. I do not know whether that is acceptable to the Senator from California or not. But the definition of an abortionist is one who causes abortion. That is pretty clear. I do not know why anybody would object to the term ''abortionist'' when someone being called an abortionist causes an abortion. It seems to be awfully defensive to me.

I want to respond to the Senator from Illinois, and I am sorry she is not here on the floor, in regard to her remarks. The Senator from Illinois, Senator MOSELEY-BRAUN, a few minutes ago said that this bill is unconstitutional. Even in Roe versus Wade —I want to point out, she said it was unconstitutional, but even in Roe versus Wade, the decision that is thrown around here all the time by the prochoice people, obviously, the Supreme Court said that the born child, that is the exact terminology, ''the born child'' is a ''person'' entitled to ''the equal protection of the law.''

Let me repeat that, because the Senator from Illinois said this bill is unconstitutional. Even in Roe versus. Wade, the Supreme Court said that the born child is a person entitled to the equal protection of the law.

Now, I ask any reasonable person, if there is anybody left on the face of the Earth who is undecided—hopefully somebody may be in the Senate because we are the ones who have to vote; hopefully, I pray, there might be somebody out there listening and trying to make up their mind—how can anyone reasonably say that a child, feet, legs, toes, little soft rear end, torso, shoulders, arms, hands, part of the neck out of the birth canal, born is not a child or a person because the head still remains inside the birth canal? How can anyone say that? What is not child or not person about what the doctor is holding in his hands?

Suppose it was reversed, Mr. President, and the child's head came first and he began to breathe, is he then born? You bet he is. You bet he is, because that abortionist cannot do a thing to that child when the head comes out first and that child is breathing. He cannot do anything to it, and my colleagues know that.

So what do we do? We reverse the position in the womb, so that the feet come first, with forceps. We reverse the position in the womb. It is a deliberate act, the most horrible act against an innocent child. That is what we are talking about here. That is what we are talking about here.

That is not a ''partial birth.'' What is that? That is a child. How can anyone say that does not deserve protection under the Constitution of the United States? With the greatest respect for the Senator from Illinois, I sure do not read that in the Constitution. I sure do not read that in Roe versus Wade. A born child. Now, if the Senator from Illinois, or any other Senator, wants to take the floor and say here and now that that is not a child, 90 percent of

which is in the hands of that person—call him a doctor, an abortionist, call him what you want—and is wiggling, moving, and you can feel the heartbeat, of course, and you can feel the movement of the child—it is wiggling. That is not a child? What is it? My God, what is it? Let us be serious. Of course it is a child. And you deliberately reverse the position in the uterus to make that child come out feet first.

A ''chamber of horrors,'' my colleague said. You bet it is. It is a chamber of horrors in the United States of America. And I have to stand here with some of my colleagues and try to stop something that should not be happening. I heard a lot about doctors and OB-GYN's. No one testified in that hearing who performed one of these, and no one—no one—including Viki Wilson and others, and including the young woman that Senator MOSELEY-BRAUN spoke about, had a partial-birth abortion, because a partial-birth abortion involves killing a child by inserting a catheter and scissors in the back of the head, in the canal. That is a partial-birth abortion. That is what I am stopping. We are not stopping anything else.

I do not know if the Senator from California knows Mary Davenport, OB-GYN, Oakland, CA. She wrote to me on December 1, 1995:

DEAR SENATOR SMITH: I am writing to you in support of the partial-birth abortion bill. There is no medical indication for this procedure, and the performance of this operation is totally in opposition to 2,000 years of Hippocratic medical ethics. Please do your best to eliminate this procedure. It is not done in any other nation of the world.

If you think I solicited that letter, I have 250 more of them from OB-GYN's all over America who are outraged and disgusted and horrified that we would do this to our children. What kind of a country are we?

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. SMITH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, how much time do I have remaining on my side?

The PRESIDING OFFICER. Eight minutes 11 seconds.

Mrs. BOXER. Mr. President, I would like to retain 2 minutes of my time, if the Chair will let me know when I have used 5 minutes.

The PRESIDING OFFICER. The Chair will so advise the Senator.

Mrs. BOXER. I thank the Chair.

Mr. President, we have just heard a very loud and angry voice. I do not know who that anger is aimed at. I do not know if it is aimed at the Senators who disagree. I do not know who it is aimed at.

We live in a world where we do not know what lies ahead and down the road. We pray to God that every birth experience that we will have in our own personal families and everyone's will be a good one, and that the babies will be healthy.

I want to say that the anger that you just saw here displayed on this floor, in reality, is aimed at families like this in the picture. That is who it is aimed at. These are the families that are the losers. These are the families who will lose a mom if this bill goes forward. Why do I say that? Because doctors have testified that it is the safest procedure to use in the late term.

I am going to read you Viki Wilson's statement, and then I am going to ask you whether you believe Viki Wilson deserves that kind of anger that we just heard on this floor.

This is Viki here in the photo. She is a nurse. This is her husband, who is a doctor in an emergency room.

At 36 weeks of pregnancy, all of our dreams and happy expectations came crashing down around us. My doctor ordered an ultrasound at that time and detected what all my previous prenatal testing failed to detect, an encephalocele. That is a brain growing outside the head. Approximately two-thirds of my baby's brain had formed on the outside of her skull and, literally, I fell to my knees from shock because, being in pediatrics, I realized that she would not survive outside my womb.

My doctor desperately tried to figure out a way to save this pregnancy. All my medical rationality went out the window. I thought there's got to be a way. Let's do a brain transplant. That is how irrational I was. I wanted this baby. My husband and I were praying that there would be a new surgical way, but all the experts concurred that Abigail could not survive outside my womb, could not survive the birthing process because of size of her anomaly. Basically, her head would have been crushed and she would have suffocated, and that would have been her demise, coming through my birth canal. Because of her anomaly, it was also feared that had she come through the birth canal, my cervix would have ruptured.

The doctor explained to me that even if I had gone into spontaneous labor—

Which, by the way, my colleagues say is an alternative.

More than likely my uterus would have ruptured, rendering me sterile, and that was not an acceptable option. It was also discovered during one of my exams. I kept crying on the examining table, saying, ''How could this be? You know, there are such strong baby movements.'' And they said, ''I am sorry, Viki, those are seizures.'' My immediate response was, ''Do a C-section and get her out.'' ''Viki, we do C-sections to save babies. We can't save her, and a C-section in your condition is too dangerous, and I can't justify those risks.''

The biggest question then became for my husband and I. A high power had already decided that my baby was going to die. The question was, how is she going to die?

We wanted to help her leave this world as painlessly and peacefully as possible and in a way that protected my life and my health, to allow us to have more children. We agonized and we prayed for a miracle.

During our drive to Los Angeles to see the specialist we chose our daughter's name. We named her Abigail, the name that my grandmother has always wanted for a grandchild. We decided if she were to be named Abigail, her great grandmother would be able to recognize her in Heaven. You think of those things when you are going through a crises like this.

Losing Abigail was the hardest thing that ever happened to us in our lives. After we went home, I went into the nursery, held her clothes, crying and thinking I will never be able to tell her that I love her. I have often wondered why this happened to us. What did we do to deserve this pain?

I am a practicing Catholic and I could not help but believe God had some reason for giving me such a burden. Then I found out about this legislation and I knew then and there that Abigail's life had special meaning.

I think God knew I would be strong enough to come here and tell you my story, to stop this legislation from passing and causing incredible devastation for other families like ours because there will be other families in our situation, because prenatal testing is not infallible, and I urge you, please, do not take away the safest method known.

Mr. President, I ask unanimous consent for 5 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Thank you.

I told my Monsignor at my parish that I was coming here to Washington, and he supported me and he said, ''Viki, what happened to you was not about choice. You did not have a choice. What you did was about preserving your life.'' I was grateful for his words and I agree, this is not about choice. This is a medical necessity. It is about life and health.

My kids attend a Catholic school where a playground was named in Abigail's honor. I believe that God gave me the intelligence to make my own decisions, knowing that I am the one who has to live with the consequences.

My husband said to me, as I was getting on the plane coming here to Washington, ''Viki, please make sure this Congress realizes this would truly, truly be the Cruelty to Families Act.''

So, again, for us, for future families, and for more and more families. We are all sitting at home thinking, this is 1995, no way in a rational situation are they going to see the necessity of this legislation. They are going to realize that when they hear our stories.

Mr. President, why are we getting angry at women like this? Why are we getting angry at husbands like this? Why are we getting angry at families like this? What right do we have to get angry at decent, religious, family-loving people like this? To stand on this floor and wave our arms at people like this, because that is what this is about.

The Smith-Dole exception for life of the woman is not an exception. It only deals with women who come in with a preexisting condition or injury. I pray—I pray—that the Senate will be courageous—because it is very difficult to explain this in 5 minutes to my colleagues—that they will support the Boxer - Brown - Specter - Lautenberg - Moseley - Braun - Murray - Snowe amendment. It is bipartisan, it is the right thing to do.

We have come together as family, loving Members of this U.S. Senate. We

have reached across the aisle that divides us, Mr. President. We are standing for these families.

I hope we will lower our voices, because there should not be room for that kind of anger, in my humble opinion. We are trying to reach a rational decision on a heart-wrenching issue here. We should not be angry at each other. We should not be angry at families like this or to the doctors these families turn to in the most difficult circumstances.

The PRESIDING OFFICER. The Senator from New Hampshire has 5 minutes 18 seconds.

Mr. SMITH. I yield myself 18 seconds and the remainder of the time to the Senator from Ohio.

I say in response to the Senator from California, if the 800 children who were perfectly normal electively aborted could speak here on the floor today, they would be angry, too.

Mr. DEWINE. Mr. President, I think all the arguments have been made. That usually does not stop us. We continue to make them and will probably make some more tomorrow.

Let me try to be very, very brief in closing. I think it is important, as I said 2 days ago on this floor, we keep our eye on the ball, we keep our eye on what this debate is about, what is relevant and what is not relevant.

The horrible tragedy that the Senator from Illinois described a few minutes ago, the horrible tragedies that my friend from California continues to describe are horrible. They are tragic. Everyone was moved in the committee. I had tears in my eyes before I left the room listening to those horrible tragedies. Our heart goes out to these families. But the fact is these horrible cases are not relevant to what we are talking about. Viki Wilson did not have this procedure.

Let me repeat for my friends on the floor and my friends who may be watching this on TV that Viki Wilson did not have this procedure. I do not know how many times we have to say it. That is what the facts are. None of the three women did. It is simply not true.

Let me read from the proposed statute. ''As used in this section, the term 'partial-birth abortion' means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.'' That is not what happened in these particular cases, however sad they say they are.

Let us keep our eye on the ball. Let us keep our eye on the ball and have relevant debate in regard to saving the life of the mother.

The bill, as Senator SMITH introduced it, had an affirmative defense. The amendment that Senator DOLE has proposed should take any doubt away that it is covered because it puts it right in the statute itself—puts that exception, the life-of-the-mother exception. But even, in a sense, of more significance is we will not get to this situation because there has been no credible evidence at all in the hearings—none—that this procedure would ever be used to save the life of the mother. That evidence was just to the contrary. The evidence was that there were other procedures that would be used. This would not be used. You would not use the procedure. The evidence was it would take 3 days, which this procedure does.

Dr. Smith of Chicago, IL, and Mt. Sinai Hospital, a very credible witness, testified this is simply not the standard of care. Let me quote a portion of the testimony from the hearing. If anyone has the doubt about the relevancy, look at this on page 78 of the hearing by the Committee on the Judiciary.

> Now, this insinuates that this is a standard of care to take care of a trapped fetal head on a breech deliver. This is totally untrue, and I have provided for you from *Williams Obstetrics* the techniques that are used by obstetricians to deal with this problem. Those techniques include relaxing the womb with halifane or with anesthesia, cutting the cervix, in limited circumstances if you are going to do a Cesarean section to save a term baby, you can do that. And if the baby has what we call hydrocephalus, or water on the brain, you insert a needle and drain that fluid.

The testimony is very, very clear. Of the other procedures that you use, this is simply not one of them at all.

Again, Mr. President, let us keep our eye on the ball. Let us talk about this in a rationale way. Let us talk about what is relevant and what is not relevant.

Time and time again on this floor the argument has been made that if you support this bill, it is an attack on Roe versus Wade. I would submit that flies in the face of any rational discussion about what Roe versus Wade really means and a correct interpretation of it.

Pro-choice individuals in the House of Representatives, such as Representatives KENNEDY, MOLINARI, GEPHARDT, TRAFICANT, each one voted in favor of this. I do not want to put words in their mouths, but I will simply say that a person who is pro-choice could very well support this.

Mr. President, I ask for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DEWINE. Mr. President, a person who is pro-choice could very consistently support this bill as these pro-choice Representatives in the House of Representatives clearly did. A pro-choice person can support this simply by believing, by saying, by arguing that there is some limit to what we will permit; there is some limit to what a civilized people tolerate.

Again, I do not want to put words in their mouths. But I think that clearly is a consistent position with being pro-choice.

So this is not an attack on Roe versus Wade. You simplistically could argue that. But I think it is very, very incorrect.

My friend from California talked about the fact that ''America does have a heart and soul.'' Yes, we have a heart and soul. That is why we are on the floor. That is why Senator SMITH introduced this bill. This is why people across this country—once they learned about the facts of this procedure—are simply saying, ''No, it is wrong. We cannot tolerate it. We cannot permit it.''

My friend talked about the arrogance of power, that we are somehow arrogant to be making this argument. It is not arrogance. I think it would be, quite frankly, not arrogance but indifference for us to turn our back on this horrible, horrible procedure.

Finally, Mr. President, my friend from California talked about the anger. Who is this directed at, this anger? This anger is not directed at anybody, not a person. It is directed at a procedure that a civilized society simply should not permit.

Mr. President, we will surely continue this debate tomorrow.

At this point, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SMITH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, thank you very much.

Mr. President, this has been a very tough debate, and I have 4 minutes left. I am not going to use it. I know the majority leader is ready to say goodnight to all of us for the evening. So maybe we can have some semblance of some sort of dinner.

Mr. President, this has been probably the harshest debate we have had to date on this topic. I think it is so important that when we debate each other, we do it right on the mark, that we get to our differences. I have told some heart-wrenching stories, and these stories were told before the Judiciary Committee by people like Viki Wilson, a nurse, a practicing Catholic. Her husband is an emergency room doctor.

We have here Coreen Costello, whose story I have told a number of times, a conservative Republican, who had been completely against abortion until she faced this tragedy. And she came and told her story.

Then my friends on the other side said: Wait a minute. They made a mistake, these women. They did not have the kind of procedure that we are trying to outlaw.

My friends, that is an interesting debating topic, but do not tell these people what procedure they went through. They read the definition in your bill. Viki Wilson is a nurse. Her husband is

a doctor. They read the bill—the doctor that performed this, a doctor that you have attacked over and over again, Dr. James McMahon, who was summoned by Representative CANADY to testify because he performed the very procedure you wish to outlaw.

So if you want to speak out against the Boxer-Brown-Specter-Moseley-Braun–Snowe amendment, et al., you should. You should speak out against our amendment. You should say there should be no exception for the life and serious health consequences to a woman. But do not say that these women do not know what they are talking about and their families do not know what they are talking about, when, in fact, your side has named the very doctor that they used for this late-term abortion, your side has named him and paraded his name around because he used that very procedure you wish to outlaw.

So, Mr. President, this has been a tough night. We have heard raised voices. It has not been pleasant. As a matter of fact, this has been the most unpleasant week that I can remember here in a long time for me personally, because, yes, I think it is arrogant to insert a politician into this woman's life, into this man's life, and into these children's lives. I do not think that we have the wisdom to know better how they should handle a tragedy such as the tragedy they had to handle.

And I hope and I pray that the bipartisan amendment that I have offered, and which we have reached across the aisle to work together to protect families like this, passes.

I yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT—MOTION TO PROCEED

Mr. DOLE. Mr. President, I now move to proceed to Senate Joint Resolution 31 regarding the desecration of the flag.

CLOTURE MOTION

Mr. DOLE. I send a cloture motion to the desk.

The PRESIDING OFFICER. The clerk will state the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S.J. Res. 31, a joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States:

Bob Dole, Orrin Hatch, Conrad Burns, Ben Nighthorse Campbell, Slade Gorton, Craig Thomas, Alan Simpson, Larry Craig, Trent Lott, Connie Mack, Don Nickles, Spencer Abraham, John Ashcroft, John Warner, Chuck Grassley, and Strom Thurmond.

Mr. DOLE. Mr. President, for the information of all Senators, we have been attempting—and have wasted the whole day—to bring up the flag amendment. We were precluded from doing that by the efforts of the Senator from New Mexico, Senator BINGAMAN. He has every right to do that. I know he is not for the flag amendment, but he indicates he does not mind if we vote on it.

But I wanted to point out that tomorrow is Pearl Harbor day. Tomorrow is December 7. On a Sunday morning 54 years ago, more than 2,300 brave Americans lost their lives during the raid on the U.S. Pacific Fleet. As a testament to their valor, some of the dead are permanently entombed in the U.S.S. *Arizona*, one of the ships sunk during the attack.

As World War II raged on, thousands of other brave American soldiers followed their country's flag into battle. The great sacrifices made by our fighting men and women during this war and in subsequent conflicts—Korea, Vietnam, the Persian Gulf, Somalia—reflect the courage and strength of character of the American people.

Our flag is the unique and beloved symbol of these qualities. Representing Americans of every race, creed, and social background, the flag is also the one symbol that brings to life the phrase ''E Pluribus Unum''—Out of many, one.

So it would seem to me that as we look back over the history of America, one of our most enduring national images is the famous picture of six courageous Americans—Sgt. Michael Trank, Cpl. Harlan Block, Pfc. Hamilton Hayes, Pfc. Rene Arthur Gagnon, Pfc. Franklin Runyon, and Pharmacist's Mate John Henry Bradley—who risked their lives to raise Old Glory at the top of Iwo Jima's Mount Suribachi.

These men were not constitutional scholars. They were not legal experts. They were young enlisted men, like so many of the 6,000 American soldiers who gave their lives to their country during the deadly ascent up that hill.

Because of the sacrifices of these men and countless thousands like them, I support this amendment. Because of the flag's unique status as the symbol of the American spirit and experience, I believe it deserves constitutional protection.

AMENDING THE BILL OF RIGHTS

Now, there are those who charge the supporters of the flag amendment with attempting to amend the Bill of Rights. I strongly disagree with this characterization.

It is the Supreme Court—and more precisely five Justices on the court—who amended the bill rights when they concluded in the Texas versus Johnson decision that the Act of flag-burning was constitutionally-protected speech. This misguided ruling effectively overturned 48 State statutes and a Federal law proscribing flag desecration. Most of these statutes had been on the books for decades, without threatening any of our freedoms, including our freedom of speech guaranteed by the first amendment.

And, after all, the first amendment is not absolute. One cannot use libel to convey an opinion and claim first amendment protection. Obscenity, and fighting words, and yelling fire in a crowded theater, all fall outside the first amendment's free-speech guarantee.

In fact, even some of the strongest supporters of the first amendment never imagined that the act—the act—of flag-burning would merit constitutional protection.

As Justice Hugo Black, considered by many legal experts to be a first-amendment absolutist, once put it: ''It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American flag an offense.'' Or as former Chief Justice Earl Warren explained: ''I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace * * *''

So, Mr. President, it's time for a little reality check: We can pass laws making it illegal to destroy U.S. currency, or deface your own mailbox, or even rip the warranty label off your own bedroom mattress. But, according to the Supreme Court, if you want to burn our Nation's most cherished symbol, the flag, just go right ahead.

And that is why we need a flag amendment: not to amend the Bill of Rights, not to change the first amendment, but to correct the Supreme Court's own red-white-and-blue blunder.

Let me make another point: The Framers of the Constitution intentionally made the amendment process a difficult one, requiring the assent of two-thirds of each House of Congress and three-fourths of the State legislatures before an amendment's ratification. These sensible hurdles were designed to protect the Constitution from ill-conceived and frivolous changes. But once an amendment has been ratified, clearing the high hurdles built into the amendment process itself, the American people have spoken.

OPENING A PANDORA'S BOX

Some of those who oppose the flag amendment also claim that ratifying it will open a Pandora's Box—that supporters of other national symbols, no different from the flag, will clamor for similar protection from desecration.

I reject this argument because the flag is unique.

Do we pledge allegiance to the Constitution, or to the Presidential seal, or to any other national symbol? No.

Flag Day, June 14, is a national holiday, but do we have a national holiday honoring the Constitution, or the Presidential seal, or any other national symbol? No.

The ''Star Spangled Banner,'' our national anthem, honors the resiliency of Old Glory. But does our national anthem honor the Constitution, or the Presidential seal, or any other national symbol? No, it does not.