PERMISSION FOR COMMITTEE ON THE JUDICIARY TO FILE SUPPLEMENTAL REPORT ON H.R. 1086, STANDARDS DEVELOPMENT ORGANIZATION ADVANCEMENT ACT OF 2003

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary have permission to file a supplemental report on the bill H.R. 1086, the Standards Development Organization Advancement Act of 2003.

This request has been cleared by the minority.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 257, I call up the bill (H.R. 760) to prohibit the procedure commonly known as partial-birth abortion, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 257, the bill is considered read for amendment.

The text of H.R. 760 is as follows:

H.R. 760

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Partial-Birth Abortion Ban Act of 2003''.

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion—an abortion in which a physician delivers an unborn child's body until only the head remains inside the womb, punctures the back of the child's skull with a sharp instrument, and sucks the child's brains out before completing delivery of the dead infant—is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.

(2) Rather than being an abortion procedure that is embraced by the medical community, particularly among physicians who routinely perform other abortion procedures, partial-birth abortion remains a disfavored procedure that is not only unnecessary to preserve the health of the mother, but in fact poses serious risks to the long-term health of women and in some circumstances, their lives. As a result, at least 27 States banned the procedure as did the United States Congress which voted to ban the procedure during the 104th, 105th, and 106th Congresses.

(3) In Stenberg v. Carhart, 530 U.S. 914, 932 (2000), the United States Supreme Court opined ''that significant medical authority supports the proposition that in some circumstances, [partial birth abortion] would be the safest procedure'' for pregnant women who wish to undergo an abortion. Thus, the Court struck down the State of Nebraska's ban on partial-birth abortion procedures, concluding that it placed an ''undue burden'' on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the ''health'' of the mother.

(4) In reaching this conclusion, the Court deferred to the Federal district court's factual findings that the partial-birth abortion procedure was statistically and medically as safe as, and in many circumstances safer than, alternative abortion procedures.

(5) However, the great weight of evidence presented at the Stenberg trial and other trials challenging partial-birth abortion bans, as well as at extensive Congressional hearings, demonstrates that a partial-birth abortion is never necessary to preserve the health of a woman, poses significant health risks to a woman upon whom the procedure is performed, and is outside of the standard of medical care.

(6) Despite the dearth of evidence in the Stenberg trial court record supporting the district court's findings, the United States Court of Appeals for the Eighth Circuit and the Supreme Court refused to set aside the district court's factual findings because, under the applicable standard of appellate review, they were not ''clearly erroneous''. A finding of fact is clearly erroneous ''when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed''. Anderson v. City of Bessemer City, North Carolina, 470 U.S. 564, 573 (1985). Under this standard, ''if the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently''. Id. at 574.

(7) Thus, in Stenberg, the United States Supreme Court was required to accept the very questionable findings issued by the district court judge—the effect of which was to render null and void the reasoned factual findings and policy determinations of the United States Congress and at least 27 State legislatures.

(8) However, under well-settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg under the ''clearly erroneous'' standard. Rather, the United States Congress is entitled to reach its own factual findings—findings that the Supreme Court accords great deference—and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence.

(9) In Katzenbach v. Morgan, 384 U.S. 641 (1966), the Supreme Court articulated its highly deferential review of Congressional factual findings when it addressed the constitutionality of section 4(e) of the Voting Rights Act of 1965. Regarding Congress' factual determination that section 4(e) would assist the Puerto Rican community in ''gaining nondiscriminatory treatment in public services,'' the Court stated that ''[i]t was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations. . . . It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support section 4(e) in the application in question in this case.''. Id. at 653.

(10) Katzenbach's highly deferential review of Congress's factual conclusions was relied upon by the United States District Court for the District of Columbia when it upheld the ''bail-out'' provisions of the Voting Rights Act of 1965, (42 U.S.C. 1973c), stating that ''congressional fact finding, to which we are inclined to pay great deference, strengthens the inference that, in those jurisdictions covered by the Act, state actions discriminatory in effect are discriminatory in purpose''. City of Rome, Georgia v. U.S., 472 F. Supp. 221 (D. D. Col. 1979) aff'd City of Rome, Georgia v. U.S., 446 U.S. 156 (1980).

(11) The Court continued its practice of deferring to congressional factual findings in reviewing the constitutionality of the must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992. See Turner Broadcasting System, Inc. v. Federal Communications Commission, 512 U.S. 622 (1994) (Turner I) and Turner Broadcasting System, Inc. v. Federal Communications Commission, 520 U.S. 180 (1997) (Turner II). At issue in the Turner cases was Congress' legislative finding that, absent mandatory carriage rules, the continued viability of local broadcast television would be ''seriously jeopardized''. The Turner I Court recognized that as an institution, ''Congress is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon an issue as complex and dynamic as that presented here''. 512 U.S. at 665–66. Although the Court recognized that ''the deference afforded to legislative findings does 'not foreclose our independent judgment of the facts bearing on an issue of constitutional law,'" its ''obligation to exercise independent judgment when First Amendment rights are implicated is not a license to reweigh the evidence de novo, or to replace Congress' factual predictions with our own. Rather, it is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.'' Id. at 666.

(12) Three years later in Turner II, the Court upheld the ''must-carry'' provisions based upon Congress' findings, stating the Court's ''sole obligation is 'to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.'" 520 U.S. at 195. Citing its ruling in Turner I, the Court reiterated that ''[w]e owe Congress' findings deference in part because the institution 'is far better equipped than the judiciary to ''amass and evaluate the vast amounts of data'' bearing upon' legislative questions,'' id. at 195, and added that it ''owe[d] Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power.'' Id. at 196.

(13) There exists substantial record evidence upon which Congress has reached its conclusion that a ban on partial-birth abortion is not required to contain a ''health'' exception, because the facts indicate that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care. Congress was informed by extensive hearings held during the 104th, 105th, and 107th Congresses and passed a ban on partial-birth abortion in the 104th, 105th, and 106th Congresses. These findings reflect the very informed judgment of the Congress that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care, and should, therefore, be banned.

(14) Pursuant to the testimony received during extensive legislative hearings during the 104th, 105th, and 107th Congresses, Congress finds and declares that:

(A) Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure. Those risks include, among other things: an increase in a woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption,

amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position, a procedure which, according to a leading obstetrics textbook, ''there are very few, if any, indications for . . . other than for delivery of a second twin''; and a risk of lacerations and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death.

(B) There is no credible medical evidence that partial-birth abortions are safe or are safer than other abortion procedures. No controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. Furthermore, there have been no articles published in peer-reviewed journals that establish that partial-birth abortions are superior in any way to established abortion procedures. Indeed, unlike other more commonly used abortion procedures, there are currently no medical schools that provide instruction on abortions that include the instruction in partial-birth abortions in their curriculum.

(C) A prominent medical association has concluded that partial-birth abortion is ''not an accepted medical practice,'' that it has ''never been subject to even a minimal amount of the normal medical practice development,'' that ''the relative advantages and disadvantages of the procedure in specific circumstances remain unknown,'' and that ''there is no consensus among obstetricians about its use''. The association has further noted that partial-birth abortion is broadly disfavored by both medical experts and the public, is ''ethically wrong,'' and ''is never the only appropriate procedure''.

(D) Neither the plaintiff in Stenberg v. Carhart, nor the experts who testified on his behalf, have identified a single circumstance during which a partial-birth abortion was necessary to preserve the health of a woman.

(E) The physician credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome and, thus, is never medically necessary to preserve the health of a woman.

(F) A ban on the partial-birth abortion procedure will therefore advance the health interests of pregnant women seeking to terminate a pregnancy.

(G) In light of this overwhelming evidence, Congress and the States have a compelling interest in prohibiting partial-birth abortions. In addition to promoting maternal health, such a prohibition will draw a bright line that clearly distinguishes abortion and infanticide, that preserves the integrity of the medical profession, and promotes respect for human life.

(H) Based upon Roe v. Wade, 410 U.S. 113 (1973) and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a governmental interest in protecting the life of a child during the delivery process arises by virtue of the fact that during a partial-birth abortion, labor is induced and the birth process has begun. This distinction was recognized in Roe when the Court noted, without comment, that the Texas parturition statute, which prohibited one from killing a child ''in a state of being born and before actual birth,'' was not under attack. This interest becomes compelling as the child emerges from the maternal body. A child that is completely born is a full, legal person entitled to constitutional protections afforded a ''person'' under the United States Constitution. Partial-birth abortions involve the killing of a child that is in the process, in fact mere inches away from, becoming a ''person''. Thus, the government has a heightened interest in protecting the life of the partially-born child.

(I) This, too, has not gone unnoticed in the medical community, where a prominent medical association has recognized that partial-birth abortions are ''ethically different from other destructive abortion techniques because the fetus, normally twenty weeks or longer in gestation, is killed outside of the womb''. According to this medical association, the '''partial birth' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body''.

(J) Partial-birth abortion also confuses the medical, legal, and ethical duties of physicians to preserve and promote life, as the physician acts directly against the physical life of a child, whom he or she had just delivered, all but the head, out of the womb, in order to end that life. Partial-birth abortion thus appropriates the terminology and techniques used by obstetricians in the delivery of living children—obstetricians who preserve and protect the life of the mother and the child—and instead uses those techniques to end the life of the partially-born child.

(K) Thus, by aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, partial-birth abortion undermines the public's perception of the appropriate role of a physician during the delivery process, and perverts a process during which life is brought into the world, in order to destroy a partially-born child.

(L) The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the procedure.

(M) The vast majority of babies killed during partial-birth abortions are alive until the end of the procedure. It is a medical fact, however, that unborn infants at this stage can feel pain when subjected to painful stimuli and that their perception of this pain is even more intense than that of newborn infants and older children when subjected to the same stimuli. Thus, during a partial-birth abortion procedure, the child will fully experience the pain associated with piercing his or her skull and sucking out his or her brain.

(N) Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life. Thus, Congress has a compelling interest in acting—indeed it must act—to prohibit this inhumane procedure.

(O) For these reasons, Congress finds that partial-birth abortion is never medically indicated to preserve the health of the mother; is in fact unrecognized as a valid abortion procedure by the mainstream medical community; poses additional health risks to the mother; blurs the line between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned.

SEC. 3. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 73 the following:

''CHAPTER 74—PARTIAL-BIRTH ABORTIONS

''Sec.
''1531. Partial-birth abortions prohibited.

''§ 1531. Partial-birth abortions prohibited

''(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. This subsection takes effect 1 day after the enactment.

''(b) As used in this section—

''(1) the term 'partial-birth abortion' means an abortion in which—

''(A) the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

''(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus; and

''(2) the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: Provided, however, That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

''(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

''(2) Such relief shall include—

''(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

''(B) statutory damages equal to three times the cost of the partial-birth abortion.

''(d)(1) A defendant accused of an offense under this section may seek a hearing before the State Medical Board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

''(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

''(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

''74. Partial-birth abortions ..... 1531''.

The SPEAKER pro tempore. After 1 hour of debate on the bill, it shall be in

order to consider an amendment printed in House Report 108–139, if offered by the gentleman from Pennsylvania (Mr. GREENWOOD) or his designee, which shall be considered read, and shall be debatable for 1 hour, equally divided and controlled by the proponent and an opponent.

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from New York (Mr. NADLER) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 760.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, H.R. 760, the Partial-Birth Abortion Ban Act of 2003, would prohibit the gruesome and inhumane procedure of partial-birth abortion that, unfortunately, we are all too familiar with. An abortionist who violates this ban would be subject to fines, a maximum of 2 years' imprisonment, or both. The bill includes an exception for those situations in which a partial-birth abortion is deemed necessary to save the life of the mother. An identical bill, H.R. 4965, was approved by this Chamber last summer by a 274–151 vote, but the then-Democratic leadership in the other body chose not to bring it up for a vote.

A moral, medical, and ethical consensus exists that partial-birth abortion is an unsafe and inhumane procedure that is never medically necessary and should be prohibited. Contrary to the claims of advocates of this gruesome procedure, the procedure remains an untested, unproven, and potentially dangerous procedure that has never been embraced by the medical profession. Unfortunately, two Federal bans that were passed by prior Republican Congresses and sent to President Clinton's desk were promptly vetoed.

In June 2000, the United States Supreme Court struck down Nebraska's partial-birth abortion ban, which was similar, but not identical, to bans previously passed by Congress. The Court concluded that Nebraska's ban did not clearly distinguish the prohibited procedure from the other more commonly performed second trimester abortion procedures. The Court also held, on the basis of highly disputed factual findings of the district court, that the law was required to include an exception for partial-birth abortions deemed necessary to preserve the health of a woman.

H.R. 760's new definition of partial-birth abortion addresses the Court's first concern by clearly and unambiguously defining the prohibited procedure. The bill also addresses the Court's second objection to the Nebraska law by including extensive congressional findings based upon medical evidence received in a series of legislative hearings, that, contrary to the factual findings of the district court in Stenberg, a partial-birth abortion is never medically necessary to preserve a woman's health, poses serious risk to a woman's health, and in fact is below the requisite standard of medical care.

H.R. 760's lack of a health exception is based upon Congress's factual determination that partial-birth abortion is a dangerous procedure that does not serve the health of any woman. The Supreme Court has a long history, particularly in the area of civil rights, of deferring to Congress's factual conclusions. In doing so, the Court has recognized that Congress's institutional structure makes it better suited than the judiciary to assess facts upon which it will make policy determinations.

As Justice Rehnquist has stated, the Court must be, ''particularly careful not to substitute its judgment of what is desirable for that of Congress, or its own evaluation of evidence for a reasonable evaluation by the legislative branch.'' Thus in Katzenback v. Morgan, while addressing section 4(e) of the Voting Rights Act of 1965, the Court deferred to Congress's factual determination that section 4(e) would assist the Puerto Rican community in ''gaining nondiscriminatory treatment in public services,'' stating: ''It is not for us to review the congressional resolution'' of the various issues it had before it to consider. Rather, ''It is enough that we are able to perceive a basis upon which the Congress might resolve the conflict as it did.''

Similarly in Fullilove v. Klutznick, when reviewing the minority business enterprise provision of the Public Works Employment Act of 1977, the Court repeatedly cited and deferred to the legislative record and factual conclusions of Congress to uphold the provisions as an appropriate exercise of congressional authority.

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In addition to the health risks to women who undergo the partial-birth abortion procedure, it is particularly brutal and inhumane to the nearly born infant as virtually all the infants upon whom this procedure is performed are alive and feel excruciating pain. Furthermore, a child upon whom a partial-birth abortion is being performed will not be significantly affected by medication administered to the mother during the performance of the procedure.

As credible testimony received by the Subcommittee on the Constitution confirms, ''Current methods for providing maternal anesthesia during partial-birth abortions are unlikely to prevent the experience of pain and stress'' that the child will feel during the procedure. Thus, claims that a child is almost certain to be either dead or unconscious and near death prior to the commencement of the partial-birth abortion are unsubstantiated.

H.R. 760 enjoys overwhelming support from members of both parties precisely because of the barbaric nature of this procedure and the dangers it poses to women who undergo it. Additionally, the American Medical Association has recognized that partial-birth abortions are ''ethically different from other destructive abortion techniques because the fetus, normally 20 weeks or longer in gestation, is killed out of the womb.'' Thus, the ''partial birth'' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body.

Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns but all vulnerable and innocent human life. Thus, Congress has a compelling interest in acting, indeed it must, to prohibit this inhumane procedure.

Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. GREEN).

(Mr. GREEN of Texas asked and was given permission to revise and extend his remarks.)

Mr. GREEN of Texas. Mr. Speaker, I rise today opposing H.R. 760 and supporting the substitute.

Mr. Speaker, I rise today to express my opposition to H.R. 760, the Partial Birth Abortion Ban of 2003.

This is always an ugly and difficult debate. I am not comfortable with the notion of a pregnancy being terminated when a woman is in the last trimester.

I doubt that many people believe a woman who is eight months pregnant should be able to just change her mind and terminate the pregnancy. And I really don't believe that that situation happens.

But there are times when late term abortions are necessary to protect the life and health of the mother, or to save the fetus from undue pain and suffering due to irreversible birth defects.

In those cases, we should make sure that women have access to safe, appropriate medical procedures.

Unfortunately, the legislation we are considering today is almost identical to a Nebraska law that the Supreme Court found unconstitutional.

In Stenberg v. Carhart, the Court found that the Nebraska law outlaws several procedures, including the safest and most commonly used method for performing pre-viability second trimester abortions.

Second, the Court ruled that any ban on methods of abortion must provide an exception for women's health, and also struck down the Nebraska law for failing to include such an exception.

H.R. 760 continues to flout the Supreme Court's rulings by continuing to ban certain procedures, and failing to protect the life of the mother.

If we are serious about banning truly late-term abortions, than we should do what Texas did.

My home state has a law which says that "No abortion may be performed in the third trimester on a viable fetus unless necessary to preserve the woman's life or prevent a "substantial risk of serious impairment" to her physical or mental health or if the fetus has a severe and irreversible abnormality."

I supported this law when it passed the State Legislature, and support the Hoyer-Greenwood Amendment being offered today, which provides similar protections for women facing this awful choice.

I urge my colleagues to reject H.R. 760, and instead support the Hoyer-Greenwood substitute, which is similar to common sense Texas law.

Mr. NADLER. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Speaker, I want to thank very much the ranking member of the subcommittee on Judiciary that is managing this bill, I want to thank him for the great work that he and the Judiciary staff have done in trying to bring some understanding to the significance of what we are doing here today.

First of all, let us begin the discussion by recognizing that the term ''partial-birth abortion'' is a political term or a rhetorical term. It is not found in the medical journals. It is not found in the textbooks on medicine. The reason is that it was invented in the Congress. Okay?

The bill before us is different from other bills that have attempted to ban abortion because this bill has now determined that they would get around the Supreme Court ban on these procedures which require the health of the mother be taken into consideration by saying, we have a bill here that has about 14 pages of findings, congressional findings, that now make it unnecessary to follow Roe v. Wade and the other major case that precludes these bills from being constitutional. They have been struck down repeatedly, repeatedly, repeatedly. But this bill is now going to be okay because we have congressional findings.

Flash to the Congress. All congressional findings are not approved by the Supreme Court. Sorry about that, gentlemen. We have here, that I will put into the RECORD, and I hope we will have some discussion on it, the Turner Broadcasting case, Supreme Court case; the Morrison case, the Penhurst case, we go on and on with a long list of cases that say all findings are not findings and that therefore the Supreme Court is going to say, oh, okay, you had two or three doctors testify before your subcommittee and from this you draw findings and so, therefore, now all the Supreme Court decisions about the protection of the health and life of the mother are void. Not so.

The reason is that H.R. 760 simply states that the district court erred in its finding of fact and law, but as a matter of fact, this bill does not add a health exception, but instead simply states that the procedures covered by the bill are not necessary and that therefore their use pose no risk to the mother's health.

We listen to some doctors, we then determine that we have now exceptions and we pack them into this bill and we say, That's it. We don't need to determine that the health and welfare of the mother is as critical as the Supreme Court used to think because now we have findings, congressional findings. And the Supreme Court has got to follow congressional findings. Right? Wrong.

It would seem that on the basis that this was done, it will be pretty easy for the Supreme Court to look behind this bill, H.R. 760.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the gentleman from Michigan is right. The Supreme Court is not required to accept congressional findings. In the cases that I have cited, they have given great deference to congressional findings. Here in the Stenberg case, the Supreme Court accepted the findings of the district court. We believe the district court's findings were in error. That is why there are extensive findings contained in H.R. 760 which we hope are substantiated by extensive hearing records and that the Supreme Court will give the same type of deference that it has done in the past in civil rights and employment cases.

Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding me this time. Partial-birth abortion is the termination of the life of a living baby just seconds before it takes its first breath outside the womb. The procedure is violent, it is gruesome, it is horrific, it is barbaric, it is infanticide.

Proponents of this procedure will tell you a different story today. They want you to believe it is about politics or ideology. They will do anything to divert attention from the cold, hard facts about partial-birth abortion.

I want to remind everybody that we have seen these same tactics for many years and that the misinformation touted by the abortion lobby was exposed as blatant propaganda back in 1997. We might recall that the executive director of the National Coalition of Abortion Providers admitted that he, quote, ''lied through his teeth when he stated that partial-birth abortions were rarely performed.'' He went on to say that the procedure is most often performed on healthy mothers who are about 5 months pregnant with healthy fetuses.

So as we debate this compassionate bill today, I ask that you remember the truth: Partial-birth abortion remains an untested, unproven and dangerous procedure that has never been embraced by the mainstream medical community.

I would like to take a few minutes to discuss this legislation in more detail. Two years ago in Stenberg v. Carhart, the United States Supreme Court struck down Nebraska's partial-birth abortion ban which was similar, but not identical, to bans passed by previous Congresses. To address the constitutional concerns raised by the majority in Stenberg, our legislation differs from previous proposals in two areas. First, the bill contains a new, more precise definition of the prohibited procedure that, as expert medical testimony received by the Subcommittee on the Constitution indicated, clearly distinguishes it from more commonly performed abortion procedures.

Opponents of this legislation claim that doctors will be confused by the definition of partial-birth abortion. Despite the assertions of the abortionists who defend this procedure, the new definition provides physicians anatomical guideposts so that there will be no confusion about which procedure is prohibited.

Second, our legislation addresses the Stenberg majority's opinion that the Nebraska ban placed an undue burden on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the health of the mother. The Stenberg court based its conclusion on the trial court's factual findings regarding the relative health and safety benefits of partial-birth abortions, findings which were highly disputed.

Under well-settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg under the clearly erroneous standard. Rather, as the Supreme Court explained in Turner Broadcasting System, Inc. v. Federal Communications Commission, the United States Congress is entitled to reach its own factual findings, findings that the Supreme Court consistently relies upon and accords great deference, and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution and draws reasonable inferences based upon substantial evidence. That is exactly what we have done in this legislation.

The first section of our legislation contains Congress' extensive factual findings that, based upon extensive medical evidence compiled during congressional hearings, partial-birth abortion poses serious risks to women's health, is never medically indicated, and is outside standard medical care. In fact, the district court's factual findings in Stenberg are inconsistent with the overwhelming weight of authority regarding the safety and medical necessity of partial-birth abortion.

According to the American Medical Association, ''There is no consensus among obstetricians about its use, it

has never been subject to even a minimal amount of normal medical practice development, and it is not in the medical textbooks.'' In addition, no controlled studies of partial-birth abortions have been conducted, nor have any comparative studies been conducted to demonstrate its efficacy compared to other abortion methods.

Leading proponents of partial-birth abortion also acknowledge that it poses additional health risks because of the many difficulties required in that particular procedure. It has even been called a rogue procedure.

Partial-birth abortion is truly a national tragedy. Fortunately, the American people and the President recognize the horrors of partial-birth abortion and are waiting for Congress to again take action. On March 13, 2003, the other body passed virtually identical legislation by a 64 to 33 vote.

I urge my colleagues to support our bill and help end this barbaric and inhumane practice once and for all in this country. It is now time for us to pass this legislation. I feel confident that we will do so today.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we have a very bad combination, a combination of Members of Congress who want to play doctor and Members of Congress who want to play Supreme Court. When you put the two together, you have a prescription for some very bad medicine for the women in this country.

We have been through this debate often enough to know that you will not find the term ''partial-birth abortion'' in any medical textbook. There are procedures that you will find in medical textbooks, but the authors of this legislation would prefer to use the language of propaganda rather than the language of medical science. This bill is so vague that it could be read to prohibit many common procedures used during the second trimester. This, the Supreme Court has said, Congress may not constitutionally do.

The bill as written fails every test the Supreme Court has laid down for constitutional regulation of abortion. It reads almost as if the authors went through the Supreme Court's controlling decision in Stenberg v. Carhart and went out of their way to thumb their noses at the Court. Unless the authors think that when the Court has made repeated and clear statements over the years of what the Constitution requires in this area, they were just pulling our leg, this bill has to be considered facially unconstitutional.

In addition, in just one example of an obnoxious clause, the bill allows the husband of a woman who seeks an abortion to sue her and her doctor if the husband did not consent to the procedure. This would include a husband who had abused the woman, punched her causing massive damage to the fetus, deserted her, and then allow him to realize a huge windfall after she is left alone to deal with the consequences of his wrongdoing.

This is the position of people who call themselves pro-life? It is an obscenity and people who support it should not be proud.

The Supreme Court has repeatedly said any restriction on the right to choose must have a clear exception to preserve the life and health of a woman at any stage of pregnancy.

□ 1745

The bill lacks an exception for the health of the woman. I know that some of my colleagues do not like the constitutional rule that has been in place and reaffirmed by the Court for 30 years; but that is the supreme law of the land, and no amount of rhetoric, even if written into legislation, will change that. Even the Ashcroft Justice Department in its brief defending an Ohio statute before the Court has acknowledged that a health exception is required by law.

The sponsors say that findings in the bill to the effect that so-called partial-birth abortion is never medically necessary will satisfy the constitutional requirement of a health exception to any limitation on the right to choose an abortion. But while the Court has made clear that it now requires Congress to support our legislation with findings of fact and that the Court has arrogated to itself the right to decide whether the facts established are sufficient to establish that the legislation is appropriate and proportionate to the evil to be remedied in order to render the legislation constitutional, that is an affirmative requirement within the power of Congress to legislate.

It is not. The Court has said the opposite. The Court has not said where Congress has no power to legislate, such as abortion regulation, without an exception for the health of the woman, that findings of fact can expand the power to legislate. The fact requirement is established by the Court as a limitation on Congress, not as an expansion of the power of Congress.

Whatever deference the Court may have shown to Congress's fact findings, the Court has made clear it is the final arbiter of the fact, not Congress, even if we put so-called fact findings in the bill. I do not like that anymore than other Members of the House, but there you have it; and frankly, the contention that the findings in this bill negate the necessity for the health exception to make this constitutional is laughable, and I do not believe any Member who knows anything about constitutional law can seriously and honestly suggest anything other than that.

While I realize many of the proponents of this bill view all abortion as tantamount to infanticide, that is not a mainstream view. The proponents of this bill are attempting to foist a marginal view on the general public by characterizing it as having to do with abortions involving healthy fetuses that are already viable. But, of course, the definition in this bill will go into second trimester abortions also.

If they really wanted to deal with post-viability abortions and situations in which a woman's life and health are not in jeopardy, then let them write a bill dealing with late-term abortions. We already have such laws in 40 Sates, and they would not find much opposition, if any opposition, to that. But it is clear that the majority is not interested in a bill that could pass into law and naturally be upheld as constitutional. What they want is simply an inflammatory piece of rhetoric to start undermining the political support of Roe v. Wade. The real purpose of this bill is not, as we have been told, to save babies, but to save elections.

We now have a President who has expressed a willingness to sign this bill. He may in fact get his chance.

Perhaps here in the Halls of Congress the health of women takes a back seat to the most extreme views of the anti-choice movement. Perhaps the President does not care about the health of women. We will find that out, perhaps.

Let us hope that this administration does not get the opportunity to pack the Supreme Court with fanatics who are also indifferent to the lives and health of women. Until then, fortunately, the Constitution still serves as a bulwark against dangerous, malicious, destructive, and misogynistic particular bills like this one. I am thankful for that.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Virginia (Mr. FORBES).

Mr. FORBES. Mr. Speaker, what really amazes me when you listen to the debate on this bill is the huge disconnect between the rhetoric we hear and what the bill actually before us is about.

This bill is not about choice, and this bill is really not about abortion. This bill substantively, when you look at it, is about one procedure, one procedure that is so painful to an unborn baby, so barbaric, so egregious, that even the most extreme proponent of abortion has to look at it and say it shocks even their conscience.

The overwhelming testimony is that a partial-birth abortion is never necessary to protect the health of the mother. This procedure is infanticide, and its cruelty stretches the limits of human decency.

This issue comes down to one simple question: Is there no limit, is there no amount of pain, is there no procedure that is so extreme that we can apply to this unborn child or this fetus that we are willing as a country to say that just goes too far and we cannot allow that to happen? That is what partial-birth abortion does. It goes too far. That is why it is so important that we pass this bill today.

Mr. NADLER. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from New York (Mrs. LOWEY).

Mrs. LOWEY. Mr. Speaker, after commemorating the 30th anniversary of the Supreme Court's decision in Roe v. Wade just 6 months ago, we are reminded again today that the fight to preserve a woman's right to choose is far from over. We are here today considering a ban on so-called partial-birth abortions for the ninth time in 8 years because the proponents of this bill disagree with the Supreme Court. They want to overturn Roe v. Wade and Stenberg v. Carhart and go back to the days when women had no options, when they left the country or died in back alleys.

In reflecting on the long debate over this bill starting in 1995, I was struck by something Sandra Day O'Connor said on CNN recently. Justice O'Connor said that she was drawn to the law because she saw the role it plays in shaping our society. ''I don't think law often leads society,'' she said. ''It really is a statement of society's beliefs in a way.''

The proponents of this bill and I would likely agree with Justice O'Connor, except I believe that Roe v. Wade continues to express our society's beliefs, and they do not. Roe said that the decision to terminate a pregnancy is private and personal and should be made by a woman and her family without undue interference from the government. I, and the American people, still believe that. Supporters of the bill do not.

Roe and Stenberg said that a woman must never be forced to sacrifice her life or damage her health in order to bring a pregnancy to term. The woman's life and health must come first and be protected throughout pregnancy. I and the American people still believe that. Supporters of the bill do not.

Roe and Stenberg said that determinations about viability and health risks must be made for each woman by her physician. A blanket government decree about medicine is irresponsible and dangerous. I and the American people still believe that. Supporters of the bill do not.

The supporters of H.R. 760 disagree with the Court's reflection of our society and reject the principles embodied in its decisions. Holding their opinion is their right. Disregarding the Constitution is wrong.

The Supreme Court's decisions in Roe v. Wade and Stenberg v. Carhart rested on precedent, including Marbury v. Madison, decided 200 years ago this year. Marbury was critically important to the development of our democracy because it established the Supreme Court as the final and ultimate authority on what the Constitution means.

In 1803, the Supreme Court became in fact, not just on paper, an equal partner in government, co-equal with the executive and the legislature. But in 2003, this Congress has decided to ignore the Court. The Court made clear that a partial-birth abortion ban was extreme and dangerous because it limited safe options for women and failed to protect the health of women.

Yet the bill before us contains no protection for the health of the woman, leaves no role for the physician treating a woman, and never mentions fetal viability. Congress ignores women, families, doctors and the Supreme Court, and makes all the decisions.

Congress is wrong to pass this ban and the President would be wrong to sign it. I urge my colleagues to respect the law of the land, support American values in Roe v. Wade, Stenberg v. Carhart, leave decisions in the hands of families, protect the health of women. Please vote against this bill.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). The Chair would kindly ask Members to mute electronic devices while on the floor of the House.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. I thank my good friend for yielding. And I deeply appreciate both Chairman SENSENBRENNER's and Chairman CHABOT's courageous leadership on this human right issue.

Mr. Speaker, slowly, but inexorably, the movement to reinfranchise unborn children in law as respected and cherished members of the human family is growing.

The most recent issue of Newsweek, it is a cover story entitled, ''Should a Fetus Have Rights; How Science Is Changing the Debate,'' absolutely shatters the myth that unborn children are somehow less human and less alive than their born brothers and sisters.

Indeed, a second Newsweek story also in this week's edition, ''Treating the Tiniest Patients,'' notes that ''medicine has already granted unborn babies a unique form of personhood, as patients.''

Newsweek points out that, ''Once just grainy blobs on a TV monitor, new high-tech fetal ultrasound images allow prospective parents to see tiny fingers and toes, arms and legs, and a beating heart as early as 12 weeks. While these images make a parent's heart leap for joy, they also pack such an emotional punch that even the most hard-line abortions rights supporters may find themselves questioning their beliefs.''

Mr. Speaker, let us hope so. May the questioning begin. We have lived in denial concerning the violence of abortion for far too long. We have, by our actions, or more so by our inaction, enabled and empowered abortionists to dismember, decapitate and chemically poison more than 43 million innocent and precious babies since 1973.

Today, Mr. Speaker, we can stop some of this violence against children. Today we can take one of those weapons out of the hands of the abortionist. Today we can tell America that partially delivering a baby, only to stab that child in the skull so that his or her brains can be sucked out, is the nightmarish world of a Hannibal Lecter, not American medicine or jurisprudence.

Mr. NADLER. Mr. Speaker, I yield 1½ minutes to the distinguished gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, if Members could actually wade through the absurd and fallacious rhetoric that is being bandied about today, it would not be difficult to see that this unconstitutional legislation is not actually about so-called partial-birth abortion; it is about two things and two things only.

The first is the question of who gets to make the medical decisions about a woman's health, the actual woman, in consultation with her family and physician, or the agitated and hyperbolic politicians in attendance today? I vote for the woman.

The second is the fact that passage of this bill is one more step down the path where a woman's right to choose no longer exists, and that is clearly what the House and Senate and White House have said all along.

Do not be fooled. There is no actual procedure called this. So-called late-term abortions are quite rare, and they usually occur under the most difficult of circumstances.

To pass this legislation is to elevate the rhetoric of politicians over the sound medical advice of doctors. To pass this bill today is to deny women a safe and legal procedure when tragedy strikes.

If the other side really cared about these types of abortions, they would vote for women's health, which they do not. They would not pass an unconstitutional bill which is wasting this body's time, when we could be talking about child tax credits and other issues and not spending all of this money. They could really put their efforts on stopping unwanted pregnancies in general.

I urge my colleagues to think rationally and compassionately and vote ''no'' on this terrible piece of legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. HOEKSTRA).

Mr. HOEKSTRA. Mr. Speaker, I thank my colleague for yielding me time.

Mr. Speaker, life, life is a precious gift. Life is a precious gift from God. Partial-birth abortion is a gruesome procedure that has no place in our society, has no place in a civilized society.

Partial-birth abortions are performed in the U.S. They are performed thousands of times annually on healthy babies and healthy mothers. In 1997, Ron Fitzimmons, executive director of the National Coalition of Abortion Providers, estimated that the method was used 3,000 to 5,000 times annually. ''In the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus that is 20 weeks or more along,'' Fitzimmons said.

Not that polls are all that important on this issue, it is what is right or wrong, but in January of 2003 a Gallup Poll found that 70 percent of Americans favored a law making it illegal to perform a partial-birth abortion except in cases necessary to save the life of the mother.

□ 1800

These folks recognize the preciousness of the gift of life. H.R. 760 would prohibit the partial-birth abortion procedure unless it is medically necessary to save the life of the mother.

H.R. 760 addresses the concerns identified by the Supreme Court when it struck down Nebraska's partial-birth abortion ban by a 5–4 ruling. The five-Justice majority thought that the Nebraska law was too vague. H.R. 760 contains a new and a more precise definition of the prohibited procedure.

I thank my colleague for bringing this bill forward. I hope that today this House will join the other body in moving this legislation forward and, hopefully, moving it to the President's desk. We have passed similar legislation a number of times, but never have we been able to get it on the President's desk where the President will sign it.

Let us move this bill and let us get it on the President's desk.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise today for my annual statement in opposition to this bill. Republicans say they are for smaller government. In reality, they want to make government just small enough to fit inside our bedroom.

This bill forces government to step between pregnant mothers and their doctors, interfering with the doctor's ability to make the safest and healthiest decisions for the mother, never mind that this bill is certifiably unconstitutional.

Proponents of this bill should be ashamed to go home to their wives, their daughters, nieces, sisters, and women constituents and explain to them why they voted for a bill that not only blatantly disregards their health, but tries to claim that it is not an issue; explain to them why they voted for a bill that would criminalize the behavior of their doctors, who acted in their best interests, because the law said that their health did not matter.

This bill is not about late-term abortion or even a so-called ''partial-birth abortion'' procedure, which has no medical definition in this bill. This bill is about banning safe abortion procedures that sometimes are the safest method of previability, second-trimester abortions.

For us to be true to the Constitution, to be true to the sentiments of equality and freedom, women must have control over their bodies. Instead, proponents of this bill, including the Bush administration, are using this bill as part of a broader agenda to take away a woman's constitutionally guaranteed right to choose.

This assault on a woman's right to control her body and her health must stop. I urge my colleagues to vote ''no'' on H.R. 760.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, we have heard from the people who oppose this legislation that it infringes on Roe v. Wade. Roe v. Wade very clearly gives Congress and the several States the right to prohibit abortions on viable babies.

There is one State in the Union, Kansas, that collects statistics on partial-birth abortions. Let me quote from page 17 of the committee report: ''The experiences of the State of Kansas, the only State to require physicians to report the performance of partial-birth abortions, are instructive on this point. Under its mandatory reporting scheme for partial-birth abortions, in 1998, 58 partial-birth abortions were performed, all of which were on viable babies and all of which were necessary to prevent a substantial or irreversible impairment of a major body function, which was the impairment of the patient's mental function.

''Similarly, in 1990, 182 such procedures were performed,'' all for the same reason, and again, all on viable babies.

Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, let us all be clear: the bill before us is unconstitutional because it does not contain an exemption for the health of the woman who seeks to exercise her reproductive rights. There is no doubt about that. This is because the U.S. Supreme Court has already ruled on very similar legislation in Stenberg v. Carhart. Opponents of the right to reproductive choice should know that.

This bill likely will not prevent a single abortion, but it does defeat the rights of women. I believe that equal protection under the law and the right to privacy should be freedoms enjoyed by women as well as men, but women will not be equal to men if this constitutionally protected right is denied. This bill infringes on those rights for women. That is why I will oppose it.

Throughout my career, I have worked to reduce the need for abortions by preventing unwanted pregnancies through comprehensive sex education, birth control, and increased access to health care. I think that all of my colleagues would agree that we should work to prevent unwanted pregnancies that lead to abortions.

I will continue those efforts, but the bill before us today is the wrong way to do that. Advocates of this bill who want to stand in defense of life would be helpful if they worked to support families with adequate child care funding, child tax credit relief for vulnerable families, and peace.

For some, this debate is only about politics. The fact that other abortion legislation, the Unborn Victims of Violence Act, has been advanced on the publicity of the Laci Peterson tragedy shows the unfortunate politicization of this debate.

I know there are many who are sincere in their desire to reduce the need for abortions. In leading this Nation towards this goal, we must preserve constitutional rights. We must respect the freedom and equality of women. The best path for our country is not to escalate the divisiveness and political nature of this debate. Rather, it is to remember the principles of this Nation and refrain from undermining freedom of choice. We must respect the basic human dignity of women to make personal decisions.

This House can do better to truly work to reduce the need for abortions while respecting the freedom of choice. For these reasons, I will oppose the bill today.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Mr. Speaker, partial-birth abortion is what some call getting away with murder on a technicality. By law, a baby who has taken a breath outside the womb is considered a human being, a person. No one would think of killing it. To kill him would be murder.

To get around this technicality, abortionists turn the baby around so they can partially deliver the baby feet first, like a breech birth. While the baby's head remains in the birth canal, then they stick him in the back of the neck with surgical scissors and suck out his brain. Because the baby's head is held inside the mother's birth canal, the law does not count it as murder. Therefore, it is called getting away with murder on a technicality.

This is one of the most disgusting ways of circumventing the law I can think of. How can we justify saying a baby who can live on its own is not allowed to survive simply because someone is holding its head inside its mother's body? We cannot, not if we believe in the dignity of human life.

But we can stop this terrible procedure and save thousands of lives of healthy babies who are dying every year. Vote for this bill and close this loophole that allows people to literally get away with murder and infanticide.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Speaker, I rise deeply troubled that the House is again voting on this ill-conceived bill to ban a medical procedure. Let us be honest: The underlying issue is really about whether or not a woman should have the legal right to choose to end a seriously flawed pregnancy.

As my colleagues stated, the term ''partial-birth abortion'' cannot be

found in any medical literature. Lawmakers have continued this misnomer, ''partial-birth abortion,'' and have succeeded in confusing the public's understanding of the issue.

Federal law already bans procedures performed after fetal viability unless the mother's health is at risk. But this bill directly defies the Supreme Court because it once again lacks an adequate health exception, and it could outlaw procedures used in the first or second trimester before viability that can safely protect the health of the mother.

By criminalizing these constitutionally protected procedures, physicians are left with limited options when treating a patient in a crisis. The ban would force a woman to undergo potentially more damaging, risky, and rarely performed procedures or otherwise continue a very unsafe pregnancy.

Sadly, there are times when it may be necessary for a woman to terminate a wanted pregnancy. It is often impossible to detect fetal abnormalities before the second trimester, and it is at this stage that certain preexisting medical conditions exacerbated by pregnancy may worsen for a woman. At these unfortunate times, a woman, in consultation with doctors and families, must freely be able to determine the best course to preserve her life, her health, her future fertility.

Congress is treading in dangerous waters with this legislation. In this Chamber we often insist that we should not be telling doctors how to practice medicine, we should not usurp the opinions of medical experts when considering patient safety, standards of care for diseases, and the administration of drugs.

But with this bill today, Congress, comprised predominantly of lawyers, is entering into a hospital room, acting as a gatekeeper, and dictating what doctors can and cannot do in medical practice.

For these reasons, I support the Hoyer-Greenwood substitute. This substitute clearly and in medical terms bans all post-viability abortions except in cases where serious, adverse health consequences could result to the woman's health, or the woman's life is at stake.

This amendment would allow physicians to continue to make these critical medical decisions. I urge my colleagues to reject the underlying bill and to support the substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from New Mexico (Mr. PEARCE).

Mr. PEARCE. Mr. Speaker, I rise in support of this important bill. Not one of us looks in society and we see the changes, the abuse against our children. Not one of us has stared in incredulity at the actions of new mothers who have disposed of their children in disposals, or placed them in a wastebasket and went back to the dance.

We cannot overlook our treatment of the unborn, and especially this treatment of the unborn in a partial-birth abortion, and the changes that we find in society.

Mr. Speaker, I rise in strong support of the bill and request our colleagues to support this gentleman's fine bill.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, if there is one frivolous late-term abortion in America, in my book that is one too many. But this bill is a false promise for two reasons.

First, it is clearly unconstitutional, since it has no health exception for the mother. Passing an unconstitutional bill will not save one child. That is a fact.

Second, supporters of this bill have misled the American people to think the bill outlaws late-term abortions. It does not. The truth is, this bill focuses on prohibiting one type of late-term abortion while keeping perfectly legal other types of late-term abortion procedures.

Let me state a fact that is going to surprise many Americans who have been misled regarding this bill. The truth is, this partial-birth abortion bill will allow late-term abortions to remain legal. Supporters of this bill have never really honestly answered this question. If they really believe a woman is a monster and wants to abort a late-term fetus for absolutely frivolous reasons, then why are Members just banning one procedure? That will just let her tell the doctor to use another procedure. They have not saved one child and they know it.

Perhaps the real answer to that question, Mr. Speaker, lies in the statement of Ralph Reed, who said several years ago that this partial-birth abortion bill is a silver political bullet. This bill is about sound-bite politics and campaign attack ads, not saving babies.

In contrast, 16 years ago as a Texas State senator I worked with pro-choice and pro-life groups to pass a constitutional bill that did not ban one late-term abortion procedure; we banned in 1987 all late-term abortion procedures. Then we worked with those groups in good faith, put in a constitutionally mandated health exception. We knew that health exception was necessary 16 years ago, and they know it is necessary today.

I think it is a shame that the House leadership has put politics above policy. I hope some people will wake up to recognize that had that not been the case, we could have passed a ban on all late-term abortion procedures in this Congress and it would have been signed into law 8 years ago. Instead, we are voting today on a false promise.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, we have heard the allegation that this is about politics. This is about protecting innocent, unborn, little human beings who cannot defend themselves, and so, under this Supreme Court decision, it is necessary for Congress to take action. We believe that this bill does pass constitutional muster.

We have also heard that these are generally seriously flawed pregnancies. We have heard earlier this afternoon time and time again that these were rare, and that they were done basically because there was a baby that was in jeopardy.

The New York Times in a recent article dated April 22, not exactly a bastion of conservative newspapers, said, ''One aspect of the debate about partial-birth abortion has changed. When it began, some opponents of the ban,'' in other words, those on the other side of the aisle who are in favor of continuing to allow it in this country, ''said the targeted form of abortion was used only when a fetus had extreme abnormalities or the mother's health was endangered by pregnancy. Now both sides acknowledge that abortions done late in the second trimester, no matter how they are conducted, are most often performed on healthy pregnancies.''

□ 1815

So there are some times when these are pregnancies that are in jeopardy, but overall the statistics now show that these are healthy mothers, that these are healthy babies. That is the bulk of the partial-birth abortions that are performed in this country. It is not about politics. It is about protecting those innocent human lives. And we have already heard the other side, again, who clearly stated in their own words, they were lying through their teeth when they indicated that these abortions are rare.

Most of the experts say there are anywhere from 2,200 to 5,000 of these performed in this country every single year. These are lives that have a right to be born and they are destroyed. It is exactly as the gentleman from Pennsylvania (Mr. PITTS) said, this is murder, is what it amounts to. We need to protect these babies.

Mr. NADLER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, the gentleman makes the comments about an inhumane form of abortion, but of course, the fact is the gentleman would not support any form of abortion. He does not care that one form is more or less humane than the others. That is why this bill makes no sense at all.

Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY. Mr. Speaker, I thank my colleague for yielding me time and I congratulate him on his extraordinary leadership on this issue.

Mr. Speaker, I first would like to respond to my colleague on the other side of the aisle who referenced an article in the New York Times. I would like to place into the RECORD the

Times editorial from today, not only the New York Times editorial but the Washington Post editorial, both of which strongly came out against the Republican bill before us today.

The bill is extreme, it is vicious, mean-spirited, antiwoman, and it is unconstitutional.

We have heard a great deal of graphic rhetoric from the majority party today. But let me tell you what we have not heard and that is their true agenda, which is to roll back, chip away at a woman's right to choose. That is what this debate is about. That is totally what it is about. And since the Republican majority came to Congress in 1994, I have kept a score card on their antichoice votes. Today marks their 202nd vote against a woman's right to choose. It is on my Web site.

Mr. Speaker, I ask my colleagues today to stand in defense of a woman's reproductive health and to vote against this bill which deprives women of safe, quality medical care at a time when they need it most. The right to choose is meaningless without the access to choose. And this bill is so broadly written that it would, in effect, undermine a woman's legal right to abortion in this country.

When I go home, my constituents ask me about many things, but believe me, they have never asked me to be their doctor, nor do they want Members of Congress to be making medical decisions. It is unprecedented. It is wrong. It is unconstitutional. Vote against this Republican bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. TERRY) on this bipartisan bill.

Mr. TERRY. Mr. Speaker, I rise in support of H.R. 760. The abomination of this procedure, the facts of it are undisputed. It is an inhumane practice. It cannot be tolerated in a civilized today society and it cannot be tolerated amongst people who value the sanctity of human life.

It is often overlooked that partial-birth abortion can cause physical and emotional harm. Women who undergo this procedure can have difficulty conceiving children in the future and can experience gut-wrenching guilt and regret.

In 1993, a nurse practitioner named Brenda Pratt Shafer described such an incident in her testimony before Congress. She was a pro-choice nurse in an abortion clinic, who quit her job the day that she witnessed the grief of a woman who received a partial-birth abortion. She told Members of Congress, ''What I saw is branded forever in my mind. The woman wanted to see her baby after the procedure, so they cleaned up the baby and put it in a blanket and handed the baby to her. She cried the whole time as she kept saying, 'I am so sorry. Please forgive me.' I was crying too. I could not take it, a baby boy with the most perfect, angelic face I had ever seen.''

It amazes me that in the year 2003, the United States still permits this procedure, this act of death. Allowing partial-birth abortion to remain legal would be a tragedy for all. It would lower our standards of conscience and humanity. I strongly urge my colleagues to join me in supporting H.R. 760 and bringing an end to this era of suffering in our Nation.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I have another story; it is one that I have watched and heard and seen over the years that we have been dealing with this concept, political concept of partial-birth abortion.

I have the story of several women appearing in the Committee on the Judiciary room some years ago. I believe at that time there may have been only two women on the Committee on the Judiciary, each of us having our own personal story of childbirth and understanding the enormous challenge, burden and emotion of that particular act or procedure along with family members encouraging and hoping for a wonderful live birth.

We listened to women from around the country who came and said that had it not been for a procedure that allowed them to live, they might not have been able to procreate ever again. We heard women say that they had tried and tried and tried to retain the pregnancy, but that under the advice of their doctors in certain months, they were asked to have that particular pregnancy terminated.

Mr. Speaker, this is not a foolish nor is it a frivolous nor is it a political question. This is a question of privacy. We recently honored the 30th anniversary of the landmark Roe v. Wade decision and that decision reaffirmed a woman's right to choose.

I respect my opponents for they have their own reasons, but I will say that I respect life and I respect the right of a woman to make that decision between her god, her family, and her physician.

Partial-birth abortion is not a medical term. The opponents know that. They know that the Supreme Court has reaffirmed a woman's right to choose. They also realize that it does not allow a health exemption which the Supreme Court unequivocally said was a fatal flaw in any restriction on abortion. They realize that this bill is flawed. They realize that it will not save lives.

But most importantly, what we are doing here today is not promoting the sanctity of life, but we are saying to women that you do not count. They count. Vote against this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, the gentlewoman from Texas (Ms. JACKSON-LEE) is wrong. This bill will save lives. It will save the lives of viable babies who are subjected to this brutal and inhumane treatment. The gentlewoman from Texas (Ms. JACKSON-LEE) was not listening when I quoted the Kansas report that said of the partial-birth abortions that were reported under their State law, most of them were on viable fetuses.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. SESSIONS).

Mr. SESSIONS. Mr. Speaker, I appreciate the gentleman yielding me time.

Mr. Speaker, what we are talking about today is extending the debate that took place yesterday in the Committee on Rules on this exact same subject as we were rendering a rule about this debate that would take place today.

I found yesterday, as I find today, that many of the speakers on the other side do not understand that there are three types of late-term abortions. One of those three is called a partial-birth abortion. There are two other procedures.

Today, this bill is about partial-birth abortion. And for anyone to characterize this debate as it is not going to stop another abortion, it is not going to do anything, it is meaningless, that is simply not only untruthful, but it is disregarding the facts that are being placed before our colleagues today.

What we are going to stop is a late-term abortion, and we recognize that there are two other types of late-term abortions that take place. There are some who suggest that as a result of Supreme Court laws and tests, that because those abortions would take place, in essence, in the womb, that they would not be legal.

We, today, my party, this Committee on the Judiciary, this House of Representatives, is debating and will outlaw that which is known as partial-birth abortion.

Mr. EDWARDS. Mr. Speaker, will the gentleman yield?

Mr. SESSIONS. I yield to the gentleman from Texas.

Mr. EDWARDS. Mr. Speaker, let me ask and I would like to have an honest debate on this. I appreciate what the gentleman has said. He has been very honest and straightforward about outlining one procedure and not two others.

My question is, if we assume a mother is going to take a perfectly healthy baby later term and have that child aborted for frivolous reasons, why would she not go and use one of the other two procedures? What babies have you saved?

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New York (Mr. MEEKS).

(Mr. MEEKS of New York asked and was given permission to revise and extend his remarks.)

Mr. MEEKS of New York. Mr. Speaker, I oppose this legislation, not because of political ideology, not because I believe my wife, my two sisters, and my three daughters should have the right to decide when to bring a child into this world, but because I read the bill. I researched the history and I understand the real issues involved here.

Unfortunately, H.R. 760, the so-called partial-birth abortion ban and, again, partial-birth abortion is not a medical term, distorts the issue. H.R. 760 is a broadly written piece of legislation that would outlaw some of the safest and most common abortion procedures and makes no exception to preserve a woman's health or her fertility.

There are other so-called facts in this bill that are not supported by medical research. Contained in the bill, it is written that the procedure is never necessary to preserve the health of the woman. The key word here is never necessary. Well, I say ask Vikki Stella, a diabetic who, after examining all other options with her doctor, made a decision, along with her husband, to terminate her pregnancy of a much-wanted son. Vikki's option to choose this procedure was believed to be the safest and most appropriate, leaving her the opportunity to live a healthy life with her husband and two young daughters, as well as the opportunity to bear the son that they later gave birth to, Nicholas.

This bill distorts the truth and politicizes a constitutional right of all women in this country. And the in rulings of Roe, Casey and Stenberg by the Supreme Court, the Court stated that every abortion restriction must contain a health exception that allows an abortion when necessary in appropriate medical judgment for the preservation of the life or health of the mother.

This bill does not do it. I ask my colleagues to vote ''no'' on this bill in its present form.

Mr. Speaker, I come before this body with two purposes in mind. First, to discuss the demons I battled as I came to a conclusion regarding my position on the legislation before us today. Secondly, to hopefully educate those listening and watching this debate taking place before us.

As I sat in my office yesterday evening confronting my long-held beliefs and realizing the possible collision that my surfacing position on this issue may have with my political ideology, I chose to delve deep into the heart of the issue and question my beliefs regarding abortion that I had never questioned before. As I further focused over the legality and morality of ending a pregnancy, the rights of a woman, and the rights of an unborn child pre-viability and post-viability, I came to the decision to oppose this legislation. No, not to oppose it because of political ideology. No, not to oppose it because I believe my wife, two sisters, and three daughters should have a right to decide when to bring a child into the world. But because, I read the bill, I researched the history, and I came to terms with the real issue. Unfortunately, H.R. 760, the so-called Partial Birth Abortion Ban of 2003 distorts the real issue—preventing members in this body and constituents throughout the nation from truly understanding what is at stake.

H.R. 760 is a broadly written piece of legislation that would outlaw some of the safest and most common abortion procedures, and it makes no exception to preserve a woman's health or future fertility. As the supporters of this bill incorrectly label the procedure of dilation and extraction, commonly known as D & X, but for the purposes of this bill as partial birth abortion, they vividly describe a procedure that they wish to ban in 2000 was found constitutional in the Supreme Court case Stenberg v. Carhart.

First, I will address the manner in which this legislation describes the fetus as a child. Medical journals describe the object in the womb of the mother as a fetus until fully delivered. And I, like many of you, not being a member of society who holds accredited medical credentials must follow the standards put forth by the medical society. The proponents of the bill truly attempt to be creative in its attempts to have readers of the language imagine an actual child going through this procedure. It almost worked on me, but that is when I looked closer at the language and focused on Section 2, subsection 5 of the legislation. There, contained in the bill, it is written that the procedure ''is never necessary to preserve the health of a woman.'' And here is where H.R. 760 further distorts the truth. They key phrase here is never necessary. Well, this all depends on what one values as a necessity. Yes, one procedure could have an advantage over another in certain cases. Where one doctor may prefer dilation and evacuation, commonly known as D & E, which involves a doctor inserting an instrument into a woman's womb and dismembering the fetus, because it is the safest procedure to ensure the woman's life and health, that same doctor may choose D & X for another patient because it is the safest and most appropriate procedure for that particular patient to ensure the woman's life and health. Unlike the proponents of this bill, I will stand on this House floor today and admit that sometimes this gruesome procedure is a necessity for some women. For example, it was the only option for Vikki Stella—a diabetic who, after examining all other options with her doctor, made the decision along with her husband to terminate her pregnancy of her much-wanted son. Vicki's option to choose this procedure was believed to be the safest and most appropriate—leaving her the opportunity to live a healthy life with her husband and two young daughters—as well as the opportunity to bear the son she later gave birth to, Nicholas.

My colleagues, this bill distorts the truth and politicizes a constitutional right of all women in this country. Incorrectly labeling the procedure and overriding the ruling of the Supreme Court as reaffirmed by the majority in Stenberg that a woman's health must be the paramount consideration, women across the nation are being denied their constitutional right. As a result of the ruling by the Supreme Court, every abortion restriction must contain a health exception that allows an abortion when ''necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'' H.R. 760 does not do this. And for this reason, I find the so-called Partial Birth Abortion Ban of 2003 unconstitutional and unworthy of my support, the support of my colleagues, and the support of the people of this great Nation. I ask my colleagues to vote against this bill in its present form.

Mr. SENSENBRENNER. Mr. Speaker, I am prepared to close general debate if the gentleman from New York (Mr. NADLER) wants to use the rest of his time.

Mr. NADLER. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from New York (Mr. NADLER) has 1 minute remaining. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 3½ minutes remaining.

Mr. NADLER. Mr. Speaker, I thought I had 3 minutes remaining.

The SPEAKER pro tempore. The gentleman from New York (Mr. NADLER) has 1 minute remaining.

Mr. NADLER. Mr. Speaker, I yield myself the balance of my time to close.

Mr. Speaker, two key points to be made. One, if the real purpose of this bill is to ban late-term abortions with all the gruesome descriptions we have heard, you could do it very simply by including a health and life exception for the mother as the Supreme Court requires. No one would oppose it. We have such laws in 40 States.

□ 1830

That is not the goal here. The goal is a propaganda goal.

Second point, the declaration by the majority here that they can get around the health exception requirement of the Supreme Court by saying, by a legislative finding that such a procedure is never necessary for the health of the mother runs into the observation by Justice Clarence Thomas in a different context that ''if Congress 'could make a statute constitutional simply by finding that black is white or freedom, slavery, judicial review would be an elaborate farce.' What if Congress, in the aftermath of Brown versus Board of Education found that segregated schools could be equal after all?''

With reference to Ruth Marcus' column in The Washington Post, from which I just quoted, this morning she points out that Judge Posner, a distinguished conservative appeals court judge, said the purpose of this statute is that they are concerned with making a statement in an ongoing war for public opinion. The statement is that fetal life is more valuable than women's health.

That is the real purpose of this bill, not to protect babies, not to save lives, but to undermine Roe v. Wade, to undermine a woman's right to choose and to declare that fetal life is more sacred than the life of the existing woman.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman's time has expired.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, the major argument that gets to the substance of this bill that the opponents have stated in the last hour is that the findings that Congress makes that are contained in H.R. 760 the Supreme Court will just completely ignore.

I will be the first to concede that the Supreme Court does not have to accept congressional findings, nor does the Supreme Court have to accept findings that have been made by lower courts either that reach their own conclusions; but there is a string of cases in

the last 20 years or so that have indicated that the Supreme Court will defer to congressional fact finding, and they have been highly and historically deferential to Congress's factual determination, regardless of the legal authority upon which Congress has sought to legislate, as the following case quotes demonstrate.

First, ''The fact that the Court is not exercising a primary judgment but sitting in judgment upon those who also have taken the oath to observe the Constitution and who have the responsibility for carrying on government compels the court to be particularly careful not to substitute our judgment of what is desirable for that of Congress, or our own evaluation of evidence for a reasonable evaluation by the legislative branch.'' That is Rostker v. Goldberg, 1981.

Second, ''It is for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did.'' Katzenbach v. Morgan, 1966.

Third, ''Here we pass on a considered decision of Congress and the President. We are bound to approach our task with appropriate deference to the Congress, a co-equal branch.'' Fullilove v. Klutznick, 1980.

Fourth, ''The Supreme Court 'must afford great weight to the decisions of Congress. The judgment of the legislative branch cannot be ignored or undervalued. When the Court faces a complex problem with many hard questions and few easy answers, it does well to pay careful attention to how the other branches of government have addressed the same problem.''' Columbia Broadcasting System v. The Democratic National Committee, 1973.

Fifth, ''Congress is far better equipped than the judiciary to amass and evaluate the vast amounts of data bearing upon an issue as complex and dynamic as that presented here.'' Turner Broadcasting System v. FCC, 1994.

Finally, ''We owe Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power.'' Turner Broadcasting System, Inc. v. FCC, 1997, which was the second case.

What the opponents of this bill are saying is they do not agree with the findings that are contained in H.R. 760. That is their right, and that is their prerogative; but if this bill passes, they are in the minority, and the majority who voted for this bill will have disagreed with their conclusion on those findings.

Mr. BRADY of Texas. Mr. Speaker, partial birth abortion is one of the more barbaric procedures of modern times. Doctors confirm it is never medically necessary. Never. So much so that it is not even taught in our nation's medical schools.

Yet more than 3,000 healthy babies are subject to this horrible procedure each year. Too many of them are more than 5 months old in fetal development—able to live outside the womb if just given the same chance as you and me.

Today we have an opportunity to protect our nation's mothers.

Today we can save the lives of precious babies too tiny to save themselves.

Today we ban partial birth abortions and close this grisly chapter in America's history.

Mr. VAN HOLLEN. Mr. Speaker, today the House considers a measure which will seriously impinge on a woman's right to choose a safe and legal abortion. A women's right to choose is a fundamental one, and the Congress should not tell a woman how to manage her health or reproductive care. Unfortunately, what should be a private matter between a woman and her doctor has become a political football.

Each individual case is different and involves a variety of factors. The decision in each case should be left to the woman and her family, in consultation with her doctor. We must not pass legislation that curbs the ability to make a decision which might be necessary to protect the life and health of the mother.

Moreover, we cannot exert a power we do not have. The Supreme Court, in Roe v. Wade, has determined that a woman has a constitutional right to choose a safe and legal abortion during the pre-viability period. Many people have been misled into believing that this so-called ''partial-birth'' abortion bill is about banning late term abortions. It is not. It applies to all abortions in which a certain medical procedure is used regardless of when the abortion is performed. We should leave it to the doctors—not politicians—to determine what method is necessary to best protect the health of a woman. Limiting a woman's sovereignty over reproductive choice and restricting access to the best health options comprise the essence of this bill. I urge my colleagues to oppose it.

Mr. FILNER. Mr. Speaker and collagues, I rise to voice my opposition to H.R. 760, the so-called Partial Birth Abortion Ban.

This is a bill that immediately provokes strong feelings on both sides of the abortion issue. No one is in favor of abortion. I am not in favor of abortion, and in Congress, I am focused on making abortions less and less necessary.

However, in a few situations each year, the procedure that this bill seeks to ban is necessary to protect the life or the health of the mother—or because of multiple abnormalities of the fetus, making viability virtually impossible.

A woman, in this situation, has the constitutional right to an abortion, and there is a wealth of credible medical evidence that this procedure in some instances is much safer than other available procedures. H.R. 760 seeks to criminalize these safe, legal, and rare abortion procedures.

A major problem with this bill is its name. The term, ''partial birth,'' is not a medical term. There is no medical definition of a ''partial birth'' abortion. It is a loaded, political term made up by the anti-choice movement to inflame the debate. It is not helpful to an enlightened discussion of this issue.

In addition, as I have said, the bill is unconstitutional. In 2000, the Supreme Court found Nebraska's ''partial-birth'' abortion ban unconstitutional in Carhart v. Stenberg because it prevented a women's constitutional right to choose by banning safet abortion procedures and because it lacked the constitutionally-required exception to protect women's health. The Court noted that ''the absence of a health exception will place women at an unnecessary risk of tragic health consequences''. These flaws are also present in H.R. 760.

This bill definitely endangers women's health. Doctors will be forced to choose between providing care that is safe for their patients and going to jail. Despite repeated opportunities, anti-choice lawmakers refuse to include in their bills an exception to protect women's health.

Finally, a majority of Americans agree that government has no place in private medical decisions that need to be made by a woman, her family, and her physician. Politicians should not be legislating medical care. H.R. 760 is an unprecedented intrustion into the doctor-patient relationship.

This bill is opposed by a large number of respected medical and health organizations such as the American College of Obstetricians and Gynecologists, the American Medical Women's Association, the American Nurses Association, and the American Public Health Association, and the American Medical Association has withdrawn its support of these bans.

As difficult as this vote may be, there is no way to vote for H.R. 760. A vote for this bill would be a vote for legislation that is unconstitutional, that allows government to intervene in personal and private decisions, and that provides no protections for women's health.

Mr. LARSON of Connecticut. Mr. Speaker, I regret that due to a family medical emergency, I am unable to be present for the debate and vote on H.R. 760, the Partial-Birth Abortion Ban Act of 2003. However, I wish to submit this statement for the record to ensure that my position on this legislation is clear.

While I am against late term abortions, H.R. 760 fails to make an exception for instances where the procedure was deemed medically necessary for preservation of the life or health of the mother. If enacted, this legislation would most likely stop physicians form performing lifesaving medical procedures when a fetus will not survive, or when a woman's life, health, or future reproductive capacity may be severely threatened. Therefore, had I been present I would have opposed this bill.

However, I do support the compromise substitute amendment offered by Representatives GREENWOOD and HOYER, which would prohibit all late-term abortions, irrespective of procedure, with exceptions only to protect the life of the mother and to avert serious, adverse consequences to her health. Had I been present, I would have voted in favor of this amendment. Additionally, I would have voted in favor of the motion to recommit offered by Representative BALDWIN to return H.R. 760 to committee to include exceptions for the preservation of the life or health of the mother.

Mr. FARR. Mr. Speaker, I rise today in strong opposition to the ongoing campaign to undermine the constitutionally established right to privacy, which threatens women's access to safe and comprehensive reproductive healthcare. The latest attack on these rights is H.R. 760, The Partial Birth Abortion Ban of 2003. The proponents of this legislation have consistently used vague language and shock tactics in an attempt to undermine the basic

tenets of the Supreme Court's decisions in Roe v. Wade and Stenberg v. Carhart.

In 1973, the Supreme Court handed down its decision, Roe v. Wade, which gave women a constitutionally protected right to an abortion. The Court allows a state to ban abortions after fetal viability (the point at which a fetus may survive independent of a woman, but not independent of technology), but only if the state provides exceptions for the protection of a woman's life and health. In 2000, in the case of Stenberg v. Carhart, the Court struck down a Nebraska ban on partial birth abortions because it did not contain an exception for the protection of the health of the woman, and utilized a vague definition of which procedures would be banned.

Disregarding 30 years of established Supreme Court precedent, the Partial Birth Abortion Ban of 2003 contains the same flaws as the ban ruled unconstitutional in Stenberg v. Carhart.

H.R. 760 fails to provide an exception to protect the health of the mother. Rather, this legislation presumes that the authors' findings overrule those of the Supreme Court. The very text of this bill audaciously promotes ignoring the Supreme Court ruling in Stenberg v. Carhart.

The definition of the banned procedure in H.R. 760 is vague and could be interpreted to prohibit some of the safest and most common abortion procedures that are used before viability during the 2nd trimester. This legislation could have been written using precise, medical terms, and exemptions for procedures that are used pre-viability. However, the bill's unclear definition reveals the broad anti-choice agenda that this bill promotes.

The Supreme Court's decisions have clearly, and correctly protected a woman's right to make personal, and sometimes difficult decisions regarding her reproductive health. In addition to a legal obligation established by the Supreme Court, we have a moral and ethical obligation to protect the health of the mother. Every woman deserves the honest, accurate, professional advice of her doctor, a right that is endangered by H.R. 760. There is no place for Congress in the very private relationship between doctor and patient.

Furthermore, this ban is opposed by many groups of healthcare professionals who take their responsibility to preserve the health of their patients very seriously. These organizations include: the American College of Obstetricians and Gynecologists (ACOG), the American Medical Association (AMA), the American Nurses Association (ANA), and the California Medical Association (CMA).

Let me assure you that I grappled with the issue of partial birth abortion and determined that this procedure should be used only when medically necessary to protect the life and health of the mother. My decision to oppose legislation banning this procedure was based on my personal conversations with one of my constituents who faced this terrible situation and relied on the medical judgment of her doctor to make the only medically sound decision that preserved her ability to have children in the future.

I urge all of my colleagues to oppose H.R. 760 and vote against this harmful and unconstitutional legislation.

Mr. SOUDER. Mr. Speaker, as a cosponsor of H.R. 760, the Partial-Birth Abortion Ban Act, I strongly believe that the Congress must act now to pass this important bill. We should no longer allow the abhorrent killing of a partially-delivered baby to be lawful.

Leading up to a partial-birth abortion, a pregnant woman's cervix is forcibly dilated over a three-day time period. On the third day, the abortionist pulls a living baby feet-first out of the womb and into the birth canal, except for the head, which the abortionist purposely keeps lodged just inside the cervix. While the fetus is stuck in this position, dangling partly out of the woman's body, and just a few inches from a completed birth, the abortionist punctures the base of the skull with a surgical instrument, such as a pair of long scissors or a pointed hollow metal tube called a trochar. He or she then inserts a catheter into the wound and removes the baby's brain with a powerful suction machine. This causes the skull to collapse, after which the abortionist completes the delivery of the now-dead baby. The corpse is discarded, usually as medical waste.

H.R. 760 would ban performance of this heinous procedure except if it were necessary to save a mother's life. The bill would permit use of the procedure if ''necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.''

According to Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, partial-birth abortions are performed 3,000 to 5,000 times annually, usually in the fifth and sixth months of pregnancy, on healthy babies of healthy mothers. It has also been used to perform abortions as late as in the third trimester, which is the seventh month and later. Many of these babies are old enough to survive outside the womb, and many of them are developed enough to feel the pain of this horrendous procedure.

Most of us have seen the dreadful images of these near-to-term victims of an abortionist, and while recoiling in horror, we have resolved to end this painful outrage. Twice previously, both houses of Congress voted to ban partial-birth abortion, only for the bans to be vetoed. Now, with a president who values the sanctity of life and who will sign this important protection into law, we have the greatest chance ever to end this contemptible practice. We must pass H.R. 760 to ensure that partially delivered babies are protected and that the gruesome procedure used to perform partial-birth abortions is banned under law.

Mr. CONYERS. Mr. Speaker, the Supreme Court has accorded some deference to congressional findings as Congress is the legislative body representing the people. The Court has ruled that it is not necessary for Congress to present conclusive evidence when declaring findings, and Congress has the discretion to weigh evidence and make reasonable inferences.

Nonetheless, the courts do not blindly follow congressional findings. In numerous cases, including Turner, Morrison, and Pennhurst, courts review evidence and look at sworn testimony that is subject to cross-examination before coming to a conclusion. Thus, the implication in H.R. 760 that courts strictly defer to congressional findings is not correct.

H.R. 760 cites Turner Broadcasting System, Inc. v. Federal Communications Commission (''Turner I'') and Turner Broadcasting System, Inc. v. Federal Communications Commission (''Turner II'') to show that the Court pays great deference to congressional findings. However, in Turner I and Turner II, the Court deferred to the overwhelming array of factual evidence presented by Congress. Evidence presented included extensive case law, Senate Reports, numerous hearings held by numerous committees and subcommittees, declarations, and reports. The Court paid great deference to the factual propositions Congress presented. The Court stated that Congress could weight the evidence it uncovered and make ''reasonable inferences based on substantial evidence.''

The key difference is that H.R. 760 simply states that the District Court erred in its findings of fact and law. Gainsaying, no matter how presented, is not the same as fact findings. For example, H.R. 760 does not add a health exception but instead simply states that the procedures covered by the bill are not necessary and that their probation poses no risk to the mother's health. This declaration goes directly against the ruling of the Supreme Court in Stenberg and the findings of fact in the lower court. The ''findings,'' in effect, are an attempt to overturn Stenberg. Congress cannot simply refute findings of fact made by the District Court by presenting its own ''findings'' that are contrary to the evidence the Court depended upon to make its ruling.

In Pennhurst State School and Hospital v. Halderman, a patient at a Pennsylvania hospital for the mentally retarded challenged the conditions of the hospital. The patient claimed Pennhurst Hospital had violated the terms of § 6010 of the Developmentally Disabled Assistance and Bill of Rights Act of 1976 (''DDABRA''). §§ 6010(1) and (2) of the DDABRA was ''the bill of rights provision,'' and it ''grant[ed] to mentally retarded persons a right to 'appropriate treatment, services, and habilitation' in 'the setting that is least restrictive of . . . personal liberty.' ''In § 6010, Congress made a series of findings that were repudiated by the Court. The Court found that § 6010 ''is simply a general statement of 'findings' '' and ''does no more than express a congressional preference for a certain kind of treatment.'' The Court held that the ''bill of rights'' did not create a requirement for States to provide the least restrictive environment or to provide certain kinds of treatment to the mentally retarded.

Likewise, in United States v. Morrison, the Court struck down a section of the Violence Against Women Act (''VAWA'') as a violation of the Commerce Clause in the face of overwhelming congressional findings that domestic violence affected interstate commerce. The Court stated, ''[T]he existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation.'' Therefore, although the Court defers to congressional findings, findings alone are not sufficient to make an unconstitutional act constitutional.

As with Pennhurst, the ''findings'' in H.R. 760 express a congressional preference, and it is unlikely that any court would defer to the findings. The language in the proposed bill is similar to the challenged language in Pennhurst in that the ''findings'' include precatory language. For example, the ''findings'' include the statement that so-called ''partial-birth'' abortions are never medically necessary even though the Court in Stenberg concluded otherwise.

H.R. 760 also purports to rely on the Supreme Court's holding in Katzenbach v. Morgan for the proposition that the Court will employ a ''highly deferential review of Congress's factual conclusions.'' However, Katzenbach involved Congress's power under section 5 of the 14th Amendment to craft a remedy to a 14th amendment violation Congress had identified. Congress went beyond what the Supreme Court had deemed required as a remedy by the 14th Amendment. In that case, the Court held that provisions of the Voting Rights Act prohibiting the enforcement of a New York law requiring the ability to read and write English as a condition of voting was an appropriate exercise of Congress's section 5 powers. Specifically, the Court said that while Congress could use its enforcement power to provide additional protections for a right guaranteed by the 14th Amendment, it could not narrow that right. H.R. 760 would do exactly the opposite of what the Court approved in Katzenbach in that it narrows, rather than enforces a right protected under the 14th Amendment; in this case, the right to choose as delineated in Roe.

Moreover, in the intervening years, the Court has become far less deferential to Congress's enforcement powers under sec. 5, and to Congress as a finder of fact.

It is unclear what types of procedures are covered by the legislation. Although some believe the legislation would apply to an abortion technique known as ''Dilation and Extraction'' (D & X), or ''Intact Dilation and Evacuation,'' it is not clear the term would be limited to a particular and identifiable practice. For example, the American College of Obstetrics and Gynecologists has noted that the definitions in the bill ''are vague and do not delineate a specified procedure recognized in the medical literature. Moreover the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.'' As a result, the bill could well apply to additional abortion procedures known as D & E (Dilation and Evacuation), and induction.

In the wake of the controversies over partial birth abortions, a number of states have taken up similar legislation. Like the federal bill, most of the state measures are so vague and so broad that they cover a wide range of abortion methods.

The overwhelming majority of courts to have ruled on challenges to state so-called ''partial-birth abortion'' bans have declared the bans unconstitutional and enjoined their enforcement. In the last three years, medical providers have challenged the state statutes that ban ''partial-birth abortion'' in twenty states. In eighteen of those states—Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, Rhode Island, West Virginia, and Wisconsin—the bans are currently enjoined, in whole or in part. In a nineteenth, Alabama, the state attorney general has limited the ban's enforcement to post-viability abortions. In only one state, Virginia, has a court considered the constitutional challenges but nevertheless permitted enforcement of the statute pending further proceedings. Six federal district courts have entered permanent injunctions against statutes that are virtually identical, word for word, with H.R. 760.

The reality concerning quantitative data is that there is no national figures on the absolute number of D & X procedures performed. The two authorities which have the most comprehensive information on abortion—the Centers for Disease Control and Prevention (CDC) and the Alan Guttmacher Institute (AGI) do not compile data on the number of D & X procedures before or after viability.

According to AGI, in the most recent year for which data is available—1996—the total number of abortions nationally fell to 1.35 million from a high of 1.61 million in 1990. Of these, ''an estimated total of 31 providers performed the [D&X] procedure 2,200 times in 2000, and 0.17% of all abortions performed in that year used this method.''

Proponents of H.R. 760 also ignore the fact that most women do not simply elect to delay the time of their abortion or gratuitously choose the D & X procedure. The causes for delay are varied, including a dearth of abortion providers in many poor or rural areas, lack of availability of Medicaid funding, fear of violence at local clinics, teenagers fearful of notifying their parents or subject to delays caused by notice and informational requirements, and women who only learn of severe fetal abnormalities as a result of late term ultrasound or amniocentesis tests (which is subject to a mandatory wait for results). Physicians will not recommend a particular type of abortion procedure—D & X or otherwise—unless they believe it to be the safest for their patients.

Mr. STARK. Mr. Speaker, I rise today to strongly oppose H.R. 760, the so-called Partial-Birth Act.

I'd like to ask my colleagues, in what medical book can the procedure partial-birth abortion be found? Nowhere. This is a conjured up term used by opponents of abortions. ''Partial birth'' is a political term, not a medical one. At this very moment, Congress is legislating medical protocols that should be the determination of doctors and their patients. Most members have no medical training and are unequipped to make medical determinations of this nature.

The medically accepted, rarely-used procedure that is being targeted today, which is so graphically described by the supporters of this ban, is nearly always used in the third trimester when the life or health of the mother is in danger. But this bill put forward by proclaimed anti-choice proponents goes far further than that. Their ban would not just apply to procedures performed in the third trimester. It criminalizes numerous abortion procedures—including the safest and most commonly used methods of abortion that are performed in the second trimester.

If this legislation passes, it opens a Pandora's box of restrictions on the rights of women and on the ability of doctors to practice medicine. Just imagine the country we will live in. In communities across the nation, law enforcement officers will be conducting sting operations in doctors' offices to arrest pregnant women and their physicians. Is that what we want for America? I certainly don't.

This bill isn't about banning one procedure. Let's be honest. It is an attempt to re-ignite an anti-abortion campaign to eviscerate Roe v. Wade.

Just 3 years ago, the Supreme Court in Stenberg v. Carhart, struck down as unconstitutional a Nebraska law virtually identical to legislation before us today. Moreover, countless medical organizations disagree with this legislation—the American Medical Association, the American College of Obstetricians, the American Nurses Association, and the California Medical Association to name a few.

H.R. 760 could ban what may be the safest choice to protect a woman's life and health. Once again, this difficult decision is one I believe wholeheartedly is best left in the hands of those who have the skills to make these medical determinations, and those patients and families the decision is affecting—not Congress.

Vote no on H.R. 760.

Mr. PAUL. Mr. Speaker, like many Americans, I am greatly concerned about abortion. Abortion on demand is no doubt the most serious sociopolitical problem of our age. The lack of respect for life that permits abortion significantly contributes to our violent culture and our careless attitude toward liberty. As an obstetrician, I know that partial birth abortion is never a necessary medical procedure. It is a gruesome, uncivilized solution to a social problem.

Whether a civilized society treats human life with dignity or contempt determines the outcome of that civilization. Reaffirming the importance of the sanctity of life is crucial for the continuation of a civilized society. There is already strong evidence that we are indeed on the slippery slope toward euthanasia and human experimentation. Although the real problem lies within the hearts and minds of the people, the legal problems of protecting life stem from the ill-advised Roe v. Wade ruling, a ruling that constitutionally should never have occurred.

The best solution, of course, is not now available to us. That would be a Supreme Court that recognizes that for all criminal laws, the several states retain jurisdiction. Something that Congress can do is remove the issue from the jurisdiction of the lower federal courts, so that states can deal with the problems surrounding abortion, thus helping to reverse some of the impact of Roe v. Wade.

Unfortunately, H.R. 760 takes a different approach, one that is not only constitutionally flawed, but flawed in principle, as well. Though I will vote to ban the horrible partial-birth abortion procedure, I fear that the language used in this bill does not further the pro-life cause, but rather cements fallacious principles into both our culture and legal system.

For example, 14G in the ''Findings'' section of this bill states, ''. . . such a prohibition [upon the partial-birth abortion procedure] will draw a bright line that clearly distinguishes abortion and infanticide . . .'' The question I pose in response is this: Is not the fact that life begins at conception the main tenet advanced by the pro-life community? By stating that we draw a ''bright line'' between abortion and infanticide, I fear that we simply reinforce the dangerous idea underlying Roe v. Wade, which is the belief that we as human beings can determine which members of the human family are ''expendable,'' and which are not.

Another problem with this bill is its citation of the interstate commerce clause as a justification for a federal law banning partial-birth abortion. This greatly stretches the definition of interstate commerce. The abuse of both the interstate commerce clause and the general welfare clause is precisely the reason our Federal Government no longer conforms to constitutional dictates but, instead, balloons out of control in its growth and scope. H.R. 760 inadvertently justifies federal government

intervention into every medical procedure through the gross distortion of the interstate commerce clause.

H.R. 760 also depends heavily upon a ''distinction'' made by the Court in both Roe v. Wade and Planned Parenthood v. Casey, which establishes that a child within the womb is not protected under law, but one outside of the womb is. By depending upon this illogical ''distinction,'' I fear that H.R. 760, as I stated before, ingrains the principles of Roe v. Wade into our justice system, rather than refutes them as it should.

Despite its severe flaws, this bill nonetheless has the possibility of saving innocent human life, and I will vote in favor of it. I fear, though, that when the pro-life community uses the arguments of the opposing side to advance its agenda, it does more harm than good.

Mr. STEARNS. Mr. Speaker, today opponents of the proposed ban on partial birth abortion will levy a great deal of unfair derision against those of us who will stand today to speak on behalf of the unborn. These same opponents repeatedly deny the terrible facts regarding partial birth abortion despite overwhelming evidence. They fight against common sense efforts such as parental notification and demonstrate, through their actions, that the unborn are not worthy of protection in their eyes. I emphatically disagree.

The phrase ''partial-birth abortion'' describes the process employed in this late-term abortion procedure. It refers to any abortion in which the baby is delivered ''past the navel . . . outside the mother's body'' and then is killed by any means effective. This method is usually employed after 24 weeks gestation at which point these babies have eyebrows and eyelashes and have shown to be sensitive to pain.

It is difficult and painful for all of us to hear of the violence against these unborn children. It is mournful that any child has ever known such brutality and in this case with the permission of the law.

Opponents of the ban have a difficult task before them because the truth of the matter is so painfully clear. They attempt to rationalize that if the baby's head and shoulders are still inside of the mother that it is worthless tissue to be discarded without regret. Is the line between murder and medical procedure really only five inches!? Such an argument is baseless and preposterous.

I am hopeful that this year's debate will be our last and we will finally ban this abhorrent procedure.

Mr. PORTMAN. Mr. Speaker, as an original co-sponsor of the Partial-Birth Abortion Ban Act, I want to express my strong support for outlawing the troublesome practice of partial-birth abortions.

Opponents of the ban suggest that partial-birth abortions are needed to protect mothers with pregnancy-related complications, but this argument simply does not hold up to the testimony of abortion providers and medical experts. Former Surgeon General of the United States C. Everett Koop has said that there is ''no way'' he can see a medical necessity for this barbaric procedure. The American Medical Association's legislative council has unanimously supported the partial-birth abortion ban.

Mr. Speaker, I ask you: What will future generations think of a society that allows this practice? For the moral health of our country, and for future generations, we should take action today to ban partial-birth abortions.

Congress has the opportunity today to do the right thing by banning partial-birth abortions. We have a duty to protect the unborn from this horrific procedure. I hope my colleagues will listen to their consciences and vote to make partial-birth abortions illegal once and for all.

Mrs. MALONEY. Mr. Speaker, I rise in opposition to this bill. Again, we are facing a bill that deprives women of safe, high quality medical care at a time when they need it most. And yet again, this bill places undue burden on a woman's right to seek an abortion.

Let's put this bill in perspective. Since the majority party took power in 1994, I've kept a scorecard. This is their 202nd strike against reproductive rights, and you can check the list at any website *www.house.gov/Maloney.*

Language similar to this bill has already been struck down in Stenberg v. Carhart on the grounds that it fails to take the health of the woman into account.

What this bill is about is the right to choose. The bill is extreme, it's vicious, and it's unconstitutional. The Supreme Court, The New York Times and the Washington Post agree, and I ask permission to place a copy of the Times and Post editorials in the RECORD.

The fact is that this bill says it's banning intact dilation and extraction, a procedure acknowledged by the experts, the American College of Obstetrics and Gynecology, as safe to end late-term pregnancy—when it's necessary. The opposition shows horrible pictures and yells about how grotesque this procedure is. It is, but so are lots of medical procedures. But they're still good care. This bill flatly disrespects medical opinion.

My constituents ask my opinion on important things—like low income women asking where their child tax credit went; like the Federal Communications Commission's ruling to consolidate access to news in the hands of a few. That's important, that's dangerous. But, I gotta tell you, not one of my constituents has asked me to be their doctor!

The Supreme Court has said that neither the Court nor Congress may ban a medical procedure appropriate to save the woman's life and health. Period

The blatant disregard for this fact and for the rights of women to choose is astonishing. I urge you all to vote ''no'' on this measure.

[From the New York Times, June 4, 2003]

''PARTIAL BIRTH'' MENDACITY, AGAIN

If the so-called partial-birth abortion ban now careering toward almost certain approval by the full House this week has a decidedly familiar ring, it is not your imagination playing tricks. The trickery here belongs to the measure's sponsors.

Although promoted as narrowly focused on a single late-term abortion procedure, the measure's wording adds up to a sweeping prohibition that would, in effect, overturn Roe v. Wade by criminalizing the most common procedures used after the first trimester, but well before fetal viability. Indeed, the measure replicates the key defects that led the Supreme Court to reject a strikingly9 similar state law a mere three years ago. In addition to its deceptively broad sweep, the bill unconstitutionally omits an exception to protect the health of the woman.

Plainly, the measure's backers are counting on the public not to read the fine print. Their strategy is to curtail access to abortion further as the inevitable legal challenge wends its way back to the Supreme Court for another showdown. They obviously hope that by that time, there will have been a personnel change that will shift the outcome their way.

House members who vote for this bill will be participating in a cynical exercise that disrespects the rule of law and women's health while threatening the fundamental right of women to make their own childbearing decisions. Representatives who care about such things will not go along.

[From the Washington Post, June 4, 2003]

''PARTIAL BIRTH,'' PARTIAL TRUTHS

(By Ruth Marcus)

The poisonous national debate over what's known as partial-birth abortion resumes this week, and this time for real: The House is expected to handily approve a prohibition on the procedure, and the Senate has already passed its version. While his predecessor twice vetoed bills outlawing partial-birth abortion, President Bush is eager to sign legislation that he says will ''protect infants at the very hour of their birth.''

For those who support abortion rights, partial-birth abortion is not the battleground of choice, which is precisely why those who oppose abortion have seized on the issue. The procedure is gruesome, as indeed are all abortions performed at that stage of pregnancy. Although partial-birth abortion is routinely described as a late-term procedure, this label is misleading. The procedure isn't performed until after the 16th week of pregnancy, but it's already legal for states to prohibit abortions once a fetus is viable, at about 24 weeks. More than 40 states have such bans, and properly so. The Supreme Court has said that abortions must be available even after fetuses are viable if necessary to protect the life or health of the mother, and it may be that the health exception ought to be stricter. But this has nothing to do with a partial-birth abortion ban. The law would not prevent any abortion, before viability or after. Instead, it would make one particular procedure—one that may be the safest method for some women—a criminal act.

Indeed, even as they dwell on the gory details of the partial-birth procedure, the groups pushing for a ban on it don't seem to be doing anything to make it easier for women to obtain abortions earlier. Rather, the rest of their antiabortion agenda has been devoted to putting practical and legal roadblocks in the way of women seeking abortions at any stage of pregnancy. Thus, a pregnant teenager faced with multiple hurdles—no abortion provider nearby, no money, a parental consent law—may end up letting her pregnancy progress to the point where she is seeking a second-trimester abortion.

Then there are situations arising from the availability of medical technology that permits a previously impossible glimpse inside the womb. Amniocentesis, which doctors urge for women over 35 because of the heightened risk of birth defects, is not performed until the 15th or 16th week of pregnancy. Other fetal defects may be detected on sonograms only at that stage or later. This puts women squarely in the zone where partial-birth abortion becomes an awful possibility.

When it struck down Nebraska's partial-birth abortion law three years ago, the Supreme Court cited two distinct problems. First, the law was supposed to prohibit only partial-birth abortion, in which the fetus is partially delivered and then dismembered. But, intentionally or not, it was written so

inexactly that it could also apply to the most common—though scarcely less grisly—technique for second-trimester abortions, dilation and evacuation, in which the fetus is dismembered before being removed from the womb. Such a bar, the court said, would be unconstitutional because it imposes an ''undue burden'' on a woman's right to abortion before the fetus is viable.

Second, the ban made no exception that would allow the procedure to be performed when necessary to protect the health of the mother. In cases of hydrocephaly, for example, partially delivering the fetus and then collapsing the skull can reduce damage to the cervix—and possibly preserve a woman's ability to carry another child to term. The American College of Obstetricians and Gynecologists told the justices that the partial-birth procedure ''presents a variety of potential safety advantages. Especially for women with particular health conditions, there is medical evidence that [it] may be safer than available alternatives.''

The legislation now before Congress tries to avoid the first problem identified by the court by defining partial-birth abortion more precisely. Opponents contend that the new definition could still apply to the more common technique. The bill's supporters argue this is not true, but they could have explicitly exempted such abortions from the law's reach if they really wanted to make that clear.

A bigger problem is the cavalier way in which Congress leapfrogged the court's requirement for a health exception: Lawmakers simply declared that partial-birth abortion ''is never medically indicated to preserve the health of the mother.'' As Justice Clarence Thomas wrote in a different context, if Congress ''could make a statute constitutional simply by 'finding' that black is white or freedom, slavery, judicial review would be an elaborate farce.'' What if Congress, in the aftermath of Brown v. Board of Education, ''found'' that segregated schools could be equal after all?

The political agenda is clear. Ken Connor, president of the conservative Family Research Council, spelled this out in an e-mail after the Senate vote last March. ''With this bill,'' he wrote, ''we are beginning to dismantle, brick by brick, the deadly edifice created by Roe v. Wade.'' Indeed, in urging the overturning of partial-birth abortion laws in Illinois and Wisconsin, federal appeals court Judge Richard Posner, one of the nation's most prominent conservative jurists, said such statutes have nothing to do with protecting fetuses. Rather, said the judge, ''they are concerned with making a statement in an ongoing war for public opinion. . . . The statement is that fetal life is more valuable than women's health.''

Mrs. EMERSON. Mr. Speaker, I rise today to speak in support of a measure soon to be considered by this legislative body, H.R. 760, the Partial-Birth Abortion Ban Act, and to call to attention the moral duty of the United States House of Representatives to ban this procedure.

It is not necessary for me to walk you through the gruesome steps required for a physician to commit a partial birth abortion procedure as you are certainly well familiar with it from the testimony of previous speakers today. While the means of the procedure need not be repeated, the end to these means must be restated. Simply put, this procedure results in the end of a human life. A life that was moments before on the path towards formally entering the world—a path leading toward a life of loving, dreaming, learning—a path of potential. No, I do not need to define for you the cold, methodical death procedure that is a partial birth abortion or the pain experienced by the fetus. A child is deprived of a future; that should be moral reason enough to suspend the practice.

For this fetus, this baby, all rights are forbidden in order for the mother to exercise her right to personal privacy under the Fourteenth Amendment. In America, we do not hold the rights of one person over those of another; there is equal treatment under the law. This is of course with the exception of abortion, where restrictions cannot be made on an abortion procedure unless the potential life of the fetus is considered ''viable.'' Even though I do not personally require the fetus to be viable in order for a life to be significant, it is an important justifying factor to the Supreme Court that many partial-birth abortions are performed on viable fetuses. A legal reason to suspend the practice.

I do not believe that we, in Congress, are in any position to pick one life over another, which is why I believe that when the life of the mother is in danger, abortion should remain an option. Mr. Speaker, please know that I do not favor legislation that would decide for a family who should die, the mother or the child, but H.R. 760 is careful to address this issue. This measure includes a factual finding demonstrating that partial-birth abortion is never necessary to protect the health of a woman.

Mr. Speaker, this legislation not only protects the rights of the unborn, but it is also a carefully crafted piece of legislation that addresses the concerns of the U.S. Supreme Court expressed in Stenberg v. Carhart. For a few thousand children, upon whom the partial-birth abortion procedure will be committed in the next year, H.R. 760 is not just legislation; it is life. Mr. Speaker I urge my colleagues to pass H.R. 760.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in opposition to H.R. 760. By debating this bill, this Chamber is once again considering anti-choice legislation that is unconstitutional and dangerous to women's health. As I have in the past, once again I oppose this legislation.

We recently honored the 30th anniversary of the landmark Roe v. Wade decision. This decision reaffirmed a woman's right to choose. H.R. 760 is not only unconstitutional but it is yet another attempt to ban so-called ''partial birth abortions.'' This is a non-medical term. The U.S. Supreme Court struck down a similar statute in Stenberg v. Carhart. The Court invalidated a Nebraska statute banning so-called ''partial birth abortions.'' So, this legislation is at odds with the court's ruling. In Roe v. Wade, the court held that women had a privacy interest in electing to have an abortion, based on the 5th and 14th Amendments' concept of personal liberty.

Despite the fact that the Supreme Court struck down legislation virtually identical to H.R. 760 in the year 2000, anti-choice Members of Congress continue to jeopardize women's health by promoting this legislation to advance their ultimate goal of eliminating a woman's right to choose altogether.

H.R. 760 is unconstitutional for the same two reasons the Supreme Court found other statutes attempting to ban partial birth abortions unconstitutional. First, H.R. 760 lacks a health exception, which the Supreme Court unequivocally said was a fatal flaw in any restriction on abortion. Second, the non-medical term ''partial birth abortion'' is overly broad and would include a ban of safe, previability abortions. Banning the safest abortion option imposes an undue burden on a woman's ability to choose.

There are several safe procedures at issue in H.R. 760: the intact dilation and extraction or dilation and extraction (''intact D&E'' or ''D&X''), the dilation and evacuation (''D&E''), and induction abortions. The proponents of H.R. 760 claim the bill would ban only the D&X procedure, but medical experts argue otherwise.

D&E is the most commonly used procedure for second-trimester abortions. Together, D&E and D&X abortions comprise approximately 96 percent of all second-trimester abortions performed in this country. Induction abortions account for the majority of the remaining 4 percent of second-trimester abortions, require hospitalization, and are more expensive than D&E or D&X abortion. While induction is a safe procedure, for some women, it poses unacceptable risks.

With the vast majority of second-trimester abortion procedures performed using the D&E or D&X methods or by induction, banning these procedures would ban virtually all previability second-trimester abortions in this country. If H.R. 760 passes, physicians will be left with very few options to protect the safety of their patients. Physicians will have to choose between performing practically all second-trimester abortions under threat of criminal and civil prosecution, changing their medical practices to the detriment of the maternal health and financial health of their patients, or stop providing second-trimester abortions altogether.

Forcing physicians to choose from these limited options, prevents physicians from electing a procedure that is within the accepted standard of care, is safe, and for some women may be safer than the options remaining. The D&X abortion procedure offers a variety of safety advantages over other procedures. Compared to D&X abortions, D&X involves less risk of uterine perforation or cervical laceration because the physician makes fewer passes into the uterus with sharp instruments. There is substantial medical evidence that D&X reduces the risk of retained fetal tissue, a complication that can cause maternal death or injury. The D&X procedure is a safer option than other procedures for women with particular health conditions. Finally, D&X procedures usually take less time than other abortion methods used at a comparable stage of pregnancy, which can have significant health advantages.

In fact, as the American College of Obstetricians and Gynecologists (ACOG) has concluded, D&X may be ''the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman.''

H.R. 760 would improperly put the legislature in the physician's office. Allowing physicians to exercise their medical judgment is not only good policy—it is also the law. In Stenberg v. Carhart, 530 U.S. 914 (2000), the Supreme Court rules that all abortion legislation must allow the physician to exercise reasonable medical judgment, even where medical opinions differ. The Court made clear that exceptions to an abortion ban cannot be limited to situations where the health risk is an ''absolute necessity,'' nor can the law require

unanimity of medical opinion as to the need for a particular abortion method.

The proponents of H.R. 760 have further compromised the medical safety of women by refusing to draft an exception to the ban on certain abortion procedures to protect women's health. Such an exception is required under the Constitution. The Supreme Court has concluded in several cases that a women's health is always the physician's primary concern and that a physician must be given the discretion to determine the best course of treatment to protect women's lives and health.

The bill's ban on safe abortion procedures that are within the standard of care strips physicians of the discretion they need to make critical medical judgments. This will result in an unacceptable risk to women's health. Given the safety advantages of D&E, D&X and induction procedures over other abortion procedures, banning these procedures will necessarily harm women and deprive them of optimal care. As a physician and a woman, I consider this result unacceptable.

The findings to H.R. 760 attempt to justify the fact that the bill directly conflicts with Carhart by suggesting that the Supreme Court must defer to Congressional fact-finding, even if Congress's so-called ''facts'' conflict with the preponderance of evidence in litigation before the Court. But the drafters of H.R. 760 are wrong. First, a fundamental tenet of our constitutional structure, which establishes three separate branches of the Federal government, is that Congress can enact laws, but it cannot decide whether those laws are constitutional. The power to decide what laws are constitutional is exclusively the Supreme Court's role.

Second, the Supreme Court is not required to defer to Congressional fact-finding. Rather, the Court has the power and the duty to independently assess the evidence that is presented to it, as it did in Carhart, and has no obligation to defer to Congressional findings on ''partial-birth abortion.''

The drafters of H.R. 760 are clearly wrong in asserting that they can overrule Carhart through legislation. Prior attempts by Congress to undo disfavored Supreme Court rulings (such as Congress's attempt to legislatively overturn Miranda v. Arizona, 384 U.S. 436 (1966), and Employment Division, Dep't of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990)) have been soundly rejected by the Supreme Court. Given the utter absence of legal support for this bill, it must be seen as a purely political gesture, not as a serious attempt at legislation.

The ACOG, whose more than 44,000 members represent approximately 95 percent of all board-certified obstetricians and gynecologists practicing in the United States, opposes abortion ban legislation and has stated that ''. . . [t]he intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.''

In addition to ACOG, other medical groups have opposed attempts by Congress to enact abortion ban legislation, including:

The American Public Health Association, the American Nurses Association, the American Medical Women's Association, the California Medical Association, Physicians for Reproductive Choice and Health, the American College of Nurse Practitioners, the American Medical Student Association, the Association of Reproductive Health Professionals, the Association of Schools of Public Health, the Association of Women Psychiatrists, the National Asian Woman's Health Organization, the National Association of Nurse Practitioners in Reproductive Health, the National Black Women's Health Project, the National Latina Institute for Reproductive Health, the National Women's Health Network, and the Rhode Island Medical Society.

Mr. Speaker, the medical community has voiced wide-spread opposition to H.R. 760. Likewise, the Supreme Court has opposed the bans on abortion procedures proposed in H.R. 760. I join the medical community and the Supreme Court is standing up for women's constitutionally protected right to choose safe abortion procedures. I oppose H.R. 760 and I urge my colleagues to do the same.

Mr. SHAYS. Mr. Speaker, I rise in support of H.R. 760, the Partial-Birth Abortion Ban Act.

I am pro-choice, but believe late-term abortions are wrong. Abortion is a very personal decision and a woman's right to choose whether to terminate a pregnancy subject to the restrictions of Roe v. Wade must be protected. In my judgment, however, the use of this particular procedure cannot be justified.

I have personally spoken with doctors, both pro-choice and pro-life, who made it very clear to me that the ''partial-birth'' procedure is never medically necessary.

The debate on partial-birth abortion has been difficult for me. I voted against the ban back in 1996 believing this procedure was rare and used mostly in cases where it was necessary to save the life of the pregnant woman, to prevent severe consequences to her health, or when severe fetal genetic deformities exist.

After voting, I learned this procedure was not as uncommon as it was made out to be; rather than a few hundred partial-birth abortions each year, there have been thousands. Now, choice advocates acknowledge this procedure is often used for elective abortions of healthy fetuses.

For this reason, Mr. Speaker, I have voted for the ban since 1997 and urge my colleagues to support this bill.

Mr. CRANE. Mr. Speaker, as a cosponsor of H.R. 760, I rise in strong support of the Partial-Birth Abortion Ban Act of 2003. By passing this legislation we will once again take a step towards banning the truly horrifying practice whereby an innocent life is taken in a most gruesome way.

During this procedure, which is used in second and third trimester abortions, the infant's body is delivered, leaving only the head in the womb. At that point the abortionist pieces the back of the infant's skull with a sharp instrument and then proceeds to vacuum out the infant's brain tissue, thus collapsing the skull, allowing the now-dead infant's body to be extracted.

This legislation makes it a federal crime for a physician, in or affecting interstate commerce, to perform a so-called partial birth abortion, unless it is necessary to save the life of the mother. Under H.R. 760, anyone who knowingly preforms a partial-birth abortion would be subject to fines and up to two years in prison. The bill provides that a defendant could seek a hearing before the state medical board on whether his or her conduct was necessary to save the life of the mother, and further provides that those findings may be admissible at trial.

The House has passed legislation in each of the last four Congresses banning partial-birth abortions. In the 104th and 105th Congresses, President Clinton vetoed the partial-birth abortion bans. Both times the House voted to override the veto, but the Senate sustained it.

Mr. Speaker, I urge my colleagues to vote in favor of this very important legislation. Thanks to President Bush, this Congress has an opportunity to finally ban the gruesome procedure without the threat of a presidential veto. By passing H.R. 760 today, we will take a giant step towards protecting innocent babies who, through no fault of their own, have their lives taken.

Mr. EVANS. Mr. Speaker, I believe that the decision to terminate a pregnancy is one that should be made between a woman, her doctor, and her God. Ending a pregnancy is not done lightly; it is the most difficult decision a woman can make. As a Member of Congress, I do not believe that it is the role of this legislative body to make deeply personal, medical decisions for the women of this nation.

Three years ago, the Supreme Court heard a case involving late-term abortion. In Stenberg v. Carhart (2000), the Court found a Nebraska law banning a specific late-term abortion procedure to be unconstitutional because the statute lacked any exemption for the preservation of the health of the mother. It also found that the law violated Roe v. Wade (1973), in that the language in the law was so vague that it may be applied to a common, safe, early-term abortion practice as well as a late-term abortion procedure.

Today, we see on the floor an attempt to make this rare, life-saving medical procedure into a criminal act. The circumstances that make late-term abortions necessary are largely due to a tragic illness or event that compromises either the health of the fetus or its mother. This bill, H.R. 760, seeks to interfere with a woman's access to necessary health care services by making doctors criminally liable and subject to imprisonment. This is the punishment for performing a procedure that is in the doctor's judgement the best option for the mother's life or health.

I cannot support H.R. 760; I stand by American women's right to safe and legal reproductive health care.

Mr. LANTOS. Mr. Speaker, I deeply regret that once again the time of this House and its members will be spent dealing with the so-called ''partial birth abortion'' issue. I would emphasize that the term ''partial birth abortion'' is not a medical term, but rather a political term which the sponsors of this legislation have created in order to shock people into supporting this legislation.

I will not be able to cast my vote today when the roll call is taken on this pernicious piece of legislation, so I would like to take this opportunity to indicate my views on the underlying legislation (H.R. 760) and on the Greenwood/Hoyer/Johnson (of Connecticut) amendment that will be offered to this bill.

Mr. Speaker, the amendment in the nature of a substitute that our colleague from Pennsylvania, Mr. GREENWOOD, is offering makes it unlawful to knowingly perform an abortion after the fetus has become viable, unless, in the medical judgment of the attending physician, it is necessary to preserve the life of the woman or to avert serious adverse health consequences to her. I am not in support of the Congress substituting its judgment for that of a physician in a matter of medicine and health, but clearly this amendment is a substantial improvement over the original text of

H.R. 760. I want to commend our colleagues—Mr. GREENWOOD, Mr. HOYER, and Ms. JOHNSON of Connecticut—for offering this amendment. If I where able to be here for the vote on this amendment, I would cast my vote in favor.

Mr. Speaker, even if the more reasonable and moderate language of the Greenwood Amendment is approved by this house, however, I would cast my vote against this bill if I were here when the House considers final passage later today. Even with the Greenwood language, the House is being asked to specify that a rarely utilized medical procedure is illegal. It seems to me that it is not particularly useful for the Congress of the United States to tell physicians how to practice medicine. The matter of terminating a pregnancy is a deeply personal and private matter, and it ought to be left to the woman and her physician. It is not a matter for the Congress of the United States to decide. I find it hypocritical that most members of the majority party in this body are anxious to keep the federal government out of the lives of Americans, but in the case of this most personal and most private of decisions, they seek to have the federal government take over that decision.

Mr. Speaker, I urge my colleagues to vote ''no'' on H.R. 760.

Mr. COLLINS. Mr. Speaker, America has always been a nation which values human life. We have spent trillions of dollars, and sacrificed the best and bravest of our men and women in far-flung lands to prevent the destruction of innocent life. We as a nation fight for the right of every man and woman to live without tyranny.

Our foundational document, the Declaration of Independence states ''We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life . . .''

The issue before us today is not about choice. It is not about convenience. It is not about privacy. The issue before us today is whether the United States will live up to its responsibilities, its foundational principals, and protect innocent human life.

I won't describe the brutal and barbaric practice of Partial Birth Abortion. What I will do, is urge every person within the sound of my voice to consider what allowing this practice to continue says about the American people.

In the most prosperous nation in the world, we currently allow 4,000 to 5,000 infants each year to be brutally murdered in this manner moments before they take their first, liberty laden breath.

On September 11, 2001, more than three thousand Americans lost their lives. This tremendous loss of life lead to tremendous outrage, military action, and was the most tragic experience this nation has ever faced. Yet each year we allow the brutality of between four and five thousand partial birth abortions to occur.

Mr. Speaker, I am proud to be an original cosponsor of this bill. I am proud that the American people have said ''enough'' and elected us to represent them here today so that we can prevent any more needless, tragic, painful, barbaric deaths from partial birth abortion.

I urge my colleagues to defend these innocent ones. I urge the Members of this House to support this ban on partial birth abortion.

Mr. MILLER of Florida. Mr. Speaker, I rise in strong support of H.R. 760, the Partial Birth Abortion Ban Act. I would like to thank Mr. CHABOT for introducing this important legislation and for his leadership in protecting the life of the unborn.

As elected officials, banning this horrific practice may be one of the most important matters we will ever do. For years I have listened to the dislike opponents have for this bill and for this cause. And in all honesty, their concerns deeply disturb me.

Throughout this debate, we have repeatedly heard the details of this so-called ''medical procedure.

Doctors have described to us how the baby is pulled partly out of the mother's body, only inches from a completed birth and how an abortionist inserts scissors into the skull creating a hole where the baby's brain can be suctioned out. We have all seen pictures of the life-less body pulled from the mother and tossed away like trash.

After seeing this, why is their even debate? Partial Birth abortion is murder. Anti-life advocates claim this is about a woman's right to choose. The are wrong. This is about a child's right to live.

President Reagan wrote in his work ''Abortion And The Conscience Of The Nation'', that ''every legislator, every doctor, and every citizen needs to recognize that the real issue is whether to affirm and protect the sanctity of all human life, or to embrace a social ethic where some human lives are valued and others are not. As a nation, we must choose between the sanctity of life ethic and the quality of life ethic.'' For me, like our former president, the choice is simple. We must ensure that the sanctity of human life is never compromised. The unborn child has no voice and cannot protect itself. It is up to all of us to guarantee their voices are heard and their right to life is protected.

I urge my colleagues to help protect the lives of the most innocent, helpless and defenseless among us and support the Partial Birth Abortion Ban Act.

Mr. WELDON of Florida. Mr. Speaker, as a physician, I find the practice of partial birth abortion extremely disturbing. It is an agonizing experience for the mother, a slow painful death for the child and is utterly unnecessary. Supporters of Partial Birth Abortions will say that these procedures are necessary for the mother, that it may be the safest procedure for some women in emergency situations. I ask them to consider the facts of the procedure. It is important to understand the procedure that we are banning in this bill.

The woman is subjected to three days of slow dilation of the cervix. The feet, body and arms of the baby are delivered. Only the head is not delivered. Then the abortionist kills the child by puncturing the back of the child's neck and removing his/her brain. If the baby's head were three inches further out of the birth canal, this practice would be recognized as murder under our court system.

The procedure is not in the best interest of women and even the American Medical Association has said that the procedure is ''not good medicine.'' In fact, it presents a number of serious risks to mothers. No woman and no child should be subjected to this gruesome and unnecessary procedure. In fact, this procedure is no troubling that scores of pro-choice Members of Congress have joined us in voting to ban this procedure.

Opponents of this bill are attempting to add an exemption for the mother's ''health.'' I know and they know that the courts have defined the term ''health'' to include a definition of mental health so broad as to make any ban virtually meaningless.

President Bush has said that he would sign a bill banning this practice. My hope is that the 108th Congress will give the President the Partial Birth Abortion Ban Act of 2003 for him to do just that. I urge my colleagues to do the right thing today and vote for this ban.

Mr. GOODLATTE. Mr. Speaker, I rise in strong support of H.R. 760, the ban on the procedure known as partial birth abortion. I was appalled when I learned of the partial birth abortion procedure and have been working diligently to abolish it ever since. This heinous procedure involves partially delivering fully formed babies, and then killing them. It is one of the most horrible forms of abortion practiced. The difference between abortion and murder is literally a few inches. I believe that there is no justification for this brutal and heartless procedure, and only the most calloused among us can hear the description of this procedure and not react with disgust.

We must act now to ban this appalling procedure and protect the innocent unborn from violent deaths. A vote in favor of H.R. 760 will stop the killing of innocent children and will send a message to the world that our Nation views life as a sacred and precious gift.

The overwhelming majority of the American people want to ban partial-birth abortions and no matter what your position is on abortion, this grisly procedure is indefensible in a civilized society. Thus, this vote on H.R. 760 gives all of us an opportunity to join together in protecting innocent children from this horrific and gruesome procedure.

H.R. 760 is effective legislation to ban an unbelievably gruesome act. I urge each of my colleagues to support this legislation and to protect those who cannot protect themselves.

Mr. SMITH of Texas. Mr. Speaker, I support the Partial Birth Abortion Ban Act, which bans partial-birth abortions unless they are necessary to save a mother's life. Partial birth abortion is a gruesome and inhumane procedure.

The American Medical Association has stated that partial-birth abortion is ''not an accepted medical practice,'' is ''ethically wrong,'' and is ''never the only appropriate procedure.''

A recent survey of abortion providers estimated that 2,200 partial birth abortions were performed in 2000. Most of these abortions are performed in the fifth and sixth months of pregnancy. Infants then are usually viable—that is, if they are born premature at this stage, they are born alive and usually enjoy long lives. This makes the procedure even more disturbing.

The Senate recently passed this legislation and the American public overwhelmingly supports this ban. A poll this year found that 70 percent of those asked favored a law to make partial birth abortions illegal except in cases where needed to save the life of the mother.

This bill is the same text that the House passed last year. Congress has twice approved a ban on partial-birth abortions, but both times the bills were vetoed by President Clinton. Hopefully, this time, because President Bush supports the ban, we will be successful in implementing a new policy.

Ms. ROS-LEHTINEN, Mr. Speaker, this critical legislation would prohibit physicians from

performing partial-birth abortions, a horrific and heinous procedure.

Mr. Speaker, there is overwhelming evidence that shows that partial-birth abortion is not medically necessary to preserve the health of the woman, but rather poses serious consequences to her health.

Even organizations such as the AMA have said that this procedure is ''not good medicine'' and is not medically necessary.

Partial-birth abortion is a gruesome and inhumane procedure in which the child is forcibly pulled from the mother, with only the head remaining inside the cervical canal. The head of the child is then punctured at the base of the skull, and the brain is removed with a powerful vacuum. This is a barbaric act that is a grave attack against human dignity and justice, and it must be banned. Life is a gift, and it must be embraced and respected at all stages.

In a country which espouses the importance of protecting the inherent rights of every person, partial-birth abortion denies the rights of our most innocent and vulnerable members, our children. We, as legislators, must strive to uphold the truths upon which our great Nation was founded, especially that every individual is entitled to life, liberty, and the pursuit of happiness.

Partial-birth abortion is not a sign that women are ''free to choose.'' It is a sign that women have been abandoned. They have not had the support and care that they so desperately need. Rather, abortion is the only option offered. There is increasing evidence that abortion causes extreme emotional and psychological damage. It has been determined that many abortions occur later in pregnancy when women do not want an abortion at all, but rather feel pressure to hid their pregnancy from their boyfriends or parents.

We must strive to ensure that each and every person is guaranteed the most basic human rights, the right to life. Women deserve better than to endure the physical and emotional pain and suffering associated with partial-birth abortion, and children deserve the chance to live.

I ardently support efforts to protect the dignity of women and children. As women, we have a unique role in society, to nurture and protect that dignity. Such dignity is only possible if it is promoted on every level.

It is time for partial-birth abortion to stop. We must have the courage and the strength to fight against the greatest of all human rights violations—partial-birth abortion. Women deserve better than abortion. I urge my colleagues to vote in favor of H.R. 760 the Partial-Birth Abortion Ban. A vote for the ban is a vote for life.

Mr. FRANKS of Arizona. Mr. Speaker, I rise today in support of legislation offered by colleague, Mr. CHABOT, to ban the procedure known as partial-birth abortion. Over the past 30 years, abortion has placed 42 million separate scars on America's soul. Each time, a mother was never quite the same. Each time, a nameless baby died a tragic and lonely death and all the gifts the child might have brought to humanity were lost forever. Mothers were impoverished while doctors were enriched.

I recently read the story about Samuel Armas, a three and a half year old from Villa Rica, Georgia. Samuel underwent experimental surgery at 21 weeks of gestational age to close a hole at the bottom of his spinal cord. An astonishing photo from this surgery shows Samuel's innocent and curious little hand emerging from his mother's womb during the surgery—an irrefutable example of just how precious and fragile a human life can be. The grasp of Samuel's five tiny fingers stunningly illustrates the miracle of life within the womb. The unspeakable and far-reaching cost of diminished respect for human life, born and unborn, is beginning to dawn in the hearts of us all. I urge my colleagues to vote in favor of this legislation to ban this horrific procedure, and oppose any amendment that would allow for exceptions. I commend my colleague Mr. CHABOT for this gallant legislation made in the interest of children and humanity everywhere.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for general debate has expired.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. GREENWOOD

Mr. GREENWOOD. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. GREENWOOD:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Late Term Abortion Restriction Act''.

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

(a) IN GENERAL.—It shall be unlawful, in or affecting interstate or foreign commerce, knowingly to perform an abortion after the fetus has become viable.

(b) EXCEPTION.—This section does not prohibit any abortion if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman.

(c) CIVIL PENALTY.—A physician who violates this section shall be subject to a civil penalty not to exceed $10,000. The civil penalty provided by this subsection is the exclusive remedy for a violation of this section.

The SPEAKER pro tempore. Pursuant to House Resolution 257, the gentleman from Pennsylvania (Mr. GREENWOOD) and a Member opposed each will control 30 minutes.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the Greenwood substitute and claim the time in opposition.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) will control the time in opposition.

The Chair recognizes the gentleman from Pennsylvania (Mr. GREENWOOD).

Mr. GREENWOOD. Mr. Speaker, I ask unanimous consent to yield 15 minutes to the gentleman from Maryland (Mr. HOYER) for the purposes of control.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GREENWOOD. Mr. Speaker, I yield myself such time as I may consume.

Debates as the one we are having today always focus on the differences between us; and there are, in fact, differences between us.

We who offer this substitute amendment believe that the 90 percent of abortions that occur in the first trimester of pregnancy should be private and legal. The proponents of this bill do not. We believe that the 99.6 percent of all abortions performed in the country that are not affected by this legislation at all should be private and legal. They do not.

But there are points of agreement. We all believe that abortions that might be performed post-viability, that are not done to protect the life or preserve the health of the woman, should be illegal. We agree on that; and now let us see which of these bills, theirs or ours, actually accomplishes this goal.

Proponents of the underlying bill claim that their legislation will stop a particular type of abortion. They are wrong. It will not.

Thirty-one States have passed this legislation and the United States Supreme Court in the famous case of Stenberg v. Carhart deemed those bills, which are essentially identical to this bill, unconstitutional; and fundamentally, they said that what was wrong with those bills was that they made no exceptions for when the woman's health was a serious issue. Our substitute, not the underlying bill, complies with the Court's requirement that there must be a health exception.

Secondly, proponents claim that they want this dilation and extraction procedure, which is what it is actually called, they say it is being performed on healthy women. Yet their bill makes no exceptions for sick women. We have heard over and over again this procedure is done on healthy women with healthy babies. Then put a bill in, as we have, that talks about making the procedure illegal for women who are healthy, but allows it for those who are sick and need it.

Third, the proponents of this legislation claim that they want to eliminate late-term abortions. Yet their bill fails to accomplish this not once, but twice. First, it does not limit itself to post-viability pregnancies, late-term abortions; but it reaches way back into the early second trimester. Secondly, it fails to ban post-viability abortions by other means, as has been said repeatedly. So women who seek post-viability abortions for important medical reasons, who would be denied access to dilation and extraction procedures under this legislation, would still be perfectly free to use other, albeit more dangerous, procedures.

Our substitute bill bans all post-viability abortions by any means, not just one means but all means, unless the woman has a serious medical reason for needing that procedure. Our substitute substitutes policy for politics, and I urge its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, this substitute is identical to H.R. 809, and that bill is a phony ban which would grant a giant loophole that allows abortionists to perform partial-birth and third-trimester abortions at will. The substitute, which would prohibit the performance of an abortion after the unborn infant became viable, would not prohibit any abortion, from the substitute, ''if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman.''

The proponents of this substitute admit that their measure would allow any abortion at any stage of pregnancy if the mother's mental health is at risk. Thus, by its own term, this bill would not prohibit partial-birth abortions, nor would it prohibit late-term abortions because it grants the abortionist, who has a financial interest in performing as many abortions as possible, unbridled discretion to determine whether a partial-birth or third-trimester abortion may be performed.

Abortionists have demonstrated that they can and will justify any abortion on the grounds that it, in the judgment of the attending physician, is necessary to avert serious adverse health consequences to the woman. For example, Dr. Warren Hern of Colorado, the author of the standard textbook on abortion procedures who also performs many third-trimester abortions, has stated, ''I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.'' This is a man who has a financial interest in performing the abortion, and this is the physician who under the Greenwood substitute would be able to certify that the loophole is proper and the abortion can be performed.

I will quote from Dr. Hern again: ''I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.''

The substitute sponsors have stated that even psychological trauma caused by the pregnancy could justify an abortion, including a partial-birth abortion at any stage of pregnancy, including the third trimester.

The substitute would also have no effect on most partial-birth abortions because the bill only prohibits abortions after the fetus is viable in the vast majority of partial-birth abortions are performed on babies 4½ to 5½ months in development. Before it can be proven beyond a reasonable doubt that a given baby is viable, remember we are dealing with criminal statutes here; and prosecution, if this bill becomes law, the substitute becomes law, must prove that the fetus is viable in order for the ban to kick in.

The lung development of babies at this stage of pregnancy is such that most of them cannot survive if delivered from the mother's womb prematurely. Many of them can survive, but the percentages are such estimates of 39 percent of babies born at 23 weeks that it would be impossible for the government to prove beyond a reasonable doubt that any given one of these babies would have survived in a given case.

Given the substitute's failure to define the term ''viable,'' it would not be sufficient to show that the baby had a one in three or one in two or even a three in four chance of survival. Unless the baby was in the seventh month of pregnancy or later, reasonable doubt would remain as to whether that particular baby would have survived outside the womb.

Furthermore, the notion that viability is a prerequisite for giving any legal protection to a child is misguided. Premature infants who are born before the third trimester with little or no chance of survival are fully entitled to the protections of law while they are alive. A person could not, for example, just walk into a neonatal intensive care unit and kill an infant who was born 23 weeks into the pregnancy and is in an incubator struggling to survive. That child has only a 39 percent chance of surviving, but his ultimate viability has no bearing on whether or not he is entitled to the protections of the law.

In the same way, partially born children with little or no chance of survival outside the womb are entitled to the protections of law. Viability is simply not a prerequisite for legal protection of born or partially born children.

For these reasons, I urge my colleagues to vote against the substitute.

Mr. Speaker, I reserve the balance of my time.

□ 1845

Mr. HOYER. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, first, let us stipulate, I hope, that no one on this floor is pro-abortion any more than George Bush is pro-war. I supported President Bush, and I am not pro-war. There are times, though, when the health of the mother, her life, and, yes, her psychological health require and dictate, and the Supreme Court has upheld her right to seek, the termination of a pregnancy.

I do not believe that anyone here truly believes in his or her heart that abortion is a desired outcome to a woman's pregnancy. And I think, Mr. Speaker, without question, that this belief is even stronger when an abortion is obtained in the late stages of pregnancy. Yet the authors of the Partial-Birth Abortion Ban Act cannot escape the indisputable fact that their legislation would not prevent one late-term abortion or, I suggest, any other abortion at any other time, period. Not simply because the legislation they offer is undoubtedly unconstitutional, but also because there are alternative ways to terminate a pregnancy.

If my colleagues' interpretation of their legislation is that it precludes all types of termination of pregnancy, then they ought to state it as such. If, however, as they state, it is simply the elimination of a procedure, with admittedly alternative procedures available, then it does not prevent any abortion.

Mr. Speaker, on an issue of this magnitude, an issue that is fraught with emotion, that is susceptible to demagoguery and that requires us to balance a woman's right to personal autonomy with the rights of an unborn fetus, this House should seize what common ground exists.

Common ground, we do not find common ground in this House very often. We ought to find it on this issue. That is precisely what this bipartisan substitute, the Late-Term Abortion Restriction Act would do.

In short, this substitute addresses the very heart of the matter in this contentious debate, the termination of viable fetuses in the late stages of pregnancy. Unlike the Partial-Birth Abortion Ban Act, this bill focuses on when abortions are performed rather than how they are performed. It would ban all late-term abortions. Hear me: It would ban all late-term abortions constitutionally. That is to say, the Supreme Court has articulated exceptions that must be in legislation; specifically, protection of the life of the mother and the health of the mother. Thus, this substitute comports with the constitutional requirements articulated in Stenberg v. Carhart.

Recall that the Court in Stenberg struck down a Nebraska law prescribing partial-birth abortions because it, one, lacked the requisite exceptions, and two, impermissibly placed an undue burden upon a woman's right to choose. It is evident that where the Late-Term Abortion Restriction Act is constitutional, the Partial-Birth Abortion Ban Act, which deliberately excludes an exception for the health of the mother, is not.

The authors of the Partial-Birth Abortion Ban Act recognize the constitutional infirmity of their bill and thus seek to alter the facts upon which Stenberg was decided. Specifically, they reject the court's findings that partial-birth abortion may in some circumstances be the safest abortion procedure, and they state that partial-birth abortion is never necessary. But let me read to my distinguished friend a justice that I do not usually support the opinion of. In this case I think he is absolutely correct.

Justice Clarence Thomas, in a different context, says if Congress ''could make a statute constitutional simply by finding that black is white or freedom, slavery, judicial review would be an elaborate farce.'' It is not an elaborate farce and, therefore, we cannot simply state that this is constitutional or this is not necessary. That will be subject to proof and the Court's determination.

I urge my colleagues to vote for this substitute, which resembles the law in 41 States of the Nation, including the

chairman's State and my own. Let us not be driven further apart by our differences, but seize what common ground exists in this daunting debate.

I would tell my friend that our statute is not a criminal statute. If my friend will read it, it is a civil statute, a civil penalty, and, therefore, the burden of proof would be much less. And I say that in this context: If the doctor is a charlatan, if the doctor is not going to follow the law, no matter what we pass will make no difference. However, it will make a difference in the final analysis because the court, the jury, the finder of fact and the finder of the law will in fact be able to make a determination that there was not the risk of serious adverse health consequences to the mother and, therefore, in that instance, a late-term abortion was not appropriate.

I am not for late-term abortion except in an instance where the life of the mother must be saved or serious health care consequences must be avoided. But let me say this. Not all of my colleagues, some are, I think, intellectually consistent, but some give credence to an exception for abortion if it results from rape or incest. That, of course, is a psychological exception not a physical exception.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. HYDE).

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I was just thinking, an idle mind, I guess crazy thoughts go through your head. I was thinking of theme songs, and I was thinking for the pro-life people, ''People Who Need People Are the Luckiest People in the World.'' I think it is a great theme song for us, and I am trying to think of a funeral dirge that would fit the so-called pro-choice people, but I cannot.

My good friend, the gentleman from New York (Mr. NADLER), said this is designed to undermine Roe v. Wade. Not at all. This is designed to say there ought to be civilized limits on the exercise of the abortion license. With 1.5 million abortions a year, one would think somebody would look at that and say, what can we do to stem that tide.

We are talking about human life. We are talking about death. We are talking about abortion, which does not terminate a pregnancy, it exterminates a pregnancy. And we are talking about a particularly hideous, gruesome form of abortion called partial-birth abortion.

Yesterday, we decided that flags were not for burning. I hope today we decide that little infants are not for killing. Partial-birth abortion is exactly what the pro-choice late Senator from New York said it is: infanticide.

The substitute offered by my friend from Maryland is a tactical maneuver in the ongoing war between the quality-of-life people, who think if you cannot have a decent quality of life, life is not worth living; and the sanctity-of-life people over here who think every life is important and has intrinsic value.

The victim is a nearly-delivered baby, four-fifths delivered out of the birth canal. The doctor takes a Metzenbaum scissor, jams it in the neck of the little baby, sucks out the brains and collapses the skull. How can we defend a process that we would not impose on a laboratory dog or a hamster? Cruel? Can we understand the pain that that little one must feel? Oh, my colleagues might deny it, but the medical texts are clear, absolutely.

The law exists to protect the weak from the strong. I cannot think of anything weaker than a little baby, a little nearly born infant, with little legs flailing, little arms flailing waiting for the knife to hit him in the back. The people we pretend to defend, the powerless, those who cannot escape, who cannot rise up in the streets, those are the ones that ought to be protected by the law. The law exists to protect the weak from the strong.

Let me just say this: The great Horace Mann said something interesting. He said, ''You ought to be ashamed to die unless you have achieved some victory for mankind.'' Well, I think if we can put partial-birth abortion into the torture chamber, where it belongs, and get rid of it, that may not be a major victory, but it will be a victory for humanity. I want to be on that side.

Mr. GREENWOOD. Mr. Speaker, I yield myself 30 seconds, and our theme song is ''We Trust the Women of America to Do What Is Right.''

But to respond to my friend, the chairman of the Committee on the Judiciary, who argued that our health exception is too broad and allows loopholes. Their response is to have no health exception whatsoever. If the issue here is that we want to make sure that this procedure is only used where health requirements demand it, then we should be working together to create a very tight health exception not eliminating one entirely.

Mr. Speaker, I yield 3 minutes to the gentleman Illinois (Mr. KIRK).

(Mr. KIRK asked and was given permission to revise and extend his remarks.)

Mr. KIRK. Mr. Speaker, I want the gentleman from Illinois (Mr. HYDE) to know that he is still my hero, and with a gentle heart, I rise in opposition to the position he outlined.

Mr. Speaker, our goal is to end late-term abortions, and therefore, we must pass legislation that will be upheld by the Supreme Court. If we are to save babies, then we must do it effectively. When the underlying bill passes the House today, it will sit for 2 years while lower courts enjoin it, the Supreme Court reviews it and eventually declares it unconstitutional. So what is our goal, to end late-term abortions or to make a political statement?

The Supreme Court of the United States clearly indicated in Stenberg that any law prohibiting late-term abortions ''requires that the statute include a health exception from the majority holding.'' H.R. 760 does not include a health exception and goes far to declare that the procedure is ''never medically necessary.'' We are setting Congress up for a defeat at the hands of our highest Court, rendering the action we take today totally ineffective and the current law permitting late-term abortions unchanged.

I was not elected to Congress as a medical doctor and do not intend to tie the hands of physicians who should have the right to discuss all available options with their patients. Are Congressmen competent to regularly vote now on common medical procedures as never medically necessary? If we set this massive precedent to declare what a physician can and cannot do in their medical judgment, we give an awesome power to future Presidents and Congresses that will not share our gentle philosophy or our calm responsibility. Congressmen cannot suddenly declare they have medical degrees and are board certified to practice medicine. If my wife and I were faced with this dilemma, I would certainly hope that our physician was not hamstrung by distant Congressmen in Washington.

I urge my colleagues to support the Greenwood substitute, which effectively bans late-term abortions. To do otherwise only serves the interest of pressure groups and lawyers that will make a killing as the Supreme Court strikes down the underlying bill. The Court in Stenberg gives us a clear direction. While the underlying bill cannot survive in the Supreme Court, the substitute offered by the gentleman from Pennsylvania (Mr. GREENWOOD) does.

I oppose late-term abortions and will support effective measures to change the law and make the ban effective. Unlike H.R. 760, the Greenwood substitute bans late-term abortions in a way the Supreme Court will sustain. Passage of the Greenwood substitute would mean a quick end to litigation and a rapid change in U.S. law.

□ 1900

Failure to pass the substitute means continuing litigation and defeat at the hands of the Supreme Court.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, make no mistake about it, the Greenwood-Hoyer substitute is not a real ban at all. It is a giant loophole that allows partial-birth abortions and third-trimester abortions on demand. The substitute contains no definition of ''viable.'' It imposes no objective criteria that would bind an abortionist. An abortionist has unconstrained discretion to define and declare whether or not any given child is deemed to be viable.

If Members vote for this substitute, they might as well vote against the

ban on partial-birth abortion. Why do so many Members want to ban this horrific procedure? I have never seen one. I would venture to say nobody in this room has probably seen one before, but one person did. Brenda Schaefer who was a registered nurse for Dr. Martin Haskell, the physician in Dayton, Ohio, who is credited with developing this horrible practice.

She describes it as follows: ''Dr. Haskell went in with forceps and grabbed the baby's legs and pulled them down into the birth canal, and then he delivered the baby's body and the arms, everything except the head. The doctor kept the head just inside the uterus. The baby's little fingers were clasping and unclasping, and his little feet were kicking. Then the doctor stuck the scissors in the back of his head, and the baby's arms jerked out like a startle reaction, like a flinch, like a baby does when he thinks he is falling. The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby went completely limp. He cut the umbilical cord and delivered the placenta. He threw the baby in a pan along with the placenta and the instruments he had just used. I saw the baby moved in the pan. I asked another nurse, and she said it was just reflexes. That baby boy had the most perfect, angelic face I think I have ever seen in my life.''

That is what Brenda Schaefer witnessed with her own eyes, and that is why so many of us want to pass this today, and pass it in a form that will really mean something; and that means passing it without this phony ban, without this substitute.

Mr. Speaker, if Members vote for this substitute, they might as well vote against the bill.

Mr. HOYER. Mr. Speaker, I yield 2½ minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Speaker, I thank the gentleman from Maryland for introducing this substitute along with the gentleman from Pennsylvania (Mr. GREENWOOD).

I have voted for the ban on partial-birth abortion at every other point when it has come up. We are talking about a procedure that represents less than one-fifth of 1 percent of the abortions that are performed in this country. Every one of us wants abortions to be rare; none of us favor abortion. We would love to see not just the issue taken off the floor, but that option taken off the table so that every family could have a healthy baby and every mother could continue to live a full life.

I am changing my vote, and I could suggest it is for legalistic intellectual reasons. I could cite the Stenberg v. Carhart decision in Nebraska where the so-called partial-birth abortion law was struck down. The Supreme Court has already deemed it unconstitutional. But my decision is not coming from the mind as much as the heart. It is because I have talked to too many families I know that I represent.

These are devoted parents, loving partners that want their children, who place their family above everything else; but when a family finds that they have a seriously deformed fetus or where they find that the mother has a very serious illness, cancer, heart disease, any number of other possible illnesses, that couple sits down at the kitchen table, or lies together at night agonizing, as agonizing a decision as they could make, and what right do we have to barge into their bedroom, to sit down at their kitchen table and put our hands on our hips and preach to them what they should do.

Do we for a moment think that they love their child in the concrete less than we do in the abstract? We are talking about the abstract here. They are talking in the concrete. We have got to respect the sovereignty of the American family. That is what this is about. They have the right to make this decision, and only they do in the context of their religion, their family, what is right for their family, what is right for each other. They know best; they know better than we do. Support the substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I rise in opposition to the substitute and in support of the original bill, H.R. 760, the Partial-Birth Abortion Ban Act.

Supporters of the substitute claim it would restrict late-term abortions, meaning after a child is viable unless a physician determines that the abortion is necessary to avert a serious health consequence to the woman; but it leaves so many doors open to the exceptions that it will have no practical effect whatsoever. It would do nothing to ban the partial-birth abortion procedure which is what we are trying to accomplish today.

As a sponsor of the substitute has stated, health consequences can mean almost anything, a level of mental health problem or a psychological trauma. The substitute also does nothing to ban a gruesome procedure known as partial-birth abortion which is shamefully legal in this country. It simply refers to late-term abortions. Seventy percent of the American people understand that this procedure is horrific, and they want it banned. The substitute ignores their pleas.

If this substitute becomes law, partial-birth abortions would continue to be performed, which is especially troubling at a time when this procedure has become even more common. Since 1994, the Alan Gutt Marker Institute noted that the number of partial-birth abortions has tripled. In fact, the substitute places no restrictions on these abortions in the fifth or sixth month of pregnancy when the vast majority of these abortions are performed. The main health reason for performing these is mental health, but it is undefined in the law.

Under Kansas law, abortion providers must report the reason for this type of abortions. Of the 182 performed last year, none of these were performed because of a problem with health of the mother or the child. It was simply and generically ''mental health.'' What does this mean? According to testimony before the Committee on the Judiciary, Dr. James McMann, who developed the procedure, said the most common reason for performing this procedure was depression.

Finally, as the findings in the bill note, partial-birth abortions are a health risk to the mother. We have had endless testimony in the last several sessions stating this. Our bill will ban it; the substitute will not. In a country where we allow such things, we should be ashamed. We should take the opportunity now to support the bill and say no to the substitute.

Mr. GREENWOOD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would state that the gentlewoman from Pennsylvania (Ms. HART) indicated that the people of this country are calling for this kind of a law. In the three States where this has been on a referendum, it has been defeated in each case.

Mr. Speaker, I yield 4 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I thank the Committee on Rules for making this amendment in order. This is a very important issue because it involves the balancing of conflicting rights, the right of the fetus and the right of the mother; and it is because balancing rights is the very hardest thing a democracy has to do that this is a constitutional issue. It ought to matter to the proponents that every single State law has been found wanting and been overturned because it does not balance these rights fairly. It does not allow the mother, the woman, to consider her health; but the system can only consider her life and every court has overturned every single State law for this constitutional deficiency.

Some Members wonder why I am so passionate about this subject. I can tell Members it is not because I am pro-abortion. I oppose abortion. I do not like abortion. But my husband trained as an obstetrician and gynecologist in this country when abortion was illegal.

I do not know what song, Henry, you would like to have on your side, but I wonder what song you would sing to this family. My husband stood by the bedside of a woman, the mother of five children with her husband sitting there weeping as she died of an aseptic abortion because abortions were not legal and she could not get the care she desperately sought. But she and her husband, in accord with their beliefs and conscience, had sought a very early termination to preserve their ability to parent their five children.

And, yes, he saw a beautiful young woman, 22 years old, single, die of an aseptic abortion.

This bill, because it is so broad, will have such a chilling effect on the availability of abortions that there will be many forced to go back alley and will die as a consequence. I think that matters. I think there is a balance of competing rights here. That is why the American College of Obstetrics and Gynecology said D&X may be the best and most appropriate procedure in a particular circumstance to save the life or preserve the health of a mother. A particular circumstance. We do not know that circumstance. We will not be in the operating room when that circumstance comes up, and yet we are going to tell the physician you cannot do this.

Do Members know what the physician might do instead that would be perfectly legal? He can do a hysterectomy. He will have taken care of what he considers to be a life-threatening situation without running the risk of suit, which we are putting on him now; without running the risk of jail time, which we are putting on him now. This is not in the interest of the woman's life or her health.

In my substitute, we take a very evenhanded approach. We balance the rights, we allow the exception for life and serious adverse health consequences. This is not lighthearted, and I think it is a slap at all women that anyone would put out that out of fear of open space, that that would represent an adverse impact on your health. That is ridiculous and it is demeaning to women. But in certain situations you need to be able to consider health as well as life. Our amendment is evenhanded. It bans all forms of abortion after viability and all procedures equally.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. HYDE), whose name was taken in vain.

Mr. HYDE. Mr. Speaker, my name was not taken in vain. The gentlewoman is incapable of taking a name in vain.

Mr. Speaker, I just want to say that it is tragic that that woman died from a bungled abortion; but every abortion is lethal and fatal to the baby, so that is a greater tragedy in my opinion.

By the way, I thought of the theme song for the pro-choice people, ''Mahler's Tenth.'' You ought to hear it. It will really make you feel sad.

Mr. SENSENBRENNER. Mr. Speaker, the example the gentlewoman from Connecticut (Mrs. JOHNSON) gave would have fallen under the exception that is contained in H.R. 760. The subsection which is the ban does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

□ 1915

The real-life story that the gentlewoman from Connecticut's husband faced would have fallen under the exception and would have allowed a partial-birth abortion. That is why this bill should pass and the substitute should be defeated.

Mr. Speaker, I yield 3 minutes to the gentleman from Iowa (Mr. KING).

(Mr. KING of Iowa asked and was given permission to revise and extend his remarks.)

Mr. KING of Iowa. Mr. Speaker, I very much appreciate the gentleman yielding me this time.

As I looked at this situation, there were two things that jumped out at me that cried to be answered. One of them was, as I thumbed through the Washington, D.C., phone book, I came across, by accident, ''Abortion Services.''

And we talk about viability, there is ad after ad after ad in there, multiple pages, that advertise they will provide abortions up to 24 weeks. It is in print, it is standard practice, and that is past that point of viability that has been talked about here.

It is chilling to see that, for someone who comes from the Middle West where we do not have such a thing. There is nothing in any phone books that I have seen in the Middle West. But it shocked me.

Another issue, as I sat in the Committee on the Judiciary and listened to remarks, and I am going to speak specifically to the remarks that were made by the gentleman from New York who said that we were cynical about this, that we simply wanted to ban partial-birth abortion for political reasons and that 41 States have banned late-term abortions, and that if we were serious, we would just go forward and do that. And that is what this amendment seeks to do. I rise in opposition to this substitute for that reason, because we know why it would not be effective and why it would gut this bill.

I am not a lawyer. I grew up in a cornfield and rode out on a bulldozer, but I can tell you I know this much about law. How did we get here to this point? I do not think anybody has referenced it now, and that is the case in 1965, Griswold v. Connecticut, right to privacy, when Connecticut outlawed contraceptives and the Supreme Court ruled that the State of Connecticut had no business getting into the privacy of the family and, therefore, found their law that outlawed contraceptives unconstitutional. That is the foundation for right to privacy.

Just a few years later, 8 years later, along came Roe v. Wade. That was the piece that said, well, that right to privacy extends to the woman's womb and in our declaration where it defines life, liberty, pursuit of happiness, those rights are prioritized except that the right of the liberty of the pregnant female takes priority over the life of the unborn. And then Roe v. Wade, of course, outlawed, though it did not make an exception for, late-term post-viability abortions.

But same day, concurrent decision, Doe v. Bolton gave that definition that I think we have heard that addresses the health of the mother. It does not prohibit any abortion if in the medical judgment of the attending physician the abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman, a hole you could drive a truck through. That is also what this amendment seeks to do, and that is another reason that I oppose it.

Planned Parenthood v. Casey reaffirmed Roe v. Wade. That is what it looks like to this fellow who did not go to law school, but does read the cases and that precedent of right to privacy takes us to the floor of this House Chamber tonight to debate something that would be a chilling concept to us if we had been confronted with that in the environment when we were children.

And so Stenberg v. Carhart. I will just say this, it is a ghastly, ghoulish, gruesome procedure and that child is one inch from screaming for its own mercy. If ultrasound could hear the silent scream, we would not be in this debate tonight.

Mr. HOYER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, I support the Hoyer-Greenwood amendment for two reasons. First, this amendment makes illegal all late-term abortion procedures, unlike the underlying bill that only outlaws one late-term abortion procedure while, amazingly, allowing all other late-term abortion procedures to be left perfectly legal.

Second, passing an unconstitutional bill is not going to save one child's life. Not one. We know what the Supreme Court decision has said. It said it June 28 of 2000. The Supreme Court said, even in italics, that if you do not have a health exception, the bill will not become law. To put it in italics by the Supreme Court makes it about as clear as we can make the English language be.

I find it, Mr. Speaker, amazing that those who say their goal, and I trust their convictions, is to save babies' lives, why would you not want to ban all late-term abortions? If you assume these women are such monsters that just seconds before a perfectly healthy childbirth they would want to kill that baby, then I guess you could also assume very understandably she would just ask the doctor to use one of the other late-term abortion procedures.

Sixteen years ago, as a member of the Texas Senate, I was not interested in sound bites or partisanship. I was interested in banning all late-term abortion procedures, because no matter how a baby dies, if he dies frivolously late term, that is morally wrong in my book. But we knew then what we know today and that is, if you tonight have a health exception, your bill will not be law.

I ask once again, to the supporters of this bill, the question that has never been answered. If you assume a woman wants to kill a baby in the last seconds before a normal childbirth, why are you allowing her to do that under your bill just using other procedures?

This bill is a false promise. Vote for the Hoyer-Greenwood amendment and we can stop all late-term abortion procedures.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. GINGREY) who knows more about delivering babies than practically all of us.

Mr. GINGREY. Mr. Speaker, I rise in strong opposition to this substitute amendment. The Greenwood-Hoyer substitute, make no doubt about it, will gut this bill to ban late trimester pregnancy termination just as surely as the procedure itself barbarically guts the life out of nearly born healthy children.

There are physicians who, unfortunately, and for a generous consultation fee, will readily certify that a woman's health is endangered by the pregnancy. In fact, the coauthor just a few minutes ago said that health exceptions would include psychological syndromes such as, you name it, extreme anxiety, as well as nebulous physical syndromes, such as chronic adult fatigue. So, in essence, the mother's health exception could be claimed literally in every one of these cases if we approved this substitute amendment and we would have no bill.

You talk about the fact that the Supreme Court could possibly rule this ban on partial-birth abortion as unconstitutional. If we vote in support of this substitute amendment, the bill dies right here tonight. In fact, the so-called consultant that I mentioned theoretically could come into the delivery room and declare the woman's health to be endangered within minutes of a spontaneous live birth.

The gentlewoman from Connecticut talked about sepsis. I have actually seen these tools that are used to perform this abominable procedure called partial-birth abortion. And you talk about the risk of sepsis developing after that type of a procedure. The gentleman from Virginia talked about the loving parents who would want to terminate the life of a child who was not going to be born perfect. A loving parent will allow that child an opportunity for life no matter how short it may be.

Mr. HOYER. Mr. Speaker, I yield myself 1 minute.

I ask this because I believe it is the nub of the debate. Does the gentleman from Georgia believe there is a procedure to terminate a pregnancy that is more humane or more appropriate than the partial-birth abortion?

Mr. GINGREY. If the gentleman will yield, will the gentleman mind repeating that question?

Mr. HOYER. Do you believe there is a procedure that is more humane or more acceptable than partial birth for the termination of a pregnancy?

Mr. GINGREY. The gentleman from Texas earlier talked about other late-term pregnancy termination procedures other than this one we know as partial-birth abortion. I do not know exactly what he or you are referring to.

Mr. HOYER. Reclaiming my time, and obviously I do not have more time, I wish I had more time because this is an important debate. My question to you is, A; let me ask you this, yes or no, if you can. Do you believe the only way to terminate an abortion is late-term, the procedure referred to in this bill?

Mr. GINGREY. I do not believe there is another way to terminate a pregnancy in late term.

Mr. HOYER. In late term than this? Is that correct?

Mr. GINGREY. I am sorry. I am not understanding you.

Mr. HOYER. In late term, this is the only way to terminate a pregnancy?

Mr. GINGREY. It is the only way to terminate a pregnancy without delivering a live born child. These pregnancies can be terminated by injecting saline or they can be terminated by performing a cesarean section, but the problem there is it is a live child.

Mr. HOYER. In which case, reclaiming my time, the child would not be live; am I correct?

Mr. GINGREY. In those instances, the child would be alive.

Mr. HOYER. You believe that that is more humane.

Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Speaker, I rise today in support of the Hoyer-Greenwood substitute. As a pro-choice, pro-child Member of Congress and mother, I believe that abortions should be safe, legal and rare. For more than a quarter of a century, the Supreme Court has drawn a very clear line on this issue. As Americans and lawmakers, we are bound by the Constitution and we must realize that a ban on a specific late-term procedure that fails to include the life-and-health-of-the-mother standard the Supreme Court established in Roe and upheld in both Casey and Webster will be overturned by the Supreme Court.

What is wrong with the underlying bill? First, it does not take into consideration the health of the mother. Second, it bans an overly broad class of medical procedures that are also useful during pre-viability stages.

The Hoyer-Greenwood substitute gives Congress an opportunity to do the right thing. This bipartisan bill would prohibit all late-term abortions, but it makes the constitutionally required exception for when it would be necessary to save the mother's life or avert serious health consequences. Congress should leave a decision as deeply personal as whether to have an abortion to a woman, her family, her doctor and her God.

My colleagues, this vote is a test. Are we interested in banning late-term abortions? Or are we just wasting everybody's time and beating our chests just to pass something that we know will be overturned by the Supreme Court?

Let us do the right thing. Let us ban these procedures in late term. I urge my colleagues to vote for the Hoyer-Greenwood substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Arizona (Mr. RENZI).

Mr. RENZI. Mr. Speaker, all of us love this Nation. But how can all of us love this land unconditionally when there exists a law on the books that allows partial-birth abortion?

In America today, an abortionist begins partial-birth abortion by causing a woman to go into labor. Involuntary contractions begin that push a pre-born American child into the birth canal. This law, as shown on this diagram, then allows an abortionist to reach into the womb and, with the baby in the breech position, begin to pull the baby out by its feet and legs. The law and the amendment we debate today allows an abortionist to pull the baby almost all the way out of its mother, and as shown here on this diagram, insert his scissors into the base of this pre-born American child's brainstem and vacuum out its brains.

This is abuse of pre-born American children. This is violence against pre-born American babies. This is the torture and murder of future American patriots who deserve this Nation. And it is a corrupt law forced upon the land by the Supreme Court. This amendment says that an abortionist may continue to conduct this violence if he is trying to avert serious health consequences. This exemption is so big that it is nothing but a giant loophole. It once again allows the abortionist, the very menace to the child that is waiting to be paid, to define what averting serious health consequences means.

□ 1930

Think about it. The possibility of serious pain, serious stress, the possibility of serious health consequences, is what women endure in labor and in giving birth. Therefore, the very act of childbirth under this amendment would trigger the exemption. Those who have written it so broadly, so loosely defined, allow the possibilities of that which is endured during the very act of childbirth itself to be enough of a standard by which this amendment would allow an abortionist to continue his horror.

As the father of 12 children, I want to teach my children to love our Nation unconditionally, to revere her, to respect her laws and to be drawn into complying with the laws of this Nation, because her laws represent goodness, because they are filled with integrity, and because we are bound by a moral sense of obligation to abide by them.

Let us love our Nation unconditionally by removing these decrepit and immoral corrupt laws from the same books that contain our sacred rights and liberties. Stop the torture and infanticide of our preborn American children and our future patriots which this Nation needs to be born. Let them have life. Oppose this amendment.

Mr. GREENWOOD. Mr. Speaker, I yield myself 1½ minutes.

Mr. Speaker, the previous speaker used very good words. Unfortunately, the bill that he advocates will not ban the procedure he abhors. Our amendment will.

The previous speaker talked about the broadness of our health exception. If the proponents of this legislation wanted to make sure that no healthy woman could ever get a late-term abortion, they would be advocating legislation that would require a second doctor's opinion, a clearly defined definition or list of medical conditions. That is what they would be doing if they were serious about that. But because they are opposed to abortion under any circumstances virtually at all, they cannot go there.

Now, they are very good at describing the gruesome details of abortion. Let us talk about the gruesome realities that sometimes make abortion necessary.

In March 1995, Tammy Watts from Arizona and her husband Mitch made the agonizing decision to end a wanted pregnancy at 28 weeks gestation. It would have been their first child. The fetus, however, had extensive, ultimately lethal, anomalies related to a genetic condition known as trisomy-13.

The Watts daughter, which they had already named McKenzie, was missing chambers in her heart, her brain was severely damaged and her skull had not formed in the back. Her liver and kidneys were oversized and already failing irreparably. Her bowel, bladder and intestines were formed on the outside of her body and had grown into a nonfunctioning mass of tissues. Doctors also told the couple that Tammy's health was at risk from a continued pregnancy, especially if the baby died in utero.

They decided to terminate the pregnancy, and Tammy and Mitchell were able to conceive again and announced the birth of their daughter, Savannah Whitnee, last July.

These are the realities that American women confront with their physicians, and that is why, in cases where their life or their health is at risk, this is none of our business and we do not belong in this decision.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Virginia (Mrs. JO ANN DAVIS).

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, I rise today in opposition to the substitute amendment to H.R. 760, the Partial-Birth Abortion Ban Act of 2003.

The partial-birth abortion procedure is a brutal and violent act that kills a living baby just seconds before it takes its first breath outside the woman. We must call partial-birth abortion what it really is, the murder of a baby during delivery.

Former Surgeon General C. Everett Koop has stated, ''Partial-birth abortion is never medically necessary to protect a mother's health or future fertility. On the contrary, this procedure can pose a significant threat to both.''

The substitute amendment being offered today includes a so-called health exception to the partial-birth abortion ban. Yet this broad definition, according to the Supreme Court, includes factors such as physical, emotional and psychological issues. All of these factors relate to health. Subsequent testimony has clarified that this health exception includes age, depression and even a fear of open spaces.

Mr. Speaker, this substitute is a facade. It is a ploy designed to gut the intent of the ban on partial-birth abortion.

The future of our Nation depends on decisions such as this. Does America have the moral and ethical fortitude to protect the most basic of human rights, the right to live? We as a civilized culture cannot stand by and allow defenseless, innocent children to be killed. We are not savages. We are not barbarians. We are human beings. Partial-birth abortion is insane, and this killing must end.

I am proud to offer my support for the partial-birth abortion ban. I urge my colleagues to reject this substitute amendment and pass the underlying bill, H.R. 760.

Mr. HOYER. Mr. Speaker, I reserve the balance of my time.

Mr. GREENWOOD. Mr. Speaker, I yield 1 minute to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I rise to correct the record to some extent. It was said that the case examples that I gave would have been covered under the underlying bill. I want to make clear that they would not have been covered, because those women were dying of the infections caused by being forced to get back-alley abortions under unsterile circumstances. If they had been allowed to be in a hospital and get the legal treatments that are available under our law, they would not have gotten the infection and they would not have died. But this underlying bill denies them that right because its definition is so broad. It reaches way down to fairly early decisions to terminate. So I do not accept that those women's lives would be saved under the underlying bill.

I also regret that one of my colleagues, a very skilled colleague who himself has a lot of experience, maintained that there were no other techniques other than late-term abortions that could be used. There are other techniques that are just as harsh, they look just as bad on a poster, and the underlying bill does not ban them.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Louisiana (Mr. VITTER).

Mr. VITTER. Mr. Speaker, I rise to support the underlying bill and to strongly oppose the substitute amendment.

Mr. Speaker, I just want to point out that this substitute amendment is built on two myths. The first is the myth that this specific procedure we are talking about is somehow medically necessary in certain circumstances. It is not.

The American College of Obstetricians and Gynecologists states, ''There are no circumstances under which the procedure would be the only option to save the life of the mother and preserve the health of the woman.''

In 1995, a panel of 12 doctors with the AMA voted unanimously to ban the procedure, calling it ''basically repulsive.''

As one of my colleagues mentioned, former Surgeon General C. Everett Koop says that this procedure is ''never medically necessary to protect a mother's life or her future fertility. On the contrary, this procedure can pose a significant threat to both.''

So if we want to follow medical advice, let us do that and admit this procedure is never medically necessary.

The second big myth is that somehow this exception in the substitute amendment will in fact allow a real ban, and it will not. The health exception, you can drive a truck through it. That is clear in 41 states, and it will be no ban whatsoever.

Mr. HOYER. Mr. Speaker, I yield 30 seconds to the distinguished gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, the last speaker just read part of the American College of Obstetricians and Gynecologists' statement. He said that they could identify no circumstances under which the procedure identified above could be the only option to save the life or preserve the health of the woman. Then he stopped. The rest of it is, ''However, it may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of the woman, and only the doctor, in consultation with the patient, based on the woman's particular circumstances, can make that decision.''

We just want the whole statement in the RECORD.

Mr. HOYER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the AMA opposes this bill. The Organization of Obstetricians and Gynecologists, you heard their statement. We are speaking past one another and we are not speaking to the American public.

Your bill is unconstitutional. You know it. You tried in 17 or 18 pages to restore it. You cannot do it, because you do not include what the Supreme Court requires, protecting the health of the mother.

Our bill is constitutional, and, except for the premise that you make that

doctors are charlatans and will not be held accountable for breaking this law, which has to be proved only by a preponderance of the evidence, you say this law does nothing. In fact, it is the only statute on this floor which will preclude abortions at late-term being performed by any procedure; by any procedure.

Now, I tried to get the gentleman from Georgia (Mr. GINGREY) to respond. He would not respond. Why would he not respond? Because my friend, the gentleman from Illinois (Mr. HYDE), for whom I have unrestrained respect, believes the termination of a pregnancy, the taking of a life of a fetus, is wrong, however you do it. He is shaking his head affirmatively. That is an intellectually honest position. I respect it.

Partial-birth as described is an awful procedure. Abortion is an awful procedure. I accept that. And I personally oppose late-term abortions. When I am accused of being for abortion on demand at the 8th month, 29th day, I am not. We ought to protect those lives. But we have to balance it. That is what the Court says, that is what the Constitution of the United States says.

Support the Greenwood-Hoyer alternative. It is the only legislation that will be effective in trying to make some sense of this issue that so vexes America.

Mr. GREENWOOD. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, why are we here? Are we here because we are about to vote on a piece of legislation that will become law? No, we are not. It will not. It has been abundantly clear. The Supreme Court has voted on this issue. It has nullified every identical state law, and, as sure as God made little green apples, if this bill goes to the United States Supreme Court, by a vote of 5 to 4 it will be discarded.

So we have engaged in a political issue. I know what the political issue is. The political issue is to try to make those of us who are pro-choice appear to be extreme. Good politics, lousy use of this Chamber. It is a lousy use of this Chamber.

If Members who propose this legislation were serious about limiting late-term abortions and joining us in that effort, what would they do? They would help us create a tight, tight law that makes it clear that healthy women with healthy fetuses cannot get late-term abortions. We would all be in agreement. We would get something done.

□ 1945

We would make sure all of this talk of a loophole big enough we can drive a truck through would be gone. We would settle that.

But they cannot go in because they do not believe in a woman's right to choose at all, so they cannot craft reasonable legislation that would take care of the late-term issue. They cannot do that. So all they can do is go to the extreme, create the most exaggerated circumstances, and point to the most gruesome photographs and drawings.

I submit that this is an exercise in futility and urge Members to support the Greenwood-Hoyer-Johnson substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield the balance of my time to the gentleman from Texas (Mr. DELAY), the majority leader.

Mr. DELAY. Mr. Speaker, I appreciate the chairman bringing this bill to the floor.

Mr. Speaker, as I have watched the debate, and it has been a good debate, what I have heard from the proponents of the substitute are two factors.

One is that this is unconstitutional, theirs is constitutional, and they have made a decision for the courts. I did not come to the House to make a decision for the courts. I came to the House to pass very strong, important legislation and then to fight in the courts for my position. I do not let the courts decide what direction I go. I do not make those decisions in this Chamber. If Members want to make decisions for the courts, then go down to the White House and get a nomination from the President.

The second is that their amendment will end late-term abortions, as if they are more pro-life than the gentleman from Illinois (Mr. HYDE). It is amazing to me. If we took this substitute and put it out here freestanding as a bill, which we may get the opportunity to do, they would vote against it and their outside groups, their pro-abortion groups and pro-choice groups, would be rallying outside these doors against their substitute.

So, Mr. Speaker, we have, though, a chance today to make the world a little less cruel for the defenseless. Opponents of this bill have condemned it to the top of their lungs, but we will not mistake volume for veracity. Despite the howls of extremism, all this bill really says is that even in this violent world, we can still tell the difference between right and wrong. We can still recognize that the inhumanity of this procedure has no place in a moral society. We can still recoil at brutality.

We should set aside the politics for a moment and just close our eyes and try to imagine what it is we are talking about. Think of the grip of the doctor's hand, like a vice, pulling a frightened baby, pulling on a frightened baby's legs out of the womb and into the world. Think of the frantic wriggling of that little body in that gloved hand. Think of that moment of pure terror when those sanitized scissors puncture the baby's neck. Then ask yourself, is this the best that we can do for unborn children, however unwanted; for pregnant women, however desperate; for the American people, however divided?

How can anyone think so? After all, women do not ask for partial-birth abortions. No, its violence is unleashed for the convenience of the doctor, not the health of the patient. Women who undergo the procedure run the risk of infection, future pregnancy difficulties, and infertility. Yet its defenders tell us that this cruel, dangerous, and medically unnecessary procedure is essential to the well-being of American women.

Mr. Speaker, it is just not true, but it is an untruth we will not have to bear or hear again after today. After 8 long years and many partial-birth abortions, Congress will finally send the Partial-Birth Abortion Ban Act of 2003 to a President who is willing to sign it.

When he does, abortion will still be with us. The debate over the rights of the unborn will continue and new battles will be fought. But in the meantime, in the meantime, the American people will take this one stand, this one stand on behalf of the innocent, to tame the savageness of man and to make gentle the life of this world.

Take that stand with them now. Vote against this substitute and vote for the bill.

Mr. MENEDEZ. Mr. Speaker, I rise today in strong support of he Hoyer-Greenwood substitute. It is refreshing to finally give policy a chance over politics. By allowing us the opportunity to vote on the Hoyer-Greenwood alternative as a substitute, the debate today is about making good public policy.

Our goal should be to increase services that prevent unwanted pregnancies. However, when the unintended happens, let us remember that the decision to have an abortion is an extremely difficult and personal one. I believe it is a decision that is best left to a woman in consultation with her doctor, her family, her loved ones, and her faith.

The Hoyer-Greenwood substitute is a superior alternative providing the most broad-based restriction on late-term abortions of any bill being considered in the House.

This proposal ensures that no healthy women with a healthy fetus can terminate her pregnancy in the third trimester, regardless of the type of procedure used. I strongly support thee restrictions and always have. But for the life and extreme health threats to the mother, I know of no compelling reason to terminate a pregnancy at his late stage, and Hoyer-Greenwood alternative would ban all such procedures.

Evidently, my Republican colleagues oppose what President Bush governed under in Texas. The Texas laws is even broader than the Hoyer-Greenwood substitute we are now considering. It says that no abortion may be performed in the third trimester on a viable fetus unless necessary to preserve the woman's life or prevent a ''substantial risk of serious impairment to her physical or mental health, or if the fetus has a severed and irreversible abnormality.'' That is the law in the State of Texas. That is the law under which President Bush operated during his terms as Governor of the State of Texas. It is a law similar to the 41 laws that have been passed in the different states that have such meaningful late-term abortion restrictions.

I hope all of my colleagues recognize the opportunity we have today, an opportunity to vote in support of commonsense legislation. I urge my colleagues to support the Hoyer-Greenwood substitute.

Mr. KIND. Mr. Speaker, I rise today in support of the Hoyer/Greenwood/Johnson substitute, the Late Term Abortion Restriction Act, and in opposition to the underlying bill.

In June 2000, in Stenberg v. Carhart, the U.S. Supreme Court invalidated a Nebraska statute that ostensibly prohibited ''partial-birth'' abortions. The court based its decision on two determinations: (1) the statute lacked any exception for the preservation of a woman's health; (2) the statute placed an ''undue burden'' on the right to choose abortion because its vague definition of ''partial birth'' abortion could cover multiple procedures, at any time during a pregnancy, regardless of viability. Due to these determinations, the court found the Nebraska statute unconstitutional.

Justice Sandra Day O'Connor, however, indicated that if changes were made in the legislation to address these concerns, restrictions on late-term abortions could be found constitutional. Unfortunately, the authors of H.R. 760, the underlying bill, failed to follow the outline by Justice O'Connor.

The legislation I support, the Hoyer/Greenwood/Johnson substitute, is a bipartisan effort that meets the Supreme Court's criteria. This substitute would ban all abortions after fetal viability, allowing an exception to protect the life or health of the mother. This bill did not eliminate a particular procedure; it would prohibit all late-term post-viability abortions by whatever method or procedure.

Most people, even those who oppose abortion, would make allowances for pregnancies as a result of rape or incest. There is no doubt that a young girl who becomes pregnant as the result of rape or incest can medically carry the pregnancy to term. However, many of us would say that that young girl should have the option to terminate that pregnancy as a means to safeguard emotional well-being—that is an argument in favor of recognizing the traumatic impact of a pregnancy due to rape or incest.

Some would argue that the pregnancy could be terminated earlier. We would hope so. However, the psychiatric and sociological record is replete with scientific and anecdotal evidence that even in the most supportive environments, girls who are victims of rape and incest are reluctant to reveal their abuse, leaving them vulnerable to emotional and mental breakdown, self-destructive behavior, and, in the worst case, unrecognized or unacknowledged pregnancies up until the last trimester. Only the Hoyer/Greenwood/Johnson substitute would adequately address this serious issue.

While this has been a difficult issue, I must oppose H.R. 760. This bill does not recognize the constitutionality issues raised by the Supreme Court. It does not contain an exception for a woman's health, nor does it adequately define ''partial birth'' abortion in such a way as to address the issue of ''undue burden.'' I am confident that if this bill is signed into law, the Supreme Court would strike it down.

As a Member of the U.S. Congress, I took an oath to uphold the Constitution of the United States. I will not betray that oath. Now that the Supreme Court has determined the constitutional parameters for a partial-birth abortion ban in the Stenberg case, I must adhere to that decision and cannot vote for a bill that is blatantly unconstitutional. H.R. 760 does not comply with the Court's decision.

Mr. KOLBE. Mr. Speaker, I rise today in support of the Greenwood, Hoyer, and Johnson amendment to the Partial-Birth Abortion Ban Act of 2003, H.R. 760.

For several years, Congress and the American people have endured a wrenching debate concerning abortions. Although I believe in a woman's right to determine her reproductive destiny, I do not support partial birth abortion. In fact, I am opposed to any post-viability abortion by whatever method, unless it is performed to save the life of the woman or to avert serious adverse consequences to her health.

To date, congressional debate has centered on legislation that would federalize the regulation of abortion, a matter historically left to the discretion of the States. And, for the first time in medical history, it would ban a specific procedure, known medically as a dilation and extraction, D&X. I cannot support this legislation because of its uncompromising language banning this specific late term abortion method even in a case where a pregnancy goes tragically wrong and the woman's health is placed in serious peril.

Recognizing the need for some answers in a debate that has generated more heat than light, I join my colleagues, Congressman JIM GREENWOOD, and STENY HOYER, and Congresswoman NANCY JOHNSON in support of an amendment that would prohibit all late-term abortions, regardless of the method used to terminate the abortion. The Greenwood, Hoyer, and Johnson amendment applies to all abortions performed after ''viability'', defined as that time when a fetus is able to survive outside the womb. The amendment provides an exception only in cases where it is necessary to save the life of the woman or to avert serious adverse consequences to her health.

The Greenwood, Hoyer, and Johnson amendment correctly puts the emphasis on when abortions are performed, not how they are performed. This amendment does not try to put Congress in the inappropriate role of determining the correctness of one particular medical procedure. Instead, this amendment makes clear that throughout the course of a pregnancy, prior to viability, medical decisions regarding a woman's personal care and treatment must lie with the patient, her physician, and her family—not lawmakers in Washington.

Mr. Chairman, the Greenwood, Hoyer, and Johnson amendment would prohibit all post-viability abortions even if the woman suddenly decided she no longer wanted the child or was emotionally unable to care for a child. I cannot and I will not justify a late-term abortion in these instances. However, when an abortion is medically necessary, I want every woman to have available to her the procedure that is the safest. I encourage all my colleagues, Republicans and Democrats alike, to support this amendment.

Mr. LEVIN. Mr. Speaker, I rise in support of the Greenwood-Hoyer Substitute, the Late Term Abortion Restriction Act, and in opposition to the underlying bill.

I oppose all late term abortions with exceptions only when the mother's own life is at risk or to prevent serious adverse consequences to her health.

Federal courts have ruled unconstitutional at least 19 different State laws with similar or identical language to the underlying bill because they do not contain adequate health exceptions. In Stenberg v. Carhart, the U.S. Supreme Court noted that ''a State may promote but not endanger a woman's health when it regulates the methods of abortion'' and that ''the absence of a health exception will place women at an unnecessary risk of tragic health consequences.'' Despite this clear Court opinion, the bill's sponsors refuse to allow an exception to protect against adequate health consequences to a woman's health.

We should be working together to approve legislation that bans late-term abortions in a manner which protects the mother's health and which is consistent to the decisions of the Federal courts and the Supreme Court. The Late Term Abortion Restriction Act, which I cosponsor, does just this.

Mr. HOSTETTLER. Mr. Speaker, I rise in opposition to the amendment in the nature of a substitute. This amendment inserts a so-called ''health exception'' in the ban.

I hope my colleagues will realize that this substitute would completely destroy the ban on partial-birth abortions. The amendment relies upon an outrageously broad definition of health that would effectively allow the doctor to determine that any circumstance qualifies for a ''health exception.''

That means that a doctor could prescribe a partial-birth abortion because a mother is suffering from temporary depression or any number of other such circumstances.

The mother's depression should be taken seriously and she should receive the best care possible, but snuffing out the life of her child is not a good cure for depression.

In fact, partial-birth abortion has a great likelihood of being injurious to a woman's health—the doctor, while jabbing a pair of scissors into the child, could also stab the mother, as well.

The Subcommittee on the Constitution held hearings on the Partial Birth Abortion Ban on March 25, and during that hearing, Dr. Mark Neerhof testified that hemorrhage, infection, and uterine perforation are all possible results of partial birth abortion. These women are put at greater risk of severe bleeding, uterine rupture, and death, as well.

Women deserve better. Do not sell women short by making them pawns of abortion providers. It is not right to murder children—we should make strides to help these mothers without killing their children.

Every child is precious in God's eyes, and we must learn to look at all children and their parents through God's eyes.

I urge my colleagues to support the ban on partial-birth abortion, and to oppose the substitute.

The SPEAKER pro tempore (Mr. SIMPSON). All time for debate on the amendment offered by the gentleman from Pennsylvania (Mr. GREENWOOD) has expired.

Pursuant to House Resolution 257, the previous question is ordered on the bill and on the amendment offered by the gentleman from Pennsylvania (Mr. GREENWOOD).

The question is on the amendment in the nature of a substitute offered by the gentleman from Pennsylvania (Mr. GREENWOOD).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. HOYER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 133, nays 287, not voting 14, as follows:

[Roll No. 240]

YEAS—133

Abercrombie
Allen
Andrews
Baca
Baird
Ballance
Bass
Becerra
Bell
Berkley
Berman
Biggert
Bishop (NY)
Blumenauer
Boehlert
Boucher
Brady (PA)
Brown (OH)
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Castle
Clay
Clyburn
Conyers
Cooper
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Delahunt
DeLauro
Dingell
Dooley (CA)
Edwards
Emanuel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frelinghuysen
Frost
Gilchrest
Gonzalez
Gordon
Green (TX)
Greenwood
Gutierrez
Harman
Hill
Hoeffel
Hooley (OR)
Houghton
Hoyer
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (CT)
Johnson, E. B.
Kelly
Kennedy (RI)
Kind
Kirk
Kleczka
Kolbe
Larsen (WA)
Levin
Lewis (GA)
Lynch
Markey
McCarthy (MO)
McCarthy (NY)
McCollum
McGovern
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore
Moran (VA)
Napolitano
Neal (MA)
Obey
Olver
Ose
Pascrell
Pastor
Price (NC)
Ramstad
Rangel
Reyes
Rodriguez
Roybal-Allard
Ruppersberger
Rush
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sandlin
Schiff
Scott (GA)
Scott (VA)
Shays
Sherman
Simmons
Snyder
Spratt
Strickland
Sweeney
Tauscher
Thomas
Thompson (MS)
Tierney
Towns
Turner (TX)
Van Hollen
Visclosky
Watson
Watt
Waxman
Wu
Wynn

NAYS—287

Ackerman
Aderholt
Akin
Alexander
Bachus
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Bereuter
Berry
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Case
Chabot
Chocola
Coble
Cole
Collins
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Doggett
Doolittle
Doyle
Dreier
Duncan
Dunn
Ehlers
Emerson
Engel
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Grijalva
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hostettler
Hulshof
Hunter
Hyde
Inslee
Isakson
Issa
Istook
Janklow
Jefferson
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kennedy (MN)
Kildee
Kilpatrick
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Kucinich
LaHood
Lampson
Langevin
Latham
LaTourette
Lee
Lewis (CA)
Linder
Lipinski
LoBiondo
Lowey
Lucas (KY)
Lucas (OK)
Majette
Maloney
Manzullo
Marshall
Matheson
Matsui
McCotter
McCrery
McDermott
McHugh
McInnis
McIntyre
McKeon
McNulty
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nadler
Nethercutt
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (OH)
Ryun (KS)
Sanders
Saxton
Schakowsky
Schrock
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Solis
Souder
Stark
Stearns
Stenholm
Stupak
Sullivan
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Udall (CO)
Udall (NM)
Upton
Velazquez
Vitter
Walden (OR)
Walsh
Wamp
Waters
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Young (AK)
Young (FL)

NOT VOTING—14

Burton (IN)
Carson (OK)
Dicks
Eshoo
Gephardt
Jones (OH)
Lantos
Larson (CT)
Leach
Lewis (KY)
Lofgren
Rothman
Ryan (WI)
Smith (WA)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 2011

Messrs. OWENS, JANKLOW, HINCHEY, NADLER, HONDA, HOLT, ENGEL and Ms. WATERS changed their vote from ''yea'' to ''nay.''

Messrs. BACA, FATTAH, SWEENEY, GUTIERREZ, Ms. HARMAN and Ms. LINDA T. SÁNCHEZ of California changed their vote from ''nay'' to ''yea.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MS. BALDWIN

Ms. BALDWIN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Ms. BALDWIN. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. BALDWIN moves to recommit the bill H.R. 760 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

Page 17, line 2, strike ''abortion'' and all that follows through ''itself'' in line 6, and insert ''abortion that is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother''.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Wisconsin (Ms. BALDWIN) is recognized for 5 minutes in support of her motion.

Ms. BALDWIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to offer a motion to recommit that would provide an exemption to protect the health of the woman.

Women do face profound medical crises during pregnancy. Conditions like hypertension, heart defects, diabetes, and breast cancer can cause serious trauma to a pregnancy. These potential traumas demand a health exception.

The consequences of this sweeping ban are frightening. Women may face severe health consequences such as death, infertility, paralysis, coma, stroke, hemorrhage, brain damage, infection, liver damage, and kidney damage.

□ 2015

Mr. Speaker, the list of consequences becomes even more horrifying when we realize that the families faced with crisis pregnancies are real.

Allow me to tell my colleagues the story of a Wisconsin family, Kathy and her husband, Chris. Kathy was over 6 months into her pregnancy when doctors discovered through an ultrasound that their baby had no brain. There was a tumor in the baby's brain cavity, and the ultrasound revealed other factors that would complicate the delivery and jeopardize Kathy's health. Her doctor recommended that she have an abortion. After the procedure, Kathy was in tears for weeks suffering from depression. She felt alienated and shamed, even though she had done nothing wrong.

The women who face this terrible decision want nothing more than to have a child and are devastated to learn that their baby cannot survive outside the womb. In consultation with their doctors and families, they make this difficult decision to preserve their own health and in many cases to preserve their ability to have children in the future.

How can we look a woman like Kathy in the eye and tell her that she cannot have a safe procedure that would preserve her health and give her the best chance to have children in the future?

Simple humanity alone should be sufficient to justify a health exception; but if my colleagues need more, the U.S. Supreme Court has made it clear that such an exception is legally required. In Stenberg v. Carhart, the Court held the Nebraska ban was unconstitutional because there was no health exception for the mother.

Language in this motion is taken directly from the Supreme Court ruling. Denying a health exception is wrong and unconstitutional. If this bill passes today without this motion, women who are already dealing with the tragic consequences of crisis pregnancies will have their health put in serious danger.

Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentlewoman for yielding time to me.

Mr. Speaker, even if this bill were constitutional, it would not stop any abortions, just a procedure. The abortion would still take place using an alternative procedure. I am not going to inflame the debate by describing those alternative procedures; but this bill in its present form, without this amendment, is clearly unconstitutional.

This amendment would make it constitutional. The Supreme Court said in Stenberg v. Carhart that the ban on partial birth abortions was unconstitutional because the law lacked any exception for the preservation of the health of the; mother, and reading out of the case, it says subsequent to viability the State, in promoting the interests of the potentiality of human life, may, if it chooses, proscribe an abortion and in italics it says except where it is necessary in appropriate medical judgment for preservation of the life or health of the mother. This is what this amendment says. That was in italics.

Later down it says the governing standard requires an exception, and it says, where it is necessary in appropriate medical judgment for preservation of the life or health of the mother. That is the language of this amendment. It also says, our cases have repeatedly invalidated statutes, and the process of regulating the methods of abortion imposed significant health risks.

Finally, it says, but where the substantial medical authority supports the proposition that banning a particular abortion procedure could endanger women's health case law requires the statute to include a health exception when the procedure is, and listen up, necessary in appropriate medical judgment for the preservation of life or health of the mother.

That is what the Supreme Court said in June 2000. Five judges found that opinion. All five are still on the Court. They used the same language in this amendment in plain print, in italics and in quotes. They were serious about this legislation. We ought to read the case and apply the law and adopt the motion to recommit.

The SPEAKER pro tempore (Mr. SIMPSON). The gentlewoman's time has expired.

Who claims time in opposition?

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion.

The SPEAKER pro tempore. The gentleman from Wisconsin is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

This motion to recommit should be rejected for several reasons. The overwhelming weight of evidence compiled in a series of hearings indicates that partial-birth abortions are never necessary to preserve the health of a mother and, in fact, pose substantial health risks to women undergoing the procedure.

No controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its safety and efficacy as compared to other abortion methods. There have been no articles published in peer review journals that establish that partial-birth abortions are superior in any way to establish abortion procedures.

Furthermore, experience indicates that partial-birth abortions are not performed to preserve the health of a woman. The late Dr. James McMahon, developed this method and performed thousands of them, some as late as the ninth month. In 1995, Dr. McMahon submitted to the Committee on the Judiciary a graph and explanation that explicitly showed that he aborted healthy babies even in the third trimester which begins after the 26th week of pregnancy. His own graph showed, for example, that at 29 or 30 weeks one-fourth of the aborted babies had no flaw.

Furthermore, leading proponents of partial-birth abortion acknowledge that it could pose additional health risks because, among other things, the procedure requires a high degree of surgical skill to pierce the infant's skull with a sharp instrument in a blind procedure.

Dr. Warren Hern testified that he had very serious reservations about this procedure and that he could not imagine a circumstance in which this procedure would be safest. Although he was opposed to legislation banning partial-birth abortion, he also stated, ''You really can't defend it. I'm not going to tell somebody else they should not do this procedure, but I'm not going to do it.'' He also stated, ''I would dispute any statement that this is the safest procedure to use.''

The procedure also poses the following additional health risk to the woman: an increase in the woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position.

Finally, a health exception, no matter how narrowly defined, gives the abortionist unfettered discretion in determining when a partial-birth abortion may be performed, and abortionists have demonstrated they can justify any abortion on this ground. Again, Dr. Warren Hern, ''I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.'' I repeat, ''I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.''

It is clear then that a law that includes such an exception would not ban a single-birth abortion; and for that reason, I would urge a ''no'' vote on the motion to recommit.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Ms. BALDWIN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—yeas 165, nays 256, not voting 13, as follows:

[Roll No. 241]

YEAS—165

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Bass
Becerra
Bell
Berkley
Berman
Bishop (NY)
Blumenauer
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Castle
Clay
Clyburn
Conyers
Cooper
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Dooley (CA)
Edwards
Emanuel
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gilchrest
Gonzalez
Gordon
Green (TX)
Greenwood
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Kennedy (RI)
Kilpatrick
Kind
Kleczka
Kolbe
Kucinich
Larsen (WA)
Lee
Levin
Lewis (GA)
Lowey
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore
Moran (VA)
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ose
Owens
Pallone

Pascrell
Pastor
Payne
Pelosi
Price (NC)
Rangel
Rodriguez
Roybal-Allard
Ruppersberger
Rush
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Simmons
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—256

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Bereuter
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Chabot
Chocola
Coble
Cole
Collins
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (AL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Doyle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hinojosa
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kildee
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
LaHood
Lampson
Langevin
Latham
LaTourette
Leach
Lewis (CA)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Ortiz
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (OH)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stupak
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—13

Burton (IN)
Carson (OK)
Dicks
Eshoo
Gephardt
Jones (OH)
Lantos
Larson (CT)
Lewis (KY)
Lofgren
Rothman
Ryan (WI)
Smith (WA)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 2040

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 282, nays 139, not voting 13, as follows:

[Roll No. 242]

YEAS—282

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis (AL)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doolittle
Doyle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinojosa
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jefferson
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
King (IA)
King (NY)
Kingston
Kleczka
Kline
Knollenberg
LaHood
Lampson
Langevin
Latham
LaTourette
Leach
Lewis (CA)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Neal (MA)
Nethercutt
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Ortiz
Osborne
Ose
Otter
Oxley
Pascrell
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ruppersberger
Ryan (OH)
Ryun (KS)
Sandlin
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spratt
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—139

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Bishop (NY)
Blumenauer
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Clay
Clyburn
Conyers
Cummings
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Doggett
Dooley (CA)
Edwards
Emanuel
Engel
Evans
Farr
Fattah
Filner
Frank (MA)
Frost
Gonzalez
Green (TX)
Greenwood
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (CT)
Johnson, E. B.
Kilpatrick
Kind
Kirk
Kolbe
Kucinich
Larsen (WA)
Lee
Levin
Lewis (GA)
Lowey
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller (NC)
Miller, George
Moore
Moran (VA)
Nadler
Napolitano
Olver
Owens
Pallone
Pastor
Payne
Pelosi
Price (NC)
Rangel
Rodriguez
Roybal-Allard
Rush
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Simmons
Slaughter
Snyder
Solis
Stark
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—13

Burton (IN)
Carson (OK)
Dicks
Eshoo
Gephardt
Jones (OH)
Lantos

Larson (CT)	Lofgren	Ryan (WI)
Lewis (KY)	Rothman	Smith (WA)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised 2 minutes remain in this vote.

□ 2047

Mr. BERMAN changed his vote from ''yea'' to ''nay.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. LARSON of Connecticut. Mr. Speaker, I could not be present today, Wednesday, June 4, 2003, to vote on rollcall vote Nos. 236 through 242 due to a family medical emergency.

Had I been present, I would have voted:

''Yea'' on rollcall No. 236 on H. Res. 257; ''yea'' on rollcall No. 237 on H. Con. Res. 177; ''yea'' on rollcall vote No. 238 on H. Res. 201; ''yea'' on rollcall vote No. 239 on H.R. 1954; ''yea'' on rollcall vote No. 240; ''yea'' on rollcall vote No. 241; and ''no'' on rollcall vote No. 242.

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 257, I call up from the Speaker's table the Senate bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The text of S. 3 is as follows:

S. 3

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Partial-Birth Abortion Ban Act of 2003''.

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion—an abortion in which a physician delivers an unborn child's body until only the head remains inside the womb, punctures the back of the child's skull with a sharp instrument, and sucks the child's brains out before completing delivery of the dead infant—is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.

(2) Rather than being an abortion procedure that is embraced by the medical community, particularly among physicians who routinely perform other abortion procedures, partial-birth abortion remains a disfavored procedure that is not only unnecessary to preserve the health of the mother, but in fact poses serious risks to the long-term health of women and in some circumstances, their lives. As a result, at least 27 States banned the procedure as did the United States Congress which voted to ban the procedure during the 104th, 105th, and 106th Congresses.

(3) In Stenberg v. Carhart (530 U.S. 914, 932 (2000)), the United States Supreme Court opined ''that significant medical authority supports the proposition that in some circumstances, [partial birth abortion] would be the safest procedure'' for pregnant women who wish to undergo an abortion. Thus, the Court struck down the State of Nebraska's ban on partial-birth abortion procedures, concluding that it placed an ''undue burden'' on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the ''health'' of the mother.

(4) In reaching this conclusion, the Court deferred to the Federal district court's factual findings that the partial-birth abortion procedure was statistically and medically as safe as, and in many circumstances safer than, alternative abortion procedures.

(5) However, the great weight of evidence presented at the Stenberg trial and other trials challenging partial-birth abortion bans, as well as at extensive Congressional hearings, demonstrates that a partial-birth abortion is never necessary to preserve the health of a woman, poses significant health risks to a woman upon whom the procedure is performed, and is outside of the standard of medical care.

(6) Despite the dearth of evidence in the Stenberg trial court record supporting the district court's findings, the United States Court of Appeals for the Eighth Circuit and the Supreme Court refused to set aside the district court's factual findings because, under the applicable standard of appellate review, they were not ''clearly erroneous''. A finding of fact is clearly erroneous ''when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed''. Anderson v. City of Bessemer City, North Carolina (470 U.S. 564, 573 (1985)). Under this standard, ''if the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently'' (Id. at 574).

(7) Thus, in Stenberg, the United States Supreme Court was required to accept the very questionable findings issued by the district court judge—the effect of which was to render null and void the reasoned factual findings and policy determinations of the United States Congress and at least 27 State legislatures.

(8) However, under well-settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg under the ''clearly erroneous'' standard. Rather, the United States Congress is entitled to reach its own factual findings—findings that the Supreme Court accords great deference—and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence.

(9) In Katzenbach v. Morgan (384 U.S. 641 (1966)), the Supreme Court articulated its highly deferential review of Congressional factual findings when it addressed the constitutionality of section 4(e) of the Voting Rights Act of 1965. Regarding Congress' factual determination that section 4(e) would assist the Puerto Rican community in ''gaining nondiscriminatory treatment in public services,'' the Court stated that ''[i]t was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations. . . . It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support section 4(e) in the application in question in this case.'' (Id. at 653).

(10) Katzenbach's highly deferential review of Congress's factual conclusions was relied upon by the United States District Court for the District of Columbia when it upheld the ''bail-out'' provisions of the Voting Rights Act of 1965, (42 U.S.C. 1973c), stating that ''congressional fact finding, to which we are inclined to pay great deference, strengthens the inference that, in those jurisdictions covered by the Act, state actions discriminatory in effect are discriminatory in purpose''. City of Rome, Georgia v. U.S. (472 F. Supp. 221 (D. D. Col. 1979)) aff'd City of Rome, Georgia v. U.S. (46 U.S. 156 (1980)).

(11) The Court continued its practice of deferring to congressional factual findings in reviewing the constitutionality of the must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992. See Turner Broadcasting System, Inc. v. Federal Communications Commission (512 U.S. 622 (1994) (Turner I)) and Turner Broadcasting System, Inc. v. Federal Communications Commission (520 U.S. 180 (1997) (Turner II)). At issue in the Turner cases was Congress' legislative finding that, absent mandatory carriage rules, the continued viability of local broadcast television would be ''seriously jeopardized''. The Turner I Court recognized that as an institution, ''Congress is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon an issue as complex and dynamic as that presented here'' (512 U.S. at 665–66). Although the Court recognized that ''the deference afforded to legislative findings does 'not foreclose our independent judgment of the facts bearing on an issue of constitutional law,' '' its ''obligation to exercise independent judgment when First Amendment rights are implicated is not a license to reweigh the evidence de novo, or to replace Congress' factual predictions with our own. Rather, it is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.'' (Id. at 666).

(12) Three years later in Turner II, the Court upheld the ''must-carry'' provisions based upon Congress' findings, stating the Court's ''sole obligation is 'to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.' '' (520 U.S. at 195). Citing its ruling in Turner I, the Court reiterated that ''[w]e owe Congress' findings deference in part because the institution 'is far better equipped than the judiciary to ''amass and evaluate the vast amounts of data'' bearing upon' legislative questions,'' (Id. at 195), and added that it ''owe[d] Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power.'' (Id. at 196).

(13) There exists substantial record evidence upon which Congress has reached its conclusion that a ban on partial-birth abortion is not required to contain a ''health'' exception, because the facts indicate that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care. Congress was informed by extensive hearings held during the 104th, 105th, and 107th Congresses and passed a ban on partial-birth abortion in the 104th, 105th, and 106th Congresses. These findings reflect the very informed judgment of the Congress that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care, and should, therefore, be banned.

(14) Pursuant to the testimony received during extensive legislative hearings during the 104th, 105th, and 107th Congresses, Congress finds and declares that:

(A) Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure. Those risks include, among other things: an increase in a woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position, a procedure which, according to a leading obstetrics textbook, ''there are very few, if any, indications for . . . other than for delivery of a second twin''; and a risk of lacerations and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death.

(B) There is no credible medical evidence that partial-birth abortions are safe or are safer than other abortion procedures. No controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. Furthermore, there have been no articles published in peer-reviewed journals that establish that partial-birth abortions are superior in any way to established abortion procedures. Indeed, unlike other more commonly used abortion procedures, there are currently no medical schools that provide instruction on abortions that include the instruction in partial-birth abortions in their curriculum.

(C) A prominent medical association has concluded that partial-birth abortion is ''not an accepted medical practice,'' that it has ''never been subject to even a minimal amount of the normal medical practice development,'' that ''the relative advantages and disadvantages of the procedure in specific circumstances remain unknown,'' and that ''there is no consensus among obstetricians about its use''. The association has further noted that partial-birth abortion is broadly disfavored by both medical experts and the public, is ''ethically wrong,'' and ''is never the only appropriate procedure''.

(D) Neither the plaintiff in Stenberg v. Carhart, nor the experts who testified on his behalf, have identified a single circumstance during which a partial-birth abortion was necessary to preserve the health of a woman.

(E) The physician credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome and, thus, is never medically necessary to preserve the health of a woman.

(F) A ban on the partial-birth abortion procedure will therefore advance the health interests of pregnant women seeking to terminate a pregnancy.

(G) In light of this overwhelming evidence, Congress and the States have a compelling interest in prohibiting partial-birth abortions. In addition to promoting maternal health, such a prohibition will draw a bright line that clearly distinguishes abortion and infanticide, that preserves the integrity of the medical profession, and promotes respect for human life.

(H) Based upon Roe v. Wade (410 U.S. 113 (1973)) and Planned Parenthood v. Casey (505 U.S. 833 (1992)), a governmental interest in protecting the life of a child during the delivery process arises by virtue of the fact that during a partial-birth abortion, labor is induced and the birth process has begun. This distinction was recognized in Roe when the Court noted, without comment, that the Texas parturition statute, which prohibited one from killing a child ''in a state of being born and before actual birth,'' was not under attack. This interest becomes compelling as the child emerges from the maternal body. A child that is completely born is a full, legal person entitled to constitutional protections afforded a ''person'' under the United States Constitution. Partial-birth abortions involve the killing of a child that is in the process, in fact mere inches away from, becoming a ''person''. Thus, the government has a heightened interest in protecting the life of the partially-born child.

(I) This, too, has not gone unnoticed in the medical community, where a prominent medical association has recognized that partial-birth abortions are ''ethically different from other destructive abortion techniques because the fetus, normally twenty weeks or longer in gestation, is killed outside of the womb''. According to this medical association, the '''partial birth' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body''.

(J) Partial-birth abortion also confuses the medical, legal, and ethical duties of physicians to preserve and promote life, as the physician acts directly against the physical life of a child, whom he or she had just delivered, all but the head, out of the womb, in order to end that life. Partial-birth abortion thus appropriates the terminology and techniques used by obstetricians in the delivery of living children—obstetricians who preserve and protect the life of the mother and the child—and instead uses those techniques to end the life of the partially-born child.

(K) Thus, by aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, partial-birth abortion undermines the public's perception of the appropriate role of a physician during the delivery process, and perverts a process during which life is brought into the world, in order to destroy a partially-born child.

(L) The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the procedure.

(M) The vast majority of babies killed during partial-birth abortions are alive until the end of the procedure. It is a medical fact, however, that unborn infants at this stage can feel pain when subjected to painful stimuli and that their perception of this pain is even more intense than that of newborn infants and older children when subjected to the same stimuli. Thus, during a partial-birth abortion procedure, the child will fully experience the pain associated with piercing his or her skull and sucking out his or her brain.

(N) Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life. Thus, Congress has a compelling interest in acting—indeed it must act—to prohibit this inhumane procedure.

(O) For these reasons, Congress finds that partial-birth abortion is never medically indicated to preserve the health of the mother; is in fact unrecognized as a valid abortion procedure by the mainstream medical community; poses additional health risks to the mother; blurs the line between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned.

SEC. 3. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 73 the following:

"CHAPTER 74—PARTIAL-BIRTH ABORTIONS

''Sec.
''1531. Partial-birth abortions prohibited.

"§ 1531. Partial-birth abortions prohibited

''(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. This subsection takes effect 1 day after the date of enactment of this chapter.

''(b) As used in this section—

''(1) the term 'partial-birth abortion' means an abortion in which—

''(A) the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

''(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus; and

''(2) the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: *Provided, however,* That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

''(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

''(2) Such relief shall include—

''(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

''(B) statutory damages equal to three times the cost of the partial-birth abortion.

''(d)(1) A defendant accused of an offense under this section may seek a hearing before the State Medical Board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

''(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

''(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

"74. Partial-birth abortions ..... 1531".

SEC. 4. SENSE OF THE SENATE CONCERNING ROE V. WADE.

(a) FINDINGS.—The Senate finds that—

(1) abortion has been a legal and constitutionally protected medical procedure throughout the United States since the Supreme Court decision in Roe v. Wade (410 U.S. 113 (1973)); and

(2) the 1973 Supreme Court decision in Roe v. Wade established constitutionally based limits on the power of States to restrict the right of a woman to choose to terminate a pregnancy.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the decision of the Supreme Court in Roe v. Wade (410 U.S. 113 (1973)) was appropriate and secures an important constitutional right; and

(2) such decision should not be overturned.

MOTION OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 257, I offer a motion.

The Clerk read as follows:

Mr. SENSENBRENNER moves to strike all after the Enacting clause of S. 3, and insert in lieu thereof the provisions of H.R. 760 as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read a third time, and passed, and a motion to reconsider was laid on the table.

MOTION TO GO TO CONFERENCE

Mr. SENSENBRENNER. Mr. Speaker, pursuant to clause 1 of rule XXII, I offer a motion.

The Clerk read as follows:

Mr. SENSENBRENNER moves that the House insist on its amendment to S. 3 and request a conference with the Senate thereon.

The motion was agreed to.

A motion to reconsider was laid on the table.

MOTION TO INSTRUCT OFFERED BY MR. NADLER

Mr. NADLER. Mr. Speaker, I offer a motion to instruct the conferees.

The Clerk read as follows:

Mr. NADLER moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendments to the bill S. 3 be instructed to insist that—

(1) the committee of conference allow opportunity for members of the committee of conference to offer and debate amendments at all meetings of such conference; and

(2) all meetings of the committee of conference—

(A) be open to the public and to the print and electronic media; and

(B) be held in venues selected to maximize the capacity for attendance of the public and the media.

Mr. NADLER (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. OSE). Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. The gentleman from New York (Mr. NADLER) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 30 minutes.

The gentleman from New York (Mr. NADLER) is recognized for 30 minutes.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. SENSENBRENNER. Mr. Speaker, will the gentleman yield?

Mr. NADLER. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, as I understand it, the motion says that the conferences should be open, and I am pleased to support the motion.

Mr. NADLER. Reclaiming my time, the gentleman is correct, the motion is to have the conference be open. I appreciate the gentleman's support.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume, and I just want to say that I support the motion, and hope it passes.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from New York (Mr. NADLER).

The motion to instruct was agreed to.

APPOINTMENT OF CONFEREES

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: From the Committee on the Judiciary for consideration of the Senate bill and the House amendment, and modifications committed to conference: Messrs. SENSENBRENNER, HYDE and NADLER.

There was no objection.

PERSONAL EXPLANATION

Ms. JACKSON-LEE of Texas. Mr. Speaker, on Monday June 2, 2003, I was unavoidably detained in my district in Houston on official business and missed the following rollcall votes: Rollcall vote 227, H. Res. 159, if I had been present, I would have voted aye; rollcall vote 228, H. Res. 195, if I had been present, I would have voted aye; and rollcall vote 229, H.R. 1469, if I had been present, I would have voted aye.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 898

Mr. MCINTYRE. Mr. Speaker, I ask unanimous consent to have the gentleman from Missouri (Mr. GEPHARDT) removed as a cosponsor of H.R. 898.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

PARTIAL-BIRTH ABORTION BAN UNCONSTITUTIONAL

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, in an intent to correct the record, in the debate that we just finished, H.R. 760, I was taken to task of being wrong for a proposition that I raised on this floor.

Let me correct the record and say I was not wrong, I was right. This partial-birth abortion bill, H.R. 760, is unconstitutional for the same two reasons that the Supreme Court found other statutes attempting to ban partial-birth abortions unconstitutional.

First, H.R. 760 lacks a health exception which the Supreme Court unequivocally said was a fatal flaw in any restriction on abortion.

Second, the nonmedical term partial-birth abortion is overly broad and would include a ban of safe previability abortions. Banning the safest abortion option imposes an undue burden on a woman's ability to choose, and the life of the mother and the health of the mother, and the mother's ability to give birth in the future.

Finally, let me say this: We want to save lives, H.R. 760 does not.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

DISPARITY OF COST OF PRESCRIPTION DRUGS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. GUTKNECHT) is recognized for 5 minutes.

Mr. GUTKNECHT. Mr. Speaker, I rise tonight again to talk about the issue of the disparity between the price that Americans pay for prescription drugs and what the rest of the world pays for the same drugs.

On several occasions I have used articles from the newspapers, whether it be the New York Times or the Wall Street Journal, other newspapers, and I started many of my conversations with something that Will Rogers said so many years ago, and that is ''All I know is what I read in the newspapers.''

Today I read in one in the publications up here on Capitol Hill a story that really surprised me, the first story that they have actually done on the whole issue of prescription drugs, and they decided to do essentially a piece that destroys the credibility of one of the groups that I have gotten much of the research information that I have gotten in the past from, and that is the Life Extension Foundation, and I want to talk about some of the numbers that they have sent me.

I have never personally met anybody from Life Extension, but everything they have sent me checks out. So I have used their statistics in the past, and I will use them in the future. I have also been quoting from a book by