this is so outrageous that we need to ban it.

I am a health care professional and I cannot even imagine a doctor or a nurse being involved in one of these procedures, delivering the baby out of the birth canal up to about here, the neck—arms and legs moving, holding that little baby in their hand, feeling life in their hand, a little heartbeat—and voluntarily taking forceps and jabbing them into the back of the skull. The skull is too big to come out so they have to collapse the skull down, sucking out the contents of the skull—the brains, basically. The baby at that point can feel pain. It is documented. In fact, it feels pain more than a normal child that has inhibitory pain fibers. We are saying this is somehow humane for the child, and that is literally beyond me.

This procedure is completely, in my mind, indefensible; it is infanticide. I want to talk about abortion in general because the other side is saying this is just chipping away at the rights of abortion. I remember when President Clinton said that abortion should be safe, legal, and rare. I think those were his terms. I was thinking to myself, safe, I can understand that; legal, from his perspective, I can understand that; but if you don't believe it is wrong, who cares whether it is rare?

If there is nothing wrong with abortion, why should it be rare? Who cares? If it is not a baby, if it is just a blob of tissue, like the other side says, who cares whether it happens all the time? Why do we care whether it is rare?

The reason even somebody like Bill Clinton says it should be rare is because there is something in our conscience that is telling us abortion is wrong. Eighty-six percent of Down syndrome babies are aborted today—86 percent. We have an incredible young man right out here who runs the elevators. His name is Jimmy. He has Down syndrome.

We have a great organization in Las Vegas called Opportunity Village which deals with a lot of people. It employs a lot of people, finds them a job, people with either congenital problems, whether Down syndrome or other problems, or whether they have had a brain injury. We are saying to those people: You don't have the right to live. We are saying to the Jimmys of the world: You know what, you aren't perfect, so you don't have the right to live. That is what abortion is about. Is it going to be difficult? Yes, but life isn't guaranteed to be easy.

Mr. President, we have to look at what we are becoming as a society. If we do not value human life to the point where it is OK to have little imperfections, what are we becoming as a society? Haven't we seen in history the societies that have tried to create the perfect race, how immoral that was? Isn't that what we are trying to do somewhat with abortions and some of the other new medical technologies that are coming out?

This is a very emotional issue, and I understand people who believe abortion should be legal. There are a lot of women who have had abortions, who have gone through incredible stress—post-abortion syndrome, as it is known. It is likened to post-traumatic stress syndrome. I feel badly, and I feel pain for those women and men who have been involved with abortions.

Sometimes as a defense mechanism, one tries to justify what one did. I think it is important for us to show compassion for those people who have been involved and it is important not to judge other people's motives. But at the same time, we have to look, as a country, at whether it is right or wrong. If it is a baby, it is wrong. It just is. If it is a baby, it is murder. If it is not a baby, if it is some tissue, like the other side says, that is exactly right, it should be legal. It should be absolutely legal, if it is just tissue. But if it is a human life, then that human life deserves to be defended. That innocent human life deserves all the protections of the law, whether they have Down syndrome, spina bifida, or any other congenital ailment. They deserve the same protection under our law any other ''normal'' healthy child has.

We have to look at ourselves as a society and what type of a society we want to have going into the future. America's greatness has been because we have had strong moral standards. This is the great moral problem of our day about which we have to do some soul-searching as a country, to be on our knees in prayer to figure out the right course of action. For me, it is clear.

I urge all of our colleagues to do a lot of soul-searching on this issue. I believe if you are honest, people will see the rights of a baby deserve to be protected.

I thank the manager of the bill and others who have been involved in this issue for the great work they have done. This is truly a fight worth doing and worth doing right.

I thank the Chair. I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. DEWINE).

The PRESIDING OFFICER. The Senator from Pennsylvania.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003 CONFERENCE REPORT—Continued

Mr. SANTORUM. Mr. President, I yield 10 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I commend the Senator from Pennsylvania, Mr. SANTORUM, and Senator FRIST for their leadership on this particular issue. Both have worked extremely hard. I also commend the Presiding Officer for his leadership for the rights of the unborn.

I am pleased to be a cosponsor of the Partial-Birth Abortion Act, which is S. 3. This legislation is designed to help protect unnecessary suffering of the unborn child and also to protect the mother. It prohibits a partial-birth abortion, which is a partial delivery of a living baby, the killing of a baby before complete delivery.

The bill allows partial-birth abortion except for the life of the mother, and in cases where there is endangerment by physical disorder, illness, and injury.

I will go through some of the bill's definitions, which I think say a lot about what this bill is all about.

The term ''partial-birth abortion'' means an abortion which, first, ''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.'' That is the way it is defined in the bill. Further, the term ''partial-birth abortion'' means an overt act, other than completion of delivery, that ''kills the partially delivered living fetus with this procedure.''

This type of abortion is called a D&X abortion, which would be prohibited, also referred to as a dilation and extraction abortion. The bill defines ''extraction'' as: ''Extraction from the uterus and into the vagina of all of the body of a fetus except the head, following which the fetus is killed by extracting the contents of the skull.'' After the baby's skull tissue is rooted out, then the remains of the baby are removed.

I emphasize, this bill does not prohibit other abortions. For example, it does not prohibit what is commonly referred to as D&E, or dilation and evacuation, a procedure which includes dismemberment of the baby inside the uterus, induction of preterm labor with the fetus forced from the uterus, and suctioning of the baby out of the uterus. It does not prohibit suction abortion, which involves scraping the fetus apart from the placenta, or suctioning the baby out of the uterus. It does not prohibit all other types of abortion that might be applied, such as a Caesarian section or a hysterotomy.

The bill protects the life and safety of the mother. Partial-birth abortion was never intended to be a procedure to protect the health of the mother. This procedure has become a form of abortion. On the contrary, we need a ban in order to protect the health of the mother. It is a dangerous procedure, it is a fringe procedure, and it is outside the mainstream of routine medicine.

The American Medical Association, for example, which is an organization that is committed to medical excellence on behalf of patients and professionals, opposes this procedure. The AMA has described this procedure as unsafe and dangerous. The American Medical Association has stated it is ''not good medicine,'' ''not medically indicated.''

There are some specific exceptions: If the mother's life is in danger. The bill allows abortion if endangered by physical disorders or illness or injury.

In the bill, again, it says:

> 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.

I went through a lot of the procedures of the bill just to let the Members of the Senate know how grotesque this procedure is. This bill is necessary and important.

This legislation is designed to protect infants. Testimony in committee indicates there is pain to the baby when this partial-birth abortion procedure is conducted. Professor Robert White, who is director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, testified before the Constitution Subcommittee in 1995. These are his exact words:

> The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain. Without question, all of this is a dreadfully painful experience for any infant subject to such a surgical procedure.

The procedure should not exist or be permitted, in my view. It is painful, morbid, inhumane, and simply barbaric. A majority of Americans believe we should end this practice and it should be illegal except if necessary to save the life of the mother.

The House and Senate have passed a number of times on this legislation. We passed a partial-birth abortion bill from this body in the 104th, 105th, and 106th Congresses. In the 108th Congress, both the House and the Senate passed this ban—with a vote in the House of 181 for, 142 against. It was a bipartisan vote. Again, we had a bipartisan vote in the Senate, where we had 64 for and 33 against.

It is important that we pass this particular legislation. The President strongly supports S. 3. President Bush, in his State of the Union Address, asked Congress to:

> . . . protect infants at the very moment of birth, and end the practice of partial-birth abortion.

We need to act now. I again thank my colleagues in the Senate who have been such strong advocates of eliminating partial-birth abortion except in situations threatening the life of the mother. I am pleased we are acting now, and I thank my colleagues for their support of this important ban for the Nation's children.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. After conferring with my colleague from California, we set this in place. I will yield to the Senator from Illinois for 10 minutes. I ask unanimous consent that following that 10 minutes, the Senator from Ohio be recognized for 10 minutes.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mrs. BOXER. Mr. President, I yield 10 minutes to the Senator from Illinois. If he needs further time, I agree to an additional 5 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, this debate is not something I look forward to on the floor of the Senate. This is one of the toughest issues any elected official ever has to face. It is highly controversial. In my home State of Illinois, in my hometown of Springfield, virtually everywhere I travel, there is a strong difference of opinion on the issue of abortion.

I understand that, and I really have to say as to all those who come to the floor today on either side of this issue, we should never question their motives because I think each and every one of us has tried to search our soul to find out what is fair and what is just. In many instances here, we are talking about things beyond our expertise as individuals. Some of us are lawyers, some have other backgrounds. Very few, if any of us, have medical credentials. But we come today to consider something which is historic, and that is that we would ban in the United States a medical procedure.

To my knowledge, that has never been done. It is being done here under the pretense that it is the humane and right thing to do. Yet when you speak to the professionals, those who do this for a living, the obstetricians and gynecologists, they basically tell you, be careful, because you can't really predict in every instance what a mother might face late in a pregnancy. But this bill has decided that regardless of the medical emergency that might face a mother late in her pregnancy—regardless, we are going to eliminate once and for all this medical procedure. I think that is a very historic and very dangerous action.

I wonder if, in retrospect, we would do it in any other area of medicine. But when it comes to the politically controversial area of abortion, many politicians and elected officials just come roaring through the door and say: Let me tell you what we are going to do and what we are not going to do.

I have tried to look at this in honest and fair terms. Let me tell you what I believe. I believe all late-term abortions should be strictly construed and prohibited in almost every case. I only allow two exceptions for any type of late-term abortion procedure: The life of the mother, and where the mother faces grievous physical injury if she goes through the pregnancy.

I said in an amendment I brought to the floor, just to make certain we know what we are doing, two doctors have to certify that either her life is at stake or, in fact, she runs the risk of grievous physical injury. I can stand behind that. I can say in good conscience that those are the only two exceptions for which I will stand.

But the bill before us today does not allow those two exceptions. If a mother faces the possibility of grievous physical injury if she continues the pregnancy, this bill will still ban a procedure which some doctors believe is best for her under those circumstances. Consider that for a moment. Consider what we are saying. Even if the woman faces grievous physical injury, she has to continue the pregnancy, or at least seek some other way of terminating the pregnancy that might not be as good for her.

Don't take my word for it. Again, I am a lawyer, I am a legislator. But the American College of Obstetricians and Gynecologists was asked about this procedure, and this is what they said. When abortion is performed after 16 weeks, intact D&X, which is what is called partial-birth abortion here, is one method of terminating a pregnancy. This is the important language from the professionals, from the obstetricians and gynecologists. Listen closely:

> The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

If it were your wife whose life was at stake, whose physical well-being were at stake, isn't that the standard you would want, that the doctor and your wife and family would make the best decision, appropriate to her medical circumstances? There is no doubt in my mind. There is no doubt in the minds of the women who have come to tell me of the sad stories of their pregnancies that ended so badly.

Yet in this bill we are saying, as politicians and legislators, we want to step into that room in the doctor's office, we want to stand between the doctor and the patient, and we want to make the decision. We want to say to that doctor, regardless of what you think is best for this woman who faces grievous physical injury if she goes forward with the pregnancy, regardless of what is best for her in your medical, professional opinion, we are going to take away from you one procedure which you can use. It might be the best one for her, but it is not the best one politically. That is why this bill is before the Senate. That is a sad circumstance.

In one of the most frightening times in a woman's life, when she is so late in her pregnancy that they have decorated the room for the baby, picked the

name, they know what they will do when the baby comes home, she gets the tragic news that something has happened no one anticipated. One of the ladies from my State came forward. I met her a few years ago. Vicki talked about having two children and a third child on the way. Here she was, late in her pregnancy. She described the pregnancy as disgustingly normal. At 32 weeks in the pregnancy, 8 months into the pregnancy, she went in for an ultrasound and discovered the little boy she was carrying had at least 9 major anomalies, including a fluid-filled cranium with no brain tissue at all, compacted, flattened vertebrae, congenital hip dysplasia, skeletal dysplasia, and hyperteloric eyes. The doctor told her this baby will never survive outside the womb and because of her physical condition he said she should terminate the pregnancy if she wanted to live and if she ever wanted to have another child.

Her husband, a doctor, sat down with her. They told me, personally, of crying through the night, making this decision and finally deciding they had to do this. And they did. She terminated this pregnancy with the very procedure that is being banned by this bill. She did it because she thought she had no choice. The doctor told her she had no choice. Frankly, if this bill passes, that procedure would not be available to her.

What has happened to Vicki since? The good news is she became pregnant again and she delivered a son, Nicholas, a little boy I met right outside the Capitol. This is a woman who did not want to be a mother, who did not want to be pregnant? No. It is a woman who, through no fault of her own, found herself facing a medical emergency and deciding at the last moment, with her husband and her conscience, what was the best thing to do. She chose the very procedure which is going to be banned and prohibited by this bill.

That is unfortunate. There has been so much publicity back and forth about abortion procedures. Trust me, there is no way to terminate a pregnancy which is clean and sanitary and something you would want to publicize on television. It is a gruesome procedure at any stage in the pregnancy. Yet we have been led to believe this termination of pregnancy is somehow much different.

When I came before the Senate and said, all right, I will go along with terminating all late-term abortion procedures except when the mother's life is at stake or she is running the risk of grievous physical injury, we will require two doctors to certify that and will penalize a doctor if he misrepresents or lies about that, I thought, finally, we found a reasonable middle ground. Those who are opposed to virtually all abortions still would not vote for that amendment. Even though we had support of people who are pro-life and pro-choice, they could not support it.

The Supreme Court, across the street, has told us what happens to bills such as the one we are passing today. If you do not include a provision in there to consider the health of the mother, grievous physical injury, for example, if you do not include that provision, then you fail by the Roe v. Wade test.

Do not ask this Senator to stand here and make this statement with no evidence. The Court already mandated that decision in Stenberg v. Carhart. Nebraska, in that case, struck it down, with virtually the same language before the Senate today. They said it lacks any exception for the preservation of the health of the mother. This bill lacks any exception for the preservation of the health of the mother.

Why are we here today? Because some people understand that regenerating this issue on a regular basis is good for some politically. But it is not good for this Nation, not to have closure on an issue or at least some reasonable compromise where we can limit all late-term abortion procedures.

There are some who are opposed to all forms of abortion. I respect their point of view. I respect the principles that bring them to that decision. But for those who believe, as I do, that abortion should be rare and should be safe, that we should limit it to the most extraordinary cases, particularly late-term abortions, I offered an amendment to do that. It was rejected. Instead, we have this bill coming before the Senate, headed to the Supreme Court, which does not include the exception necessary to protect the health of the mother—protect the health of the mother I met, a woman who faced an extraordinary medical emergency.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio is recognized for 10 minutes.

Mr. DEWINE. Mr. President, I thank my friend and colleague from Pennsylvania, Senator SANTORUM, Senator BROWNBACK, Senator GRAHAM, Majority Leader FRIST, also my colleague, Senator ALLARD, who spoke just a moment ago, for their unending and unwavering efforts to put a permanent end to this horrible partial-birth abortion procedure.

We are here today because a civilized society cannot tolerate this type of procedure. With all due respect to my colleague, my friend from Illinois, this is not about politics. This is about what kind of a society we have, what kind of a country, what kind of a people we are.

This will be the third time for the Senate and the Congress to vote to ban this inhumane procedure—a procedure which, I point out, has absolutely no medical purpose. Time and time again, the testimony we heard in front of our Judiciary Committee is this procedure is never—I repeat, never—medically indicated. I also point out, just to make sure there is a a provision in this bill that provides for a life-of-the-mother exception, the testimony time and time again from all the experts was this is never medically indicated.

This has been before the Senate before. We have voted on this before. The difference today is after Congress votes to ban this procedure this time, this time the President of the United States will sign this bill into law. Soon, once this becomes the law of the land, the abortionist will not be able to legally perform this brutal act on our society's most innocent victims. Once this becomes the law of the land, the abortionist will no longer pull living babies feet first out of their mother's wombs, puncturing their skulls and sucking out their brains. Those are the facts, much as we hate to talk about them.

I have come to the Senate before and talked about different specific stories. I have talked about the story of Baby Hope. The stories of little children like Baby Hope will no longer occur. I described before in the Senate in detail the story of Baby Hope. This was the story where the abortionist, Dr. Mark Haskell, in Dayton, OH, inserted, as he has done thousands of times, a surgical instrument into this little child—in this case, Baby Hope—into Baby Hope's mother to dilate her cervix so Baby Hope could eventually be removed and killed. In this case, Baby Hope's mother went home to Cincinnati expecting to return 3 days later to Dayton for the completion of the procedure. This is a 3-day procedure. In this case, the mother's cervix dilated too quickly and as a result Baby Hope was actually born but died shortly thereafter.

Mr. President and Members of the Senate, on the death certificate there is a space for the cause of death or ''Method of Death.'' In Baby Hope's case, the method of death is written in with the word ''natural.'' Well, that, of course, is simply not true. There is nothing natural about the events that led to the death of this tiny little child. We all know that Baby Hope did not die of natural causes.

We cannot nor should we ever forget this tragedy, nor others like it as recounted by medical professionals.

My colleagues may recall the story of Brenda Pratt Shafer, a registered nurse who was assigned to Dr. Haskell's abortion clinic one morning in the early 1990s. I have told this story on the Senate floor many times.

Nurse Shafer observed Dr. Haskell use the partial-birth abortion procedure to abort babies that day. In fact, she testified before our Senate Judiciary Committee in 1995.

I would like to share with my colleagues again—and I pray that this time will be the final time we have to tell this story on the Senate floor—exactly what the nurse saw and what she testified to in front of the Judiciary Committee.

Nurse Shafer gave very gripping, very telling, very truthful testimony. This is what she said. She described the partial-birth abortion she witnessed on a child that was 26½ weeks. This is what she said:

The young woman was 18, unmarried, and a little over six months pregnant. She cried the entire three days she was at the abortion clinic. The doctor told us, ''I'm afraid she's going to want to see the baby. Try to discourage her from it; we don't like them to see the babies.''

The nurse continues:

Dr. Haskell went in with forceps and grabbed the baby's legs and pulled them down into the birth canal.

Then he delivered the baby's body and arms—everything but the head. The doctor kept the head right inside the uterus. The baby's little fingers were clasping and unclasping and his little feet were kicking.

The baby was hanging there, and the doctor was holding his neck to keep his head from slipping out. The doctor took a pair of scissors and inserted them into the back of the baby's head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks he might fall. The doctor opened up the scissors, stuck a high-powered suction tube in the opening and sucked the baby's brains out.

The nurse continues:

Now the baby went completely limp. We 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 move in the pan.

I asked another nurse and she said it was just reflexes. The baby boy had the most perfect angelic face I think I have ever seen in my life. When the mother started coming around, she was crying—''I want to see my baby.''

''I want to see my baby.''

So we cleaned him up and put him into a blanket. We put her in a private room and handed her the baby. She held that baby in her arms and when she looked into his face, she started screaming—''Oh my God, what have I done? This is my baby.''

Soon we will rest more easily knowing we are very near the end, very near the day when we do not have to retell Nurse Shafer's story—the day when my colleagues, such as Senators SANTORUM and BROWNBACK and GRAHAM and Majority Leader FRIST and the rest of us who have fought this battle, will not have to come to the Senate floor and talk about partial-birth abortion. Nobody wants to talk about this act. Nobody wants to tell the story, to tell Nurse Shafer's story.

Now is finally the time we will ban this horrible, horrible procedure. I look forward to this forthcoming vote in just a few hours and our subsequent delivery of this bill to the President for his prompt signature.

This is the right thing to do. The facts are there. The facts are that this procedure is not medically indicated; it is not medically necessary. We should be judged, I believe, not just by what we do in society; I think we also should be judged by what we put up with, by what we tolerate.

I say to my colleagues, no civilized society should tolerate this type of action. We should say today, by our vote, we simply will not tolerate this, that this is wrong. We cannot allow this to continue in this great country of ours.

Mr. President, I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). Who yields time?

The Senator from California.

Mrs. BOXER. Mr. President, could you tell us how much time remains on Senator SANTORUM's side and how much time remains on our side?

The PRESIDING OFFICER. The Senator from Pennsylvania has 38 minutes remaining. The Senator from California has 58½ minutes remaining.

Mrs. BOXER. Would the Presiding Officer be so kind as to tell me when I have used 20 minutes?

The PRESIDING OFFICER. Yes.

Mrs. BOXER. Thank you very much.

Mr. President, you have heard a tragic story here of a woman who had an abortion who really did not want to have one. I have to tell you, that is why I am so proud to be a pro-choice Senator, a pro-choice American, a pro-choice Californian, fighting for that woman's right to never, ever, ever have to have an abortion if she decided she did not want one.

At the same time, I want the other side to understand that Roe v. Wade is the law of the land and that at the early stages of a pregnancy Government should stay out of a personal, private, moral, and religious decision. That is exactly what being pro-choice means. It means the woman described by my friend must never be forced to have an abortion, ever, no matter what goes wrong with the pregnancy—no matter what—if she insists on going through with it and wanting to have that child. Regardless of the risk to her health, she has the right to do it. That is what being pro-choice is about. Being anti-choice means that Government will dictate that situation.

What we have here today and why our side has decided we wanted to have another debate on this is because, just as the other side has said, the anti-choice side has said this is a historic day, we agree. This is, indeed, a historic day because, for the first time in history, Congress will be banning a medical procedure that is considered medically necessary by physicians, physicians who know. And we will put those statements in the RECORD once again.

My colleague, Senator DEWINE, very eloquently said this debate is about what kind of a country we are. That is true. What kind of a country would say to half of its population, ''We don't trust you; We think you would choose murder''? What kind of a country would say to its doctors, who take the Hippocratic oath, ''Do no harm. We don't trust you. You are going to jail''? In this bill, they will go to jail if they use this technique and it was not to save the life of a mother.

Imagine the circumstance where a doctor is making this decision: I think my patient might die if I don't use this. My God, I have to read the law. Oh, my God, she might live. How could I be sure? I am not positive. I think she might die.

That woman lying in front of that doctor is in great danger. That is why so many medical organizations and OB/GYNs are saying: Please, Senators, stop playing doctor. When we were kids, we had a doctor's set. We put on the white coat. If we want to do that, we should go get our medical degree. But don't stand here and talk about the fact that we can just make this a better country by outlawing medical procedures without an exception for the health of the woman. What kind of country does that? What kind of country says to half of its population: Yes, you are important, but if you are lying on the table and you could wind up being paralyzed or getting a stroke, you are just not that important. What kind of country says that to women? That is why I am here today. This bill is going to pass overwhelmingly. We know the drill. This President is going to sign it. There is going to be a big signing ceremony. There is going to be an immediate court suit. The bill will be stayed. The debate will occur across the street in the Supreme Court. This bill is the same bill essentially that was declared unconstitutional before because the judges understand—maybe better than my colleagues over here understand—the life and the health of a woman is very important, and it must be protected in accordance with the law.

We have been told by physicians—we have the statements in the RECORD—that by banning this procedure, a woman might get a hemorrhage. She might rupture her uterus. She could get very serious blood clots. She could get a stroke, an embolism. She could have damage to nearby organs. She could be paralyzed for life. Do you want to vote that way? You have a chance. If you don't make a health exception, then you are essentially saying women are just not that important.

If you love your mother, don't vote for this bill. If you love your daughter, don't vote for this bill. Because if she finds herself in this horrific circumstance of a pregnancy gone desperately wrong, where the doctor informs her, perhaps, that the baby's brain is outside of the skull, that there would be excruciating pain if the baby is born, that she could lose her fertility, that she could perhaps suffer a stroke, she won't be able to do anything about it. Is that what we want to do here in the Senate?

In many ways this is an exercise in politics, because we believe very strongly this bill will be overturned when it gets across the street. It is not an exercise I take lightly when colleagues think so little of the women of this country, of the mothers of this country, of the daughters of this country that they would pass a bill with no health exception.

I don't think that is what Americans want. When they really understand this, they turn against it. If you hear it without the full explanation, of course we say: Let's not do this procedure. But if you say, but it may be necessary to save the life or health of a woman, people say: OK, then at least allow it in those circumstances.

There isn't a Democrat on this side of the aisle who wouldn't have voted for a health exception along with a life exception, and this procedure would be banned. As a matter of fact, we have proposed—and I have written legislation—banning all late-term abortions except for a health exception and a life exception.

We all come here and say we know what Americans want. It is interesting because, of course, we are trying to determine that. Senator SESSIONS had a poll that said women in this country no longer want the right to choose. That is what he said. I have a poll that shows everyone in this country believes Roe is a fair balance and should continue. But let me tell you what I think Americans want. Let me tell you what I know Californians want. I don't speak for every Californian. I couldn't. There are 35 million of us. But the vast majority of us—and we have had amazing polls on this point—want American women protected. They want children protected. They want privacy protected. They want women respected. They trust women more than they trust Senators. They want us to do the right thing, and they know what the right thing is.

They understand Roe v. Wade took a very difficult decision and explained it in a way that is a balance between all the rights involved.

Here is what Roe v. Wade essentially says: In the first 3 months after pregnancy, a woman has the right to choose and the Government cannot get involved. After that, the Government can get involved. As a matter of fact, after viability, the Government could ban all abortion, which I support, except for the life or health of a woman. I happen to believe that was a Solomon-like decision. It balanced all the concerns. But the most important thing it did is it respected women for the first time.

This was a struggle. Women died. The Senator from Pennsylvania says it was only 85 women a year who died before Roe. We have evidence and we have articles to put in the RECORD today that will show you we believe the 5,000-a-year figure is more on the mark, because the 85 is only a report to the CDC from States where abortion was legal and in many States abortion was illegal in those years. Thousands of women died.

As I said before, let's face it, that is what the underlying tension is in the debate, because this particular procedure is done very rarely. What is really at stake here is Roe v. Wade.

How do I know that? I know it because of the language used on the other side over and over again: Killing children, killing children, killing children. My God, as someone who wrote the Violence Against Children Act, I have to hear people talk about the fact that women are out there every day killing children, that doctors are out there killing children.

Roe v. Wade is not about killing children. Roe v. Wade is about respecting women to say this is a moral issue. This is a religious issue. This is a family issue. This is a privacy issue. Government should stay out in the early stages. In the later stages, government can in fact legislate.

If you take the rhetoric used in the Chamber today and you extrapolated it in a logical fashion, it means the other side thinks all abortion is murder from the minute of conception. If there is a murder committed, there is a murderer, and you have to say that is the woman because, if you listen to their rhetoric, that is what it is about. The doctor is an accomplice in this act. Frankly, I would have more, shall we say, legislative respect for my colleagues—I have personal respect for them, but I would have more legislative respect for them—if they just came out and said, call it what it is: Abortion is murder. That is why we threw out the Harkin amendment that was in this bill supporting Roe. We think abortion is murder. We want women in jail. We want doctors in jail. Maybe they even want the death penalty for a woman. I don't know. I haven't probed them on it.

That is really what this debate is about. It is why it is important to take the debate to the American people. The beauty of being pro-choice is you totally respect the woman regardless of her view.

If she is 18 years old, or 17, or 19, and she wants to have that child, a pro-choice American says: What can we do to help you make it easier? But if she doesn't and it is something she wants to deal with very early in the pregnancy, then just the same way, we say it is your choice; we respect that choice.

This debate is a very important one, a very historic debate. It is true that this bill has passed several times. We expect it to pass today. But this is the first President who will ever sign a bill outlawing a medically necessary procedure.

Now, I am going to prove it is a medically necessary procedure because I am going to put in the RECORD a series of letters. First is the ACOG statement, the American College of Obstetricians and Gynecologists. We can play doctor all we want here. These are the folks who are out there birthing our children, out there telling us month after month, as we go back for our checkup when we are pregnant, how important it is to have good nutrition, not to smoke, not to have alcohol, how to protect that fetus and have a healthy baby. These are the people who want healthy babies born. What do they say? They say:

> The intervention of legislative bodies into medical decisionmaking is inappropriate, ill-advised, and dangerous.

I will repeat that. The obstetricians and gynecologists from all over this country told us that:

> The intervention of legislative bodies into medical decisionmaking is inappropriate, ill-advised, and—

The last word is powerful—

> dangerous.

This bill, if it is upheld by the Court—which I don't believe it will be—is putting women's lives in danger. Don't ask me; ask the doctors. The testimony of Anne Davis is clear. She is a physician. She is very eloquent on the point. She even says that the life exception in the bill is very narrow, which is something I agree with, but I hope the Court will look at that. She says this procedure that is about to be banned by this bill may well be the safest procedure for women in certain circumstances. She was very clear in her testimony.

I commend to my colleagues her testimony on March 25, 2003, before the House Subcommittee on the Constitution.

Mr. President, the American Public Health Association writes:

> We are opposed to [this bill] because we believe this and other legislative and judicial restrictions to safe, medically accepted abortion procedures severely jeopardize women's health and well-being.

You are going to hear my colleagues on the other side say: This bill doesn't hurt women's health—not a problem, not an issue. This bill doesn't conflict with Roe. Why? Because they wrote in the findings that this bill has nothing to do with the health of a woman. Please. Give women just a little bit of credit here.

So here is the American Public Health Association clearly telling us why they believe this is a jeopardy to women's health and their well-being.

Then we have the American Medical Women's Association in a letter they wrote to us. They strongly oppose this ban, and this is what they say, because I think it is a very important thing they say here:

> While the Association has high respect for each member and their right to hold whatever moral, religious and philosophical beliefs his or her conscience dictates, as an organization of 10,000 women physicians and medical students dedicated to promoting women's health and advancing women in medicine, we believe [this bill] is unconscionable.

Doctors are telling us this bill is ''dangerous.'' These doctors are telling us that this bill puts women's health ''in jeopardy.'' Doctors are telling us loudly and clearly that this bill is ''unconscionable.'' But it is going to be passed and it will get the signature of the President and, if not overturned, it is going to hurt the women of our country.

They go on to say:

> Legislative bans for procedures that use recognized [OB/GYN] techniques fail to protect the health and safety of women and their children, nor will it improve the lives of women and families.

I ask unanimous consent to have this letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL WOMEN'S ASSOCIATION, INC.,
Alexandria, VA, March 25, 2003.

Hon. JERROLD NADLER,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN NADLER: The American Medical Women's Association (AMWA) strongly opposes HR 760, the ''Partial-Birth Abortion Ban Act of 2003.'' While the Association has high respect for each member and their right to hold whatever moral, religious and philosophical beliefs his or her conscience dictates, as an organization of 10,000 women physicians and medical students dedicated to promoting women's health and advancing women in medicine, we believe HR 760 is unconscionable.

AMWA has long been an advocate for women's access to reproductive health care. As such, we recognize this legislation as an attempt to ban a procedure that in some circumstances is the safest and most appropriate alternative available to save the life and health of the woman. Furthermore, this bill violates the privilege of a patient in consultation with her physician to make the most appropriate decision regarding her specific health circumstances.

AMWA opposes legislation such as HR 760 as inappropriate intervention in the decision-making relationship between physician and patient. The definition of the bill is too imprecise and it includes non-medical terminology for a procedure that may ultimately undermine the legality of other techniques in obstetrics and gynecology used in both abortion and non-abortion situations. At times, the use of these techniques is essential to the lives and health of women. The potential of this ban to criminalize certain obstetrics and gynecology techniques ultimately interferes with the quality of health and lives of women. Furthermore, the current ban fails to meet the provisions set forth by the Supreme Court in Stenberg v. Carhart, a ruling that overturned a Nebraska statute banning abortion because it contained no life and health exception for the mother.

AMWA's position on this bill corresponds to the position statement of the organization on abortion and reproductive health services to women and their families.

AMWA believes that the prevention of unintended pregnancies through access to contraception and education is the best option available for reducing the abortion rate in the United States. Legislative bans for procedures that use recognized obstetrics and gynecological techniques fails to protect the health and safety of women and their children, nor will it improve the lives of women and their families. If you have any questions please contact Meghan Kissell, at 703–838–0500.

Sincerely,

LYNN EPSTEIN, MD,
President.

Mrs. BOXER. Then you have the Physicians for Reproductive Choice and Health. They make a very good point—a point we have made over and over again: There is no mention of the term ''partial-birth abortion'' in any medical literature. Physicians are never taught a technique called ''partial-birth abortion'' and cannot even define it, which is one of the things the Court said was too vague a definition. So why do you think my colleagues are banning something called partial-birth abortion when there is no such thing, according to physicians, as partial-birth abortion? I will give you 10 seconds to think it over.

The PRESIDING OFFICER. The Senator has used 20 minutes.

Mrs. BOXER. I ask unanimous consent for 10 additional minutes.

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

Mrs. BOXER. I gave you 10 seconds to think about why we are banning something called partial-birth abortion when there is no such medical procedure. The answer is, it is a highly charged bunch of words. There is no such thing as partial-birth abortion in the medical literature; you either have a birth or an abortion. But it charges people up. It gives you a picture that is not accurate.

This is what the Physicians for Reproductive Choice and Health tell us:

Physicians need to have all medical options available in order to provide the best medical care possible. It is unethical and dangerous—

There is the word again ''dangerous''—

for legislators to dictate the details of specific surgical procedures. Banning procedures puts women's health at risk.

''Risk,'' ''danger,'' ''jeopardy,'' and ''unconscionable'' are the words that go along with this bill. They are not my words. They are words of physicians who have lived their life to help women have babies. That is what they are about.

Politicians should not legislate decision-making by doctors.

They call it medical decisionmaking.

To do so would violate the sanctity and legality of the physician-patient relationship. To falsify scientific evidence in an attempt to deny women their right is unconscionable.

There it is. ''Unconscionable,'' ''dangerous,'' ''jeopardy,'' and ''at risk'' are the words we are being told. But we are going to vote for this bill because it is about politics. It is easy to say I cannot buy this procedure. We could have banned it completely. We could have banned all late-term abortion completely with a life exception, health exception. But, oh, no, I think the other side would rather have an issue than make progress. That is not just me talking, that is very anti-choice people who have said this is going to be overturned across the street in 5 minutes.

I ask unanimous consent to print this letter from Physicians for Reproductive Choice and Health in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PHYSICIANS FOR REPRODUCTIVE CHOICE AND HEALTH,
New York, NY.

Hon. JERROLD NADLER,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN NADLER: We are writing to urge you to stand in defense of women's reproductive health and vote against H.R. 760, legislation regarding so-called ''partial birth'' abortion.

We are practicing family physicians; obstetrician-gynecologists; academics in obstetrics, gynecology and women's health; and a variety of other specialties in medicine. We believe it is imperative that those who perform terminations and manage the pre- and post-operative care of women receiving abortions are given a voice in a debate that has largely ignored the two groups whose lives would be most affected by this legislation: physicians and patients.

It is misguided and unprincipled for lawmakers to legislate decision-making in medicine. We all want safe and effective medical procedures for women; on that there is no dispute. However, the business of medicine is not always palatable to those who do not practice it on a regular basis. The description of a number of procedures—from liposuction to cardiac surgery—may seem distasteful to some, and even repugnant to others. When physicians analyze and refine surgical techniques, it is always for the best interest of the patient. The risk of death associated with childbirth is about 11 times as high as that associated with abortion. Abortion is proven to be one of the safest procedures in medicine, significantly safer than childbirth, and in fact saves women's lives.

While we can argue as to why this legislation is dangerous, deceptive and unconstitutional—and it is—the fact of the matter is that the text of the bill is so vague and misleading that there is a great need to correct the misconceptions around abortion safety and technique. It is wrong to assume that a specific procedure is never needed; what is required is the safest option for the patient, and that varies from case to case.

THE FACTS

(1) So-called ''partial birth'' abortion does not exist.

There is no mention of the term ''partial birth'' abortion in any medical literature. Physicians are never taught a technique called ''partial birth'' abortion and therefore are unable to medically define the procedure.

What is described in the legislation, however, could ban *all* abortions. ''What this bill describes, albeit in non-medical terms, can be interpreted as any abortion,'' stated one of our physician members. ''Medicine is an art as much as it is a science; although there is a standard of care, each procedure—and indeed each woman—is different. The wording here could apply to nay abortion patient.'' The bill's language is too vague to be useful; in fact, it is so vague as to be harmful. It is intentionally unclear and deceptive.

(2) Physicians need to have all medical options available in order to provide the best medical care possible.

Tying the hands of physicians endangers the health of patients. It is unethical and dangerous for legislators to dictate the details of specific surgical procedures. Until a surgeon examines the patient, she does not necessarily know which technique or procedure would be in the patient's best interest. Banning procedures puts women's health at risk.

(3) Politicians should not legislate medical decision-making.

To do so would violate the sanctity and legality of the physician-patient relationship. The right to have an abortion is constitutionally protected. To falsify scientific evidence in an attempt to deny women that right is unconscionable and dangerous.

The American College of Obstetricians and Gynecologists, representing 45,000 ob-gyns, agrees: ''The intervention of legislation bodies into medical decision making is inappropriate, ill advised, and dangerous.''

The American Medical Women's Association, representing 10,000 female physicians, is opposed to an abortion ban because it ''represents a serious impingement on the rights of physicians to determine appropriate medical management for individual patients.''

THE SCIENCE

We know that there is no such technique as ''partial birth'' abortion, and we believe this

legislation is a thinly-veiled attempt to outlaw all abortions. Those supporting this legislation seem to want to confuse both legislators and the public about which abortion procedures are actually used. Since the greatest confusion seems to center around techniques that are used after the first trimester, we will address those: dilation and evacuation (D&E), dilation and extraction (D&X), instillation, hysterectomy and hysterotomy (commonly known as a c-section).

Dilation and evacuation (D&E) is the standard approach for second-trimester abortions. The D&E is similar to first-trimester vacuum aspiration exception that the cervix must be further dilated because surgical instruments are used. Morbidity and mortality studies indicate D&E is preferable to labor induction methods (instillation), hysterotomy and hysterectomy because of issues regarding complications and safety.

From the years 1972–76, labor induction procedures carried a maternal mortality rate of 16.5 (note: all numbers listed are out of 100,000); the corresponding rate for D&E was 10.4. From 1977–82, labor induction fell to 6.8, but D&E dropped to 3.3. From 1983–87, induction methods had a 3.5 mortality rate, while D&E fell to 2.9. Although the difference between the methods shrank by the mid-1980s, the use of D&E had already quickly outpaced induction.

Morbidity trends indicate that dilation and evacuation is much safer than labor induction procedures and for women with certain medical conditions, labor induction can pose serious risks. Rates of major complications from labor induction, including bleeding, infections, and unnecessary surgery, were at least twice as high as those from D&E. There are instances of women who, after having failed inductions, acquired infections necessitating emergency D&Es as a last resort. Hysterotomy and hysterectomy, moreover, carry a mortality rate seven times that of induction techniques and ten times that of D&E.

There is a psychological component which makes D&E preferable to labor induction, undergoing difficult, expensive and painful labor for up to two days can be extremely emotionally and psychologically difficult, much more so than a surgical procedure that can be done in less than an hour under general or local anesthesia. Furthermore, labor induction does not always work: Between 15 and 30 percent or more of cases require surgery to complete the procedure. There is no question that D&E is the safest method of second-trimester abortion.

There is also a technique known as dilation and extraction (D&X). There is a limited medical literature on D&X because it is an uncommonly used variant of D&E. However, it is sometimes a physician's preferred method of termination for a number of reasons: It offers a woman the chance to see the intact outcome of a desired pregnancy, to speed up the grieving process; it provides a greater chance of acquiring valuable information regarding hereditary illness or fetal anomaly; and D&E provides a decreased risk of injury to the woman, as the procedure is quicker than induction and involves less use of sharp instruments in the uterus, providing a decreased chance of uterine perforations or tears and cervical lacerations. The American College of Obstetricians and Gynecologists addressed this in their statement in opposition to so-called ''partial birth'' abortion when they said that D&X ''may be the best or most appropriate procedure in a particular circumstances to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based on the woman's particular circumstances, can make this decision.''

It is important to note that these procedures are used at varying gestational ages. Both D&E and D&X are options for surgical abortion prior to viability. D&E and D&X are used solely based on the size of the fetus, the health of the woman, and the physician's judgment, and the decision regarding which procedure to use is done on a case-by-case basis.

THE LEGISLATION

Because this legislation is so vague, it would outlaw D&E and D&X (and arguably techniques used in the first trimester). Indeed, the Congressional findings—which go into detail, albeit in non-medical terms—do not remotely correlate with the language of the bill. This legislation is reckless. The outcome of its passage would undoubtedly be countless deaths and irreversible damage to thousands of women and families. We can safely assert that without D&E and D&X, that is, an enactment of H.R. 760, we will be returning to the days when an unwanted pregnancy led women to death through illegal and unsafe procedures, self-inflicted abortions, uncontrollable infections and suicide.

The cadre of physicians who provide abortions should be honored, not vilified. They are heroes to millions of women, offering the opportunity of choice and freedom. We urge you to consider scientific data rather than partisan rhetoric when voting on such far-reaching public health legislation. We strongly oppose legislation intended to ban so-called ''partial birth'' abortion.

Sincerely,

MEMBER PHYSICIANS.

Mrs. BOXER. Mr. President, I am going to read you the story of Viki Wilson. Viki is a pediatric nurse. She lives in California. Her husband Bill is an emergency room physician. The Wilsons were expecting their third child when they received a devastating diagnosis at 36 weeks of pregnancy.

I hope every colleague will listen to this story and, for a moment, think about this couple and what they faced.

Viki was married to an emergency room physician. They were told after 36 weeks of pregnancy, of looking forward to this baby, that a large portion of the brain was formed outside the skull and most of the baby's tissue was abnormal. They were told by several physicians, including geneticists and perinatologists that their daughter they named Abigail could never survive outside her mother's womb, and that the so-called healthy baby kicks that Viki had thought for sure she was feeling were, in fact, seizures caused by the pressure as the baby's head had lodged in her pelvis.

Think about how you would feel if you were that father, if you were that mother, if you were that grandma, if you were that grandpa, if you were the mother of Viki or the mother-in-law or the father or the father-in-law or you were the brother of Viki or you were the brother-in-law or you were the sister or you were the aunt. They learned this pregnancy was doomed. They learned the baby they wanted so much could never live outside the womb. They learned the risks of this continued pregnancy to Viki, the very severe risks she faced.

They decided this procedure that is being banned today was the safest and best procedure for Viki. They talked about it; they prayed on it; they discussed it with their family; they discussed it among themselves with their physicians. They brought in every specialist one can think about, and they decided this was the best thing for Viki's family and for her children and for her children she hoped to have in the future.

The Wilsons held a funeral for Abigail, and a playground at their children's Catholic school is named in her honor. And then, very soon after, the Wilson family welcomed a baby son, actually through adoption. Is this the kind of person you want to harm? Is this the kind of woman you want to put at risk? Is this the kind of couple to which you are saying: Sorry, even if your doctors say Viki might have a stroke, Viki might be paralyzed, no can do; we can't help you because Senators playing doctor decided this procedure should no longer be a choice, an option for a woman in a severe and tragic circumstance.

I have to tell you, I have looked inside my heart up and down. I do not understand how we move forward as a society, how we move forward as a compassionate country when we do something that can conceivably hurt thousands and thousands of women and thousands and thousands of families. We could have passed this bill in a nanosecond. Just make a health exception. It would have met the objections of the Court with the health exception and a little bit less vagueness on the procedure, and we would have done something that would have been important. But, oh, no, I guess in the end the women of this country just don't matter that much.

I think this record is very clear. The physicians who know what they are talking about, who deal with these pregnancies every day don't want us to do this. The women, many of them very religious, who have been faced with this crisis tell us: Please, please make a health exception because if we didn't have this procedure, A, we might have died; B, we might have been paralyzed; C, we might have been made infertile; D, we might have had a stroke or embolism or damaged our nearby organs.

Why are we doing this? There is no such procedure called ''partial-birth abortion.'' It is in every letter from the physicians. There is no such procedure. It is a made-up term to make this debate what it really is not about. It is a very sad day for us that we are banning a procedure that I have proven, by putting into the RECORD letter after letter from physicians, is necessary sometimes to save the life and health of a woman. We are banning this with no health exception. This is not the right thing to do.

This bill was stripped of the supportive language of Roe v. Wade that this Senate passed twice—not once but twice—saying that Roe v. Wade should remain the law of the land. Oh, no,

they were so radical in that conference committee, they kicked out that very simple statement where most Americans agree that Roe v. Wade, making this decision in the early stages of a pregnancy in private—Government stay out of it; Senator BOXER, I might think you are really a good gal, but stay out of my private life. They are right. I don't deserve to be in it.

Senator HARKIN has just come to the Chamber. He is the one who had that amendment which was adopted by this Senate twice, and how proud I was to stand with him. I wonder if it is OK with my colleagues, since Senator HARKIN has arrived, if I give him 10 minutes.

Mr. President, can Senator HARKIN take about 10 minutes? Does the Senator want more time?

Mr. HARKIN. Yes, if I can have a couple minutes.

Mrs. BOXER. Fifteen minutes, 20? I yield up to 20 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized for up to 20 minutes.

Mr. HARKIN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. HARKIN. Mr. President, are we under time constraints on this measure?

The PRESIDING OFFICER. Yes, we are.

Mr. HARKIN. Will the Chair please state for the Senator what the situation is right now in terms of this conference report?

The PRESIDING OFFICER. The Senator from California has 27½ minutes. The Senator from Pennsylvania has 37, almost 38 minutes.

Mr. HARKIN. I thank the Presiding Officer.

Mr. President, I wish to take a few minutes to talk about this pending measure. First and foremost, I applaud the Senator from California, Mrs. BOXER, for her unwavering leadership and commitment in protecting a woman's right to privacy and to choose. No one has fought harder and longer, both in the House and in the Senate and in all of their public life, to protect a woman's right to choose than Senator BOXER of California.

Senator BOXER has my highest esteem for all the work she has done to make sure that the women of this country are not controlled by ideology, by one religious belief, or by the actions of a male-dominated Senate and House of Representatives and, I might add, now a male-dominated Supreme Court.

We are going to vote this afternoon on this so-called late-term abortion bill. I have serious questions about whether it will pass constitutional muster. I don't believe it will. So what we are doing is really a political exercise. This is what I call something to go out and get the vote for, by exciting passions, arousing fears, and by trying to state in overblown terms what this is all about.

The bottom line and what it really comes down to is whether or not the health of the mother is a constitutionally protected right of women in this country.

In 2000, the U.S. Supreme Court said similar State legislation was not constitutional because it lacked a health exception. It was not constitutional because there was no protection for the health of the mother. So what does the Senate and the House do? Pass legislation that still lacks the health exception. That is why it is unconstitutional.

I am also very disappointed that the conferees stripped from the bill my sense-of-the-Senate resolution about a woman's right to privacy. I had offered, as I had before, a simple statement that it was the sense of the Senate that we supported the Roe v. Wade Supreme Court decision and it should not be overturned. It passed 52 to 46. It was attached to this late-term abortion bill which also passed the Senate. The Senator from California said the conference took less than 5 minutes to drop my resolution, without discussion.

Roe v. Wade is the moderate, mainstream policy American women have come to rely on, and it took the conferees less than 5 minutes, without discussion, to drop it. What that says to me is very startling. Congress has turned its back on America's women—their right to privacy, their right to choose. America's women are now second-class citizens.

Let me again give a brief review of what I am talking about. On January 22, 1973, the U.S. Supreme Court announced its decision in Roe v. Wade, a challenge to a Texas statute that made it a crime to perform an abortion unless a woman's life was at stake. That was the Texas law. The case had been filed by Jane Roe, an unmarried woman who wanted to safely and legally end her pregnancy. Siding with Roe, the Court struck down the Texas law. In its ruling, the Court recognized for the first time the constitutional right to privacy ''is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.''

It also set some rules. The Court recognized the right to privacy is not absolute and that a State has a valid interest in safeguarding maternal health, maintaining medical standards, and protecting potential life. A State's interest in ''potential life'' is not compelling, the Court said, until viability, the point in pregnancy at which there is a reasonable possibility for the sustained survival of the fetus outside of the womb.

A State may but is not required to prohibit abortion after viability, except when it is necessary to protect a woman's life or health.

That is what my resolution was all about, to say we agree that Roe v. Wade was an appropriate decision and should not be overturned.

Before the 1973 landmark ruling of Roe v. Wade, it is estimated that each year 1.2 million women resorted to illegal abortions, despite the known hazards of frightening trips to dangerous locations in strange parts of town, of whiskey as an anesthetic, of ''doctors'' who were often marginal or unlicensed practitioners, sometimes alcoholic, sometimes sexually abusive, unsanitary conditions, incompetent treatment, infection, hemorrhages, disfiguration, and death. By invalidating laws that forced women to resort to back-alley abortions, Roe was directly responsible for saving women's lives.

It is estimated as many as 5,000 women died yearly from illegal abortions before Roe. Only 10 pieces of legislation were introduced in either the House or the Senate before the Roe decision, but in the 30 years since the ruling more than 1,000 separate legislative proposals have been introduced. The majority of these bills have sought to restrict a woman's right to choose.

Unfortunately, what is often lost in the rhetoric and in some of those proposals is the real significance of the Roe decision. The Roe decision recognized the right of women to make their own decisions about their own reproductive health.

The decision whether to bear a child is profoundly private and life altering. As the Roe Court understood, without the right to make autonomous decisions about pregnancy, a woman could not participate freely and equally in society. Roe not only established a woman's reproductive freedom, it was also central to women's continued progress toward full and equal participation in American life.

In the 30 years since Roe, the variety and level of women's achievements have reached a higher level. As the Supreme Court observed in 1992:

> The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.

As I have often said, the freedom to choose on the part of women is no more negotiable than the freedom to speak or the freedom to worship in our Constitution.

I do not believe any abortion is desirable. I do not think anybody does. I have struggled with this issue all my adult life as a father. However, I do not believe it is appropriate to insist my personal views be the law of the land and that I impose those on anyone else. So I urge my colleagues to vote against the final bill, first because it is unconstitutional, but also because by dropping the resolution we adopted saying Roe v. Wade should continue to be the law of the land, it sends the wrong message to American women. What it says is they are not equal to men. They cannot make decisions for themselves. We men will make those decisions for them. They do not have the same protections under the Constitution in this bill. Somehow they are second-class citizens.

I say to the women of this country, as I have said before on the floor, they must be concerned about this.

We passed the resolution on Roe v. Wade 52 to 46. Well, that was a win, I guess one might say, for upholding the belief that Roe v. Wade continue to be the law of the land, but 46 Senators basically voted to say Roe v. Wade ought to be overturned, that it should not be the law of the land, that we need to go back in time to prohibit all abortions, regardless.

I say to those who may think this is just one particular procedure that we are somehow prohibiting here—and again I want to point out, as the Senator from California so eloquently pointed out time after time, this is the first time in the history of this Senate that Senators have decided against a medical procedure, the only time we have somehow put on the cloak of knowing better than doctors, professionals, and women that somehow we politicians know better.

Aside from that, if my colleagues think this is all this is about, they are sadly mistaken. That is not what this is about. I say to the women of America, this is step one. I say especially to young women, who sort of take it for granted—I mean, Roe v. Wade was 30 years ago, ancient history in the United States of America—especially young women who believe, as they have grown up, having this freedom to choose, having the right to control their own reproductive health, if they think this is something that inures to them because they were born in America, they have another think coming. There are people who do not want them to have that right. There are people in this Senate who want to turn the clock back and say women have no right to make any decision on their reproductive health. But, then again, isn't that what we had in Texas before Roe v. Wade? That is what this country was like before that.

The Supreme Court said no, there is something else that has to do with the health of a woman, too, and a woman's right to control her own body and a woman's right to privacy.

Again, I see where this is going with 46 votes in the Senate. Just think, a couple of votes here or there in the next election, you can kiss Roe v. Wade goodbye, because that is what will happen. And with one or two Justices on the Supreme Court who feel this way, that will be the end of Roe v. Wade. That will be the end for women who think they have the right to control their own reproductive health in this country—to make their own decisions. That is where this is headed.

I know Senators, many Senators have personal feelings about that. Fine. There are Senators who believe very deeply that Roe v. Wade should not be the law of the land, who believe it never should have been decided that way, who believe that women should not have a right over their reproductive health. There are people who believe that.

Fine, if they want to believe that for themselves, that's their belief structure. But in this pluralistic society in which we live, in which we respect each other's rights but do not try to impose our own personal religious or moral beliefs on others, the Supreme Court really did, in fact, reach a logical and I think fair and balanced approach.

Yet there are those who want to strip that away—that no matter what—a woman does not have the right to make her own decisions and the right to privacy. And what does that mean? Well, it will mean we're going back to the back alley.

This, really, to me is more than just an issue about some narrow procedure, I say to my friend from California. This is about whether or not the women of this country are going to be treated as equals with men or as second-class citizens. I ask the Senator from California, rhetorically, what other times has the Senate said there are certain medical procedures which applied to men that cannot be conducted? What is next? Is there something else coming down the pike we don't know about? I don't think it will affect men but it will affect women. It is a holdover from mediaeval times, a holdover from the days in which women did not have the right to participate fully in society. That is what this is about more than anything else.

I thank the Senator from California for her courage, for her wisdom, for her judgment, and for being so stalwart, making sure we know what this battle is about. I think we see the writing on the wall here. It is going to pass. It is going to pass. If the Supreme Court adheres to its previous decisions, it will throw it out because there is no exception for the health of the mother. I guess then there will be a political issue to whip up emotions around the countryside.

I wish we could take emotions out of this and just talk about it on the basis of what women want. I will close on this. I have often asked, think to yourself, what would happen if we had 100 women sitting here? I mean a cross section of America, liberal, conservative, moderate, different religions, different ethnic backgrounds—just a good cross section of women in America. Do you really think, down deep in your heart, this would be passed before the Senate? No way. No way would this ever pass. Or, if you had a majority of the women in the House of Representatives? Absolutely not.

Women do make up more than half of our society. I forget, how many women Senators do we have now?

Mrs. BOXER. Fourteen.

Mr. HARKIN. There are 14 out of 100. So women are drastically underrepresented in the body. They are underrepresented on the Supreme Court.

Women have made great strides. Fourteen is more than there were when I came here—there were only one or two at the time I came here. They are making strides.

What this says is we are going to turn the clock back. I don't want to turn the clock back and neither does the Senator from California. We have to make sure women in America have their constitutional right to privacy, just like men. That is what this is really about.

I thank the Senator. I am proud to be on her side.

I retain the remainder of our time. I yield the floor and retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I yield 10 minutes to the chairman of the Judiciary Committee who has done incredible work on this legislation now for a fourth Congress that he has been involved in moving this forward. This moment of accomplishment here would not have happened except for the great work of the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 10 minutes.

Mr. SANTORUM. I ask unanimous consent that following the remarks of the Senator from Utah, the Senator from California be recognized under Senator BOXER's time for 15 minutes.

The PRESIDING OFFICER. The Senator should be advised——

Mr. SANTORUM. Mr. President, while I have the floor, let me ask unanimous consent that the vote on adoption of the conference report to accompany S. 3, the partial-birth abortion ban bill, occur at 5 p.m. today, provided that the time between the expiration of the current time allocation and 5 p.m. be equally divided between Senators SANTORUM and BOXER or their designees.

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

The Senator from Utah is recognized for 10 minutes.

Mr. HATCH. Mr. President, I rise today because it is difficult for me to understand how anybody could support this barbaric, heinous approach toward abortion. The Senate passed S. 3, the partial-birth abortion ban of 2003, with strong bipartisan support, 64 to 33, back in March of this year. The legislation passed the House in June with similarly strong bipartisan support, 282 to 139. We were then forced to debate the motion to go to conference in September.

We completed the conference in September. Now we are finally able to vote on passage of the conference report. Let's get on with it. This has taken a long time in this Congress, but it also has taken 7 years to get to this point. Even though the Congress has passed similar legislation before, finally we will be able to send it to President Bush, who will sign it into law.

I know the people of my home State of Utah recognize the importance of this effort. The vast majority of people in Utah and, I believe, in our country, recognize that the practice of partial-birth abortion is immoral, offensive,

and impossible to justify. This procedure is so heinous that even many who consider themselves pro-choice cannot defend it.

Senator SANTORUM should be applauded for his tireless efforts to achieve this goal. His leadership has been essential and very much appreciated. I admire his efforts to protect innocent human life, especially here, where it is so graphically obvious this procedure cannot be defended.

By now we have all seen Dr. B. Benoit's film of the 3-dimensional ultrasound of the baby in utero, yawning and even smiling. This appeared in the Evening Standard in London. It is a picture of an unborn baby smiling inside the womb. It says: ''Picture Exclusive, Proof Babies Smile in Womb.'' It is truly amazing and enlightening what advancing technology has enabled us to see. This truly is an incredible window into the mother's womb, where it has to be clear to all who view it that this is a living human being, a living baby.

Yet there are those who want to protect the ability to violently crush this young life. In the case of the procedure we seek to ban with this legislation, it is a baby just inches away from being born. Yes, inches away from being born.

For those who may not have a clear understanding of this procedure, let me describe it. This is a little graphic, I agree, but we need to ensure that the American people understand what is going on. How anyone can justify this barbaric procedure is beyond me. A baby is almost fully delivered with only her head remaining inside the birth canal when the doctor stabs scissors into the base of the baby's skull to open a hole into which he then inserts a suction tube and sucks out the brain so the skull collapses. Then they pull the baby out and say it is not a living human being even though just seconds before this was a full human being, a living human being with legs dangling and kicking. I honestly do not know how anyone can avoid being truly sickened when they see a baby being killed in this gruesome manner. It is not done on a mass of tissue but to a living baby capable of living outside the womb, capable of feeling pain, and at the time this procedure is typically performed, capable of living outside the womb.

All this legislation does is ban the one procedure. As the testimony in the House made clear, the fact is, there is no medical need to allow this type of procedure. It is never medically necessary, it is never the safest procedure available, and it is morally reprehensible and unconscionable.

As I mentioned when we debated the bill in the spring, we have all heard in recent years about teenage girls giving birth and dumping their newborns into the trash can. One woman was criminally charged after giving birth to a child in a bathroom stall during the prom and strangling and suffocating the baby before leaving the body in the trash. Tragically, there have been several incidents around the country in the past few years. This should not surprise us. This is what happens when we continue, as some would do here, to devalue human life—those who would like to stop this bill by and large.

William Raspberry argued in a column in the Washington Post:

> . . . only a short distance [exists] between what [these teenagers] have been sentenced for doing and what doctors get paid to do.

He got it right. When you think about it, it is incredible that there is a mere 3 inches separating a partial-birth abortion from murder. Partial-birth abortion simply has no place in our society and rightly should be banned. President Bush has described partial-birth abortion as ''an abhorrent procedure that offends human dignity.'' With that, I wholeheartedly agree.

Basic human decency, I hope, will prevail. I pray that never again will it be legal in this country to perform this barbaric procedure. Unfortunately, I am sure the opponents of this measure will seek to challenge the law in court where I hope good judgment will ultimately prevail.

In Stenberg v. Carhart, the Supreme Court confirmed:

> . . . by no means must physicians [be granted] unfettered discretion in their selection of abortion methods.

The House has already passed this conference report. It is time for this Congress to finish its work and send this bill to the President for his signature.

Oddly enough, young girls out there, young women, are becoming more and more opposed to abortion. I believe it has been this debate, this barbaric procedure that is the cause for them to think it through and to acknowledge that inside that womb of the mother is a living human being, a living baby, and especially one capable of living outside the mother's womb.

This is a serious debate. This is as serious a bill as we can have before the Senate. I hope our colleagues will vote overwhelmingly to pass the conference report as we simply have to get rid of this barbaric and inhumane procedure.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I yield myself 20 minutes.

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

Mrs. FEINSTEIN. I rise in opposition to the conference report accompanying S. 3 which some, I think inaccurately, call the partial-birth abortion bill. In fact, this bill, originally introduced by Senator SANTORUM, is more accurately called the unconstitutional anti-choice bill, given the fact that it is flagrantly unconstitutional and its primary result will be to chill second-trimester abortion procedures.

I voted against this conference report in the recent House-Senate conference on this bill and also on the floor of the Senate last March.

This is the first bill since Roe v. Wade in 1973 that outlaws safe medical procedures and recriminalizes abortion. It is a major step forward in the march to obliterate a woman's right to control her own reproductive system and to eviscerate the entire choice movement in this country.

This bill is unconstitutional, I believe, for two reasons. First, it uses a vague definition of dilation and extraction abortion, or D&X abortion. This technique is also called intact dilation and evacuation, or intact D&E. It is also sometimes called, inaccurately, partial-birth abortion.

The sponsors of the bill have refused to use a definition of D&X that I suggested and that tracks the medical definition submitted by the American College of Obstetricians and Gynecologists. Why? Why would they refuse to use a definition suggested by the elite medical group of obstetricians and gynecologists who deal with this issue—a definition that would enable those obstetricians and gynecologists to know exactly what this legislation makes a crime?

I believe there is a reason. I believe that this bill deliberately uses a vague definition of D&X in order to affect other kinds of second-trimester abortions and thus impact the right to choose. Because its definition is so loose, the bill would ban and otherwise interfere with perfectly legal, permissible abortion techniques. It will also have a chilling effect on doctors, who will be afraid to perform abortions other than D&X for fear they will be subject to investigation and prosecution. Why? Because the bill does not use an accepted medical definition of D&X.

Second, the bill lacks any health exception. This has been spoken about before, and I will do it again. The Supreme Court ruled in Stenberg v. Carhart that any ban must have a health exception. This bill has no health exception. Why are we bothering to pass a bill that is so clearly unconstitutional?

The only reason I can think of is the proponents of the bill do not believe the health of a mother is sufficient reason to interrupt a pregnancy.

In fact, the supporters of the bill are not trying to remedy its constitutional defects. Rather, they are just making minor alterations to the findings in the bill.

I also oppose the bill because it omits language a majority of the Senate added last March recognizing the importance of Roe v. Wade and stating that this important opinion should not be overturned.

Unfortunately, as has been said, this language was stripped out in conference over the strenuous opposition of Senator BOXER, Congressman NADLER, Congresswoman LOFGREN, and myself.

As an initial matter, I want to lay one myth to rest; that is the myth that

most Americans support this bill. Supporters of the bill have repeatedly and erroneously argued that a majority of the country supports banning D&X abortion.

For example, in introducing this bill, Senator SANTORUM stated on the floor that ''the American people clearly believe this is a procedure that should be prohibited.''

However, such statements are not borne out by recent polls. For example, last July, ABC News released a nationwide poll which showed 61 percent of Americans oppose bans on so-called partial-birth abortion procedures if a woman's health is threatened. The bill now before us contains no health exception. That means a substantial majority of Americans think this bill is wrong.

I also want to mention a poll taken by Greenberg, Quinlan, Rosner Research, Inc. between June 5, 2003, and June 12, 2003, of 1,200 likely voters. The poll found a majority of Americans—56 percent—believe abortion should be legal in all or most cases.

In addition, this poll found the country does not want the Government involved in a woman's private medical decisions. Eighty percent of voters believe abortion is a decision that should be made between a woman and her doctor. In fact, even a majority of those who identified themselves as pro-life said a woman and her doctor should make the decision.

In stark contrast, this bill criminalizes safe abortion procedures, and it puts the abortion decision in the hands of the Government and in the hands of politicians, not the woman and her doctor.

I would now like to mention Randall Terry, the founder of Operation Rescue, and the man who the New York Times called ''an 'icon' of the pro-life movement.'' Mr. Terry is one of the staunchest foes of the right to choose in the entire Nation. He is known for harboring views so strong on the abortion issue that he has been jailed dozens of times for blocking clinics and for having a human fetus delivered to former President Bill Clinton. He is also known for speaking his mind.

Let me read some quotes from Mr. Terry in a press release issued through the Christian Communication Network, dated just a month ago, September 15, 2003. This press release is entitled: ''Randall Terry, Founder of Operation Rescue Says, 'Partial-Birth Abortion Ban is a Political Scam but a Public Relations Goldmine.''

Let me repeat that: ''Partial-Birth Abortion is a Political Scam but a Public Relations Goldmine.''

Mr. Terry says the bill before us is a ''Political Scam.'' Specifically, he states:

> This bill, if it becomes law, may not save one child's life. The Federal courts are likely to strike it down. . . .The bill provides political cover in an election season to cowardly ''pro-life'' political leaders who have done little for the pro-life cause.

That is not me. I am quoting Randall Terry, the founder of Operation Rescue.

Let me repeat: ''This bill, if it becomes law, may not save one child's life. The Federal courts are likely to strike it down. . . .''

And he is right.

Mr. Terry then goes on to say:

> If the President and Congress want to accomplish a small, but real, step they should outlaw all abortions after 20 weeks—the age when a baby can live outside the womb.

Interestingly enough, his suggestion is similar to an amendment I offered on the floor of the Senate and in the joint House-Senate conference on this bill. This amendment would have banned all postviability abortions except and unless a doctor determines such an abortion is necessary to protect the life and health of the woman.

This is the way to go. If someone truly believes these abortions, which are not medically defined in the bill, should not take place, and if one believes the child is capable of life, then ban postviability abortions. I was prepared to see that enacted into law. But it was voted down twice, on the floor and in the conference committee.

I would like to take a moment to explain in detail why I think this bill is poorly drafted and is virtually certain to be struck down by the courts.

The conference report bill is unconstitutional for two reasons.

First, it attempts to ban the specific medical procedure it calls ''partial-birth abortion,'' but it fails to use the accepted medical definition of what surgical procedure constitutes partial-birth abortion. The refusal of the sponsors of the bill to accept the medical definition of intact D&E is revealing. It makes it clear they are not really intent or interested in banning intact D&E or D&X, but, rather, they seek to muddy the waters to make it harder for women to get legal abortion using other legal and acceptable techniques. That, in my view, is the underlying purpose of the bill.

The Supreme Court ruled in Stenberg v. Carhart that any ban must have a health exception. This bill clearly, despite many attempts by this senator and others to put one in, has no health exception. The other side has repeatedly opposed a health exception.

Here is what Justice O'Connor said in her deciding opinion in Stenberg v. Carhart:

> [B]ecause even a post-viability proscription of abortion would be invalid absent a health exception, Nebraska's ban on pre-viability partial birth abortions, under the circumstances presented here, must include a health exception as well. . . .The statute at issue here, however, only excepts those procedures necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness or physical injury. This lack of a health exception necessarily renders the statute unconstitutional.

Now, I must ask you, why would anybody, after this case, with the swing judge making that statement, draft a bill that so clearly violates the Supreme Court's decision? Justice O'Connor has very clearly said the ''lack of a health exception necessarily renders the statute unconstitutional.''

The fact the sponsors are ignoring the clear words of the Supreme Court is suspect to me. It is even more suspect given the fact that just last year the U.S. Government took the position in court that any ban on D&X must include a health exception. The Santorum bill, then, not only contravenes the Supreme Court but also flies in the face of the position taken by the U.S. Department of Justice.

Let me read from a brief filed by the United States in February of 2002 in Women's Medical Professional Corporation v. Bob Taft, a case in the Sixth Circuit involving an Ohio statute prohibiting late-term abortion including D&X. According to this brief:

> the Court [in Carhart] stressed that the Nebraska statute prohibited the partial birth method of abortion except where that procedure was ''necessary to save the life of the mother,'' . . . in violation of the Court's prior holdings in Roe v. Wade . . . and Planned Parenthood of Southeastern Pennsylvania v. Casey . . . that a State must permit abortions, ''necessary in appropriate medical judgment, for the preservation of the life or health of the mother . . . ''

The original brief even has the words ''or health'' underlined.

In other words, according to a brief filed by the United States Government last year, under Carhart, Roe, and Planned Parenthood, a State ''must'' provide a health exception for the woman. Yet we fly merrily in the face of that. It is ridiculous.

Supporters of the Santorum bill argue that they can ignore this language by throwing into the bill some questionable factual findings that a health exception is unnecessary. Baloney. They argue that these so-called findings make irrelevant the Supreme Court's constitutional determination in Carhart that a health exception is necessary.

The Framers of the Constitution did not intend that Congress be able to evade Supreme Court precedent and effectively amend the Constitution just by holding a hearing and generating questionable testimony from hand-picked witnesses. In fact, the Supreme Court has made crystal clear that Congress cannot simply ignore a constitutional ruling they dislike by adopting a contrary legislative finding and telling the Court that they have to defer to it. That is just what is being done here.

Let me quote Chief Justice Burger on this point:

> A legislature appropriately inquires into and may declare the reasons impelling legislative action but the judicial function commands analysis of whether the specific conduct charged falls within the reach of the statute and if so whether the legislation is consonant with the Constitution.

So make no mistake about it. You can say anything you want in the findings, and it isn't going to be dispositive

as to whether the statute meets the test of the Constitution of the United States.

I also want to quote from U.S. v. Morrison, 529 U.S. 598 (2000), a decision that struck down part of the Violence Against Women Act. I personally disagree with this decision, but it is controlling law. In that case, the Supreme Court held that ''the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality'' of the challenged provision of the Violence Against Women Act. That is on page 614.

So why are these findings in the bill? I believe the other side is well aware of U.S. v. Morrison and other cases. Why are they doing it this way then? There has to be a reason.

Here the sponsors of S. 3 are trying to do exactly what the Supreme Court said the Congress cannot do: Use congressional findings to do something that is clearly unconstitutional. The sponsors of this bill are effectively trying to overturn binding Supreme Court precedent and rewrite the Constitution by enacting a bill that on its face violates Stenberg v. Carhart. They have clearly overstepped their bounds.

Mr. President, one of the most disappointing aspects of this debate is that a majority of the House-Senate conference on this bill decided to thwart the will of the Senate and strip out language recognizing the importance of Roe v. Wade. This decision clearly unmasked the sponsor's clear intention in introducing this bill: to strike at Roe. The provision stripped out of the bill was a simple sense-of-the-Senate resolution. Let me read its exact language:

One, the decision of the Supreme Court in Roe v. Wade, 410 U.S. 113, 1973, was appropriate and secures an important constitutional right.

Two, such decision should not be overturned.

They struck this language out. Why? Because they want Roe overturned. That is the reason.

I am pleased that the Roe v. Wade amendment was added to the bill last March on a bipartisan vote of 52 to 46. Unfortunately, the House-passed late-term abortion bill lacked the language. The House refused to agree to it.

While I oppose the criminalization of safe abortion techniques in S. 3, I strongly support the Roe v. Wade language we added to that legislation.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator has used 20 minutes.

Mrs. BOXER. Mr. President, I yield 4 additional minutes and retain the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Senator from California.

In the past 30 years, since the Supreme Court upheld a woman's right to choose, a great deal has changed for women in America. But now, in 2003, we are about to push women back to where they were in the 1950s, a generation that I remember well, a generation of passing the plate to raise money for abortions in Mexico, a generation of back alley abortions, a generation of tremendous mortality and morbidity for women, a generation of fear. It makes no sense.

The fact that a majority of the House-Senate conference stripped out sense-of-the-Senate language that merely summarized Federal abortion law should be exhibit A for anyone who doubts that this bill is really a frontal political attack on choice in America.

I am also disappointed that the conference refused to accept a commonsense amendment I offered to the bill before us today. That amendment, as I said, would have banned all postviability abortions except if determined by the doctor that such an abortion was necessary to protect the life and health of the woman.

With that amendment, the sponsors of this bill could have gotten what they wanted legally. Why didn't they take it? The reason they didn't take it is because if you have an anti-choice bill with a nebulous, vague definition, you can chill all legal second trimester abortions.

Let me tell you one more thing about the amendment I offered. To ensure compliance with the amendment, we even provided that a doctor who would perform a postviability abortion on a woman whose health or life is not at risk could be fined up to $100,000. That amendment would have put medical decisions back into the hands of doctors but, at the same time, prevented abuses. In my view, if a doctor believes such a procedure is necessary to protect a woman's life or health, then he or she should be able to perform that procedure.

Why do some Senators believe that the Federal Government even needs to be involved in this issue?

Why is this legislation even necessary? Roe v. Wade clearly allows States to ban all postviability abortions unless it is necessary to protect a woman's life or health, and 41 States already have bans on the books. All States are free today to do so if their State legislatures so choose.

The fact is, abortions this late in the pregnancy are rare and usually performed under tragic circumstances, such as a brain outside of a child's skull or vital inner workings outside of the body that cannot be connected.

Mr. President, the whole focus of many in this Congress and in the conservative movement has been to give power and control back to the States and eliminate the Federal Government from people's lives. So anyone who believes in States' rights must now question the logic of imposing a new Federal regulation on States in a case such as this, where States already have the authority to ban postviability abortions and where a dominant majority of States—41—have already enacted such a law.

Is Federal legislation really necessary? No. I say to my colleagues that this clearly is a political bill designed to fan the flames and invade Roe v. Wade and weaken it substantially. It attempts to ban a medical procedure without properly identifying that procedure in medical terms.

Mr. President, I ask unanimous consent that a number of letters demonstrating that this legislation poses a serious threat to women's health be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ASSOCIATION OF REPRODUCTIVE HEALTH PROFESSIONALS,
Washington, DC, October 20, 2003.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: We are writing on behalf of thousands of health care providers to urge you and your colleagues to oppose federal legislation criminalizing safe abortion procedures (S. 3, the so-called ''Partial Birth Abortion Ban Act of 2003'').

This bill is deceptive, is based on a number of flawed assumptions, and is unnecessary. First, ''partial-birth abortion'' is not a medical term but a non-scientific and politically biased rhetorical expression invented by activists to convey misrepresentations about safe and medically necessary abortion procedures. The term ''partial-birth abortion'' is not used by any of the major national medical organizations, including the American College of Obstetricians and Gynecologists, the American Medical Women's Association, the American Public Health Association, and the Association of Reproductive Health Professionals (ARHP).

Second, the bill is deceptive because it does not specify any particular stage of pregnancy—contrary to assurances by its sponsors that the bill's intent is to focus only on third trimester abortions.

Finally, abortions during the third-term are already illegal in almost every state except to save the woman's life or health, and are rarely performed. This legislation is unnecessary and is an example of political ideology trumping science and appropriate medical decision-making.

Published literature attests to the fact that placing restrictions on abortion services is harmful to the health of women and that medical decisions should be left to health care providers. ARHP is concerned because S. 3 dictates health care methodology to the clinicians who must provide medical care under the most difficult of circumstances. Restrictions imposed by the government on abortion services will not reduce the need for abortion or the quantity of abortions performed, it will only make abortion less safe.

If you or members of your staff have any questions or would like additional information, please contact Wayne C. Shields at the ARHP office at (202) 466–3825 or wshields@arhp.org.

Sincerely,

FELICIA H. STEWART, MD,
Chair, ARHP Board of Directors.
WAYNE C. SHIELDS,
President and CEO.

OCTOBER 17, 2003.

U.S. SENATE,
Washington, DC.

DEAR SENATOR FEINSTEIN: The National Latina Institute for Reproductive Health (NLIRH) strongly opposes S. 3, the ''Partial-Birth Abortion Ban Act of 2003''. As an organization that is dedicated to ensuring the

fundamental human right to reproductive health care for Latinas, their families, and their communities, we cannot support the proposed legislation which would drastically inhibit a woman's right to choose, as well as prohibit medically safe procedures which are often necessary to protect and save the life of the woman.

NLIRH supports the right of every Latina to be in charge of her own life, to determine if and when to have children, and, to seek the full range of reproductive health options available. These health options include access to quality gynecological care, family planning and contraception, fertility treatment, and all abortion services. Contrary to popular belief, Latinas do access abortion services, and 51% of Latinas actively identify as pro-choice. While abortion may not be an option for every Latina, we support the right of every Latina to make her own personal and private decision about abortion and we also support efforts to restore public funding for abortion. For Latinas, accessing abortion services is often difficult already, due to cultural, linguistic, legal, and economic barriers, and banning safe abortion procedures would only further impede upon our rights to choose what is medically and personally appropriate for us.

Restricting and criminalizing any abortion procedure would undermine the fundamental human right to self-determination, and would endanger the lives of women for whom abortion may be medically necessary. Decisions regarding when to have children are often difficult, personal, and morally complicated, and should be made only by the woman.

We appreciate your attention to our concerns, and strongly urge you to vote against the so-called ''Partial-Birth Abortion Ban of 2003.''

Sincerely,

———.

MEDICAL STUDENTS FOR CHOICE,
Oakland, CA, October 19, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of Medical Students for Choice, a national organization representing more than 7,000 medical students and residents, I write to urge your opposition to H.R. 760/S. 3, the (so-called) Partial-Birth Abortion Ban Act of 2003.

Medical Students for Choice is dedicated to ensuring that woman's right to choose from a full range of reproductive health options is preserved. We believe that a physician, in consultation with the patient, should make the decision regarding what method should be used to terminate a pregnancy. Physicians need to have all medical options available in order to provide women with the best medical care possible.

We are opposed to H.R. 760/S. 3 because we believe this and other legislative and judicial restrictions to safe, medically accepted abortion procedures severely jeopardize women's health and well-being. We also oppose the bill because it fails to include adequate health exception language in instances where certain procedures may be determined by a physician to be the best or most appropriate to preserve the health of the woman. This bill ties the hands of physicians and endangers the health of women. Further, we believe that this bill is deceptive and represents a thinly veiled attempt to restrict women's access to all abortion procedures. ''Partial birth'' is a political term, not a medical term. Despite the anti-choice political rhetoric, this bill is neither designed nor written to ban only one procedure. The bill's prohibitions would apply well before viability and could ban more than one procedure. These so-called ''partial birth'' abortion bans are deliberately designed to erode the protections of Roe v. Wade.

Thank you for your attention to our concerns regarding the negative effect this legislation would have to a woman's right to a safe, legal abortion.

Sincerely,

ANGEL M. FOSTER, D.Phil.,
President.

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND,
Washington, DC, October 14, 2003.

Re Conference Report H. Rept. 108–288—The Partial Birth Abortion Act of 2003.

DEAR SENATOR: I am writing on behalf of the Mexican American Legal Defense and Educational Fund (MALDEF) to urge you to oppose Conference Report H. Rept. 108–228, the so-called Partial Birth Abortion Act of 2003 (the Act). MALDEF, a national nonprofit organization whose mission is to protect and promote the civil rights of the over 35 million Latinos living in the United States, believes this legislation is unconstitutional and harmful to women's health.

The Act is unconstitutional for at least three reasons. First, the legislation does not include a health exception. The Supreme Court has held that laws regulating abortion must adequately safeguard a woman's health. This legislation does not include such an exception. Contrary to the legislative findings indicating that a health exception to the ban is never necessary, many physicians have stated that this legislation would prevent them from performing procedures that are necessary to protect a woman's health. Second, the legislation is unconstitutional because the language of the ban is overly broad. The ban is not limited to specific medical procedures and actually could prohibit the safest abortion techniques in certain cases, thereby unduly burdening a woman's right to choose. Finally, determining which procedure is medically necessary is a medical decision that should be made by a physician and his or her patient, not by the federal government. The Supreme Court has emphasized the need for physicians to have adequate discretion to make these types of medical decisions.

The Supreme Court directly addressed this type of ban in *Stenberg* v. *Carhart*, 530 U.S. 914 (2000). In *Stenberg*, the Court found Nebraska's ban on so-called partial birth abortion unconstitutional because the legislation's language was overly broad and it lacked a health exception. The federal version of the ban now pending before you contains the same flaws and is similarly unconstitutional.

This legislation is an unprecedented attempt by the federal government to restrict women's access to abortion that ultimately jeopardizes the health of women. MALDEF strongly opposes this legislation and urges you to do so as well. If you have any questions please contact Angela Hooton at (202) 293–2828.

Sincerely,

ANTONIA HERNÁNDEZ,
President and General Counsel.

NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH,
Brooklyn, NY, October 17, 2003.

U.S. SENATE,
Washington, DC.

DEAR SENATOR FEINSTEIN: The National Latina Institute for Reproductive Health (NLIRH) strongly opposes S. 3, the ''Partial-Birth Abortion Ban Act of 2003''. As an organization that is dedicated to ensuring the fundamental human right to reproductive health care for Latinas, their families, and their communities, we cannot support the proposed legislation which would drastically inhibit a woman's right to choose, as well as prohibit medically safe procedures which are often necessary to protect and save the life of the woman.

NLIRH supports the right of every Latina to be in charge of her own life, to determine if and when to have children, and to seek the full range of reproductive health options available. These health options include access to quality gynecological care, family planning and contraception, fertility treatment, and all abortion services. Contrary to popular belief, Latinas do access abortion services, and 51% of Latinas actively identify as pro-choice. While abortion may not be an option for every Latina, we support the right of every Latina to make her own personal and private decision about abortion and we also support efforts to restore public funding for abortion. For Latinas, accessing abortion services is often difficult already, due to cultural, linguistic, legal, and economic barriers, and banning safe abortion procedures would only further impede upon our rights to choose what is medically and personally appropriate for us.

Restricting and criminalizing any abortion procedure would undermine the fundamental human right to self-determination, and would endanger the lives of women for whom abortion may be medically necessary. Decisions regarding when to have children are often difficult, personal, and morally complicated, and should be made only by the woman.

We appreciate your attention to our concerns, and strongly urge you to vote against the so-called ''Partial-Birth Abortion Ban of 2003.''

Sincerely,

SILVIA HENRIQUEZ,
Executive Director.

NATIONAL BLACK WOMEN'S HEALTH PROJECT, INC.,
October 20, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the Black Women's Health Imperative (formerly National Black Women's health Project), I am writing to convey our opposition to H.R. 760, the Partial-Birth Abortion Ban Act of 2003.

As the only national organization that is solely dedicated to the health of the nation's 19 million Black women and girls, the Black Women's Health Imperative (the Imperative), has focused on issues that disproportionately affect Black women from access to healthcare, inclusive of reproductive health care. The Imperative has been in the forefront advocating for a comprehensive agenda that includes the full range of medical and socially available technologies and services for fertility management.

We believe that H.R. 760 would restrict safe, medically acceptable abortion procedures that would severely endanger women's health and well-being, disproportionately affecting low-income African American women. Moreover, we feel that this legislation fails to include adequate health exception language in instances where certain procedures may be determined by a physician to be the most appropriate to preserve the health of the woman.

For the past 20 years, the Black Women's Health Imperative has been instrumental in highlighting disparities in health and will continue to play an essential role in helping to shape policies that seek to improve African American women's overall health. On behalf of our constituency, we urge the United

States Senate to oppose H.R. 760, the Partial-Birth Abortion Ban Act of 2003.

Sincerely,

LORRAINE COLE, PhD.

[From Medscape General Medicine, June 25, 2003]

THE FEDERAL BAN ON SO-CALLED ''PARTIAL-BIRTH ABORTION'' IS A DANGEROUS INTRUSION INTO MEDICAL PRACTICE

(By Paul D. Blumenthal, MD, MPH)

Congress has passed the ''Partial-Birth Abortion Ban Act of 2003,'' the first federal legislation ever enacted that bans abortion procedures. This unprecedented intrusion by Congress into medical practice will reduce access to second-trimester abortions and defines the doctors who perform them as criminals. Moreover, by undermining a woman's right to select the reproductive healthcare most appropriate for her and interfering with a physician's ability to make medical decisions, Congress derogates the physician-patient relationship.

Proponents of this law claim that it bans only a particular procedure. However, the legislation does not define what is being banned in such a way that a physician can know exactly what is prohibited. There is no formally recognized medical procedure to which the term ''partial-birth abortion'' used in this legislation applies; it is therefore vague and medically incorrect. None of my colleagues know or could state whether the abortion procedures they now perform are covered under this law. Indeed, as I read the definition of the banned procedures, any of the safest, most common abortion methods used throughout the second trimester of pregnancy could proceed in such a manner as to be outlawed. One can only assume that by intimidating medical providers with the constant threat of criminal accusations, the intent of this law is to frighten the medical community—the same community that swears an ancient oath to use its knowledge and skills to serve and protect the lives of its patients—from performing pregnancy terminations at all.

The practice of high-quality medicine requires that physicians be knowledgeable about and able to perform variety of procedures to accomplish a given treatment or therapy. Planning any procedure is done in consultation with the patient, and it is based on the medical judgment, experience, and training of the provider, and the individual circumstances of the patient's condition. Sometimes, as a result of developments during a surgery or in a patient's condition, it becomes necessary to adapt and choose a different course or modify the procedure as it progresses. These decisions are often quite complex and mandate that physicians use their best professional and clinical judgment, most often right on the spot. These are decisions that should be made by physicians and their patients stone. Indeed, when performing surgery, there is not time for a call to Congress, the Supreme Court, or anyone else in order to obtain clarification of the statutory intent or to request a waiver. This law evokes a preposterous image of physicians with their attorneys present in the operating room advising and counseling them at each step, and perhaps even in the middle of surgery suggesting a physician alter a technique deemed best for the patient to avoid committing a federal crime. Physicians and surgeons should be allowed to practice their art in accordance with time-honored peer-reviewed standards and with only the interests of the patient at . . . .

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. I yield myself such time as I may consume.

Mr. President, I have listened to this debate on both sides, and I continue to hear a lot of the same things. I just think it is important to set the record straight with respect to what many have heard today.

First, the Senator from California, Mrs. BOXER, has objected to my using the term ''killing'' the child when describing the diagrams of the partial-birth abortion. So I wanted to make sure I was not using terms that were inflammatory or inaccurate. She said I was referring to the fetus as a child instead of the fetus. I looked up the definition of fetus: ''An unborn child.'' So I don't think referring to a fetus as a child is incorrect when the definition of a fetus is ''an unborn child, from the third month until birth.'' This child is obviously in excess of 3 months into gestation, so it is obvious I am using a correct term.

She objected to me using the term ''killing.'' I will quote some people in the abortion movement to justify my using of this term. This is from Faye Wattleton, former president of Planned Parenthood:

I think we have deluded ourselves into believing that people don't know that abortion is killing. So any pretense that abortion is not killing is a signal of our ambivalence, a signal that we cannot say, yes, it kills a fetus, but it is a woman's body and ultimately her choice.

So say even those in the abortion movement.

Judy Arcana, a pro-choice author and educator, said:

Sometimes a woman has to decide to kill her baby. That is what abortion is.

I understand how people want to avoid talking about the baby, the child, the fetus, or whatever term you feel most comfortable using. It is what it is. It is a human being. I understand we like to use terms that don't refer to the human being. In fact, in all the debate we have heard today on the other side, we hear this concentration and talk about the woman and the right to choose. We hear very little discussion about what the choice is all about. I know most Americans like choices and they like the right to choose. But I think it is important that people know what the choice is all about, what we are choosing.

What we are choosing here is to kill a human being. Yet many on the other side just don't want to consider what is being chosen here. What many on that side like to think is that we are choosing a medical procedure. The Senator from New Jersey earlier referred to it being similar to the removal of a cancerous intestine. Maybe some people look at babies as this sort of cancer or this thing that they don't want anymore, that somehow affects them in some way. But I think it is important for us, if we are going to make decisions that impact millions of lives, to face up to what we are doing and we don't try to couch it in terms that sound nice, that sound American—words such as ''freedom'' and ''choice'' and words such as that.

What we are choosing is to take away a fundamental right of every person in America, and that is the right to life. So, yes, I will use the term ''killing'' because that is exactly what it is, the extinguishing of a life. It is a child, it is a baby, an infant, a fetus, a living human being.

Second, the Senator from California has suggested that this is not a medical term. Well, I had my staff run and look it up in Webster's Medical Dictionary. In Webster's, the term ''partial-birth abortion'' is in fact defined:

Abortion in the second or third trimester in which the death of the fetus is induced after it is passed part way through the birth canal.

As to this idea that it is not a term used, it is in the dictionary. It is interesting that the Senator from California would say that this is not a medical term, that this doesn't exist. Yet she has repeated many times that this thing that doesn't exist is a great threat to women. If we abolish something that doesn't exist, somehow or another this is a horrible thing we are doing to women. That doesn't necessarily make sense to me. Then she goes on and says this thing that doesn't exist—she claims it doesn't exist—is medically necessary at times. I have a hard time grappling with this argument in the alternative. First you argue it doesn't exist, and then it does exist and it is medically necessary.

The Senator from California, last month, put in the RECORD statements from Physicians for Reproductive Choice and Health, and in this letter in the CONGRESSIONAL RECORD, they say:

So-called partial-birth abortion does not exist. There is no mention of the term partial-birth abortion in any medical literature.

That is not true.

Physicians are never taught a technique called partial-birth abortion; therefore, they are medically unable to define the procedure. We know that there is no such technique as partial-birth abortion.

She makes the argument that it doesn't exist, and then she argues that it is necessary. I don't know how you can have it both ways. It either does exist and it is necessary or it doesn't exist and it is not necessary. We find interesting arguments that don't seem to hold up upon closer examination.

Another thing that doesn't hold up under examination is the repeated attempts by those who oppose this legislation to misinform the public as to what it does. I am not only going to go through the most recent example of this, but the chronology of events around this legislation, which started with Charles Canady in the House of Representatives and Bob Smith in the Senate, who did an outstanding job.

I remember when Bob first came to the Senate floor. He was ridiculed as being this extreme person who would bring this medical procedure to the floor and it was an outrageous thing for a Senator to do. He had the courage to stand up for his convictions and follow through. But I remember at hearings, they were saying this procedure

didn't exist, first, and, second, the anesthesia given to the mother would kill the baby, and that this was only done on mothers who were in a position where the baby was badly deformed or the mother's health was in danger, and it was only done a few dozen times a year.

Every one of those things I have mentioned has been debunked. They are simply not true. Yet here we are just days away from passing this bill again in the Senate for the third time, but the fourth time we have debated, and we see a statement by Planned Parenthood last month that says:

> S. 3 is a bill to outlaw the medical procedure used primarily in emergency abortions.

''Primarily in emergency abortions.'' Let me, again, without reading the comment below, state this is a 3-day procedure. This is a procedure where the woman presents herself to the abortionist, and I say abortionist because this procedure is only done in abortion clinics. It is not done in hospitals, as this organization that Senator BOXER submitted for the RECORD said. They don't teach this procedure in medical school. It was designed by an abortionist for the convenience of the abortionist.

She presents herself to an abortionist who gives her something to help dilate her cervix and tells her to return 2 days later.

Can you possibly imagine someone in an emergency situation presenting themselves to a health care professional who is in an emergency situation because of her pregnancy, who is given something to dilate her cervix and sent home for 2 days?

On the face of it, it makes no sense. But yet they persist in spite of the fact that Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, is quoted in the New York Times on February 26, 1997—1997, not February 26, 2003, 2002—6½ years ago:

> Mr. Fitzsimmons recalled the night in November 1995, when he appeared on ''Nightline'' on ABC and ''lied through my teeth'' when he said the procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged.

''Lied through my teeth'' in 1995, he said, on ''Nightline.'' But in 1997, he came clean. He said:

> 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, Mr. Fitzsimmons said. The abortion rights folks know it, the antiabortion folks know it, and so probably does everyone else, he said in the article in the Medical News, an American Medical Association publication.

They knew it. In 1997, they knew this. A month ago they were still saying it.

I don't mind having a good honest debate, and the Senator from California, Mrs. FEINSTEIN, brought up legitimate legal issues, a proper, good debate, but when the organization that is principally behind the stopping of this bill a month before this bill gets presented continues to try to misinform the American public, I think you have to ask yourself a question as to the credibility of that organization and the credibility of their case.

There are a couple other comments that were made on which I have to set the record straight. The Senator from California, Mrs. BOXER, said this abortion procedure needs to remain legal out of respect for women and ''because it gives the fetus dignity.''

Anyone who looks at this abortion procedure and suggests that pulling a child feet first through the birth canal at 20 weeks of gestation, who otherwise would have been born alive, and have a pair of scissors thrust in the base of their skull and have their brains suctioned out is an act of dignity I think has to rethink what the word ''dignity'' means. To treat any human being, to treat any living thing in that fashion is insulting to that life. It certainly is not an act that I would call a dignified act or an act that shows respect for that child.

A lot has been made by both Senators from California and others about the need for a health exception. This gets in to the meat of this debate with respect to its constitutionality. The Court did state that there were two reasons for the Nebraska law on partial-birth abortion to be overturned. One was that it did not have a health exception that was required by Roe v. Wade.

Step back and think about this debate in a larger context. I don't think most Americans, if I can put up the last chart of the diagram of the procedure—I don't think most Americans contemplate that Roe v. Wade covers abortions done late in pregnancy by healthy mothers with healthy babies who would otherwise be born alive being treated in such a brutal and barbaric fashion. I don't think most Americans see the scope of Roe v. Wade as including that type of abortion but it does.

That is really the wake-up call for America here: That Roe v. Wade is not what they claim it to be. If it is later in pregnancy, it is mothers who have health issues or the child has health issues. No, that is not what we are talking about here. We are talking about there needs to be a health exception, according to this court, for a procedure done late in pregnancy on healthy mothers with healthy babies treated in a brutal fashion such as this. I don't think most Americans would have said: Gee, we need a health exception here or Roe v. Wade covers this issue, but that is what they say; that based on the evidence they compiled in the Federal district court in Nebraska, the court examined the evidence and determined that a health exception was necessary, based on the evidence that was submitted at trial.

We believe strongly the evidence submitted at trial was incomplete; that there has been a lot of evidence submitted to the Congress and in publications that is counter to what the Nebraska district court found, and that the overwhelming weight, and I would argue the dispositive weight, of evidence presented to this Congress, which is a finder of fact just as the district court is, is that it is never medically necessary.

The Senator from California has said the American College of Obstetrics and Gynecology has written a letter saying that it may be medically—that is the term, ''may be medically necessary.'' Yet in the letter she has entered into the RECORD, which she has entered many times before, they do not present one example of a case in which it would be medically necessary.

For 8 years I have stood on the floor of the Senate and have asked for such a case from the American College. To date, the American College has never replied to my request. They have not sent one case to be submitted into this RECORD as to where this may be medically necessary actually is medically necessary.

One has to wonder the validity of the statement that it may be medically necessary if they can't find a case in fact where it is. Cases have been submitted by both Senators from California where some obstetricians have said this was medically indicated in this case. For every 1 letter that has been submitted, we have had 6, 7, 8, 9, 10 letters from maternal fetal medicine specialists—they are specialists in high-risk pregnancies—perinatologists who say not only aren't those cases good cases but they are contraindicated.

It is bad medicine. So we do not really have any uncontrovertible case where it is medically necessary. I think that is important for the Court to consider. I think it is also important for the Court to consider that the Congress, which has had multiple hearings of fact, unlike the Court, was able to make a determination and have a vote overwhelmingly in both the House and Senate that these facts are as we say they are. I believe we have a right as a body to make that determination.

We hope, just as we listen to the Court in matters of law because that is their responsibility, that as finders of fact they would listen to what we come up with. I know many on the Court think it is a one-way street. They just tell us what they think and we have to do whatever they tell us and we have no input into what the Court decision is.

That is not the way our Framers envisioned it. I found it sort of humorous that the Senator from California said the Framers did not envision the Congress amending the Constitution by legislative findings. I will assure the Senator from California that our Framers did not envision the Supreme Court amending the Constitution by judicial fiat but they do. Roe v. Wade is a case in point.

So there are lots of things our Framers did not envision, I say the most

grotesque of which is the Court activism that we have seen across the street.

With respect to this health exception, it is overwhelmingly clear that it is never medically necessary.

Why do we go to such length in saying that a health exception is not medically necessary? Well, because if we had a health exception to this bill—and many have suggested, just put in a health exception. I mean, are you not concerned about women's health?

Well, I do not think anyone is not concerned about women's health. In fact, the evidence presented is overwhelming that this procedure is a riskier procedure than other abortion procedures and is never medically indicated. So if one looks at the overwhelming body of evidence and they are concerned about women's health, they would be for banning this procedure because it is never medically indicated. It is done only for the convenience of abortionists and is, in fact, unhealthy. So if one's concern is women's health, then they would be for banning this procedure.

The interesting point is, why are they pushing so hard for this health exception and why are we resisting it so much? Well, what does the health exception mean? This is the little secret that to those who have not followed the abortion debate may say, what is the big deal? Why do you not put in a health exception? That sounds reasonable.

The problem with the health exception is that it is so broad an exception it swallows up the bill because a health exception—when Roe v. Wade was decided, there was a companion case decided called Doe v. Bolton, and in that case health was defined as: Medical judgment may be exercised in the light of all factors: physical, emotional, psychological, familial, and the woman's age relevant to the well-being of the patient. All of these factors may relate to health. This allows the attending physician the room he needs to make the best medical judgment.

So over time what this has been interpreted to mean is health means anything: emotional, physical, spiritual, psychological, whatever it is, stress, anxiety. Some have even brought it to economic concerns.

Health is an exception that swallows the rule. So as long as the doctor says the woman obviously exhibited anxiety, stress, discomfort, she had a headache or whatever, it does not matter. It does not say severe. It just says anything. So what this provision did, and that is what the Court wanted to do, was to give absolute latitude to the doctor to do whatever the doctor wanted to do in consultation with the patient. So the health exception is no exception at all. It is a barred antiprohibition. So understand that the health exception bars the bill, stops the bill from having any effect. So that is why we resist.

In our case, we think we are outside this health exception because it is actually unhealthy for the woman and it is never medically necessary.

Before I move on to the next topic, I want to go through some of the health risks as outlined—we have a series of letters which I will submit for the RECORD—that partial-birth abortion poses serious health risks for women.

First, as I mentioned before, the physician has to dilate the cervix a couple of days before the abortion is performed, creating a risk, according to several physicians, to an incompetent cervix, a leading cause of future premature deliveries or infection, and is the main cause of subsequent infertility.

As we can see, the baby is brought in feet first through the birth canal. When they reach in to pull the baby out of the uterus—reaching into the uterus to pull the baby's feet through the cervix is a dangerous procedure, risking the tearing of the uterus. It poses an increased risk of uterine rupture, abruption, amniotic fluid embolus and trauma to the uterus as a result of converting the child into a footling breech position. Grabbing the baby's legs could perforate the uterus, which could result in severe hemorrhage and possibly a hysterectomy. Then the procedure that follows where the Metzenbaum scissors are placed in the base of the baby's skull to kill the baby and puncture the baby's skull, putting the scissors into the baby's brain is a partially blind procedure. As we can see, the physician has no way of seeing where those scissors are entering the baby or if they are even entering the baby.

This blind procedure with a sharp instrument may expose the uterus to sharp bone shards, bone shards from the baby's skull upon the puncture. They may lacerate different parts of the woman's body and cause hemorrhaging and could necessitate a hysterectomy to save the mother's life. This is not a riskless procedure. This is a risky procedure.

I reiterate, this is not taught in medical schools. There are no peer review journals published that suggest this is a superior way, much less an appropriate way, to deal with an abortion. There are no studies that have been done, that are controlled in nature, to show that this is a proper procedure. This is a rogue procedure. It is medically unhealthy and it is medically unnecessary.

Both Senators from California talked about their recollection of the pre-Roe v. Wade days. The Senator from California, Mrs. BOXER, suggested the debate we had a month ago with respect to the number of maternal deaths as a result of abortion prior to Roe v. Wade were women in all States—in some States, abortion was legal, not in all States—that women as a result of that had higher incidents of maternal death. The Senator from California continued to indicate that there were some 5,000 deaths per year as a result of abortion not being legal everywhere in the United States.

I entered information in the RECORD from the Bureau of Vital Statistics, including more recently the Centers for Disease Control, suggesting at the time of 1972, prior to the decision being made, there were 83 maternal deaths. The Senator from California suggested that is only because the only reported deaths were States in which abortion was legal.

That is not the case from the statistics. Had that been the case—it is not, according to the information we have gathered, but had it been the case, then why were there 1,231 reported deaths from abortion in 1942, where abortion was not legal in any State in the country?

So if her information was correct, if they were only reporting cases in States in which abortion was legal in 1942, there would have been no deaths because there were no States in which abortion was legal. But in fact they were reporting from States where abortion was legal and illegal.

What you saw from 1942 down to 1972 was a decrease, from 1,231, almost straight line down to 83 deaths in 1972. Why? Because medicine improved. Antibiotics, first and foremost, is probably the principal reason, because of infection, but there were a whole variety of reasons. The improvement of medical science is why those numbers continued to decrease. So the idea that somehow or another there were thousands of women dying prior to Roe v. Wade is just not backed up by the facts.

We have an obligation; as much as we would like to paint a picture for the eyes particularly of young people who didn't live then, as much as we would like to paint this picture to young people to convince them of the justice or righteousness of the right to abortion, that things were really bad, that women were dying in droves, there was a horrible situation prior to Roe v. Wade, we cannot. You have to deal with the fact that was not the case with respect to the amount of maternal deaths.

There may be other factors that you consider and you are welcome to make the arguments about how people felt at the time. That is fine. But you cannot play with the facts to present a case that is not true.

I want to quote Bernard Nathanson who was, at the time of 1972, an abortionist. He says:

> How many deaths were we talking about when abortion was illegal? In N.A.R.A.L.—

A group he helped found, the National Abortion Rights Action League—

> we generally emphasized the drama of the individual case, not the mass statistics, but when we spoke of the latter it was always ''5,000 to 10,000 deaths a year.'' I confess that I knew the figures were totally false, and I suppose the others did too, if they stopped to think about it. But in the ''morality'' of our revolution, it was a useful figure, widely accepted, so why go out of our way to correct it with honest statistics?

This is a very serious issue. I would argue it is the greatest moral issue of

our time. I think we have an obligation to use honest statistics, at least honest statistics—honest statistics, honest cases. The Senator from California brought up the case of Vicki Wilson, as she has repeatedly throughout this debate over the past several years. She said Vicki Wilson needed a partial-birth abortion because of a medical condition she and the baby had. Let me quote from Vicki Wilson's own testimony to Congress.

> My daughter died with dignity inside my womb, after which the baby's body was delivered head first.

Not feet first. Vicky Wilson did not have a partial-birth abortion. Yet it is a case that is continually used here to justify a partial-birth abortion being kept legal.

The case was also made she needed to have one done. Quoting Vicki Wilson:

> I knew I could go ahead and carry the baby until full term but knowing, you know, that this was futile, you know, that she was going to die, I felt like I needed to be a little bit more in control in terms of her life and my life.

Vicki Wilson did not have a medical emergency or a health need, from the standpoint of what most people would consider to be a health need, which is physical health.

I caution, when people listen to this debate, that they listen to the debate of what is real, what the facts are, and what the consequences are. There is no question in my mind that the consequences of this debate are the most profound consequences we face as a country and more specifically as a culture as to who we are. Because ultimately what this is about, banning this procedure, is about who we are going to accept in our human family. Do we accept this little baby? You can pull out the photo Senator BROWNBACK showed earlier. If we can accept this little baby at 20 weeks or 21 weeks into our human family, or do we say no, no, you may look like us, you may have hands and feet and you may have a heartbeat, you may be perfectly normal, you may have looked like us when we were that age, but we are not going to include you in the human family. We are not going to call you an American. We are not going to give you the rights provided to you under the Constitution.

It really is about who we accept. I would argue it is about who we are going to love, who we are going to nurture, who we are going to support.

Today in the Senate we have a chance to say in some very small way—and I admit, I will agree with the Senators from California and others that this will do very little to limit the number of abortions. I agree with that. But in some small way we are acknowledging this little child, this little child is a member of our family.

The Senator from Iowa, Senator HARKIN, as well as the Senator from California, Senator FEINSTEIN, talked at length about the striking of the Roe v. Wade language from this bill that passed the Senate. The language stated Roe v. Wade was the law of the land and should continue to be the law of the land. It passed by a couple of votes here in the Senate.

I think many of us found that to be somewhat in contrast with the underlying purpose of this bill, in the sense that this was a very small tip of the hat, recognition of the humanity of this child, we were not going to treat this child in this grotesque fashion. That is all.

It doesn't say that child couldn't be killed in some other fashion that was medically safer for the woman. But it says when it comes to delivering a child and having that child just inches away from being born, we were not going to go that far. This, really, was too close. So we gave a small nod, a small nod to the humanity of that child in the process of being born.

So many of us thought, sort of restating this sense of the Senate about the primacy of Roe v. Wade was an insult to even this little nod that I would argue is outside of Roe v. Wade. Unnecessary, is what it is. Roe v. Wade is, according to the Court, how they will decide abortion cases.

I vehemently disagree with them and I will continue to fight on this floor and anywhere else I can to make sure that law, that Court decision taking the decision away from the American public—which is where it was prior to Roe v. Wade—taking the decision of great moral import away from the American public, is returned to the people.

We just saw an election in California where the people rose up and said they wanted to take back control of their State. We don't have such a process here. The Court is insulated from the public rising up and saying no, we don't like your decision—or even from the Congress. It takes a huge amount of effort. It is a very difficult process to amend the Constitution, pass both Houses of Congress by a constitutional majority, 67 percent; plus get three-quarters of the States to ratify a constitutional amendment. Yet this Court by a whim can amend the Constitution with five votes, and did so. They amended the Constitution like that.

I don't think that is the way the Framers wanted it. I think they set forth a constitutional amendment process because that is the way they wanted to create new rights or change the Constitution, not to allow the Court to do it.

I have likened the Roe v. Wade decision—I was fortunate enough Sunday to be in St. Louis, MO and had the opportunity to walk by the courthouse, which is right in downtown St. Louis, where the Dred Scott case was initially decided. That is where the district court was.

You look back, and people in St. Louis have great pride in the fact that case was there, and many Missourians stood up and fought against what that case was all about. I would argue that Roe v. Wade is exact in kind as the Dred Scott decision. Like the Dred Scott decision, Roe v. Wade—unlike, if you think back, and think of any other major Supreme Court decision, where rights, individual rights were dealt with—almost every other Supreme Court decision in which individual constitutional rights were dealt with, over time the public grew to accept. That is because over time, the public grew to understand the justice of that decision.

The most recent one is civil rights decisions. But in Dred Scott the abolitionist and so many others knew of the injustice—yes, it was the law; that is what the court said. They decided the case. There were too many in this country who said, no, I don't believe that is right.

It is amazing if you see the polling of young people in America, there is actually a higher pro-life sentiment among young people than older people, but you would think people who grew up, knowing this was the law—because when people hear the law they think, if it is the law, it must be right; it must be just; it must be ethical; it must be moral; otherwise, it would not be the law. The law is a great teacher. It is the greatest teacher to young people as to what is right and what is wrong. Young people, knowing the law, still say there is something inside me that says this is not right. Just like young people in the 1850s and 1860s, who said there is something inside me that tells me this is not right.

Abraham Lincoln said a house divided against itself cannot stand. So here we are today, with the American public deeply divided on this issue, deeply divided because so many people for 30 years have only known the law and the popular culture. Does the popular culture depart at all from what the law is? Is there anything you see coming out of Hollywood or New York that at all disagrees with this, the Supreme Court notion of what the law should be? Of course not. Yet this feeling is out there, this sentiment, like the abolitionists of the 1860s who said it may be the law, but in this case that does not make it right. That does not make it just. So while we had a great debate on Roe v. Wade, this will have no impact. It is just a debate that will continue to go on.

The final point I make about this is one I have made before. Why are Dred Scott and Roe v. Wade alike? Because the Dred Scott decision put the rights, the property rights, the liberty rights of the slaveholder above the life rights of the slave. In our founding document, the Declaration of Independence, Thomas Jefferson wrote: We are endowed by our creator with certain inalienable rights. Then he listed them: The right to life, liberty, the pursuit of happiness. In that order—life, liberty, pursuit of happiness.

In Dred Scott, we took the fundamental right, life—for without life you cannot have liberty; without liberty you cannot pursue happiness. So they are put in order for a reason. What

Dred Scott did was take the life rights of a slave and put them under the liberty rights of someone else.

And Roe v. Wade, the reason I compare it to Dred Scott, does the same thing. It puts the life right of this little human being that we have decided not to accept in our society as a person and subjugates them to the liberty rights, the choice of someone else, in this case the baby's mother.

The Senator from California says why don't we trust women more? I do. But you cannot ignore the fact that one-third of all pregnancies in America end in abortion. This is a very small piece of legislation, I will admit that. But it is important just for a brief moment, just for some rather small piece of legislation that affects, if you consider 1.3 million abortions, less than 1 percent of all abortions, far less, .1 of all abortions, but in some small way it begins to recognize the humanity that we have to display toward this child and not treat this child in such a brutal fashion.

I conclude by thanking my colleague from California and all those who have been involved in this debate over the years. We have had a vigorous debate. That is important in the Senate that we debate these very important issues. I thank all those on both sides of the aisle who have engaged in that. I thank Senator SMITH for his courage in bringing this bill up; Senator DEWINE, in particular, who has been a tremendous champion on this issue; along with Senator BROWNBACK, Senator ENSIGN, Senator VOINOVICH, and so many others who have come to the Senate and taken on this issue.

I thank my staff: Heather MacLean, for the tremendous work she has done in supporting me in every way possible in getting the information I need when I need it, to carry this debate forward; and Michelle Kitchen; prior to her, Wayne Palmer, my legislative director; and all the members of my staff.

Finally, I thank all who have been sending your prayers to Washington, DC, through this debate. They have made a difference.

Mr. DOMENICI. Madam President, I rise today to support adoption of the conference report to accompany the ''Partial-Birth Abortion Ban Act of 2003.'' I compliment the distinguished Senator from Pennsylvania, Mr. SANTORUM. He has carried this bill and I offer him my congratulations for his efforts in this regard.

I have always been a supporter of the rights of the unborn. And, after many years of debate on this issue, I am very pleased that this body is going to pass this measure, and that the President has said he will sign it.

In March, I came to the floor and I discussed this very issue. At that time, I quoted one of our very distinguished former colleagues, Mr. Daniel Patrick Moynihan. Senator Moynihan described the Partial Birth Abortion procedure as follows:

> I think this is just too close to infanticide. A child has been born and it has exited the uterus. What on Earth is this procedure?

That is what the distinguished Senator from New York said.

And, the Senator was right. This debate is not about Roe v. Wade; this is not a pro-life or pro-choice vote. This debate is about humanity and necessity. The procedure of partial- birth abortion, to put it candidly, is cruel and inhumane. The issue here today is whether we should prohibit a form of abortion that borders on infanticide. As Senator Moynihan said, ''what on Earth is this procedure?''

By now, many Americans are uncomfortably aware of the details of a partial-birth abortion. They have heard the testimony of doctors who perform this procedure and nurses who witness it. They have also most likely seen information ads or read descriptions of the procedure. Maybe they have even watched us debate the issue on prior occasions. I will not go through the details of the procedure. I will only say that at a minimum it is cruel and inhumane, and when this debate is completed, I hope that the Senate will take a stand and ban a procedure that diminishes the life of a child that has been born and has exited the uterus.

This debate today is about protecting a fetus, a baby, a life that is now destroyed in a cruel and inhumane way. It is about a life that is unnecessarily destroyed and it need not happen. We are not really talking about banning abortion here, we are talking about banning a form of infanticide and it is for this reason that I will gladly vote in favor of the ''Partial Birth Abortion Act of 2003.''

Mr. VOINOVICH. Madam President, today is a glorious day. Today is the day that we finally send the Partial-Birth Abortion Ban Act to the President for his signature, and we can now begin to save human lives. Today's vote is only marred by the fact that it took us so long to get here. Just imagine the number of lives we could have saved if we had sent this bill to the President 8 months ago, when we first passed it.

The subject of partial-birth abortion is not a new one for me. Eight years ago, when I was Governor of Ohio, we were the first State to pass a partial-birth abortion ban, which was unfortunately struck down by the courts. Subsequent to that, I watched the partial birth abortion ban make its way through the 104th and 105th Congresses, only to be vetoed by President Clinton. After I arrived in the Senate in the 106th Congress, I gave a speech in support of a partial birth abortion ban that passed both chambers but never made it to Conference. I am overjoyed that we finally got this done in the 108th Congress!

During debate on this bill, I listened to my colleagues quote statistics and spout off facts about medical necessity and the health of the mother. Well, we can all quote different statistics, but the bottom line is that there is no need for this procedure. Most of these partial birth abortions are elective. They take 3 days to complete and are never medically necessary.

The victims of the partial-birth abortions are human beings. I find it interesting that they are sometimes called living fetuses. Whether they are called babies or fetuses, no one seems to dispute the fact that they are living. In fact, they are human babies and they can feel pain.

I would like to thank all of my colleagues who voted for this very important legislation. We can certainly be proud of what we have accomplished today!

Mr. BUNNING. Madam President, today I come to the floor with joy in my heart knowing we will finally put an end to the death of unborn children through partial-birth abortions. I am joyful that our efforts will not go in vain this year because President Bush is eager to sign this bill.

But my heart is also heavy knowing that this procedure has gone on too long. Too many children have died in this horrific way. The vast majority of Congress has been trying for the better part of a decade to ban partial-birth abortions but has been stymied by President Clinton and the current minority party in the Senate. I am glad the days of obstruction and vetoes have come to an end and this bill will become law.

I can think of no more clear-cut case between right and wrong. All one needs to know is a description of the process to understand how wrong partial-birth abortions are. First, an abortionist induces dilation of the mother so the baby can be almost fully delivered. Next, the baby is delivered to the point that only its head remains inside the mother. Third, the child is stabbed in the back of the skull with scissors or some other sharp object. Finally, a tube is used to suck the child's brains out of the hole left by the stabbing.

There is no gray area or middle ground when it comes to this procedure and there are no justifications for it. The child is delivered to within inches of breathing its first breath. If the doctor lets the head of the baby slip just an inch or two, the child would be born and the doctor would be prosecuted for murder. Nevertheless, some abortion supporters cannot see through the fog of their fervor to realize just how wrong that is.

I do not mean to suggest that there is widespread support for partial-birth abortions. There is not. The vast majority of the American people want the procedure to end. Congress has voted overwhelmingly many times in the last few years to enact a ban like the one before the Senate today. Most doctors oppose the procedure including quite a few who perform other forms of abortion.

There is no evidence that this procedure is ever necessary to preserve the health of the mother. In fact, it is quite dangerous. Babies being killed in this manner can feel the pain of its skull being pierced and have been seen

writhing in pain, flailing tiny arms and legs until its skull collapses after its brains have been vacuumed out. I do not understand how anyone can believe this should go on.

Doctors and medical researchers have made great progress in fetal health care. Babies can be operated on while still in the womb. Premature babies can survive outside their mother at younger and younger ages. With those and other advancements Americans are continually placing a greater value of life. By passing this law Congress will further advance the cause of life and send an unmistakable message that ours is a just society that values every human being and believes in the sanctity of life.

I look forward to President Bush signing this bill into law. I am proud of his support of this bill and for life.

Mr. NICKLES. Madam President, as I am sure all of my colleagues know by now, the procedure banned by this bill—the partial-birth abortion procedure—defies description. I am not going to go into the terrible details of this procedure which is performed on a living child late in pregnancy.

This is a truly shocking procedure—absolutely indefensible. The term ''partial-birth'' is perfectly accurate. Some prominent defenders of partial-birth abortions insist that anesthesia kills the babies before they are removed from the womb. This myth has been refuted by professional societies of anesthesiologists. In reality, the babies are alive and experience great pain when subjected to a partial-birth abortion.

It has been asserted that this procedure is the only way to prevent serious health damage. However, partial-birth abortions are performed thousands of times annually on healthy babies of healthy mothers.

Hundreds of ob-gyns and fetal/maternal specialists, along with former Surgeon General Koop have come forward to unequivocally state that ''partial-birth abortion is never medically necessary to protect another's health or her future fertility.'' Thus, the first section of S. 3 contains Congress' factual findings that, based upon extensive medical evidence compiled during congressional hearings, a partial-birth abortion is never necessary to preserve the health of a woman.

In January 2003, even the Alan Guttmacher Institute—an affiliate of Planned Parenthood—published a survey of abortion providers that estimated that 2,200 abortions were performed by the method in the year 2000. While that figure is surely low, it is more than triple the number that AGI estimated in its most recent previous survey, for 1996.

The stark fact is that unless this bill becomes law, more innocent unborn children will have their lives brutally ended by the inhumane partial-birth procedure.

It is unbelievable to me that this unspeakable abortion procedure even exists in this country, much less that we are having to take legislative action to ban such a procedure. It is further unbelievable to me that anyone in good conscience can even defend the partial-birth abortion procedure. It is a fiction to believe that it is all right to end the life of a baby whose body, except the head, is fully delivered. In order to engage in such a fiction, one has to take the position that curling fingers and kicking legs have no life in them. Those who subscribe to such a fiction, are at best, terribly misguided.

As Former Surgeon General C. Everett Koop stated: ''. . . in no way can I twist my mind to see that the late-term abortion as described—you know, partial birth and then destruction of the unborn child before the head is born—is a medical necessity for the mother. It certainly can't be a necessity for the baby.'' American Medical News, August 19, 1996.

Now it is time for the Senate to approve a ban on partial-birth abortions. It is time to end this injustice and the practice of this inhumane procedure. I urge my colleagues to join me in ending this atrocity.

Mr. BOND. Madam President, I rise today in support of the conference report to the Partial-Birth Abortion Ban Act. I am pleased to be a cosponsor of this legislation, and I look forward to the day when partial-birth abortion is banned once and for all.

Medical experts agree, partial-birth abortion is not good medicine. The Physicians Ad Hoc Coalition for Truth, PHACT, a group of over 500 doctors, mostly specialists in OB/GYN, maternal and fetal medicine, and pediatrics, have stated that partial-birth abortion is never medically necessary to protect a woman's health or her fertility. In fact, the exact opposite is true; the procedure can pose a significant threat to both the pregnant woman's health and her fertility.

Today we move one step closer to putting an end to this brutal procedure. One of life's greatest gifts is our children, and we cannot allow them to be victims of this heinous and cruel procedure.

I have cosponsored this legislation in the past three Congresses, and I am a cosponsor of the bill before us today. I am pleased to rise once again in support of protecting human life. I hope that Congress will deliver this bill to the President, who is eager to sign this bill into law.

Ms. MIKULSKI. Madam President, I rise today in support of the Roe v. Wade decision that was made by the Supreme Court over 30 years ago, and in opposition to the late term abortion conference report before the Senate.

The Supreme Court's acknowledgement of the fundamental ''right to privacy'' in our Constitution gave every woman the right to decide what to do with her own body. Since that historic day, women all across the country and the world have had improved access to reproductive health care and services. However, Congress is on the brink of turning back the clock.

Last month, my colleague from California, Senator BOXER, led a fight on the Senate floor to keep Senate passed language in support of Roe v. Wade in the late term abortion bill, S. 3. I was disheartened to hear that the conference committee stripped the Senate passed Roe v. Wade language. The Roe v. Wade decision is important to women's rights, women's health, and public health.

I believe that this bill is the first step in a plan by the leadership of this Congress to overturn Roe v. Wade. When President Bush signs this bill, he will become the first President since Roe V. Wade to recriminalize abortion procedures.

As I have stated previously on the Senate floor, the bill before us is unconstitutional. Just 3 years ago the Supreme Court ruled in Stenberg v. Carhart that a Nebraska State law that bans certain abortion procedures is unconstitutional. The Supreme Court ruled it was unconstitutional for two reasons. First, it did not include an exception for a woman's health. Second, it does not clearly define the procedure it aims to prohibit and would ban other procedures, sometimes used early in pregnancy.

S. 3 is nearly identical to the Nebraska law the Supreme Court struck down. The proponents of this legislation say they have made changes to the bill to address the Supreme Court's ruling. They have not. It still does not include an exception to protect the health of the woman. It still does not clearly define the procedure it claims to prohibit. Let me be clear about this. S. 3 is unconstitutional. That is why I supported the Durbin substitute when the Senate considered this legislation.

I supported the Durbin amendment because it was consistent with my four principles. These are my principles: It respects the constitutional underpinnings of Roe v. Wade. It prohibits all post-viability abortions, regardless of the procedure used. It provides an exception for the life and health of a woman, which is both intellectually rigorous and compassionate. And it leaves medical decisions in the hands of physicians—not politicians. The Durbin alternative addressed this difficult issue with the intellectual rigor and seriousness of purpose it deserves.

I strongly support a woman's right to choose and have fought to improve women's health during the more than two decades I have served in Congress. Whether it is establishing offices of women's health, fighting for coverage of contraceptives, or requiring federal quality standards for mammography, I will continue the fight to improve women's health.

Congress must protect a woman's freedom of choice that was handed down by the Supreme Court over 30 years ago. This Congress must not turn back the clock on reproductive choice for women. I urge my colleagues to vote against the conference report for the late term abortion bill.

Mr. NELSON of Florida. Madam President, today the Senate considers the conference report to accompany S. 3, the Partial-Birth Abortion Ban Act, and I want to take this opportunity to explain my vote. I am opposed to the procedure known as partial-birth abortion, except in cases where the life or physical health of the mother is in jeopardy. This legislation does not include an exception to provide for the physical health. That means that a physician could determine that a woman could be paralyzed for life, and it would not be considered an adequate exception under this legislation. Therefore, I must respectfully vote against this bill.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD)

● Mr. EDWARDS. Madam President, I rise today to express my opposition to the conference report to accompany S. 3, the late term abortion ban bill.

As we know, the Supreme Court has ruled on this issue. The Court said that a ban on later-term abortion procedures must protect a woman's health. In Stenberg V. Carhart, the Court ruled that an abortion ban must include a health exception when ''necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.''

The bill before us today does not include an exception for a woman's health. If this bill becomes law, a woman would be refused this procedure even if other procedures would cause her grave harm. While late-term abortions should occur only in rare circumstances, this bill bans them in all circumstances. That is not constitutional and it is not fair to the women who are in the rare circumstances where this procedure is required. For this reason, I cannot support this bill.●

Mr. FEINGOLD. Madam President, earlier this year, the Senate passed S. 3, the Partial Birth Abortion Ban Act. I opposed that bill and instead supported a constitutionally sound alternative offered by my colleague, Senator DURBIN. The Durbin alternative would ban post viability abortions unless the woman's life is at risk or the procedure is necessary to protect the woman from grievous injury to her physical health.

I understand that people on all sides of this issue hold sincere views. I respect those who oppose abortion on principle. Like most Americans, I would prefer to live in a world where abortion is unnecessary. I support efforts to reduce the number of abortions through family planning and counseling to avoid unintended pregnancies. I have always believed that decisions in this area are best handled by the individuals involved, in consultation with their doctors and guided by their own beliefs and unique circumstances, rather than by government mandates.

I support Roe v. Wade, which means that I agree that the government can restrict abortions only when there is a compelling state interest at stake. I feel very strongly that Congress should seek to regulate abortions only within the constitutional parameters set forth by the U.S. Supreme Court.

Unfortunately, the conference report fails to cure the flaws in the bill that make it unconstitutional on its face. The conference report's description of the procedure that it would ban is so vague and overbroad that it could place an undue burden on a women's right to choose by encompassing safe and common abortion procedures used prior to viability.

I am also disappointed that the conference report failed to adopt the Senate's language in S. 3 reaffirming the Senate's commitment to Roe and its belief that Roe should not be overturned. The Senate had a straight up-or-down vote on this language, which was offered by my colleague Senator HARKIN. A majority of the Senate agreed to support the Harkin amendment. The House was wrong to remove this language during its consideration of the bill, and I am disappointed that the conference report failed to adopt the Senate's position on this issue.

The Senate should only legislate in this area in a way that is constitutionally sound. This conference report does not meet that test and I cannot support it.

Ms. CANTWELL. Madam. President, I rise today to express my opposition to the conference report to S. 3 the so-called Partial-Birth Abortion Ban Act of 2003. This is an unconstitutional piece of legislation that puts women's lives in jeopardy.

Supporters of this bill will argue that this legislation bans only one procedure but this is not the case. Make no mistake about it. This bill puts us on a path outlawing abortion. The language in this bill is vague, and this law could be used to ban other safe and legal procedures. Moreover, this legislation imposes an undue burden on a woman's ability to choose by banning abortion procedures at any stage in a woman's pregnancy. This bill does not only ban post-viability abortions, it unconstitutionally restricts women's rights regardless of where the woman is in her pregnancy.

In 1973, in Roe v. Wade, the Supreme Court found that women have a constitutional right to choose. However, after the point of viability—the point at which a baby can live outside its mother's body—States may ban abortions as long as they allow exceptions when a woman's life or health is in danger. The bill before us, however, restricts abortions before viability and it does not include a health exception. Let me repeat that. This bill is fundamentally flawed because it does not protect the women when her health is in danger.

In June 2000, the U.S. Supreme Court reinforced the importance of this health exception in Stenberg v. Carhart, which determined that a Nebraska law banning the performance of so-called ''partial birth'' abortions was unconstitutional under Roe v. Wade.

The Supreme Court has stated unequivocally that every abortion restriction, including bans on so-called ''partial-birth abortion,'' must contain a health exception. The Court emphasized that, by failing to provide a health exception, the Nebraska law would place a woman's life in danger. That is exactly what the legislation before us today does as well: it places a woman's life in danger.

Despite the Supreme Court's very clear mandate, this underlying legislation does not provide an exception for the health of the mother. For this reason, this legislation, like the measure that was struck down in Stenberg, is unconstitutional.

I am very disappointed that this conference report does not include language passed by the Senate that abortion has been a legal and constitutionally protected medical procedure throughout the United States since the Supreme Court decision in Roe v. Wade; and that 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.

Furthermore, the amendment firmly laid out the sense of the Senate that the decision of the Supreme Court in Roe v. Wade was appropriate and secures an important constitutional right and that the decision should not be overturned.

I fundamentally believe that private medical decisions should be made by women in consultation with their doctors—not politicians. These decisions include the methods by which a physician chooses to treat his or her patients. Why should we decide that here on the Senate floor? Congressional findings cannot possibly make up for medical consultation between a patient and her doctor. This bill, however, would undermine a physician's ability to determine the best course of treatment for a patient.

Physicians must be free to make clinical determinations, in accordance with medical standards of care, that best safeguard a woman's life and health. Women and their families, along with their doctors, are simply better than politicians at making decisions about their medical care. And I don't want to make those decisions for other women.

During the course of this debate we heard painful stories about women who were anxiously awaiting the birth of a child when something went horribly wrong. We heard true stories of women who were devastated when they discovered that their child had severe health problems and would not survive. We heard stories about women who wanted to complete their pregnancy and were told by their physicians that, should they do so, they would put their health at risk. The truth is that this is a

heartbreaking, painful, personal decision that should be made by solely a woman with the advice of her doctor.

I trust the health care providers and organizations like the American College of Obstetricians and Gynecologists, and the American Medical Women's Association who oppose this ban. These physicians know their patients, they know their stories, and the painful choices that many make, and they know that this ban is wrong. Most importantly, I trust the women in my State and around this country to make the decision that is right for them. During such a difficult, private time, women should be surrounded by those who love and support them. Women should not have to listen to rhetoric that demonizes their heartbreak, but should be able to receive medically accurate information from a trusted health care professional.

Three States, including my home State of Washington, have considered similar bans by referendum. All three failed. We considered this debate in my home State in 1998. The referendum failed decisively—by a vote of 57 to 43 percent.

These so-called ''partial-birth'' abortion bans—whether the proposals that have been before the Senate in the past or the one before us today—are deliberately designed to erode the protections of Roe v. Wade, at the expense of women's health and at the expense of a woman's right to privacy.

The Supreme Court, during the 30 years since it recognized the right to choose, has consistently required that, when a State restricts access to abortion, a woman's health must be the absolute consideration. This legislation does not only disavow the Supreme Court's explicit directive, but the advice of the medical community, and the will of the American people. We must continue to ensure that the women of America have the right to privacy and receive the best medical attention available.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I understand I have a minute, 51 seconds remaining.

The PRESIDING OFFICER. The Senator is correct.

Mrs. BOXER. I understand Senator FRIST will take some leader time and Senator DASCHLE has given me 4 minutes of his leadership time, so I will speak for about 6 minutes if that is all right.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, the Senator may use the leader's time.

Mrs. BOXER. Madam President, I, too, thank everyone involved in this debate on both sides because I think it has been a very enlightening debate. I have been on the Senate floor about this bill many times. This particular debate brought out so many issues.

I also thank the many women who experienced this procedure, who were able to come to Washington on many occasions to tell us what their world was like when they found out late in the pregnancy that something had gone horribly wrong and the doctor told them that their baby could never live outside of their womb and the doctor told them if they did not have the procedure that is being banned in this bill, they could suffer a stroke, they could suffer paralysis, they could lose their fertility. These women came out and put a face on this issue, a real, human face; many of them very religious, many anti-choice, who said this was an excruciatingly difficult choice, but they knew it was right for themselves and their baby.

What we are about to do today—and I have no illusions; I know this bill will pass—we are about to ban a procedure that doctors say is needed to save the life and health of a woman. If I went up to you on the street and I said, I know there is a medical procedure that is sometimes necessary to save the life and health of a woman, would you want to ban it or would you be willing to ban it except for those occasions when it is necessary. I think and I know most Americans would do the humane thing and say absolutely, we want to make an exception for life and health. That is not what is done in this bill.

The doctors tell us this is a dangerous piece of legislation. The doctors tell us this is an unconscionable piece of legislation. The doctors tell us that women's lives and health will be put at risk if we pass this. I happen to believe, on issues such as these, we have to turn to the women themselves who have faced this agonizing decision, and to the doctors, the OB/GYMs whose job it is to bring life into the world.

Well, when we have done that, they have told us not to go this route, that if we are going to ban the procedure, always to have an exception, always for the life and health of the woman. Yet this Senate is going to turn its back on the women of this country, turn its collective back on the doctors of this country, and basically outlaw a procedure they say is necessary.

When the President signs this bill—and he will do so—it will be the first time in history any President of either party has banned a medical procedure that is necessary to save the life and health of the people of this country. I think that is a historic moment, and I think the people of this country will understand all of the ramifications. There is no question about that.

To make it clear, I will reiterate what many of my colleagues who are pro-choice have said. We believe Roe v. Wade was rightly decided. We believe it balanced all the interests that were before the Court. We believe when the Court said, in the very early stages of a pregnancy, Senators, Congress people, stay out of this decision, they were right. When the Court said, in the late stages of a pregnancy, the State can control what occurs in an abortion, but always with an exception for the life and health of a woman, we believe that is right.

Now the other side tells us: Oh, well, this bill has nothing to do with Roe v. Wade. It does not in any way challenge Roe v. Wade. Well, that is just untrue on its face. The Court has already ruled in the Nebraska case that when you do not make an exception for health, when you have vague definitions, that is violative of Roe.

What we are doing is passing a piece of legislation that will be signed with great fanfare, and it will be declared unconstitutional across the street. Instead, we could have joined hands across party lines, we could have joined hands across ideological lines, we could have banned every single late-term abortion with an exception for life and health, but the other side refuses to do this—refuses to do this. I do not understand how you can stand here and say you are doing the right thing by the women in this country and not make an exception to protect the health of a mother.

I hope many of us will vote this down. I have no illusions in the final vote, but it has been an excellent debate. I hope America was listening.

I thank you very much.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I know I just have a few seconds, but I do want to recognize the tremendous effort and work the majority leader has made over the years on this issue. His presentation, when he first came to the Senate, as the only physician in the Senate, was compelling, persuasive, and I think one of the things that allowed us to get the 60-plus votes we needed to have this bill passed on previous occasions and now gives us the margin we have today. He is to share a significant amount of credit for today's victory.

Thank you, Madam President.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, on leader time, I will use just a remaining few minutes.

The partial-birth abortion ban is finally at the finishing line. I expect today the Senate will vote for the last time to end this morally reprehensible procedure. We will have a bill on the President's desk, and this President will sign the ban into law.

As a physician and as a board-certified surgeon, I can say without equivocation that partial-birth abortion is brutal, it is barbaric, it is morally offensive, and it is outside of the mainstream practice of medicine.

Contrary to the claims of its supporters, partial-birth abortion is a fringe procedure outside of the mainstream. It is not performed by people who are board-certified surgeons. It is not found in common medical textbooks. It is not taught in our surgical residency programs.

The sole purpose of this partial-birth abortion is to deliver a dead baby. It is not, as some insist, to protect the life of the mother. In fact, partial-birth

abortion, as we have heard again and again, is dangerous to the health of the mother, more dangerous than other alternatives. We could go on and on with these undeniable medical facts in greater detail, but something larger is at stake, and we speak to that powerfully with this vote today.

Beyond even the ethical practice of medicine, our Nation's charter, the Declaration of Independence, asserts our Creator has blessed us with certain rights—rights from which we, as beings made in God's image and likeness, cannot be alienated.

In destroying the body of a mature, unborn child, we are alienating that child from his or her most essential right; and that is, the right to life.

In doing so, we are violating the very premise of our Republic—that our rights are enduring gifts of God, not privileges to be revoked by human whim.

In Evangelium vitae, Pope John Paul II tells us true human freedom is rooted in a ''culture of life.''

We will reaffirm in this Chamber that human personhood is precious, that doing no harm is still the bedrock of medical morality, and that we have the will to stop a practice we know is evil and morally reprehensible.

I yield back the remainder of the time.

Mrs. BOXER. Madam President, I ask unanimous consent that I be allowed to speak for 2 minutes from Senator DASCHLE's leader time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. Thank you.

Madam President, I want to reply to what the good Senator has said, with great respect, when he says this procedure is outside the mainstream. I want to point out, I respect his opinion, but I think doctors who have gone into OB/GYN, if that is their field—I do not believe the American College of OB/GYNs—45,000 doctors—are out of the mainstream. I do not believe the American Medical Women's Association—10,000 female doctors—are outside the mainstream. Nor do I believe the American Public Health Association—thousands of doctors—are outside the mainstream.

So although I totally respect the opinion of my colleague, and I would fight for his right to have it, and his right to believe what he does, I think it is a bit dismissive of the mainstream OB/GYN doctors in this country, all of whom have told us, please do not pass this ban that they have said is dangerous to women. They have said, to use their words, it is risky to women, and they are very upset about it.

I did not want the Senate to believe these organizations back this bill, because they do not. We have put those letters into the RECORD.

I thank you very much.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, obviously we have a strong disagreement in the statements that were just made. Let me finally close by saying this is a brutal procedure. It is a barbaric procedure. It offends the sensibilities of 90 percent or more of Americans. It is outside of mainstream medicine as practiced in the United States of America today.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the conference report. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Texas (Mrs. HUTCHISON) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 34, as follows:

[Rollcall Vote No. 402 Leg.]

YEAS—64

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Bayh	Dorgan	Murkowski
Bennett	Ensign	Nelson (NE)
Biden	Enzi	Nickles
Bond	Fitzgerald	Pryor
Breaux	Frist	Reid
Brownback	Graham (SC)	Roberts
Bunning	Grassley	Santorum
Burns	Gregg	Sessions
Byrd	Hagel	Shelby
Campbell	Hatch	Smith
Carper	Hollings	Specter
Chambliss	Inhofe	Stevens
Cochran	Johnson	Sununu
Coleman	Kyl	Talent
Conrad	Landrieu	Thomas
Cornyn	Leahy	Voinovich
Craig	Lincoln	Warner
Crapo	Lott	
Daschle	Lugar	

NAYS—34

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Bingaman	Graham (FL)	Nelson (FL)
Boxer	Harkin	Reed
Cantwell	Inouye	Rockefeller
Chafee	Jeffords	Sarbanes
Clinton	Kennedy	Schumer
Collins	Kerry	Snowe
Corzine	Kohl	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Levin	
Durbin	Lieberman	

NOT VOTING—2

Edwards	Hutchison

The conference report was agreed to.

Mr. MCCONNELL. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLASS ACTION FAIRNESS ACT OF 2003—MOTION TO PROCEED

The PRESIDING OFFICER. The Senate will resume consideration of the motion to proceed to S. 1751.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, parliamentary inquiry: Is it in order at this point in time for the Senator to speak as in morning business for about 10 minutes?

The PRESIDING OFFICER. The Senator should seek consent for that purpose.

Mr. REID. I could not hear the Senator's request. I am sorry.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. The Senator from Virginia simply asked the parliamentary situation, could I proceed as in morning business for 15 minutes?

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

REMARKS BY SERVICE MEMBERS

Mr. WARNER. Madam President, the press have reported comments made by a general officer, General Boykin, and those remarks have been the subject of considerable concern. They are also regrettably a subject of great discussion in the Arab press.

I also am concerned, and I rise to advise my colleagues and others of a recommended course of action. I do so by first reading a letter signed by Senator LEVIN and myself dated last Friday. We wrote this letter jointly in the course of the debate on this floor in response to the request by the Commander in Chief, the President, for some $87 billion to support our military and to support our reconstruction efforts in Iraq and elsewhere. I was a strong supporter and was happy to vote for it. Fortunately, the measure has passed and is now subject to the conferees.

It is interesting, at the very time that we were passing this legislation, which are taxpayer funds in considerable amounts, the object was to provide freedom and quality of life for the people of Iraq. The people of Iraq largely follow the Muslim religion in teaching, in tenets, and it is dear to their hearts. At the same time, the coverage in the United States is about comments made by a distinguished officer, a man who has shown great personal courage in the profession as a soldier.

Nevertheless, there are allegations with regard to these remarks that have been reported in the press. Senator LEVIN and I felt it was our duty, as chairman and ranking member of the Armed Services Committee, to make a recommendation to the Secretary of Defense.

I am about to read that letter we sent on Friday, because I think it is a very responsible way to deal with a high-profile situation.

Dear Mr. Secretary:

Enclosed are copies of articles that have appeared in the press recently about public statements allegedly made in uniform by LTG William G. Boykin, U.S. Army, the Deputy Under Secretary of Defense for Intelligence. In matters pertaining to religious beliefs, the practice and expression, the Armed Forces have traditionally permitted as much latitude as possible,