with blood pressure problems and cholesterol problems. They keep people healthy and well, and they keep them fit. That helps hold down the cost for what is called Medicare Part A, the acute care portion of Medicare that covers hospitals and institutional services. Under the Snowe-Wyden approach, we contain costs without shifting them onto the backs of somebody else.

One of the things that concerns me, there is a well-meaning bill that has been introduced that suggests we ought to have Medicare buy up all the drugs and act as a buyer for everybody. The problem with that approach is that it will result in tremendous cost-shifting onto the backs of other Americans who are having difficulty paying for their prescription drug bills. I don't want to see a 27-year-old divorced African American woman with two kids, who is working hard, playing by the rules and doing everything she can to get ahead, have to see a big increase in her prescription drug bill because the costs are shifted onto her when somebody doesn't think about the implications of trying to do this through approaches that don't involve marketplace forces.

So these are letters I am receiving from seniors across the country. Here is another one from Myrtle Creek, OR. This is a senior citizen who has to take a variety of medicines, including Albuterol, Dulcolax, and other drugs. She writes me that she spent $370 recently on prescription drugs from a Social Security check of $1,152. She went to a small drugstore in Myrtle Creek, OR—a terrific small community—and spent $370 from a Social Security check of $1,152 on her medicines.

I think a lot of these seniors are asking themselves, what is it that the Senate is so busy doing that it cannot work in a bipartisan way to be responsive to older people and families on this issue? I am very hopeful that if seniors just read what it says in this poster: ''Send in your prescription drug bills'' to Senators—Senator SNOWE and I are particularly interested in hearing from older people because we want to do this in a bipartisan way. A lot of people think the prescription drug issue is just going to be fodder for the campaign in the year 2000 and in the fall of 2000 we will just have the Democrats and Republicans slugging it out on the issue. The last time I looked, it was more than a year until that election comes up.

I don't want to see seniors such as the ones I am hearing from in Myrtle Creek and King City, and all over the Willamette Valley in my home State—I don't want to see them suffer. I know the Chair doesn't want to see people suffer in Kentucky. Other colleagues feel the same way. If we can put down the partisanship for a little while and work together in an effort to get the vulnerable seniors across this country the coverage they need, we will have a truly lasting legacy from this session of the Senate.

I was codirector of the Gray Panthers, a great senior citizens group, for about 7 years before I was elected to the Congress. Some of my most joyous memories are working with older people back then. We talked about how important it was to cover prescriptions.

Well, what has happened with the evolution of the pharmaceutical sector over those 20 years is, prescription drugs have become even more important since those days when I was codirector of the Gray Panthers; the drugs are even more important now because they do so much to promote wellness. We needed them before because you do need medications for so many who are acutely ill. But today, this could result in keeping people healthy and save Medicare, particularly the institutional part of the program, Part A, that it could save Medicare Part A money and we could do it through marketplace forces.

Snowe-Wyden doesn't go out and set up a price control regime. We give senior citizens the kind of bargaining power a health maintenance organization would have through the marketplace. Seniors would get to choose the various kinds of coverages that are available to Members of Congress, such as the President of the Senate and myself. It would not be bureaucratic. We know our health care doesn't create a whole lot of new redtape and bureaucracy. We know it works. So that is what Senator SNOWE and I are trying to do.

This is the fourth time I have come to the floor of the Senate to urge seniors, as this poster says, to send in their prescription drug bills. I intend now to come back to the floor of this Senate every few days until this session ends and read, as I have, directly from copies of these prescription drug bills I am receiving.

I know that so many Senators care about the needs of the elderly. I see Senator CHAFEE, who has long been an expert in health and a member of the Finance Committee; our friend, Senator MIKULSKI, who has championed the Older Americans Act issue so passionately for so many years in the Appropriations Committee.

When we have these colleagues who have expertise in these issues and we know how acute the need is and we know we can do it in a bipartisan way, as Senator SNOWE and I have been trying to do, it would be a tragedy for the Senate to pass on this issue and say: Well, let's just put it off until after the year 2000.

We have consulted with senior groups. We have consulted with the insurance industry. We have consulted with those in the pharmaceutical sector. All of them have told us that our bill, while perhaps not their first choice for how to ensure that seniors get their coverage, will work. It will get seniors the help they need, and it will be something that we can do and do now—not after the 2000 election, not after some other period of campaign activity, but it is something we can do now.

The Nation's seniors and our families can see as a result of my reading from these bills and what I am receiving from Oregon that I am very serious about their input. I hope that seniors and their families, as this poster says, will send in their prescription drug bill to their Senator. I hope they will be for the bipartisan Snowe-Wyden bill. Frankly, I am much more interested in hearing from them about the need for Congress to act. We can act. We can do it.

I yield the floor.

PARTIAL-BIRTH ABORTION BAN ACT OF 1999—Continued

The PRESIDING OFFICER (Mr. VOINOVICH). Under the previous order, the question is on agreeing to amendment No. 2321. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) and the Senator from New Hampshire (Mr. GREGG) are necessarily absent.

The result was announced—yeas 51, nays 47, as follows:

[Rollcall Vote No. 337 Leg.]

YEAS—51

Akaka	Edwards	Lieberman
Baucus	Feingold	Lincoln
Bayh	Feinstein	Mikulski
Biden	Graham	Moynihan
Bingaman	Harkin	Murray
Boxer	Hollings	Reed
Bryan	Inouye	Robb
Byrd	Jeffords	Rockefeller
Campbell	Johnson	Sarbanes
Chafee	Kennedy	Schumer
Cleland	Kerrey	Snowe
Collins	Kerry	Specter
Conrad	Kohl	Stevens
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Warner
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden

NAYS—47

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Reid
Bond	Grams	Roberts
Breaux	Grassley	Roth
Brownback	Hagel	Santorum
Bunning	Hatch	Sessions
Burns	Helms	Shelby
Cochran	Hutchinson	Smith (NH)
Coverdell	Hutchison	Smith (OR)
Craig	Inhofe	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Enzi	Mack	

NOT VOTING—2

Gregg	McCain

The amendment (No. 2321) was agreed to.

Mrs. BOXER. Mr. President, I move to reconsider the vote.

Mr. SANTORUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the underlying amendment, as amended, is agreed to.

The amendment (No. 2320), as amended, was agreed to.

Mrs. HUTCHISON. Mr. President, I voted against the Harkin amendment because I disagree with the findings stated in the resolution and because it is not relevant to the underlying bill. However, I would not vote to repeal Roe v. Wade, as it stands today, which has left room for States to make reasonable restrictions on late-term abortions.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I am about to send an amendment to the desk. The purpose of the amendment is a modification of the language that defines what a partial-birth abortion is in S. 1692.

The reason for the modification is in direct response to the Eighth Circuit decision where the court asserted the procedure defined—it was a similar definition to the one here—was unconstitutionally vague; that it could have included other forms of abortion and, thereby, was an undue burden because it would have eliminated other forms of abortion and would have, by doing so, restricted a woman's right unduly, according to the court.

I am not going to take issue with the court whether they are right or wrong. I do not believe they are right, but in response to that, I am going to be offering an amendment that makes it very clear we are not talking about any other form of abortion; that we are talking about just the abortion procedure that has been described over and over about a baby being delivered outside of the mother, all but the head, and then killed; not a baby that is being killed in utero and a part of the baby's body may be in the birth canal. That is what the court said they were concerned about.

Mr. KERREY. Will the Senator yield for a question?

Mr. SANTORUM. Yes.

Mr. KERREY. I think I have the language that—

Mr. SANTORUM. We made a slight modification.

Mr. KERREY. The language you gave me earlier said:

> As used in this section, the term ''partial-birth abortion'' means an abortion in which the person performing the abortion deliberately and intentionally delivers through the vagina some portion of an intact living fetus until the fetus is partially outside the body of the mother for the purpose of performing an overt act that the person knows will kill the fetus while the fetus is partially outside—

Any changes?

Mr. SANTORUM. The only change is in the first few words.

Mr. KERREY. I ask the Senator to respond to me. We had a colloquy earlier. I have the Eighth Circuit decision. Earlier all I had was opinions on the Eighth Circuit decision from both opponents and supporters of the Senator's legislation. The Eighth Circuit says, referencing the Nebraska statute, which is the concern I have, that it did create an undue burden because, in many instances, it would ban the most common procedure of second-trimester abortions, and that is the D&E. You are saying you are drawing it more narrowly so it does not.

Mr. SANTORUM. That is correct.

Mr. KERREY. Here is the language, I say to the Senator from Pennsylvania, that the court found objectionable, and it sounds awfully similar to your amended version. I want to give you an opportunity to talk to me about it. It says:

> . . . deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child.

Mr. SANTORUM. That is similar to the language that is in the bill right now. But the amended language further specifies the fetus is partially outside the body of the mother. The court was concerned about a D&E performed in utero, but the baby during this procedure could be partially delivered into the birth canal and that occasionally an arm or leg or something might be delivered, and that was the confusing part for the court.

This is clear that the living baby has to be outside of the mother before the act of killing the baby occurs; that the act of killing the baby is not occurring in utero, but occurring when the baby is outside the mother. I think it pretty well carves out any other form of abortion.

Mr. KERREY. May I ask him one more question?

Mr. SANTORUM. Yes, ask as many as you like.

Mr. KERREY. I will get you the comparative language. Again, I will not give the precise Eighth Circuit compared to yours. You have been on this a lot longer than I have, and I know the Senator from California has as well. Perhaps between the two of you, you can clarify if this change meets the Eighth Circuit's test.

I understand that this is one circuit, and you may get—I have voted against other circuits before when they have had decisions, so there is certainly precedent for me ignoring what a court says.

But in the earlier discussion we had, I expressed one of the concerns I have. And since we talked earlier, I have talked to an OB/GYN from Omaha who does not, in a normal practice, conduct abortions. What she does is work with women who are pregnant and helps them through their delivery. She is expressing a concern that if she is working with a woman who is having some difficulty, because of the penalties that are in here, she finds herself saying: Am I going to be able to do something that I ordinarily might have done?

In other words, you said to me earlier, when I talked about this, that this is for people who intentionally make a decision to go in and get an abortion as opposed to somebody, as this doctor described to me, who is not going in for an abortion. I think it is a very important point because the universe consists of people who get abortions but do not want one; they were intending to deliver, and the doctor, for medical reasons, makes this decision, but the woman may prefer that that not have happened. The doctor is making the decision based upon life and health considerations. And you said to me it has to be the intent. Where in the bill does it say that?

Mr. SANTORUM. Yes. Do you have the bill in front of you? Page 3, lines 9 and 10:

> As used in this section, [the] term ''vaginally delivers a living fetus before killing the fetus'' means deliberately and intentionally delivers into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure the physician knows will kill the fetus, and [then] kills the fetus.

So it is——

Mr. KERREY. It seems to me that can still easily cover a doctor making a decision with a woman who does not want an abortion, but the abortion is selected by the doctor as a consequence of some complications occurring.

What this doctor said to me was——

Mr. SANTORUM. If you have some language that could clarify—but if you read the definition, it says:

> . . . means deliberately and intentionally delivers into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure the physician knows will kill the fetus. . . .

That is, if you deliver for the purpose of killing the fetus, as this says, as opposed to delivering for the purpose of delivering a live baby where that may go awry and something may happen, and that would require the killing of a fetus. And that is not covered. I think it is pretty clear that is not covered.

If you have some language that would make you more comfortable with that, it is certainly not our intention—let me make it very clear—to cover any case where you have a birth where a complication arises and something has to be done.

Mr. KERREY. I appreciate that. I will give that some consideration.

I say that I have had a very interesting conversation—both the earlier one and subsequent one with this OB-

GYN physician in Omaha—because, again, she is not an abortion doctor. That is not her practice.

Mr. SANTORUM. Right.

Mr. KERREY. Her practice is in working with women who either are pregnant or want to get pregnant; and that is her business.

Mr. SANTORUM. Has she read this language?

Mr. KERREY. I just faxed the language to her, both the amended version and the original version.

Again, one of the problems that all of us have—I have two problems: One, as a man, I have difficulty trying to figure all this out; but secondly, as a nonphysician, I have a difficult time figuring it out. She starts talking to me and says: Understand, the cervical arteries are at 3 and 9 o'clock.

What you are dealing with here is a situation where you can produce damage. You have to be careful not to. In other words, she is saying to me: Understand that delivery itself is a life-threatening process—as the Senator from Pennsylvania knows all too well. Delivery itself is a life-threatening process to the mother, and decisions are being made by the physician as to what to do and what not to do. And she is very concerned that this will make it difficult for her to continue her practice.

As I said, I faxed it to her. And I look forward to further colloquies with the Senator.

Mr. SANTORUM. I appreciate that. I state for the record this is part of the legislative history. Obviously, if there is some language that makes you more comfortable, that we need to be more clear here, it is certainly clearly the legislative intent not to include situations where the baby is in the process of being born and the process of a natural childbirth and a complication arises which forces the doctor to do things that result in the death of the child. That is clearly outside the scope of this. It certainly is our intent for it to be outside the scope. We think the language here is clear that it is.

But, again, I would be willing to work with the Senator from Nebraska to make sure he is comfortable that that is clearly outside the scope of this.

Mr. KERREY. I appreciate that. I said earlier, when we had our colloquy, that I am comfortable in my position in saying I believe a woman or doctor, physician, should—and her spiritual counselor—be making this decision. I consider myself to be a pro-choice individual as a consequence of that.

I supported Medicaid funding because I think it is hypocritical of me not to if I am going to let people who have the means get a legal procedure. But this procedure troubles me. I have voted against you on a number of occasions. And I have promised people in Nebraska I would keep an open mind. I listened, especially last evening, to your arguments. And I am willing to keep an open mind on this.

Mr. SANTORUM. I thank the Senator from Nebraska.

Mr. President, I am going to be sending an amendment to the desk, which the Senator from Nebraska referred to in our colloquy, that redefines what a partial-birth abortion is—the definition section of the act.

Again, it is in response, as the Senator from Nebraska accurately pointed out, to the Eighth Circuit's concern about this provision in the bill as being unconstitutionally vague. In other words, it is a provision in the bill that defines the procedure, that the Eighth Circuit said could include other procedures.

As I described to the Senator from Nebraska, the most common form of late-trimester abortion is a D&E in which the baby is killed in utero. During that procedure, occasionally, I am told, a part of the body may enter into the birth canal. And the concern of the court, of other courts—not just the Eighth Circuit but other courts—is that the definition we have in place right now—and the definition states as follows: ''means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.'' According to the court, it is unclear that we are talking about a baby outside the mother.

Of course, from the charts we have shown here, we described partial birth as the baby being outside of the mother and then killed. We do not say that in this underlying bill. So the courts have said: Well, it can mean partially delivered; it could be a body part in the birth canal. That could be seen as partially delivered; therefore, overly broad.

Again, I think that is, frankly, stretching it to the extremes. But because of the other sections—again, to address the issue of vagueness—we have come up with an alternative definition. It is as follows:

> As used in this section, the term ''partial-birth abortion'' means an abortion in which the person performing the abortion deliberately and intentionally—
>
> (A) vaginally delivers some portion of an intact living fetus—

I underline ''intact living fetus.''

Again, with a D&E, the baby is killed in utero and is not intact or living at the time it is coming through the birth canal, and certainly not intact or living if it is outside the mother.

Again:

> . . . vaginally delivers some portion of an intact living fetus until the fetus is partially outside of the mother,—
>
> ''Intact living . . . outside of the mother''—
>
> for the purpose of performing an overt act that the person knows will kill the fetus while the fetus is partially outside the body of the mother; and
>
> (B) performs the overt act that kills the fetus while the intact living fetus is partially outside the body of the mother.

So this makes it crystal clear that what we are talking about here is just this specific procedure, just a partial-birth abortion, not a D&E, not any other kind of abortion that occurs in utero. This is an abortion where the killing occurs when the baby is intact, outside of the mother.

I do not know how there could be any vagueness attached with this clarifying definition. I am hopeful that in combination with the other concern the Senator from Nebraska had, which is the intent clause—it is section (b)(3) of the bill—again, killing the fetus means deliberately and intentionally delivering into the vagina a living fetus or substantial portion thereof, for the purpose of performing a procedure the physician knows will kill the fetus, and kills the fetus. You have to have intent to kill when you do this. You have to have the baby outside of the mother with the intent to kill the baby outside the mother, and then do it.

Mrs. BOXER. Is the Senator going to send it up and ask unanimous consent to modify?

Mr. SANTORUM. My understanding is that we want to get an overall agreement. I will hold off until we get all——

Mrs. BOXER. I would like to have a chance to discuss what the Senator has done, whenever it is easy for him.

Mr. SANTORUM. Why don't I suspend right here if the Senator would like to make a comment. I am interested to hear what she has to say, as always.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank the Senator from Pennsylvania.

I don't know how this is all going to end, but my side has no problem with the Senator from Pennsylvania changing his legislation in any way he wants to change it. We on our side are not going to object at all. He can change it any way he wants to change it.

I will say something very important from our side, and that is, the change he is submitting does nothing at all to meet the health concerns of the mother. He is changing a definition, and he doesn't at all say, if a woman's health is at stake, this procedure can be used. So if the Senator is trying to meet the constitutional objection from the courts which have thrown out his bill across this country, he doesn't do it with his modification. He still doesn't make an exception for the health of a woman, and this bill remains a very dangerous bill. It makes no exception for health.

Secondly, as I understand it, he still keeps the criminal penalties for the doctors. This caused the American Medical Association to back off its support for the bill. That still is a defect because, as the Senator from Nebraska

said, after speaking to an OB/GYN, who brings life into the world, when these dangerous situations present themselves to a physician, they have to make a quick-second judgment on what to do to preserve life, to preserve health, to make sure the woman is not paralyzed, deformed, made infertile, to make sure the fetus isn't injured. All these things come into play. We don't want to have doctors saying: Just a minute, I have to read Senator SANTORUM's law.

What we want is for the physicians to do what has to be done, do the right thing, according to their oath they take when they become physicians. We take an oath of office when we become Senators. We are not physicians. We don't take the Hippocratic oath. When we take the oath, we swear to uphold and defend the Constitution of the United States of America. We do not get sworn in to be physicians. Physicians take their oath to do no harm. Our oath is to uphold the Constitution. And to uphold the Constitution, we should be upholding the landmark decision Roe v. Wade, which, by a very slim majority, this Senate says it upholds.

So this so-called fix the Senator from Pennsylvania will be submitting, which I have no objection to his submitting, still renders the bill unconstitutional because the health of the woman is not addressed. Roe says clearly, yes, the State can get involved in the right to choose after viability, but you always have to respect the health of the woman. No such exception.

Secondly, I only had a little time to send this new language, because we did not see it until literally less than an hour ago, to the American College of Obstetricians and Gynecologists. I want to ask them if they believe this new language Senator SANTORUM is going to place into his bill, in fact, makes the whole issue clearer, whether or not it is still vague, vaguely describes a procedure that is used in the earlier terms, which is the second reason the courts have struck it down. The way partial-birth abortion is described—and that is a political term, not a legal term—the courts say applies to all abortions, regardless of whether they are in the first month, second, third, fourth, fifth, or sixth. So the court struck it down.

This is what Ann Allen, general counsel of the American College of OB/GYNs—those 40,000 physicians who bring babies into the world and, yes, if things go tragically wrong, may have to resort to this procedure—says:

> Upon review of the attached language . . . in my opinion the language does not correct the constitutional defects of S 1692. In particular, this language does not correct the issues addressed by many states and federal courts, including the U.S. Court of Appeals for the Eighth Circuit, which have held similar legislation to be unconstitutional.

The Senator from Pennsylvania says he is reacting to the Eighth Circuit Court. The doctors at the American College of Obstetricians and Gynecologists, through their general counsel, say it does not cure that problem.

I ask unanimous consent to print this letter in the RECORD during the debate.

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

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, October 21, 1999.

Hon. BARBARA BOXER,
Hart Office Building, Washington, DC.

DEAR SENATOR BOXER: Upon review of the attached language, an amendment to S. 1692, the "Partial-Birth Abortion Ban Act of 1999," by Senator Rick Santorum, in my opinion the language does not correct the constitutional defects of S. 1692. In particular, this language does not correct the issues addressed by many states and federal courts, including the U.S. Court of Appeals for the Eighth Circuit, which have held similar legislation to be unconstitutional.

Sincerely,

ANN ALLEN, JD,
General Counsel.

Mrs. BOXER. I have a second letter on the new Santorum language from the Center for Reproductive Law and Policy. It was addressed to Senator CHAFEE.

DEAR SENATOR CHAFEE: You have asked for our advice regarding the significance of new language defining partial-birth abortion in substitution for the prior language. In our opinion, the changes are without legal significance and will not correct the constitutional infirmities of S. 1692. Nor do they limit the prohibition's wide-ranging ban on previability abortion procedures.

I ask unanimous consent this letter be printed in the RECORD.

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

THE CENTER FOR REPRODUCTIVE LAW AND POLICY,
October 21, 1999.

Hon. JOHN H. CHAFEE,
Washington, DC.

Re: New Santorum language (S. 1692).

DEAR SENATOR CHAFEE: You have asked for our advice regarding the significance of proposed new language defining "partial-birth abortion," in substitution for the prior language of Section 1531(b)(1). In our opinion, the changes are without legal significance and will not correct the constitutional infirmities of S. 1692, the proposed "partial-birth abortion" ban. Nor do they limit the prohibition's wide-ranging ban on pre-viability abortion procedures.

The Center for Reproductive Law and Policy (CRLP), lead counsel in 14 state cases successfully challenging "partial-birth abortion" bans including challenges to laws in Iowa, Arkansas, and Nebraska struck down by the U.S. Court of Appeals for the Eighth Circuit, appreciates the opportunity to comment on this iteration of "partial-birth" definition.

(1) The proposal continues to preclude any procedure at any gestational age of a pregnancy. Court after court—including the unanimous 8th Circuit—has held that such an approach unduly burdens the right to abortion.

(2) The proposal purports to add a requirement of intentionality. Numerous statutes containing similar language ("deliberate" and "intention") have been enjoined, including those in Nebraska, Iowa, New Jersey, Rhode Island, and West Virginia,

(3) Similarly the requirement that an "overt act" be performed adds nothing. Every abortion procedure requires an "overt act."

(4) The new Santorum formulation is similar to proposed abortion bans labeled "infanticide" in some states. Although the rhetoric is extreme and the images repellant, the fundamental legal prohibition remains the same—and is similarly unconstitutional.

Sincerely,

JANET BENSHOOF,
President.

SANA F. SHTASEL,
Washington, DC Director.

Mrs. BOXER. I thank the Chair.

To sum up my feeling on this and the feeling of those of us who actively oppose the Santorum bill, we have no objection to the Senator amending his bill in this fashion, but we still believe very strongly that it doesn't meet the constitutional arguments. It still doesn't do anything to protect the health of a woman, and it doesn't do anything to remove criminal penalties on physicians.

I hope we will get this moving forward. We will amend the bill the way the Senator from Pennsylvania wants. I hope we can get to a vote at some point, although I know Senator SMITH is still talking about an amendment. Senator LANDRIEU has a very important amendment. I hope when we can get this wrapped up, all of those things can be done, perhaps in the next hour or two.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2323

(Purpose: To express the sense of the Congress that the Federal Government should fully support the economic, educational, and medical requirements of families with special needs children)

Ms. LANDRIEU. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Ms. LANDRIEU] proposes an amendment numbered 2323.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . SENSE OF THE CONGRESS CONCERNING SPECIAL NEEDS CHILDREN.

((a) FINDINGS.—Congress finds that—

(1) middle income families are particularly hard hit financially when their children are born with special needs;

(2) in many cases, parents are forced to stop working in order to attempt to qualify for medicaid coverage for these children;

(3) the current system of government support for these children and families is woefully inadequate;

(4) as a result, working families are forced to choose between terminating a pregnancy or financial ruin; and

(5) government efforts to find an appropriate and constitutional balance regarding the termination of a pregnancy may further exacerbate the difficulty of these families.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Federal Government should fully cover all expenses related to the educational, medical and respite care requirements of families with special needs children.

AMENDMENT NO. 2323, AS MODIFIED

Ms. LANDRIEU. I send a modified amendment to the desk.

The PRESIDING OFFICER. The Senator has that right.

The amendment is so modified.

The amendment (No. 2323), as modified, is as follows:

At the appropriate place, insert the following:

SEC. . SENSE OF THE CONGRESS CONCERNING SPECIAL NEEDS CHILDREN.

(a) FINDINGS.—Congress finds that—

(1) middle income families are particularly hard hit financially when their children are born with special needs;

(2) in many cases, parents are forced to stop working in order to attempt to qualify for medicaid coverage for these children;

(3) the current system of government support for these children and families is woefully inadequate; and

(4) as a result, many families are forced to choose between terminating a pregnancy or financial ruin.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Federal Government should fully cover all expenses related to the educational, medical and respite care requirements of families with special needs children.

Ms. LANDRIEU. Mr. President, when Justice Blackmun delivered the opinion of the Court in Roe v. Wade, which is one of the most significant decisions—regardless of how one feels about this issue, it is one of the most significant decisions rendered by our highest court—he wrote for the Court the following:

> We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that this subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitude toward life and family, and their values and the moral standards one establishes and seeks to observe are all likely to influence and to color one's thinking and conclusions about abortion. In addition, population growth, pollution, poverty and racial overtones tend to complicate, not simplify, the problem.

Mr. President, he was quite accurate, as we have witnessed on the floor of this Senate in the last few hours a very emotional and tough debate regarding one of the most serious issues I think this body has ever considered in the history of the Congress.

Regardless of how one feels about this issue, or the way we vote on these amendments, whether we regard ourselves as pro-life or pro-choice, or somewhere in the middle, the amendment I send to the desk and urge my colleagues to vote for and support is an amendment that is quite simple. It simply states that all individuals families or who find themselves in a situation of having a child with a birth defect would have their expenses covered—their medical expenses, their educational expenses, and the respite care for those families. That is so important for the many families who find themselves in the most difficult of situations. At that time in a family's life, there should be no hesitation on the part of this Government to come forward with the money and resources to support that family in this great time of need.

So I offer this amendment with great spirit and hope my colleagues on both sides of the aisle, regardless of how they are going to vote on the final outcome, will understand the merit of this amendment and will put this Senate on record as saying we believe all families should have assistance when faced with the great challenge and heartache of raising a child who has been challenged in some special way.

So I thank the managers for the time.

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

The PRESIDING OFFICER (Mr. FITZGERALD). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I thank the Senator from Louisiana for her amendment. It gets to the heart of the concern for people with disabilities. I think it reflects that we should open our arms to unborn children who are faced with disabilities and the difficulties they are going to deal with. I talked about it over and over again—how the debate for this abortion technique to be kept legal centered upon disabled children who were not wanted. There may be a percentage of those cases where abortion is done because of the financial concerns of parents in dealing with a disabled child. Those are real concerns and things people think about—whether they can provide a quality of life under the financial constraints of a child who may need a lot of care.

So to have an amendment that is a sense of the Congress that we should be open to helping and supporting life and affirming the decision of someone who wants to carry their child to term and accept them the way God has given that child to them is something I think Congress should do.

So I commend the Senator from Louisiana. I would be willing to accept the amendment, but I understand the Senator would like a recorded vote.

Mrs. BOXER. Mr. President, I would like to be heard on the amendment if my friend has finished.

Mr. SANTORUM. I would like to respond to her remarks about my amendment, also.

Mrs. BOXER. I want to add my voice on this amendment. I am really pleased that the Senator from Louisiana has brought this amendment to the floor. It is very important that we make a statement today that the children of America will be protected, and the Senator from Pennsylvania said he views this amendment as opening our arms to unborn children. To me, this is opening our arms to children regardless of where they come from, so the children born in this country will get help.

I ask unanimous consent to have printed in the RECORD an article that appeared in the Washington Post a couple of weeks ago. Its title is, ''Study Links Abortion Laws, Aid to Children.'' It says, ''States With Stricter Rules Are Less Likely To Spend on the Needy.'' That is incredible. Legislators stand up and say Roe v. Wade ought to be overturned, women should not have a right to choose, and what happens? ''States with the strongest anti-abortion laws generally are among the States that spend less on needy children and are less likely to criminalize''—this is amazing—''the battering or killing of fetuses in pregnant women by a third party. . . .''

That doesn't add up. So I think what we are doing today with the Landrieu amendment—because I think it is going to get overwhelming support—is saying whatever side of the aisle we fall into on the Santorum amendment—and there are strong differences there—we agree with her sense of the Congress that the Federal Government should fully cover all expenses related to the educational, medical, and respite care requirements of families with special needs children.

Many times, these children come into the world, and it is anticipated by their parents that it will happen, and the parents choose to go forward with the pregnancy. Many times, we have children born and it is a total surprise to parents that they have special needs requirements. Either way, any way, however it happens, how could our hearts not go out to children in this country with special needs?

By the way, I would like to engage my friend in a colloquy. Wouldn't this apply to any child—perhaps a child who is 1, 2 or 3—who gets injured in a car accident and suddenly the family finds that they need special care for the child?

My friend isn't just talking about newborn babies. I think she is basically saying all children and all families

that have this need ought to be covered.

Ms. LANDRIEU. Yes. The Senator from California is correct. The way that this is drafted is in a broader way because I believe that we have to be very sensitive to children with special needs, and their families that sometimes find themselves—even families at a fairly significant income level—in great financial distress. Often one of the parents has to quit their job or give up their job to qualify for the woefully inadequate. It would be my intention to do that. There would be others with other opinions. But I think it would be important for us to reach out to all families with children with special needs.

Mrs. BOXER. I thank my friend.

Again, I think it is really important because to have this study come out and say that States with the strongest antiabortion laws and want to end a woman's right to choose are the weakest in taking care of these children seems to be a horrible contradiction to me. I think what my friend is saying is regardless of our position, my goodness, we ought to come together when it comes to taking care of our children who have special needs.

I thank her. I will be proud to support her amendment.

I yield the floor.

Mr. BYRD. Mr. President, I cannot support amendment No. 2323, offered by the distinguished Senator from Louisiana, Ms. LANDRIEU. I appreciate her concern regarding the devastating financial impact that having a special-needs child can place on working families.

However, I am also mindful of the fact that, as we strive to complete our budgetary work, nearly all Members have agreed that we should do so without using Social Security Trust Fund surpluses or raising taxes. Despite the fact that this is a sense of the Congress amendment and therefore has no statutory consequence, I am nevertheless concerned with the unknown financial consequence that a commitment of this magnitude could have. For that reason, I am constrained to oppose the Landrieu amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask the Senator from Louisiana if she would be willing to withhold a vote until we have a couple of votes so that we can stack them together a little later in the afternoon. Senator SMITH has an amendment that I think he would require a vote on. Senator BOXER may have an amendment to the Smith amendment. Hopefully, we will be able to work that out.

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

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor. Does he yield the floor?

Mr. SANTORUM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

Mr. SANTORUM. Mr. President, thank you.

Mr. President, I want to make a couple of comments about my amendment and the attempt that I am trying to make to address the constitutional infirmities that the Eighth Circuit found in this language of the partial-birth abortion bill. The Arkansas statute is similar to the language that is in the bill presently.

The Senator from California talked about this not addressing the other constitutional issues that the Eighth Circuit brought up.

I remind the Senator from California. I am quoting from the case.

The district court held the act unconstitutional for three reasons.

> Because it was unconstitutionally vague, because it imposes an undue burden on women seeking abortions, and because it was not adequate to protect the health and lives of women. We agree the act imposes undue burdens on women and therefore hold the act unconstitutional. And because we based it on undue burden grounds as we did in Carhart, we do not decide the vagueness issue or whether the act fails to provide adequate protections.

The Eighth Circuit did not address that issue. The only circuit court that addressed it, addressed it on the issue that we are addressing here, which is that this could include other procedures, would ban other procedures, and as a result it could be unduly burdensome because it would eliminate all forms of abortions late in pregnancy.

We are making it clear what the court said, and not what some say the court said. That is what the court said. That is the only circuit court to have ruled on the case. Now we have an amendment which clearly deals with the issues of the circuit court which we are concerned about. I think we have cleared that constitutional hurdle.

It is interesting that the Senator from California talks about we have to follow the Constitution. Nowhere in the Constitution is the issue of partial-birth abortion mentioned, as far as I can see. Nowhere in the Constitution is the right to privacy mentioned. Nowhere is it mentioned. It is created by the Supreme Court.

To be technically correct, the Senator from California should say that we need to follow the Supreme Court, and not the Constitution, because there is a difference. The Supreme Court has interpreted and legislated rights through their Court decisions. The Senator from California accurately reflects that the law of the land is the high court. But to suggest we are following the Constitution, which is clear about this issue as far as I am concerned because the Constitution says that we have the right to life. So if the Constitution speaks at all to this issue, it speaks on our side.

Again, the law of the land is—I think she would be correct if she phrased it that way. We need to comport with the law of the land as the Court has interpreted the Constitution.

I would like to get back to my amendment and go through my modification to the bill. I am trying to get my terms correct. It is not going to be an amendment. It will be a modification. I would like to get back to the modification of the underlying bill that will redefine partial-birth abortion, and again focus on the fact that this solves one of the two issues that are out there with respect to the constitutionality.

More importantly, in my mind, it deals with the two issues that I think concern Members of the Senate as to whether to support this bill. One is, is it an undue burden? Do we ban more than what we say we do? If people are concerned whether that is the case, I think we have solved that problem—that if this bill passes no procedure other than partial-birth abortion, when the baby is outside of the mom after 20 weeks, outside the mother, would otherwise be born alive, and then brutally killed, executed by having a sharp pair of scissors thrust into the base of the skull of the baby and then its brains suctioned out. That would be outlawed under this procedure. But no other procedure would.

I want to make clear Congress' regard as to what the intent of the Congress is. Again, I think the language is amply clear for the court to do so.

It was interesting that the Senator from California contacted ACOG, the American College of Obstetricians and Gynecologists, and on an hour's notice, when asked about our amendment, ACOG was able to fax back to the floor of the Senate a response objecting to this provision. But those of us who have asked ACOG for 3 years, 3 years, to provide us a for instance as to when and under what circumstances this procedure would be a preferable or more proper procedure than other abortion techniques, they have yet to respond. It is interesting they can respond in an hour with great specificity about their concerns about this bill, about this modification. But in 3 years they have not been able to respond to a very simple question. You state—and they did—that it ''may be'' the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of the woman. We have asked for a ''for instance.'' We have asked for that for instance to be peer reviewed, to see whether their suggestion is, in fact, an accurate suggestion.

In more than 3 years, in three sessions of Congress, they have refused to provide an example.

That, my friends, is the underpinning of the second objection to the people to this bill that it unduly infringes upon the health of the mother; that this is medically necessary to preserve the health of the mother under Roe v. Wade.

Mrs. BOXER. Will the Senator yield on his criticism of ACOG?

Mr. SANTORUM. I yield.

Mrs. BOXER. I want to ask my friend from Pennsylvania, am I right, he is critical of the general counsel of the American College of Obstetricians and Gynecologists, who are the doctors in charge of women's health in this country; he is critical that their general counsel, upon reading his amendment, could determine on its face that amendment or that modification does not meet the criticism of the Eighth Circuit Court? Is he critical that the general counsel trusted her law degree, her reading of his bill, her understanding of the law, to come back with an opinion? It is hard for me to believe that.

Mr. SANTORUM. Reclaiming my time.

Mrs. BOXER. Please. I know the Senator wants to criticize the doctors, but now he is criticizing the lawyers.

Mr. SANTORUM. Any reasoned understanding of what I just said would lead one to believe I was not criticizing the American College of Obstetricians and Gynecologists for promptly responding to your request. I was comparing their swift response to your request to what could whimsically be considered a casual response to my request which has taken now 3 years on the core point, on the core question, as to whether this bill restricts or in any way inhibits the health of the mother.

Again, I will read their own report: We could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of a woman. Then they go on to say it may be best or appropriate in some circumstance, but they give no such circumstance, no such evidence.

This is the only pillar upon which the other side stands, saying it is medically necessary.

I will read several letters from members of ACOG, fellows in ACOG, who dissect their policy statement and say this second sentence, it may be the best position, is hogwash. That is a medical term—it is hogwash.

Again, ACOG has not responded to a letter, now in, 2½ years.

I would like to respond to the January 12th statement of policy issued by the executive board. I am a former abortion provider.

Let me repeat. This is an obstetrician, a member, a fellow of the American College of Obstetricians and Gynecologists:

I am a former abortion provider and I would like to take issue with the ''Statement'' for a number of reasons.

First, I can think of no ''established obstetric technique'' that ''. . . evacuat(es) the intercranial contents of a living fetus to affect vaginal delivery of a dead but otherwise intact fetus.'' The closest technique that I can imagine is a craniocentesis on a hydrocephalic infant to allow for vaginal delivery. There is no necessity that the infant be killed in this situation, and you must admit that there is a vast difference between craniocentesis for hydrocephaly and suctioning the brain of an otherwise normal infant who would be viable outside the womb.

Second, as to the number of abortions performed after 16 weeks, I do not trust the CDC's data on this since abortion statistics are at best, arguable. Abortion industry lobbyist Mr. Ron Fitzsimmons' recent admission of purposely misinforming the media and Congress on the statistical incidence of the procedure and its predominant usage (normal infants) should at a minimum demand an accurate audit of second and third trimester abortions in America. . ..

Finally, I'm sure there are many ACOG members who join me in reminding you that your stand on this issue, published as an official policy statement, does not reflect the views of many, if not most, ACOG members. However, the perception of the general public and the media is that you speak for all of us. Please recognize that you have a responsibility to all members of ACOG if not to stay neutral in sensitive areas such as this, to at least issue a disclaimer on such statement that the opinions of ACOG Executive Committee do not reflect those of its members.

This is signed by three members of ACOG.

I can go through another letter of a physician in Northern Virginia who writes in detail, a fellow of the American College of Obstetricians and Gynecologists, a letter to Senator TORRICELLI last year:

My name is Dr. Camilla Hersch. I am a board certified Obstetrician and Gynecologist, a fellow of the American College of Obstetrics and Gynecology, in private practice, caring exclusively for the health needs of women for thirteen years. I am also a clinical assistant professor of [OB/GYN] for Georgetown University. I have been involved with teaching medical students and OBGYN residents for fourteen years at two major medical teaching centers.

Not, by the way, compared to the inventor of partial-birth abortion. Not an obstetrician or gynecologist but a family practitioner who does abortions. That is who they are defending —a procedure not taught in medical school, not in any of the literature which Senator FRIST, Dr. FRIST, went through in detail last night. His thorough review of all the medical literature on the subject of abortion had not a mention of this procedure.

Back to the letter:

I have delivered over two thousand babies. On a daily basis I treat pregnant women and their babies. In my everyday work I am privileged to participate in the joy of healthy birth and the agony and sorrow of complications in pregnancy which can lead to loss of life or heartbreaking disability.

As a member of the Physicians' Ad Hoc Coalition for Truth, which now has more than 600 members, I strongly support and applaud the legislative efforts to ban this heinous Partial-Birth Abortion procedure.

Many of the members of PHACT, Physicians' Ad Hoc Committee for Truth, hold teaching positions or head departments of obstetrics and gynecology or perinatology at universities and medical centers across the country. To our knowledge, there are no published peer-reviewed safety data regarding the procedure in question. It is not taught as a formally recognized medical procedure. Proponents of partial-birth abortion tout it as the safest method available. Nothing could be further from the truth. There are in fact several recognized, tested, far safer, recommended methods to empty the uterus when it is medically necessary to do so.

There is no data in the accepted standard medical literature that could possibly support any assertion of the appropriateness of this procedure.

If you ask most obstetricians or family practice physicians about partial-birth abortion, they will tell they have never seen or heard of such a treatment for any reason in their educational training or practice.

Most physicians I have questioned are incredulous that anyone knowledgeable about Obstetrics and Gynecology would ever consider this procedure as any kind of serious suggestion, because it is so obviously dangerous. It has never been proposed or taught as the safest method to empty the uterus and end a pregnancy whether for purely elective reasons for abortion or in those grave instances when it is medically necessary to do so to save the mother's life.

Consider the grave danger involved in partial-birth abortion, which usually occurs after the fifth month of pregnancy, even into the last month of pregnancy. A woman's cervix is forcibly dilated over several days. This risks creating an incompetent cervix, a leading cause of subsequent premature delivery. It also risks serious infection, a major cause of subsequent infertility. In the event of a truly life threatening complication of pregnancy, the days of delay involved substantially add to the risk of loss of life of the mother.

The abortionist then reaches into the uterus to pull the child feet first out of the mother's body, up to the neck, but leaves the head inside. He then forces scissors through the base of the baby's skull—which remains lodged just within the opening of the forcibly dilated cervix, because the baby's head is larger and of course harder than the remainder of the soft little body.

I think it is obvious that for the baby this is a horrible way to die, brutally and painfully killed by having one's head stabbed open and one's brains suctioned out.

But for the woman, this is a mortally dangerous and life threatening act.

Partial-birth abortion is a partially blind procedure, done by feel, thereby risking direct scissor injury to the mother's uterus and laceration of the cervix or lower uterine segment. Either the scissors or the bony shards or spickules of the baby's perforated and disrupted skull bones can roughly rip into the large blood vessels which supply the lower part of the lush pregnant uterus, resulting in immediate and massive bleeding and the threat of shock, immediate hysterectomy, blood transfusion, and even death to the mother.

Portions of the baby's sharp bony skull pieces can remain imbedded in the mother's cervix, setting up a complicated infection as the bony fragments decompose.

Think of the emotional agony for the woman, both immediately and for years afterward, who endures this process over a period of several days.

None of this nauseating risk is ever necessary, for any reason. Obstetrician-gynecologists like myself across the U.S. regularly treat women whose unborn children suffer the same conditions as those cited by proponents of the procedure.

Never is the partial-birth abortion procedure necessary: not for polyhydramnios (an excess of amniotic fluid collecting around the baby),

That is one of the cases given by the other side. Never is a partial-birth abortion procedure necessary—

not for trisomy (genetic abnormalities characterized by an extra chromosome), not for anencephaly (an abnormality characterized by the absence of the top portion of the baby's brain and skull),

Never is a partial-birth abortion necessary,

not for hydrocephaly (excessive cerebrospinal fluid in the head),

Water on the brain. Never is partial-birth abortion necessary,

not for life threatening complications of pregnancy to the mother.

Sometimes, as in the case of hydrocephaly, it is first necessary to drain some of the fluid from the baby's head, with a special long needle, to allow safe vaginal delivery. In some cases, when vaginal delivery is not possible, a doctor performs a Cesarean section. But in no case is it necessary or medically advisable to partially deliver an infant through the vagina and then to cruelly kill the infant.

The legislation proposed clearly distinguishes the procedure being banned from recognized standard obstetric techniques.

We are even further clarifying it.

I must point out, even for those who support abortion for elective or medical reasons at any point in pregnancy, current recognized abortion techniques would be unaffected by the proposed ban.

Any proponent of such a dangerous procedure is at the least seriously misinformed about medical reality or at worst so consumed by narrow minded ''abortion-at-any-cost'' activism, to be criminally negligent. This procedure is blatant and cruel infanticide, and must be against the law.

Mr. President, I would like to put in place as legislative history for this modification that I will add to the bill a colloquy. Senator DEWINE is here. We are going to go through a colloquy that will create for the court a clear understanding of what is meant by this amendment.

So I yield to the Senator from Ohio for a question.

Mr. DEWINE. I thank the Senator. I am looking at the language obtained in the modification. I do have some questions concerning some of the language that is in there, some of the wording.

First, let me ask the sponsor, my colleague from Pennsylvania, what is the meaning of the word ''living'' as used in the amendment, as where it refers to a living fetus?

Mr. SANTORUM. I thank the Senator from Ohio.

In the Michigan partial-birth abortion case, Evans v. Kelly, the Federal District Court found that:

[t]he doctors were . . . unanimous in their understanding of the meaning of the term ''living,'' as used in the statute's definition of a ''partial-birth abortion'': A living fetus means a fetus having a heartbeat.

Mr. DEWINE. Let me also ask, then, what is the meaning of the word ''intact,'' as used in the amendment where it refers to an ''intact'' living fetus? Intact?

Mr. SANTORUM. The word ''intact'' is used in this context to refer to the living fetal organism rather than a fetal part that has been removed from a fetus. Because of the use of the word ''intact,'' a person performing a partial-birth abortion would not fall under the prohibition that the law provides if, for example, he or she delivers a dismembered fetal arm or leg. To fall under the prohibition, the abortionist would have to deliver a living fetal body, functioning as an organism.

The use of the word ''intact'' is not, however, meant to allow the killing of a partially born fetus merely because some nonessential body part is missing. An abortionist cannot cut a toe of the fetus off before partial delivery and then claim in defense that the fetus killed after the partial-birth abortion was not intact.

Mr. DEWINE. I thank my colleague for that answer.

Let me also ask about this. The amendment referred to an ''overt act'' that kills the fetus; an ''overt act'' that kills the fetus. I wonder if my friend from Pennsylvania could tell us what is meant by the term ''overt act'' in this particular context?

Mr. SANTORUM. I thank the Senator.

The term ''overt act'' is used to mean some separate specific act that the abortionist must undertake to deliberately and intentionally kill the fetus, other than delivering the fetus into a partial-birth position or causing the fetus to abort. It does not mean the overall abortion procedure which typically begins with a living fetus and ends with a dead fetus.

Under the amendment, the abortionist must not only deliver the fetus in such a way that some portion of the body of the fetus is outside of the mother's body, he or she must also separately and specifically act to then kill the fetus while it is in the partially-delivered position, for example, by puncturing the fetal skull or suctioning out the fetal brain.

Mr. DEWINE. I again thank my colleague. Let me ask a further question.

Would the bill as amended prohibit the suction curettage abortion procedure?

Mr. SANTORUM. No. The bill would have two elements. First, the fetus must be delivered into the partially delivered position for the purpose of performing an overt act that will kill the fetus while it is in the partially delivered position. Second, the fetus must actually be killed; that is, it must die while it is in the partially delivered position. Neither of these would happen with the suction curettage. Removal of the dismembered fetal parts entailed in a suction curettage is not prohibited because the parts do not constitute an intact living fetus. Suction curettage also typically involves dismemberment and fetal death in utero, conduct beyond the scope of the bill.

In the extremely implausible event that an entire fetus was suctioned through the cannula and died after removal from the mother's body, then the bill would not apply either, since it requires that the fetus be killed while in a partially delivered position.

Even if one argues that a fetus might occasionally die in the cannula while partially outside the mother's body during the course of a suction curettage procedure, the fetus would not have to be deliberately positioned there for the purpose then of taking a separate, second step to end its life at that point. Nor is any such separate step ever taken. Rather, suction curettage involves a single continuous suction process that removes the fetus from the uterus through a cannula and out of the mother's body. The physician could not knowingly deliver an intact living fetus into the partially delivered position by this method because he would have no way of knowing that the fetus yet lived at this point when it was partially outside the mother's body. The abortionist would, thus, never knowingly cause fetal death to occur at the partially delivered stage because the physician would never know at what point fetal demise occurred.

Even State partial-birth abortion statutes that did not have the ''fetus partially outside the mother's body'' have been held not to govern suction curettage abortion, and that is the Federal district court in Virginia and Kentucky.

Mr. DEWINE. I thank my colleague for that answer.

Let me pose an additional question. Would the bill, as amended, prohibit the conventional dilation and evacuation abortion procedure which involves dismemberment of the fetus?

Mr. SANTORUM. Absolutely not. In the conventional D&E procedure, the intact living fetus is never positioned partly outside the mother's body for the purpose of taking a separate overt act to end its life while it remains in that position. Moreover, the second step to end fetal life in that position is never taken. Also, once a physician has begun performing a conventional D&E dismemberment, he typically does not know when the fetus dies. Thus, he cannot meet the mens rea requirement of knowingly bringing an intact living

fetus partially out of the mother for the purpose of performing a separate overt act intended to kill the fetus in the partially delivered position.

Mr. DEWINE. Again, I thank my colleague for his answer.

I pose one additional question. Would the bill, as amended, prohibit the induction abortion procedure?

Mr. SANTORUM. No. Physicians doing inductions never deliberately and intentionally deliver an intact living fetus partially outside the mother's body for the purpose of pausing to perform an act that they know will kill the fetus while it remains in a partially delivered position before continuing the delivery.

It is possible that rarely during an induction abortion, an intact living fetus could be trapped in a partially delivered position with complete delivery being prevented by entanglement of the umbilical cord or the fetal head being lodged in the cervix. In such circumstances, the physician may cut the cord or decompress the skull before completing delivery without being in violation of the bill because he did not intentionally and deliberately get the fetus in that position for the purpose of killing it while it was in that position.

Even State partial-birth abortion statutes that did not have ''fetus partially outside the mother's body'' language have been held not to govern induction abortions, and again, Federal district courts in Virginia and Kentucky have so ruled.

Mr. DEWINE. I thank my colleague very much for those answers.

Mr. SANTORUM. I thank the Senator from Ohio.

The Senator from Nebraska had questions about how this amendment from a constitutional standpoint would be perceived. This is very clear. With this colloquy, we very clearly address all the different aspects of different kinds of abortions which would not be outlawed by this procedure and why they would not be outlawed by this procedure.

For those who have suggested—and I know many have suggested—that what we are about here is the first step to eliminating abortions, I again state for the record that I cannot honestly say we will eliminate one abortion in this country if we pass this bill. I can honestly say that is not the thrust of what we are trying to accomplish.

I have said it once, and I will say it again and again: What we are trying to accomplish is to make sure that in a society where the lines are ever blurring, in a society where sensitivity to life may be at an all-time low, in a society where the Peter Singers of the world are running rampant with their talk of being able to kill children if they are not perfect after they are born, we need a bright line. And the bright line should be that if the child is in the process of being born, you cannot kill the child, you cannot do an abortion where the baby is in the process of being born.

That has to be the bright line, except, of course, to save the life of the mother. But to deliberately birth the baby for the purpose of killing the baby goes over the line.

In closing, I refer to what the Senator from California said when I said she defends a procedure in which the baby is born all but the head; that under those circumstances you can still kill the baby. But if the baby is born head first and all but the foot is still inside the mother, when I asked her, can you kill the baby in this circumstance, she said no, ''Absolutely not.''

If that is a bright line to anybody in this Chamber, if that is where we want to stand, I will tell you, that is on shifting ground. In fact, that is on quicksand, and pretty soon the Peter Singers of this world who say, ''Killing a disabled infant is not morally equivalent to killing a person. Very often it is not wrong at all''—a professor at the University of Princeton. And you say that is outrageous?

Look at the examples the other side has given as reasons to keep this procedure legal. The examples are all about disabled infants. None of them concerns the health of the mother. They all concern a case where children were going to be born with profound abnormalities, disabled. The argument is, we need to keep this legal because disabled children are less entitled to protection than healthy ones.

You have heard no example. You will hear no example. You will hear no example of a healthy mother and a healthy child being used to legitimize this procedure. They won't dare do that. Why? Because it would shock you. Yet 90 percent of abortions performed under partial birth are performed on just those cases. What they will use is the disabled child, and the American public, incredibly, to me, will say: OK; that's OK; I understand; it's OK; if the child is disabled, of course you can kill it.

If that is what we are thinking, America, if that is a legitimate reason to keep this ''safe'' procedure—which, of course, it is not—how far are we from, killing a disabled infant is not morally equivalent to killing a person? How far away are we, America? If this Senate today upholds, by not passing this bill by a constitutional majority, that logic, then, Dr. Singer, come on down because you are next.

Mr. President, I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the Chair for recognizing me.

Let me say at the outset, I am so grateful to the younger Senators who have taken up this battle. And they are doing well with it. They may not win, but they are doing the Lord's work as far as I am concerned.

I remember, on January 22, 1973—and I had barely arrived in the Senate—Jim Buckley and I were sitting right over there, and the clerk brought in a bulletin from the Associated Press announcing the Supreme Court decision in Roe v. Wade. Jim Buckley looked at me, and he said: We've got to fight this. I said: We certainly do. And we did. And we are still fighting it—in different ways. He is a Federal judge now, and I am a somewhat older Senator.

But my respect goes out to the ladies outside who are standing up for the right to life. They will always be dear to me.

Mr. President, before I launch into what I want to say, I have thought so many times of a beautiful Afro-American lady named Ethel Waters, born in Mississippi, the product of a rape. Her mother was much beloved by citizens in that Mississippi town. And they offered to take care of an abortion for her. She said: No. I don't want it. The Lord put that child in me, and I want it to be born. The baby turned out to be a girl who grew up to be one of the greatest singers in the history of this country. Ethel Waters' name is in all of the musical records as being a great voice.

That brings me up to the point that I want to try to make today, as briefly as possible. The United Nations recently sounded its alert button to announce what the United Nations described as the arrival of the six-billionth baby born in this world. And the news reports went on and on, of course, in great lamentation that the Earth does not produce enough resources to handle such population growth, the point being, of course, that the United Nations crowd does not believe bringing more babies into the world is advisable.

If I may be forgiven, I do not regularly agree with the United Nations, and this is another time when I do not agree.

In fact, the spin doctors worked steadily drumming up all manner of contrived environmental statistics to persuade the American people to support abortion. And those spin doctors, of course, used the term ''population control''—which is nothing more than a diplomatic way of promoting abortion because that is exactly what ''population control'' means. It means brutally killing innocent unborn babies.

Anyone doubting the horrors of population control need only to look at Red China, a Communist country, that proudly boasts of its population control program, a program which forces pregnant women, who have already given birth to a male child, forces those women to undergo an abortion.

Astonishingly, Red China's Premier, Zhu Rongji, boasted that the world had

been spared the ''burden'' of 300 million babies as a result of Red China's forced-abortion policy.

So I think there is no doubt that the ''population control'' spin doctors are, without fail, pro-abortionists with an undying and unyielding commitment to the abortion movement.

And no matter where it is performed, whether it is in Red China or in the United States, abortion, in any form, is atrocious and wrong. And my critics may come out of their chairs, but they are breaking one of the Ten Commandments.

That is why I am grateful to the distinguished Senator from Pennsylvania, Mr. SANTORUM, for his strength and conviction in standing up in defense of countless unborn babies. RICK SANTORUM's willingness to continue to lead the fight on behalf of the passage of the Partial-Birth Abortion Ban Act is a demonstration of his courage.

From the moment the Senate first debated the Partial-Birth Ban Act in the 104th Congress, the extreme pro-abortion groups have sought to justify this inhumane, gruesome procedure as necessary to protect the health of women in a late-term complicated pregnancy. That is what they always say. However, well-known medical doctors, obstetricians, and gynecologists have repeatedly rejected this assertion that a partial-birth abortion can be justified for health reasons.

Moreover, there is much to be said about the facts surrounding the number of partial-birth abortions performed every year and the reasons they are performed—or at least the stated reasons. It is difficult to overlook the confession of Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, who acknowledged that he himself had deceived the American people on national television about the number and nature of partial-birth abortions. Mr. Fitzsimmons has since then estimated that up to 5,000 partial-birth abortions are conducted annually on healthy women, carrying healthy babies—a far cry from the rhetoric of Washington's pro-abortion groups who have insisted that only 500 partial-birth abortions, as they put it, are performed every year, and only—they say, every time—in extreme medical circumstances.

It is time for the Senate, once and for all, to settle this matter and pass the Partial-Birth Abortion Ban Act with a veto-proof vote and affirm the need to rid America of this senseless, brutal form of killing.

It is also important to note that the American people recognize the moral significance of this legislation. The majority of Americans agree that the Government must outlaw partial-birth abortion. In fact, in recent years, polls have found as many as 74 percent of Americans want the partial-birth procedure banned.

Unfortunately, the American people have to contend with President Clinton's adamant refusal to condemn this senseless form of killing, despite the public's overwhelming plea to ban it.

The President of the United States should have to explain, over and over again, to the American people why he will not sign this law. The spotlight will no longer shine on the much proclaimed ''right to choose.''

I remember vividly the day when the Supreme Court handed down the decision to legalize abortion. As I said earlier, Jim Buckley and I—Senator Jim Buckley of New York and I—were sitting side by side because we were backbench Senators at that time. Each of us who has fought, heart and soul, to undo that damaging decision, understood so well that day that we had yet to see what devastation would come of such a horrendous rule.

Indeed, when you stop to think about it, when the President of the United States condones the inhumane procedure known as ''partial-birth abortion,'' it is clear that our worst fears that January morning are coming true. So it is time, once again, Mr. President, for Members of the Senate to stand up and be counted for or against the most helpless human beings imaginable, for or against the destruction of innocent human life in such a repugnant way. Senators are going to have to consider whether an innocent, tiny baby, partially born, just 3 inches from the protection of the law, has a right to live and to love and to be loved. In my judgment, the Senate absolutely must pass the Partial-Birth Abortion Ban Act. I pray that it will do it by a great margin, of at least the 67 votes to override Bill Clinton's veto.

I thank the Chair and yield the floor.

MODIFICATION TO S. 1692

Mr. SANTORUM. Mr. President, I ask unanimous consent that it be in order for me to send a modification of the bill to the desk, the modification of the bill be agreed to, and the motion to reconsider be laid upon the table.

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

Mr. SANTORUM. Pursuant to the agreement, I send the modification to the desk.

The PRESIDING OFFICER. The bill is so modified.

The modification was agreed to, as follows:

On page 2, strike lines 18 through 21, and insert the following:

''(b)(1) As used in this section, the term 'partial-birth abortion' means an abortion in which the person performing the abortion deliberately and intentionally—

''(A) vaginally delivers some portion of an intact living fetus until the fetus is partially outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the fetus while the fetus is partially outside the body or the mother; and

''(B) performs that overt act that kills the fetus while the intact living fetus is partially outside the body of the mother.

On page 3, strike lines 8 through 13.

Mr. SANTORUM. Mr. President, while I have a few minutes, I want to continue building the record, not from RICK SANTORUM, not from other Senators who are not experts in the field, but building the record from physicians, obstetricians, and experts who comment directly, fellows of the American College of Obstetricians and Gynecologists, an organization that the other side uses as defense.

Again, this defense is a paper bag that simply needs to be tested. It is a facade. It will collapse. It will be punched through.

Let me strike a blow. This is a statement of Dr. Don Gambrell, Jr. M.D., with the Medical College of Georgia, again, a fellow of the American College of Obstetricians and Gynecologists. He is a clinical professor of endocrinology and OB/GYN. First sentence right out of the block:

Partial-birth abortion is never medically indicated to protect a woman's health or fertility.

You have heard several other comments I have made about obstetricians who have said the exact same sentence. Think about who is saying this. This is an expert. We have 600 such physicians. The American college itself, who is against this bill, said it is never the only option. So they even agree it is not the only option. What they say is, it may be preferred. But they give no case; in 3 years, they have given no case. Their own members say it is never medically indicated—never.

He underlined the word ''never.'' This is a doctor at a medical college. By the way, I have reams of letters here, all from physicians, all from obstetricians from all over the country who say the same thing.

Think about this he is a doctor. For a doctor to say ''never,'' put it in writing and stand behind it—in this case, this was submitted as testimony to the House of Representatives in Atlanta, GA—to put this in sworn testimony, to be able to stand up and, without flinching, to lead off, first sentence, ''never medically necessary.''

What do we have on the other side of this medical necessity debate? I will read it one more time. The only factual evidence that supports the other side is this statement:

The select panel could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of the woman.

They agree with us: Not the only option; it is not an undue burden; there are, in fact, other procedures that can be used that are as safe.

But they go on to say, however, it ''may be the best or most appropriate procedure.'' It ''may be.''

Here is one of their members—by the way, there are at least five, six dozen

members, their members, who have written, who have said ''never,'' letter after letter after letter after letter after letter, ''never.'' What did they respond to their own members? A deafening silence.

Their own members have asked: Give us a for instance. What has been their response? Nothing.

Then we are to defeat a bill based on no evidence and an assertion that it may be, without a shred of evidence to support that ''may be.''

We have mountains of evidence, of expert opinion, of specific indications, of, as I just read from Dr. Hersh, where she went through specific abnormalities and said, not appropriate, not appropriate, not appropriate, not appropriate. Why these abnormalities? Because they were all the abnormalities listed in their anecdotes, in their case histories, that said ''requires'' a partial-birth abortion or is a preferable procedure to perform under these circumstances. Again, experts on the record under oath—never.

Now they go further than that. These people say not only is it never medically indicated, it is contraindicated. It is more dangerous to do this.

I want Members to know, when they walk to this floor and vote on this bill this time, A, the medical evidence is crystal clear: Never medically necessary to protect the health of the mother. And anybody who walks outside this Chamber and asserts that is doing so against 100 percent of the record before us.

By the way, that won't stop people. It won't stop anybody. But look at the record; look at the facts. Anybody who walks out of here and says, I am opposed to this because it is unconstitutional, it is vague, it may cover more of this abortion, and it is an undue burden because of that, read the modification that has just been sent to the desk and adopted. It is crystal clear that no other abortion is banned by this bill now. I don't believe it was before, but if you had any doubt, it is not now.

Senator DEWINE and I entered into a colloquy that specifically listed instances and other abortion techniques used that are not covered by this bill. We explain in legal and medical detail why they are not. We say to the courts, that is not our intention; it is not covered. Here, legally and medically, is why it is not.

If you want to walk out here and tell your constituents that you voted against this because we needed to protect the health of the mother, ''check strike one, not true.'' You can say it. You might get away with it. But it is not true. They don't have a shred of evidence to say that it is.

They will put up pictures and tell stories about difficult decisions. Every one of those cases have been reviewed and every single one of them, experts in the field, 600 of them have said, not true. You may walk out this door and tell your constituents that I need to vote against this because it bans other procedures; it would be an undue burden; it would prohibit a woman's right to choose. Not true. It does not ban any other procedures. If it conceivably did, by some distortion of the words, which is what I think the courts have done, we make it crystal clear. This bill, the new bill, the first time any Member of this Senate will be voting on this particular bill be careful, be careful, because all of the trees you can hide behind in the game of abortion politics are being cut down at the base. In fact, there aren't even stumps left to hide behind. There is no medical evidence to support what they suggest. There is no constitutional argument on undue burden left with this new bill.

So if you want to support this procedure, look your constituents in the eye and say: I believe abortion should be done at any time, at any place, in any manner, anyone wants to do it, and that includes 3 inches from being completely born and being protected by the Constitution. If you want to say that, then you are telling the truth; then you are being honest.

If you want to say anything else, then you are hiding behind what was a truth. It is gone. There is no protection. You will have to look your constituents in the eye and say: I am not concerned about the dividing line between what is protected under our Constitution and what is not; I am not concerned that this is a slippery slope, where if the head is not born, you can kill the baby, but if the foot is not born, you can't, and it doesn't concern me at all; it doesn't set a double standard at all; it doesn't cause a problem in our society where a baby 3 inches away from life can be executed. It doesn't bother me, America. I want you to know that, constituents. This doesn't bother me. It doesn't bother me that all of the reasons given by the other side as to why this procedure should be kept legal are because of disabled children who were either not going to live long, or live long with a disability.

Mrs. BOXER. Will the Senator yield for a question?

Mr. SANTORUM. No, not at this time.

Mrs. BOXER. I want to ask, how much longer does the Senator plan on going at this point in the debate?

Mr. SANTORUM. A couple of minutes. The Senator from Illinois wants to speak.

Mrs. BOXER. Mr. President, I have not objected to his modification, but I wanted to speak on it. The Senator did it when I was talking about Senator SMITH. I would like to have a little time prior to the Senator from Illinois to respond to the modification.

Mr. SANTORUM. Sure.

Mrs. BOXER. Thank you.

(Mr. GORTON assumed the chair.)

Mr. SANTORUM. So if you want to look your constituents in the eye and say: I am not concerned that we need to draw a bright line, and that the examples being used as to why this procedure should be kept legal—and the stories and the cases to legitimize this procedure all involve deformed babies; they all involve babies who were not perfect in someone's eyes—if you want to look at them and say we need to keep this procedure legal because of these cases, then you need to look them in the eye and say: Well, I don't mean what Dr. Singer says, that killing a disabled infant is not morally equivalent to killing a person. But if you say that, then you have to look them in the eye and say: By the way, I want this procedure to be legal to kill healthy children with healthy mothers because that is how 90 percent of these abortions are done.

So if you can look in the eyes of constituents and say a 25-week-old baby who is from a healthy mother, a healthy baby, which would otherwise be born alive, that may in fact be viable, can in fact be delivered, all but the head, its brains punctured and suctioned out, and that is OK in America, and that doesn't bother us, and that doesn't create a slippery slope and create a cultural crisis—if you can look in the eyes of your constituents and tell them that, then come down here and vote no. Vote no, and you can do so with a clear conscience; you can do so with a clear conscience as to what you are saying.

I don't know about other aspects of your clear conscience, but know what you are doing because anybody who will take the time to read the RECORD of what happened over the last 2 days will have no doubt as to what you are doing. I know most folks don't read the RECORD. But you have, you listened, and your staff listened. You know the facts. You know what is at stake. You know the right thing to do.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, we finally have reached a point where the Senator from Pennsylvania and I have a strong agreement; we are urging everybody to read the record of this debate. I do hope the American people will read the record of this debate, and they will find out who stands for the mainstream view on the issue of a woman's right to choose and who stands for the extreme view on a woman's right to choose. The extreme view is overturning Roe v. Wade, which, from 1973, has protected the right of a woman to make a personal, private, moral, spiritual decision with her family, her doctor, her God, her advisers.

That is the mainstream view in America. That is the law of the land. The Senator from Pennsylvania is right that it is the law of the land because the Supreme Court found a right

of privacy in the Constitution and said that, yes, women count. We have a right to privacy. So, please, read the RECORD.

We voted on the issue of Roe v. Wade and by a thin, small margin—the vote was 51–48—we said don't overturn Roe. That is a dangerous vote. Forty-eight Members of this body want to criminalize abortion, make it illegal, go back to the days when women died—5,000 women a year. This is the first time this Senate in history has ever voted on that landmark decision, and 48 Senators don't trust women; 48 Senators want to tell women what to do in a personal, private, religious, moral decision.

So, yes, I do hope the people of this country will read the RECORD because the RECORD is complete on this issue. We heard from the other side that we don't care about Roe v. Wade; we are not going to overturn it. We don't want to do anything about it. We just want to talk about this one procedure. And many of us on this side of the aisle said it is a smokescreen, and we tested it today. What did we find out? The leaders of this ban, which has been called unconstitutional by 19 courts, also voted to overturn Roe v. Wade.

I hope the families of America read this RECORD. It is very clear about who stands where. Let me tell you the difference between the two sides. It is not so much about how we feel on the issue because that is a personal matter. I have given birth to children—the greatest joy in my life. I have a grandson—a new joy in my life. I have one view; the Senator from Pennsylvania has another. Let me tell you the difference. It is who decides. I respect the right of the Senator from Pennsylvania to make that decision by himself with his wife, with his family. He does not respect my right, or your right, or the right of anyone in America to be trusted to make that decision. He wants to tell you what to do. I didn't think we were elected to play God or to play doctor. I thought we were elected to be Senators. I thought we were elected to uphold the Constitution and the laws of the land.

Yes, this RECORD is full. It is important. It ought to be reflected upon. Our votes ought to be scrutinized. I agree with the Senator from Pennsylvania. Every word that was spoken here ought to be looked at. Every single time we engage in a conversation ought to be reviewed. I think it is important.

I also think it is important to understand that this modification that was sent to the desk—we had no objection to the Senator from Pennsylvania rewriting his law. That is his right. I don't have a problem with it. It does not do what the Senator from Pennsylvania says it does. The Senator from Pennsylvania says his new language addresses the objection of the Eighth Circuit and of the other courts that have ruled on his law that has been enacted in many States as unconstitutional on its face.

In the short period of time we have had to send out his new language, we have heard from the Center for Reproductive Law and Policy. The letter is in the RECORD. It says:

> The proposal continues to preclude any procedure at any gestational age of a pregnancy. Court after court—including the unanimous Eighth Circuit—has held that such an approach unduly burdens the right to abortion.

That is the Center for Reproductive Law and Policy.

The general counsel of the Association of Obstetricians and Gynecologists, the very group that deals with bringing life into the world, the very group of doctors we go to when we are ready to have our families and to help us have our families, says about this new language, upon review of it, that the language does not address the issues addressed by many States and Federal courts, including the United States Court of Appeals for the Eighth Circuit.

The Senator may say he has met constitutional objections. But those who deal with this law, who deal with it every day, say it does not.

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

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

NORTHWESTERN UNIVERSITY
MEDICAL SCHOOL,
Chicago, IL, October 21, 1999.

I have reviewed Senator Santorum's amendment. It would apply to all second trimester procedures. It does not narrow the definition of the so-called ''Partial-Birth Abortion Ban'' Act. It would effectively ban the safest and most common form of second trimester abortions.

Sincerely,
MARILYNN C. FREDERIKSEN, M.D.,
Associate Professor,
Obstetrics and Gynecology,
Department of Obstetrics and Gynecology.

Mrs. BOXER. Mr. President, this letter is from Northwestern University Medical School signed by Marilynn Frederiksen, M.D., Department of Obstetrics and Gynecology, who says:

> I have reviewed Senator Santorum's amendment. It would apply to all second trimester procedures. It does not narrow the definition . . . [and] would effectively ban the safest and most common form of second trimester abortions.

I say to my colleagues, if you were looking for a fix on the constitutionality, it isn't here.

Again, I repeat that if you believe in the Constitution, if you believe in the right of privacy, and if you believe in following court precedent, a woman's health must always be protected. Under this law, as modified, the woman's health isn't even mentioned.

It is possible she could be paralyzed. All kinds of horrible things could happen. She could be made infertile. And, yet, no exception.

We have another letter that I ask unanimous consent to have printed in the RECORD.

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

THE AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, October 21, 1999.

Hon. BARBARA BOXER,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR BOXER: In response to the current Senate floor debate on the so-called ''partial birth abortion'' ban, I would like to clarify that there are rare occasions when Intact D & X is the most appropriate procedure. In these instances, it is medically necessary.

Sincerely,
STANLEY ZINBERG, MD,
Vice President,
Clinical Practice Activities.

Mrs. BOXER. Mr. President, this letter is from Stanley Zinberg, vice president, clinical practices, the American College of Obstetricians and Gynecology. This is a new letter:

> . . . I would like to clarify that there are rare occasions when intact D&X is the most appropriate procedure. In these instances, it is medically necessary.

The very words that some Senators said were not present in this debate are suddenly present in this letter. The doctors are telling us that the procedure that many Senators are voting to ban without making a health exception is medically necessary on certain occasions.

I will conclude with these remarks in the next few minutes by addressing something that has been very upsetting to me as a human being. Forget that I am a Senator. We have heard from people who would have to go through this procedure a series of stories that could break your heart. They decided, because they believed it was in their best interests, in the best interests of the fetus they were carrying, and in the best interests of their families, they decided after consulting their spiritual counselors that it was the right thing to do for their families.

The Senator from Pennsylvania wants to outlaw this option, this choice. But, worse than that, he calls these stories anecdotes. He says: Do not listen to anecdotes. But yet he cites his own experience and doesn't call it an anecdote. He calls it a tragedy. I have to say I hope we would apply the same kind of language to all Americans as we do to our own families.

These are stories. Let me share some with you.

Tiffany Benjamin: Genetic tests revealed that her child had an extra chromosome. Doctors advised her that her condition was lethal. No one could offer hope. They determined the most merciful decision for their child and the family would be to terminate the

pregnancy. She says, ''Although three years have passed for us, the depth of our loss is vivid in our minds.'' She says to every Senator who would outlaw this procedure, ''We are astounded that anyone could believe that this type of decision is made irresponsibly and without a great deal of soul searching and anguish. These choices were the most painful of our lives.''

Is that an anecdote? That is a true life experience of a woman who says to us, please don't ban a procedure that is medically necessary.

Coreen Costello, a registered Republican, describes herself as very conservative. She made it clear that she is opposed to abortion. She was 7 months pregnant in 1995 with her third child. She was rushed to the emergency room, and an ultrasound showed something seriously wrong. The baby had a deadly neurological disorder, had been unable to move inside her womb for 2 months. She goes on. The doctors told Coreen and her husband that the baby was not going to survive, and they recommended terminating the pregnancy. The Costellos say this isn't an option for us: ''I want to go into labor.'' She said: ''I want my baby to be born on God's time. I did not want to interfere.''

They went from expert to expert. And the experts told her labor was not an option. They considered a cesarean section. But the doctors said the health risks were too great. In the end, they followed the doctor's recommendation and Coreen had an abortion. She says now they have three happy, healthy children, and she since then has had a fourth.

She writes to us: ''This would not have been possible without the procedure.'' She says please give other women and their families this chance. Let us deal with our tragedies without any unnecessary interference from the Government. Leave us with our God. Leave us with our families. Leave us with our trusted medical experts.

I could go on and on with these stories, these real-life tragedies. They are not anecdotes. They are not stories that are made up. They are not rumors. They are real people who have gone through this. I daresay we ought to listen because they are people who count. They are telling us to stay out of their private lives. Stay out. If anyone wants to make a decision about their family, please, that is their right. I would do anything in my power to fight for anybody's right not to have an abortion if that is their choice. I am as strongly for that.

However, I think it is an insult, an indignity, a slap in the face of the women and the families of this Nation for government to tell them what to do in these tragic moments.

Mr. LAUTENBERG. Will the Senator yield?

Mrs. BOXER. I am happy to yield to the Senator.

Mr. LAUTENBERG. Mr. President, I have heard on this floor that there haven't been any of these late-term abortions performed by doctors or performed in hospitals. The Senator has been diligent on the floor of the Senate in these last days in making sure women's rights are protected. It has been a tough fight. I wonder, to the Senator's knowledge, is it true these late-term abortions have been done exclusively outside of hospitals by nonobstetricians, by nonphysicians? Does the Senator have that kind of information?

I had a chance to speak to Ms. Koster, portrayed in the photograph, a woman very happy with her decision to have an abortion in late term. By the way, this is not an unreligious person or not a person we could accuse of immorality. She insisted and told me she had obstetricians and she had it performed in a hospital, as I remember, in Iowa.

Is the Senator familiar with that situation?

Mrs. BOXER. Yes, and I want to say in my State we have a law. A procedure done in the late term must be done inside a hospital.

We have received a letter from the American College of Obstetricians and Gynecologists who work in hospitals all over this country and have said this procedure that the Senator from Pennsylvania wants to ban is, in certain instances, medically necessary.

We have the most prestigious group of doctors from the American College of Obstetricians and Gynecologists saying banning this procedure is dangerous. That, in fact, even with the changes that the Senator from Pennsylvania made, it is so broadly worded it allows most abortions. There is still no health exception.

My friend is absolutely right. These procedures, and abortions in general, are done by physicians.

Mr. LAUTENBERG. My most recent grandchild was delivered 1 week ago, a large baby. My daughter is very active athletically. She produced a 9-pound, 7-ounce baby girl, larger than the two brothers who preceded her.

I also have two other daughters, each of whom has two children; one daughter carried a fetus for almost 8 months and something happened. She called me and said: Daddy, I've got bad news. The baby got caught in the cord and apparently choked to death. She wasn't feeling a heartbeat when she went to the doctor. Nothing hurt me more, nothing hurt her more.

We are not the kind of family that casually looks at abortion and says everybody ought to have one. This is the right of privacy, is it not?

Mrs. BOXER. It is absolutely about the right to privacy and respect of the woman and her family.

Mr. LAUTENBERG. Does the Senator find women's organizations coming forward about outlawing this procedure? Does it make sense in any way to protect women who have an unfortunate condition or whose health is in danger in the late term in their pregnancy?

Mrs. BOXER. Anyone who believes in the basic right to choose and the basic decision in Roe, which protected a woman's health, is opposed to this Santorum bill.

Let me read into the record a few groups, and I will not even name women's groups; I will name other groups: The American Public Health Association opposes this bill; the American Medical Women's Association opposes this bill; the American Nurses Association opposes this bill; the Society for Physicians for Reproductive Choice and Health opposes this bill; the American College of Obstetricians and Gynecologists opposes this bill; and the Religious Coalition for Reproductive Choice opposes this bill.

I say to my friend, women's groups who support a woman's right to choose see this as chipping away at the right of a woman to make a decision with her God and her doctor and her conscience. They oppose it as well as the medical and religious groups.

Mr. LAUTENBERG. I inquire as to the Senator's response, if this is an attempt to establish the moral platitudes around which this country should operate—and that is fortified in my view by the fact that while we ignore the opportunity to protect a born child 15 or 10 years old in school, we are unwilling to pay attention to the mother's plea in that case to protect the child; but we hear the National Rifle Association's voice.

Does the Senator see a born child, a child going to school, a child walking in the neighborhood, a child at play, as being as protected as the definition that we want to exert here on a woman whose pregnancy is in a late term, and a doctor and she agree that it is an appropriate thing to do? Does the Senator see some kind of conflict here? Or perhaps even hypocrisy? The Senator ought to correct me if I am wrong because I don't want to be wrong about this.

As I remember, those who are presently so strongly advocating removing the right of a woman to make a decision, vote against gun control measures that we have when it comes to protecting children. Does the Senator see the same question raised that I see?

Mrs. BOXER. The irony of this issue is right there. I say that the leading voices in this Chamber on this issue are the same voices that we hear against any type of sensible laws to protect our children that deal with gun violence.

Interestingly, in my State, gunshots are the leading cause of death among children. It is a supreme irony.

Mr. LAUTENBERG. Is the Senator aware that 13 kids a day are killed by

gunfire in this country, over 4,500 children a year are killed by gunfire? Children who are alive, working, and with their families, exchanging love with their parents, brothers and sisters. Is the Senator aware that 13 children every day in this country are killed by gunfire because we lack control over that?

Mrs. BOXER. I am aware and it is a tragedy.

Mr. LAUTENBERG. Where does the Senator think we are in terms of saying to women, you can't make a choice on your own; you don't have the moral rectitude to go ahead and make this decision, even though you and your doctor agree and there is some risk to the mother's health in carrying this pregnancy.

We can't even get an exception to that. Am I right in that interpretation?

Mrs. BOXER. That is correct. No exception for health.

Mr. LAUTENBERG. It reverts back to wanting to control other people's destinies, other people's decisions by a few other-than-experts in this body on pregnancy, and the health care necessary to attend to that.

Mrs. BOXER. My friend is right. There is not one obstetrician or gynecologist in this Senate, yet we see the pictures used, the cartoon figures of a woman's body—which I find rather offensive. The bottom line is, we were not elected to be doctors, but we were elected, it seems to me, to be tough on crime and to stop crime and to do what it takes to protect our citizens.

My friend from New Jersey has been a leading voice in that whole area. I do not know how many months it has been since the Vice President broke the tie there, when my friend had a very important amendment up to close the gun show loophole so people who are mentally unbalanced and people who are criminals can no longer get guns at a gun show to shoot up kids and shoot up a school.

Mr. LAUTENBERG. The Senator has mentioned we have drawings on the floor, of the horror that is involved in performing a surgical procedure. Aren't surgical procedures generally unpleasant to witness?

Mrs. BOXER. Absolutely.

Mr. LAUTENBERG. I once saw an appendix removed and saw a couple of people around me faint. It is never pretty, but it is done for a purpose. When a lung is removed, or a colon is removed, it is never a beautiful procedure. But the fact is, the person for whom the procedure is done often is in better health afterward.

Has the Senator ever seen pictures of the kids jumping out of the windows at Columbine High School in Littleton, CO?

Mrs. BOXER. Yes, I say to my friend, I think those are images that are in everybody's mind.

Mr. LAUTENBERG. They are not drawings.

Mrs. BOXER. They are real TV images of children escaping gun violence.

Mr. LAUTENBERG. I know the Senator's home State is California. Did the Senator see the picture of the tiny children being led hand-in-hand by policemen and others trying to protect them from gunfire?

Mrs. BOXER. Again, my friend is evoking images I don't think anyone in America will ever forget, of those children grasping the hands of those policemen in the hopes of being saved.

Mr. LAUTENBERG. Did the Senator see the pictures from, I believe the city was Fort Worth, TX, of those young people praying together, reaching out to God?

Mrs. BOXER. Yes.

Mr. LAUTENBERG. Trying to correct what imbalances they saw in life. Did the Senator see the pictures of those people?

Mrs. BOXER. I saw the horror, yes.

Mr. LAUTENBERG. Did you see them crying and holding each other?

Mrs. BOXER. I did.

Mr. LAUTENBERG. Can the Senator tell me why it is we refused to identify those buyers of guns at gun shows here? In a vote we had here? We finally eked out a vote, 51–50, that said we should not have it. But our friends on the Republican side in the House dropped it out of the juvenile justice bill, and we do not see it here.

Can the Senator possibly give me her description of what might be the logic there, as those on the other side want to take away the right of women to make a decision that affects their health and their well-being and their families' well-being?

Mrs. BOXER. I can only say to my friend, we see an enormous amount of passion, which I think, in the end, puts women in danger. It goes against the basic right of privacy and the basic dignity of women and their families in their to make a personal decision. We see a lot of emotion to end those rights. But we do not see the same intensity of emotion—we do not even get the votes of those people—to make sure our children who are living beings, who are going to school, have the protection they deserve to have.

Mr. LAUTENBERG. Is the Senator aware, because we serve on the environment committee together, of the threat to children's health that is resulting from the contamination of our air quality?

Mrs. BOXER. Yes. I have authored a bill called the Children's Environmental Protection Act which would, in fact, strengthen our laws. There are very few cosponsors, I might add, from the other side of the aisle. But it is a good law and would protect our children from hazardous waste and toxic waste and make sure our standards are elevated, because, when a child breathes in dirty air and soot and smog, et cetera, it has a much worse impact than it does on a full-grown adult.

Mr. LAUTENBERG. Has the Senator seen the recent news reports about children, the numbers of children increasingly becoming asthmatic, as a result?

Mrs. BOXER. Yes, I have.

Mr. LAUTENBERG. I have a daughter who is my third daughter. She is a superb athlete. She suffers from asthma. It is a very painful thing to witness.

My sister was a board member at a school in Rye, NY, a school board in Rye, NY. She was subject to asthmatic attacks. One night at a school board meeting—she carried a little machine she would plug into the cigarette lighter in the car to help her breathe—she felt an attack coming on and she tried to get to her car and she didn't make it. She collapsed in the parking lot, went into a coma, and 2 days later had died.

I have a grandson who has asthma and I have a daughter who has asthma.

Does the Senator remember anything that got support from the other side to protect lives by adding to the cleansing of our environment by getting rid of the Superfund sites, the toxic sites around which children play and from which they get sick? Does the Senator recall any help we got to protect those children? No. No. No. What we got was a denial.

But, heaven forbid a woman should make a decision to protect her health for the rest of her children, or her health for her family, or to continue to be a mother to her other children. Does the Senator recall any similar passion or zeal on those issues when we went up to vote here?

Mrs. BOXER. No, I do not.

Mr. LAUTENBERG. Well, I thank the Senator because of her courage in standing up against what I consider an onslaught against the lives and well-being of women by those men who would stand here primarily and say: No, Madam, you can't do that because according to my moral standard you are wrong.

But the Senator does recall, as I do, when we had votes to protect children from gunfire or protect children from a contaminated environment, the votes were not there from that side.

Mrs. BOXER. My friend is correct. I want to say his series of questions and comments have moved me greatly. I consider him a great Senator.

Mr. LAUTENBERG. That is very kind.

Mrs. BOXER. I only wish he would stay here longer than he plans.

Mr. LAUTENBERG. Is the Senator aware I have been a protector of children's health by raising the drinking age to 21?

Mrs. BOXER. Yes.

Mr. LAUTENBERG. Does the Senator know we saved 14,000 children, 14,000

families from having to mourn the loss of a little child or youngster in school?

Mrs. BOXER. I am aware of that.

Mr. LAUTENBERG. The Senator knows I tried to take away guns from spousal and child abusers, and succeeded by attaching an amendment to a budget bill that had to get through, that was signed over the objections of our friends on the other side—

Mrs. BOXER. I recall.

Mr. LAUTENBERG. Almost unanimously. So I think the Senator, as she said, knows I have credentials in terms of wanting to protect the children in our society.

Mrs. BOXER. Absolutely.

Mr. LAUTENBERG. Frankly, that is my main mission in being here.

So I conclude my questions by asking the Senator if she will continue to fight no matter what is said—anecdotally, hypocritically, falsely in some cases—will she continue to fight this fight for the women of America?

Mrs. BOXER. I say to my friend, he has asked me if I will continue to fight for the women of America. The answer is yes. I believe while I fight for them, I am fighting for their families, for the people who love them, their fathers, their mothers, their grandfathers, their grandmothers, and their children.

I think underlying all this debate is that basic difference between myself and the Senator from Pennsylvania; between the Senator from New Jersey and the other Senators on the other side of the aisle. I think it is about basic respect of the women and the families of this Nation.

In concluding my remarks, because I know the Senator from Illinois has been waiting very patiently, I will conclude with a quote from three Justices. I ask my friend from New Jersey to once more listen to their words.

Mr. LAUTENBERG. I will hear them.

Mrs. BOXER. I heard them yesterday. He said to me how touched he was by them. I think it would be suitable to quote them again, reminding everyone these are three Republican Justices of the Supreme Court.

In their decision upholding Roe v. Wade, this is what they said:

> At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

The Senator from New Jersey and I and those of us in this body who voted today to uphold Roe, and many of us who will vote against the Santorum bill, believe the State must not, should not be able to tell people in this country how to think, what to believe, and especially what to do for themselves and their families when it comes to a medical procedure.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I again appreciate the indulgence of the Senator from Illinois who has been incredibly patient now for 50 minutes.

Let me make a couple points first to the Senator from California. She seems to object to the term ''anecdote'' in referring to the cases that were brought here. I looked up the word ''anecdote'' in the dictionary right at the leader's desk, the Standard College Dictionary.

> Anecdote: A brief account of some incident; a short narrative of an interesting nature.

I will put it over here and share it with the Senator from California, and if she finds that to be an offensive word in describing what she has presented, I think we have gotten rather touchy.

The Senators from New Jersey and California mentioned that the leading cause of death in California is gun violence among children. Wrong. The leading cause of death in California among children is abortion. The Senator from New Jersey said 13 children a day die of gun violence. Mr. President, 4,000 children a day die from abortions—4,000 children die a day—that some say they want legal, safe, and ''rare,'' 4,000 a day.

The Senator from New Jersey equates the medical procedure of partial-birth abortion to the equivalent of an appendectomy. That is not an appendix, I say to my colleagues.

Mr. LAUTENBERG. Will the Senator yield?

Mr. SANTORUM. That is not a blob of tissue. That is a living human being.

Mr. LAUTENBERG. Will the Senator yield for a question?

Mr. SANTORUM. I will be happy to yield.

Mr. LAUTENBERG. Did the Senator hear me say that I compared an abortion to a surgical procedure? Might I offer a correction to our colleague from Pennsylvania?

Mr. SANTORUM. I hope the Senator will.

Mr. LAUTENBERG. I said surgical procedures are never pretty. I did not say abortions and appendectomies are the same thing. Don't distort the RECORD, if the Senator will oblige me.

Mr. SANTORUM. I think the RECORD speaks for itself.

Mr. President, the Senator from California suggested this in her opening comments: Banning this procedure of taking a child who would otherwise be born alive, taking it outside of the mother and killing the child is an extreme view; banning this procedure is an extreme view in America.

Where have you gone, Joe DiMaggio? This now defines ''extreme.'' Killing a child, a living being outside of its mother is now an extreme view in America. The mainstream view, according to the Senator from California, is the mother has the absolute, irrefutable right to destroy her child at any point in time for whatever reason. That is the mainstream view in America.

Our Nation turns its eyes to you, Joe. That is the mainstream view in America. So welcome to America; welcome to America 1999. Welcome to an America with which Peter Singer, the new prophet of America, who is from Australia, will feel most comfortable; Peter Singer, the philosopher who writes:

> Killing a disabled infant is not morally equivalent to killing a person. Very often it is not wrong at all.

Welcome to America 1999 because this is killing an infant, and the reason given is because it is not perfect, and they say it is not morally wrong. And by the way, who are we to judge? Why is murder wrong if it is not morally wrong? Is it because we have a number of votes that ban murder? Is that the only reason, because the majority says we think murder is wrong? Not morally wrong because we can't make moral judgments; God forbid we make a moral judgment on the floor of the Senate. Oh, no, who am I to tell you that murder is wrong? I mean, how dare me. How can you tell me that murdering someone is wrong if it is not based on some moral judgment?

So, please, don't come down here and say I have no right to impose moral judgments. We do it every day in the Senate. How many speeches do I hear that it is immoral not to provide health insurance? That is immoral, this isn't. That is immoral and this isn't.

We can't judge anybody. We can't say that taking a child almost born outside of the mother, 3 inches from legal protection, and killing that baby in a barbaric fashion, we can't say that is wrong because that would be judging somebody else; we can't judge anybody here. Who are we to judge anybody?

Welcome to America 1999. Welcome to the mainstream America 1999. Welcome to the Peter Singers of the world. Read the New Yorker September 6 issue. Read it when he says:

> If a pregnant woman has inconclusive results from amniocentesis, Singer doesn't see why she shouldn't carry the fetus to term. Then, if the baby is severely disabled and the parents prefer to kill it, they should be allowed to. That way there would be fewer needless abortions and more healthy babies.

Welcome to America because here you can find out if the baby is healthy or not. If you want to kill it, you can. If not, you can deliver it. Welcome to Peter Singer's world.

And you are not concerned about the lines drawn in America? You are not concerned we need to a have a bright line to prevent the Columbines in the future? When the Senator from California reads the Casey decision, doesn't she see Columbine in the Casey decision? What does the Casey decision say that she so proudly stands behind? ''At the heart of liberty is the right to define one's own concept of existence, of

meaning, of the universe, and of the mystery of human life. . .''

A young boy in Littleton, CO, said the same thing just before he shot 13 people. He said: What I say goes; I am the law.

This is what the Casey decision says. It says each one of us has the right to determine our own reality. We are the law. We can do whatever we want to do.

God help us. God help us if that is the law of the land. God protect us, if that is the law of the land, from predators who think they can do whatever they want to do to us because they are the law; they can define their own meaning of existence. They can define their own meaning of the universe. They can define their own meaning of human life. God help us.

And where does this decision come from? It comes from the poisonous well of keeping procedures like this legal. Drink from it, America. Drink from it. I yield the floor.

Mr. SMITH of New Hampshire addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 2324 TO AMENDMENT NO. 2323

(Purpose: to provide for certain disclosures and limitations with respect to the transference of human fetal tissue)

Mr. SMITH of New Hampshire. Mr. President, I send a second-degree amendment to the pending amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from New Hampshire [Mr. SMITH] proposes an amendment numbered 2324 to amendment No. 2323.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the Landrieu amendment, add the following:

SEC. ____. TRANSFERENCE OF HUMAN FETAL TISSUE.

Section 498N of the Public Health Service Act (42 U.S.C. 289g-2) is amended—

(1) by redesignating subsections (c) and (d), as subsections (e) and (f), respectively; and

(2) by inserting after subsection (b), the following:

''(c) DISCLOSURE ON TRANSPLANTATION OF FETAL TISSUE.—

''(1) REQUIREMENT.—With respect to human fetal tissue that is obtained pursuant to an induced abortion, any entity that is to receive such fetal tissue for any purpose shall file with the Secretary a disclosure statement that meets the requirements of paragraph (2).

''(2) CONTENTS.—A disclosure statement meets the requirements of this paragraph if the statement contains—

''(A) a list (including the names, addresses, and telephone numbers) of each entity that has obtained possession of the human fetal tissue involved prior to its possession by the filing entity, including any entity used solely to transport the fetal tissue and the tracking number used to identify the packaging of such tissue;

''(B) a description of the use that is to be made of the fetal tissue involved by the filing entity and the end user (if known);

''(C) a description of the medical procedure that was used to terminate the fetus from which the fetal tissue involved was derived; and the gestational age of the fetus at the time of death.

''(D) a description of the medical procedure that was used to obtain the fetal tissue involved;

''(E) a description of the type of fetal tissue involved;

''(F) a description of the quantity of fetal tissue involved;

''(G) a description of the amount of money, or any other object of value, that is transferred as a result of the transference of the fetal tissue involved, including any fees received to transport such fetal tissue to the end user;

''(H) a description of any site fee that was paid by the filing entity to the facility at which the induced abortion with respect to the fetal tissue involved was performed, including the amount of such fee; and

''(I) any other information determined appropriate by the Secretary.

''(3) DISCLOSURE TO SHIPPERS.—Any entity that enters into a contract for the shipment of a package containing human fetal tissue described in paragraph (1) shall—

''(A) notify the shipping entity that the package to be shipped contains human fetal tissue;

''(B) prominently label the outer packaging so as to indicate that the package contains human fetal tissue;

''(C) ensure that the shipment is done in a manner that is acceptable for the transfer of biomedical material; and

''(D) ensure that a tracking number is provided for the package and disclosed as required under paragraph (2).

''(4) DEFINITION.—In this subsection, the term 'filing entity' means the entity that is filing the disclosure statement required under this subsection.

''(5) Nothing in this subsection shall permit the disclosure of—

''(A) the identity of any physician, health care professional, or individual involved in the provision of abortion services;

''(B) the identity of any woman who obtained an abortion; and

''(C) any information that could reasonably be used to determine the identity of individuals or entities mentioned in paragraphs (A) and (B).

''(6) Violation of this section shall be punishable by the fines of more more than $5,000 per incident.

''(d) LIMITATION ON SITE FEES.—A facility at which induced abortions are performed may not require the payment of any site fee by any entity to which human fetal tissue that is derived from such abortions is transferred unless the amount of such site fee is reasonable in terms of reimbursement for the actual real estate or facilities used by such entity.''.

Mr. SMITH of New Hampshire. Mr. President, I yield the floor.

Mr. FITZGERALD addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Illinois.

Mr. FITZGERALD. Mr. President, thank you for this opportunity to be heard.

Mr. President, listening to my distinguished colleague from California, Senator BOXER, I thought back to earlier this year. We had an issue on which we agreed; in fact, we have had a few this year. This isn't one of them, however.

But earlier this year, Senator BOXER was very concerned about the inhumane treatment of dolphins who are getting caught in tuna fishing nets. In fact, she spoke so eloquently on the cruel and inhumane treatment of dolphins that I distinctly remember during that debate, I called home to see how my family was doing, and my 7-year-old boy answered the phone, and he said to me: Daddy, I hope you're going to vote tonight to protect the dolphins. And boy, when I heard that, I really took a careful look at Senator BOXER's bill. I was inclined to support her already, but when I heard that from my son, and I started to focus on that debate, and the eloquence with which she spoke, I wound up voting with her to support and protect those dolphins.

Mrs. BOXER. Would my friend yield for a question so I have a chance to thank him for that support, and thank his son, and tell his son that I am going to fight just as hard to protect the life and health of his mother and all the moms of this country and to make sure we protect the children as well. Thank you.

Mr. FITZGERALD. I would like to encourage the Senator from California, and others in the Senate, to maybe think about the humanity issue here as we focus on the debate on partial-birth abortion.

Mr. President, I rise today as an original cosponsor of this bill, the Partial-Birth Abortion Ban Act of 1999. I would like to thank Senator SANTORUM for sponsoring it again and for his forceful and eloquent arguments on behalf of the innocent unborn.

Every time I think about partial-birth abortion, I think of the observations which, I believe, capture the essence of this debate. My esteemed colleague from Illinois, Representative HENRY HYDE, asked: What kind of people have we become that this procedure is even a matter of debate?

He went on to say: You wouldn't even treat an animal, a mangy raccoon like this.

What is a partial-birth abortion? As it has been described so thoroughly by my colleague from Pennsylvania, and many others, it is a truly gruesome procedure. It is barbaric. It is chilling. It is cruel. More than anything else, what I would like to emphasize here is that it is inhumane.

The medical term for this procedure is ''intact dilation and extraction,'' or ''intact D&E,'' for short. I have also heard it referred to as ''intrauterine

cranial decompression.'' What do these medical terms mean?

Briefly, what happens is this: The abortionist turns the baby around in the womb so it is in the breech position—feet first. The abortionist then pulls the baby out of the womb and into the birth canal so all but its head is outside the mother; thus, the term ''partial birth.'' At this point, the abortionist takes out a sharp surgical instrument, often a pair of scissors, and stabs the baby in the back of its head to create a hole. The abortionist then inserts a type of suction tube into the hole and sucks out the baby's brain. Sucking out the baby's brain causes the skull to collapse, or implode, and the delivery can then be completed.

I will read an excerpt from testimony given to Congress by Mrs. Brenda Pratt Shafer, a registered nurse. While working for a temporary placement agency in 1993, Mrs. Shafer was assigned to an Ohio abortion clinic, where she was asked to assist with a partial-birth abortion on a woman who was just over 6 months pregnant. Here is some of what Mrs. Shafer testified to Congress that she observed that day:

> He delivered the baby's body and arms, everything but his little head. The baby's body was moving. His little fingers were clasping together. He was kicking his feet. 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. Then the doctor opened up the scissors, stuck the high-powered suction tube into the hole [in the head] and sucked the baby's brains out. The baby went completely limp. Then, the doctor pulled the head out, and threw the baby into a pan.

This is inhumane. You wouldn't treat an animal, a mangy raccoon like that.

In an attempt to somehow justify the humaneness of this procedure, opponents of a ban have cited the statements of a handful of medical professionals who contend that the unborn baby is actually killed, or rendered brain dead, prior to being extracted from the womb by the anesthesia given to the mother.

Mr. President, and my colleagues, consider this: Professor Robert White, director of the Division of Neurosurgery and Brain Research at Case Western Reserve School of Medicine, testified before a House committee several years ago that:

> The fetus within this timeframe of gestation, 20 weeks and beyond, is fully capable of experiencing pain.

He stated, regarding partial-birth abortions:

> Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure.

Dr. Norig Ellison, president of the 34,000-member American Society of Anesthesiologists, testified before Congress:

> I think the suggestion that the anesthesia given to the mother, be it regional or general, is going to cause the brain death of the fetus is without basis of fact.

And finally, Dr. Martin Haskell, who has been called a ''pioneer'' in the use of the partial-birth abortion procedure, in 1993, stated:

> . . . the majority of fetuses aborted this way are alive until the end of the procedure.

He went on to say:

> . . . probably about a third of those are definitely dead before I actually start to remove the fetus. And probably the other two-thirds are not.

What kind of a people have we become that this procedure is even a matter of debate in the Senate? You wouldn't treat an animal, a mangy raccoon like that.

To my colleagues today who are still seriously considering this debate, this is an issue of basic humaneness, and humaneness is an issue that many of us, on both sides, have often found quite troubling. In my short time in the Senate, I have joined a number of my colleagues on several occasions to speak against the inhumane treatment of animals. In fact, it wasn't very long ago, during the debate on the Interior appropriations bill that I voted in support of an amendment offered by Senator TORRICELLI that would have prohibited the use of funds in the Interior budget to facilitate the use of steel-jawed traps and neck snares for commerce or recreation in national wildlife refuges.

During the debate on this amendment, my distinguished colleague from Nevada, Senator REID, described the amendment as a ''no-brainer.'' My colleague went on to say that ''these traps are inhumane. They are designed to slam closed. The result is lacerations, broken bones, joint dislocations, and gangrene.'' In conclusion, Senator REID stated that ''in this day and age, there is no need to resort to inhumane methods of trapping. . . .'' And many of us were persuaded.

And why were we persuaded? Why are we troubled by steel-jawed traps? Isn't it, Mr. President, because there's something in our gut that twists and turns over the unnecessary suffering and pain of creatures with whom we share this Earth? The majestic animals that are as much a part of God's wonderful creation as we are. Wonderful animals who add richness and texture to our own experience of the planet. Animals whom we thank God for allowing us to appreciate and admire.

The suffering of a bear or a deer can lead many of us to say no to a steel-jawed trap and a neck snare. But what about a scissor through the head and neck of a child? What about sucking out a baby's brain.

Mr. President, You wouldn't treat an animal, a mangy raccoon like this.

The Senate also acted this year to do more to fight the inhumane treatment of dolphins. On July 22, I supported an amendment offered by Senator BOXER to the fiscal year 2000 Commerce-Justice-State appropriations bill to force countries to pay their fair share of the expenses of the Tuna Commission and delay the importation of tuna caught using fishing methods that unnecessarily harm and kill dolphin. During debate on this amendment, Senator BOXER spoke eloquently of the thousands of dolphin killed each year by fishing methods that cruelly and unnecessarily harass, chase, encircle, maim, and kill dolphin that happen to be swimming over schools of tuna. I appreciated hers and others' efforts in the name of humaneness.

God has given us dominion over a wondrous planet, a beautiful blue sphere that takes our breath away when we see it silhouetted against the dark of the universe. And with that dominion we know comes a stewardship, a responsibility to appreciate, care, and speak for God's creation who cannot speak for themselves.

I believe our Maker has touched our human conscience with something that makes us almost instinctively recoil from causing unnecessary pain and suffering to animals. I know there's a tender spot in the hearts of some who now oppose a ban on this procedure. I know it's there because I've seen it in debates on the floor of this body. But I don't understand how those who can hear the howl of a wolf or the squeal of a dolphin, can be deaf to the cry of an unborn child.

Mr. President, if people were sticking scissors in the heads of puppies, we would not abide it. In the name of common decency and humanity, I implore my colleagues not to let this happen to our own young.

I yield the floor.

Mr. SANTORUM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT

Mr. GRASSLEY. Mr. President, on behalf of the leader, I ask unanimous consent that the only amendments in order be the pending Smith of New Hampshire amendment and the pending Landrieu amendment, that they both be separate first-degree amendments, and the votes occur in relation to these amendments at 5:30 in the order listed, with 3 minutes prior to each vote for explanation.

I further ask unanimous consent that following the votes described above, the bill be immediately advanced to third reading and passage occur, all without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object—and I will not object—can we be sure the 3 minutes are equally divided between the two sides?

Mr. GRASSLEY. That is our understanding.

Mrs. BOXER. Fine. That is fine with us.

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

Mr. GRASSLEY. Mr. President, in light of this agreement, there will then be three votes beginning at 5:30 p.m.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. NICKLES. Mr. President, for the information of all colleagues, I believe there are going to be three rollcall votes commencing at 5:30. So hopefully everybody will be present and we can move the votes fairly rapidly.

I compliment the Senator from Pennsylvania, Mr. SANTORUM, for the outstanding debate he has conducted on the floor during the last couple of days. In addition, Senator SMITH and others, I think, have presented a very compelling case that this procedure, the so-called partial-birth abortion procedure, should be stopped. There is no medical necessity for it. It is not necessary to save the life of the mother under any circumstances, according to experts such as Dr. Koop, the American Medical Association, and others. It is a gruesome, terrible procedure. It needs to be stopped.

We have laws on the books that protect unborn endangered species from Oregon to Florida. We have fines and penalties that if you destroy an animal, or an insect, you can be subjected to fines and penalties of thousands of dollars. You can even go to jail for destroying the unborn of a particular type of insect which happens to be classified as endangered.

Yet in this procedure, when we are talking about a child who is partially born, we won't give it any protection whatsoever. We are talking about a child, a human being. I know some people say, ''It's a fetus and not a child; it is not a human.'' Well, if we waited maybe 30 seconds, then it would be a child, or a human being, totally outside the mother's womb. I just find that incredible that we are not going to offer at least some protection for these unborn children.

I want to allude to something else. There was a sense of the Senate passed earlier today, and some people have talked on it and said it reaffirms Roe v. Wade, as the law of the land. That Roe v. Wade is a great thing. There are a couple of points about this I would like to address. From a legislative standpoint, we are the legislative body; we pass the laws of the land. The Supreme Court is not supposed to legislate. I read the Constitution. We all have a copy. It says, in article I, section 1, of the Constitution:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

All legislative powers.

Then if you read through the conclusion of the Constitution, in the 10th amendment it says:

> All of the rights and powers are reserved to the States and to the people.

It does not say in the case of abortion we give the Supreme Court the right to legislate. That is exactly what they did in Roe v. Wade. So now we have a sense of the Senate that says we agree with Roe v. Wade. I wonder how many people have really looked at Roe v. Wade. I thought I might introduce it into the RECORD because it is a very convoluted, poorly-drafted piece of legislation in which the Supreme Court legalized abortion.

The Supreme Court doesn't have the constitutional power to legalize anything. They don't have the constitutional power to pass laws. That is what they did. I was going to insert Roe v. Wade into the RECORD, but it is too long, it has too many pages. I object to the Supreme Court legislating at any time, even if I agree with the legislative result.

If Congress wants to codify Roe v. Wade, let somebody introduce legislation and let it go through the process. Let's have hearings. Does it make sense to have abortion legal, totally legal, without any restrictions whatsoever in the first trimester, and maybe little restrictions on the second trimester, and further on the third trimester? Is that the way Congress would do it? If we are going to do it this way, at least if the people don't like the laws Congress passes, they would have some recourse. There is no recourse to legislation dictated by the Supreme Court.

So I strongly object to the idea of the Supreme Court legislating. I think the sense of the Congress was a serious mistake. I don't know if I am going to be a conferee or not, but I will work hard to make sure the sense of the Senate language is not included in anything that will be reported out on this bill. I think that would be a serious mistake.

Again, I compliment the authors of the bill and state for the RECORD that I urge all people, Members of Congress, to vote for the legislation by the Senator from Pennsylvania to protect unborn children who are three-fourths born, or two-thirds born; give them protection—maybe not as much protection as we give unborn animals under the endangered species. Evidently, we are not going to do that, but let's give them some protection.

So let's pass this bill. We can go to conference with the House, and we can drop this sense-of-the-Senate resolution and pass the bill, and hopefully this time the President will sign it.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, I understand we are ready now to do a series of three votes back to back.

For the information of all Senators, these votes will be the last votes of the day.

It will be my intention to begin debate on the African trade bill, which includes, of course, the CBI enhancement provisions, immediately following these votes. It is my hope that the Senate will begin debating and amending the bill yet this evening because we do have some more time that we could keep working on this bill.

I had the opportunity this afternoon to talk to the President about this legislation. He is committed to being of assistance in any way he can to the Senate taking this bill up and passing it in its present form.

I have been working with the Democratic leader, the chairman and ranking member of the committee, all of whom support this legislation.

This is a free trade initiative that will be good for a America, good for the Caribbean Basin, and good for Africa.

Assuming the Senate begins debate on this bill, any votes relative to amendments would be postponed to occur at a time determined by the majority leader after consultation with the Democratic leader.

On Monday, the Senate will be debating the African trade bill with the CBI provisions.

I will propose to confirm six nominations from the Executive Calendar. If debate is necessary on these nominations, that debate would also occur on Monday.

However, the votes, if necessary, would be postponed to occur on Tuesday at 9:30 a.m.

I thank all Members, and will notify each Senator as the voting situation becomes clearer.

Based on what I said, I believe we will have only debate on Friday. It is not clear at this time what the situation would be with regard to Monday. We will have debate. We do have nominations we want to clear. But we will

be in communication with both sides of the aisle and notify the Members as soon as further decisions can be made.

AMENDMENT NO. 2324

I ask for the yeas and nays on amendment No. 2324.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mrs. BOXER. Mr. President, as I understand it, we have a minute and a half per side.

The PRESIDING OFFICER. The Senator from California is correct.

Mrs. BOXER. Mr. President, we are going to vote shortly on the Smith amendment.

I tried very hard to work with my colleague. There is one very serious flaw in his legislation which I fear could escalate the violence at health care clinics all over this country. Now it is illegal in any way to sell fetal tissue. We all support that ban. We have voted on that ban. You cannot sell fetal tissue.

The Senator is concerned that this sale, nonetheless, is taking place. He wants certain disclosure as it relates to this issue. In the course of that, he has amended his legislation to deal with some of my problems by making sure that we can identify the woman who agreed to donate that tissue for research. It won't identify physicians. For that I am grateful.

The one area we couldn't reach agreement on had to do with the identity of the health care facility in which the woman had her legal and safe abortion. That will be subject to disclosure. Anyone could find out through a Freedom of Information request where that clinic is.

There have been 33 instances of violence against health care facilities since 1987.

I really am sad that the Senator from New Hampshire was unable to protect the confidentiality of these clinics.

I urge my colleagues on both sides of the aisle, please protect the identity of these clinics. We don't want to have anyone calling up and finding out where they are. I am very fearful it could escalate the violence. We certainly don't want to do that unwittingly.

Thank you very much. I will be urging a ''no'' vote.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, Senator BOXER and I made an attempt to come to accommodation on this amendment. We were not able to do that.

As you heard from my presentation on the floor, we know that fetal body parts are being sold in violation of law. Abortions may be induced in certain ways, such as possibly partial birth, or perhaps even live births in order to have good fetal body tissue to sell.

This is a serious problem. Clearly, it is a big industry.

This amendment requires disclosure of certain information prior to the transfer of any of this fetal body tissue or parts in induced abortions. That is what it does. It is against the law to sell fetal tissue for research. It is against Federal law.

This amendment allows HHS to track these transfers to enforce current law. You can donate tissue, but you can't sell it. It is being sold. We need the sun to shine in on this industry to find out what is happening.

It protects the privacy of all women undergoing abortions and the doctors providing them.

But this is something that is occurring within the industry. It is a very elaborate network of abortion providers getting those body parts to a wholesaler who then in turn is selling those body parts to universities and other research institutions. It simply let's the light in. That is all it does.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 2324. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative assistant called the roll.

Mr. NICKLES. I announce that the Senator from Rhode Island. (Mr. CHAFEE), the Senator from Florida (Mr. MACK), and the Senator from New Hampshire (Mr. GREGG) are necessary absent.

The result was announced—yeas 46, nays 51, as follows:

[Rollcall Vote No. 338 Leg.]

YEAS—46

Abraham	Enzi	McCain
Allard	Fitzgerald	McConnell
Ashcroft	Frist	Murkowski
Bennett	Gorton	Nickles
Bond	Gramm	Roberts
Breaux	Grams	Santorum
Brownback	Grassley	Sessions
Bunning	Hagel	Shelby
Burns	Hatch	Smith (NH)
Campbell	Helms	Smith (OR)
Cochran	Hutchinson	Thomas
Coverdell	Hutchison	Thompson
Craig	Inhofe	Thurmond
Crapo	Kyl	Voinovich
DeWine	Lott	
Domenici	Lugar	

NAYS—51

Akaka	Feinstein	Mikulski
Baucus	Graham	Moynihan
Bayh	Harkin	Murray
Biden	Hollings	Reed
Bingaman	Inouye	Reid
Boxer	Jeffords	Robb
Bryan	Johnson	Rockefeller
Byrd	Kennedy	Roth
Cleland	Kerrey	Sarbanes
Collins	Kerry	Schumer
Conrad	Kohl	Snowe
Daschle	Landrieu	Specter
Dodd	Lautenberg	Stevens
Dorgan	Leahy	Torricelli
Durbin	Levin	Warner
Edwards	Lieberman	Wellstone
Feingold	Lincoln	Wyden

NOT VOTING—3

Chafee	Gregg	Mack

The amendment (No. 2324) was rejected.

Mr. LOTT. Mr. President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, I ask unanimous consent that the remaining votes in this series be limited in length to 10 minutes each.

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

AMENDMENT NO. 2323, AS MODIFIED

The PRESIDING OFFICER. There are 3 minutes equally divided. Who yields time?

Mrs. BOXER. Mr. President, as I understand the unanimous consent agreement, Senator LANDRIEU will have 1½ minutes and the other side will have 1½ minutes on her amendment, which I strongly support.

The PRESIDING OFFICER. That is correct.

Mrs. BOXER. Senator LANDRIEU has 1½ minutes.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. I thank the Chair. Mr. President, we have been debating a very contentious and emotional issue for many, many hours now. This debate will perhaps go on for some years to come as we try to resolve our many differences. It is a very tough issue for many families and for policymakers all over our Nation.

This amendment is an attempt to help because whether you are for or against, pro-life or pro-choice, or somewhere in the middle, we can say today it is the sense of this Congress that we want to help all families who have children with birth defects or special needs, regardless of their circumstances.

It is a very tough situation when families, even with a wanted pregnancy, have to sometimes make a very tough decision that could result in their financial ruin. We should step up to the plate, and that is what this amendment does.

It simply says it is the sense of the Senate that many families struggle with very tough decisions and that we should fully cover all expenses related to educational, medical, and respite care requirements of families with special-needs children.

I commend this to my colleagues and ask for their support.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I support the amendment, and I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to amendment No. 2323, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Florida (Mr. MACK), the

Senator from Rhode Island (Mr. CHAFEE), and the Senator from New Hampshire (Mr. GREGG) are necessarily absent.

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

The result was announced—yeas 46, nays 51, as follows:

[Rollcall Vote No. 339 Leg.]

YEAS—46

Abraham	Harkin	Murkowski
Akaka	Hatch	Murray
Baucus	Hollings	Reed
Biden	Hutchison	Reid
Boxer	Jeffords	Santorum
Breaux	Kennedy	Sarbanes
Bryan	Kohl	Schumer
Cleland	Landrieu	Smith (OR)
Conrad	Lautenberg	Snowe
Daschle	Leahy	Specter
DeWine	Levin	Torricelli
Dodd	Lieberman	Voinovich
Dorgan	Lincoln	Wellstone
Durbin	Lugar	Wyden
Feingold	Mikulski	
Feinstein	Moynihan	

NAYS—51

Allard	Edwards	Kyl
Ashcroft	Enzi	Lott
Bayh	Fitzgerald	McCain
Bennett	Frist	McConnell
Bingaman	Gorton	Nickles
Bond	Graham	Robb
Brownback	Gramm	Roberts
Bunning	Grams	Rockefeller
Burns	Grassley	Roth
Byrd	Hagel	Sessions
Campbell	Helms	Shelby
Cochran	Hutchinson	Smith (NH)
Collins	Inhofe	Stevens
Coverdell	Inouye	Thomas
Craig	Johnson	Thompson
Crapo	Kerrey	Thurmond
Domenici	Kerry	Warner

NOT VOTING—3

Chafee	Gregg	Mack

The amendment (No. 2323), as modified, was rejected.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

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

The PRESIDING OFFICER. Under the previous order, there are 3 minutes equally divided.

The Senator from California.

Mr. KYL. Mr. President, the arguments against the Partial-Birth Abortion Act keep changing. During previous consideration, for example, we heard from proponents of the procedure that it was used in only rare and tragic cases, so it would be wrong to ban it. Here is how the Planned Parenthood Federation of America characterized partial-birth abortion in a November 1, 1995 news release: ''The procedure, dilation and extraction (D&X), is extremely rare and done only in cases when the woman's life is in danger or in cases of extreme fetal abnormality.'' Planned Parenthood was not the only group to make such sweeping statements at the time.

But it did not take long for the story to unravel. On February 26, 1997, the New York Times reported that Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, admitted he ''lied in earlier statements when he said [partial-birth abortion] is rare and performed primarily to save the lives or fertility of women bearing severely malformed babies.'' According to the Times, ''He now says the procedure is performed far more often than his colleagues have acknowledged, and on healthy women bearing healthy fetuses.''

Mr. Fitzsimmons told American Medical News the same thing—that is, the vast majority of these abortions are performed in the 20-plus week range on healthy fetuses and healthy mothers. He said, ''The abortion rights folks know it, the anti-abortion folks know it, and so, probably, does everyone else.''

We heard about the frequency of the procedure from doctors who performed it. The Record of Bergen County, New Jersey, published an investigative report revealing that far more of these abortions were performed in New Jersey and across the country than the abortion lobby wanted Americans to believe.

Now, after the truth is exposed, we see an advertising campaign by a group called the Center for Reproductive Law and Policy, claiming that it is the legislation that is deceptive and extreme. The claim is that the bill would prohibit ''some of the safest and most commonly used medical procedures and risk the health and well-being of women.'' Apparently out of convenience, opponents have now flipped their argument and claim the procedure is common, not rare at all—which is what supporters of the legislation contended all along.

On the issue of safety, they have been more consistent. They claim the procedure is safe, but here is what the former Surgeon General of the United States, Dr. C. Everett Koop, had to say on the subject. According to Dr. Koop, ''partial-birth abortion is never medically necessary to protect a mother's health or future fertility. On the contrary, this procedure can pose a significant threat to both.'' A threat to health and fertility.

We heard the same thing from other medical experts during hearings in the Judiciary Committee a few years ago. Dr. Nancy Romer, a practicing Ob-Gyn from Ohio, testified that in her 13 years of experience, she never felt compelled to recommend this procedure to save a woman's life. ''In fact,'' she said, ''if a woman has a serious, life threatening, medical condition this procedure has a significant disadvantage in that it takes three days.''

Even Dr. Warren Hern, the author of the nation's most widely used textbook on abortion standards and procedures, is quoted in the November 20, 1995 edition of American Medical News as saying that he would ''dispute any statement that this is the safest procedure to use.'' He called it ''potentially dangerous'' to a woman to turn a fetus to a breech position, as occurs during a partial-birth abortion. Dangerous, Mr. President.

The American College of Obstetricians and Gynecologists was quoted by Charles Krauthammer in a March 14, 1997 column as indicating that there are ''no circumstances under which this procedure would be the only option to save the life of the mother and preserve the health of the woman.''

And of course, the American Medical Association (AMA), on the eve of the Senate vote during the 105th Congress, endorsed the bill to ban the technique. According to the chairman of the AMA's board of trustees, ''it is a procedure which is never the only appropriate procedure and has no history in peer reviewed medical literature or in accepted medical practice development.''

To those who call the Partial-Birth Abortion Ban Act extreme, I ask: Is it extreme to want to ban a procedure that medical experts tell us is dangerous and threatening to women? Or are the extremists those who are so radically pro-abortion that they defend even a such a dangerous and threatening procedure?

What about those rarest of instances when it might be necessary to use this dangerous procedure to save a woman's life? Those are provided for, despite what President Clinton said when he vetoed the Partial-Birth Abortion Ban Act on October 13, 1997. He said he did so because the bill did not contain an exception that ''will adequately protect the lives and health of the small group of women in tragic circumstances who need an abortion performed at a late stage of pregnancy to avert death or serious injury.''

Let me read the language of the bill that was vetoed. This is language from the bill's proposed section 1531. The ban, and I am quoting, ''shall 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, illness, or injury.'' Identical language providing a life-of-the-mother exception appears in this year's version of the bill, S. 1629, as well. I do not know how the language can be any clearer.

Mr. President, another charge now being made against this bill is that it is unconstitutional. Of course, we all can speculate about how the U.S. Supreme Court might rule on the matter. The Eighth Circuit Court of Appeals recently struck down partial-birth abortion bans in Nebraska, Iowa, and Arkansas, but a three-judge panel from the Fourth Circuit stayed an injunction against a similar Virginia law, pending review by the full court. The Fourth Circuit has yet to rule, but observers expect it to uphold the Virginia ban.

Ultimately, the U.S. Supreme Court is going to have to rule on the question, given the differing Circuit Court decisions. And as Harvard Law School Professor Lawrence Tribe noted in a November 6, 1995 letter to Senator BOXER, there are various reasons ''why one cannot predict with confidence how the Supreme Court as currently composed would rule if confronted with [the bill].'' He noted that the Court has not had any such law before it. And he noted that ''although the Court did grapple in 1986 with the question of a state's power to put the health and survival of a viable fetus above the medical needs of the mother, it has never directly addressed a law quite like [the Partial-Birth Abortion Ban Act].''

Mr. President, neither Roe v. Wade nor any subsequent Supreme Court case has ever held that taking the life of a child during the birth process is a constitutionally protected practice. In fact, the Court specifically noted in Roe that a Texas statute—one which made the killing of a child during the birth process a felony—had not been challenged. That portion of the law is still on the books in Texas today.

Remember what we are talking about here: ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.'' That is the definition of a partial-birth abortion in the pending legislation.

So we are talking about a child whose body, save for his or her head, has been delivered from the mother—that is, only the head remains unborn. No matter what legal issues are involved, I hope no one will forget that we are talking about a live child who is already in the birth canal and indeed has been partially delivered.

I dare say that, even if the Court were somehow to find that a partially delivered child is not constitutionally protected, the Partial-Birth Abortion Ban Act could still be upheld under Roe and Planned Parenthood of Southeastern Pennsylvania v. Casey. Under both Roe and Casey, the government may prohibit abortion after viability, except when necessary to protect the life or health of the mother. But the exception would never arise here because, as the experts tell us, this procedure is never medically necessary.

Although I believe the law would be upheld by the Court, I will concede that no one can say with certainty how the Supreme Court will rule until it has ruled. Until then, I suggest that we not use that as an excuse to avoid doing what we believe is right.

The facts are on the table. The bill includes a life-of-the-mother exception—an exception that would probably never be invoked given that medical experts tell us a partial-birth abortion is never necessary to protect the life or health of a woman, and indeed may even pose a danger to life and health. Let us do what is right and put a stop to what our colleague, Senator DANIEL PATRICK MOYNIHAN, has appropriately characterized as infanticide. Let us pass this bill.

Mr. EDWARDS. Mr. President, I enter this debate sad that partisan politics has obstructed the effort of many of us to address this problem in a meaningful way. Put simply, I oppose partial-birth abortions. Indeed, I oppose all late-term abortions unless they are necessary to save the life of the mother or to avert grievous damage to the physical health of the mother.

I have voted for the Durbin amendment and will vote against the Santorum measure. One, the Durbin proposal, has failed. The other will pass the Senate but accomplish nothing.

The Santorum bill suffers from a number of serious flaws. First, it is clearly unconstitutional. The vast majority of federal courts dealing with this issue have held so, and no amount of wishful thinking can alter that fact. Second, even if it were constitutional, it would not stop a single abortion. Let me reiterate that: it would not stop a single abortion. It would simply spur doctors and women to seek other methods to achieve the same goal.

Before explaining why the Santorum measure is unconstitutional, let me elaborate on why it is ineffective. Long before the procedure of partial-birth abortion was developed, late-term, postviability abortions were available through alternative methods. Under the Santorum bill, which only prevents one particular procedure, physicians can simply revert to the use of other more dangerous procedures if partial-birth abortion is banned. This bill will not end late-term abortions. It will simply force doctors to fall back on antiquated medical interventions that will further endanger the lives and health of women. Is that really what we want?

In addition, 19 recent court rulings have determined that similar proposals are unconstitutional. There is a strong likelihood that this bill, if passed, will be struck down as unconstitutional according to the precedent set by Roe v. Wade. As drafted this legislation is unconstitutionally vague and violates the clear dictates of the Supreme Court. Our objective should not be to pass divisive legislation that has no chance of ever becoming law.

And so I support the Durbin amendment. I believe it achieves a rare balance in the debate about abortion. It is constitutional. It limits government interference in a woman's most personal and important decisions. And it provides a framework for dealing with the late-term abortions—including partial birth abortions—that the so many of us struggle to find sense in.

I have spoken with women who have had late-term abortions. They struggled mightily with their God and their consciences. They made their decisions with their husbands, their families and their doctors. And they alone confronted the awful moment when hope for a new life collided with terror about the fate of their own life. I can never understand that conflict. But I believe that the Durbin amendment offers a bridge between those women and all of us who try to understand how or why a woman might choose to have a late-term abortion.

I simply do not believe that Senators or any government representative has the authority or expertise to determine that a partial-birth or late-term abortion will never be necessary to prevent severe injury to a woman's physical health or a threat to her life. But I do believe that we do have the authority to ask that before a late-term abortion is performed it be determined that the woman's life or physical health are truly at stake. The Durbin amendment would accomplish this goal. It would bar, except in narrow circumstances and under the advice and consent of two physicians, all late-term abortions.

On balance, I believe that the difficult question of abortion should be left for a woman to decide in consultation with her family, her physician and her faith. However, once the fetus has reached viability, I believe that we do have a responsibility, and a constitutional ability, to protect the unborn child. I believe that the Durbin amendment was the piece of legislation before us that would have most effectively accomplish that goal. And so I have voted in its favor.

Mr. BUNNING. Mr. President, it boggles the mind to think that we are back here again, trying to convince the President that there is no place in this nation for partial-birth abortions.

It is hard to believe that we are having to go through this exercise again because this particular procedure is so clearly barbaric. It is such a clear case or genocide.

In two Congresses now—during both of which is served in the House of Representatives—Congress has passed a ban of this barbaric procedure only to see the President veto that ban and allow the killing to continue.

In both of these Congresses, the House of Representatives voted to override the President's veto—but this body did not.

Hopefully, we can change that. If not today—then maybe tomorrow or the next day—the next month—or the next year—because this is such a clear case of human justice—moral justice—and plain old humanity—we cannot ever give up until partial-birth abortions are banned across the land.

It is really hard to believe that we have to go through this exercise every Congress because nobody—with a straight face and clear conscience—can stand up and defend this procedure.

The only way anyone can justify it is to say that—hey, it doesn't matter—because not that many partial birth abortion are actually performed. They say that partial birth abortions are only utilized in cases when the mother's life is in jeopardy.

And we know this just isn't true. We know that some of the most ardent and visible defenders of abortion have actually lied about the numbers. It's not just a few hundred a year—it is thousands.

But the numbers really shouldn't make any difference. If it is wrong and inhumane we should ban it—whether it affects one or one million.

But misleading facts about the numbers—trying to downplay the prevalence and the frequency of the procedure—are no justification at all.

This bill does not ignore the health needs of women. It clearly makes an exception when the life of the mother is jeopardy. This bill clearly says that the ban on partial-birth abortions does not apply when such a procedure is considered necessary to save the life of a mother whose life is endangered by a physical disorder, illness or injury.

So, even though many medical experts insist that there is never any medical justification for partial-birth abortion, this bill permits it if the mother's life in jeopardy.

No one can deny that partial-birth abortion is cruel. No one can deny that it is patently inhumane. No one can deny that it is grotesque.

I urge my colleagues to support this bill—support this ban.

It is simply a matter of respect for human life.

Mr. ENZI. Mr. President, I am proud today to join the Senator from Pennsylvania and a large majority of my other colleagues in support of S. 1692, the Partial-Birth Abortion Ban Act of 1999. I urge my colleagues to join me in passing this bill by a sufficient margin to withstand President Clinton's promised veto.

We are debating an issue that has an important bearing on the future of this Nation. Partial-birth abortion is a pivotal issue because it demands that we decide whether or not we as a civilized people are willing to protect that most fundamental of rights—the right to life itself. If we rise to this challenge and safeguard the future of our Nation's unborn, we will be protecting those whose voices cannot yet be heard by the polls and those whose votes cannot yet be weighted in the political process. If we fail in our duty, we will justly earn the scorn of future generations when they ask why we stood idly by and did nothing in the face of this national infanticide.

We must reaffirm our commitment to the sanctity of human life in all its stages. We took a positive step in that direction two years ago by unanimously passing legislation that bans the use of federal funds for physician-assisted suicide. We can take another step toward restoring our commitment to life by banning partial-birth abortions.

In this barbaric procedure, the abortionist pulls a living baby feet first out of the womb and through the birth canal except for the head, which is kept lodged just inside the cervix. The abortionist then punctures the base of the skull with long surgical scissors and removes the baby's brain with a powerful suction machine. This causes the head to collapse, after which the abortionist completes the delivery of the now dead baby. I recount the grisly details of this procedure only to remind my colleagues of the seriousness of the issue before the Senate. We must help those unborn children who are unable to help themselves.

Opponents have argued that this procedure is necessary in some circumstances to save the life of the mother or to protect her health or future fertility. These arguments have no foundation in fact. First, this bill provides an exception if the procedure is necessary to save the life of the mother and no alternative procedure could be used for that purpose. Moreover, leaders in the medical profession including former Surgeon General C. Everett Koop have stated unequivocally that ''Partial-birth abortion is never medically necessary to protect a mother's health or her future fertility. On the contrary, this procedure can pose a significant threat to both.''

A coalition of over 600 obstetricians, perinatologists, and other medical specialists have similarly concluded there is no sound medical evidence to support the claim that this procedure is ever necessary to protect a woman's future fertility. These arguments are offered as a smoke-screen to obscure the fact that this procedure results in the taking of an innocent life. The practice of partial birth abortions has shocked the conscience of our nation and it must be stopped.

Even the American Medical Association has endorsed this legislation. In a letter to the chief sponsor of this bill, Senator SANTORUM, the AMA explained ''although our general policy is to oppose legislation criminalizing medical practice or procedure, the AMA has supported such legislation where the procedure was narrowly defined and not medically indicated. The Partial-Birth Abortion Ban Act now meets both these tests . . . Thank you for the opportunity to work with you towards restricting a procedure we all agree is not good medicine.''

I have based my decision on every bill that has come before this body on what effect it will have on those generations still to come. We in the Senate have deliberated about what steps we can take to make society a better place for our families and the future of our children. We as Senators will cast no vote that will more directly affect the future of our families and our children that the vote we cast on this bill.

When I ran for office, I promised my constituents I would protect and defend the right to life of unborn babies. The sanctity of human life is a fundamental issue on which we as a nation should find consensus. It is a right which is counted among the unalienable rights in our Nation's Declaration of Independence. We must rise today to the challenge that has been laid before us of protecting innocent human life. I urge my colleagues to join me in casting a vote for life by supporting the Partial Birth Abortion Ban Act.

All of us in this body have had significant life experiences that help to shape our political philosophies. Nearly 4 years ago, I had a torn heart valve and was rushed to the hospital for emergency surgery. I had never been in a hospital except to visit sick folks before. I have to tell you that I am impressed with what they were able to do, but I have also been impressed with what doctors do not know. That is not a new revelation for me.

Over 26 years ago, a long time ago, my wife and I were expecting our first child. Then one day early in the sixth month of pregnancy, my wife starting having pains and contractions. We took her to the doctor. The doctor said, ''Oh, you may have a baby right now. We know it's early and that doesn't bode well. We will try to stop it. We can probably stop it.'' I had started storing up books for my wife for 3 months waiting for the baby to come. However, the baby came that night, weighing just a little over 2 pounds. The doctor's advice to us was to wait until morning and see if she lives. They said they didn't have any control over it.

I could not believe the doctors could not stop premature birth. Then I could not believe that they could not do something to help this newborn baby. Until you see one of those babies, you will not believe what a 6-month-old baby looks like. At the same time my wife gave birth to our daughter, another lady gave birth to a 10-pound baby. This was a small hospital in Wyoming so they were side by side in the nursery.

Some of the people viewing the other baby said, ''Oh, look at that one. Looks like a piece of rope with some knots in it. Too bad.'' And we watched her grasp and gasp for air with every breath, and we watched her the whole night to see if she would live. And we prayed.

Then the next day they were able to take this baby to a hospital which provided excellent care. She was supposed to be flown to Denver where the best care in the world was available, but it was a Wyoming blizzard and we couldn't fly. So we took a car from Gillette, WY, to the center of the State to

Wyoming's biggest hospital, to get the best kind of care we could find. We ran out of oxygen on the way. We had the highway patrol looking for us and all along the way, we were watching every breath of that child.

After receiving exceptional care the doctor said, ''Well, another 24 hours and we will know something.'' After that 24 hours there were several times we went to the hospital and there was a shroud around the isolette. We would knock on the window, and the nurses would come over and say, ''It's not looking good. We had to make her breathe again.'' Or, ''Have you had the baby baptized?'' We had the baby baptized in the first few minutes after birth. But that child worked and struggled to live. She was just a 6-month-old-3 months premature.

We went through 3 months of waiting to get her out of the hospital. Each step of the way the doctors said her ability to live isn't our doing. It gave me a new outlook on life. Now I want to tell you the good news. The good news is that the little girl is now an outstanding English teacher in Wyoming. She is dedicated to teaching seventh graders English, and she is loving every minute of every day. The only problem she had was that the isolette hum wiped out a range of tones for her, so she cannot hear the same way that you and I do. But she can lip read very well, which, in the classroom, is very good if the kids are trying to whisper. But that has given me an appreciation for all life and that experience continues to influence my vote now and on all issues of protecting human life.

Life is such a miracle that we have to respect it and work for it every single day in every way we can. I think this bill will help in that effort, and I ask for your support for this bill.

I thank the Chair and yield the floor.

Mr. BINGAMAN. Mr. President, I believe that late-term abortion procedures should be used as sparingly as possible, when all other options have been ruled out. But I do believe that it should be permitted as a last resort, and that when doctors judge it necessary to save a woman's life or to avert grievous injury to the physical health of the mother, they should not be subject to criminal prosecution. That is why I cosponsored the Durbin amendment. This amendment outlaws all post-viability abortions, regardless of the procedure used, except to save the life of the mother or avert grievous injury to her physical health. It also requires that both the attending physician and an independent non-treating physician certify in writing that, in their medical judgment, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health. Grievous injury is defined as (1) a severely debilitating disease or impairment specifically caused or exacerbated by the pregnancy or (2) an inability to provide necessary treatment for a life-threatening condition, and is limited to conditions for which termination of the pregnancy is medically indicated.

The underlying legislation, on the other hand, would not prevent a single late-term abortion as it is written. It only seeks to outlaw one procedure, which is broadly and vaguely defined. The term partial birth abortion is a political term, not a medical one. In fact, this legislation is written so vaguely that it is highly likely to be declared unconstitutional. In 19 of 21 states considering legislation similar to this legislation, courts have partially or fully enjoined the laws. These decisions have been made by judges who have been appointed by every President from President Reagan on.

Further, Mr. President, the Constitution protects a woman's right to make decisions about her pregnancy up to the point that the fetus is viable. The bill before us, and similar state bills, are vague and broad enough that this basic right is not protected, according to the vast majority of judges ruling on these laws.

For these reasons, I support the Durbin amendment and oppose the underlying bill.

Mr. LEVIN. Mr. President, the Supreme Court has ruled that a ban on all abortions after viability is permitted under the Constitution, providing the ban contains an exception to protect the life and health of the woman.

S. 1692 does not meet that test because the exception it provides for does not include constitutionally required language relative to a woman's health.

The Supreme Court has also held that states may not ban pre-viability abortions. S. 1692 bans a specific abortion procedure that is not limited to post-viability abortions and therefore would ban certain pre-viability abortions, also making it unconstitutional.

In fact, 19 out of 21 state laws similar to S. 1692 have been held unconstitutional by the courts, including a Michigan statute. In Michigan, the U.S. District Court has held that:

> [T]he Michigan partial-birth abortion statute must be declared unconstitutional and enjoined because, under controlling precedent, it is vague and over broad and unconstitutionally imposes an undue burden on a woman's right to seek a pre-viability second trimester abortion . . .

The American College of Obstetricians and Gynecologists has continually expressed deep concern about legislation prohibiting the intact D&X procedure, which is the technical name for the so-called partial birth abortion procedure. They have urged Congress not to pass legislation criminalizing this procedure and not to supersede the medical judgment of trained physicians. They have stated the legislation, ''continues to represent an inappropriate, ill advised and dangerous intervention into medical decision-making. The amended bill still fails to include an exception for the protection for the health of the woman.''

Principally for these reasons, I oppose this legislation. I supported an alternative bill which would ban all post-viability abortions, regardless of the procedure used, except in cases where it is necessary to protect a woman's life or health. I think that approach is preferable to S. 692 which would criminalize the procedure and which fails to protect a woman's health. However, it would be even more preferable to leave this matter to the states which already have the right to ban postviability abortions by any method, as long as the ban meets the constitutional standard.

Mr. JEFFORDS. Mr. President, today we once again are debating legislation to ban the dilation and extraction, or D&X, procedure used by doctors. I am again opposed to this legislation and will once again be voting against this ban for the fifth time in as many years.

My reasons for opposing this legislation are many. Most have been discussed on the floor during the many debates on this difficult issue. First, and most importantly I believe that this bill undermines the Supreme Court's decision in Roe v. Wade to leave these critical matters in the hands of a woman, her family and her doctor. The pending legislation is an effort to chip away at these reproductive rights established in that 1973 decision and upheld by court cases since 1973. I understand many people disagree with my position. This issue has been contentious since I came to Congress in 1975.

Second, with the Roe decision, the Supreme Court wisely gave states the responsibility to restrict third-trimester abortions, so long as the life or health of the mother were not jeopardized. As of 1999, all but ten states have done so. To me, the rights of states to regulate abortions, when the life or health of the mother are not in danger, is an adequate safeguard. In the event the states pass unconstitutional regulations on this point, the appropriate remedy is with the courts. I realize that this policy leads to differences in law from state to state, but just as families differ, so too do states. As has been said before during the debate on this issue:

> When the Roe v. Wade decision acknowledged a state interest in fetuses after viability, the Court wisely left restrictions on post-viability abortions up to states. There are expert professional licensing boards, accreditation councils and medical associations that guide doctors' decision-making in the complicated and difficult matters of life and death.

Third, the legislation before us would prevent doctors from using the D&X procedure where it is necessary to save the life of the mother. This clearly goes against the holding of the Supreme Court in Roe, as it required the

health of the mother be safeguarded when states regulate late-term abortions. I will not vote for a bill that is neither Constitutional, nor takes into account those situations where carrying a fetus to term would cause serious health risk for the mother. This is simply unacceptable. My vote in 1997, in favor of the Feinstein substitute amendment underscored my commitment to safeguarding a doctor's options to protect the health of the mother in cases where a late-term procedure is necessary.

Finally, I believe that women who choose to undergo a D&X procedure do so for grave reasons. We have established a delicate legal framework in which to address late-term abortions and we should not shift the decision making to the federal government.

• Mr. McCAIN. Mr. President, we are not here today to debate the legality of abortion. We are here to discuss ending partial-birth abortion—a particularly gruesome procedure that would be outlawed today but for the President's veto last year of a national ban.

Banning partial-birth abortion goes far beyond traditional pro-life or pro-choice views. No matter what your personal opinion regarding the legalization of abortion, we should all be appalled and outraged by the practices of partial-birth abortions. This procedure is inhumane and extremely brutal entailing the partial delivery of a healthy baby who is then killed by having its vibrant brain stabbed and suctioned out of the skull.

This is simply barbaric.

Some would argue that abortion, including partial-birth abortion, is a matter of choice—a woman's choice. Respectfully, I must disagree.

What about the choice of the unborn baby? Why does a defenseless, innocent child not have a choice in their own destiny?

Some may answer that the unborn baby is merely a fetus and is not a baby until he or she leaves the mother's womb. Again, I disagree, particularly, in the case of infants who are killed by partial-birth abortions.

Most partial-birth abortions occur on babies who are between 20 and 24 weeks old. Viability, ''the capacity for meaningful life outside the womb, albeit with artificial aid'' as defined by the United States Supreme Court, is considered by the medical community to begin at 20 weeks for an unborn baby. Most, if not all, of the babies who are aborted by the partial-birth procedure could be delivered and live. Instead, they are partially delivered and then murdered. These children are never given a choice or a chance to live.

Today, we have to make a choice. We can choose to protect our nation's most valuable resource—our children. We can choose to give a tomorrow full of endless possibilities to unborn children throughout our nation. We can choose to save thousands from being murdered at the hands of abortionists.

Or we can choose to allow this barbaric procedure to continue, permitting doctors to kill more innocent, unborn children.

We each have a choice, a choice which unborn children are denied. We must make the right choice when we vote today—the choice to save thousands of unborn children by banning partial birth abortions in this country.

Today, I will choose to protect the unborn child. Today, I will once again cast my vote to ban partial birth abortions.

I want to reiterate my strong support for this bill and my unequivocal and long-standing opposition to the practice of partial birth abortion. I find it disconcerting that a few people are attempting to dilute my unequivocal support for banning this horrific procedure as well as to cast doubt on my long standing commitment to protecting the life of unborn children merely because of my vote on a procedural motion.

Yesterday, I voted against a parliamentary maneuver designed solely to end debate on S. 1593, the campaign finance reform bill. This was an unnecessary move since a unanimous consent agreement had been offered, with no known opposition, which would have allowed the chamber to temporarily lay aside the campaign finance reform bill so that the Senate could consider the partial birth abortion ban legislation. Under that procedure, when the Senate finished its work on the important bill banning partial birth abortions, we could then return to complete the debate on campaign finance reform. Instead, the opponents of McCain-Feingold forced a vote on a maneuver which returned the bill to the Senate calendar, effectively cutting off the debate, well short of the time promised to consider this important issue.

In no way does my vote yesterday and strong support for campaign finance reform reduce my unequivocal, long-standing opposition to abortion, including the practice of partial birth abortion. I am a cosponsor of this legislation, as I was in previous years. I have voted 5 times over the past 5 years to ban this repugnant and unnecessary procedure, including 2 votes to overturn the President's veto of this legislation. When the Senate votes today on S. 1692, I will again vote for the ban.

Mr. President, I am pro-life and will continue fighting for measures which protect our nation's unborn children and provide them with an opportunity for life—the greatest gift each of us has.•

Mr. KENNEDY. Mr. President, for the fifth time in the past two years, the Republican leadership has chosen to debate and vote on legislation that President Clinton has vetoed twice and that numerous courts have ruled unconstitutional. No matter how often the Senate votes, the facts will remain the same. This bill is unconstitutional—it's a violation of the Supreme Court's decisions in Roe v. Wade and Planned Parenthood v. Casey, and the Senate should oppose it.

The Roe and Casey decisions prohibit Congress from imposing an ''undue burden'' on a woman's constitutional right to choose to have an abortion at any time up to the point where the developing fetus reaches the stage of viability. Congress can constitutionally limit abortions after the stage of viability, as long as the limitations contain exceptions to protect the life and the health of the woman.

This bill fails that constitutional test in two clear ways. It clearly imposes an undue burden on a woman's constitutional right to an abortion in cases before viability. In cases after viability, it clearly does not contain the constitutionally required exception to protect the mother's health.

Supporters of this legislation are flagrantly defying these constitutional requirements, and they know it. Similar laws have been challenged in 21 of the 30 states where they have been passed, and the results are clear. In 20 states, laws have been blocked or severely limited by the courts or by state legal action. Eighteen courts have issued temporary or permanent injunctions preventing the laws from taking effect because of constitutional defects. One court and one attorney general have limited enforcement of the law. Of the states where the laws have been blocked, six have statutes identical to the Santorum bill.

Recently, the Eighth Circuit Court of Appeals ruled that laws in three states under its jurisdiction—Arkansas, Iowa, and Nebraska—were unconstitutional. In the opinion on the Nebraska law, the court specifically held that, ''Under controlling precedents laid down by the Supreme Court, [the] prohibition places an undue burden on the right of women to choose whether to have an abortion.''

The conclusion is obvious. The supporters of the Santorum bill would rather have an issue than a law. They have rejected compromise after compromise. They have ignored President Clinton's plea to add an exemption for ''the small number of compelling cases where selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse consequences to her health.''

In doing so, the Republican leadership has chosen to ignore the Constitution. They are also ignoring the large number of medical professionals who oppose this legislation, including the American College of Obstetricians and Gynecologists, the American Nurses

Association, and the American Medical Women's Association. The American Medical Association—which once endorsed the bill—no longer supports it. The AMA withdrew its support after independent investigators hired by the organization concluded that, ''rather than focusing on its role as steward for the profession and the public health . . . the board . . . lost sight of its responsibility for making decisions which, first and foremost, benefit the patient and protect the physician-patient relationship.''

Most important, in its effort to pass this legislation, the Republican leadership has ignored the tragic situations in which some women find themselves—women like Eileen Sullivan, Erica Fox, Vikki Stella, Tammy Watts, and Viki Wilson. Women like Coreen Costello, who testified before the Senate Judiciary Committee and told us that she consulted with numerous medical experts and did everything possible to save her child. She later had the procedure that would be banned by this legislation, and, based on that experience, she told the Committee the following:

> I hope you can put aside your political differences, your positions on abortion, and your party affiliations and just try to remember us. We are the ones who know. We are the families that ache to hold our babies, to love them, to nurture them. We are the families who will forever have a hole in our hearts. . . . please put a stop to this terrible bill. Families like mine are counting on you.

For all of these reasons, I oppose the Santorum bill. We should stand with Coreen Costello and others like her, who with their doctors' advice, must make these tragic decisions to protect their lives and their health.

Mr. HATCH. Mr. President, I rise today in strong support of S. 1692, the Partial Birth Abortion Ban Act. At the outset, I would like to thank the Senator from Pennsylvania, Senator SANTORUM, for his great efforts here this week, and over the past few years, in trying to seek passage of this measure. Few people can speak on this issue with the same passion and depth of understanding as Senator SANTORUM.

As we face this vote today, it is clear that the majority of the Senate supports this bill. It is a bipartisan effort. The hope we have, however, in the face of an inevitable veto, is that a number sufficient to override this veto will vote in favor of this bill.

Mr. President, I have spoken in past years on this important legislation. As chairman of the Senate Judiciary Committee, I chaired a major hearing on this bill several years ago, and the graphic description of this procedure and the testimony I heard was compelling, even chilling.

This bill presents, really, a very narrow issue: whether one rogue abortion procedure that has probably been performed by a handful of abortion doctors in this country, that is never medically necessary, that is not the safest medical procedure available under any circumstances, and that is morally reprehensible, should be banned.

This bill does not address whether all abortions after a certain week of pregnancy should be banned or whether late-term abortions should only be permitted in certain circumstances. It bans one particular abortion procedure.

I chaired the Judiciary Committee hearing on this bill that was held on November 17, 1995. After hearing the testimony presented there as well as seeing some of the submitted material, I must say that I find it difficult to comprehend how any reasonable person could examine the evidence and continue to defend the partial-birth abortion procedure.

That procedure involves the partial delivery of an intact fetus into the birth canal. The fetus is delivered from its feet through its shoulders so that only its head remains in the uterus. Then, either scissors or another instrument is used to poke a hole in the base of the skull. This is a living baby at this point, in a late trimester of living. Once the abortionist pokes that hole in the base of the skull, a suction catheter is inserted to suck out the brains. This bill would simply ban that procedure.

The committee heard testimony from a total of 12 witnesses presenting a variety of perspectives on the bill. I wanted to ensure that both sides of this debate had a full opportunity to present their arguments on this issue, and I think that the hearing bore that out.

Brenda Shafer, a registered nurse who worked in Dr. Martin Haskell's Ohio abortion clinic for 3 days as a temporary nurse in September 1993, testified to her personal experience observing Dr. Haskell performing the procedure that would be banned by this bill. Dr. Haskell is one of only a handful of doctors who have acknowledged performing the procedure.

The committee also heard testimony from four ob-gyn doctors—two in favor of the bill and two against—from an anesthesiologist, from an ethicist, and from three women who had personal experiences either with having a late-term abortion or with declining to have a late-term abortion. Finally, the committee also heard from two law professors who discussed constitutional and other legal issues raised by the bill.

The hearing was significant in that it permitted the issues raised by this bill to be fully aired. I think that the most important contribution of the hearing to this debate is that the hearing record puts to rest a number of inaccurate statements that have been made by opponents of the bill and that have unfortunately been widely covered in the press.

Because the Judiciary Committee hearing brought out many of the facts on this issue, I would like to go through the most important of those for my colleagues to clear up what I think have been some of the major misrepresentations—and simply points of confusion—on this bill.

The first and foremost inaccuracy that we must correct once and for all concerns the effects of anesthesia on the fetus of a pregnant woman. I must say that I am personally shocked at the irresponsibility that led some opponents of this bill to spread the myth that anesthesia given to the mother during a partial-birth abortion is what kills the fetus.

Opponents of the measure presumably wanted to make this procedure appear less barbaric and make it more palatable. In doing so, however, they have not only misrepresented the procedure, but they have spread potentially life-threatening misinformation that could prove catastrophic to women's health.

By claiming that anesthesia kills the fetus, opponents have spread misinformation that could deter pregnant women who might desperately need surgery from undergoing surgery for fear that the anesthesia could kill or brain-damage their unborn children.

Let me illustrate how widespread this misinformation has become: In a June 23, 1995, submission to the House Judiciary Constitution Subcommittee, the late Dr. James McMahon, the other of the two doctors who has admitted performing the procedure, wrote that anesthesia given to the mother during the procedure causes fetal demise.

Let me note also that if the fetus was dead before being brought down the birth canal, then this bill by definition would not cover the procedure performed to abort the fetus. The bill covers only procedures in which a living fetus is partially delivered.

An editorial in USA Today on November 3, 1995, also stated, ''The fetus dies from an overdose of anesthesia given to its mother.''

In a self-described fact sheet, circulated to Members of the House, Dr. Mary Campbell, Medical Director of Planned Parenthood, who testified of the Judiciary Committee hearing wrote:

> The fetus dies of an overdose of anesthesia given to the mother intravenously. A dose is calculated for the mother's weight, which is 50 to 100 times the weight of the fetus. The mother gets the anesthesia for each insertion of the dilators, twice a day. This induces brain death in a fetus in a matter of minutes. Fetal demise therefore occurs in the beginning of the procedure while the fetus is still in the womb.

When that statement was referenced to the medical panel at the Judiciary Committee hearing by Senator ABRAHAM, the president of the American Society of Anesthesiologists, Dr. Norig

Ellison, flatly responded, ''There is absolutely no basis in scientific fact for that statement.''

The American Society of Anesthesiologists was invited to testify at our hearing precisely to clear up this obvious misrepresentation. They sought the opportunity to set the record straight.

What was terribly disturbing about this distortion was that it could endanger women's health and women's lives. The American Society of Anesthesiologists has made clear that they do not take a position on the legislation, but that they came forward out of concern for the harmful misinformation.

The spreading of this misinformation strikes me as a very sad commentary on the lengths that those who support abortion on demand, for any reason, at virtually any time during pregnancy and apparently regardless of the method, will do to defend each and any procedure, and certainly this procedure. The sacrifice of intellectual honesty is very disheartening.

As Dr. Ellison testified, he was ''Deeply concerned . . . that the widespread publicity given to Dr. McMahon's testimony may cause pregnant women to delay necessary and perhaps lifesaving medical procedures, totally unrelated to the birthing process, due to misinformation regarding the effect of anesthetics on the fetus.''

He stated that the American Society of Anesthesiologists, while not taking a position on the bill, ''. . . have nonetheless felt it our responsibility as physicians specializing in the provisions of anesthesia care to seek every available forum in which to contradict Dr. McMahon's testimony. Only in that way we believe can we provide assurance to pregnant women that they can undergo necessary surgical procedures safely, both for mother and unborn child.''

Dr. Ellison also noted that, in his medical judgment, in order to achieve neurological demise of the fetus in a partial-birth abortion procedure, it would be necessary to anaesthetize the mother to such a degree as to place her own health in jeopardy.

In short, in a partial-birth abortion, the anesthesia does not kill the fetus. The baby will generally be alive after partly being delivered into the birth canal and before having his or her skull opened and brain sucked out.

Mr. President, if this description is distasteful, that is because the procedure itself is.

That is also consistent with evidence provided by Dr. Haskell describing his use of the procedure. In his 1992 paper presented before the National Abortion Federation, which is part of the hearing record, Dr. Haskell described the procedure as first involving the forceps-assisted delivery into the birth canal of an intact fetus from the feet up to the shoulders, with the head remaining in the uterus. He does not describe taking any action to kill the fetus up until that point.

In a 1993 interview with the American Medical News, Dr. Haskell acknowledged that roughly two-thirds of the fetuses he aborts using the partial-birth abortion procedure are alive at the point at which he kills them by inserting a scissors in the back of the head and suctioning out the brain.

Finally, in a letter to me dated November 9, 1995, Dr. Watson Bowes of the University of North Carolina Medical School wrote, ''Although I have never witnessed this procedure, it seems likely from the description of the procedure by Dr. Haskell that many if not all of the fetuses are alive until the scissors and the suction catheter are used to remove brain tissue.''

Simply put, anesthesia given to a mother does not kill the baby she is carrying.

Let me move on to the next misrepresentation. Another myth that the hearing record debunks is that the procedure can be medically necessary in late-term pregnancies where the health of the mother is in danger or where the fetus has severe abnormalities.

Now, there were two witnesses at the hearing who testified as to their experiences with late-abortions in circumstances in which Dr. McMahon's performed the procedure. Both women, Coreen Costello and Viki Wilson, received terrible news late in their pregnancies that the children they were carrying were severely deformed and would be unable ot survive for very long.

I would like to make it absolutely clear that nothing in the bill before us would prevent women in Ms. Costello's and Ms. Wilson's situations from choosing to abort their children. That question is not before us, and it is not one that we face in considering this narrow bill.

I also would like to point out that I have the utmost sympathy for women—and their husbands and families—who find themselves receiving the same tragic news that those women received.

Regardless of whether they aborted the child or decided to go through with the pregnancy, which is what another courageous witness at our hearing, Jeannie French of Oak Park, Illinois, chose to do—and as a result, her daughter Mary's heart valves were donated to other infants—their experiences are horrendous ones that no one should have to go through.

The testimony of all three witnesses was among the most heart-wrenching and painful testimony I have ever heard before the committee. My heart goes out to those three women and their families as well as any others in similar situations.

However, the fact is that medical testimony in the record indicates that even if an abortion were to be performed under such circumstances, a number of other procedures could be performed, such as the far more common classical D&E procedure or an induction procedure.

When asked whether the exact procedure Dr. McMahon used would ever be medically necessary—even in cases like those described by Ms. Costello and Ms. Wilson—several doctors at our hearing explained that it would not. Dr. Nancy Romer, a practicing Ob-Gyn and clinical professor in Dayton, Ohio, stated that she had never had to resort to that procedure and that none of the physicians that she worked with had ever had to use it.

Dr. Pamela Smith, Director of Medical Education in the Department of Obstetrics and Gynecology at the Mount Sinai Medical Center in Chicago, stated that a doctor would never need to resort to the partial-birth abortion procedure.

This ties in closely to what I consider the next misrepresentation made about the partial-birth abortion procedure: the claim that in some circumstances a partial-birth abortion will be the safest option available for a late-term abortion. Testimony and other evidence adduced at the Judiciary Committee hearing amply demonstrate that this is not the case.

An article published in the November 20, 1995, issue of the American Medical News quoted Dr. Warren Hern as stating, ''I would dispute any statement that this is the safest procedure to use.'' Dr. Hern is the author of ''Abortion Practice,'' the Nation's most widely used textbook on abortion standards and procedures. He also stated in that interview that he ''has very strong reservations'' about the partial-birth abortion procedure banned by this bill.

Indeed, referring to the procedure, he stated, ''You really can't defend it. I'm not going to tell somebody else that they should not do this procedure. But I'm not going to do it.''

In fairness to Dr. Hern, I note that he does not support this bill in part because he feels this is the beginning of legislative efforts to chip away at abortion rights. But, his statement regarding the partial-birth abortion procedure certainly sheds light on the argument made by opponents that it is the safest procedure for late-term abortions.

Another misrepresentation that should be set straight concerns claims that the partial-birth abortion procedure that would be banned by this bill is, in fact, performed only in later-term pregnancies where the life of the mother is at risk or where the fetus is suffering from severe abnormalities that are incompatible with life.

I certainly do not dispute that in a number of cases the partial-birth abortion procedure has been performed where the life of the mother was at

risk or where the fetus was severely deformed.

Substantial available evidence indicates, however, that the procedure is not performed solely or primarily where the mother's life is in danger, where the mother's health is gravely at risk, or where the fetus is seriously malformed in a manner incompatible with life.

The fact of the matter is—and I know this is something that opponents of the bill have not faced—this procedure is being performed where there are only minor problems with the fetus, and for purely elective reasons.

Most important, however, medical testimony at our hearing indicated that a health exception in this bill is not necessary because other abortion procedures are in fact safer and better for women's health.

Now, let me be perfectly clear that I do not doubt that in some cases this procedure was done where there were life-threatening indications.

However, I simply must emphasize two points.

First, those cases are by far in the minority. We should get the facts straight so that our colleagues and the American people understand what is going on here.

Second, the most credible testimony at our hearing—confirmed by other available evidence—indicates that even where serious maternal health issues exist or severe fetal abnormalities arise, there will always be other, safer abortion procedures available that this bill does not touch.

On that note, I would like to close by highlighting a statement made at our hearing by Helen Alvare of the National Conference of Catholic Bishops. She remarked that opponents of this bill keep asking whether enacting it would be the first step in an effort to ban all abortions.

In her view, however, the real question should be whether allowing this procedure would serve as a first step toward legalized infanticide. I urge the bill's opponents to ask themselves this question. What is the real purpose of this procedure?

That is the fundamental problem with this procedure, It involves killing a partially delivered baby.

Let me say to my colleagues in the Senate that the evidence presented more than confirms my view that this procedure is never medically necessary and should be banned.

This evidence, regardless of one's view on the broader issue of abortion, provides ample justification for an ''aye'' vote on S. 1692.

I hope my colleagues will agree.

Mrs. BOXER. Mr. President, I will be brief.

The courts in twenty States have said the Santorum law that has basically been adopted in those States is unconstitutional. Senator SANTORUM, in an effort to fix his bill, sent up a modification to the desk which he believes has narrowed the definition of what he means by the term ''partial-birth abortion,'' which is not a medical term.

I have letters I have put in the RECORD from the obstetricians and gynecologists organization saying that, in fact, the new language doesn't do anything to narrow the definition; the same problem still holds.

This ban is so vague, it could impact all abortions. That is why the courts say it is wrong. There is no exception for the health of a woman. That also goes against Roe. And 51 of us voted in favor of Roe. I hope we will vote no. I believe at least 35 of us or so will do that. That will be enough to sustain the veto. I hope more of my colleagues will consider standing with the life and health of a woman and voting no on this legislation.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, the amendment I offered to modify the language, directly on point, addresses the Eighth Circuit concern. It specifically talks about the baby having to be intact, living outside the mother, before the baby is killed.

The concern of the Eighth Circuit was that other forms of abortion that are performed in utero could be involved. This is absolutely, positively clear. We are not talking about that. We ban a particular procedure. All other procedures would be legal under this bill. So there is no undue burden.

Second, regarding the issue of health that Senator BOXER brings up, I have hundreds and hundreds of letters from obstetricians who say this is never, never medically necessary, and is never the only alternative, and it is never the preferred alternative. I have entered into the RECORD where the AMA has said that, and other organizations, 600 obstetricians.

On the other side is one organization, ACOG, which says, also, that it is never the only option, but says it may be necessary, or it may be the preferred procedure. For 3 years, we have asked for an example of when it would be the preferred procedure. They have never given us an example; never have they provided an example that backs up their specious claim that this is in some way, somehow, somewhere necessary.

It is not medically necessary. There is no health exception needed because it is an unhealthy procedure. This is the opportunity to draw the line in the sand about what is protected by the Constitution and what is not. A child three-quarters born deserves some protection.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Florida (Mr. MACK), and the Senator from New Hampshire (Mr. GREGG) are necessarily absent.

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

The result was announced—yeas 63, nays 34, as follows:

[Rollcall Vote No. 340 Leg.]

YEAS—63

Abraham	Dorgan	Lugar
Allard	Enzi	McCain
Ashcroft	Fitzgerald	McConnell
Bayh	Frist	Moynihan
Bennett	Gorton	Murkowski
Biden	Gramm	Nickles
Bond	Grams	Reid
Breaux	Grassley	Roberts
Brownback	Hagel	Roth
Bunning	Hatch	Santorum
Burns	Helms	Sessions
Byrd	Hollings	Shelby
Campbell	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Conrad	Inhofe	Specter
Coverdell	Johnson	Stevens
Craig	Kyl	Thomas
Crapo	Landrieu	Thompson
Daschle	Leahy	Thurmond
DeWine	Lincoln	Voinovich
Domenici	Lott	Warner

NAYS—34

Akaka	Graham	Murray
Baucus	Harkin	Reed
Bingaman	Inouye	Robb
Boxer	Jeffords	Rockefeller
Bryan	Kennedy	Sarbanes
Cleland	Kerrey	Schumer
Collins	Kerry	Snowe
Dodd	Kohl	Torricelli
Durbin	Lautenberg	Wellstone
Edwards	Levin	Wyden
Feingold	Lieberman	
Feinstein	Mikulski	

NOT VOTING—3

Chafee	Gregg	Mack

The bill (S. 1692), as amended and modified, was passed, as follows:

S. 1692

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Partial-Birth Abortion Ban Act of 1999''.

SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

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

"CHAPTER 74—PARTIAL-BIRTH ABORTIONS

''Sec.

''1531. Partial-birth abortions prohibited.

"§ 1531. Partial-birth abortions prohibited

''(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than two

years, or both. This paragraph shall 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, illness, or injury. This paragraph shall become effective one day after enactment.

''(b)(1) As used in this section, the term 'partial-birth abortion' means an abortion in which the person performing the abortion deliberately and intentionally—

''(A) vaginally delivers some portion of an intact living fetus until the fetus is partially outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the fetus while the fetus is partially outside the body of the mother; and

''(B) performs the overt act that kills the fetus while the intact living fetus is partially outside the body of the mother.

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

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

''(2) Such relief shall include—

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

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

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

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

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

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

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

SEC. 3. SENSE OF CONGRESS CONCERNING ROE V. WADE AND PARTIAL BIRTH ABORTION BANS.

(a) FINDINGS.—Congress finds that—

(1) abortion has been a legal and constitutionally protected medical procedure throughout the United States since the Supreme Court decision in Roe v. Wade (410 U.S. 113 (1973)); and

(2) no partial birth abortion ban shall apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that partial birth abortions are horrific and gruesome procedures that should be banned.

SEC. 4. SENSE OF CONGRESS CONCERNING A WOMAN'S LIFE AND HEALTH.

It is the sense of the Congress that, consistent with the rulings of the Supreme Court, a woman's life and health must always be protected in any reproductive health legislation passed by Congress.

SEC. 5. SENSE OF CONGRESS CONCERNING ROE V. WADE.

(a) FINDINGS.—Congress finds that—

(1) reproductive rights are central to the ability of women to exercise their full rights under Federal and State law;

(2) abortion has been a legal and constitutionally protected medical procedure throughout the United States since the Supreme Court decision in Roe v. Wade (410 U.S. 113 (1973));

(3) 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; and

(4) women should not be forced into illegal and dangerous abortions as they often were prior to the Roe v. Wade decision.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) Roe v. Wade was an appropriate decision and secures an important constitutional right; and

(2) such decision should not be overturned.

Mr. BROWNBACK. Mr. President, I want to speak for a brief period. The reason I want to speak is to read into the RECORD a great speech that was given by a Nobel Laureate for Peace prize winner in 1979. It fits in with the culmination of what we discussed today, the partial-birth abortion ban. That vote has taken place and we have had extended discussion on that. I think this is actually a very fitting final conclusion to this debate.

Mr. President, this speech is titled ''The Gift of Peace.'' It was given by Mother Teresa, Nobel Laureate, on December 11, 1979. I think it relates to a lot of what we have talked about here today. I will read it. I think it puts a good summary on it.

Mother Teresa said:

As we have gathered here together to thank God for the Nobel Peace Prize, I think it will be beautiful that we pray the prayer of St. Francis of Assisi which always surprises me very much—we pray this prayer every day after Holy Communion, because it is very fitting for each one of us, and I always wonder that 4–500 years ago as St. Francis of Assisi composed this prayer that they had the same difficulties that we have today, as we compose this prayer that fits very nicely for us also. I think some of you already have got it—so we will pray together.

Let us thank God for the opportunity that we all have together today, for this gift of peace that reminds us that we have been created to live that peace, and Jesus became man to bring that good news to the poor. He being God became man in all things like us except sin, and he proclaimed very clearly that he had come to give the good news. The news was peace to all of good will and this is something that we all want—the peace of heart—and God loved the world so much that he gave his son—it was a giving—it is as much as if to say it hurt God to give, because he loved the world so much that he gave his son, and he gave him to Virgin Mary, and what did she do with him?

As soon as he came in her life—immediately she went in haste to give that good news, and as she came into the house of her cousin, the child—the unborn child—the child in the womb of Elizabeth, lit with joy. He was that little unborn child, was the first messenger of peace. He recognized the Prince of Peace, he recognized that Christ has come to bring the good news for you and for me. And as if that was not enough—it was not enough to become a man—he died on the cross to show that greater love, and he died for you and for me and for that leper and for that man dying of hunger and that naked person lying in the street not only of Calcutta, but of Africa, and New York, and London, and Oslo—and insisted that we love one another as he loves each one of us. And we read that in the Gospel very clearly—love as I have loved you—as I love you—as the Father has loved me, I love you—and the harder the Father loved him, he gave him to us, and how much we love one another, we, too, must give each other until it hurts. It is not enough for us to say: I love God, but I do not love my neighbour. St. John says you are a liar if you say you love God and you don't love your neighbour. How can you love God whom you do not see, if you do not love your neighbour whom you see, whom you touch, with whom you live. And so this is very important for us to realize that love, to be true, has to hurt. It hurt Jesus to love us, it hurt him. And to make sure we remember his great love he made himself bread of life to satisfy our hunger for his love. Our hunger for God, because we have been created for that love. We have been created in his image. We have been created to love and be loved, and then he has become man to make it possible for us to love as he loved us. He makes himself the hungry one—the naked one—the homeless one—the sick one—the one in prison—the lonely one—the unwanted one—and he says: You did it to me. Hungry for our love, and this is the hunger of our poor people. This is the hunger that you and I must find, it may be in our own home.

I never forget an opportunity I had in visiting a home where they had all these old parents of sons and daughters who had just put them in an institution and forgotten maybe. And I went there, and I saw in that home they had everything, beautiful things, but everybody was looking toward the door. And I did not see a single one with their smile on their face. And I turned to the sister and I asked: How is that? How is it that the people they have everything here, why are they all looking toward the door, why are they not smiling? I am so used to see the smile on our people, even the dying ones smile, and she said: This is nearly every day, they are expecting, they are hoping that a son or daughter will come to visit them. They are hurt because they are forgotten, and see—this is where love comes. That poverty comes right there in our own home, even neglect to love. Maybe in our own family we have somebody who is feeling lonely, who is feeling sick, who is feeling worried, and these are difficult days for everybody. Are we there, are we there to receive them, is the mother there to receive the child?

I was surprised in the waste to see so many young boys and girls given into drugs, and I tried to find out why—why is it like that,

and the answer was: Because there is no one in the family to receive them. Father and mother are so busy they have no time. Young parents are in some institution and the child takes back to the street and gets involved in something. We are talking of peace. These are things that break peace, but I feel the greatest destroyer of peace today is abortion, because it is a direct war, a direct killing—direct murder by the mother herself. And we read in the Scripture, for God says very clearly. Even if a mother could forget her child—I will not forget you—I have curved you in the palm of my hand. We are curved in the palm of His hand so close to Him that unborn child has been curved in the hand of God. And that is what strikes me most, the beginning of that sentence, that even if a mother could forget something impossible—but even if she could forget—I will not forget your. And today the greatest means—the greatest destroyer of peace is abortion. And we who are standing here—our parents wanted us. We would not be here if our parents would do that to us. Our children, we want them, we love them, but what of the millions. Many people are very, very concerned with the children in India, with the children of Africa where quite a number die, maybe of malnutrition, of hunger and so on, but millions are dying deliberately by the will of the mother. And this is what is the greatest destroyer of peace today. Because if a mother can kill her own child—what is left for me to kill you and you to kill me—there is nothing between. And this I appeal in India, I appeal everywhere: Let us bring the child back, and this year being the child's year: What have we done for the child? At the beginning of the year I told, I spoke everywhere and I said: Let us make this year that we make every single child born, and unborn, wanted. And today is the end of the year, have we really made the children wanted? I will give you something terrifying. We are fighting abortion by adoption, we have saved thousands of lives, we have sent words to all the clinics, to the hospitals, police stations—please don't destroy the child, we will take the child. So every hour of the day and night it is always somebody, we have quite a number of unwedded mothers—tell them come, we will take care of you, we will take the child from you, and we will get a home for the child. And we have a tremendous demand for families who have no children, that is the blessing of God for us. And also, we are doing another thing which is very beautiful—we are teaching our beggars, our leprosy patients, our slum dwellers, our people of the street, natural family planning.

And in Calcutta alone in six years—it is all in Calcutta—we have had 61,273 babies less from the families who would have had, but because they practice this natural way of abstaining, of self-control, out of love for each other. We teach them the temperature meter which is very beautiful, very simple, and our poor people understand. And you know what they have told me? Our family is healthy, our family is united, and we can have a baby whenever we want. So clear—these people in the street, those beggars—and I think that if our people can do like that how much more you and all the others who can know the ways and means without destroying the life that God has created in us. The poor people are very great people. They can teach us so many beautiful things. The other day one of them came to thank and said: You people who have evolved chastity you are the best people to teach us family planning. Because it is nothing more than self-control out of love for each other. And I think they said a beautiful sentence. And these are people who maybe have nothing to eat, maybe they have not a home where to live, but they are great people. The poor are very wonderful people. One evening we went out and we picked up four people from the street. And one of them was in a most terrible condition—and I told the sisters: You take care of the other three, I take of this one that looked worse. So I did for her all that my love can do. I put her in bed, and there was such a beautiful smile on her face. She took hold of my hand, as she said one word only: Thank you—and she died.

I could not help but examine my conscience before her, and I asked what would I say if I was in her place. And my answer was very simple. I would have tried to draw a little attention to myself, I would have said I am hungry, that I am dying, I am cold, I am in pain, or something, but she gave me much more—she gave me her grateful love. And she died with a smile on her face. As that man whom we picked up from the drain, half eaten with worms, and we brought him to the home. I have lived like an animal in the street, but I am going to die like an angel, loved and cared for. And it was so wonderful to see the greatness of that man who could speak like that, who could die like that without blaming anybody, without cursing anybody, without comparing anything. Like an angel—this is the greatness of our people. And that is why we believe what Jesus has said: I was hungry—I was naked—I was homeless—I was unwanted, unloved, uncared for—and you did it to me. I believe that we are not real social workers. We may be doing social work in the eyes of the people, but we are really contemplatives in the heart of the world. For we are touching the body of Christ 24 hours. We have 24 hours in this presence, and so you and I. You too try to bring that presence of God in your family, for the family that prays together stays together. And I think that we in our family we don't need bombs and guns, to destroy to bring peace—just get together, love one another, bring that peace, that joy, that strength of presence of each other in the home. And we will be able to overcome all the evil that is in the world. There is so much suffering, so much hatred, so much misery, and we with our prayer, with our sacrifice are beginning at home. Love begins at home, and it is not how much we do, but how much love we put in the action that we do. It is to God Almighty—how much we do it does not matter, because He is infinite, but how much love we put in that action. How much we do to Him in the person that we are serving. Some time ago in Calcutta we had great difficulty in getting sugar, and I don't know how the word got around to the children, and a little boy of four years old, Hindu boy, went home and told his parents: I will not eat sugar for three days, I will give my sugar to Mother Teresa for her children. After three days his father and mother brought him to our house. I had never met them before, and this little one could scarcely pronounce my name, but he knew exactly what he had come to do. He knew that he wanted to share his love. And this is why I have received such a lot of love from you all. From the time that I have come here I have simply been surrounded with love, and with real, real understanding love. It could feel as if everyone in India, everyone in Africa is somebody very special to you. And I felt quite at home I was telling Sister today. I feel in the Convent with the Sisters as if I am in Calcutta with my own Sisters. So completely at home here, right here. And so here I am talking with you—I want you to find the poor here, right in your own home first. And begin love there. Be that good news to your own people. And find out about your next-door neighbor—do you know who they are? I had the most extraordinary experience with a Hindu family who had eight children. A gentleman came to our house and said: Mother Teresa, there is a family with eight children, they had not eaten for so long—do something. So I took some rice and I went there immediately. And I saw the children—their eyes shining with hunger—I don't know if you have ever seen hunger. But I have seen it very often. And she took the rice, and divided the rice, and she went out. When she came back I asked her—where did you go, what did you do? And she gave me a very simple answer: They are hungry also. What struck me most was that she knew—and who are they, a Muslim family—and she knew. I didn't bring more rice that evening because I wanted them to enjoy the joy of sharing. But there was those children, radiating joy, sharing the joy with their mother because she had the love to give. And you see this is where love begins—at home. And I want you—and I am very grateful for what I have received. It has been a tremendous experience and I go back to India—I will be back by next week, the 15th I hope—and I will be able to bring your love.

And I know well that you have not given from your abundance, but you have given until it hurts you. Today the little children they gave—I was so surprised—there is so much joy for the children that are hungry. That the children like themselves will need love and care and tenderness, like they get so much from their parents. So let us thank God that we have had this opportunity to come to know each other, and this knowledge of each other has brought us very close. And we will be able to help not only the children of India and Africa, but will be able to help the children of the whole world, because as you know our Sisters are all over the world. And with this Prize that I have received as a Prize of Peace, I am going to try to make the home for many people that have no home. Because I believe that love begins at home, and if we can create a home for the poor—I think that more and more love will spread. And we will be able through this understanding love to bring peace, be the good news to the poor. The poor in our own family first, in our country and in the world. To be able to do this, our Sisters, our lives have to be woven with prayer. They have to be woven with Christ to be able to understand, to be able to share. Because today there is so much suffering—and I feel that the passion of Christ is being relived all over again—are we there to share that passion, to share that suffering of people. Around the world, not only in the poor countries, but I found the poverty of the West so much more difficult to remove. When I pick up a person from the street, hungry, I give him a plate of rice, a piece of bread, I have satisfied. I have removed that hunger. But a person that is shut out, that feels unwanted, unloved, terrified, the person that has been thrown out from society—that poverty is so hurtable and so much, and I find that very difficult. Our Sisters are working amongst that kind of people in the West. So you must pray for us that we may be able to be that good news, but we cannot do that without you, you have to do that here in your country. You must come to know the poor, maybe our people here have material things, everything, but I think that if we all look into our own homes, how difficult we find it sometimes to smile at each

other, and that the smile is the beginning of love. And so let us always meet each other with a smile, for the smile is the beginning of love, and once we begin to love each other naturally we want to do something. So you pray for our Sisters and for me and for our Brothers, and for our co-workers that are around the world. That we may remain faithful to the gift of God, to love Him and serve Him in the poor together with you. What we have done we would not have been able to do if you did not share with your prayers, with your gifts, this continual giving. But I don't want you to give me from your abundance, I want that you give me until it hurts. The other day I received 15 dollars from a man who has been on his back for twenty years, and the only part that he can move is his right hand. And the only companion that he enjoys is smoking. And he said to me: I do not smoke for one week, and I send you this money. It must have been a terrible sacrifice for him, but see how beautiful, how he shared, and with that money I bought bread and I gave to those who are hungry with a joy on both sides, he was giving and the poor were receiving. This is something that you and I—it is a gift of God to us to be able to share our love with others. And let it be as it was for Jesus. Let us love one another as he loved us. Let us love Him with undivided love. And the joy of loving Him and each other—let us give now—that Christmas is coming so close. Let us keep that joy of loving Jesus in our hearts. And share that joy with all that we come in touch with. And that radiating joy is real, for we have no reason not to be happy because we have Christ with us. Christ in our hearts, Christ in the poor that we meet, Christ in the smile that we give and the smile that we receive. Let us make that one point: That no child will be unwanted, and also that we meet each other always with a smile, especially when it is difficult to smile.

I never forget some time ago about 14 professors came from the United States from different universities. And they came to Calcutta to our house. Then we were talking about home for the dying in Calcutta, where we have picked up more than 36,000 people only from the streets of Calcutta, and out of that big number more than 18,000 have died a beautiful death. They have just gone home to God; and they came to our house and we talked of love, of compassion, and then one of them asked me: Say, Mother, please tell us something that we will remember, and I said to them: Smile at each other, make time for each other in your family. Smile at each other. And then another one asked me: Are you married, and I said: Yes, and I find it sometimes very difficult to smile at Jesus because he can be very demanding sometimes. This is really something true, and there is where love comes—when it is demanding, and yet we can give it to Him with joy. Just as I have said today, I have said that if I don't go to Heaven for anything else I will be going to Heaven for all the publicity because it has purified me and sacrificed me and made me really something ready to go to Heaven. I think that this is something, that we must live life beautifully, we have Jesus with us and He loves us. If we could only remember that God loves me, and I have an opportunity to love others as He loves me, not in big things, but in small things with great love, then Norway becomes a nest of love. And how beautiful it will be that from here a centre for peace of war has been given. That from here the joy of life of the unborn child comes out. If you become a burning light in the world of peace, then really the Nobel Peace Prize is a gift of the Norwegian people. God bless you!

I simply wanted to put Mother Teresa's speech here again as a reminder to us of one of the great people of the world of our time, one that we have had the pleasure of having in this body, and that at the face of all this, we are really talking about peace. We are talking about a caring peace.

I hope that we can move forward as a society, whether we want to do it by laws or not by laws. If we want to do it, we are persuading people's hearts. What we are talking about is the peace of that individual, and peace of mind, caring, caring through adoption.

I hope we can move our hearts—all of us, whether we disagree or agree on the legislation—forward to reach out to that child and to those children the way she did.

DAY OF NATIONAL CONCERN ABOUT YOUNG PEOPLE AND GUN VIOLENCE

Mr. DASCHLE. Mr. President, today has been designated by the Senate as a ''Day of National Concern about Young People and Gun Violence.'' Sadly, thus far, the Senate seems indifferent to that fact.

Despite repeated acts of gun violence, the conference on the juvenile justice bill, which was convened 77 days ago, has yet to complete its business. While the conference is stalled, more and more children are losing their lives.

Every day in the United States, 12 children under the age of 19 are killed with guns—1 child every 2 hours. Every day, three children commit suicide using a firearm. Every day, approximately six children are murdered by gunfire. Between 1979 and 1997, gunfire killed nearly 80,000 children and teens in America, more than the total number of soldiers lost in the Vietnam war. In fact, homicide is the third leading cause of death among children ages 5 to 14.

That is why Senator MURRAY and others worked so hard to pass the resolution that declared today, this day, the ''Day of National Concern about Young People and Gun Violence.''

The good news is that the number of children dying from gunfire has declined. Moreover, children across the country are engaged in positive endeavors to rid their communities of violence and to encourage their friends to find peaceful ways to settle disputes.

This week, the Democrats in the House of Representatives hosted 300 teenagers from across the country for a conference entitled ''Voices Against Violence.'' At this conference, teens discussed their concerns about violence and explored ideas for addressing this pressing problem.

Senate Democrats believe we, in the Senate, must join America's children and do our part to stem that violence. That is why we fought so hard to pass a comprehensive juvenile justice bill that included common sense gun safety provisions, money for programs designed to prevent violence before it occurs, and measures to ensure that those few kids who are truly dangerous are punished appropriately.

On May 20th the Senate passed the juvenile justice bill, and on June 17th the House passed their juvenile justice bill. After waiting weeks, on August 5th—77 days ago—the juvenile justice conference had its first and only meeting. Yesterday marked the 6-month anniversary of the Columbine tragedy, and it is time for the stalling to stop.

The Y2K legislation conference report was produced 14 days after the Senate passed the bill, and the Republican tax cut conference report was produced only 5 days after the Senate voted on that package. Why don't we have the same commitment to producing legislation to combat youth violence?

The conference should be working around the clock to produce a bill the President can sign before the end of this session. We ought to use this day and every day to ensure that this juvenile justice bill is passed and to ensure that we live up to the expectations of all who said on the day when we passed the ''Day of National Concern about Young People and Gun Violence'' legislation that it was more than just words, it was more than just a rhetorical commitment, it meant sincerely that the Senate was serious about addressing this issue. Indeed, we remind our colleagues that thus far, our children have waited too long.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I commend the Democratic leader, Senator DASCHLE, for bringing to the attention of the Senate this extremely important day, October 21. It is the Day of National Concern about Young People and Gun Violence. This is a day that all Members in the Senate have recognized as a day we want young people everywhere to take a pledge to not bring a gun to school and to resolve their conflicts without using a gun. It is a very important message.

This is a bipartisan message. Senator Kempthorne and I began this effort 4 years ago. This year, Senator JOHN WARNER and I put this resolution forward in a bipartisan way. It was supported by all Members of the Senate. It is a simple message to young children. Millions of them today took the pledge and joined with others in their community to take the power of reducing violence into their own hands.

As leaders of the United States, we have a responsibility to do all we can to reduce youth violence in this country. We need to stand behind these young kids who are taking violence