SENATE—*Thursday, May 15, 1997*

The Senate met at 9:15 a.m. and was called to order by the Hon. John ASHCROFT, a Senator from the State of Missouri.

The PRESIDING OFFICER. We are favored today with the presence of a guest Chaplain, Dr. Greg Mathis of Mud Creek Baptist Church from Hendersonville, NC. Our guest Chaplain will lead the Senate in prayer.

PRAYER

The Reverend Dr. Greg Mathis of Mud Creek Baptist Church, Hendersonville, NC, offered the following prayer:

Let us pray:

Heavenly Father, thank You for the privilege of prayer. In obedience to You, I lift up the leaders of our country who are in positions of authority and responsibility. Remind each of us this day that all wisdom begins with You. Help us, O Lord, to work this day to protect our heritage, to find common ground for the present, and to have a vision for the future. May this be our purpose. Heavenly Father, guide us to give careful thought to our ways. Grant special insight to our leaders to anything that would threaten our country. Give integrity to them today as they hear, speak, think, and decide. Give them initiative to accomplish something for the good of all. Remind us, O Lord, that You are sovereign. May Your word be our standard of righteousness. May Your love be our example of kindness. May the wonderful salvation You offer to us through Your son, Jesus Christ, find acceptance. Heavenly Father, I pray that everything that transpires here this day will be pleasing to You and in accordance with Your will. This I pray in the name of Jesus Christ, the Saviour of the world. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. THURMOND].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 15, 1997.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN ASHCROFT, a Senator from the State of Missouri, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. ASHCROFT thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

THE GUEST CHAPLAIN

Mr. FAIRCLOTH. Mr. President, the Reverend Greg Mathis, pastor of Mud Creek Baptist Church in Hendersonville, NC, is one of our outstanding ministers from North Carolina. Reverend Mathis graduated from Southeastern Baptist Theological Seminary in Wake Forest, NC, and he has pastored Mud Creek for 20 years. During that time, the church experienced a remarkable growth under his leadership. Reverend Mathis is serving his second term as president of the North Carolina Baptist State Convention. The North Carolina Baptist State Convention is the foremost religious organization in North Carolina. It has 3,600 churches and represents 1.2 million worshipers.

Reverend Mathis' wife, Deborah, is with us today, and his three children are back in North Carolina attending school. Also with Reverend Mathis today is the chairman of the board of deacons, Greg Corn, and his wife, Susie.

It is a distinct honor and my pleasure to have Rev. Greg Mathis as our guest Chaplain of the U.S. Senate today and to have led us in our opening prayer. I thank him for being here.

SCHEDULE

Mr. JEFFORDS. Mr. President, for the information of all Senators, today the Senate will resume consideration of S. 4, the Family Friendly Workplace Act. Under the previous order, at approximately 10 a.m., the Senate will vote on a motion to invoke cloture on S. 4. Following that vote, there will be a period for morning business until the hour of 11 a.m. to accommodate a number of the Senators who have requested time to speak. In addition, I remind all Members that they have until 10 a.m. to file second-degree amendments to S. 4.

Also, by previous order, at 11 a.m., the Senate will resume consideration of H.R. 1122, the partial-birth abortion ban bill, with Senator FEINSTEIN recognized to offer an amendment. Debate on the Feinstein amendment will last until approximately 2 p.m., with the time equally divided between Senator FEINSTEIN and Senator SANTORUM. At approximately 2 p.m., a rollcall vote will occur on, or in relation to, the Feinstein amendment.

Following the disposition of the Feinstein amendment, Senator DASCHLE will be recognized to offer his amendment to H.R. 1122, and under a consent agreement, there will be 5 hours of debate in order equally divided between Senator DASCHLE and Senator SANTORUM. Therefore, Senators can anticipate a vote on, or in relation to, the Daschle amendment later this evening. Consequently, Members can expect rollcall votes throughout today's session of the Senate. As always, Senators will be notified with as much notice as possible as to the exact time of these ordered votes.

The majority leader reminds all Members that next week, as the last week prior to the Memorial Day recess, as Senators are aware, we have a number of important issues which we hope to complete action on prior to the recess, including the budget resolution, any conference reports that are available and any executive nominations that can be cleared. Therefore, the majority leader appreciates the cooperation of all Members in the scheduling of legislative business and votes next week.

I thank my colleagues for their attention and yield the floor.

FAMILY FRIENDLY WORKPLACE ACT

The PRESIDING OFFICER (Mr. BROWNBACK). The Chair lays before the Senate, S. 4, with debate equally divided until the hour of 10 a.m. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 4) to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Mr. President, I yield to the Senator from the State of Texas—I am not sure how much time she needs, 15 minutes?

Mrs. HUTCHISON. That will be fine. I probably will not need all of that.

Mr. JEFFORDS. Fine.

The PRESIDING OFFICER. The Senator from Texas is recognized for up to 15 minutes.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mrs. HUTCHISON. Thank you, Mr. President, and I thank the chairman of the committee.

We are going to vote in about an hour and a half to invoke cloture, which means we are going to vote on whether we can take up the Family Friendly Workplace Act. Mr. President, this act is long overdue. This is going to free the hourly employees of our country to have the same flexibility that Federal workers now have, that most State workers now have, that salaried employees now have. Only hourly employees are not able to walk into their employer and say, "Could I take off at 3 o'clock Friday afternoon to go to my child's soccer game and work 2 extra hours on Monday?"

The hourly employees of this country are not allowed to walk into their employer and say, "You know, I don't ever work overtime, but I'd like to be able to work some extra hours and bank those so that when I am able to go on a camping trip with my child, I will have those hours to do it."

An hourly employee is not allowed to walk in to his or her employer's office and say, "I would like to know if it would be possible for me to work maybe 9 hours everyday for 2 weeks and take every other Friday off." An hourly employee cannot do that. And yet this has worked so well for Federal employees and salaried employees who have dealt with the stresses of being a working mom or a working dad. They need to work, they need the extra income, but they do not have enough time with their children. Salaried employees can do this. Federal employees can do this. State employees can do this. But hourly workers cannot. Why? Because the Federal Government says they cannot, because the Federal Government discriminates against employees by a bill that was passed into law in 1938.

Mr. President, in 1938, 10 percent of the women in this country with children worked—10 percent. So it was not exactly an issue on the front burner at the time that working moms had the kind of stresses they do today. The ones who were working did, no question about it, but there were not as many. Today, two-thirds of the working women in this country have school-age children—two-thirds.

I was talking to my daughter last night. I was worried because I had not heard from her. I left a message for her Sunday. Ray and I were trying to reach her and we left a message for her Sunday and said call us back. She did not call back. She called me last night about 10:30, and she said, "Oh, gosh, I'm really sorry, everything is fine, but I had just beem volunteering full time at the school and Travis' Little League directors meeting was tonight, I had just gotten home from the directors' meeting, and we have been working with our twin daughters having a pen pal program with another school and were planning a party for the children who were coming over to meet for the first time."

My gosh, I thought, how does she have enough hours in the day, and she is a full-time mom. What if she were working and trying to do those wonderful things that she is doing to support her son's Little League, or our twin granddaughters' activities in Brownies, which she hosts every week at her home? All the extra hours that she volunteers at school, reading to all the children in school at the library, I thought, what if she were a working mom? And I thought to myself, two-thirds of the working women in this country have school-age children, and they would love to do what Brenda Maxon, our daughter, does volunteering at school to read to the children, being on the board of directors of the Little League, working with her twin daughters' pen pal class and having Brownie troop meetings every week. Those are such wonderful things, and I am so grateful that my grandchildren have such a wonderful mom.

But, Mr. President, if she were working full time, she would have the stresses that would make it impossible. Impossible. Every mom would like to be able to do those things. We are trying to relieve some of that stress with this bill. We are going to try to give hourly employees the ability to say, "I would like to host a Brownie troop every other Friday. Could I work 9 hours every other day of the week and take every other Friday off so I can host a Brownie troop for my daughter?" That is what we want for the hourly employees of our country.

What this bill does is allow the hourly employees to come in and say, "I'd like to work overtime and bank the hours to take a day off." Or, if an employer says, "I need overtime work," the person can have their choice: Time-and-a-half pay or time-and-a-half hours, and, once again, bank those hours for when they are needed. Or to be able to walk in and say, "Can I work 9 hours a day and take every other Friday off?" Or "Can I work 10 hours 4 days a week and take Fridays off?" Because other people are able to do that. Maybe they do not have child care on Fridays. They have child care 4 days a week they feel really comfortable with, but not on Fridays.

You see, the difference between 1938 laws and today is that I think employers realize how important it is that they have happy, productive employees. And when two-thirds of the working women in this country have school-aged children, they know there is stress in this life. What can we do to make these employees happier, to give them a release valve, to let them have that time to do something special with their children so that they do not worry that their children are going to grow up without their awareness of how much their moms and dads love them, cherish them, and want them to have solid values? So, Mr. President, that is what the bill is.

I have heard the opposition. They say, "Oh, but this will just allow employers to coerce employees. All the rights are with the employers." Well, of course the employer is running the business. Many times it is the small business man or woman that has gone out and borrowed the money, that works 80 hours a week trying to make it go, to contribute to our economy. It is not easy being in business in America with all of the taxes and regulations and litigation that a person in business must face.

So, of course, they are running the operation. But that does not mean they are bad. It does not mean that they are going to say, to an employee, "Oh, no. Of course you're not going to do that. I don't want to pay you overtime." That is not the way America is. This is not 1938. It is not 1948. It is 1997.

Welcome to the end of the 20th century. Employers want happy, productive employees. They are going to bend over backward. And they do bend over backwards to make life better for their employees. And if it is not going to disrupt the workplace, of course they are going to say, yes, they would like the flexibility to do this.

It has been stated on the floor, "Oh, well, the only people supporting this are employers." That is not true. This morning in my office I met with three Federal workers. And I said, "How do you like flextime?"

They said, "Oh, it's wonderful, of course. We love it."

And I said, "Well, can you imagine why many of the Democrats are keeping this bill from coming up so that others would be able to have these same rights?"

And they looked at me sort of aghast—aghast—of course.

What in the world could be wrong with adding one more option for the working moms and dads in this country that are hourly employees? We are taking away no rights. We are taking nothing away.

In fact, the unions are opposed to this, but I do not understand it, because if there is a union contract, it does not apply. A union contract overrides the ability for this employee to go outside of the union contract to his or her employer. So the unions' rights are certainly protected.

Why would the union not want other hourly employees, who do not have union contracts, why would they step in and say that we should not allow hourly employees in this country to have the same rights as salaried employees do, as Federal employees do? What could be their motivation?

It is incomprehensible to me that adding another option to the hourly

employees' ability to relieve the stress in their lives would be opposed by anyone, by unions, by members of the Democratic side of the Senate. It is incomprehensible because every single Republican is certainly going to vote for this bill.

But we need 60 votes to move forward. And I do not know if we will have 60 votes. But I would like to have the explanation from someone who is going to vote against this bill, why they would not allow the hourly employees of this country to have another option to relieve the stress in their lives, to spend more time with their kids, paid rather than unpaid, which is what the President's plan would do.

This is paid. What if the hourly employee cannot afford the Family and Medical Leave Act, which does not have pay, because they have a mortgage payment and they are barely making ends meet, they have a car payment, they have day care payments, they just cannot quite squeeze it out if they cannot get paid? That is why this is so important. They will continue to get paid at their regular rates. They know what their hourly compensation is. They know they can depend on it. They would just choose, if they wanted to, instead of getting extra pay, they would take extra time off.

In a poll done by Money magazine, a survey found 64 percent of the public and 68 percent of the women would choose paid time off, which our bill would give them, for overtime work instead of added pay because it means that it is up to them to have the extra time with their kids without in any way giving up the ability to pay the car payment and the mortgage payment and the day care payment.

So, Mr. President, this bill is so fair. It is so right. It is impossible to think—if you go out and do an interview on the street, talk to people who are not in Washington, DC. Talk to people who are in the real world, working hard to make ends meet, running a small business. Talk to people who are making this country tick. It is not the people in the U.S. Senate that are making this country tick; it is the people out there on the frontline, working to make ends meet as hourly employees or as small business owners or as salaried employees or Federal workers. They are out there trying to make ends meet. And we are giving them one more option to relieve the stress in their lives.

If you ask a man on the street, would they like this as an option, not as a mandate, but as an option to be able to at some point attend a special football game, a special soccer game, a special Little League baseball game, or to be able to host the Brownie troop every Friday, would they like the option to go to their employer and say, "Could I have flexible time? Could I have compensatory time?" I will guarantee you, that 8 out of 10 people will say absolutely yes—probably 10 out of 10—but I know 8 out of 10 would, or 68 percent of the women or 65 percent of all people. An overwhelming majority would say, "Hey, I didn't know they couldn't." That is what most people would say. "Are you kidding me? You mean, there are people in this country who cannot walk into their employer's office and say, 'Could I have time off Friday at 3 o'clock and work Monday until 7?' Well, gosh, yeah, I think they ought to have that right. I sure do." That is what we are trying to give them today.

So, Mr. President, I hope people will ask themselves the question—ask yourself the question, should hourly employees have the same rights as everybody else that works in this country? Should they? And if you think they should, then you should vote today for cloture so we can get on with this bill.

I think the President would have a hard time not signing a flextime bill when he campaigned saying exactly that is what he wanted. He wanted flextime. We are going to give it to him, if the Democrats will let us move forward on this bill.

Thank you, Mr. President. I appreciate the time.

The PRESIDING OFFICER. Who seeks time?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. How much time do I have, Mr. President?

The PRESIDING OFFICER. The Senator from Massachusetts controls 19 minutes and 48 seconds.

Mr. KENNEDY. Mr. President, I yield myself 7 minutes.

Mr. President, I listened to my good friend from Texas make a very eloquent statement and, of course, if that was the bill that we had before us, there would be an entirely different result than the vote that is going to take place at a little after 10 this morning. But that is not the bill we have before us.

I'd like just to mention that on page 9 of the bill, the decision about whether an employee will be permitted to take the time off will be made, as line 18 says, by the employer, not by the employee.

If, the good Senator from Texas said wants to change that, so that the employee makes the decision, instead of the employer, we have an entirely different bill here. If you want to give the choice to the workers, so that the employee can make that judgment and decision, you would have an entirely different outcome.

But that is not what the legislation says. This bill says the employer will make the decision—the employer will make it. And as I have said, if the employer decides not to grant an employee's request to use comptime on a particular date, because the employer makes the decision that the employee has not given sufficient notice, or the use of the comptime would disrupt the employer's operations, the employee has no ability to appeal it. Even if the employer fails to adhere to this standard, the employee has no remedy. There is no remedy if the employer is being unreasonable or harsh.

So that is really the difference. The difference between this bill and the Federal employee program is that the Federal employee makes the decision about when to take the time off. That is the difference between this bill and the Family and Medical Leave Act, too—the employee makes the decision. Under this bill, it is the employer that makes the decision. And that is the major difference between this bill and those existing programs.

I would just mention to my friend again, who objects because the unions are opposed to this even though they are not affected by it. Sometimes we have groups in our country that fight for the rights of people who are not necessarily members of those groups. That is why just about every woman's group that has fought for economic justice has also opposed this legislation, because they believe it is a major step back, particularly for lower income workers. And they know that, while those lower income workers are primarily women, they are not all women.

It is interesting that all the organizations that supported the increase in the minimum wage, all the ones who supported the Family and Medical Leave Act, all the ones who supported the WARN Act, which requires an employer to give employees 60 days' notice before closing a factory—all are opposed to this bill. And all the organizations that opposed all those provisions that would have enhanced the rights of working families are for this bill. So we ought to look at the bill very closely.

Those organizations that support this bill do so for a very fundamental reason.

Mr. President, I urge my colleagues to oppose cloture on S. 4, which its supporters call the Family Friendly Workplace Act. This is a bill with an appealing title but appalling substance. We should not rush to final passage.

This bill would make a fundamental change in the Fair Labor Standards Act, a law that has well served American workers and their families for 60 years. The law requires that employees be paid no less than the minimum wage. Does that sound unreasonable to the American people? Have we changed so much in the 60 years since that Act was passed that we do not want to permit hard-working men and women to be paid the minimum wage? The law requires the payments of the minimum wage, currently at $4.75 an hour. And the law also requires that employees be

paid at least time-and-a-half when they work more than 40 hours a week.

Contrary to what the Senator from Texas said, if workers want to work 10 hours a day for 4 days and have Friday off, they can do it under existing law. They can do that under the existing law. If the employer wants to juggle work schedules so that employees can work half a day on Friday, and work longer days in the earlier part of the week, they can do that under existing law. Only 10 percent of hourly employees are offered these or other flexible arrangements available under current law. Part of our complaint about this bill is, why don't employers first demonstrate that the existing law does not work for them? We do not believe the law should be changed until employers show that existing law does not provide adequate flexibility.

The Fair Labor Standards Act requires employers to pay the minimum wage, and to give employees time-and-a-half for hours worked over 40 in a week. That principle is part of the fabric of the employer-employee relations in this Nation. It has been so since 1938. But this bill would radically change that principle.

Under Senator ASHCROFT's proposal, employees could be required—listen to this, Mr. President—could be required to work up to 80 hours in a single week without being paid a penny of overtime.

Under this bill, employers could require workers to work extra hours in one week, then give them an equal number of hours off at a later time without paying time-and-a-half.

This is what it says, Mr. President. Right here on page 11: "In general, notwithstanding any other provision of the law"—that eliminates the 40-hour workweek—"an employer may establish biweekly work programs that allow the use of biweekly work schedules that consist of a basic work requirement of not more than 80 hours over a 2-week period in which more than 40 hours of the work requirement may occur in a week of the period." Well, that says it. "More than 40 hours of the work requirement may occur" in 1 of the 2 weeks.

Further: "The employee shall be compensated for each hour in such biweekly work schedule at a rate not less than the regular rate at which the employee is employed." That is straight time. Do we all understand that? It is left to the employer to decide whether that employee will work not just 40 hours, but 50, 60, 70, or even 80 hours a week. And every single one of those hours will be paid at straight time. This is the abolition of the 40-hour workweek.

We hear, "Well, times have changed. We do not want to be restricted by the traditions of the past." I agree with that. We are not committed to unnecessary programs, but we are committed to values, the values that men and women ought to work 40 hours a week, and if they are going to work longer than 40 hours a week, they get paid time and a half. I think that concept is as real today as it ever was—but the Ashcroft proposal disagrees.

The PRESIDING OFFICER. The Senator has spoken for 7 minutes.

Mr. KENNEDY. I yield 3 additional minutes.

The Ashcroft proposal says that the idea of the 40-hour workweek is out; it can be 50, 60, 70 hours a week, all paid at straight time.

I have discussed who makes the decision under this bill—it is the employer, not the employee. It is not the employee who says, "My child has a school play," or "I have a meeting with the child's teacher." Under this bill, the employee has no right to use comptime for these important purposes. The employee has no right to use any time for these purposes—paid or unpaid.

That is the Murray amendment. That amendment provides employees just 24 hours a year to attend school conferences and participate in family literacy programs. Those 24 hours are within the 12 weeks of family leave provided by the Family and Medical Leave Act. We will see how many votes we get from the other side of the aisle when we consider the Murray amendment. We will see how many votes we will get on that.

I say to the Senator from Texas that I hope she makes that very eloquent statement when Senator MURRAY offers the amendment.

Mr. President, we are talking about abolishing the 40-hour workweek and giving the employers the whip hand. The changes proposed by this bill go to the heart of our labor standards laws and would alter the basic rules covering 65 million Americans.

But this has been debated on the floor for only a little over 2 hours. We began debate on the bill 2 days ago and spent only a morning discussing it before the Republicans filed this petition—2 hours and they filed this petition. Since that time, we have not had a moment of debate on the bill on the floor of the Senate. This issue deserves much fuller consideration than that. We should not be contemplating such significant changes with so little discussion.

These changes are so powerful and the debate has been so short, I wonder why the bill's proponents are in such a rush? What do they have to fear from developing or talking about or debating these issues? Those who support this legislation must recognize the bill cannot withstand close scrutiny. They know that full and fair consideration of the legislation will reveal fatal flaws. Serious defects are built into the bill, and the proponents know it. That is why they want to ram this legislation through without adequate opportunity for discussion.

That is exactly why we should oppose this petition. This bill cries out for a closer look. The 65 million American workers deserve no less.

A careful review of the bill demonstrates that it is nothing more than a pay cut for those hard-working Americans. In truth, the bill should be called the Paycheck Reduction Act. The bill is not designed to help employees juggle their work and family obligations. Instead, it is designed to help employers cut wages.

The bill's proponents have admitted that small businesses cannot afford to pay their employees overtime. That is why they support this bill. This statement was made by the witness from the National Federation of Independent Businesses who testified in support of S. 4 before the Labor Committee in February.

The bill has four major flaws. First, it makes good on the NFIB's characterization. It cuts workers' wages. Under the bill, an employer could force an employee to take an hour off in the future for every hour of overtime they work. Current law requires employers to pay time and a half for overtime hours. Substituting time off at a straight time rate is a pay cut, pure and simple.

The bill also lets employers discriminate against workers who refuse to take comptime instead of overtime pay. Under S. 4, the employer is free to assign overtime work only to those workers who accept comptime. Workers who need the money the most, who cannot afford to take the time off, would be hurt the most. Their paychecks would be smaller. Giving the employer that power eliminates the worker's freedom of choice. We offered an amendment to address that issue. It was defeated in the Labor Committee—on a party line vote.

Second, the bill cuts employees' benefits. Many industries link the size of employees' pension and health benefits to the number of hours they work. Under S. 4, when an employee uses comptime hours, they would not count towards pension and health benefits. The result is a reduction in employees' income after retirement and a cut in their health benefits while they are working. Once again, we offered an amendment on that issue in committee, and we were defeated along strict party lines.

The bill also permits a perverse outcome. The way the bill is drafted, an employee would not be assured an increase in time off. If an employee takes 8 hours of comptime on Monday in order to spend time with his or her family, the employer is free to force the employee to work on Saturday to make up for lost time. The employer does not even have to pay time and a half for the hours worked on Saturday.

That is really family friendly. The comptime hours used on Monday do not count toward the 40-hour workweek. Is this family friendly? We offered an amendment on this issue, too, and it was defeated along party lines in the committee.

Third, as I mentioned, the bill abolishes the 40-hour week. The so-called biweekly work program allows employers to work employees up to 80 hours in a single week, without paying a penny of overtime. Or, the employer could impose a work schedule of 60 hours one week and 20 hours the next—again, without paying any overtime premium. Making child care arrangements for such shifting and irregular schedules wouldn't be family-friendly—it would be a nightmare.

Finally, and most importantly, the bill does not give employees the choice about when to take comp hours that they have earned. Supporters of S. 4 claim that their bill is meant to give employees the option to use comptime to attend a child's graduation, take an elderly parent to the doctor, or deal with other family obligations. But nothing in this bill requires the employer to give the employee the day that he or she wants or needs. Instead, the bill gives the employer virtually unreviewable discretion to decide when the employee takes the time off.

If the employer gets to choose when employees can take comptime, this bill provides no benefit. It does not help workers to give up overtime pay if the employer can deny their request to use comptime when they need it. Instead, the system becomes nothing more than a pay cut.

For all these reasons, I urge my colleagues to vote against cloture. Give us the opportunity to explore and discuss what this bill does to—not for—65 million working Americans. The hard-working families who depend on overtime pay to make ends meet deserve no less.

I reserve the remainder of my time.

Mr. JEFFORDS. How much time do I have remaining?

The PRESIDING OFFICER. You have 23 seconds.

Mr. JEFFORDS. I was allocated 22½ minutes. I have used 15. I ask unanimous consent the Senator from Maine be allowed to speak for 5 minutes.

Mr. KENNEDY. I will not object if we can have the same 5 minutes on our side.

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

There is an additional allocation of 5 minutes on each side. The Senator from Maine is recognized for a period of 5 minutes.

Ms. COLLINS. Mr. President, I am pleased to be an original cosponsor of the Family Friendly Workplace Act, which will permit employers to offer more flexible work schedules to their employees.

The lifestyles of today's employees do not always match the traditional 9 to 5, 5-day-a-week schedules of their parents. This legislation is intended to give families greater flexibility in order to better balance the often competing demands of work and family.

The legislation will allow private sector employers to offer more flexible work schedules to their employees by providing additional options like comptime, flextime, and biweekly schedules. The legislation doesn't change to amount of compensation—simply the form of compensation.

For instance, the legislation allows employers to give their employees the option of receiving overtime in the form of compensatory time off instead of cash wages at a rate of not less than one and one-half hours for each hour of overtime worked.

The legislation also allows employers and employees—by mutual agreement—to set up a biweekly schedule consisting of any combination of 80 hours over a 2-week period. For example, an employee could work 45 hours in week one and 35 hours in week two, which would allow them to work nine hours a day and take every other Friday off.

In response to the concerns expressed by my Democratic colleagues, I also want to emphasize that participation in these programs is strictly voluntary on the part of both the employee and the employer. No one can be forced to participate, nor can participation be a "condition of employment." In fact, employers are expressly prohibited from coercing, threatening, or intimidating their employees into participating against their will, and violators face a range of sanctions.

Mr. President, for many families, time is more valuable than money, and this bill simply extends options that have been widely available—and extremely popular among employees—in the public sector to the private sector.

I have been a manager in the public sector, and I know firsthand how popular and effective these options can be. As former Representative Geraldine Ferraro said during the House debate on the bill allowing Federal agencies to offer flextime and biweekly work schedules, "Flexible schedules have helped reduce the conflicts between work and personal needs, particularly for working women and others with household responsibilities." I certainly agree with former Representative Ferraro on this issue.

Finally, Mr. President, I bring to my colleagues' attention a very recent study of over 1,100 women conducted by the Princeton Survey Research. Of the mothers surveyed, 91 percent—91 percent—of those surveyed said that a flexible work schedule was important to them. In fact, the ability to work a flexible work schedule was more important to these working women than the availability of workplace child care or the ability to work part time.

Mr. President, we should listen to the women of America. We should listen to the mothers of America. I urge all of my colleagues to join me in supporting S. 4, the Family Friendly Workplace Act. It is prowomen, it is profamily, and it is proemployee.

I yield back the remainder of my time.

Mr. KENNEDY. I yield 5 minutes to Senator MURRAY.

The PRESIDING OFFICER. The Senator from Washington is recognized for 5 minutes.

Mrs. MURRAY. I appreciate the opportunity to come to the floor today to talk about the comptime bill or the so-called Family Friendly Workplace Act. I have listened very carefully to this bill. I serve in the committee that it went through, the Labor Committee, and we went through the amendments. The Senator from Massachusetts, Senator KENNEDY, has really outlined the true effects of this bill.

Now, I, like everyone, like the stated purpose of this bill. As a mother with a daughter who is in school, working full time, I know the pressures that every single parent faces in this country in trying to manage their job and making sure that they pay the right attention to their young children as well. All of us are in that time crunch where we are trying to figure out how we can do the best job possible for our employer and we can do the best job possible for our children.

Unfortunately, the comptime bill that has been presented to us does not offer that flexibility for families. In fact, it will take that flexibility away. Can you imagine a young mother with two young children who has them in preschool or day care, who is told by her employer on Friday that next week you will work 60 hours? Now, how is she going to go to her day care provider and say, excuse me, I need 20 additional hours for my two young children in preschool next week or in day care. Day care facilities are very controlled in the amount of children they can have and the amount of hours they can have. They do not have flextime to allow additional children just whenever an employer says you need to work 60 hours next week.

It is critical that we look at this bill from the eyes of those who are the receivers, the employees, the people who go to work every day, the people who are really trying to raise their kids and manage their jobs at the same time. This bill does not give them the flexibility. It will, instead, take that away from them and really cause a lot more family stress than is already needed.

I encourage my colleagues to vote against cloture so we can have the opportunity to offer amendments to this bill to really make it do what the proponents want it to do, and that is to

give employees time to participate with their children. I will have an amendment called the "time for schools" amendment that we will offer on this bill if we are allowed, if cloture is defeated, so we can really give that flexibility back to families.

I have spent a great deal of time going around my State talking to parents who are working. Inevitably they say to me, "You know, I could not get to my child's school conference last week, I could not go participate with my young child. I feel guilty about that. But I went to my employer and I could not take time off." When you talk to young children today, far too often they say, "My parent does not care about my education. They did not come to my school conference last week. They did not participate with me. They do not care whether or not I get a good education. They are never here."

Kids want their parents at school with them for those teacher conferences and those important dates. Mothers and fathers want to be with their kids on those important dates.

My amendment, if I am allowed to offer it, will give employees 24 hours a year. That is 2 hours a month—simply 2 hours a month—of the current family medical leave time; time off to go back and forth to school conferences; to participate with their child in importance activities.

What an incredible message that will give to young children across this country—all of us saying to them that we feel it is so important that parents participate with their children that we are willing to give them time off from their jobs to go participate with those kids.

I want every young person in this country to say, "My parents care about my education. They came with me to school last week for an hour to talk with the teachers." I want that child to say, "My education is important. I know because my mother was here yesterday. She took off from her job to be here."

That is what my amendment does. That is what this bill is all about—giving parents the ability to participate with their young children when it is vitally important.

Let's do the right thing with this bill. Let's stop cloture today and move on to a mandatory process that really does what all of us want to do—deal with that time that every parent feels today, and let their children know that as adults we will care for them. Let's pass the time for schools amendment. Let's put some flexibility in the bill that really allows employees the ability to care for their families and do their jobs right, and let's do it right.

So I urge my colleagues to oppose cloture today, and then help us pass amendments that really make this a Family Friendly Workplace Act.

Thank you, Mr. President.

Mr. KENNEDY. Mr. President, I yield myself 15 seconds.

The amendment that has been described by the Senator from Washington was offered in our committee, and was defeated. If we allow cloture on this, she will be denied offering that amendment on this particular program. It is an additional reason that we should not have cloture.

I yield 5 minutes to the Senator from Illinois, my good friend, and a strong supporter of families and working families.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. I thank Senator KENNEDY very much.

Thank you, Mr. President.

Mr. President, I would like to join many of my colleagues in opposing S. 4.

People across the country are working hard to realize the American Dream of economic security for their families. At the same time, it is increasingly apparent that parents are having to struggle to balance the competing interests of work and family. Parents are being forced to choose between paying for health care and education for their children, for instance, and spending quality time with them so they can be happy and succeed. The Federal Government's policies need to support efforts to strengthen families as well as efforts to realize the American Dream.

I do not believe, however, that S. 4, the so-called "Family Friendly Workplace Act," is an appropriate response to the problems facing working families. While the title of the bill sounds benign enough, the consequences will be detrimental to all working people and to working parents in particular. Parents could end up with less control over their work schedule and less money to pay for raising their families. The paycheck reduction act might be a more appropriate name.

This legislation purports to allow working people the flexibility to choose between overtime pay and compensatory time off or flexible credit hours and replaces the 40-hour work week with an 80-hour 2 week work period, with hours to be agreed upon by the employers and the employees. Each of these provisions will have serious adverse consequences for working families.

The most serious concern is that employees would not, in fact, be given a choice. Employers would favor an employee who consistently chose comptime over overtime when assigning overtime hours. The atmosphere in the workplace might lead employees to believe that their jobs depended on their choosing comptime instead of overtime, or to work 60 hours in a busy week and 20 hours in a slow week regardless of the needs of the family.

Overtime pay is a significant source of income for many American families. Thousands of families pay for food, shelter, education and retirement by earning overtime at time-and-a-half. With the growing income gap between the rich and poor, and with the middle class working harder than ever working Americans have little room to give on wages. If S. 4 results in the end of overtime, it will mark the end of many people's ability to provide for their children and to remain part of the American middle class.

The 40-hour work week is a basic protection for workers. We talk about wanting to strengthen the family unit, eliminate single parent families, and provide important parental supports so that parents can care for their children.

If an employee has to work 65 hours one week and 15 hours the next, their schedule is going to dictate chaos for the whole family. Imagine if your mom was home early one week and then not home for dinner at all the next. Obtaining decent child care, already difficult for many parents, could become even harder due to the erratic work schedule and odd hours of a mother or father working 80 hours in two weeks. Without real employee choice, the 80-hour work week could spell disaster for a family.

While there are some provisions in the legislation to prevent employers from forcing employees to choose compensatory time instead of overtime or to work excessive hours one week, these provisions are weak and insufficient to protect employees. I and my staff have met with many employers from Illinois who are good employers, just trying to make their businesses work better and their employee's lives better. I point out, however, that while Illinois may have many ideal employers, there are currently overtime abuses across the country. Abuses that the Labor Department is unable to enforce due to the sheer number of them and the lack of resources in the Department.

A Wall Street Journal article from June of last year cites as conservative a study that estimates workers are cheated out of $19 billion a year in overtime pay. If employers are not paying their workers earned overtime, why should we believe that they will allow them to freely choose between comptime and overtime. Expanding the opportunities for abuse does not seem prudent.

There are additional concerns that even where comptime is freely chosen, employees will be able to take their compensatory time off when they need it. Under the current language, a company who found it inconvenient to give comptime when a parent requested time off, could refuse the comptime request. There is also concern that for the purposes of unemployment and

pension compensation, comptime will not be counted in the same manner as overtime pay, thus leaving the employee with less lifetime benefits. This means that as parents and grandparents retire, they are less likely to be self sufficient and more likely to rely on their families.

There are many options available to employers wishing to create family friendly flexibility in their workplaces, including the flexibility to create both flextime and compressed work schedules programs that allow workers and employers to create family friendly schedules. There are many legislative options as well, including expansion of the Family and Medical Leave Act. These are initiatives that provide flexibility without opening the door to abuses.

The 40-hour work week and the right to overtime were not instituted at the whim of Congress. These are rights that the working people of America fought for for over 100 years. Blood was shed and people died in the struggle to create a work week in which people could see daylight, see their children, and build their communities. We should not take lightly efforts to eradicate the victories of America's working men and women, victories that have strengthened America's families. I urge my colleagues to support America's working families by voting no on S. 4 and no on cloture.

Mr. President, this legislation reduces pay, cuts benefits, and eliminates worker options all under the guise of flexibility.

If you think about it for a minute, when you have a choice that only goes in one direction, that is not flexibility. That is coercion. And that is what this legislation allows.

Employees will not be able to freely choose whether or not they want to take overtime, or to take comptime. That will be up to the employer.

Under this legislation, the employer gets to choose not only when an employee can use comptime but who gets to use comptime. So an employer could theoretically choose to give favored employees the benefits of the flexibility they need and not offer the same options to someone they didn't like quite as much.

Add to that the fact that the benefits that employees receive with regard to their pensions and other retirement benefits are calculated based on hours worked and it is possible that under this legislation retirement benefits would wind up being cut. This is another flaw of this legislation that is hidden under the guise of flexibility.

Add to that also the fact that S. 4 is the Paycheck Reduction Act. Clearly an employer could decide that an employee will not have overtime, and many people—15 percent of manufacturing workers in this country for instance—right now depend on overtime in order to meet the family bills, in order to provide for their children. That option would be gone for many working families under this legislation. Employees could wind up having their overtime pay cut in favor of what is called comptime or flexible credit hours.

Again, choice going in one direction is coercion.

Finally, Mr. President, this legislation fails, I think, the test of good legislation because it does not give employees the ability to plan. The sponsors say this legislation is intended to give workers the flexibility to plan their lives, and the like.

In fact, under this legislation the employer could say to a given worker, "This week you work 50 hours, and next week you work 30 hours. And that makes up the 80 hours, and I don't have to do anything else for you." If that person has a child in day care, or if that person doesn't want to split up their work week so they can plan their activities they are out of luck. If they wind up putting in 50 or 60 hours in 1 week and only 20 or 30 the next, if an individual is disrupted by this schedule, if their personal life is disrupted, this legislation does not provide any protections for them. It only provides for protections against disruption for the employer.

So, if this legislation wants to be called the Family Friendly Workplace Act, I would actually suggest it be amended to be called the Adams Family Friendly Workplace Act because that is the only family that this legislation is friendly to.

I urge my colleagues to oppose this legislation, and I oppose cloture.

I yield the floor.

Mr. BAUCUS. Mr. President, I rise today because yesterday I introduced the Baucus-Kerrey-Landrieu substitute amendment to the comptime bill. This amendment will give working men and women the choice between earning overtime pay or taking that time off to spend with their families.

As I travel around my State, I get the chance to meet with a lot of decent, hard-working people. In Montana, we know how to put in an honest day's work. And in exchange for that work, we ask only for an honest day's pay.

But lately, that pay isn't stretching as far as it used to. That means working longer hours, and sometimes holding down two jobs. Whether it is a single-parent household, or a home where both parents have to work, people are finding less and less time for their families.

Mothers and fathers are finding themselves caught in a costly juggling act, where they are trying to balance the demands of their work with the needs of their families.

I believe that this trend has very serious consequences on our families and our society as a whole. I know most of the Senators in this body agree with me.

As our society changes, so must our labor laws. They must reflect the needs of our current work force.

And that is why I offered this amendment. Because America's working men and women need flexibility in their jobs—so they can spend more time with their families.

And that is what S. 4, in its current form, proposes to do. Regrettably, I believe this legislation takes the wrong approach.

Under the current bill, mothers and fathers do not have the final say in how their overtime will be used. Their hands are tied by the decisions of their employer.

Under my amendment, if a worker puts in overtime, he or she can be paid time and a half, just as the law stands now. Or if that person wants, he or she can take that payment in the form of vacation—an hour and a half for every hour of overtime. Quite simply, workers can choose money or time, and not be penalized for their choice.

This choice would allow a parent the flexibility to attend their child's soccer game. Or it would let that worker earn a little extra money for Christmas presents.

Under the changes proposed in Senator ASHCROFT's bill, the employer has the last word. Mothers and fathers could find their employer deciding whether they get time off or whether they get overtime pay. And I believe that is wrong.

It is our duty to protect America's workers. When it comes to the choice between comptime and time off, we need to make sure the employee has the last choice.

We have a tremendous opportunity to do something great for America's working men and women. We have a chance to give our families a powerful tool in the struggle to find balance between work and family.

They're not asking for much. They simply want an honest day's pay for an honest day's work. They also want a little time to spend with their families.

The American people have made it clear to us that flexibility and choice are what they need. Under my amendment, that flexibility, and that choice, are what they will get.

I urge my colleagues to join me, and vote in favor of this amendment when it comes to the Senate floor.

Mr. President, I yield the floor.

Mr. ABRAHAM. Mr. President, I am voting for cloture for the Family-Friendly Workplace Act because I believe that it has the potential to allow workers around the country the flexibility to spend more time with their families. This legislation will give employees the flexibility of taking time-and-a-half off in lieu of receiving time-and-a-half pay for any overtime hours worked. In addition, the employee will

also have the option of working out a biweekly work program with his or her employer or using flexible credit hours. All of these options are currently available to Federal employees and receive high praise from the employees who choose to participate.

While I think the principles behind this bill are sound and important for the American worker, I also believe it is important to ensure that the choice to participate in the program is left to the employee. Without this assurance, the employee will have gained nothing.

For this reason, I have expressed my concern that the coercion language contained in this bill be strong enough to deter potential abuses of the law. I am supportive of the managers' amendment which establishes a similar level of penalties for employers who coerce employees to accept the compensatory time, biweekly work program, or flexible credit hours. This amendment, would essentially double the penalties for an employer who coerced an employee to take any of these options.

In addition to this change, I have filed two amendments Nos. 254 and 255, that would establish additional penalties for employers who continue to abuse the intent of this law. If an employer is found guilty of a second offense of coercion, my amendment would triple the penalties for that employer. While I believe that most employers will work with their employees to establish mutually beneficial work programs, I believe it is important to establish strong penalties for those employers who may abuse the system.

With appropriate protections for the employee, I believe the Family-Friendly Workplace Act will benefit hundreds of workers and families around the country.

Mr. KENNEDY. Mr. President, how much time remains? We are prepared to yield back. I think we have had excellent statements that have been made by our two colleagues and friends.

The PRESIDING OFFICER. Two minutes and ten seconds.

Mr. KENNEDY. I will withhold the time, if the proponents of legislation want to yield back.

Mr. JEFFORDS. Mr. President, I think I have the right to close.

Mr. KENNEDY. Mr. President, I yield back our time.

Mr. JEFFORDS. Mr. President, I will very brief.

All of the arguments that have been given here against the Family Friendly Workplace Act are based on one fact: that an employer who is a real SOB is not going to give his or her employees the rights created in this bill.

Why deny the 99.9 percent of the employees in this Nation who have good employers the ability to work these things out with their employers?

So all of the arguments against S. 4 are based on one thing; that employers will not follow the provisions contained in the bill. The point is, Mr. President, that S. 4 contains provisions that will protect American workers. Since the bill does contain these protections, and 99.9 percent of employees work for good employers, it is completely unfair to deny all of the rest of the employees in the country the ability to participate in comptime, flextime and bi-weekly work schedules.

Mr. President, I yield the remainder of my time.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee amendment to Calendar No. 32, S. 4, the Family Friendly Workplace Act of 1997:

Trent Lott, John Ashcroft, Susan M. Collins, Kay Bailey Hutchison, Mike DeWine, Judd Gregg, Paul Coverdell, Gordon Smith, John W. Warner, Thad Cochran, Conrad Burns, Fred Thompson, Don Nickles, Wayne Allard, Jeff Sessions, and Dirk Kempthorne.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the committee substitute, as modified, on S. 4. shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 53, nays 47, as follows:

[Rollcall Vote No. 68 Leg.]

YEAS—53

Abraham	Frist	McCain
Allard	Gorton	McConnell
Ashcroft	Gramm	Murkowski
Bennett	Grams	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Roth
Burns	Hagel	Santorum
Campbell	Hatch	Sessions
Chafee	Helms	Shelby
Coats	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Collins	Inhofe	Snowe
Coverdell	Jeffords	Stevens
Craig	Kempthorne	Thomas
DeWine	Kyl	Thompson
Domenici	Lott	Thurmond
Enzi	Lugar	Warner
Faircloth	Mack	

NAYS—47

Akaka	Feingold	Levin
Baucus	Feinstein	Lieberman
Biden	Ford	Mikulski
Bingaman	Glenn	Moseley-Braun
Boxer	Graham	Moynihan
Breaux	Harkin	Murray
Bryan	Hollings	Reed
Bumpers	Inouye	Reid
Byrd	Johnson	Robb
Cleland	Kennedy	Rockefeller
Conrad	Kerrey	Sarbanes
D'Amato	Kerry	Specter
Daschle	Kohl	Torricelli
Dodd	Landrieu	Wellstone
Dorgan	Lautenberg	Wyden
Durbin	Leahy	

The PRESIDING OFFICER (Mr. SMITH of Oregon). On this vote, the yeas are 53, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, might we have order?

The PRESIDING OFFICER. If I can have the attention of the Senators in the Chamber, if will they take their conversations outside, I would appreciate it. The Senator from Georgia has the floor. He is due your attention.

Mr. COVERDELL. Mr. President, on behalf of the leader, I make the following remarks.

The people of America want flextime. Working women, mothers and fathers need the same flexible work schedules and comptime choices that Government workers, salaried workers, bosses and boardroom executives have enjoyed for decades. I am particularly struck that, since 1978, Government workers have enjoyed what this legislation would provide other workers in the private sector.

I remember when I came here it was important that there be congressional accountability, that the Congress operate under the same laws as the businesses and people of the country. I think that is applicable here, too. If Government workers can enjoy these benefits, then private sector employees ought to as well.

The Family Friendly Workplace Act is a matter of fairness to the workers of America. It is a high priority of the Republican leadership, and we intend to continue to press this case both here in the Senate and before the American people. A number of people on the other side, including the White House, have said both publicly and privately they want to get a bill. An op-ed, or editorial, in today's Wall Street Journal by the executive director of the Democratic Leadership Council urges passage of the bill. That appeared Thursday, May 15, 1997: "Comptime's Time Has Come."

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

[From the Wall Street Journal, May 15, 1997]

COMP TIME'S TIME HAS COME

(By Chuck Alston)

For a fresh example of why voters think Washington doesn't get it, look no further than the partisan standoff over overtime compensation.

Federal law now requires employers to pay most hourly workers time-and-a-half for all work beyond 40 hours a week. The Senate, following the House's lead, is now debating legislation that would permit employers to give workers the choice of taking so-called compensatory time off (at the time-and-a-half rate) instead of overtime pay.

The concept is enormously popular, and for good reason. The Fair Labor Standards Act which must be amended to allow comp time, was designed in 1938 for the male manufacturing work force of the Depression era. Today, both parents generally must work to keep their family in the middle class. Even with squeezed family budgets, some workers would welcome extra time off to take care of a sick child or parent, attend a Little League game or just catch up with home life. According to the independent Families and Work Institute, 40% of workers say they can't get their chores done because of their job; 35% complain of a lack of personal time; 24% complain they lack time for their families. No wonder a 1995 Penn, Schoen & Berland poll for the business-backed Labor Policy Association found that three-fourths of all Americans favor giving employees a choice between overtime pay and comp time.

Unfortunately, politics as usual could kill this attempt to help harried families. President Clinton has called for comp-time legislation, but has threatened to veto the bill the House has passed, largely on the grounds that it does not go far enough to protect workers' interests. Unions have made opposition a litmus test for Democrats, making a yes vote suicidal for members who want to protect their labor PAC donations (a big reason only 13 House Democrats voted yes). Democratic opponents have cast the House bill as the "paycheck reduction act." And Republicans have appeared gleeful at the thought of jamming legislation down labor's throat, a payback for unions $35 million soft money campaign last year for Democrats. In sum, hardly the atmospherics for compromise.

Nonetheless, this effort to modernize labor law shouldn't be allowed to run aground on partisan shoals. The tools and protection workers need in the new economy are different from those of the Industrial Era. Employers and employees alike will benefit from public policy that supports two-parent families by giving them the flexibility to balance family and income needs.

The legislation has won wide backing from business groups: not only because it could lower labor costs by cutting cash out the door for payroll and payroll taxes, but also because smart companies understand how flexibility can help their efforts to recruit and retain top-notch employees. As a recent Working Woman article on workplace flexibility programs at Xerox Corp. noted, "In the end, researchers found that work/life initiatives were not just a feelgood answer to personal time conflicts, but a solution to business problems—and one that could provide companies with a competitive edge." A comp-time law would give companies yet another flexibility option to offer employees, but without mandating it.

At the same time, we must also make sure workers' interests are protected. In the real world, some companies will certainly try to maneuver workers into taking comp time instead of overtime, or start offering overtime work only to people who will take comp time instead of pay. As a former newspaper reporter, I'm well aware of the lengths to which managers will go to avoid paying overtime. That is why any legislation must ensure that comp time is truly voluntary. It should bar employers from coercing employees to take comp time, give employees reasonable latitude over when they can take the time off or cash out their accumulated hours, protect part-time, seasonal and other especially vulnerable employees, and prevent employers from discriminating unfairly in determining who gets comp time.

The House bill's five-year sunset provision was a good compromise. If employers aren't honoring these protections, or the law proves so overly complex that employers don't take advantage of it, we can always revise it or return to the status quo ante.

The president and House Republicans aren't that far apart on comp-time legislation. The Senate could point the way toward compromise, based on this foundation: Republicans must understand that tinkering with one of the labor movement's greatest accomplishments—the 40-hour work week—naturally generates suspicion in Democratic quarters. And they shouldn't automatically resist every attempt to bolster worker protection. Meanwhile, Democrats who rightly seek to protect workers must understand that they can, and may well, doom comp time with overly complex conditions. In the end, the last thing anyone should want is a law so complicated that employers, especially in small businesses, choose not to offer employees any option at all for fear of being sued.

The irony of the debate is that the comp-time option has been available in the public sector since 1985. To be sure, it won't work everywhere in the private sector, but it's time go give companies—and their workers—the choice.

Mr. COVERDELL. Mr. President, now is the time to get serious about this, but it is your move. I urge the White House to get with the sponsor of S. 4, and let us find out where the common ground is. Senators JEFFORDS, DEWINE, and ASHCROFT are ready to work with you, Mr. President, as they always have been. It is your move.

I hope Senators who voted against cloture, cutting off debate, will think about whose side they are on. Are you on the side of those who already have flextime but want to deny others the same rights? Or are you on the side of the working women and men who do not have these options? The only workers who are denied flextime today are hourly workers: the secretaries, sales clerks, mechanics, factory workers in our country. They are the folks who get up early, punch in the time clock, and work hard to make ends meet. It is time that we were on the side of the millions of working class people in America who are denied these choices. I repeat these choices that Federal workers already have. Single moms, two-paycheck families need flextime. Just ask them and they will tell you. Let us give working parents a helping hand in the vital job they are doing.

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

Mr. BUMPERS. Mr. President, will the Senator withhold that request for a moment?

Mr. COVERDELL. Mr. President, I withhold my request for a moment.

Mr. BUMPERS. Parliamentary inquiry. What is the time situation between now and the time we go to the FEINSTEIN amendment?

The PRESIDING OFFICER. We have morning business until 11. We have already cut into that substantially. About half of it is remaining.

Mr. BUMPERS. How much time remains and who is supposed to receive it?

The PRESIDING OFFICER. The Democratic side—the Democratic leader has 12 minutes, the Senator from Wyoming has 8 minutes.

Mr. BUMPERS. I thank the Chair.

Mr. COVERDELL. Mr. President, I yield the floor.

Mr. THOMAS addressed the Chair.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, there will now be a period for morning business until the hour of 11 a.m., with Senator DASCHLE or his designee in control of 10 minutes and Senator THOMAS or his designee in control of 10 minutes.

The Senator from Wyoming.

THE PARTIAL-BIRTH ABORTION ACT

Mr. THOMAS. Mr. President, I am sorry we have moved into some of our time, but I will be very brief and cover the points I want to make. I am real pleased today to be joined by three of my associates in support of H.R. 1122, the Partial-Birth Abortion Act. I am going to be very brief. It has been talked about to a great extent. Everything, probably, has been said. But there is one thing that sticks in my mind that I think is important about this discussion and this vote that will come up.

We did this last year, you will recall. It passed by significant numbers in the Senate. President Clinton vetoed the bill that was passed in the 104th Congress. I just want to mention the reasons that he gave for vetoing the bill.

First, he said it was only necessary in "a small number of compelling cases." The fact is that is not factual. The fact is that has changed. The fact is, there are facts that show, for instance, in New Jersey, that there were more than 1,500, just in the one State. So that reason for vetoing is not true. It is not true.

The second one was to protect the mother from "serious injury to her health." The fact is, in the vast majority of cases when the partial-birth technique is used, it is for elective purposes, and that, also, has been shown to be true.

Third, the President said, to avoid the mother "losing the ability to ever bear further children." The facts have now shown it is never necessary to safeguard the mother's health or fertility; that there are other procedures that are available. I think these are compelling, compelling arguments. These are the reasons the President vetoed the bill that have subsequently been found not to be factual.

I yield time to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, I rise today to offer my full support for the Partial-Birth Abortion Ban Act. I am proud to be an original cosponsor of this important legislation.

I thank my distinguished colleague from Pennsylvania, Senator SANTORUM, for his leadership on this issue.

This debate, of course, is about abortion, which I strongly oppose. But it is about much more than that. It is about doing what is right. It is about values.

And it is about a civilized society standing against a heinous procedure that is used to kill a mostly born child—a procedure that, as even some advocates of abortion rights have conceded, comes dangerously close to murder.

The debate about abortion raged in America long before I began my service in the Senate. It will continue long after the Senate votes on this bill to ban one specific abortion procedure.

It will continue until America comes to grips with the moral crisis that makes abortion just another sign of the times.

This debate itself may rise and fall, but my view on this matter is straightforward—I believe America should ban partial-birth abortion because it is wrong.

For too long, our society has drifted too far from that simple conclusion. In this body—as in this country—we are adept at weighing and debating the pros and cons. We know how to balance competing interests. We know how to strike compromises. But do we think often enough about the consequences of our actions?

I fear we have strayed from seeking straightforward answers to tough questions. We have too often strayed from making public policy based solely on what is right.

The vote we are about to cast is about banning a specific method of abortion. But the debate in which we are engaged is about larger questions.

Have we become coarsened by a society that cheapens life—from our failure to stop violence in our streets to our unwillingness to keep violence from our television screens?

Have we come to accept what should never be acceptable—a society where drug use is termed recreational, and irresponsible behavior is just a sign of the times?

Have we lost the basis of a civil society? Are we no longer willing to stand up and say enough is enough?

Mr. President, I came to this Senate with a firm belief that we can make a real difference for America's future. I have no doubt we can put our financial books in order—by cutting spending, cutting taxes, cutting regulations, and balancing the budget.

But can we put our values in order? If we, as leaders, fail to do what is right and fail to stop what is wrong, will we really have left a better America for our children and our grandchildren?

I think not.

For two centuries, America has rested on a value system anchored by personal responsibility. Our society has always been underpinned by respect for others, respect for self, faith in God and family, and helping those in need. We have always held these values important—worth struggling for and worth fighting for.

People of good character stood up for these values in their own lives, and in their communities. They expected their leaders to stand up for them as well.

Mr. President, I have every confidence that this body will vote to outlaw this gruesome procedure because the goodness of our people will demand it. Just as families across America wake up every day and try to do the right thing, so they are expecting their leaders to do the same.

The vote we will cast on this issue is important. It goes to the heart of who we are as a people and who we want to be as a Nation.

I hope we will all take pause, in this body and throughout America, to reflect on what type of society we have become and what type of society we want to leave for our children and grandchildren.

Thank you, Mr. President. I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I ask unanimous consent the 12 minutes remaining for the Democratic side be divided 5 minutes to Senator BINGAMAN and 5 minutes to the Senator from Arkansas, who will share it with the Senator from Georgia, Senator CLELAND, and 2 minutes to the Senator from Wisconsin, Mr. KOHL.

The PRESIDING OFFICER. Is there objection?

Mr. THOMAS. Reserving the right to object, is there time left on our original 10 minutes?

The PRESIDING OFFICER. The Senator has 3 minutes and 42 seconds.

Mr. THOMAS. I wonder if it would be possible for us to go ahead and finish and then do it as the Senator described?

Mr. BUMPERS. Is the Senator objecting to the request?

Mr. THOMAS. No, sir, I am asking that we finish the 10 minutes we were allocated and then transfer to you to do it in the method that you asked.

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

The Senator from Oregon is recognized.

Mr. SMITH of Oregon. Mr. President, in that I only have 3 minutes remaining, I am going to put aside my written remarks and, frankly, speak from the heart.

I rise today, first, to thank Senator SANTORUM for his leadership on this issue but, more important, to stand with those who stand for the principle of life today on this very important bill. I have consistently supported this principle and have tried to listen with some care and compassion to those who advocate the other view. I heard them say things like, "Let's make abortion safe, legal, and rare," except for the fact that when it comes to doing anything to make it rare, I seldom see them helping us in this endeavor. Conversely, I have tried very hard to reach out on issues of education and prevention to try to make abortion rare.

Today presents us with an opportunity not to end abortion but simply to ban one incredibly gruesome procedure and to make all unborn American children safe from this procedure.

It is clear, because of testimony that has come out, that the partial-birth abortion is anything but rare in this country, and today we need to make it impossible.

I refer to the statement by the Surgeon General C. Everett Koop, a man much admired for his service in health care in this country, who said:

> Partial-birth abortion is never medically necessary to protect the mother's health or her future fertility. On the contrary, this procedure can pose a significant threat to both.

As I ponder partial-birth abortion, I come to the conclusion that Americans must be bigger than this procedure performed on the most innocent among us. We are bigger than this, and I believe that Americans today in the United States will rise above this procedure to make it unlawful and to contribute towards the common desire of those who are pro-life and pro-choice to make abortion rare.

Thank you, Mr. President.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. I thank the Chair.

(The remarks of Mr. BINGAMAN pertaining to the introduction of S. 748 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BUMPERS addressed the Chair.

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

Mr. BUMPERS. I thank the Chair.

(The remarks of Mr. BUMPERS and Mr. CLELAND pertaining to the introduction of S. 745 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I ask unanimous consent for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Wisconsin is recognized.

JUDICIAL NOMINATIONS

Mr. KOHL. Mr. President, yesterday Mr. LEAHY and several of my colleagues spoke about judicial confirmations. Let me make a few additional points. First, we are experiencing a record slowdown in confirming judges. Last year, only 17 Federal judges were confirmed, and not a single judge for a court of appeals. This year, the process has gotten even worse—only two judges have been confirmed, and the year is almost half over. Indeed, at our current pace, with only 5 judges likely to be confirmed a year, and an average of more than 50 retiring, we would have no federal judges at all in 20 years. Literally, an empty bench.

Second, we need these judges, both to prosecute and sentence violent criminals and to prevent more backlogs in civil cases. This is about justice—it shouldn't be about politics. Don't take my word on this, ask Chief Justice Rehnquist. He says "filling judicial vacancies is crucial to the fair and effective administration of justice." Chief Justice Rehnquist is right.

Or ask Judge George Kazen from the Southern District of Texas. He is the subject of a front page article in today's Washington Post with the headline "Cases Pile Up as Judgeships Remain Vacant." He is hearing a dramatic increase in criminal cases now because we're cracking down on illegal immigration and drug smuggling in his border district. He desperately wants and needs help. But we haven't helped. Instead, the Senate has held up a nominee for his district for almost 2 years. I ask unanimous consent to print this article in the RECORD at the conclusion of my remarks.

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

(see exhibit 1.)

Mr. President, third, inaction now can only make matters worse. If we don't start moving judges, some Senators might feel compelled to put a hold on all other legislative business. Or the President could be forced to make recess appointments to the Federal bench. Of course, no one wants either of these things, including me. But if we don't confirm nominees through the normal process, I am afraid this is what could happen.

Mr. President, let's breathe life back into the confirmation process. Let's vote on the nominees who already have been approved by the Judiciary Committee, and let's set a timetable for future hearings on pending judges. Let's fulfill our constitutional responsibilities; justice demands that at a minimum. I thank you, and I yield the floor.

EXHIBIT 1

[From the Washington Post, May 15, 1997]

CASES PILE UP AS JUDGESHIPS REMAIN VACANT

(By Sue Anne Pressley)

LAREDO, TX.—The drug and illegal immigrant cases keep coming. No sooner does Chief U.S. District Judge George Kazen clear one case than a stack of new cases piles up. He takes work home at night, on weekends.

"It's like a tidal wave," Kazen said recently. "As soon as I finish 25 cases per month, the next 25 are on top of me and then you've got the sentence reports you did two months before. There is no stop, no break at all, year in and year out, here they come.

"We've already got more than we can say grace over down here," he said.

This is what happens to a federal judge on the southern border of the United States when Washington cracks down on illegal immigration and drug smuggling. It is a situation much aggravated by the fact that the Senate in Washington has left another federal judgeship in this district vacant for two years, one of 72 vacancies on federal district courts around the country.

As Border Patrol officers and other federal agents swarm this southernmost region of Texas along the Mexican border in ever-increasing numbers, Judge Kazen's docket has grown and grown. He has suggested, so far unsuccessfully, that a judgeship in Houston be reassigned to the Rio Grande Valley to help cope.

In Washington, where the laws and policies were adopted that has made Kazen's life so difficult, the Senate has made confirmation of federal judges a tedious process, often fraught with partisan politics. In addition to the 72 federal district court vacancies (the trial level), there are 25 circuit court vacancies (the appellate level) and two vacant international trade court judgeships across the country, leaving unfilled 99 positions, or 11 percent of the federal judiciary. Twenty-six nominations from President Clinton are pending, according to Jeanne Lopatto, spokeswoman for the Senate Judiciary Committee, which considers nominations for recommendation to the full Senate for confirmation.

Of those 99 vacancies, 24 qualify as judicial emergencies, meaning the positions have been vacant more than 18 months, according to David Sellers of the Administrative Office of the U.S. Courts. Two of the emergencies exit in Texas, including the one in Kazen's southern district.

Lopatto said the thorough investigation of each nominee is a time-consuming process. But political observes say Republicans, who run the Senate, are in no hurry to approve candidates submitted by a Democratic president. The pinch is particularly painful here in border towns. The nominee for Brownsville, in Kazen's district, has been awaiting approval since 1995. Here in Laredo, Kazen's criminal docket has increased more than 20 percent over last year.

"We have a docket," he said, "that can be tripled probably at the drop of a hat. * * * The Border Patrol people, the Customs people at the [international] bridges will tell you, they don't catch a tenth of who is going through. The more checkpoints you man, the more troops you have at the bridges, will necessarily mean more stops and more busts."

And many more arrests are expected, the result of an unprecedented focus on policing the U.S.-Mexico border. Earlier this year, Clinton unveiled a $367 million program for the Southwest for fiscal 1998, beginning Oct. 1, that includes hiring 500 new Border Patrol agents, 277 inspectors for the Immigration and Naturalization Service, 96 Drug Enforcement Administration agents and 70 FBI agents.

In Kazen's territory, the number of Border Patrol agents already has swollen dramatically, from 347 officers assigned to the Laredo area in fiscal 1993 to 411 officers in fiscal 1996. More tellingly, in 1993, agents in the Laredo sector arrested more than 82,000 people on cocaine, marijuana and illegal immigration charges. By 1996, arrests had soared to nearly 132,000, according to data supplied by the INS.

All of which is keeping Kazen and the other judges here hopping. "I don't know what the answer is," said U.S. District Judge John Rainey, who has been acting as "a circuit rider" as he tries to keep Kazen out in Laredo from his post in Victoria, Tex. "I certainly don't see it easing up anytime soon. There still seems to be such a demand for drugs in this country, and that's what causes people to bring them in. Until society changes, we won't see any changes down here."

In a letter to Rep. Henry B. Gonzalez (D-Tex.) in February, Kazen outlined the need for a new judge in the Laredo or McAllen division, rather than in Houston, where a vacancy was recently created when then-Chief Judge Norman Black assumed senior status. "The 'border' divisions of our court—Brownsville, McAllen and Laredo—have long borne the burden of one of the heaviest criminal dockets in the country, and the processing of criminal cases involves special pressures, including those generated by the Speedy Trial Act," he wrote.

On a recent typical day, Kazen said, he sentenced six people on drug charges and listened to an immigration case. His cases tend to involve marijuana more often than cocaine, he said.

"The border is a transshipment area," he said. "The fact is, a huge amount of contraband somehow crosses the Texas-Mexican border, people walking through where the river is low, and there are hundreds and hundreds of miles of unpatrolled ranchland.

"In some cases," Kazen continued, "we're seeing a difference in the kind of defendant. We're almost never seeing the big shots—we're seeing the soldiers. Once in a while, we'll see a little bigger fish, but we're dealing with very, very smart people. We see some mom-and-pop stuff, too. There was a guy who came before me who had been in the Army umpteen years, and he needed the money, he was going bankrupt, so he did this 600-pound marijuana deal. He said he stood to pick up $50,000, and now he's facing five to 40 years.

"We see kids 18 and 19 years old," Kazen said. "We see pregnant women. We see disabled people in wheel-chairs. This is very, very tempting stuff." In Washington, the argument over court vacancies continues. On April 30, Attorney General Janet Reno told the Judiciary Committee, "Chief judges are calling my staff to report the prospect of canceling court sittings and suspending civil calendars for lack of judges, and to ask when they can expect help. This committee must act now to send this desperately needed help."

In remarks yesterday to the Federal Judges Association meeting in Washington, Reno warned that "the number [of vacancies] is growing."

"As you are no doubt aware," Reno told the judges, "the level of contentiousness on the issue of filling judicial vacancies has unfortunately increased in recent times."

PARTIAL-BIRTH ABORTION BAN ACT OF 1997

The PRESIDING OFFICER. Under the previous order, the Senate will now

proceed to H.R. 1122, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1122) to amend title 18, United States Code, to ban partial-birth abortions.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER (Mr. INHOFE). Under the previous order, the Senator from California is recognized to call up an amendment.

Mrs. FEINSTEIN. Thank you, Mr. President.

AMENDMENT NO. 288

(Purpose: To prohibit certain abortions)

Mrs. FEINSTEIN. Mr. President, I would like to begin this debate by sending an amendment to the desk. This amendment is sent on behalf of myself, Senator BOXER, and Senator MOSELEY-BRAUN.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mrs. BOXER, and Ms. MOSELEY-BRAUN proposes an amendment numbered 288.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Post-Viability Abortion Restriction Act".

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

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

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

SEC. 3. CIVIL PENALTIES.

(a) ACTION BY ATTORNEY GENERAL.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General (referred to in this Act as the "appropriate official"), may commence a civil action under this subsection in any appropriate United States district court to enforce the provisions of this Act.

(b) RELIEF.—

(1) FIRST VIOLATION.—In an action commenced under subsection (a), if the court finds that the respondent in the action has violated a provision of this Act, the court shall assess a civil penalty against the respondent in an amount not exceeding $100,000, and refer the case to the State medical licensing authority for consideration of suspension of the respondent's medical license.

(2) SECOND VIOLATION.—If a respondent in an action commenced under subsection (a) has been found to have violated a provision of this Act on a prior occasion, the court shall assess a civil penalty against the respondent in an amount not exceeding $250,000, and refer the case to the State medical licensing authority for consideration of revocation of the respondent's medical license.

(c) CERTIFICATION REQUIREMENTS.—

(1) IN GENERAL.—At the time of the commencement of an action under subsection (a), the appropriate official shall certify to the court involved that the appropriate official—

(A) has provided notification in writing of the alleged violation of this Act, at least 30 calendar days prior to the filing of such action, to the attorney general or chief legal officer of the appropriate State or political subdivision; and

(B) believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

(2) LIMITATION.—No woman who has had an abortion after fetal viability may be penalized under this Act for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of title 18, United States Code.

SEC. 4. REGULATIONS AND PROCEDURES.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Health and Human Services shall establish regulations—

(1) requiring an attending physician described in section 2(b) to certify that, in the best medical judgment of the physician, the abortion described in section 2(b) was medically necessary to preserve the life or to avert serious adverse health consequences to the woman involved, and to describe the medical indications supporting the judgment; and

(2) to ensure the confidentiality of all information submitted pursuant to a certification by a physician under paragraph (1).

(b) STATE REGULATIONS AND PROCEDURES.—The regulations described in subsection (a) shall not apply in a State that has established regulations described in subsection (a).

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to prohibit State or local governments from regulating, restricting, or prohibiting post-viability abortions to the extent permitted by the Constitution of the United States.

Mrs. FEINSTEIN. Mr. President, I rise to offer a substitute amendment to H.R. 1122, which, as I said, is cosponsored by Senators BOXER and MOSELEY-BRAUN. The amendment we offer is presented as an alternative to the House-passed bill on so-called partial-birth abortions and as an alternative to the Daschle substitute as well.

My colleagues and I offer this amendment for one reason: We very much believe that any legislation put forward by Congress that restricts access to abortions or to a particular medical procedure must be constitutional and must contain sufficient protections for a woman's health. The Feinstein-Boxer-Moseley-Braun bill provides that protection while instituting a ban on post-viability abortions similar to that in the Daschle bill.

Our bill does three things.

First, it prohibits all abortions after a fetus has become viable or able to live independently outside of the mother's womb.

Second, it provides an exception for cases where, in the medical judgment of a physician, an abortion is necessary to preserve the life of the mother or to prevent serious adverse health consequences to the mother.

And third, it provides stringent civil penalties for physicians performing post-viability abortions in the absence of compelling medical reasons.

The penalties are limited to the physician and include for the first offense a fine of $100,000, and referral to a State licensing board for possible suspension of the medical license.

For the second offense, the fine would be up to $250,000, with referral to the State licensing board for possible revocation of license.

There is no health exception in H.R. 1122, known as the Santorum bill. And we do not believe that the health exception provided in the Daschle bill is sufficient, nor do we believe that it will meet the constitutional test.

Let me begin by speaking of my opposition to the House bill. And let me begin by pleading with anyone listening to this debate to read the bill—read H.R. 1122. It is short. It is easy to read. I want to quote from page 2 of that bill to illustrate what this bill does.

Let me begin on line 9:

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.

The bill refers to a "partial-birth abortion," which is a term not existing in medical literature or medical texts. So let us find out what a partial-birth abortion is. And we turn to line 19 of page 2 for that description:

As used in this section, the term "partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

The issue here is clear. We heard yesterday on this floor a vivid description of a procedure, a procedure known as "intact D&E." Nowhere in House Resolution 1122 are "intact D&E" or "intact D&X" or any medical procedure referred to. Instead, we have a term not existent in medical science anywhere called "partial-birth abortion."

Now, anyone who is familiar with a woman's physiology knows that this term can be used to deny second-trimester and third-trimester abortions—virtually, I believe, all of them.

If the concern of the authors of this legislation were truly in fact to prohibit or ban one specific procedure, why would they not spell out what the procedure is in legislative language just as they have graphically spelled out the procedure on the Senate floor? Why? Why not do that?

I believe there is a reason why they did not do that. And the reason is, that I sincerely believe that this bill is

meant to do much more, much more than simply ban a procedure known as intact D&X or intact D&E. I believe that this bill is essentially a Trojan horse, a Trojan horse in the sense that it is not at all what it seems to be on the outside.

If you look on the inside, which means opening the page of the bill, you will see that this bill is the first major legislative thrust to make abortion in the United States of America illegal.

I stated yesterday on the floor that we are really a product of our live's experiences. And my life's experiences that have caused me to be essentially pro-choice are essentially threefold.

The first, my days in college at Stanford University, days when I remember a bright young woman who committed suicide because she was pregnant and abortion was illegal in the United States. And I also remember the passing of a plate in a college dormitory so that another friend could go to Mexico for an abortion. I remember that well.

My second life experience was in the early 1960's at the California Institution for Women, the women's prison in California for women convicted of felonies, where I set sentences and granted paroles to women convicted of providing abortions. I remember this well because the only way a case really came to the attention of the authorities was either through the morbidity or the mortality of the patient.

And I remember the graphic stories in those cumulative summaries that were given to us prior to term setting, of what happened to women who were victims of illegal abortions. And I remember that the women who provided the abortions would leave and come back and commit the same crime again because of the importunings of other women.

And the third graphic experience for me was becoming a grandmother and finding out that my daughter in her pregnancy had an unexpected, very serious, potentially life-threatening problem, and realizing how surprised I was not to know that this could happen in this day and age. But it did happen.

My story—my daughter's story—came out fine because today I have a bright-eyed and bushy-tailed and wonderful, light of my life, in the form of a 4½-year-old granddaughter by the name of Eileen.

But I learned that there can be unpredictable occurrences, and that when we legislate—in a piece of paper that becomes an abiding law enforced everywhere throughout the United States of America—we ought to legislate with the knowledge that human life and human experience has many permutations that are unexpected and unanticipated.

I view H.R. 1122 as doing much, much more than banning a simple procedure. That procedure is not mentioned anywhere in this piece of legislation. But it does set up the basis for lawsuit after lawsuit against any physician that might practice and might perform a second-trimester abortion. Every other type of abortion in some way has the head of the fetus coming through the birth canal. And then the case is, at what point is that fetus still living or not living? And so I think it is a potentially very dangerous piece of legislation in that regard.

I mentioned yesterday that I basically do not believe that intact D&E or intact D&X should be used, that there are other forms of abortion. That is my personal belief. And I believe that the AMA is on its way in a medical venue of taking some steps to limit it. We all know we are talking about less than 1 percent of all of the abortions that take place in this country, in any event.

So the question is, what do we do? What kind of legislation do we present that recognizes the exigencies, the human trials, the difficulties that a woman can have?

Yesterday, I mentioned a young nurse; her name is Viki Wilson. When I was a county supervisor and mayor, I worked with her mother, Susan Wilson, who was a supervisor from Santa Clara County. Viki Wilson is a nurse, married to a doctor. In her 36th week she had a sonogram and she found out she had a severely deformed baby with its brain outside its skull. She learned that the contractions she was having were actually seizures that the child was having and that the child was incompatible of sustaining life outside of the womb.

She went to a doctor and her doctor recommended the particular procedure that is under siege here today, as the procedure, at that stage of her pregnancy, that would be most protective of her health. I cannot tell you whether it was or not. I am not a physician. There is only one physician in this body who might know. Yet, we are going to legislate, in a bill that is drafted to be so broad, that it can impact much more than one procedure.

The amendment that the three of us present to this body today, we believe, comports with Roe versus Wade. We believe it would not put in jeopardy every second- and third-trimester abortion. We believe it would prohibit every third-trimester abortion unless the life and the health, as defined by serious adverse health consequences to the mother, were at risk, and that this decision would be made by the physician and the woman, which I think is the appropriate remedy for this issue.

I think this is a very difficult debate because most people have not read the bill before the Senate, H.R. 1122. Most people really do not understand the whole panoply of human ills that can take place in a pregnancy.

I believe the AMA, in the recent paper they have put forward, very clearly indicates they believe that, with few exceptions, this procedure that is at question should not be used. However, they are not—and I think rightly so—not ready to sacrifice the integrity of the medical profession to say that no doctor, no matter what the situation is, no matter what the physiology of the woman may be, no matter that she may not be able to have another procedure, that she might be adversely impacted healthwise, cannot, no matter what the situation is, have this procedure as a remedy.

Mr. President, we present to you a bill that we believe is constitutional, a bill that would ban all third-trimester abortions, unless the life and health of the woman, as defined as serious adverse health consequences, were threatened. The bill includes very strong civil penalties, which we believe would be a substantial deterrent to the performance of any third-trimester abortions unless there is a very serious medical need.

Mr. President, I notice my distinguished colleague, and I ask the Senator from Massachusetts how much time he desires.

Mr. KENNEDY. I would like 10 minutes, and I appreciate the courtesy, but I expect, Mr. President, that we are perhaps alternating back and forth.

I see Senator DEWINE, as well as Senator SANTORUM.

Mr. SANTORUM. I will do a unanimous-consent request and then be happy to let the Senator from Massachusetts speak.

Mrs. FEINSTEIN. I yield the floor.

PRIVILEGE OF THE FLOOR

Mr. SANTORUM. Mr. President, I ask unanimous consent that Steven Schlesinger, a detailee on the Judiciary Committee, and Michelle Kitchen, a member of my staff, be permitted privileges of the floor for the duration of the debate.

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

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, it is unfortunate that the Republican leadership has chosen to force this debate on the same confrontational and unconstitutional legislation that President Clinton vetoed last year, when reasonable and constitutional alternatives are so obviously available. It is clear that the primary purpose of the Republican leaders is not to regulate late-term abortions, but to roll back the protections for women guaranteed by the Supreme Court.

If the goal is to pass effective legislation, the sponsors of the Santorum bill know they must meet the constitutional requirments for protecting of a woman's right to choose. President Clinton has made clear that he cannot and will not accept a ban on any procedure that represents the best hope for a woman to avoid serious risks to her health. The bill vetoed last year and

the bill before us today are identical, and they clearly fail to provide these needed protections for women.

The Supreme Court rulings in the Roe and Casey decisions prohibit Congress and the States from imposing an "undue burden" on a woman's right to choose to have an abortion at any time up to the point where the developing fetus reaches the stage of viability.

Governments 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 flunks that clear constitutional test in two ways. It imposes an undue burden—a flat prohibition—on a woman's constitutional right to an abortion before fetal viability. And it impermissibly limits the right to an abortion after fetal viability, by excluding any protection whatsoever for the woman's health.

Given the clear constitutional problems with this bill, it is fair to ask, why do Republicans insist that we send it to the President, for another certain veto, when reasonable alternatives are available.

In fact, there is little need for any Federal legislation in this area because 41 States already ban late-term abortions. Massachusetts has prohibited these abortions except when the woman's life is in danger or "the continuation of the pregnancy would impose a substantial risk of grave impairment to the woman's physical or mental health." Many other States have similar restrictions. There is no evidence that the States are not enforcing their laws.

Supporters of the Republican bill also claim that the public and Congress were misled about the actual number of abortions performed by the procedure that would be banned by their bill. But very few, if any, of us in the last Congress were misled about the facts. Only a few hundred of these procedures are performed after viability, and they are performed in cases where the fetus cannot survive because of a severe medical abnormality, or where there is a serious threat to the life or the health of the woman.

It was clearly reported during last year's debate that the procedure was also used before the stage of viability, and that the number of such cases was larger, probably amounting to several thousand a year. But all of us were also aware that Congress cannot constitutionally ban the procedure at that stage.

We know that some doctors begin to use the particular procedure that would be banned by the Republican bill at about 20 weeks of gestation, which is well before the time when a fetus has the capacity for survival outside the womb. Most authorities place the time of viability at 24 to 26 weeks in a normal pregnancy. According to the best available statistics, 99 percent of all abortions are performed before 20 weeks. Only about 1 percent of all abortions are performed after that time, and two-thirds of those abortions are performed before the 23d week.

This information is provided by the Alan Guttmacher Institute and used by the National Center for Health Statistics. It is the most accurate information available.

Even so, it is difficult to draw a sharp dividing line on the viability of a particular pregnancy. A great deal depends on the prenatel care the woman is receiving. Low-birth weight babies reach viability at later stages of pregnancy.

A further problem is that viability is to some extent a statistical concept. At 21 weeks of a normal pregnancy, few if any fetuses can survive. At 23 weeks about 25 percent survive. At 26 weeks about 50 percent survive.

A physician's decision relies on best medical judgment, but it is hardly precise for a particular case. The real issue involves lives and the health of women. The so-called partial-birth abortion bill would not stop a single abortion. Instead, it would force women to use another, possibly more dangerous procedure if they must terminate their pregnancy to preserve their health.

Of course, the sponsors of this bill continue to argue that there are no circumstances in which a procedure banned by the bill is necessary to preserve a woman's health. And, even worse, some supporters don't seem to care. Mark Crutcher, president of Life Dynamics, an antiabortion organization based in Denton TX, told the Detroit Free Press that the bill is "a scam being perpetrated by people on our side of the issue * * * for fund-raising purposes."

It doesn't seem to matter to the proponents of this defective Republican bill that women like Maureen Britell, Eileen Sullivan, Coreen Costello, Erica Fox, Vikki Stella, Tammy Watts, Viki Wilson, and others will be forced to risk serious health consequences if this bill becomes law.

Doctor after doctor has told us that this procedure may be necessary to preserve a woman's health. The American College of Obstetricians and Gynecologists has said:

> An intact D&X may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The intervention of legislative bodies into medical decisionmaking is inappropriate, ill-advised, and dangerous.

Perhaps if the Republican men in Congress were the ones to get pregnant, they would show more compassion for the women who find themselves in these tragic circumstances.

Take the case of Coreen Costello. After consulting numerous medical experts and doing everything possible to save her child, Coreen had the procedure that would be banned by this legislation. Based on that experience, she gave the following testimony to the Senate Judiciary Committee last year:

> 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. We are the families that had to choose how our babies would die * * * please put a stop to this terrible bill. Families like mine are counting on you.

I oppose this legislation. Instead, I stand with Coreen Costello and others whose lives and health must be protected. The alternative proposed by Senator SNOWE and Senator DASCHLE provides that protection, and so does the alternative proposed by Senator FEINSTEIN, Senator BOXER and Senator MOSELEY-BRAUN. I intend to vote for these alternatives, because they respect the Constitution, and above all they respect the right of women and their doctors to make these difficult and tragic decisions.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. How much time is the Senator requesting?

Mrs. BOXER. I ask for 15 minutes.

Mrs. FEINSTEIN. Mr. President, I am happy to yield 15 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, let me say how proud I am to stand with my colleague, my senior Senator from California, Senator FEINSTEIN, and the senior Senator from Illinois, Senator CAROL MOSELEY-BRAUN, who has just arrived on the floor, to speak in favor of the bill which really addresses an issue that the American people want addressed. It does so in a way that is constitutional. It does so in a way that is respectful of women and their families.

When we approach this issue, we have very strong feelings in the approach that is taken, in a sensitive way.

It is harmful legislation. It will harm women, will hurt women, will lead to women dying, will lead to women suffering infertility, suffering paralysis, and all needlessly.

So what we have done in this legislation, which I am very proud of, is to basically codify Roe versus Wade. In other words, we support a woman's right to choose with the understanding that after viability, when the fetus can live outside the womb with or without life support, we want to be very careful that there should be no abortion at all unless the woman's life is threatened, or her health is threatened, and in those cases where a doctor so determines and the woman's family so agrees, that that woman will be able to

terminate that pregnancy in a way that protects her life and her health.

What we are attempting to do in the course of this debate is to put a woman's face back on this issue because, when you listen to the other side, the woman is completely forgotten. As I said yesterday, the day we pass legislation that harms more than half of our population is the day that I wonder what we are doing as a country.

I hope that the other side on this issue would join hands with us and get this passed. We know the President would sign this bill. Then we can tell the American people together that the only cases of late-term abortion in this Nation that would be allowed is when the woman faces a life-threatening situation, if the pregnancy continues, or one that is so serious that action must be taken to terminate the pregnancy.

Senator SANTORUM would outlaw a particular procedure and not allow it be used except in the most narrow circumstance.

I want to tell you what some doctors have said about this procedure that Senator SANTORUM would ban.

The American College of Obstetricians and Gynecologists is an organization representing 37,000 physicians. As I have said in the past, I know those of us who come to the U.S. Senate are pretty strong people who believe in our views, who believe in ourselves, but we ought to leave our egos at the door when it comes to protecting lives.

When it comes to medical emergencies, we do not have the capability of deciding what procedure ought to be used in a hospital room. If you were to ask your constituents, I don't care what party, or whether they are Independent, Republican, Democratic, or whatever party they are for, who would you rather have in the emergency room with you, Senator SANTORUM, Senator BOXER, or the family doctor who is trained, who understands the issue? I think they would say, "I don't want any politicians in the hospital room with me. I want the best physician that I can find for my wife or for my daughter or for my niece. And I want that doctor to have the full range of options," knowing that there will never be an abortion in the late term unless the life or health of the mother is at stake.

That is a pretty moderate course, it seems to me, a pretty reasonable course. And that is the course of the Feinstein-Boxer-Moseley-Braun bill.

Let me repeat, under our bill, there will be no late-term abortion, no post-viability abortion unless the doctor determines that to protect the woman's life and health he or she must terminate the pregnancy.

Senator FEINSTEIN talked about Viki Wilson. I have her picture up here behind me with her loving family. And I think it is worth repeating the story.

In her 36th week of the pregnancy, the nursery was ready, the family was anticipating the arrival of their new family member. Viki's doctor ordered an ultrasound which detected something that all of her prenatal testing had failed to detect. As Senator FEINSTEIN told you, two-thirds of her daughter's brain had formed outside the skull, and the doctors feared that Viki's uterus would rupture in the birthing process leaving Viki sterile. After consulting with other physicians, with their clergy, with their God, in order to preserve Viki's fertility, they made the painful choice to have this procedure that would be outlawed under the Santorum bill.

Now you see Viki, who has protected her fertility, a decision made with her doctor and her God. This procedure would be outlawed by the Santorum bill.

The 37,000 gynecologists and obstetricians stated that this procedure that would be outlawed under the Santorum bill "may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances, can make this decision. . ."

Today I received an additional letter that I want to share with my colleagues from David Grimes, a physician in San Francisco, CA. He tells the story—that he had never used this procedure that Senator SANTORUM wants to outlaw. But he talks about it this way, and the time that he did use it recently.

He says:

> A woman in the Bay Area became seriously ill with preeclampsia (which is toxemia of pregnancy) at 24 weeks' gestation. She had a dangerous and extreme form of disease, called HELLP syndrome . . . she had liver failure and abnormal blood-clotting ability. The pregnancy had to be terminated to save her life.
>
> During several days spent unsuccessfully in attempts to induce labor, her medical condition continued to deteriorate. Finally, in desperation, the attending physician called me to assist . . .

He said he accomplished the procedure in a manner of minutes with very little blood loss.

> She recovered quickly thereafter, and her physician discharged her home in good condition after a few weeks.

He said:

> . . . I received a lovely thank you note from her husband.

You know, this isn't only about women. It is about their loving husbands and their loving fathers.

He "received a . . . note from her husband thanking me for saving his wife's life."

And the doctor said:

> In this instance, an intact D&E was the fastest and safest option available to me and to the patient. Congress must not take this option away.

So, yet—and I have many other letters from physicians—that is exactly what this Congress is set to do. With the exception of 1 physician, who I don't believe is an OB-GYN, we have 99 people in here who do not know a whit about being an obstetrician or gynecologist. They don't have any training, at least that I know of.

I find it the height of—I don't even know the right word to use—the "height of ego," I guess, to think that we would know more than a physician, we would pass legislation that would take an option away from a physician. I can't believe that we would be doing this.

I can tell you, I just had a community meeting in California. Maybe I knew 2 people out of 700 people that came out to the community meeting. The floor was open. It was their meeting. And not one of them stood up in that meeting and said, "Senator BOXER, you ought to go there and outlaw medical procedures."

What they told me is go back there and get that budget balanced, educate our children, and preserve our freedoms.

So I have to say this is now the third time we have taken up this debate. It is the third time. It is painful. It is difficult. The reason I find it so painful is because in the name of saving pain, this Congress is going to vote for a bill that is going to cause families pain, and not just momentary pain, but long-lasting pain, because when a woman loses her fertility it is long-lasting pain, or if a woman gets paralyzed it is long-lasting pain.

I want to talk to you about a couple of other women:

Maureen Britell, a 30-year-old, Irish-Catholic mother of two, who lives in Massachusetts. On February 17, Maureen and her husband were awaiting—this is in 1994—joyously awaiting the birth of their second child. On that date, when she was 5 months pregnant, a sonogram determined that her daughter had no brain and could not live outside the womb. Her doctor recommended termination of the pregnancy. The next day a third-degree sonogram at the New England Medical Center in Boston confirmed the diagnosis that the baby had no brain and was not viable.

Maureen and her family sought counsel from their parish priest, Father Greg, who supported the decision to terminate the pregnancy. Let me repeat that. Maureen and her family sought counsel from their parish priest, Father Greg, who supported the decision to terminate the pregnancy. They named their daughter Dahlia. She had a Catholic funeral, and was buried at Otis Air Force Base in Cape Cod.

So Senators are going to interfere with the decision made by a family, its doctor, and their God. And by the passage of the Santorum legislation, if in fact it is going to pass, which indications are it will, that is just what we

are doing—the height of ego. "We know better than a doctor. We know better than a priest. We know better than a rabbi. We are going to be in the hospital room. We are going to say what medical procedures can't be performed."

What is the next one? There are no pretty medical procedures, period. What is the next one that we are going to stand up here and outlaw?

I want you to meet Eileen Sullivan.

Eileen Sullivan, with 10 brothers and sisters, runs a nursery school in southern California. And she is an Irish-Catholic woman.

Eileen writes, "For as long as I can remember, being in the company of children was when I was happiest. So when my husband and I watched the home pregnancy test slowly show a positive result, we were ecstatic. After three years of trying to conceive a baby, I didn't believe it. So I kept checking the test against the diagram on the package. Sure enough, we had done it. We were going to have a baby."

Eileen continues:

> My long awaited pregnancy was easy and blissful. As I charted my baby's growth week by week, the bond grew stronger between us. Many nights I spoke to my baby, saying that I accepted it just as it was, boy or girl, with dark eyes like mine or blue like my husband's. I didn't care—I was just so happy that we would finally be parents.

At 26 weeks, Eileen went to her obstetrician for a routine ultrasound. After a few moments, her doctor got quiet and began to focus intently on the monitor. The doctor confirmed that there was a problem and sent Eileen and her husband to have tests immediately.

The Sullivans went to a genetic specialist for another ultrasound. The doctor concluded that among other things: the baby's brain was improperly formed and being pressured by a backup of fluid. His head was enlarged, his heart was malformed, his liver was malfunctioning, and there was a dangerously low amount of amniotic fluid.

According to Eileen, for 2 hours the specialist detailed the baby's anomalies. Eileen writes, "My husband and I held one another and tried to understand what was happening. This was a nightmare. We spoke to a genetics counselor and had a battery of additional tests including an amniocentesis and a placenta biopsy."

She continues: "When the tests came back, the prognosis was the same—the anomalies were incompatible with life."

"Not wanting to accept this," she writes, "we went to another specialist—a pediatric cardiologist. His prognosis was no better. According to the cardiologist, our baby's heart condition was lethal and he would not live."

She continues: "We wept. We discussed what we should do, what was best and safest for myself and the baby. After all the talking was over, we were faced with the hardest decision of our lives, and we opted to do what we thought was right. We opted to undergo a late-term abortion. Our long awaited, much anticipated baby was not going to make it, and there was nothing we could do to change that."

Eileen continues: "What we could do is choose the best way to end our pregnancy and help improve our chances of future pregnancy. I had had cervical cancer."

She goes into all the problems and all the reasons why she had to make this choice. She said, "We chose * * * a safe, surgical procedure that protected my health, spared my baby needless suffering and allowed us to hold our child and say our goodbyes. This is the procedure that would be banned by the legislation you are considering today." And she says, "Please leave these difficult medical decisions where they belong—between women, their families and their doctors."

So I think you have seen, Mr. President, that the women who have undergone these surgeries wanted these children desperately. Their husbands wanted these children desperately. They were religious, they are religious women. Many of them say they do not consider themselves pro-choice. But what we would do with the Santorum legislation is to take away an option that saved their fertility, saved their health, and perhaps even saved their lives.

Why on Earth would we do this? I believe the Feinstein-Boxer-Moseley-Braun alternative is the sane way to go, the appropriate way to go. It keeps these decisions where they belong, and yet it says the only time that an abortion in the late term will be allowed would be when the woman's life is in danger or her health is in danger. So I proudly stand with my colleagues, and I urge my colleagues to be strong, to be courageous. I listen to these ads. I read these ads. They are misleading. They use hot button words, and I have to tell you, if you look at this and you look at these women, this, my friends, is the truth. These women stand and tell the truth. Let us stand with them.

I thank you, I say to my friend and colleague, and I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I yield myself such time as I may use.

Mr. President, there are so many things I would like to say, but let me just start with one at a time, and that is the pictures the Senator from California put up here of women who have been in situations where they were faced with a fetal abnormality and were convinced, unfortunately, by some genetics counselors and others to have an abortion as their option.

Let me show you a picture of someone who wasn't convinced by genetics counselors that that was her only option. That is Donna Joy Watts. I talked about her yesterday. She had the same condition as two of the women that Senator BOXER just described—same condition. Her mother had to go to four hospitals to find someone who would not do what the people that Senator BOXER just talked about did, which is terminate the pregnancy, abort the child. She said no. She says, I'm going to let my child live in the fullness of what God has planned for her. I am not going to end her life. I am not going to make the decision to end her life, like any other mother or father would not, if they were faced with a sick child, kill them. Why would you kill your child? Because your child is sick? Because your child might not live long? Why kill your child?

Lori Watts and Donny Watts said, no, we are not going to kill our child. We are going to do what we can. We are going to treat her with dignity and respect like any other member of our family. We are going to love her and do everything we can to support her.

So they delivered Donna Joy Watts. The doctors would not treat her. They said she was going to die. They would not even feed her for 3 days. You want to talk about all these doctors who are so concerned about saving lives. Then why are we debating physician-assisted suicide if all these doctors are so concerned about saving lives? People who perform abortions are not principally concerned about saving lives. They are worried about malpractice concerns, particularly if you have a difficult pregnancy. They are worried about a whole lot of other things. But I would suggest, unfortunately, there are too many—if there is one, there is too many—doctors out there who—after she was born, doctors were referring to Donna Joy as a fetus laying there alive, breathing—a fetus.

So do not tell me, do not tell me that all these caring, compassionate doctors would, of course, do everything to save a child's life. It is not true. God, I wish it were true. And, unfortunately, bad advice is given out by people who either do not know, have not taken the time to understand what options are available, what technology has been developed, or do not care or just are afraid to deal with the problem.

Mr. and Mrs. Watts had to go to four hospitals just to find a place to have her delivered. They would not deliver her. They would abort her. They would do a partial-birth abortion. In fact, they offered a partial-birth abortion, but they would not deliver her.

So do not bring your pictures up here and claim that is the only choice. This is not a choice. These are little babies. And they are asking us to help them now. This is not Senator RICK SANTORUM, nonphysician, speaking. Over 400 obstetricians and gynecologists—and by the way, the person

who designed this barbaric procedure that we are debating was not an obstetrician. You hear so much about all these experts. He was not an expert. He is a family practitioner who does abortions, and you can only question as to why he spends all his time doing abortions instead of taking care of families. But that is what he does. He does abortions.

This is not taught in any medical school. It is not in any peer review literature. It is not done anywhere but abortion places. It is not done in hospitals that deal with high-risk pregnancies. Ask the question. I will ask it. Can you find a place that deals with high-risk pregnancies that has perinatologists at their unit that does partial-birth abortions?

The answer is no, zero. No hospitals do this procedure. If this is a procedure that was so important to be kept alive and so important to be an option, then why don't the experts, the people who study high-risk pregnancies, perform this? If this was the best choice—and the Senator from California suggested that in fact would be the only choice in certain cases. Yesterday, she listed five conditions in which this would be the only choice. Now, if you are a perinatologist, someone who deals in late-term pregnancies, and you are not performing this—you are basically telling the perinatologists that they are doing malpractice because they are not doing this procedure.

Let me talk to you about one perinatologist who wrote to me. This is Dr. Steve Calvin, assistant professor, Division of Maternal-Fetal Medicine, Department of Obstetrics and Gynecology, University of Minnesota in Minneapolis:

As a specialist in Maternal-Fetal Medicine, I practice with the busiest group of perinatologists—

That is obstetricians who work on high-risk pregnancies and deal with these fetal problems—

in the upper midwest.

The busiest group of perinatologists in the upper Midwest.

I also teach obstetrics to medical students and residents. I know of no instances when the killing of a partially born baby was necessary to accomplish delivery in any of the five medical situations listed by Senator Feinstein.

Senator FEINSTEIN claims that partial-birth abortion is necessary to end a pregnancy in the following five situations: Fetal hydrocephaly, fetal arthrogryposis, maternal cardiac problems (including congestive heart failure), maternal kidney disease and severe maternal hypertension.

The first two conditions are significant fetal problems. Hydrocephalus—

And that is exactly, by the way, what Donna Joy Watts had—

is an increased amount of cerebrospinal fluid that can cause enlargement of the head and arthrogryposis includes deformities of the fetal limbs and spine. Significant as these abnormalities may be, they do not require the killing of a partially born fetus. Delivery can be accomplished by other means that are safer for the mother—

I repeat, "safer for the mother"—

and give the fetus at least a chance of survival.

And, I might add, apart from this, some dignity, some dignity to one of our children, one of our humankind, in the case of the family, one of their family.

The other three conditions are maternal illnesses that may indeed require ending the pregnancy. But, as with the fetal problems, there is no reason that the treatment must include suctioning out the brain of a partially born baby.

One of my biggest concerns is that the opponents of this ban are claiming that this destructive procedure is the only method of ending a pregnancy. Abortion supporters have previously acknowledged that surgical mid-trimester and late- term abortions are more dangerous to a woman's health than induction of labor.

Let me read this again.

Abortion supporters have previously acknowledged that surgical mid-trimester and late-term abortions are more dangerous to a woman's health than induction of labor. Their concern for women's health and safety apparently ends when there is any threat to unrestricted abortion.

Signed Steve Calvin, MD.

And I will put up this quote from 400 doctors, over 400 doctors, including the former Surgeon General, C. Everett Koop. I suggest these over 400 doctors, many of them members of ACOG, which is American College of Obstetricians and Gynecologists, also are concerned about maternal health. Many of these are perinatologists, people who specialize in high-risk pregnancies. I would think they would be concerned about maternal health. Many of these doctors are pro-choice and they said the following clearly.

While it may become necessary, in the second or third trimester, to end a pregnancy in order to protect the mother's life or health, abortion is never required.

Now, they did not say it should be an option. They said never. These are experts. Senator BOXER says, well, RICK SANTORUM should not be in the operating room. I would not want to be in the operating room. I would pass out if I was in the operating room. The fact of the matter is I am not going to be in the operating room. These folks are. This is what they say. "Never," not sometimes, "never required."

It is never medically necessary, in order to preserve a woman's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester, and certainly—

Underline certainly—

not by mostly delivering the child before putting him or her to death.

This last line is very important.

What is required in the circumstances specified by Senator Daschle [Senator Boxer, Senator Feinstein] is separation of the child from the mother, not the death of the child.

In other words, there may be cases where you must separate the child from the mother, you must deliver the baby, either by induction and delivery, vaginally or by cesarean section, but in no case, according to a doctor—and I ask if you can produce one perinatologist who would say that it is necessary, absolutely necessary, to kill the child in order to protect the life and the health of the mother, because I have hundreds who say it is not, hundreds from the finest universities and the finest medical schools all over this country who say absolutely, definitively—and the former Surgeon General of the United States, C. Everett Koop—never necessary, never necessary.

Now, we also have to talk about all these cases that we are concerned about the mother's health. We make the assumption that abortion is an option to preserve the mother's health or life. I heard that over and over again. It has to be out there in late trimesters, after 20 weeks. Let me share a couple of statistics that shed some light on this.

This was referred to by Dr. Calvin. I want to back it up by the statistics. This is from the Alan Guttmacher Institute. Who are they? They signed letters with NARAL and Planned Parenthood and all these other abortion groups, in support of this procedure, in support of every liberalization you can possibly imagine. They are a pro-choice, some would even suggest pro-abortion group. Here is what they say.

The risk of death associated with abortion increases with the length of pregnancy, from 1 death in every 600,000 abortions at 8 or fewer weeks to 1 per 17,000 at 16–20 weeks, and [after 20 weeks, when partial-birth abortions are performed, they are considered late-term abortions after 20 weeks] 1 per 6,000 at 21 or more weeks.

It is 100 times more likely that a mother will die than if the abortion were performed in the first 8 weeks. It is 100 times more likely.

This is what these people are advocating, performing abortions. Let me throw one statistic on top of that. I will show it. I will read it. "It should be noted that at 21 weeks and after, abortion is twice as risky for women as childbirth: The risk of maternal death is 1 in 6,000 for abortion and 1 in 13,000 for childbirth."

So, aborting a child through partial-birth abortion, late in term, is statistically more dangerous to the life of the woman than inducing labor. In other words, not only is it preferential for our society not to kill children who should be given a chance at birth, late, when there may be a chance of viability or just when they should have at least some dignity attached to their life, but it is more dangerous to abort than it is to induce labor or to have a cesarean section. It is more dangerous.

The folks who say they are protecting a woman's health and life are arguing for procedures that do the exact opposite. Facts: I know we do not

like to talk about facts when it comes to abortion. We like to put up pictures of nice families and warm little babies, that somehow or another, this family is better off because of an abortion. The fact is by having an abortion she was twice as likely to die and not be in that picture. That is the fact. We do not want to talk about that. We want to make sure the right of abortion is paramount among all rights. Because that is what this amendment does—nothing. It lets there be abortion on demand, anytime, anywhere, on anybody. That is what this amendment does. It has no restrictions. It is an exception that is not an exception.

It is an exception that says that, while we cannot have postviability abortions except for the health of the mother— let me tell you what Dr. Warren Hern, who wrote the definitive textbook on abortion, called "Abortion Practice," said. Here it is: "Abortion Practice," Warren M. Hern, from Colorado. My understanding is this is sort of the definitive textbook on teaching abortions. He does second- and third-trimester abortions and is very outspoken on this subject. He does not use partial-birth abortion, I might add; does not see it as a recognized procedure. But this is what an abortionist who does late-term abortions—in fact, has people come from all over the world to have abortions done by him—this is what he said about, not the Boxer-Feinstein amendment but the Daschle amendment, which we are going to debate next:

> I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.

In other words, abortion on demand, anytime during pregnancy. And he believes this. Some would say you are relying on the doctor's bad faith—no. He believes this. And he has a right to believe it. If you look at the statistics, I mean, you know, unfortunately some women do die as a result of pregnancy and, therefore, he could say legitimately there is a risk. Any pregnancy is a risk. It may be a small risk, but it is a risk. And all these bills require, that we are going to hear today, is just a risk. Not a big risk, a risk.

So what we have are limitations without limits. What we have is a farce, to try to fool all of you, to try to fool the press. It has done a very good job fooling the press. We have wonderful headlines about how we are trying to step forward and do something dramatic on limiting late-term abortions. Phooey, we have a step forward into the realm of political chicanery, of sham, of obfuscation, illusion, that does nothing but protect the politician at the risk of the baby. That is what is going on here. That is what is going on all day. You are going to hear a lot of it. You are going to hear, "Oh, we need to do this, we need to protect this." Here are the facts as pointed out by their side. I am using their facts. The Alan Guttmacher Institute—their numbers.

Even when we debate with their information they cannot refute it. The fact of the matter is, there is no reason to do a partial-birth abortion and there is every reason in the world to stop it. It is a dehumanizing procedure. You wonder why we have a society that just is becoming adrift, that does not know right from wrong, that does not have any sense of justice, that does not have—we do not have any compassion for each other? I will give you a good example why that happens. Because on the floor of the U.S. Senate we are debating a procedure where we can kill a little innocent baby that is completely delivered from the mother except for the head. It is moving outside of the mother, a little baby who has done nothing wrong to anybody, and we are saying, "You don't deserve to live."

Give people like Donna Joy Watts a fighting chance. It will ennoble us all. We can look to Donna Joy and her family and say there are parents who showed the best, who showed the best in our hearts, who showed the willingness to fight for life, for things that are at the core of who we are as humanity. Let that spirit come back into American culture. Stop this culture of death and self-centeredness and focus in on life and dignity. What about poking scissors in the base of a little baby's skull and suctioning its brains out is dignifying the human being? You would not do that to a dog or an old cat that you wanted to put to sleep. You would not do it to a criminal who has killed 30 or 40 people. And you do it to a little baby who has done nothing wrong and just wants a chance, for however long it may be—and it may not be long—but, for however long, the dignity of life.

The Senator from California talks about the long-lasting pain to the family that we would be imposing on them. What is so painful about looking at yourself in the mirror and saying: "I have done everything I can to help my little girl or my little boy have a chance at life. I gave them every chance. I loved them as much as I possibly could in the time that God gave us." What is so painful about that?

I will tell you pain. Facing, every day, that you killed your son or daughter for no reason, that is a pain I would not want to live with.

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

Mr. SANTORUM. Not yet.

Mrs. BOXER. Let me know. I will be happy to wait until you are ready. Thank you.

Mr. SANTORUM. There are great pains out there when you are dealing with a child that is not going to live. It hurts. And it is troubling. But you will find, not only from my experience but from the experience of doctors who deal with this all the time, that treating your son or daughter with dignity, loving them as much as you can for as long as you can—does not make the pain go away. It never goes away. When you lose a child it never, ever goes away. But it helps you live with it.

What we are doing today is, hopefully, banning a procedure and explaining to all of those unfortunate people who may be dealing today, right now, with this situation, that there is a better way for everyone. Let us do the better way. Let us do the right thing. Let us do the just thing for everyone.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, let me just make a couple of comments.

The PRESIDING OFFICER. Who yields time?

Mr. SANTORUM. I yield 10 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Pennsylvania has the time. Does the Senator from Pennsylvania yield time to the Senator from Oklahoma?

Mr. SANTORUM. I yield 10 minutes to the Senator from Oklahoma.

Mr. INHOFE. I thank the Senator from Pennsylvania for yielding time. I think he made one of the best presentations I have heard on the floor of this body. I want to say that, when he deals with the facts, he is dealing with the facts but, you know, we are also dealing today with perceptions. I tried to make a list of those things I have heard over and over. There is a lot of redundancy on this floor but there are some things that have not been stated. I would like to share a couple of those with you.

I am going to do something that is a little unusual, because I am going to read some Scriptures to you. It is not totally unprecedented in this body. In fact, the distinguished senior Senator from West Virginia does it quite often. So I would like to read a couple of Scriptures, just for those who care. Anyone who does not, don't listen.

First of all, I have used this a number of times, Jeremiah 1:35 says, "Before I formed you in the womb I knew you; Before you were born I sanctified you."

Or the 139th Psalm, no matter which interpretation you use, it makes it very clear when life begins.

Then, I was, not too long ago, at the U.S. Holocaust Memorial Museum. I had been to the museum in Jerusalem, and I found the same thing was printed on the last brick as you are going through. This is Deuteronomy 30, verse 19. It said: "I call heaven and earth as witnesses today against you, that I have set before you life and death,

blessing and cursing; therefore choose life, that both you and your descendants may live."

And, last, I am always concerned that something that is as dramatic and is as significant as this issue is going to go unnoticed; that maybe there are Senators out there who are not really into this issue and they might want to vote the party line, or they might want to say, well, maybe there aren't as many of these procedures out there, so they just really are not knowledgeable of the subject. So, I will read Proverbs 24, 11 and 12:

Rescue those who are unjustly sentenced to death. Don't stand back and let them die. Don't try to disclaim responsibility by saying you didn't know about it, for God knows. Who knows all hearts knows yours, and He knew that you know.

Mr. President, I was listening to the Senator from Massachusetts who said it does not do any good if we pass this because the President is going to veto it anyway. But I suggest to you that the President may not veto it, and if he does veto it, maybe some people will come over who were not here a year ago on this side of the aisle.

Ron Fitzsimmons who just last year insisted that the number of partial birth abortions were a relative handful now admits "I lied through my teeth."

He was lying. So if the President is predicating his decision to veto this ban on the basis of what was told to him by Ron Fitzsimmons, there is every reason he could turn around on the issue. I suggest also that we are talking now not just about a procedure, but a culture.

I have a very good friend by the name of Charles W. Colson who gave these remarks upon winning the prestigious Templeton Prize for contribution to religion. Listen very carefully. He puts it all together, not isolating one procedure or one issue:

Courts strike down even perfunctory prayers, and we are surprised that schools, bristling with barbed wire, look more like prisons than prisons do. Universities reject the very idea of truth, and we are shocked when their best and brightest loot and betray. Celebrities mock the traditional family, even revile it as a form of slavery, and we are appalled at the tragedy of broken homes and millions of unwed mothers. The media celebrate sex without responsibility, and we are horrified by plagues. Our lawmakers justify the taking of innocent lives in sterile clinics, and we are terrorized by the disregard for life in blood-soaked streets.

I think that kind of puts it into a context, which we are now approaching, that this is not just a normal type of an abortion.

I have a great deal of respect for one of the most intellectual Members of this body. It is Senator PATRICK MOYNIHAN from New York, who is a self-proclaimed pro-choice Senator. He said:

And now we have testimony that it is not just too close to infanticide, it is infanticide, and one would be too many.

This is where we get into the numbers game. I heard it said on this floor many times that we are talking about maybe 1 percent or maybe talking about those that are in the ninth month may be an infinitesimal number. But, in fact, one is too many. It was said on the floor that we may be only talking about 200 lives being taken during the normal delivery process. That is when a baby is given a natural birth and, yet, they take the life by using this barbaric procedure. We have all kinds of documentation that it is being done in the ninth month and during the normal birth process. They say only 200.

Mr. President, I am from Oklahoma, and we lost 168 lives in the Murrah Federal Office Building bombing. This was the largest domestic terrorist attack in American history. Did anybody say that is only 168 lives that were lost in Oklahoma City? No, the entire Nation came with compassion and mourned with us. One life, I agree with Senator MOYNIHAN, is too many.

One other issue that has not been discussed in this debate this year is that of pain, and rather than go into it, I do not think anyone refutes the fact that a small baby, if that baby is certainly past the second trimester, feels pain every bit as much as anybody who is in here, as any Member of the U.S. Senate would feel pain. There was a study conducted in London, and I have the results here, but I think everyone understands that this is something that is very real, that these babies do feel pain.

I have a picture of a good friend of mine with me. His name is Jason—James Edward Rapert. Back when people our age were having babies, they would not even let you in the hospital, let alone the delivery room. When my daughter, Molly, called up and said, "Daddy, the time is here, could you come over," and I went over to the hospital, she said, "Would you like to come into the delivery room?"

"Wow, yes, I would."

So I saw for the first time what many of you in this room have seen, and many of the women have experienced personally, but I was there when this little guy was born. It is hard to describe to some of the men here who have not been through that experience of seeing this wonderful life begin, and I can remember when, in that room where the delivery took place, it occurred to me that when Baby Jase, my grandson, was born, that that is at a moment when they could have used this procedure inflicting all of the pain you have heard described so many times: Going into the cranium with the scissors, opening up the scissors, suck the brains out, the skull collapses. Awful. And there are individuals who want to keep a procedure like this legal. If you did that to a dog, they would picket in front of your office. Somehow we have developed a culture that puts a greater value on the lives of critters than human life.

So I watched Baby Jase being born, and I suggest to those of you who are concerned about choice that this is really the choice. It is either that choice or this choice. Those are the choices we are faced with today.

Mr. President, this is something on which I agree with the Senator from Pennsylvania. We should not be having to talk about it. To think 100 years from now they may look back and talk about that barbaric society that killed their own young, and here we are just trying to save a few lives from a very painful death. But nonetheless, that is the issue we are faced with today. I yield the floor.

The PRESIDING OFFICER. Who seeks time?

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. I yield 5 minutes to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I rise to speak in support of the partial-birth abortion ban. I applaud the bipartisan effort taking place to bring this bill to the floor. Most importantly, I applaud the efforts of my good friend, Senator SANTORUM from Pennsylvania, who has effectively and courageously articulated many of the reasons that this procedure should not be accepted in America today.

People in this country are concerned about our Nation. They are concerned about its moral values; they are concerned about its goodness. What do we value, what do we cherish, what do we respect and how do we live? Mr. President, I think it is time for all of us to think about that.

I am a lawyer. I served for quite a number of years as a Federal U.S. attorney charged with enforcing laws, and I have been thinking about this both as a lawyer, and as a person who wants to decide what kind of laws we ought to have. I do believe that laws do affect and reflect the character and the values that the people of this Nation hold dear.

I say to you, Mr. President, that we need clarity in our law. No matter how we debate or what we feel about the overall question of abortion, this procedure, in which a child is partially removed from the womb of the mother, is partially born, to then have its life exterminated, is a standard that we ought not to allow. We should not allow children who are partially born to be murdered. I think that is an area in which it is appropriate for the law to have a clear distinction.

Some have said the President will not sign this bill, that he will veto it again. But I remember what the President said his reasons for the last veto were. He said these procedures were rare, and that they were performed

only to preserve the life or the health of the mother or to preserve the reproductive right of the mother because of the most severe abnormalities in the infant. Those are the reasons he gave; those are the reasons American citizens were told from this very floor by many of the people who are arguing today in support of this procedure. That is what they were told.

Mr. Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers—that means the national group of abortionists—admitted publicly that he had lied through his teeth, that the false information he had displayed made him sick to his stomach.

So I will just say to you, Mr. President, that I do not believe President Clinton has made up his mind on this matter. The reasons he gave when he struck down this bill last time are not present today. I believe that with the election behind him he has an opportunity now to abide by his conscience and to abide by the facts which have been proven repeatedly to be true, and I believe that when this bill is passed, it will be signed by the President. I certainly hope so. I think he certainly needs that opportunity, because the circumstances have greatly changed.

So I will say again how much I appreciate the work of the Senator from Pennsylvania, Senator SANTORUM, how much I respect his commitment, love and capacity for all humankind. I think it is an important question for this country because it sets a standard about who we are, what we will accept in our community, what kind of laws we ought to have, and based on that, I support this bill, and I urge my colleagues to do so.

I yield the floor.

The PRESIDING OFFICER. Who seeks time?

Mrs. FEINSTEIN. Mr. President, I yield 10 minutes to the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. Thank you very much, Mr. President.

There really is no more important value than life. The only question that is raised today with this debate is, whose life?

This debate is about women's health, women's rights, women's choices, and their stories, but, most importantly, this debate is about women's lives. This is not a place for the kind of screaming, fiery rhetoric we have heard here. If anything, we need to listen to each other, we need to hear the voices of people, of women who have been faced with the choices and the issues, who have been faced with troubled pregnancies and understand that somewhere in this very controversial area, there is guidance for us and there are answers for us.

This debate is about whether or not women are going to have the ability to make decisions regarding their own reproductive health, whether women will have and be able to exercise their constitutional rights to privacy, whether women will be able to make decisions regarding their own pregnancies, and this debate, in the final analysis, is about whether women are going to be heard.

Women's health is at stake with this legislation. We cannot afford to have women suffer irrevocable and irreparable harm due to pregnancy where we have the medical ability to prevent that harm and save the woman's life. We should not dictate that an unborn fetus is more precious to us than the life or the health of its mother.

In 1900, some 600 women died in childbirth in the United States for every 100,000 live births. Death in childbirth was a regular tragic occurrence. But by 1970, 21.5 women died in childbirth for every 100,000 live births. Today, that number has dropped to less than 10. Women are surviving in childbirth because of advances in medicine.

These figures show us that the maternal death rate has dropped by some two-thirds since the Supreme Court affirmed the right of a woman to obtain a safe and legal abortion. This is an important reduction in maternal mortality and one which I know we are all thankful for. But it seems to matter less to some in this debate that some women may well die if the right to make choices about their own health is taken away from them. Abortion should be safe, it should be legal, and it should be rare.

Mr. President, it seems to me that legislation that we are debating right now to ban certain specific abortion procedures would turn back the advances that have been made in medical science and have been made with regard to maternal health and maternal death rates, and it would dictate to doctors what procedures they can and cannot use to protect the life and health of their patients.

One of the Senators who spoke on the floor today talked about protecting politicians versus protecting babies. Well, the point is that the politicians should have nothing to do with this. This is a question for the mother, the child, the family, and their God.

Mr. President, in this legislation there is no exception, none, to protect the health of the mother. And so this legislation, H.R. 1122, the underlying bill, lays aside altogether the advances in medical science. The training of doctors is disregarded altogether. Women's health is ignored. And so essentially it would send us back to the status of the law that existed before Roe versus Wade was decided by the U.S. Supreme Court and when we had such a prevalence of maternal deaths.

Some have argued that the procedure being banned in this legislation is being banned because it is medically dangerous. Well, Mr. President, if it is dangerous then doctors should make that determination, not Senators. That is their job; it is not ours.

Some have argued the procedure is unnecessary. And yet the legislation contains a narrow life exception to the ban. If that exception is needed, that is because in some circumstances the procedure that is involved here is needed. Physicians have said this and have written to us about this. And so you really have to take a chance that you might not force a woman to die because of the decisionmaking that will be made in this Chamber. But again, this is essentially a medical decision, what procedure to use in the case of a troubled pregnancy.

Mr. President, women's rights also are at stake. And this is a very important point. Women's rights as equal citizens under the law are at stake in this debate. Women fought for generations for full protections under the law in our Constitution. And this legislation rolls back the clock. I would point out, women were not even citizens in this country until 75 years ago. We just then got the right to vote in this country.

This legislation unfortunately, in my opinion, assumes that female citizens do not have rights which the unborn are bound to have. The debate that we are now engaged in has turned the notion of entitlement of citizenship right on its head by giving the unborn equal or even greater status than their mother, as I believe this legislation does. Legal conclusions may be reached that reduce women to second-class citizenship.

And so the legislation reduces the status of all women as citizens, but even more tragically, it could very well result in a death sentence for some women by forcing a choice between the life of the mother and the life of the fetus, particularly in cases of poor women or rural women who do not have easy access to the top-quality health care, the health care that could save the life of someone if they were fortunate enough to be able to access it.

So we are essentially debating whether or not we are going to sentence some women who have difficult pregnancies to a death sentence with this legislation.

The Supreme Court had ruled in Roe, States cannot restrict a woman's access to abortion in the first or second trimesters. The Court has said that the interests of the potential citizen, that is not yet a citizen, that is not yet viable, cannot be placed in front of the rights of a woman who is currently a full citizen.

In addition, the Court has ruled that while the States may have a compelling interest to legislate restrictions on postviability abortions, there must be an exemption for the life and health

of the mother. That basic exemption for life and health is missing from the underlying legislation that we are debating today. And so I submit that the legislation fails to protect fundamental rights of female citizens.

Mr. President, women's choices are at stake in this legislation. Choosing to terminate a pregnancy is the most personal and private and fundamental decision that a woman can make about her own health—about her own health and her own life.

Choice is, when boiled down to its essentials, a matter of freedom. It is a fundamental issue of the relationship of a female citizen, a woman citizen to her Government. Choice is a barometer of equality and a measure of fairness. And it is, I believe, central to our liberty.

I do not personally favor abortion as a method of birth control. My own religious beliefs hold life dear. And I would prefer that every potential child have a chance to be born. But whether or not that child will be born must be a mother's personal decision, a woman's personal decision.

I fully support the choice of those women who carry their pregnancies to term no matter what the circumstances. But I also respect the choice of those women who, under difficult circumstances where their life and health may be endangered, choose not to go forward with that pregnancy.

I also believe, Mr. President, this is a choice that can only be made by a woman in consultation with her doctor, her family, and her God. Politicians should have no role to play in making so basic a decision.

I recognize that the American people are deeply divided on this issue. People of goodwill will hold greatly differing opinions on the issues we are debating today. And I respect those differences as well.

I have joined my colleagues, Senators FEINSTEIN and BOXER in introducing a substitute amendment banning postviability abortions except in the cases where the life or the health of the mother is threatened. I ask the Senator from California to yield me as much time as I need. I need a few more minutes.

Mrs. FEINSTEIN. I would be happy to.

Mr. President, I yield as much time as the Senator from Illinois will consume.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. Thank you, Mr. President.

I want to talk about the substitute amendment, the Feinstein-Boxer-Moseley-Braun substitute, because it is really very straightforward.

It shall be unlawful, in or affecting interstate or foreign commerce, for a physician knowingly to perform an abortion after the fetus has become viable.

Why is this opposed?

It is opposed because the second section says that:

* * * if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman [this absolute ban does not apply].

So what this says is that women's lives, women's health, women's choices are respected by the substitute amendment, but not by the underlying legislation. I believe that this substitute amendment is clearly constitutional, that it is far-reaching, that it does not direct a doctor to choose one medical procedure over another, that it protects future citizens but it also insures, Mr. President, that under no circumstances will women be prevented from accessing the best medical care possible to save their lives or to prevent serious adverse health consequences, such as the loss of their fertility.

When I started, I mentioned that women's stories are being ignored in this debate with this legislation. And I cannot recount the story of Vikki Stella, Vikki Stella from Naperville, IL, without being reminded just how important this fight is for families everywhere.

Our provision, the provision introduced by Senator FEINSTEIN, would protect women like Vikki Stella from Naperville, IL. There can be no greater argument against the underlying bill, H.R. 1122, than this story, in my opinion.

Vikki Stella and her husband were expecting their third child, Anthony. At 20 weeks, she went for a sonogram and was told that she and her child were healthy.

At 32 weeks, that is to say in the last trimester of her pregnancy, 8 months pregnant, Vikki took her two daughters with her to watch their brother on the sonogram.

But the technician that was administering the sonogram was quiet and did not really respond, and asked Vikki if she would come upstairs to talk to the doctor. Vikki thought perhaps that the baby might be breach. As a diabetic she knew that any complications in her pregnancy could be very serious.

Well, the doctor was too busy to see her that day but called at 7 o'clock the next morning, called to say that the leg bones, the femurs on the fetus, seemed a little short, but would she come back in. He assured her there was a 99-percent chance that nothing was wrong, but she should still come in for a level 2 ultrasound.

Well, Mr. President, after that second ultrasound Vikki and her husband and her family were told that the child she was carrying had no brain. It was an abnormality incompatible with life. And Vikki then had to make the hardest decision that she says she had ever made. I want to use her words. She said, "I had to remove my son from life support—that was me."

Now, Vikki's decision would be illegal under the underlying bill, H.R. 1122, that we are debating right now. Vikki's doctor could have gone to jail under the Senator's legislation. And Vikki's family would have suffered a tragedy, perhaps in the loss of her life or the loss of her ability to have other children. All of those implications would have been a tragedy for this family from my State of Illinois.

As it turns out, the story had a better ending because the procedure was performed. Vikki's fertility was maintained. She did not die, and she is now the proud parent of, in her own words, "a beautiful baby boy named Nicholas Archer."

Nicholas Archer was able to be born because H.R. 1122 was not law, Mr. President, because Vikki was able to obtain the procedure that would be banned by this bill. She was able to consider the possible options with her doctor, her family, and her God in private without the interference of politicians. She was able to make a choice that was best for her and best for her family. And she was able to give birth to Nicholas Archer.

Vikki's story, Mr. President, is why we must not support the underlying bill here.

I am going to make another point that I have made before, and it is a difficult one. And I mean no disrespect by it, but I think it is particularly important for Senators to listen to, not just hear but to listen to Vikki's story, because, frankly, over 90 percent of the Members of this U.S. Senate are about to legislate on something that they could never experience.

Now, that is not to say that men do not have an interest in this. They do. But they cannot know—and again I mean no disrespect—cannot know how it feels to be pregnant, cannot know how it feels to carry a troubled pregnancy, cannot know how central to one's life reproductive health is. So what we are talking about is legislation based on second-hand intelligence and hypothetical experience.

One of the reasons this debate sounds so awkward with descriptions of the female reproductive organs and "carrying to term" is that it is being talked about by people who cannot, as a matter of personal experience, know what is involved, have never themselves had a pregnancy, have never themselves had to go to an obstetrician and be examined and told your health is going to be affected one way or the other.

And can you imagine how Vikki Stella felt at 8 months? I know what being 8 months pregnant is like. How many other Members of the Senate know how it feels to be 8 months in that condition, and then to find out that the baby that you are carrying has no brain?

And then to be told you cannot choose what kind of decisions to make about your health. Your doctor has nothing to say about the procedures to save your life because of legislation that the U.S. Senate took up.

Mr. President, there is an editorial in the St. Louis Post Dispatch. And I just want to read the middle part here:

Certainly, most people are repelled by the idea of a third-trimester abortion and rightly so. But they should also realize that most women who have late-term abortions never wanted to end their pregnancies; they expected to have their babies but something drastic or unpredictable happened.

Mr. President, I ask unanimous consent that that article be printed in the RECORD.

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

[From the St. Louis Post, May 14, 1997]

REASONABLE COMPROMISE ON ABORTION

The battle against "partial-birth" abortion has always been political, to chip away at abortion rights. The intent of this anti-abortion strategy is to ban one abortion procedure after the next—with the ultimate goal of banning them entirely.

Organized opponents don't differentiate among one type or another. In their view, "partial-birth" abortions are as egregious as abortions induced by RU-486, the drug that can only be used in the earliest weeks of pregnancy, and birth control pills used as "morning after" pills to prevent implantation. The issue is not the method but abortion itself.

Certainly, most people are repelled by the idea of a third-trimester abortion and rightly so. But they should also realize that most women who have late-term abortions never wanted to end their pregnancies; they expected to have their babies but something drastic or unpredictable happened.

Roe vs. Wade embodies this concern by permitting states to outlaw third-trimester abortions except when the life or health of the mother is at stake. Forty-one states, including Missouri and Illinois, already have such laws in place. That's one reason Gov. Mel Carnahan says that Missouri doesn't need a new law on "partial-birth" abortion. In Illinois, the Legislature sent to Gov. Jim Edgar on Tuesday a bill banning the procedure. Without a health exception, any ban on abortion in the third trimester would not pass constitutional muster.

Third-trimester abortions are relatively uncommon. About 600 abortions, or 0.04 percent of 1.5 million annual abortions, are preformed after fetal viability. No one knows how many are performed by intact dilation and extraction, or D&E, the medical name for the targeted procedure. Contrary to anti-abortion rhetoric, there's no epidemic of infanticide, with full-term fetuses being aborted so girls can fit into their prom dresses.

While anti-abortion rhetoric focuses on infanticide, the issue is really second-trimester abortions, before the fetus can survive on its own. That's when most intact D&E abortions are performed. The "partial-birth" ban makes no distinction between viability and non-viability; it prohibits the procedure itself. Their bill also imposes criminal penalties on doctors who perform the procedure.

The issue of second-trimester abortions is where the trickiest constitutional issues are raised. The Supreme Court will have to determine whether outlawing a medical procedure presents an undue burden for a woman seeking an abortion. The answer is not clear because a ban on "partial-birth" abortions would not necessarily eliminate any abortions. Other methods could still be used, although they might be more dangerous to the mother.

In the U.S. Senate, set to debate the issue this week, abortion foes have the votes to pass the bill, but they apparently lack the votes to override a promised presidential veto. Legislators who want to express their concern, without risking a veto, do have options. Pro-choice senators have their own bills, which essentially seek to codify *Roe* vs. *Wade*. They ban all abortions involving viable fetuses, but they include an exception for both the life and health of the mother. President Bill Clinton indicates he may accept these alternatives.

The bill proposed by Senate Minority Leader Tom Daschle of South Dakota would tighten the health exception to "grievous injury" to physical health. He defines "grievous injury" as a "severely debilitating disease or impairment specifically caused by the pregnancy or an inability to provide necessary treatment for a life-threatening condition. Grievous injury does not include any condition that is not medically diagnosable."

Sen. Carol Moseley-Braun of Illinois and California Sens. Barbara Boxer and Dianne Feinstein, all Democrats, have a version with a looser, more *Roe*-friendly health exception—to prevent adverse health consequences. Senators who want to codify support for the availability of abortion in the first and second trimesters and for the third-trimester restrictions set by *Roe* should support these bills.

Ms. MOSELEY-BRAUN. Well, we are about to say—predictable, unpredictable, drastic circumstances, viability notwithstanding—no woman has that choice about her own body, about her own life, about her own baby, about her own family. That is what the underlying legislation would do.

Mr. President, I urge my colleagues to oppose the underlying legislation. We must protect the health, the rights, the reproductive choice of women. If we would just listen to the tragic stories of the women who have fought to recover from the loss of a child, to keep their families together, and to tell us their stories, we can make a better decision here. And I hope that the rhetoric will tone down.

I hope that the rhetoric will tone down and we will focus on the fact that this is not a hypothetical. This is not just legislating in a vacuum. We are really talking about something as central as one's personal ability to make decisions about one's own body, about one's own health. That is an issue for women that transcends the second-hand intelligence of those standing on the side who would make choices about us, make choices that would reduce our citizenship to something that could be legislated from afar.

I urge my colleagues to support the alternative that Senator FEINSTEIN has filed. This alternative will ban all postviability abortions, but it will make an exception for the life and for the health of the mother, and preserve women's rights to choose with regard to their own reproductive health.

I thank my colleagues. I yield back to the Senator from California.

Mrs. FEINSTEIN. Mr. President, I believe Senator DORGAN would like to be recognized for the purpose of a unanimous-consent agreement. I have no objection, if there is no objection.

The PRESIDING OFFICER. The Senator is recognized.

PRIVILEGE OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent that Petrea Kaldahl, Jeremy Johnson, Brian Underdahl, Susan Webb, and Jessica Braeger be permitted privileges of the floor for the duration of the debate.

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

Mr. SANTORUM. Mr. President, before I yield to the Senator from Iowa, I have a question for the Senator from Illinois, a question I asked in previous debate, and I will ask again. That is, during the process of partial-birth abortions, if the baby that is being brought out in this fashion would for some reason have its head slip out because all that is left inside of the mother is a very small head, if that head would slip out, would it still be up to the doctor and the mother to kill the child?

Ms. MOSELEY-BRAUN. If the baby is born, Senator, it is a birth.

Mr. SANTORUM. So you are saying the difference between being able to kill a child and not kill a child is the distance of the child's head? That is the difference?

Ms. MOSELEY-BRAUN. Senator, I think I started off saying that, again, the inflammatory kind of—that is——

Mr. SANTORUM. If the Senator——

Ms. MOSELEY-BRAUN. First, let me say with regard to the picture—may I please respond? You asked me a question and I would like to respond.

Mr. SANTORUM. This is something that can——

Ms. MOSELEY-BRAUN. What you have is a cartoon. It does not begin to describe accurately what is involved with a physician putting his hand in between somebody's legs to deliver a baby. Start with that.

The second point is, it is impossible——

Mr. SANTORUM. Mr. President, reclaiming my time.

The PRESIDING OFFICER. Regular order. The Senator from Pennsylvania has the time. The Chair would observe that he will insist upon regular order. The Chair would observe this is an emotional debate. The Senator from Pennsylvania has the time. The Chair would also observe that if the Senator wishes another Senator to respond and to yield, certainly we want respect given to that Senator.

The Senator from Pennsylvania is recognized.

Mr. SANTORUM. I want to clarify a point. Dr. Haskell, who developed this procedure, testified that the drawings were accurate, and I am quoting him, "from a technical point of view." So these drawings are not cartoons. They are accurate drawings of a procedure that Dr. Haskell has invented.

The point I am trying to make, and I think she answered the question, and I think she answered it correctly, and that is if the child was delivered, completely delivered, you would not be able to kill the child.

The point I am trying to make, look how close we are drawing this line, a matter of a few inches of a baby's skull. Those 3 inches determine whether you can live or die. Is that really what we want in our society? Is that really the standard that we want to develop as to when life is worth living, or life should or should not be protected?

Ms. MOSELEY-BRAUN. I respond by saying to my colleague from Pennsylvania that, again, you did not really ask a question. You were making a statement, but it is very difficult to make a statement like that.

I used a picture of Vikki Stella. That is a real person, a real woman, who had a troubled pregnancy that had to be ended in a late-term abortion.

You are using a cartoon, a cartoon that is a child. The question you asked had to do with the cartoon you had. Now, if your point is that this child, there was a decision about this child's health or her mother's health at the time of the delivery, that is another story, but that is not the question you asked. That is not the question you put.

The only point I say is, if you are going to talk about these issues, then it really should be based on reality and not just posturing and not just politics. I am afraid this debate, frankly, has degenerated to that.

The PRESIDING OFFICER. The Chair would observe the regular order, under rule XIX:

A Senator can yield only for a question. He has a right to yield to another Senator to propound a question. He cannot interrogate or propound an inquiry of another Senator, except by unanimous consent, in which case the latter Senator may be allowed to answer such questions, with the right of the Senator having the floor being reserved in the meantime.

The Senator from Pennsylvania has the time and is now recognized.

Mr. SANTORUM. Mr. President, I have shown this picture. This is a real picture, a real person, and there are other real persons who have been through this threat of partial-birth abortion and survived it and made the choice of life. This is not a hypothetical situation; it is a real situation.

I suggest to the Senator from Illinois that the question I ask—I asked a question. I asked a question. I did not make a statement. I asked whether a child, to be delivered, would it be up to the doctor and mother to kill the child? The difference is a matter of 3 inches, and you have affirmed that 3 inches makes the difference as to whether that child is protected or not protected, and I think that is a very, very close line that you are drawing, one that is, I think, very destructive of our culture.

I yield 10 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, we have all heard by now that Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, admitted that many pro-abortion groups agreed to a party line to say that partial birth abortions are very rare and performed only in extreme medical circumstances. Mr. Fitzsimmons has now admitted that this party line was a lie.

Recent witness before the Senate Judiciary Committee, Renee Chelian, the president of the National Coalition of Abortion Providers, was quoted in a news article as saying, "The spin out of Washington was that it was only done for medical necessity, even though we knew it wasn't so."

She openly admitted that she kept waiting for the National Abortion Federation to clarify it and they never did it. She said, "I got caught up: What do we do about this secret? Who do we tell and what happens when we tell? But frankly no one was asking me, so I didn't have to worry."

But the truth came out. Now we know that many, who so desperately were trying to tell us the truth, were right when they declared that this procedure is done thousands of times a year and the majority is done for elective purposes.

I'm saddened to see that a new wave of behavior has begun to permeate our legislative process and for that matter political behavior. What appears to be commonplace is that now the end justifies the means. We've seen the administration use that excuse most recently when they openly admitted that it was necessary to do what it took to raise campaign funds in order to win the Presidency. And now, in this partial-birth abortion debate we have people who admitted they deliberately lied to Members of Congress and more important to the public about the partial-birth abortion procedure to justify a defeat of legislation banning it.

The partial-birth abortion procedure is an assault on women and children. It is more than abortion on demand—it's abortion out-of-control.

This is more than a debate about a woman's right to choose. This is about whether doctors, under the guise of health care, should be allowed to take the life of a child in such a barbarous way.

I plan to support the measure before us, without amendment, which would end this procedure. This form of abortion is senseless, dangerous, and is clear-cut infanticide.

My colleagues have discussed what happens to the mother and child during this type of abortion in graphic detail. Unfortunately, this procedure cannot be sugarcoated. It is a procedure which doctors use to kill unborn babies who in many cases have developed enough to live outside of the womb.

I have been contacted by thousands of people in my State imploring me to support legislation to ban this procedure. Several hospitals from my State and their staffs have urged me to ban this procedure.

Last year, President Clinton stated before he vetoed the original legislative ban on partial-birth abortion, "I have studied and prayed about this issue, and about the families who must face this awful choice, for many months. I believe that we have a duty to try to find common ground: a resolution to this issue that respects the views of those—including myself—who object to this particular procedure, but also upholds the Supreme Court's requirement that laws regulating abortion protect both the life and the health of American women."

Although it appears the President and many of my colleagues are concerned about the life and health of the mother, I must question their judgment. This bill would ban partial-birth abortions unless the life of the mother would be endangered. Medical experts have said that this 3-day procedure would not be necessary even then.

Many say that this procedure must be allowed in cases where the health of the mother is at risk. Even that logic has been challenged. We know the Doe versus Bolton case interpreted health very broadly to mean almost anything, including if the mother is a minor or if the mother has depression and so forth. So, what that means in real terms is if the mother doesn't want the child—having the child will detrimentally affect her health and so on—abortion can take place in the third trimester.

Many have testified that partial-birth abortion is almost never the safest procedure to save a woman's life or even her health.

Former Surgeon General, Doctor C. Everett Koop has stated, "Contrary to what abortion activists would have us believe, partial-birth abortion is never medically indicated to protect a woman's health or her fertility. In fact, the opposite is true: The procedure can pose a significant and immediate threat to both the pregnant woman's health and fertility."

In the American Medical News, Dr. Warren Hern, who authored a widely used abortion manual, stated, "I would dispute any statement that this is the safest procedure to use."

Opponents talk about reproductive rights, but women have been deceived to think if an abortion procedure is legal then it is automatically safe. And I believe many women and men who support abortion in general do so on the basis of this reproductive safety jargon.

Some have accused pro-life individuals of only being concerned about the baby and accused pro-choice individuals of only being concerned about the woman. I am seriously concerned about both the woman and the child. Babies are being victimized and women are being exploited. What kind of Federal or State regulations exist to make sure these abortions are safe? And I ask this question about abortions in general. A person doesn't even have to have a health care license of any kind to assist in the execution of an abortion.

Do we have any uniform health and safety regulations that make sure abortion clinics are safe? I know there aren't Federal ones, because the pro-abortion forces have blocked any attempt to set safety standards and State regulations vary greatly. We saw the "60 Minutes" exposé on the lack of safety regulations in Maryland that led to the abortion clinic death of at least one woman.

I am concerned about women's health. And although some would say because I am pro-life, I do not care about the reproductive rights of women. That deduction is not accurate. And it exasperates me that women across our country have been led to believe that legality is synonymous with safety.

Women should be outraged that this procedure has been designed and is being performed on them and healthy babies. This particular abortion technique is one of the most dangerous to their reproductive health and runs the great risk of jeopardizing their chances to ever carry a child to full term. As far as being out of touch, the other side is out of touch with protecting these children, many of whom could be the future women and men of America.

And if those in opposition are really interested in protecting women's lives, why can't we enact Federal safety and health standards for abortion clinics? We can't because supporters of abortion don't want even minimum standards. How many women have been killed or maimed getting these so-called legal abortions?

We always hear the mantra that the pro-life side is somehow out of touch and trying to turn the clock back on women. Well, the problem with the other side is they totally disregard the children and the women that are involved in these difficult cases. I'd like to move the clock forward for these children, not back, like the other side would like to do.

Doctors that perform abortions are not required to inform the patient about any of the risks she faces with each specific abortion procedure. Doctors that perform abortions are not required to offer decision-based counseling to their patients. Doctors and those that assist the doctors, such as anesthesiologists, are not required to have an abortion-specific license.

Abortionists can even ask their patients to sign statements saying that they will not sue if injured. Again, this is not a so-called anti-choice issue. Even pro-choice members have voted against this. Many have reiterated my colleague from New York's statement which said it accurately, "I think this is just too close to infanticide. A child has been born and it has exited the uterus and, what on Earth is this procedure?"

I want to submit for the record a copy of an article from the Argus Leader. It features a family from Hull, IA. At 23 weeks into her pregnancy, Sarah Bartels went into premature labor. Her daughter Stephanie was born at 1 pound, 2 ounces. The doctor who was working the night Stephanie was born said she was small and yet very vigorous, wiggling her arms. Three-months later, her twin sister, Sandra, was born. Each of these were miraculous births.

However, it becomes completely clear that because of location, one sister's life was protected and the other's was not. Over the 88-day period before her twin sister was born, Stephanie's life was protected by law because she was living in an intensive-care nursery. Over the same 88-day period, Sandra was not protected by law because she was living in her mother's womb. George Will pointed out in his column that unless she is completely outside the mother, she is fair game for the abortionist.

Mr. President, I ask unanimous consent to have these articles printed in the RECORD.

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

[From the Washington Post, Apr. 24, 1997]

THE ABORTION COVERUP

(By George F. Will)

The accusation that President Clinton cares deeply about nothing is refuted by his tenacious and guileful battle to prevent any meaningful limits on the form of infanticide known as partial-birth abortion. However, that battle proves that his professed desire to make abortion "rare" applies only to the fourth trimester of pregnancies.

Soon—probably in the first half of May—the battle will be rejoined in the Senate, where the minority leader, South Dakota's Tom Daschle, will offer what he will advertise as a compromise. Truth-in-advertising laws do not apply to legislators.

Daschle has not published his language yet, but presumably it will be congruent with Clinton's real, as distinct from his rhetorical, position. And judging by previous legislative maneuverings, a "compromise" measure will be craftily designed for the convenience of "pro-choice" legislators who are kept on a short leash by the abortion-maximizing lobby.

The aim will be to enable such legislators to adhere to that lobby's agenda while casting a cosmetic vote that will mollify a public repelled by partial-birth abortion, the practice of sucking the brains from the skull of a baby delivered feet first and killed while only the head remains in the mother's uterus. Senators should consider this issue in the light cast by the case of Stephanie and Sandra Bartels of Hull, Iowa.

They are twins born in a South Dakota hospital 88 days apart by what is called "delayed-interval delivery." Stephanie, born Jan. 5 when her mother went into premature labor in the 23rd week of her pregnancy, weighed 1 pound, 2 ounces. Sandra, weighing 7 pounds, 10 ounces, was born April 2, by which time Stephanie weighed 4 pounds, 10 ounces.

For 88 days, while her twin sister's life was protected by the law, Sandra could have been, under the probable terms of the Daschle "compromise," aborted by any abortionist. This is because under any language acceptable to the abortion movement and hence to Clinton and Daschle, a baby does not warrant legal protection merely because she is medically "viable," referring to the point at which she can survive with good medical assistance, a point that now begins at about 23 weeks. Location is the key factor: Unless she is completely outside the mother, she is fair game for the abortionist.

Daschle has at times said his measure will not put any restrictions on abortions in the second trimester of pregnancy, when about 90 percent of partial-birth abortions occur, involving thousands of babies a year, many of them potentially less precariously viable than Stephanie was. And Daschle's language will contain a provision pertaining to "health," perhaps even an apparent limitation to considerations of "physical" health. However, this will be meaningless if the language grants the abortionist an unreviewable right to determine when the exception applies.

During the 1996 campaign, Clinton, who had vetoed a ban on partial-birth abortions, said he would support the ban if there were a "minor" amendment creating only a "very stringent" exception. It would allow such abortions to prevent "severe physical damage" to the mother. Note the word "physical."

However, the White House reportedly has told congressional Democrats that Clinton's views are compatible with "compromise" language proposed last month by Maryland Rep. Steny Hoyer, co-chairman of the House Democratic Steering Committee. Hoyer's language would permit post-viability abortions whenever, "in the medical judgment of the attending physician" (the abortionist), not performing the abortion would have "serious adverse health consequences."

Does that include "mental health" consequences? Said Hoyer, "Yes, it does."

To allay suspicions that this might be an infinitely elastic loophole, he said, "We're not talking about a hangnail, we're not talking about a headache." However, a suspicion unallayed by such flippancy is this: The abortionist will be free to decide that not performing an abortion will cause, say distress and depression sufficient to constitute serious health consequences.

Daschle, following Hoyer's precedent, may leave the definitions of "viability" and "health" up to the abortionist. If so, this will be, says Douglas Johnson of the National Right to Life Committee, akin to a

law that ostensibly bans "assault weapons" but empowers any gun dealer to define an assault weapon.

So the Daschle "compromise" probably will aim to confer on the supposedly restricted person, the abortionist, an uncircumscribed right to define the critical terms of the supposed restrictions. If enacted, such a "compromise" would be a remarkable confection, a law that is impossible to violate.

[From the Argus Leader, Sioux Falls, SD, Apr. 2, 1997]

88-DAY-OLD GIRL AWAITS THE EXPECTED BIRTH TODAY OF HER TWIN

(By Joyce Terveen)

Three-month-old Stephanie Bartels is expecting a twin baby brother or sister any day now.

At 23 weeks into her pregnancy, Sarah Bartels, 23, of Hull, Iowa, went into premature labor. Stephanie was born Jan. 5 at Sioux Valley Hospital, fighting for life at 1 pound, 2 ounces.

While doctors were unable to stop Stephanie's birth, they have been successful in holding off the second birth.

The world record for what's called a delayed-interval delivery is 92 days. Bartels is on day 88.

Her home since Stephanie's birth has been a hospital room. But those days have been bearable, she said, because she can go to the intensive-care nursery to help care for 4½-pound Stephanie.

"When I first saw Stephanie, she was skin and bones. Now she's really a little chunk," said Bartels as she rested in her hospital bed Tuesday.

Babies born at 23 weeks are on the statistical edge of life, with one out of five making it. Forty weeks is considered full term.

"I remember that delivery vividly," said Dr. Martin Vincent, the neonatologist who was working the night Stephanie was born. "The baby came out small and yet very vigorous, wiggling her arms."

The Bartels say it was difficult not being able to hold their first-born for the first six weeks while she was on a ventilator.

"The first time I held her, it made me feel like a natural dad," said David Bartels, a draftsman for an electrical engineering firm in Sioux Center, Iowa. "Before, she didn't feel like she was mine."

Stephanie is doing well and gaining weight. So is the second twin, who is estimated to weigh 7 pounds, 13 ounces.

"Since it was at the extreme of life, we tried to do what we could to keep the second baby inside," said Dr. William J. Watson, a perinatologist who handled Sarah's case because her diabetes made her a high-risk patient. "We've tried this a number of times and have been unsuccessful."

To delay the second birth, Watson stitched Bartels' cervix to keep it closed. She was given antibiotics to fight off the infection that had infected the membrane of the first twin. She also took medications to prevent contractions.

The Bartels don't care if they break any records.

"I just want to have my baby and go home," Bartels said.

They haven't worried yet about dealing with the question, "Why are we twins and born three months apart?"

"We're just hoping the kids won't ask us that," Bartels said.

[From Roll Call, Feb. 27, 1997]

PARTIAL-BIRTH BETRAYAL: DEMOCRATS SEETHING AS ACTIVIST ADMITS LIE

(By Charles E. Cook)

A quiet fight within the Democratic party went public earlier this week with the statement by the leader of a major pro-choice organization that he "lied through [his] teeth" about the frequency and circumstances of the "partial birth" abortion procedure during the 1995 debate on the issue.

In an American Medical News article to be published March 3 and quoted in Wednesday's New York Times, Ron Fitzsimmons, executive director of the National Association of Abortion Providers, said the procedure is performed far more often than he and other pro-choice leaders had told the public and Congress. His previous assurances had encouraged Congressional Democrats to oppose a ban on the procedure, which President Clinton vetoed.

The National Association of Abortion Providers is an organization of more than 200 independent abortion clinics. Fitzsimmons told the Times that he remains pro-choice and still opposes a ban on the procedure, but was quoted as saying that the lying, particularly in an appearance on ABC's "Nightline," "made me physically ill."

He said he told his wife the next day, "I can't do it again."

Privately, Congressional Democrats and their strategists have been seething for some time, feeling that they had been set up by the pro-choice community. They say they were led to believe that the procedure—in which a fetus is partially delivered and then its skull is crushed before removal from the birth canal—is quite rare and only used under extraordinary circumstances, such as to save the life or preserve the health of the mother, or when the fetus is severely deformed.

The partial-birth abortion issue, though not widely used in the 1996 elections, was extremely potent where it did come up. It almost cost Democrats two Senate seats: in Iowa, where Democratic Sen. Tom Harkin saw a comfortable lead evaporate in a matter of days; and in Louisiana where it cost Democrat Mary Landrieu 4 or 5 points, turning the race into the closest Senate contest in Louisiana history.

Just a couple of days before the Fitzsimmons statement, a Democratic strategist told me to expect Senate Democrats to bring the issue back up to allow their Members to get on the record against this procedure. They are bitter that they were misled by pro-choice lobbyists—and that it almost cost them dearly on Election Day.

To be sure, Democrats are not having second thoughts about the abortion issue in general, but they now see that this aspect of the debate is a certain political loser. They concede that even many voters who otherwise are adamantly pro-choice are squeamish about this particularly gruesome procedure.

There is some evidence that the percentage of Americans who are pro-choice under all circumstances has declined a few points in the last couple of years. It's possible that corresponds to the rise of this partial birth issue, which until recently was unknown to the general public.

Should Democrats decide to backtrack on the partial-birth issue, there is some question as to whether it will be a meaningful retreat. The National Right to Life Committee argues that while Clinton and Senate Minority Leader Tom Daschle (D-SD) have "indicated a willingness to accept a ban on partial birth abortions if a 'narrow' exception were added for various serious health circumstances," the exceptions amount to little, if any, change.

The pro-life forces maintain that the Clinton-Daschle proposal would only apply from the seventh month of pregnancy onward, while most partial-birth abortions occur they say, during the fifth and sixth months.

Furthermore, the NRLC opposes an exemption that would allow the procedure to be performed to "Protect a mother's future fertility." They point to a statement former Surgeon General C. Everett Koop and 400 other physicians that "partial-birth abortion is never medically necessary to protect a mother's health or future fertility," and that it "can pose a significant threat to both her immediate health and future fertility."

Interestingly, this all comes on the heels of Congress voting to release family planning funding for international organizations. While that money technically isn't supposed to be used to fund abortions, it has the effect of freeing up other funds that can.

The pro-choice cause, in general, has not lost ground. But this one extreme position has caused it significant harm—especially in terms of credibility. Some of the movement's best friends on Capitol Hill feel betrayed.

One of the most basic rules of lobbying is, "Never lie to a Member of Congress, particularly one of your friends." Another is, "Never ask a Member to do something that will later jeopardize his seat."

The pro-choice movement did both and will pay a price for it.

The PRESIDING OFFICER. Who seeks time?

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I yield to the distinguished Senator from Washington 10 minutes.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Thank you, Mr. President.

Mr. President, I rise today in support of the pending Feinstein amendment. This amendment is not a creative or imaginative approach, that has been implied but rather conforms to the law of the land. It is an amendment that simply says that the health and life protections extended to all women in Roe versus Wade will not be infringed upon. It goes to the heart of this debate; will we act today to limit the rights and protections afforded all women by the U.S. Supreme Court or will we reaffirm that the life and health of a woman in this country must remain a priority.

There seems to be some confusion as to what Roe versus Wade and other courts decisions say and do. When you carefully read the majority opinion issued by the Justices in the Roe versus Wade decision, the limitations are quite clearly spelled out by the Court. The Justices spent a great deal of time and effort making the clear distinction between the rights of the women during the first two trimesters and the rights of the women in the last

trimester once the fetus is viable. The courts drew this line and made it clear that the State had an overriding interest in restricting and regulating post viability abortions. As a result, post viability abortions are prohibited, except when necessary to protect the life and health of the mother. The Justices recognized the importance of a woman's health and life and had every confidence that women could make reasonable decisions. I simply do not understand why many of my colleagues refuse to accept the courts decisions and refuse to understand that late term, post viability abortions are only necessary when the life and health of the mother are in serious jeopardy.

While the language in this amendment simply reiterates what the courts have said and what many States have enacted because many on the other side have distorted the facts and have waged a public relations campaign against women and against doctors, I felt it was necessary to work on language that will address some of the allegations that have been made. That is why I have worked with the minority leader on his amendment that limits the scope of the health exemption without jeopardizing the guarantees and protections of women in this country. I would argue that this was not necessary, as I have full faith in women to make the right decision, but because of the allegations and misconceptions that have we have heard and seen, I recognize that it is the reasonable course of action.

I support the Feinstein amendment as it is consistent with what the States have done and it ensures that women will not be subjected to serious threats to their health and life because some people simply want to turn back the clock. I support this amendment because it goes beyond the pending bill in that it will prohibit all post viability abortions, not just a procedure. As supporters of this amendment, we do not claim to have the medical expertise to pick what procedures physicians are allowed to utilize. Further, we recognize the fact that the U.S. Senate should not be in the room with the physician and his or her patient.

I will also be a cosponsor of the Daschle language as I believe that a responsible legislator, I must do everything I can to ensure that the legisation we enact is constitutional and protects all citizens.

The Feinstein amendment does not and will not allow a healthy women to terminate a healthy pregnancy simply because she decides she no longer wants to be a mother. That is illegal and will continue to be illegal for a physician to perform any abortion after viability unless the women's health and life are in serious jeopardy. I ask my colleagues to carefully read the language in this amendment and remember that women and doctors know the definition of serious health consequences and to defeat the underlying legislation.

I would like to thank the sponsor of the amendment, Senator FEINSTEIN. I know that Senator FEINSTEIN has spent a great deal of time studying this issue and working to ensure that we did not unduly burden physicians and women.

I support her with this amendment, and I urge my colleagues to defeat the underlying bill that is before us today.

I yield my time to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I see Senator FRIST is to be recognized.

I yield to him, and then I will wrap up, if that is agreeable.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I yield myself approximately 10 minutes.

Mr. President, I rise in opposition to the Feinstein-Boxer substitute amendment in large part because the substitute amendment fails to address what is the underlying bill on the floor; that is, to ban the partial-birth abortion procedure, a procedure that we all recognize to be one that is brutal, that is unnecessary, and that is repulsive to our civilization today.

I feel that is what we need to ban, that specific procedure which has been described on this floor again and again in detail, that is shocking to us each time we hear it, as well as shocking to America.

The Feinstein-Boxer amendment shifts the focus away from that procedure which we are attempting to ban and to prohibit, and enters another area, another region, that I think needs to be debated. I appreciate the fact that Members on both sides of the aisle say that debate deserves our attention and our discussion. But the problems I have using this as a substitution amendment is twofold.

No. 1, the substitution amendment really does—this is my opinion—nothing to decrease the number of abortions that are being performed in this country. I will come back to that and explain why.

No. 2, to use it as a substitution, I think, we cannot do, and, therefore, I oppose the amendment, because it still allows the underlying procedure of the partial-birth abortion, which, again, graphically has been described as a fetus, a viable fetus, with otherwise normal life to be delivered shortly, be delivered partially, and then killed. It is still allowed under the Feinstein-Boxer substitution amendment.

I will speak to the first point, because a lot of people will assume that the Feinstein-Boxer substitution amendment encompasses a much broader bill, and I think that is the way it is intended.

Let me go back to the amendment as written. This is the Feinstein-Boxer amendment. "It shall be unlawful for a physician knowingly to perform an abortion after the fetus has become viable."

I agree with that and wholeheartedly support that, and I agree with the sponsors. I think the majority of people in this body think that is good, that that is the right direction. But where I have a very significant problem, and a problem that has not been talked very much about on the floor but I think that we must address if we are to consider this amendment in its entirety, is the exception clause. The exception law says what I just said—it does not apply if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman.

Again, I think most of us would agree with that wholeheartedly. But concerning the part of the exception that says, "or to avert serious adverse health consequences to the woman."

Again, let me say my sensitivities to the health consequences are as strong as everyone. I have taken a Hippocratic oath where I am totally dedicated as a physician to the health of the patient before me.

But, from the practical standpoint, "serious adverse health consequences" is a huge exception that people will drive through to potentially perform more abortions than we see today. On the surface, it sounds so right, but, in truth, when you say "health consequences," to lay people it may seem something else. But it is also such a loophole, such an exception, that people can take advantage of it. There are people out there who do.

Yesterday, I cited on the floor Dr. McMahon of California, who is deceased, but who testified before committees in this body that he performed 39 abortions for depression; a mother's depression. Does that depression mean that she felt bad for a few days, or a few weeks and, therefore, this fetus was killed; this viable fetus who would otherwise be alive today was killed? I cited 9 cases where the infant's cleft lip was cited to be the indication and, therefore, yes. A mother could say that, "I am depressed because my child will have a cleft lip." But does that justify killing an otherwise viable fetus? The whole issue of health is complicated. I have gone back to my colleagues again and again saying, can you give me a good definition of health that we could write down, that we could put in statute and that people would agree with?

Well, we all turn back to Doe versus Bolton and the definition of health as defined by Doe versus Bolton in 1973 in the Supreme Court decision, and there health is defined as "all factors, physical, emotional, psychological, familial, and the woman's age, relevant to the well-being of the patient."

As a physician, those are the sort of factors that you have to consider when

you are talking to a patient—their overall well-being. But does it justify killing a viable fetus, a fetus that by definition of viability is alive, once taken out at that point in time, if taken out of the womb, will survive, will live? You are saying that some of these factors, the overall well-being, the psychological factors at that point in time, can be used to justify killing that otherwise viable fetus. I say no, and most people say "no". Yet we know, and it has been cited in the Chamber, that people use that definition of health to perform, in the third trimester, procedures broadly—abortions, including a specific procedure we should outlaw under all conditions, the partial-birth abortion procedure.

What I have done is really gone back to talk to my colleagues to ask them, and I have asked them point blank, is there a time when it is necessary to destroy a viable fetus—remember, a viable fetus. And the definition I looked up in my old Steadman's Medical Dictionary, the classic dictionary that we use as physicians. "Viable" is defined as "denoting a fetus sufficiently developed to live outside the uterus." A viable fetus, the fetus that is taken out of the womb at that point in time is alive, is a baby, will grow up to live a full life.

Thus, are there really any situations where we can kill that otherwise viable fetus, full of life? And you say, well, life of the mother. There is general agreement that that may be—may be—may be a consideration. That is put in the statute. But what about health consequences, adverse health consequences which have been defined in Doe versus Bolton to use the emotional factors and psychological factors? It says in here that an individual physician determines whether or not those health consequences are adverse or not.

Well, that goes all over, all over the field. As a physician who deals in end-of-life issues myself, I transplant hearts, so an adverse health condition to me might mean something very different than to a cardiologist who does not do heart surgery or transplant hearts. The same is true of physicians. Adverse health consequence is going to vary from physician to physician.

We have seen in a report, as I have said, Dr. McMahan in California doing 39 abortions for depression itself—again, depression. Is that treatable? Would it have been gone in 1 week or 2 weeks? Or that cleft lip, which is disturbing—it would be disturbing to many of us as parents—is that justification for allowing an exception in an amendment to abort fetuses in that third trimester, or viable fetuses? That viability, I think, is a good definition in many ways because, remember, that child would live just taken out of the womb. Why kill a viable fetus under any situation? It really seems that this amendment should rise or fall on this whole concept of serious adverse health consequences.

I have a friend whom I turn to frequently. I would like to submit for the RECORD an article that he had in the Nashville Tennessean on May 13, 1997. It is by Dr. Frank Boehm. Dr. Boehm is professor of obstetrics and gynecology and director of obstetrics at Vanderbilt University, highly regarded in his field. The editorial basically addresses the issue, is there ever a reason to abort a viable fetus? Let me quote one paragraph.

> Pro-choice activists claim that abortion should be available even at these later gestational stages in order to save the life or health of a woman or if the fetus is seriously malformed.

The PRESIDING OFFICER. The Senator's 10 minutes has expired.

Mr. FRIST. Mr. President, I yield myself 3 more minutes.

> While that may sound reasonable to some, it misses the point. In the case when the life or health of a mother is in jeopardy and her fetus has reached a chance of survival outside the womb—

As an aside, that is viability—

> (currently 24 weeks), physicians can deliver that child by either cesarean section or induction of labor without compromising the mother.

Dr. Frank Boehm, the Nashville Tennessean May 13, 1997.

Adverse health consequences, a huge door, a huge door that the medical profession is not going to agree on from one person to another.

Well, what this amendment, unfortunately, does, by putting this exception in there, it says that, no, you do not do abortions after the fetus has become viable except under adverse health conditions, which means, as a physician, if you say there is an adverse health condition, go do the abortion, go kill a viable fetus, an individual who by definition will grow up and live a full life, a viable fetus.

Mr. President, let me just go back and say I oppose the amendment on substance itself, but even that aside, I would argue that it does not do what the intent of the underlying bill does, and that is to outlaw a brutal and unnecessary, a malicious procedure which destroys life, and that is the partial-birth abortion procedure. It should be banned.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from California.

Mrs. FEINSTEIN. How much time remains on our side?

The PRESIDING OFFICER. The Senator has 18½ minutes.

Mrs. FEINSTEIN. And how much time resides with the other side?

The PRESIDING OFFICER. About 19½ minutes.

Mrs. FEINSTEIN. Mr. President, I see the Senator on his feet. Perhaps I will yield at this time and reserve the remainder of my time for a wrap-up comment.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I yield 3 minutes to the Senator from Missouri.

Mr. BOND. I thank the Chair. I thank my colleague from Pennsylvania.

We are discussing the partial-birth abortion ban, a horrible procedure likened to infanticide—late-term abortions as our distinguished and knowledgeable colleague from Tennessee has described to us.

Normally, when we come to the floor, we talk about subjects about which we have read in books or what we have learned from briefings, but we have just heard the Senator from Tennessee, who is an accomplished and distinguished surgeon, describe as best one can describe why this is an objectionable, totally unnecessary and unwarranted procedure—a fully developed fetus, viable, brought down the birth canal feet first, and then delivered all but the head. Then the abortionist takes a pair of scissors, inserts them in the back of the baby's neck, collapses the brain and the baby is delivered dead.

The overwhelming majority of people in America and Missourians will vote against this. Last night, the Missouri General Assembly passed a ban by veto majority. When we debated the issue last summer and fall, I received over 50,000 letters and post cards supporting the ban. No other issue has generated that amount of mail.

The issue would be settled if President Clinton had not vetoed the bill last year against the wishes of an overwhelming number of Americans.

A word about the amendments now before us. These amendments were written by opponents of the ban, supporters of the procedure. They contain loopholes big enough to drive a truck through. The Feinstein amendment contains a loophole big enough to drive a train through. The amendments we are considering will do nothing to stop partial-birth abortions or other forms of late-term abortions, as Senator FRIST has so eloquently noted. I hope the Senate will reject the Feinstein and Daschle amendments and pass the partial-birth abortion ban today.

I yield the floor. I thank my colleague for the time.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I would like to wrap up, if I might. Let me begin by saying that you have just heard on our side from four women Senators and the distinguished Senator from Massachusetts, who is not lucky enough to be a woman, but from four women. All of us have been pregnant; all of us have given birth to a child; two of us are grandparents. And I think

among the four of us there is an understanding of the vicissitudes and the problems that are inherent both in our physiology as well as in a pregnancy. It is my contention that the bill before us, H.R. 1122, is about much more than one procedure.

Let me quote from the only Member among us who is a physician in his comments yesterday on this floor. I am reading from the Congressional RECORD.

From the outset, I will admit that it has been difficult for me to imagine how a procedure that is not taught in residency programs where obstetricians are trained—it is not taught today; it is not referenced in our peer-reviewed journals, which is really the substance, the literature through which we teach each other and share information; it is not in peer-reviewed journals—it is a little bit hard for me to understand how people could argue that this is the best procedure available. Really until the recent controversy, many practitioners who you talk to had never heard of this particular procedure.

In fact, that is the case. I would now like to quote from the AMA report of the board of trustees dated yesterday:

From a medical perspective the language used in the proposed legislation—H.R. 1122—"partially vaginally deliver a living fetus before killing the fetus and completing the delivery" does not refer to a specific obstetrical/surgical technique, nor does it refer to a specific stage of gestation (i.e., pre- or post-viability). In fact, the description in the proposed legislation could be interpreted to include many recognized abortion and obstetric techniques (such as those used during dilation and evacuation (D & E)) or other procedures used to induce abortion.

This is exactly my concern about H.R. 1122. I think H.R. 1122, as I described earlier, is in fact a Trojan horse. It is not what it seems to be. Not one medical procedure is referenced in H.R. 1122. Rather, a vague definition of what is called partial-birth abortion. Partial-birth abortion is referred to nowhere in any of the medical literature. I believe the reason this bill is drafted that way is because it is much broader in what it intends to do. I believe what it intends to do is essentially stop second- and third-trimester abortions with no consideration for the woman's health.

Now, you have heard here today, you have heard descriptions by my colleague, Senator BOXER, and by myself, and by the other women, of instances of malformed, seriously malformed, fetuses which cannot sustain life outside the womb. Yet, leaving a woman to have to deliver these babies could present a considerable risk to her health.

Now, what we are struggling to do is find a way to say we agree there should not be third-trimester abortions, except—except when the life or the health of the mother is at risk. And then we are trying to set a definition of health that will meet the constitutional test of Roe versus Wade.

What is clear to me is that restrictive definitions of health will not meet the constitutional test of Roe versus Wade. So we have taken the definition that we believe will stand the test of constitutionality, "serious, adverse health consequences for the woman," and we, more fundamentally in the regulations we prescribe in section 4 of our bill, say, "We are requiring an attending physician, described in section 2(b), to certify to the Department of Health and Human Services that, in the best medical judgment of the physician, the abortion described was medically necessary to preserve the life or to avert serious adverse health consequences to the woman involved." And then—this is the important language—"and to describe the medical indications supporting the judgment." So that the physician who makes the decision that the life or health of the mother is dependent on an abortion must support that, must indicate what his medical judgments were, must indicate what the condition of the fetus was.

One of the big problems in this debate—and I say this respectfully to the Senator from Pennsylvania, because reasonable people can differ—is that conditions of the health of the mother and conditions of the fetus can also vary. We all know there are medical diagnoses. We know that within these medical diagnoses the severity can differ. Conditions have different degrees of seriousness. Severe, serious abnormalities incompatible with life—that is also what we are talking about in this bill. I believe that within the confines of Roe versus Wade, we have developed a constitutional measure which prohibits third-trimester abortions, provides a health and life exception that is constitutional, provides that the medical doctor must give his reasons and his findings as to why, if he does perform a third-trimester abortion, he or she is performing it, and outline these conditions. And we also provide substantial penalties—$100,000 on the first offense plus referral to the State Board of Medical Examiners for possible suspension of the medical license; and on a second offense, up to $250,000 and referral to the State Board of Medical Examiners for possible revocation of licensing.

These are very hefty sums. I believe they provide a sufficient deterrent to the practice of third-trimester abortions unless the most serious situation is present.

Mrs. BOXER. Will my friend yield for a moment?

Mrs. FEINSTEIN. Can I finish my thought?

Mrs. BOXER. Absolutely. When my friend is ready, I have a question to ask her.

Mrs. FEINSTEIN. In the findings of this same AMA paper, the American Medical Association board goes on to make this statement:

The partial-birth abortion is not a medical term. The American Medical Association will use the term, 'intact dilation and extraction,' to refer to a specific procedure comprised of the following elements:

And then they describe the elements:

This procedure is distinct from dilation and evacuation procedures more commonly used to induce abortion after the first trimester. Because partial-birth abortion is not a medical term, it will not be used by the American Medical Association. [And then it goes on.] According to the scientific literature, there does not appear to be any identified situation in which intact D&X is the only appropriate procedure to induce abortion, and ethical concerns have been raised about intact D&X. We have heard these concerns. The American Medical Association recommends that the procedure not be used unless alternative procedures pose materially greater risk to the women. The physician must, however, retain the discretion to make that judgment, acting within standards of good medical practice and in the best interests of the patient.

I happen to believe that is a correct judgment. I happen to believe that the physician must retain the discretion. And I must tell you, it scares me when this body is prepared to write in the concrete of a law that every State in this Union must abide by their judgments, untrained, unskilled, never, for the most part, having given birth to a child, never, for the most part, being intimately familiar with the physiology of a woman, and, yet, has the gumption to say: We are going to write laws. We are not going to have a health exception. And everybody in the United States is going to have to comply with this.

I find that somewhat scary, because conditions do vary. Health circumstances do vary. We all know we can have a certain condition, and for some people it will be benign; for others, it can be terminal. And it can be the same condition. In terms of abnormalities, hydrocephalus has been mentioned on this floor. I have visited, in the old days, institutions where children walked around with their head on a crib because the head was so big they could not lift it off the crib.

Medical science is wonderful. Now hydrocephalus, in many cases—not all—can be handled. So you can't say all hydrocephalics have the same problem. But it is conceivable, and it does happen, that there are serious hydrocephalic implications in some fetuses which make it impossible for them to sustain life on the outside, past any amount of time, or to be delivered in a way that they will not irreparably damage the health of the mother. This is also true.

But there are variations and there are gradations. This legislation, H.R. 1122, does not take that into consideration. Rather, it says that, wholesale, anything that can come under the rubric of partial-birth abortion is hitherto prohibited. And if you commit it—we do not know what it is, the medical

literature does not know what it is—but if you commit it, doctor, M.D., you are guilty of a crime. Can you imagine what this is going to do throughout the United States of America? It is going to have a chilling effect. Not only that. In addition to that, everybody out there can sue.

I am perplexed why, if one wants to outlaw a particular procedure, why that procedure is not written up. It has been spoken about. It has been described. It is contained in specificity in this RECORD. But it is not in the legislation. Instead, the legislation has a much more sweeping impact. All one has to do, in my view, is read that legislation.

Senator BOXER, Senator MOSELEY-BRAUN, and I have tried to write a piece of legislation which is very strong, which prohibits as a matter of law third-trimester abortions except when the life and the health of the mother are at stake, and which defines health in a way that it will meet a constitutional test.

I believe we have done it. And it provides civil penalties that will deter and also say to the physician, as an additional test, if you perform one of these third-trimester abortions, know that you have to put in writing, subject to investigation, and send to the Federal Department of Health and Human Services the conditions, the reasons to justify that abortion. I think that is a sound piece of legislation.

I do not think we will win because I think, unfortunately, this debate has been so characterized by egregious situations that everything other than the egregious situation has suddenly been washed away. Yet everything other than the egregious situation is out there in America every single day. I submit that, if legislation does not cover what is the real life of people, and the many different things to which they are subjected, you are going to have a much higher rate of both morbidity, which is physical harm to women, and mortality, which is death to women. That is the way it was before, and that is the way it will be again if we set the clock back.

So I must—I know my colleague from California would like to make some comments—I would like to yield the floor to her. But I must earnestly implore this body, I would be very hopeful that Members will vote for this amendment and vote no on H.R. 1122.

I yield the remainder of my time to the Senator from California.

Mrs. BOXER. Mr. President, there is about 2 minutes remaining? Thank you.

Let me just thank my colleague. Again, I have been extremely proud to stand with her, really proud to stand with her and Senator MOSELEY-BRAUN. When we started maybe we had 3 votes, our own. I do believe we will do considerably better than that. I do believe, if the people who watch this debate—that we would get even more votes if they would get on the phone and tell their Senator what this is all really about.

I was going to ask my colleague, but since there is no time to ask a particular question I want to share with her an editorial today that ran in USA Today, because it backs up everything my colleague has said. It says that: "The Partial-Birth ban would stop few, if any, abortions." We know that is true because the Santorum bill does not go after any other procedure. "But it would set a precedent of lawmakers playing doctor."

I think this point has been made by us, over and over again. We do have a lot of confidence in ourselves around here. To be a U.S. Senator you have to have confidence. But we do not have, save for one of us, a medical degree. It is the height of ego, to me, to then decide we are going to be, not only lawmakers, but doctors. It is really somewhat extraordinary. Especially, it is more extraordinary because this issue is going to be so harmful to women.

The PRESIDING OFFICER. All time of the Senator from California has expired.

Mrs. BOXER. I ask unanimous consent for 25 seconds.

The PRESIDING OFFICER. There are 17 minutes remaining.

Mr. SANTORUM. I yield the Senator from California 25 seconds.

Mrs. BOXER. Thank you, that is very nice of you.

I would say the one thing that broke my heart today was when the Senator from Pennsylvania said, "How could someone kill their son or daughter." They are talking about these women, these women who desperately wanted these children. These families like Coreen Costello, and Eileen Sullivan. These are the faces: Viki Wilson and Maureen Britell. And, last, Vikki Stella.

These women, these men, these families wanted these babies. They did not kill their child. They desperately wanted a baby. I yield.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SANTORUM. I yield 10 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. ABRAHAM. I thank the Senator from Pennsylvania for his efforts here. I thank you, Mr. President.

Mr. President, let me just preface my comments by saying I will be speaking on the bill generally, as opposed to specifically to the amendment before us. I thank the Senator from Pennsylvania for giving me that chance.

Obviously, abortion is an issue on which people disagree. We have seen much of that disagreement expressed here on the floor of the Senate. We see it expressed in the debates, whether it is at public meetings or around coffee tables around our country all the time.

It does seem to me, though, that we ought to be able to agree on some things with respect to abortion, even when people are on different sides. One of those should be the fact that there are too many abortions and we should have fewer abortions in this country. I would hope we could agree on that.

I hope we could agree also that certain types of abortions are wrong. Partial-birth abortion, in my judgment, is an example of an abortion procedure that is wrong. We have had the procedure itself described here on the floor, both in the course of this debate and in previous debates on this issue. I do not have to retell the horrible details that we have all become familiar with. It seems to me almost on its face that we ought to be able to come to an agreement that that type of procedure is wrong and ought not take place in our country.

In addition, contrary to the claims of some of the advocates, those on the other side of this issue, it is not an anesthetic which causes the child, the baby to die during a partial-birth abortion. Indeed, last year when we confronted this issue in the Judiciary Committee, we had several discussions about the actual cause of death.

I ask unanimous consent to have printed in the RECORD both the testimony, as well as questions and answers, that related to that issue which was before the Judiciary Committee last year.

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

STATEMENT OF NORIG ELLISON, M.D., PRESIDENT, AMERICAN SOCIETY OF ANESTHESIOLOGISTS—BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION, HOUSE OF REPRESENTATIVES, MAR. 21, 1996

Chairman Canady, members of the Subcommittee. My name is Norig Ellison, M.D., I am the President of the American Society of Anesthesiologists (ASA), a national professional society consisting of over 34,000 anesthesiologists and other scientists engaged or specially interested in the medical practice of anesthesiology. I am also Professor and Vice-Chair of the Department of Anesthesiology at the University of Pennsylvania School of Medicine in Philadelphia and a staff anesthesiologist at the Hospital of the University of Pennsylvania.

I appear here today for one purpose, and one purpose only: to take issue with the testimony of James. T. McMahon, M.D., before this Subcommittee last June. According to his written testimony, of which I have a copy, Dr. McMahon stated that anesthesia given to the mother as part of dilation and extraction abortion procedure eliminates any pain to the fetus and that a medical coma is induced in the fetus, causing a "neurological fetal demise", or—in lay terms—"brain death".

I believe this statement to be entirely inaccurate. I am deeply concerned, moreover, that the widespread publicity given to Dr. McMahon's testimony may cause pregnant women to delay necessary, even lifesaving, medical procedures, totally unrelated to the birthing process, due to misinformation regarding the effect of anesthetics on the

fetus. Annually over 50,000 pregnant women are anesthetized for such necessary procedures.

Although it is certainly true that some general analgesic medications given to the mother will reach the fetus and perhaps provide some pain relief, it is equally true that pregnant women are routinely heavily sedated during the second or third trimester for the performance of a variety of necessary surgical procedures with absolutely no adverse effect on the fetus, let alone death or "brain death". In my medical judgment, it would be necessary—in order to achieve "neurological demise" of the fetus in a "partial birth" abortion—to anesthetize the mother to such a degree as to place her own health in serious jeopardy.

As you are aware, Mr. Chairman, I gave the same testimony to a Senate committee four months ago. That testimony received wide circulation in anesthesiology circles and to a lesser extent in the lay press. You may be interested in the fact that since my appearance, not one single anesthesiologist or other physician has contacted me to dispute my stated conclusions. Indeed, two eminent obstetric anesthesiologists appear with me today, testifying on their own behalf and not as ASA representatives. I am pleased to note that their testimony reaches the same conclusions that I have expressed.

Thank you for your attention. I am happy to respond to your questions.

After Dr. Norig Ellison presented his prepared testimony at the Nov. 17 public hearing before the Senate Judiciary Committee, the following exchange occurred among Senator Spence Abraham (R-Mi.); Dr. Mary Campbell, medical director of Planned Parenthood of Metropolitan Washington; and Dr. Ellison.

Senator ABRAHAM [to Dr. Campbell]. Would you make the statement then that the fetus dies due to the anesthesia? Is that your position?

Dr. CAMPBELL (Medical Director, Planned Parenthood of Metropolitan Washington). I think the fetus has no pain because of the anesthesia. I do not——

Senator ABRAHAM. No. I'm asking you whether you think that's what causes the fetus to die?

Dr. CAMPBELL. I do not know what causes the fetus to die. The fetuses are dead when delivered.

Senator ABRAHAM. Well, let me just direct you, if I could—I have here a factsheet that indicates it was prepared by you which relates to the House legislation in which——

[Sen. Abraham was referring to "H.R. 1833, Medical Questions and Answers," which contains the caption, "Fact Sheet Prepared by Mary Campbell, M.D." This document was circulated to Members of the House of Representatives in October, before HR 1833 came to a vote in that house. This document contains the following passage:

"Q: When does the fetus die?

"A: 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 at the beginning of the procedure while the fetus is still in the womb."]

Dr. CAMPBELL. I was quoting Dr. McMahon at that time. [Editor's note: There is no reference to Dr. McMahon anywhere in Dr. Campbell's five-page factsheet.] On thinking it over in more depth, I believe because there are no EEG studies available——

Senator ABRAHAM. So you no longer adhere to the position that you say in here, "the fetus dies of an overdose of anesthesia given to the mother intravenously." That is no longer your position?

Dr. CAMPBELL. I believe that is true.

Senator ABRAHAM. You believe that is true?

Dr. CAMPBELL. I believe that is true.

Senator ABRAHAM. Dr. Ellison, would you like to comment on that?

Dr. ELLISON (President, American Society of Anesthesiologists). There is absolutely no basis in scientific fact for that statement. There is—I can present you a study in the American Journal of Obstetrics and Gynecology, 1989, by [names inaudible] et al, of 5,400 cases of women having surgery having general anesthesia or regional anesthesia in which the fetus did not suffer demise. I think the suggestion that the anesthesia given to the mother, be it regional or general, is going to cause brain death of the fetus is without basis of fact.

Dr. CAMPBELL. I have not said brain death. I'm saying no spontaneous respirations, no movement.

Senator ABRAHAM. Well, that's what you are saying today, but in this fact sheet, which you prepared I believe fairly recently, it says, "The fetus dies"—there's no qualifying regarding breathing or anything else—"of an overdoes of anesthesia." I mean, that is a very clear statement assertion.

Dr. CAMPBELL. [Pause] I simplified that for Congress. [Outburst of laughter from audience.] I do not actually believe that you want a full discussion of when death occurs.

Senator ABRAHAM. Well, we are forced to make those decisions, and I guess my question is that how many other things would you say in the fact sheet or in your statements today have been likewise simplified in this dramatic fashion?

Dr. CAMPBELL. Since I have over 28 years of education and experience in medicine, I would say that is a great deal less and a great deal more simple than what I know.

Senator ABRAHAM. Well, it seems to me that there's a rather substantial disparity between what Dr. Ellison says and what you are both saying now and have certainly written here. I just am wondering how that bears on other comments that have been made.

Mr. ABRAHAM. Mr. President, at that time, we heard from some of the advocates on behalf of maintaining the current practice that it was an anesthetic that was the reason the baby died. The National Council of Anesthesiologists, I think, conclusively and irreversibly rebutted that position.

I was struck—and as the testimony I have had printed in the RECORD will indicate—by the efforts on the part of the advocates to try to fuzz up this issue and make assertions that were patently inaccurate and inconsistent during the course of that hearing.

In my judgment, we should be able to end this practice and we should be able to end it in the context of this legislation which provides, I think, protections for the life of the mother in sufficient fashion to meet whatever standards society might demand.

I understand why some had concerns the last time we debated this issue. Back then, we were told that only a few of these partial-birth abortions were conducted per year. We were told that they only occurred late, very late, in the process of a pregnancy, so late that this was the only option available. We were also told that they were exclusively used in these very rare circumstances to deal with serious fetal defects in high-risk circumstances.

But this year we enter the debate in a different context. We now know that those three pieces of information were not true. As we learned from Ron Fitzsimmons of the National Coalition of Abortion Providers, it is not the case that only a few such procedures occur per year. It is not the case that these only occur very late during a pregnancy, and it is not the case that they only occur in instances of serious fetal deformities and risk. They happen too often, they happen too early, and they happen without the kinds of circumstances and without the same justifications we were told were the exclusive conditions under which they took place.

In my judgment, those statements from Mr. Fitzsimmons, combined with the statements just printed in the RECORD from Dr. Campbell a year ago, make me wonder how many of the other assertions we heard during the debate from so-called experts in favor of this practice are correct. I don't know the answer to that. I have serious questions about some of the arguments made in support of the maintenance of these practices.

There are, however, a variety of facts which have come to light during the debate this year that seem to me not only to be accurate but have strong bearing on how Members of this body should deal with this issue.

The Physicians' Ad Hoc Coalition for Truth, a 600-member group of physician specialists, issued a variety of statements in specific reference to partial-birth abortions. Included is this the statement:

> Partial-birth abortion is never medically necessary to protect the mother's health or her future fertility. On the contrary, this procedure can pose a significant threat to both.

In addition, that organization has indicated:

> It is never medically necessary in order to protect a woman's life, health, or future fertility, to deliberately kill an unborn child in the second and third trimester of pregnancy, and certainly not by mostly delivering the child before putting him or her to death.

For these reasons, I hope that we can join together—a majority of us already have—and I hope this time an overwhelming majority of us will join together to support the legislation before us offered by the Senator from Pennsylvania.

In light of the new information, both the refutation of the claims made by proponents of the partial-birth abortion procedure, as well as those made

by the various physician committees that have now emerged in support of the abolition of this practice, it seems to me that it is time for us to end this horrible procedure.

I just want to make two other comments, Mr. President. They go to part of the debate which I have been watching for several days now and recollect from last year, and that is the argument that we hear because we are not doctors in this body, we lack the expertise to deal with these issues. It is true that only one of us is a doctor, but we have heard from him, and I think he has been very compelling in his statements on the floor that it is time for us to end the partial-birth abortion procedure. If a doctor's advice makes sense, the advice of our doctor from Tennessee should make sense to all of us.

It also is the case that we, as Members of the Senate, are called upon to act as experts in a variety of areas where our own experiences, education and training have not necessarily prepared us before our elections to do the people's business. None of us, I don't believe, in this body, are nuclear physicists, and yet we are regularly called upon to make important decisions with respect to nuclear policy. Not all of us in this body have expertise or have served in the military, and yet all of us are called upon to make extraordinarily difficult choices with respect to the defense of our Nation. On and on it goes across the spectrum of issues.

This is not a unique circumstance. It is consistent with the responsibilities we have here to make judgments, to learn the facts, to do the best we can and to consult the experts. We have done that on this issue, and that is why I believe a majority of Members in this Chamber are going to vote to end the partial-birth abortion practice.

I will just conclude with my own personal experiences, two of them. First involves the experience my wife and I had, which I have related before on this floor, and it is a major reason why I support this legislation. When our two oldest children were born almost 4 years ago, they were very early in the process. They were twins, and they came early. We were in a neonatal intensive care unit for several weeks with them.

We were lucky because our children were sufficiently developed that they were able to come home with us after a fairly brief stay, but we also got to know the families whose children came at an earlier point in the pregnancy, some who were born with birthweights under 2 pounds, some almost 1 pound—small, tiny children who would be potential victims of the partial-birth abortion procedure, struggling and surviving. We were lucky, as I say, because our daughters were born fairly well along in the process, so we only were in that circumstance for a couple of weeks.

But just a few months ago, we had it occur again in our family, this time my wife's sister, whose child was born I believe in the 28th week of pregnancy and was, therefore, in the neonatal intensive care unit for many, many weeks.

The experiences we have gone through, the familiarity we have developed with these tiny newborn babies and their struggle for survival makes at least this Senator extraordinarily committed to trying to protect and defend those babies. I believe, at a minimum, we should be able to protect them from practices such as the partial-birth abortion. For that reason, today I speak in support of the legislation.

I thank the Chair and yield the floor back to the Senator from Pennsylvania.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I thank the Senator from Michigan for his excellent statement and for his tremendous defense of the unborn, particularly on this particular issue. He has been a partner in providing information to Senators on the facts, the real facts of what has gone on here on the issue of partial-birth abortion. I want to address a couple of things the Senators from California talked about in closing my remarks.

The Senator from California said that conditions could differ; that there is always a chance that something could happen.

I will just refer again to the quote from over about 500 physicians, including many people who deal in the area of maternal fetal medicine, perinatology, people who deal with high-risk pregnancies. The experts—we hear so much about we are not the experts. I am not the expert. I am talking about the people who are the experts. This is what the experts say. They don't equivocate. Senator FRIST read from the head of obstetrics at Vanderbilt University, one of the most prestigious universities in our country. He agrees with this comment:

> While it may become necessary, in the second or third trimester, to end a pregnancy in order to protect the mother's life or health, abortion is never required—i.e., it is never medically necessary, in order to preserve a woman's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester, and certainly not by mostly delivering the child before putting him or her to death. What is required in the circumstances specified by Senator Daschle—
>
> Boxer-Feinstein—
>
> is separation of the child from the mother, not the death of the child.

It is never necessary. According to doctors, not RICK SANTORUM, according to doctors who practice in this speciality, hundreds of them, it is not necessary, you don't have to kill the child.

Let's use your own common sense. Use our own common sense. Here is this procedure. You have dilated the cervix over 2 days, you brought the baby into position feet first, you have taken it out of the womb, you have taken it out of the uterus, out of the birth canal, the baby is completely out of the mother's uterus, birth canal, except the head. Tell me what health reason of the mother requires you to kill this baby? These babies are very small. You can see the hands of the physician compared to the size of this baby. This baby can fit in the palm of your hand. Why do you have to kill this baby?

There is no reason, as these doctors just said, that you cannot at least give this baby some chance, some chance of living. Why? In fact, the argument is made by several doctors who have written me that by puncturing the base of the skull like that in a blind procedure—you cannot see the area where you are inserting these scissors—that you risk, obviously, missing, causing damage, you risk—and this is graphic, but it, again, was written to me by several physicians—the splintering of the skull can cause problems. I know this is graphic stuff, but this is reality. This is what they want to keep legal, and they believe that this protects the woman's health. I guarantee you this does not protect the woman's health.

There is no reason at this point to kill this baby, but they insist upon having that choice. This is the choice right here. It is not a choice. It doesn't have to be a choice. It is not me saying it doesn't have to be a choice, it is doctor after doctor, specialist after specialist saying it doesn't have to be a choice.

Their legislation pretends to bar third-trimester abortions, postviability abortions with a narrow health exception, they suggest. What they say is that it comports with Roe versus Wade. We know what Roe versus Wade and Doe versus Bolton say that health is anything—mental health, depression, the mother is young. Those are all reasons approved by the courts to allow an abortion any time—any time—for any reason. Those are all legitimate health reasons. They continue to be health reasons.

They say we don't want elective abortions. Let me tell you what Dr. Warren Hern said—again, Dr. Warren M. Hern, author of "Abortion Practice," what I am told is the definitive textbook on abortions who does second- and third-trimester abortions, said it yesterday in the Bergen County Record, and I will repeat it:

> I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.

The Boxer-Feinstein amendment does not say anything about physical health. This is the Daschle amendment he is referring to, which also does not do anything. But there is never a case, according to Dr. Hern, where he cannot do an abortion and claim physical health.

He says it again, just in case he was misquoted, in today's USA Today:

I say every pregnancy carries a risk of death.

What this amendment does is nothing. If you want to stop partial-birth abortions, vote against the Boxer-Feinstein amendment.

The PRESIDING OFFICER (Mr. HAGEL). All time has expired. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

They yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 28, nays 72, as follows:

[Rollcall Vote No. 69 Leg.]

YEAS—28

Akaka	Inouye	Murray
Baucus	Jeffords	Reed
Bingaman	Kennedy	Robb
Boxer	Kerrey	Rockefeller
Bryan	Kerry	Sarbanes
Chafee	Lautenberg	Torricelli
Cleland	Leahy	Wellstone
Durbin	Levin	Wyden
Feinstein	Mikulski	
Glenn	Moseley-Braun	

NAYS—72

Abraham	Enzi	Lieberman
Allard	Faircloth	Lott
Ashcroft	Feingold	Lugar
Bennett	Ford	Mack
Biden	Frist	McCain
Bond	Gorton	McConnell
Breaux	Graham	Moynihan
Brownback	Gramm	Murkowski
Bumpers	Grams	Nickles
Burns	Grassley	Reid
Byrd	Gregg	Roberts
Campbell	Hagel	Roth
Coats	Harkin	Santorum
Cochran	Hatch	Sessions
Collins	Helms	Shelby
Conrad	Hollings	Smith (NH)
Coverdell	Hutchinson	Smith (OR)
Craig	Hutchison	Snowe
D'Amato	Inhofe	Specter
Daschle	Johnson	Stevens
DeWine	Kempthorne	Thomas
Dodd	Kohl	Thompson
Domenici	Kyl	Thurmond
Dorgan	Landrieu	Warner

The amendment (No. 288) was rejected.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from South Dakota.

AMENDMENT NO. 289

(Purpose: To amend title 18, United States Code, to prohibit the performance of an abortion where the fetus is determined to be viable)

Mr. DASCHLE. Mr. President, I have an amendment at the desk and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] for himself, Ms. SNOWE, Ms. MIKULSKI, Mrs. MURRAY, Ms. LANDRIEU, Ms. COLLINS, Mr. LIEBERMAN, and Mr. KENNEDY, proposes an amendment numbered 289.

Mr. DASCHLE. 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:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Abortion Ban Act of 1997".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As the Supreme Court recognized in Roe v. Wade, the government has an "important and legitimate interest in preserving and protecting the health of the pregnant woman...and has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grow in substantiality as the woman approaches term and, at a point during pregnancy, each becomes compelling".

(2) In delineating at what point the Government's interest in fetal life becomes "compelling", Roe v. Wade held that "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability", a conclusion reaffirmed in Planned Parenthood of Southeastern Pennsylvania v. Casey.

(3) Planned Parenthood of Southeastern Pennsylvania v. Casey also reiterated the holding in Roe v. Wade that the government's interest in potential life becomes compelling with fetal viability, stating that "subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother".

(4) According to the Supreme Court, viability "is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of State protection that now overrides the rights of the woman".

(5) The Supreme Court has thus indicated that it is constitutional for Congress to ban abortions occurring after viability so long as the ban does not apply when a woman's life or health faces a serious threat.

(6) Even when it is necessary to terminate a pregnancy to save the life or health of the mother, every medically appropriate measure should be taken to deliver a viable fetus.

(7) It is well established that women may suffer serious health conditions during pregnancy, such as breast cancer, preeclampsia, uterine rupture or non-Hodgkin's lymphoma, among others, that may require the pregnancy to be terminated.

(8) While such situations are rare, not only would it be unconstitutional but it would be unconscionable for Congress to ban abortions in such cases, forcing women to endure severe damage to their health and, in some cases, risk early death.

(9) In cases where the mother's health is not at such high risk, however, it is appropriate for Congress to assert its "compelling interest" in fetal life by prohibiting abortions after fetal viability.

(10) While many States have banned abortions of viable fetuses, in some States it continues to be legal for a healthy woman to abort a viable fetus.

(11) As a result, women seeking abortions may travel between the States to take advantage of differing State laws.

(12) To prevent abortions of viable fetuses not necessitated by severe medical complications, Congress must act to make such abortions illegal in all States.

(13) abortion of a viable fetus should be prohibited throughout the United States, unless a woman's life or health is threatened and, even when it is necessary to terminate the pregnancy, every measure should be taken, consistent with the goals of protecting the mother's life and health, to preserve the life and health of the fetus.

SEC. 3. ABORTION PROHIBITION.

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

"CHAPTER 74—ABORTION PROHIBITION

"Sec.
"1531. Prohibition.
"1532. Penalties.
"1533. State regulations.
"1534. Rule of construction.

"§ 1531 Prohibition.

"(a) IN GENERAL.—It shall be unlawful for a physician to abort a viable fetus unless the physician certifies that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

"(b) GRIEVOUS INJURY.—

"(1) IN GENERAL.—For purposes of subsection (a), the term 'grievous injury' means—

"(A) a severely debilitating disease or impairment specifically caused by the pregnancy; or

"(B) an inability to provide necessary treatment for a life-threatening condition.

"(2) LIMITATION.—The term 'grievous injury' does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.

"(c) PHYSICIAN.—In this chapter, 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, except that any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs an abortion in violation of subsection (a) shall be subject to the provisions of this section.

"(d) NO CONSPIRACY.—No woman who has had an abortion after fetal viability may be prosecuted under this section for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of title 18, United States Code.

"§ 1532 Penalties.

"(a) ACTION BY ATTORNEY GENERAL.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General may commence a civil action under this chapter in any appropriate United States district court to enforce the provisions of this chapter.

"(b) RELIEF.—

"(1) FIRST OFFENSE.—Upon a finding by the court that the respondent in an action commenced under subsection (a) has knowingly violated a provision of this chapter, the court shall notify the appropriate State medical licensing authority in order to effect the suspension of the respondent's medical license in accordance with the regulations and

procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding $100,000, or both.

"(2) SECOND OFFENSE.—If a respondent in an action commenced under subsection (a) has been found to have knowingly violated a provision of this chapter on a prior occasion, the court shall notify the appropriate State medical licensing authority in order to effect the revocation of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding $250,000, or both.

"(3) HEARING.—With respect to an action under subsection (a), the appropriate State medical licensing authority shall be given notification of and an opportunity to be heard at a hearing to determine the penalty to be imposed under this subsection.

"(c) CERTIFICATION REQUIREMENTS.—At the time of the commencement of an action under subsection (a), the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General shall certify to the court involved that, at least 30 calendar days prior to the filing of such action, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney involved—

"(1) has provided notice of the alleged violation of this section, in writing, to the Governor or chief executive officer and attorney general or chief legal officer of the State or political subdivision involved, as well as to the State medical licensing board or other appropriate State agency; and

"(2) believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

"§ 1533 Regulations.

"(a) REGULATIONS OF SECRETARY FOR CERTIFICATION.—

"(1) IN GENERAL.—Not later than 60 days after the date of enactment of this chapter, the Secretary of Health and Human Services shall publish proposed regulations for the filing of certifications by physicians under section 1531(a).

"(2) REQUIREMENT.—The regulations under paragraph (1) shall require that a certification filed under section 1531(a) contain—

"(A) a certification by the physician (on penalty of perjury, as permitted under section 1746 of title 28) that, in his or her best medical judgment, the abortion involved was medically necessary pursuant to such section; and

"(B) a description by the physician of the medical indications supporting his or her judgment.

"(3) CONFIDENTIALITY.—The Secretary of Health and Human Services shall promulgate regulations to ensure that the identity of the mother described in section 1531(a) is kept confidential, with respect to a certification filed by a physician under section 1531(a).

"(b) ACTION BY STATE.—A State, and the medical licensing authority of the State, shall develop regulations and procedures for the revocation or suspension of the medical license of a physician upon a finding under section 1532 that the physician has violated a provision of this chapter. A State that fails to implement such procedures shall be subject to loss of funding under title XIX of the Social Security Act.

"§ 1534 Rule of Construction.

"(1) IN GENERAL.—The requirements of this chapter shall not apply with respect to post-viability abortions in a State if there is a State law in effect in the State that regulates, restricts, or prohibits such abortions to the extent permitted by the Constitution of the United States.

"(2) STATE LAW.—In paragraph (1), the term "State law" includes all laws, decisions, rules or regulations of any State, or any other State action having the effect of law.".

(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. Prohibition of post-viability abortions ..... 1531".

Mr. DASCHLE. Mr. President, for the information of all Senators, it is my understanding we have 5 hours of debate to be divided evenly, is that correct, beginning at 2:30?

The PRESIDING OFFICER. That is correct.

Mr. DASCHLE. Mr. President, the issue of late-term abortion has been a very troubling issue for a lot of us. For the past 6 or 7 months, I have been making an effort to better understand all of the implications and all of the circumstances surrounding this issue. I am repulsed by the practice of so-called partial-birth abortions, but I am also very sensitive to the extraordinarily personal circumstances that many women face as they face excruciating decisions involving their lives and the lives of their potential children.

I was troubled by the votes cast last fall, and indicated at that time that I was going to do whatever I could to see if we could find a compromise. Today, I come to the floor with the realization that I could not find a compromise. What I did do was seek out doctors, constitutional experts, people in virtually every walk of life, who have voiced their opinion about this issue.

The conclusion I reached was that rather than a compromise, an entirely different approach may be our best solution, not necessarily saying yes or no to what it was others have advocated with their partial-birth-abortion ban because that is a procedural prohibition.

My feeling—and the feeling expressed by many experts from whom I have sought advice—was that the pending legislation, the so-called partial-birth-abortion ban would not stop one abortion. This will not end abortion. This will simply force physicians to use other, equally troubling forms of abortion that I will address in a little while.

So my concern was: Could we find a constitutional way with which to address this issue and also find a way to provide a comprehensive ban on abortion?

In seeking ways in which to do that, I began with a series of conclusions and considerations that I want to talk about momentarily.

First of all, I was amazed to find that, in spite of all the statistics bandied about with regard to numbers, there are very few numbers upon which anybody can base their estimates with any reliability—very, very few. The numbers of the Alan Guttmacher Institute are considered the best and used by the Centers for Disease Control. They report that 89 percent of all abortions occur in the first 12 weeks, that 10 percent of the abortions occur in weeks 13 to 20, that eight-tenths of 1 percent of all abortions occur in weeks 21 to 24, and that six-hundredths of 1 percent of all abortions occur in the final weeks beyond that.

Those aren't my figures. They are the most legitimate estimations based upon the available evidence and the statistical data which is used by the Centers for Disease Control.

So that is one question. When do abortions occur? The answer by the Guttmacher Institute is this: 89 percent occur in the first 12 weeks.

The real issue, in my view, is not which procedure ought to be outlawed, because I find, as I have already indicated, the so-called partial-birth abortion of viable fetuses to be absolutely abhorrent, as I find other abortion procedures. The question is when, and under what circumstances, should the Government restrict abortion? It seems to me that really is what is going to cause us to deal with this issue in a way that will solve the problem and not simply force it into another context.

When and under what circumstances should the Government restrict abortion?

The Supreme Court has ruled on this matter on a number of occasions. They have already given us guidance that they require us to follow, if we are going to be within the constitutional parameters in answering the question that I just asked.

Obviously, Roe versus Wade is the basis upon which all decisions have subsequently been made, and Roe versus Wade simply asserts that a woman's decision whether or not to terminate her pregnancy is protected by the Constitution.

There have been proposals to change the Constitution in that regard, and I know some of my colleagues support a constitutional amendment to overturn Roe versus Wade. But that isn't the issue today.

Colautti versus Franklin in 1979 further clarified Roe versus Wade. The Court said, "A fetus is considered viable if it is potentially able to live outside the womb, albeit with artificial aid."

Why is that decision important? That decision is important because in 1973, the Court ruled that it was really on the basis of trimesters that we would

make some decisions with regard to a woman's right and that it was within the first two trimesters—chosen to approximate the transition at viability—that a woman had a right during those first two trimesters to make the decision, and after that it would be up to the States to decide what limits they would impose on a woman's right to choose, because at that point there was clearly the possibility that a fetus could live outside the womb. They clarified the definition of viability in Colautti. They built upon it. They created a new set of criteria by which to make that decision in 1979. They said now with technology, viability is not something that neatly falls into the categories of trimesters.

Then in 1992, in Planned Parenthood versus Casey, the Court redefined the point at which the States could restrict abortion by incorporating the viability definition. The Court clarified the constraints and the circumstances under which a woman can consider an abortion. They have already decided now that the States may restrict abortion after viability. Now the question is, Are there any other circumstances? Well, in Casey the Court ruled that there can be a prohibition as long as it does not place "a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."

What do they mean by that? Basically they said if a fetus is viewed to be nonviable, you cannot put obstacles in the place of a woman. Viability is determined not only, of course, by time but also by the condition of the fetus.

So in cases throughout the 1970's, 1980's, and 1990's, the Court has made it very clear what it is they intend to do with regard to protection of the fetus as well as protection of the mother. Viability then—based upon the decisions made by the Court—is simply the ability to sustain survivability outside the womb with or without life support. If a fetus can live outside the womb with life support, that fetus has to be protected—has to be protected.

So our amendment very clearly says, in findings that I will read in a moment, it shall be the policy, the determination of this country, that we must make every medically appropriate effort to protect a viable fetus.

That viability, as I said a moment ago, occurs between the 23d and the 28th weeks. Who determines viability? I have heard people say, "Well, abortionists determine viability." Abortionists. But we all know that to be a pejorative term. Of course abortionists may determine that. But a high-risk ob/gyn determines that, too. The question is, What is the alternative to that? What is the alternative to a doctor making the determination of viability? Based on the medical evidence, the medical information available in their best judgment, is a fetus viable? That is what the Court requires. That is what the Supreme Court rulings were all about: protecting viable fetuses after defining the concept of viability.

So the key questions posed by the bill that is pending seem to me to be, Should just one or all post-viability abortion procedures be banned given what the Court has ruled? Should it be just one, or should it be all of them? Should a mother's health be protected throughout pregnancy? Should that have any consideration at all?

Should a woman's constitutional right to choose before viability be preserved? Those seem to me to be pretty fundamental questions that this debate brings about. I think it is a legitimate, a very fair, an understandable debate around which there are very deeply divided opinions.

But those are the questions that I think are the most significant as we debate the legislative options we are debating right now.

So, Mr. President, my proposal, and the proposal cosponsored by a number of my colleagues on both sides of the aisle—not seeking again to compromise but to provide a different approach—simply does this. S. 6, or H.R. 1122, bans one procedure that I believe ought to be banned. I personally believe it ought to be banned. Our alternative bans all procedures.

S. 6, because it doesn't distinguish between pre- and post-viability, in my view—and because it doesn't address a woman's health at all—in my view would be ruled unconstitutional. What we have attempted to do is to recognize and to respect constitutional findings of the Supreme Court, to say that present viability—I must add I believe viability could conceivably be reached at less than 23 at some point in the future. So I believe it is a very honest way with which to determine on a timeline when a woman's right to choose ought to end in terms of being the sole constitutional consideration. But right now it is viewed to be 23 weeks, well into the 6th month. But we preserve the constitutionality by ensuring that a woman's right is respected as the Court has required. We also said that there are circumstances involving health in very, very extraordinary circumstances, even addressed by the AMA, that ought to be considered.

So, Mr. President, those are the two approaches that we have pending now this afternoon.

According to the Guttmacher Institute, 99 percent of the abortions are performed within the first 20 weeks. The right to choose is protected. Viability comes at week 23, approximately. The alternative protects the fetus after that period of time. H.R. 1122 and S. 6 ban abortion using that procedure only—before amd after viability. So from a timeline point of view, in that time before viability, we protect the right of the mother to choose, as the Court requires.

What about after viability, because this is really the crux of the whole debate? What do we do to protect a viable fetus?

This is what troubles me perhaps the most about where we are with regard to S. 6. We have seen the procedure graphically depicted, and I think that graphic depiction clearly compels one to want to respond in a way that says we have to end it, in some way. I have not chosen this afternoon to depict the alternatives on similar charts.

(Mr. HUTCHINSON assumed the chair.)

Mr. DASCHLE. But I must tell you I have seen them. So-called partial-birth abortion is technically called dilatation and extraction. There is another dilatation method called dilatation and evacuation. In that method a fetus is dismembered inside the womb and removed. You could depict that very graphically, too. S. 6 does not restrict that approach.

Induction is a method that you could graphically depict. Saline solution or other agents chemically poison the fetus and premature labor is induced. A chemical poisoning of the fetus could be graphically depicted.

You could graphically depict hysterotomies. Hysterotomies are preterm c-sections, an incision. A fetus is lifted outside the womb and the life is terminated. That could be graphically depicted.

You could graphically depict a hysterectomy used for purposes of abortion where a woman's womb is completely pulled out of her body.

Every one of the procedures that I have just verbally depicted would still be legal under S. 6. They are still legal. And what amazes me is that in spite of the fact that they are every bit as graphically repulsive, they are not addressed in S. 6. A doctor somehow is supposed to certify that the one procedure is inappropriate—dilatation and extraction is something that ought to be prohibited—but under S. 6 dilation and evacuation, induction, hysterotomy, hysterectomy are all OK.

We went onto the Web and looked at what National Right to Life Committee had said about these particular procedures. As of the first of May, National Right to Life said that dilatation and evacuation "may cause cervical laceration." Why? Cervical laceration may be caused because when you shove the medical instrument into a woman's womb, you may puncture it. You may puncture it seriously. But there is no ban on this procedure. "Bleeding may be profuse," according to Right to Life.

Induction, according to Right to Life, "risks cervical trauma, infection, hemorrhage, cardiac arrest and rupture of the uterus. Death is not unheard of." Those are not Tom DASCHLE's words but those of the National Right to Life Committee. But guess what. No ban. No ban.

According to the National Right to Life Committee, hysterotomy, or c-section involves "the highest risk to the health of the mother; potential for rupture during subsequent pregnancies."

And there is no ban for that procedure. What is amazing, at least as of May 1, is that Right to Life cites no maternal health risks for the D&X procedure, and yet, lo and behold, that is the one that is banned.

Now, I understand why it is banned, and I am sympathetic to banning it. But does it not seem a little unusual that we would not consider these other approaches, that we would not worry about causing cervical lacerations, bleeding, that we would not worry about cervical trauma and infection and hemorrhage and cardiac arrest and uterine rupture?

Now, again, I could have a graphic illustration of a cervical laceration. I could have a graphic illustration of cervical trauma and infection and hemorrhages and cardiac arrest. But you do not need much of an imagination and you do not have to be married to a woman very long to be pretty sympathetic.

So who should decide, Mr. President? That is the question. Who should decide? Who should decide which medical procedure is appropriate? A woman and her doctor, knowing all these ramifications, or the Government? That is the question. That is what we are trying to grapple with. We are trying to make the best decision about what to do with these horrendous circumstances.

Well, the Court has also grappled with it. The Court has also tried to figure out a way constitutionally to address all of these issues. In Roe versus Wade, what the Court says is that a woman's health ought to be protected throughout pregnancy for the reasons cited, for all these reasons. These are the reasons the Court was concerned about health. You do not have to be a doctor to know that, given the circumstances involving a woman's health, we have to come up with some legal protection.

In the 1975 case of Planned Parenthood versus Danforth, the Court said you cannot force a woman and her physician to terminate her pregnancy by methods more dangerous to her health than the method outlawed. In other words, you cannot risk creating a more egregious health set of circumstances for the mother.

And then in Thornburgh versus American College of Ob-Gyn's in 1986, it says you cannot force a mother to bear an increased medical risk to save a viable fetus. You may not trade off the mother's health for the fetus's health.

That is what the Court says.

So, Mr. President, over the last 6 months, we have worked, asking, if we want to act in the Senate and not worry about being overturned by the Court 3 months later, how do we deal with these things? How can you ensure that we are not going to be back here this fall or next year having been declared unconstitutional? What do we do about these Court decisions? They are not just there as guidance. They are there as law. We do not have the luxury of saying we will agree or we will not agree unless we change the Constitution.

It is under those constraints and in that context that we attempt to find ways with which to address this issue, first in a comprehensive way, banning all procedures; and, second, in a constitutional way so that we do not have to do our work over again in 6 months or a year.

I know there have been a lot of different charts in the Chamber during this debate quoting physicians groups, and I know that you can say anything and use a quote to justify it. But I also know that the American College of Obstetricians and Gynecologists includes both pro-life and pro-choice physicians. I have talked to them. I know they are there. They have been very involved in this debate from the beginning because they, more than anybody else outside mothers who are affected, have to deal with this issue. Pro-life and pro-choice physicians have had to confront this matter. And so ACOG, as they are called, the American College of Obstetricians and Gynecologists, has said in a letter:

> An intact D&X may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon a woman's particular circumstances can make this decision. The intervention of legislative bodies into the medical decisionmaking is inappropriate, ill-advised, and dangerous.

Now, we do not have to agree with that. All I am saying is that is what this group of Republican and Democratic, pro-life and pro-choice, doctors have said officially. That is their position. You can challenge it and others have, but I believe that they are perhaps the most respected organization directly involved with this particular issue. They do not deal with hearts. They do not deal with brains. They do not deal with feet. They deal with pregnancy. They deal with fetuses. They deal with wombs and uteruses and cervixes and all of the things we have had graphically depicted. They are the experts.

Here is what they also tell us, and they cite manuals like this, the Clinical Manual of Obstetrics, from the Medical School of the University of California, Davis, or the Manual of Obstetrics, with contributions from respected obstetric professors from around the country.

They say that there are cases when pregnancy termination is required. Pregnancy termination. Now, keep in mind, there is a difference between pregnancy termination by delivery and by abortion. I think everybody in this Chamber would agree that there are some cases when pregnancy termination is required, but pregnancy termination may be delivering a live fetus, a child. And what we are saying in our legislation is that in every case where it is possible to deliver a viable fetus a doctor must do that—must. But there are cases when, unfortunately, that will not provide the mechanism a doctor needs to respond to the crisis.

"Primary pulmonary hypertension, involves the sudden death or intractable congestive heart failure. Maternal mortality approaches 50 percent. This or other complications occur in 10 to 40 percent of patients with chronic hypertension."

"Preeclampsia. Severe hypertension and accompanying renal or liver failure." Five to 10 percent of pregnancies in circumstances of that kind. "Cardiomyopathy occurs late in pregnancy in women with no history of heart disease as a distinct well described syndrome of cardiac failure."

These are diseases caused by the pregnancy, Mr. President, that doctors and manuals like these cite as reasons for pregnancy termination.

Now, there are also other cases, other situations unrelated to the pregnancy itself when a pregnancy complicates treatment.

"Cancers. Cancer occurs in approximately 1 in every 1,000 pregnancies. Pregnancy depresses mother's immune system; radiation and chemotherapy are harmful to the fetus."

Again, the first consideration for termination of the pregnancy must be early delivery. If possible, deliver the fetus.

"Lymphoma. 50 percent cure rate with immediate treatment; likely death in 6 months if delayed; radiation and chemotherapy risk fetal mutation." Again, if you can deliver the child, do so. Do so.

Breast cancer. 1 in 3,000 pregnancies. "Increased estrogen and lactose production during pregnancy accelerates cancer; immune system depressed."

Those are cases, categories of cases, Mr. President, that are listed in obstetrics manuals because they can and do occur. Physicians should be prepared for them, and should know the proper ways to treat pregnant women who develop these serious conditions.

There are specific cases that graphically illustrate the answer to the question posed so often by those on the other side of this amendment: Why not deliver? I want to cite a few because I think this is really the crux of the issue.

These are the specific cases. A woman in her 25th week is hemorrhaging with internal injuries. Her blood would not clot, leading to uncontrollable bleeding. Delivery by c-section or induction was impossible, because c-section and its increased blood

loss posed significant risks. Induced delivery would take too long. Because of the risks to the mother's life and health and the low chance of fetal survival, termination through abortion was chosen because it could not be delivered.

It has always concerned me that some say we ought to prohibit abortion except in cases of immediate life endangerment—that they are unwilling to recognize that there also may be cases involving serious health endangerment. How is it that life and death are so clearly delineated, that health never falls in between them? If there are cases involving death, would there not also be cases involving health? And who but the doctor decides when the mother's life is endangered? If we are making liars of all "abortionists," would we not be making liars of doctors who are doing their best to save the mother's life, who decide that termination of a pregnancy through abortion may be required, as is allowed in H.R. 1122?

Case No. 2: A 23-year-old woman in her 24th week presented with preeclampsia and deteriorating kidney function. Doctors tried to induce delivery early. After 3 days of unsuccessful attempts, induction was still not possible. At that time, the woman's failing kidneys became completely nonfunctional, risking permanent kidney failure. Recognizing that induction was impossible and c-section totally out of the question, the pregnancy was terminated to save the woman's health—terminated by abortion.

Mr. President, there are others. I will read one provided to us by a trauma surgeon whom I know well—highly regarded, nationally recognized. A patient in the 6th month of pregnancy was severely injured in a motor vehicle collision. She sustained multiple fractures to her extremities and a critical head injury, developed adult respiratory distress syndrome, massive pulmonary inflammation. Her lungs were stiff and it was impossible to ventilate. The trauma staff used every possible technique to improve the lung function, but the size of her uterus made the ventilator unable to inflate her lung. After agonizing, consulting with the family, the physicians came to the conclusion that to protect her heart and lungs, to save her life and her long-term health, they had to abort.

And finally, Mr. President, a doctor from my own State of South Dakota related to me a tragic circumstance that completely answers the question of why doctors sometimes absolutely cannot deliver a viable fetus. A 25-year-old woman arrived at the hospital in active, spontaneous labor in her 25th week of pregnancy. The fetus was in the breech position, its feet coming out first. Because of the breech position, the woman's cervix was not fully dilated. Even though most of a preterm fetus can pass through even a partially dilated cervix, a normal fetal head is sometimes too large to be fully delivered and becomes stuck. It is not stopped by the physician, prevented from coming out—it is tragically, but naturally, trapped.

In this case, the fetus was already in the process of preterm, spontaneous delivery, and because it could not be completely delivered, it was impossible to further dilate the woman artificially. Manual stretching of the cervix was necessary to create a wide enough opening for complete delivery. This South Dakotan doctor tried pulling at the woman's cervix—the only option left for the doctor—in order to widen the opening enough to deliver the fetus.

Manual stretching was not successful. In addition to being very difficult, it also poses great risks to the woman's health and future fertility because such stretching can permanently damage the cervix, risking hemorrhaging. Without complete dilation, the fetus suffocates. Evacuation must be effected by any means, and in this tragic case, that evacuation of the fetus was by the D&X procedure.

These were real cases. These did not come from "abortionists." These were doctors trying their very best to help the fetus and the mother to survive. That is what they were trying to do. They were not in the business of abortion. They were in the business of life.

What do you do in cases like this? Say that the Government has ruled that these are all impossible? Would that be our response? "The Government has ruled that none of these cases exist; it is all a figment of your imagination. You are trying to abort. Don't kid us, we know better. We are the Government. We can decide for you. We will tell you. None of these are possible. You are lying to us." Is that what we want to say? Do we really know better than this trauma surgeon? Do we know better than these physicians who have been there, who have had blood on their hands, who have tried to save a mother's life and a fetus?

Having thought through all of this, and having talked to a lot of our colleagues, this is the best, tightest, toughest language we know how to come up with:

> It shall be unlawful to abort a viable fetus unless the physician certifies that continuation of the pregnancy would threaten the mother's life or risk grievous injury—grievous injury—to her physical health.
>
> "Grievous injury" shall be defined as:
>
> (a) a severely debilitating disease or impairment specifically caused by the pregnancy.

That is case No. 1 that I outlined on the chart. Or:

> (b) an inability to provide necessary treatment for a life-threatening condition.

That is case No. 2 that I outlined in my chart.

> "Grievous injury," we further elaborate, "does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated."

The American College of Obstetricians and Gynecologists have been very helpful to us in trying to work through this. They say that this is acceptable—they have endorsed our substitute—because it includes "an exception when it is necessary for a woman's health * * * physicians [have] to make judgments about individual patients," as these cases would dictate.

There is a similar recommendation in the AMA Board of Trustees draft report just released and so often raised on the floor in the last couple of days. You can agree or disagree with its findings, with its recommendations, but they did say, quoted in the report: "Except in extraordinary circumstances, maternal health factors which demand termination of the pregnancy can be accommodated without sacrifice of the fetus. * * *"

And we say, "Hurrah, absolutely. That is exactly what we are trying to do. Let us not end the fetus's life if it is at all possible." But keep in mind that first phrase, "except in extraordinary circumstances." I have just tried to give you some extraordinary circumstances—not figments of somebody's imagination, but real life situations presented to us by real life doctors who said, "We are going to do everything possible to save the fetus, but there are," as the AMA has said," extraordinary circumstances that cannot be wished away."

So, who should decide when the medical risks are serious enough? Who should decide? The Government or the doctors?

I believe that H.R. 1122, having laid it out as clearly as I know how to lay it out, is unconstitutional. Because doctors can use other procedures, it will not stop a single abortion. I am still absolutely convinced it is a procedure that ought to be abolished. But if we are trying to find ways with which to deal with circumstances in real life, involving efforts to stop abortion after a fetus is viable, H.R. 1122 does not do it. It will not do it. What we do is simply say, look, the Constitution has said that prior to viability, whether you like it or not, unless you are willing to change the Constitution, prior to viability we may not restrict a woman's access to safe abortion. I support a woman's right to choose prior to viability. But that is not the issue, because it is the constitutional requirement.

Under our substitute, after viability, all procedures are banned with an exception only when life and health are seriously threatened. I have seen the criticisms. I have seen the arguments that, "Well, a doctor certainly can do his own thing. Who is looking? A doctor can just lie." But a doctor who is

caught lying—and the mother, the family, a nurse, somebody in the hospital, anybody, anybody can call attention to the fact that he lied—and when he is caught he is subject to perjury charges, $100,000 fine and revocation of his license in the first instance; the second time, permanent revocation of his license—the loss of his ability to practice—and a $250,000 fine.

I would be willing to look at any other way with which to ensure that we keep a doctor honest. But I must say, there is no assurance that a doctor is being honest under H.R. 1122. How do we know that a doctor did not perform a dilation and extraction procedure on a woman? How do we know that? He must certify—right? That is the only way we know, if he certifies. Actually, under H.R. 1122, he does not even have to certify, as he must under our substitute. Under H.R. 1122, the doctor must simply assert that the abortion was necessary to save the mother's life if the situation is reported or investigated. Why is it that he cannot lie? Why is it that they are not just as vulnerable to doctors who may try to find a way around the law in this case? Why is it assumed doctors are less likely to lie about a woman's life being threatened than about her health being threatened?

Mr. President, I think the Washington Times last Friday had it right. We spare viable fetuses. Our proposal is stricter than the one pending.

There are a lot of people who wish to be heard, and I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I see a lot of Members here and I will keep my remarks brief in order to give them an opportunity to speak. But I, too, just want to get in a couple of points in response, and a comment. First the comment.

That is, I very much appreciate what the Senator from South Dakota has stated. I respect his opinion. I respect the fact that he is trying to make an effort to deal with a very serious issue, and that is abortion in this country, moving toward making it much more rare. Certainly, I do not doubt his intentions at all. I know this is an issue that not only he is struggling with, on the issue of partial-birth abortion, but other Members who I have talked to and who I have heard from directly and indirectly. This has been an issue that has been a very difficult issue for people to deal with. We are looking for answers and looking for different ways. I respect the effort of the Senator from South Dakota to do what he believes is right.

I hope, and I would just offer this—while I do not agree in the assessment of the Senator from South Dakota as to what his bill does, we have an honest disagreement on that. And I think it is one. I think it is simply a disagreement on what he believes his bill does. He believes it does some things. I will argue as to why I don't think it does what he says it does. Two people can reasonably disagree on that. And we will have that debate here today at length.

I will say that I certainly am open to working with the Senator from South Dakota, and anybody else in this Chamber, after this day is done and this issue is behind us, and hopefully it will be behind us soon, to look at other ways that we can get at these very, very prickly issues. We can do it in a way that can be bipartisan. The people who are generally concerned about unborn children—I know the Senator from South Dakota is. So I just want to start, having said that, and just address the two points which I see are the flaws in his legislation, as well-intentioned as I believe it is.

The Senator from South Dakota referred over and over again to how these different procedures that are not banned by the partial-birth abortion ban, H.R. 1122—he kept saying this is no ban, this is no ban. I suggest, as carefully as the Senator tried to construct this amendment, that in fact his bill is no ban either. It allows for two determinations to be made, two issues to be left to the discretion of the doctor, which creates the loophole by which not one single abortion will be banned under this procedure.

I do not say that lightly. I say that with the very strong conviction that what will happen as a result, if this bill were to become law and signed by the President, there would not be one less abortion done in this country. There would not be one abortion banned in this country.

The reason I say that—and I will talk about two particular areas. I will be brief. I will get into this in more detail later, because I know there are people who want to speak. I am going to be here. They have things to do.

I will talk first about the health exception. I showed the quote today from Dr. Warren Hern. Again, Dr. Hern is an authority on abortion procedures and techniques. He has written "Abortion Practice," Warren M. Hern. This is the definitive textbook on teaching abortion. He does second- and third-trimester abortions.

He does them from all over the world. He instructs doctors through his book and directly on abortion practice. This is what Dr. Hern said yesterday to the Bergen County Record:

> I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.

Dr. Hern, who does second- and third-trimester abortions, was commenting on the Daschle amendment. This is one of the leading people in this field. I just suggest that Dr. Hern, while I could not disagree more with what Dr. Hern says, the fact of the matter is that he can stand there and, in good conscience, say that to not only the Bergen County Record, but to USA Today—he repeated the statement in case there is no validity to the original statement, a different quote, similar in nature—that any pregnancy could be a threat and could cause grievous injury—I know this is the language the press keeps honing in on, "grievous injury" to physical health. Here it is.

I have a lot of other things I am going to say about health and why the health exception, as drafted in this amendment, is a very broad loophole and will not restrict abortions. The fact that the doctor is the one to certify, what does that mean? That is pretty much current law. The doctor certifies when there is a health reason to do an abortion, and we say we are going to ban these, but the doctors determine when there is an exception.

I use the example of recently in the Congress, we banned assault weapons. We said we were going to make assault weapons illegal, but we are going to give the person selling the gun the ability to determine what an assault weapon is. That is what we have done with the Daschle amendment. It has given the person performing the abortion certification dispositive, conclusive authority to determine what is a health reason.

I agree that is what Roe versus Wade says, but the fact that the Daschle amendment parrots that shows that there will be no change in the way doctors view this issue. There will be no change.

The second issue is the issue of viability, and I think Senator DASCHLE points up very accurately the progress we have made since Roe versus Wade in the area of viability, but, again, the only way you can for sure determine whether a child is viable is to try to save the child. There is no way that a doctor can look into the womb of a mother and say this child will survive and this one will not. You cannot do it. They might have guesses, but we have cases of children surviving at 22 weeks, 21 weeks, not many, very few, maybe only singular cases. But how do we know unless we deliver the baby alive, and births after 20 weeks are almost certainly alive if you deliver the baby without doing anything to it. The heart is beating. Unfortunately, they gasp for breath. They will be alive, but you never know whether they are going to survive until you try.

So to suggest that the doctor can then define viability by knowing in advance whether this baby is going to survive, you cannot do that. What you end up doing is, again, leaving the doctor absolute discretion, even at times—I think we are now up to the point at 26 weeks you are into roughly 80 percent survival, but you can still say,

"Twenty percent don't survive, and I make a determination this is one of the 20 percent." It is a reasonable judgment call. There is no way you can second-guess it, because there is no way to know for sure.

You have, literally, up until 26, 27—you can go on, there is not 100-percent certainty survival of viability until well into pregnancy, until maybe even in the 35th week where you have 100-percent chance. So the doctors can always say, "This was one and I certify it, it is conclusive, it is dispositive," as it is under Roe versus Wade.

I am not saying he is changing current law, but by applying current law, codifying current law, he accepts the exception to the overall ban which nullifies the ban, and so what we have is a ban that does not do anything.

Again, I say to the Senator from South Dakota, I appreciate the effort he put behind trying to address this issue, but it does not accomplish what was intended. I feel bad about it. I wish I could stand up here and say this is something that is going to make a positive impact. Look, if I felt that this was going to do something to stop children from being aborted, I would sign up right now, but I don't believe that it will.

I am willing to work in the future if we can come up with something that will save children's lives, count me in. I will say that I was not approached on this compromise. I was not asked for my input as the sponsor of the bill that is on the floor. That is the prerogative of the people who drafted the amendment. That is certainly within the realm of Hoyle around here. But if we truly want to reach out and try to work on something across the chasm, which unfortunately is a chasm that has been breached somewhat on the issue of partial-birth abortion, I am happy to say that maybe as a result of partial-birth abortion, we are beginning to see that there are real problems out there, even those who support abortion rights.

So I hope, while I have to stand and speak against this amendment and urge my colleagues to vote against this, because not only does the Daschle amendment create a ban that has no limits to it, there is no ban, the Daschle amendment wipes out the partial-birth abortion ban. So it wipes out the underlying legislation. In a sense, whoever votes for Daschle votes against banning partial-birth abortions because under the Daschle amendment, not one partial-birth abortion will stop. Not one. So if you vote for this amendment, you vote against the underlying bill and replace it with something that, as well-intentioned as it may be, does nothing to limit late-term abortions, the fifth, sixth month and beyond.

I had to rise in opposition. I respect the Senator from South Dakota. I look forward to engaging further in this debate. I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, let me respond quickly because many Senators are seeking recognition. I appreciate the tone of the Senator's response. I also acknowledge that the Senator from Pennsylvania is certainly well intentioned. I respect the fact that he is also trying to find a solution. I was perhaps sent the wrong message about his desire to become a constructive partner in the dialog when I read his criticisms of the effort several months ago. I take responsibility for perhaps misinterpreting his criticisms. But, nonetheless, I do believe he is well intentioned.

It is ironic that we both come to the same conclusion. The Senator from Pennsylvania has offered legislation that will clearly not stop one abortion because every other abortion procedure is available. He recognizes that. So I don't know how anyone could argue that his ban of a procedure is a ban of abortion, because it doesn't stop all of the other procedures. So how does it stop abortion?

As to Dr. Hern, that man is going to jail, and I will just tell him on the record in public right now, "Dr. Hern, you're going to jail for perjury if this legislation passes and you lie about the need for unnecessary abortions you perform." If you don't go to jail, there is something wrong with our legal system, not with the law as it is written.

As to viability, I have no differences of opinion with the Senator from Pennsylvania on viability. He and I agree on the need to find a way to ensure that the viable fetus is a top priority, along with a mother's health in these circumstances, and if it can be delivered live, it ought to be, regardless of what week. So we have no disagreement on that.

With regard to making the determination, that it is up to the doctor, let me just say one last thing. I don't know what the Senator or any other Senator who supports H.R. 1122 would say if a doctor said, "Well, I'm going to take Dr. Hern's approach 'to save the life of a mother,'" which is a clause in their bill, "I'm going to use dilation and extraction to save the life of the mother. I can do that. It's legal." Dr. Hern should love that language. That is still available.

So if we distrust the veracity of a doctor in my circumstances, I would think we would be reciprocal in distrusting the veracity of any doctor who could use any out and, indeed, they allow an out, not to mention all the other alternative abortion procedures.

So there are differences between us in spite of the good intentions we have, in spite of the fact I know we both want to come to the same conclusion.

Mr. President, I yield 15 minutes to the distinguished Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Thank you very much, Mr. President.

Mr. President, I rise in strong support of the Daschle alternative, and I do so because of three reasons: No. 1, it preserves Roe versus Wade; No. 2, it prohibits all postviability abortions; and No. 3, it provides an exception for the life and the health of the mother, which is both intellectually rigorous and compassionate at the same time.

The Daschle substitute respects the Supreme Court's ruling in the Roe decision. When the Court decided Roe, it was faced with the task of defining when does life begin. Theologians and scientists differ on this. People of good will and good conscience differ on this. So the Supreme Court used viability as its standard. Once a fetus is viable, it is presumed not only to have a body, but a mind, a spirit and a persona that has standing in our society and in our courts. Therefore, it has standing under the law as a person.

The Daschle alternative respects that key holding of Roe. It says after the point of viability, no woman should be able to abort a viable fetus. There would only be two exceptions: to immediately save her life, and the other may be when the woman faces a serious and debilitating threat to her health.

The bill before us, H.R. 1122, as proposed by the Senator from Pennsylvania, simply bans a particular abortion technique at any point in the pregnancy. Because it would ban the use of a technique during previability, it would violate the Supreme Court's standard on viability. Should this language be passed, in all probability, it would be struck down by the courts, and the proponents of the legislation do know this.

The Daschle alternative bans all postviability abortions. It does not create loopholes by allowing other procedures to be used. Therefore, this Daschle alternative is superior to H.R. 1122 because it does ban abortions, it doesn't just ban a procedure, it bans all abortions after the point of viability. Therefore, it is good public policy, it is good public health and also will stand up to the test of the Supreme Court.

I believe there is no Senator who thinks a woman should abort a viable fetus for frivolous or nonmedical reasons. It does not matter what procedure is used. It is wrong and we know it. Therefore, the Daschle alternative bans those abortions.

However, on the other hand, H.R. 1122 does not stop one single abortion. For those who think they support this approach, know that it is unconstitutional and is, therefore, both hollow and ineffective.

Let us be clear. A vote for the underlying bill will be both hollow and ineffective. It will attempt to ban a particular procedure, but allows doctors to simply go to another procedure.

The Daschle alternative does ban abortions. It says that a woman cannot have an abortion once the fetus is viable. We talk about then "What is viable?" It means surviving outside of the womb with or without life support. Medical advances are the ones that will determine what enables a fetus to be viable.

Let me tell you what else I like about the Daschle alternative. The health of the mother is rigorously, intellectually defined, but it is also compassionate. Under the Daschle alternative, the only time an abortion would be allowed—other than saving the life of the mother—is when the woman faces a medical crisis that is grave and severe. And it defines that as circumstances that "threaten the mother's life or risk grievous injury to her physical health."

But I want to be very clear in this. The Daschle alternative does not create a gaping loophole with its health exception. We are not loophole shopping when we insist that the Constitution requires, and the reality of women's lives demands, an exception for women's health.

The health exception in the Daschle alternative has been carefully developed. I know that the Senator has consulted with medical ethicists, physicians, as well as constitutional scholars. It is specific and not vague. It is meant to cover only the most severe types of medical conditions.

What kind would they be? Some of these conditions are caused or aggravated by the pregnancy itself. For instance, issues like severe hypertension or preeclampsia, which occurs in 5 to 10 percent of pregnancies. In severe instances, the woman would face severe renal failure, kidney failure, liver failure, and ultimately could die.

Other women find themselves at risk for serious heart damage as a result of peripartal cardiomyophy. These women have no previous history of heart disease. It is the pregnancy itself that puts them at risk for cardiac failure. Would anyone argue that this is not a profound health crisis?

There are other complications. Women with existing hypertension often find their condition dangerously aggravated by the pregnancy. Complications of hypertension occur in 10 to 40 percent of these patients. These women are at risk for organ failure, seizures, or even death.

Women who suffer from diabetes may find their condition exacerbated during pregnancy, so severe that it could lead to blindness or amputations. And in some instances, where the woman is carrying a fetus with severe anomalies, she is at risk of uterine rupture and the loss of future fertility.

These are real, undeniable severe medical complications. While they are rare, they do occur. Senator DASCHLE's alternative addresses this reality.

It recognizes that to deny these women access to the abortion that could save their lives and health would be unconscionable. When the continuation of the pregnancy is causing these sorts of profound health problems, a woman's doctor must have every tool available to respond.

There are also cases where a life-endangering condition, unrelated to the pregnancy, arises and cannot be properly treated because of the pregnancy.

For instance, in the course of her pregnancy, if a woman is defined as having breast cancer, leukemia or some other form of cancer, she could not have her chemotherapy or radiation because it would cause profound fetal mutation.

Doctors are faced with choices. Mothers and fathers will be faced with choices. The question is, who decides? I do not think it should be done on the floor of the U.S. Congress by politicians. I believe the decisions should be made in a clinical situation between a doctor, the mother, and her husband. I support the Daschle alternative because it would provide this health exception and allow the physician and the family affected to make the decision that is medically appropriate to address very grave health situations that a woman may face.

That is why the Daschle alternative is so important. That is why the Daschle alternative is critical to passage. For those who are serious about banning postviability abortions, the Daschle alternative is the only alternative. For those who really want to seek common ground, the Daschle alternative is compassionate, intellectually rigorous. It enables physicians to determine what is medically necessary.

I have been troubled by this issue ever since I came to the House of Representatives more than 20 years ago. I am associated as being a pro-choice U.S. Congresswoman, and now Senator. What does pro-choice mean? It is not that I am for abortion. I do not believe that abortion is an unlimited right. But I believe it is the woman, in consultation with the physician and the family affected, who should decide.

Through the grace of God, I have been granted the faith of being a Roman Catholic. I will be eternally grateful for that gift of faith. But with that gift came two other gifts, one of hope and one of compassion. I hope to live as a Catholic; I hope to be able to die a Catholic. I feel that the Daschle alternative gives us an option that is not only constitutionally defensible, but is medically and morally defensible. And I hope that finally we can bring this debate and this discussion to the end.

Last year, we voted 52 times on the subject of abortion. Was the public served by it? Were women served? I don't know. I do not think so. So, please, let us take politicians out of this conversation. Let us put doctors back in because if we truly cannot trust the decisions in the medical profession, then I do not know who we can trust. You ask the American people, who do you trust more, your doctor or your politician? I do not think they would debate as long as we will be debating this issue.

Before closing, let me just extend my deep appreciation for the work our Democratic leader has done on this issue. He has been heroic, faithful and determined.

He has reached out to every Member of the Senate. He has consulted a wide range of medical professionals, lawyers, and legal and ethical scholars. He has been absolutely committed to finding a solution that is passable, signable, and constitutional. I believe he has succeeded.

So I thank him. And I compliment his excellent staff, Laura Petrou, Caroline Fredrickson, and Amy Sullivan, who have done truly outstanding work in developing the alternative before us.

Mr. President, today we have the opportunity to do something very important. We can move beyond soundbites and politics, and do something real, something which I know reflects the views of the American people.

We can pass the Daschle alternative. We can say that we value life and we value our Constitution. We can make clear that a viable fetus should not be aborted. We can say that we want to save women's lives and women's health.

I urge my colleagues to support the Daschle alternative.

I respect people on the other side who have differing views. But I am also concerned that there might be a lack of clarity about some of those issues.

Before I yield the floor, I wonder if the distinguished Democratic leader would yield for two questions, if he might?

There is some question whether the woman's physician would be allowed—the alternative has been criticized because it allows the woman's physician to make the medical judgment regarding the woman's need.

Could you tell me what procedures your alternative provides so that a physician does not abuse the strict standards provided for in your measure, and what enforcement tools there would be so we could trust the doctors?

Mr. DASCHLE. Well, I appreciate the Senator's question.

Let me just say that, first of all, the circumstances involving a doctor's role are identical between the bill offered, which is pending, S. 6, and our legislation. A doctor makes the determination in their case whether or not a life is affected and can make the determination to use their procedure, the

procedure that is outlawed, I should say, if in their opinion a life is affected.

What we say is that a doctor has to make the decision, but we limit the definition of "health" and "life" to include only grievous circumstances. And we define "grievous circumstances" as severely debilitating diseases specifically caused by pregnancy or an inability to provide necessary treatment for a life-threatening condition.

Then we say what it is not. It is not any condition that is not medically diagnosable or a condition for which termination of the pregnancy is not medically indicated.

In a previous provision of the bill, we say that termination of a pregnancy must first include the possibility of a live birth. It must include that. Then we say, if you violate it, you are going to lose your license, you are going to pay $100,000; and then $250,000 and you are going to lose your license for good, and you are going to be subject to charges of perjury if you lie.

We make anybody who wants to bring charges able to—a nurse, a family member, somebody in the hospital—anybody who has any question about whether or not the right decision was made can bring a charge.

So we have done everything we can, I would say to the Senator from Maryland, to get at the legitimate concern that somebody could abuse this.

Ms. MIKULSKI. Thank you, Mr. Leader. I appreciate that.

I think that spells that out.

Now, one of the reasons I support your alternative is because I truly believe it will prevent abortion, particularly postviability abortion.

Can you assure me that your alternative—assure those who also want to ban all postviability abortions that your alternative would do so?

Mr. DASCHLE. Well, that is really the fundamental difference between the two pending bills. We ban abortion; they ban a procedure. They allow all the other abortion procedures available—dilation and evacuation, induction, hysterotomies—those are still legally available. But what we ban are all of those procedures, all of them, and affix the penalties that we have discussed.

So I would say with absolute certainty to the Senator from Maryland that we do everything within the constitutional parameters available to us to stop all abortions.

Ms. MIKULSKI. Many States have enacted their own laws on postviability abortion. My own State of Maryland has a law that bans postviability abortions. It was approved by the voters of Maryland in a referendum. The Maryland law says a postviability abortion is only allowed when it "is necessary to protect the life or health of the woman; or the fetus is affected by genetic defect or serious deformity or abnormality." Other States have even more far-reaching bans.

How does the bipartisan alternative affect Maryland law, which the people of Maryland endorsed through referendum?

Mr. DASCHLE. The alternative does not prohibit a State that already has a postviability ban from retaining its State law. Especially in a State such as Maryland, where the people decided that the health definition you outlined was the most appropriate way to deal with women's health, States should be allowed to either retain their own laws, or enact this alternative. We believe we have provided an appropriately clear and tight definition. States with even more restrictive laws may disagree, and we do not preempt their laws, either.

The alternative would not displace any comprehensive State postviability abortion bans, in whole or in part, currently in effect. The bipartisan alternative would not displace any procedure-specific restrictions or any other abortion-related State statutes. However, if a State has no comprehensive postviability ban in effect—either because none has been enacted or because a ban has been repealed or invalidated by the courts—the bipartisan alternative would take effect in that State. The effect of the bipartisan alternative is to ensure that there is a postviability abortion ban in effect in every State.

Ms. MIKULSKI. The bipartisan alternative has a very narrowly drawn definition of the health situations under which a postviability abortion would be allowed. It says that the physician must certify that "continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health."

Does this mean that there are no situations when a woman with a profound mental health problem would be permitted a postviability abortion under your bill?

Mr. DASCHLE. As we discussed last year during the debate over mental health parity, most of us now realize that there is a connection between mental and physical illnesses. They are not mutually exclusive. Women with serious psychiatric diseases who risk psychotic breaks that would leave them nonfunctional may have physical manifestations of those psychiatric conditions. If such physical manifestations take the form of severely debilitating impairments, they would be covered under the health definition. I do not know if any cases would fall under that strict standard, but we cannot anticipate every medical circumstance.

Ms. MIKULSKI. I thank the leader for his explanation.

I want to thank the Democratic leader for the excellent work he has done. I intend to support his alternative.

Mr. President, I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DEWINE. Mr. President, on behalf of the manager of the bill, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DEWINE. Thank you, Mr. President.

Mr. President, I rise in reluctance, but very strong opposition, to this amendment. I join with the comments that my friend, Senator SANTORUM, has made about our colleague, the distinguished minority leader. I think he has made a very honest attempt to deal with this issue. But I would like to explain over the next few minutes why I believe that this attempt has failed and why I believe that this amendment, however well intentioned I know it is, is a gutting amendment and how this amendment strips really everything away.

It is really not the Senator's fault. I do not know if it is anyone's fault. But the reality is, we have to live with previous Court decisions and we have to live with a whole body of law. Legislation that we write has to take that into consideration, how words have in fact been defined.

The Supreme Court has made it abundantly clear in the Bolton case how broad the language of "health" is, and when there is a health exception what that really does, and that everything is taken into consideration.

I understand the Senator has tried to craft this legislation maybe to deal with that. I do not think it can be done. I do not think, in light of those cases, that that really can be done at all.

But let us walk through, for a moment, what has to take place. The word "certification" is important because what this amendment says is—you have several issues, but they are all decisions, let us keep in mind, that are made by the attending physician, by the person performing the abortion.

You start with the issue of viability. Now, the reality is —you cannot change the reality—the vast majority of these occur before viability. And the vast majority of them—according to Dr. Haskell 80 percent—are elective abortions. That is a fact. Those are the facts. We cannot change those facts, which means that this amendment does not deal with that. It does not deal with all those abortions at all.

But let us go beyond that, because what this amendment says is the doctor has to certify. But even before he gets to the certification process, he makes a determination about viability. If he says "not viable" then that is it; it ends the debate. Only if he or she then says this child is viable, the fetus is viable, then the language kicks in. It says the doctor must certify.

I would submit that once the certification takes place, that is it. And,

again, it is solely within the discretion of the doctor whether certification takes place or does not take place. The operative act is not an objective standard; it is the certification in and of itself. That ends the discussion. That is it.

Let me, if I could, Mr. President, recap where we are and what I think we have learned in the last few days. But before that, of course, with testimony in the Judiciary Committee on several different occasions, the other floor debates that we have had, I think we have established certain things, that certain things are uncontroverted.

We have all seen the graphic descriptions of what happens in this procedure. There is no dispute about that. There is no dispute about the horror. There is no dispute about the tragedy.

I believe it has been established and recognized from the AMA to Dr. C. Everett Koop that this procedure is never the only procedure that will save the life, or the health, of the mother.

I think we have established that even when the baby, for medical reasons, must be separated from the mother, there is no reason to kill the baby. The termination of pregnancy is not the same as an abortion.

I think the evidence is clear that the real reason this procedure is done is because it is easier for the abortionists. We have heard what Dr. Martin Haskell, the abortionist from Dayton, OH, has to say. I read his quote yesterday. This is what he says in part: "The goal of your work is to complete an abortion." To complete an abortion. That is the goal.

So we know, Mr. President, why these babies are killed—not for health reasons, not because the mother needs it, not because the baby cannot be delivered and may be saved, but because an abortionist does not want the baby to survive.

That is the object. That is what Dr. Haskell says in his quote.

The amendment that is before the Senate purports to deal with the issue of health. The amendment would ban postviability abortions unless "the physician certifies"—the operative language—"that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her health."

As I mentioned in my statement yesterday, I believe it is clear this amendment—and the Court cases show—this amendment would do nothing to stop partial-birth abortion. To the contrary, it would allow any abortion, any abortion, Mr. President, to be performed.

Roe versus Wade provides, as we all know, that in the third trimester there is a legitimate State interest in prohibiting abortions after fetal viability. This amendment would add a health exception to the underlying bill. That sounds good on its face, it looks good, but when you look at the Court decisions and when you look at the reality of how this would work in the real world, we find that exception expands in practice.

There are no health circumstances, the evidence has clearly shown, that require a pregnancy be terminated by administering this particularly horrible procedure. Yesterday, I quoted Dr. Nancy Romer, chairman of ob-gyn and a professor at Wright State University Medical School in Ohio. Dr. Romer said,

> This procedure is currently not an accepted medical procedure. A search of medical literature reveals no mention of this procedure, and there is no critically evaluated or peer review journal that describes this procedure. There is currently no peer review or accountability in this procedure. It is currently being performed by physicians with no obstetric training in an outpatient facility behind closed doors and with no peer review.

Dr. Romer goes on to say,

> There is no medical evidence that the partial-birth abortion procedure is safer or necessary to provide comprehensive health care to women.

So, Mr. President, it is clear there are no medical circumstances that would require this procedure. Well, then you could argue, if that is true, Senator DEWINE, why, then, what is wrong with putting a health exception in? What harm would that do? If there are no such circumstances, why not add a health exception anyway? The answer is, this health exception is so broad that it would, in fact, swallow up the rule. It is so broad that, literally, any abortion would be permitted.

How do we know that? When the Supreme Court handed down its decision in Roe versus Wade, it also handed a decision entitled "Doe versus Bolton." Bolton held that a State statute that forbade abortions based on a life exception had to be interpreted to mean that "the medical judgment" to provide abortion for health reasons "may be exercised in the light of all factors—physical, emotional, psychological, the woman's age—relevant to the well-being of the patient."

It is clear from other cases how that is interpreted. That is interpreted, basically, to mean that it cannot be enforced in any way, that health exception consumes everything.

If we pass the Daschle amendment and require this concept of physician certification, that the pregnancy would risk grievous injury, I believe that clearly would render this bill meaningless. The courts, in interpreting the meaning of the word "health," were accorded the broad interpretation that the Supreme Court has consistently applied.

My colleague from Pennsylvania, Senator SANTORUM, has already read the quote from Dr. Warren Hern, but it is appropriate to hear it again because it is directly on point to this issue. Dr. Warren Hern, a Colorado abortionist who has performed hundreds of late-term abortions, has already stated that he will certify that any pregnant woman can meet the standard of the DASCHLE amendment. "I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health." Any pregnant woman.

So, Mr. President, there we have it. Under this exception, any abortion would be permitted. When we have the testimony of America's most respected doctor, Dr. C. Everett Koop, backed by the American Medical Association in support of the assertion that there is never a medical necessity for this procedure, it is clear what the health exception is.

Mr. President, unfortunately, tragically, that purported exception is a hoax, it is a sham, it is a smokescreen, however well-intentioned the authors are.

In conclusion, Mr. President, when you come down to it, I think it is a moral dodge. I think it puts us to sleep. It is a way we can try to convince ourselves that it is OK, this amendment is OK, even though, in effect, we are tolerating something very, very bad.

Mr. President, we are not OK. We know what is going on behind the curtain and we cannot wish that knowledge away, however much we would like to. We have to face it and we have to do what is right. That means passing this bill to ban this barbaric, inhuman, unconscionable practice.

Again, with respect to my distinguished colleague, the minority leader, it also means we must vote this amendment down.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. I listened with great interest to the distinguished Senator from Ohio. He mentioned Dr. Hern's remark that he would use life or grievous injury. That was his term, life or grievous injury as a reason to continue an abortion practice.

I cite his remark because, of course, H.R. 1122 uses life as a reason, justifiably, to allow the late-term abortion, the dilation and extraction method that the bill otherwise prohibits from being used. So, if Dr. Hern would use health, he would use life, as he indicated, making meaningless the language in H.R. 1122, as well.

I just hope we apply the same standards to both bills in our debate as to what the efficacy of language will be. Indeed, if people are going to find loopholes, they will find them in H.R. 1122, as in our bill.

But, again, I reiterate that Dr. Hern, with our language, will go to jail, will go to jail.

I yield 10 minutes to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. SNOWE. I thank the Senate minority leader for yielding me this time, but, more importantly, I secondly want to commend him for his refreshing approach in trying to craft a consensus on what is obviously a very difficult issue when it comes to the problem of late-term abortion. He has shown determination and persistence and dedication in arriving at this compromise. I think that if more people in this body took that approach on the most contentious issues, we would not be standing here today even debating this one.

This is a very difficult issue. But the compromise that the Senate minority leader has worked out clearly represents a serious attempt in bridging the differences on this issue, but also an attempt to address a very divisive issue.

I had to reread the legislation after I heard several interpretations of it today. The Senate minority leader's legislation will ban all postviability abortions. There is one area upon which we all agree, that no viable fetus should be aborted by any method unless it is necessary to protect the life and the health of the mother.

The difference here today is one issue: It is whether or not we are prepared to provide a health exception. I am very grateful to my colleague from South Dakota for trying to find common ground on this issue. All Members, pro-choice and pro-life, ought to be able to come together and agree.

Mr. President, 41 States, including my own State of Maine, already ban postviability abortions. We all agree that we need to ensure that healthy pregnancies are never terminated after a fetus is viable regardless of which procedure is used. That is why the Daschle approach is so important.

Furthermore, the Daschle substitute will lower, actually lower the number of abortions in this country as opposed to the legislation offered by the Senator from Pennsylvania.

The legislation of the Senator from Pennsylvania, S. 6, would not prevent a single abortion. Ironically, what it would do is force a woman to choose another potentially life-threatening procedure when it comes to her health.

It clearly does not make any sense to me that we here in the U.S. Senate are prepared to place a woman's health in jeopardy, place a woman in an unacceptable risk, while doing nothing to lower the number of abortions that occur in this country.

The Daschle amendment will decrease the number of abortions and will do so without putting a woman's life and health on the line. To critics who say the Daschle language contains a loophole because it leaves it to the doctor to determine when the fetus is viable, I ask, who is in a better position than doctors to determine this? Certainly not the Federal Government. Certainly not the U.S. Senate. I know some would think they are omnipotent, but certainly not the U.S. House of Representatives. Certainly not politicians making this determination. This is a determination that should be made by the physician and the physician alone.

In fact, the report that has been touted here by the American Medical Association, which I find quite interesting, is a 35-page report. I know that proponents of S. 6 and the legislation supported by the Senator from Pennsylvania touts this report, but this report did not even come down in support of the Senator's legislation after 35 pages. But in this report that was released on Tuesday by the American Medical Association, it states, "It is the physician who should determine the viability." Exactly.

But it is not only the American Medical Association who says the viability of determination should be left to the doctor. It is also the Supreme Court. In Planned Parenthood versus Danforth, the Supreme Court said,

> The time viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician.

Only doctors are equipped to make this determination. It is not those of us here in the U.S. Senate. It is not a bureaucracy. It is not the Government. We want our physicians to make that determination.

Now, critics say protecting a woman from a grievous injury to her physical health does not justify terminating a later stage pregnancy.

I ask again. Who are these politicians to make this heart-wrenching decisions for a family when a woman's life is in jeopardy? To the critics who say the Daschle language contains a loophole because doctors can interpret the health exception any way they want, as I say, read legislative language.

"Grievous physical injury" is defined as a "severely debilitating disease or impairment caused by the pregnancy," or "an inability to provide necessary treatment for a life-threatening condition."

That is very clear. It is very plain. It is very strict. It is a very narrow definition. And, as the Senator from South Dakota indicated, the penalties are extremely harsh, if the doctor didn't make that determination according to this definition.

If I were a doctor and I read the penalties in this legislation that became law, I can guarantee you the doctor would make that determination and that definition in terms of what was grievous, what was a severely debilitating disease or impairment caused by the pregnancy or an inability to provide necessary treatment for a life-threatening condition. Their definition is protecting women from the most serious and life-threatening health risk.

This narrow definition comports with again the American Medical Association's position that postviability abortion should only be used under those extraordinary circumstances when it absolutely is necessary to preserve the life and health of the mother. The Daschle substitute is narrowly tailored to allow postviability abortions only under these extraordinary circumstances.

This language could not be more clear. How can you second-guess what is grievous? How could you second-guess the penalties that are included in this legislation? How could you second-guess the notion of going to jail?

There is no question that any abortion is an emotional and difficult decision for a woman. When a woman must confront this decision during the later stages of her pregnancy because she knows that the pregnancy jeopardizes her very life and health, such a decision becomes a nightmare. And we have heard example after example. These aren't faceless individuals. These are human beings. These are women—women we know who have faced these circumstances who do not want the U.S. Senate or the U.S. Congress making that decision for them in these very limiting exceptional health circumstances. We have no right to be making that decision.

The Roe versus Wade decision was carefully crafted by the Supreme Court 24 years ago. It was designed to balance the rights of women in America with reproductive decisions that have to be made. And they said that the rights of women are paramount in those decisions. This decision held that women have a constitutional right to an abortion, but after viability States could ban abortions as long as they allow exceptions for cases in which a woman's life or health is in danger. Let me repeat that: Allow exceptions for cases in which a woman's life or health is endangered.

The Supreme Court has reaffirmed that decision time and time again. Forty-one States have passed legislation upholding that banning of abortions in the later stages of pregnancy, except when it comes to a woman's life or a woman's health.

The legislation offered by the Senator from Pennsylvania does not allow the exception for health. It does not allow it. In the last year, we heard, "Oh, it provides a health exception." But it is so broad. It just says health. It is so broad you could drive a truck through it.

The Senate minority leader made a good-faith effort to come up with a very narrow definition of grievous injury. You couldn't get much stricter in its interpretation.

So that in certain situations, where a woman's life and health is in severe jeopardy, an exception can be made.

The health exception for grievous physical injury can only be invoked under two circumstances.

The first involves those heart-wrenching cases where a wanted pregnancy seriously threatens the health of the mother. The Daschle language would allow a doctor in these tragic cases to perform an abortion because he believes it is critical to preserving the health of a woman facing cardiac failure:

Peripartal cardiomyopathy, a form of cardiac failure which is often caused by the pregnancy which can result in death or untreatable heart disease; preeclampsia, or high blood pressure, which is caused by a pregnancy which can result in kidney failure, stroke, or death; uterine ruptures, which could result in infertility.

Is anyone suggesting here that we should not allow exceptions in these very serious health circumstances—circumstances that are not excepted in the language that has been proposed by the Senator from Pennsylvania? Imagine: A form of cardiac failure that causes death would not be excepted. High blood pressure that can result in kidney failure, stroke, or death would not be excepted, or exempted; or infertility. Or the second circumstance that would be provided for as an exception under the Daschle language: When a woman has a life-threatening condition that requires lifesaving treatment.

It applies to tragic cases, for example, when a woman needs chemotherapy when pregnant. So the family faces a terrible choice of confronting the pregnancy, or providing lifesaving treatment.

These conditions include breast cancer, lymphoma, which has a 50-percent mortality rate, if untreated; primary pulmonary hypertension, which has a 50-percent maternal mortality rate.

Are we saying here that the U.S. Senate is saying, "No, we will not provide any exception." I hope not. I hope that would not be the case. And the Daschle substitute allows for those very limiting but very serious instances of health circumstances that could jeopardize permanently a woman's life, if not resulting in death.

If this Chamber passes this bill without the Daschle amendment, it will represent a direct frontal assault on the health of American women. Make no mistake. Innocent women will suffer. We must not overlook that women's lives and health are at stake. They hang in balance. Women who undergo these procedures face a terrible tragedy of later-stage pregnancy that has through no fault of their own gone terribly, tragically wrong.

I urge my colleagues to support the Daschle language. It will ensure that no abortions will take place after viability unless it is absolutely necessary to avoid grievous physical injury to a woman while protecting the woman's life and health.

I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, a couple of comments before I yield to the Senator from Arkansas.

I want to repeat what was stated by George Will in a column talking about the Daschle amendment. He said, "The Daschle amendment is a law that is impossible to violate."

All these things sound really wonderful. We have these real tough definitions; real tough except for the fact that you can't violate the law because you are giving all of the authority to the doctor to determine whether he breaks the law, or she breaks the law.

Wouldn't you love to have a law where you are the self-enforcer of the law? You have to call it yourself because, once you sign that certification, it is a conclusion. You cannot be second-guessed. What doctor is going to say, "Oh. I aborted this baby, and it would have been viable"?

First of all, no second-trimester baby is ever going to be viable by any doctor doing an abortion. They just won't because there is still a percentage that aren't, and they will just say, "It is not viable." They will sign a certification saying it is not viable. Next, they will sign it saying there is a health problem. Like Dr. Hern said, you can't get away from the fact that the people who are doing these abortions—most of the folks who do them—do them for a living. They are not going to call it on themselves—that there really wasn't a health exception. They are not going to say, "That is the reason I did this. I did this abortion wrong."

What we have here instead of a judge, jury, and executioner is executioner, judge, and jury.

As far as I am concerned, George Will is absolutely right. This is a law that cannot be violated. As tough as all of this sounds, as persuasive as some of his arguments that they really care about limiting abortions, it will not stop one abortion.

At least what the underlying bill does is outlaw a procedure that is so far outside of what our country should permit, and at least take the step in the right direction of providing some sense of humanity to those little children.

I yield 10 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I thank the Senator from Pennsylvania for yielding.

Mr. President, I rise in respectful but very, very strong opposition to the Daschle amendment.

I want to commend the Senator from Pennsylvania for his courageous leadership on an issue that deserves to be debated and a ban which deserves to be passed.

I believe that abortion and the human life issue in this country are the great moral issues that confront our society.

I heard my colleague from Maryland, Senator MIKULSKI, say that we voted 52 times in the last Congress on the issue of abortion. And she said, "Are we any better off?"

I would suggest that while we debate balanced budget amendments, while we debate chemical weapons treaties, and while we debate a host of important issues, there is no issue more important to the future of our country, to civilization, and to the kind of people we are going to be than the sanctity of human life. If it takes 52 votes, then it is worth it.

Many of today's politicians will run for cover at the very mention of abortion, even at the term "partial-birth abortion." How do we call ourselves leaders if we are not willing to grapple, to debate, to struggle, to agonize and reach moral conclusions as to this great issue confronting who we are as a people and what kind of civilization we are going to be.

I heard over and over the proponents of the Daschle amendment, the opponents of the ban on partial-birth abortions, that it is hard to imagine that we would be debating on the floor of the U.S. Senate with those who would oppose a ban on the most horrific, barbaric procedure imaginable. But that is what we are doing. I heard them over and over say, "Let's keep politicians out of it; shouldn't have politicians getting involved in such an issue"; suggested that Government should stay out of the abortion issue. If the protection of innocent human life is not Government's duty, then what is?

Thomas Jefferson once wrote, "The care of human life, not its destruction, is the first and only legitimate objective of good government." Then Jefferson went on. He said, "Legislative efforts to protect the weak and defenseless are right, and should be pursued."

Isn't that the proper role of Government—to protect those who are weak, to protect those who are defenseless? Should we not, in Jefferson's words, "pursue" those legislative efforts? I believe we should.

To me it is the great irony of the Daschle amendment because in every speaker who has advocated and spoken in favor of the Daschle amendment there has been a dichotomy. There has been, "Keep Government out. Oh, this is tough. This is a tough ban. Keep Government out of this. Leave it with the physician. But we will throw that physician in jail. The Daschle abortion ban spares viable fetuses, proposals stricter than the GOP measure. They will throw him in jail, and then, keep Government out."

To my colleagues, I say you can't have it both ways. It is clever. It sounds good. The reason we have this

amendment today is because the polls say that 70 percent of the American people support a ban on this terrible, terrible medical procedure, if you can call it a medical procedure—partial-birth abortion.

That is why this amendment is being offered. I hope that after this debate is over, Senator DASCHLE will offer this as a freestanding bill. I think it has problems. I do not think it will do all what he believes it will do, what I think he sincerely believes it will do, but if he is sincere in this, it will be offered as a freestanding bill, and we will take this up through the legislative process.

The reason the President has said he will support the Daschle amendment, in my opinion, is simply that he knows it is no ban. It is, in the words of George Will, "a law that can't be violated." In fact, the ultimate arbiter becomes the physician, in this case the abortion provider.

Seventy percent of the American people say we need this ban and support it. In March of this year, Arkansas, my home State, joined with seven other States in banning such a procedure. The State legislature passed the bill. Gov. Mike Huckabee signed the bill into law. And I believe that the home State of our President has, in enacting that legislation, in passing our own partial-birth abortion ban in the State of Arkansas, they have sent a message to the President of the United States, our former Governor, our native son, that the people of his home State do not want this procedure legal in this country.

Partial-birth abortion is barbaric; it is uncivilized; it is shockingly close to infanticide; and no civilized country should allow it. It is that simple. Any woman knows that the first step of a partial-birth abortion—breech delivery—is something to avoid, not something to cause purposely.

The rhetoric surrounding this issue is amazing. Those who would allow unlimited partial-birth abortions characterize the procedure as one that is used very rarely and only in an absolute emergency and only where no other procedure is available. They would have you believe that all those who have this procedure want to carry their pregnancy to term and have the child. These claims are simply wrong and they are unfounded. A quote that is extremely interesting to me is from Jean Wright, associate professor of Pediatrics at Emory University. Ms. Wright was testifying against the argument that fetuses who are candidates for a partial-birth abortion do not feel pain during the procedure. She testified that the fetus is sensitive to pain, perhaps even more sensitive than a full-term infant. She added, and this is the part that is especially striking, "This procedure, if it was done on an animal in my institution, would not make it through the institutional review process. The animal would be more protected than this child is."

It is incredible. We are protecting animals better than we protect unborn, viable fetuses. Making one class of humanity expendable, I believe, devalues all humanity. In fact, the rejection of life's sanctity begins a downward journey toward human debasement.

I was interviewed, as we all have been interviewed, by a reporter. I was interviewed yesterday, and the reporter asked an interesting question. She asked this: Won't this ban start us down a slippery slope that will end up banning all abortions? Interesting choice of words, "slippery slope," because now in this country we debate assisted suicides, we debate partial-birth abortions. The slippery slope has been in our slow debasement and devaluing of the worth and sanctity and dignity of human life. That is the slippery slope.

Over the last few months there has been some breakthrough, I think, in information that is being disseminated. The confession of Ron Fitzsimmons was very telling when he admitted that he "lied through his teeth" to the Nation. I cannot help but wonder after this vote is over if 2 months, 3 months down the road we will not find again that there has been a campaign of disinformation to prevent this ban from being enacted. I even now ask my colleagues to look deep within their souls. They have been misled. They have been sold a bill of goods. They have every justification for switching a vote and voting for this ban and voting to override an expected veto.

> In the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus.

That is what Ron Fitzsimmons said. That is what he admitted. He is an advocate of abortion. He goes on to say that

> the abortion-rights folks know it, the anti-abortion folks know it, and so probably, does everyone else. One of the facts of abortion is that women enter the abortion clinics to kill their fetuses. It is a form of killing. You are ending a life.

That is what the head of the National Coalition of Abortion Providers confessed. Syndicated columnist Richard Cohen admitted he "was led to believe that late-term abortions were extremely rare and performed only when the life of the mother was in danger or the fetus irreparably deformed." Realizing the mistake, and I quote again, he said, "I was wrong."

Wouldn't it be refreshing if some of those who were misled would simply say, "I was wrong. I will change my vote."

Could I ask the Senator from Pennsylvania for an additional 5 minutes?

Mr. SANTORUM. The Senator is yielded such time as he may consume.

Mr. HUTCHINSON. Now we have the Daschle amendment before us. The facts have not changed. I think many are beginning to see the truth on this issue, the truth behind the partial-birth abortion myth.

The next myth that we have to overcome in this debate is that the President and his congressional allies have a viable alternative to the partial-birth abortion ban, that this amendment that we are debating even now is a legitimate alternative to a ban on partial-birth abortions.

Well, that is a myth. George Will said, "It is a law that's impossible to violate." He is right. It is an amendment that pro-abortion allies can support so they can tell their constituents they supported a ban, I believe. And, again, I hope that this will be introduced as a freestanding bill because I think in that situation, we will be able to see exactly where the flaws are as it is debated in a committee, as it is scrutinized.

The Daschle proposal would explicitly allow abortion even in the third trimester if an abortionist simply asserts that "continuation of the pregnancy would risk grievous injury to the mother." That is all he has to say. That's all the abortionist has to say. In effect, the Daschle amendment would allow partial-birth abortions on demand in the fifth and sixth months of the baby's development when the vast majority of such abortions are performed. So the vast majority of partial-birth abortions—this procedure that is universally condemned—would be permitted under the Daschle amendment, it would not affect them at all, would not stop a one, even though we know that many of those preborn infants can now survive even before the third trimester because of advanced technology.

I recently visited the Children's Hospital in Little Rock, AR. I was absolutely amazed at the neonatal unit and what is being done today in lowering the age of viability. On the basis of recent published interviews with abortionists who perform these procedures as well as the head of the National Coalition of Abortion Providers, Ron Fitzsimmons, it appears likely that 90 percent or more of partial-birth abortions are performed in the fifth and sixth months, not the third trimester. The Daschle amendment will not affect those partial-birth abortions at all.

One of Senator Daschle's arguments against adding second-trimester language is that Roe versus Wade prohibits second-trimester abortions. But in the official report of the House Judiciary Committee on the bill, the committee argues that the partial-birth abortion procedure is not protected by Roe versus Wade. It is not protected by Roe versus Wade since the baby is mostly outside the womb throughout the procedure, and Roe versus Wade refers to fetuses inside the womb.

So to say we cannot address the second-trimester issue of partial-birth

abortions because it is protected by Roe versus Wade is to beg the issue and to avoid, I think, good legal opinion.

Many lawmakers who support Roe versus Wade also support the Partial-Birth Abortion Ban Act, some of them explicitly citing the Judiciary Committee's constitutional argument. In addition, several States have passed bills to ban partial-birth abortions at any point in the pregnancy with only a life-of-the-mother exception. It appears, therefore, that many State legislators do not share the Democratic leader's view that they are powerless to prevent partial-birth abortions in the fifth and sixth months.

My home State of Arkansas, as I mentioned earlier, is one of those States that does not share in that opinion.

Moreover, the Physicians Ad Hoc Coalition for Truth, a coalition of over 500 physicians, including professors and department chairmen in obstetrics and gynecology, has emphasized that not only is a partial-birth abortion never necessary to preserve a woman's health or future fertility, but this procedure can, in fact, pose a significant threat to both.

While there may be a medical circumstance which requires a fetus to be delivered early, there is none—none—which requires killing the fetus and certainly none requiring that a fetus be partly delivered and then killed as during a partial-birth abortion.

The Daschle proposal would allow any abortionist to kill a baby even after viability merely by signing a permission slip to himself, a so-called certification, and once the abortion provider signs such a piece of paper, this amendment would give that abortion provider complete immunity from any penalty, even if there is overwhelming objective evidence that he aborted a healthy, viable baby of a mother who is not at risk, because he signed that certification.

The House passed H.R. 1122, its version, with a margin sufficient to override a Presidential veto. I hope my colleagues in the Senate will join our House colleagues in such a vote here. There is nothing, I believe, that will define us as a people, there is nothing that will define us as a civilization more than how we speak on this issue.

Mr. President, I ask unanimous consent that a letter dated May 7, 1997, from PHACT be printed in the RECORD.

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

PHYSICIANS' AD HOC
COALITION FOR TRUTH,
May 7, 1997.

LETTERS TO THE EDITOR,
The Washington Post,
Washington, DC.

DEAR EDITORS: Senator Tom Daschle lists several medical conditions as indications for a "termination of pregnancy" in the health interests of the mother ("Late Term Abortion—In Rare Cases Only," The Washington Post, 5/2/97). However, he confuses "termination of pregnancy" with abortion—the deliberate destruction of the unborn (or, in the case of the partial-birth abortion procedure, the mostly born) human fetus. The two things are not the same.

As specialists in the care and management of high risk pregnancies complicated by maternal or fetal illness (perinatology), we have all treated women who, during their pregnancies, have faced the conditions cited by Senator Daschle. We are gravely concerned that the remarks by Senator Dashle and those who support the continued use of partial-birth abortion may lead such women to believe they have no other choice but to abort their children because of their conditons. While it may become necessary, in the second or third trimester, to end a pregnancy in order to protect the mother's life or health, abortion is never required—i.e., it is never medically necessary, in order to preserve a women's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester, and certainly not by mostly delivering the child before putting him or her to death. What is required in the circumstances specified by Senator Daschle is separation of the child from the mother, not the death of the child.

Fetal indications have been cited in attempts to justify partial-birth abortion, including hydrocephaly, triscomy, omphalocele and encephalocele. Such fetal anomalies alone do not threaten a mother's life or health and therefore do not require the death of the child for the mother's medical well-being.

Sen. Daschle would limit his "ban" to the third-trimester or "post-viability." Again, there is no medical necessity for killing a post-viable child. If maternal conditions require the emptying of the womb post-viability, the standard would be to induce labor and simply deliver the child. By definition, the post-viable child delivered early is simply a premature baby.

Moreover, because Sen. Daschle limits his proposal to the third trimester, it would do little to end the practice of partial-birth abortion. The majority of partial-birth abortions—estimated at some four to five thousand annually—take place in the fifth and six month (late second trimester) and mostly on healthy mothers with healthy children. But even at this earlier stage of pregnancy, a standard induction of labor, in terms of the mother's health, is far preferable to partial-birth abourtion as the means for emptying the womb.

Finally, it should be noted that at 21 weeks and after, abortion is twice as risky for women as childbirth: the risk of maternal death is 1 in 6,000 for abortion and 1 in 13,000 for childbirth. If the chief concern is to minimize health risks to women who show indications for a termination of pregnancy in the second or third trimester, then, as these numbers clearly show, termination by induction of labor and delivery is clearly preferable to abortion.

With on-going advances in the care and management of high risk pregnancies, even women suffering from those conditions cited by Senator Daschle can often be brought safely to term and their child delivered. In those cases where a second or third trimester preterm termination of pregnancy is indicated, abortion, and certainly partial-birth abortion, is never medically required or necessary to achieve this. We agree with Senator Daschle that it is "appropriate . . . for Congress and the public to consider when, and under what circumstances the government may restrict access to abortion by any procedure." Having the medical facts straight is a necessary part of this process.

While we support Sen. Daschle's goal of banning abortion after the fetus is viable—because they are never medically indicated or necessary—his proposal would do nothing to achieve this goal, while leaving the practice of partial-birth abortion virtually untounched.

Sincerely,

Steve Calvin, M.D., Assistant Professor, Ob/Gyn, Division of Maternal-Fetal Medicine, University of Minnesota; Thomas M. Goodwin, M.D., Associate Professor, Ob/Gyn, Duivision of Maternal-Fetal Medicine, University of Southern California; Curtis R. Cook, Maternal Fetal Medicine, Buttersworth Hospital, Michigan State College of Human Medicine; Byron Calhoun, M.D., Associate Clinical Professor, Ob/Gyn, Division of Maternal-Fetal Medicine, Uniformed Service University of Health, Sciences, F. Edward Hebert School of Medicine, Bethesda, MD; Nathan Hoeldtke, M.D., Maternal-Fetal Medicine Fellow, Madigan Army Medical Center, Tacoma, WA; John M. Thorp, Jr. M.D., Maternal-Fetal Medicine, Chapel Hill, NC.

Mr. HUTCHINSON. I thank the Senator from Pennsylvania. I yield the floor.

Mr. DASCHLE. Mr. President, I yield 15 minutes to the Senator from Illinois.

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the Senator from Illinois.

Mr. DURBIN. I thank the Chair.

There is an old saying that "virtue is its own reward." I would have to say to the minority leader, Senator DASCHLE, that when he undertook this project and this responsibility to try to craft a reasonable answer to this national debate on partial-birth abortion, as it is characterized, he truly understood the daunting task which he faced. I have seen the advertisements against the Senator, full-page ads which have called the Senator every name in the book. But I know, having tried to do the same thing, that the Senator addressed this issue in an honest and forthright way, that the Senator worked for months to come up with the right language that was, first, constitutional; second, sensitive to reality; and, third, which addressed a serious national concern about late-term abortions. I am proud to be a cosponsor of Senator DASCHLE's amendment.

When this issue came before the House of Representatives, and I served in that body, I sat in the Chamber of the House and listened to every minute of debate. I have never, ever in my public career viewed a vote on abortion as an easy vote. I have always sat down and thought carefully about what is the right thing to do, and some of the votes have troubled me because it is a troubling issue. Since our national debate on slavery, I cannot think of another issue which has divided America over such a protracted period of time.

And the reason, of course, is that in this debate we are addressing one of the most enduring debates in the history of man, the appropriate role of Government. At what point do the rights of the individual end and the rights of society and the Government begin? This classic question, pitting individual liberty against the responsibility of Government, is clearly at issue when we discuss abortion.

Religions and moralists draw clear lines of belief, but where does a diverse society like America draw the line? Where do the rights of a woman to control her body end, and the rights of the fetus, or potential life, begin? The Supreme Court, in Roe versus Wade, tried to draw a bright line on this clouded issue. The absolute rights of a woman in America to privacy and to the control of her body yield when the fetus can survive outside the mother. Thus, viability is the dividing line in this national debate. Before viability, when the fetus cannot survive, then the mother's rights and decisions are paramount. After viability, the fetus is protected except in the most extraordinary cases.

Senator DASCHLE, what I find interesting is this: Had you presented this bill 2 or 3 years ago, and said that you wanted to take the Doe versus Bolton case, which said that we would allow abortions after viability to protect the mother's life or health, but you wanted to take that language and clarify it so that the word "health" was better understood and that those violating it would be subject to serious penalties, I would daresay that you would have been applauded by many of the people who are going to vote against you today.

But they do not accept your sincerity in this, and I do. I share your feeling. I believe that after viability we should apply a strict test as to whether any abortion procedure is going to be allowed.

The Senator from Pennsylvania, in banning one procedure, previability and postviability does not address this. And he would have to admit, in all honesty, that Senator DASCHLE addresses the specific procedure he would like to ban and any other abortion procedure after the moment of viability. His ban, his restriction is much more specific, but much less respectful of the Constitution, women, and fetuses, than that being offered by the Senator from Pennsylvania.

I find it interesting, too, that Senator DASCHLE's proposal faces criticism on the grounds that the doctor is going to make the decision as to whether there is a possibility of risk to the mother's life or a possibility of grievous injury, which is very carefully defined. If the doctor does not make this decision, who will? The local Congressman? A U.S. Senator? Some Federal employee? I have been to a lot of town meetings, hundreds of them. People have asked my opinion and help in many, many situations, but never, never have they asked me to come to their homes when their family has to make an important medical decision and give them the Government's point of view. Quite honestly, Senator DASCHLE addresses this in the only way that you can. This is a situation to be certified by a doctor.

The Republican side has said, well, what if the doctor lies? What if he misleads people? What if, in fact, there is not a threat of grievous injury and he goes ahead with the procedure? And then they quote "Dr. Will," who says, well, this is a law that can never be violated. But there will be other people in that operating room. There will be other witnesses to this act. If that doctor's certification is fraudulent, I daresay he or she runs the risk that they will be held responsible. So, to say that this is unenforceable is, I think, unfair.

The problem with this debate, as I see it, is that many times it deteriorates very quickly. There was an advertisement, a full page ad that was bought by a religious group, which listed the reasons a woman seeks a late-term abortion. It was an embarrassment to read that ad. At one point they said, "Some women seek an abortion because they no longer fit in their prom dresses." Perhaps that is the case. Perhaps not. But for those who are arguing this issue, I hope, I sincerely hope that they have taken the time, as I have, to speak to women who faced tragic circumstances, and never made a casual decision.

I, for one, have met six different women who have been faced with this challenge and have undergone this procedure. They remind me that this debate is not about politics. It is not about legal jargon. It is about our daughters, our sisters, our wives and our friends. It is about families. One woman in my home State of Illinois, when she heard this debate, came forward and said: This isn't fair. The way they are characterizing this procedure and the decision that I faced is not fair. I want to tell my story. My husband and I have decided we have to tell our story.

This is their photograph. Vikki Stella of Naperville, IL, the mother of two daughters, 32 weeks pregnant with her third child whom she had named Anthony. She had painted the nursery. They were prepared, expectant parents, again, for the happiness of another baby, their first son. And then they learned through a sonogram that Anthony suffered from a serious deformity. Anthony had no brain. Anthony would not survive birth but for a few moments. And, if she continued the pregnancy, she ran the risk of jeopardizing her ability to ever have another baby.

So her dying infant would be the last child she ever would bear. Vikki Stella tells the story about she and her husband, hearing this tragic news—imagine, 8 months into the pregnancy—and then being faced with the awful decision as to whether to terminate the pregnancy. They prayed over it. They cried over it. They went forward with it. Afterward, she held Anthony in her arms and understood it was the only thing that she and her family could do. And she came back home.

Last year I had a chance to be introduced to Nicholas. He is in the picture here. He is the little boy in her arms. Nicholas is their new son. I was not really introduced to him because he was asleep in a stroller. But the fact of the matter is, Vikki Stella's story is what this debate is all about. Do you really want to say to this family that we don't care whether or not this family ever has another child; that it makes no difference, the government is going to decide this one for you? Do you really want to say that? I don't think so. This was no casual decision. This was no perfect infant, as some of your illustrations try to prove. This was a sad situation and this family in grief faced a tragic situation and made a difficult decision. This bill that is being offered by the Senator from Pennsylvania would preclude the very procedure which Vikki Stella's doctor recommended. That is not fair.

If you value life, look in the eyes of Nicholas and understand that life came from this decision. There would not have been more life had she been precluded from ending that first pregnancy. It would have been the end of her ability to bear any children. Six different women I have spoken to on this, each one of them a gripping story.

Let me just concede a point. Are casual decisions made? Are there some abortions where you and I might agree, oh, wait a minute, come on, that is not a serious case? Yes, I think that is true. But that is what Senator DASCHLE addresses with his amendment. He says when you are late in the pregnancy you cannot terminate that pregnancy unless you have a serious reason: The life of the mother is at stake, or she risks a grievous injury. We have gone beyond the abstract, we have gone beyond the casual, we are into the serious situations which he has described. And that is why the Daschle amendment is one which I hope those who decry abortion will think about.

The Senator from Arkansas, my colleague, just said, "Search your conscience and soul." I would ask you to do the same over the Daschle amendment. What TOM DASCHLE is offering today is a sensible statement of policy for this Nation. It does not preclude any State from saying we are going to impose a stricter standard. But it says that, for a national policy, we will preclude all late-term abortions except in the most serious situations.

He does not stand alone here. This is not a political calculation. The American Medical Association stands with him, as does the American College of Obstetricians and Gynecologists.

We have so many people practicing medicine on the floor of the Senate today, I am sure that those who are tuning in must wonder whether or not we have diverted from passing law. I do not profess to have any expertise when it comes to medicine. But the people who do, the American Medical Association, the American College of Obstetricians and Gynecologists, have said the Daschle amendment is sensible, it is reasonable, it will preserve for doctors the discretion they need to make the very important decisions about a woman's pregnancy, and terminate it. I respect that. I think all of us should.

Let me also say that, as this issue divides America, it divides this Chamber, it divides political parties, it divides members of our families. I would hope that at the end of this debate, whatever the outcome, we can lower the volume of rhetoric on this difficult issue and try to find some common ground on issues that we might all agree on. How can we implement policies in this Nation to reduce the number of unintended pregnancies? Whether you are pro-life or pro-choice, can we try to find some common ground there? Would that not be good for this Nation and good for this issue—whatever your position on abortion?

How can we make certain that children, wanted children, receive appropriate pre-natal nutritional care during the pregnancy? Should we not all agree on that, pro-choice or pro-life? I think there are so many things which we can address which really speak to our reverence for life. But today I stand in the midst of this long and maybe intractable debate, and urge my colleagues to seriously consider the amendment offered by the minority leader. I believe it is responsible and I believe it addresses late-term abortions in terms that every family can concede are realistic. Yes, we want to reduce the number of abortions. We want to make them rare. But let us never preclude that option, when we have the life of the mother at stake, or the situation that faced Vikki Stella. She had her chance because abortion is legal and safe in America. As a result, she is, in this photo, with her son Nicholas.

I yield my time.

Mr. SANTORUM. Mr. President, I yield 5 minutes to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 5 minutes.

Mr. BROWNBACK. Mr. President, I appreciate very much the Senator from Pennsylvania leading this critical dialog that we are having. I note my appreciation for what the Democrat leader is putting forward, and appreciation as well for his discussion, what he is saying, that what we need to be talking about is limiting abortion. I think folks should note the change that is taking place. We are finally talking about stopping the destruction from occurring here. We are finally addressing that, rather than saying let us continue and let us continue the growth of that. I appreciate his efforts in putting that forward.

I would note, the American Medical Association has said that this is not a needed procedure at all, the partial-birth abortion procedure. This is not a needed procedure. Regardless of the statements of the Senator from Illinois or others, this is not a necessary procedure. Indeed, it is a heinous procedure. The partial-birth abortion is something that pricks our conscience because we cannot even stand the concept of it for pets or for animals, let alone for children and for babies in this country or any other country around the world.

But, if I could, I would like to stand here and sound a hopeful note for us, us as a people, us as a nation, we as a body as the U.S. Senate. I want to stand here and sound a hopeful note because it seems to me we are finally talking about and starting to really wrestle with one of those things that has been one of the parts of the decline in the American culture. I have shown these charts before, but I want to show them during this debate because I think they are an important part about this debate, about what has happened to the American culture during the past 30 years.

Look at this chart. This is about child abuse and neglect reports in the United States since 1976. This is about children being abused, being neglected in America. We had a lot in 1976. We had nearly 600,000 taking place then. In 1976, 600,000 children being abused. What do we have today? I don't know if it will be surprising to anybody. Over 3 million children are being abused or neglected in America today. That is the state of our culture.

What about violent crimes? I chair the District of Columbia Subcommittee. We have no shortage of violent crimes here. We have had three police officers murdered, assassinated, actually. I have had three staff members who have suffered break-ins in my short service in the U.S. Senate. I have been here 4 months. This is a violent society. Look at the numbers per 100,000. About 160 per 100,000 in 1960; 746 per 100,000 in 1993. My goodness, a shocking amount of violent crime taking place in this society.

What have we had taking place in abortion during this period in our society and our culture? In 1973 we had a little under 800,000 abortions in America occurring, in this country an awful lot. Look, it has nearly doubled, 1.6 million per year in America.

If you are an astute observer you will notice some inconsistencies here between a couple of these charts. You will say, "Wait a minute, shouldn't child abuse have gone down if we had children who were not wanted who did not come into the world?" We were promised that an expansion of legal abortion would make every child a wanted child and reduce abuse and neglect, yet child abuse has gone up during that same period of time that we have nearly 1.6 million abortions in America annually.

What has happened here? What is going on? I think it just talks about—it is a debate everybody is familiar with, the coarsening of our culture, the lack of love, the lack of respect. You can call it, really, whatever you want to. It is just that this culture has been in decline for the past 30 years. We get child neglect on the rise, and violent crimes, and 1.6 million abortions a year in America. But do you know what the hopeful note is here? It is we are finally talking about how we limit some of this.

We all, everybody in this body, want this number to go down. Everybody in this body, regardless of whether you are pro-life or pro-choice, wants this number to go down. Now we are finally talking about it. How can we help bring this number down?

I oppose Senator DASCHLE's amendment. I don't think his does it. I don't think we will have any fewer of these taking place. I don't know how many we are actually talking about with the bill of the Senator from Pennsylvania, and nobody really knows, but I think what we are really talking about is we, as a nation, don't really like this. We want it to be less. We want to stop it. We want it to go down.

Mother Teresa was here in this country 3 years ago. She is a saint to all of us. She is probably today the most respected person in the world. She addressed the National Prayer Breakfast 3 years ago, and she stood there, this small, frail little woman, and said, "Can't you care for your children? If you can't, send me your children and I will care for them. Send me your children. I'll care for your children." She also noted at that point in time, as she noted previously, America is not a rich nation; America is a poor nation—it is poor in love and caring.

I hope historians will look back on this debate and say this was the start of us changing this culture from destruction to caring, from saying how can we go down to how can we start back up, and that is the hopeful note I have here. That is why I support Senator SANTORUM's proposed bill to eliminate, to ban this procedure of partial-birth abortion.

Mr. President, let me close by noting the heading the Democrat leader has blown up from the Washington Times, suggesting his alternative is more comprehensive. Mr. President, now that the details are known, the Washington

Times printed today on an article with the headline, "Daschle bill may not ban anything." And I would like to ask unanimous consent that a copy of that article be included in the RECORD.

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

[From the Washington Times, May 15, 1997]

DASCHLE BILL MAY NOT BAN ANYTHING

(By Frank J. Murray)

A bill written by Senate Minority Leader Tom Daschle that is designed to head off a ban on "partial-birth" abortions proposes a mix of state and federal sanctions that critics say hinges entirely on the judgment of the abortionist.

"[A doctor would] pretty much have to indict himself," said one Capitol Hill aide involved in efforts to stop abortions once a fetus can live outside the uterus.

Even when violations are found, federal officials would not be able to act until 30 days after notifying a state's governor and medical licensing board—and then only if needed "to secure substantial justice," according to a text of Mr. Daschle's bill obtained by The Washington Times.

The South Dakota Democrat says his bill would bar aborting any fetus capable of living outside the uterus. A doctor's certification that a pregnancy risks a woman's life or "grievous injury" to her health would be required to perform such an abortion.

The bill's unusual and complex division of authority was termed an unenforceable "scam" yesterday by interests as diverse as Douglas Johnson, lobbyist for the National Right to Life Committee, and Dr. Warren Hern, who literally wrote the textbook on "Abortion Practice."

The Denver gynecologist said the fact of occasional death in childbearing can justify any abortion, no matter how late it is done.

"I will certify that any pregnancy is a threat to a woman's life and could cause 'grievous injury' to her 'physical health.'" Dr. Hern said, using key words from the "Daschle bill, which he criticized as an unwise political stunt to keep pace with pro-life Republicans.

Although Dr. Hern said some doctors would be frightened into complying with the Daschle ban, Mr. Johnson predicted most would follow Dr. Hern's lead.

"In their world, they're not doing anything unethical to sign these certifications. They think it would be unethical not to. They won't see it as lying or bad faith at all," Mr. Johnson said.

The lobbyist would not be drawn into discussing how the partial-birth abortion ban, which would bar a specific type of late-term procedure, and the Daschle bill might be merged.

"You'd still be putting lipstick on a pig," Mr. Johnson said, adding that he is unwilling to help Mr. Daschle "change the subject."

Lingering doubts about whether physical "impairment" mentioned in the Daschle bill would cover psychological stress or depression were unanswered by its text or those who would comment on it.

As many as 41 states have legislation restricting late-term abortion, but pro-life groups say only New York and Pennsylvania have set a time, both at 24 weeks.

That disparity was listed as a congressional finding to justify uniformity so that women cannot cross state lines for abortions once viability occurs.

Dr. Hern said that, in the past year, he performed 13 abortions on women beyond week 26 who "came to me from all over the world."

Among other untested legal questions the Daschle measure poses:

Whether the Supreme Court would let Congress exercise powers that its Roe vs. Wade ruling assigned to states. The bill's "findings" say the court indicated it is constitutional for Congress to act, but a quote from the ruling is edited to omit specific reference to states having that power.

How civil or criminal courts might examine a physician's belief that "continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health."

Whether the 1973 Doe vs. Bolton ruling, issued as a companion on the same day with Roe vs. Wade, forbids second-guessing a physician's "professional that is his best clinical, judgment."

Kristi S. Hamrick, communications director for the Family Research Council, faulted Mr. Daschle for not releasing the text and asking the Senate "to put aside the Partial-Birth Abortion Ban Act in favor of an unseen bill hidden behind the legislative equivalent of Monty Hall's door No. 2."

The draft bill obtained yesterday by The Times, after a spokesman insisted it had not yet been prepared, would bar all abortions "after the fetus has become viable."

Although a Daschle fact sheet titled "The Bipartisan Alternative" includes extensive descriptions of potential medical complications, the proposed statute's entire definition of grievous injury is: "(A) Severely debilitating disease or impairment specifically caused by the pregnancy or (B) an inability to provide necessary treatment for a life-threatening condition."

The bill also would bar enforcement through private lawsuits when government will not act.

There may not even be federal jurisdiction, said a House Judiciary Committee aide to Rep. Charles T. Canady, Florida Republican who sponsored the Partial-Birth Abortion Ban Act that passed the House March 20 by the veto-proof vote of 295–136.

"How does the federal government have any way to get into court on this? It's a civil suit, there's no criminal case here. I don't think they even have a federal nexus," said the aide, who asked not to be named.

In effect, the draft measure would give a doctor, or nonphysician allowed to do abortions, the last word on the likelihood a fetus would survive outside the uterus, as well as calculating risks of "grievous injury" to the mother if she continues the pregnancy.

The bill would assign the Department of Health and Human Services to regulate a doctor's certificate that "in his or her best medical judgment the abortion involved was medically necessary." False statements to federal agencies are felonies.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to make a couple comments. The Senator from Illinois made his comments, as did the Senator from Maine.

They keep focusing on the reason we need a health exception, that the Daschle amendment will do some things, "We provide for a mother's health as well as provide for taking care of these viable babies." I don't know how many times I have to repeat it from how many different sources, but it needs to be repeated again and again and again, and it is being repeated, frankly, without contradiction. These people who I am quoting are people who are involved in maternal fetal medicine. These are people who deal with high-risk pregnancies, pregnancies that are talked about as so important to keep this health option open, that those of us who want to ban partial-birth abortion without a health option, which everyone knows is an open door to do abortion on demand—the courts have said it is, it is an open door—there is no need for a health option in second- and third-trimester abortions. That is not RICK SANTORUM saying it. I don't know how many times I have said this. I am not saying this.

I will give you another physician who is a specialist in maternal fetal medicine, a perinatologist at the Medical College of Pennsylvania who testified under oath—under oath—in U.S. Federal District Court in the Southern District of Ohio. This is Dr. Harlan Giles, who specializes in high-risk obstetrics and perinatology and also performs abortions. This is not someone who is pro-life. Under oath, a specialist in the field who performs abortions, and here is what he says:

After 23 weeks—

This is a 23-week case—

After 23 weeks, I do not think there are any maternal conditions that I'm aware of—

This is 23 weeks, which is what Senator DASCHLE termed as "viability"—

. . . I do not think there are any maternal conditions that I'm aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated.

In other words, you do not have to kill the baby, even in viable babies:

In my experience for 20 years, one can deliver these fetuses either vaginally, or by cesarean section for that matter, depending on the choice of the parents with informed consent. . . But there's no reason these fetuses cannot be delivered intact vaginally after a miniature labor, if you will, and be at least assessed at birth and given the benefit of the doubt.

The Senator from Illinois said, "You don't care about the health of the woman, you want to take these decisions away." It is a decision, unfortunately, of too many doctors in this country and we know this—one thing I learned in being involved, unfortunately, as I have with health care problems personally with my family is that doctors don't know everything. Not every doctor is up on all the literature, not every doctor knows what is out there. So, unfortunately, a lot of people get a lot of bad advice.

Yes, they get a lot of bad advice as to when to abort a baby, far, far, far too often. Maybe it is bad advice because they just don't know or they haven't taken the time to figure it out, or maybe it is because they just don't

want to deal with that high-risk pregnancy because that is not their speciality and they would rather just take the easy way out. You don't get sued for performing an abortion, you get that little consent. In fact, most of the consents on abortions waive the right to be sued. So you get that consent and no one is sued for doing abortions wrongfully. But doctors are sued for wrongful birth. Can you believe that? We don't sue people for doing abortions; we sue them for having babies with deformities or abnormalities. Interesting country we live in.

But the fact of the matter is that no health exception is necessary under the Daschle proposal, because after viability, if you will, there is no reason to kill the baby to protect the health of the mother. No reason; never, never. I have 400 physicians who sent a letter saying never. I have a doctor who is a perinatologist who performs abortions—never. I don't know what else we need.

We talk so much. I know the Senator from California often said, "You're not doctors, and we shouldn't be making decisions here because we're not doctors." I think the Senator from Michigan was right. We are not nuclear scientists, but we make decisions on nuclear energy, and we are not generals, but we make decisions on defense. That is our job. It may not be that we are the best qualified in all cases to make decisions, but that is what we are here to do, and we do it.

I can tell you the Senator from California is not shy about telling other people how to live their lives in a whole lot of other areas. So I just suggest that what we are talking about are the experts telling us to stop the tragedy, and what we have done with the partial-birth abortion ban is to stop the tragedy.

What the Daschle bill does is continue the status quo. It does nothing to stop. You have seen this picture. Donna Joy Watts. Every doctor who looked at Donna Joy Watts in utero said she was not viable. The Daschle amendment would not have stopped doctors, and there were many of them who wanted to abort Donna Joy Watts.

This is a little girl who was born to Joe and Sandra Mallon who live in Upper Darby, PA. This is Kathleen. Kathleen had the same condition, hydrocephalus. She would not be viable, she would not be protected from abortion under the Daschle amendment. The list goes on and on and on.

The fact of the matter is, there is a loophole in this amendment that nullifies the whole good intent that everyone is going around talking about. This does nothing. What it does is provide political cover for those who do not want to vote for a partial-birth abortion ban.

Even if you believe the Daschle amendment does what he says it does, even if you believe that it bans "postviability abortions," most partial-birth abortions are done at 20 to 24 weeks, which is just at the edge of viability. So most partial-birth abortions would, undoubtedly, continue to be legal under the Daschle amendment.

I suggest that we stick to what we know are the facts. We know the fact is that the partial-birth abortion procedure is a brutal, barbaric procedure that should not be legal in our country. We should abolish it. We have the opportunity to do that. If the Senator from South Dakota, and the other Members who are part of his team, want to work on further restricting abortions, count me in, but this amendment does not do that.

Mr. DASCHLE. Mr. President, I yield 10 minutes to the Senator from Maine.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maine for 10 minutes.

Ms. COLLINS. Thank you, Mr. President.

Mr. President, I rise in support of the substitute offered by the distinguished minority leader and my colleague from Maine, Senator SNOWE, to H.R. 1122, the partial-birth abortion legislation.

Let me be clear at the outset that I do not favor abortion. Like most women, I do not believe that abortion should be used as a means of contraception, and I am extremely pleased that the incidence of abortion is on the decline in my State of Maine. In fact, it has dropped by more than 43 percent over the past 10 years.

Moreover, while I respect the right of a woman to choose to terminate a pregnancy during the early stages, even if it is not a choice that I personally would ever make, I am strongly opposed to all late-term abortions that are not necessary to preserve the physical health or the life of the mother.

Fortunately, these procedures are exceedingly rare in my State where just one abortion involving a fetus 20 weeks or older was recorded in all of 1995.

We have heard some graphic and extremely disturbing descriptions of the partial-birth-abortion procedure during the debate on this bill. However, all of the procedures used to perform late-term abortions are equally gruesome and horrible and troubling.

I agree with the minority leader that this debate should not be about one particular method of abortion, but rather should focus on the larger question of under what circumstances should late-term abortions be legally available. My belief is that late-term abortions, whatever the procedure used, should be banned, except in those rare cases where the life or the physical health of the mother is at serious risk.

In my view, Congress is not well equipped to make judgments on specific medical procedures. As the American College of Obstetrics and Gynecologists has said:

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

Most politicians have neither the training nor the experience to decide which procedure is most appropriate in any given case. These medically difficult and highly personal decisions should be left for families to make in consultation with their doctors.

While I do not believe that it is appropriate for us to dictate medical practice, I do believe that Congress does have an appropriate duty to consider the circumstances under which access to abortion by any procedure should be restricted.

The Supreme Court, in Roe versus Wade, has set certain parameters for our task by identifying "viability"—the point at which the fetus is capable of sustaining life outside the womb with or without life support as the defining point in determining the constitutionality of restrictions on abortion.

The amendment we are proposing today goes beyond S. 6 which simply prohibits a medical procedure and will not prevent a single abortion. I think that is a point that has been missed frequently in this debate. By contrast, the Daschle-Snowe substitute would prohibit the abortion of any viable fetus by any method unless the abortion is necessary to preserve the life of the mother or to prevent grievous injury to her physical health.

Mr. President, some have expressed concern that providing a general exception for the health of the mother creates too large a loophole, that it will allow late-term abortions to be performed simply because the mother is depressed or feeling stressed by the pregnancy. I share this concern. I completely agree. And that is why I opposed the amendment offered by the Senators from California, and it is why I have worked so hard to carefully and tightly limit the exception in this amendment to grievous injury to the mother's physical health.

"Grievous injury" is narrowly and strictly defined by the amendment as either a "severely debilitating disease or impairment specifically caused by the pregnancy" or an "inability to provide necessary treatment for a life-threatening condition." Moreover, grievous injury does not include any condition that is not medically diagnosable or any condition for which the termination of the pregnancy is not medically indicated. This language is far more restrictive, and rightly so, than the broad "health" exception debated earlier.

Mr. President, we are not talking about healthy mothers aborting healthy fetuses in the final weeks of pregnancy. We are not talking about hypothetical examples developed by rogue doctors as excuses for performing abortions. What we are talking about

are the severe medically diagnosable threats to a woman's physical health that are sometimes brought on or aggravated by pregnancy. Let me give my colleagues a few examples.

Primary pulmonary hypertension, which can cause sudden death or intractable congestive heart failure;

Severe pregnancy-aggravated hypertension with accompanying kidney or liver failure;

Complications from aggravated diabetes, such as amputation or blindness;

Or an inability to treat aggressive cancers, such as leukemia, breast cancer, or non-Hodgkins lymphoma.

These are all conditions that are cited in the medical literature as possible indications for pregnancy terminations. In these rare cases, I believe that we should leave the very difficult decisions about what should be done to the best judgment of the women, their families, and the physicians involved.

Mr. President, last month, after weeks of heated debate and discussion, the Maine State legislature rejected a bill to ban partial-birth abortions.

During the course of that emotional debate—and this was a very difficult and agonizing debate for all of us—Republican Senator Betty Lou Mitchell of Etna, ME, talked about the decision her daughter-in-law faced 12 years ago. Well into her much-wanted pregnancy, at more than 5 months, the expectant mother learned that her fetus was seriously brain damaged and could not live in the world for more than a few months. Moreover, she was told that carrying the baby to term would prevent her from ever having another child. Faced with this devastating news, she made the heartwrenching decision to terminate the much-wanted pregnancy.

Maine State minority leader Jane Amero told me of a similar experience of a friend's daughter who suffered an extremely serious infection very late in her pregnancy. If she had not terminated that pregnancy, this young woman, who very much wanted to be a mother, would have been left sterile at the age of 25.

The stories told by these two Maine State senators revealed the reality behind the rhetoric in this highly charged emotional debate. Thankfully, most of us here will never face such wrenching decisions. But we know that there are women who do. And the question is, whether this highly personal choice, under such difficult and tragic medical circumstances, should be made by these women and their families or by the Federal Government.

In my judgment, the substitute before us will ensure that late-term abortions are severely limited and limited to only those rare and tragic cases where the life or the physical health of the mother is in serious jeopardy. I urge adoption of the substitute.

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

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I yield such time as he may consume to the Senator from New Hampshire who, I might add, while we have had many speakers come to support this partial-birth abortion legislation—this time in effect we have 42 cosponsors on this legislation—when the bill first came to the U.S. Senate, Senator SMITH, and, frankly, Senator SMITH alone, was standing, debating this issue and defending this position. He was a crusader and someone who stood out when few were willing to speak up. And he is truly the champion of this legislation. It is an honor to yield whatever time he would like to talk about it.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. I thank my distinguished colleague from Pennsylvania for his very kind remarks, and want to join many of my colleagues in applauding his efforts on this issue the way that he has pursued this, I think in fairness and in looking for every opportunity to proceed along this course which basically, as we all know, is the taking of innocent life. And Senator SANTORUM has stood up for those innocent children, time and time again on the floor.

I do know what it feels like to do that, but you know, when you look back in the great debates of history—and this is one of the great debates of history; it will be so judged, I will say to my colleagues—it will be judged up there with the debate on slavery and other great moral issues of our time, which some say we ought not to be debating here on the floor. But the truth of the matter is, this is a very appropriate place to debate these kinds of things.

Slavery was wrong. It was morally wrong. And people stood up against the popular tide at the time and opposed it. Because they did, slavery was ended.

I sincerely hope—and I know that there has been enough rhetoric said on all sides of this issue to make everybody tired of it, I am sure. And I do not intend to be loud. I like to try to be as quiet and unassuming, but firm, as I can.

As I sat here listening this afternoon, and also as I have listened to so much of it on the monitor over the last day, I could not help but wonder what those who have been the victims of abortion would say if they could vote. They cannot.

Some of our constituents who disagree with us or agree with us, whatever the case may be, have the opportunity to so judge you at election time, but not—not—the victims that we are talking about in this debate, which is somewhat ironic to say the least.

And I know that I have seen pictures from both sides of the debate presented from those children who were born because a young woman had another opportunity to have a child and also from those children who were born because a young woman did not have an abortion. So I have seen the pictures. But, Mr. President, I go beyond pictures.

I had the opportunity about a year-and-a-half ago to be at an event where a young woman—I will not use her name—but she was aborted in the eighth month by her mother, and she survived. And she was a 22-year-old young woman who had a slight disability as a result of the procedure. Other than that, she had nothing wrong with her. The abortion that this young child was the victim of was purely for convenience.

Now, that is not the debate here—and I do not mean that it is on the Daschle amendment—but she was aborted. And to listen to her, Mr. President, stand before an audience of probably 800 to 1,000 people, say, No. 1, "I forgive my mother. And she is my mother," she said, and, No. 2, listening to her sing "Amazing Grace"—now, if you want something to tear at your heartstrings, endure that. I have. But that is nothing as to what this young woman endured.

I remember her testifying here before congressional committees where she was taunted by Members of Congress. We all know that story. And I bring that up to simply make the point that these are innocent children, the most innocent of society, unborn, but still children.

I remember engaging in a dialog with one of my colleagues earlier on this issue—and it is a tough issue; there is no question about it—but this person—and I will not mention the name; it is not necessary; the record speaks for itself—but this person indicated that they felt that they looked at the issue and did not feel there was viability in these young months, therefore, there was not life. And I guess I would simply respond by saying: I started at conception.

If there is anybody out here that did not, I would like to hear from them. But I started at conception. I do not know of any way to get where I am now without starting at conception. Now, if there is a way, I would like somebody to tell me what it is.

The truth of the matter is, no matter how you define these terms—you can say "fetus," you can talk about "viability," and "medical procedure" and "abortion," you can talk about all these words—but it boils down to children, innocent, unborn children.

And in the case of partial-birth abortion, I might make the point, as Senator MOYNIHAN has done, that it is probably children, born children, and borders on infanticide. Senator MOYNIHAN is a very respected individual in this body, and one who does, by his own admission, call himself prochoice, and I believe, unless he has

changed his mind—I do not think he has—supports the ban on the partial-birth abortions.

So, Mr. President, I would just like to preface my remarks by, again, making the point that we are talking about real children here, children who have no say, no opportunity to be heard.

And, again, I would just ask my colleagues to reflect, as we have these next few votes on this issue, to think about that. They cannot vote against us. They cannot vote for us. They cannot criticize us. They cannot say anything. And they will never get the opportunity. And you know, I cannot help but wonder. I think about this a lot. I do not know. There are some 20 million-plus children that have been aborted, not partial-birth abortions.

But let us just take partial-birth abortions. We know there have been thousands who have been aborted through this process. So let us focus on that group.

How many children in that group may have grown up to be a President of the United States, a Senator, a doctor who maybe finds the cure for cancer, a teacher who perhaps saves a dozen, 15, 20 children during the course of his or her teaching career, saving these children from going astray, a clergyman who saves a soul? How many people, how many people would there be in that group? We will never know. We will never know.

That is the issue, Mr. President. I hope as we continue this debate—and I know it is tough—I hope we can separate all of this rhetoric and all of the harsh words and the hard feelings, just put that aside and think about what we are really thinking about here, an unborn child—yes, created at conception, at some point along the way, denied the access to life, to being born. That is the issue.

Now, I know how hard my colleague from South Dakota has struggled with this issue because we have talked, and I respect him very much and he knows that. I had to think long and hard and very carefully about what the Senator proposed to do. He is my friend. I cannot understand the amendment. I want to make some points about this amendment that I think perhaps the Senator has not thought about—I do not know if that is true or not. There have been a lot of things said out here, and it is probably unlikely there is something he has not thought about.

I believe this amendment, as presented by the Senator from South Dakota, represents, even though it is not intended, an extremist position on this issue, on the abortion issue, because the Daschle substitute amendment explicitly permits abortions even in the 7th, 8th, and 9th month of pregnancy, so long as the abortion claims, "Continuation of the pregnancy would risk grievous injury to the mother."

Think about that, Mr. President. Babies in the 7th, 8th, and 9th month have already developed to the point where they can survive. In fact, babies can survive even earlier than that, survive in the sense that I mean survive outside the body of their mother. They can survive independently.

Then let me ask this question, for anybody who may be undecided, and there probably are not many, if any. If you have a child that can live independently of the mother, why abort it? Why not deliver the baby alive? By definition, abortion means taking the life of a child. Why do we have to do that? Why do we have to take the life of a child?

I am not a doctor and I do not pretend to be, but I do listen to medical advice and medical comments. I listen to the point of view of a group called the Physicians Ad Hoc Coalition for Truth, an organization of 600 doctors nationwide who have been providing an enormous public service by working to get the true medical facts out about partial-birth abortions. In a statement they issued on May 12 of this year, they said, as follows: "If maternal conditions require the emptying of the womb"—and these are not my words; these are the words of physicians—"If maternal conditions require the emptying of the womb postviability, the standard would be to induce labor and deliver the child. By definition, the postviable child delivered early is simply a premature baby. Senator DASCHLE's legislation never addresses the reason why it may ever be necessary to kill a premature baby, including those in the process of being born," as is the case in partial-birth abortion, "in order to preserve the health of the woman."

The Catholic Diocese in Sioux Falls, SD, Reverend Carlson, made a statement saying, "The substitute bill allows abortions, including partial-birth abortion procedures in the last weeks of pregnancy, because in the case of certain serious illnesses a physician may have to 'terminate' a pregnancy after viability to save the mother, yet in such cases a physician can simply deliver the child. Nothing in the medical literature indicates a need to abort or kill a child in such cases."

See, that is the issue here. By definition, you are saying "viability." Viability by definition means that the child can survive outside the body of the mother. Then why kill the child?

Mr. President, let me repeat the latter part of the statement that was made by these physicians. The Daschle legislation never addresses the reason why it may ever be necessary to kill a premature baby, including those in the process of being born in order to preserve the health of a woman. It does not address that. That is the flaw, the main flaw, as I see it, in the amendment, as well-intended as it is.

I remember having a debate with one of my colleagues a couple of years ago when I was out managing this same bill. It was very interesting, and I ask Members to reflect for a moment. We all know in the partial-birth-abortion procedure, first of all, it does not always happen in the 7th, 8th, and 9th month. Sometimes it happens earlier than that, and, of course, the Daschle amendment would not protect those children.

I remember in the debate having a very interesting dialog with one of my colleagues in which I pointed out that in order to ensure the opportunity to take a child's life through partial-birth abortion, you have to turn the child in the womb and deliver the child breach, or feet first, and in the process, stop the child's head from coming into the world. Now, my colleague that I was debating said, "That is fine. That child is not born yet because the head is still in the birth canal." I said, "OK, I do not agree, but fine. Let me turn it around. What happens if the child comes into the birth canal head first and only 10 percent of the body comes into the world, for example, just the head?" And the answer was, "That is life, that is life."

So now what we have done is define a certain part of the baby's body as being life and another part of the baby's body as not. There is no logic here. There is absolutely no logic here. I am not trying to sensationalize this. These are facts. You turn the child around because if the baby is born head first, you cannot use the needle and destroy the child. So 10 percent in the world, head first, it is a child according to the critics; 90 percent in the world, feet first, it is not. Does anybody really believe that? Does anybody really in here, never mind up here, in here, does anybody believe that? If you believe that, you ought to vote against the partial-birth abortion ban; you ought to vote for Daschle if you really believe that.

Why is it necessary, ever, to kill a premature baby? That question has not been answered yet in this debate, including those in the process of being born in order to preserve the health of a woman. How does it help the health of a woman to restrain a child from coming the rest of the way through the birth canal—that is what a partial-birth abortion is, restraining a child from coming into the world so you can kill it. That is the purpose.

As Senator MOYNIHAN said, it is bordering on infanticide. Indeed, it probably is infanticide. This is not abortion. It is probably misnamed. It is killing a child in the hands of the doctor. Nothing impersonal about this one. There are many impersonal ways to commit abortions. We all know, we have all heard about them. Nothing impersonal about this one. You are holding the child in your hand when you do it.

With all the problems we have in the world and in our country—you name it,

race problems, poverty problems, problems of protecting ourselves and national defense, anything, all the problems we have, infrastructure—do we really want to spend time doing this to our children? Do we?

In May 1997, in the Washington Post, and again on the Senate floor, Senator Daschle said every effort should be made to save the baby. I know he means that. But with all due respect, the amendment is trying to have it both ways. It does not focus on the baby, it focuses only on the mother.

How can you say you are for saving a baby when your amendment explicitly authorizes an abortionist to kill a baby? The assertion is that the Daschle amendment somehow requires doctors to try to save the life of the viable baby that they are aborting. Yet, the language to this effect, which includes a wide open health exception, appears on page 4 of his amendment in the nonbinding findings. I say you put this in the nonbinding findings, but you do not have it in the main language of the amendment.

This language would not have the force of law. It would, if it were in the main bill, in the amendment, but it is not. It is in the language. So if we want to truly write some protection for the viable fetus into this proposed criminal statute, we could put it in the statute itself, not in the nonbinding finding section and certainly not with a wide open health exception.

We all know and respect and support, I believe, the principle of self-defense. If the health of the mother is a problem and the life of a mother is a threat, try to save both. What is wrong with that? Why do we say we are going to say something is viable and then kill it? If you say it is viable, if you make the admission, which this amendment does, that this child is viable any time after the sixth month, if it is viable, then when you abort it you are killing it because you said it is viable by your own definition.

This is really a pretty logical debate here, Mr. President. Sometimes we get off on other tangents. After viability, doctors can terminate the pregnancy without killing the baby. It happens all the time. They can do this by delivering the baby by cesarean section or directly through the birth canal. Sometimes they must do that in order to protect both the mother and the child. That is not an abortion. It is a premature delivery. It happens every day in America. There is no reason why it cannot happen here.

Dr. Harlan Giles, a professor of high-risk obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures before viability, and in sworn testimony before the U.S. District Court for the Southern District of Ohio in November 1995, Giles had this to say about abortions after viability. This is a doctor who performs them:

> [After 23 weeks] I do not think there are any maternal conditions that I am aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated. In my experience for 20 years, one can deliver these fetuses either vaginally, or by cesarean section for that matter, depending on the choice of the parents with informed consent . . . But there's no reason these fetuses cannot be delivered intact vaginally after . . . labor, if you will, and be at least assessed at birth and given the benefit of the doubt.

That is the doctor's own words who perform abortions.

Mr. President, the question that I ask to the proponents of the Daschle amendment is the same one I have been asking over and over and over again, year after year, on this issue, with those who support partial-birth abortion on demand. And it is on demand and we know that. I repeat the question in a moment.

We know that because of the statements made by an individual who performed them, and I stood on the Senate floor a year and a half ago or 2 years ago, and took flak from every direction, from my opponents on the other side of this issue, accusing me of making that up, that it was only a few hundred abortions a year this way, done in this manner, when, in fact, we now know it is thousands, and that they admitted they lied. But to the individual's credit, he told the truth now. But the question is, why is it necessary to kill a partially born baby? Will somebody come out on the floor of the Senate and answer me that question, when you have a baby in the birth canal, 90 percent born but for the head, somebody give me one reason why we have to take that baby's life in order to protect the mother's life or health when you literally restrain that child from coming the rest of the way out of the birth canal.

Nobody has been able to tell me that. Why not just deliver the baby alive. And I will tell you why, Mr. President, because you have a problem when the baby is alive, don't you? And you know what another real dark secret is here? And they do not talk about it much. Do you know what happens oftentimes? You get the baby in the position, the abortionist is prepared with the needle, the head is still in the birth canal and, whoops, the baby comes out. You look around and you do it.

That is not abortion, Mr. President. Do not let anybody tell you it is. That is killing an innocent child, a live, born child, and it happens. That is the dirty dark secret, one of them, about partial-birth abortion. Why not just deliver the baby. Her body, her shoulders are already out of the womb and in the birth canal. Why not just complete the delivery? Why kill her before completing the delivery?

Unfortunately, that is what this amendment will allow. Why propose an amendment that explicitly authorizes abortions to kill viable children? That is not saving lives. And I know what the intent here is by the Senator, but we are killing viable children in seventh, eighth, and ninth months of pregnancy. We are protecting the mother but why not protect the child, too? It is not necessarily one against the other.

In his May 2, Washington Post opinion article Senator DASCHLE cited certain conditions for termination of pregnancy such as hypertension, kidney failure, coma, breast cancer, et cetera. However, what was not said was why the Senator and the supporters of the amendment believe that it would ever be necessary to kill that viable baby because of the medical conditions that he cites.

Think about it. Why would you have to kill the child for any of those reasons: hypertension, kidney failure, coma, breast cancer. Remove the child alive. It can be done. It is done every day.

Once again, let me point out that physicians, not Senators, physicians, across America address these complicated pregnancies day in and day out and they do it by delivering babies. This amendment, even though it is not intended to do that, would give abortionists the legal authority now under law to perform abortions in these cases whenever they want to without any consideration to the law.

Before the Senate closes debate, and I know we are getting close—for the benefit of my colleagues, I am shortly going to yield—before the Senate closes debate on this amendment, I hope that we will have an answer to the question that I have posed. I would really sincerely like to hear the answer as to why this child must be terminated, killed, taken dead from the womb of the mother when, in fact, you could perhaps save both?

I have one final point. Those proponents of this amendment assert that it would provide some limitation on postviability abortions because it includes what they say is a narrow health exception. The Senator's amendment says that postviability abortions are permitted if an abortionist certifies that a woman is threatened with some "risk," no matter how remote, of a "grievous injury" to her health. Unfortunately, the "grievous injury" exception does not protect one single viable unborn child, not one. Not one. And if the intent of the authors of the amendment and the proponents of the amendment is to save lives, babies' lives, the amendment does not do it. If it is the intent to save mothers' lives at all costs, I think it does do that and I support that part of it, saving mothers' lives, but it does not do anything to save a baby's life.

Dr. Warren Hern, a leading third-trimester abortionist, who has written a major treatise on the subject of the

"grievous injury" exception, in an interview published on May 14, yesterday, in the Bergen County Record, said:

I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.

In other words, no matter what the grievous injury it is the health exception that the abortionist will use. That is not what the Senator from South Dakota intends but is the result of this amendment. Any doctor who wishes to do it can do it.

So we have a leading third-trimester abortionist who basically says, hey, pass that thing. Then I can kill all kinds of babies and not have to worry about a thing. Just pass it. He is an expert, and he is saying this will allow him to perform an abortion on a viable child any time he wants to. So you could not ask for more compelling testimony, in my opinion, that this amendment, the Daschle amendment is a prescription for abortion on demand even after viability, and it is the main reason that it should be defeated and that we should pass the ban on partial-birth abortions as prescribed by the bill introduced and supported by the Senator from Pennsylvania.

I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the vote occur on or in relation to the Daschle amendment at 7 p.m. and that the time between now and then be equally divided between Senators SANTORUM and DASCHLE.

Mr. DASCHLE. Mr. President, reserving the right to object, I have a request for 45 minutes of time that I would be willing to lock in, but I think that would mean a slight difference in the amount of time allocated to both sides. So with the understanding that I could have 45 minutes, I have no objection.

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

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Let me respond briefly to the distinguished Senator from New Hampshire prior to the time I yield time to the Senator from Louisiana. He asked the question, why not allow a child to live? And my answer is that is exactly what we want to happen. On page 3 of the bill we say:

Even when it is necessary to terminate a pregnancy to save the life or health of the mother, every medically appropriate measure should be taken to deliver a viable fetus.

Termination of a pregnancy does not necessarily mean abortion. We want to provide the opportunity for that child to live. And on page 3 we assert that.

On page 4:

Abortion of a viable fetus should be prohibited throughout the United States unless the woman's life or health is threatened, and even when it is necessary to terminate the pregnancy every measure should be taken, consistent with the goals of protecting the mother's life and health—

Which is the constitutional requirement—

to preserve the life and health of the fetus.

On page 3 and on page 4 of the bill we assert that as unequivocally as possible.

Now, he indicates that this is the findings. Well, the findings are designed to instruct the Court on how to interpret the law. That is what the findings do. There is no more appropriate place than in the findings to tell the Court this is how we want you to interpret whether or not a doctor is in compliance with the law.

I would be more than ready to state that assertion on every page of the bill if it would make my colleague from New Hampshire more confident that the intent of our legislation is to do just as I have asserted. But this is the language in the bill. We want the child to live.

Now, with regard to permitting abortions in the seventh, eighth, and ninth month, I find it ironic that anybody supporting H.R. 1122 would use that as a criticism of our amendment because that is exactly what the partial-birth abortion ban does. It allows abortions. It allows dilation and evacuation. It allows induction. It allows hysterotomies. It allows abortion. H.R. 1122 is banning only one procedure here. They are not banning abortion with their bill. We, by contrast, ban them all. So I hope that no one would cite that as a reason to oppose our amendment.

I yield 10 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. I thank the Chair. I begin by thanking my distinguished colleague from South Dakota, Senator DASCHLE, for his hard work and excellent work. He has been working for months, talking with medical doctors, advocates for children and families, and affected women to try to help us arrive at a balanced approach, that will resolve this very difficult of issues.

To my distinguished colleague from New Hampshire, who just spoke, I say that I am here today because I want to join with you in ending late-term abortions. The young woman about whom the Senator spoke so beautifully, would have a chance to live under our amendment because it will ban all procedures except in the very rarest of circumstances. With due respect, under the bill that the gentleman is supporting, that wonderful child could still be aborted, because the mother would still be free to choose another procedure.

My colleagues on the opposite side continue to make reference to a Dr. Hern. I want to say again that when this bill passes, he will lose his license. He will not be able to practice.

My distinguished colleague from New Hampshire has made the excellent argument for the minority of people in this country who believe that abortion should be banned at all times, in every circumstance, in every case, but the majority of Americans in my State of Louisiana and in this country want reason. They want to abide by the Constitution which gives the woman the right to terminate a pregnancy in the early stages, but they want most certainly to ban and prohibit late-term abortions. That is what this amendment does.

We have heard all day about one or two doctors that might say they would never perform a late-term abortion. That is their right under the law. But the American Medical Association, 37,000 strong, has said, and I want to quote again for the debate:

In recognition of the constitutional principles regarding the right to an abortion articulated by the Supreme Court and in keeping with the science and values of medicine, the AMA recommends that abortions not be performed in the third trimester except in the cases of serious fetal abnormalities, incompatible with life. Although third-trimester abortions can be performed to preserve the life or health of the mother, they are in fact generally not necessary for those purposes except in the most extraordinary circumstances.

That is what my distinguished colleague from South Dakota along with the two Senators from Maine, have tried to craft, a very narrow health exception with tight restrictive language.

Mr. President, I rise today in support of the Snowe-Daschle amendment to Senate Bill 6.

Mr. President, the distinguished Supreme Court Justice Felix Frankfurter wrote:

Great concepts like liberty were purposely left to gather meaning from experience. For they relate to the whole domain of social and economic fact, and the statesmen who founded this nation knew too well that only a stagnant society remains unchanged.

We are not a stagnant society and changes in reality and our perceptions have brought us here today. It has been nearly 25 years since the Supreme Court decided Roe versus Wade. The Roe decision encompassed a lot of the experience and wisdom that our nation had acquired regarding personal liberty. In 1973, it affirmed the new understanding that Americans had developed about the role of women in society and the role of government in our personal lives.

However, 25 years after Roe, our country has had more time to reflect on its experiences. Social and economic factors have altered the world in which we live. Breakthroughs in medicine have changed our understanding of human development and have allowed us to deliver premature babies at ages

never before possible. We have reached the appropriate time to review our definition of liberty in the context of a woman's right to end a pregnancy.

Those of us who support Roe versus Wade understand this was not a decision which allowed for abortion on demand, but rather it was a decision which balanced the rights of privacy and liberty on one hand—and State's authority to protect prenatal life on the other. In writing his decision, Justice Blackmun clearly stated:

> A state may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in the pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision.

One of the questions we face today is what is the approximate point at which prenatal life becomes sufficiently compelling and what are the appropriate regulations to the termination of pregnancy.

In reviewing both Roe and Casey, it is clear that the Court has given us one sure point on which to balance individual liberty and prenatal life. That point is viability. Before a fetus is viable, the rights of privacy and personal liberty found in the Constitution require us to provide safe and accessible method to terminate a pregnancy. After viability, the State's interest in prenatal life should prevail. Our first woman on the Supreme Court, Sandra Day O'Connor, framed the delicate balance our society has reached in the Casey decision when she stated:

> While [Roe] has engendered disapproval, it has not been unworkable. An entire generation has come of age, free to assume Roe's concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions . . . and no changes of fact have rendered viability more or less appropriate as the point at which the balance of interests tips.

Viability presents a bright line—a legal standard—that we can use to govern our decisions about regulating abortion.

Mr. SANTORUM's bill violates the viability standard and does nothing to end late-term abortion. On the other hand, Mr. President, Senator DASCHLE and Senator SNOWE's alternative method would indeed make clear that all late-term abortions by any procedure are prohibited. I thank them for their leadership in bringing this alternative to the floor. They have both displayed a willingness to reach across the aisle and provide us with a bill which reflects the consensus that the American people have already reached.

A 1996 Gallup Poll indicated that 64 percent of Americans support a woman's right to have an abortion during the first 3 months of pregnancy. This is a strong indication of a national consensus that abortion should be an available, legal, and safe option for women in the early stages of pregnancy.

When you ask those same people how they feel about abortions in the third trimester, the consensus flips the other way. Only 13 percent of those surveyed supported abortion, 82 percent would prohibit it. Those 82 percent of the people who oppose abortion in the third trimester are not just opposed to a particular procedure; they are opposed to all procedures. They believe that once a fetus reaches the point where it could sustain meaningful life, they are opposed to abortion.

That is precisely what is accomplished by the Snowe-Daschle amendment. We make clear, with appropriate penalties, that late-term abortion by any procedure will not be allowed, except in the rare and extraordinary circumstances when a woman's life or physical health is gravely threatened. Yes, a doctor would certify the viability and health risk to the mother, but who else would be qualified to make such medical decisions? The local judge or city council?

Without this amendment, S. 6 would accomplish very little. The partial birth abortion ban concentrates on banning only one procedure, it does nothing to stop late-term abortions. What possible good is accomplished by bringing this very heart-wrenching subject before the Congress and the American people, only to pass a bill that does not affect abortions? As written, this bill is simply an opportunity for people to congratulate themselves on having done something important, when in fact they have accomplished nothing. If we pass S. 6 unamended, it would be like outlawing armed robbery with an Uzi, but allowing criminals to hold you up with a handgun. The American people will see through this facade and be even more disillusioned with this institution and its members.

Maybe the most significant advantage of the Snowe-Daschle amendment is that it can be passed, signed by the President and will meet constitutional scrutiny. The bipartisan approach of this amendment is our best chance to address post-viability abortions, while also preserving our understanding of liberty in the 25 years since Roe versus Wade.

I would be remiss if I did not add that when the government acts to restrict abortions, as is its right in certain circumstances, it has an increased obligation to make the choice to support life more compelling. We cannot on one hand require women to forego the option of abortion and at the same time undermine all the programs that support a woman as she struggles to bring a child into the world. Since the Roe decision, a number of steps have been taken to make abortion safer and more accessible. We need to act affirmatively to make abortion more rare and less necessary. We can do that by vigorously supporting pregnancy prevention strategies that would minimize or preclude the need for abortion.

A key component of this effort must be adoption. This Nation needs to make adoption more affordable through tax credits and Congress should work to implement State and Federal laws and regulations that encourage families to build through adoption.

We must continue to reform our foster-care system to make permanent placement for children a reality and a loving family for every child an achievable goal.

We should invest more in prenatal care and health insurance for our children so that young mothers deliver healthy babies, taxpayers save money, and children have a real chance at a decent life.

We ought to concentrate on effective pregnancy prevention efforts in our schools. Our children need to understand the serious ramifications of sex outside of marriage so that we are faced with fewer unplanned pregnancies. We have had years of experience with sex education programs in this country. We should, state-by-state, replicate those successful programs nationwide.

It is important that we in the Congress and in this Chamber understand that a commitment to life means more than just talk. In a time of tight budgets, the true test of peoples' priorities is where they are willing to commit scarce resources. We can all agree that we should make every effort to preserve human life. However, it is a hollow promise to bring life into the world and then abandon it when it arrives. If life is a priority for this Congress, we should reflect it by making our policies and pocketbooks available to nurture young lives.

Mr. President, the debate surrounding late-term abortions has been a valuable opportunity for the American people to take stock of what we mean by liberty. I believe that the Snowe-Daschle amendment is an excellent reflection of what our experience has taught us since Roe. It restores a balance to our national dialogue about abortion and premises it upon the clear standard of viability. I urge my colleagues to support this amendment.

Thank you very much.

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

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, first, I would like to compliment my colleague from Pennsylvania, Senator SANTORUM, in addition Senator SMITH of New Hampshire, who brought this issue to the floor of the Senate last Congress and maybe educated everybody in the Congress and maybe in the country about this very gruesome procedure

which, unfortunately, happens all too many times. The President said it doesn't happen very many times. But now we found out it happens thousands of times. In one clinic in New Jersey it happened 1,500 times.

So I compliment my colleagues from Pennsylvania and from New Hampshire, and also Senator DEWINE and Senator FRIST, who spoke very eloquently about this issue. It is not an easy issue. It is not one that I think a lot of us look forward to debating.

Mr. President, I speak on this issue on occasion. Again, it is not one that I particularly like to speak on. Maybe I did it for a lot of reasons. Somebody said, "Why does Congress always have debates on abortion?"

I think part of the premise goes back to the fact that the Supreme Court legalized abortion. They legalized abortion in the Roe versus Wade decision. Everybody acknowledges that. I have a problem any time the Supreme Court legalizes or legislates in any area. I look at the Constitution. Article I says Congress shall pass all laws—Congress being comprised of the House and the Senate, elected bodies.

People have a choice. If they don't like the laws we pass, they can change Members of Congress.

In 1973, the Supreme Court legalized abortion. They overturned laws in almost every State that had some restrictions dealing with abortion and basically decided by trimesters what was legal and what was not legal. I object to that process.

Colleagues who really think that we should legalize abortion or preempt all State laws, or some State laws, should introduce such legislation, and, if they have the votes, they can codify Roe versus Wade, or they can change it. But they should do it through legislative process not do it through a nonelected judicial process of the Supreme Court.

So I object to the Supreme Court legislating. I think that they have done a pretty crummy job in their legislating.

Our colleagues are aware of the fact—because we had this debate last year and now we have this debate before us today—that there is a procedure called partial-birth abortions where the baby is almost totally delivered, yet its head is held inside, scissors are inserted into the baby's head, and the brains are sucked out. Then the dead baby is delivered.

We are trying to ban that procedure. Senator DASCHLE has an amendment. I looked at the headline. It says: "Daschle Abortion Ban Spares 'Viable' fetuses."

If I believed that headline, I would support the amendment. But I look at the amendment. What does it do? In the first place, it is a substitute. If it was in addition to the language before us, maybe we would have something to talk about. But it isn't. It is a substitute. It strikes the language.

If you look at the language of the amendment, it strikes all of the prohibition on banning partial-birth abortions and says let's insert the following.

So it totally eliminates the bill that has already passed the House of Representatives by an over two-thirds vote, and a bill that we voted on last year when we had overwhelming support. We didn't have two-thirds. It strikes that, and says let's start over.

We just saw the language today. It was just inserted today. We have not had enough time to totally review it. But I have read it. I have some problems with it.

If the real purpose of it is to spare viable fetuses, I am going to support it. But I don't think that is the case. I want to go into the language and maybe point out what I think is deficient in the language and then tell my colleagues and my friend, the minority leader, that I will be happy to work with him. Maybe we can come up with language that would accomplish the objective of sparing viable fetuses. I will work with any Senator to try to do that. I will be happy to. But I don't think the language that we have in front of us today does that. I will go into a statement to illustrate it.

Mr. President, the amendment that we have before us includes the health exception that is said to be "stricter than the Republican measure," what it says on the headline. But, in reality, the exception contained in this amendment is no exception at all, but a large hole, a large protection for late-term abortions.

The proposal is—as George Will accurately characterized it in his April 24, 1997, column—"a law that is impossible to violate."

That's one reason this amendment has been termed by critics "the abortionist empowerment clause."

While this amendment claims to protect viable unborn children from abortion, a closer look shows that it provides no protection at all.

The amendment would make it "unlawful for a physician to abort a viable fetus. * * *"

Who determines whether a particular fetus is viable?

There is no definition of "viability" in federal law. Nor does this amendment define "viability."

The prevailing standard of viability in federal law was set by the Supreme Court in Planned Parenthood of Central Missouri versus Danforth. In that case, the Court held:

The determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician.

In other words, the person who performs the abortion decides whether the baby he or she is aborting is viable. This is the standard that governs the Daschle amendment.

The abortionist decides whether the baby is viable. The abortionist doesn't even have to certify his decision. Unless he voluntarily says to a U.S. attorney that the baby he aborted is viable, no civil penalty can be brought against him.

Let's say that an abortionist tells a U.S. attorney that he has aborted a viable baby. In order to avoid civil action, the abortionist need only "certif[y] that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health."

To whom does the physician certify? Does he file a certification with the Justice Department? With HHS? With the state licensing authority? With a notation in the patient's file? The amendment doesn't say.

When does the physician certify? Before he performs the abortion? After he performs the abortion? After he is called into question for having performed the abortion? The amendment doesn't say.

It merely says that by "certifying," he avoids civil action for having aborted a viable infant, and it leaves it to the Secretary of HHS to develop regulations defining what the certification entails.

A physician who aborts a viable child must certify that "the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health."

While the amendment defines "grievous injury," it does not define "risk."

The risk of continuing a particular pregnancy may be small, but that is irrelevant under the Daschle amendment.

The risk of carrying a pregnancy to term may carry less risk in a particular case than the risk of terminating the pregnancy, but that doesn't matter under the Daschle amendment.

The only relevant question is "does the abortionist believe that the "continuation of the pregnancy" poses any risk of "grievous injury?" Since every pregnancy poses at least some risk, an abortionist can justify any abortion under the Daschle amendment.

The Daschle amendment states that a physician must certify—under penalty of perjury—"that, in his or her best medical judgment, the abortion involved was medically necessary."

Unfortunately, as with other provisions of this amendment, the perjury penalty is very difficult, if not impossible, to enforce.

The abortionist only has to sign a paper that asserts that "in his or her best medical judgment," the abortionist believes that "the continuation of the pregnancy would . . . . risk grievous injury to her physical health."

The certification is based not on objective medical facts but on the abortionist's subjective judgment.

If the certification by an abortionist was challenged in an action for perjury, the question before the court would not be about medical facts but on whether the physician believed that he had exercised his best medical judgment. Impossible, impossible to bring a conviction.

I think that every abortionist would certify he had exercised his best judgment when he aborted a baby, whether viable or no. For example, Dr. Warren Hern, who performs third-trimester abortions in Colorado, said of this amendment: "I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health." So long as Dr. Hern says he used his best medical judgment in making these certifications, he could not be prosecuted for perjury under this amendment. So this amendment, in my opinion, would be ineffective, totally ineffective in protecting viable unborn infants.

Mr. President, I ask the sponsor if I can have an additional 2 minutes.

Mr. SANTORUM. I yield 2 minutes to the Senator.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. NICKLES. Mr. President, we have to ask the question Senator SMITH asked us: Why kill a viable baby? That is another aspect of this amendment that troubles me a lot. The amendment allows for the destruction of viable unborn children.

A group of physicians headed by my colleague from Oklahoma, Dr. TOM COBURN, and the Physicians' Ad Hoc Coalition for Truth, states that it is "never medically necessary, in order to protect a woman's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester of pregnancy." He is an obstetrician. He has delivered hundreds, thousands of babies. I have not. But he has made that statement. Dr. Koop has made that statement. I happen to give them credit. I think the child would like for us to give them that credit.

So the Daschle amendment would be ineffective in protecting viable unborn infants.

Mr. President, a big difference between the Daschle amendment and the amendment by the Senator from California that was defeated earlier today is that the Daschle amendment does not include a "mental health" exception.

The distinguished Democratic leader, in speaking with the press earlier this week, said that his amendment does not contain "a simple mental health loophole."

But he then added, "It's my understanding based upon an extraordinary number of conversations and consultations that mental problems ultimately, in situations involving pregnancy and abortion, evidence themselves physically."

Thus, while the amendment does not contain a simple mental health loophole, the author of the amendment believes that mental illness can have physical manifestations that would possibly justify late-term abortions.

The Daschle amendment would not eliminate the vast majority of all partial-birth abortions.

Ron Fitzsimmons, the executive director of the National Coalition for Abortion Providers admitted he lied about the frequency and necessity of partial-birth procedures.

He told the American Medical News that the vast majority of partial-birth abortion are performed in the 20-plus week range on healthy fetuses and healthy mothers. "The abortion rights folks know it, the anti-abortion folks know it, and so, probably, does everyone else."

Yet this amendment would permit most partial-birth abortions since they are usually performed during the 2d trimester of pregnancy.

The amendment prohibits abortions of viable infants unless there is a risk of grievous injury to the mother's life or health.

Abortionists who violate this law are subject to fines and suspension of their medical licenses. No provision is made for any review of the physician's certification or the medical basis for it.

Unfortunately, since the abortionist determines the health of the mother and the viability of the baby, no punishment would result no matter what the evidence.

In order for someone to be prosecuted under this amendment they would have to voluntarily report that the child they had aborted was viable and that the abortion they had performed was not medically necessary.

Does anyone imagine a physician would ever volunteer for such a penalty?

It would be as if we allowed each driver to decide whether or not he or she was speeding. The only people who would receive speeding tickets would be those who voluntarily reported to the police that they had exceeded the speed limit.

Self-enforcement is no enforcement. And that is what the Daschle amendment would put in place.

I just conclude with the statement, Mr. President, this is a vitally important issue. I do not question the motives of my colleagues on the other side of this issue. I hope maybe we can come up with some type of a ban on aborting viable fetuses. But I believe this language in the first paragraph of the bill, language that says it shall be unlawful for a physician to abort a viable fetus when the physician makes that determination, unless the physician certifies—and he can do that, basically, by saying it is his best medical judgment that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health—any risk, every pregnancy has risk—I am afraid that this language is so riddled with loopholes that it would provide no protection whatsoever, that it would have no real impact whatsoever.

So I urge my colleagues to vote "no" on the Daschle amendment, to support the ban on partial-birth abortions, and then let us see if we cannot work together in the intervening couple of months, through the proper committees, have hearings, have suggestions from experts, health experts, and maybe we can refine language comparable to this to provide real protection for unborn children.

I ask unanimous consent an article by Charles Krauthammer, "Saving the Mother? Nonsense," which is dated March 14, and also a letter from the Physicians' Ad Hoc Coalition for the Truth, be printed in the RECORD.

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

[From the Washington Post, Mar. 14, 1997]

SAVING THE MOTHER? NONSENSE

(By Charles Krauthammer)

Even by Washington standards, the debate on partial-birth abortion has been remarkably dishonest.

First, there were the phony facts spun by opponents of the ban on partial-birth abortion. For months, they had been claiming that this grotesque procedure occurs (1) very rarely, perhaps only 500 times a year in the United States, (2) only in cases of severe fetal abnormality, and (3) to save the life or the health of the mother.

These claims are false. The deception received enormous attention when Ron Fitzsimmons, an abortion-rights advocate, admitted that he had "lied through his teeth" in making up facts about the number of and rationale for partial-birth abortions.

The number of cases is many times higher—in the multiple thousands. And the majority of cases involve healthy mothers aborting perfectly healthy babies. As a doctor at a New Jersey clinic that performs (by its own doctors' estimate) at least 1,500 partial-birth abortions a year told the Bergen record: "Most are for elective, not medical, reasons: people who didn't realize, or didn't care, how far along they were."

Yet when confronted with these falsehoods, pro-abortion advocates are aggressively unapologetic. Numbers are a "tactic to distract Congress," charges Vicki Saporta, executive director of the National Abortion federation. "The numbers don't matter." Well, sure, now that hers have been exposed as false and the new ones are inconvenient to her case.

Then, the defenders of partial-birth abortion—led by President Clinton—repaired to their fall-back position: the heart-tugging claim that they are merely protecting a small number of women who, in Clintons' words, would be "eviscerated" and their bodies "ripped . . . to shreds and you could never have another baby" if they did not have this procedure.

At his nationally televised press conference last Friday, Clinton explained why this is so: "These women, among other things, cannot preserve the ability to have further children unless the enormity—the

enormous size—of the baby's head is reduced before being extracted from their bodies."

Dr. Clinton is presumably talking about hydrocephalus, a condition in which an excess of fluid on the baby's brain creates an enlarged skull that presumably would damage the mother's cervix and birth canal if delivered normally.

Clinton seems to think that unless you pull the baby out feet first leaving in just the head, jam a sharp scissors into the baby's skull to crack it open, suck out the brains, collapse the skull and deliver what is left—this is partial-birth abortion—you cannot preserve the future fertility of the mother.

This is utter nonsense. Clinton is either seriously misinformed or stunningly cynical. A cursory talk with obstetricians reveals that there are two routine procedures for delivering a hydrocephalic infant that involve none of this barbarity. One is simply to tap the excess (cerebral spinal) fluid (draw it out by means of a small tube while the baby is still in utero) to decompress (reduce) the skull to more normal size and deliver the baby alive. The other alternative is Caesarean section.

Clinton repeatedly insists that these women, including five he paraded at his ceremony vetoing the partial-birth abortion ban last year, had "no choice" but partial-birth abortion. Why, even the American College of Obstetricians and Gynecologists, which supports Clinton's veto, concedes 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"—flatly contradicting Clinton.

Moreover, not only is the partial-birth procedure not the only option. It may be a riskier option than conventional methods of delivery.

It is not hard to understand that inserting a sharp scissors to penetrate the baby's brain and collapse her skull risks tearing the mother's uterus or cervix with either the instrument or bone fragments from the skull. Few laymen, however, are aware that partial-birth abortion is preceded by two days of inserting up to 25 dilators at one time into the mother's cervix to stretch it open. That in itself could very much compromise the cervix, leaving it permanently incompetent, unable to retain a baby in future pregnancies. In fact, one of the five women at Clinton's veto ceremony had five miscarriages after her partial-birth abortion.

Why do any partial-birth abortions, then? "The only possible advantage of partial-birth abortion, if you can call it that," Dr. Curtis Cook, a specialist in high-risk obstetrics, observes mordantly, "is that it guarantees a dead baby at time of delivery."

Hyperbole? Dr. Martin Haskell, the country's leading partial-birth abortion practitioner, was asked (by American Medical News) why he didn't just dilate the woman's uterus a little bit more and allow a live baby to come out. Answer: "The point is here you're attempting to do an abortion. . . not to see how do I manipulate the situation so that I get a live birth instead."

We mustn't have that.

DASCHLE ABORTION PROPOSAL DOESN'T PASS MUSTER WITH MEDICAL PROFESSIONALS

ALEXANDRIA, VA.—The more than 600 doctors nationwide who make up the Physicians' Ad-hoc Coalition for Truth (PHACT) maintain that Sen. Daschle's recently announced legislative proposal regarding "post-viability" abortion will leave the practice of partial-birth abortion virtually untouched, and fails to address why late-term abortions are ever medically necessary.

PHACT agrees with Sen. Daschle that it is appropriate for Congress and the American people to consider when and under what circumstances the government may restrict access to any abortion procedure. Having the medical facts straight is a necessary part of this process.

It is never medically necessary, in order to protect a woman's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester of pregnancy, and certainly not by mostly delivering the child before putting him or her to death. While it may become necessary, in the second or third trimester, to terminate a pregnancy because of maternal illness, abortion is never required. What is required is separation of the child from the mother, not the death of the child.

Senator Daschle would limit his legislation to third trimester or "post-viability" abortion. This would leave virtually untouched the practice of partial-birth abortions, since the vast majority of partial-birth abortions take place in the second trimester, several thousand times a year on mostly healthy mothers with healthy children.

If maternal conditions require the emptying of the womb post-viability, the standard would be to induce labor and deliver the child. By definition, the post-viable child delivered early is simply a premature baby. Senator Daschle's legislation never addresses the reason why it may ever be necessary to kill a premature baby, including those in the process of being born, in order to preserve the health of a woman.

At 21 weeks and after, abortion is far riskier to a woman's health than childbirth. According to the Alan Guttmacher Institute (affiliated with Planned Parenthood) the risk of maternal death at 21 weeks and after is actually twice as great for abortion as for childbirth. If the chief concern is to minimize health risks to women who show indications for a termination of pregnancy in the second or third trimester, then as the statistics show, termination by induction of labor and delivery is clearly preferable to abortion.

Nowhere does Senator Daschle every explain the need to kill a post-viable child in order to protect a woman's health. Medically, he cannot, for there is no medical reason, either in the second or third trimester of a pregnancy, to prefer killing the child to delivering the child.

The PRESIDING OFFICER (Mr. BENNETT). The Democratic leader is recognized.

Mr. DASCHLE. I yield the Senator from Connecticut 10 minutes.

Mr. LIEBERMAN. Mr. President, today the Senate once again returns to the morally perplexing question of abortion, a question which has not only divided the Senate and divided America, but I would say that it divides individual Senators and individual Americans. I must say, as I have listened to this debate today, I am proud to be serving here, as difficult as the question before us is, because of the thoughtful, sincere and civil way in which this debate has proceeded.

We have in front of us two responses to the problem of abortion: one that would prevent use of a specific medical procedure, intact dilation and extraction, which is used for abortion, and, a second that would prevent almost all abortions from being performed after viability. I believe that the second alternative, Senator DASCHLE's, more broadly and appropriately responds to the mix, the difficult mix, of moral and legal concerns at issue here, and, therefore, I will vote for Senator DASCHLE's amendment.

In Pope John Paul II's Encyclical Letter on the Value and Inviolability of Human Life, His Holiness writes that, "The direct and voluntary killing of an innocent human being is always gravely immoral." I respect, with humility, the depth of the Pope's statement and the moral conviction of millions of Americans of all religions who recoil from abortion and believe that any abortion at any stage of pregnancy is a taking of life. The Pope's statement, and others by those who oppose all abortions regardless of how early in pregnancy are powerful expressions driven by deep convictions and high moral principles. I respect and value the sincerity and depth with which those convictions are held and expressed—certainly so by the Senator from Pennsylvania, who is the sponsor of the underlying proposal. In fact, I personally share many of those convictions.

But the question for me today—and each of us must decide this personally—remains the same as it was when I was called upon to pass public judgment during my time as a State senator in Connecticut in the 1970's after the Roe v. Wade decision was passed down: What is the appropriate place for my personal convictions about abortion, my personal conviction that potential life begins at conception, and, therefore, my personal conviction that all abortions are unacceptable? How do I relate that appropriately to my role as a lawmaker?

I struggled with this over and over again in the 1970's in the Connecticut State Senate. How does one, appropriately, as a lawmaker, balance the right of the mother to life, the right of the potential life to protection by the State, and the right of privacy of the woman, the right of the woman to choose, which is recognized by our courts?

These competing interests that exist throughout the pregnancy are what we in the Senate are called upon, each in our own way, to try to balance and resolve. Our role here, it seems to me, calls on us to resolve that competition in a way that respects and reflects our own convictions, our constituents', and finally our Constitution.

I was shaken, as I would imagine many Members of the Senate were, as the debate over this partial-birth-abortion ban went on, and it sent me back to the conflicts that I faced in the 1970's in the Connecticut State Senate because the partial-birth abortion, the intact dilation and extraction, is horrific; it is horrifying. Yet, the more I

focused on it, the more I got concerned about the number of these abortions that are being performed—and as small as that number is—the number is unacceptable—the more I had to face my own personal conclusion that any abortion is unacceptable. Any abortion is horrific.

It brought me back to the question of what the role of a body of lawmakers is in reconciling the interests of the mother, the interests of the fetus, potential life, and in respecting the judgments of our courts. In the end, again today, I resolve that conflict with a sense of humility about my authority as one lawmaker, about my capacity, about my judgment in the face of the uniquely private personal judgment and right to choose that a woman has up until the point of viability of the fetus, when that right is equalized by the right of the fetus to be protected by the State.

The amendment in front of us, offered by the Senate Democratic leader, does, in fact, ban all abortions of viable fetuses, regardless of procedure, except where the physician certifies that continuation of the pregnancy threatens the mother's life or risks grievous injury to her physical health.

It was my honor to work with Senator DASCHLE, Senator SNOWE and many others in preparing this amendment. My personal conclusion, and here I speak as a lawyer, as a former attorney general, is that this amendment will, in fact, ban almost all postviability abortions that might otherwise be performed in this country.

The definition of the exception, particularly with the addition of the words "physical health" tied to "grievous injury," is very narrow. Senator DASCHLE's amendment sets up a procedure where the Department of HHS, Health and Human Services will, in fact, promulgate regulations about certification, will require the doctor to file a certification with the Department.

What doctor, and there are only a few who perform postviability abortions, would certify inappropriately under the narrow definition in this law and risk losing his or her medical license? Tying the State's protection of the fetus to viability extends protection in a way that I do not believe we have before, to those fetuses that need all the assistance, postviability, that today's technology and medical science make available. It is a remarkable advance, if you will, for the pro-life movement in that regard.

As I read Senator DASCHLE's amendment, and I have spoken with him about this and he has spoken to this, it would prevent abortions of any fetus that could survive outside the mother's body with or without life support. I asked him this question, "What about a fetus postviability that a test reveals is disabled or may have Down's syndrome, but yet can survive with life support outside the mother's body?" Senator DASCHLE said quite clearly to me that is a viable fetus which could not be terminated under his amendment.

The term "viability" allows the protection of the law to move as medical science advances. When Roe v. Wade was handed down, fetuses under 28 or 29 weeks of gestation were not considered viable. Similarly, for many developmental and genetic defects that led to the death of a fetus or the inability to survive without the mother's bodily support, medicine has found ways to save those babies. Medical science has advanced, and with it, younger and sicker fetuses now are able to live. The term "viability" will allow the Government's responsibility to protect potential human life to move with medical science.

I want to pick up on something that the Senator from Oklahoma, Mr. NICKLES, said a short while ago. The truth is Senator DASCHLE, Senator SNOWE and the others who sponsored this amendment have reached common ground. I think he has established a common ground here that both pro-choice and pro-life Members of this Senate can support. I understand that many will not support it today because it is a substitute for the underlying legislation proposed by Senator SANTORUM, and the Daschle amendment clearly does not protect fetuses previability.

But if this amendment fails today, I believe that it is such an advance and provides such an opportunity for common ground that I hope Members of the Senate, regardless of their position on it, on this difficult and perplexing issue, will come together and help us on another day, if not today, pass this legislation.

I thank the Senate Democratic leader and his staff and all who have worked conscientiously on both sides of the aisle for the thoughtful, constructive approach which will save a lot of fetal life, if it is passed—if and when it is passed.

I thank the Chair.

I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I yield to the Senator from Tennessee, the only physician in the Senate.

The PRESIDING OFFICER. Senator from Tennessee.

Mr. FRIST. I rise in opposition to the Daschle amendment. I also want to congratulate him because I know he worked very, very, very hard with people around the country to fashion an amendment that would, as narrowly as possible, define "health," which I really think this debate is balanced on, "health of the mother."

He has done his very, very best. But what he has tried is impossible. It has not been done in this bill. And I think it probably cannot be done, defining the "health of the mother" in such a narrow, narrow fashion.

His proposal is a substitution bill and, thus, that means he would put aside what the underlying bill does, and that is to ban the partial-birth abortion procedure, a procedure that we all know is brutal, that is vicious, that is a fringe procedure and that destroys life. We have heard very little today that this is not a vicious, brutal procedure.

Thus, I think the Daschle amendment attempts to shift the focus away from the underlying bill that is banning this vicious procedure, and I think it is not going to be accepted tonight. I urge opposition and voting against it because I think, even if you look at the substance of it, it does nothing—it does nothing—to decrease the number of abortions in this country. And I will come back and cite why.

No. 2, his bill, an amendment which is a substitution amendment, would still allow this vicious procedure to be performed if certain criteria are met.

This procedure should be outlawed. It should be banned. Again, we have seen the graphs and we have seen the charts.

Let me refer to the paper "Dilation and Extraction for Late Second Trimester Abortion" by Martin Haskell, presented at the National Abortion Federation, Risk Management Seminar, September 13, 1992. This describes the procedure in medical terms, not with charts, not with cartoons and not with all the other figures. Basically, we have gone through it before. This is a medical paper. But it says:

> When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity. The surgeon then applies firm traction to the instrument causing an inversion of the fetus . . . and pulls the extremity into the vagina. . . .
>
> With a lower extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities. . . .
>
> At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and "hooks" the shoulders of the fetus with the index and ring fingers (palm down). . . .
>
> While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt, curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.
>
> Reassessing the proper placement of the closed scissors tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening.
>
> The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.

This is not somebody's description of the procedure.

Mr. President, I ask unanimous consent that it be printed in the RECORD in its entirety.

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

DILATION AND EXTRACTION FOR LATE SECOND TRIMESTER ABORTION

(By Martin Haskell, M.D.)

INTRODUCTION

The surgical method described in this paper differs from classic D&E in that it does not rely upon dismemberment to remove the fetus. Nor are inductions or infusions used to expel the intact fetus.

Rather, the surgeon grasps and removes a nearly intact fetus through an adequately dilated cervix. The author has coined the term Dilation and Extraction or D&X to distinguish it from dismemberment-type D&E's.

This procedure can be performed in a properly equipped physician's office under local anesthesia. It can be used successfully in patients 20–26 weeks in pregnancy.

The author has performed over 700 of these procedures with a low rate of complications.

D&E evolved as an alternative to induction or instillation methods for second trimester abortion in the mid 1970's. This happened in part because of lack of hospital facilities allowing second trimester abortions in some geographic areas, in part because surgeons needed a "right now" solution to complete suction abortions inadvertently started in the second trimester and in part to provide a means of early second trimester abortion to avoid necessary delays for instillation methods.[1] The North Carolina Conference in 1978 established D&E as the preferred method for early second trimester abortions in the U.S.[2,3,4]

Classic D&E is accomplished by dismembering the fetus inside the uterus with instruments and removing the pieces through an adequately dilated cervix.[5]

However, most surgeons find dismemberment at twenty weeks and beyond to be difficult due to the toughness of fetal tissues at this stage of development. Consequently, most late second trimester abortions are performed by an induction method.[6,7,8]

Two techniques of late second trimester D&E's have been described at previous NAF meetings. The first relies on sterile urea intra-amniotic infusion to cause fetal demise and lysis (or softening) of fetal tissues prior to surgery.[9]

The second technique is to rupture the membranes 24 hours prior to surgery and cut the umbilical cord. Fetal death and ensuing autolysis soften the tissues. There are attendant risks of infection with this method.

In summary, approaches to late second trimester D&E's rely upon some means to induce early fetal demise to soften the fetal tissues making dismemberment easier.

PATIENT SELECTION

The author routinely performs this procedure on all patients 20 through 24 weeks LMP with certain exceptions. The author performs the procedure on selected patients 25 through 26 weeks LMP.

The author refers for induction patients falling into the following categories: Previous C-section over 22 weeks; Obese patients (more than 20 pounds over large frame ideal weight); Twin pregnancy over 21 weeks; and Patients 26 weeks and over.

DESCRIPTION OF DILATION AND EXTRACTION METHOD

Dilation and extraction takes place over three days. In a nutshell, D&X can be described as follows: Dilation; More Dilation; Real-time ultrasound visualization; Version (as needed); Intact extraction; Fetal skull decompression; Removal; Clean-up; and Recovery.

Day 1—Dilation

The patient is evaluated with an ultrasound, hemoglobin and Rh. Hadlock scales are used to interpret all ultrasound measurements.

In the operating room, the cervix is prepped, anesthetized and dilated to 9–11 mm. Five, six or seven large Dilapan hydroscopic dilators are placed in the cervix. The patient goes home or to a motel overnight.

Day 2—More Dilation

The patient returns to the operating room where the previous day's Dilapan are removed. The cervix is scrubbed and anesthetized. Between 15 and 25 Dilapan are placed in the cervical canal. The patient returns home or to a motel overnight.

Day 3—The operation

The patient returns to the operating room where the previous day's Dilapan are removed. The surgical assistant administers 10 DU Pitocin intramuscularly. The cervix is scrubbed, anesthesized and grasped with a tenaculum. The membranes are ruptured, if they are not already.

The surgical assistant places an ultrasound probe on the patient's abdomen and scans the fetus, locating the lower extremities. This scan provides the surgeon information about the orientation of the fetus and approximate location of the lower extremities. The tranducer is then held in position over the lower extremities.

The surgeon introduces a large grasping forcep, such as a Bierer or Hern, through the vaginal and cervical canals into the corpus of the uterus. Based upon his knowledge of fetal orientation, he moves the tip of the instrument carefully towards the fetal lower extremities. When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity. The surgeon then applies firm traction to the instrument causing a version of the fetus (if necessary) and pulls the extremity into the vagina.

By observing the movement of the lower extremity and version of the fetus on the ultrasound screen, the surgeon is assured that his instrument has not inappropriately grasped a maternal structure.

With a lower extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities.

The skull lodges at the internal cervical os. Usually there is not enough dilation for it to pass through (The fetus is oriented dorsum or spine up.)

At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and "hooks" the shoulders of the fetus with the index and ring fingers (palm down). Next he slides the tip of the middle finger along the spine towards the skull while applying traction to the shoulders and lower extremities. (The middle finger lifts and pushes the anterior cervical lip out of the way.)

While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

Reassessing proper placement of the closed scissors tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening.

The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.

The surgeon finally removes the placenta with forceps and scrapes the uterine walls with a large Evans and a 14 mm suction curette. The procedure ends.

Recovery

Patients are observed a minimum of 2 hours following surgery. A pad check and vital signs are performed every 30 minutes. Patients with minimal bleeding after 30 minutes are encouraged to walk about the building or outside between checks.

Intravenous fluids, pitocin and antibiotics are available for the exceptional times they are needed.

ANESTHESIA

Lidocaine 1% with epinephrine administered intra-cervically is the standard anesthesia. Nitrous-oxide/oxygen analgesia is administered nasally as an adjunct. For the Dilapan insert and Dilapan change, 12cc's is used in 3 equidistant locations around the cervix. For the surgery, 24cc's is used at 6 equidistant spots.

Carbocaine 1% is substituted for lidocaine for patients who expressed lidocaine sensitivity.

MEDICATIONS

All patients not allergic to tetracycline analogues receive doxycycline 200 mgm by mouth daily for 3 days beginning Day 1.

Patients with any history of gonorrhea, chlamydia or pelvic inflammatory disease receive additional doxycycline, 100mgm by mouth twice daily for six additional days.

Patients allergic to tetracyclines are not given proplylactic antibiotics.

Ergotrate 0.2 mgm by mouth four times daily for three days is dispensed to each patient.

Pitocin 10 IU intramuscularly is administered upon removal of the Dilapan on Day 3.

Rhogam intramuscularly is provided to all Rh negative patients on Day 3.

Ibuprofen orally is provided liberally at a rate of 100 mgm per hour from Day 1 onward.

Patients with severe cramps with Dilapan dilation are provided Phenergan 25 mgm suppositories rectally every 4 hours as needed.

Rare patients require Synbalogos DC in order to sleep during Dilapan dilation.

Patients with a hemoglobin less than 10 g/dl prior to surgery receive packed red blood cell transfusions.

FOLLOW-UP

All patients are given a 24 hour physician's number to call in case of a problem or concern.

At least three attempts to contact each patient by phone one week after surgery are made by the office staff.

All patients are asked to return for check-up three weeks following their surgery.

THIRD TRIMESTER

The author is aware of one other surgeon who uses a conceptually similar technique.

* Footnotes to appear at end of article.

He adds additional changes of Dilapan and/or lamineria in the 48 hour dilation period. Coupled with other refinements and a slower operating time, he performs these procedures up to 32 weeks or more.[10]

SUMMARY

In conclusion Dilation and Extraction is an alternative method for achieving late mestar abortions to 26 weeks. It can be used in the third trimester.

Among its advantages are that it is a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia.

Among its disadvantages are that it requires a high degree of surgical skill and may not be appropriate for a few patients.

FOOTNOTES

[1] Cates, W. Jr., Schulz, K.F., Grimes D.A., et al: The Effects of Delay and Method of Choice of the Risk of Abortion Morbidity, Family Planning Perspectives, 9:266, 1977.

[2] Borell, U., Emberey, M.P., Bygdeman, M., et al: Midtrimester Abortion by Dilation and Evacuation (Letter) American Journal of Obstetrics and Gynecology, 131:232, 1978.

[3] Centers for Disease Control: Abortion Surveillance 1978, p. 30, November, 1980.

[4] Grimes, D.A. Cates, W. Jr., (Berger, G.S., et al, ed): Dilation and Evacuation, Second Trimester Abortion—Perspectives After a Decade of Experience, Boston, John Wright—PSG, 1981, p. 132.

[5] Ibid, p. 121-128.

[6] Ibid, p. 121.

[7] Kerenyi, T.D. (Bergen, G.S. et al, ed): Hypertonic Saline Instillation, Second Trimester Abortion—Perspectives After a Decade of Experience, Boston, John Wright—PSG, 1981, p. 79.

[8] Hanson, M.S. (Zatuchni, G.I. et al, ed): Midtrimester Abortion: Dilation and Extraction Preceded by Laminaria, Pregnancy Termination Procedures, Safety and New Developments, Hagerstown, Harper and Row, 1979, p. 192.

[9] Hern, W.M. Abortion Practice. Philadelphia, J.B. Lippincott, 1990, p. 127. 144-5.

[10] McMahon, J., personal communications, 1992.

Mr. FRIST. Mr. President, the American Medical Association has afforded to me a statement, because a number of people on both sides have mentioned the board of trustees report. The Senator from Louisiana just quoted it. Let me say that the trustee report that people have been referring to has not been approved, has not been approved by the American Medical Association.

It is OK for people to cite it, I would think, but it does not become AMA policy until it is approved by the house of delegates. And it has not yet been approved. It has not been sent to the house of delegates yet.

No. 2, it has been suggested that the AMA supports one side or the other. It was suggested earlier that the AMA is for the Daschle amendment. I quote the AMA in a press release released about 30 minutes ago. "The report,"—meaning the board of trustees report—"does not directly address any pending legislation regarding 'partial-birth abortion.' The AMA does not support any legislative proposals at this time." So I think we need to make that very clear.

So the substitution bill—amendment really—addresses a whole different issue, not the procedure that we are here to ban, this vicious procedure.

But let us look at the piece of legislation that the Democratic leader has introduced. This is a real problem, a real fundamental problem. I do say this as a physician, as somebody who spent 4 years in medical school, somebody who is board trained. I have my boards in general surgery. We are talking about surgical procedures. I spent about 14 years in trauma centers. When we talk about trauma, we talk about the heart and pulmonary hypertension and we talk about other related diseases.

So I want to comment, with that as my background. And I have delivered babies. I am not an obstetrician, but I do want people to know I know a little bit about the medical literature. I want to comment on my view as a U.S. Senator, but also as a physician.

Basically, this bill says that: It shall be unlawful for a physician knowingly to perform an abortion after the fetus has become viable unless the physician certifies that the continuation of the pregnancy would threaten the mother's life—I think most people agree with everything so far—or risk grievous injury to her physical health. That is the problem. "Grievous injury" is not a medical term. It is not even accepted as a medical term. It is not in the medical dictionary. It is a term that was crafted, I think, by the Democratic leader to try to allay people's feelings.

It defines "grievous injury" as "a severely debilitating disease." Well, again that sounds pretty good, but I can tell you what is a severely debilitating disease to one physician is not going to be the same to another. To me, in heart disease, a severely debilitating disease is when a patient is going to die in 3 months.

To other physicians, a severely debilitating disease would be maybe some heart attack. To me, that is not severely debilitating. But another physician thinks a heart attack is severely debilitating. Why? Because I am a heart transplant surgeon. The people I see are all, without intervention, going to die shortly.

My point is that "severely debilitating disease" depends on who the person is, who the physician is, what his or her experiences are.

Depression. Is that a severely debilitating disease?

Remember, 39 cases—Dr. McMahon in California has been cited earlier. There were 39 cases in which he did the procedure called or referred to as a partial-birth abortion. In 39 cases he did it for depression—he did it for depression. Is that a severely debilitating disease or is that a physical disease?

I can tell you today that if somebody is depressed, it is going to affect them physically. It might affect their heart rate. It is going to affect their attitude. They may not have any appetite. You cannot separate mental health from physical health, especially in a bill or statute like this. I cannot do it as a physician. I will guarantee you, other physicians cannot.

So to throw physical health in there to attempt to narrow this down does not work. It just does not work. We know that physical health influences mental health and mental health influences physical health. We do know that abortions are performed today for depression, for emotional reasons. And this bill has a huge loophole by this definition of "grievous injury" meaning "severely debilitating disease."

The only other definition of "grievous injury" in this amendment is "impairment specifically caused by the pregnancy."

I have done five heart transplants on cardiomyopathy, postcardiomyopathy people who I have transplanted. Those five women are alive. Their children are alive. Did their pregnancy cause the cardiomyopathy or the bad pumping heart that I had to replace? I do not know if it caused it or not, was associated with it. But it says for "grievous injury," "a severely debilitating disease or impairment specifically caused by the pregnancy." I have taken hearts out of people that I guess one could say was caused by the pregnancy. They had normal children. But I am a little hesitant to allow this loophole as well.

It comes down to supporting, I think, this whole big loophole. We know that in Doe versus Bolton in 1973, health is defined as "all factors: physical, emotional, psychological, mental, the women's age relevant to the well-being of the patient." And that is the problem. The health can be anything you want it to be. It can be emotional health, physical health, mental health. And it is really hard to separate out the two. In fact, I would say it is impossible as a physician to separate physical from mental health. It is impossible to do.

I am a trauma surgeon. I am a heart surgeon, lung surgeon. I have my boards in cardiothoracic surgery and general surgery. But I am not an obstetrician. So I simply called my expert friends around and asked them a very specific question. Point blank, is there ever a time when it is necessary to destroy a viable fetus? Remember, a viable fetus is one that, at the point in time when you took it out of the womb, would live, would grow up, have a job, have a family. Do you ever destroy that opportunity? Is it ever necessary for the health of the mother, physical or otherwise, ever necessary for emotional reasons or financial reasons or social reasons, which all can be called health, but necessary for her physical health? And the answer—the answer—is a resounding "No."

So, while I support the Democratic leader's attempt to narrow the definition, it cannot be done. It is not done in this amendment, and I would contend that it cannot be done.

So I asked Dr. Koop—in fact, I have a letter from Dr. Koop. I ask unanimous consent to have it printed in the RECORD.

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

THE G. EVERETT KOOP INSTITUTE AT DARTMOUTH,
Hanover, NH, May 13, 1997.

Hon. WILLIAM FRIST, MD,
U.S. Senate
Washington, DC.

DEAR BILL: It is never necessary to destroy a viable fetus in order to preserve the health of the mother. Although I can't think of an example, if it were deemed beneficial for the mother to be without the fetus, it could be delivered by induction or C-section. Abortion is truly more traumatic than either and exposes the mother to future problems with an incompetent cervix, miscarriage, and infertility.

Sincerely yours,
C. EVERETT KOOP, MD, ScD.

Mr. FRIST. This letter from Dr. Koop is dated May 13, 1997. It is a letter to me. It says the following:

DEAR BILL:

It is never necessary to destroy a viable fetus in order to preserve the health of the mother. Although I can't think of an example, if it were deemed beneficial for the mother to be without the fetus, it could be delivered by induction or C section. Abortion is truly more traumatic than either and exposes the mother to future problems with an incompetent cervix, miscarriage, and infertility.

Sincerely yours, C. Everett Koop.

The first sentence: "It is never necessary to destroy a viable fetus in order to preserve the health of the mother."

That is from Dr. Koop.

Steadman's Dictionary, the dictionary we use to define "viable fetus" denotes a fetus that is "sufficiently developed to live outside the uterus."

As a physician, I have tried to think of a circumstance where you can justify destroying that viable fetus. I cannot. Not only do we have alternatives, which we have—the delivery of a normal child.

So I asked a number of people, and my colleagues have said, no, they cannot think of a circumstance. So it seems to me to be pretty simple. When you have a viable fetus, once it is removed from the womb or leaves the womb, do you kill it? Do you allow it to progress to delivery? Or do you allow the pregnancy to continue throughout the entire 9 months? Remember, it is a viable child.

So, Mr. President, I think we see, as we step back, that we have an underlying bill that is brutal, vicious, that we need to ban—and that is the partial-birth abortion. The attempt today has been made to put that bill aside, put in a bill which basically cannot define the health of the mother, that leaves a huge loophole that I contend might even increase the number of abortions, because once you put in writing what this loophole is, everybody is going to say that the health of the mother is debilitating, is grievous. And once that is certified by a physician, all of a sudden you do the procedure. You can even do a partial-birth abortion, this vicious procedure, if you meet that certification criteria laid out in the bill.

Mr. President, I feel strongly—feel strongly—that we must defeat the Daschle proposal, that it does not address the underlying issue. I urge all of my colleagues to support and continue to support the ban on the partial-birth abortion.

Mr. DASCHLE. I yield 5 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. President.

Mr. President, I rise today as a cosponsor of the Daschle amendment that is before us. I want to take a minute to thank and applaud the Democratic leader for the amount of work that he has put into this very difficult and divisive issue, to try to find common ground that not only Members of the Senate can agree on but people across this country can find common sense in.

The majority of Americans do support Roe versus Wade and want to protect a woman's right to choose previability. The Daschle amendment does that. The vast majority of Americans want to ensure that if there is a healthy baby in a healthy woman, that that baby is born in this country, and the Daschle amendment does that.

The vast majority of Americans also want to ensure that, if a woman's life is at risk, she is not forced to keep a pregnancy and lose her life herself or have a grievous injury as a result of that. The Daschle bill protects a woman's health.

I know we have heard a lot of arguments about this. We have listened to this debate all day long. For my colleagues, I want us to remember this is not about choice or termination of unwanted pregnancy. This debate right now is about women's health.

The Santorum bill that is pending before the Senate today does not and will not end late-term, postviability abortions. As the Democratic leader has pointed out, there are other alternatives out there. What this bill does do is subject women to more dangerous procedures that could render them infertile. What the Santorum bill will do is forever eliminate the ability of a physician to take whatever steps are necessary to protect the health of his or her patient. If the Santorum legislation is enacted over the objections of the President, doctors who try to provide the best care possible for their patients will be arrested. I can tell my colleagues that I have more faith in a physician to make these decisions than I do in the U.S. Senate.

This debate is about the health of a woman. This is about women across this country and their ability to make sure that their health is protected. That is what the Daschle amendment does.

I listened to my colleagues time and again on this floor, come to the floor to say they are protecting women's health. We have had many debates about women's health, with many champions of women's health on this floor. I hope those Senators who so quickly rush to this floor to be those champions will be here to vote for the Daschle amendment.

I ask all of my colleagues to think of your wife or your daughter or your sister. If they are faced with a threatening, serious and grievous illness like cancer, would you not want their doctor to have every option available to save their life? We should remember this is about protecting the women.

I urge my colleagues to seriously think about the grievous consequences of the decision that this body is making today. I urge them to support the thoughtful, commonsense solution that Senator DASCHLE and others have put forward and to reject the Santorum bill.

I thank the Senator from South Dakota and yield my time back to him.

Mr. DASCHLE. Mr. President, I yield 5 minutes to the distinguished Senator from Connecticut.

Mr. President, I withdraw that request.

Mr. GRAMM. Go ahead, I might be enlightened.

Mr. DODD. Hope springs eternal.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I thank my colleague from Texas, and my Democratic leader, Senator DASCHLE, for yielding some time.

Mr. President, I have some brief remarks, and I begin by commending the Democratic leader, Senator DASCHLE, for offering what I think is a very thoughtful and reasonable substitute proposal before the Senate. I want to associate my remarks with those of my colleague from Connecticut, Senator LIEBERMAN, who spoke a few moments ago about the difficult decision that Congresses over the last quarter of a century have grappled with since the adoption of Roe versus Wade by the Supreme Court of the United States. It is never an easy issue.

Mr. President, let me also state at the outset that I have deep respect for those who have differing views on this issue. By and large, people in this body have held out a great deal of respect for those with opposing views on this issue. It is not easy. There are those who take the position except where the life of the mother is involved, abortion ought to be banned. I respect that view. I disagree with it. There are those who take the view that abortion ought to be allowed under any circumstance during pregnancy. I respect that view. I disagree with it.

What Senator DASCHLE has offered here today, I think, is a reasonable approach to dealing with the issue of

postviability abortion. It does so by addressing concerns that have been raised over the years, putting aside the particular procedure which is the subject, of course, of the proposal being offered by our colleague from Pennsylvania. That is, it tries to limit and define the circumstances under which a fetus would be aborted in the postviability period.

I say with all due respect, obviously with the exception of one of our colleagues, none of us are physicians. We are Senators. We are public figures. I have a great deal of hesitancy, Mr. President, to engage in debate and discussion on the floor of the U.S. Senate and to try to take on responsibilities where we lack expertise.

What the proposal of our colleague from Pennsylvania suggests is that we ban a particular procedure. I respect that but I do not feel in any way adequately prepared to be engaged in deciding whether or not certain medical procedures are adequate or inadequate. I note that the College of Obstetricians and Gynecologists, on behalf of some 38,000 physicians, has endorsed the Daschle proposal. I do not suggest that everyone has. I suspect there are those who disagree within the medical profession about abortion, just as physicians disagree about other medical issues, and just as there are those who are not physicians who have disagreements.

But I believe that Senator SNOWE and Senator DASCHLE, as I said, have offered a carefully crafted measure that will actually reduce the number of abortions performed in this country in the postviability period. I share the hope expressed by my colleague from Connecticut, Senator LIEBERMAN, a few moments ago. It appears there will not be enough votes to support the Daschle amendment. I hope that is not the case, but it may be such. I also hope that we will come to the point where this reasonable proposal becomes the position of the majority, if not unanimously, of Members of this body. There are those who have disagreed on this issue and will continue to do so, but if we can find common ground on this particular proposal where we would deal with the issue in a broader context than the issue of approaching this situation procedure by procedure by procedure by procedure, sitting here as a body trying to determine whether each and every one of those procedures is medically sound or proper or right.

The procedure of abortion itself, no matter how it is performed, can be described, of course, in the most brutal terms, and all of us understand that. It does not mean, necessarily, that you are going to ban all the procedures at any time except, of course, if you subscribe to the notion that abortion ought to be banned from conception.

So this proposal here, I think, does offer people of different views on this issue a chance to come together to do something in a positive and constructive way and deal with this issue in a much more generic way than the effort to do so on a procedure-by-procedure basis—an effort, by the way, that would not stop a single abortion.

Mr. President, regarding the issue of the health of the mother, when a woman and her fetus are both healthy and the fetus is able to survive outside the womb, we should not and do not permit abortion. Roe versus Wade and subsequent decisions do not permit abortion in these circumstances. The Senator from South Dakota's legislation does not permit abortion—by any method—in these circumstances. But, we also recognize that a woman's life and physical health, when either is seriously threatened, should be protected.

Tragically, that is sometimes the case when a woman is in the later stages of pregnancy. Thankfully, such instances are rare. But they do occur. And when they do, abortion is sometimes the only way to save the woman's life or preserve her health from grievous, lasting, physical damage. I cannot turn my back on women who, along with their husbands, desperately want the children with whom their are pregnant and then tragically find themselves with their physical health at grievous risk. Such cases should be excepted under a ban on post-viability abortions, and that is what the Daschle proposal does.

Some argue, Mr. President, that there are never health circumstances that would require partial-birth abortion. Others say that post-viability abortions are never necessary. Viable babies, they argue, can just be delivered. Mr. President, in those cases where the mother faces a serious health risk and a viable baby can still be delivered alive, it is. But sadly, that is not always the case. As the American College of Obstetricians and Gynecologists has explained, after viability, "terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother."

The Senator from South Dakota, along with the Senator from Maine, worked very, very hard to craft language here that would ban post-viability abortions except to deal with life endangerment or grievous, serious, physical conditions. That is an effort reached through serious consultation. I think all of our colleagues here, as the Senator from Tennessee indicated earlier, have deep appreciation for the time and effort that the Democratic leader has put into this effort. This was not legislation or wording crafted by staff here trying to come up with some words that would make all of us feel comfortable. Rather, the Senator from South Dakota went about the business of asking people all across this country who are knowledgeable to define language which they could support and could relate to. The fact that the College of Obstetricians and Gynecologists supports this language, I think, is a good indication that they feel comfortable that this would do what the Senator wants to do. They do not necessarily agree with what he wants to do, but they believe they can function as medical professionals and define clearly what must be done.

The fact there is a certification process here is important. The suggestion that this certification is somehow going to allow for widespread violation of the ban is, I think, mistaken. As the Senator from Connecticut, Senator LIEBERMAN, my colleague, pointed out, a certification process which would place in jeopardy the medical license of a physician has to be taken very, very seriously. I cannot believe that the overwhelming majority of doctors in this country, when considering whether or not circumstances existed which would warrant having a postviability abortion, would not want to know very, very carefully whether or not those circumstances were being met as dictated by the substitute of the Senator from South Dakota. I don't think any doctor would violate this ban when doing so would mean loss of his or her very livelihood.

I believe this is a real solution. I believe it would make a difference. I believe it would give this body an opportunity to really speak in a far broader and meaningful way on this issue that I think the Nation would applaud. There will be some who obviously disagree with this because they think it does not go far enough, others who think this goes way too far. But from my point of view, Mr. President, I think this strikes the reasonable balance and reflects where most people are on this issue. None feel terribly comfortable with this. I know of very few who enjoy any sense of comfort in discussing, or considering even, this issue.

So, today, we are given an opportunity to do something meaningful on this, not on a procedure-by-procedure basis, but to deal fundamentally with the issue of what and how a woman, her doctor and her family can act under the most serious and troublesome circumstances. I applaud the Senator from South Dakota for this effort. I support this effort. I hope my colleagues will do so, as well.

Mr. HATCH. Mr. President, I rise today to speak in support of H.R. 1122, the Partial Birth Abortion Ban Act of 1997.

I understand that many people on both sides of this issue have very strongly held beliefs. I respect those whose views differ from my own. And I condemn, as I know every other Member of this body does, the use of violence or any other illegal method to express any point of view on this issue.

Unfortunately, Mr. President, it ought to be noted the expression of points of view on the issue of partial-birth abortion has been marked by half-truths and the knowing or reckless deception of the American people.

Let us be very clear about what is at issue in this legislation. Despite the rhetoric of the bill's more extreme opponents, it is not about the right of a woman who so chooses to have an abortion. H.R. 1122 does not address whether all abortions after a certain week of pregnancy should be banned, nor whether late-term abortions should be permitted only in certain circumstances. The Partial-Birth Abortion Ban Act of 1997 bans one, and only one, specific abortion procedure.

During a joint hearing of the Senate Judiciary Committee and the House Judiciary Subcommittee on the Constitution on partial birth abortions, held March 11, 1997, Dr. Curtis Cook, a board-certified obstetrician/gynecologist and a subspecialist in maternal-fetal medicine, also known as high risk obstetrics, described the partial-birth abortion procedure as follows:

> An instrument is then inserted into the uterus to grasp the leg of her living baby and drag it down into the cervix and into the vagina. The baby is then delivered up to the level of the after-coming head, before grasping the baby's chest and stabilizing the skull. The base of the skull is then punctured with a sharp instrument, and a suction instrument is then [placed into the hole] after it has been enlarged. The brain contents are then sucked out, thereby killing the fetus and collapsing the skull, allowing the infant to thereby deliver.

Only this inhumane procedure, which our colleague from New York, Senator MOYNIHAN, has described as "close to infanticide," would be prohibited under this legislation.

The record in support of this legislation is long. At the March 1997 Senate-House joint hearing, we heard from 10 witnesses, including representatives of the major organizations on both sides of this issue and a medical doctor who specializes in maternal-fetal medicine. In November 1995, the Judiciary Committee held a comprehensive, 6½-hour hearing on the subject of partial-birth abortions. The committee heard from a total of 12 witnesses presenting a variety of perspectives on this issue, including a registered nurse who had worked as a temporary nurse for 3 days in the clinic of a doctor who performs this procedure and who testified as to her personal experience in observing the procedure, from four ob-gyn doctors, from an anesthesiologist, from an ethicist, from three women who had personal experience either with having or declining to have a late-term abortion, and from two law professors who discussed constitutional and legal issues raised by this legislation.

I find it difficult to comprehend how any reasonable person could examine the mountain of evidence and continue to defend the partial-birth abortion procedure. The indefensibility of this procedure is so evident, even to those who oppose this legislation, that, to date, few have tried to defend partial-birth abortions. Instead, abortion advocates embarked on what became a pattern of dissemblance and deception intended to make this procedure appear less barbaric and thus more palatable to the American people.

Even worse, opponents of the bill not only misrepresented the partial-birth abortion procedure—which is bad enough—but also spread potentially life-threatening misinformation concerning the effects of anesthesia on the fetus of a pregnant woman that could prove catastrophic to women's health. By falsely claiming that anesthesia kills the fetus, opponents spread misinformation that could deter pregnant women who might desperately need surgery from undergoing surgery for fear that anesthesia could kill or brain-damage their unborn child.

In a June 23, 1995 submission to the House Judiciary Constitution Subcommittee, the late Dr. James McMahon, one of two doctors who had, at the time, admitted performing partial-birth abortions, wrote that anesthesia given to the mother during the procedure caused fetal demise. In a so-called fact sheet circulated to Members of the House, Dr. Mary Campbell, medical director of Planned Parenthood who testified at the Judiciary Committee hearing, wrote: "The fetus dies of an overdose of anesthesia given to the mother intravenously . . . [The anesthesia] induces brain death in a fetus in a matter of minutes. Fetal demise therefore occurs at the beginning of the procedure while the fetus is still in the womb." This claim was picked up and reported by the media, as in a November 5, 1995 editorial in USA Today which stated, "The fetus dies from an overdose of anesthesia given to its mother."

When Senator ABRAHAM referred to that statement during the medical panel at the 1995 Judiciary Committee hearing, 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 had sought the opportunity to set the record straight and, although they did not take a position on the partial-birth abortion ban, to their credit they came forward out of concern for this harmful misinformation.

The March 1997 Senate-House hearing, appropriately entitled "Partial Birth Abortion: The Truth," documented how the leaders of major pro-abortion groups repeated, over and over again, their false mantra that partial-birth abortions were extremely rare and performed only in exceptional circumstances. These charts contain a sampling of such statements. On this first chart, we have statements from the National Abortion and Reproductive Rights Action League, including one by Kate Michaelman, dated December 8, 1995, in which she stated "These are rare procedures, performed under only the most compelling circumstances of life endangerment. . . ." The next chart contains similar statements from Planned Parenthood of America, typified by a November 1, 1995 Planned Parenthood press release which states "The procedure . . . is extremely rare and done only in cases when the woman's life is in danger or in cases of extreme fetal abnormality." As recently as February 25, 1997, the National Abortion Federation was spreading the false message, via its Internet web page, that "[T]his particular procedure is used only in about 500 cases per year, generally after 20 weeks of pregnancy, and most often where there is a severe fetal anomaly or maternal health problems detected late in pregnancy."

For a time, the pro-abortion lobby's campaign of misinformation, aided by a media which, as was demonstrated at the March 1997 hearing, all too often passively accepted false or inaccurate information from pro-abortion sources and reported it, unexamined, as news, succeeded in misleading the American people and their elected representatives about the horrible reality of partial-birth abortion. How many times during the Senate debate on this issue in the last Congress did we hear that such procedures were extremely rare and performed only to save the life of the mother in cases of severe fetal abnormalities?

One of the greatest strengths of our free society is that the truth usually manages to emerge into the light. And so it is with partial-birth abortions.

The recent admissions by Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, as reported in the American Medical Association's weekly newspaper, American Medical News, dated March 3, 1997, have finally broken through the abortion extremists' smokescreen of deception and confirmed what many already knew to be true, that Fitzsimmons, like others, had "lied through my teeth" when he said the partial-birth abortion procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged. As he himself admits, "I just went out there and spouted the party line."

The terrible truth is that this grisly procedure is, according to Fitzsimmons, used as many as three or four thousand times a year, with the vast majority of such abortions performed in the 20-plus week range on healthy fetuses and healthy mothers. As Fitzsimmons put it: "You know they're primarily done on healthy women and healthy fetuses and it makes you feel like a dirty little abortionist with a dirty little secret."

The truth is that partial-birth abortions are being performed on an elective basis, where the abortion is being performed for non-health related reasons on healthy fetuses and healthy mothers, and even though there are equally safe alternative abortion procedures available.

As Congress has considered this issue, and, in particular, as more and more members of the medical community have spoken out with respect to partial-birth abortion, it has become abundantly clear that there is no medical necessity or justification for the use of this inhumane procedure to protect either the life or the health of the mother. Indeed, partial-birth abortion can be harmful to a woman's health.

The absence of any medical justification for partial-birth abortion is now well-documented in the legislative records of the 104th and 105th Congresses. Several of my colleagues will discuss this particular issue in greater detail. Let me just quote former Surgeon General C. Everett Koop, who said in an interview in the American Medical News, that "in no way can I twist my mind to see that the late-term abortion described—you know, partial birth and then destruction of the unborn child before the head is born—is a medical necessity for the mother. It certainly can't be a necessity for the baby. So I am opposed to . . . partial-birth abortions."

In addition, a group of over 400 obstetrician-gynecologists and maternal fetal specialists have unequivocally stated that "partial-birth abortion is never medically necessary to protect a mother's health or future fertility." In fact, the opposite is true: The procedure "can pose a significant threat to both her immediate health and future fertility."

Let me address one important aspect of the debate over the Partial-Birth Abortion Ban Act; the argument raised by opponents of this bill that it would violate the right of women to obtain abortions and is therefore unconstitutional under Roe versus Wade.

The constitutional arguments raised in opposition to the Partial-Birth Abortion Ban Act reflect a fundamental misunderstanding of constitutional principles and of the Supreme Court's abortion jurisprudence. This is not only my view, but the view of numerous respected constitutional scholars at our Nation's finest law schools, including Douglas Kmiec of the Notre Dame Law School, Michael McConnell of the University of Utah College of Law, and of other authorities on constitutional law, such as William Barr, former Attorney General of the United States. Congress can constitutionally, and should morally, prohibit the particular, inhumane abortion procedure addressed by this legislation.

Banning partial-birth abortions does not violate the Supreme Court's holding in Roe versus Wade, or any of the Court's other abortion decisions. I differ strongly with the Court's ruling in Roe, and believe the jurisprudence willed by the Court was fundamentally flawed. Nevertheless, I recognize that Roe is the law, and that we should endeavor to craft legislation that is consistent with its progeny.

While the Court in Roe did hold that the word "person," as used in the 14th amendment, does not include the "unborn," it has never addressed the constitutional status of those who are in the process of "being born," and there is no controlling legal authority on this precise issue. Indeed, the Supreme Court specifically noted in its decision that the plaintiffs in Roe did not challenge the constitutionality of the Texas statute which prohibited killing of a child during the birth process.

The child involved in a partial-birth abortion is unquestionably one in the process of being born. The statutory definition of partial-birth abortion contained in H.R. 1122 is clear and precise: "the term partial-birth abortion means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery."

Because of the timing in the birth process at which this particular type of abortion is performed, when the fetus is literally just inches away from birth, these fetuses may actually qualify as persons under the Constitution as interpreted by the Court in Roe and its progeny, entitled to all of the protections of law that all other American citizens enjoy. The Supreme Court's decision in Roe makes clear that the Court did not even consider—let alone decide—whether partial-birth abortion could be prohibited. Congress is, therefore, free to address and decide this issue on its merits, and to pass a statute protecting such partially born children.

Even if one believes that a partially born child is not a person under the 14th amendment, Supreme Court jurisprudence on abortion, principally articulated in Planned Parenthood of Southeastern Pennsylvania versus Casey, fully permits Congress to ban partial-birth abortions.

While the Supreme Court in Roe versus Wade established a right for a woman to choose to have an abortion, the Court explicitly rejected the argument that the right to an abortion is absolute, and that a woman is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses.

In Planned Parenthood versus Casey, the Court established a bifurcated approach to determine whether an abortion statute is constitutional, drawing a line at fetal viability. In reviewing a statute regulating abortion, a court must first determine whether the statute imposes an undue burden on the mother's right to choose to have an abortion. If the statute does not impose an undue burden on the mother, the court must then determine whether the statute reasonably relates to a legitimate governmental purpose. Once the fetus is viable, the Government can prohibit abortion.

Under Casey, pre-viability regulation of abortion is constitutional so long as it does not constitute an undue burden on the abortion liberty. The essence of the undue burden test is whether the law, on its face, places a substantial obstacle on the woman's liberty interest that effectively deprives her of the right to make the ultimate decision of whether or not to have an abortion. Writing for the Court, Justice O'Connor wrote:

> A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. . . . What is at stake is the woman's right to make the ultimate decision, not a right to be insulated from all others in doing so. . . ."

A prohibition on partial-birth abortions would not unduly burden a woman's right to have an abortion even in pre-viability cases. Just as the right to have an abortion first recognized in Roe versus Wade did not guarantee a right to "abortion on demand," so, too, the undue burden test adopted in Casey does not guarantee an absolute, unrestricted right to have an abortion at the request of a woman under any and all circumstances.

H.R. 1122's ban on partial-birth abortions clearly passes muster under the Casey undue burden standard. The record before Congress establishes that there are several safe, standard abortion techniques for providing abortions other than the partial-birth procedure. Congress's fact finding is entitled to considerable respect and deference from the courts. H.R. 1122 does not prevent a woman from having an abortion, nor does it force a woman to undergo an unacceptably dangerous or painful medical procedure. H.R. 1122 merely bars a physician from performing an abortion in one particular manner. It has neither the purpose nor effect of prohibiting or restricting abortions other than those performed by the partial-birth procedure, and leaves in place alternative methods of abortion. It thus would not constitute an undue burden on a woman's right to choose to have an abortion.

Since banning partial-birth abortions does not place an undue burden on a mother's right to choose to have an abortion, H.R. 1122 will be upheld as constitutional if it is reasonably related to a legitimate government interest. The Supreme Court has recognized many legitimate—and even compelling—interests that may justify abortion statutes such as this.

In Roe itself, the Court acknowledged the government's legitimate interest in safeguarding health, maintaining medical standards and in protecting potential life. The Court has also recognized as legitimate interests: protecting immature minors, promoting general health, promoting family integrity, and encouraging childbirth over abortion.

In addition, this act serves the legitimate government interest of protecting human life, that of the child who is otherwise killed after being partially delivered from his mother's womb. Partial-birth abortion would be criminal infanticide but for a mere three inches. Banning this procedure would protect children from being killed during the delivery process.

The act also serves the interests of protecting the dignity of human life and preventing cruel and inhumane treatment. The partial-birth procedure is a particularly heinous method of abortion, one that inflicts excruciating pain on the child. No one would question a statute prohibiting the treatment of animals in such a manner. In fact, we have laws and regulations preventing harsh and painful treatment of laboratory animals in government research projects. Surely the government has a legitimate interest in extending at least the same level of protection to living children in their last seconds before birth.

Mr. President, when Ron Fitzsimmons finally came forward to confirm the truth about the terrible procedure called partial-birth abortion, there was one more thing he said which bears remembering. He reminded us that women who enter abortion clinics do so to kill their unborn children. He said that abortion is "a form of killing . . . You're ending a life."

And that, Mr. President, is the ultimate truth which should be remembered by each Senator, and by each American, during this debate. We are deciding whether this nation will continue to permit partially born children, children just three inches away from life, thousands of children each and every year, mainly healthy children from healthy mothers, to be killed in a particularly painful, dangerous, inhumane and medically unjustified and unnecessary manner.

We now know the truth about partial-birth abortions. The question is whether we will have the courage to do what I believe each member of the Senate knows, in his or her heart, to be the right, the moral, thing. With respect to this one terrible and unnecessary procedure, let us finally say, as a nation, enough. Here, on the edge of infanticide, is the line that we will not cross. I urge my colleagues to vote to pass H.R. 1122.

Mrs. BOXER. Mr. President, The Daschle amendment narrows the definition of health to such a degree that in practice it would lead to physical and mental harm to women in emergency situations.

I believe the amendment is inconsistent with Supreme Court decisions on this issue.

At this time, I ask unanimous consent that excerpts from a letter by Prof. Laurence Tribe, of Harvard University Law School, be printed in the RECORD. These excerpts outline in some detail my concerns.

The Feinstein-Boxer-Braun alternative essentially codifies Roe versus Wade and offers a clear alternative to H.R. 1122, which would cause grave harm to women.

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

The upshot is that the Daschle language would criminalize at least three categories of post-viability abortions that, under *Roe* and *Casey*, may not be prohibited.

First, abortions that are regarded by the woman and her physician as necessary to avoid medically diagnosable injury to mental health, including suicidal depression that might result from having to carry to term a fetus so severely deformed (as in a case of anencephaly, for instance) that it would be born only to die hours later after a brief and painful life;

Second, abortions that are required because, in the judgment of the woman and her physician, continuing the pregnancy would seriously and permanently threaten the woman's physical and/or mental health but not by bringing about what the physician could certify is a "severely debilitating disease or impairment specifically caused by the pregnancy;"

Third, and to some degree encompassed within the second point above, abortions that are medically required because continuing the pregnancy would preclude the provision of necessary treatment for a condition that, although not life-threatening, would indeed amount to a "severely debilitating impairment"—such as, for instance, permanent inability to bear children in the future, or permanent impairment of some important bodily capacity or function such as e.g., vision—but not an impairment that is "specially caused by the pregnancy."

Mr. REED. Mr. President, I rise in support of the Feinstein and Daschle amendments and in opposition to H.R. 1122.

The decision to proceed with a potentially lethal pregnancy or one that would endanger the future health of the mother should rest with a woman and her doctor. As a general principle, the Government's role in such a difficult decision should be secondary to that of the woman who must inevitably come to terms with her own personal moral, religious, and philosophical beliefs.

H.R. 1122 supersedes the medical judgment of trained physicians and criminalizes medical procedures that may be necessary to preserve the life and health of the woman. Indeed, it seeks to restrictively and coercively dictate what constitutes appropriate medical practice.

Furthermore, H.R. 1122 does not provide an exception for the health of the mother, thus rejecting the constitutional standard governing postviability abortions set forth in the Supreme Court's decision in Roe versus Wade. Let us make no mistake, Roe versus Wade does not allow a healthy mother of a healthy fetus to have a postviability abortion.

During this emotionally charged debate, it is important to keep in mind those unfortunate women who have faced unpredictable, tragic, and life-threatening pregnancies. For instance, two women who endured such grave circumstances shared their stories recently before a joint House-Senate Judiciary Committee hearing. They testified to the heart-wrenching circumstances surrounding their decision—a decision that would have been illegal under this legislation. We have heard these and other equally compelling stories shared by many of my colleagues during this debate today.

The amendments offered by Senator FEINSTEIN and Senator DASCHLE, however, both take into consideration the woman's life and health. The Feinstein amendment bans all postviability abortions, except those necessary to preserve the life of the woman or to avert serious adverse health consequences. The Daschle amendment also bans all postviability abortion, but makes an exception for those necessary to save the mother's life or to protect her from grievous injury to her physical health. I will support these amendments because their sponsors seek to preserve the core principles of Roe versus Wade.

Of these two amendments, the Feinstein approach is preferable to meet the tragic and trying circumstances of women facing this agonizing decision. I am concerned that the Daschle amendment may not ensure appropriate medical options for all the possible health-related difficulties faced by some women. If it is the true intention of H.R. 1122's proponents to address late term abortions, I would urge my colleagues to support the Feinstein and Daschle amendments which accords with the Supreme Court's decisions in this area and have been endorsed by the President.

Mr. President, the debate on the issue of abortion involves profound questions. Questions of a moral, personal, and religious nature. I do not personally favor abortion. However, my duty as a Senator is to uphold the Constitution and ensure that the power of the State is not used to compel citizens in a manner which contradicts an individual's protected religious and moral beliefs.

Mr. MURKOWSKI. Mr. President, in March, the House of Representatives—in a bipartisan manner—overwhelmingly voted 295–136 to end the horrible procedure known as partial birth abortion. That strong endorsement for the ban came in the wake of a confession by a prominent proponent of abortion

who admitted that he lied through his teeth when he said that partial birth abortions were very rare and only performed in the most dire of circumstances.

On February 27, 1997, Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, an association of over 200 abortion providers, recanted his earlier statements that partial birth abortions were used only in extreme medical circumstances. Fitzsimmons admitted that: In actuality, 5,000 partial birth abortions are performed every year as an elective procedure on a healthy mother with a healthy fetus that is 20 weeks or more along.

Fitzsimmons justified his lie by saying that he just went out there and spouted the party line. The party line Fitzsimmons referred to, of course, is the party line agreed on among the Washington-based pro-abortion groups.

Unfortunately, President Clinton justified his veto of this ban by spouting the same party line lies—that this procedure is medically necessary in certain compelling cases to protect the mother.

Mr. President, here is the truth about partial birth abortions:

According to reputable medical testimony given before this Congress by partial birth abortion practitioners, partial birth abortions occur as many as 5,000 times a year. They are used predominantly for elective purposes and are seldom necessary to safeguard the mother's health or fertility.

Former Surgeon General C. Everett Koop confirmed that President Clinton was misled by his medical advisors and stated that "In no way can I twist my mind to see that the late-term abortion as described as partial birth is a medical necessity for the mother."

Other physicians agree: In a September 19, 1996, Wall Street Journal editorial, three obstetricians declared that "contrary to what abortion activists would have us believe, partial birth abortion is never medically indicated to protect a woman's health or her fertility."

Here's another truth: Partial birth abortions are violent. The procedure is one in which four-fifths of the child is delivered before the abhorrent process of killing the child begins. Sadly, throughout this procedure, the majority of babies are alive and may actually feel pain during this ordeal. Ms. Brenda Schaffer, a nurse who observed the procedure, made this moving statement before a congressional committee:

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

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

Mr. President, it's not easy to discuss this topic, but unfortunately, those are the stark and brutal realities of a partial birth abortion. My good friend and colleague Senator MOYNIHAN declared that the practice of partial birth abortions is "just too close to infanticide."

Mr. President, the vote today is not an issue of pro-life or pro-choice—it's an issue of putting an end to an inhumane procedure. This infant is within inches from being declared a legal person in every State of the Union. The time has come for this body to legally protect that person.

During the last Congress, a ban on partial birth abortion failed because of misinformation. This year, may the truth prevail. As we in Congress and the President finally hear the truth about this procedure—that it cannot be defended medically nor morally.

I ask my colleagues to look into their consciences to make the right decision: To ban this painful, unnecessary, and morally offensive procedure of terminating the life of a viable child.

Mrs. FEINSTEIN. Mr. President, consistent with my remarks made both on the 14th and today, it will be my intention to vote against the Daschle substitute amendment to H.R. 1122.

I made the argument that I believe both H.R. 1122 as well as the Daschle substitute are unconstitutional.

With respect to the Daschle amendment, my reading of it indicates that, even if a severely, horribly deformed fetus were capable of only 1 hour of life outside the womb, a woman would be forced to carry that pregnancy to full term and deliver that child, without consideration of what may be severely debilitating consequences to her health.

For me that is not enlightened public policy, and I cannot support it.

Additionally, I ask unanimous consent to have printed in the RECORD a letter to me from Laurence Tribe, professor of constitutional law at Harvard University, which more definitively spells out the constitutional vulnerability of the Daschle amendment.

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

HARVARD UNIVERSITY LAW SCHOOL,
Cambridge, MA, May 15, 1997.

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

DEAR SENATOR FEINSTEIN: I've been surprised to learn that some people are evidently confused about whether the health exception contained in Senator Daschle's proposed legislation complies with the constitutional requirements set forth in Roe and Casey. You've asked me to put in writing my explanation of why the Daschle exception is constitutionally insufficient, and I'm glad to do so.

Both Roe and Casey unambiguously hold that a state may not prohibit any post-viability abortion that is "necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." The Daschle language would forbid abortion of a viable fetus unless the physician certifies that continuing the pregnancy "would threaten the mother's life or risk grievous injury to her physical health," and goes on to explain that even this narrowed health exception—which impermissibly excludes medically diagnosable risks, however severe, to the woman's mental health and which requires the physician to certify that the physical injury to the woman would be "grievous"—is inapplicable unless the "severely debilitating disease or impairment" that the physician believes requires termination of pregnancy is "specifically caused by the pregnancy." Thus, although a pregnancy may be terminated without violating Daschle if its continuation would cause what the proposed statute calls "an inability to provide necessary treatment for a life-threatening condition," a pregnancy may not be terminated without violating Daschle if its continuation would cause only an inability to provide necessary treatment for a severely debilitating but not life-threatening condition.

The upshot is that the Daschle language would criminalize at least three categories of post-viability abortions that, under Roe and Casey, may not be prohibited:

First, abortions that are regarded by the woman and her physician as necessary to avoid medically diagnosable injury to mental health, including suicidal depression that might result from having to carry to term a fetus so severely deformed (as in a case of anencephaly, for instance) that it would be born only to die hours later after a brief and painful life;

Second, abortions that are required because, in the judgment of the woman and her physician, continuing the pregnancy would seriously and permanently threaten the woman's physical and/or mental health but not by bringing about what the physician could certify is a "severely debilitating disease or impairment specifically caused by the pregnancy;"

Third, and to some degree encompassed within the second point above, abortions that are medically required because continuing the pregnancy would preclude the provision of necessary treatment for a condition that, although not life-threatening, would indeed amount to a "severely debilitating impairment"—such as, for instance, permanent inability to bear children in the future, or permanent impairment of some important bodily capacity or function such as, e.g., vision—but not an impairment that is "specifically caused by the pregnancy."

I should stress the arbitrariness of the exclusion, from the Daschle language, of impairments in the latter category. If a woman is pregnant with a viable fetus in circumstances where the pregnancy itself, unless terminated, would cause a severe impairment (say, to kidney function), the Daschle bill would permit her to obtain an abortion. If the same woman is pregnant with the same viable fetus where the pregnancy itself causes no impairment but where the continuation of that pregnancy would make impossible the use of certain drugs or procedures (because those drugs or procedures would cause severe deformity in the fetus, for instance, as is often the case with chemotherapy or radiation therapy) without which the woman would suffer an even more severe impairment (say, to kidney and liver function and future reproductive capacity),

the Daschle bill would make it a crime for her doctor to perform the same abortion. This arbitrary distinction would in all likelihood violate the Due Process Clause of the Fifth Amendment even apart from Roe and Casey, bit in any event it seems undeniable that it would violate the principles laid down in those decisions, which quite pointedly focus on whether the abortion is necessary to preserve "the life or health of the mother," not on the (quite irrelevant) issue of whether the pregnancy itself endangers her life or health.

The Daschle bill recognizes that the key question is the necessity of the abortion and not what the pregnancy itself might cause when it comes to what it calls "life-threatening" conditions, making clear that a pregnancy may be terminated if it causes an "inability to provide necessary treatment" for such conditions. The glaring omission of any parallel provision for terminating a pregnancy that causes an inability to provide necessary treatment for severely debilitating even if not life-threatening conditions, or an inability to provide procedures that would prevent the development of such conditions, cannot be squared with the requirements of Roe and Casey.

For these reasons, I cannot understand how anyone could doubt the inconsistency of the Daschle language with the requirements of the Constitution as construed in Roe and Casey. I can readily understand the political temptation of some to sign onto a measure that seems less drastic and dangerous from some perspectives than Santorum, and this letter is not intended to address the political pros and cons of various positions. I think it would be a tragedy, however, for Senators, or the White House, to proceed on the basis of demonstrably indefensible readings of the Daschle language or of Roe v. Wade or both.

Sincerely yours,

LAURENCE H. TRIBE.

Mr. BYRD. Mr. President, I commend the Minority Leader for his good efforts to bring about a thoughtful compromise on this difficult issue. He and his staff have worked long and hard to develop the language we have before us in the form of this amendment. The Daschle alternative would ban all post-viability abortions while presenting an exception for the life of the mother and a meaningful, narrowly tailored exception for serious health risk to the mother. The amendment also contains penalties for a first violation of the law in the form of a fine of up to $100,000 or the loss of the physician's license.

While I am generally opposed to abortion, I also believe that there should be the ability to protect the mother. This issue is a very difficult and a very emotional one. I have grappled with it long and hard. While some may argue that this amendment is a paper tiger, I disagree. This amendment, unlike the underlying bill, would address all late-term abortion procedures, not just the partial-birth abortion procedure.

Again, I appreciate the efforts of the Minority Leader, and I will cast my vote in support of his amendment.

Mr. BIDEN. Mr. President, I supported and still support the partial-birth abortion bill. I voted for it in 1995 and voted to override the President's veto last year. The bill was a step in the direction of ending late-term abortions. But, it was not a perfect solution. It did not, as I would have liked, ban all post-viability abortions.

There is no dispute that under the Supreme Court's Roe versus Wade decision, the government can ban post-viability abortions. But, I was and still am concerned that in banning only partial-birth abortions, we do not go far enough. In fact, there is a legitimate concern that in banning partial-birth abortions, not a single abortion would be prevented. The result would be merely to shift the type of procedure used in performing an abortion.

Today, Mr. President, we have a better solution—a solution that goes beyond the ban on a single procedure by actually banning all late-term abortions. The Daschle proposal would make all post-viability abortions—regardless of the method used—illegal, except in very limited circumstances consistent with Roe versus Wade. As an article in The Washington Times put it—and the Times is one of the most conservative newspapers in America—"Mr. DASCHLE's plan would go further in restricting abortion than the . . . partial-birth plan."

If the goal is to reduce the number of abortions in America and to eliminate late-term abortions consistent with Roe versus Wade—and that has been my goal from day one—then the Daschle proposal is the answer because the Daschle proposal bans all post-viability abortions. The only exception is when an abortion is necessary to save the woman's life or in the small number of cases where continuation of the pregnancy would, to quote the amendment, "risk grievous injury to her physical health."

Now, I wish to address for just a minute the health exception. Critics often claim that a health exception is a gigantic loophole—a loophole so big, some have said, that it would allow a teenage girl to get a late-term abortion just because she could not fit into her prom dress. That is an outrageously untrue claim to begin with, regardless of the language of the health exception. But, the rhetoric aside, the health exception under the Daschle proposal is extremely narrow. It must be a severely debilitating disease caused by the pregnancy or it must be a case where a woman cannot undergo necessary treatment for a life-threatening condition as long as she is pregnant. This is not mental health. This is not a minor ailment. This is grievous physical injury.

There are some, Mr. President, who simply do not believe that there should ever be a health exception no matter how narrow. I disagree. There needs to be a narrow health exception. Take, for example, a woman who, during pregnancy, is diagnosed with breast cancer. Her life is not directly endangered by the pregnancy, but her long-term prospects for survival are. Early detection and treatment of breast cancer can increase survival rates by 30 percent. But, a pregnant woman cannot undergo chemotherapy treatment unless her pregnancy is terminated because the chemotherapy can result in permanent damage, even mutation, of the fetus. And, a continued pregnancy will weaken her body's immune system, making it harder for her to fight the cancer. That decision should be between the woman and God, not the government.

Cases such as these are tragic situations—rare and tragic. But, it would be even more tragic to say that ipso facto a woman cannot have an abortion unless her life is threatened by giving birth. That is why the Supreme Court has required a health exception and why the Daschle proposal includes a very narrow health exception.

Mr. President, I admit I am faced with a dilemma here. I can vote to ban one particular abortion procedure that I find repugnant—but in the process, allow late-term abortions to continue. Or, I can vote to eliminate more abortions, by banning all late-term abortions—but in the process allow the so-called partial-birth abortion procedure to continue under limited circumstances. I wish we were not faced with the choice of one or the other. I would like to do both. But, I must cast my vote now for the proposal that I believe will result in fewer abortions. In my view, that is the Daschle proposal. But, let me also be clear. If the Daschle proposal fails, I will again vote for the bill to ban partial-birth abortions.

Mr. SPECTER. Mr. President, I am voting against the amendments offered by Senator FEINSTEIN and Senator DASCHLE because I believe those amendments are so broad as to negate the purpose of the bill.

In my judgment, as detailed below, once the child is partially out of the mother's womb, it is no longer abortion. It is infanticide.

As a legal matter, infanticide would be justified only by analogy to self-defense to save another life—the life of the mother. That legal conclusion is based on the judgment that infanticide is not warranted for the lesser values of averting "serious adverse health consequences to the woman"—Senator FEINSTEIN'S amendment—or avoiding "grievious injury to her physical health"—Senator DASCHLE'S amendment.

I adhere to the fuller statement of my views set forth in my floor statement of September 26, 1996:

This is among the most difficult of the 6,003 votes I have cast in the Senate because it involves a decision of life and death on the line between when a woman may choose abortion and what constitutes infanticide.

In my legal judgment, the issue is not over a woman's right to chose within the constitutional context of Roe versus Wade or Planned Parenthood versus Casey. If it were,

Congress could not legislate. Congress is neither competent to micromanage doctors' decisions nor constitutionally permitted to legislate where the life or health of the mother is involved in an abortion.

In my legal judgment, the medical act or acts of commission or omission in interfering with, or not facilitating the completion of a live birth after a child is partially out of the mother's womb constitute infanticide. The line of the law is drawn, in my legal judgment, when the child is partially out of the womb of the mother. It is no longer abortion; it is infanticide.

This vote does not affect my basic views on the pro-choice/pro-life issue. While I am personally opposed to abortion, I do not believe it can be controlled by the Government. It is a matter for women and families with guidance from ministers, priests, and rabbis.

If partial-birth abortions are banned, women will retain the right to choose during most of pregnancy and doctors will retain the right to act to save the life of the mother.

Mr. SANTORUM. I yield 5 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I want to first say how proud I am of two of our colleagues here, Senator SANTORUM and Senator DEWINE. I have delayed coming over to speak until the end because, quite frankly, I think they have done a better job of defending the position that I hold than I could possibly do. I think their arguments over the last few days have been a great testament to the seriousness with which we take our business. I was thinking, since I was chairman of the National Republican Senatorial Committee when they were both elected, that if I found myself at the Pearly Gates and St. Peter added up my good deeds and found me coming up short, I would say as my final argument, SANTORUM and DEWINE, I had a little something to do with their being elected. I am convinced that would be instrumental in getting me through the gates.

We have had a lot of things said here, and I want to get back to the basic point, which I think often gets lost. This is not a debate about a woman's right to choose. This is not a debate about the rights of the unborn. We are debating, today, a gruesome procedure that no civilized society would condone.

We are back here again today because every day since we had the first debate more facts have come out, often contradicting the very arguments that were used against this bill when we debated it last year on the floor of the Senate. As people learn more about this procedure, they become stronger in their conviction that it should be stopped. We are here today because many members who voted against this bill last year have constituents back home who, as they have gotten to know more about this procedure, feel that a mistake was made. We are here today because even the people who opposed the bill before are deeply troubled by this procedure that we are trying to ban.

Now, I am not a physician. I first got involved in this debate when back in 1995, I came over to give one of my dull lectures on economics. While waiting to speak, Senator SMITH was standing here talking about this procedure. I knew little about its gruesomeness prior to that time. A Senator rose to object. That Senator was offended by what Senator SMITH was trying to demonstrate. It suddenly struck me, if we are offended by somebody simply talking about this procedure, for God's sake, we ought to be offended that it is happening to thousands of children in America. I cosponsored Senator SMITH's bill. That marked the beginning of my involvement.

The bottom line here is that we are trying to ban a gruesome procedure which is inhumane, uncivilized, and clearly unnecessary.

I am not sure about all that the Daschle amendment purports to do. Many people see it doing many different things. But I am sure that the one thing it does not do is ban partial-birth abortion. Should we as members of the greatest of all civilized societies continue to condone such a procedure? An unborn living child is completely delivered, except for the child's head, and that child is literally 3 inches from the full constitutional protections afforded every person in this country. Only at that point is that child's life terminated.

I think the American people who have come to understand this procedure want it stopped. If you want it stopped, you can't stop it with the Daschle amendment. You have to stop it by banning partial-birth abortion.

So I urge my colleagues to vote no on the Daschle amendment and to vote for this bill.

Mr. DASCHLE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Democratic leader has 8 minutes remaining. The other side has 7 minutes remaining.

Mr. DASCHLE. Mr. President, I yield 5 minutes to the distinguished Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Thank you, Mr. President. I thank the distinguished minority leader for yielding.

Mr. President, for 25 years the question of abortion has been among the most divisive in our Nation. It divides our families and poisons our political debate.

We come to this floor today still holding, I know, fundamentally different views on this question. I believe strongly that the issue of bringing a pregnancy to term remains with a woman in consultation with her conscience and her doctor. I know others have fundamentally different views.

But there is a real chance at long last, at least for this moment, for one narrow part of this issue, to find some common ground. Because, on this day, there is a chance to address at least the issue of postviability, late-term abortions. And the question largely rests with those who have dedicated these years in opposition to abortion rights generally.

The Senator from South Dakota [Mr. DASCHLE] has offered an alternative—that it is constitutional because it deals only with postviability pregnancies. It, and it alone, can pass the constitutional test of Roe versus Wade. It alone does not have an undue burden or a substantial obstacle, as outlined in Casey versus Planned Parenthood. And it alone will get the signature of the President of the United States.

Yet, there are those who passionately want to prohibit this procedure but will not be voting with us on this occasion. It raises the question of whether they avoid this chance to end late-term abortions because they seek to preserve a political issue more than to end the procedure which many Americans find offensive.

Mr. President, I will be voting with Senator DASCHLE because, while I strongly believe—as our Supreme Court has affirmed—that there is an inherent right to privacy, that every woman has a constitutional right to reach her own judgment about whether to bring to term or terminate a pregnancy before viability, there is a legitimate public policy question affirmed by the courts on whether or not this procedure or any other should be allowed to continue postviability.

Senator DASCHLE, in the alternative that he brings to the Senate today, prohibits not only the late-term abortion procedure described in detail by those supporting Mr. SANTORUM's legislation, but he also prohibits other alternatives dealing with postviable fetuses. And he alone does so.

It again begs the question whether or not this Senate is intending to actually prohibit late-term abortions, or whether, cynically and regrettably, this is genuinely an effort to maintain a political issue, because, if Senator DASCHLE fails, our opponents may, in fact, outlaw this single procedure, but at least three other procedures also dealing with postviable fetuses would be allowed to continue, and many women whose lives would be better protected, their health better assured, would be forced to use other procedures that are more dangerous.

Mr. President, I urge the adoption of Senator DASCHLE's alternative. It is constitutional. It protects a woman's choice. It is a better balance. It is the only chance for common ground. Let us resume the fight tomorrow and today to end this late-term abortion struggle.

Mr. SANTORUM. Mr. President, I yield 6 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, why do we argue with the Daschle amendment that sounds, on its face, reasonable? Why do we argue to say that it is a gutting amendment? Let me give my colleagues, very quickly, four reasons.

When you look at the language of the Daschle amendment, you find that it creates a subjective standard. The underlying bill has an objective standard.

The amendment says "would threaten the mother's life," or "risk grievous injury to her physical health." "Risk" is the key word.

We have quoted Dr. Hern in Colorado who said, "I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health"—"could cause." We cited this. But, frankly, I don't believe anyone, if you look just at the language, would disagree with what the doctor said. The reality is that any pregnancy has a risk. We are dealing with subjective language.

Second, it is doctor self-certified. The operative language, the key language, is certification. No way you can look beyond and behind that certification. Once the certification is made, that is it.

Third, the issue of viability: Before you even get to the question of certification, you have the issue of viability. All the doctor has to say is "not viable." Who is going to look behind that?

Senator NICKLES has pointed out very well in citing the Supreme Court case that says when we are dealing with the issue of viability it is left up to the discretion of the physician. We look to the physician. My friends on the other side of the aisle can say, "Well, who else would you look at?" That is fine. But the reality is, you can't then tell me it is an objective standard. It is a subjective standard. It is self-certification, self-decided by the person who is performing the abortion.

Finally, the fourth reason: The courts have historically given a very liberal interpretation to the whole issue of health as it pertains to a bill having to do with abortions.

Four reasons, Mr. President, and Members of the Senate, why this very good-sounding amendment is a gutting amendment which really destroys the underlying bill.

The PRESIDING OFFICER. Who yields time?

Mr. DASCHLE. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Democratic leader has 2 minutes and 43 seconds. The Republican side has 4 minutes and 15 seconds.

Mr. DASCHLE. Mr. President, does the Senator from Pennsylvania wish to consume any of the remaining time prior to the time of vote?

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, several comments have been made about what the minority leader's legislation attempts to do, postviability abortions, and that ours doesn't do that. That is correct. That was never the intention of the bill. What our bill does is stop the infanticide.

We have had a change in the debate here. We have had a debate about the late-term abortion. But what we have been debating—maybe the other side didn't realize it—here is stopping the killing of children, "infanticide." That is not my word. The Senator from New York, Senator MOYNIHAN, says this looks like infanticide. This baby is outside of the mother, a fully formed little baby.

That is what this debate is about. We have gotten off track here a little bit and tried to talk about late-term abortions and trying to define it.

I think you heard the Senator from Tennessee define how this doesn't do anything. But that is one. The Senator from South Dakota said you have the same procedures, as far as doctors determining life of the mother in partial-birth abortions.

The difference is there is no certification procedure in the partial-birth abortion—none. By giving a certification procedure in your bill, you raise that as a standard that is dispositive. We do not do that in this bill. We leave that up to a judge and a jury.

In the case of the Daschle bill, as I said before, the executioner is the judge and the jury. In our bill, that is not the case.

So there is a substantive difference in how we deal with this.

I yield the remainder of my time to the Senator from Tennessee.

I hope that we have opposition to the Daschle amendment.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. How much time remains?

The PRESIDING OFFICER. Two and one-half minutes.

Mr. FRIST. Thank you, Mr. President.

In closing, I simply also urge opposition to the Daschle amendment and support for the underlying bill to ban partial-birth abortion.

The Daschle amendment, although well-intended and with a good, strong effort to narrow the definition of health of the mother, simply does not accomplish what it intends. The bill tries to close the loophole. It is a loophole in the sense that there are many people, unfortunately, who exploit the definition of health of a mother to their benefit, to perform abortions very late, second trimester, third trimester. Unfortunately, there are people like that. We have heard about them. We have described their cases. Some of them exploit the loophole of health of the mother to use the partial-birth-abortion procedure.

I have argued that the Daschle amendment does not outlaw, does not ban, the partial-birth abortion. And if the criteria are met in his bill, people will still be performing the partial-birth procedure.

Second, the bill, although it tries to narrow the definition, fails. Why? Because you can't separate physical health from mental health, from emotional health. That is why you can't define health of the mother so narrowly.

Mr. President, I have had the opportunity to deliver babies as a physician, as a resident in training. It is a miraculous process. It is a beautiful process to see and help deliver that child, to come into the real world. Many of us as fathers have participated in that process.

Remember, we are talking about banning a procedure that at one point in time in this miraculous, this beautiful process is said to be OK, but 1 second later, 3 inches later, we call it murder.

It is a procedure that is brutal, inhumane, and deeply offensive to our sensibilities as human beings. It must and should be banned.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, we agree. We want to ban the procedure. But we also respect the Constitution. We recognize how critical it is that if we are indeed desirous of passing legislation that will remain constitutional, we have to live within the bounds of the Constitution.

I respect greatly the distinguished Senator from Tennessee, and admire him immensely. He is a distinguished physician as well as a distinguished Senator.

But the American College of Obstetricians and Gynecologists disagrees with his position.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the American College of Obstetricians and Gynecologists (ACOG) statement of policy, a letter of endorsement from ACOG, a report from the American Medical Associations Board of Trustees concerning late term abortion techniques, and examples of serious maternal health conditions as noted in obstetrics manuals.

I would like to note that the recommendations of the American Medical Association regarding the use of late term abortion techniques are wholly consistent with the goals and intent of my amendment.

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

ACOG STATEMENT OF POLICY

(As issued by the ACOG Executive Board)

STATEMENT ON INTACT DILATATION AND EXTRACTION

The debate regarding legislation to prohibit a method of abortion, such as the legislation banning "partial birth abortion," and

"brain sucking abortions," has prompted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

The American College of Obstetricians and Gynecologists (ACOG) believes the intent of such legislative proposals is to prohibit a procedure referred to as "Intact Dilatation and Extraction" (Intact D & X). This procedure has been described as containing all of the following four elements: (1) Deliberate dilatation of the cervix, usually over a sequence of days; (2) instrumental conversion of the fetus to a footling breech; (3) breech extraction of the body excepting the head; and (4) partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus.

Because these elements are part of established obstetric techniques, it must be emphasized that unless all four elements are present in sequence, the procedure is not an intact D & X.

Abortion intends to terminate a pregnancy while preserving the life and health of the mother. When abortion is performed after 16 weeks, intact D & X is one method of terminating a pregnancy. The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

According to the Centers for Disease Control and Prevention (CDC), only 5.3% of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. A preliminary figure published by the CDC for 1994 is 5.6 percent. The CDC does not collect data on the specific method of abortion, so it is unknown how many of these were performed using intact D & X. Other data show that second trimester transvaginal instrumental abortion is a safe procedure.

Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother. Intact D & X is one of the methods available in some of these situations. A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. An intact D & X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are critical to the lives and health of American women. The intervention of legislative bodies into medical decision making is inappropriate, ill advised and dangerous.

Approved by the Executive Board, January 12, 1997.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, May 13, 1997.

Hon. THOMAS A. DASCHLE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR DASCHLE: On behalf of the American College of Obstetricians and Gynecologists (ACOG), an organization representing 38,000 physicians dedicated to improving women's health. I am endorsing the legislative language of your substitute amendment to H.R. 1122. Although it does not take a position on the findings enumerated in your proposal, ACOG believes that by banning abortions on viable fetuses except when continuing the pregnancy threatens a woman's life or risks serious injury to her health, your substitute legislative language provides a meaningful ban while assuring women's health is protected.

ACOG believes this amendment is preferable to H.R. 1122 for the following reasons:

It provides a meaningful ban, while allowing an exception when it is necessary for a woman's health. This preserves the ability of physicians to make judgments about individual patents, an issue of critical importance to physicians.

The amendment does not dictate to physicians which abortion procedures can or cannot be performed.

In conclusion, ACOG supports your amendment and urges the Senate to adopt this language as an alternative to H.R. 1122.

Sincerely,

RALPH W. HALE, MD,
Executive Director.

FROM THE REPORT OF THE BOARD OF TRUSTEES OF THE AMERICAN MEDICAL ASSOCIATION, APRIL 1997

(Report is subject to review by the AMA House of Delegates in June, 1997)

RECOMMENDATIONS

The Board of Trustees recommends the adoption of the following statements of policy and that the remainder of this report be filed:

(1) The American Medical Association reaffirms current policy regarding abortion, specifically policies 5.990, 5.993, and 5.995.

In summary: The early termination of pregnancy is a medical matter between the patient and physician subject to the physician's clinical judgment, the patient's informed consent, and the availability of appropriate facilities; abortion is a medical procedure and should be performed by a physician in conformance with standards of good medical practice; support of or opposition to abortion is a matter for members of the AMA to decide individually, based on personal values or beliefs. The AMA will take no action which may be construed as an attempt to alter or influence the personal views of individual physicians regarding abortion procedures; and neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles.

(2) The term "partial birth abortion" is not a medical term. The American Medical Association will use the term "intact dilatation and extraction" (or intact D&X) to refer to a specific procedure comprised of the following elements: Deliberate dilatation of the cervix, usually over a sequence of days; instrumental or manual conversion of the fetus to a footling breech; breech extraction of the body excepting the head; and partial evacuation of the intracranial contents of the fetus to effect vaginal delivery of a dead but otherwise intact fetus. This procedure is distinct from dilatation and evacuation (D&E) procedures more commonly used to induce abortion after the first trimester. Because partial birth abortion is not a medical term it will not be used by the AMA.

(3) According to the scientific literature, there does not appear to be any identical situation in which intact D&X is the only appropriate procedure to induce abortion, and ethical concerns have been raised about intact D&X. The AMA recommends that the procedure not be used unless alternative procedures pose materially greater risk to the woman. The physician must, however, retain the discretion to make that judgment, acting within standards of good medical practice and in the best interest of the patient.

(4) The viability of the fetus and the time when viability is achieved may vary with each pregnancy. In the second-trimester when viability may be in question, it is the physician who should determine the viability of a specific fetus, using the latest available diagnostic technology.

(5) In recognition of the constitutional principles regarding the right to an abortion articulated by the Supreme Court in Roe versus Wade, and in keeping with the science and values of medicine, the AMA recommends that abortions not be performed in the third trimester except in cases of serious fetal anomalies incompatible with life. Although third-trimester abortions can be performed to preserve the life or health of the mother, they are, in fact, generally not necessary for those purposes. Except in extraordinary circumstances, maternal health factors which demand termination of the pregnancy can be accommodated without sacrifice of the fetus, and the near certainty of the independent viability of the fetus argues for ending the pregnancy by appropriate delivery.

(6) The AMA will work with the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics to develop clinical guidelines for induced abortion after the 22nd week of gestation. The guidelines will address indications and contra-indications for such procedures, identify techniques which conform to standards of good medical practice and, whenever possible, should be evidence-based and patient-focused.

(7) The American Medical Association urges the Centers for Disease Control and Prevention as well as state health department officials to develop expanded, ongoing data surveillance systems of induced abortion. This would include but not be limited to: a more detailed breakdown of the prevalence of abortion by gestational age as well as the type of procedure used to induce abortion at each gestational age, and maternal and fetal indications for the procedure. Abortion-related maternal morbidity and mortality statistics should include reports on the type and severity of both short- and long-term complications, type of procedure, gestational age, maternal age, and type of facility. Data collection procedures should ensure the anonymity of the physician, the facility, and the patient.

(8) The AMA will work with appropriate medical specialty societies, government agencies, private foundations, and other interested groups to educate the public regarding pregnancy prevention strategies, with special attention to at-risk populations, which would minimize or preclude the need for abortions. The demand for abortions, with the exception of those indicated by serious fetal anomalies or conditions which threaten the life or health of the pregnant woman, represent failures in the social environment and education. Such measures should help women who elect to terminate a pregnancy through induced abortion to receive those services at the earliest possible stage of gestation.

This should not be considered an exhaustive list of serious maternal health conditions. These are merely examples of conditions listed in obstetrical textbooks as possible medical indications for pregnancy termination.

DISEASE OR IMPAIRMENT CAUSED BY PREGNANCY

Preeclampsia with accompanying renal, kidney, or liver failure, onset of severe hypertension during pregnancy: "Preeclampsia often occurs early and with increased severity. Deterioration of maternal renal function or uncontrolled hypertension is an indication for pregnancy termination."[1] Preeclampsia occurs in 5–10% of pregnancies and is severe in less than 1%. Eclampsia (complication characterized by seizures) occurs in approximately 0.1% of pregnancies.

Peripartal cardiomyopathy, heart failure in late pregnancy: "Characterized by its occurrence in women with no previous history of heart disease and in whom no specific [origin] of heart failure can be found, peripartal cardiomyopathy is a distinct, well-described syndrome of cardiac failure in late pregnancy."[1]

Pregnancy-aggravated hypertension, acceleration of existing hypertension: "Maternal indications include organ failure such as renal failure, seizures associated with the development of eclampsia [progression from hypertension/preeclampsia characterized by seizures and can result in cerebral hemorrhage], and uncontrollable hypertension."[2] Complications develop in 10–40% of patients with chronic hypertension.

Primary pulmonary hypertension, complication of existing hypertension (abnormally high blood pressure): "The natural course of the disease terminates either by sudden death or by the development of intractable congestive heart failure resistant to therapy. Maternal mortality with primary pulmonary hypertension approaches 50%."[1]

LIFE-THREATENING CONDITIONS REQUIRING IMMEDIATE TREATMENT

Bone marrow failure, severe form of anemia: "The role of pregnancy termination [in bone marrow failure treatment] is unclear. Therapeutic abortion is inconsistently associated with remission. It may be necessary, however, in order to treat the patient with anabolic steroids."[1] Additionally, "bone marrow transplant has become the treatment of choice. Termination of the pregnancy would be necessary if a suitable donor could not be found."[1] It should be noted that bone marrow transplant is also a treatment for other conditions such as leukemia.

Cardiac arrest, heart failure: Most incidents of cardiac arrest are secondary to other acute events, such as anesthetic complications, trauma, or shock. According to several obstetrics manuals, pregnancy termination—whether by delivery or abortion—is often recommended.[1 2] CPR can generally be expected to generate only 30 percent of normal cardiac output, and during pregnancy the uterus obstructs this cardiac output even further.

CANCER

Cancer complicates approximately 1 out of every 1,000 pregnancies. Issues that must be addressed in pregnancies affected by cancer include the effect of pregnancy on the malignancy, the need for pregnancy termination, and the timing of therapy. Radiation and chemotherapy may be contraindicated during pregnancy due to documented risks of fetal mutation. Additionally, pregnancy inhibits a woman's ability to fight off cancer because the immune system is often depressed, and her nutritional intake is divided between herself and the fetus.

Lymphoma, cancer of lymphatic system: "High-grade Non-Hodgkin's lymphoma is a rapidly progressive disease with a median survival of six months. Since cure rates approach 50%, it is imperative therapy not be delayed.[2] In this situation, delay of therapy could mean the loss of an opportunity to cure the mother. Because both radiation and chemotherapy present mutation risks for the fetus, termination of the pregnancy is suggested in order to begin treatment for lymphoma.

Breast cancer, especially breast cancer diagnosed during pregnancy: "Factors in pregnancy that could adversely affect this malignancy include . . . increased estrogen and prolactin stimulation [both factors that exacerbate breast cancer], and depression of the immune system"[1] The frequency of breast cancer in pregnancy is second only to cancer of the cervix, occurring in 1 out of every 3,000 pregnancies. In addition, adequate nutrition is a serious problem.

FOOTNOTES

[1] Manual of Obstetrics: Diagnosis and Therapy, ed. Kenneth Niswander and Arthur Evans, University of California, Davis, School of Medicine.

[2] Clinical Manual of Obstetrics, ed. David Shaver and Frank Ling (University of Tennessee College of Medicine), Sharon Phelan (University of Alabama Department of Obstetrics and Gynecology), and Charles Beckmann (University of Wisconsin Department of Obstetrics and Gynecology)

Mr. DASCHLE. Mr. President, second, let me just say that the distinguished Senator from Pennsylvania said that only his bill allows a judge and jury to decide. I beg to differ. We have virtually the same standard with regard to the determination of illegality. They don't "self-certify" any more than we "self-certify," and vice versa.

It ultimately comes down to whether or not someone believes a physician has broken the law. And we have very specific guidelines by which a person, a doctor, can be prosecuted if indeed he or she has violated the law.

The third question is simply this. If indeed we want to stop abortion, then we really have a choice. We can stop one procedure, which is what H.R. 1122 does. It only stops one procedure. It allows all the other alternatives to continue. Or we can stop them all.

There is only one bill pending—one piece of legislation pending—that allows the complete elimination of all methods of abortion.

Finally, Mr. President, let me just say, as much as one might like to get around the parameters required by the Supreme Court and the Constitution, that when it comes to health, there can be no doubt. A woman's health, as well as her life, needs to be protected.

That is exactly what this legislation does. It outlaws every one of the procedures. It doesn't allow doctors just to shift to another procedures as the colleagues on the other side who support this particular procedure will continue to allow.

It does not allow that, but it does say we are going to stay within the Constitution in prohibiting all these procedures but saving a mother's life and health. We can do no less. We need to support this legislation. I hope on a bipartisan basis we will do that now.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 36, nays 64, as follows:

[Rollcall Vote No. 70 Leg.]

YEAS—36

Akaka	Feingold	Lieberman
Baucus	Graham	Mikulski
Biden	Harkin	Moseley-Braun
Bingaman	Inouye	Murray
Bryan	Johnson	Reed
Bumpers	Kennedy	Robb
Byrd	Kerrey	Rockefeller
Cleland	Kerry	Sarbanes
Collins	Kohl	Snowe
Daschle	Landrieu	Torricelli
Dodd	Leahy	Wellstone
Durbin	Levin	Wyden

NAYS—64

Abraham	Feinstein	Mack
Allard	Ford	McCain
Ashcroft	Frist	McConnell
Bennett	Glenn	Moynihan
Bond	Gorton	Murkowski
Boxer	Gramm	Nickles
Breaux	Grams	Reid
Brownback	Grassley	Roberts
Burns	Gregg	Roth
Campbell	Hagel	Santorum
Chafee	Hatch	Sessions
Coats	Helms	Shelby
Cochran	Hollings	Smith (NH)
Conrad	Hutchinson	Smith (OR)
Coverdell	Hutchison	Specter
Craig	Inhofe	Stevens
D'Amato	Jeffords	Thomas
DeWine	Kempthorne	Thompson
Domenici	Kyl	Thurmond
Dorgan	Lautenberg	Warner
Enzi	Lott	
Faircloth	Lugar	

The amendment (No. 289) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, just to confirm, again, this is the last vote for tonight. The next recorded vote will not occur before 5 o'clock on Monday. However, we are now working with the leadership on both sides of the Capitol and the Budget Committees, with the idea of having the Budget Committees markup the budget resolution, and we hope to get to the budget resolution early next week. We will continue to work to get the budget resolution out of the committee either tomorrow or

[1] Footnotes at end of article.

Monday, and we will bring it to the floor as soon as we can get it completed and get an agreement as to how that will proceed, knowing what the rules require, but, also, wanting to work in good faith in a bipartisan way, which we think we are going to be able to do.

For the information of all Senators, as I said, there will be no further votes this evening. The Senate will next consider S. 476, relative to the Boys and Girls Clubs of America, for debate only, and a rollcall has not been requested on passage. There will not be a rollcall on that passage. We are going to take that up tomorrow, and we will be able to pass it without rollcall vote.

The Senate will be in session tomorrow for morning business to accommodate Senators' requests, although there will be no votes tomorrow.

Again, I think we have reached a final agreement on the package that will go to the Budget Committee.

MORNING BUSINESS

Mr. LOTT. I ask unanimous consent there now be a period for the transaction of routine morning business, with Senators permitted to speak for up to 5 minutes each.

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

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

THE RIM ROCK RUN

Mr. ALLARD. Mr. President, the Mesa Monument Striders have held a road race inside the beautiful landscape of Colorado National Monument since 1993. Over the past 4 years, participation in the race has soared. This year, 250 Rim Rock Run participants will be shut out of the park in an effort by the National Park Service to snuff out a Colorado legacy.

Yesterday, Deputy Regional Director, Robert Reynolds, upheld the ruling of the park's superintendent to prohibit the race—all in the name of traffic congestion. But this is a 2 hour race held on an early Sunday morning in November. This is a slap in the face to the State of Colorado and the spirit of recreation which national parks were established for. I have watched the culmination of this dispute evolve from an irrational rejection of a race permit to a national dispute over the unjustified actions of a bureaucracy that refuses to listen to the voice of the people.

The people of western Colorado have bent over backwards to reach a compromise with the park's superintendent. Countless meetings have been held offering rescheduled times and dates or proposals to scale down the size of the race. The sheriff's department has committed their entire force to the security and coordination of the run. The local paper has arranged for a shuttle service to alleviate traffic inconveniences. It is clear to me that no amount of effort to compromise will sway the park service's decision to forbid the race.

Well, I will not stand for this decision. I am requesting to meet with the acting director of the Park Service to demand a justification for this ludicrous ruling. Next month, this same Park Service is sponsoring the closure of a 13 mile stretch of George Washington Parkway for a road race right here in our Nation's Capital. This might inconvenience a few thousand drivers, but I don't see any Park Service officials challenging the legitimacy of this popular race. If this is the precedent we want to set for holding an event in a national park, then let's just call off the hundreds of events already planned this year in all national parks.

This controversy is only the latest example of public land managers consistently trying to restrict public access to lands which were set aside for the public to use and enjoy. It is not an isolated case. I am convinced that this fight in Colorado is only symptomatic of a much larger problem.

This is not finished. I will continue to fight this outrageous ruling until someone listens. Closing a national monument road for a few hours to accommodate a simple 23-mile road race should not provoke this kind of controversy. Yet, the Park Service seems determined to continue the controversy by ignoring the runners, the local paper and the community. When will our National Park Service understand that they need to work with the people and not ignore them, especially when we have a community that is willing to do its fair share?

I yield back the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

PROVIDING FOR THE ESTABLISHMENT OF BOYS AND GIRLS CLUBS OF AMERICA FACILITIES

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 44, S. 476, regarding the Boys and Girls Clubs of America.

I further ask unanimous consent that there be 20 minutes under the control of Senator HATCH, 10 minutes under the control of Senator BIDEN, and 10 minutes under control of Senator LEAHY, and no amendments be in order to the bill; and, finally, following the expiration or yielding back of the time, the bill be read a third time with no other intervening action or debate.

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

The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 476) to provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000.

The Senate proceeded to consider the bill.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to urge my colleagues to support S. 476, legislation to further the commitment of the Republican Congress to support the expansion of the Boys and Girls Clubs of America, one of the best examples of proven youth crime prevention.

This is not a partisan initiative, however. I am pleased to have the company of a bipartisan group of Senators, including Senator BIDEN, the ranking Democrat on the Youth Violence Subcommittee, Senator STEVENS, the chairman of the Senate Appropriations Committee, Senator GREGG, the chairman of the Commerce, Justice, State Appropriations Subcommittee, Senator KOHL, who serves on the Judiciary Committee, and, of course, Senator THURMOND, who has served as a distinguished chairman of the Judiciary Committee.

Mr. President, the volunteer spirit is alive and well in America. The Presidents' summit on voluntarism, held recently in Philadelphia, focused national attention on this aspect of the American people's generous spirit. Yet, the effects of the legislation we are debating today will be felt in neighborhoods across the country long after the spotlight is gone, and long after the speeches are forgotten.

Our legislation addresses our continuing initiative to ensure that, with Federal seed money, the Boys and Girls Clubs of America are able to expand to serve an additional 1 million young people through at least 2,500 clubs by the year 2000. The dedication of all of these members demonstrates our commitment to both authorize and fund this effort.

Last year, in a bipartisan effort, the Republican Congress enacted legislation I authored to authorize $100 million in Federal seed money over 5 years to establish and expand Boys and Girls Clubs in public housing and distressed areas throughout our country. With the help of the Appropriations Committee, we have fully funded this initiative.

The bill we are debating today streamlines the application process for these funds, and permits a small amount of the funds to be used to establish a role model speakers' program to encourage and motivate young people nationwide.

It is important to note that what we are providing is seed money for the construction and expansion of clubs to serve our young people. This is bricks and mortar money to open clubs. After they are opened, they will operate

without any significant Federal funds. In my view, this is a model for the proper role of the Federal Government in crime prevention.

The days are over when we can afford huge, never-ending, federally run programs. According to a GAO report last year, over the past 30 years, Congress has created 131 separate Federal programs, administered by 16 different agencies, to serve delinquent and at-risk youth. These programs cost $4 billion in fiscal year 1995. Yet we have not made significant progress in keeping our young people away from crime and drugs.

What we can and must afford is short-term, solid support for proven private sector programs—like the Boys and Girls Clubs—that really do make a difference. Boys and Girls Clubs are among the most effective nationwide programs to assist youth to grow into honest, caring, involved, and law-abiding adults.

We know that Boys and Girls Clubs work. Researchers at Columbia University found that public housing developments in which there was an active Boys and Girls Club had a 25-percent reduction in the presence of crack cocaine, a 22-percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime. Members of Boys and Girls Clubs also do better in school, are less attracted to gangs, and feel better about themselves.

There are many distinguished alumni of Boys and Girls Clubs, including President Clinton and other role models such as actor Denzel Washington, basketball superstar Michael Jordan, and San Francisco 49ers quarterback Steve Young.

More important, however, are the uncelebrated success stories—the miracles performed by Boys and Girls Clubs every day. At a Judiciary Committee hearing on March 19, we heard from one of these miracles. Amador Guzman, from my State of Utah, told us how he believes the club in his neighborhood saved his life, by keeping him from gangs, drugs, and violence.

The reason Boys and Girls Clubs work—and the reason Congress wants to do more for them—is because they are locally run and depend primarily on community involvement for their success.

Never have our youth had a greater need for the positive influence of Boys and Girls Clubs, and never has the work of the Clubs been more critical. Our young people are being assaulted from all sides with destructive messages. For instance, drug use is on the rise. Recent statistics reconfirm that drugs are ensnaring young people as never before. Overall drug use by youth ages 12 to 17 rose 105 percent between 1992 and 1995, and 33 percent between 1994 and 1995. 10.9 percent of our young people now use drugs on a monthly basis, and monthly use of marijuana is up 37 percent, monthly use of LSD is up 54 percent, and monthly cocaine use by youth is up 166 percent between 1994 and 1995.

Our young people are also being assaulted by gangs. By some estimates, there are more than 3,875 youth gangs, with 200,000 members, in the Nation's 79 largest cities, and the numbers are going up. Even my State of Utah has not been immune from this scourge. In Salt Lake City, since 1992, the number of identified gangs has increased 55 percent, from 185 to 288. The number of gang members has increased 146 percent, from 1,438 to 3,545; and the number of gang-related crimes has increased a staggering 279 percent, from 1,741 in 1992 to 6,611 in 1996. Shockingly, 208 of these involved drive-by shootings.

Every day, our young people are being bombarded with cultural messages in music, movies, and television that undermine the development of core values of citizenship. Popular culture and the media glorify drug use, meaningless violence, and sex without commitment.

The importance of Boys and Girls Clubs in fighting drug abuse, gang recruitment, and moral poverty cannot be overstated. The Clubs across the country are a bulwark for our young people and deserve all the support we can give.

Indeed, Federal efforts are already paying off. Using over $15 million in seed money appropriated for fiscal year 1996, the Boys and Girls Clubs of America opened 208 new clubs in 1996. These clubs are providing positive places of hope, safety, learning and encouragement for about 180,000 more kids today than in 1995. In my State of Utah, these funds have helped keep an additional 6,573 kids away gangs, drugs, and crime.

The $20 million appropriated for fiscal year 1997 is expected to result in another 200 clubs and 200,000 more kids involved in clubs. We need now to redouble our efforts. The legislation we introduce today demonstrates our commitment to do that. It will not, and cannot, solve our juvenile crime problem. We will be bringing other legislation to the floor that will address, in a comprehensive manner, the urgent problems of juvenile crime. S. 476, is, however, an important first step in that endeavor, aimed at stopping youth crime before it starts.

Mr. President, let me just add, this is a terrific bill. It is a bipartisan initiative. I want to compliment my colleague from Delaware for the hard work he has done through the years on Boys and Girls Clubs, and he certainly deserves a lot of the credit for the bill. We have worked together, and we are going to continue to do so. I hope that the Congress will pass this in an expeditious fashion to continue to use one of the best ways of stopping crime and helping kids that our society has ever known.

Mr. BIDEN. Mr. President, let me thank my colleague for his reference. I think it should be made clear that without the chairman's strong and wholehearted support and initiation here, we would not be where we are. I want to, just in a very brief time, review the bidding here a little bit.

Let me remind everybody that this was in the crime bill, the original Biden-Hatch crime bill, and ended up having some other iterations before it was over. But we had provisions in there for prevention.

One of the things that happened was on both sides of the aisle, left, right, center, was we got into this great debate about whether prevention works and whether or not the prevention money in the crime bill was to support prisoners in pink tutus dancing in ballet style, and all that kind of stuff. We got into big fights about midnight basketball, and all that.

I am not suggesting we reengage those fights except to make this following point. The reason why in the original bill a while ago I specifically singled out Boys and Girls Clubs—I want to be up front about this—was real simple. It was the one place I knew that we could get consensus among Democrats and Republicans, liberals and conservatives, because this is prevention that works. And it was my view at the time that, if we singled out Boys and Girls Clubs—and we did, which is kind of unusual to do in a crime bill to single out a specific nonprofit to make sure they get money. That is a bit unusual. The reason to do it was, the statistics are overwhelming. Let me give you a few reasons why this works.

There was a study done by Columbia University that demonstrated—and I am going to be brief—that public housing sites where there are Boys Clubs and Girls Clubs, compared with public housing sites without these clubs, there was a drastic difference. Let me make it clear now, this study was done, no one disputes—they took public housing sites with the same demographic makeup, same cities, same populations, same racial composition, put a Boys and Girls Club in the basements of one, not in the other.

Here is what the study confirmed. Those public housing projects that had a Boys and Girls Club in the basement, or wherever they were in the building, had 13 percent fewer juvenile crimes, 22 percent less drug activity, and 25 percent less crack presence. This is in the crack epidemic. Still a big problem. We have other things to worry about, too. But the bottom line, Mr. President, is it works.

I know the Presiding Officer from Montana has done a lot of work with kids over the years. He has been involved in things that have to do with

everything from 4-H to rodeos to Lord only knows what. I hear all these stories he tells me about Montana and about how these kids are involved. The truth of the matter is you get a kid involved, you have less chance that kid is going to get involved in something bad.

My mom has an expression that I am sure every one of our moms have said in different ways, the expression is: "Remember, JOEY, an idle mind is a devil's workshop." The bottom line is you give a kid nothing to do, he is likely to find trouble. Give a kid nothing to do in an area where there is nothing but trouble, he or she becomes part of the trouble. Give a child something to do, an alternative, an escape, a way out where there is nothing but trouble, give them a safe haven, and you increase the prospects that they are not going to be in trouble.

So that is why we proposed and passed through the Senate in 1996 $20 million in spending for the first year of a 5-year effort to create 1,000 new Boys and Girls Clubs. Ultimately we got $11 million in the final appropriations bill.

Senator HATCH and some of our colleagues, Senator LEAHY and others that are mentioned, worked together to provide the second year of funding in last year's appropriations bill.

If it were not for the fact that Senator HATCH in the majority party, the leader of the committee, jumped in at that point, I believe the appropriation would not have been anything. He used his influence and his weight, got this up on the radar screen and continued to save this program. So the second year of funding in last year's appropriations bill came through.

Senator HATCH also worked to pass legislation supporting this concept, the whole notion, last year. The bottom line is, we are working together so that we can have a total of 2,500 Boys and Girls Clubs by the year 2000. This bill does a very important thing. It simplifies—let me emphasize, it simplifies—the application procedure.

So, although it does not provide additional funding beyond that already authorized, the simplification is important, letting Boys and Girls Clubs go straight to the Justice Department. They do not have to go through their Governors, do not have to go through their State legislature, do not have to go through their city council. They go straight to the Justice Department and seek the funding.

This is the simple, straightforward approach that I have always supported in the Biden crime bill and why I am so pleased that my colleague, the chairman of the committee, has in fact been so supportive and led on this.

Last year's bill provided for consultation with the Department of Housing and Urban Development, an unnecessary requirement. I have nothing against HUD, but I believe we must get these important prevention dollars out to the Boys and Girls Clubs throughout the country as quickly and as efficiently as possible. And this bill well help do that.

Let me conclude by saying, if we are able to fund 2,500 Boys and Girls Clubs, it could not come at a more important moment in our history from a demographic standpoint. There are 39 million children, Mr. President, under the age of 10 in the United States of America today, the largest cadre of young people about to enter the crime-committing years that we have had since the baby boom of those of us born in the 1940's.

It is a big deal, Mr. President. If we through our police efforts, through our present efforts, hold the percentage of crime committed by young people to the same percentage it is now, without one one-hundredth of 1 percent increase in the amount of crime that is committed, as a percent of the population, we will in fact still have about an 8 percent increase in violent crime in America. You know why? That is how many more kids there are going to be. We better figure out now before this so-called baby boomlet—that's what the demographers are referring to—before this baby boomlet hits those crime-committing years.

I can think of nothing—nothing—that the police can do, nothing that we can do, that can solve the problem alone without providing safe havens and alternatives for these children. boys and Girls Clubs are a proven—a proven—safe haven. A proven safe haven.

So, Mr. President, I urge my colleagues to adopt this legislation. I hope this bill is a sign that we will continue to work together to deal with those prevention efforts that work. Another thing all our moms said to us, "An ounce of prevention is worth a pound of cure." "An ounce of prevention." This is 2,500 ounces of prevention that will prevent tens of thousands of pounds of crime. This is a big deal.

I thank my colleague for his support and allowing me to participate in this effort.

I yield the floor.

Mr. HATCH. I thank my colleague for his kind remarks.

I think he has summed it up very, very well. So I will not repeat what he has said. I agree with him. I have to say this is one of the best programs for youth that we could do. It is the right thing to do, and I urge all our colleagues to support it.

Mr. LEAHY. Like my colleagues, I too support the expansion of Boys and Girls Clubs. I would like to ask the author of this legislation, its principal sponsor and the chairman of the Judiciary Committee, whether I am correct that this bill should serve to expand the availability of Boys and Girls Clubs in rural areas?

Mr. HATCH. That is correct. The bill will change the law to permit Boys and Girls Clubs to be expanded where needed, and certainly a club in a rural area could be needed, and make a significant difference to the young people in that area.

Mr. LEAHY. Do we intend for the funds to be used to expand clubs in communities under 50,000 in population?

Mr. HATCH. Absolutely. The original language passed last year expressly included rural areas, but this amendment is intended to make our intent clearer that not only can rural areas as well as urban qualify as distressed areas, but also that clubs ought be expanded into rural areas and smaller communities where needed and, in particular, into rural areas such as those in my friend's State of Vermont, my State of Utah, and other States with few Boys and Girls Clubs. I agree with the Senator that our call for 1,000 new clubs by the year 2001 should include attention to expanding opportunities for young people in our rural areas and smaller communities.

Mr. LEAHY. So the author of the bill intends for there to be increased expansion into rural activities by the Boys and Girls Clubs even beyond the almost 20 percent expended in the first year in rural areas?

Mr. HATCH. Absolutely. I am as concerned about the threat of drugs and gangs coming into our rural communities as is the Senator from Vermont, and I believe strongly that the Boys and Girls Clubs we seek to establish are a big part of the answer to these threats.

Mr. LEAHY. I thank the Senator for clarifying this point. With that clarification, I am prepared to support this bill.

I join in supporting S. 476 to provide authority to expand Boys and Girls Clubs across the country, including both urban and rural areas. When we passed similar legislation last year, we did it as part of a legislative package that included the National Information Infrastructure Protection Act that Senator KYL and I authored and that I helped push through during the closing days of the last Congress.

Most important to me, the revised language should serve to expand the availability of Boys and Girls Clubs in rural areas. The original language was more restrictive, requiring the grants to be used only for the purpose of establishing Boys and Girls Clubs in public housing projects and other distressed areas. I have worked with the Boys and Girls and know that they understand that rural areas as well as urban can qualify as distressed areas.

Nonetheless, the new language is more expansive and will give girls and boys in rural areas greater opportunities to share in Boys and Girls Clubs and their programs. The revised statute will authorize grants for establishing and extending facilities where

needed. Particular emphasis continues to be given to housing projects, where Boys and Girls Clubs have proven effective in preventing youth crime, and to distressed areas, rural or urban. But the where needed language should help make expansion into rural areas a greater priority.

Likewise, the removal of the language concerning contracts with HUD should streamline the expansion process and help make clear that such expansions are not limited to public housing projects.

The changes made to that program by this bill also permit up to five percent of the grant funds to be used to establish a role model speakers' program. Anyone who has seen the Boys and Girls Clubs of America commercial with Denzel Washington and his coach will know the kinds of outstanding role models that we are seeking to promote to encourage and motivate young people to be involved, productive citizens.

I have seen the outstanding results at the Boys and Girls Club in Burlington, VT, under the direction of Bob Robinson. The role models they provide include the outstanding instructors and volunteers who work in the club's many programs. I have also witnessed the outstanding results of the Kids 'N Kops Program at the University of Vermont with the cooperation of local law enforcement.

Expansions are proceeding and over 200 new clubs serving 180,000 youth were opened as a result of last year's legislation. I know that the Burlington Boys and Girls club received $100,000 to help enhance that Club's outreach efforts. I was glad to receive a letter from the Boys and Girls Clubs of America indicating that they are in the planning stages for the development of a new club in Rutland and researching the feasibility of a club in Essex Junction, as well. I would hope that with the continuation of this initiative they will look for opportunities to serve young people in St. Albans, Brattleboro, St. Johnsbury, Montpelier, and other Vermont locations, as well. I would be delighted for a sizeable portion of the 1 million additional young people who we hope will be served by the end of this century to come from the 145,000 young people in Vermont and those in other rural areas.

In supporting this bill, I encourage the Boys and Girls Clubs as one example of a successful youth-oriented program that can help make a difference in young people's lives and prevent crime and delinquency. I also support the work of others who are effective with young people, including our outstanding 4-H programs. In working for the passage of this measure I have received assurances that other members will join with me in supporting these other fine programs, as well.

It is nice to see Republican Members support juvenile crime prevention programs. Only a short time ago Republicans tried to stop passage of the President's 1994 Violent Crime Control and Law Enforcement Act and contended that crime prevention programs were "pork" or a waste of funds.

In the juvenile crime bill I sponsored this year, S. 15, we include a number of initiatives to prevent juvenile crime and youth drug abuse. I hope that we can expect bipartisan support for those juvenile crime prevention provisions as we move forward in this Congress so that we can enact a comprehensive approach to the problem of youth crime. This measure should not become an excuse for anyone not to join with us to to bolster comprehensive drug education and prevention for all elementary and high school students. We should proceed to help create after school safe havens where children are protected from drugs, gangs, and crime with activities including drug prevention education, academic tutoring, mentoring, and abstinence training. This bill is a step but should not be the end of our efforts to support programs that help prevent juvenile delinquency, crime, and drug abuse.

I ask unanimous consent that a copy of a letter I just received from the Boys and Girls Clubs of America be printed in the RECORD.

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

BOYS AND GIRLS CLUBS
OF AMERICA,
Rockville, MD, May 8, 1997.

Hon. PATRICK J. LEAHY,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Last week when the Judiciary Committee discussed S. 476 I heard your concerns, and if possible, I would like to clarify what we are trying to do with this Bill and what we have done with previous appropriations.

Our goal within the state of Vermont is to strengthen the youth development services currently being provided. In addition, we are working to increase both the number of local Boys & Girls Club facilities and youth being served throughout the state.

Just this past year, we passed $100,000 through to the Boys & Girls Clubs of Burlington, VT, to enhance the Club's outreach efforts. Today, we are in the planning stages for the development of a Boys & Girls Club in Rutland, VT, and are researching the feasibility of a Club in Essex Junction, VT. I give you every assurance that these efforts will remain a priority.

Nationally, with Boys & Girls Clubs of America's 1996 appropriation, we opened 208 Boys & Girls Clubs and served 180,000 new boys and girls. All told, Boys & Girls Clubs now serve some 2.6 million young people throughout America, including many in rural and semi-rural communities. Our planned growth for 1997, with the assistance of our current appropriation, will continue at this same pace.

Upon passage and successful implementation of S. 476, we plan on serving 1,000,000 new boys and girls throughout the United States. Many of the children in Vermont who are not currently being served—will be.

Senator Leahy, you have been a friend to Boys & Girls Clubs and to many youth organizations over the years. We hope that you can now help us pass S. 476 and help us reach 1,000,000 new boys and girls.

Thank you and we look forward to working with you on this and other issues that help America's children and families.

Sincerely,

ROBBIE CALLAWAY,
Senior Vice President.

Mr. STEVENS. Mr. President, today I rise in strong support of S. 476, the Boys and Girls Clubs of America Act of 1997, which I have cosponsored. This important legislation will give seed money to build 1,000 additional Boys and Girls Clubs across America, with special emphasis on establishing clubs in public housing projects and distressed areas.

In Alaska, and across the Nation, kids are reaping the benefits of Boys and Girls Clubs. They are safe places where kids can go after school to learn and have fun. Boys and Girls Clubs are places where they find role models, and where they can explore their own talents and skills. In 1995 there were 8,000 Alaskans participating in Boys and Girls Clubs; today more than 14,000 young Alaskans are Boys and Girls Club members. In fact many of my staff are alumni of these clubs in Alaska.

This seed money will insure that more than 1 million more young Americans will have a safe place to grow and learn by the year 2000. This is a model program supplying the construction cost for the clubs and giving youths in depressed communities a chance to succeed. Studies by Columbia University have shown that in areas of public housing where there are Boys and Girls Clubs Juvenile crime has dropped 13 percent.

I thank Senator HATCH and the other cosponsors of this important legislation for their hard work and dedication. I look forward to seeing more Boys and Girls Clubs across our great Nation.

Mr. HATCH. Mr. President, I am prepared to yield back the remainder of my time.

Would the Senator from Delaware yield back the remainder of his time?

Mr. BIDEN. I yield back the remainder of my time.

Mr. HATCH. I yield back the remainder of my time as well as Senator LEAHY's time, I am authorized to say.

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

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 476

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

SECTION 1. 2,500 BOYS AND GIRLS CLUBS BEFORE 2000.

(a) IN GENERAL.—Section 401(a) of the Economic Espionage Act of 1996 (42 U.S.C. 13751 note) is amended by striking paragraph (2) and inserting the following:

"(2) PURPOSE.—The purpose of this section is to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,000 additional local clubs where needed, with particular emphasis placed on establishing clubs in public housing projects and distressed areas, and to ensure that there are a total of not less than 2,500 boys and girls Clubs of America facilities in operation not later than December 31, 1999.".

(b) ACCELERATED GRANTS.—Section 401 of the Economic Espionage Act of 1996 (42 U.S.C. 13751 note) is amended by striking subsection (c) and inserting the following:

"(c) ESTABLISHMENT.—

"(1) IN GENERAL.—For each of the fiscal years 1997, 1998, 1999, 2000, and 2001, the Director of the Bureau of Justice Assistance of the Department of Justice shall make a grant to the Boys and Girls Clubs of America for the purpose of establishing and extending Boys and Girls Clubs facilities where needed, with particular emphasis placed on establishing clubs in and extending services to public housing projects and distressed areas.

"(2) APPLICATIONS.—The Attorney General shall accept an application for a grant under this subsection if submitted by the Boys and Girls Clubs of America, and approve or deny the grant not later than 90 days after the date on which the application is submitted, if the application—

"(A) includes a long-term strategy to establish 1,000 additional Boys and Girls Clubs and detailed summary of those areas in which new facilities will be established, or in which existing facilities will be expanded to serve additional youths, during the next fiscal year;

"(B) includes a plan to ensure that there are a total of not less than 2,500 Boys and Girls Clubs of America facilities in operation before January 1, 2000;

"(C) certifies that there will be appropriate coordination with those communities where clubs will be located; and

"(D) explains the manner in which new facilities will operate without additional, direct Federal financial assistance to the Boys and Girls Clubs once assistance under this subsection is discontinued.".

(c) ROSE MODEL GRANTS.—Section 401 of the Economic Espionage Act of 1996 (42 U.S.C. 13751 note) is amended by adding at the end the following:

"(f) ROLE MODEL GRANTS.—Of amounts made available under subsection (e) for any fiscal year—

"(1) not more than 5 percent may be used to provide a grant to the Boys and Girls Clubs of America for administrative, travel, and other costs associated with a national role-model speaking tour program; and

"(2) no amount may be used to compensate speakers other than to reimburse speakers for reasonable travel and accommodation costs associated with the program described in paragraph (1).".

Mr. HATCH. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that there now be period for the transaction of morning business with Senators permitted to speak up to 10 minutes each, except for the Senator from Pennsylvania, Senator SANTORUM.

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

ETHANOL TAX POLICY; PRESENT AND FUTURE

Mr. DASCHLE. Mr. President, I want to take this opportunity to clarify a statement I made last week with respect to the upcoming battle to protect and extend the ethanol tax incentives.

I want to make clear that I do not think there is any room to compromise on the existing tax incentives prior to the year 2000. Many ethanol plants have made investments based on the expectation that those incentives will be available in their current form until 2000. Congress should not change those incentives or jeopardize in any way those existing plant investments.

Having said that, I appreciate that some will argue that the ethanol incentives should be allowed to expire in 2000. My response to them is that the Nation will continue to benefit in some very significant ways in the 21st century from new entrants into the industry and expanded use of clean burning ethanol and its ether. By encouraging billions of dollars of investment in commercial scale plants, the tax credits have promoted major technology advances and many more improvements are on the brink of commercialization. These benefits justify some level of continuing support. On the other hand, to my fellow industry supporters, I suggest that we need to recognize that the tax incentives are nearly 20 years old and should be reviewed for possible constructive changes.

In extending the incentives beyond 2000, we should be willing to take a critical look at the incentives to determine if they should be modified to better achieve the objectives of the ethanol industry and the country. During this debate, my first priority will be to ensure the continued growth and development of small ethanol plants that have been responsible for diversification of the ethanol industry and rural economic development. Those plants represent the future for economic growth in rural America and will help keep the benefits of value-added agricultural processing in the rural communities from which those products originate.

Ethanol and its ether, ETBE, have never played as large a role as I believe they can and should play in cleaning up America's air or reducing its dependence on foreign energy through the reformulated gasoline program. We need to explore how the tax incentives can be restructured to make ETBE more price-competitive with MTBE, so that ethanol can play a greater role in the reformulated gasoline market.

Finally, Congress should be willing to provide sufficient encouragement to the rest of the ethanol industry to allow it to continue converting corn and other grains into high grade liquid fuel and proteins, generating much needed rural employment and investment, and improving air quality. This can be done while still limiting our tax expenditures and contributing to a balanced Federal budget.

Since its inception in the late 1970's, the domestic ethanol industry has helped reduce our dependence on foreign oil, create rural jobs and greater farm income, and provide consumers with a choice of oxygenated fuels. That is a track record that makes sense for America, and that should neither be discounted nor abandoned. It is my hope that in the near future a constructive dialog can begin in Congress on how to extend the tax incentives in a fiscally prudent and economically effective manner beyond the year 2000. I am committed to that goal.

DISTRICT COURT BACKLOG AND JUDICIAL VACANCIES

Mr. LEAHY. Mr. President, for the past several months I have spoken about the crisis being created by the almost 100 vacancies that are being perpetuated on the Federal courts around the country and the failure of the Senate to carry out its constitutional responsibilities to advise and consent to judicial confirmations.

Today, the Washington Post, in an excellent article written by Sue Anne Pressley, focused on the consequences of this judicial crisis in one district court in Texas, the southern district of Texas. The article reports on the growing drug and immigration cases that are inundating this district court and the lack of Federal judges needed to administer justice in these cases.

This district has two vacancies, one open since December 1, 1990, and the President has nominated Hilda Tagle to fill this judicial emergency vacancy. Ms. Tagle's nomination was first received by the Senate Judiciary Committee on August 10, 1995, but she has yet to have a hearing before the committee.

This district in Texas is only one example of crisis that affects the entire country. We could find similar backlog problems in district courts in California, Florida, and other States that are swamped with rising cases and unfilled judicial vacancies. Yesterday, I met with members of the Federal Judges Association who are very concerned about the growing backlogs and rising caseloads in Federal courts across the Nation.

I want to commend Senators BOXER, SARBANES, and KENNEDY for joining me yesterday on the Senate floor to speak out against the Senate's current stall on confirming Federal judges. I also want to commend Senator KOHL for his similar remarks today.

Mr. President, confirming Federal judges should not be a partisan issue. The administration of justice is not a political issue. Working together, the Senate should do our constitutionally mandated job and proceed to confirm the judges we need for the Federal system.

I ask unanimous consent that today's Washington Post article titled "Cases Pile Up As Judgeships Remain Vacant" be printed in the RECORD immediately after my remarks.

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

[From the Washington Post, May 15, 1997]

CASES PILE UP AS JUDGESHIPS REMAIN VACANT

(By Sue Anne Pressley)

LAREDO, Tex.—The drug and illegal immigrant cases keep coming. No sooner does Chief U.S. District Judge George Kazen clear one case than a stack of new cases piles up. He takes work home at night, on weekends.

"It's like a tidal wave," Kazen said recently. "As soon as I finish 25 cases per month, the next 25 are on top of me and then you've got the sentence reports you did 2 months before. There is no stop, no break at all, year in and year out, here they come.

"We've already got more than we can say grace over down here," he said.

This is what happens to a federal judge on the southern border of the United States when Washington cracks down on illegal immigration and drug smuggling. It is a situation much aggravated by the fact that the Senate in Washington has left another federal judgeship in this district vacant for 2 years, one of 72 vacancies on federal district courts around the country.

As Border Patrol officers and other federal agents swarm, this southernmost region of Texas along the Mexican border in ever-increasing numbers, Judge Kazen's docket has grown and grown. He has suggested, so far unsuccessfully, that a judgeship in Houston be re-assigned to the Rio Grande Valley to help cope.

In Washington, where the laws and policies were adopted that has made Kazen's life so difficult, the Senate has made confirmation of federal judges a tedious process, often fraught with partisan politics. In addition to the 72 federal district court vacancies (the trial level), there are 25 circuit court vacancies (the appellate level) and two vacant international trade court judgeships across the country, leaving unfilled 99 positions, or 11 percent of the federal judiciary. Twenty-six nominations from President Clinton are pending, according to Jeanne Lopatto, spokeswoman for the Senate Judiciary Committee, which considers nominations for recommendation to the full Senate for confirmation.

ON TEXAS BORDER, CASES WON'T WAIT FOR WRANGLING ON JUDICIAL VACANCIES

Of those 99 vacancies, 24 qualify as judicial emergencies, meaning the positions have been vacant more than 18 months, according to David Sellers of the administrative Office of the U.S. Courts. Two of the emergencies exist in Texas, including the one in Kazen's southern district.

Lopatto said the thorough investigation of each nominee is a time-consuming process. But political observers say Republicans, who run the Senate, are in no hurry to approve candidates submitted by a Democratic president. The pinch is particularly painful here in border towns. The nominee for Brownsville, in Kazan's district, has been awaiting approval since 1995. Here in Laredo, Kazen's criminal docket has increased more than 20 percent over last year.

"We have a docket," he said, "that can be tripled probably at the drop of a hat. . . . The Border Patrol people, the Customs people at the [international] bridges will tell you, they don't catch a tenth of who is going through. The more checkpoints you man, the more troops you have at the bridges, will necessarily mean more stops and more busts."

And many more arrests are expected, the result of an unprecedented focus on policing the U.S.-Mexican border. Earlier this year, Clinton unveiled a $367 million program for the Southwest for fiscal 1998, beginning Oct. 1, that includes hiring 500 new Border Patrol agents, 277 inspectors for the Immigration and Naturalization Service, 96 Drug Enforcement Administration agents and 70 FBI agents.

In Kazen's territory, the number of Border Patrol agents already has swollen dramatically, from 347 officers assigned to the Laredo area in fiscal 1993 to 411 officers in fiscal 1996. More tellingly, in 1993, agents in the Laredo sector arrested more than 82,000 people on cocaine, marijuana and illegal immigration charges. By 1996, arrests had soared to nearly 132,000, according to data supplied by the INS.

All of which is keeping Kazen and the other judges here hopping. "I don't know what the answer is," said U.S. District Judge John Rainey, who has been acting as "a circuit rider" as he tries to help Kazen out in Laredo from his post in Victoria, Tex. "I certainly don't see it easing up anytime soon. There still seems to be such a demand for drugs in this country, and that's what causes people to bring them in. Until society changes, we won't see any changes down here."

In a letter to Rep. Henry B. Gonzalez (D-Tex.) in February, Kazen outlined the need for a new judge in the Laredo or McAllen division, rather than in Houston, where a vacancy was recently created when then-Chief Judge Norman Black assumed senior status. "The 'border' divisions of our court—Brownsville, McAllen and Laredo—have long borne the burden of one of the heaviest criminal dockets in the country, and the processing of criminal cases involves special pressures, including those generated by the Speedy Trial Act," he wrote.

On a recent typical day, Kazen said, he sentenced six people on drug charges and listened to an immigration case. His cases tend to involve marijuana more often than cocaine, he said.

"The border is a transshipment area," he said. "The fact is, a huge amount of contraband somehow crosses the Texas-Mexican border, people walking through where the river is low, and there are hundreds and hundreds of miles of unpatrolled ranchland.

"In some cases," Kazen continued, "we're seeing a difference in the kind of defendant. We're almost never seeing the big shots—we're seeing the soldiers. Once in a while, we'll see a little bigger fish, but we're dealing with very, very smart people. We see some mom-and-pop stuff, too. There was a guy who came before me who had been in the Army umpteen years, and he needed the money, he was going bankrupt, so he did this 600-pound marijuana deal. he said he stood to pick up $50,000, and now he's facing five to 40 years.

"We see kids 18 and 19 years old," Kazen said. "We see pregnant women. We see disabled people in wheelchairs. This is very, very tempting stuff."

In Washington, the argument over court vacancies continues. On April 30, Attorney General Janet Reno told the Judiciary Committee, "Chief judges are calling my staff to report the prospect of canceling court sittings and suspending civil calendars for lack of judges, and to ask when they can expect help. This committee must act now to send this desperately needed help."

In remarks yesterday to the Federal Judges Association meeting in Washington, Reno warned that "the number [of vacancies] is growing."

"As you are no doubt aware," Reno told the judges, "the level of contentiousness on the issue of filling judicial vacancies has unfortunately increased in recent times."

FIELD HEARING ON INTRASTATE AIR SERVICE IN COLORADO

Mr. CAMPBELL. Mr. President, today I want to call my colleagues' attention to an important issue facing the Western Slope of my home State of Colorado; namely, the lack of quality and reliable air service.

I have long been concerned about this problem facing the residents and the business community in western Colorado. I have received hundreds of complaints from constituents up and down the Western Slope and have experienced many of these problems myself. For example, on numerous occasions I have found myself waiting for a delayed flight for several hours only to find out later on that the flight had been canceled. On one occasion, the pilot showed up only to announce that he was not certified to fly the plane.

To address this issue, I held a field hearing on Wednesday, April 2, in Grand Junction, CO, to hear testimony firsthand from citizens and representatives of the business community. Witnesses at the hearing included representatives from the airlines industry, consumers as well as the business community.

The testimony presented reflected the deep concern among business leaders and consumers in western Colorado about the lack of adequate air service. Many of the witnesses testified to the lack of competition in air service in western Colorado after deregulation. They further stressed that their concerns center around late arrivals, canceled flights, discontinuation of service, over booked flights, inadequate aircraft that cannot handle passenger baggage, inadequate safety procedures, inconvenient schedules and costs and high turnover of pilots.

Because of the importance of this testimony, I wrote to the acting administrator of the Federal Aviation Administration, Mr. Barry Valentine, on April 18, requesting the FAA's review of this material and requested a report from the FAA on ways in which air service can be improved on the

Western Slope and how the witnesses' concerns can be addressed. I also provided a complete set of this testimony to the Senate Aviation Subcommittee, so it can be used in future subcommittee work on commuter air service.

For the benefit of my colleagues, I ask unanimous consent that a copy of the witness list be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. CAMPBELL. I am more concerned now than ever about the quality of air service in Colorado, and I look forward to working with my colleagues on improving air service in this important region of our country.

EXHIBIT 1

LIST OF WITNESSES PRESENT AT THE HEARING

Mr. Greg Walcher, President of Club 20.

Mr. Benard Buescher, Colorado Transportation Commissioner.

Mr. John Frew, President and CEO of Colorado Ski Country U.S.A.

Mr. Jamie Hamilton, Vice President of the Grand Junction Chamber of Commerce.

Mr. J.J. Johnston, Executive Director of the Mesa County Economic Development Council.

Ms. Debbie Kovalik, Executive Director of the Grand Junction Visitor Bureau.

Mr. Mark Berumen, Governmental Affairs Coordinator for Frontier Airlines.

Mr. Cody Ddiekroger. Founder and President of Maverick Airlines.

Mr. Don Schreiber, Vice President of Governmental Relations for Mesa Air Group.

Mr. Dave Logan, Partner, Park Avenue Travel Agency.

Ms. Jo Saul, Owner, Jo's Travel Source in Durango.

Ms. Cindy Stanfield, Owner, the Travel Connection Agency in Grand Junction.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, May 14, 1997, the Federal debt stood at $5,339,781,396,107.91. (Five trillion, three hundred thirty-nine billion, seven hundred eighty-one million, three hundred ninety-six thousand, one hundred seven dollars and ninety-one cents)

One year ago, May 14, 1996, the Federal debt stood at $5,096,217,000,000. (Five trillion, ninety-six billion, two hundred seventeen million)

Five years ago, May 14, 1992, the Federal debt stood at $3,893,082,000,000. (Three trillion, eight hundred ninety-three billion, eighty-two million)

Ten years ago, May 14, 1987, the Federal debt stood at $2,272,137,000,000. (Two trillion, two hundred seventy-two billion, one hundred thirty-seven million)

Fifteen years ago, May 14, 1982, the Federal debt stood at $1,062,129,000,000 (One trillion, sixty-two billion, one hundred twenty-nine million) which reflects a debt increase of more than $4 trillion—$4,277,652,396,107.91 (Four trillion, two hundred seventy-seven billion, six hundred fifty-two million, three hundred ninety-six thousand, one hundred seven dollars and ninety-one cents) during the past 15 years.

NORMAL TRADE RELATIONS

Mr. MACK. Mr. President, I rise today because a bill is being introduced by Senators ROTH, MOYNIHAN, and members of the Finance Committee which seeks to amend trade laws and provisions referring to "Most Favored Nation" [MFN] trading status. They seek to rename MFN, "Normal Trade Relations."

I am not joining my Finance Committee colleagues on this bill today. But I would gladly support this initiative once the United States has an effective China policy.

Mr. President, the reason we annually consider China's trade, human rights, and national security behavior during the MFN renewal debate is because we do not have an acceptable alternative. The goal, therefore, of this year's debate should not be to simply extend or revoke MFN for the PRC. I suggest, instead, that we endeavor to address the shortcomings of our China policy so that we do not need the annual MFN issue to debate China.

Mr. President, we need a real China policy to replace the MFN revocation threat, not a name change. If the issue were just about the name, Americans would not voice such strong opposition to trading with China as if it were a normal country. The fact is, Mr. President, China is not like other trading nations. It is perhaps the worst violator of human rights and weapons nonproliferation standards in the world. The PRC trades unfairly, persecutes people of faith, imprisons and tortures democrats, proliferates weapons technology, sells arms to street gangs in the United States, and disbands democratic institutions in Hong Kong. The PRC does this while receiving international aid, American technology—much with military applications, and free access to the American market. This so-called engagement policy seems hollow and dangerous. Merely changing the name of MFN will not change this reality.

Mr. President, I traveled to Hong Kong and China in late March this year with my colleague and fellow co-chair of the Senate's Hong Kong Caucus, Senator LIEBERMAN of Connecticut.

I returned from this mission more concerned about Hong Kong than when I departed. The Chinese leadership tried to put to rest my concerns for Hong Kong by reassuring me that democracy would be returned to Hong Kong once the people received proper civic education. This distrust of people is apparent in China's actions toward Hong Kong's civil and political freedoms.

It also caused me to renew my concern for our China policy. My position on this bill, and on the MFN debate in general, arises from my desire for good relations with China. I know this is in the best interest of America, China, and the world.

There are a tremendous number of issues which Americans wish to raise with China. In 1997, these include Hong Kong reversion, weapons proliferation, religious persecution, PRC-Taiwan relations, human rights, involvement in U.S. elections, and our unequal trade relationship.

Many people advise, however, that opposing MFN represents a hollow—essentially meaningless—threat. And yet, without a responsible alternative, Members of Congress must choose between voting to revoke MFN or taking no action. Neither option is acceptable. Neither choice is in our Nation's best interest.

So that our children and the children of China do not inherit an adversarial relationship, we must do two things in 1997. First, we must engage in a domestic debate on China; we must get beyond hollow engagement and hollow threats. Second, we must ensure our policy demonstrates to China that their actions have consequences: That they are a member of the world community and actions which violate agreements and norms are not merely internal matters.

As many people know, I had discussed an idea to extend the current MFN status for the PRC for an additional 3 months in 1997. In offering this idea, I sought to accomplish the above two goals. It is too late for the House to take action on the 3-month extension as I had proposed it, but it is not too late for us to unite behind a call for action.

Mr. President, I agree with my distinguished Finance Committee colleagues who believe we must get beyond the annual MFN revocation threat. But the way to do this is not to change the name of MFN; we must address the real problem. We must develop new instruments which address our interests with China.

I fear, Mr. President, that the name change does not accomplish this most important goal; in fact, to the extent that it decreases our resolve to discuss China, this bill jeopardizes our national interests. It is for this reason that I do not join my colleagues today in offering this name-change legislation.

Instead, I invite the Congress and the President to join me in making the best use of this year's debate. We must utilize this time to develop and advance our China policy, not merely put it off for another year.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

PARTIAL-BIRTH ABORTION BAN ACT OF 1997

Mr. SANTORUM. Mr. President, we have heard a lot of talk over the past several days about the issue of partial-birth abortion, about late-term abortion, about the need to have an option available should a pregnancy go awry, and in describing when a pregnancy goes awry they have described the need to have a health exception in cases where there is a fetal abnormality, where a baby is developing in the womb that is not perfect.

Now we have heard all of the horrible accounts of Dr. McMahon performing partial-birth abortions on children because they had cleft palates or other very minor—Down's syndrome, and other minor, or not life-threatening maladies. That, in my mind, is an indefensible defense for a health exception.

I found it absolutely astonishing that Members would have gotten up yesterday and talked about the need to have partial-birth abortion as an option to dispose of children who were developing in the womb with a defect. They did so at the same time, the same day, we passed IDEA, Individuals with Disabilities Education Act, the same day that people passionately got up on the floor and argued for the rights of the disabled to be educated, to maximize their human potential, and some 30 Senators who voted for that voted today to wipe out the ban on partial-birth abortion.

Now, I find that absolutely incongruous. How can you fight for the rights of the disabled to be educated? How can you fight for the rights of the disabled under the Americans With Disabilities Act, which all of those Members, to my knowledge, those that were here, supported, back in 1990, I believe it was. How can you support that stand and say you care about the disabled, that you want to maximize their potential, that you want to treat them with dignity and give them civil rights, when you will not give them the most basic of civil rights, the right to live in the first place?

If you survive the womb, if you survive Roe versus Wade, which allows you to be destroyed because you are not perfect—yes, Roe versus Wade, Doe versus Bolton, allow you to be destroyed because you are not perfect. I know that may click some sort of memory of people who remember what happened across the Atlantic some 50 and 60 years ago, that just because you were not perfect, you were not deserving to live.

We have Members, standing here, arguing that we need to be able to have the option of killing a little baby because it is not perfect. They say, oh, that history that happened 50, 60 years ago, could never repeat itself. It cannot happen. Oh, how history tends to repeat itself, even here on the Senate floor.

I find it absolutely amazing that people are not shocked by their own words, that they do not understand, as the Bible says, that a house divided against itself, that you cannot stand up on one side and argue for rights of the disabled at the same time saying they do not even have the right to be born in the first place, they are not going to be protected by our Constitution, they are not going to be protected by our laws.

I will share with you tonight some stories, stories of people with disabilities, diagnosed in the womb. I will share with you some happy stories, and I will share with you some sad stories. But even in the sad stories you will find a silver lining, a lining that would not be there if it were not for someone who cared enough to treat their child with dignity and respect, cared enough to love them as fully as they loved any one of their other children.

You heard me talk earlier today, yesterday, about Donna Joy Watts. One of the cases cited over and over again by people who want to create a health exception in the partial-birth abortion bill is that there are times when a baby's head has excess fluid, cerebral spinal fluid, and it is called hydroencephaly, water on the brain. Donna Joy Watts was one of the babies that was diagnosed with hydroencephaly, and another malady where the brain was actually growing outside of the skull.

The doctors diagnosed her condition as fatal and told her mother and father they would have to abort her, and her mother and father said, "At 7½ months we are not going to abort our child. Why not give her a chance to live?" They said, "no, no, we will not give her a chance to live because she will not live. It is best for you. Trust me, you will feel a lot less pain. You need to just get on with it." These were obstetricians, genetics counselors. She had to go four places—four places—to get someone who would deliver her baby. Any of the four would have aborted her baby, but only one of the four would have delivered her baby.

We are reaching the point in this country where it is almost easier to find an abortion than it is to find a doctor to deliver a child that will have complications. The fear of lawsuit, the fear of complications, and the stress associated with it are just creating the impetus to do abortions. Nobody can sue you for doing abortions. You sign a consent form. You give up your rights. You say, "I won't sue. As long as you kill my child, I will not sue." So they don't get sued. No liability there. But if you work with the mother to deliver the child, then if mom believes you didn't tell her everything you should have, you get hit with a wrongful birth suit. In other words, "My child is better off dead than alive" kind of suit.

What kind of society allows that? What kind of society would say we put in legal doctrine a suit that says my child is better off dead than alive? What a misunderstanding of life. Every child is perfect in the eyes of God; I hope in the eyes of the mother, but we have some to go that way. We have lots of people in the medical profession who certainly do not see it that way, and counsel for abortion. In fact, at every single turn, Donny and Lori Watts were hit with "abort, abort, abort. Save yourself the trouble." She said no and he said no.

They finally delivered her. This is what she looked like. It is a little Donna Joy, named after her daddy, Donna Joy. Oh, her little head is not perfect, and she had problems, serious problems. But she was born alive.

For 3 days Lori Watts told me the medical professional at the hospital referred to her little baby, who weighed about 7 pounds, as a "fetus." For 3 days after her birth, a "fetus." For 3 days they wouldn't feed this baby because it was going to die. For 3 days they wouldn't drain the water from her head and put a shunt in it because she was going to die. And Donna Joy just wouldn't die.

So Lori and Donny decided that they were going to threaten. Lori said in the paper that she would threaten the doctors if they didn't do something. So finally they did.

And through a struggle, which I detailed yesterday, which I will not today, but through an incredible struggle of heroism her mom and her dad fed her. She had 30 percent of her brain.

You often hear so much about you only use a small percentage of your brain. And if there is one place in the body we don't understand, we don't understand the brain very well. We don't understand how it really works and how it compensates for problems, whether it be by stroke or things like this. But Donna Joy had 30 percent of her brain. She had a deformed medulla oblongata which connects the brain to the spinal cord. She had no medulla oblongata. Her left and right side of the brain were not connected. They didn't talk to each other. She fought and she fought and she fought through incredible difficulties.

Today, this is little Donna Joy Watts, who yesterday and today was in my office playing, talking to reporters, writing me notes, playing with my children, coloring books, acting like a little girl, walks with a little bit of a limp. She is a little bit behind for her age. But after eight brain operations

and with 30 percent of her brain, she is an amazing story.

Her parents were told to have a partial-birth abortion because her head was so large. They wanted to put those scissors in the base of this little girl's skull and kill her. And Lori and Donny said no. They could have taken the easy way out.

I can tell you. When Lori told me of the times when she was a little baby of having to feed her, which took an hour and a half because she didn't have the muscles to hold the food in—it would just come right back up, she had no muscular control as a baby. So the food would come right back up. They thought she would die of malnutrition until Lori thought it out. She would put this paste, which was real heavy that would stay in her stomach, but it was drop by drop in the back of her mouth. It took an hour and a half to feed her. She would take an hour-and-a-half break, and another hour and a half to feed her, 24 hours a day, setting the alarm in the middle of the night, getting up to feed her child so the child would not die of malnutrition.

It is hard. But little Donna Joy Watts is one of the great stories that ennobles all of us. Had Lori and Donny decided to kill, to let little Donna Joy die by aborting her, our society would be diminished. The inspiration that this little girl and her family has provided ennobles us all, calls us to a greater sense of commitment and love for our children and those who are not so fortunate to be perfect.

Another story: This is a story I just got the other day. It is a letter written to me by Sandra and Joseph Mallon from Upper Darby, PA. I will read the story as she writes it to me.

DEAR SENATOR SANTORUM: My name is Sandra Mallon. I live in Upper Darby, PA with my husband, Joe, and our 5 month old daughter, Kathleen. Both Joe and I work outside the home—but Kathleen is the most important thing in our lives. I am writing in reference to the H.R. 872 and S. 5 bill currently being considered. This issue is very near to my heart; and I feel this is a crisis issue that I must discuss.

My daughter was diagnosed with hydrocephalus, an abnormal accumulation of cerebrospinal fluid around the brain, at 23 weeks gestation.

You may have heard the debate earlier about viability. At 22 weeks' gestation, a baby can survive. About 24 or 25 percent of babies survive outside the womb.

At that time we were not given a positive outlook for our little girl. We were told first to abort—but that was out of the question. Then we were told the best case would be to expect a shunt operation and retardation; worse case would be death before or shortly after delivery. We decided to give our child every chance we could. We went to many doctors for the next four months—the news got a little better as the pregnancy went on.

Kathleen was born on December 6, 1996—and she is our miracle baby. Though she has hydrocephalus, she is showing no symptoms. One month ago she underwent an operation to place a shunt, a tube which helps the fluid to pass through the brain in a safe and effective way. This is the most widely used treatment for hydrocephalus, and even so, most patients have to have their shunt revised (replaced) several times in their lifetimes. The alternative in most cases is death.

Joe and I have many hopes and dreams for Kathleen—but mostly we want her to be a healthy, happy child. We want her to be given every chance in life to experience her world. Right now I want her to be able to play, jump, swim and maybe even ride horses. Unlike most families these every day activities could cause Kathleen to need a shunt revision. This scares me to death!! Right now there is technology and materials to help Kathleen should there be a reason. But if these bills do not pass my child could be in for pain and suffering which would slowly and painfully kill her. Don't let this happen to my Kathleen Marie. Silicone is the only material available which the body does not see or reject to make these lifesaving shunts.

I can't stress how important this issue is to me and my family. Besides our immediate need to know Kathleen can continue to grow up as any other child. But the silicone is also used in many other biomedical devices (i.e. ear tubes, and pacemakers). So the S5 in the Senate and HR872 in the House would seek to control my access to raw material for shunts. I understand there are other issues wrapped up in the bill, and I believe personally that Product Liability and Tort Reform are important measures. If S5 and HR872 are not passed, it is a certain death sentence for Kathleen and every other person affected by hydrocephalus.

I ask you to look at the picture of Kathleen. Tell me that you will help her. Don't wait too long Senator, people will die. I am looking forward to your response to this issue of life and death importance to me and my family.

These are two wonderful stories of children who would not be termed "viable," could be aborted late-term because it was a medical complication, and these children were deformed.

This is the kind of health exception that many want to allow so we can kill children just like this. But we know there is another way, a way suggested by even people who perform abortions like the doctor at the Medical College of Pennsylvania who says that after 23 weeks, the second or third trimester, it is not necessary to kill a baby. It may be necessary to separate the mother from the child. But it is never necessary to kill a baby, even one that has an abnormality.

In fact, doctors have told me they are not aware of any abnormality in and of itself that is a threat to the woman's health or life that cannot be remedied by a separation—not an abortion, not the deliberate killing of the baby, but by separation. In fact, most abnormalities don't require separation. You can deliver later in term, at term.

Not all stories end as happily. I want to share some stories with you of people that went through very tough decisions, and some that, frankly, didn't have very tough decisions but went through heartaches when it came to a child who had a problem in the womb.

Let me first share the story of Jeannie French. Jeannie has been very outspoken. I shared her story last year, but it bears repeating.

My name is Jeannie Wallace French. I am a 34 year old healthcare professional who holds a masters degree in public health. I am a diplomat of the American College of Healthcare Executives, and a member of the Chicago Health Executives Forum.

In the spring of 1993, my husband Paul and I were delighted to learn that we would be parents of twins. The pregnancy was the answer to many prayers and we excitedly prepared for our babies.

In June, five months into the pregnancy, doctors confirmed that one of the twins, our daughter Mary, was suffering from occipital encephalocele—a condition in which the majority of the brain develops outside of the skull. As she grew, sonograms revealed the progression of tissue maturing in the sack protruding from Mary's head.

We were devastated. Mary's prognosis for life was slim, and her chance for normal development non-existent. Additionally, if Mary died in utero, it would threaten the life of her brother, Will.

Doctors recommended aborting Mary. But my husband and I felt that our baby girl was a member of our family, regardless of how "imperfect" she might be. We felt she was entitled to her God-given right to live her life, however short or difficult it might be, and if she was to leave this life, to leave peacefully.

When we learned our daughter could not survive normal labor, we decided to go through with a cesarean delivery. Mary and her healthy brother Will were born a minute apart on December 13, 1993. Little Will let out a hearty cry and was moved to the nursery. Our quiet little Mary remained with us, cradled in my Paul's arms. Six hours later, wrapped in her delivery blanket, Mary Bernadette French slipped peacefully away.

Blessedly, our story does not end there. Three days after Mary died, on the day of her interment at the cemetery, Paul and I were notified that Mary's heart valves were a match for two Chicago infants in critical condition. We have learned that even anacephalic and meningomyelocele children like our Mary can give life, sight or strength to others. Her ability to save the lives of two other children proved to others that her life had value—far beyond what any of us could every have imagined.

Mary's life lasted a total of 37 weeks 3 days and 6 hours. In effect, like a small percentage of children conceived in our country every year, Mary was born dying. What can partial birth abortion possibly do for children like Mary? This procedure is intended to hasten a dying baby's death. We do not need to help a dying child die. Not one moment of grief is circumvented by this procedure.

In Mary's memory, as a voice for severely disabled children now growing in the comfort of their mother's wombs, and for the parents whose dying children are relying on the donation of organs from other babies, I make this plea: Some children by their nature cannot live. If we are to call ourselves a civilized culture, we must allow that their deaths be natural, peaceful, and painless. And if other preborn children face a life of disability, let us welcome them into this society, with arms open in love. Who could possible need us more?

I will now share a more personal story. A comment was made in this

Chamber on several occasions in the last debate and unfortunately again in this debate that Members who speak on this issue have no right to speak on this issue because they cannot experience what the women who stood with President Clinton when he vetoed this bill experienced.

Well, that is not true. I will read from an article I wrote about what happened to me and my wife and our family.

On September 26, 1996, the Senate voted to sustain President Clinton's veto of the Partial Birth Abortion Ban. I led the fight to override the veto on the floor of the Senate.

Central to the debate was the assertion by opponents of the ban that this procedure was necessary later in pregnancy in cases when a severe fetal defect was discovered. I was told that I could not understand what these women, who experienced this procedure, had gone through. "It had never touched your life," one Senator said.

This is a story of how just one week after that vote, it did.

We had been through the joyous routine before—the technician would turn out the lights, spread gel on Karen's growing midsection, and then right there on the screen in front of our eyes we would get the first glimpse of our baby—a fuzzy, black and white picture that told us all was well.

This time, however, was different. Sitting in the darkened room, listening to the background buzz of the machine, we saw a large, dark circle on the screen, and we saw the technician's demeanor change. Everything seemed fine—arms, legs, head, spine—but the woman with the instrument was strangely quiet, examining and re-examining the dark circle.

We had brought along our three children, ages 5, 3, and 1—Elizabeth, Johnny, and Daniel—to this appointment because we wanted them to be able to have a glimpse into the still, perfect world of their unborn baby brother. We now feared that they might get a glimpse into something else.

The technician left, giving way to a doctor who repeated the earlier routine, mumbling something about a "bladder." Finally, we were coldly given the verdict: "Your child has a fatal defect and is going to die."

It's not that the world stopped, nor that it moved in slow motion, it was just that the world had changed. Suddenly, our child whom we loved, prayed for, dreamed about, and longed to meet was diagnosed with a life threatening condition. Through our tears erupted the most basic of all parental instincts and emotions—we were going to save our child.

After the initial shock, I took the kids out into the hallway to the phone and called Dr. Scott Adzick. Six months earlier, I had gone to Children's Hospital of Philadelphia and seen a world I never knew existed—a world of Dr. Adzick's creation—a world of surgery and care for children still in their mother's womb. I remembered his amazing skill and how I sensed an aura of peace and a certainty of purpose surrounding his mission.

I frantically described what had transpired and asked if he could help. Before he peppered me with questions, he calmly reassured me that all was not lost. He had seen cases like this before and knew immediately that it had to be post-urethral valve syndrome.

Scott's principal concern had to do with the absence of fluid in the amniotic sac. What he told us failed to lift our hopes. The absence of fluid meant that the baby likely had a complete obstruction of the urinary tract—in short, a very rare, severe, and extremely problematic condition.

Not typically understood is that the element comprising the amniotic fluid encompassing the baby during development is the baby's urine. The fluid not only provides a barrier of protection from outside trauma, but it is necessary in the development of the baby's lungs. Without it its lungs would not develop enough for him to survive outside the womb.

In addition, the baby's enlarged bladder would so compress the internal organs—particularly the kidneys—that they would cease to function. Kidney failure would mean near-certain death shortly after birth.

Dr. Adzick arranged for tests to be done the next day in Philadelphia at Pennsylvania Hospital. The initial results did not look good. Seated in front of our second sonogram machine in as many days, Dr. Adzick and Dr. Alan Donnefeld described our son's kidneys as not positive. Dr. Adzick told us that though he, too, was discouraged, there were one or two occasions where he had seen bad kidneys have sufficient levels of function, enabling a baby to survive until a transplant soon after birth.

We adjourned to a supply room next to the treatment area. The purpose of the meeting was to discuss options. Dr. Donnenfeld took the lead, saying that things were grave, and presenting us with three options. "Your first option is to terminate the pregnancy." As the word pregnancy left his lips the room instantly went dark. The doctor quickly reached up and turned on the light that was on a timer. Through nervous and awkward laughter I said, "I guess that answers your question."

We knew that abortion was a legal option, it just wasn't a sane one. It was inconceivable to us as parents to kill our baby because he wasn't perfect or because he might not live a long life. While we couldn't look into his eyes or hold him in our arms, he was no less our child than our other three children. And we loved him every bit as much. He was our gift from God from the moment we found out Karen was pregnant. In our mind, from that time on our job as parents of this tiny life was to do everything we could to nurture him through life. Karen and I have this saying, "life is about being there," and this was our chance to be there for our baby.

The second option was to do nothing. In this case our son would live only as long as he was in the womb. While in the womb our baby's lungs and kidneys were not necessary for him to survive—Karen was performing those functions for him. There was no increased threat to Karen as a result of his defect.

The third option would entail several tests and testaments that could put Karen at risk. Karen's immediate response was to do whatever it took to save our son, no matter what the risk to her.

Our son went through two days of tests to determine kidney function. If there was very poor or no kidney function there would be no point in proceeding further—he would not develop enough in the womb to survive outside. The first day the results were so bad that we discussed whether it was worth going through a second painful day of tests for Karen. Dr. Adzick said we needed a miracle to get those kidneys to work better.

We prayed more than I can remember for our son, who we named that day Gabriel Michael, after the great archangels. The next day our prayers were answered with a miraculous improvement; the chances for success were not just okay, but kidney function very good. We could now do the surgery that would save his life.

For both of us, this crisis was not so much a "faith check" as it was a time of reassurance. No matter what happened, we knew that God held us—and held Gabriel Michael—in his hands. What that knowledge there is a peace beyond human understanding.

The bladder shunt procedure, to drain the urine into the amniotic sac in an effort to create the proper fluid environment for Gabriel, was scheduled for Tuesday with Dr. Bud Wiener at Pennsylvania Hospital. Dr. Wiener had done more of these procedures than anyone else on the east coast and had pioneered the plastic tube that would be used to drain the urine.

Next came the surgery. The idea that surgery on a child in only its 20th week of life inside the womb could work boggles the mind. And watching Dr. Weiner at work was something to behold. He guided the shunt into place, though more slowly than he would have liked, but it was a success. As we left the hospital, we worried about whether the shunt had worked, and whether the longer than usual procedure might have put Karen more at risk.

Two days later, Karen began feeling both chills and cramping—the cramping was the beginning of labor and the chills were a sign of an infection in her womb. Our worst fears had become a reality.

Hoping desperately that it was food poisoning or the flu, Karen fought desperately to hold it all together. A call to the doctor was met with an order to rush to the hospital. We were in Pittsburgh at home. There another doctor performed another sonogram. What we saw was perhaps the single worst and single best things of our lives. The fuzzy picture on the screen showed an active baby—arms and legs moving freely in a sac of amniotic fluid. But the infection persisted.

Karen was seized with horrible chills. Huddled under nearly a dozen blankets her body temperature soared to 105. By this point there was little that could be done. Intra-uterine infections are untreatable as long as the source of the infection—the amniotic sac—is in place. Unless the sac and thereby the baby were delivered, Karen would eventually die, and Gabriel Michael with her. Here again the doctors told us that abortion was a legal option, but we knew there was another way. This way gave our son the love and respect he deserved and to Karen and me the gift of a precious few hours with our son.

Karen was given an antibiotic which reduced the fever and made her comfortable. She clung to the baby with all her might, but nature was relentless. Soon the labor intensified—the body had identified the source of the infection. She did everything she could to delay the inevitable. I tried calling everyone I knew to see if there was something else that could be done. There was no answer to be found. I thanked God for the presence of Karen's father, Dr. Ken Garver, a physician whose specialty is in genetics counseling, prenatal diagnosis of birth defects, and Monsignor Bill Kerr who helped guide us through this time.

We knew the end was near so we tried to pack a lifetime of love into those few hours. I put my hands on Karen's abdomen—we prayed and we cried. We also talked to Gabriel to let him know how much we loved him—how much we will miss him, how much we will miss mothering and fathering him

and how his brothers and sister will miss his presence.

Within hours of 12:45, our son was born. He was a beautiful creation—a small, pink, package of joy and sorrow, hope and questions. We bundled him up, put a little hat on his head, we held him, sang to him, cried for him. He was too small to make a sound but he spoke so powerfully to our hearts. His eyes never opened to see his mommy and daddy, but he allowed us to see, in him, the face of God. Two hours later, he died in my arms.

We tried to make Gabriel's short life, short time on Earth, filled with love, only love. And we told him that soon he would be experiencing something that we are striving for. God would be bringing him to be with Him in heaven. Finally, we pledged to him that we would rededicate ourselves to joining him someday.

The next days were no less of a blur than the ones that led up to them. We buried our son later that day, next to other members of our family, and we prayed to God to give us understanding.

This is our story, the irony finding ourselves confronted with a baby with a fetal defect when only the few days before, the absence of such had disqualified me from the debate on partial-birth abortion. It was in the eyes of many truly overwhelming. On two occasions we, too, could have chosen the option to abort. We knew that Gabriel's life would probably be measured in minutes and hours, not in years and decades. We chose to let Gabriel live and die in the fullness of time—being held and loved and nurtured by two parents who loved him dearly.

We wouldn't have traded those 2 hours with our son for anything in the world. And we know he wouldn't have either.

In the midst of the debate that fall, disgusted by and worried about the gruesome descriptions of abortion, one of the Senators said that a medical procedure was bloody and that it was just the nature of the event. The Washington Post described what happened next:

Republican Senator Rick SANTORUM turned to face the opposition and, in a high, pleading voice, cried out, "Where do we draw the line? Some people have likened this procedure to an appendectomy. That's not an appendix," he shouted, pointing to a drawing of a fetus. "This is not a blob of tissue. It's a baby. It's a baby."

And then, impossibly, in an already hushed gallery, in one of those moments when the floor of the Senate looks like a stage set, with its small wooden desks somehow too small for the matters at hand, the cry of a baby pierced the room, echoing across the chamber from an outside hallway.

No one mentioned the cry. But for a few seconds no one spoke at all.

Maybe it was a freak occurrence. It was a baby, a visitor's baby that was crying in the hallway as the door to the floor opened and a few seconds later closed. A freak occurrence, perhaps, or maybe a cry from a son whose voice we never heard but whose life has changed ours forever.

Mr. President, I am using the words of my wife:

Accepting partial-birth abortion as our only alternative to a difficult birth or a potentially disabled infant is to thwart two of our strongest human impulses: the impulse of love and the impulse of memory. All of us are united by our need to love and by our need to remember and be remembered. Giving life to and caring for a sick infant—for however brief a period—allows us to express these uniquely human impulses. Rick and I were blessed with the time to offer the fullness of our love to our baby, and we have the peace of knowing that he felt that love. Gabriel Michael joined our family forever. He has not been obliterated. Gabriel was known and will always be remembered. His memory will live with us forever. I believe that every human being should be remembered by somebody. Memory helps to anchor us to each other; it locates us not only within a certain time and place, but within a family and within a community. It is one of the measures of the value we place on each other. And the tragedy of infants who are destroyed and forgotten should haunt us all.

There is another way. You heard me quoting doctors all day about the other way, that there is no need to kill a baby. You may need to separate the mother from the baby, but there is no need to kill the baby. I do know that. I have experienced that. And I, as I said, would not trade one moment, one second.

What we are debating here is infanticide, not abortion. We should have the moral courage to stop infanticide in the U.S. Senate. We should be able to muster up enough support out around America to send a message, loud and clear, to every Member in this Senate, that we will not stand for it any longer.

The children who are victims of partial-birth abortion are not here to speak for themselves. So we must do that. And so I ask you on their behalf that you don't subject anyone else in America to this procedure. I plead with you on their behalf to stop the murder. I ask the President to look into his heart and see if he can't understand and feel the disruption that this procedure is causing to our culture and to our civilization. I ask every Member of the Senate to do the same. I think, if you do, the decision will be easy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I congratulate and thank my colleague from Pennsylvania, not only for bringing this bill to the floor, for working on it for so many months, but also for that very eloquent statement about the tragedy that occurred in his family.

I think his statement was the statement about the value of life and how precious human life really is. Each one of us, at different times in our lives, are reminded of the value of life, and sometimes how brief that life can be. As I look around the Chamber of the Senate this evening, I see three of my colleagues who have lost children, three of us who have lost children, who understand maybe more than we did before how precious human life is.

Really, that is what this debate is about tonight, what it has been about today. One of the things that we do in this Senate, as we have the luxury, if you want to use the term, of unlimited debate, is to thoroughly discuss issues. And as we do that, this tradition that is over 200 years in this body, as we do that, many times we do, in fact, educate ourselves and understand things better. Maybe, as we try to educate ourselves, we help educate the American people.

We have been at this debate for a long time because we had this debate last session of Congress. I would like, tonight, to talk about some of the things we have learned. I entered this Chamber, as my colleague from Texas, PHIL GRAMM, said earlier this evening, entered the Chamber a few months ago—I say now over a year ago—with not a whole lot of knowledge about partial-birth abortion. I think we all have become educated, not just from the debate here on the floor, but also we have been educated by the hearings. We have learned what partial-birth abortion is.

I think the most telling description was given by Brenda Pratt Shafer, of Franklin, OH, when she testified in front of the Judiciary Committee. Let me, if I could, share with my colleagues in part what she said:

Mr. Chairman and Honorable Members of the Judiciary Committee, I am Brenda Pratt Shafer. I am a registered nurse, licensed in the State of Ohio, with 13 years of experience. In 1993, I was employed by Kimberly Quality Care, a nursing agency in Dayton, OH. In September 1993, Kimberly Quality Care asked me to accept an assignment at the Women's Medical Center, which is operated by Dr. Martin Haskell. I readily accepted this assignment because I was at that time very pro-choice.

She continues:

So, because of the strong pro-choice views I held at that time, I thought this assignment would be no problem for me.

But I was wrong. I stood at the doctor's side as he performed the partial-birth abortion procedure—and what I saw is branded on my mind forever.

I worked as an assistant nurse at Dr. Haskell's clinic for 3 days—September 28, 29, 30, 1993.

She continues:

On the third day, Dr. Haskell asked me to observe as he performed several of these procedures that are the subject of this hearing. Although I was in the clinic on the assignment of the agency, Dr. Haskell was interested in hiring me full-time, and I was being oriented in the entire range of procedures provided by that facility.

I was present for three of these partial-birth procedures. It is the first one that I will describe to you in detail.

The mother was 6 months pregnant, 26½ weeks. A doctor told her that the baby had Down Syndrome, and she had to have an abortion. She decided to have this abortion. She came in the first 2 days and have the laminaria inserted and changed, and she cried the whole time she was there. On the third day, she came in to have the partial-birth abortion procedure.

Dr. Haskell brought the ultrasound in and hooked it up so that he could see the baby. On the ultrasound screen, I could see the heart beat. As Dr. Haskell watched the baby on the ultrasound screen, the baby's heartbeat was clearly visible on the ultrasound screen.

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

Senators this is a baby that was a little bit smaller than the baby that I actually saw that day.

She held something up.

This is a mechanical model of a baby.

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

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

I was really completely unprepared for what I was seeing. I almost threw up as I watched Dr. Haskell doing these things.

Next, Dr. Haskell delivered the baby's head. He cut the umbilical cord and delivered the placenta. He threw the baby in a pan, along with the placenta and the instruments he had just used. I saw the baby move in the pan. I asked another nurse, and she said it was just reflexes.

I have been a nurse for a long time, and I have seen a lot of death—people maimed in auto accidents, gunshot wounds, you name it. I have seen surgical procedures of every sort. But in all my professional years, I had never witnessed anything like this.

The woman wanted to see her baby, so they cleaned up the baby and put it into a blanket and handed it to her. She cried the whole time. She kept saying, "I am so sorry, please forgive me." I was crying, too. I couldn't take it. That baby boy had the most perfect angelic face I think I have ever seen in my life.

I was present in the room during two more such procedures that day, but I was really in shock. I tried to pretend I was somewhere else, to not think about what was happening. I just couldn't wait to get out of there. After I left that day, I never went back. The last two procedures, by the way, involved healthy mothers with healthy babies.

That was the testimony of the nurse, testimony that has never been controverted. In fact, I will not take the Senate's time to read this in its entirety, but this is the actual paper that Dr. Haskell prepared that has been quoted before in this procedure. It is a paper delivered by Martin Haskell, presented at the National Abortion Federation, Risk Management Seminar, September 13, 1992. You can track in Dr. Haskell's own words exactly what nurse Shafer said.

The doctor uses medical terminology. Part of this has already been read today by Dr. FRIST, Senator FRIST, when he gave his very eloquent comments in opposing the Daschle amendment. I will point out one thing that is very evident when you look at this description by Dr. Haskell of what this partial-birth abortion procedure is, that it takes 3 days, day 1, day 2, day 3. That was confirmed by what Nurse Shafer said. The dilation occurs in the first 2 days. They go in, go back home or go to a motel, and then come back the third day for the procedure itself. But actually the whole procedure takes 3 days.

We have also learned not only what the procedure is, we have learned a lot about why it is done.

Again, maybe the best evidence is to listen to the people who perform the abortions.

Dr. McMahon has told us, he has said that a number of these were done for nothing more serious than cleft palates. Seven, eight, possibly nine, for cleft palates, the life was snuffed out.

Dr. Haskell has told us that 80 percent—80 percent—of the abortions he performs are elective. The evidence is overwhelming of why these are done and under what circumstances.

Mr. President, during the just concluded debate, a number of my colleagues spoke of how this issue has deeply divided this country. One even said that nothing really has divided this country as much as the abortion debate has since the debate over slavery prior to and leading up to and including the Civil War.

I think that is correct. Few issues in our whole country's history have been so divisive. I would argue, Mr. President, this debate over abortion has been so protracted and intense because in a sense in a government of "we the people," we are still trying to figure out who "we"—what that means, who is included.

I say, Mr. President, that the vulnerable babies that we have heard about are us. And whether or not we are willing to speak out, whether or not we are willing to say enough is enough, not only will determine whether some of these babies will live or die, but it also will determine what kind of a people we are, what kind of a society we want to live in, who we really are, who we are as a people, what do we value and what do we not value, what do we become indignant about, and what do we walk away from.

How bad do things have to be before we speak up and say enough is enough? This is something we simply, even in 1997, this is something we will not tolerate. It is wrong. We will not put up with it. We will not allow it to occur in a civilized society. So, in a sense, not only is this a debate about the babies, not only a debate about who will live, it is also a debate about who all of us are and what kind of a country we have, what kind of a country we want.

I think we have an obligation to speak up. I think that many times the sins that we commit as a people, as individuals, are sins of omission, what we do not do when we do not speak up.

I would like to quote from my friend, HENRY HYDE, from a book that he wrote that I think summarizes what I believe. This is what Congressman HENRY HYDE said:

> I believe . . . that when the final judgment comes—as it will surely—when that moment comes that you face Almighty God—the individual judgment, the particular judgment—I believe that a terror will grip your soul like none other than you can imagine. The sins of omission will be what weigh you down; not the things you've done wrong, the chances you've taken, but the things you failed to do, the times that you stepped back, the times you didn't speak out.
>
> Not only for every idle word but for every idle silence must man render an account. I think that you will be overwhelmed with remorse for the things you failed to do.

Mr. President, let us move to pass this bill. Let us speak out for what is right. And let us hope that the power of the arguments that have been heard on the floor—no, rather the facts that have been clearly disclosed on the floor—will then persuade the President of the United States to rectify a mistake that he made last year when he vetoed this bill. We know more today. Many of the statements that were made by the President in his veto message are clearly, clearly not true. It was clear to many of us at the time they were not true, but now that we have had the opportunity for more debate, more evidence, it is clear that the reasons he gave, the rationales he gave, are simply not there.

So let us pass this bill. Let us send it again to the President. And let us pray that the power of the facts will convince our President to sign the bill.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON THE CFE FLANK DOCUMENT—MESSAGE FROM THE PRESIDENT—PM 35

The PRESIDING OFFICER laid before the Senate the following message

from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations.

To the Congress of the United States:

In accordance with the resolution of advice and consent to ratification on the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe of November 19, 1990 ("the CFE Flank Document"), adopted by the Senate of the United States on May 14, 1997, I hereby certify that:

In connection with Condition (2), Violations of State Sovereignty, the United States and the governments of Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey and the United Kingdom have issued a joint statement affirming that (i) the CFE Flank Document does not give any State Party the right to station (under Article IV, paragraph 5 of the Treaty) or temporarily deploy (under Article V, paragraphs 1 (B) and (C) of the Treaty) conventional arms and equipment limited by the Treaty on the territory of other States Parties to the Treaty without the freely expressed consent of the receiving State Party; (ii) the CFE Flank Document does not alter or abridge the right of any State Party under the Treaty to utilize fully its declared maximum levels for conventional armaments and equipment limited by the Treaty notified pursuant to Article VII of the Treaty; and (iii) the CFE Flank Document does not alter in any way the requirement for the freely expressed consent of all States Parties concerned in the exercise of any reallocations envisioned under Article IV, paragraph 3 of the CFE Flank Document.

In connection with Condition (6), Application and Effectiveness of Senate Advice and Consent, in the course of diplomatic negotiations to secure accession to, or ratification of, the CFE Flank Document by any other State Party, the United States will vigorously reject any effort by a State Party to (i) modify, amend, or alter a United States right or obligation under the Treaty or the CFE Flank Document, unless such modification, amendment, or alteration is solely an extension of the period of provisional application of the CFE Flank Document or a change of a minor administrative or technical nature; (ii) secure the adoption of a new United States obligation under, or in relation to, the CFE Treaty or the CFE Flank Document, unless such obligation is solely of a minor administrative or technical nature; or (iii) secure the provision of assurances, or endorsement of a course of action or a diplomatic position, inconsistent with the principles and policies established under conditions (1), (2), and (3) of the resolution of advice and consent to ratification of the CFE Flank Document.

In connection with Condition (7), Modifications of the CFE Flank Zone, any subsequent agreement to modify, revise, amend or alter the boundaries of the CFE flank zone, as delineated by the map entitled "Revised CFE Flank Zone" submitted to the Senate on April 7, 1997, shall require the submission of such agreement to the Senate for its advice and consent to ratification, if such changes are not solely of a minor administrative or technical nature.

In connection with Condition (9), Senate Prerogatives on Multilateralization of the ABM Treaty, I will submit to the Senate for advice and consent to ratification any international agreement (i) that would add one or more countries as States Parties to the ABM Treaty, or otherwise convert the ABM Treaty from a bilateral treaty to a multilateral treaty; or (ii) that would change the geographic scope or coverage of the ABM Treaty, or otherwise modify the meaning of the term "national territory" as used in Article VI and Article IX of the ABM Treaty.

In connection with Condition (11), Temporary Deployments, the United States has informed all other States Parties to the Treaty that the United States (A) will continue to interpret the term "temporary deployment", as used in the Treaty, to mean a deployment of severely limited duration measured in days or weeks or, at most, several months, but not years; (B) will pursue measures designed to ensure that any State Party seeking to utilize the temporary deployments provision of the Treaty will be required to furnish the Joint Consultative Group established by the Treaty with a statement of the purpose and intended duration of the deployment, together with a description of the object of verification and the location of origin and destination of the relevant conventional armaments and equipment limited by the Treaty; and (C) will vigorously reject any effort by a State Party to use the right of temporary deployment under the Treaty (i) to justify military deployments on a permanent basis; or (ii) to justify military deployments without the full and complete agreement of the State Party upon whose territory the armed forces or military equipment of another State Party are to be deployed.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 14, 1997.*

REPORT ON THE CFE FLANK DOCUMENT—MESSAGE FROM THE PRESIDENT—PM 36

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations.

To the Senate of the United States:

I am gratified that the Senate has given its advice and consent to the ratification to the CFE Flank Document and I look forward to the entry into force of this important agreement. It will reaffirm the integrity of one of the CFE Treaty's core provisions and will facilitate progress on CFE adaptation and, thus, NATO enlargement, key elements for advancing United States and European security.

I must, however, make clear my view of several of the Conditions attached to the resolution of advice and consent to ratification, including Conditions 2, 3, 4, 6, 7, 9 and 11. These Conditions all purport to direct the exercise of authorities entrusted exclusively to the President under our Constitution, including for the conduct of diplomacy and the implementation of treaties. The explicit limitation on diplomatic activities in Condition 3 is a particularly clear example of this point. As I wrote the Senate following approval of the Chemical Weapons Convention, a condition in a resolution of ratification cannot alter the allocation of authority and responsibility under the Constitution. I will, therefore, interpret the Conditions of concern in the resolution in a manner consistent with the responsibilities entrusted to me as President under the Constitution. Nevertheless, without prejudice to my Constitutional authorities, I will implement the Conditions in the resolution.

Condition (9), which requires my certification that any agreement governing ABM Treaty succession will be submitted to the Senate for advice and consent, is an issue of particular concern not only because it addresses a matter reserved to the President under our Constitution, but also because it is substantively unrelated to the Senate's review of the CFE Flank Document. It is clearly within the President's authorities to determine the successor States to a treaty when the original Party dissolves, to make the adjustments required to accomplish such succession, and to enter into agreements for this purpose. Indeed, throughout our history the executive branch has made a large number of determinations concerning the succession of new States to the treaty rights and obligations of their predecessors. The ABM Succession MOU negotiated by the United States effectuated no substantive change in the ABM Treaty requiring Senate advice and consent. Nonetheless, in light of the exceptional history of the ABM Treaty and in view of my commitment to agree to seek Senate approval of the Demarcation Agreements associated with the ABM Treaty, I have, without prejudice to the legal principles involved, certified, consistent with Condition (9), that I will submit any agreement concluded

on ABM Treaty succession to the Senate for advice and consent.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 14, 1997.*

REPORT ON THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES—MESSAGE FROM THE PRESIDENT—PM 37

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Armed Services.

To the Congress of the United States:

As required by section 603 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, I am transmitting a report on the National Security Strategy of the United States.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 15, 1997.*

MESSAGES FROM THE HOUSE

At 12:10 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2. An act to repeal the United States Housing Act of 1937, deregulate the public housing program and the program for rental housing assistance for low-income families, and increase community control over such programs, and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 2. An Act to repeal the United States Housing Act of 1937, deregulate the public housing program and the program for rental housing assistance for low-income families, and increase community control over such programs, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1871. A communication from the Secretary of the Senate, transmitting, pursuant to law, a statement of receipts and expenditures of the Senate, showing in detail the expense under proper appropriations, the aggregate thereof, and exhibiting the exact condition of all public moneys received, paid out, and remaining in his possession from October 1, 1996 through March 31, 1997; which was ordered to lie on the table.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 430. A bill to amend the Act of June 20, 1910, to protect the permanent trust funds of the State of New Mexico from erosion due to inflation and modify the basis on which distributions are made from those funds (Rept. No. 105-18).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BUMPERS (for himself, Ms. LANDRIEU, Mr. CLELAND, Mr. KERRY, and Mr. DASCHLE):

S. 745. A bill to amend the Internal Revenue Code of 1986 to modify the partial exclusion from gross income of gain on certain small business stock, to provide a rollover of capital gains on certain small business investments, and for other purposes; to the Committee on Finance.

By Mr. LEVIN:

S. 746. A bill to reaffirm and clarify the Federal relationship of the Burt Lake Band as a distinct federally recognized Indian tribe, and for other purposes; to the Committee on Indian Affairs.

By Mr. ROTH (for himself, Mr. MOYNIHAN, Mr. CHAFEE, Mr. GRAHAM, Mr. HATCH, Ms. MOSELEY-BRAUN, Mr. GRASSLEY, Mr. BAUCUS, Mr. GRAMM, Mr. CONRAD, Mr. NICKLES, Mr. BREAUX, Mr. JEFFORDS, Mr. BRYAN, Mr. ROCKEFELLER, Mr. KERREY, Mr. MURKOWSKI, Mr. D'AMATO, and Mr. LOTT):

S. 747. A bill to amend trade laws and related provisions to clarify the designation of normal trade relations; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Mrs. HUTCHISON, Ms. MIKULSKI, Mr. BUMPERS, Ms. COLLINS, and Mr. ROBB):

S. 748. A bill to provide for college affordability and high standards; to the Committee on Labor and Human Resources.

By Mr. DORGAN (for himself and Mr. CONRAD):

S. 749. A bill to provide for more effective management of the National Grasslands, and for other purposes; to the Committee on Energy and Natural Resources.

S. 750. A bill to consolidate certain mineral interests in the National Grasslands in Billings County, North Dakota, through the exchange of Federal and private mineral interests to enhance land management capabilities and environmental and wildlife protection, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SHELBY (for himself, Mr. MURKOWSKI, Mr. CRAIG, and Mr. BURNS):

S. 751. A bill to protect and enhance sportsmen's opportunities and conservation of wildlife, and for other purposes; to the Committee on Environment and Public Works.

By Mr. THURMOND (for himself, Mr. COATS, Mr. HOLLINGS, Mr. HELMS, Mr. FAIRCLOTH, and Mr. HUTCHINSON):

S. 752. A bill to amend title 23, United States Code, to modify the minimum allocation formula under the Federal-aid highway program, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MACK (for himself, Mr. LIEBERMAN, and Mr. BROWNBACK):

S. 753. A bill to amend the Internal Revenue Code of 1986 to provide for individuals who are residents of the District of Columbia a maximum rate of tax of 15 percent on income from sources within the District of Columbia, and for other purposes; to the Committee on Finance.

By Mr. CAMPBELL (for himself, Mr. INOUYE, and Mr. DOMENICI):

S. 754. A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to provide for direct assistance to Indian tribes for juvenile justice and delinqency prevention programs, and for other purposes; to the Committee on Indian Affairs.

By Mr. CAMPBELL (for himself and Mr. FORD):

S. 755. A bill to amend title 10, United States Code, to restore the provisions of chapter 76 of that title (relating to missing persons) as in effect before the amendments made by the National Defense Authorization Act for Fiscal Year 1997 and to make other improvements to that chapter; to the Committee on Armed Services.

By Mr. KERRY (for himself, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. KENNEDY, Mr. HOLLINGS, Mr. WELLSTONE, Ms. MOSELEY-BRAUN, and Mr. HARKIN):

S. 756. A bill to provide for the health, education, and welfare of children 6 years of age; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ABRAHAM (for himself and Mr. LEAHY):

S. Res. 86. A resolution expressing the sense of the Senate with respect to telephone access charges for use of the Internet and the growth of advanced interactive communications networks like the Internet; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUMPERS (for himself, Ms. LANDRIEU, Mr. CLELAND, Mr. KERRY, and Mr. DASCHLE):

S. 745. A bill to amend the Internal Revenue Code of 1986 to modify the partial exclusion from gross income of gain on certain small business stock, to provide a rollover of capital gains on certain small business investments, and for other purposes; to the Committee on Finance.

THE SMALL BUSINESS CAPITAL GAINS ENHANCEMENT ACT OF 1997

Mr. BUMPERS. Mr. President, I rise today to introduce the Small Business Capital Gains Enhancement Act of 1997, which will make several important improvements to section 1202 of the Internal Revenue Code, a measure I authored in 1993 to provide an incentive for investment in entrepreneurial efforts. Section 1202 provides a 50 percent exclusion for capital gains from qualified small business stock held at least 5 years.

The purpose of section 1202 is clear. Because small businesses are inherently riskier than large businesses, most investors are reluctant to invest in the smaller enterprises. This, obviously, tends to create a dearth of capital for entrepreneurs. But maintaining a healthy investment environment for small businesses is extremely important for the well-being of our economy. Most new jobs come from small businesses, not large ones. From 1991–95, businesses with fewer than 500 employees created 22 million new jobs, while businesses of greater than 500 employees cut 3 million jobs. And it was because of this dynamic small business impact on our economy that Congress passed section 1202 with great bipartisan support in both chambers: we wanted to create a capital formation incentive for small business.

Now, for two reasons, it has become crucial that we make certain improvements to section 1202. First, section 1202 is not adequate. The small business incentive I originally proposed in 1993 was considerably more extensive than section 1202. After years of discussions among entrepreneurs and tax experts regarding what would be helpful and workable, we had determined that the incentive should, for example, include companies of up to $100 million in assets, allow corporate investors, and not be subject to the alternative minimum tax. But because of budget concerns during the Omnibus Reconciliation Act of 1993, the proposal was scaled back to include only companies of $50 million or less, allow no corporate investors, and subject 50 percent of the benefit to the alternative minimum tax. The bill my cosponsors and I are introducing today will expand section 1202 to provide the kind of incentive originally envisioned and more.

The second reason that today's legislation is crucial is to preserve the incentive in the face of other impending capital gains cuts which would effectively nullify it. As we all know, it appears that we are headed toward an across-the-board capital gains cut following the recent budget agreement between the Clinton administration and Republican congressional leaders. Ironically, an across-the-board cut could obliterate the small business incentive if the latter is not adjusted accordingly.

Here is how that would happen. Under the GOP capital gains proposal in S. 2, the top regular capital gains rate will be 19.8 percent, while the top rate for small business capital gains will remain at 14 percent. In other words, an investor could buy stock in, say, Microsoft, hold that stock 1 year, sell the stock, and, if a gain were realized, pay a maximum tax of 19.8 percent. Alternatively, the investor could make that investment in, say, a new biotech firm, hold that stock 5 years, sell the stock, and, if a gain were realized, pay a maximum tax of 14 percent. The logical choice would be clear: the investor would choose the big business over the small business. After all, who would choose a risky 5-year small business investment over a 1-year Microsoft investment for a tax differential of only 5.8 percent? Clearly, a major across-the-board tax cut without a corresponding increase in the exclusion for small business investments will obliterate section 1202's effectiveness. Small business will be left without a viable capital gains incentive.

Not only would the situation described above nullify the small business incentive for the future, it would be unfair to those who have already made small business investments based on section 1202—those who accepted the risk of investing in a small business stock for the promise of preferential capital gains treatment. We would be saying, "Thanks for taking a risk with your small business investment, but we've decided to change the rules. We're gonna give you about the same tax rate we give other people for their less-risky Fortune 500 investments." As a matter of fairness to those who have already invested in a small business based on section 1202, we must maintain a substantial difference between small business and big business capital gains taxes. This bill will make that adjustment by increasing the exclusion for small business capital gains from 50 percent to 75 percent.

Here is a list of all the improvements our legislation would make to section 1202. Increase the small business deduction from 50 percent to 75 percent; increase the asset limit for "qualified small businesses" from $50 to $100 million; make the incentive available to corporate investors; exempt the incentive from alternative minimum tax calculations; change the working capital spend-down period (intended to prevent abuse through inactivity) from 2 years to 5 years to allow companies to raise adequate capital before beginning to spend it; increase the per-taxpayer benefit limit to $20 million or 10 times investment. Presently, the limit is $10 million or 10 times investment; and allow the tax-deferred rollover of capital gains from one qualified small business to another.

Although we have not yet received a Joint Tax Committee revenue estimate on this measure, it would appear from previous estimates to cost under $500 million over 5 years and under $1 billion over 10 years. Compared to the cost of an across-the-board capital gains tax cut and other major tax cuts being considered by this Congress, this is a pittance.

Mr. President, section 1202 is the major, if not the only, capital formation incentive for small business in the entire Tax Code. It would be a tragedy and a slap in the face of America's entrepreneurs if we fail to maintain this measure in viable form. The bill we are introducing today will do that, and I urge my colleagues to support it.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 745

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 "Small Business Capital Gains Enhancement Act of 1997".

SEC. 2. MODIFICATIONS TO EXCLUSION OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) INCREASED EXCLUSION.—

(1) IN GENERAL.—Subsection (a) of section 1202 of the Internal Revenue Code of 1986 (relating to 50-percent exclusion for gain from certain small business stock) is amended—

(A) by striking "50 percent" and inserting "75 percent", and

(B) by striking "**50-percent**" in the heading and inserting "**75-percent**".

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 1202 of such Code is amended by striking "50-percent" and inserting "75-percent".

(B) The table of sections for part I of subchapter P of chapter 1 of such Code is amended by striking "50-percent" in the item relating to section 1202 and inserting "75-percent".

(b) EXCLUSION AVAILABLE TO CORPORATIONS.—

(1) IN GENERAL.—Subsection (a) of section 1202 of the Internal Revenue Code of 1986, as amended by subsection (a), is amended by striking "other than a corporation".

(2) TECHNICAL AMENDMENT.—Subsection (c) of section 1202 of such Code is amended by adding at the end the following new paragraph:

"(4) STOCK HELD AMONG MEMBERS OF CONTROLLED GROUP NOT ELIGIBLE.—Stock shall not be treated as qualified small business stock if such stock was at any time held by any member of the parent-subsidiary controlled group (as defined in subsection (d)(3)) which includes the qualified small business."

(c) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) IN GENERAL.—Section 57(a) of the Internal Revenue Code of 1986 (relating to items of tax preference) is amended by striking paragraph (7).

(2) TECHNICAL AMENDMENT.—Section 53(d)(1)(B)(ii)(II) of such Code is amended by striking ", (5), and (7)" and inserting "and (5)".

(d) STOCK OF LARGER BUSINESSES ELIGIBLE FOR EXCLUSION.—

(1) Section 1202(d)(1) of the Internal Revenue Code of 1986 (relating to qualified small business) is amended by striking "$50,000,000" each place it appears and inserting "$100,000,000".

(2) Section 1202(d) of such Code is amended by adding at the end the following new paragraph:

"(4) INFLATION ADJUSTMENT OF ASSET LIMITATION.—In the case of stock issued in any calendar year after 1997, the $100,000,000 amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1996' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $1,000,000, such amount shall be rounded to the next lower multiple of $1,000,000."

(e) PER-ISSUER LIMITATION.—Section 1202(b)(1)(A) of the Internal Revenue Code of 1986 (relating to per-issuer limitation on taxpayer's gain) is amended by striking "$10,000,000" and inserting "$20,000,000".

(f) OTHER MODIFICATIONS.—

(1) WORKING CAPITAL LIMITATION.—Section 1202(e)(6) of the Internal Revenue Code of 1986 (relating to working capital) is amended by striking "2 years" each place it appears and inserting "5 years".

(2) REDEMPTION RULES.—Section 1203(c)(3) of such Code (relating to certain purchases by corporation of its own stock) is amended by adding at the end the following new subparagraph:

"(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purchase was not to avoid the limitation of this section."

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock issued after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendments made by subsection (c), (e), and (f) shall apply to stock issued after August 10, 1993.

SEC. 3. ROLLOVER OF CAPITAL GAINS ON CERTAIN SMALL BUSINESS INVESTMENTS.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to common nontaxable exchanges) is amended by adding at the end the following new section:

"SEC. 1045. ROLLOVER OF GAIN ON SMALL BUSINESS INVESTMENTS.

"(a) NONRECOGNITION OF GAIN.—In the case of the sale of any eligible small business investment with respect to which the taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

"(1) the cost of any other eligible small business investment purchased by the taxpayer during the 6-month period beginning on the date of such sale, reduced by

"(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this subtitle.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) PURCHASE.—The term 'purchase' has the meaning given such term by section 1043(b)(4).

"(2) ELIGIBLE SMALL BUSINESS INVESTMENT.—Except as otherwise provided in this section, the term 'eligible small business investment' means any stock in a domestic corporation, and any partnership interest in a domestic partnership, which is originally issued after December 31, 1996, if—

"(A) as of the date of issuance, such corporation or partnership is a qualified small business entity,

"(B) such stock or partnership interest is acquired by the taxpayer at its original issue (directly or through an underwriter)—

"(i) in exchange for money or other property (not including stock), or

"(ii) as compensation for services (other than services performed as an underwriter of such stock or partnership interest), and

"(C) the taxpayer has held such stock or interest at least 6 months as of the time of the sale described in subsection (a).

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this section.

"(3) ACTIVE BUSINESS REQUIREMENT.—Stock in a corporation, and a partnership interest in a partnership, shall not be treated as an eligible small business investment unless, during substantially all of the taxpayer's holding period for such stock or partnership interest, such corporation or partnership meets the active business requirements of subsection (c). A rule similar to the rule of section 1202(c)(2)(B) shall apply for purposes of this section.

"(4) QUALIFIED SMALL BUSINESS ENTITY.—

"(A) IN GENERAL.—The term 'qualified small business entity' means any domestic corporation or partnership if—

"(i) such entity (and any predecessor thereof) had aggregate gross assets (as defined in section 1202(d)(2)) of less than $25,000,000 at all times before the issuance of the interest described in paragraph (2), and

"(ii) the aggregate gross assets (as so defined) of the entity immediately after the issuance (determined by taking into account amounts received in the issuance) are less than $25,000,000.

"(B) AGGREGATION RULES.—Rules similar to the rules of section 1202(d)(3) shall apply for purposes of this paragraph.

"(c) ACTIVE BUSINESS REQUIREMENT.—

"(1) IN GENERAL.—For purposes of subsection (b)(3), the requirements of this subsection are met by a qualified small business entity for any period if—

"(A) the entity is engaged in the active conduct of a trade or business, and

"(B) at least 80 percent (by value) of the assets of such entity are used in the active conduct of a qualified trade or business (within the meaning of section 1202(e)(3)).

Such requirements shall not be treated as met for any period if during such period the entity is described in subparagraph (A), (B), (C), or (D) of section 1202(e)(4).

"(2) SPECIAL RULE FOR CERTAIN ACTIVITIES.—For purposes of paragraph (1), if, in connection with any future trade or business, an entity is engaged in—

"(A) startup activities described in section 195(c)(1)(A),

"(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

"(C) activities with respect to in-house research expenses described in section 41(b)(4),

such entity shall be treated with respect to such activities as engaged in (and assets used in such activities shall be treated as used in) the active conduct of a trade or business. Any determination under this paragraph shall be made without regard to whether the entity has any gross income from such activities at the time of the determination.

"(3) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), (7), and (8) of section 1202(e) shall apply for purposes of this subsection.

"(d) CERTAIN OTHER RULES TO APPLY.—Rules similar to the rules of subsections (f), (g), (h), and (j) of section 1202 shall apply for purposes of this section, except that a 6-month holding period shall be substituted for a 5-year holding period where applicable.

"(e) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any eligible small business investment which is purchased by the taxpayer during the 6-month period described in subsection (a).

"(f) STATUTE OF LIMITATIONS.—If any gain is realized by the taxpayer on the sale or exchange of any eligible small business investment and there is in effect an election under subsection (a) with respect to such gain, then—

"(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's cost of purchasing other eligible small business investments which the taxpayer claims results in nonrecognition of any part of such gain,

"(B) the taxpayer's intention not to purchase other eligible small business investments within the 6-month period described in subsection (a), or

"(C) a failure to make such purchase within such 6-month period, and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, or otherwise and regulations to modify the application of section 1202 to the extent necessary to apply such section to a partnership rather than a corporation."

(b) CONFORMING AMENDMENT.—Paragraph (23) of section 1016(a) of the Internal Revenue Code of 1986 is amended—

(1) by striking "or 1044" and inserting ", 1044, or 1045", and

(2) by striking "or 1044(d)" and inserting ", 1044(d), or 1045(e)".

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter O of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 1045. Rollover of gain on small business investments."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1996.

Mr. CLELAND. Mr. President, I rise this morning, to join my good colleague from Arkansas in support of the Small Business Capital Gains Enhancement Act of 1997.

Today, our country's economy is more robust and is growing faster than it has in the last decade and maybe even the last several decades. Fostering this growth is crucial to sustain the great and important strides that our economy has made in these past years, and I believe that this legislation will go a long way to improving incentives for investment in small businesses. Cutting the capital gains tax in this targeted fashion is something that small businesses have time

and again asked for because they know, as we all do, that investing in small businesses and providing capital for that investment creates growth and, more importantly, jobs.

Small businesses have had a striking impact on Georgia's economy. They are vital as job creators, and their diversity and composition provide a work force with endless opportunities and are easily the envy of the country.

Mr. President, according to the SBA, 97.6 percent of the business firms in Georgia are small businesses. Women-owned businesses have increased 62.7 percent since 1987. African American owned firms have increased 79.8 percent between 1987 and 1992. Hispanic firms, including part-time businesses, grew 184.9 percent in the same period of time. So the impact of this legislation is huge. These figures are numbers that corporate investors cannot—cannot—ignore, but if section 1202 of the Internal Revenue Code doesn't allow them to invest in these small businesses, then I believe we are missing out on far more than the taxes that we collect as the law is now. We must make certain that these investors have every opportunity to become involved in the growing of small businesses. These are the ideal investors, they recognize that, and so should we, Mr. President.

I wish to add support to my colleague's comments that across-the-board cuts, while they may sound wonderful, can in fact have a negative impact toward small businesses as they compete with big businesses for investment dollars. It is important to maintain the differences between small business and big business capital gains taxes. Making adjustment in the present law and fine tuning where needed is smarter, in my opinion, than the alternatives of wide ranging or all encompassing legislative action.

This is an affordable tax cut and one that puts important capital dollars in the coffers of the men and women of this country who are creating jobs, creating economic opportunity, and giving hope to the country and I believe hope to our great future. I believe many of our colleagues will join us in our commitment to the small businesses of this country. I thank my friend from the wonderful State of Arkansas for his leadership and the opportunity to participate here with him this morning. This is a great opportunity that I look forward to supporting.

Mr. President, I yield the floor and any time that may remain.

By Mr. LEVIN:

S. 746. A bill to reaffirm and clarify the Federal relationship of the Burt Lake Band as a distinct federally recognized Indian tribe, and for other purposes; to the Committee on Indian Affairs.

THE BURT LAKE BAND OF OTTAWA AND CHIPPEWA INDIANS ACT

Mr. LEVIN. Mr. President, I rise today to introduce a bill to reaffirm the Federal recognition of the Burt Lake Band of Ottawa and Chippewa Indians. This legislation will reestablish the government-to-government relations of the United States and the Burt Lake Band. This is the same legislation which I introduced last Congress and which was originally introduced in the 103d Congress by my friend and colleague, Senator Donald Riegle.

Federal recognition for Burt Lake is vitally important for a variety of reasons. With this process completed the Band can move on to the tasks of improving the economic and social welfare of its people. More important however, passage of this legislation will clarify that the Burt Lake Band is a historically independent tribe.

The Band is named after Burt Lake, a small inland lake about 20 miles south of the straits of Mackinac. The Band already had deep roots in the area when a surveyor named Burt inspected the area in 1840. During the 1800's, the Burt Lake Band was a signatory to several Federal treaties, including the 1836 Treaty of Washington and the 1855 Treaty of Detroit. These treaties were enacted for the purpose of securing territory for settlement and development.

During the mid-1800's, the Federal Government turned over to the State of Michigan annuity moneys on the Band's behalf in order to purchase land. This land was later lost by the Band through tax sales, although trust land is nontaxable. The Band was subsequently evicted from their village. In 1911, the Federal Government brought a claim on behalf of Burt Lake against the State of Michigan. The autonomous existence of the Band at this stage is clear.

Although the Band has never had its Federal status legally terminated, the Bureau of Indian Affairs since the 1930's has not accorded the Band that status nor treated the Band as a federally recognized tribe. The Burt Lake Band, as well as the other tribes located in Michigan's lower peninsula were improperly denied the right to reorganize under the terms of the Indian Reorganization Act of 1934 even though they were deemed eligible to do so by the Indian Service at that time.

My Michigan colleague, Congressman DALE KILDEE, has sponsored a similar piece of legislation. I look forward to the consideration of this legislation by the respective committees in both the Senate and the House and its enactment into law. I also ask unanimous consent that a copy of this bill be printed in the RECORD.

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

S. 746

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 "Burt Lake Band of Ottawa and Chippewa Indians Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) the Burt Lake Band of Ottawa and Chippewa Indians are descendants and political successors to the signatories of the treaty between the United States and the Ottawa and Chippewa nations of Indians at Washington, D.C. on March 28, 1836 (7 Stat. 491 et seq.), and the treaty between the United States and the Ottawa and Chippewa Indians of Michigan at Detroit on July 31, 1855 (11 Stat. 621 et seq.);

(2) the Grand Traverse Band of Ottawa and Chippewa Indians, the Sault Ste. Marie Tribe of Chippewa Indians, and the Bay Mills Band of Chippewa Indians, whose members are also descendants of the signatories to the treaties referred to in paragraph (1), have been recognized by the Federal Government as distinct Indian tribes;

(3) the Burt Lake Band of Ottawa and Chippewa Indians consists of over 650 eligible members who continue to reside close to their ancestral homeland as recognized in the reservations of lands under the treaties referred to in paragraph (1) in the area that is currently known as Cheboygan County, Michigan;

(4) the Band continues to exist and carry out political and social activities with a viable tribal government;

(5) the Band, along with other Michigan Odawa and Ottawa groups, including the tribes described in paragraph (2), formed the Northern Michigan Ottawa Association in 1948;

(6) the Northern Michigan Ottawa Association subsequently submitted a successful land claim with the Indian Claims Commission;

(7) during the period between 1948 and 1975, the Band carried out many governmental functions through the Northern Michigan Ottawa Association, and at the same time retained control over local decisions;

(8) in 1935, the Band submitted a petition under the Act of June 18, 1934 (commonly referred to as the "Indian Reorganization Act") (48 Stat. 984 et seq., chapter 576; 25 U.S.C. 461 et seq.), to form a government on behalf of the Band;

(9) in spite of the eligibility of the Band to form a government under the Act referred to in paragraph (8), the Bureau of Indian Affairs failed to act on the petition referred to in that paragraph; and

(10) from 1836 to the date of enactment of this Act, the Federal Government, the government of the State of Michigan, and political subdivisions of the State have had continuous dealings with the recognized political leaders of the Band.

SEC. 3. DEFINITIONS.

In this Act:

(1) BAND.—The term "Band" means the Burt Lake Band of Ottawa and Chippewa Indians.

(2) MEMBER.—The term "member" means any individual enrolled in the Band pursuant to section 7.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 4. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—Congress reaffirms the Federal recognition of the Burt Lake Band of Ottawa and Chippewa Indians.

(b) APPLICABILITY OF FEDERAL LAWS.—Each provision of Federal law (including any regulation) of general application to Indians or Indian nations, tribes, or bands, including the Act of June 18, 1934 (commonly referred to as the "Indian Reorganization Act") (48 Stat. 984 et seq., chapter 576; 25 U.S.C. 461 et seq.), that is inconsistent with any specific

provision of this Act shall not apply to the Band or any of its members.

(c) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—

(A) IN GENERAL.—The Band and its members shall be eligible for all services and benefits provided by the Federal Government to Indians because of their status as federally recognized Indians.

(B) SERVICES AND BENEFITS.—Notwithstanding any other provision of law, the services and benefits referred to in subparagraph (A) shall be provided after the date of enactment of this Act to the Band and its members without regard to—

(i) whether an Indian reservation exists for the Band; or

(ii) the location of the residence of any member on or near an Indian reservation.

(2) SERVICE AREAS.—

(A) IN GENERAL.—For purposes of the delivery of Federal services to the enrolled members of the Band, the area of the State of Michigan within a 70-mile radius of the boundaries of the reservation for the Burt Lake Band, as set forth in the seventh paragraph of Article I of the treaty between the United States and the Ottawa and Chippewa Indians of Michigan, done at Detroit on July 31, 1855 (11 Stat. 621 et seq.), shall be deemed to be within or near an Indian reservation.

(B) EFFECT OF ESTABLISHMENT OF AN INDIAN RESERVATION AFTER THE DATE OF ENACTMENT OF THIS ACT.—If an Indian reservation is established for the Band after the date of enactment of this Act, subparagraph (A) shall continue to apply on and after the date of the establishment of that reservation.

(C) PROVISION OF SERVICES AND BENEFITS OUTSIDE THE SERVICE AREA.—Unless prohibited by Federal law, the services and benefits referred to in paragraph (1) may be provided to members outside the service area described in subparagraph (A).

SEC. 5. REAFFIRMATION OF RIGHTS.

(a) IN GENERAL.—To the extent consistent with the reaffirmation of the recognition of the Band under section 4(a), all rights and privileges of the Band and its members, which may have been abrogated or diminished before the date of enactment of this Act, are reaffirmed.

(b) EXISTING RIGHTS OF TRIBE.—Nothing in this Act may be construed to diminish any right or privilege of the Band or its members that existed before the date of enactment of this Act. Except as otherwise specifically provided, nothing in this Act may be construed as altering or affecting any legal or equitable claim the Band may have to enforce any right or privilege reserved by or granted to the Band that was wrongfully denied to the Band or taken from the Band before the date of enactment of this Act.

SEC. 6. TRIBAL LANDS.

The tribal lands of the Band shall consist of all real property held by, or in trust for, the Band. The Secretary shall acquire real property for the Band. Any property acquired by the Secretary pursuant to this section shall be held in trust by the United States for the benefit of the Band and shall become part of the reservation of the Band.

SEC. 7. MEMBERSHIP.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Band shall submit to the Secretary a membership roll consisting of all individuals currently enrolled for membership in the Band at the time of the submission of the membership roll.

(b) QUALIFICATIONS.—The Band shall, in consultation with the Secretary, determine, pursuant to applicable laws (including ordinances) of the Band, the qualifications for including an individual on the membership roll.

(c) PUBLICATION OF NOTICE.—The Secretary shall publish notice of receipt of the membership roll in the Federal Register as soon as practicable after receiving the membership roll pursuant to subsection (a).

(d) MAINTENANCE OF ROLL.—The Band shall maintain the membership roll of the Band prepared pursuant to this section in such manner as to ensure that the membership roll is current.

SEC. 8. CONSTITUTION AND GOVERNING BODY.

(a) CONSTITUTION.—

(1) ADOPTION.—Not later than 2 years after the date of enactment of this Act, the Secretary shall conduct, by secret ballot, elections for the purpose of adopting a new constitution for the Band. The elections shall be held according to the procedures applicable to elections under section 16 of the Act of June 18, 1934 (commonly referred to as the "Indian Reorganization Act") (48 Stat. 987, chapter 576; 25 U.S.C. 476).

(2) INTERIM GOVERNING DOCUMENTS.—Until such time as a new constitution is adopted under paragraph (1), the governing documents in effect on the date of enactment of this Act shall be the interim governing documents for the Band.

(b) OFFICIALS.—

(1) ELECTIONS.—Not later than 180 days after the Band adopts a constitution and bylaws pursuant to subsection (a), the Band shall conduct elections by secret ballot for the purpose of electing officials for the Band as provided in the governing constitution of the Band. The elections shall be conducted according to the procedures described in the governing constitution and bylaws of the Band.

(2) INTERIM GOVERNMENTS.—Until such time as the Band elects new officials under paragraph (1), the governing bodies of the Band shall include each governing body of the Band in effect on the date of the enactment of this Act, or any succeeding governing body selected under the election procedures specified in the applicable interim governing documents of the Band.

By Mr. ROTH (for himself, Mr. MOYNIHAN, Mr. CHAFEE, Mr. GRAHAM, Mr. HATCH, Ms. MOSELEY-BRAUN, Mr. GRASSLEY, Mr. BAUCUS, Mr. GRAMM, Mr. CONRAD, Mr. NICKLES, Mr. BREAUX, Mr. JEFFORDS, Mr. BRYAN, Mr. ROCKEFELLER, Mr. KERREY, Mr. MURKOWSKI, Mr. D'AMATO, and Mr. LOTT):

S. 747. A bill to amend trade laws and related provisions to clarify the designation of normal trade relations; to the Committee on Finance.

NORMAL TRADE RELATIONS LEGISLATION

Mr. ROTH. Mr. President, I rise today to introduce a bill to clarify the meaning of the term, "most-favored-nation trading status." I do so because the term gives the false impression that MFN is some sort of special privilege or reward.

In fact, MFN is not a special privilege or reward. It designates the most ordinary, most normal trading relationship among countries. Since the founding of our Republic, the principle of nondiscrimination embodied in MFN has served as the cornerstone of U.S. international trade policy.

In its most basic trade application, this principle requires a country to apply the same tariff duty rate on a particular product from one country as it applies to imports of the same product from all other countries.

For example, if the U.S. tariff on imported clock radios is 5 percent, all clock radios imported from countries with MFN status are subject to a 5-percent tariff. Imports from countries that do not have MFN status—and there are only six countries that fall into this category—are subject to far higher duty rates.

Another important point about MFN is that it is not a one-way street. When we give MFN status to a particular country, that country, in return, gives the United States most-favored-nation status.

Therefore, because we give Singapore MFN status, the clock radios we import from that country are subject to the same tariff rates as clock radios from Thailand, Spain, or any other country to which we extend MFN.

In return, when Singapore imports our computer chips, it imposes the same tariff on United States chips as those imported from Japan, Korea, Great Britain, or any other country to which it extends MFN.

What does the United States get out of all this? American companies get to compete on fair and equal terms with their foreign rivals.

Let me emphasize again: MFN status does not confer—let alone imply—special treatment.

In fact, when we decide to give special treatment to imports from other countries—as Congress has expressly chosen to do for certain products from over 130 nations—those imports are subject to tariff rates substantially below the MFN rate. Sometimes we even allow specified countries to export products to the United States duty free.

In short, MFN status denotes the standard, not the exceptional, trading relationship. Ending this standard trading relationship by revoking MFN is an extreme measure. In fact, because MFN is so fundamental to trade relations among countries, some correctly liken its withdrawal to a declaration of economic war.

Because of the confusion created by the phrase, "most-favored-nation trading status," Senator MOYNIHAN and I and virtually all the Members of the Finance Committee have agreed to introduce legislation to replace the phrase wherever appropriate in U.S. trade law with a more suitable term—"normal trade relations"—a term that underscores the unexceptional nature of the MFN concept. I believe that if we adopt this legislation, we will all better understand the issue, and our discussions on extending normal trade

relations to various countries will be more constructive.

It should be clear to our trading partners that creating this new term will not alter our international rights and obligations. Rather, in choosing the term "normal trade relations" we aim to describe more accurately the nondiscriminatory principles underlying U.S. trade law and policy.

Last year, similar legislation passed the Senate unanimously. I ask my colleagues to do the same again this year.

Mr. MOYNIHAN. Mr. President, I am pleased to join once again with the distinguished Chairman of the Finance Committee, Senator ROTH, to reintroduce legislation that will, we believe, help to dispel the fog that sometimes shrouds our discussions of trade policy. This bill would, simply and directly, replace the term "most favored nation" with the phrase "normal trade relations"—a more accurate, less muddled phrase that better describes this fundamental principle of trade policy.

The concept is well established. It has been traced by historians to the 13th century. More particularly, to a clause in the treaty of November 8, 1226, in which the Emperor Frederick II conceded to the city of Marseilles the privileges previously granted to the citizens of Pisa and of Genoa. Not greater privileges, but merely the same as had been extended to others.

The term itself—"most favored nation"—dates to the end of the 17th century. And has been nearly as long a cornerstone of American trade policy. Since the 18th century, our trade policy has been grounded on the principle of nondiscrimination: the vast majority of our trading partners receive treatment equal to the treatment we give every other trading partner. In no sense can this fairly be characterized as most favored treatment; rather it is the treatment that we normally accord our trading partners.

And yet we continue to use that 17th century term in treaties and agreements, in executive orders and in trade laws, a term that, even at the beginning, was a misnomer. There is, Mr. President, no single most favored nation. There never really was.

As noted in a 1919 report to the Congress by the United States Tariff Commission, known today as the United States International Trade Commission:

> It is neither the purpose nor the effect of the most-favored-nation clause to establish a "most favored nation"; on the contrary its use implies the intention that the maximum of advantages which either of the parties to a treaty has extended or shall extend to any third State—for the moment the "most-favored"—shall be given or be made accessible to the other party.

That is, the most favored nation is not the nation with which we are negotiating, but rather a third nation altogether that happens to benefit at the moment from lower tariffs or other preferences with respect to some particular product. The most-favored-nation principle means merely that we will grant to our negotiating partner the same terms that we have given to that third country, for the moment more favored.

Little wonder, then, that the term has created confusion. And yet we must continue to discuss the concept for the simple reason that there exists still, in U.S. law, a very unfavorable tariff—the Smoot-Hawley tariff (stemming from the 1930 act of the same name). This was the last tariff schedule enacted line-by-line by the Congress and it produced the highest tariff rates, overall, in our history. It is still on the books, though it applies only to a handful of countries.

In response to the disaster that followed enactment of the Smoot-Hawley tariff, which, at the time applied to all of our trading partners, Congress authorized the Roosevelt administration to negotiate a series of trade agreements aimed at reducing tariffs worldwide. These efforts culminated in a series of trade agreements with individual countries, and ultimately paved the way for a series of broad multilateral negotiations under the auspices of the General Agreement on Tariffs and Trade that reduced American tariffs, just as they slashed tariffs worldwide. These much lower tariff rates are the tariffs that we call our most-favored-nation tariff rates and they apply, in fact, to the vast majority of countries. They are thus the norm, and not in any way more favorable tariffs.

They are, indeed, not the lowest tariff rates that the United States applies. We have free-trade arrangements with Canada, Israel, and Mexico that call for the complete elimination of tariffs. We have eliminated tariffs on certain imports from developing countries under the Generalized System of Preferences, from Caribbean nations under the Caribbean Basin Initiative and from Andean countries under the Andean Trade Preferences Act. The tariff rates under these regimes are, in all cases, lower than what we now call our most-favored-nation tariff rates. Hence the confusion, and hence the need to find a more apt phrase.

Mr. President, this legislation will be familiar to most of my colleagues. The identical bill was introduced in the 104th Congress with the cosponsorship of the entire Finance Committee and it passed the Senate by unanimous consent. I expect that we will be able to repeat that victory in the 105th Congress, and I hope that we can do so promptly.

Let me underscore that this legislation in no way alters the bedrock principles of equal treatment or nondiscrimination. It merely drops an outdated term in favor of one that ought to help make our trade policy more comprehensible to the American public.

Mr. CHAFEE. Mr. President, today Senators ROTH, MOYNIHAN, and I, along with others on the Finance Committee, are introducing legislation to clarify the meaning of most favored nation [MFN] trading status—a change I have advocated for some time.

Over the past few years, MFN has gained notoriety as a special favor that the U.S. grants to other nations. Not true. Indeed, MFN is a misnomer if there ever was one.

Rather, MFN refers to a centuries-old concept used by all trading nations—the concept that no nation shall be granted trade treatment less favorable than that granted to the most-favored-nation. In other words, no playing favorites! Every nation is to receive equal treatment when it comes to the terms of trade.

Thus, the MFN concept represents the lowest common denominator of trade status.

Over the centuries, this simple nondiscrimination concept came to be known as most favored nation status. Frankly, that is unfortunate. That particular terminology has fostered the mistaken view that MFN is a special treatment granted only to a privileged few. Yet just the opposite is true: MFN, as the basic trading status between nations, is granted to virtually all nations with whom the U.S. trades. The exceptions can almost be counted on one hand: Serbia, Laos, Afghanistan, Vietnam, Cuba, and North Korea.

In sum, while the concept of MFN is sound, the term used to denote that concept is misleading and has resulted in a good deal of mischief—a fact that Senators MOYNIHAN and I have lamented often during Senate Finance Committee hearings. It is high time that we called the MFN nondiscrimination concept by a term that more accurately represents its meaning.

Therefore, today my colleagues and I are introducing this bill to amend U.S. law, where appropriate, to replace the term "MFN" with the term "NTR": normal trade relations. From this point on, we will discuss legislation and hold debate on the nondiscrimination concept using the term "NTR" in place of MFN.

Will the concept of MFN remain the same? Yes. Are we signalling a change in domestic policy, or modifying our international obligations in any way? No. But we are making perfectly clear to everyone the true meaning and purpose of this centuries-old concept. And it is my hope that our legislation will result in a better understanding of international trade relations, both here in the Congress and in the eyes of the public.

Last year, Senators ROTH, MOYNIHAN, and I introduced a virtually identical bill, again with the support of Finance Committee members. That bill sailed through the Senate unanimously, and was sent to the House of Representatives. However, the house was not able

to act on the bill prior to the date of adjournment of the 104th Congress. It is my hope that by introducing this bill tody, there will be more than enough time this year to move the measure through both chambers and send it to the President for his signature. I therefore urge swift consideration of our legislation by the Senate.

By Mr. BINGAMAN (for himself, Mrs. HUTCHISON, Ms. MIKULSKI, Mr. BUMPERS, Ms. COLLINS, and Mr. ROBB):

S. 748. A bill to provide for college affordability and high standards; to the Committee on Labor and Human Resources.

THE COLLEGE AFFORDABILITY AND HIGH STANDARDS ACT OF 1997

Mr. BINGAMAN. Mr. President, during the last few years, many of us have been trying to figure out how to solve some of the troubling questions surrounding public education. These issues include two core questions, one about inadequate academic standards and the the other about the skyrocketing cost of going on to college.

What can we do to improve the standards of academic performance in our schools and, how can we make college more affordable to more of our students?

One very straightforward answer is to expand the number of advanced placement courses taught in our schools and to increase the number of students who have the opportunity to take those courses.

Let me briefly describe what an advanced placement, or AP, course really is. The AP program is a set of college-level courses that are usually taught to high school juniors and seniors for college credit. They are taken on a voluntary basis. These courses are now taught in a majority of our high schools. They use locally developed materials. However, the year-end AP exams are evaluated on a uniform basis, making test scores comparable nationwide. Overall, there are 30 different AP courses, although most students take them in the areas of math and history and science and English.

Today, I rise to introduce the College Affordability and High Standards Act of 1997, which is also being cosponsored by Senators HUTCHISON, MIKULSKI, BUMPERS and COLLINS. This legislation will allow thousands of additional high school students to participate in AP courses. The bill focuses on low-income and minority students who often attend school in less affluent or in isolated areas.

I am introducing this bill based in part on several recent visits to New Mexico high schools, where I learned that what students want is more well-trained teachers. They are asking for more challenging academic work. In my home State, in schools like West Mesa High School in Albuquerque and Las Cruces High School, AP students told me they never thought they could succeed in classes that are this challenging. There is great satisfaction and pride, evidenced by their ability to succeed.

While it may seem new, this is not an entirely new approach to raising academics and lowering college costs. In fact, we have had legislation proposed before by Senator Kassebaum and a bipartisan group of other Members, which became law in 1992 and is still in effect. We are just building on this approach. In addition, Secretary Riley, the late President of the AFT Al Shanker, and Boston Schools Superintendent Tom Payzant have spoken out on this.

Most importantly, 23 States today provide some type of incentive program to encourage more AP participation. I have a chart I want to show my colleagues to make the point, which shows where there are initiatives to promote AP instruction.

The States in white do not have an incentive program in place. We need to supplement the 23 States listed on this map with AP programs in the other 27 States, and we need to have every State in the Union promoting more advance placement courses. In essence, that is the purpose of this legislation.

There is a long-outdated myth that I want to address very briefly about what type of students take these AP courses. There has been in the past the impression that AP courses are only for the elite. The truth is, more and more students from minority groups from various backgrounds are taking AP courses today, as this chart shows, with out a decrease in rigor or quality.

Roughly 1.5 million students participated—80 percent from public schools, 55 percent female, and 30 percent minority.

Almost 60 percent of all high schools offered AP courses, and over 800,000 exams were taken.

As a result of this growth, the AP program is the most widely accepted program of high academic standards in the nation.

THE BENEFITS OF PARTICIPATING IN AP

Participation is skyrocketing and States are spending funds on AP largely because of the benefits of the program:

AP test scores of 3 or better are valuable because they are accepted for credit at nearly 3,000 colleges and universities nationwide.

AP programs raise academic standards in schools and improve students' academic performance in college.

For students who plan to go directly to work, AP programs provide a world-class education with high-level skills that can be easily compared among prospective job candidates.

GROWTH IN MINORITY PARTICIPATION

Largely as a result of the 23 State AP incentive programs, overall participation and in particular the number of minority participants have increased tremendously:

The overall number of exams taken by minorities has increased to over 200,000 students in 1996—an increase of 36,000 students—21 percent—in just 2 years.

Minority participation in the New Mexico program increased 74 percent for Hispanic students and 950 percent for native Americans from 1994 to 1996.

Participation among Hispanics in Texas nearly tripled over the last 4 years, from under 2,000 students to over 5,000.

These figures are showing us that low-income and underserved students have the same ability to meet the academic challenge and the same need to lower college costs.

STATE PROGRAMS

Each of the States trying to increase AP participation does it a little bit differently, with annual budgets that range from $50,000 to over $2 million.

Some States focus more on training more AP teachers, some on helping schools with start-up funding for new classes and labs, and others on subsidizing part of the AP test fee for some students.

However, despite the growing number of State programs, AP programs are still often distributed unevenly among regions, States, and even among high schools in the same districts.

Some States like Texas are quickly catching up to the rising national participation rate by dedicating a significant amount of consistent State funding.

Meanwhile, other States such as New Mexico are struggling to keep up, with relatively small annual budgets that rise and fall each year.

WHAT THE LEGISLATION DOES

The legislation I am introducing today will both help the remaining States start new programs and help the States that are already involved continue and expand their efforts.

To help expand access to these courses more evenly, this legislation is designed to accommodate the variety of programs that States have designed.

At its core, the bill focuses on supporting State programs that help increase AP participation among underserved groups of students, and helping pay for part of the AP test fees for low-income students.

In addition, it would help make AP programs a part of other federal education initiatives, encouraging States and districts to use education technology and teacher training funds to provide AP courses to underserved areas.

Several Star Schools and State Eisenhower Program grantees are already taking this approach, with tremendous success being reported.

CONCLUSION

Let me conclude by pointing out that this approach has a long, bipartisan

history, and was originally advocated by Members including Senators STEVENS, Kassebaum, and Seymour, as well as Congressmen CUNNINGHAM, GOODLING, OWENS, BECERRA, and MILLER.

Having seen from New Mexico's experience what tremendous good can come out of even a small investment in AP incentives.

For these reasons, I urge my colleagues to consider the many benefits of this approach and support this legislation and the $6 million appropriations request for 1998 that has already been made by the administration.

Mr. President, I encourage my colleagues to support this legislation as the session proceeds.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 748

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 "College Affordability and High Standards Act of 1997".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) far too many students are not being provided sufficient academic preparation in secondary school, which results in limited employment opportunities, college dropout rates of over 25 percent for the first year of college, and remediation for almost one-third of incoming college freshmen;

(2) there is a growing consensus that raising academic standards, establishing high academic expectations, and showing concrete results are at the core of improving public education;

(3) modeling academic standards on the well-known program of advanced placement courses is an approach that many education leaders and almost half of all States have endorsed;

(4) advanced placement programs already are providing almost 30 different college-level courses, serving almost 60 percent of all secondary schools, reaching a 1,500,000 student population (of which 80 percent attend public schools, 55 percent are females, and 30 percent are minorities), and providing test scores that are accepted for college credit at almost 3,000 colleges and universities, every university in Germany, France, and Austria, and most institutions in Canada and the United Kingdom;

(5) 24 States are now funding programs to increase participation in advanced placement programs, including 19 States that provide funds for advanced placement teacher professional development, 3 States that require that advanced placement courses be offered, 10 States that pay the fees for advanced placement tests for some or all students, and 4 States that require that their universities grant uniform academic credit for scores of 3 or better on advanced placement tests; and

(6) the State programs described in paragraph (5) have shown the responsiveness of schools and students to such programs, raised the academic standards for both students participating in such programs and other children taught by teachers who are involved in advanced placement courses, and shown tremendous success in increasing enrollment, achievement, and minority participation in advanced placement programs.

(b) PURPOSES.—The purposes of this Act are—

(1) to encourage more of the 600,000 students who take advanced placement courses but do not take advanced placement exams each year to demonstrate their achievements through taking the exams;

(2) to build on the many benefits of advanced placement programs for students, which benefits may include the acquisition of skills that are important to many employers, Scholastic Aptitude Tests (SAT) scores that are 100 points above the national averages, and the achievement of better grades than the grades of students who have not participated in the programs;

(3) to support State and local efforts to raise academic standards through advanced placement programs, and thus further increase the number of students who participate and succeed in advanced placement programs;

(4) to increase the availability and broaden the range of schools that have advanced placement programs, which programs are still often distributed unevenly among regions, States, and even secondary schools within the same school districts, while also increasing and diversifying student participation in the programs;

(5) to build on the State programs described in subsection (a)(5) and demonstrate that larger and more diverse groups of students can participate and succeed in advanced placement programs; and

(6) to provide access to advanced placement courses for secondary school juniors at schools that do not offer advanced placement programs, increase the rate of secondary school juniors and seniors who participate in advanced placement courses to 25 percent of the secondary school student population, and increase the numbers of students who receive advanced placement test scores for which college academic credit is awarded.

SEC. 3. ADVANCED PLACEMENT DEMONSTRATION PROGRAM GRANTS.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—Subject to subsection (e) and from amounts appropriated under the authority of subsection (g) for a fiscal year, the Secretary shall award grants, on a competitive basis, to eligible entities for the fiscal year to enable the eligible entities to carry out the authorized activities described in subsection (c).

(2) DURATION AND PAYMENTS.—

(A) DURATION.—The Secretary shall award a grant under this section for a period of 3 years.

(B) PAYMENTS.—The Secretary shall make grant payments under this section on an annual basis.

(3) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term "eligible entity" means a State educational agency, or in the case of a State for which the State educational agency does not receive a grant under this section, a local educational agency in the State.

(b) PRIORITY.—In awarding grants under this section the Secretary shall give priority to eligible entities submitting applications under subsection (d) that demonstrate—

(1) a pervasive need for access to advanced placement incentive programs;

(2) the involvement of business and community organizations in the activities to be assisted;

(3) a focus on developing or expanding advanced placement programs and participation in the core academic areas of English, mathematics, and science; and

(4) the availability of matching funds from State or local sources.

(c) AUTHORIZED ACTIVITIES.—An eligible entity may use grant funds under this section to expand access for low-income individuals to advanced placement incentive programs that involve—

(1) teacher training;

(2) preadvanced placement course development;

(3) curriculum coordination and articulation between grade levels that prepares students for advanced placement courses;

(4) curriculum development; and

(5) any other activity related to expanding access to and participation in advanced placement incentive programs for low-income individuals.

(d) APPLICATION.—Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(e) SPECIAL RULE.—The Secretary shall award a grant under this section for a fiscal year only if the College Board expends for the College Board Fee Assistance Program for the fiscal year at least the amount of funds the College Board expended for the program for the preceding fiscal year.

(f) DATA COLLECTION AND REPORTING.—

(1) DATA COLLECTION.—Each eligible entity receiving a grant under this section shall annually report to the Secretary—

(A) the number of advanced placement tests taken by students served by the eligible entity;

(B) the scores on the advanced placement tests; and

(C) demographic information regarding individuals taking the advanced placement tests.

(2) REPORT.—The Secretary shall annually compile the information received from each eligible entity under paragraph (1) and report to Congress regarding the information.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1998, and such sums as may be necessary for each of the 4 succeeding fiscal years.

SEC. 4. ADDITIONAL PRIORITIES FOR ADVANCED PLACEMENT.

(a) STUDENT INCENTIVES.—

(1) BYRD SCHOLARSHIPS.—Section 419G(a) of the Higher Education Act of 1965 (20 U.S.C. 1070d-37(a)) is amended by adding at the end the following: "The criteria shall take into consideration participation and performance in advanced placement courses.".

(2) DISSEMINATION OF ADVANCED PLACEMENT INFORMATION.—Each institution of higher education receiving Federal funds for research or for programs assisted under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.)—

(A) shall distribute to secondary school counselors or advanced placement coordinators in the State information with respect to the amount and type of academic credit provided to students at the institution of higher education for advanced placement test scores; and

(B) shall standardize, not later than 4 years after the date of enactment of this Act, the form and manner in which the information described in subparagraph (A) is disseminated by the various departments, offices, or other divisions of the institution of higher education.

(b) STATE AND LOCAL INITIATIVES.—

(1) JAVITS GIFTED AND TALENTED STUDENTS.—Section 10205(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8035(a)) is amended—

(A) in paragraph (1), by striking "and" after the semicolon;

(B) in paragraph (2), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(3) to programs and projects for gifted and talented students that build on or otherwise incorporate advanced placement courses and tests.".

(2) UPWARD BOUND PROGRAM.—Section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) is amended by adding at the end the following:

"(f) PRIORITY.—The Secretary shall give priority in awarding grants under this section to upward bound projects that focus on increasing secondary school student participation and success in advanced placement courses.".

(3) EISENHOWER PROFESSIONAL DEVELOPMENT.—

(A) FEDERAL ACTIVITIES.—Section 2101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6621) is amended by adding at the end the following:

"(c) PRIORITY.—The Secretary shall give priority in awarding grants and entering into contracts and cooperative agreements under this part to activities that involve training in advanced placement instruction.".

(B) STATE AND LOCAL ACTIVITIES.—Section 2207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6647) is amended—

(i) in paragraph (12), by striking "and" after the semicolon;

(ii) in paragraph (13), by striking the period and inserting "; and"; and

(iii) by adding at the end the following:

"(14) providing professional development activities involving training in advanced placement instruction.".

(4) TECHNOLOGY.—

(A) STAR SCHOOLS.—Section 3204 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6894) is amended by adding at the end the following:

"(i) ADVANCED PLACEMENT INSTRUCTION.—Each eligible entity receiving funds under this part is encouraged to deliver advanced placement instruction to underserved communities.".

(B) EDUCATION TECHNOLOGY GRANTS.—Subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6841 et seq.) is amended—

(i) in section 3134 (20 U.S.C. 6844)—

(I) in paragraph (5), by striking "and" after the semicolon;

(II) in paragraph (6), by striking the period and inserting "; and"; and

(III) by adding at the end the following:

"(7) providing education technology for advanced placement instruction."; and

(ii) in section 3136(c) (20 U.S.C. 6846(c))—

(I) in paragraph (4), by striking "and" after the semicolon;

(II) in paragraph (5), by striking the period and inserting "; and"; and

(III) by adding at the end the following:

"(6) the project will use education technology for advanced placement instruction.".

SEC. 5. ADVANCED PLACEMENT TEST FEE REDUCTION PROGRAM.

Part G of title XV of the Higher Education Amendments of 1992 (20 U.S.C. 1070a–11 note) is amended to read as follows:

"PART G—ADVANCED PLACEMENT TEST FEE REDUCTION PROGRAM

"SEC. 1545. ADVANCED PLACEMENT TEST FEE REDUCTION PROGRAM.

"(a) GRANTS AUTHORIZED.—

"(1) IN GENERAL.—Subject to subsection (g) and from amounts appropriated under the authority of subsection (j) for a fiscal year, the Secretary shall award grants to State educational agencies for the fiscal year to enable the State educational agencies to carry out the authorized activities described in subsection (d).

"(2) AMOUNT.—

"(A) IN GENERAL.—The Secretary shall award a State educational agency a grant under this section for a fiscal year in an amount based on $25 for each eligible low-income individual in the State who takes an advanced placement test for the fiscal year.

"(B) ADJUSTMENTS.—The Secretary may adjust the dollar figure in subparagraph (A) to reflect changes in inflation or in amounts appropriated under the authority of subsection (j).

"(b) INFORMATION DISSEMINATION.—The State educational agency shall disseminate information on the activities assisted under this section to low-income individuals through secondary school teachers and guidance counselors.

"(c) PRIORITY.—The Secretary shall give priority in awarding grants under this section for a fiscal year to State educational agencies serving States that—

"(1) expend State funds—

"(A) to lower advanced placement test fees for eligible low-income individuals; or

"(B) to expand the State pool of teachers prepared to teach advanced placement courses to low-income individuals or in underserved communities;

"(2) use more than a negligible amount of funds provided under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.) or other Federal funds to increase participation in advanced placement incentive programs; or

"(3) operate, on the date of enactment of the College Affordability and High Standards Act of 1997, an advanced placement incentive program.

"(d) AUTHORIZED ACTIVITIES.—A State educational agency may use grant funds under this section for activities that are related to expanding access for low-income individuals or in underserved communities to advanced placement tests, and involve—

"(1) establishing or expanding an advanced placement test fee reduction program for eligible low-income individuals that may include—

"(A) varying the amount or type of advanced placement test fee reimbursement for eligible low-income individuals; or

"(B) establishing a sliding scale advanced placement test fee reimbursement program based on an eligible low-income individual's annual gross income; or

"(2) only in the case of a State that operates an advanced placement test fee reduction program on the date of enactment of the College Affordability and High Standards Act of 1997, expanding the program or carrying out any activity that meets the requirements of subparagraph (A) or (B) of subsection (c)(1).

"(e) SPECIAL RULES.—

"(1) REMAINING FUNDS.—If any funds authorized to be appropriated under the authority of subsection (j) for a fiscal year remain available after the Secretary awards grants to State educational agencies under this section for the fiscal year, then the Secretary shall use the remaining funds to award grants under this section for the succeeding fiscal year.

"(2) MAINTENANCE OF EFFORT.—The State educational agency, in utilizing the proceeds of a grant received under this section, shall maintain the expenditures of the State educational agency for advanced placement incentive programs at a level of such expenditures maintained by the State educational agency for the fiscal year preceding the fiscal year for which the grant is received.

"(f) APPLICATION.—Each State educational agency desiring a grant under this section shall submit to the Secretary an application at such time, in such manner, and accompanied by such information as the Secretary may require.

"(g) REQUIREMENT.—The Secretary shall award a grant under this section for a fiscal year only if the College Board expends for the College Board Fee Assistance Program for the fiscal year at least the amount of funds the College Board expended for such program for the preceding fiscal year.

"(h) DATA COLLECTION AND REPORTING.—

"(1) DATA COLLECTION.—Each State educational agency receiving a grant under this section shall annually report to the Secretary—

"(A) the number of advanced placement tests taken by students served by the State educational agency;

"(B) the scores on the advanced placement tests; and

"(C) demographic information regarding individuals taking the advanced placement tests.

"(2) REPORT.—The Secretary shall annually compile the information received from each State educational agency under paragraph (1) and report to Congress regarding the information.

"(i) DEFINITIONS.—In this section:

"(1) ADVANCED PLACEMENT INCENTIVE PROGRAM.—The term 'advanced placement incentive program' means a program that provides advanced placement activities and services to low-income individuals.

"(2) ADVANCED PLACEMENT TEST.—The term 'advanced placement test' means an advanced placement test administered by the College Board or approved by the Secretary.

"(3) ELIGIBLE LOW-INCOME INDIVIDUAL.—The term 'eligible low-income individual' means a low-income individual (as defined in section 402A(g)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a–11(g)(2)) who is academically prepared to successfully take an advanced placement test as determined by a secondary school teacher or advanced placement coordinator taking into consideration factors such as enrollment and performance in an advanced placement course or superior academic ability.

"(4) SECONDARY SCHOOL; AND STATE EDUCATIONAL AGENCY.—The terms 'secondary school' and 'State educational agency' have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(5) SECRETARY.—The term 'Secretary' means the Secretary of Education.

"(6) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $6,000,000 for fiscal year 1998 and such sums as may be necessary for each of the 4 succeeding fiscal years.".

SEC. 6. DEFINITIONS.

In this Act:

(1) ADVANCED PLACEMENT INCENTIVE PROGRAM.—The term "advanced placement incentive program" means a program that provides advanced placement activities and services to low-income individuals.

(2) ADVANCED PLACEMENT TEST.—The term "advanced placement test" means an advanced placement test administered by the College Board or approved by the Secretary.

(3) ELIGIBLE LOW-INCOME INDIVIDUAL.—The term "eligible low-income individual" means a low-income individual (as defined in section 402A(g)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a-11(g)(2)) who is academically prepared to successfully take an advanced placement test as determined by a school teacher or advanced placement coordinator taking into consideration factors such as enrollment and performance in an advanced placement course or superior academic ability.

(4) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(5) LOCAL EDUCATIONAL AGENCY; SECONDARY SCHOOL; AND STATE EDUCATIONAL AGENCY.—The terms "local educational agency", "secondary school", and "State educational agency" have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(6) SECRETARY.—The term "Secretary" means the Secretary of Education.

(7) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

By Mr. DORGAN (for himself and Mr. CONRAD):

S. 749. A bill to provide for more effective management of the national grasslands, and for other purposes; to the Committee on Energy and Natural Resources.

THE NATIONAL GRASSLANDS MANAGEMENT ACT

Mr. DORGAN. Mr. President, today I am introducing the National Grasslands Management Act. I introduced this bill in the 104th Congress as well. This bill applies primarily to the grasslands in the Dakotas and half a dozen other States. I want to explain briefly what the objective of this bill is and how it came about. North Dakota has been particularly concerned about management reform because it embraces over 25 percent and 1.2 million acres of all national grasslands. Many North Dakota ranching families have earned their livelihood on these lands for several generations.

For several years, however, the ranchers in western North Dakota have been asking for a less cumbersome approach to management of the grasslands and both chambers of the 1995 legislature passed a resolution unanimously asking for management reform on the grasslands as well. Here is why.

The current regulatory regime is cumbersome mainly because the Forest Service must manage the grasslands under the same framework as it does the rest of the National Forest System. It doesn't handle efficiently the day-to-day problems of the ranchers and grazing associations. For example, ranchers have had to wait for as long as 2 to 3 years to get approval for a stock tank because of the labyrinth of regulations that the Forest Service overlays on the management of the grasslands. This legislation will change that by removing the national grasslands from the National Forest System and creating a new structure of rules specifically suited to the ecology of the grasslands.

However, it is not only the rancher's needs that my bill addresses. It will also protect a broad range of uses on the public lands. All hunting, fishing, and recreational activities will continue as before and environmental protections will continue actually be strengthened. Further, it is my intention that the public must be involved in the decisionmaking process as these new rules are implemented. Only by working together can we solve the problems on the grasslands.

Let me reassure the conservation community that this bill, which was originally incorporated as part of a larger grazing package during the 104th Congress, will not make grazing the dominant use of the public lands at the expense of other uses. This bill includes specific provisions to protect hunting and fishing, and preserves the multiple uses of the national grasslands, preserves public participation in the management of the grasslands and keeps the link between the grasslands and major environmental laws such as the Endangered Species Act, the Clean Air Act, and the Clean Water Act.

I have worked diligently with the ranchers, environmentalists, and other recreational users of the grasslands to ensure a balanced approach to grasslands management. The result of that work is the National Grasslands Management Act that I am introducing today.

The legislation explicitly states that there will be no diminished hunting or fishing opportunities, that all applicable environmental laws will apply to those lands, and that the grasslands will be managed under a multiple use policy. The bill directs the Secretary to promulgate regulations which both promote the efficient administration of livestock agriculture and provide environmental protection equivalent to that of the National Forest System.

In short, I believe that the National Grasslands Management Act is a solid piece of legislation that will make the administration of the grasslands more responsive to the people who live there, without diminishing the rights and opportunities of other multiple users of this public land. It will help to preserve the historic ranching economy and lifestyle of western North Dakota and other areas in the West will be protecting the environment. I urge my colleagues to support this initiative.

By Mr. DORGAN (for himself and Mr. CONRAD):

S. 750. A bill to consolidate certain mineral interests in the National Grasslands in Billings County, North Dakota, through the exchange of Federal and private mineral interests to enhance land management capabilities and environmental and wildlife protection, and for other purposes; to the Committee on Energy and Natural Resources.

MINERAL EXCHANGE LEGISLATION

Mr. DORGAN. Mr. President, today I am introducing a bill that will facilitate a mineral exchange in western North Dakota. I introduced this bill at the end of the last Congress and hope to move forward in this Congress with a proposal based on that effort. The purpose of this mineral exchange is to consolidate certain mineral estates of both the U.S. Forest Service and Burlington Resources, formerly known as Meridian Oil. This consolidation will produce tangible benefits to an economically distressed region in North Dakota and also protect environmentally-sensitive areas.

For years, the land and mineral ownership pattern in Western North Dakota has been extremely fragmented. In many cases the Forest Service owns and manages the surface land while private parties, such as Burlington Resources, own the subsurface mineral estates. This fragmentation has not only frustrated the management objectives of the Forest Service, it has also inhibited mineral exploration and development.

The bill will definitely promote environmental protection. By consolidating the mineral estates, the Forest Service will have the opportunity to protect the view-shed along the wonderfully scenic Little Missouri River, creating a more attractive hunting, fishing, and hiking area. Further, the mineral exchange will protect certain bighorn sheep lambing areas. The area protected by the mineral exchange is one of the last places that provides adequate habitat and escape cover for bighorn sheep. The Forest Service and Burlington have already signed a memorandum of understanding which will bolster the protection of wildlife and wildlife habitat after the exchange is concluded. The exchange is also supported by all major environmental groups in the state, the Governor of North Dakota, and the Bureau of Land Management's Dakotas Resource Advisory Council.

The bill will also strengthen the regional economy. Burlington Resources supports this legislation. Burlington will have better opportunities for mineral exploration and development within its consolidated mineral estates.

This increased development will benefit not only Burlington, but also Billings County and the State of North Dakota through increased tax revenues.

One point that I would like to make clear is that this mineral exchange should in no way be seen as affecting the multiple uses of the land. Current multiple uses, such as recreation, livestock grazing, watershed protection or fish and wildlife purposes, will continue as before. This is not a wilderness bill, but a proposal to swap mineral rights in order to enhance the environment and to stimulate economic activity in a depressed area. I do not favor the designation of wilderness within Billings County.

May I further underscore that this mineral exchange costs the U.S. taxpayer nothing. The bill provides for an exchange of about the same number of acres with equivalent monetary values. Yet, this no-cost transaction will yield substantial economic, environmental, and management dividends.

Further, the bill does not rely on the Government imposing a solution. Rather, this voluntary agreement embodies a consensus reached between the affected parties, the mineral holders, the state and its citizens, the environmental organizations, and the U.S. Forest Service.

Finally, may I stress that there is an urgent need for action on the exchange. I would ask unanimous consent that the text of the bill, letters of support from the Governor of North Dakota, the Bureau of Land Management's Dakotas Resource Council, and the Sierra Club, and the memorandum of understanding signed by the Forest Service and Burlington Resources be entered into the RECORD in order to aid my colleagues in their deliberations on the bill. In turn, I urge my colleagues to support timely passage of this bill.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 750

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

SECTION 1. EXCHANGE OF CERTAIN MINERAL INTERESTS IN BILLINGS COUNTY, NORTH DAKOTA.

(a) PURPOSE.—The purpose of this section is to consolidate certain mineral interests in the Little Missouri National Grasslands in Billings County, North Dakota, through the exchange of Federal and private mineral interests in order to enhance land management capability and environmental and wildlife protection.

(b) EXCHANGE.—Notwithstanding any other provision of law—

(1) if, not later than 45 days after the date of enactment of this Act, Burlington Resources Oil & Gas Company (referred to in this section as "Burlington" and formerly known as Meridian Oil Inc.), conveys title acceptable to the Secretary of Agriculture (referred to in this section as the "Secretary") to rights and interests identified on the map entitled "Billings County, North Dakota, Consolidated Mineral Exchange—November 1995", by quitclaim deed acceptable to the Secretary, the Secretary shall convey to Burlington, subject to valid existing rights, by quit-claim deed, all Federal rights and interests identified on that map; and

(2) if Burlington makes the conveyance under paragraph (1) and, not later than 180 days after the date of enactment of this Act, the owners of the remaining non-oil and gas mineral interests identified on that map convey title acceptable to the Secretary to all rights, title, and interests in the interests held by them, by quitclaim deed acceptable to the Secretary, the Secretary shall convey to those owners, subject to valid existing rights, by exchange deed, all Federal rights, title, and interests in National Forest System lands and National Grasslands in the State of North Dakota as are agreed to by the Secretary and the owners of those interests.

(c) LEASEHOLD INTERESTS.—As a condition precedent to the conveyance of interests by the Secretary to Burlington under this section, all leasehold and contractual interests in the oil and gas interests to be conveyed by Burlington to the United States under this section shall be released, to the satisfaction of the Secretary.

(d) APPROXIMATE EQUAL VALUE OF EXCHANGES WITH OTHER INTEREST OWNERS.—The values of the interests to be exchanged under subsection (b)(2) shall be approximately equal, as determined by the Secretary.

(e) LAND USE.—

(1) EXPLORATION AND DEVELOPMENT.—The Secretary shall grant to Burlington, and its successors and assigns, the use of Federally-owned surface lands to explore for and develop interests conveyed to Burlington under this Act, subject to applicable Federal and State laws.

(2) SURFACE OCCUPANCY AND USE.—Rights to surface occupancy and use that Burlington would have absent the exchange under this Act on its interests conveyed under this Act shall apply to the same extent on the federally owned surface estate overlying oil and gas rights conveyed to Burlington under this Act.

(f) ENVIRONMENTAL PROTECTION FOR ENVIRONMENTALLY SENSITIVE LANDS.—All activities of Burlington, and its successors and assigns, relating to exploration and development on environmentally sensitive National Forest System lands, as described in the "Memorandum of Understanding Concerning Certain Severed Mineral Estates, Billings County, North Dakota", executed by the Forest Service and Burlington and dated November 2, 1995, shall be subject to the terms of the memorandum.

(g) MAP.—The map referred to in subsection (b) shall be provided to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives, kept on file in the office of the Chief of the Forest Service, and made available for public inspection in the office of the Forest Supervisor of the Custer National Forest within 45 days after the date of enactment of this Act.

(h) OTHER LAWS.—The exchange under subsection (b)(1) shall be deemed to meet the requirements of all other Federal laws, including all land exchange laws, environmental laws, and cultural laws (such as the National Historic Preservation Act (16 U.S.C. 470 et seq.)), and no further compliance with any other law shall be required in order to implement the exchanges.

(i) CONTINUATION OF MULTIPLE USE.—Nothing in this Act shall limit, restrict, or otherwise affect the application of the principle of multiple use (including outdoor recreation, range, timber, watershed, and fish and wildlife purposes) in any area of the Little Missouri National Grasslands. Federal grazing permits or privileges in areas designated on the map entitled "Billings County, North Dakota, Consolidated Mineral Exchange—November 1995" or those lands described in the "Memorandum of Understanding Concerning Certain Severed Mineral Estates, Billings County, North Dakota", shall not be curtailed or otherwise limited as a result of the exchange authorized by this Act.

OFFICE OF THE GOVERNOR,
Bismarck, ND, July 25, 1996.

Hon. BYRON L. DORGAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR DORGAN: The State of North Dakota supports the introduction of a bill which would implement a proposed mineral exchange between the United States Forest Service and Meridian Oil, Inc. This effort will advance our "2020" program to plan and implement sound management of the Badlands well into the future.

Current land and mineral ownership patterns in the Bullion Butte and Ponderosa Pine areas of the Little Missouri National Grasslands are fragmented, thereby complicating management of surface and mineral resources.

The proposed exchange is an opportunity to consolidate ownership, enhance natural badlands habitat adjacent to the Little Missouri River and facilitate mineral development while reducing conflict by competing activities.

Finally, I have included a summary describing more completely, the intended exchange and its effect.

Sincerely,

EDWARD T. SCHAFER,
Governor.

Enclosure.

LEGISLATION TO EFFECT AN EXCHANGE OF MINERAL RIGHTS IN THE LITTLE MISSOURI NATIONAL GRASSLANDS, BILLINGS, ND

For over a decade, the United States Forest Service (USFS) and Meridian Oil, Inc. (Meridian) have been considering a possible exchange of oil and gas rights in the Bullion Butte and Ponderosa Pine areas of the Little Missouri National Grasslands in North Dakota. The land ownership pattern in those areas is very fragmented, with both federal and privately owned mineral rights and federal surface and private subsurface estates. This lack of unity between the surface and subsurface estates and intermixture of public and private mineral rights have complicated both effective management of surface resource values and efficient extraction of minerals. The USFS views an exchange to consolidate mineral ownerships as an opportunity to protect bighorn sheep and their habitat and the viewshed in the Little Missouri River corridor. Meridian expects an exchange to facilitate exploration for and development of oil and gas by reducing the conflict such activities would have with other sensitive Grasslands resources.

At the urging of Senator Dorgan and Governor Schafer, the USFS and Meridian reached an agreement last year on an exchange of certain federal and private mineral rights and the imposition of certain constraints on Meridian oil and gas activities. The agreement would be implemented by this legislation.

What the legislation does. The legislation would accomplish the following:

Direct the completion of the transfer of Meridian's mineral rights in approximately 9,582 acres to the USFS for federal oil and gas rights in 8,796 acres, all in Billings County, North Dakota, within 45 days of enactment.

Authorize the exchange of any other private mineral rights in the same area for federal mineral rights within 6 months of enactment.

Deem the mineral rights to be transferred in the USFS/Meridian exchange to be of equal value (since the two parties have already negotiated the exchange and are of the informed opinion that the values are equivalent) and require that the other mineral rights to be transferred be of approximately equal value.

Require Meridian, as a condition for the exchange, to secure release of any leasehold or other contractual rights that may have been established on the Meridian oil and gas interests that will be exchanged.

Assure Meridian that it will have access across federal lands to be able, subject to applicable federal and State laws, to explore for and develop oil and gas on the interests it will receive in the exchange and that it will have the same surface occupancy and use rights on the interests it will receive that it now holds on the interests to be surrendered.

Find that the USFS/Meridian exchange meets the requirements of other federal exchange, environmental, and cultural laws that would apply if the exchange were to be processed without Congressional approval and direction.

Assure that no provision of the legislation can be interpreted to limit, restrict, or otherwise affect the application of the principle of multiple use (including such uses as hunting, fishing, grazing and recreation) in the Grasslands.

In addition to facilitating the exchange, the legislation would memorialize a Memorandum of Understanding (MOU) also negotiated and executed by the USFS and Meridian concerning management of certain Meridian oil and gas properties that will remain in Grasslands' areas with high surface resource values. In particular the MOU, adopted by reference in the legislation, obligates Meridian to make its best efforts to locate any oil and gas facilities and installations outside of the 1/4 mile view corridor on either side of the stretch of the Little Missouri River being considered for designation as a Wild and Scenic River and to access certain other property adjacent to an important bighorn sheep lambing area only by directional drilling.

Equally important is what the legislation does not do. It does:

Not increase the amount of surface which the USFS controls. The USFS currently controls the surface on essentially all the land involved in the exchange, and this will not change since only mineral interests will be transferred.

Not decrease the federal land available for oil and gas development. To the contrary, in the exchange the federal government will receive a net gain of almost 800 acres in mineral rights that may be leased for exploration and development by other parties. And, by consolidating federal mineral rights which now are scattered in a checkerboard pattern, access to them should be improved. The extent to which existing and new federal mineral rights are leased to private parties will be decided by the USFS in the ongoing planning and Environmental Impact Statement for the Southern Little Missouri Grasslands. The "multiple use" provision of the legislation makes certain the legislation will not affect that decisionmaking process.

Not decrease revenue to the county, state, and federal governments. For the same reason that the exchange would not decrease land available for oil and gas development, the economic interests of taxing entities and the oil and gas industry should not be affected significantly by the exchange. In fact, with Meridian consolidating its mineral holdings in a more manageable and less sensitive unit, area oil and gas activity should increase and produce a net positive economic effect.

Not provide either Meridian or USFS with mineral rights of greater value than those they now hold. The USFS with the assistance of the Bureau of Land Management, has reached the conclusion that the mineral rights to be exchanged between the USFS and Meridian are of equal value. Some additional value will accrue to both sets of mineral rights transferred by the exchange because of the greater ease of access and management that will result from consolidation. The legislation requires that any other mineral rights exchanged by other parties under the legislation be of approximately equal value.

Not resolve the issue of wilderness designation. Some parties desire wilderness protection for the area. Other parties, including Meridian, oppose wilderness designation, and the USFS has not indicated any intent to establish a wilderness. The legislation would not increase, or decrease, the prospect for wilderness designation since wilderness may be designated whether the mineral rights are privately or publicly owned, the designation can only be accomplished by a separate Act of Congress, and the legislation's "multiple use" language makes clear the intent of Congress that the exchange is not intended to affect the wilderness issue.

DAKOTAS RESOURCE
ADVISORY COUNCIL,
Dickinson, ND, September 13, 1996.

Hon. ED SCHAFER,
Governor of North Dakota, State Capitol, Bismarck, ND

DEAR GOVERNOR SCHAFER: The Dakota Resource Advisory Council (RAC), a 12-member body appointed by the Secretary of the Interior, represents users of public lands in North and South Dakota. The RAC provides opportunities for meaningful public participation in land management decisions at the district level and encourages conflict resolution among various interest groups.

At our meeting in Dickinson, North Dakota on September 9, 1996, the RAC reviewed and discussed the Meridian Mineral Exchange that you have been considering. After careful review by our RAC, a resolution was passed indicating our support for legislation to allow the Meridian Mineral Exchange to be completed by the Bureau of Land Management.

Since there is considerable activity in this area, there is a definite urgency to move this legislation in the remaining days of this Congress. The Dakota RAC respectfully requests the introduction and passage of legislation on the Meridian Mineral Exchange.

If we can be of further assistance to your efforts in this regard, we are most willing to help. District Manager, Doug Burger, has more details with respect to the exchange and we have asked him to assist you.

Thank you for considering the recommendations of the Dakota RAC.

Sincerely,

MARC TRIMMER, *Chair,*
Dakota RAC.

DACOTAH CHAPTER OF
THE SIERRA CLUB,
Mandan, ND, September 14, 1995.

Re meridian mineral exchange.

Hon. BYRON DORGAN,
U.S. Senate, Washington, DC.

DEAR SENATOR DORGAN: I am writing to convey the Sierra Club's support for the "agreement in principle" for a mineral exchange between Meridian Oil Inc. (MOI) and the Bureau of Land management (BLM) / United States Forest Service (USFS). This agreement follows extensive negotiations between MOI, USFS, BLM, the North Dakota Game and Fish Department (NDGF) and local conservation organizations.

It is my understanding that there are two components to the agreement. Part One involves the actual exchange of the mineral estate. Part Two outlines a Memorandum of Understanding (MOU) between the USFS and MOI to protect the viewshed of the Little Missouri State Scenic River while still allowing MOI to access their minerals. The MOU also addresses a plan to directionally drill an oil well to protect a bighorn sheep lambing area.

I have also contacted the enclosed list of conservation organizations and they have also stated their support for Parts One and Two of the agreement as proposed. I join them in urging you to introduce enabling legislation at the earliest opportunity. Your efforts throughout this process have been very much appreciated. Please contact me if there is anything conservationists can do to facilitate this mineral exchange.

CONSERVATION ORGANIZATIONS IN SUPPORT OF THE MINERAL EXCHANGE

Dacotah Chapter of the Sierra Club.
National Wildlife Federation.
National Audubon Society.
Clean Water Action.
North Dakota Chapter of the Wildlife Society.
Bismarck Mandan Bird Club.
Lewis and Clark Wildlife Club.

MEMORANDUM OF UNDERSTANDING CONCERNING CERTAIN SEVERED MINERAL ESTATES, BILLINGS COUNTY, NORTH DAKOTA

The Memorandum of Understand (MOU) is between Meridian Oil Inc. (Meridian) with offices in Englewood, Colorado and the U.S. Forest Service, Custer National Forest (Forest Service).

The intent of the MOU is to set forth agreement regarding development of certain oil and gas interests beneath Federal surface. This MOU is in addition to, and does not abrogate, any rights the United States otherwise has to regulate activities on the Federal surface estate or any rights Meridian otherwise has to develop the oil and gas interest conveyed.

The provisions of this MOU shall apply to the successors and assigns of Meridian.

The MOU may be amended by written agreement of the parties.

Section A. View Corridor—Little Missouri River

Includes the following land (Subject Lands) in Township 137N., Range 102W.:

Section 3: Lots 6, 7, 9–12, 14–17 (+) River Bottom 54.7 acres

Section 10: Kits 1–4, N½, N½SE¼, SE¼SE¼ (+) River Bottom 7.3 acres

Section 14: Lots 1, 2, 3, 6, 7, NW¼NE¼., NW¼SW¼, S½S½ (+) River Bottom 41.4 acres

Section 24: Lots 1-9, NE¼, S½NW¼, NE¼NW¼ (+) River Bottom 75.84 acres

1. The purpose of this Section is to set forth the agreements that Meridian and the Forest Service have made concerning reasonable protection of the view from the Little Missouri River which has been identified as potentially suitable for classification as a Wild and Scenic River under the Wild and Scenic Rivers Act. This section of the MOU shall remain in effect as long as the Forest Service maintains a corridor for this purpose.

2. The Forest Service has designated a ¼ mile corridor on either side of the River for protection of the view from the River, and this Section applies to the location of permanent improvements within said corridor and not to temporary activities such as seismic operations within said corridor.

3. Meridian agrees to use its best efforts to locate permanent production facilities, well sites, roads and other installations outside the ¼ mile corridor on the Subject Lands. However, such facilities may be located within the ¼ mile corridor if mutually agreed to by the parties in writing.

4. The Forest Service agrees that Meridian may access its minerals within or without the ¼ mile corridor of the subject lands from a well or wells whose surface location is on adjoining lands in which Meridian owns the severed mineral estate.

Section B. Development of T.138N., R102W., Section 12: S½

1. The purpose of this section is to set forth the agreement that Meridian and the Forest Service have made concerning the option to develop the mineral resources in the S½ Section 12 from specified locations in 'Section 13, T.138N., R.102W.

2. If, at any time, Meridian, at its sole discretion, decides that the development potential of the S½ Section 12 justifies additional directional drilling the following options are hereby made available to them by the Forest Service:

A. Directional drilling from an expanded pad on the Duncan MP#1 location in Section 13, T.138N., R.102W. or

B. Directional drilling from a location in Section 13 adjacent to the county road and screened from the bighorn sheep lambing area located in Section 12.

If Meridian elects to develop the S½ Section 12 from one of the specified locations in Section 13, surface disturbing activities related to development and production will only be allowed from June 16 through October 14, annually.

3. This section of the MOU shall remain in effect as long as the S½ of Section 12 is subject to the present, or a future, oil and gas lease.

STEVEN L. REINERT,
Attroney-in-Fact,
Meridian Oil, Inc.
NANCY CURRIDEN,
Forest Supervisor,
Custer National Forest.

By Mr. SHELBY (for himself, Mr. MURKOWSKI, Mr. CRAIG, and Mr. BURNS):

S. 751. A bill to protect and enhance sportsmen's opportunities and conservation of wildlife, and for other purposes; to the Committee on Environment and Public Works.

SPORTSMEN'S BILL OF RIGHTS ACT OF 1997

Mr. SHELBY. Mr President, today, I am pleased to join my colleagues and fellow Congressional Sportsmen's Caucus cochairs Senators BURNS, CRAIG and MURKOWSKI in introducing the Sportsmen' Bill of Rights Act of 1997.

Hunting and fishing are traditions that have been an integral part of our history since the inception of our Nation and are among the most basic of our heritage. Through the ages, sportsmen have shown a deep respect and appreciation for the land and have made a concerted effort to wisely use our Nation's renewable natural resources. All across this country, very successful alliances have been formed between hunting and fishing enthusiasts and conservationists. Both are very concerned about protecting natural habitats, and when working together their force includes some 70 percent of the U.S. population.

Today, millions of Americans participate in these venerable pastimes. Over 60 million Americans enthusiastically participate in fishing activities and 14 million citizens are licensed hunters. These recreational activities are a significant boost to many local and State economies, as well as the Nation. Sportsmen spent more than $67.9 billion last year on goods and services supporting an industry that employs more than a million people across the country. When discussing the contributions sportsmen have made to our Nation, often overlooked is the fact that sportsmen have carried the burden of financing fish and wildlife management and preservation through the years.

America owes our sportsmen a debt of gratitude for their pioneering achievements on behalf of wildlife and habitat conservation. The Sportsmen's Bill of Rights recognizes the important role fishing and hunting play in our society by providing anglers and hunters with explicit access to public lands; opening the process of wildlife management and protecting the integrity of the sportsmen's trust funds. This bill ensures that hunting and fishing opportunities are considered in Federal land management decisions, and provides a clear procedure for Federal agencies to follow in their management of our Federal public lands.

For too long, sportsmen have been unduly penalized from equitably sharing public land. This bill mandates that Federal agencies analyze the effects of potential hunting and fishing limitations prior to enacting new land use policies. Hunters and anglers should be granted the right to intervene in any civil action where law would limit the use of land for hunting and fishing. The provisions in the sportsmen's bill of rights assure that Federal agencies support, encourage and enhance the opportunities for fishing and hunting.

While this bill promotes access to public lands, it recognizes the need for exceptions and exclusions due to national security concerns, public safety matters, emergency situations and policy reasons that are incompatible with hunting or fishing. This act cannot be used to force the opening of National Parks or monuments administered by the National Park Service to fishing or hunting and this legislation is not intended to place fishing and hunting above other land management priorities. The sportsmen's bill of rights is aimed at setting forth tangible management guidelines.

Additionally, this year marks the 60th anniversary of one of our Nation's most successful Federal restoration programs, the Pittman Robertson Act. P-R, as it is often referred to, is a partnership created by the State fish and wildlife agencies and the funds provided by the anglers and hunters. Sportsman across the land have sponsored, supported and maintained the integrity of P-R throughout the last 60 years. The funds are raised through an excise tax on sportsman's goods and subsequently, placed in a fund to be allocated to the States yearly in accordance with statutory formulas. Today $357 million is raised for wildlife restoration through P-R funds in conjunction with the Dingell-Johnson Act and the Wallop-Breaux Act.

Due to the congenial partnership of our Nation's hunters and anglers with Federal-State agencies, America's wildlife is thriving. For every taxpayer dollar invested in wildlife conservation, sportsmen and women contribute $9 dollars. At the turn of the century, only 41,000 elk were counted across our Nation. While the Nation's population soared and massive development occurred, sportsmen's conservation initiatives have enable the elk population in just 10 western States to increase to approximately 810,000. Similar stories can be applied to numerous species including the white-tailed deer, the Canada goose, and the wild turkey. Hunters and anglers have been and will continue to be the champions of wildlife and habitat conservation. These examples just begin to demonstrate the value of anglers and hunters to our society.

The sportsmen's bill of rights will protect and enhance sportsmen's opportunities and enhance the conservation of wildlife. I urge my colleagues to join me by cosponsoring this important legislation.

By Mr. THURMOND (for himself, Mr. COATS, Mr. HOLLINGS, Mr. HELMS, Mr. FAIRCLOTH, and Mr. HUTCHINSON):

S. 752. A bill to amend title 23, United States Code, to modify the minimum allocation formula under the Federal-aid highway program, and for other purposes; to the Committee on Environment and Public Works.

HIGHWAY TRUST FUND LEGISLATION

Mr. THURMOND. Mr. President, I rise today to introduce legislation to

revise the formula by which the highway trust fund is apportioned and distributed to the States under the Federal Aid to Highways Program. This measure is cosponsored by Senators COATS, HOLLINGS, HELMS, FAIRCLOTH, and HUTCHINSON from Arkansas.

The current formula was established in 1956 to support the building of a nationwide, interstate highway system. At that time, it was necessary to redistribute the tax revenues from some States to those with large land areas and low population. As it exists now, the present formula is inefficient and unfair. It is inefficient because it is based upon population statistics that were current in 1980. There is no allowance for population shifts in the future and, as a result, high growth areas of the country are left on their own to provide the infrastructure to support growing populations. It is unfair because the disparity in the rates of return creates a policy that, in effect, values a mile of road in one State three times as much as a similar mile of road in another State.

Mr. President, the interstate highway program has been an enormous success and is now virtually complete. However, the circumstances which gave rise to the present formula have changed and it is now time for a new one. Our legislation corrects both the inefficiency and unfairness of the current formula. It amends the law to provide that the minimum annual allocation to each State from the highway trust fund be equal to that State's share of contributions to the fund. This formula will allocate funds where they are most needed. The General Accounting Office, in a November 1995 study, noted that highway trust fund contributions bear a high correlation to the need for highway funding in a given area. Moreover, under this new formula, as population grows and economic activity increases, additional infrustructure funding will be available.

Mr. President, this bill presents a fair and workable formula for distributing funds under the next highway bill. I urge my colleagues to join us in support of this legislation.

Mr. President, I ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 752

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

SECTION 1. MINIMUM ALLOCATION.

(a) FISCAL YEAR 1998 AND THEREAFTER.—Section 157(a) of title 23, United States Code, is amended by adding at the end the following:

"(5) FISCAL YEAR 1998 AND THEREAFTER.—In fiscal year 1998 and each fiscal year thereafter, on October 1, or as soon as possible thereafter, the Secretary shall allocate among the States amounts sufficient to ensure that a State's percentage of the total apportionments in each fiscal year and allocations for the prior fiscal year from funds made available out of the Highway Trust Fund is not less than 100 percent of the percentage of estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund in the latest fiscal year for which data are available.".

(b) CONFORMING AMENDMENT.—Section 157(a)(4) of title 23, United States Code, is amended by striking the paragraph designation and all that follows before "on October 1" and inserting the following:

"(4) FISCAL YEARS 1992–1997.—In each of fiscal years 1992 through 1997,".

Mr. HOLLINGS. Mr. President, today I am proud to join Senator THURMOND in introducing legislation to bring fairness to Federal transportation funding. This legislation would guarantee that the Federal Government would return to each State the same share of gas tax funds that it had paid into the transportation trust fund.

In 1991, I voted against the current transportation law, known as "ISTEA." Supporters advocated the legislation as a forward-looking consolidation of Federal highway programs, but the heart of the bill—the way it distributed money—looked backward in every sense. It tightly tied each State's future funding to past funding levels. It used old census data. It used old formula factors which do not even pass the "straight face" test. As the GAO reported, "the Congress elected not to change the basic formula structure" and thus the key factors in the formula are "irrelevant" and "divorced from current conditions." In other words, we are currently targeting more than $20 billion of taxpayer funds to the wrong places for the wrong reasons.

South Carolina bears the brunt of this inequity. In 1995, South Carolina received only 52 cents back for each dollar it paid to the highway trust fund. Over the period of ISTEA, South Carolina received only 70 cents back on the dollar. Let me add that I am not unaware of the overall Federal funding situation in South Carolina. South Carolina gets back more Federal tax money than its citizens contribute. Mr. President, that is as it should be. We are one Nation, and some parts of the Nation have lower average incomes. That is no excuse for targeting highway funds in a way that an objective study found to be "irrelevant" and "divorced from current conditions."

It is rare that a $20 billion problem has a simple solution. I refer again to the independent assessment of the GAO, which said that basing Federal payments to States on the amounts States paid in would, would meet two major, commonsense objectives of any highway program:

First, it would be a "relatively simple and direct method of fund distribution."

Second, it would "tend to correlate highly with highway needs, particularly for major highways."

Furthermore, the GAO found that basing funding on gas tax paid in would effectively kill two birds with one stone by accounting for highway needs and for equity between States with one formula factor.

Mr. President, a program that does not target funds to today's needs, and which mires States and the Congress in arcane complexity, cries out for revision. The legislation we introduce here today is a good starting point to better address our Nation's highway needs. I urge my colleagues to join us in supporting this bill.

By Mr. MACK (for himself, Mr. LIEBERMAN, and Mr. BROWNBACK):

S. 753. A bill to amend the Internal Revenue Code of 1986 to provide for individuals who are residents of the District of Columbia a maximum rate of tax of 15 percent on income from sources within the District of Columbia, and for other purposes; to the Committee on Finance.

THE DISTRICT OF COLUMBIA ECONOMIC RECOVERY ACT

Mr. MACK. Mr. President, I am pleased to introduce along with my colleague Senator LIEBERMAN the District of Columbia Economic Recovery Act. The social, administrative, and fiscal problems of our Nation's capital are well documented. The District of Columbia is facing its greatest economic crisis since its establishment in 1790. Congress has taken major steps, including the creation of a financial control board, to assist the city during this current financial crisis. Despite efforts by the District's Government and Congress to manage these problems, the city has a long way to go to achieve economic self-sufficiency.

Mr. President, at the root of the District's problems is an evereroding middle class. Since 1950, Washington's population has declined by nearly 250,000 residents; 68,000 left between 1988 and 1993 alone. The vast majority of these people were middle-class families whose taxes funded the city's operations. Historically, the District of Columbia has tried to offset this decline by raising taxes, leading to even more residents leaving the city in search of lower tax rates, better schools and safer streets.

We believe that the best way to help the District is to promote economic growth, and the best way to promote economic growth is to significantly reduce the tax burden on its residents. Economic growth will mean more jobs, more opportunity, greater private sector investment and ultimately a better quality of life in the Nation's capital.

The DCERA is an important step in luring taxpayers back to the District of Columbia. It provides tax incentives,

including a 15-percent flat income tax rate for all District resident and deductions of: $15,000 for individual filers; $25,000 for head of household filers; and $30,000 for married filers.

Many critics of the flat rate argue that it is a bonanza for the rich and the poor, but does little to address the needs of the middle class. We have added several incentives designed specifically to assist the middle class. First, the bill includes a $5,000 first time home buyers' provision designed to assist middle-class families in purchasing homes within the District of Columbia. Second, the bill maintains the current home mortgage and charitable deductions. Finally, we have included a zero capital gains tax rate to help spur investment by District and non-District residents. Middle class residents should benefit significantly from this provision because it encourages them to invest their earnings and it offers a generous reward if and when a middle-class resident sells their homes. Besides these incentives we have included a brownfields provision that encourages companies to clean up environmentally damaged land that is sure to improve the quality of life for District residents and their families.

This bill also provides an opportunity for all Americans to participate in the economic stability of the District of Columbia by allowing them to have a zero capital gains rate for investments made within the District. We believe that Americans everywhere have great pride in this city and truly want it to represent all the best aspects of this Nation, including a vibrant economy. For too long the city's economy has been linked with the growth and declines of the Federal Government. I believe that the capital gains provisions will encourage nongovernmental economic investment in the District of Columbia.

Washington, DC is not only home to the people who live here, it is truly the Nation's city.

We believe that these incentives, along with responsible and sensible financial management, are just what this great city needs to regain its past glory.

Mr. LIEBERMAN. Mr. President, I am delighted to join with Senators MACK, and BROWNBACK as an original cosponsor of this important legislation, the District of Columbia Economic Recovery Act of 1997 (DCERA).

The District of Columbia belongs to each and every one of us. As citizens of the United States, we have a stake in the successes, and a stake in the failures, of Washington, DC. It is America's city. But, for a variety of reasons, not all of them easily explained, Washington is in desperate financial straits. The here and now financial prospects are grim for the city, and the future gets grimmer. This is largely because middle-class families, the backbone of any successful community, are fleeing the District in alarming numbers.

The legislation we are introducing today would instantly transform our Nation's capital, making it a more appealing place to live, to invest, to build, to buy, and to work. This bill is designed to reverse the flow of businesses and the middle-class residents who currently are fleeing the city for the suburbs. Those still in the District would have new incentives to stay. And many others now living elsewhere would have a very strong incentive to move into the District with their families and with their businesses.

We cannot make the schools better in the District overnight. We cannot promise crime-free streets overnight. We cannot promise a revitalized economy overnight. What we can do is provide middle-class tax relief in the District, and as a way to lure these middle-class taxpayers to the District as a way to reestablish a tax base in the District. And once we bring these people back, safer streets and better schools can follow.

This legislation is modeled on legislation that has been introduced in the House with broad, bipartisan support, by Representative ELEANOR HOLMES NORTON. Both the House and the Senate version of the DCERA establish a maximum Federal tax rate of 15 percent. Both bills double the personal exemption, which would eliminate Federal income taxes for single residents who make up to $15,000 a year and married couples filing jointly who make up to $30,000 a year. At the same time, the bill retains the mortgage and charitable deductions and would allow a taxpayer to file under the old system, if that is what they prefer to do. In contrast to Representative NORTON's bill, which provides capital gains tax relief only to D.C. residents, our legislation establishes a zero capital gains rate for D.C. investments held by D.C. or non-D.C. residents for 3 years. We believe that the broader exemption is necessary to spur as much investment in the District as possible. Also in contrast to the House DCERA, our bill includes a $5,000 credit for first time District home purchases and includes a provision to clean up abandoned brownfields within the District. Members of Congress not representing the District could not take advantage of the tax incentives in the bill, and the District already has enacted legislation ensuring that it would not take advantage of the Federal tax incentives in this bill by raising local taxes.

I very much see this bill as a first step. Some of the urban problems Washington faces are unique to Washington because Washington has no State, no broader tax base, to draw on. At the same time, many of Washington's problems are problems that are faced by cities all across this country. If this approach works in Washington, I hope we can try it in Bridgeport, New Haven, and Hartford as well.

I should note that, unlike some proponents of this legislation, I am at best an agnostic on a flat tax. I believe progressivity in our tax rates is inherently fair and am pleased that the legislation we are introducing today has elements of that progressivity by providing such a generous personal exemption. At the same time, a good number of our cities are facing the loss of their middle-class population and the only way to rebuild that base may be through bold measures like a flat tax which has clear and compelling benefits for the middle class. The people we are really anxious to bring back to our cities are the 28 percenters. Under the current Tax Code a typical family in the 28-percent bracket would be a couple with two children who make roughly between $39,000 and $95,000 after deductions. Our bill would create a very favorable tax incentive for these people to stay in, or move to, the District.

Mr. President, the most important thing there is to say about urban policy in this country is that we really do not have an urban policy. We know what has not worked; today we are introducing legislation that we believe will work and there is no better place to start than in Washington, DC, a city that belongs to all Americans. I urge my colleagues to join us in cosponsoring this important legislation.

Mr. BROWNBACK. Mr. President, I am pleased to join with my distinguished colleagues today to introduce the District of Columbia Economic Recovery Act, a bill which would jumpstart the District's economy and set in motion a commercial, social, and cultural renaissance that will once again make all Americans proud of their Capital.

I am delighted to find that the District's City Council shares my belief that the enactment of this legislation will be very good for the city. On May 9, 1997, in a resolution to accompany its qualified endorsement of the administration's bailout plan, the Council stated that ". . . the District of Columbia Economic Recovery Act . . . would provide the jolt that is desperately needed to expand the District's revenue base by reversing the hemorrhaging of residents and jobs from the District."

Although this legislation represents a good start toward the resolution of the city's problems, much more needs to be done. As chairman of the Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, I have just concluded 2 months of oversight hearings on the District's many problems, including the poor performance of the schools, the high crime rate, and the city's reputation for low quality services. While each of these problems are being addressed in some fashion by the Control Board, they are far from being

solved, and the city remains desperately in need of a renewal of its spirit.

In the coming weeks I will be exploring with my colleagues, with city officials, and with the administration a series of additional reform options that will help lead to this renewal, and to the recreation of a Capital City worthy of a great Nation.

By Mr. CAMPBELL (for himself, Mr. INOUYE, and Mr. DOMENICI):

S. 754. A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to provide for direct assistance to Indian tribes for juvenile justice and delinquency prevention programs, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

Mr. CAMPBELL. Mr. President, today I, along with Senators INOUYE and DOMENICI, introduce legislation which will reform the existing Native American Pass-Through Program administered by the Office of Juvenile Justice and Delinquency Prevention [OJJDP], within the Department of Justice, and will create a grant program that will provide direct funding to eligible tribes for the purpose of addressing juvenile justice needs in Indian country.

Juvenile delinquency is an enormous problem faced by both State and tribal governments. A February 1997 report, issued by OJJDP, indicated that law enforcement agencies around the country made an estimated 2.7 million arrests in 1995 of persons under age 18. This accounted for 18 percent of all arrests made during that year. OJJDP also reported that while the total number of juvenile arrests for violent crimes decreased in 1995, the total number of arrests is considerably higher than they were in 1992 and 67 percent higher than the 1986 level.

Unfortunately, there are no complete and accurate sets of statistics available on the rate of juvenile delinquency among the American Indian and Alaskan Native population as a whole. In spite of this, I think it is fair and accurate to say that the threat of an increased rate of juvenile delinquency is great in Indian country due to the large and growing population of Indian youth under the age of 18.

In fact, in a hearing conducted by the Senate Committee on Indian Affairs on April 8, a representative of the Department of Justice stated that "while violent crime is falling in American cities, it is rising on American Indian reservations." Despite this, there are still about half as many police officers in Indian country on a per capita basis.

Currently, tribal governments which perform law enforcement functions are eligible to receive grants through the Native American Pass-Through Program, established through the 1988 amendments to the Juvenile Justice and Delinquency Prevention Act of 1974. Under this program, States must make available to tribes a minimum amount of funding based, in part, upon the ratio of the number of Indian juveniles within a State's boundaries compared to the total number of juveniles within that State. This funding may go toward a variety of juvenile delinquency prevention, control, or reduction efforts.

Based upon the comments of representatives of tribal governments, State advisory groups, the National Coalition for Juvenile Justice, and State governments, it has become clear to me that the Pass-Through Program is simply not meeting the needs of tribes. First, the minimum amount of funding each State must make available to tribes is, on average, so minimal that it fails to appropriately address the needs of the tribes. While many States do award grants in excess of the requirement, the amounts tribes receive are often too small to initiate a program of any magnitude. In addition, many tribes do not even apply for these grants, because the cost of preparing a grant application would exceed the amount of funds awarded. More importantly, the Pass-Through Program exists in conflict with the Federal-tribal government-to-government relationship, by requiring tribal governments to depend upon the States. If a State chooses not to participate in the program or does not meet certain requirements, tribes located within that State's boundaries will not receive funds under the act. Because of these and other concerns raised by tribes and juvenile justice officials, I am introducing the Indian Juvenile Justice and Delinquency Prevention Improvement Act. This proposal seeks to eliminate the Native American Pass-Through Program and replace it with a discretionary grant program that will provide direct Federal grants to Indian tribes. Consistent with the Pass-Through Program, these funds will be used to plan and develop programs to prevent and reduce juvenile crime as well as to improve the tribal government's juvenile justice system.

More specifically, this legislation will require tribes to submit program plans as part of their grant application to the Administrator of OJJDP. Tribes must comply with certain core requirements in order to demonstrate an ability to administer and account for the quality of the juvenile justice programs. Finally, this legislation includes a reporting requirement similar to the one mandated in the Indian Self-Determination Act.

On the administrative side, the legislation directs OJJDP to take into account certain important factors when awarding grants such as a tribe's available resources and the population of Indian youth who reside within the tribe's jurisdiction. It is also important to note that this legislation in no way prevents tribes from entering into cooperative agreements with States or units of local government. Tribes are still able to enter into these agreements and apply for State funding should they desire to do so.

The prevention, control, and reduction of juvenile delinquency should be one of the top priorities of this Nation. With this legislation, we have the opportunity to provide a better mechanism to deliver funds to tribes for the purpose of addressing juvenile justice needs, a much better mechanism than we currently have.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 754

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 "Indian Juvenile Justice and Delinquency Prevention Improvement Act".

SEC. 2. AMENDMENTS TO THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974.

(a) DEFINITIONS.—Section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603) is amended—

(1) in paragraph (8), by striking "an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior,";

(2) in paragraph (9)—

(A) by striking "States or units of general local government" and inserting "States, units of general local government, or Indian tribes"; and

(B) by striking "States or units" and inserting "States, units, or Indian tribes";

(3) in paragraph (11), by striking "any State, unit of local government, combination of such States or units" and inserting "any State, unit of general local government, Indian tribe, combination of 1 or more States, units of general local government, or Indian tribes";

(4) by striking paragraph (18) and inserting the following:

"(18) the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;"; and

(5) in paragraph (22), by inserting "Indian tribe," after "unit of local government,".

(b) TECHNICAL AMENDMENT.—Part B of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended by striking the heading and inserting the following:

"PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS AND PROGRAMS FOR INDIAN TRIBES

"Subpart I—Federal Assistance for State and Local Programs".

(c) ELIMINATION OF PASS-THROUGH FOR INDIAN TRIBES.—Section 223(a) of the Juvenile

Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(a)) is amended—

(1) in paragraph (4), by inserting "and Indian tribes" after "units of general local government";

(2) in paragraph (5)—

(A) in subparagraph (A), by striking the semicolon at the end and inserting ", except that with respect to any cooperative program conducted with an Indian tribe, the participation of the Indian tribe shall be funded from the amounts made available under subpart II of this part; and";

(B) in subparagraph (B), by striking "and" at the end; and

(C) by striking subparagraph (C);

(3) in paragraph (6)—

(A) by inserting "(A)" before "provide that";

(B) by striking "programs funded under this part" and inserting "programs funded under this subpart";

(C) by striking the semicolon at the end and inserting "; and"; and

(D) by adding at the end the following:

"(B) with respect to any case in which an Indian tribe participates in a cooperative program under paragraph (5)(A), provide that the appropriate official of the governing body of an Indian tribe assign responsibility for the preparation and administration of the Indian tribe's part of the applicable State plan, or for the supervision of the preparation and administration of the Indian tribe's part of the State plan;";

(4) in paragraph (24), by striking "and" at the end;

(5) in paragraph (25), by striking the period at the end and inserting a semicolon; and

(6) by adding at the end the following:

"(26) provide assurance that, in carrying out the plan under this section, the State will take appropriate action to improve—

"(A) communication between the State and units of general local government and Indian tribes;

"(B) cooperation between the State and units of general local government and Indian tribes; and

"(C) intergovernmental relationships between the State and units of general local government and Indian tribes; and

"(27) provide, as appropriate, a description and analysis of any disproportionate representation in the juvenile justice system of Native Americans (as that term is defined in section 16(10) of the National Museum of the American Indian Act (20 U.S.C. 80q-14(10))) including, if appropriate, any disproportionate representation of Alaska Natives (within the meaning of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) from—

"(A) urban populations; and

"(B) populations that are not, as of the date of development of the plan, recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

(d) FEDERAL ASSISTANCE FOR PROGRAMS FOR INDIAN TRIBES.—Part B of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended by adding at the end the following:

"Subpart II—Federal Assistance for Programs for Indian Tribes

"SEC. 221. ESTABLISHMENT OF PROGRAM.

"(a) IN GENERAL.—The Administrator shall, by regulation, establish a program to provide direct grants to Indian tribes in accordance with this section. Each grant made under this section to an Indian tribe shall be used by the governing body of the Indian tribe—

"(1) for planning, establishing, operating, coordinating, and evaluating projects for achieving compliance with the requirements specified in paragraphs (12)(A), (13), and (14) of section 223, and otherwise meeting any applicable requirements of this Act; and

"(2) for otherwise conducting activities to promote the improvement of the juvenile justice system of that Indian tribe.

"(b) PLANS.—As part of an application for a grant under this section, an Indian tribe shall submit a plan for conducting activities described in subsection (a). The plan shall—

"(1) provide evidence that the Indian tribe performs law enforcement functions (as determined by the Secretary of the Interior);

"(2) identify the juvenile justice and delinquency problems and juvenile delinquency prevention needs to be addressed by activities conducted by the Indian tribe in the area under the jurisdiction of the Indian tribe with assistance provided by the grant;

"(3) provide for fiscal control and accounting procedures that—

"(A) are necessary to ensure the prudent use, proper disbursement, and accounting of funds received under this subchapter; and

"(B) are consistent with the requirements of section 232; and

"(4) contain such other information, and be subject to such additional requirements, as the Administrator may reasonably prescribe to ensure the effectiveness of the grant program under this subpart.

"(c) FACTORS FOR CONSIDERATION.—In awarding grants under this section, the Administrator shall consider—

"(1) the resources that are available to each applicant that will assist, and be coordinated with, the overall juvenile justice system of the Indian tribe; and

"(2) for each Indian tribe that receives assistance under such a grant—

"(A) the relative population of individuals under the age of 18; and

"(B) who will be served by the assistance provided by the grant.

"(d) GRANT AWARDS.—

"(1) IN GENERAL.—

"(A) COMPETITIVE AWARDS.—Except as provided in paragraph (2), the Administrator shall annually award grants under this section on a competitive basis. The Administrator shall enter into a grant agreement with each grant recipient under this section that specifies the terms and conditions of the grant.

"(B) PERIOD OF GRANT.—The period of a grant awarded under this section shall be 1 year.

"(2) EXCEPTION.—In any case in which the Administrator determines that a grant recipient under this section has performed satisfactorily during the preceding year in accordance with an applicable grant agreement, the Administrator may—

"(A) waive the requirement that the recipient be subject to the competitive award process described in paragraph (1); and

"(B) renew the grant for an additional grant period (as specified in paragraph (1)(B)).

"(3) MODIFICATIONS OF PROCESSES.—The Administrator may prescribe requirements to provide for appropriate modifications to the plan preparation and application process specified in this section for an application for a renewal grant under this subsection.

"SEC. 232. REPORTING REQUIREMENT.

"Each Indian tribe that receives a grant under section 231 is subject to the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

"SEC. 233. TECHNICAL ASSISTANCE.

"The Administrator shall establish a program to provide technical assistance to assist Indian tribes in carrying out the activities described in section 231(a).

"SEC. 234. COORDINATION WITH STATE ADVISORY GROUPS.

"In carrying out the programs under this subpart, the Administrator shall, not later than 180 days after the end of the fiscal year during which the Indian Juvenile Justice and Delinquency Prevention Improvement Act is enacted, and annually thereafter, issue a report to each advisory group established under a State plan under section 223(a)(3) that includes information relating to each grant awarded under section 231, including the amount of the grant.

"SEC. 235. RULE OF CONSTRUCTION.

"Nothing in this subpart may be construed to affect in any manner the jurisdiction of an Indian tribe with respect to land or persons in Alaska.

"SEC. 236. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Department of Justice to carry out this subpart, $10,000,000 for each of fiscal years 1998 through 2001.".

By Mr. CAMPBELL (for himself and Mr. FORD):

S. 755. A bill to amend title 10, United States Code, to restore the provisions of chapter 76 of that title (relating to missing persons) as in effect before the amendments made by the National Defense Authorization Act for fiscal year 1997 and to make other improvements to that chapter; to the Committee on Armed Services.

THE MISSING PERSONS AUTHORITIES IMPROVEMENT ACT

Mr. CAMPBELL. Mr. President, with the approach of Memorial Day, we are reminded of the millions of American men and women who have dedicated and sacrificed their lives in service to the U.S. Armed Forces. And for far too many, it is a day to remember those service members who have yet to return home from the wars they valiantly fought many years ago.

During the last Congress, we passed the Missing Service Personnel Act. Specifically, this bill created a framework of accountability within the Department of Defense to establish the status and location of our missing Armed Forces personnel. Until this legislation was introduced in 1995, the procedures for handling missing service personnel had remained unchanged for more than 50 years. This legislation improved procedures for reviewing POW/MIA cases and protected the missing service member from being declared dead solely based on the passage of time. Gathering 47 cosponsors in the Senate and achieving unanimous passage in the House, the bill became law in February 1996. However, an amendment to the 1997 Defense Authorization Conference Report repealed its strongest provisions.

Today, I am introducing The Missing Persons Authorities Improvement Act

of 1997 in an effort to restore not only those lost provisions but to also offer a sense of accountability for our missing service personnel and their loved ones. A companion bill has already been introduced in the House of Representatives by Congressman BEN GILMAN of New York.

One major provision to be restored requires that military unit commanders report and initiate a search within 48 hours from the time a person has been deemed missing. Right now, a soldier can be missing for up to 10 days before a report and search must be made.

Another restored provision protects civilian defense employees and contractors who become missing as a result of hostile action. These civilians who serve with, or accompany the Armed Forces in the field under orders and place their lives in danger, should be entitled to the same protection that is given to uniformed soldiers.

This bill also includes a provision which requires that if remains are recovered and are not identifiable through visual means, certification must be made by a forensic scientist that the remains recovered are, in fact, the missing person. In the past, hasty and speculative conclusions have often lead to misidentification and ultimately, undue emotional hardship for MIA families. It is our obligation to take full advantage of our current technological capabilities and provide the families of missing service personnel with certain, respectful closure in every case possible.

As a veteran who served in Korea, I am especially proud to also include an additional provision that calls for the establishment of personnel files for Korean conflict cases. Under this provision, if any new information is discovered that indicates that the soldier may not have been killed during the Korean war, a new case must be opened or an existing one must be reviewed. There are currently some 8,000 of my Korean war colleagues who have never been accounted for. The recent efforts by the many families of Korean War MIA's to learn the fate of their loved ones only reinforce the necessity for this provision. These families deserve our respect and attention.

This legislation is supported by numerous veterans' service organizations such as the American Legion, the Disabled American Veterans, the Korean and Cold War Families Association, and the National League of POW/MIA Families.

This bill asks the Department of Defense only to make the best possible effort to recover and return our missing personnel. It is the least we owe our soldiers, past and present, who endanger their lives in defense of our country. It is the very least we owe the families who have and will endure the pain and uncertainty of a loved one left unaccounted for at a time of war.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD. I also ask unanimous consent that Senator FORD be included as an original cosponsor to this legislation.

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

S. 755

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 "Missing Persons Authorities Improvement Act of 1997".

SEC. 2. IMPROVEMENT OF MISSING PERSONS AUTHORITIES APPLICABLE TO DEPARTMENT OF DEFENSE.

(a) APPLICABILITY TO DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES AND CONTRACTOR EMPLOYEES.—(1) Section 1501 of title 10, United States Code, is amended—

(A) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) COVERED PERSONS.—Section 1502 of this title applies in the case of the following persons:

"(1) Any member of the armed forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.

"(2)(A) Any other person who is a citizen of the United States and is described in subparagraph (B) who serves with or accompanies the armed forces in the field under orders and becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.

"(B) A person described in this subparagraph is any of the following:

"(i) A civilian officer or employee of the Department of Defense.

"(ii) An employee of a contractor of the Department of Defense.

"(iii) An employee of a United States firm licensed by the United States under section 38 of the Arms Export Control Act (22 U.S.C. 2778) to perform duties under contract with a foreign government involving military training of the military forces of that government in accordance with policies of the Department of Defense."; and

(B) by adding at the end the following new subsection:

"(f) SECRETARY CONCERNED.—In this chapter, the term 'Secretary concerned' includes—

"(1) in the case of a person covered by clause (i) of subsection (c)(2)(B), the Secretary of the military department or head of the element of the Department of Defense employing the employee;

"(2) in the case of a person covered by clause (ii) of subsection (c)(2)(B), the Secretary of the military department or head of the element of the Department of Defense contracting with the contractor; and

"(3) in the case of a person covered by clause (iii) of subsection (c)(2)(B), the Secretary of Defense.".

(2) Section 1503(c) of such title is amended—

(A) in paragraph (1), by striking out "one military officer" and inserting in lieu thereof "one individual described in paragraph (2)";

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(C) by inserting after paragraph (1) the following new paragraph (2):

"(2) An individual referred to in paragraph (1) is the following:

"(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

"(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.".

(3) Section 1504(d) of such title is amended—

(A) in paragraph (1), by striking out "who are" and all that follows in that paragraph and inserting in lieu thereof "as follows:

"(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

"(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

"(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

"(ii) such members of the armed forces as the Secretary considers advisable.

"(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

"(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

"(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry."; and

(B) in paragraph (4), by striking out "section 1503(c)(3)" and inserting in lieu thereof "section 1503(c)(4)".

(4) Paragraph (1) of section 1513 of such title is amended to read as follows:

"(1) The term 'missing person' means—

"(A) a member of the armed forces on active duty who is in a missing status; or

"(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves with or accompanies the armed forces in the field under orders and who is in a missing status.

Such term includes an unaccounted for person described in section 1509(b) of this title, under the circumstances specified in the last sentence of section 1509(a) of this title.".

(b) REPORT ON PRELIMINARY ASSESSMENT OF STATUS.—(1) Section 1502 of such title is amended—

(A) in subsection (a)(2)—

(i) by striking out "10 days" and inserting in lieu thereof "48 hours"; and

(ii) by striking out "Secretary concerned" and inserting in lieu thereof "theater component commander with jurisdiction over the missing person";

(B) in subsection (a), as amended by subparagraph (A)—

(i) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(ii) by inserting "(1)" after "COMMANDER.—"; and

(iii) by adding at the end the following new paragraph:

"(2) However, if the commander determines that operational conditions resulting from hostile action or combat constitute an emergency that prevents timely reporting under paragraph (1)(B), the initial report should be made as soon as possible, but in no case later than ten days after the date on which the commander receives such information under paragraph (1).";

(C) by redesignating subsection (b) as subsection (c);

(D) by inserting after subsection (a), as amended by subparagraphs (A) and (B), the following new subsection (b):

"(b) TRANSMISSION THROUGH THEATER COMPONENT COMMANDER.—Upon reviewing a report under subsection (a) recommending that a person be placed in a missing status, the theater component commander shall ensure that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person. Not later than 14 days after receiving the report, the theater component commander shall forward the report to the Secretary of Defense or the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title. The theater component commander shall include with such report a certification that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person."; and

(E) in subsection (c), as redesignated by subparagraph (C), by adding at the end the following new sentence: "The theater component commander through whom the report with respect to the missing person is transmitted under subsection (b) shall ensure that all pertinent information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person is properly safeguarded to avoid loss, damage, or modification.".

(2) Section 1503(a) of such title is amended by striking out "section 1502(a)" and inserting in lieu thereof "section 1502(b)".

(3) Section 1504 of such title is amended by striking out "section 1502(a)(2)" in subsections (a), (b), and (e)(1) and inserting in lieu thereof "section 1502(a)".

(4) Section 1513 of such title is amended by adding at the end the following new paragraph:

"(8) The term 'theater component commander' means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.".

(c) FREQUENCY OF SUBSEQUENT REVIEWS.—Subsection (b) of section 1505 of such title is amended to read as follows:

"(b) FREQUENCY OF SUBSEQUENT REVIEWS.—(1) In the case of a missing person who was last known to be alive or who was last suspected of being alive, the Secretary shall appoint a board to conduct an inquiry with respect to a person under this subsection—

"(A) on or about three years after the date of the initial report of the disappearance of the person under section 1502(a) of this title; and

"(B) not later than every three years thereafter.

"(2) In addition to appointment of boards under paragraph (1), the Secretary shall appoint a board to conduct an inquiry with respect to a missing person under this subsection upon receipt of information that could result in a change of status of the missing person. When the Secretary appoints a board under this paragraph, the time for subsequent appointments of a board under paragraph (1)(B) shall be determined from the date of the receipt of such information.

"(3) The Secretary is not required to appoint a board under paragraph (1) with respect to the disappearance of any person—

"(A) more than 30 years after the initial report of the disappearance of the missing person required by section 1502(a) of this title; or

"(B) if, before the end of such 30-year period, the missing person is accounted for.".

(d) PENALTIES FOR WRONGFUL WITHHOLDING OF INFORMATION.—Section 1506 of such title is amended by adding at the end the following new subsection:

"(f) WRONGFUL WITHHOLDING.—Any person who (except as provided in subsections (a) through (d)) willfully withholds, or directs the withholding of, any information relating to the disappearance or whereabouts and status of a missing person from the personnel file of that missing person, knowing that such information is required to be placed in the personnel file of the missing person, shall be fined as provided in title 18 or imprisoned not more than one year, or both.".

(e) INFORMATION TO ACCOMPANY RECOMMENDATION OF STATUS OF DEATH.—Section 1507(b) of such title is amended by adding at the end the following new paragraphs:

"(3) A description of the location of the body, if recovered.

"(4) If the body has been recovered and is not identifiable through visual means, a certification by a practitioner of an appropriate forensic science that the body recovered is that of the missing person.".

(f) MISSING PERSON'S COUNSEL.—(1) Sections 1503(f)(1) and 1504(f)(1) of such title are amended by adding at the end the following: "The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.".

(2) Section 1503(f)(4) of such title is amended by adding at the end the following: "The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.".

(3) Section 1505(c)(1) is amended by adding at the end the following: "The Secretary concerned shall appoint counsel to represent any such missing person to whom such information may be related. The appointment shall be in the same manner, and subject to the same provisions, as an appointment under section 1504(f)(1) of this title.".

(g) SCOPE OF PREENACTMENT REVIEW.—(1) Section 1509 of such title is amended by striking out subsection (a) and inserting in lieu thereof the following:

"(a) REVIEW OF STATUS.—(1) If new information is found or received that may be related to one or more unaccounted for persons described in subsection (b) (whether or not such information specifically relates (or may specifically relate) to any particular such unaccounted for person), that information shall be provided to the Secretary of Defense. Upon receipt of such information, the Secretary shall ensure that the information is treated under paragraphs (2) and (3) of section 1505(c) of this title and under section 1505(d) of this title in the same manner as information received under paragraph (1) of section 1505(c) of this title. For purposes of the applicability of other provisions of this chapter in such a case, each such unaccounted for person to whom the new information may be related shall be considered to be a missing person.

"(2) The Secretary concerned shall appoint counsel to represent each such unaccounted for person to whom the new information may be related. The appointment shall be in the same manner, and subject to the same provisions, as an appointment under section 1504(f)(1) of this title.

"(3) For purposes of this subsection, new information is information that—

"(A) is found or received after the date of the enactment of the Missing Persons Improvement Act of 1997 by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title; or

"(B) is identified after the date of the enactment of the Missing Persons Improvement Act of 1997 in records of the United States as information that could be relevant to the case of one or more unaccounted for persons described in subsection (b).".

(2) Such section is further amended by adding at the end the following new subsection:

"(d) ESTABLISHMENT OF PERSONNEL FILES FOR KOREAN CONFLICT CASES.—The Secretary of Defense shall ensure that a personnel file is established for each unaccounted for person who is described in subsection (b)(1). Each such file shall be handled in accordance with, and subject to the provisions of, section 1506 of this title in the same manner as applies to the file of a missing person.".

(h) WITHHOLDING OF CLASSIFIED INFORMATION.—Section 1506(b) of such title is amended—

(1) by inserting "(1)" before "The Secretary";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following:

"(2) If classified information withheld under this subsection refers to one or more unnamed missing persons, the Secretary shall ensure that notice of that withheld information, and notice of the date of the most recent review of the classification of that withheld information, is made reasonably accessible to family members of missing persons.".

(i) WITHHOLDING OF PRIVILEGED INFORMATION.—Section 1506(d) of such title is amended—

(1) in paragraph (2)—

(A) by striking out "non-derogatory" both places it appears in the first sentence;

(B) by inserting "or about unnamed missing persons" in the first sentence after "the debriefing report";

(C) by striking out "the missing person" in the second sentence and inserting in lieu thereof "each missing person named in the debriefing report"; and

(D) by adding at the end the following new sentence: "Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to family members of missing persons."; and

(2) in paragraph (3)—

(A) by inserting ", or part of a debriefing report," after "a debriefing report"; and

(B) by adding at the end the following new sentence: "Whenever the Secretary withholds a debriefing report, or part of a debriefing report, containing information on

unnamed missing persons from accessibility to families of missing persons under this section, the Secretary shall ensure that notice that the withheld debriefing report exists is made reasonably accessible to family members of missing persons.".

By Mr. KERRY (for himself, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. KENNEDY, Mr. HOLLINGS, Mr. WELLSTONE, Ms. MOSELEY-BRAUN, and Mr. HARKIN):

S. 756. A bill to provide for the health, education, and welfare of children under 6 years of age; to the Committee on Labor and Human Resources.

THE EARLY CHILDHOOD DEVELOPMENT ACT

Mr. KERRY. Mr. President, no issue is more important in America than focusing on the urgent needs of young children. This country must rededicate itself to investing in children, an investment which will have tremendous returns. Early intervention can have a powerful effect on reducing government welfare, health, criminal justice, and education expenditures in the long run. By taking steps now we can significantly reduce later destructive behavior such as school dropout, drug use, and criminal acts. A study of the High/Scope Foundation's Perry Preschool found that at-risk toddlers who received preschooling and a weekly home visit reduced the risk that these children would grow up to become chronic lawbreakers by a startling 80 percent. The Syracuse University family development study showed that providing quality early childhood programs to families until children reached age 5 reduces the children's risk of delinquency 10 years later by 90 percent. It's no wonder that a recent survey of police chiefs found that 9 out of 10 said that America could sharply reduce crime if government invested more in these early intervention programs.

These programs are successful because children's experiences during their early years of life lay the foundation for their future development. Our failure to provide young children what they need during this period has long-term consequences and costs for America. Recent scientific evidence conclusively demonstrates that enhancing children's physical, social, emotional, and intellectual development will result in tremendous benefits for children, families, and our Nation. The electrical activity of brain cells actually changes the physical structure of the brain itself. Without a stimulating environment, the baby's brain suffers. At birth, a baby's brain contains 100 billion neurons, roughly as many nerve cells as there are stars in the Milky Way. But the wiring pattern between these neurons develops over time. Children who play very little or are rarely touched develop brains 20 to 30 percent smaller than normal for their age.

Mr. President, reversing these problems later in life is far more difficult and costly. I want to discuss several examples.

First, poverty seriously impairs young children's language development, math skills, IQ scores, and their later school completion. Poor young children also are at heightened risk of infant mortality, anemia, and stunted growth. Of the 12 million children under the age of 3 in the United States today, 3 million—25 percent—live in poverty.

Second, three out of five mothers with children younger than 3 work, but one study found that 40 percent of the facilities at child care centers serving infants provided care of such poor quality as to actually jeopardize children's health, safety, or development.

Third, in more than half of the States, one out of every four children between 19 months and 3 years of age is not fully immunized against common childhood diseases. Children who are not immunized are more likely to contact preventable diseases, which can cause long-term harm.

And fourth, children younger than 3 make up 27 percent of the 1 million children who are determined to be abused or neglected each year. Of the 1,200 children who died from abuse and neglect in 1995, 85 percent were younger than 5 and 45 percent were younger than 1.

Unfortunately, Mr. President, our Government expenditure patterns are inverse to the most important early development period for human beings. Although we know that early investment can dramatically reduce later remedial and social costs, currently our Nation spends more than $35 billion over 5 years on Federal programs for at-risk or delinquent youth and child welfare programs.

Today we seek to change our priorities and put children first. I am introducing the Early Childhood Development Act of 1997 to help empower local communities to provide essential interventions in the lives of our youngest at-risk children and their families. I am delighted that Senators ROCKEFELLER, MURRAY, KENNEDY, HOLLINGS, WELLSTONE, MOSELEY-BRAUN, and HARKIN are joining me as cosponsors of this bill.

This legislation seeks to provide support to families by minimizing Government bureaucracy and maximizing local initiatives. We would provide additional funding to communities to expand the thousands of successful efforts for at-risk children ages zero to six such as those sponsored by the United Way, Boys and Girls Clubs, and other less well-known grassroots organizations, as well as State initiatives such as Success By Six in Massachusetts and Vermont, the Parents as Teachers Program in Missouri, Healthy Families in Indiana, and the Early Childhood Initiative in Pittsburgh, PA. All are short on resources. And nowhere do we adequately meet demand although we know that many States and local communities deliver efficient, cost-effective, and necessary services. Extending the reach of these successful programs to millions of children currently underserved will increase our national well-being and ultimately save billions of dollars.

The second part of this bill would provide funding to States to help them provide a subsidy to all working poor families to purchase quality child care for infants, toddlers, and preschool children. We would not create a new program but would simply increase resources for the successful Child Care Development Block Grant (CCDBG). Child care for infants and toddlers is much more expensive than for older children since a higher level of care is necessary. Additional funding would also pay for improving the salaries and training level of child care workers, improving the facilities of child care centers and family child care homes, and providing enriched developmentally appropriate educational opportunities.

The bill would also establish a scholarship fund for child care workers who earn a degree in early childhood development and then work with infants and toddlers in child care settings for 2 years. Child care providers now are underpaid and frequently receive inadequate training, which causes higher turnover and lower quality care for children.

The bill would also expand the uses of time allowed under the Family and Medical Leave Act [FMLA] to promote parental involvement in schools and child care centers. Parents or guardians would be allowed to use up to 24 hours per year of FMLA time to participate in school and center activities such as parent-teacher conferences, interviewing for a new school or child care center, and getting an assessment for services in a family literacy program. This leave would be within the maximum 12 weeks of time currently allowed under the FMLA.

Finally, the bill would increase funding for the Early Head Start Program. The successful Head Start Program provides quality services to 4- and 5-year-olds. The Early Head Start Program, which currently is a modest program funded at $200 million annually, provides comprehensive child development and family support services to infants and toddlers. Expanding this program would help more young children receive the early assistance they need.

I was delighted to be joined yesterday by Governor Dean of Vermont and Governor Romer of Colorado in announcing this legislation. I also am happy to have a wide range of groups and individuals endorsing this bill including the Association of Jewish Family and Children's Agencies, Boys and Girls Clubs of America, Catholic Charities USA, Children's Defense Fund,

Child Welfare League of America, Coalition on Human Needs, Jewish Council for Public Affairs, National Black Child Development Institute, Inc., National Center for the Early Childhood Work Force, National Council of Churches of Christ in the USA, Religious Action Center of Reform Judaism, and Rob Reiner of the I Am Your Child Campaign.

Children need certain supports during their early critical years if they are to thrive and grow to be contributing adults. I look forward to working with both sides of the aisle to pass this legislation and ensure that all children arrive at school ready to learn.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 756

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Early Childhood Development Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—ASSISTANCE FOR YOUNG CHILDREN

Sec. 101. Definitions.
Sec. 102. Allotments to States.
Sec. 103. Grants to local collaboratives.
Sec. 104. Supplement not supplant.
Sec. 105. Authorization of appropriations.

TITLE II—CHILD CARE FOR FAMILIES

Sec. 201. Amendment to Child Care and Development Block Grant Act of 1990.

TITLE III—LOAN REPAYMENT FOR CHILD CARE WORKERS

Sec. 301. Loan repayment for child care workers.

TITLE IV—FULL FUNDING FOR THE WOMEN, INFANTS, AND CHILDREN PROGRAM

Sec. 401. Full funding for the women, infants, and children program.

TITLE V—AMENDMENTS TO THE HEAD START ACT

Sec. 501. Authorization of appropriations.
Sec. 502. Allotment of funds.
Sec. 503. Effective date.

TITLE VI—SCHOOL INVOLVEMENT LEAVE

Sec. 601. Short title.
Sec. 602. General requirements for leave.
Sec. 603. School involvement leave for civil service employees.
Sec. 604. Effective date.

SEC. 2. FINDINGS.

Congress makes the following findings—

(1) The Nation's highest priority should be to ensure that children begin school ready to learn.

(2) New scientific research shows that the electrical activity of brain cells actually changes the physical structure of the brain itself and that without a stimulating environment, a baby's brain will suffer. At birth, a baby's brain contains 100,000,000,000 neurons, roughly as many nerve cells as there are stars in the Milky Way. But the wiring pattern between these neurons develops over time. Children who play very little or are rarely touched develop brains that are 20 to 30 percent smaller than normal for their age.

(3) This scientific evidence also conclusively demonstrates that enhancing children's physical, social, emotional, and intellectual development will result in tremendous benefits for children, families, and our Nation.

(4) Since more than 50 percent of the mothers of children under the age of 3 now work outside of the home, our society must change to provide new supports so young children receive the attention and care that they need.

(5) There are 12,000,000 children under the age of 3 in the United States today and 1 in 4 lives in poverty.

(6) Compared with most other industrialized countries, the United States has a higher infant mortality rate, a higher proportion of low-birth weight babies, and a smaller proportion of babies immunized against childhood diseases.

(7) National and local studies have found a strong link between increased violence and crime among youth when there is no early intervention.

(8) The United States will spend more than $35,000,000,000 over the next 5 years on Federal programs for at-risk or delinquent youth and child welfare programs, which address crisis situations which frequently could be avoided or made much less severe with good early interventions.

(9) Many local communities across the country have developed successful early childhood efforts and with additional resources could expand and enhance opportunities for young children.

TITLE I—ASSISTANCE FOR YOUNG CHILDREN

SEC. 101. DEFINITIONS.

In this title:

(1) POVERTY LINE.—The term "poverty line" means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

(2) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(3) STATE BOARD.—The term "State board" means a State Early Learning Coordinating Board established under section 102(c).

(4) YOUNG CHILD.—The term "young child" means an individual who is under 6 years of age.

(5) YOUNG CHILD ASSISTANCE ACTIVITIES.—The term "young child assistance activities" means the activities described in section 103(b).

SEC. 102. ALLOTMENTS TO STATES.

(a) IN GENERAL.—The Secretary shall make allotments under subsection (b) to eligible States to pay for the Federal share of the cost of enabling the States to make grants to local collaboratives under section 103 for young child assistance activities.

(b) ALLOTMENT.—

(1) IN GENERAL.—From the funds appropriated under section 105 for each fiscal year, the Secretary shall allot to each eligible State an amount that bears the same relationship to such funds as the total number of young children in poverty in the State bears to the total number of young children in poverty in all eligible States.

(2) YOUNG CHILD IN POVERTY.—In this subsection, the term "young child in poverty" means an individual who—

(A) is a young child; and

(B) is a member of a family with an income below the poverty line.

(c) STATE BOARDS.—

(1) IN GENERAL.—In order for a State to be eligible to obtain an allotment under this title, the Governor of the State shall establish, or designate an entity to serve as, a State Early Learning Coordinating Board, which shall receive the allotment and make the grants described in section 103.

(2) ESTABLISHED BOARD.—A State board established under paragraph (1) shall consist of the Governor and members appointed by the Governor, including—

(A) representatives of all State agencies primarily providing services to young children in the State;

(B) representatives of business in the State;

(C) chief executive officers of political subdivisions in the State;

(D) parents of young children in the State;

(E) officers of community organizations serving low-income individuals, as defined by the Secretary, in the State;

(F) representatives of State nonprofit organizations that represent the interests of young children in poverty, as defined in subsection (b), in the State; and

(G) representatives of organizations providing services to young children and the parents of young children, such as organizations providing child care, carrying out Head Start programs under the Head Start Act (42 U.S.C. 9831 et seq.), providing services through a family resource center, providing home visits, or providing health care services, in the State.

(3) DESIGNATED BOARD.—The Governor may designate an entity to serve as the State board under paragraph (1) if the entity includes the Governor and the members described in subparagraphs (A) through (G) of paragraph (2).

(d) APPLICATION.—To be eligible to receive an allotment under this title, a State board shall annually submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. At a minimum, the application shall contain—

(1) sufficient information about the entity established or designated under subsection (c) to serve as the State board to enable the Secretary to determine whether the entity complies with the requirements of such subsection;

(2) a comprehensive State plan for carrying out young child assistance activities;

(3) an assurance that the State board will provide such information as the Secretary shall by regulation require on the amount of State and local public funds expended in the State to provide services for young children; and

(4) an assurance that the State board shall annually compile and submit to the Secretary information from the reports referred to in section 103(d)(2)(F)(iii) that describes the results referred to in section 103(d)(2)(F)(i).

(e) FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share of the cost described in subsection (a) shall be—

(A) 85 percent, in the case of a State for which the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b))) is not less than 50 percent but is less than 60 percent;

(B) 87.5 percent, in the case of a State for which such percentage is not less than 60 percent but is less than 70 percent; and

(C) 90 percent, in the case of any State not described in subparagraph (A) or (B).

(2) STATE SHARE.—

(A) IN GENERAL.—The State shall contribute the remaining share (referred to in this paragraph as the "State share") of the cost described in subsection (a).

(B) FORM.—The State share of the cost shall be in cash.

(C) SOURCES.—The State may provide for the State share of the cost from State or local sources, or through donations from private entities.

(f) STATE ADMINISTRATIVE COSTS.—

(1) IN GENERAL.—A State may use not more than 5 percent of the funds made available through an allotment made under this title to pay for a portion, not to exceed 50 percent, of State administrative costs related to carrying out this title.

(2) WAIVER.—A State may apply to the Secretary for a waiver of paragraph (1). The Secretary may grant the waiver if the Secretary finds that unusual circumstances prevent the State from complying with paragraph (1). A State that receives such a waiver may use not more than 7.5 percent of the funds made available through the allotment to pay for the State administrative costs.

(g) MONITORING.—The Secretary shall monitor the activities of States that receive allotments under this title to ensure compliance with the requirements of this title, including compliance with the State plans.

(h) ENFORCEMENT.—If the Secretary determines that a State that has received an allotment under this title is not complying with a requirement of this title, the Secretary may—

(1) provide technical assistance to the State to improve the ability of the State to comply with the requirement;

(2) reduce, by not less than 5 percent, an allotment made to the State under this section, for the second determination of noncompliance;

(3) reduce, by not less than 25 percent, an allotment made to the State under this section, for the third determination of noncompliance; or

(4) revoke the eligibility of the State to receive allotments under this section, for the fourth or subsequent determination of noncompliance.

SEC. 103. GRANTS TO LOCAL COLLABORATIVES.

(a) IN GENERAL.—A State board that receives an allotment under section 102 shall use the funds made available through the allotment, and the State contribution made under section 102(e)(2), to pay for the Federal and State shares of the cost of making grants, on a competitive basis, to local collaboratives to carry out young child assistance activities.

(b) USE OF FUNDS.—A local collaborative that receives a grant made under subsection (a) shall use the funds made available through the grant to provide, in a community, activities that consist of—

(1) education and supportive services, such as—

(A) home visits for parents of young children;

(B) services provided through community-based family resource centers for such parents;

(C) drug treatment services for such parents; and

(D) collaborative pre-school efforts that link parenting education for such parents to early childhood learning services for young children;

(2) activities designed to strengthen the quality of child care for young children and expand the supply of high quality child care services for young children;

(3) health care services for young children, including increasing the level of immunization for young children in the community, providing preventive health care screening and education, and expanding health care services in schools, child care facilities, clinics in public housing projects (as defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b))), and mobile dental and vision clinics;

(4) services for children with disabilities who are young children; and

(5) activities designed to assist schools in providing support to young children, and parents of young children, in the community, to be carried out during extended hours when appropriate.

(c) LOCAL COLLABORATIVES.—To be eligible to receive a grant under this section for a community, a local collaborative shall demonstrate that the collaborative—

(1) has the capacity to provide, through a coordinated effort, young child assistance activities to young children, and parents of young children, in the community; and

(2) includes—

(A) all public agencies primarily providing services to young children in the community;

(B) businesses in the community;

(C) representatives of the local government for the county or other political subdivision in which the community is located;

(D) parents of young children in the community;

(E) officers of community organizations serving low-income individuals, as defined by the Secretary, in the community;

(F) community-based organizations providing services to young children and the parents of young children, such as organizations providing child care, carrying out Head Start programs, or providing pre-kindergarten education, mental health, or family support services; and

(G) nonprofit organizations that serve the community and that are described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code.

(d) APPLICATION.—To be eligible to receive a grant under this section, a local collaborative shall submit an application to the State board at such time, in such manner, and containing such information as the State board may require. At a minimum, the application shall contain—

(1) sufficient information about the entity described in subsection (c)(2) to enable the State board to determine whether the entity complies with the requirements of such subsection; and

(2) a comprehensive plan for carrying out young child assistance activities in the community, including information indicating—

(A) the young child assistance activities available in the community, as of the date of submission of the plan, including information on efforts to coordinate the activities;

(B) the unmet needs of young children, and parents of young children, in the community for young child assistance activities;

(C) the manner in which funds made available through the grant will be used—

(i) to meet the needs, including expanding and strengthening the activities described in subparagraph (A) and establishing additional young child assistance activities; and

(ii) to improve results for young children in the community;

(D) how the local cooperative will use at least ¾ of the funds made available through the grant to provide young child assistance activities to young children and parents described in subsection (e);

(E) the comprehensive methods that the collaborative will use to ensure that—

(i) each entity carrying out young child assistance activities through the collaborative will coordinate the activities with such activities carried out by other entities through the collaborative; and

(ii) the local collaborative will coordinate the activities of the local collaborative with—

(I) other services provided to young children, and the parents of young children, in the community; and

(II) the activities of other local collaboratives serving young children and families in the community, if any; and

(F) the manner in which the collaborative will, at such intervals as the State board may require, submit information to the State board to enable the State board to carry out monitoring under section 102(f), including the manner in which the collaborative will—

(i) evaluate the results achieved by the collaborative for young children and parents of young children through activities carried out through the grant;

(ii) evaluate how services can be more effectively delivered to young children and the parents of young children; and

(iii) prepare and submit to the State board annual reports describing the results; and

(3) an assurance that the local collaborative will comply with the requirements of subparagraphs (D), (E), and (F) of paragraph (2), and subsection (f).

(e) DISTRIBUTION.—In making grants under this section, the State board shall ensure that at least ¾ of the funds made available through each grant are used to provide the young child assistance activities to young children (and parents of young children) who are members of a family with an income below 133 percent of the poverty line.

(f) LOCAL SHARE.—

(1) IN GENERAL.—The local collaborative shall contribute a percentage (referred to in this subsection as the "local share") of the cost of carrying out the young child assistance activities.

(2) PERCENTAGE.—The Secretary shall by regulation specify the percentage referred to in paragraph (1).

(3) FORM.—The local share of the cost shall be in cash.

(4) SOURCE.—The local collaborative shall provide for the local share of the cost through donations from private entities.

(5) WAIVER.—The State board may waive the requirement of paragraph (1) for disadvantaged communities, as defined by the Secretary.

(g) MONITORING.—The State board shall monitor the activities of local collaboratives that receive grants under this title to ensure compliance with the requirements of this title.

SEC. 104. SUPPLEMENT NOT SUPPLANT.

Funds appropriated under this title shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services for young children.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title $1,000,000,000 for fiscal year 1998, $1,000,000,000 for fiscal year 1999, $2,000,000,000 for fiscal year 2000, $3,000,000,000 for fiscal year 2001, and $4,000,000,000 for fiscal year 2002 and each subsequent fiscal year.

TITLE II—CHILD CARE FOR FAMILIES

SEC. 201. AMENDMENT TO CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT OF 1990.

The Child Care and Development Block Grant Act of 1990 is amended by inserting after section 658C (42 U.S.C. 9858b) the following:

"SEC. 658C-1. ESTABLISHMENT OF ZERO TO SIX PROGRAM.

"(a) IN GENERAL.—

"(1) PAYMENTS.—Subject to the amount appropriated under subsection (d), each State shall, for the purpose of providing child care assistance on behalf of children under 6 years of age, receive payments under this section in accordance with the formula described in section 658O.

"(2) INDIAN TRIBES.—The Secretary shall reserve 2 percent of the amount appropriated to carry out this section in each fiscal year for payments to Indian tribes and tribal organizations.

"(3) REMAINDER.—Any amount appropriated for a fiscal year under subsection (d), and remaining after the Secretary awards grants under paragraph (1) and after the reservation under paragraph (2), shall be used by the Secretary to make additional grants to States based on the formula under paragraph (1).

"(4) REALLOTMENT.—

"(A) IN GENERAL.—Any portion of the allotment under paragraph (1) to a State that the Secretary determines is not required by the State to carry out the activities described in subsection (b), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

"(B) LIMITATIONS.—

"(i) REDUCTION.—The amount of any reallotment to which a State is entitled to under subparagraph (A) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out the activities described in subsection (b).

"(ii) REALLOTMENTS.—The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this paragraph.

"(C) INDIAN TRIBES OR TRIBAL ORGANIZATIONS.—Any portion of a grant made to an Indian tribe or tribal organization under paragraph (2) that the Secretary determines is not being used in a manner consistent with subsection (b) in the period for which the grant or contract is made available, shall be allotted by the Secretary to other tribes or organizations in accordance with their respective needs.

"(5) AVAILABILITY.—Amounts received by a State under a grant under this section shall be available for use by the State during the fiscal year for which the funds are provided and for the following 2 fiscal years.

"(b) USE OF FUNDS.—

"(1) IN GENERAL.—Amounts received by a State under this section shall be used to provide child care assistance, on a sliding fee scale basis, on behalf of eligible children (as determined under paragraph (2)) to enable the parents of such children to secure high quality care for such children.

"(2) ELIGIBILITY.—To be eligible to receive child care assistance from a State under this section, a child shall—

"(A) be under 6 years of age;

"(B) be residing with at least one parent who is employed or enrolled in a school or training program or otherwise requires child care as a preventive or protective service (as determined under rules established by the Secretary); and

"(C) have a family income that is less than 85 percent of the State median income for a family of the size involved.

"(3) INFANT CARE SET-ASIDE.—A State shall set-aside 10 percent of the amounts received by the State under a grant under subsection (a)(1) for a fiscal year for the establishment of a program to establish new models of infant and toddler care, including models for—

"(A) the development of family child care networks;

"(B) the training of child care providers for infant and toddles care;

"(C) securing higher level of compensation for providers of infant and toddler care; and

"(D) the support, renovation, and modernization of facilities used for child care programs serving infants.

"(4) POVERTY LINE.—As used in this subsection, the term "poverty line" means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) that is applicable to a family of the size involved.

"(c) LEVELS OF ASSISTANCE.—

"(1) IN GENERAL.—The Secretary shall promulgate regulations to ensure that the levels of assistance provided by States on behalf of eligible children under this section are, subject to paragraph (2), adequate to provide parents with the ability to select a high quality provider of care of their child. Such regulations shall, to the maximum extent practicable—

"(A) ensure that States provide assistance in amounts that provide at a minimum market rate for child care in the communities involved;

"(B) permit States to adjust rates above the market rates to ensure that families have access to high quality infant and toddler care; and

"(C) encourage States to provide additional assistance on behalf of children for enriched infant and toddler services.

"(2) AMOUNT OF ASSISTANCE.—In providing assistance to eligible children under this section, a State shall ensure that an eligible child with a family income that is less than 100 percent of the poverty line for a family of the size involved is eligible to receive 100 percent of the amount of the assistance for which the child is eligible.

"(d) APPROPRIATION.—For grants under this section, there are appropriated—

"(1) $500,000,000 for fiscal year 1998;

"(2) $1,000,000,000 for fiscal year 1999;

"(3) $2,000,000,000 for fiscal year 2000;

"(4) $3,000,000,000 for fiscal year 2001; and

"(5) $4,000,000,000 for fiscal year 2002 and each fiscal year thereafter.

"(e) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning—

"(1) the appropriate child to staff ratios for infants and toddlers in child care settings, including child care centers and family child care homes; and

"(2) other best practices for infant and toddler care.

"(f) APPLICATION OF OTHER REQUIREMENTS.—

"(1) STATE PLAN.—The State, as part of the State plan submitted under section 658E(c), shall describe the activities that the State intends to carry out using amounts received under this section, including a description of the levels of assistance to be provided.

"(2) OTHER REQUIREMENTS.—Amounts provided to a State under this section shall be subject to the requirements and limitations of this subchapter except that section 658E(c)(3), 658F, 658G, 658J, and 658O shall not apply.".

TITLE III—LOAN REPAYMENT FOR CHILD CARE WORKERS

SEC. 301. LOAN REPAYMENT FOR CHILD CARE WORKERS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by striking the heading for subpart 7 and inserting after subpart 6 (20 U.S.C. 1070d–31 et seq.) the following:

"SUBPART 7—LOAN REPAYMENT FOR CHILD CARE WORKERS

"SEC. 420. LOAN REPAYMENT FOR CHILD CARE WORKERS.

"(a) LOAN REPAYMENT PROGRAM.—

"(1) IN GENERAL.—From amounts appropriated under subsection (f), the Secretary shall carry out a program of assuming the obligation to repay a loan made, insured or guaranteed under part B or part D (excluding loans made under section 428A, 428B, or 428C) for any borrower who—

"(A) is awarded an associate degree, or a baccalaureate or graduate degree, in early childhood development; and

"(B) is employed, for not less than 2 years, in a child care facility serving low-income children who are primarily age birth through 3.

"(2) MAXIMUM AMOUNT.—The Secretary shall determine the maximum amount of loans that may be repayed under this section.

"(3) REGULATIONS.—The Secretary is authorized to issue such regulations as may be necessary to carry out this section.

"(b) LOAN REPAYMENT.—

"(1) IN GENERAL.—Subject to subsection (a)(3), the Secretary shall assume the obligation to repay the total amount of loans under part B or D (excluding a loan made under section 428A, 428B, or 428C) incurred by a borrower in pursuit of a baccalaureate or graduate degree in early childhood development.

"(2) CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the refunding of any repayment of a loan made under part B or D.

"(3) INTEREST.—If a portion of a loan is repaid by the Secretary under this section for any year, the proportionate amount of interest on such loan which accrues for such year shall be repaid by the Secretary.

"(c) REPAYMENT TO ELIGIBLE LENDERS OR HOLDERS.—The Secretary shall pay to each eligible lender or holder for each fiscal year an amount equal to the aggregate amount of loans which are subject to repayment pursuant to this section for such year.

"(d) APPLICATION FOR REPAYMENT.—

"(1) IN GENERAL.—Each eligible individual desiring loan repayment under this section shall submit a complete and accurate application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Loan repayment under this section shall be on a first-come, first-served basis.

"(2) CONDITIONS.—An eligible individual may apply for repayment after completing the employment described in subsection (a)(1)(B). The borrower shall receive forbearance while engaged in the employment described in subsection (a)(1)(B).

"(e) DEFINITION.—For the purpose of this section the term "eligible lender" has the meaning given the term in section 435(d).

"(f) CAPPED ENTITLEMENT.—There are authorized to be appropriated and there are appropriated $100,000,000 to carry out this section for fiscal year 1998 and each succeeding fiscal year.".

TITLE IV—FULL FUNDING FOR THE WOMEN, INFANTS, AND CHILDREN PROGRAM

SEC. 401. FULL FUNDING FOR THE WOMEN, INFANTS, AND CHILDREN PROGRAM.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in the second sentence of subsection (a)—

(A) by striking "authorized" and inserting "established"; and

(B) by striking ", up to the authorization levels set forth in subsection (g) of this section,";

(2) in subsection (c)—

(A) in the first sentence of paragraph (1), by striking "may" and inserting "shall"; and

(B) in paragraph (2), by striking "appropriated" and inserting "made available";

(3) in subsection (g)—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) FUNDING.—

"(A) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be—

"(i) appropriated to carry out this section such amounts as are necessary for each of fiscal years 1997 through 2002; and

"(ii) made available such amounts as are necessary for the Secretary of the Treasury to fulfill the requirements of subparagraph (B).

"(B) APPROPRIATIONS.—

"(i) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary of Agriculture, on the date of enactment of the Early Childhood Development Act of 1997 for fiscal year 1997, and October 1 of each fiscal year for each fiscal year thereafter, to carry out this subsection—

"(I) for fiscal year 1997, an additional amount of $1,500,000,000; and

"(II) for each fiscal year thereafter, an amount equal to the total amount made available for fiscal year 1997 to carry out this subsection (including the additional amount referred to in subclause (I)), adjusted on October 1, 1998, and each October 1 thereafter, to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics for the 12-month period ending the preceding June 30.

"(ii) ENTITLEMENT.—The Secretary of Agriculture shall be entitled to receive the funds and shall accept the funds.";

(B) in the first sentence of paragraph (4), by striking "appropriated" and inserting "made available"; and

(C) in paragraph (5), by striking "appropriated" and inserting "made available";

(4) in subsection (h)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "appropriated" both places it appears and inserting "made available"; and

(ii) in subparagraph (C), by striking "appropriated" both places it appears and inserting "made available"; and

(B) in the first sentence of paragraph (2)(A), by striking "1998" and inserting "2002"; and

(5) in subsection (l), by striking "funds appropriated" and inserting "funds made available".

TITLE V—AMENDMENTS TO THE HEAD START ACT

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

Section 639(a) of the Head Start Act (42 U.S.C. 9834(a)) is amended by inserting before the period at the end the following: ", $4,900,000,000 for fiscal year 1999, $5,500,000,000 for fiscal year 2000, $6,100,000,000 for fiscal year 2001, and $6,700,000,000 for fiscal year 2002".

SEC. 502. ALLOTMENT OF FUNDS.

Section 640(a)(6) of the Head Start Act (42 U.S.C. 9835(a)(6)) is amended—

(1) by striking "1997, and" and inserting "1997,"; and

(2) by inserting after "1998," the following: "6 percent for fiscal year 1999, 7 percent for fiscal year 2000, 8 percent for fiscal year 2001, and 9 percent for fiscal year 2002,".

SEC. 503. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on October 1, 1997.

TITLE VI—SCHOOL INVOLVEMENT LEAVE

SEC. 601. SHORT TITLE.

This title may be cited as the "Time for Schools Act of 1997".

SEC. 602. GENERAL REQUIREMENTS FOR LEAVE.

(a) ENTITLEMENT TO LEAVE.—Section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)) is amended by adding at the end the following:

"(3) ENTITLEMENT TO SCHOOL INVOLVEMENT LEAVE.—

"(A) IN GENERAL.—Subject to section 103(f), an eligible employee shall be entitled to a total of 24 hours of leave during any 12-month period to participate in an activity of a school of a son or daughter of the employee, such as a parent-teacher conference or an interview for a school, or to participate in literacy training under a family literacy program.

"(B) DEFINITIONS.—In this paragraph:

"(i) FAMILY LITERACY PROGRAM.—The term 'family literacy program' means a program of services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family and that integrate all of the following activities:

"(I) Interactive literacy activities between parents and their sons and daughters.

"(II) Training for parents on how to be the primary teacher for their sons and daughters and full partners in the education of their sons and daughters.

"(III) Parent literacy training.

"(IV) An age-appropriate education program for sons and daughters.

"(ii) LITERACY.—The term 'literacy', used with respect to an individual, means the ability of the individual to speak, read, and write English, and compute and solve problems, at levels of proficiency necessary—

"(I) to function on the job, in the family of the individual, and in society;

"(II) to achieve the goals of the individual; and

"(III) to develop the knowledge potential of the individual.

"(iii) SCHOOL.—The term 'school' means an elementary school or secondary school (as such terms are defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)), a Head Start program assisted under the Head Start Act (42 U.S.C. 9831 et seq.), and a child care facility operated by a provider who meets the applicable State or local government licensing, certification, approval, or registration requirements, if any.

"(4) LIMITATION.—No employee may take more than a total of 12 workweeks of leave under paragraphs (1) and (3) during any 12-month period.".

(b) SCHEDULE.—Section 102(b)(1) of such Act (29 U.S.C. 2612(b)(1)) is amended by inserting after the second sentence the following: "Leave under subsection (a)(3) may be taken intermittently or on a reduced leave schedule.".

(c) SUBSTITUTION OF PAID LEAVE.—Section 102(d)(2)(A) of such Act (29 U.S.C. 2612(d)(2)(A)) is amended by inserting before the period the following: ", or for leave provided under subsection (a)(3) for any part of the 24-hour period of such leave under such subsection".

(d) NOTICE.—Section 102(e) of such Act (29 U.S.C. 2612(e)) is amended by adding at the end the following:

"(3) NOTICE FOR SCHOOL INVOLVEMENT LEAVE.—In any case in which the necessity for leave under subsection (a)(3) is foreseeable, the employee shall provide the employer with not less than 7 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subsection. If the necessity for the leave is not foreseeable, the employee shall provide such notice as is practicable.".

(e) CERTIFICATION.—Section 103 of such Act (29 U.S.C. 2613) is amended by adding at the end the following:

"(f) CERTIFICATION FOR SCHOOL INVOLVEMENT LEAVE.—An employer may require that a request for leave under section 102(a)(3) be supported by a certification issued at such time and in such manner as the Secretary may by regulation prescribe.".

SEC. 603. SCHOOL INVOLVEMENT LEAVE FOR CIVIL SERVICE EMPLOYEES.

(a) ENTITLEMENT TO LEAVE.—Section 6382(a) of title 5, United States Code, is amended by adding at the end the following:

"(3)(A) Subject to section 6383(f), an employee shall be entitled to a total of 24 hours of leave during any 12-month period to participate in an activity of a school of a son or daughter of the employee, such as a parent-teacher conference or an interview for a school, or to participate in literacy training under a family literacy program.

"(B) In this paragraph:

"(i) The term 'family literacy program' means a program of services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family and that integrate all of the following activities:

"(I) Interactive literacy activities between parents and their sons and daughters.

"(II) Training for parents on how to be the primary teacher for their sons and daughters and full partners in the education of their sons and daughters.

"(III) Parent literacy training.

"(IV) An age-appropriate education program for sons and daughters.

"(ii) The term 'literacy', used with respect to an individual, means the ability of the individual to speak, read, and write English, and compute and solve problems, at levels of proficiency necessary—

"(I) to function on the job, in the family of the individual, and in society;

"(II) to achieve the goals of the individual; and

"(III) to develop the knowledge potential of the individual.

"(iii) The term 'school' means an elementary school or secondary school (as such terms are defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)), a Head Start program assisted under the Head Start Act (42 U.S.C. 9831 et seq.), and a child care facility operated by a provider who meets the applicable State or local government licensing, certification, approval, or registration requirements, if any.

"(4) No employee may take more than a total of 12 workweeks of leave under paragraphs (1) and (3) during any 12-month period.".

(b) SCHEDULE.—Section 6382(b)(1) of such title is amended by inserting after the second sentence the following: "Leave under subsection (a)(3) may be taken intermittently or on a reduced leave schedule.".

(c) SUBSTITUTION OF PAID LEAVE.—Section 6382(d) of such title is amended by inserting before ", except" the following: ", or for leave provided under subsection (a)(3) any of the employee's accrued or accumulated annual leave under subchapter I for any part of the 24-hour period of such leave under such subsection".

(d) NOTICE.—Section 6382(e) of such title is amended by adding at the end the following:

"(3) In any case in which the necessity for leave under subsection (a)(3) is foreseeable, the employee shall provide the employing agency with not less than 7 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subsection. If the necessity for the leave is not foreseeable, the employee shall provide such notice as is practicable.".

(e) CERTIFICATION.—Section 6383 of such title is amended by adding at the end the following:

"(f) An employing agency may require that a request for leave under section 6382(a)(3) be supported by a certification issued at such time and in such manner as the Office of Personnel Management may by regulation prescribe.".

SEC. 604. EFFECTIVE DATE.

This title takes effect 120 days after the date of enactment of this Act.

ADDITIONAL COSPONSORS

S. 193

At the request of Mr. GLENN, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 193, a bill to provide protections to individuals who are the human subject of research.

S. 251

At the request of Mr. SHELBY, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 251, a bill to amend the Internal Revenue Code of 1986 to allow farmers to income average over 2 years.

S. 356

At the request of Mr. GRAHAM, the name of the Senator from Louisiana [Ms. LANDRIEU] was added as a cosponsor of S. 356, a bill to amend the Internal Revenue Code of 1986, the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the titles XVIII and XIX of the Social Security Act to assure access to emergency medical services under group health plans, health insurance coverage, and the medicare and medicaid programs.

S. 375

At the request of Mr. MCCAIN, the name of the Senator from Oregon [Mr. WYDEN] was added as a cosponsor of S. 375, a bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test.

S. 387

At the request of Mr. HATCH, the names of the Senator from Nevada [Mr. BRYAN] and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of S. 387, a bill to amend the Internal Revenue Code of 1986 to provide equity to exports of software.

S. 419

At the request of Mr. BOND, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 419, a bill to provide surveillance, research, and services aimed at prevention of birth defects, and for other purposes.

S. 442

At the request of Mr. WYDEN, the names of the Senator from Montana [Mr. BURNS], the Senator from Arizona [Mr. MCCAIN], the Senator from Alabama [Mr. SHELBY], and the Senator from Washington [Mrs. MURRAY] were added as cosponsors of S. 442, a bill to establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

S. 460

At the request of Mr. BOND, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 460, a bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes.

S. 476

At the request of Mr. HATCH, the names of the Senator from New York [Mr. D'AMATO] and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 476, a bill to provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000.

S. 528

At the request of Mr. CAMPBELL, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 528, a bill to require the display of the POW/MIA flag on various occasions and in various locations.

S. 665

At the request of Mr. KERREY, the name of the Senator from Wisconsin [Mr. FEINGOLD] was added as a cosponsor of S. 665, a bill to monitor the progress of the Telecommunications Act of 1996.

SENATE RESOLUTION 64

At the request of Mr. ROBB, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of Senate Resolution 64, a resolution to designate the week of May 4, 1997, as "National Correctional Officers and Employees Week".

SENATE RESOLUTION 76

At the request of Mr. THURMOND, the names of the Senator from Delaware [Mr. ROTH] and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of Senate Resolution 76, a resolution proclaiming a nationwide moment of remembrance, to be observed on Memorial Day, May 26, 1997, in order to appropriately honor American patriots lost in the pursuit of peace and liberty around the world.

SENATE RESOLUTION 86—RELATIVE TO TELEPHONE ACCESS CHARGES FOR USE OF THE INTERNET

Mr. ABRAHAM (for himself and Mr. LEAHY) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 86

Whereas with the enactment of the Telecommunications Act of 1996 (Public Law 104–104), Congress sought to stimulate through the competitive marketplace the rapid deployment of new communications technologies at the lowest possible cost to the customers;

Whereas the Internet is the most noteworthy example of the development of an advanced communications network, having expanded from the four linked sites of its precursor network in 1969 to become the first ubiquitous, interactive advanced communications network today;

Whereas the Internet is a digital electronic environment where different forms of multimedia flow freely and efficiently;

Whereas over 15,000,000 households are currently connected to the Internet and 43,000,000 households are expected to be so connected by the year 2000;

Whereas the Internet is an invaluable tool for personal communications, education, telemedicine, and better integrating the elderly, the disabled, and individuals living in remote locations into the life of the Nation;

Whereas the development of an electronic marketplace over the Internet will be a competitive stimulus to the national economy, with the amount of electronic commerce expected to grow to $80,000,000,000 by the year 2000;

Whereas commerce over the Internet will empower consumers by offering a myriad of options for comparison shopping information gathering, and purchasing opportunities;

Whereas commerce over the Internet has also proven an important start-up mechanism for small businesses by providing minimal barriers to entry and by acting as a ubiquitous, cost-effective distribution system;

Whereas innovative companies in all economic sectors have tied their economic future to the continued growth and success of the Internet;

Whereas the Internet is the medium of choice for electronic commerce, electronic mail, multimedia, and corporate Intranets;

Whereas the Internet has succeeded as a result of its responsiveness to technical challenges unencumbered by any preconceptions imposed by regulation relating to its development; and

Whereas the imposition of telephone access charges by regulation would inhibit the development of the Internet and discourage the use of the Internet at a time when the national policy should be to promote the development of advance telecommunications networks such as the Internet: Now, therefore, be it

Resolved, That it is the sense of the Senate that the telecommunications policy of the United States should support the continued unfettered growth of the Internet by—

(1) encouraging greater dialogue between the Local Exchange Carriers and the Internet community in the effort to reach a mutually beneficial resolution to the issues relating to connecting to the internet; and

(2) encouraging the removal of impediments to the introduction of competition, and in particular, in the provision of new technologies and services to connecting to the internet and other advanced networks.

Mr. ABRAHAM. Mr. President, I rise today to submit a resolution regarding access charges on the Internet. This resolution conveys the sense of the U.S. Senate that telephone access charges for Internet use will impede the Internet's continued growth and development and, therefore, should be discouraged.

The rise of the Internet has been truly phenomenal. From the four linked sites of its 1969 precursor, the Internet has developed into an advanced telecommunications network that was unimagined only a decade ago. Today, over 15,000,000 households are currently connected to the Internet, and some industry analysts expect this number to rise to 43,000,000 by the year 2000. These new users will continue to find an increasing amount of options and assistance available to them online. Whether the Internet is used to meet new friends, do online banking, compare medical or scientific research or do shopping, as services increase, the Internet will become an indispensable part of everyday life.

Personal uses aside, many believe the Internet's greatest growth potential lies in the evolution of online commerce. The Internet is clearly the technology of the future and innovative companies are staking their future on the public's increased access to this network. According to the Wall Street Journal, online commerce was estimated at $518 million in 1996 and is expected to reach $1.14 billion in 1997.

Not surprisingly though, the surge of Internet use has led to some unexpected difficulties. Industry studies indicate that Internet usage is growing at up to 42 percent per year, and some Local Exchange Carrier's [LEC] contend this increasing traffic could exceed the current phone system's capacity. While studies differ on the scope or extent of this problem, it seems clear that, ultimately, a significant investment in the telephone infrastructure will be required if gridlock is to be avoided. To fund this infrastructure, some of the LEC's support an Internet user fee to help fund the installation of new circuits designed to head-off any congestion problems.

Rather than install more, inefficient analog switches, however, it is my hope that the Local Exchange Carriers will work to upgrade their telephone systems to digital transmissions just as satellite transmitters, wireless, and long-distance companies have undertaken the transition to digital. Last year, a coalition of high-technology companies in support of this concept organized to oppose traditional telephone fees for Internet use. Consumers, they argue, will be reluctant to use the Internet if new fees are imposed without such product improvement. I agree. The Nation's telephone system needs improvement in order to meet the challenges of 21st century technology and consumer expectations. For this to happen, the telephone infrastructure will require technological improvements, not just additional capacity.

In my opinion, if we are to maximize the potential for this new technology, it is important that we recognize the exciting technological changes ongoing in communications. In particular, when addressing problems caused by the surge in Internet use, I believe America should focus on ways to optimize this medium's efficiency. Charging additional regulatory fees for access to the Internet, I fear, could have the unintended consequence of limiting the public's ability and desire to connect. If, as a result of some new form of access fee, less people use the Internet, then we will have passed up a great opportunity to advance the public's investment and involvement in one of the truly revolutionary technological advancements of this century. I hope that the advanced-technology companies which depend on the Internet and the local carriers which help provide service can come to a mutually beneficial agreement on Internet services absent the imposition of additional fees for Internet use.

The likelihood of such an agreement was probably heightened by last weeks announcement by the Federal Communications Commission that it will not permit the Local Exchange Carriers to charge user fees for connecting to the internet. This resolution demonstrates congressional support for the FCC position. This sense of the Senate resolution outlines the dramatic growth of the Internet, spells out the benefits available online and recognizes the potential for digital commerce. More importantly, the resolution demonstrates that it is time for the Internet providers and the local phone companies to work together to resolve this conundrum before it becomes a real problem.

With so many different issues surrounding the Internet today, it is easy to lose track of the industries' latest developments. This legislation, however, addresses what I believe to be the most fundamental Internet issue: affordability. All of the amazing tools provided by the Internet and all its conveniences will be meaningless if, in our zeal to control the Internet, we price its access beyond the reach of average Americans. This nonbinding resolution expresses the desire of the Senate to avoid such a mistake, and I urge my colleagues to support it.

Mr. LEAHY. Mr. President, I am pleased to cosponsor this resolution with Senator ABRAHAM. I feel strongly that the Senate needs to speak out on the importance that our future telecommunications policy will play in the growth of commerce on the Internet.

The Internet was born in 1974, but I missed the birth announcement. Like many who later would become avid Internet users, I let several years slip by before realizing the incredible potential of this new tool—that computers could virtually connect you to anyone, anywhere, anytime.

The Internet is changing more than the speed of communications; it is changing the very dynamics of communication. Though still in its infancy, it already is beginning to change the way we do business. Over the past 2 years, sales generated through the Web grew more than 5,000 percent. And Net merchants are expected to sell billions of dollars worth of goods by the end of the century. This is a tremendous potential market for businesses.

While Internet growth has been explosive, concrete standards for Internet commerce have not been set. Most online users still do not buy and sell goods over the Internet because they are afraid online hackers will steal their financial information. These are legitimate concerns that still have to be addressed by emerging security technologies.

That is why I have worked with industry leaders during the past two years to find ways to promote more secure encryption technology. Better encryption means safer online commerce. We should be working with the private sector to help set standards that provide a secure Internet where people are safe paying their bills from their home computers. We should also encourage greater dialogue between Local Exchange Carriers and the Internet community. We do not want to choke Internet growth with excessive phone charges for Internet access.

I use the Internet on a daily basis for anything from finding the latest Batman movie clips to online chats with Vermont schools. My work on Internet

issues has earned me the nickname of "the Cyber Senator." I have had many nicknames in my life. Some have been better than others but I am proud of this nickname because as the Cyber Senator, I can help Vermonters. That is why the Internet is so important to me.

In two key ways, the opportunities opened by the Internet are a perfect match for Vermont.

First, cyber-selling compliments our community-centered, environmentally-conscious style. In the past 25 years, Vermonters have shown uncommon stewardship in preserving our State's quality of life. Other States that only now are discovering these values will have trouble recapturing what already has eroded. Since the Internet allows anyone to work anywhere in the world, why not in Vermont where you can enjoy a unique lifestyle?

Second, throughout this century, we Vermonters have been held back because we are not geographically near any major markets to sell our goods. Now, through the Internet, we can sell our goods in the blink of an eye to anyone in the world.

Some pioneering Vermont businesses are already venturing into cyberspace. My home page on the World Wide Web is linked to Web sites of more than 100 Vermont businesses, ranging from the Quill Bookstore in Manchester Center to Jay Peak Ski Resort. For instance, The Flying Noodle in Waterbury Center now sells about 30 percent of its gourmet pasta and sauces over the Internet and has regular customers in Japan, Guam, Germany, France, and South Korea.

We all have visions of what we want for Vermont as we enter the 21st century. My vision is that the Internet will unlock the potential for any Vermonter—and especially, our children—to stay in our beautiful State to earn a living. The Internet is a place where Vermonters can exchange ideas with people across the world with the stroke of a key or the click of a mouse.

Mr. President, I commend my colleague from Michigan for submitting this resolution. It is strongly supported by the American Electronics Association, Business Software Alliance, and many other groups devoted to the growth of Internet commerce. I urge my colleagues to support our resolution.

AMENDMENTS SUBMITTED

THE FAMILY FRIENDLY WORKPLACE ACT OF 1997

JEFFORDS AMENDMENT NO. 280

(Ordered to lie on the table.)

Mr. JEFFORDS submitted an amendment intended to be proposed by him to the amendment No. 244 submitted by Mrs. MURRAY to the bill (S. 4) to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. . APPLICATION OF FAIR LABOR STANDARDS ACT OF 1938 TO THE EXECUTIVE OFFICE OF THE PRESIDENT.

Section 413(d)(2) of title 3, United States Code, is amended by striking "October 1, 1998" and inserting "October 1, 1997".

SPECTER AMENDMENT NO. 281

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to amendment No. 278 submitted by him to the bill, S. 4, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

"(iii) UNLAWFUL DISCRIMINATION.—It shall be an unlawful act of discrimination for an employer to request, directly or indirectly, that an employee accept compensatory time off in lieu of monetary overtime compensation, or to qualify the availability of work for which overtime compensation is required upon employee's request for or acceptance of compensatory time off in lieu of monetary overtime compensation. This clause does not apply to an offer of compensatory time off by an employer to all employees or a class of employees. Any person who violates the provisions of this clause shall be subject to the penalties contained in Section 16(a) of this Act.".

GRASSLEY AMENDMENT NO. 282

(Ordered to lie on the table.)

Mr. GRASSLEY submitted an amendment intended to be proposed by him to amendment No. 260 submitted by Mr. WELLSTONE to the bill, S. 4, supra; as follows:

Strike all and insert:

On page 28, after line 16 insert the following:

(d) PROTECTIONS FOR CLAIMS RELATING TO COMPENSATORY TIME OFF AND FLEXIBLE CREDIT HOURS IN BANKRUPTCY PROCEEDINGS.—Section 507(a)(3) of title 11, United States Code, is amended—

(1) by striking "$4,000" and inserting "$6,000";

(2) by striking "for—" and inserting the following: "provided that all accrued compensatory time (as defined in section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) or all accrued flexible credit hours (as defined in section 13(A) of the Fair Labor Standards Act of 1938) shall be deemed to have been earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—"; and

(3) in subparagraph (A), by inserting before the semicolon the following: "or the value of unused, accrued compensatory time (as defined in section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207)) or the value of unused, accrued flexible credit hours (as defined in section 13A of the Fair Labor Standards Act of 1938)".

GRASSLEY AMENDMENT NO. 283

(Ordered to lie on the table.)

Mr. GRASSLEY submitted an amendment intended to be proposed by him to amendment No. 270 submitted by Mr. KENNEDY to the bill, S. 4, supra; as follows:

Strike all and insert:

On page 28, after line 16, insert the following:

(d) PROTECTIONS FOR CLAIMS RELATING TO COMPENSATORY TIME OFF AND FLEXIBLE CREDIT HOURS IN BANKRUPTCY PROCEEDINGS.—Section 507(a)(3) of title 11, United States Code, is amended—

(1) by striking "$4,000" and inserting "$6,000";

(2) by striking "for—" and inserting the following: "provided that all accrued compensatory time (as defined in section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) or all accrued flexible credit hours (as defined in section 13(A) of the Fair Labor Standards Act of 1938) shall be deemed to have been earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—"; and

(3) in subparagraph (A), by inserting before the semicolon the following: "or the value of unused, accrued compensatory time (as defined in section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207)) or the value of unused, accrued flexible credit hours (as defined in section 13A of the Fair Labor Standards Act of 1938)".

ASHCROFT AMENDMENT NO. 284

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to amendment No. 262 submitted by Mr. WELLSTONE to the bill, S. 4, supra; as follows:

To the matter proposed to be stricken add the following:

( ) FLEXIBLE AND COMPRESSED WORK SCHEDULE PROGRAMS.—

(1) REPEAL.—Subchapter II of chapter 61 of title 5, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table of sections for chapter 61 of title 5, United States Code, is amended—

(i) by striking the following item:

"SUBCHAPTER I—GENERAL PROVISIONS";

and

(ii) by striking the items relating to subchapter II.

(B) Section 6103 of title 5, United States Code, is amended by striking subsection (d).

(C) Subchapter I of chapter 61 of title 5, United States Code, is amended by striking the following:

"SUBCHAPTER I—GENERAL PROVISIONS".

(D) Section 3401(2) of title 5, United States Code is amended by striking "(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)".

(E) Section 116 of the Indian Health Care Improvement Act (25 U.S.C. 1616i) is amended by striking subsection (c).

ASHCROFT AMENDMENT NO. 285

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to amendment No. 274 submitted by Mr. KENNEDY to the bill, S. 4, supra; as follows:

To the matter proposed to be stricken, add the following:

( ) FLEXIBLE AND COMPRESSED WORK SCHEDULE PROGRAMS.—

(1) REPEAL.—Subchapter II of chapter 61 of title 5, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—

(A) The table of sections for chapter 61 title 5, United States Code, is amended—

(i) by striking the following item:

"SUBCHAPTER I—GENERAL PROVISIONS";

and

(ii) by striking the items relating to subchapter II.

(B) Section 6103 of title 5, United States Code, is amended by striking subsection (d).

(C) Subchapter I of chapter 61 of title 5, United States Code, is amended by striking the following:

"SUBCHAPTER I—GENERAL PROVISIONS".

(D) Section 3401(2) of title 5, United States Code is amended by striking "(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)".

(E) Section 116 of the Indian Health Care Improvement Act (25 U.S.C. 1616i) is amended by striking subsection (c).

ASHCROFT AMENDMENT NO. 286

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to amendment No. 276 submitted by Mr. DODD to the bill, S. 4, supra; as follows:

To the matter proposed to be stricken, add the following:

( ) FLEXIBLE AND COMPRESSED WORK SCHEDULE PROGRAMS.—

(1) REPEAL.—Subchapter II of chapter 61 of title 5, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table of sections for chapter 61 of title 5, United States Code, is amended—

(i) by striking the following item:

"SUBCHAPTER I—GENERAL PROVISIONS";

and

(ii) by striking the items relating to subchapter II.

(B) Section 6103 of title 5, United States Code, is amended by striking subsection (d).

(C) Subchapter I of chapter 61 of title 5, United States Code, is amended by striking the following:

"SUBCHAPTER I—GENERAL PROVISIONS".

(D) Section 3401(2) of title 5, United States Code is amended by striking "(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)".

(E) Section 116 of the Indian Health Care Improvement Act (25 U.S.C. 1616i) is amended by striking subsection (c).

ASHCROFT AMENDMENT NO. 287

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to amendment No. 271 submitted by Mr. KENNEDY to the bill, S. 4, supra; as follows:

To the matter proposed to be stricken, add the following:

( ) FLEXIBILE AND COMPRESSED WORK SCHEDULE PROGRAMS.—

(1) REPEAL.—Subchaptr II of chapter 61 of title 5, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table of sections for chapter 61 of title 5, United States Code, is amended—

(i) by striking the following item:

"SUBCHAPTER I—GENERAL PROVISIONS";

and

(ii) by striking the items relating to subchapter II.

(B) Section 6103 of title 5, United States Code, is amended by striking subsection (d).

(C) Subchapter I of chapter 61 of title 5, United States Code, is amended by striking the following:

"SUBCHAPTER I—GENERAL PROVISIONS".

(D) Section 3401(2) of title 5, United States Code is amended by striking "(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)".

(E) Section 116 of the Indian Health Care Improvement Act (25 U.S.C. 1616i) is amended by striking subsection (c).

THE PARTIAL-BIRTH ABORTION BAN ACT OF 1997

FEINSTEIN (AND OTHERS) AMENDMENT NO. 288

Mrs. FEINSTEIN (for herself, Mrs. BOXER, and Ms. MOSELEY-BRAUN) proposed an amendment to the bill (H.R. 1122) to amend title 18, United States Code, to ban partial-birth abortions; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Post-Viability Abortion Restriction Act."

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

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

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

SEC. 3. CIVIL PENALTIES.

(a) ACTION BY ATTORNEY GENERAL.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General (referred to in this Act as the "appropriate official"), may commence a civil action under this subsection in any appropriate United States district court to enforce the provisions of this Act.

(b) RELIEF.—

(1) FIRST VIOLATION.—In an action commenced under subsection (a), if the court finds that the respondent in the action has violated a provision of this Act, the court shall assess a civil penalty against the respondent in an amount not exceeding $100,000, and refer the case to the State medical licensing authority for consideration of suspension of the respondent's medical license.

(2) SECOND VIOLATION.—If a respondent in an action commenced under subsection (a) has been found to have violated a provision of this Act on a prior occasion, the court shall assess a civil penalty against the respondent in an amount not exceeding $250,000, and refer the case to the State medical licensing authority for consideration of revocation of the respondent's medical license.

(c) CERTIFICATION REQUIREMENTS.—

(1) IN GENERAL.—At the time of the commencement of an action under subsection (a), the appropriate official shall certify to the court involved that the appropriate official—

(A) has provided notification in writing of the alleged violation of this Act, at least 30 calendar days prior to the filing of such action, to the attorney general or chief legal officer of the appropriate State or political subdivision; and

(B) believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

(2) LIMITATION.—No woman who has had an abortion after fetal viability may be penalized under this Act for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of title 18, United States Code.

SEC. 4. REGULATIONS AND PROCEDURES.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Health and Human Services shall establish regulations—

(1) requiring an attending physician described in section 2(b) to certify that, in the best medical judgment of the physician, the abortion described in section 2(b) was medically necessary to preserve the life or to avert serious adverse health consequences to the woman involved, and to describe the medical indications supporting the judgment; and

(2) to ensure the confidentiality of all information submitted pursuant to a certification by a physician under paragraph (1).

(b) STATE REGULATIONS AND PROCEDURES.—The regulations described in subsection (a) shall not apply in a State that has established regulations described in subsection (a).

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to prohibit State or local governments from regulating, restricting, or prohibiting post-viability abortions to the extent permitted by the Constitution of the United States.

DASCHLE (AND OTHERS) AMENDMENT NO. 289

Mr. DASCHLE (for himself, Ms. SNOWE, Ms. MIKULSKI, Mrs. MURRAY, Ms. LANDRIEU, Ms. COLLINS, Mr. LIEBERMAN, and Mr. KENNEDY) proposed an amendment to the bill, H.R. 1122, supra; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Abortion Ban Act of 1997".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As the Supreme Court recognized in *Roe v. Wade*, the government has an "important and legitimate interest in preserving and protecting the health of the pregnant woman...and has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grow in substantiality as the woman approaches term and, at a point during pregnancy, each becomes compelling".

(2) In delineating at what point the Government's interest in fetal life becomes "compelling", *Roe v. Wade* held that "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability", a conclusion reaffirmed in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.

(3) *Planned Parenthood of Southeastern Pennsylvania v. Casey* also reiterated the holding in *Roe v. Wade* that the government's interest in potential life becomes compelling with fetal viability, stating that "subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother".

(4) According to the Supreme Court, viability "is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of State protection that now overrides the rights of the woman".

(5) The Supreme Court has thus indicated that it is constitutional for Congress to ban abortions occurring after viability so long as the ban does not apply when a woman's life or health faces a serious threat.

(6) Even when it is necessary to terminate a pregnancy to save the life or health of the mother, every medically appropriate measure should be taken to deliver a viable fetus.

(7) It is well established that women may suffer serious health conditions during pregnancy, such as breast cancer, preeclampsia, uterine rupture or non-Hodgkin's lymphoma, among others, that may require the pregnancy to be terminated.

(8) While such situations are rare, not only would it be unconstitutional but it would be unconscionable for Congress to ban abortions in such cases, forcing women to endure severe damage to their health and, in some cases, risk early death.

(9) In cases where the mother's health is not at such high risk, however, it is appropriate for Congress to assert its "compelling interest" in fetal life by prohibiting abortions after fetal viability.

(10) While many States have banned abortions of viable fetuses, in some States it continues to be legal for a healthy woman to abort a viable fetus.

(11) As a result, women seeking abortions may travel between the States to take advantage of differing State laws.

(12) To prevent abortions of viable fetuses not necessitated by severe medical complications, Congress must act to make such abortions illegal in all States.

(13) abortion of a viable fetus should be prohibited throughout the United States, unless a woman's life or health is threatened and, even when it is necessary to terminate the pregnancy, every measure should be taken, consistent with the goals of protecting the mother's life and health, to preserve the life and health of the fetus.

SEC. 3. ABORTION PROHIBITION.

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

"CHAPTER 74—ABORTION PROHIBITION

"Sec.
"1531. Prohibition.
"1532. Penalties.
"1533. State regulations.
"1534. Rule of construction.

"§ 1531 Prohibition.

"(a) IN GENERAL.—It shall be unlawful for a physician to abort a viable fetus unless the physician certifies that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

"(b) GRIEVOUS INJURY.—

"(1) IN GENERAL.—For purposes of subsection (a), the term 'grievous injury' means—

"(A) a severely debilitating disease or impairment specifically caused by the pregnancy; or

"(B) an inability to provide necessary treatment for a life-threatening condition.

"(2) LIMITATION.—The term 'grievous injury' does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.

"(c) PHYSICIAN.—In this chapter, 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, except that any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs an abortion in violation of subsection (a) shall be subject to the provisions of this section.

"(d) NO CONSPIRACY.—No woman who has had an abortion after fetal viability may be prosecuted under this section for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of title 18, United States Code.

"§ 1532 Penalties.

"(a) ACTION BY ATTORNEY GENERAL.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General may commence a civil action under this chapter in any appropriate United States district court to enforce the provisions of this chapter.

"(b) RELIEF.—

"(1) FIRST OFFENSE.—Upon a finding by the court that the respondent in an action commenced under subsection (a) has knowingly violated a provision of this chapter, the court shall notify the appropriate State medical licensing authority in order to effect the suspension of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding $100,000, or both.

"(2) SECOND OFFENSE.—If a respondent in an action commenced under subsection (a) has been found to have knowingly violated a provision of this chapter on a prior occasion, the court shall notify the appropriate State medical licensing authority in order to effect the revocation of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding $250,000, or both.

"(3) HEARING.—With respect to an action under subsection (a), the appropriate State medical licensing authority shall be given notification of and an opportunity to be heard at a hearing to determine the penalty to be imposed under this subsection.

"(c) CERTIFICATION REQUIREMENTS.—At the time of the commencement of an action under subsection (a), the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General shall certify to the court involved that, at least 30 calendar days prior to the filing of such action, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney involved—

"(1) has provided notice of the alleged violation of this section, in writing, to the Governor or chief executive officer and attorney general or chief legal officer of the State or political subdivision involved, as well as to the State medical licensing board or other appropriate State agency; and

"(2) believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

"§ 1533 Regulations.

"(a) REGULATIONS OF SECRETARY FOR CERTIFICATION.—

"(1) IN GENERAL.—Not later than 60 days after the date of enactment of this chapter, the Secretary of Health and Human Services shall publish proposed regulations for the filing of certifications by physicians under section 1531(a).

"(2) REQUIREMENT.—The regulations under paragraph (1) shall require that a certification filed under section 1531(a) contain—

"(A) a certification by the physician (on penalty of perjury, as permitted under section 1746 of title 28) that, in his or her best medical judgment, the abortion involved was medically necessary pursuant to such section; and

"(B) a description by the physician of the medical indications supporting his or her judgment.

"(3) CONFIDENTIALITY.—The Secretary of Health and Human Services shall promulgate regulations to ensure that the identity of the mother described in section 1531(a) is kept confidential, with respect to a certification filed by a physician under section 1531(a).

"(b) ACTION BY STATE.—A State, and the medical licensing authority of the State, shall develop regulations and procedures for the revocation or suspension of the medical license of a physician upon a finding under section 1532 that the physician has violated a provision of this chapter. A State that fails to implement such procedures shall be subject to loss of funding under title XIX of the Social Security Act.

"§ 1534 Rule of Construction.

"(1) IN GENERAL.—The requirements of this chapter shall not apply with respect to post-viability abortions in a State if there is a State law in effect in the State that regulates, restricts, or prohibits such abortions to the extent permitted by the Constitution of the United States.

"(2) STATE LAW.—In paragraph (1), the term "State law" includes all laws, decisions, rules or regulations of any State, or any other State action having the effect of law.".

(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. Prohibition of post-viability abortions ..... 1531".

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. WARNER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Thursday, May 22, 1997, at 9:30 a.m. to consider revisions to title 44/GPO: Review and Recommendations of Draft Legislation.

For further information concerning this hearing, please contact Eric Peterson at 224-7774.

SUBCOMMITTEE ON WATER AND POWER

Mr. KYL. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources will hold a hearing to receive testimony concerning several pending measures. The measures are:

S. 439, the Federal Power Act Amendment Act of 1997,

H.R. 651 and H.R. 652, bills to extend the deadlines for hydroelectric projects in the State of Washington,

S. 725, the Collbran Project Unit Conveyance Act,

S. 736, the Carlsbad Irrigation Project Acquired Land Transfer Act,

S. 744, to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes, and

S. 538, to authorize the Secretary of the Interior to convey certain facilities of the Minidoka project to the Burley Irrigation District, and for other purposes.

The hearing will take place on Tuesday, June 10 in room SD-366 of the Dirksen Senate Office Building starting at 9:30 a.m. Persons interested in testifying or submitting material for the hearing record should contact the Subcommittee on Water and Power of the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510, attn: Shawn Taylor (S. 439, H.R. 651 and 652) at 202-224-7875 or Betty Nevitt (S. 725, S. 736, S. 744, and S. 538) at 202-224-0765.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, May 15, 1997, to conduct a hearing to examine the report dealing with U.S. and allied efforts to recover and restore gold and other assets stolen or hidden by Germany during World War II.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, May 15, 1997, at 9:30 a.m. on spectrum.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Energy and Natural Resources Committee be granted permission to meet during the session of the Senate on Thursday, May 15, for purposes of conducting a joint hearing of the Senate Energy and Natural Resources Subcommittee on Forests and Public Land Management and the House Resources Subcommittee on Forests and Forest Health which is scheduled to begin at 2 p.m. The purpose of this Hearing is to receive testimony on the release of the Columbia River Basin Environmental Impact Statement.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a full committee hearing on "Student Aid Delivery Systems: $320 million Too Much Money for Too Little Accountability?" during the session of the Senate on Thursday, May 15, 1997, at 10 a.m.

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

COMMITTEE ON SMALL BUSINESS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate for an oversight hearing on "SBA's Finance Programs—Part II" on Thursday, May 15, 1997, which will begin at 9:30 a.m. in room 428A of the Russell Senate Office Building.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. SANTORUM. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing on sexual harassment in the Department of Veterans Affairs. The hearing will be held on May 15, 1997, at 9:30 a.m., in room 216 of the Hart Senate Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, May 15, 1997, at 2 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON AFRICAN AFFAIRS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the African Affairs Subcommittee of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, May 15, 1997, at 10:30 a.m. to hold a hearing.

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

SUBCOMMITTEE ON INTERNATIONAL TRADE

Mr. SANTORUM. Mr. President, the Finance Committee Subcommittee on International Trade requests unanimous consent to conduct a hearing on Thursday, May 15, 1997, beginning at 2 p.m. in room 215 Dirksen.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Science, Technology, and Space Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, May 15, 1997, at 2 p.m. on the National Weather Service.

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

ADDITIONAL STATEMENTS

NOBEL PEACE PRIZE RECIPIENT JOSE RAMOS-HORTA

• Mrs. BOXER. Mr. President, I rise today to welcome Jose Ramos-Horta to California. In recognition of his indefatigable efforts on behalf of the people of his native East Timor, Mr. Ramos-Horta was coawarded the 1996 Nobel Prize for Peace. He will be in San Francisco in June to participate in a 3-day conference on peacemaking. There he will be joined by numerous national and world leaders including fellow Nobel laureates, the Dalai Lama of Tibet and Rigoberta Menchu of Guatemala.

The issue of East Timor has a special relevance in California, which is home to the largest concentration of Portuguese-Americans in the United States. Shortly after Portugal took steps in 1974 to end political oppression at home, it withdrew from most of its foreign territories, including East Timor. Although Portugal ceased to exercise colonial influence over East Timor in the midseventies, it has remained an important voice of conscience regarding East Timor ever since.

As may be expected at the conclusion of 500 years of foreign rule, a brief period of struggle ensued between rival

factions in East Timor. For many, the pain of this civil strife was tempered with optimism over the prospect of imminent, peaceful self-rule. Exiled by colonialist authorities for his early proindependence stance, Mr. Horta was particularly encouraged by events.

This hope of a budding nation was crushed when troops from neighboring Indonesia invaded East Timor in 1975. Annexation followed the next year and so began a period of often brutal occupation. Regrettably, over 20 years later, for many East Timorese the dream of political independence has been replaced, at least in the short term, by the struggle for the most basic of human rights.

In self-imposed exile since the invasion, Jose Ramos-Horta has never forgotten his homeland and its desire for peace and freedom. He travels, writes, and speaks continually about what has occurred and what is occurring in East Timor. It is testament to his passion and the resilience of his countrymen that the troubles of this small island no longer fester in obscurity.

Jose Ramos-Horta is the latest in a distinguished succession of modern leaders who have sacrificed and continue to sacrifice much for the causes of peace and justice. I know I join many of my colleagues and millions of others when I say that it is my hope that, like Nelson Mandela, Lech Walesa, and Andrei Sakharov, Mr. Ramos-Horta's crusade meets with rapid success and spurs further advances in human rights across Asia and the world.

He and his words of peace and dignity are always welcome in California.•

IN RECOGNITION OF JEWISH HERITAGE WEEK, MAY 11–18, 1997

• Mr. LEVIN. Mr. President, it is with great pride and pleasure that I rise today to call my colleagues' attention to President Clinton's proclamation designating May 11–18, 1997, as Jewish Heritage Week.

Jewish Heritage Week was initiated in 1976 by the Jewish Community Relations Council to celebrate the significant contributions Jewish people have made to American history and culture. It is observed every spring, during the season in which Jewish people commemorate Passover, Yom Hashoah (Holocaust Memorial Day) and Yom Ha'atzmaut (Israel Independence Day). In my home State of Michigan, a number of displays celebrating the week are on display in libraries in Oakland County on the theme "These Jewish Americans Have Made This Country and the World a Better Place." The achievements of notable Jewish-Americans are highlighted, such as Dr. Jonas Salk, who discovered the polio vaccine, Nathan Straus, who introduced pasteurized milk in America, movie legends Samuel Goldwyn and Steven Spielberg, Nobel prize winners Henry Kissinger and Saul Bellow, and musical giants George Gershwin and Irving Berlin, among many others.

I would like to recognize the efforts of the artists and organizers of these exhibits, who have helped to bring the spirit of Jewish Heritage Week to Michigan. They include Ann Barnett, Maynard Feldman, Howard Fridson, Julian Lefkowitz, Helen Naimark, and Sara Schiff.

In his proclamation last year, the President eloquently stated that "Jewish-Americans have infused our Nation with a powerful faith, a commitment to family and community, and a devotion to scholarship and self-improvement. We can draw strength and inspiration from the enduring lessons of Judaism and it is entirely fitting that we honor the great traditions of its followers." I hope my colleagues will join me and the millions of others who are celebrating the achievements of Jewish-Americans during Jewish Heritage Week.•

THE COURT IN THE SCHOOLS/ CRITICAL LIFE CHOICES PROGRAM

• Mr. ABRAHAM. Mr. President, I rise today to recognize an innovative anticrime program in my State targeted toward young people. Established in 1993 by Judge Michael A. Martone of the 52d District Court in Troy, MI, the Court in the Schools/Critical Life Choices Program is an admirable and effective effort to teach middle and high school students how to make the right choices in life.

In part one of this two part program a middle or high school's auditorium or cafeteria is transformed into a courtroom. Judge Martone, if in his own jurisdiction, or a local judge, then try actual pending cases involving youthful, nonviolent misdemeanors, such as first and second offense drinking and driving cases, controlled substance cases, and shoplifting cases, in front of the assembled students.

In part two of the program, Judge Martone interacts with the students to coach them on how to intelligently analyze risks and make critical life choices. With the aid of television news segments and taped video vignettes of tragedies resulting from youthful indiscretion, the students and Judge Martone engage in an insightful and constructive dialog.

To date, over 15,000 students have participated in the program. This low-cost, high-impact program is making a difference in young people's lives. When students see for themselves a defendant handcuffed and taken into custody, Judge Martone says student response is measured by being able to hear a pin drop.

I commend Judge Martone for his tireless work on behalf of America's children. In fact, Judge Martone maintains a standing offer to help other communities, both in Michigan and across the Nation, to develop and implement their own Court in the Schools/Critical Life Choices programs. I urge all my colleagues to consider the benefits of utilizing such a program in their own respective States, and, if interested, either contact the Troy Community Coalition for the Prevention of Drug and Alcohol Abuse at 248–740–0431, or representatives in my office for further information.•

ROY ROGERS AND DALE EVANS 50TH WEDDING ANNIVERSARY

• Mr. CLELAND. Mr. President, I rise today to pay tribute to two of my heroes, Roy Rogers and Dale Evans and to congratulate them on their year-long 50th wedding anniversary celebration. Roy Rogers and Dale Evans, the world's most popular cowboy and cowgirl ever, have inspired and entertained millions of Americans during the span of their careers.

Roy Rogers has appeared in more than 100 films since his debut in 1935, starring in most of them. During the peak of his career, from the early 1940's to the mid-1950's, he drew film audiences of about 80 million Americans per year and inspired fans around the world to organize record-size clubs. Roy moved on to other media in the 1950's, starring with his wife, Dale, in "The Roy Rogers Show" on television and in several long-running radio variety shows.

In whatever venture they have pursued, Roy and Dale have served as wonderful, positive examples to all of us. It is with great admiration and respect that I congratulate Roy Rogers and Dale Evans on their 50th anniversary year. I thank Roy and Dale for teaching us that the good guys do win.•

DEPUTY JASON HENDRIX: LAW ENFORCEMENT OFFICER OF THE YEAR

• Mrs. BOXER. Mr. President, I wish to extend my most sincere congratulations to Deputy Jason Hendrix of the San Bernardino County Sheriff's Department on being honored today by the American Police Hall of Fame as its "1997 Law Enforcement Officer of the Year." We are extremely fortunate to have an officer of Deputy Hendrix's caliber and commitment, and I commend him for the outstanding act of bravery that resulted in receipt of this award.

While off duty in March of last year, Deputy Hendrix observed an armed man holding two employees hostage in front of a crowded store. After sending his fiancee to dial 911, Hendrix startled the suspect and promptly secured the release of the hostages. An exchange of gunfire followed, in which Deputy Hendrix disabled the suspect and was

himself shot six times. The subject was subdued by another off duty officer and store employees.

Few of us can appreciate the perils faced daily by the men and women of law enforcement. Each year dozens of peace officers are killed in the line of duty. I am thankful that Deputy Hendrix survived this confrontation, and I know that his family, friends, and colleagues are grateful for his recovery.

I commend the selflessness and courage exhibited by Deputy Jason Hendrix on March 30, 1996. His act of valor almost certainly saved the lives of many innocent bystanders. His disregard for his own personal safety in defense of others represents the very best spirit of law enforcement. It is fitting that on this occasion, National Peace Officers Memorial Day, we thank Deputy Hendrix and all California police officers who regularly take risks and make sacrifices in service to their communities.•

SALUTING IDAHO'S HALL OF FAME JOCKEY

• Mr. KEMPTHORNE. Mr. President, I rise to salute an outstanding young man who has made his mark as a professional athlete—jockey Gary Stevens, a native Idahoan.

Gary Stevens won the Kentucky Derby on Silver Charm earlier this month, becoming the only active jockey to win the Derby three times. Gary won it on Winning Colors in 1988 and Thunder Gulch in 1995. Gary joins a select group of jockeys as three-time Derby winners.

Gary Stevens' accomplishments are worthy of Hall of Fame consideration. And indeed, Gary was recently elected to the National Thoroughbred Racing Hall of Fame. At 34, he is one of the youngest to win election to the Hall.

A native of Caldwell, Idaho, Gary Stevens attended Capital High School in Boise. He won his first race at the age of 16 riding at Les Bois Park in Boise. Even at such an early age, it was clear to racing fans that he had a gift and his talents would lead to something special. Horse racing experts say Gary is a master of pace—once he gets a horse in the lead, he has the ability to get the horse to relax and pace itself so it has enough to win the race.

If needed, he can come from behind, as he did in the Derby. Gary says once he got Silver Charm in the lead, the horse's ears popped up, and Gary said he knew his colt was relaxed and in good position.

Over his career, Gary Stevens has won over four thousand races and more than one hundred million dollars in purses. For all his success, he remembers his roots. Sportswriters heard him say after the Derby, "The kid from Idaho can still do it." And his family and friends in Idaho are rooting for him. Thousands of fans at Les Bois Park cheered him on as they watched the Derby simulcast. They will always remember him as "their" jockey. His peers also recognize Gary's special talents and personality. He was elected this year as President of the Jockey's Guild, an honor because his fellow riders have chosen him to represent their profession.

I know that every Idahoan joins me in congratulating Gary Stevens for winning his third Kentucky Derby and for his election to the Hall of Fame. I also want to acknowledge his parents, Ron and Barb, for their contributions to horse racing in Idaho and for raising such a fine son. Ron still trains horses at Les Bois Park, so the Stevens family remains a part of Idaho's racing scene.

So, Mr. President, I am pleased to wish Gary good luck this weekend at the Preakness Stakes, where he will once again ride Silver Charm. Gary Stevens is a winner—a winner I am proud to say who is also an Idahoan.•

JUDGE DAMON KEITH

• Mr. ABRAHAM. Mr. President, I rise today to offer my congratulations to Federal appellate Judge Damon J. Keith, recently named the 1997 recipient of the American Bar Association's Thurgood Marshall Award.

Judge Keith was born on Detroit's west side and attended Northwestern High School. After graduation from West Virginia State College, service in the U.S. Army during World War II, and graduation from Howard University Law School, Keith returned home to Detroit and set up a law practice. President Lyndon Johnson appointed Keith to the U.S. District Court in 1967 where he served until 1977, when he was appointed to the U.S. Court of Appeals for the Sixth Circuit. He took senior status in 1995.

Mr. President, I join all his well wishers in saluting Judge Damon Keith and his illustrious career, and I ask that the following editorial from the May 12, 1997 Detroit Free Press be printed in the RECORD.

The editorial follows:

DAMON KEITH: AWARD RECOGNIZES HIS GIFTS OF JUSTICE, SERVICE

Congratulations to federal Judge Damon Keith on being named the 1997 winner of the American Bar Association's Thurgood Marshall Award. It is a richly deserved honor that reflects not only the high esteem in which he is held by his peers but also the commitment to social justice and equality to which he has dedicated his life.

The award, named in honor of the late Supreme Court justice and the first African American to serve on that court, goes annually to a nominee with a history of substantial and long-term contributions to the advancement of civil rights, civil liberties and human rights in the United States. Judge Keith is the sixth recipient since the award was conceived and first given to Justice Marshall himself in 1992.

A senior judge in the 60th Circuit Court of Appeals, Judge Keith has served 30 years on the trial and appellate benches. His rulings on civil liberties, civil rights and equal protection have given hope to many previously disfranchised Americans.

Like his mentor, Justice Marshall, Judge Keith is a patriot of the first order. His commitment has never wavered to a vision of America that lives up to the demands of the Bill of Rights and treats each citizen with the dignity and respect due him or her regardless of race, sex or social status. His contributions offer promise of a society we have yet to become but, with his leadership, will one day achieve.•

THE SMALL BUSINESS ADMINISTRATION—AN EFFECTIVE VOICE FOR SMALL BUSINESS?

• Mr. BOND. Mr. President, I rise today to call on the Small Business Administration (SBA) to fulfill its role as advocate for the hardworking men and women who have made small business the backbone of our nation's economy. As Chairman of the Committee on Small Business, I have heard countless hours of testimony from small businesses who look to the SBA for information assistance and advocacy.

The SBA's role as an effective voice for small business within the executive branch recently came under fire during the final days of the Office of Management and Budget's (OMB) review of an Environmental Protection Agency (EPA) regulation to expand the number of industries covered by the Toxic Release Inventory (TRI) reporting requirements. The proposed inclusion of two industries, comprised predominantly of small businesses, was brought into question by the SBA and numerous Members of Congress. The affected small businesses had data to support their case for exclusion, and some of the data on which EPA had based its proposed rule was inaccurate. Despite the strength of their case, these small businesses found their views unwelcome at EPA. They appropriately turned to SBA to articulate the small business views to the administration.

As the Chairman of the Senate Committee on Small Business, I was dismayed when effective advocacy by the SBA on behalf of small business was criticized as improper. In a letter sent to SBA Administrator Aida Alvarez, efforts to communicate the small business perspective were characterized as "elements within [SBA] . . . actively working to undermine [the TRI] initiative." The important working relationship between SBA and its small business constituency was alleged to be an improper use of "taxpayer funds to conduct lobbying efforts on behalf of private lobbyists. . . ." In response to this criticism, the SBA temporarily removed staff from working on TRI and asked the Inspector General to review the matter.

The Ranking Minority member on the Committee, Senator KERRY, joined

me in sending a letter to the Administrator of the SBA, expressing our support for the Office of Advocacy and the SBA's role on behalf of small businesses. I ask that the text of our letter and the response I recently received from James F. Hoobler, Inspector General for the SBA, be printed in the RECORD. I am delighted to say that the role of the SBA, the Office of Advocacy and the individual staff member, whose dedication to the cause of small business was unfairly criticized, were found to have "acted properly and ethically." The Inspector General added, "SBA is statutorily mandated to support and speak up for the interests of small business. . . . To do otherwise would be contrary to its mandated responsibilities."

The SBA worked closely with the affected small businesses in an effort to ensure that their side of the story was heard. The SBA's voice apparently caught the ear of OMB, which prolonged its consideration of the rule beyond the usual 90-day review period. The debate that ensured on the merits of the rule and the basis for regulating the small employers is exactly the type of policy discussion the SBA should facilitate. In fact, during her confirmation hearing before the Committee on Small Business, SBA Administrator Aida Alvarez announced her commitment to being an effective voice for small business within the Administration. Ms. Alvarez pledged to carry the views and concerns of small business to the agencies involved and to be an advocate for small business at the Cabinet table and in her interactions with the President. I sincerely hope Administrator Alvarez will keep to her word. On the TRI rule, however, the Clinton administration did not. No accommodation, such as a threshold for reporting to cover only those sectors of the industry that arguably merited coverage, was made for the small businesses in the affected industries.

Mr. President, it is well known that federal regulations have historically imposed a disproportionate burden on small business. Last year, we enacted the Small Business Regulatory Enforcement Fairness Act—better known to small businesses as the Red Tape Reduction Act—to provide tools to ensure that small businesses get a fair shake in agency rulemakings and enforcement actions. As the author of the Red Tape Reduction Act and Chairman of the Committee on Small Business, I am committed to ensuring that small businesses have the opportunity to use the tools provided by Congress, including access to and effective representation by SBA. The SBA and its Office of Advocacy has an important advocacy role to play on behalf of the hard-working men and women whose entrepreneurial spirit makes the small business sector so vibrant. In addition to providing information and assistance, the SBA must rededicate itself to being an effective voice for small business.

The material follows:

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, April 16, 1997.

Hon. AIDA ALVAREZ,
Administrator, U.S. Small Business Administration, Washington, DC.

DEAR ADMINISTRATOR ALVAREZ: Questions have been raised regarding the activities of the Small Business Administration's Office of Advocacy. As the Chairman and Ranking Member of the Senate Committee on Small Business, we would agree that any credible allegations of improper conduct should be looked into. We are equally convinced, however, that being a determined advocate for the concerns of small businesses is not improper conduct by the Chief Counsel of Advocacy or his employees. The statutory role of SBA as the voice for small business within the executive branch, a role that has been enhanced after last year's passage of the Small Business Regulatory Enforcement Fairness Act, must not be compromised.

As the Administrator of SBA, you are keenly aware that the Office of Advocacy is expected to work with and on behalf of small business and their representatives as an essential part of its statutory mission. The effectiveness of SBA on behalf of our nation's small entrepreneurs and employers depends on communication with individual small businesses, their trade associations and other representatives. We trust that as SBA Administrator you will reject any attempt to chill proactive advocacy for small businesses by the Chief Counsel and others at SBA. To do otherwise would send a clear and alarming signal to small businesses, and would call into question the ability of SBA to carry out the critical responsibilities given to it under SBREFA and other laws.

We hope you share our commitment to ensuring that the unique concerns and interests of small businesses are given appropriate consideration by executive branch agencies. We look forward to learning what efforts you will take to support the important role historically played by the SBA and its Office of Advocacy as an effective voice for small business.

Sincerely,

CHRISTOPHER S. BOND,
Chairman.

U.S. SMALL BUSINESS ADMINISTRATION,
Washington, DC, April 29, 1997.

Hon. CHRISTOPHER S. BOND,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BOND: Thank you for your and Senator Kerry's supportive letter of April 16, 1997, to SBA Administrator Alvarez. In view of your strong conviction in the role of the SBA as a voice for small business, I believe you should be aware of the results of a recent investigation conducted by my office.

Subsequent to receipt of a complaint about possible improper activity by SBA's Office of Advocacy in connection with proposed expansion of the Toxic Release Inventory, my Investigations Division conducted a thorough inquiry into the allegations. We found that the Office of Advocacy acted properly and ethically. Moreover, as you pointed out, SBA is statutorily-mandated to support and speak up for the interests of small business. During the matter in question, the Office of Advocacy was carrying out its mission in support of small business. To do otherwise would be contrary to its mandated responsibilities.

Again, thank you for the vote of confidence, and, rest assured, my office would not hesitate to take action if SBA activities were improper. Should you, or your staff, have any questions, please contact Assistant Inspector General for Investigations Steve Marica at (202) 205-6220 and refer to Office of Inspector General file number 07-0497-03.

Sincerely,

JAMES F. HOOBLER,
Inspector General.●

TRIBUTE TO GEORGE J. COLLINS

● Mr. WARNER. Mr. President, I rise today to pay tribute to George J. Collins, a resident of Springfield, VA, who died March 23, 1997. Mr. Collins had a distinguished career of public service at the Government Printing Office [GPO]. At the time of his death, Mr. Collins was manager of the GPO's Quality Control and Technical Department, with responsibility for the development of product standards and quality attributes, testing, and inspection, as well as the supply of inks, adhesives, and other materials used in Government printing.

A native of Springfield, OH, Mr. Collins served in the U.S. Marine Corps. He received his bachelor of arts degree from Wittenberg College and pursued additional studies at the University of Cincinnati, Pennsylvania State University, North Dakota State College, the National Cash Register [NCR] Co., and with international correspondence schools. He earned certification in a variety of technical specialties, including high polymers, paint technology, water and waste treatment, industrial chemistry, and statistical methods.

Before entering Government service, Mr. Collins worked at NCR as senior research chemist in charge of their polymer group. Earlier experiences included service as a research chemist with the Commonwealth Engineering Co. of Ohio, the Chadaloid Corp., and New Wrinkle, Inc. He also worked for the city of Springfield, OH, and the Oliver Corp. as a laboratory technician.

Mr. Collins began his career at the GPO in 1963 as supervisory chemist in the ink and reprography division of the Quality Control and Technical Department. He was promoted to deputy manager of the department in December 1974 and to manager in 1982. During his service with the GPO, Mr. Collins contributed to the development of plastic printing rollers, automated bank checks, and U.S. mail processing based on tagged inks. He chaired the interagency task group that developed the Federal Information Processing [FIPS] Standard for optical character recognition [OCR] form design, which proved to be the most popular FIPS standard ever published.

Mr. Collins initiated the GPO's environmental testing and control program. He established the organization that promulgated the GPO's Quality Assurance Through Attributes

[QATAP] Program. The QATAP Program was a singular achievement that resulted in the use of quantifiable attributes for measuring quality in Government printing, and it is central to the GPO's program of procuring more than 75 percent of all printing annually from the private sector.

Mr. Collins served on the Joint Committee on Printing's Advisory Council on Paper Specifications, which establishes standards for the acquisition of printing and writing papers for Government use, including recycled paper. In 1994 he assisted the enactment of legislation requiring that all Federal lithographic printing be performed utilizing vegetable oil-based inks. Today, the CONGRESSIONAL RECORD and other congressional information products are produced on recycled paper with vegetable-based inks, products that Mr. Collins was instrumental in helping to introduce for Government use. He also worked on increasing the use of permanent papers for the production of records with enduring educational and research value.

Mr. Collins was a member of numerous professional and industry groups, and he represented the GPO on several advisory boards and committees. He was affiliated with the Franklin Technical Society of Washington, DC, the National Association of Litho Clubs [NALC], the Technical Association of the Graphic Arts [TAGA], the Technical Association of the Pulp and Paper Industry [TAPPI], the American Chemical Society [ACS], Toastmasters International, and the Committee for Graphic Arts Technologies and Standards [CGATS]. He was the recipient of various awards for his professional activities, including the Award of Excellence from the Printing Institute of America's Executive Development Institute, and several GPO awards.

Mr. Collins was a devoted husband to his wife Eleanor, father to 5 daughters, and grandfather to 14 grandchildren.

Throughout his career, Mr. Collins exemplified skill in his profession and dedication to public service, and his contributions have made Government printing more cost-effective, efficient, and environmentally sound. I join with the employees of the Government Printing Office in expressing my sincere condolences to Mr. Collins' wife Eleanor and his family.●

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 United States Code 276h–276k, as amended, appoints the Senator from Utah [Mr. HATCH], the Senator from Alabama [Mr. SHELBY], and the Senator from Arizona [Mr. MCCAIN] as members of the Senate Delegation to the Mexico-United States Interparliamentary Group meeting to be held in Santa Fe, NM, May 16–18, 1997.

ORDERS FOR FRIDAY, MAY 16, 1997

Mr. GRASSLEY. Mr. President, on behalf of the leader, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10 a.m., on Friday, May 16. I further ask unanimous consent that on Friday, immediately following the prayer, the routine requests through the morning hour be granted, and the Senate then begin a period of morning business with Senators permitted to speak for up to 5 minutes each with the following exceptions: Senator COCHRAN 15 minutes, Senator ASHCROFT or his designee from 10:30 a.m. until 11:30 a.m, Senator DASCHLE or his designee for 60 minutes, Senator COVERDELL for 10 minutes, Senator FEINSTEIN for 10 minutes, Senator SNOWE for 15 minutes.

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

PROGRAM

Mr. GRASSLEY. Mr. President, on behalf of the leader, for the information for all Senators, tomorrow there will be a period of morning business to allow a number of Senators time to speak. Therefore, no rollcall votes will be conducted during Friday's session of the Senate.

On Monday, we hope to begin consideration of the first concurrent budget resolution by possibly beginning debate. If any votes are ordered on the resolution, votes would be postponed to occur not before 5 p.m. on Monday.

In addition, early next week the Senate could return to the consideration of H.R. 1122, the partial-birth abortion bill, or S. 4, the Family Friendly Workplace Act. As always, Senators will be notified as soon as any agreements are reached.

KIDS III

Mr. GRASSLEY. Mr. President, I have spoken many times in recent months on my concerns for the growing threat to our kids from drug use. All of our early warning systems are sounding the alarm. All our major national reviews of drug trends indicate the emerging pattern. What they show is that month by month, day by day, minute by minute, drug use among our young people is on the rise. They also make clear that attitudes among young people about the dangers of drugs are changing—for the worse. More and more kids, some as young as 10 and 11, are seeing drug use as OK, as no big deal.

Let's stop for a minute and reflect on just what these facts mean. For those of us who remember how the last drug epidemic in this country got started, the present trend is truly disturbing. Think for a moment on what happened and how it happened. In the late 1970's and early 1980's, we saw the streets of our inner cities become battlegrounds. We saw many of our communities, our schools our public and private spaces overwhelmed with violence, addiction, and abuse. We saw families destroyed and individual lives shattered. The problem became so serious that the public demanded action. The Congress responded with comprehensive drug legislation in 1986 and 1988. We supported massive increases in public funding to fight back. We still do. To the tune of some $16 billion annually at the Federal level alone.

That problem, the one we spend all this money on, began with our kids. It began because we as a country allowed people to sell us on the idea that drugs were OK. We bought the idea that individuals could use dangerous drugs responsibly.

The consequence was the drug epidemic of the 1970's and 1980's. An epidemic whose long-term effects we are still coping with. Let's remind ourselves who the principal audience was that was listening to all the talk about responsible drug use. It was kids. It was the baby boom generation in their teens who heard the message and took it to heart. It was a generation of young people who bought the message. It did not take them long to translate the idea that they could use drugs responsibility into the notion that they had a responsibility to use drugs.

As a result, today, a large percentage of baby boomers have tried drugs. Many of those are today's drug addicts and dealers. Many of them are today's parents who feel disarmed in talking to their own kids about drug use.

Today, we are on the verge of making the same mistake again. After years of progress in reducing drug use among kids, it is this very population that is at risk. Once again, we are seeing the glorification of drug use. Increasingly the music our kids are listening to conveys a drugs-are-okay message. The normalization of drug use is creeping back into movies, advertising, and TV. And who do you think is listening? The answer is in the numbers.

Teenage drug use is now in its fifth year of increases. And the age of onset of use is dropping. Our last epidemic started with 16 and 17 year olds. Today's "at-risk" population, the age of onset, is 12 and 13 year olds.

One of the major reasons for this is that we have lost our message. We have in recent years been inconsistent. And, we are seeing a more sophisticated effort by some to once again promote the idea that drug use is okay. And they are targeting our young people.

Nothing brings this home better than an item in the Washington Post on 27 April.

The Sunday's Outlook section had a piece by a young woman in a New York City high school. She wrote about a recent drug lecture in her health science

class. The article, entitled "Lessons You Didn't Mean to Teach Us," is arresting. I invite all my colleagues to read the piece. I ask unanimous consent that the article be printed in the RECORD at the conclusion or of my remarks.

The Article official without objection, it is so ordered.

(See Exhibit.)

Mr. GRASSLEY. The article is based on a letter this young woman wrote to her teacher. She felt compelled to write following a lecture to her class by what was billed as a former drug addict. As she says, she expected to hear about the dangers of drug use. What she and the class got, however, was very different.

In this case, a very clean-cut looking young man, identified as a former addict, spoke. While the teacher was present, the speaker evidently did talk about the problems of his personal drug use. Once the teacher left the room, though, the message changed. Instead of an anti-message, the lecture became a mini-course on drugs, drug use, and how to make a killing selling drugs. Among the things the speaker passed on was a recipe for a stronger form of cocaine. The speaker extolled the virtues of being stoned. He "raved" about the incredible amounts of money to be made peddling drugs. He left the class with the advice that since no one could drug test for alcohol, that it was okay to drink.

The teacher in this particular class, based on negative feedback, has decided not to leave classes alone with future guest speakers. Unfortunately, as the young woman who wrote about this incident notes, the damage is done.

Mr. President, if you, or any of my colleagues, have not yet read this letter, I encourage you to do so. The story that it tells is very poignant, and very disturbing. We know that there is a growing acceptance of drug use among our children. We can see the reports and the story they tell. But what we don't always appreciate is why.

As this letter makes clear, the drugs-are-okay message is back. I would hope that this lecture by this individual was an accident and a one-time occurrence. But I am concerned that it is representative of a growing effort to influence the young. His talk apparently had everything but free samples. As the author of this letter tells us, ". . . the way in which he spoke of drugs made them seem appealing and beneficial." This type of message is not isolated.

From music to videos to movies and advertisement, we are seeing efforts once again to glamorize drugs. We have seen initiatives in several states to push drug legalization under various disguises. Just recently a micro-brewery in Maryland has begun to market a beer made with marijuana seeds under the title "Hempen."

Not too long ago some of our major fashion industry folks began to use models with the "Heroin Chic" look. We are seeing opinion leaders and members of our cultural elite portray drug use as simply a personal choice that is harmless and benign. Many of these individuals act as if the only issue is for responsible adults to decide for themselves. They speak as if it is only adults that we need to think about. This, however, is not in fact the case.

If you do not believe this, talk to parents. Talk to teachers. Talk to the health and law enforcement professionals who daily see the consequences. Visit the emergency room of your local hospital and talk to the doctors and nurses who see every day the effects of drug use.

Go to a treatment center and sit and talk to some of the patients, listen to their stories of how drug use has destroyed their lives, their families.

But most important, listen to what kids are telling us about what is happening in their schools. To their friends. Ask them where they get their information, and who they listen to. If this letter tells us anything, it is that we must listen to our kids, if for no other reason so we know whom they are listening to. Above all, we need to do a better job at delivering a clear, consistent, no-use message to our kids.

As we move into the appropriations cycle, we need to keep that need firmly in mind. We cannot repeat the mistake that we made in the 1960's and 1970's. Last time we had a drug epidemic we could claim ignorance. We don't have any excuses if we let it happen again.

EXHIBIT 1

LESSONS YOU DIDN'T MEAN TO TEACH US

After a former drug abuser came to speak to four 10th-grade health classes at a suburban New York City high school, 16-year-old Victoria Slade sent this letter anonymously to her teacher. The teacher subsequently told the classes that, because of negative feedback, she would not leave guest speakers alone with students. Slade has since told the teacher that the letter was from her. It is being reprinted with Slade's permission.

I am a student in one of your health classes this semester. As a transfer student from a very small private school, I am daily finding out shocking things about the various actions and addictions of my peers. I am currently drug-free, alcohol-free, pot-free, smoke-free, etc. The solid background I received from my previous school ensures that I will remain thus, but I am extremely concerned about my classmates, many of whom I fear are already trying drugs and alcohol. For this reason, I was glad when you announced that the surprise guest speaker was someone who had been addicted to cocaine and marijuana. I expected that seeing what happens to you when you get into drugs would make many students reconsider what they were doing. However, I was sadly mistaken in this assumption.

The guest speaker entered as a well-dressed, good-looking individual. He was relatively well-spoken and complemented his serious discussion with occasional light humor. He was described as a good student who got into trouble and was saved by his loving teachers. In our eyes, he became the victim of a corrupt police force and government. Soon forgotten was the fact that he got himself into this trouble through the sale and consumption of illegal substances. While you were present in the room, the young man acted in accordance with your wishes: we could relate to him, and so we listened attentively to the important lesson he was teaching us.

However, once you left the room, this tragic figure opened with the line: "So, do you guys have any questions? I can tell you anything you want to know about drugs." He continued in the same manner, describing the different effects of different drugs: which were best, which made you able to concentrate better, how cocaine kept him awake so he could study. When asked if you could remember what you studied the next day, he responded with an emphatic affirmative. He mentioned that if you studied while under the influence of marijuana, you wouldn't do well on the test unless you were high again while taking it, in which case you would perform to the best of your ability. His explanation for this phenomenon was that you are on a different level of consciousness while high. Furthermore, he assured us that being high on marijuana has no effect on your ability to drive, as your reaction time is not altered by the drug. He described the various types of Ecstasy, explaining that he took the 70-percent drug-content one once and became very ill. However, he soon canceled this out by describing the type with 30 percent drug content as "nice." Also, he gave us a recipe for a different, stronger form of cocaine.

The pleasing physical effect of drugs was not the sole topic of conversation. At one point, someone asked him why he would get into drugs if he was doing well in school and getting good grades. This question led him into a 10-minute exaltation of selling drugs for a living. He raved about the incredible amounts of money he made, mentioning more than twice the fact that he had four nice cars. We were all impressed when he said that he made over $500,000 in just four years of selling drugs. I's sure that those of us who work were thinking contendedly—of our five-dollar-an-hour jobs cleaning the toilets and places like McDonald's and Boston Market.

Our new role model summed up his report on the world of drugs by telling us that he was still smoking weed until just a few days before. He said he wanted to smoke as much as he could before he had to be clean for the Navy drug test. Also, he informed us that if he had not been caught, he would definitely still be using and dealing drugs now. One of his final bits of advice was that they couldn't screen you for alcohol, so it is okay to drink.

There were many other appalling statements made by this gentleman which quite disturbed me. As I mentioned earlier, many students at this school are into drugs and alcohol. I think that the idea behind this visit was good: We could live vicariously through this young man, whose life is (or should be) all but destroyed because of drugs. However, the way in which he spoke of drugs made them seem appealing and beneficial. It upsets me to think of how many classes of impressionable youths were influenced by this man—how many minds were made up by his wonderful tale. I hope that you do not promote future visits with this particular guest speaker and thank you for your attention.

Sincerely,

A Concerned Student.

THE CERTIFICATION PROCESS I

Mr. GRASSLEY. Mr. President, the House is in the process of taking steps to alter fundamentally the annual certification process for drugs. In addition, there have been a number of statements in the press and elsewhere by Members of Congress and others on problems with certification. Individuals in the Administration, including the Drug Czar, have also broached the idea of change. I agree that some form of strengthening of the certification process is needed. Indeed, I offered my "Three Strikes and you're out" bill last year with the idea of making the certification process tougher. I also suggested some fixes this last February in the debate over Mexico. But I also think that it is important to take a hard look at what the certification process is before we tinker with it.

The recent discussion of the certification process is born out of frustration over the decision on Mexico. I share some of these concerns and the frustration. But the present effort is little more than an attempt to water down congressional oversight of US narcotics policy. It does so in the name of flexibility. It does so/so that we won't be too hard on our international partners. I believe this approach is wrong. And I will vigorously oppose efforts to short change the public's interest in upholding tough standards for certification.

Since much of the discussion in recent weeks on certification is based on a series of myths about it, I think it is useful to review some of these misconceptions.

The principal myth is that the certification process unfairly brands other countries for drug supply problems. It also maintains that this is unfair while the United States does nothing to deal with its demand problem.

There are several things wrong with this view. First, even if the United States did nothing about demand, we have a right and an obligation to do something about supply. This is especially true since most of the dangerous, illegal drugs used in this country are produced overseas. These drugs are then smuggled into the United States, often with the collusion of public officials in other countries.

Our right to stop this flow stems from the fact that we and virtually every other country in the world are signatories of international agreements. These agreements bind us and them to action to stop drug production, trafficking, and money laundering. Moreover, most of these same countries—including the ones we certify—have made drug production, trafficking, and money laundering illegal under their own laws. And, many of these countries have bilateral agreements with the United States that commit them to take meaningful action against drugs. Thus, countries are bound to act in terms of international law. They are committed to binding agreements with the United States. And they have obligations in terms of their own domestic legal frameworks.

It is neither unfair nor presumptuous for the United States to expect other countries to abide by laws and commitments that they have made. Nor are we being a busybody or arbitrary when we expect and require countries to uphold appropriate international standards of conduct. Indeed, it is only by insisting that such principles of conduct be observed that we have any hope of sustaining respect for and observance of international law. This is understood when it comes to judging other countries on their compliance with a host of other international canons.

After all, we expect countries to observe principles governing human rights, sound environmental practices, fair trade, counterterrorism, and intellectual property rights, to name but a few. The United States has been a leader in promoting respect for these areas of concern.

Congress has passed a host of certification requirements regarding them. In part, this is because we recognize that failure to uphold these principles in the face of willful or negligent disregard is to abandon the idea of standards altogether. And it makes at least as much sense to hold other countries responsible for trafficking in dangerous drugs as it does to scold them for trafficking in pirated CD's.

As I said, we also have an obligation to uphold these standards. Our obligation is to the American people and to the policies we promote in their interest. Protection the citizens of this country from enemies, foreign and domestic, is one of our most important responsibilities. Stopping dangerous drugs coming to this country from abroad falls squarely into this category.

If we are prepared to enforce sanctions for violations of intellectual property rights, it is hardly excessive to judge cooperation by other countries to stop the flow of illegal drugs. After all, not one American has died from Chinese counterfeit CDs. China White heroin, on the other hand, has killed countless of our fellow citizens and ruined the lives of tens of thousands more. This points up our obligation to uphold international standards of conduct.

Somehow, though, when it comes to the drug issue, many seem to believe that expecting good conduct is wrong. They seem to hold to the notion that it is unfair. They act as if it is unkind to expect countries to comply with international law, solemn agreements, and their own legal requirements.

Some seem to believe that it is outrageous that we also take steps to protect our national interest. Now, since many of the people who voice this latter concern are the leaders of drug producing and transit countries, we can take their complaints with a grain of salt. But the domestic critics are a different matter. To them, all I have to say is that it would be irresponsible for the United States to put the concerns and interests of other countries before those of the American people. Period.

As I said, we would be justified in certifying other countries on drug cooperation even if we did nothing at home. But we in fact do a great deal. Out of a $16 billion counter-drug budget, less than 10 percent is spent on actions outside the United States.

Over 90 percent is devoted to domestic programs, many of these efforts to control demand. And this is just at the Federal level. States, local communities, and private organizations spend this much and a great deal more on demand reduction. Thus, we spend annually more than $32 billion to deal with our demand problem. There is not another country in the world that devotes such resources to the problem at home.

I remind my colleagues and the critics of the certification process that the standard for certification is not unconditional success. This is true whether we are talking about Mexico or California. To get a passing grade on drug cooperation does not mean that a country has to have totally eliminated drug production or trafficking, or, for that matter, use.

It requires a good faith effort. The certification law takes into consideration the many problems with stopping drug production and transit. Thus, it is not unexpected that individuals can disagree on the results. It is not a sign of failure if the Congress and the President should disagree. Nor should such disagreements be the occasion for throwing overboard the very process we have for ensuring cooperation. And it does do this. Over the course of the certification process, we have seen more countries take the issue seriously. They do this because they are aware that we take it seriously. We have taught our own administration and other countries that cooperation on drugs is important. To now abandon the chief tool that we have is to run from our responsibilities at the first sign of unpleasantness.

Certification is not perfect. No legislative tool is. We must, however, not expect more than is realistic. The present process clearly indicates Congress' expectation that countries, including our own, will demonstrate serious commitment. That commitment requires more than pious words. It expects action and demonstrable results. Failing that, it is wholly within our right to judge and to take appropriate steps. It is also an obligation.

I yield the floor.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. GRASSLEY. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

Thereupon, the Senate, at 9:23 p.m., adjourned until Friday, May 16, 1997, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate May 15, 1997:

IN THE COAST GUARD

THE FOLLOWING OFFICER OF THE U.S. COAST GUARD TO BE A MEMBER OF THE PERMANENT COMMISSIONED TEACHING STAFF AT THE COAST GUARD ACADEMY IN THE GRADE OF LIEUTENANT.

RICHARD W. SANDERS

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE U.S. NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. HENRY C. GIFFIN, III, [redacted]

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE U.S. AIR FORCE UNDER TITLE 10, UNITED STATES CODE, SECTIONS 618, 624, AND 628:

To be major

ANDREW J. JORGENSEN, [redacted]

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE U.S. ARMY AND FOR REGULAR APPOINTMENT AS CHAPLAINS (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, UNITED STATES CODE, SECTIONS 624, 531 AND 3283:

To be lieutenant colonel

CHARLES R. BAILEY, [redacted]
LAWRENCE M. BARRY, [redacted]
DAVID E. BATES, [redacted]
JOHN H. BJARNASON, JR., [redacted]
GREGORY L. BLACK, [redacted]
WILLIAM B. BROOME, III, [redacted]
*ANDREW J. BULLARD, III, [redacted]
WALTER E. DREW, [redacted]
DANNY R. FRANKLIN, [redacted]
RICHARD B. GARRISON, [redacted]
JERRY W. GRAHAM, [redacted]
*JOSEPH F. HANNON, [redacted]
ROBERT L. HELTON, JR., [redacted]
JERRY O. HENDERSON, [redacted]
FREDERICK E. HOADLEY, [redacted]
KENNETH KOLENBRANDER, [redacted]
LAWRENCE C. KRAUSE, [redacted]
JAMES M. LEWIS, [redacted]
JAMES E. MAY, [redacted]
WILLIAM L. MERRIFIELD, [redacted]
JOHNNY W. MIMS, [redacted]
STEVEN E. MOON, [redacted]
ANDREW R. MULVANEY, [redacted]
TED W. NICHOLS, [redacted]
RICHARD L. PACE, [redacted]
EARL B. PAYTON, [redacted]
CHARLES D. REESE, [redacted]
CURTIS C. SCHLOSSER, [redacted]
WILLIAM C. SHELNUTT, [redacted]
LARRY S. SMEDLEY, SR., [redacted]
MICHAEL S. STEELE, [redacted]
HAROLD G. TYLER, [redacted]
RONALD W. WUNSCH, [redacted]
JOHN L. WYDEVEN, [redacted]

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE U.S. ARMY AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, UNITED STATES CODE, SECTIONS 624, 628, AND 531:

To be major

CHESSLEY R. ATCHISON, [redacted]
*ROBERT P. GROW, [redacted]
RORY H. LEWIS, [redacted]
MARK L. REEDER, [redacted]
*STEPHEN E. SCHLESS, [redacted]

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE U.S. MARINE CORPS UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

To be colonel

RICHARD L. SONGER, [redacted]

THE FOLLOWING NAMED OFFICERS FOR ORIGINAL REGULAR APPOINTMENT AS PERMANENT LIMITED DUTY OFFICER TO THE GRADE INDICATED IN THE U.S. MARINE CORPS UNDER TITLE 10, UNITED STATES CODE, SECTIONS 531 AND 5589:

To be captain

ROBERT E. BALLARD, [redacted]
BRUCE E. BATTON, [redacted]
JOSEPH R. BOEHM, [redacted]
THOMAS D. BONDI, [redacted]
CHARLES E. BROWN, [redacted]
JACKIE O. BYRD, [redacted]
BRIAN K. COLBY, [redacted]
DAVID L. COMFORT, [redacted]
JAMES N. CROOK, [redacted]
JOHN T. CURRAN, [redacted]
TRACY A. DECATO, [redacted]
CHRISTOPHER S. DINOFRIO, [redacted]
MARK J. DIXON, [redacted]
STEPHEN J. DUBOIS, [redacted]
ANDREW J. FOX, [redacted]
STEFAN GRABAS, [redacted]
GREGORY B. HARAHAN, [redacted]
RALPH P. HARRIS, III, [redacted]
MARIANO G. HAWK, [redacted]
JIMMY F. HEGGINS, JR., [redacted]
MARC C. HOWELL, [redacted]
CARL J. HUTCHISON, [redacted]
THOMAS J. JOHNSON, [redacted]
PHILLIP E. KLENDWORTH, [redacted]
RICHARD D. KULP, [redacted]
ARTHUR H. LABREE, [redacted]
JORGE L. MEDINA, [redacted]
RORY F. MEEHAN, [redacted]
MARK A. MENTIKOV, [redacted]
JEFFREY L. MILLER, [redacted]
ALFRED G MOORE, [redacted]
CHARLES T PARTON, [redacted]
JOHN D PAULIN, [redacted]
JODY D PAULSON, [redacted]
STEPHEN V PENNINGTON, [redacted]
DEBORAH A PERIERA, [redacted]
DAVID S PHILLIPS, [redacted]
ROBERT P ROBERSON, II [redacted]
RONALD W SABLAN, [redacted]
WILLIAM E SAULS, [redacted]
MICHAEL H SCHMITT, [redacted]
KENNETH A STROUD, [redacted]
STEVEN C TAYLOR, [redacted]
TIMOTHY M TWOHIG, [redacted]
MICHAEL J WEBB, [redacted]
JOANN O WESLEY, [redacted]
DANIEL R WESTPHAL, [redacted]
ANTHONY W WHALEN, [redacted]
RICHARD S WILEN, JR. [redacted]
DAVID O WILLIAMS, [redacted]
PATRICK K WYMAN, [redacted]

IN THE NAVY

THE FOLLOWING NAMED OFFICER, FOR APPOINTMENT TO THE GRADE INDICATED IN THE U.S. NAVY UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

To be commander

TIMOTHY S. GARROLD, [redacted]

THE JUDICIARY

HENRY HAROLD KENNEDY, JR., OF THE DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA VICE JOYCE HENS GREEN, RETIRED.

RODNEY W. SIPPEL, OF MISSOURI, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN AND WESTERN DISTRICTS OF MISSOURI VICE STEPHEN N. LIMBAUGH, RETIRED.