

and realize this is a time, possibly, to have this terrible loss solidify the drive for peace in the Middle East.

### THE BALANCED BUDGET

Mr. EXON. Mr. President, there is a great deal of rhetoric going on today about where the Nation is going with regard to the balanced budget that this Senator supported for a long, long time. I remind the Senate it was this Senator who voted with the near majority to reach the required number of votes for setting a constitutional amendment for a balanced budget. I have been known as a conservative Democrat for a long, long time, who has been against the wild-eyed spending that has engulfed our Nation for far too long. I stand ready with Senators on both sides of the aisle to march forward if we can, in a bipartisan fashion, not dictated by the budget resolution that was passed in the Senate.

The first thing I would like to do is address some of the talk that is going on today, talk I am very fearful of impinging upon the basic tenets of our Government. It seems to me the majority of Republicans in the Senate and the majority of Republicans in the House, at least their leadership, are now, unfortunately, working their way to try and thwart the rightful duties guaranteed under the Constitution to the President with regard to the veto process.

This is all centered now around the extension of the debt ceiling. I think it is time, now, we strip aside the facade that the Republicans have fashioned about their objections to raising the debt limit.

If you examine the Republican bill and reasonably add up the numbers, you discover the necessity by the Republicans to raise the debt ceiling by \$1.8 trillion, from its present \$4.9 trillion to \$6.7 trillion by the year 2002. This is the best kept secret in Washington.

It is necessary for them to raise the debt ceiling to help accommodate their \$245 billion tax break for the wealthy and cover the ever-increasing interest costs resulting therefrom. It is significant to note that in the Republican bill, they are increasing in the short term the National debt by \$600 billion in the years 1996 to 1997.

Since this is the Republican's clearly needed goal, why do they refuse to do it now—to avert the threat of a train wreck? Such action, if it were taken by the Republicans, would avert playing Russian roulette with the economy and would avert the cloud on the economy that would be caused. Clearly, if we do not raise the debt ceiling, it would result possibly in closing down Government and defaulting on Uncle Sam's obligations for the first time in its history in not issuing Social Security checks.

Mr. President, this is wrong. The process that the Republican leadership in the House and Senate are on right

now in this regard is wrong from every standpoint, as I see it.

I am sure that the Republican majorities in both the House and the Senate will pass the conference report. I am just as sure that President Clinton will veto that bill, and he would be right to do so.

The Republicans do not have the votes to override a Presidential veto. And I am glad they do not. We will eventually have to sit down and start crafting a workable budget together.

I pledge cooperation, but not capitulation. To that end, all should know where this Senator stands and where many other Senators stand who want a balanced budget. Playing games with the debt ceiling is not a yearly casino night at the local men's club. The Republicans should not be gambling with the full faith and credit of the United States.

These budget negotiations are delicate, and they will take time. At the very least, we should extend the debt ceiling into early next year.

The same is true with the next continuing resolution. We should not be taking hostages in these negotiations.

Second, we cannot, and will not, accept the Republican's current level of reductions in projected Medicare and Medicaid requirements. These are extreme, and they are excessive. They must be pared back if there is any hope of winning Democratic approval.

The same is true with tax breaks for the rich and the tax increases for working families eligible for the earned-income tax credit. Deny it as much as you want, but there is a relationship between the size of the tax breaks for the wealthy and the Medicare expenditures. The tax breaks have to be scaled back and targeted more toward middle-income Americans.

There are, of course, many others areas that will be on my list, particularly with regard to rural America which has been mauled in this budget. But I wanted to give you at least what I believe is the starting point for a balanced budget that will win bipartisan congressional support and the signature of the President of the United States.

I say to my colleagues on the other side, instead of trying to see who will blink first, why do not we try to see eye to eye on a few of these issues? That is what the American people want. That is what they deserve.

I stand ready to be of assistance to anyone on either side of the aisle in coming together where both sides are going to have to give, and give on issues that they feel very strongly about. It is in the interest of the United States of America, though, to get away from this Russian roulette that we are now headed toward, obviously with regard to the debt ceiling extension.

Mr. President, I say again, come, let us reason together.

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

### RECESS

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

Thereupon, the Senate, at 12:35 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. Helms).

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. SNOWE). Without objection, it is so ordered.

### PARTIAL-BIRTH ABORTION BAN ACT

Mr. DOLE. Madam President, we have agreed to take this bill up at 2 o'clock to accommodate a lot of our colleagues who were on a plane all night. I thank the Senator from New Hampshire for not objecting to that process.

We are going to take up H.R. 1833, which is a bill to ban partial-birth abortions, and I think it is worth noting this bill passed by an overwhelming majority in the House. I know there will be efforts to amend the House bill and refer the bill to committee. I urge my colleagues to reject those efforts, because it is a straightforward bill. This isolates one procedure, one used up to the ninth month of pregnancy, and one procedure alone. It is not calling into question some of the larger abortion issues that so often divide us.

The American Medical Association's Council on Legislation voted unanimously to enforce H.R. 1833. A member of that council described it as not "a recognized medical technique."

The overwhelming majority vote in the House—including both those who consider themselves pro-choice and pro-life—underscores that this bill deserves immediate passage. After hearings and committee work in the House, nothing will be served by further delay. Those who seek to amend it are in effect trying to deprive this bill of any real meaning or significance.

The only people in America trying to defeat this bill are abortion extremists who believe that no compassion, no common sense, should ever get in the way of an anything-goes approach. I do not think reasonable people, whatever their views on abortion, agree with that position.

Opponents of this bill know that. As a result, we will instead hear soothing claims that opponents only want to amend the bill. There are those, for example, who argue that this bill needs to be amended to provide for an exception in cases where the life of the mother is at stake.

However, the bill already provides an affirmative defense in such cases. More to the point is the fact that arguments about life or health of the mother are designed to scare people and ignore the facts. The facts are these: This procedure is a 3-day procedure—that is right, 3 days. This is not something where a quick medical decision is called for in a life-and-death situation and opponents know it.

Doctor Pamela Smith, director of medical education in the department of obstetrics and gynecology at Mount Sinai Hospital in Chicago, IL, put it best:

Doctor Smith states unequivocally:

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

This is a straightforward and balanced bill that allows the Congress to do something it rarely has a chance to do: Step past divisive abortion arguments of the past, stand up for those who cannot defend themselves and do it in a bipartisan way.

I urge my colleagues not to allow those who have a very different agenda to defeat or delay this bill's passage.

I hope as we get into the debate that we can debate this bill and not get into unrelated matters that have no possible reference to this bill. This is an important issue.

So, hopefully, we can complete action on it or do whatever the opponents wish to do, if they are going to send it back to committee. I think there are a couple Members absent who support that approach and a couple absent who support another approach. Perhaps we can have that vote tomorrow. This is worthy of debate, and I thank my colleagues for letting us proceed to it.

I yield the floor.

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

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

The Senate proceeded to consider the bill.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Madam President, I rise today to support very strongly H.R. 1833, the Partial-Birth Abortion Ban Act of 1995. I might also point out that this is identical legislation to legislation I introduced on the Senate side. It was originally cosponsored by Senator GRAMM of Texas and had some dozen or so cosponsors, including the distinguished majority leader. But I decided that it would be just as easy to take the bill from the House side rather than to encumber the process with another piece of legislation.

So I am delighted to be here, frankly, on behalf of small children who really do not have the opportunity to be here to speak for themselves.

Last Wednesday, Madam President, was an extraordinary day in the his-

tory of the Nation's ongoing debate about abortion. There was a coalition of Members of the House from both political parties, from all across the philosophical spectrum. They were pro-choice. They were pro-life. They had different degrees of what their pro-choice or pro-life positions were—Democrats, Republicans, liberals, conservatives, pro-choice, pro-life. But they came together to form a supermajority, a two-thirds majority to pass this bill in the House, H.R. 1833.

Two of the highest ranking Members of the House minority leadership, Congressman GEPHARDT and Congressman BONIOR, joined together with the two highest ranking leaders of the majority leadership, NEWT GINGRICH and DICK ARMEY, in voting to pass this bill. I point this out, Madam President, because this is quite different from the debates that we have had here in the past on the issue of abortion. I think it goes right to the heart of how different this particular bill is to some of the other debates. Perhaps even more significant, the House's two-thirds majority for this bill, again, transcended the usual voting patterns of abortion-related issues.

It is interesting some of the names that came out of this debate: Pro-choice Democrats PATRICK KENNEDY of Rhode Island and JIM MORAN of Virginia joined with pro-choice Republicans like Susan Molinari of New York and CHARLIE BASS and BILL ZELIFF of my own State of New Hampshire to pass this bill to ban partial-birth abortions.

This does not mean that anybody compromises their views to do that. What it means is people looked at this issue very carefully with an open mind and realized what a bad, disgusting process this really is and decided that America, in no way, should be a participant or in any way add the weight of this great country in this issue to this horrible, horrible process and procedure.

So, Madam President, this great coalition, this supermajority—Democrats, Republicans, pro-choice, pro-life, liberal, conservative—came together. That does not very often happen around this place, and I think that says something about this issue and the seriousness of it.

They came together because they came to see this bill as presenting a fundamental question, a very fundamental question, and that question is a question of human rights.

The question of whether the very youngest, tiniest, most innocent of Americans, those babies whose living, moving bodies have been brought into the birth canal—into the birth canal—who, indeed are in the very process—the very process—of being born are deserving of the protection of the law of the United States of America, because that is the fundamental question we are going to face today when we vote on this issue: Is this baby, moving 90 percent through the birth canal, except

for the head, is this little baby in the birth canal 3 inches from full birth—3 inches from full birth—is this baby deserving of the protection of the law as depicted in the Constitution of the United States? That is the issue we face today. No other issue. No other issue. No other issue do we face today other than that one.

The House of Representatives, to their great credit, Madam President, answered that fundamental question, and they answered it with a very resounding yes, by a supermajority of 288 to 139. When you look at the numbers, you know that was not all Democrats on one side or all Republicans on one side or all pro-life people on one side or all pro-choice people on one side, it was a mix. They answered emphatically yes, yes, yes. These little children deserve the protection of the Constitution of the United States.

I was never prouder, in the 11 years I have spent here in Congress between the House and the Senate, than I was that day when people on both sides of that issue came together. It was a magnificent day for the House and a great day for this Nation. It was a great victory for the cause of human rights, a great victory for the protection of an innocent child in the birth canal, three inches away from birth.

It is hard for me to believe that it is necessary for me, or anyone else, to stand here on the floor of the Senate today and have to fight for that protection. It is hard for me to believe that. It has always been hard for me to believe that, but it is difficult for me to accept the fact that is necessary, that there are those who would deny that protection, as if somehow this was some generic process that did not impact young children.

But beginning today, Madam President, the U.S. Senate, too, is going to face that same question. They are going to face the same question that the House faced: Will we vote to extend the protection of the law to the youngest of our fellow Americans, those whose little bodies have emerged from womb into the birth canal and are in the process of being born? That is the question we have to ask ourselves, and that is the question we are going to have to answer today.

As we start this debate, I just want to say a word to my pro-choice colleagues. I do not agree with their positions on some matters of abortion, but I respect their right to have that position. This is America. This is not a pro-choice/pro-life debate as we know it under the other circumstances of the debate. It is certainly a life or death debate.

As you listen to this debate, I say to my pro-choice colleagues, ask yourselves, why did DICK GEPHARDT, PATRICK KENNEDY, SUSAN MOLINARI, or any others, vote for this bill? You all know them. You are their pro-choice colleagues. You know them and respect them, and you understand their views. Why did they do this? Why did 73 House

Democrats vote for this bill? I believe that if my pro-choice friends will keep an open mind and try to listen to this debate, as I try to honestly lay that debate out before you today, they will come to understand how and why that magnificent supermajority in the House came together to pass this bill.

Madam President, the one and only purpose of H.R. 1833 is to ban a single method of abortion that is first performed—not last, but first—at 19 to 20 weeks of gestation. That is a 5-month-old baby in the womb. That is the beginning. It then goes beyond that. It goes to the 21st, 22d, 23d, 24th, right on up to birth, right on up to 9 months—any particular time in this period. It is often later than 19 or 20 weeks that this process can be performed. These are late-term babies, the youngest of whom may have a fighting chance to live on their own outside of the womb, and the older of whom unquestionably could live outside womb.

Those of you who are parents, or have been parents, have gone through the process of feeling the heartbeat of your child—if you are a woman, inside your womb, and if you are a man, feeling that heartbeat inside womb of your wife.

Mr. HELMS. Madam President, will the distinguished Senator yield for just a moment?

Mr. SMITH. I am happy to yield to the Senator from North Carolina.

Mr. HELMS. First of all, this is not a question; it is a statement of fact for the RECORD. I admire my friend from New Hampshire for taking this responsibility on the Senate floor. I have been here many times on the abortion issue along with others, and I am very, very proud of BOB SMITH. I hope the people of New Hampshire understand that he is making a gallant fight.

Now, my question: Has the distinguished Senator from New Hampshire seen the Chicago Tribune editorial of November 5?

Mr. SMITH. I answer that yes, and I have it right here.

Mr. HELMS. I wonder if he would read the first paragraph for me.

Mr. SMITH. Yes, this is the Chicago Tribune editorial of November 5 of this year, entitled "Method and Madness on Abortion." It starts:

In the national debate on abortion, the activists on both sides invariably stake out absolutist positions. In so doing, they often harm their respective causes by distancing themselves from the people who make up the vast, ambivalent middle ground of America.

Those who champion the pro-choice position fell into that trap last week.

Mr. HELMS. If the Senator will hesitate a moment, now we get to the meat of the coconut. When the subject of abortion comes up and questions are asked of me, I have a ready question of my own to ask before we begin the discussion. I have asked it of young people, individuals who border on militancy on the abortion issue, and many others. It is a rather compelling question and it is this: What is an abortion?

Now, I hope the people of America understand the question, and I hope they understand the answer. I ask the Senator from New Hampshire to answer that question.

Mr. SMITH. Well, the answer to that question, from the perspective of the Senator from New Hampshire, is, I say to the Senator from North Carolina, that it is the process which interrupts the life of an unborn child.

Mr. HELMS. I ask the Senator, it does not just interrupt the life, it concludes the life, does it not?

Mr. SMITH. That is correct.

Mr. HELMS. Would it be fair to say that an abortion is a deliberate intent to destroy the most innocent, most helpless of human life? Is that reasonably correct?

Mr. SMITH. That is certainly my position. I think that if there were not to be any life there, there would not be any need to perform the action of abortion because there would not be anything to abort. So I draw from that conclusion that it is a life and, therefore, somebody had to take action to terminate that life.

Mr. HELMS. I wonder if the Senator is familiar with the quotation so often attributed to the late Douglas MacArthur. General MacArthur said: "In all of recorded history, there is no nation that survived in prosperity that lost its moral and spiritual motivation."

Is the Senator familiar with that statement by Douglas MacArthur?

Mr. SMITH. I have heard that statement, yes, sir.

Mr. HELMS. The point is—and I ask the Senator further—Douglas MacArthur was talking about a whole range of things, was he not?

Mr. SMITH. Yes.

Mr. HELMS. MacArthur was speaking in terms of how a nation can self-destruct by losing its sense of personal responsibility, its diligence, its willingness to work and to be constructive. I think the Senator is doing a great job on this issue, and I am not going to take up much more of his time.

Again I ask the Senator to please read the fourth paragraph of the Chicago Tribune editorial, if he will.

Mr. SMITH. "One can support abortion rights and still be horrified at such a procedure. The argument that this particular method could be essential to save the woman's life was unconvincing."

Mr. HELMS. Now move back to the immediately preceding paragraph.

Mr. SMITH. "The House, by more than a 2-1 ratio, voted to outlaw a gruesome form of late-term abortion. It involves the pulling the fetus, feet first, through the birth canal and suctioning out the brains so the skull collapses and the entire fetus is more easily removed."

Mr. HELMS. Will the Senator read the sentence again beginning with "It involves"? Read it slowly so that everybody watching on television or sitting in this Chamber can understand

exactly what is being discussed here today.

Mr. SMITH. It involves the pulling of the fetus feet first through the birth canal and suctioning out the brain so the skull collapses and the entire fetus is more easily removed.

Mr. HELMS. Now, let me clarify one more point with the Senator, and then I will conclude this particular line of questioning.

One person said this procedure, in addition to being gruesome and cruel, is just 3 inches away from being totally unlawful.

Mr. SMITH. That is correct.

Mr. HELMS. What does the Senator think he meant by that?

Mr. SMITH. I think that my interpretation, were it 3 inches further, if it were 3 inches further, the head would be delivered through the birth canal and it would be a living child under the full protection of the law.

Mr. HELMS. And the law, until fairly recently, took one position with respect to the deliberate, intentional destruction of innocent human life.

What did the law say the penalty was to a doctor who did that?

Mr. SMITH. Well—

Mr. HELMS. It was murder. And why murder? Because it was intentional?

Mr. SMITH. If it was intentional, that is correct.

Mr. HELMS. I will be back with some more questions but I want to compliment the Senator, and I thank him for yielding.

Mr. SMITH. I thank the Senator from North Carolina for his comments and remarks. He has been a long-time supporter of the right to life.

Since the Senator from North Carolina brought up the Chicago Tribune editorial, I will read a couple of other lines from it because I think it makes the point very, very well. "While the majority in the Nation may support a woman's right to choose an abortion, most of the people who make up that majority do not take an absolutist view. Reasonable restrictions, such as parental notification requirements in the case of teen pregnancy, have significant national support. Public support for abortion also becomes much more tenuous in the case of fetuses that are near the point of viability outside of the womb."

These are not my positions, but I believe a life is a life. I also believe that there are many in America who do not go to the extreme that this particular procedure does.

In conclusion, the editorial writer says, "Indeed this may cause moderates who generally support abortion rights to rethink their comfort level with other forms of late-term abortion, particularly when they see in this last week's debate there was a method to the madness."

Madam President, a few weeks ago I took to the floor of the Senate and I used a series of medical drawings and a photograph of a child that was prematurely delivered. That is all I showed in terms of charts or graphs.

From that particular presentation that I made I was amazed at the irresponsibility of the press in terms of how they reported that. Now, I assume that the media that reported on it either watched the tape from C-SPAN, saw the debate from the galleries, or took somebody else's word for it.

Unfortunately, those who took somebody else's word for it did not get the truth. It was reported that I had shown graphic photographs of aborted fetuses—wrong. It was reported that I had somehow violated a woman's right to privacy by showing photographs of a woman with a child in the birth canal—wrong. Also photographs of an aborted child. It went on and on and on to the point of the ridiculous.

Today I am going to try again to see if the press can get it right. I hope they can.

These are medical drawings, medical drawings accepted by the American Medical Association. They are not photographs of women. They are medical drawings. They are straightforward depictions of the procedure as described in an 8-page paper written in 1992 by Dr. Martin Haskell who has performed over 1,000 of these abortions. In a tape recorded interview with the American Medical News on July 5, 1993, Haskell himself said "The drawings were accurate from a technical point of view."

During a June 15, 1995, public hearing before the House Judiciary Constitution subcommittee, Prof. J. Courtland Robinson, M.D., testifying on behalf of the National Abortion Federation, was questioned by Congressman KENNEDY about the same line drawings displayed in poster size next to the witness table. Dr. Robinson agreed they were technologically accurate, and also added "This is exactly probably what is occurring at the hands of the two physicians involved," just as we see this.

Also Prof. Watson Bowes of the University of North Carolina at Chapel Hill, who is an internationally recognized authority on fetal and maternal medicine, coeditor of the obstetrical and gynecological survey wrote a letter to Senator KENNEDY: "Having read Dr. Haskell's paper, I can assure you these drawings accurately represent the procedure described therein."

I hope the media this time would get it right so I do not have to read editorials about me showing photographs of aborted fetuses and photographs of women in the birth position and all this other nonsense that people have been reporting. Get it right this time, please, those of you in the media.

I will show my colleague with these charts what is done to these late-term babies in the partial birth abortion procedure, because you need to know. You are going to be voting on whether or not to stop this practice, so therefore you should know what you are voting on.

Many, if not most of you, have already seen the illustrations. They have appeared in advertisements in Roll Call, Congressional Quarterly, the Hill,

and other publications as well as medical journals all over the country.

Now, some have tried to say that they are inaccurate and you will probably hear that, but they have been published in the American Medical Association's own publication, which did not question their medical accuracy.

Moreover, medical witnesses before the House Judiciary Committee hearing on this bill, even those who opposed the bill, conceded the illustrations are accurate from a technical point of view. So remember that.

Now, in this first chart, with the aid of ultrasound, the abortion doctor or the abortionist, the aid of ultrasound, finds out what the position of the baby is. Then using forceps—remember now, these children, these babies, this is 20-week minimum, 19 to 20 week, 5-month fetus and beyond; it could be 6 months, 7 months, 8 months; that is the beginning—reaches into the womb with the forceps, takes the child by the foot, as you can see in this picture here and pulls the leg around.

Why do they do that? To turn the baby around so that the baby is delivered by the feet first. Why? Because if the child comes through the birth canal feet first, the child is not breathing. If it is head first, that is a birth—a live birth, my colleagues, and we have a living baby under the protection of the law.

So we have to turn it around and do it feet first. That is what the abortionist does. Put the forceps on the tiny leg of this little child, turn it around in the womb so that it can be delivered feet first.

In the third chart, Madam President, we see that the abortionist here is pulling the child all the way out of the womb and into the birth canal with the exception of the child's head. That is what is happening in this particular chart.

Now, I want to pause for a moment. I hope that everyone will think very seriously. I want everyone to think very seriously about what is happening here.

I have witnessed the birth of my three children. It was the most beautiful thing I have ever witnessed in my life, and I am proud to say I was there. I am glad I was and I will never forget it; three children born into the world. It happens every day. Many will be born while I am speaking. Many will be aborted while I am speaking.

But here we have the hand of what could be a doctor but it is not a doctor. It is a doctor, but his goal or her goal is not to save a life; it is to take one. Picture, if you can, those of you who have witnessed a birth or can imagine what it might be like, these hands taking this child—little feet, little legs, little torso, little behind—the arms, the fingers moving as they do move. Oh, yes, there are fingers and toes at 5 months and beyond. You bet. And there is a heartbeat. It is a living, breathing child. That little body 90 percent through the birth canal, everything

but the head, is 3 inches from the protection of the Constitution of the United States, in the hands of this doctor or abortionist; totally at their mercy.

Were it to be a doctor who was trying to deliver this child, it would be a beautiful thing. If it were a premature baby, we would rush that baby to what is called the preemie ward, hook it up to whatever tubes and essentials were necessary for life support to try to bring that child to where they can come home with their mother.

But that is not the case here. That is not the case here. You see there is a different objective. The next part is the worst part. It is very difficult for me, frankly, to talk about it. That I have to stand here on the floor of the Senate and talk about it is necessary because by standing here on the floor of the Senate and talking about it, I might save one or more of these children from this horrible procedure. Let us look at what happens, my fellow Americans. Let us look at what happens.

In the hands of the abortionist, the feet, the legs, the torso, the arms right to the neck—in the hands of the abortionist—moving feet, moving hands, beating heart—you can feel it. The abortionist takes a pair of scissors, no anesthetic—takes a pair of scissors, inserts the scissors into the back of the skull, pulls the scissors apart, opens up a hole in the back of the skull, inserts a catheter and sucks out the brains of the child so that the skull compresses and then he removes this dangling lifeless form from the womb. Think about it.

Yes, I have to stand here and defend this life, and I am proud to do it. I am proud to do it, because this child cannot do it. We can get off into the generic concept of abortion and talk about the generalities of abortion, a woman's right to choose and all that. That is not the issue here, folks. That is not the issue here. This is not the way to do it—a lifeless form.

I had occasion, a couple of occasions, frankly—many of you have—to take a pet that was old—it was very difficult. I had a dog one time, most recently, that I had to do this to, named Muffin; 12 years old. You know how close you get to pets. They are like—only they are not—children. But they are like children. I took that dog, who was so old that she could not get around anymore, to the vet and I said, "I have to do this. I don't know if I can handle it."

He said, "You know, you ought to come in and watch me do it rather than leave her here, because you will feel better when you see it because it is peaceful. It is not painful. We give this dog a needle and she goes to sleep. No pain."

So I did. I am glad I did, really, because I feel better about it.

Can you imagine—could you possibly imagine the pain of this child, without any anesthetic, having scissors put in the back of its neck and having its brains sucked out? Can you imagine

the pain? This is the United States of America. Why are we doing this to our children? Could somebody please tell me why we are doing this? Why are we doing this? Give me a reason. I cannot wait until I hear the other side. For what? Why are we doing this?

At the beginning of this process we had an unborn child, an unborn child safe in her mother's womb. And yes, it could be a her, I say to my colleagues, pro-choice women of the Senate, it could be a her. We tend to use the word "him" but it could be her. We had an unborn child safe in her mother's womb.

Mrs. BOXER. Will the Senator yield? I just want to ask a parliamentary question.

Mr. SMITH. I am not going to yield.

Mrs. BOXER. I would inquire if the Senator is going to finish his statement or answer in debate?

Mr. SMITH. I am not going to yield. I want to finish my remarks.

Mrs. BOXER. If he will answer, could the Senator give me a sense of how long that will be? I need to know so I can plan my response.

Mr. SMITH. I do not know. I honestly do not know.

Mrs. BOXER. Could be an hour?

Mr. SMITH. I do not know.

Mrs. BOXER. The Senator can expect me to take an equal time.

Mr. SMITH. We had an unborn child safe in the womb of her mother, in that little protected area. A watery mass, if you will—safe. Safe.

You know, late-term babies have sleep cycles and wake cycles. They hear their parents. They hear their mother. You can feel them kick when they are excited, when they are awake. Any expectant mother knows that. They are moving. They are kicking. They are happy. They suck their thumb. Their little hearts are beating. Their little brains are working. It is a living thing.

Many experts will testify that newborn babies hear their mother's voice. Not only do they hear it, they recognize it. It soothes them. It calms them down.

Suddenly, however, Madam President—suddenly the baby's safe, warm, watery world is invaded by the forceps of an abortionist.

The journey from the womb through the birth canal to birth, the miraculous journey, the so beautiful journey which so many of us have witnessed—especially women who give birth to those children, and those of us husbands who have been lucky enough to witness it—this miraculous journey that every one of us, every single one of us, we have all taken this journey on our birthday.

(Mr. COATS assumed the chair.)

Mr. SMITH. The Senator from Indiana, in the chair, took that journey. The Senator from California took that journey. We all took that journey down that birth canal. And in most cases we needed a little help, we needed a little help.

But, when I look at that fourth picture—I am 54 years old. Maybe I do not look it but I am. I have seen a lot of rough things. I served in the Vietnam war. I have seen people die. I have seen people in agony, in near-death situations, with horrible diseases. I have seen quite a lot.

But I cannot imagine a country as great as this one is where a people would sanction—I do not care what you call yourselves, pro-choice or pro-life. I do not care. How could you sanction this? How could you sanction that? Did those of us who are veterans fight to defend that? I did not.

Mr. President, if this baby, if the head of this little baby, comes through the uterus, the child would slide right out of the mother's body and straight into the protection of law, just so easy—not so easy for the woman. But that little child comes out and is born kicking, hands and fingers and feet moving—you can picture that little baby—straight into the protection of law.

But, you know, that is a problem in this procedure for the abortionist. Do you know what they call it when the baby manages to come out? The dreaded complication. That is what they call it. That is the term that the abortionists use, the "dreaded complication." That is a live birth, a live birth—the dreaded complication. That is the last thing an abortionist wants. So what do they have to do? They stop the child's head from coming through the birth canal. They have to. Otherwise it is a live birth and then they have a problem—the dreaded complication.

I just want to remind my colleagues that when this procedure is taking place with the scissors and with the catheter, this child is alive. This is a child that moments before was happily kicking, moving its fingers and hands, listening to the sounds in the womb.

In the final illustration, Mr. President, the scissors are then removed from the baby's head, and the abortionist inserts the suction catheter, completing the partial-birth abortion procedure—sucks the child's brains out, the skull compresses, collapses, and the baby's small lifeless body is then removed from the birth canal, and it is over. The work is done. Is it not interesting—the contrast? Is it not interesting?

What could have been, but for somebody's decision? God knows it was not the baby's decision. It could have been a beautiful birth. We could have had nurses scrambling running to get the baby into the incubator, into the premie ward. No. That was not to be. What we have seen that could have been a beautiful birth is now an unspeakable, brutal, ugly death, more brutal and more ugly than the way you would put any pet. Even livestock today that we eat are killed more humanely than that.

A doctor who took the Hippocratic oath to do no harm—to do no harm—has done the worst possible harm to

the most innocent and defenseless little person, little patient, that he could possibly have. Here in America—700, 400, 500 times a year. Who knows? It happens.

Mr. President, we know all about the partial-birth abortion procedure in all of its sickening and grotesque detail because two doctors who have performed it hundreds of times, Dr. Martin Haskell and Dr. James McMahon, have spoken and written frankly about it in the past several months. But the most moving testimony of all comes from a registered nurse, a beautiful lady. Her name is Brenda Pratt Shafer. This is her picture. She is here today for this debate, and I had the privilege of meeting her just an hour or so ago. She assisted Dr. Haskell in performing a partial-birth abortion. She was a nurse, pro-choice, and assisted Haskell in performing a partial-birth abortion.

Brenda Shafer described what she saw in a letter to her Congressman, Representative TONY HALL, Democrat of Ohio. This is what she said. I hope the cameras can pick this up. Listen. These are not my words. These are the words of a nurse who took basically the same pledge to save lives as doctors to. But this is what she said:

The doctor kept the baby's head just inside the uterus. The baby's little fingers were clapping and unclapping, and his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks that he might fall.

If you can think of your child in that situation.

That is what she described the procedure as. She further states that:

I am a registered nurse with 13 years of experience. But one day in September 1993 my nursing agency assigned me to work at a Dayton, Ohio, abortion clinic, and I had often expressed strong pro-choice views to my two teenage daughters. So I thought this assignment would be no problem for me.

But I was wrong. I stood at a doctor's side as he performed the partial-birth abortion procedure—and what I saw is branded forever in my mind. The mother was 6 months pregnant. The baby's heartbeat was clearly visible on the ultrasound screen. The doctor went in with the forceps and grabbed the baby's legs and pulled them down into the birth canal. Then he delivered the baby's body and the arms—everything but the head. The doctor kept the baby's head just inside the uterus.

The baby's little fingers were clapping and unclapping. And his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks he might fall.

The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp. I never went back to that clinic. But I am still haunted by the face of that little boy—it was the most perfect, angelic face I have ever seen.

America, Mr. President, America this is happening in—6 month child.

God bless Brenda Pratt Shafer for having the courage to come forward

with her testimony and her story because, without people like her, we would not know it happened.

I have been in the Congress for 11 years, Mr. President, and until just a few months ago—I must confess my ignorance—I did not know that this procedure was performed in America.

A registered nurse, very moving testimony, self-described pro-choice, who witnessed this procedure at the hands of Dr. Haskell. Thankfully, Nurse Shafer did tell Congressman HALL what she saw.

I might just say to my colleagues, Nurse Shafer is here today. If you would like to talk with her, she is off the floor. You can talk with her. I think my colleagues now may have some understanding as to why the House voted to ban this barbaric, brutal, gruesome, inhumane procedure.

By the 19th or 20th week of gestation, the point at which this unspeakably brutal method of abortion is used, the child is clearly capable of feeling what is happening to her. This is a living human being, one who, as I said before, if it had been born alive, would be called a premie. If you read the commentary from neurologists, they would tell you that premature babies born at this stage of pregnancy actually may be more sensitive to pain stimulation than others.

Earlier this year, I attended a press conference at which a neurologist spoke to that effect. He later so testified before the House Judiciary Committee's hearings on this bill. He does surgery on babies all the time, and he indicated there is really no doubt—no doubt, he said—that the unborn child who is attacked and killed in the partial-birth procedure suffers not just pain but horrible, intense, excruciating pain.

I would ask you, all of us, as human beings, a few seconds, a few inches, and you are a living being, human being protected not only from pain but protected by the Constitution of the United States, and yet for a few inches, a few moments, you are the victim of the abortionist procedure, how could you not be appalled at this procedure? How could you possibly justify this procedure?

As I said, I did not even know this took place 6 months ago, but I know it now. And if it takes the last breath in my body, I am going to stop it. I am going to stop it.

Do you know why I am going to stop it, Mr. President? Because I believe in my heart that the American people will no longer tolerate this. I believe in my heart that people of good faith who differ on this issue, who listen to this debate, listen to this procedure, are going to make a decision. They are going to take the heat from the militant pro-choice people, and they are going to vote with us. We are going to stop this horrible procedure, as the House did. We are going to put it on the President's desk.

President Clinton, I hope that you will pick up that pen and put your signature on that bill to stop it.

It is very interesting; President Clinton was at one time an unborn child, like the rest of us, and his mother was in a very difficult situation, and his mother chose life. It is very interesting.

I just say to my colleagues, this is the greatest country in the world, founded with a Declaration of Independence that speaks of a God-given and "unalienable" right to life, liberty, and the pursuit of happiness. What happened to the right to life of this child? What happened to it? Why cannot she be given the opportunity to enjoy the blessings of liberty? Why cannot she be given the chance to laugh, to cry, to get married, to have children, to go to college, to be in a high school play? Why? Why does she not have that right?

The tragedy of accidents in life are bad enough. You lose a child to an accident because of alcohol; some alcoholic runs over a child. Those kinds of things happen every day in America, and they are terrible. But this is a deliberate act that stops this child from ever having the opportunity to do these things.

This is the land of the free and the home of the brave. If freedom has come to this, if freedom has come to meaning the freedom of abortionists to execute children—because that is exactly what they are doing. Let us call it exactly what it is. That is exactly what they are doing in this case. They are executing little children just as they emerge in the birth canal, inches away from birth. If that is what freedom means, then we ought to be brave enough to do what the House of Representatives did last Wednesday and pass this bill and stop this horrible, horrible procedure.

Defenders of this partial-birth abortion, whom you will hear from shortly, have a big job to do. They really do. It is almost an impossible job in trying to rationalize how you can be in favor of this process, because you will hear it all: We are getting in the way between a woman and a doctor. They will do everything they can to talk about something else other than this. They are not going to talk about this because they cannot talk about it. So they have to go use some other issue. They try to get you on to something else. As you listen to the debate, they will be off on something else because they cannot be on this.

One of the ways is to say partial-birth abortions are rare; they are obscure; they are almost never used. Well, Dr. Martin Haskell, the abortionist whose brutal handiwork Nurse Shafer witnessed, had claimed personally that he did 700 of them as of 1993. So I do not know what "rare" means—700 babies by one doctor.

As I look at that depiction of that little baby in the womb, hanging there limp, you know what I say to myself? How many U.S. Senators are in that

700? How many doctors, lawyers, Nobel Peace Prize winners, teachers? How many? I do not know. We will never know. We will never know. The first black President, is he or she in there? We will never know. First Hispanic President? We will never know. First woman President? We will never know. Cure for cancer? It may be 1 of those 700. We will never know. They will never have had a chance to be that little human being, to develop from that little human being to the ultimate that they are allowed under the Constitution of the United States. We will never know that that little life could have been a life like this. We all grow up to be our own personal beings. We are all different—a lot of life but very different little personalities. We will never know. We will never know.

They are gone. Gone. Not by accident, not in an automobile accident, not in war. No. Stabbed in the back of the neck with a pair of scissors with their brains sucked out by a catheter.

There was another abortionist by the name of James McMahon who died a few days ago. He made late-term abortions his specialty. He was profiled in a 1990 article in the Los Angeles Times. In that article, McMahon coldly claimed credit for having developed the partial-birth method, and this is very interesting. He did not call it partial-birth abortion. He called it "intrauterine cranial decompression." In English, that means crushing the skull while it is inside of the womb. That is a nice clinical description, is it not? But you see, we have to use terms like that because we cannot talk about this, because this is so obnoxious and so sickening and so disgusting and so outrageous that we have to talk about something else. So we use terms like "intrauterine cranial decompression." I like plain English. Killing a child in the womb that is 90 percent born, that is what it is.

Dr. McMahon continued, saying "I want to deal with the head last because that's the biggest problem."

That is what he said. Those are the feelings he had. When I read that, I thought to myself, "That little baby in the womb who happens to have Dr. McMahon, if it had been Dr. FRIST or Dr. anybody else, they would have been allowed to be born, they would have been allowed to grow, to become a President, to become a lawyer, to become a father, a mother, but through no choice of their own, it was Dr. McMahon who was there, not with gentle loving caring hands but with the hands of destruction," this physician who took the Hippocratic oath to do no harm.

Sadly and perversely, he came to see it as his role as a doctor to deal with the problem of the head of a little baby in the manner that I described here today—a problem. According to the American Medical News, Dr. McMahon performed abortions through all 40 weeks of pregnancy. Think about that. It made no difference to him—8½



months, 9 months, a couple days overdue, call Dr. McMahon, he will take care of it. He said he would only do elective abortions through the first 26 weeks. How thoughtful of him.

Mr. President, you see, when you hear this discussion, and my colleagues, about how rare this is, it is not rare. It is not rare. It is rare if you want to compare it to the number of births in America. A few hundred versus several million who are born in America. That I suppose you could call rare, but it is not rare to the 700 or so babies who have had that procedure, is it?

After last week's House vote, an article in the New York Times, relying on data from the pro-choice National Abortion Federation, among others, estimated that the partial-birth abortion procedure is performed more than 400 times a year. In other words, on the average, more than once a day, and that is a conservative number. Those are the ones we know about. That is 400, more than 1 a day. I do not think that is rare. That is 400 babies. It is certainly not insignificant.

Yesterday, the New York Times ran another article that indicates that the number of partial-birth abortions performed each year may, in fact, be much higher. The New York Times quotes a physician who identifies as a gynecologist at a New York teaching hospital who spoke on the condition of anonymity.

Mr. President, I ask unanimous consent to have printed in the RECORD this article from the New York Times.

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

[From the New York Times, Nov. 6, 1995]

WIDER IMPACT IS FORESEEN FOR BILL TO BAN  
TYPE OF ABORTION  
(By Tamar Lewin)

Public health officials and doctors who perform abortions say the bill passed by the House of Representatives last week that would ban a type of later-term abortion is so broadly written and ill defined that it could affect many more doctors than originally thought.

Indeed, they say, it could criminalize almost any doctor who performs abortions in the second trimester, or after 12 weeks of gestation, and might force doctors to turn to less-safe methods to avoid the possibility of prosecution. Some also say that it would shrink the pool of doctors who perform second-trimester abortions.

The sponsors of the bill, and the anti-abortion groups they worked with, said their goal was to ban what they call "partial-birth abortions," in which a fetus at 20 weeks of gestation or more is partly delivered, feet first, and then to make it easier for the fetus to pass through the birth canal, the skull is collapsed.

But the House bill approved on Wednesday, the Partial-Birth Abortion Ban Act, provides a far looser definition, with no reference to fetal age or to the specifics of inserting scissors into the neck to create a hole through which the brains can be suctioned out to collapse the skull.

The legislation, which will be considered in the Senate this week, says only that "the term 'partial-birth abortion' means an abor-

tion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery."

That language is so broad—and the term "partial-birth abortion" so unfamiliar in the medical community—that many doctors who perform only earlier abortions, by the most common methods, say they have done procedures that would probably be prosecutable under the law.

"I'm sure I've had a situation, with a 14- or 16-week pregnancy, when the fetus presented feet first, where I did something that a Federal prosecutor might take to court under this language," said Dr. Lewis Koplik, who performs abortions up to 20 weeks in Albuquerque, N.M., and El Paso. "The decision about what method to use is made in an individual setting based on an individual woman's situation. It's not one-size-fits-all, and it shouldn't be. I don't want to make medical decisions based on Congressional language. I don't want to be that vulnerable. And it's not what I want for my patients."

Those who drafted the legislation said they did not believe it would interfere with second-trimester abortions performed by the standard method of dilation and evacuation, or D&E.

"An element of the crime is that the prosecution has to prove beyond a reasonable doubt that the baby was living," said an assistant counsel to the Constitution subcommittee of the House Judiciary Committee, Keri Harrison, who helped draft the bill. "In a D&E, there's not a living fetus being delivered. They're in there suctioning and cutting, and what they deliver is body parts. This would not cover that."

Ms. Harrison said that in drafting the legislation, she and others had rejected specifying the gestational age or abortion technique it would cover. "This isn't about a viable baby or a nonviable one," she said. "And we did not want anything about inserting scissors into the base of the skull, because we didn't want them to come up with a slightly different technique and avoid the statute. What we want to make a crime is the abortionist starting to deliver a baby and then killing it."

About 13,000 of the nation's 1.5 million abortions a year are performed after 20 weeks' gestation. And only two doctors, who perform a total of about 450 of these abortions a year, have said publicly that this method is the safest and best. So most discussion of the proposed ban has been based on the assumption that the method is rarely used, and only by a small number of doctors.

But the National Abortion Federation, which represents several hundred abortion providers, says that more doctors have recently reported that they sometimes use the method, which they call "intact D&E." And since the House vote, some gynecologists at prominent hospitals have acknowledged that they often use the method in late-term abortions.

"Of course I use it, and I've taught it for the last 10 years," said a gynecologist at a New York teaching hospital, who spoke on the condition of anonymity. "So do doctors in other cities. At around 20 weeks, the fetus is usually in a breech position. If you don't have to insert sharp instruments blindly into the uterus, that's better and safer."

"Even in earlier abortions," the doctor continued, "it can happen that after you prepare the patient by dilating the cervix, the feet move down, and the procedure might be covered by this law."

"This legislation would be a disaster for women's health," the doctor said.

Most of the doctors interviewed said they saw no moral difference between dismembering the fetus within the uterus or

partially delivering it, intact, before killing it.

Several said they saw the bill as an opening wedge to outlawing all second-trimester abortions—and conceded that anti-abortion groups had won an important public-relations victory by focusing so much attention on late-term abortions, which are the least common but most emotionally fraught procedures.

According to the Alan Guttmacher Institute, a private group that studies reproductive health issues, almost nine out of 10 abortions are performed in the first trimester, when the procedure is relatively simple. About 164,000 abortions a year are performed during the second trimester, that is, at 13 to 26 weeks of gestation, but more than 9 out of 10 of these are before the 20th week.

Although second-trimester abortions are legal throughout the nation for any reason, few doctors perform abortions after 20 weeks, and while third-trimester abortions are legal in some states only a few hundred take place each year. Third-trimester abortions are performed almost exclusively by a handful of doctors who get referrals from obstetricians whose patients have serious health problems or are carrying fetuses with profound abnormalities.

Dr. Allan Rosenfield, dean of the Columbia University School of Public Health and a professor of obstetrics, said that he and a group of other doctors discussing the legislation had been unable to agree on what the law would cover—but did agree that it posed a threat to anyone who did second-trimester abortions.

"In a standard D&E, the fetus generally doesn't come out intact," Dr. Rosenfield said. "But you might very well bring down a leg at the start of the procedure, and if the definition is a beating heart, potentially any second-trimester abortion could fit this bill. My big worry is that if this becomes law, doctors will feel they have to go back to the less-safe second-trimester abortion methods we did until the 1980's, the installation procedures, in which the uterus is flooded with saline or urea."

Many of the doctors interviewed expressed concern that the legislation would shrink the pool of doctors willing to perform late-term abortions, especially since many of these doctors already face demonstrations and threats, and may not be willing to take on an additional worry about criminal prosecution.

"It really is such nonspecific and bizarre legislation that it's hard to tell what exactly they're trying to ban," and Dr. Mary Campbell, medical director of Planned Parenthood of Metro Washington. "Clearly they're anxious to prosecute anybody who's doing second- or third-trimester abortions. I know people who have said that this would be the end of their third-trimester practice, and probably their second."

Mr. SMITH. Mr. President, here is what this doctor said on the condition of anonymity: "Of course I use it"—partial-birth abortion procedure—"and I've taught it for the last 10 years."

"I've taught it," said a gynecologist at a New York teaching hospital who spoke on the condition of anonymity.

"So do doctors in other cities. At around 20 weeks, the fetus is usually in a breech position. If you don't have to insert sharp instruments blindly into the uterus, that's better and safer."

"Even in earlier abortions," the doctor continued, "it can happen that after you prepare the patient by dilating the cervix, the feet move down, and the procedure might be covered by this law. This legislation would be a disaster for women's health. . . ."

Not a word about the baby. And by the way, we cannot find much evidence of any concern at all about women's health in this particular issue.

It is clear that the doctors that we referred to, McMahon and Haskell, respectively, are not the only abortionists who employ the partial-birth abortion procedure. You see, we do not know. People are not going to come out and admit this. So we do not know how prevalent it really is. In fact, given that Times story yesterday, we may be sitting on the tip of an iceberg we do not even know about.

Besides trying to rationalize the opposition to this bill by claiming that partial-birth abortions are rare and insignificant, although I find it difficult to understand how insignificant that would be for the child, you are also going to hear on the floor of this Senate opponents that are going to try to rationalize their position by saying that the bill interferes with the doctor's professional discretion and invades the doctor-patient relationship. You are going to hear that because, again, we have to talk about things like that because we cannot talk about this. That is why I am talking about it.

Mr. President, the American Medical Association's council on legislation did not see it that way. They voted not once but twice to endorse this bill, to stop this practice. Twelve doctors on that board, practicing physicians, AMA members all, leaders of their profession voted unanimously to endorse H.R. 1833—unanimously.

A member of the AMA council later publicly commented that the partial-birth abortion procedure used by Drs. Haskell and McMahon is simply not even recognized as a medical procedure. Think about that, it is not recognized as a medical procedure. They got it right. You know why? Do you know why it is right? Because medicine is supposed to heal people, that is why they got it right. Thank God they had the courage to vote the way they did. Even though they could not get the rest of the AMA to do it, the council did. They got it right. A doctor is supposed to heal. A doctor who does a partial-birth abortion is not practicing medicine. Can any reasonable person take the floor of the Senate and tell me this doctor who does this is practicing medicine, healing? He is playing executioner, that is what he is doing.

I ask my colleagues to keep the AMA legislative council's action in mind as the opponents of this bill try to argue, and they will, that this bill interferes with the practice of medicine. You are going to hear it. The American Medical Association council on legislation carefully and thoughtfully considered it and they said it does not. They endorse this bill, because they recognize that partial-birth abortions simply do not constitute the practice of medicine. It is not a medical procedure that they do not agree with, they do not even think it is medicine at all. And yet you are going to hear all about it, how this

interferes with the doctor and his patient and this is a medical process. They will tell you it is not even necessary.

Mr. President, the opponents of this legislation try to rationalize their opposition by claiming that the grotesque and inhumane partial-birth abortion procedure is only used in the most extreme circumstances. This is where we get right down to the nitty-gritty and hear a lot about this, such as when the mother's life is in danger or her health is at serious risk or when the unborn child has what they call "severe congenital abnormalities incompatible with life." I do not know what that means. We will talk about that in a few minutes.

Once again, the facts belie their claims. McMahon and Haskell, doctors—I hesitate to use that term—are the only two abortionists with the brazen temerity to go public. They went public because they were proud of it. That is why they went public. They had no problem with it. They were not trying to hide it. They went public about their use of this procedure and to identify themselves personally with it. They advocate this partial-birth abortion method as the "preferred method for elected late-term abortions."

Haskell advocates the partial-birth abortion method for 20 to 26 weeks of pregnancy and Haskell told the American Medical News that most of the partial-birth abortions he performs are, in fact, elective. Speaking with what I would call chilling candor, Haskell told the AMA News, "I'll be quite frank, most of my abortions are elective in that 20- to 24-week range and probably 20 percent are for genetic reasons and the other 80 percent are purely elective."

For genetic, 20 percent and the other 80 percent are purely elective.

So there you have it, I say to my colleagues. You will hear it all. You will hear some of our colleagues claim this hideous and cruel procedure is only reserved for the hard cases, the tough cases.

Now we know the truth. Now we know that is not true. So when you hear it, I just gave you the facts. You have it straight from the horses mouth, from the people who do it. We heard from Martin Haskell—the proud practitioner of partial-birth abortions, the one Nurse Shafer witnessed in his grisly work—who told the American Medical Association's own newspaper that 80 percent of the partial-birth abortions that he performs are "purely elective." He does them. It would be interesting to see where the other facts come from when we hear the other side of the argument.

The National Abortion Federation—the official national organization of the Nation's abortion industry—has publicly acknowledged that partial-birth abortions are routinely done for purely elective reasons. Here is what they say. They told their members this in this memorandum. In anticipation

of this debate, this was sent out to their members:

Don't apologize. There are many reasons why women have late abortions . . . lack of money or health insurance, social [or] psychological crisis, lack of knowledge of human reproduction . . ."

That does not sound like dire emergency to me, Mr. President. Maybe I am missing something. What is the emergency about that? I told you what a partial-birth abortion is. I have read you Nurse Shafer's haunting eyewitness account. I have told you what the abortionists who have done partial-birth abortions have said about them. I have given you all that.

Let me tell you what H.R. 1833—the bill in question—actually does because you are going to hear that distorted, too. They are going to have all kinds of lines on what this bill does and does not do. What it does do: The barbaric and brutal partial-birth abortion procedure that I have described and illustrated on the floor of the Senate today can, should, must and will be outlawed. It will be because I am not going to leave this Senate until it is outlawed. If we lose the vote today, it is going to come back. I am going to bring it back until we win it.

Simply stated, H.R. 1833 does that. It outlaws that procedure. If you did not like what you saw on those charts, that is your vote. There is nothing else. Do not be swayed by the other arguments because they are not relevant. If you think what we saw in the charts is appropriate, then you should vote against me and this bill. If you think that process is OK, vote against me. I would not want you to vote otherwise. If you agree with me that this is wrong, then vote with me for H.R. 1833.

It amends title VIII of the United States Code and provides that "whoever, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both." The abortionist, not the woman. The abortionist is fined. That is the punishment for killing the child in this manner.

You will probably hear that the woman is going to be punished. Not true. Read the law.

H.R. 1833 defines a "partial-birth abortion" as "an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery."

That is what they do. Can anybody who sat here and listened to this debate honestly tell me that inserting scissors in the back of the head and sucking the brains out of a living, breathing child is not killing it? Beats me. But you will probably hear that it is not.

H.R. 1833 would ban not only the brain suction, partial-birth abortion that I have described, but any other abortion that involves the partial delivery of the child into the birth canal



before he or she is killed. So the abortionist who commits this horrible act will not be able to escape culpability under the law by pulling the baby into the birth canal and stabbing her through the heart rather than sucking her brains out through a hole. There are any number of ways. Would that be any more barbaric? They could have stabbed her in the heart with the scissors.

Let me say it again. H.R. 1833 authorizes the prosecution only of the abortionist. When you hear otherwise, not true. Not the mother of the child upon whom the partial-birth abortion is performed. That woman is the innocent victim because she was advised to do something that was barbaric or to agree to do something that was barbaric. This bill is aimed at the abortionists; it is aimed at the brutality of this act; it is aimed at the gross violation of just basic human rights that are protected under the Constitution of the United States of America, for everybody, including a baby who comes out of that birth canal.

Finally, Mr. President, even though you are going to hear otherwise, H.R. 1833 provides a life of the mother exception. Absolutely, it provides a life of the mother exception.

Frankly, my jaw has dropped every time I heard one of the opponents of this bill try to say with a straight face that there is no life of the mother exception in this bill. They are going to say there is no life of the mother exception, and they will say it with a straight face, and they will give you all kinds of documentary evidence. There has always been such an exception since the day the bill was first introduced. I introduced it on this side. I know what it says, and it is in there.

The life of the mother exception is in the form of what we would call an "affirmative defense." You will find it in section "e" of H.R. 1833. Look at it. You will see it. So when you are told it is not in there, read it, and it is there. Look it up. The next time somebody says it is not there, read it. It is right there.

That is the way this situation is dealt with in the United States Code. There are 31 affirmative defenses in the United States Code. Under H.R. 1833, if a doctor reasonably believes a mother's life is in danger and that a partial-birth abortion is the only procedure he can employ to save her life, he has an affirmative defense—written right into the statute. In other words, if what the doctor faced truly was a life-of-the-mother circumstance, he cannot be convicted of violating the law.

I might also say there are very few, if any, opportunities where the life of the mother would be threatened here. Let me say it again. No doctor who reasonably believes that a mother's life is in danger and a partial-birth procedure is the only way to save it can be convicted of a crime, period.

The key word in subsection "e," Mr. President, is "reasonably." No doctor

who reasonably believes that the mother's life is in danger and that no other procedure could have saved her life can be successfully prosecuted under this bill. The word "reasonably" provides protection against an abortionists like Dr. Haskell or Dr. McMahon, who may otherwise try to abuse the life of the mother exception by claiming that every partial-birth abortion they do involves a threat to the life of the mother. We are not going to let them get away with that.

Doctors have a way of projecting themselves as absolute. The doctor says it, so it must be true. The doctor says you have to have an abortion this way; it must be true. No. Doctors are human like everybody else. They are not God, and they are wrong sometimes. They are wrong when they say this is necessary procedure to save the life of the mother in all cases. A doctor against whom charges were brought under the new law would be required to demonstrate that his judgments were "reasonable." He can have other medical doctors who are in the area, who are there, who can testify to that effect, that it was an emergency that had to be done.

A doctor who abused the life of the mother exception in this bill obviously could not meet that burden. By the same token, a doctor acting in good faith to save the life of the mother obviously could and would meet that burden.

To those who try to argue that this specific, carefully drafted life of the mother exception—in the form of an affirmative defense—somehow does not adequately protect doctors who act to save the life of the mother, I say that the American Medical Association's Council on Legislation formally voted on whether to endorse this bill twice. They endorsed it, flat out, with the affirmative defense as it is written in the bill before us, H.R. 1833. They did not qualify their endorsement by saying that the life of the mother provision should be changed or modified. They endorsed it. The life of the mother affirmative defense was fine with them.

Again, all 12 doctors, the AMA legislative panel, voted unanimously, voted twice to endorse H.R. 1833—every last word. Every last provision. No exceptions.

Why would they endorse the bill if they thought the life of the mother—affirmative defense does not adequately protect doctors who try to save the life of the mother? Why would they do it? They are in the business of protecting doctors. They did not do it. They said the bill was OK.

This is a historic piece of legislation Mr. President, that originated, was voted on in the people's House, from Representative CANADY. It is the most representative body of our Nation's democracy, and as the House considered this bill as I indicated in my earlier remarks, a magnificent majority, a supermajority, a two-thirds supermajority came together—liberals, con-

servatives, Democrats, Republicans, pro-choice, pro-life—many voted for this bill. SUSAN MOLINARI to PATRICK KENNEDY to DICK ARMEY and NEWT GINGRICH.

We can do the same here in the Senate, Mr. President. We can look at this for the brutal act that it is and end it—never mind getting off into the generic discussion of abortion.

Look at the facts—a baby about to enter from the birth canal into the world, denied that opportunity. Put aside the other differences; put aside where a life begins. I happen to believe it begins at conception. Others of my colleagues do not agree with me. That is not the issue today. Or whether there are fetal brain waves at such-and-such a month. That is not the issue today.

Some say abortion should be legal for sex selection. That is not the issue today. They may think a couple who have a girl unborn child and prefer a boy can go ahead and abort the girl. That is not the issue today.

The partial birth ban will protect girl and boy babies alike. That is the issue today. We can all agree that a 19- or 20-week fetus in gestation at the onset of viability outside the womb is a human being. I would be interested to hear why it is not. I would like to know what it is if it is not a human being.

We should put aside the other differences. I had debates here with the Senator from California and others on the abortion issue. That is not the issue here today. The issue is this process. The bill is about abortion in the late second and into the third trimester of pregnancy—a brutal, horrible way.

Poll after poll consistently shows that the divisions among Americans over a abortion narrow and narrow as the pregnancy progresses into the second and third trimester. Even the most pro-choice Americans become pro-life at some point in the process. That is not the issue today.

This bill is about basic human rights, fundamental human rights, Mr. President. The right of a little baby to be born, grow up, to have a life. They do not depend on the polls. Do we really have to take a poll to find out whether a little baby should have the right to proceed and develop his little personality? They do not depend on politics. What do they know about politics? What do they know about polls?

Do you know what they know? They know that they hear sounds outside their mother's womb and they have sensed that protection. They are in that little fluid sac where they have protection, but they invade that. The abortionist invades that—pulls them feet first to their death.

Even the Supreme Court in the Roe versus Wade decision recognized that a born child—a born child—is a person entitled to the equal protection of the laws under our Constitution.

Now we are starting to talk a little bit differently. Now we have a problem

with the semantics. What is a partially-born child? Feet out? Nothing else? Feet-knees? Feet-knees-behind? Torso? All the way to the neck? What is a partially born child? What is it?

What makes it a nonchild while it is inside, while its inside is inside the womb or its shoulders or its torso? A few inches? A few moments. Does that make it something else?

Is not a partially born child one whose entire body, except for her little head, is already in the birth canal, just as much a human being? Is she no less a human being? Is the line of a baby a nonentity who can be brutally slaughtered really just a matter of a few inches? A few moments?

This is the world's greatest deliberative body, Mr. President. I am proud to be a Member. I hope and I believe that because we are the world's greatest deliberative body that we will rise to the challenge that the House has given us.

That is the reason why I did not touch that bill. I did not use my own. I wanted that bill to come right over here and bring it right up without amendment. I want to pass it today if I can, tomorrow if necessary, whatever it takes, whatever time it takes, I want to pass it and I want to put it on the President's desk.

Once it gets there, I hope that President Clinton will sign it into law. I hope that he will look at this brutal act and put an end to it because after all, his pen, William Jefferson Clinton—will stop the process. One signature, done. No more partial-birth abortions. Hundreds of innocent children saved.

President Clinton, you were an unborn child once. The President's father died, you know, while his mother was pregnant. Is that not interesting? She faced a very tough decision. Do I raise a child alone without a father? Bill Clinton's mother chose life.

Regardless of party, regardless of ideology, I think we could say we are thankful. He became a President of the United States. He could have been a victim. Bill Clinton could have been a partial-birth abortion. We never would have known. We never would have known.

Think about it, my colleagues, because this is a very personal matter. Each and every one of us—each and every one of us—started out in life as an unborn child. Just like the one depicted in the first illustration that I showed earlier today.

When you were born as you came through that birth canal your little fingers moved, your little feet moved, you kicked your legs, you moved your arms, and when you finally came into the world with a little slap on the behind, you started to cry.

Every one of us came down that birth canal the same way—little bit differently sometimes but we came down the birth canal. We slept, we woke, we felt pain, we were happy, we were sad, our quarters were close, but we always heard our mother's voice. Our mother's voice was always there to soothe us.

As I close, I am reminded of a great maxim. Do unto others as you would have them do unto you. Do unto others as you would have them do unto you.

You and I deserved to be protected by law from a partial-birth abortion when you and I lived in our mother's womb.

There are two reasons why we are here today. Either/or: one, because our mothers chose life and had no concern about aborting us; second, because there was no abortionist there to end our lives. We had value. We had worth. We had rights. We became U.S. Senators. And those little babies have the same rights that we have under the Constitution.

As the Old Testament tells us, Almighty God knew us even then, and He loved us. Our fellow human beings, these youngest of Americans, deserve no less.

My colleagues, I implore you for the sake of God, for the sake of life, for the sake of innocent children, pass this bill.

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

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, first I thank my colleague from New Hampshire for agreeing to begin this debate at a little later hour than originally scheduled. Many of us, who are on both sides of this debate, went to the Middle East with the President and a bipartisan delegation, and we literally have not had any rest for many hours. So, it really gave us a chance this morning to get that first bit of rest. This is a difficult debate and I think we all needed to have that rest. I thank my colleague from New Hampshire and I thank the majority leader and minority leader for agreeing to bring this up at 2 o'clock rather than 11 a.m.

I stand here in favor of committing H.R. 1833 to the Judiciary Committee for at least one hearing on this bill, and to report back with any amendments, if they so deem, within a 45-day period.

There are many reasons that I believe are quite rational for doing this, which I will get into in the course of the debate. But I want to say the motion that will be made to send this bill to committee will be a Republican motion offered by Senator SPECTER and supported by six other Republicans.

This is a bipartisan issue. This is the first time, in my knowledge, that a particular procedure has been criminalized. And I agree with my colleague from New Hampshire when he says—and he has said it many times—the Senate is the greatest deliberative body. Therefore, let us make sure before we do this for the first time in history that we have held a hearing that brings all sides to the table where there can be a discussion with medical experts.

We have one physician in the U.S. Senate. He was never an OB/GYN. We do not have anyone in the U.S. Senate

who truly can understand the ramifications of criminalizing what has been a life-saving procedure. So I think the course of sending this bill to Judiciary is the proper course.

I will cover a lot of ground. My colleague took almost a couple of hours. I do not think I will take as much time, but my presentations are usually quite brief. This will not be as brief because I think we have heard my colleague without possibility to, if you will, correct the RECORD or insert differing opinions. We have not had that chance. I would like to take this time to cover a good deal of ground.

I think it is important to debate this bill, every word of this bill, the ramifications of this bill, the justifications for this bill and the tragedy that is addressed by this bill. But the one thing I hope I do not have to be lectured about is the joys of childbirth. Unlike my colleague from New Hampshire, I have had it. I have had it. I have had the joy of childbirth. I have had the joy of bringing two of the most wonderful people into this world, and now I have the joy of grandparenting. So I really do not need to be lectured about the joys of the travel down the birth canal because I have experienced it in my own body.

I had two premature babies who were not safe in my womb. They were not safe in my womb toward the end of the pregnancy, and they had to struggle for their lives, and we won that struggle. They were difficult births, and very unpredictable as to what would happen.

Now I am a grandmother, and we had complications in that one. This baby is our joy—my joy, his other grandmother's joy, his grandpa's joy, his uncle's and aunt's. So I know about the joy of children very personally, the joy of grandparenting.

But do talk to me about the bill. Do talk to me about, for the first time that we can find in history, why we at the national level should outlaw a particular procedure that is sometimes the only way to save a woman's life or to avoid the most serious, long-lasting consequences to her health. Talk to me about that. Talk to me about that.

Do not tell me that you speak for all the little children who cannot speak for themselves when you talk about this bill, because I want to talk to you about little children. Let us take a little child that is happy and alive, living in a wonderful family environment, and his mom gets pregnant and everything is wonderful and everything is joyful and they have a name picked out for the baby—if it a girl or a boy—and they think everything is right, and suddenly they learn that it is not right. I would tell you if that little child could talk—let us say he is just 2 or 3—he would say, "Don't let my mommy die." So don't tell me you are talking for all children. We cannot speak for all children.

I am going to give you a few cases. Viki Wilson, a registered nurse, a practicing Catholic, and her husband Bill, a

physician, they were the parents of two children and planning for a third. In the 8th month of pregnancy, an ultrasound showed the baby's brain was growing outside of the baby's skull. The brain was twice the size of her actual head and lodged in Viki's pelvis, causing pressure on what little brain the baby had.

This was a wanted baby. They picked out a name for the baby. If Viki had carried the baby to term, Viki's cervix could not have expelled the baby. Viki's cervix would likely have torn or ruptured, causing massive hemorrhage and infection.

I do not have a chart that shows what it looks like when there is a massive hemorrhage. I do not have a chart to show you what it looks like when the cervix is torn and ruptured. I do not have a chart that shows you what your wife would look like if she had to go through this circumstance, or your daughter. I do not have a chart that shows what the baby's skull would have looked like as it was crushed by passage through the birth canal. I do not have a chart that shows that. But we do know this. If the baby had survived somehow, at most she would have lived a few short agonizing moments gasping for air. Most likely she would have suffocated the moment the umbilical cord was cut, unable to breathe through her mouth.

I do not have a chart. Viki Wilson is a practicing Catholic. If you want to meet her, you can meet her. If you want to talk to her, you can talk to her. She came forward in her grief because she could not stand to see what was happening here. She said, "My daughter's death was with dignity instead of subjecting her to a process that would have taken away all her dignity."

I have other stories. I am going to share them with my colleagues. But let me tell you of a little child who thought his mother was going through that. He would say, "Save my mother and do not allow my sister to go through this agonizing procedure."

The Senator from New Hampshire said, "Do not listen to what opponents say. They will distort this bill."

I have a copy of the bill. I have read this bill over and over again. In every case when we have voted to restrict a woman's right to choose, there have been exceptions in the bill for the life of the mother, at least in every single case. Not here, not here. Oh, yes. When the doctor is thrown in jail, he can say in his defense, "I had to do it." That is not the same as making exceptions to the life and the health of the mother.

My colleague said, Look at the numbers of votes in the House. Well, the far-right forces in the House will not allow a vote on a moderating amendment for the life of the mother, for the health of the mother. They will not allow a vote on any of this. So there was no choice for people.

I am so pleased that in the Senate we have the ability to get a vote, to stop

the extremism, to stop the danger. We have a chance to do that. No. The House did not allow an amendment. That is why you had the vote that you had. I know because I did speak to some of the people over there. They said, "Barbara, we did not have a chance to vote on any moderating language we wanted so desperately. We tried to, and the Rules Committee shut us down."

So we know what this is about. It is about politics. It is about politics because if it was about substance they would have allowed a vote.

I have to say that I am not a doctor—and I am not God—and there are none in the Senate, except for one doctor who is not an OB-GYN, nor is anyone else. And no one is God.

And people invoke the name of God. And I am glad that they do that because they feel it deeply, and I feel it deeply. And if one believes in God, one believes that God has made sure that there are medical procedures in place to help save lives.

There were so many misstatements made on this Senate floor regarding this issue, and I am not going to take them on here because I am not a doctor. But I know about giving birth, and when babies are born, except in rare cases, the head comes first. The way this is described is it is described as if the woman is having a baby, and suddenly people say, "We do not want this baby." The mother is given anesthetic, large doses of it—this is a serious, complicated situation—large doses that go right to the fetus.

That is just one example of the misstatement here. That is why we need hearings on this—to find out the facts.

Even the name of this, "partial-birth abortion"—there is no such terminology. That is not a medical term. And, yet, it is outlawing "partial-birth abortion" when there is no such medical term. It is a term being used for political reasons, in my view. There is not a birth here. This is a late-term abortion, and it is tragic. It is tragic. And that is what we are talking about.

There is talk here on the floor by men who never had the experience about what it is like for the baby to flow in the water, as it was said. That is the amniotic fluid. Sometimes something happens in a woman, and the baby is not safe in the womb. And the amniotic fluid is not there. We hope everything goes just right. We want everything to be just right. When we get to that stage of our pregnancy—I never got to those stages; I had two premature babies. By then we were so excited about this event.

And to make it sound like women are brutal, that doctors who take a Hippocratic oath are brutal, and that is their goal in life—is to be brutal. And they wake up every day saying, "I am going to wait until the end of my pregnancy, and I am not going to have it, and I am going to be brutal." If you listen to this, calling doctors abortionists—

abortion is a legal procedure in this country. They are not without laws. They try to change it on the floor of the Senate all the time. They do not have the votes to do that. Do not call a doctor an abortionist. And do not try to be a doctor. You cannot be a doctor. You are not a doctor. You do not know the truth.

We need a hearing in the Judiciary Committee. We have people on both sides of this issue on the Judiciary Committee. And, therefore, it will have a hearing in the Judiciary Committee, and both sides will be brought out. And they will have panels on one side and another.

And when the word "elective" is used, let us straighten that out right here and now. Elective means anything but for the life. It can be the health. It can be the most severe health consequence which is given the term "elective."

Let me talk about the organizations that are cited. The AMA my colleague from New Hampshire cited. The council he talked about—12 or 13 people are on the council—voted to endorse the bill. There was not one OB-GYN on the council. The only testimony heard in the AMA was of the staff of the person who wrote the bill, and the AMA Board of Trustees unanimously rejected the recommendation of the committee. And they did not take it. So let us get that straight.

The AMA does not support this bill. There are some organizations that oppose it—that oppose it: the American Medical Women's Association, the California Medical Association, which is the largest State organization in the country, the American College of Obstetricians and Gynecologists. They oppose this legislation.

Now, we believe, those of us who believe we should commit this to the Judiciary Committee for a report back in 45 days on the bill, that before Senators are asked to cast a vote on a measure that would criminalize a legal medical procedure, which is used under rare and tragic circumstances, the Judiciary Committee should have an opportunity to review it.

I have raised some of the questions here today, and I am going to raise them again. This is what I think the committee ought to look at, whatever your view on this issue. They ought to look at the fact that there is no such term as partial-birth abortion, in any medical text, and that it was invented by the authors. And let us get down to what we are talking about here. They should also look at the fact that a doctor is threatened with criminal prosecution for trying to save a woman's life. They should look at that.

What kind of chilling effect would it have on a physician? Oh, sure, there is an affirmative defense. That is like saying, "I will arrest you if you disagree with me, but once you are in court you can have your chance to explain why you disagree with me." It is an affirmative defense. You put it in

the bill. You have a right to go to court and affirmatively say, "Save the life of a mother." Let us look at what that means: Doctors threatened with criminal prosecution for trying to save the life of a woman. Let us look at that.

Let us look at the fact that there are medical problems that compel women to seek late-term abortions that range from the extremely serious to the potentially fatal, including severe heart disease, kidney failure, and cancer in need of immediate treatment. Let us have those women who have had this tragedy befall them and their husbands and their families and their children, who some here said they speak for, come forward and say how they felt when they heard unless their mother could go through an emergency medical procedure, they would lose that mother forever. Let us hear from those people. The greatest deliberative body in the world, my colleague from New Hampshire says—and I agree—let us deliberate.

The procedure that this bill would outlaw is often considered considerably safer than other alternatives. Let us look at that from a doctor's perspective. I think it is inappropriate that the Senate vote on this bill without fully exploring these questions and others.

I also have to address another issue, the issue of late-term abortion. The author of this bill—and there is a similar bill in the Senate—now the proponent of this House bill, in many ways by implication says that horrific things are going on in the country; let us stop it now; it is immediate; it is a crisis; does not tell you that under Roe versus Wade, which is the law of the land, the landmark decision in 1973, which has not been overturned by this Court, which has not been overturned by this Congress, says that in the late term of a pregnancy the States have the full and absolute right to make the rules governing these abortions. Now we have for colleagues to see the rules and regulations in every single State, and I urge my colleagues to look at that.

What you will see is that in all States of the Union there are controls. In many States of the Union, there are stringent controls which require not only the attending physician but other physicians to sign on, and this is not considered likely in the States.

What really interests me is that the party that controls this Congress—and, in particular, the people offering this legislation—always are on this floor saying let the States decide. They are closer to the problem. They are closer to the people. Let them decide. And yet they would overstep all the States, outlaw a specific procedure which we believe is the first time in the history of the country it has ever been done, and trample on all the States that have very serious regulations on this. And we will go into what some of those regulations are.

I ask unanimous consent to place in the RECORD a number of editorials.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

#### OUTLAWING AN ABORTION METHOD

The House of Representatives succumbed to emotional blackmail this week when it approved a bill that would ban a specific abortion procedure and impose criminal penalties on doctors who use it. The House action would undermine a woman's constitutionally protected right to choose to terminate a pregnancy and a doctor's right to determine what is best for his patient. The Senate would be wise to exercise more restraint.

The procedure to be banned, known as intact dilation and evacuation, is used only in late-term abortions, after 20 weeks of gestation, and even then its use appears modest. About 13,000 of the nation's 1.5 million abortions each year take place after 20 weeks, usually because of special circumstances, such as a threat to the mother's health or severe fetal abnormalities.

While there are no reliable statistics, most late-term abortions involve a procedure that breaks the fetus apart before it is suctioned out of the uterus. But some doctors, those who would be affected by the House bill, use a procedure that involves partially extracting the fetus into the birth canal and collapsing the skull in order to let it be extracted. Anti-abortion groups call this a "partial birth" abortion. They circulated graphic drawings in their inflammatory campaign to impose a ban.

The House majority allowed its distaste for the particular procedure to start it down a course that could undermine the constitutional right to abortion as outlined in Roe v. Wade. Roe recognized a woman's right to end a pregnancy, in consultation with her doctor, during the first trimester. I also recognized the state's interest in imposing some restrictions on abortions as a pregnancy progresses through the second and third trimesters. But it did not try to dictate the methods that could be used.

The House bill would erode the judgment in Roe and subsequent cases that while abortion's after fetal viability can be forbidden, exceptions must be allowed to preserve the mother's life or health. True, the bill would allow a doctor, if criminally charged, to argue that the procedure was needed to save the life of the mother and that no other procedure would suffice. But that leaves scant room for a doctor to exercise sound medical judgment as to the safest procedure in a particular abortion.

The House bill is harsh and intrusive. The Senate should have more respect for women, and responsible doctors and for Roe.

[From the Los Angeles Times, Nov. 3, 1995]

#### A GRUESOME PIECE OF LEGISLATION

THE HOUSE—SHOWN BLOODY PHOTOS—VOTES TO OUTLAW A FORM OF ABORTION

There is no question that the "partial-birth abortion" procedure that the House voted Wednesday to outlaw is gruesome. No woman undergoes this late-in pregnancy procedure without great psychological and physical pain. Few physicians perform it, and those who do may experience deeply conflicting emotions.

The procedure is done typically only to avert an outcome as gruesome as the operation itself—the death of the woman—or to remove a severely deformed fetus that would not survive after birth.

One measure of the pain and conflict surrounding the partial-birth abortion is its extreme rarity. It accounts for only about 200 of the 1.5 million abortions done annually in this country.

The nature of the procedure should have been beside the point; many medical procedures are bloody and hard to witness. Nevertheless, supporters of the bill displayed photographs of partial-birth abortions in the House chamber to manipulate the emotions of Congress members.

In banning this form of abortion, the House has set a precedent with dangerous ramifications.

Wednesday's vote is the first time a house of Congress has asserted federal authority to ban a specific, established medical procedure. As such, the action represents an important legal and political step for anti-abortion forces.

Under the House bill, doctors who perform this abortion could face up to two years in prison or monetary fines or both. A doctor must prove that no other procedure would have sufficed. In effect, Congress is telling physicians that the government will now supersede the medical judgment of a woman's physician.

Will Congress members, few of whom are physicians, now outlaw other lifesaving procedures because they are difficult to watch? Will this Congress, despite its promise to reduce the intrusion of government into private life, increasingly assert its authority at the medical bedside?

The Senate should stop this perilous slide when the legislation comes its way. And the President should be prepared to veto.

[From the Des Moines Register]

#### MEAN AND MEANINGLESS

PHYSICIANS, NOT MEMBERS OF CONGRESS, SHOULD DECIDE ON ABORTION METHODS

The House vote Wednesday to ban one method of late-term abortion and send doctors who perform it to prison is mean and meaningless.

It is mean because late-term abortions often are done to preserve the health of the mother or because the fetus is terribly deformed and not expected to live. About 13,000 of 1.5 million abortions performed in the United States are at 20 weeks or later. The bill puts an absurd burden on the doctor being prosecuted to prove that this particular method was necessary to save the life of the woman and that "no other procedure would suffice for that purpose."

It is meaningless because the legislation does not address alternative ways of terminating a pregnancy at late stages, among them Caesarean section and induced labor.

The method the House would criminalize is intact dilation and evacuation. The doctor pulls the fetus from the womb feet first, through the birth canal, leaving only its head inside. Surgical scissors pierce the skull, and the brain is suctioned out, the skull collapses, and the fetus is taken out.

It is hideous. It may also be the best procedure under certain circumstances. The New York Times reported that Colorado physician Warren Hern, author of the standard textbook on abortion practice, said: "The medical community has not determined the very best way to do late-term abortions, which are uncommon anyway. This method is a minor variation on what I've done for 20 years and could be absolutely necessary under some medical circumstances. But what's important is that the decision be left to the doctor."

Certainly, it should not be left to Congress, with medical issues so complex and personal issues so wrenching, when a mother's health is in danger or the fetus is severely damaged.

Of course, when the mother is well and the fetus is potentially viable but merely unwanted, a late-term abortion is unacceptable by any method.

"Yet this Congress is determined to interfere unthinkingly in any way it can, regardless of circumstances. This is the first time since *Roe vs. Wade* that it has acted to ban a specific abortion method, but numerous other efforts to stop abortion are under way, such as keeping funding from international groups involved in abortion overseas. The Supreme Court's landmark 1973 decision said states could not limit the right to abortion in the first trimester of pregnancy, but could regulate it in the second trimester to protect a woman's health, and could limit or prohibit it in the third trimester when the fetus is potentially viable. Today, 41 states, including Iowa, have laws prohibiting late abortions under most circumstances.

The House vote Wednesday to ban one method of late-term abortion, and a similar bill introduced in the Senate, mark the determination of politicians to pander to anti-abortion forces.

[From USA Today, Nov. 3, 1995]

#### ATTACK ON RARE ABORTION PROCEDURE INVITES MISERY

OUR VIEW: THESE CASES ARE TRAGIC, THESE CASES ARE PERSONAL, LEGISLATION IS A CLUMSY AND PAINFUL RESPONSE

Abortion is a wrenching decision under any circumstance. In the later stages of a pregnancy, it's a nightmare.

So it doubly painful to find the House of Representatives voting to make the nightmare worse. It did so Wednesday, voting to outlaw a last-report procedure to terminate some late-term pregnancies.

The procedure is one that would make anyone cringe. The fetus dies from an overdose of anesthesia given to its mother. Sometimes, its skull is then drained so the fetus can be aborted intact without risk to the mother (not to cause death as critics of the procedure often claim).

It's a process undertaken in desperate circumstances. Just ask Viki Wilson, a 39-year-old registered nurse, doctor's wife, and mother of two in Fresno, Calif. She was eagerly awaiting the birth of her baby when the bad news arrived. Just four weeks before her delivery date, she learned what previous tests had failed to detect: two-thirds of her unborn daughter's brain was in a sac outside the skull. The fetus was suffering seizures and Viki Wilson's life was in danger. The baby was doomed to die outside the womb no matter what was done.

After consulting with specialists, the Wilsons opted for "intact dilation and evacuation," the procedure banned by the House. The anesthesia was administered and a needle used to draw fluid from the baby's enlarged head so it could pass through the birth canal without damaging her mother.

"This wasn't about choice, this was about medical necessity," Wilson says.

That's the case for most late-term abortions. A mother's pregnancy is complicated by health problems such as cancer or heart disease, so that continuing the pregnancy endangers her life. Or an unborn baby is found to have unthinkable deformities.

If the Senate agrees with the House, other families won't get the option available to the Wilsons. Or other choices. The House language is so vague it can be read as outlawing all late-term abortions. It bans "partial-birth abortions," a term not found in medical dictionaries. Doctors, facing jail terms, may refuse to perform any late-term pregnancy terminations.

And that is the real story of this legislation. Its backers say it is a wedge to challenge abortion rights broadly.

The idea of aborting a healthy, late-term fetus for mere convenience is reprehensible to all sides. And rare is the doctor who would

participate in such an abortion. Only a handful will even perform late-term abortions for the more compelling reasons.

The legislation just isn't needed. And the broader assault will do nothing to alter the national division on abortion.

After 20-plus years of debate, there's no sign of national consensus to ban abortion. And absent such social agreement, the choice must be a personal one.

Abortion's dilemmas are indeed painful. But they are best resolved by appeals to hearts and minds, not dictates of law like this one.

Mrs. BOXER. I thank the Chair. One is from the Los Angeles Times. It says in part:

In banning this form of an abortion, the House has set a precedent with dangerous ramifications. Wednesday's vote is the first time a House of Congress has asserted Federal authority to ban a specific established medical procedure. Under the House bill, doctors who perform this abortion could face up to 2 years in prison or monetary fines, or both. A doctor must prove that no other procedure would have sufficed. In effect, Congress is telling physicians that the Government will now supersede the medical judgment of a woman's physician.

"Government will supersede the medical judgment of a woman's physician."

Wonderful, just what we were elected to do, decide what medical procedures should be used under what circumstances. We have never done that in history as far as I can tell. And this is a procedure that is used in most tragic, rare circumstances involving a woman's very life, and we are going to decide, without a hearing, unless we support the Specter amendment for a hearing—and I hope we do—this should be banned.

I think this editorial raises another interesting point.

Will Congress Members, few of whom are physicians, now outlaw other lifesaving procedures because they are difficult to watch? Will this Congress, despite its promise to reduce the intrusion of Government into private life, increasingly assert its authority at the medical bedside?

What is next, I ask? Then the editorial concludes.

The Senate should stop this perilous slide. When the legislation comes its way, the President should be prepared to veto it.

And the President has clearly stated that abortion should be legal and rare, and his standard is life and health of the mother. This bill makes no such exception.

Then the New York Times says:

The House bill is harsh and intrusive. The Senate should have more respect for women and for doctors and for *Roe*—

Meaning *Roe* versus *Wade*,

the Supreme Court decision that gives the right to the States in the last trimester to set the rules and the standards.

USA Today: "Attack on rare abortion procedure invites misery."

They say:

These cases are tragic. These cases are personal. Legislation is a clumsy and painful response.

And then the Baltimore Sun, and I see my colleague from Maryland is here, I think gets right to the heart of it:

When a late-term abortion is necessary, usually to protect the health or life of the mother, a physician should not have to base his decision on how to proceed on the politics of the issue.

So under the House bill, we are not only putting physicians in peril for doing what they think is right, according to their medical training and their experience, to save a woman's life, we are putting them in peril, putting them in jail but we are bringing politics into the operating room as well, because make no mistake about it, this is about the agenda of the far right in this country, who put together a contract. They want to do away with the woman's right to choose, and even though late-term abortions are regulated by the States, this is high on their agenda.

I know the phones are ringing off the hook. That is OK, that is fine, because they are ringing off the hook on both sides. Then we see the Des Moines Register, and they talk about this legislation as mean and meaningless. They say:

Physicians, not Members of Congress, should decide on abortion methods.

Look, what procedure are we going to get into next? What are we going to ban next? What are we going to outlaw next? I mean, the sky's the limit if we go down this slippery slope, and that is why having a hearing is so important.

I got a call today, they just sent it over to me: "Please, Senator BOXER, tell these people that the women they are talking about are someone's baby."

And they talk about babies. The woman who is in peril was somebody's baby and now she is somebody's daughter and somebody's granddaughter. Let us talk about that baby, because, yes, my baby may be 27 years old and have her own baby, but she is still my baby, and she will be my baby until the day that I am not here.

So this woman puts it into perspective. She wants me to put her name out. I do not know this woman. Dorothy Fox, from Santa Barbara, thank you for calling my office. "Please, Senator BOXER, tell these people that the women they are talking about are someone's baby. My daughter had this procedure, and I would have done anything to save my baby, my 36-year-old daughter who had to endure this horrible procedure to save her life and her reproductive health so that she could have healthy children in the future. Please tell them"—meaning the supporters of this bill—"that the fetus isn't the only baby involved. Those women were once somebody's baby."

I want to talk about the nurse that the Senator from New Hampshire points out, her emotional testimony about being in the room and seeing this procedure. And she is here to take questions, and that is good. I am glad

she is here, because I have a lot of people here, too, whose stories you are going to hear.

Here is a letter from the Women's MedPlus Center in Cincinnati, OH, where this nurse worked.

I want to point out that the nurse worked at the clinic for 3 days; she worked at the clinic for 3 days. This is the woman who now comes here as an expert on this procedure. So you should ask her about that experience.

The letter we have here is from Cristy Galvin, RN, and here is what she says:

I am a registered nurse and have worked since July 1993 in the Dayton office of Dr. Martin Haskell. In this capacity, I was the nurse that supervised the training of Brenda Pratt during her brief temporary employment at the Women's Medical Center of Dayton.

As you know, we initially conducted a search of our employment records under the name "Brenda Shafer," as this was the name she signed to the letter which was given to us.

When provided with the correct last name, we did, in fact, find the record of her 3-day employment at our Dayton facility.

The information provided by Ms. Pratt as to our practices at the Women's Medical Center at Dayton is largely inaccurate. First, she describes Dr. Haskell performing one 25-week and one 26-week abortion. Dr. Haskell does not perform abortions past 24 weeks of pregnancy. This is a self-imposed limit to which he has scrupulously adhered to throughout the time I have worked for him.

So let us not be fast and loose with a doctor's lifetime commitment to health.

Second, Dr. Haskell does not use the ultrasound in the performance of second-trimester procedures. We use ultrasound only to determine the pregnancy's gestation. Therefore, her entire description of her experience when viewing the second-trimester abortion, which includes Dr. Haskell's using the ultrasound while doing the procedure, is clearly questionable.

Finally, at no point during a D&E is there any fetal movement or response that would indicate awareness, pain or struggle. Ms. Pratt absolutely could not have witnessed fetal movement as she describes. We do not train temporary nurses in second trimester dilation and extraction since it is a highly technical procedure and would not be performed by someone in a temporary capacity. If, indeed, Ms. Pratt entered the room at any point during a D&E procedure, she clearly either is misrepresenting what she saw or remembers it incorrectly.

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

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

THE WOMEN'S MEDICAL CENTER,

Dayton, July 17, 1995.

DEAR CONGRESSWOMAN SCHROEDER: I am a registered nurse and have worked since July, 1993, in the Dayton office of Dr. Martin Haskell. In this capacity, I was the nurse that supervised the training of Brenda Pratt during her brief temporary employment at the Women's Medical Center of Dayton. As you know, we initially conducted a search of our employment records under the name "Brenda Shafer," as this was the name she signed to the letter which was given to us. When provided with the correct last name, we did

in fact find the record of her three-day employment at our Dayton facility.

The information provided by Ms. Pratt as to our practices at the Women's Medical Center of Dayton is largely inaccurate. First, she describes Dr. Haskell performing one 25-week and one 26-week abortion procedure. Dr. Haskell does not perform abortions past 24 weeks of pregnancy. This is a self-imposed limit to which he has scrupulously adhered throughout the time I have worked for him.

Second, Dr. Haskell does not use ultrasound in the performance of second-trimester procedures. We use ultrasound only to determine the pregnancy's gestation. Therefore, her entire description of her experience when viewing a second-trimester abortion, which includes Dr. Haskell's using the ultrasound while doing the procedure, is clearly questionable.

Finally, at no point during a dilatation and extraction or intact D&E is there any fetal movement or response that would indicate awareness, pain or struggle. Ms. Pratt absolutely could not have witnessed fetal movement as she describes. We do not train temporary nurses in second trimester dilatation and extraction, since it is a highly technical procedure and would not be performed by someone in a temporary capacity. If, indeed, Ms. Pratt entered the operating room at any point during D&X procedure, she clearly either is misrepresenting what she saw or remembers it incorrectly.

If you have any further questions, please feel free to contact our office.

Sincerely,

CHRISTIE GALLIVAN, RN.

Mrs. BOXER. Mr. President, I need just about another 10 minutes to finish my response, and I know that my colleagues here will participate.

We are talking about pain and suffering. We are talking about tragedy, and I am going to read a couple of other stories of women who have had to face this. If you notice on the chart, when the chart is shown, there is no face of a woman shown. There is no face of a woman shown. There is no talk of the woman and the peril to her health and the horrible consequences of what could happen to her if she carried the fetus to term.

I want you to hear about Coreen Costello. Coreen was 7 months pregnant with her third child when she discovered through ultrasound there was something seriously wrong with her baby. The baby, named Katherine Grace, had a severe neurological disorder. The movements Coreen had been feeling were not the healthy kicking of a baby. They were nothing more than bubbles and amniotic fluid which puddled in Coreen's uterus rather than flowing through the baby.

The baby had not been able to move for months. Not move her eyelids, not move her tongue, nothing. The baby's chest cavity was unable to rise and fall to stretch her lungs to prepare them for air. Her lungs and chest were left severely underdeveloped, almost to the point of nonexistence.

The doctors told Coreen and her husband the baby was not going to survive. They considered all the options, but all brought severe risks to the mother. If Coreen waited to go into labor naturally, there was concern her uterus

would rupture. I am not going to go into all the detail of what that looks like. I am not going to show a chart. They considered inducing labor, but were told it would be impossible due to the transverse position of the baby, and the fact that the baby's head was so swollen with fluid, while the baby's body was stiff.

Coreen and her husband faced a tragedy that most people never even have to face, thank God. In the end, they made a decision to save the mother's life, to save Coreen's life. She underwent a late-term abortion, and because of this procedure, she is alive today caring for her husband and her remaining two children.

Michele Brydon was 23 weeks pregnant with her third child when she went for a routine ultrasound to ensure that her baby was doing OK. The result of this ultrasound turned Michele's family life upside down. The doctors informed them that the baby—a girl—was suffering from a diaphragmatic hernia. The diaphragm protects and separates the heart and lungs from the stomach and intestines. A diaphragmatic hernia is a hole in the diaphragm, which leaves the baby's heart unprotected and pushes abdominal organs, such as her stomach and intestines, into the chest. Because of the intrusion of the abdominal organs, there was no lung growth. Michelle sought answers from specialists and a pediatric surgeon, who might try to fix the hernia. She was told the baby would not live; the baby was not compatible with life. She chose, in this particular case, to have this procedure.

In October 1992, Claudia Crown Ades was 6 months pregnant with her first child. Everything was perfect. At age 33, she was told there was no need for an amniocentesis. But, for some reason, she began to get anxious, and her doctor sent her to an ultrasound specialist to ease her mind. Three days and four doctors later, Claudia and her husband Richard were informed their baby was plagued with severe anomalies, including brain damage, heart complications, extra digits, and more. The abnormality is known as trisomy-13.

Claudia and Richard were told their baby would likely not survive the pregnancy, and would have little or no chance of living through the first year. They were devastated. They were devastated. I do not have a chart to show you that they were devastated. They wanted this pregnancy, and they were faced with the most agonizing of decisions.

After Tammy Watts and her husband found out she was pregnant in October 1994, they did everything prospective parents do—they discussed names, what kind of baby's room they wanted, whether it would be a boy or a girl. Everything looked fine.

Then in a routine 7-month ultrasound, after a few minutes, the doctor said, "There is something I did



not expect to see." A mass appeared outside the fetus' stomach.

Tammy was sent to several specialists for more tests to determine if something was indeed wrong with the fetus, or whether the ultrasound machine was wrong. The doctors and the genetic counselor gave Tammy the worst possible news—the fetus, which was a girl, had no eyes, six fingers, six toes, and enlarged kidneys which were already failing. The mass on the outside of the stomach involved her bowel and bladder, and her heart and other major organs were affected.

This condition is known as trisomy-13, where on the 13th gene there is an extra chromosome. The trisomy-13 was causing the slow death of their daughter in utero. If Tammy's baby had died in utero, it would have begun to breakdown, releasing fatal toxins into the woman's bloodstream.

Tammy and her family made the hardest decision of their lives, but one that saved Tammy's life. These people are here to talk to you. Listen to them, look in their eyes, and look at how they love their families and their children.

Women in their late-term pregnancies do not desire, do not anticipate, want, or even think about abortion. Women in the late term of their pregnancies are anticipating the joy of child birth, the fulfillment of motherhood and family.

Doctors know late-term abortions are dangerous and difficult. They are emergency medical procedures done in the most tragic and painful circumstances. Yet, this bill would outlaw an emergency medical procedure. It will put a doctor in jail because he tried to save a woman's life. It is going to happen without a hearing in the Judiciary Committee, unless the Republican motion to commit, which will be offered by Senator SPECTER, passes. We were not elected to be doctors, and we were not elected to be God. And the States control late-term abortions. We have the list.

I ask unanimous consent to have printed in the RECORD this list of the States with the postviability restrictions. Every single State has restrictions.

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

#### STATES WITH POST-VIABILITY RESTRICTIONS

##### ALABAMA

No abortion may be performed after viability at an abortion or reproductive health center unless immediately necessary to preserve the woman's life or physical health. Admin. Code r. 420-5-1-.03(2)(c) (Supp. 1990).

##### ARIZONA

No abortion may be performed after viability unless necessary to preserve the woman's life or health. A second physician must be in attendance at a post-viability abortion to provide medical attention to the fetus. §36-2301.01 (1993).

##### ARKANSAS

No abortion may be performed after viability unless necessary to preserve the woman's

life or health or the pregnancy is the result of rape or incest perpetrated on a minor. A second physician must be in attendance at a post-viability abortion to provide medical attention to the fetus. §§20-16-705, -707 (Michie 1991).

##### CALIFORNIA

No abortion may be performed after the 20th week of pregnancy. Health & Safety §25953 (West 1984). The Attorney General has issued an opinion stating that this provision is unconstitutional as applied to pre-viability abortions and abortions necessary to preserve the woman's life or health. 65 Op. Att'y Gen. 261 (1982).

##### CONNECTICUT

No abortion may be performed after viability unless necessary to preserve the woman's life or health. §19a-602(b) (West Supp. 1993).

##### DELAWARE

No abortion may be performed after the 20th week of gestation unless continuation of the pregnancy is likely to result in the woman's death. Tit. 24, §1790 (1987 & Supp. 1992). The Attorney General has issued an opinion stating that this provision is invalid and inconsistent with *Roe v. Wade*, 410 U.S. 113 (1973).

##### FLORIDA

No abortion may be performed in the last trimester of pregnancy unless two physicians certify in writing that the abortion is necessary to preserve the woman's life or health. §390.001(2) (West 1993). This provision is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortion prior to viability, a point which varies with each pregnancy and may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979).

##### GEORGIA

No abortion may be performed after the second trimester unless three physicians certify that an abortion is necessary to preserve the woman's life or health. §16-12-141(c) (Michie 1992). This provision is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortion prior to viability, a point that varies with each pregnancy and may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979).

##### IDAHO

No abortion may be performed after viability unless necessary to preserve the woman's life or unless the fetus, if born, would be unable to survive. §§18-608(3), 18-604(6) (1987). This law unconstitutionally prohibits post-viability abortions in cases in which an abortion is necessary to preserve the woman's health. *See Roe v. Wade*, 410 U.S. 113, 165 (1973).

##### ILLINOIS

No abortion may be performed after viability unless necessary to preserve the woman's life or health. A second physician must be in attendance at a post-viability abortion to provide medical attention to the fetus. Ch. 720, act 510 §§5.6 (Michie 1993).

##### INDIANA

No abortion may be performed after viability unless necessary to prevent a substantial permanent impairment of the life or physical health of the woman. A second physician must be in attendance at a post-viability abortion to provide medical attention to the fetus. §§16-34-2-1(3), 16-34-2-3(b) (West Supp. 1993). This law unconstitutionally prohibits some post-viability abortions that are necessary to preserve the woman's health. *See Roe v. Wade*, 410 U.S. 113, 164-165 (1973).

##### IOWA

No abortion may be performed after the end of the second trimester unless necessary

to preserve the woman's life or health. §707.7 (West 1979). This provision is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortion prior to viability, a point which varies with each pregnancy and may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979).

##### KANSAS

No abortion may be performed after viability unless the attending physician and another, financially independent physician determine that an abortion is necessary to preserve the woman's life or the fetus is affected by a severe or life-threatening deformity or abnormality. §65-6703 (1992 & Supp. 1993). The Attorney General has issued an opinion stating that abortion cannot be prohibited at any time when a woman's health is at risk, and has filed a lawsuit requesting a court order stating that this law is unconstitutional and enjoining its enforcement. Op. Att'y Gen. No. 91-130 (Oct. 15, 1991); *Stephan v. Finney*, No. 93-CV-912 (Kan. D. Ct. filed Aug. 4, 1993).

##### KENTUCKY

No abortion may be performed after viability unless necessary to preserve the woman's life or health. §311.780 (Michie/Bobbs-Merrill 1990).

##### LOUISIANA

No abortion may be performed after viability unless necessary to preserve the woman's life or health. A second physician must be in attendance at a post-viability abortion to provide medical attention to the fetus. §40:1299.35.4 (West 1992).

##### MAINE

No abortion may be performed after viability unless necessary to preserve the woman's life or health. Tit. 22, §1598 (West 1992 & Supp. 1993).

##### MARYLAND

Abortion may be prohibited after viability unless necessary to preserve the woman's life or health or unless the fetus is affected by genetic defect or serious deformity or abnormality. Health-Gen. §20-209 (Supp. 1993).

##### MASSACHUSETTS

No abortion may be performed after the 24th week of pregnancy unless necessary to preserve the woman's life or to prevent a substantial risk of grave impairment to her physical or mental health. Ch. 112, §12M (West 1983). This provision is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortion prior to viability, a point that varies with each pregnancy and may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979). This law also unconstitutionally prohibits some post-viability abortions that are necessary to preserve the woman's health. *See Roe v. Wade*, 410 U.S. 113, 165 (1973).

##### MICHIGAN

Any person who intentionally causes an abortion that is not necessary to preserve the woman's life is guilty of manslaughter if the abortion occurs after quickening. §750.323 (West 1991) (enacted 1931). A court has ruled that this law is not unconstitutional as applied to viable fetuses. *Larkin v. Cahalan*, 208 N.W.2d 176 (Mich. 1973). This law is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortions prior to viability, a point that varies with each pregnancy and may not be declared to occur at a particular gestational age. *See Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979). This law is also unconstitutional as applied to post-viability abortions necessary to preserve the woman's health. *See Rose v. Wade*, 410 U.S. 113, 165 (1973).

## MINNESOTA

No abortion may be performed after the second half of the gestation period (20 weeks) unless necessary to preserve the woman's life or health. A second physician must be immediately accessible at a post-viability abortion to take all reasonable measures to preserve the life and health of the fetus. §§145.412(sub. 3), 145.411(sub. 2), 145.423(sub. 2) (West 1989). A court has ruled that the provision restricting abortion after 20 weeks is unconstitutional.

## MISSOURI

No abortion may be performed after viability unless necessary to preserve the woman's life or health. A second physician must be in attendance at a post-viability abortion to provide medical attention to the fetus. §188.030 (Vernon 1983).

## MONTANA

No abortion may be performed after viability unless necessary to preserve the woman's life or health. §50-20-109(1)(c) (1993).

## NEBRASKA

No abortion may be performed after viability unless necessary to preserve the woman's life or health. §28-329 (1989).

## NEVADA

No abortion may be performed after the 24th week of pregnancy unless that is a substantial risk that continuance of the pregnancy would endanger the woman's life or gravely impair her physical or mental health. §442.250 (1991). This law is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortions prior to viability, a point that varies with each pregnancy and may not be declared to occur at a particular gestational age. See *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979). This law is also unconstitutional as applied to some post-viability abortions necessary to preserve the woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

## NEW HAMPSHIRE

No abortion may be performed after quickening, unless necessary to preserve the woman's life. §585:13 (1986). This provision is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortion prior to viability, a point that varies with each pregnancy and which may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979). This law also unconstitutionally prohibits post-viability abortions that are necessary to preserve the woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

## NEW YORK

No abortion may be performed after the 24th week of pregnancy unless necessary to preserve the woman's life. When an abortion is performed after the 20th week of pregnancy, a second physician must be in attendance to provide medical attention to the fetus. Penal Law §125.05(3) (McKinney 1987); Pub. Health §4164 (McKinney 1985). These provisions are unconstitutional to the extent that they prohibit pre-viability abortions. A state may not prohibit abortion prior to viability, a point that varies with each pregnancy and which may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979). This law also unconstitutionally prohibits post-viability abortions that are necessary to preserve the woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

## NORTH CAROLINA

No abortion may be performed after 20 weeks of pregnancy unless there is a substantial risk that continuance of the pregnancy would threaten the woman's life or gravely impair her health. §14-45.1(b) (1986).

These provisions are unconstitutional as applied to pre-viability abortions. A state may not prohibit abortion prior to viability, a point that varies with each pregnancy and may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979). This law also unconstitutionally prohibits some post-viability abortions that are necessary to preserve a woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

## NORTH DAKOTA

No abortion may be performed after viability unless the attending physician and two other licensed physicians who have examined the woman concur that the procedure is necessary to preserve the woman's life or continuance of the pregnancy would impose on her a substantial risk of grave impairment to her physical or mental health. A second physician must be in attendance at a post-viability abortion to provide medical attention to the fetus. §§14-02.1-04, 14-02.1-05 (1991). This law unconstitutionally prohibits some post-viability abortions that are necessary to preserve the woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

## OHIO

No abortion may be performed after viability unless two physicians certify in writing that it is necessary to preserve a woman's life or to prevent a serious risk or substantial and irreversible impairment of a major bodily function. The physician must use the abortion method most likely to result in fetal survival, a second physician must be in attendance to provide medical attention to the fetus, and the abortion must be performed in a health care facility with access to neonatal services for premature infants. This law is scheduled to become effective on November 15, 1995. A lawsuit has been filed challenging the constitutionality of these provisions. *Women's Medical Professional Corp. v. Voinovich*, (S.D. Ohio filed Oct. 27, 1995).

## OKLAHOMA

No abortion may be performed after viability unless necessary to preserve the woman's life or health. A second physician must be in attendance at a post-viability abortion to provide medical attention to the fetus. Tit. 63, §1-732 (West 1984).

## PENNSYLVANIA

No abortion may be performed after the 24th week of pregnancy unless the attending physician and another physician who has examined the woman concur that the procedure is necessary to preserve the woman's life or to prevent a substantial and irreversible impairment of a major bodily function. A second physician must be in attendance at a post-viability abortion to provide medical attention to the fetus. Tit. 18, §3211 (Supp. 1994). This law is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortion prior to viability, a point that varies with each pregnancy and may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979). This law also unconstitutionally prohibits some post-viability abortions that are necessary to preserve the woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

## RHODE ISLAND

No abortion may be performed after viability unless necessary to preserve the woman's life. §11-23-5 (1981). This law unconstitutionally prohibits post-viability abortions that are necessary to preserve the woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

## SOUTH CAROLINA

No abortion may be performed after the 24th week unless the attending physician and

another independent physician certify that the abortion is necessary to preserve the woman's life or health. §§44-41-20(c), -10(k), (l) (Law. Co-op. 1985 & Supp. 1990). A court has ruled that this provision is unconstitutional as applied to pre-viability abortions. *Floyd v. Anders*, 440 F. Supp. 535 (D.S.C. 1977), vacated without opinion on other grounds, 440 U.S. 445 (1979).

## SOUTH DAKOTA

No abortion may be performed after the 24th week of pregnancy unless necessary to preserve the woman's life or health. §34-23A-5 (1986). This provision is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortion prior to viability, a point that varies with each pregnancy and may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979).

## TENNESSEE

No abortion may be performed after viability unless necessary to preserve the woman's life or health. §39-15-201(c)(3) (1991).

## TEXAS

No abortion may be performed after viability unless necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman or if the fetus has a severe and irreversible abnormality. Art. 4495b, §4.011(b), (d) (West Supp. 1994). This law unconstitutionally prohibits some post-viability abortions that are necessary to preserve the woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

## UTAH

No abortion may be performed after 20 weeks unless necessary to preserve the woman's life, to prevent grave damage to the woman's medical health, or to prevent the birth of a child that would be born with grave defects. §§76-7-302(3) (1990 & Supp. 1993). A court has ruled that this provision is unconstitutional. *Jane L. v. Bangerter*, 61 F. 3d 1493 (10th Cir. 1995).

## VIRGINIA

No abortion may be performed subsequent to the second trimester unless the attending physician and two other physicians certify that continuation of the pregnancy is likely to result in the woman's death or substantially and irretrievably impair the woman's physical or mental health. §18.2-74 (Michie 1988). This provision is unconstitutional as applied to pre-viability abortions. A state may not prohibit abortion prior to viability, a point that varies with each pregnancy and may not be declared to occur at a particular gestational age. *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979). This law also unconstitutionally prohibits some post-viability abortions that are necessary to preserve the pregnant woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

## WASHINGTON

No abortion may be performed after viability unless necessary to protect the woman's life or health. §§9.02.110, 9.02.120 (Supp. 1994).

## WISCONSIN

No abortion may be performed after viability unless necessary to preserve the woman's life or health. §940.15 (West Supp. 1993).

## WYOMING

No abortion may be performed after viability unless necessary to protect the woman from imminent peril that substantially endangers her life or health. §35-6-102 (1988). This law unconstitutionally prohibits some post-viability abortions that are necessary to preserve the woman's health. See *Roe v. Wade*, 410 U.S. 113, 165 (1973).

Mrs. BOXER. So this is about politics. I can only conclude that it is

about a zeal to outlaw all abortion. We had that. I lived through that. Others lived through that. Women died because they could not get access. That is what this is about.

I can only conclude that it is about a commitment to the extreme right, who has made this a litmus test issue. I can only conclude that their commitment to State rights which, by the way, when they repealed nursing home standards, they said let the States set those standards. We said, wait a minute, we need to have Federal nursing home standards because our seniors will go back to the days when they were scalded in the bathtubs, sexually abused, and worse. They said, no, no, no, we believe in States rights. Well, here they are overstepping the States. The States control this in the late term of a pregnancy.

It is their desire to take the most painful and difficult and tragic circumstances and turn them into a political win. Without any hesitation, I can state that if it passes—and I know the President will not sign it because he already said he will not because it makes no exception to preserving the life and health of the mother—but if something happened that and President was not there and it was another President and that President signed the bill, women will die, and they will be our babies that we raised. Those are the babies that will die.

What kind of country do we want to be? I say to my friend, we have to look at that. Is this going to be a country which outlaws a medical procedure that is used to save a woman's life? Are we going to put women to their death? What is next, the Government deciding when people should die? Maybe we will withhold life procedures that Senators do not think are nice, and they will have charts and say withhold that procedure from your grandmother. Well, not on my watch, not on my watch.

I want to close by asking every male Senator to picture this: Your 32-year-old daughter or your 28-year-old daughter comes home to you—or, more likely, you get a call from the emergency room at the hospital, and the doctor says, "I do not know how to tell you this, but if I am going to save your child's life, your baby's life, I have to act now because she is in danger and in jeopardy"—I beg my colleagues to put themselves in that position and be honest about this issue because you know what you would say. You would ask questions; you would find out if there is any way to save this pregnancy, if there is any way to save her life or the baby's. But if it came down to that, after you checked and double checked and found out that this one emergency procedure, and only that, could save her life, you would say, "Doctor, with the help of God, do what you were trained to do and save my baby's life." I think if Senators are really honest, they will vote to send this bill to the Judiciary Committee, where it will be in front of the committee that is sharp-

ly divided on the issue of abortion, where doctors can come forward, where nurses can come forward, where women can come forward, where they can be questioned, where a nurse who said she saw this can be questioned, where a doctor who performs this can be questioned, so that we can have all the information that we need.

I ask my colleague from Maryland if she would like me to yield to her because I know she has been waiting here for hours.

Ms. MIKULSKI. I appreciate that, but I also note there is another Senator here. I have a very short statement. But I know the Senator has been waiting for some time, as well.

Mr. DEWINE. Either way. It does not matter.

Ms. MIKULSKI. Is the Senator's statement long?

Mr. DEWINE. Mine is probably about 10 minutes.

Ms. MIKULSKI. Why do we not stick to the tradition of alternating. If I might respond to the Senator from California, I think the most important thing in a debate like this is for us to maintain civility and the traditions of the Senate. I will be happy to wait my turn. I thank the Senator for her concern.

Mrs. BOXER. I say to my friends, I really appreciate the spirit with which we entered this debate. I hope it will be the spirit that we have throughout this debate. It surely is difficult.

I think I have made the case for why I think it is important to send this bill to the committee. I think I have made the point that when we talk about babies we have to talk about all of the life involved in this: My daughter and your daughter, your baby, the fetus in a late term which is so desperately wanted by the family, and why this is such a tragic decision for families.

And why for the first time in history, for Congress to ban a medical procedure that sometimes is the only way to save the woman's life is getting us down a slippery slope, and why it is very important to have a closer look at this, to be the greatest deliberative body in the world.

I thank my colleagues. I yield the floor.

Mr. DEWINE. Let me thank my colleague from Maryland for her graciousness in regard to alternating back and forth on the two sides of the aisle regarding this bill.

I rise today in strong support for the partial-birth abortion bill. I think everyone knows, in this Chamber at least, that I am pro-life. But the comments I make today are not really directed directly at those in the Chamber who are pro-life, but at those who would consider themselves to be pro-choice.

I will address some of the concerns that might be raised in regard to this bill by people who do consider themselves pro-choice.

As my colleague has so eloquently pointed out, when the House of Rep-

resentatives took this bill up and ultimately voted on it, there were a number of people who I am sure still today describe themselves as pro-choice, who voted for this bill: Representative BONIOR, Representative GEPHARDT, Representative SUSAN MOLINARI, Representative PATRICK KENNEDY. So I think it is clear that people who consider themselves pro-choice can, in fact, vote for this piece of legislation.

I think it is important as we debate today, Mr. President, that we narrow the focus of the debate to the specific bill in front of us, to the language contained in that bill. I believe that, if Members of this Chamber will do that, they will find that the legislation does deserve the support, not just of those of us who consider ourselves pro-life, but also of those who consider themselves pro-choice.

I have seen it quoted in the paper that there are those who argue that this particular piece of legislation will rollback Roe versus Wade. I do not think that is true. In fact, I know it is not true.

It is perfectly possible, Mr. President, and intellectually coherent and intellectually consistent, to endorse this legislation and at the same time support the decision in Roe versus Wade. I do not happen to support Roe versus Wade, but I do believe that by narrowly focusing on this piece of legislation—what it will do, what it will prevent—a person would come to the conclusion that it is not inconsistent with Roe versus Wade.

This bill, Mr. President, is not a ban on abortions. It is not even a restriction on when an abortion may be performed. Let me repeat that. It is not a restriction on when an abortion may be performed.

Restrictions of that kind were actually envisioned by Roe versus Wade. If you carefully read Roe versus Wade, it is clear that was envisioned by the Court. Roe versus Wade did make the distinction between the different trimesters.

Even though Roe versus Wade allowed for that kind of restriction, this bill does not restrict the timeframe for a woman contemplating an abortion. All this bill does is abolish one particular procedure. All this bill does is abolish one particular procedure.

My friend and colleague from New Hampshire has described this procedure in great detail. It was unpleasant to listen. At one point I literally walked off the floor. But I compliment him for having the courage to come to this floor and to talk about the facts and to lay out before this Senate and before the American people what, exactly, we are talking about.

Stripping away the pleasant rhetoric that is usually used in describing in great detail exactly what this single procedure and what this bill is about, and what it actually does. I think we all can agree that this procedure is especially cruel, unusual and inhumane.

Prof. Robert White is the director of the Division of Neurosurgery and Brain

Research Laboratory at Case Western Reserve University. He testified before the House Judiciary Subcommittee on the Constitution.

Let me just stop at this point in response to my colleague from California, her comment that this bill should be sent back, sent back to the Judiciary Committee of the Senate for hearings. There were significant hearings held in the Judiciary Committee in the House of Representatives that covered both sides of this particular issue.

I think in this case, at least, any additional hearings would be redundant. The facts are basically here in front of us.

Let me go back to the quote from Professor White when he testified before the House Judiciary subcommittee on the discussion. He said that fetuses that are subjected to this procedure are "fully capable of experiencing pain;" "fully capable of experiencing pain."

Mr. President, they endure that terrible procedure that we have heard described, and they are fully capable during that time of experiencing this pain.

We should, Mr. President, take some comfort in the fact that the procedure is not performed very frequently. It is rare. The fact is it should not be performed at all. It is an unnecessary procedure. Even from the perspective of the pro-choice community.

Mr. President, some Senators have expressed concern about whether the mother will be adequately protected without the availability of this procedure. If you talk to the medical community about this they will tell you that if a mother's life is in danger they certainly have more humane ways of terminating the pregnancy to save her.

Let me turn, if I could, Mr. President, to a matter that has been raised already on this floor and that I know will be raised again. That is, the exception for the life of the mother. In this bill, there is such an exception. It is called an affirmative defense.

Let me read from the statute of the proposed bill.

It is an affirmative defense to a prosecution or a civil action under this section, which must be proved by a preponderance of the evidence, that the partial-birth abortion was before a physician who reasonably believed, one, the partial-birth abortion was necessary to save the life of the mother and, two, no other procedure would suffice for that purpose.

This is the only way, I submit, that as a practical matter such an exception can be included in this type of legislation.

Affirmative defenses are not new. Affirmative defenses, as the occupant of the chair, the Presiding Officer knows very well, go back throughout history. They include things that we all know about: insanity, for example, or self-defense. In fact, they are contained in the Federal Code in 30 or 31 different statutes.

For those who have prosecuted at the State level, we all know about affirmative defenses, as well. Affirmative de-

fenses are usually written into the statute when the knowledge about the fact is uniquely in the hands or control of the defendant.

I submit that is true in this particular case. To not have it included as an affirmative defense, but rather to write it directly into the statute, would pose a situation that would be virtually impossible to deal with in court, as the prosecutor would have to basically prove a negative in every single case and then would, in fact, have to get inside the mind of the defendant. This is the type of situation where affirmative defenses are historically used. In the Federal Code, 30 or 35 times affirmative defenses are mentioned and are, in fact, built into the statute.

The legal test, guilt beyond a reasonable doubt, never changes. Every element has to be proven. It has to be proven beyond a reasonable doubt. The question of the affirmative defense comes in as raised by the defendant and there, when it is raised by the defendant, the legal standard is a very, very low standard; that standard is preponderance of the evidence, evidence which is of greater weight, more convincing than the evidence which is offered in opposition to it. It is a balancing test. That is all the defendant has to do.

To summarize, to those who are especially concerned about the life of the mother in this regard, as we all should be, this bill does contain an affirmative defense for doctors who act with a reasonable belief that this procedure is necessary to save the mother's life. As a former prosecutor, I can state it is relatively common in criminal law, both at the Federal level and State level, to provide this exception, to provide exceptions to general rules. Among the most common examples are self-defense and the insanity defense. There are more than 30 of these affirmative defenses in the current Federal law.

For example, to a charge of witness tampering, there is an affirmative defense that the intent of the defendant was to encourage truthful testimony. In cases of failure to appear, there is an affirmative defense of uncontrollable circumstances. In cases of knowing endangerment, there is an affirmative defense that the endangered person consented to a professionally approved medical treatment.

These protections for defendants are relatively common, and the Federal courts know how to deal with them. The affirmative defense in this bill is a sensible and rational provision to protect doctors and patients.

We should not lose sight of the real health issue involved here. According to Dr. Pamela Smith of the department of ob-gyn at Mount Sinai Hospital in Chicago, the procedure of partial abortion itself poses risks to the health of the mother. She cites several examples, and then she concludes:

There are absolutely no obstetrical situations encountered in this country which re-

quire a partially delivered human fetus to be destroyed to preserve the health of the mother.

This is a pretty clear medical conclusion. Frankly, as I examine the facts, I see no reason why this Senate—those who consider themselves pro-life and those who consider themselves pro-choice—should not approve overwhelmingly this bill. This debate will continue, I am sure, into the night tonight and into tomorrow.

I ask, again, that my colleagues listen to the narrow focus of the debate. Look at the language in the bill. Recall the basic facts that we have in front of us in regard to what this medical—medical procedure—actually entails.

I think, after Members do this, there is only one logical conclusion that they can come to, and that is, whether pro-life or pro-choice, they have to vote to ban this horrible, brutal operation.

I thank my colleague from Maryland, and I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise in opposition to the pending business before the U.S. Senate. Let me say at the outset, I believe that good people can differ on the matter of abortion. I believe this is an issue so profound that it requires the utmost thoughtfulness and the utmost dignity, even as we debate this.

I would also like to state what pro-choice means. We often use the phrase pro-choice or pro-life. We pro-choice people happen to think we, too, are pro-life. We are not anti-life. For us, the question is not what is decided; the question is who decides. For the pro-choice community, we believe that decisions related to abortion should not be made on the floor of the U.S. Congress but should be left in the doctor's consultation room.

So our position, when we say pro-choice, is that we believe it is a decision not to be made by Congress, not to be made by a conference committee, not to be determined through a Presidential veto, but should be determined between a physician and the patient. That is why we say we are pro-choice.

There are any number of circumstances why an abortion is either medically necessary or medically appropriate. There is no way the U.S. Congress can look at these issues or even anticipate what a variety of these medical circumstances are. Within this great institution, there is only one physician, and I know there are no nurses. Some have strong scientific background, but we are not capable of that. These are decisions that need to be made on a case-by-case basis, based on the medical circumstances and the religious convictions of the individual families that are involved, not the collective wisdom or lack of it by the U.S. Congress.

This is why, when we say we are pro-choice, I say we are not anti-life. We are for appropriate decisions to be made based on what is medically appropriate and what is the individual

family circumstances and their own religious convictions. So that is a general statement. But on this bill, I would like to say, too, that this bill requires very careful study. It is far reaching. It strikes, too, at that very core of the doctor-patient relationship that I have just commented upon.

I bring to everyone's attention, there have been no hearings on this bill in the U.S. Senate. Yes, there was a hearing in the House. But this is the U.S. Senate. If a House hearing counted, we would not hold hearings on anything. We would have not held hearings on the tax bill, we would not hold hearings on the budget, we would not hold hearings on welfare reform. We, the U.S. Senate, must act as our own body, and I believe it is up to the Senate to conduct its own hearing on this most sensitive, most difficult issue.

The ban that is being proposed would have an effect far beyond the issue of abortion. For the first time, the Congress would be directly regulating what medical procedures a doctor can and cannot provide. It is a tremendous intrusion into medical practices.

I know tomorrow morning, the Senator from Pennsylvania, Senator SPENCER, will be offering a motion to send the bill back to the committee for a hearing, with a time certain for reporting it back. I will support the motion, and I want everyone to understand that the motion to recommit for a hearing is not dodge ball, where we, by referring it back, we avoid the vote. It is to be sure that when we do vote, we will have heard from all who have an interest in this legislation.

Under this legislation, I want to bring out that Congress could make criminals out of doctors who perform a procedure which, in their expert opinion, is medically necessary to save a woman's life or to prevent serious adverse risk to her health. Supporters of the legislation like to point out that the bill contains a so-called affirmative defense which allows for procedures performed to save a woman's life. But what does that mean? If you read the bill carefully, you see that this is not a life exception. It means that after a doctor has suffered the humiliation of arrest, being handcuffed, forced to hire an attorney, and posted bond and a trial is underway, the doctor can testify that he or she believed the procedure was the only method that would have saved the woman's life. This completely shifts the burden of proof to the doctor after an arrest has been made. We criminalize this. The doctor has to prove that the procedure was the only procedure that could have saved the woman's life.

What is more, there is no such affirmative defense for cases where the woman and her doctor have decided the procedure is necessary to preserve the woman's health and future fertility.

The bill before us is a tremendous assault on Roe versus Wade. Under Roe, the Supreme Court has consistently upheld the constitutional right of

women to seek an abortion, and has rejected as unconstitutional those laws that do not allow for late-term abortions necessary to preserve the life or health of the mother. The Court has repeatedly affirmed the right of the physician to make that decision, along with the woman, as to what is in the best interest. The Court has rejected laws that would require the physician to put the health of the fetus before the health of the woman. In decision after decision, the Court has affirmed that the woman's health must remain the doctor's paramount concern. This bill would overturn that premise.

So this bill is carefully crafted to directly attack the underpinnings of Roe versus Wade, and the bill's sponsors, particularly in the House, have already served notice that their intention is to completely outlaw abortion, one procedure at a time.

Mr. President, I believe this bill is radical and far reaching. This bill has not been the subject of a single day of hearings in the Senate. We have not heard from one witness, especially the medical community. No committee has deliberated on the language of the bill and understands the full consequences of this. This is simply unacceptable.

The abortion issue is a sensitive and controversial one. Emotions run high whenever we debate this issue. That is why it is so crucial that, before we vote on this bill, it should be subject to the careful study that committee hearings and deliberation would provide. I would support a limit on the time being referred to the committee, a 30- to 40-day limit. We could vote before this Congress adjourns for the holiday recess.

For myself, I would like to hear the testimony from the proponents of the bill about why they believe Members of Congress are better able than physicians to decide what medical procedures are appropriate for women facing the tragedy of a late-term abortion. I think the Senate should hear from women who face the painful decision of terminating a wanted pregnancy, and whose doctors have selected this method.

I think the Senate should hear from the physicians who perform this procedure so that we can understand why it is sometimes necessary, and what would happen to these women if this procedure were banned. I want to hear from the American College of ob-gyn's. They are the experts in this field. The Senate should hear their testimony about what they think about this bill. I have been informed that they think it is misguided. Let them present the testimony. Let us have a discussion with that.

There are 13,000 physicians of the American Medical Woman's Association who oppose this bill. We should hear why. Is it the procedure, or is it the Federal intrusion? We hear so much about the Federal intrusion into people's lives. This is the most profound of Federal intrusions. But again, let us hear from the doctors. Let us hear from the doctors about this issue.

This issue is too complex, and its implications too profound to let it come to the floor for debate without due consideration through the committee process. Regardless of any Senator's views on abortion, I believe that every Senator should support the motion that will be offered by the Senator from Pennsylvania to send the bill to the committee. This is not an undue delay. It is a responsible thing to do. The Senate is known as the world's greatest deliberative body. On something so sensitive, and so complex, I do believe that we should hear from the American medical community who can give us guiding advice on this, and also for those women who face this issue, many of whom will tell us their story, and others who have faced this issue and chose another path.

I believe the Senate should be open-minded, listen to advice, and then in a rational and deliberative way which is characteristic of both this body and I believe those in the House who even differ on the abortion—that our decisions be based on a rational set of information going through the traditional committee process in which there can be the questioning back and forth of the witnesses.

So, Mr. President, I urge my colleagues to support the motion that will be offered by the Senator from Pennsylvania tomorrow and urge, if that does not pass, the defeat of this amendment.

Mr. President, I thank you for your attention. I yield the floor.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from New Hampshire.

Mr. SMITH. Mr. President, I believe Senator ASHCROFT will speak momentarily, and I will be happy to yield to the Senator when he gets here.

Mrs. BOXER. Will the Senator yield?

Mr. SMITH. Certainly.

Mrs. BOXER. I understand Senator KENNEDY will be here momentarily.

Mr. SMITH. If Senator KENNEDY gets down, or Senator ASHCROFT, I would be happy to yield.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I strongly support the motion that will be offered by several of our Republican colleagues to refer this bill to the Judiciary Committee.

Many of us oppose this legislation and believe it should not pass in any form. This measure is the latest attack by some of our colleagues in their continuing all-out assault against a woman's constitutional right to choose whether to continue her pregnancy. The proponents of this misguided legislation make no secret that their goal is to ban all abortions.

The procedure involved in this case is extremely rare. It involves tragic and

traumatic circumstances late in pregnancy in cases where the mother's life or health is in danger. These cases should not be dealt with by the criminal law, and our colleagues are wrong to try to criminalize them.

Who in this Chamber would second-guess the medical judgment of a physician if such a case arose affecting a member of a Senator's own family?

Who in this Chamber would sacrifice a wife or daughter by rejecting the medical procedure needed to save her life?

Surely, the debate by the Senate on the serious issues raised by this bill should take place after, not before, the Senate Judiciary Committee has had a reasonable opportunity to consider it fairly and hear testimony on both sides.

It is sad to see the leadership of the Senate so bent on meeting the right-wing's antiabortion litmus tests that they are willing to trample the integrity of the Senate legislative process.

Clearly, this legislation is not ready for final action by the full Senate at this time. It is a travesty of responsible deliberation for some Senators to pretend that it is. It is irresponsible for supporters of this measure to insist on such action without benefit of regular committee consideration.

Extremely important issues are at stake, and the Senate should not be stampeded by the shock tactics of the shock troops of the extremists who oppose all abortions at any stage of pregnancy.

The Senate has a duty to act responsibly, and to hear from both sides in this controversy, especially the views of the medical profession. Let us reject this Alice in Wonderland approach to serious legislation—sentence first, verdict afterward.

Clearly, in light of the far-reaching questions raised by the purpose of this bill and the confusing details of its provisions, it would be premature for the Senate to act.

Enactment of this legislation would represent the first time in American history that Congress has outlawed a specific medical procedure.

It would represent the first time in American history that Congress has threatened doctors with prison terms for practicing their profession.

It would threaten the life or health of hundreds of American women each year.

It would undermine the Supreme Court's landmark 1973 decision in *Roe versus Wade*, which guarantees a woman's right to choose whether or not to continue a pregnancy. In fact, the legislation is so poorly drafted that it is likely to be ruled unconstitutional by the Supreme Court under *Roe* and subsequent decisions.

This issue raises fundamental questions about the Federal Government's proper role, if any, in the doctor-patient relationship. Few aspects of the lives of ordinary citizens are as sensitive and as deserving of privacy as

the relationship between patients and their physician. Yet this bill puts the Federal Government directly into the doctor's office in the most intrusive way, by attempting to substitute Congress' political judgment for a doctor's medical judgment.

Despite the importance and complexity of these issues, this bill has received no consideration whatever by any Senate committee. The bill was passed by the House of Representatives last week. It had only 1 day of hearings in the House, and that day could hardly be called fair or balanced or objective.

A Senate bill similar to the House bill was introduced earlier this year by Senator SMITH.

But it was placed directly on the Senate Calendar—in an obvious effort to avoid the kind of committee consideration it clearly needs.

This bill is not a resolution to establish National Ice Cream Week, or to honor a sports championship team. This is a bill that would criminalize a particular medical procedure and send doctors who use it to prison.

The bill purports to ban a procedure that the bill's proponents refer to as "partial-birth abortion." The term was invented by politicians, not doctors. It appears in no medical textbook and has no well-understood meaning in the medical or scientific community.

Medical experts should have an opportunity to testify about any bill that presumes to rewrite medical procedures and ban them, especially when Congress is defining and naming a medical procedure that the medical profession does not recognize. If Congress wants to play doctor, it should hear from doctors first.

The Judiciary Committee should also hear from constitutional scholars about the constitutionality of this bill under *Roe versus Wade* and subsequent Supreme Court decisions.

In addition, the committee should hear from constitutional scholars about its constitutionality under the void-for-vagueness doctrine. As recent press reports make clear, this bill's terminology is so vague that doctors will not know what it means or which medical procedures are actually being criminalized.

Obviously, the proponents of this legislation are making a political statement with this bill.

One purpose of their vague language is to intimidate as many physicians as possible by threatening them with possible prosecution if they perform medical procedures that could be covered by the vague nonmedical language of this bill in its present form. Those who want to ban all abortions do not mind this kind of vagueness in a criminal statute—but the Constitution does.

The Supreme Court is likely, therefore, to rule that this bill is unconstitutional twice—once under *Roe versus Wade*, and once under the void-for-vagueness doctrine.

When this bill was debated in the House, its proponents actually boasted

that it was the first step in an effort to reverse *Roe versus Wade* and deny women the constitutional right to choose whether or not to bear a child.

I believe that a solid bipartisan majority of the Senate supports *Roe versus Wade* and a woman's right to choose, and that this legislation will ultimately be defeated.

But that is not the issue here. The motion to send this bill to the Judiciary Committee protects all sides in this controversy. It directs the Judiciary Committee to hold hearings on the bill and report it back to the full Senate with amendments, if any, in 45 days.

Surely, legislation so far-reaching and unprecedented deserves at least that degree of responsible consideration. What are its proponents trying to hide?

I urge the Senate to refer the bill to the Judiciary Committee.

Mr. SHELBY. Mr. President, I rise in strong support H.R. 1833, the Partial-Birth Abortion Ban Act. When the Founding Fathers drafted the Constitution of the United States, they made it abundantly clear that one of the most crucial roles of government is to "secure the Blessings of Liberty to ourselves and our Posterity."

Yet, over the past few decades, the value of life in America has been substantially cheapened, and the opportunity for liberty diminished. The rise in drive-by shootings, gang warfare, and abandoned babies, all point to the fact that life in America is not considered as precious as it used to be.

One of the most gruesome indicators of the decline in the value of life is the practice of partial-birth abortions. A partial-birth abortion is an abortion in which the person performing the abortion partially delivers a living baby before killing the baby and completing the delivery.

H.R. 1833 will bring an end to this grisly procedure. Opponents of this bill try to disguise partial-birth abortions as reproductive health services, but a close examination of the procedure shows it is no such thing. When performing a partial-birth abortion, the individual first grabs the live baby's leg with forceps and pulls the baby's legs into the birth canal. He then delivers the baby's entire body, except for the head; jams scissors into the baby's skull and opens them to enlarge the hole. Finally, the scissors are removed and a suction catheter is inserted to suck the baby's brains out. This causes the skull to collapse, at which point the dead baby is delivered and discarded.

Mr. President, this procedure is cruel and indefensible, and it is an assault to the common values of the American people. Listen to what nurse Brenda Pratt Shafer, who witnessed one of these abortions, had to say in her letter to Congressman TONY HALL:

The baby's body was moving. His little fingers were clasping together. He was kicking his feet. All the while his little head was still



stuck inside. Dr. Haskell took a pair of scissors and inserted them into the back of the baby's head. Then he opened the scissors up. Then he stuck the high-powered suction tube into the hole and sucked the baby's brains out. I almost threw up as I watched him do these things.

Mr. President, several medical experts have recently stated that this is not a medically necessary procedure. The American Medical Association's Council on Legislation—which unanimously supports banning this procedure—also stated that partial-birth abortions are “not a recognized medical technique” and concurred that the “procedure is basically repulsive.”

I agree this procedure is repulsive; it is the grotesque killing of a new-born baby. Its feet are out, its hands are out, its legs are kicking, its arms are reaching. It is a new-born baby. Think of what kind of society we live in when we fine and arrest people for affecting the habitat of an endangered kangaroo rat but explicitly allow the abhorrent practice of sucking out the brains of a new-born baby.

Moreover, most partial-birth abortions are performed for purely elective reasons. Martin Haskell, who is one of the chief advocates of this procedure, stated to AMA News in a July 1993 interview that, “I’ll be quite frank: most of my abortions are elective in that 20–24 week range. In my particular case, probably 20 percent are performed for genetic reasons. And the other 80 percent are purely elective. \* \* \*

Despite the consensus in the medical community that these procedures are not used to save the life of the mother, H.R. 1833 contains a safeguard for any practitioner who reasonably believes this procedure is necessary to save the life of the mother. This legislation is balanced and well-reasoned, and it merits our support.

Mr. President, we need to return to the premise that life in America is precious and sacred. Our Nation's children are our hope and our future, and government at all levels has an incumbent responsibility to protect these children who cannot protect themselves. I support this legislation and urge my colleagues to support it as well.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SMITH. Mr. President, I ask unanimous consent that there be debate only during the remainder of today's consideration of H.R. 1833, and at 9:30 a.m. tomorrow Senator SPECTER be recognized to make a motion to commit the bill to the Judiciary Committee, and that a vote occur on the motion at a time to be determined by the majority leader after consultation with the Democratic leader, with no

amendments in order during the pendency of the motion to commit; and further, that the time between 9:30 and 12:30 tomorrow morning be equally divided between Senator SMITH and Senator SPECTER.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, and I shall not object—as a matter of fact, I think this is an excellent request—I just want to clarify with my friend that we are looking at a vote around the 12:30 hour. In other words, it is our intention certainly by 1:30 to have disposed of the motion. Is that his understanding of it?

Mr. SMITH. That is correct. We anticipate a vote sometime in the vicinity of 12:30, not before 12:30. It could be 12:45 or 1:30. But there is no intention to delay matters beyond that. It is our intention to have any speakers who may wish to speak this evening or tomorrow morning on the bill on either side, and we would divide that time equally.

Mrs. BOXER. Clearly, I say to my friend, if we do decide to go over another 45 minutes, we could equally divide it in the same fashion. I know that is not in the request, but I am sure that is the way we would work together.

Mr. SMITH. I have no objection to that.

Mrs. BOXER. I have no objection.

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

Mr. SMITH. Mr. President, in light of this agreement, on behalf of the majority leader, I will announce that there will be no more votes during the remainder of today's session.

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

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

Mr. ASHCROFT. Mr. President, I want to begin by thanking the senior Senator from New Hampshire for his work on this legislation. Few have done more for the unborn than has Senator SMITH, I am pleased to join him as an original cosponsor of the bill before us today.

In just the past several months our work has been witness to acts of terror in Oklahoma City and again over the weekend in Israel. Each of these cases has been surrounded by voices of concern for the harsh rhetoric many feel provoked the atrocities. While I do not know how thoroughly I agree with that analysis, it does point out the need for our national debate on even the most divisive issues to be civil, to be reasoned—to win, arguments must not merely move the heart, they must persuade the mind.

And so today, that is what I want to accomplish—to speak with civility and

reason about the horror of partial-birth abortions which literally rip a child from its mother's womb.

As I mentioned earlier, abortion is the divisive moral issue of our day. It hits at our deepest notions of liberty and questions our most fundamental assumptions about life.

For more than 20 years now, abortion-on-demand has been the law of the land. I think it a poor law and I think it an immoral one. But for now it is the law and it must be observed.

The bitter fruits of this law have been the death of over 30 million human beings who will never know what it means to learn and live and laugh among us. The inhumanity of this loss can never be gauged, never be measured, never fully be felt. We saw yesterday humanity's grief at the funeral of Yitzhak Rabin. A great man was mourned by a grateful world. How much greater the grief of 30 million lives that will never know peace, never know love, never know the warmth of a father's embrace or the strength of a mother's love?

Mr. SMITH. Mr. President, I want to thank the Senator from Missouri for his comments on the bill and on the procedure and for his comments with regard to my involvement in this issue. I appreciate it. No one in the Senate is more committed to this issue and a more honorable man. I appreciate very much his friendship and support on this bill.

Mr. President, I would like to make a couple of comments on this motion to refer back to the Judiciary Committee. As a recap here, bear in mind that the House Judiciary Committee held a number of hearings. The Judiciary Committee held a hearing. They had a subcommittee markup, a committee markup, they had a committee report. The House had a full debate. It passed after that full debate by a vote of 288–139. And so to say that somehow we need to refer this bill back to committee, back to the Judiciary Committee, is nothing more than a dilatory process. And really the reason for it is quite simple. It is an effort not to have to make this vote. It is a reason to avoid the tough question. It is a reason for those who basically want abortion on demand to not have an opportunity to vote on this procedure, which we have all heard is the most outrageous procedure.

In addition, the AMA Legislative Council voted twice to endorse it. They did not need further study. They are the experts. We are having a full debate here on the Senate floor.

I just want to point out to my colleagues, if you do not approve of this process, this motion to refer is a hostile motion to that issue. If you refer this matter to the Judiciary Committee, you are saying that you want this process to continue. That is really what you are saying. Some will say that is not true, we want to study it more and have more hearings. How much more study do you have to have

than what we have already had with the process that we see? Why do we have to study something as obvious as this is? We have all the medical experts, we have all the testimony from people who worked in abortion clinics, who have observed Dr. Haskell and others. We have the nurse's testimony. We have the testimony of the abortion doctors. We have the testimony of other medical doctors. It is an effort to make sure that the full Senate does not have to face this matter.

This is one of the things about politics and politicians that just turns the American people off. Whatever your position is, if you feel that taking the life of a child with only its head in the womb is right, then vote that way. Go ahead and vote that way. That is your right. You have the right. That is your vote and I respect that.

But to delay it further and send it back to the Judiciary Committee—the chairman of the Judiciary Committee does not want the bill sent back. Yet, apparently, Senator SPECTER is going to try to send it back there against the wishes of the chairman. I hope that we will respect the wishes of the chairman of the Judiciary Committee, not some member of the committee, who simply supports this process, who wants this bill to be delayed. This is the reason for it. It is not to have hearings. We can have hearings until hell freezes over. It is not going to change anything. How many more hearings do you have to have? How many more people do you have to have testifying saying that we are killing babies this way? How many more times do you have to hear it? How many more times do you have to see these charts? How many more times?

So I want my colleagues to understand when you come in here tomorrow and we deal with this issue between the hours of 9:30 and 12:30, that there will be an effort here to send this bill back to Judiciary Committee—not to have hearings. That is just a facade. It is to delay the bill and eventually kill it so that we do not have to vote on it.

You are killing more than a bill if you do this, you are killing hundreds of children. On average, remember, there is at least one partial-birth abortion per day. So every day we delay it, there is one more child. We are not talking about the debate. I happen to believe that, after conception, it is a living child. That is not what we are talking about. We have been through this before. I will not repeat it all. But we are talking about a child in the birth canal, and one a day is killed.

So I just say to my colleagues, is there really anything that you are going to hear or see in the Judiciary Committee hearings that is going to change your mind? You either support this procedure or you do not. If you do not support it, do not delay it by sending the thing back to the Judiciary Committee.

So I encourage my colleagues, if you have something to say on this, to be

here tomorrow and be prepared to express yourself. Please bear in mind that delaying this accomplishes nothing except delay. That is what the American people get so upset with us about—that we do not make decisions. We just debate and talk.

Let me tell you, if debate and words could solve the world's problems and America's problems, we would sure do it here on the floor of the Senate because we are all good at debating. But that does not get the job done. Do you support this process of taking the life of an unborn child—partially-born child—or do you not? If you do not, then do not vote to delay further the vote to stop it. That is the issue, pure and simple.

The American people, I think, are up to here, Mr. President, with everybody dodging issues. I really think they are up to here with it. Why do we not just face up to it? I would respect that. Let us face up to it and just say that we are going to have an up-or-down vote, we are not going to have these phony issues of sending it to the Judiciary Committee or maintaining that there is not a life of the mother exception when there is one, or that there is deformity, or that somehow it is right to take a child that is deformed from the womb. Let us deal with the issue at hand, which is this process, this procedure. Let us have an honest up-or-down vote on it, tomorrow hopefully, and get it to the President's desk. That is what the issue is about.

Mr. President, at this time, I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I think we are winding down debate this evening and we will have an opportunity tomorrow to cast a very important vote on a motion by Senator SPECTER, a Republican Member of the Senate, cosponsored by six other Republican Members of the Senate, to take an issue that is precedent-setting, precedent-breaking, and refer it to a committee that needs to look at it. Why do I say that? I say that because if this House bill passes the Senate as it is, this would be the first time, that anyone around here can verify, that a medical procedure has been banned by the Congress of the United States of America—a medical procedure that is used in the most tragic, most difficult circumstances, where a life is at stake, a life of the mother, with serious health implications for the mother.

As one of my constituents who called during the debate said, there is more than one baby involved here, because the mother was somebody's baby at one time.

As I said, I ask Senators not to dodge this at all, but before they vote, close their eyes and think it was their daughter—their daughter—who they adore, where there was an emergency call and the doctor they respected and admired who had brought other chil-

dren into the world said, "Your daughter is facing a tragic situation. If I do not perform a particular medical procedure, she could be dead. I cannot guarantee that she would live if I use any other procedure."

You would say, I believe—believe me, I am not putting words in your mouth, this is what I think you would have said—"Have you double checked? Have you triple checked? Have you tried another idea? Have you tried another approach? How do you know? Have you done all the tests?"

If the doctor answered those questions to your satisfaction, you would say, "With the help of God, save my child."

I think that is what we are coming down to here—not somebody's contract, not somebody's ideology, but with a human decision that must be made, tragically, by too many American families.

So we have never before banned a medical procedure as far as we can verify. This is one where it is used in these tragic circumstances—and I went through some of those circumstances—we have people here willing and ready to talk to colleagues, people who have gone through this procedure, who have made gone through this tragic choice, who are happy to talk about it.

They are not political. I do not know what party they are in. I can just tell you they are human beings, they suffered, they struggled, and they want to spare other people, frankly, not only the pain, but the loss of life that will ensue if a lifesaving procedure is, in fact, outlawed by this Congress.

It is not about ducking issues; it is about making informed choices here for us.

How can we make an informed choice, I say to my friends and colleagues, if the committee that writes the laws about criminalization does not even have a look at this, and this would criminalize a procedure that is used by a doctor in tragic and terrible circumstances. We are going to put that doctor in jail. This greatest deliberative body in the world is not even going to hold a hearing.

I am very pleased to see seven Republican colleagues put this motion forward. It is common sense. It is highly appropriate.

I happen to believe if we did this willy-nilly and President Clinton was not there and there was another President who did not believe that it is important to save the life of the mother or protect her health and another President signed this, women would die.

Why do I say that? Not to be sensationalist. I do not have charts. I do not have pictures. But we know this is used in tragic circumstances. I think we should come together as a Senate, regardless of our view on this issue, and send this to the Judiciary Committee.

There is a time certain. It is 45 days. It could be sooner. It could be sooner. That is an outside date.

I just hope colleagues will consider this, recognize the precedent-setting nature of this House bill, and vote to send it to the Judiciary Committee, which is a very, very fair committee to send it to in terms of its membership. We get a fair hearing. Hear from the doctors.

Do not have Senators come on the floor who never spent a day in medical school describe a procedure, tell you how it feels when a baby comes down the birth canal. I know how that feels. I can talk about that. But I am not a doctor. We are not doctors. We are certainly not God.

I believe that we need to do the prudent thing here: Send this to the Judiciary Committee. They will look at some amendments. Yes, there is an affirmative defense for a physician. If he uses this procedure because he thinks under the Hippocratic oath, this is the only way he can save the life of this mother, he has committed a criminal act—he or she, as the case may be. That physician—in the bill—yes, can go to the court and defend himself or herself and explain why he did this.

What kind of society is this where we will haul a doctor into a courtroom for saving a woman's life? That is not a society that is a good society. That is not a society that looks after its people.

We are not doctors here. We are not God. We have to do the best we can to make wise and sound decisions.

It always strikes me as being very strange when we hear States' rights advocated on this floor of the Senate day in and day out. We even voted in this Senate, the Republicans did, with a couple of exceptions—not many—to completely abolish nursing home standards, and when we won a vote to restore them, that was overturned by the Roth amendment, which says there is a waiver in the process so States could have no Federal standards for nursing homes. Why? They said, "Oh, we trust the States."

Well, my friends, under Roe versus Wade the States control abortion after the first trimester. That is clear. I have printed in the RECORD a list of every State and all the restrictions in those States. This would wipe out all those restrictions.

I find it amazing that some of my Republican friends, and certainly not all—some—would argue States rights in repealing Federal standards for nursing homes, but then come right around and say, "We do not trust the States when it comes to late-term abortion."

This is about a whole other agenda. That is why I hope we can rise above a political agenda—this is a political agenda—and do what is right for the American people.

Let me say this. We do not put people in jail for political crimes in this country. This is what is so great and unique in America. We do not put people in jail for political crimes.

But I honest to God believe this, that if we outlaw a procedure which might

be the only procedure to save a woman's life, and a doctor uses it and the doctor does wind up in jail because there is no exception for the life of the mother in this radical legislation, he would be serving time for a political crime. He would be in there for a political reason—somebody's agenda. I just hope that we can come together.

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

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

#### THE MINERALS ISSUE

Mr. REID. Mr. President, I have been here many times discussing a very important issue for the State of Nevada, and that is mining. This statement today is a follow up of the conference which was completed with the House in recent days. It was during that conference that I was reminded of the old "Dragnet" program where Jack Webb, who was Joe Friday on the program, when interviewing the witnesses, would say, "Just the facts ma'am," or "Just the facts, sir." Many times we need this as we debate mining.

As the Chair knows, the debate on this issue has centered in recent years between the Senator from Nevada and my good friend, the senior Senator from the State of Arkansas. And during the course of that debate, and the conversations and the discussion we had during the conference, my friend from Arkansas on a number of occasions referred to one of the big employers in Nevada, the Newmont Mining Co., as a foreign corporation. I wanted to make sure that I was right. I on a number of occasions questioned my friend from Arkansas.

I think it is important that we understand the motives for raising this issue are clear—the desire of some to arouse fear that somehow the minerals industry has been taken over by people from outside the United States. The fact of the matter is that the vast, vast majority of investors in the mineral industry are American citizens.

Mr. President, Newmont Mining Co., as I have indicated in recent weeks, in recent years, recent months, has been the target of some very negative statements and rhetoric by the Secretary of the Interior, Bruce Babbitt, and the senior Senator from Arkansas.

The latest tirade that was offered against this company was the fact that they had been issued a patent by the Interior Department of some 118 acres in the State of Nevada.

Now, in the State of Nevada, keep in mind, we are a State of approximately 72 million acres, and this was a patent of a little over 100 acres.

Both the Secretary and my friend from Arkansas continue, as I have indicated, to refer to Newmont as a foreign company taking title to U.S. land and resources. First of all, understand, Newmont Mining Co., was formed in the United States, in the State of Delaware, in 1921. The name Newmont comes from the two areas where the company at that time was operating—New York and Montana. Therefore, the name Newmont.

Putting aside, Mr. President, the larger debate that foreign ownership should not, I believe should not even be an issue, when you understand that Newmont Mining Co. has invested over \$1.5 billion, now approaching \$2 billion in its Nevada operations, and has paid about \$700 million in wages and about \$600 million in payroll, property, sales and net proceeds taxes, including Federal income taxes since they have been there—not bad—Newmont Mining Co. is not now and never has been a foreign company.

Newmont Mining Co. stock has been publicly traded on the New York Stock Exchange since 1925. If anyone in this room decided they wanted to go buy some Newmont stock, they could walk into any stock dealer in the United States and purchase shares of Newmont stock. No one is asked for proof of U.S. citizenship or should they be, when purchasing stock in U.S. companies.

At the present time, records show that about 95 percent of Newmont's stockholders are U.S. citizens or institutions or U.S. residents. The largest single stockholder in Newmont Mining Co., owning some 13 percent of the stock, is a man by the name of Mr. George Soros, who has a very interesting background—a man who escaped from Communist Hungary in 1956, came to America, settled in New York where he made a fortune.

Mr. Soros owns not only 13 percent of Newmont Mining Co. but various pieces and sometimes the whole of various U.S. companies. No shareholder owns more than 13 percent of the stock that Mr. Soros owns in Newmont Mining Co.

The next largest shareholders are very important institutions in the United States: the Ohio Public Employees Retirement System; the State of Wisconsin Investment Board, which manages pensions for Wisconsin State government retirees, is a large holder of Newmont stock; the State of New York Employees Retirement Fund holds a very large block of Newmont stock; Fidelity Investment Management of Boston, the largest mutual fund organization in the United States, owns a large block of Newmont stock; Ark Assessment Management, a New York City pension management firm, owns a large block of Newmont stock.

Mr. President, this information is readily available to be obtained either by the Secretary of Interior or my good friend from the State of Arkansas. I think the time has come that we should stop attempting to degrade, in