because we're cracking down on illegal immigration and drug smuggling in his border district. He desperately wants and needs help. But we haven't helped. Instead, the Senate has held up a nominee for his district for almost 2 years. I ask unanimous consent to print this article in the RECORD at the conclusion of my remarks.

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

(see exhibit 1.)

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

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

EXHIBIT 1

[From the Washington Post, May 15, 1997]

CASES PILE UP AS JUDGESHIPS REMAIN VACANT

(By Sue Anne Pressley)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PARTIAL-BIRTH ABORTION BAN ACT OF 1997

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to H.R. 1122, which the clerk will report.

The legislative clerk read as follows:

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

The Senate resumed consideration of the bill.

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

Mrs. FEINSTEIN. Thank you, Mr. President.

AMENDMENT NO. 288

(Purpose: To prohibit certain abortions)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

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

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

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

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

(a) IN GENERAL.—It shall be unlawful, in or affecting interstate or foreign commerce, for

a physician knowingly to perform an abortion after the fetus has become viable.

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

SEC. 3. CIVIL PENALTIES.

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

(b) RELIEF.—

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

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

(c) CERTIFICATION REQUIREMENTS.—

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

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

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

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

SEC. 4. REGULATIONS AND PROCEDURES.

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

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

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

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

SEC. 5. RULE OF CONSTRUCTION.

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

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

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

Our bill does three things.

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

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

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

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

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

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

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

Let me begin on line 9:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I see Senator DEWINE, as well as Senator SANTORUM.

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

Mrs. FEINSTEIN. I yield the floor.

PRIVILEGE OF THE FLOOR

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

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

The Senator from Massachusetts.

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

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

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

Governments can constitutionally limit abortions after the stage of viability, as long as the limitations contain exceptions to protect the life and the health of the woman.

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

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

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

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

It was clearly reported during last year's debate that the procedure was also used before the stage of viability, and that the number of such cases was larger, probably amounting to several thousand a year. But all of us were also

aware that Congress cannot constitutionally ban the procedure at that stage.

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from California.

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

Mrs. BOXER. I ask for 15 minutes.

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

The PRESIDING OFFICER. The Senator from California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

He says:

A woman in the Bay Area became seriously ill with preeclampsia (which is toxemia of pregnancy) at 24 weeks' gestation. She had a dangerous and extreme form of disease, called HELLP syndrome . . . she had liver failure and abnormal blood-clotting ability. The pregnancy had to be terminated to save her life.

During several days spent unsuccessfully in attempts to induce labor, her medical condition continued to deteriorate. Finally, in desperation, the attending physician called me to assist . . .

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

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

He said:

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

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

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

And the doctor said:

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

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

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

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

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

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

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

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

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

So Senators are going to interfere with the decision made by a family, its doctor, and their God. And by the passage of the Santorum legislation, if in fact it is going to pass, which indications are it will, that is just what we are doing—the height of ego. ''We know better than a doctor. We know better than a priest. We know better than a rabbi. We are going to be in the hospital room. We are going to say what medical procedures can't be performed.''

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

I want you to meet Eileen Sullivan.

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

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

Eileen continues:

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

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

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

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

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

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

She continues: ''We wept. We discussed what we should do, what was best and safest for myself and the baby. After all the talking was over, we were faced with the hardest decision of our

lives, and we opted to do what we thought was right. We opted to undergo a late-term abortion. Our long awaited, much anticipated baby was not going to make it, and there was nothing we could do to change that.''

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

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

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

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

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

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

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

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

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

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

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

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

So do not bring your pictures up here and claim that is the only choice. This is not a choice. These are little babies. And they are asking us to help them now. This is not Senator RICK SANTORUM, nonphysician, speaking. Over 400 obstetricians and gynecologists—and by the way, the person who designed this barbaric procedure that we are debating was not an obstetrician. You hear so much about all these experts. He was not an expert. He is a family practitioner who does abortions, and you can only question as to why he spends all his time doing abortions instead of taking care of families. But that is what he does. He does abortions.

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

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

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

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

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

> in the upper midwest.

The busiest group of perinatologists in the upper Midwest.

> I also teach obstetrics to medical students and residents. I know of no instances when the killing of a partially born baby was necessary to accomplish delivery in any of the five medical situations listed by Senator Feinstein.
>
> Senator Feinstein claims that partial-birth abortion is necessary to end a pregnancy in the following five situations: Fetal hydrocephaly, fetal arthrogryposis, maternal cardiac problems (including congestive heart failure), maternal kidney disease and severe maternal hypertension.
>
> The first two conditions are significant fetal problems. Hydrocephalus—

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

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

I repeat, ''safer for the mother''—

> and give the fetus at least a chance of survival.

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

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

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

Let me read this again.

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

Signed Steve Calvin, MD.

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

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

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

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

Underline certainly—

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

This last line is very important.

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

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

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

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

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

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

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

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

The folks who say they are protecting a woman's health and life are arguing for procedures that do the exact opposite. Facts: I know we do not like to talk about facts when it comes to abortion. We like to put up pictures of nice families and warm little babies, that somehow or another, this family is better off because of an abortion. The fact is by having an abortion she was twice as likely to die and not be in that picture. That is the fact. We do not want to talk about that. We want to make sure the right of abortion is paramount among all rights. Because that is what this amendment does—nothing. It lets there be abortion on demand, anytime, anywhere, on anybody. That is what this amendment does. It has no restrictions. It is an exception that is not an exception.

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

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

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

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

Even when we debate with their information they cannot refute it. The fact of the matter is, there is no reason to do a partial-birth abortion and there is every reason in the world to stop it. It is a dehumanizing procedure. You wonder why we have a society that just is becoming adrift, that does not know right from wrong, that does not have any sense of justice, that does not have—we do not have any compassion for each other? I will give you a good example why that happens. Because on the floor of the U.S. Senate we are debating a procedure where we can kill a

little innocent baby that is completely delivered from the mother except for the head. It is moving outside of the mother, a little baby who has done nothing wrong to anybody, and we are saying, ''You don't deserve to live.''

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

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

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

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

Mr. SANTORUM. Not yet.

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

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

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

Mr. President, I yield the floor.

Several Senators addressed the Chair.

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

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

The PRESIDING OFFICER. Who yields time?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''Wow, yes, I would.''

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

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

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

The PRESIDING OFFICER. Who seeks time?

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

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

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

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

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

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

Some have said the President will not sign this bill, that he will veto it again. But I remember what the President said his reasons for the last veto were. He said these procedures were rare, and that they were performed only to preserve the life or the health of the mother or to preserve the reproductive right of the mother because of the most severe abnormalities in the infant. Those are the reasons he gave; those are the reasons American citizens were told from this very floor by many of the people who are arguing today in support of this procedure. That is what they were told.

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

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

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

I yield the floor.

The PRESIDING OFFICER. Who seeks time?

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

The PRESIDING OFFICER. The Senator from Illinois is recognized.

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

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

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

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

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

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

These figures show us that the maternal death rate has dropped by some two-thirds since the Supreme Court affirmed the right of a woman to obtain a safe and legal abortion. This is an important reduction in maternal mortality and one which I know we are all thankful for. But it seems to matter

less to some in this debate that some women may well die if the right to make choices about their own health is taken away from them. Abortion should be safe, it should be legal, and it should be rare.

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

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

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

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

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

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

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

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

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

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

In addition, the Court has ruled that while the States may have a compelling interest to legislate restrictions on postviability abortions, there must be an exemption for the life and health of the mother. That basic exemption for life and health is missing from the underlying legislation that we are debating today. And so I submit that the legislation fails to protect fundamental rights of female citizens.

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

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

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

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

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

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

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

Mrs. FEINSTEIN. I would be happy to.

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

The PRESIDING OFFICER. The Senator from Illinois is recognized.

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

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

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

Why is this opposed?

It is opposed because the second section says that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And can you imagine how Vikki Stella felt at 8 months? I know what being 8 months pregnant is like. How many other Members of the Senate know how it feels to be 8 months in that condition, and then to find out that the baby that you are carrying has no brain? And then to be told you cannot choose what kind of decisions to make about your health. Your doctor has nothing to say about the procedures to save your life because of legislation that the U.S. Senate took up.

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

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

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

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

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

REASONABLE COMPROMISE ON ABORTION

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

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

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

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

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

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

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

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

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

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

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

Mr. President, I urge my colleagues to oppose the underlying legislation. We must protect the health, the rights, the reproductive choice of women. If we would just listen to the tragic stories of the women who have fought to recover from the loss of a child, to keep their families together, and to tell us

their stories, we can make a better decision here. And I hope that the rhetoric will tone down.

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

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

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

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

The PRESIDING OFFICER. The Senator is recognized.

PRIVILEGE OF THE FLOOR

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

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

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

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

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

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

Mr. SANTORUM. If the Senator——

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

Mr. SANTORUM. This is something that can——

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

The second point is, it is impossible——

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

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

The Senator from Pennsylvania is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

I yield 10 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

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

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

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

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

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

who admitted they deliberately lied to Members of Congress and more important to the public about the partial-birth abortion procedure to justify a defeat of legislation banning it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE ABORTION COVERUP

(By George F. Will)

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

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

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

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

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

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

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

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

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

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

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

Daschle, following Hoyer's precedent, may leave the definitions of ''viability'' and ''health'' up to the abortionist. If so, this will be, says Douglas Johnson of the National Right to Life Committee, akin to a law that ostensibly bans ''assault weapons'' but empowers any gun dealer to define an assault weapon.

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

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

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

(By Joyce Terveen)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[From Roll Call, Feb. 27, 1997]

PARTIAL-BIRTH BETRAYAL: DEMOCRATS SEETHING AS ACTIVIST ADMITS LIE

(By Charles E. Cook)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. Who seeks time?

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

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

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Thank you, Mr. President.

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

There seems to be some confusion as to what Roe versus Wade and other courts decisions say and do. When you carefully read the majority opinion issued by the Justices in the Roe versus Wade decision, the limitations are quite clearly spelled out by the Court. The Justices spent a great deal of time and effort making the clear distinction between the rights of the women during the first two trimesters and the rights of the women in the last trimester once the fetus is viable. The courts drew this line and made it clear that the State had an overriding interest in restricting and regulating post viability abortions. As a result, post viability abortions are prohibited, except when necessary to protect the life and health of the mother. The Justices recognized the importance of a woman's health and life and had every confidence that women could make reasonable decisions. I simply do not understand why many of my colleagues refuse to accept the courts decisions and refuse to understand that late term, post viability abortions are only necessary when the life and health of the mother are in serious jeopardy.

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

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

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

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

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

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

I yield my time to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

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

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

The PRESIDING OFFICER. The Senator from Tennessee.

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

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

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

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

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

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

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

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

I agree with that and wholeheartedly support that, and I agree with the sponsors. I think the majority of people in this body think that is good, that that is the right direction. But where I have a very significant problem, and a problem that has not been

talked very much about on the floor but I think that we must address if we are to consider this amendment in its entirety, is the exception clause. The exception law says what I just said—it does not apply if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As an aside, that is viability—

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

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

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

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

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

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

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

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

The PRESIDING OFFICER. The Senator has 18½ minutes.

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

The PRESIDING OFFICER. About 19½ minutes.

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

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

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

Normally, when we come to the floor, we talk about subjects about which we have read in books or what we have

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

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

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

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

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

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I would like to wrap up, if I might. Let me begin by saying that you have just heard on our side from four women Senators and the distinguished Senator from Massachusetts, who is not lucky enough to be a woman, but from four women. All of us have been pregnant; all of us have given birth to a child; two of us are grandparents. And I think among the four of us there is an understanding of the vicissitudes and the problems that are inherent both in our physiology as well as in a pregnancy. It is my contention that the bill before us, H.R. 1122, is about much more than one procedure.

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

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

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

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

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

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

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

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

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

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

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

Mrs. FEINSTEIN. Can I finish my thought?

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

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

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

And then they describe the elements:

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

I happen to believe that is a correct judgment. I happen to believe that the physician must retain the discretion.

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

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

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

But there are variations and there are gradations. This legislation, H.R. 1122, does not take that into consideration. Rather, it says that, wholesale, anything that can come under the rubric of partial-birth abortion is hitherto prohibited. And if you commit it—we do not know what it is, the medical literature does not know what it is—but if you commit it, doctor, M.D., you are guilty of a crime. Can you imagine what this is going to do throughout the United States of America? It is going to have a chilling effect. Not only that. In addition to that, everybody out there can sue.

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. There are 17 minutes remaining.

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Michigan is recognized.

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

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

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

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

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

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

I ask unanimous consent to have printed in the RECORD both the testimony, as well as questions and answers, that related to that issue which

was before the Judiciary Committee last year.

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

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

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

I appear here today for one purpose, and one purpose only: to take issue with the testimony of James. T. McMahon, M.D., before this Subcommittee last June. According to his written testimony, of which I have a copy, Dr. McMahon stated that anesthesia given to the mother as part of dilation and extraction abortion procedure eliminates any pain to the fetus and that a medical coma is induced in the fetus, causing a ''neurological fetal demise'', or—in lay terms—''brain death''.

I believe this statement to be entirely inaccurate. I am deeply concerned, moreover, that the widespread publicity given to Dr. McMahon's testimony may cause pregnant women to delay necessary, even lifesaving, medical procedures, totally unrelated to the birthing process, due to misinformation regarding the effect of anesthetics on the fetus. Annually over 50,000 pregnant women are anesthetized for such necessary procedures.

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

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

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

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

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

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

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

Dr. CAMPBELL. I do not know what causes the fetus to die. The fetuses are dead when delivered.

Senator ABRAHAM. Well, let me just direct you, if I could—I have here a factsheet that indicates it was prepared by you which relates to the House legislation in which——

[Sen. Abraham was referring to ''H.R. 1833, Medical Questions and Answers,'' which contains the caption, ''Fact Sheet Prepared by Mary Campbell, M.D.'' This document was circulated to Members of the House of Representatives in October, before HR 1833 came to a vote in that house. This document contains the following passage:

''Q: When does the fetus die?

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

Dr. CAMPBELL. I was quoting Dr. McMahon at that time. [Editor's note: There is no reference to Dr. McMahon anywhere in Dr. Campbell's five-page factsheet.] On thinking it over in more depth, I believe because there are no EEG studies available——

Senator ABRAHAM. So you no longer adhere to the position that you say in here, ''the fetus dies of an overdose of anesthesia given to the mother intravenously.'' That is no longer your position?

Dr. CAMPBELL. I believe that is true.

Senator ABRAHAM. You believe that is true?

Dr. CAMPBELL. I believe that is true.

Senator ABRAHAM. Dr. Ellison, would you like to comment on that?

Dr. ELLISON (President, American Society of Anesthesiologists). There is absolutely no basis in scientific fact for that statement. There is—I can present you a study in the American Journal of Obstetrics and Gynecology, 1989, by [names inaudible] et al, of 5,400 cases of women having surgery having general anesthesia or regional anesthesia in which the fetus did not suffer demise. I think the suggestion that the anesthesia given to the mother, be it regional or general, is going to cause brain death of the fetus is without basis of fact.

Dr. CAMPBELL. I have not said brain death. I'm saying no spontaneous respirations, no movement.

Senator ABRAHAM. Well, that's what you are saying today, but in this fact sheet, which you prepared I believe fairly recently, it says, ''The fetus dies''—there's no qualifying regarding breathing or anything else—''of an overdoes of anesthesia.'' I mean, that is a very clear statement assertion.

Dr. CAMPBELL. [Pause] I simplified that for Congress. [Outburst of laughter from audience.] I do not actually believe that you want a full discussion of when death occurs.

Senator ABRAHAM. Well, we are forced to make those decisions, and I guess my question is that how many other things would you say in the fact sheet or in your statements today have been likewise simplified in this dramatic fashion?

Dr. CAMPBELL. Since I have over 28 years of education and experience in medicine, I would say that is a great deal less and a great deal more simple than what I know.

Senator ABRAHAM. Well, it seems to me that there's a rather substantial disparity between what Dr. Ellison says and what you are both saying now and have certainly written here. I just am wondering how that bears on other comments that have been made.

Mr. ABRAHAM. Mr. President, at that time, we heard from some of the advocates on behalf of maintaining the current practice that it was an anesthetic that was the reason the baby died. The National Council of Anesthesiologists, I think, conclusively and irreversibly rebutted that position.

I was struck—and as the testimony I have had printed in the RECORD will indicate—by the efforts on the part of the advocates to try to fuzz up this issue and make assertions that were patently inaccurate and inconsistent during the course of that hearing.

In my judgment, we should be able to end this practice and we should be able to end it in the context of this legislation which provides, I think, protections for the life of the mother in sufficient fashion to meet whatever standards society might demand.

I understand why some had concerns the last time we debated this issue. Back then, we were told that only a few of these partial-birth abortions were conducted per year. We were told that they only occurred late, very late, in the process of a pregnancy, so late that this was the only option available. We were also told that they were exclusively used in these very rare circumstances to deal with serious fetal defects in high-risk circumstances.

But this year we enter the debate in a different context. We now know that those three pieces of information were not true. As we learned from Ron Fitzsimmons of the National Coalition of Abortion Providers, it is not the case that only a few such procedures occur per year. It is not the case that these only occur very late during a pregnancy, and it is not the case that they only occur in instances of serious fetal deformities and risk. They happen too often, they happen too early, and they happen without the kinds of circumstances and without the same justifications we were told were the exclusive conditions under which they took place.

In my judgment, those statements from Mr. Fitzsimmons, combined with the statements just printed in the RECORD from Dr. Campbell a year ago, make me wonder how many of the other assertions we heard during the debate from so-called experts in favor of this practice are correct. I don't know the answer to that. I have serious questions about some of the arguments made in support of the maintenance of these practices.

There are, however, a variety of facts which have come to light during the debate this year that seem to me not only to be accurate but have strong bearing on how Members of this body should deal with this issue.

The Physicians' Ad Hoc Coalition for Truth, a 600-member group of physician

specialists, issued a variety of statements in specific reference to partial-birth abortions. Included is this the statement:

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

In addition, that organization has indicated:

It is never medically necessary in order to protect a woman's life, health, or future fertility, to deliberately kill an unborn child in the second and third trimester of pregnancy, and certainly not by mostly delivering the child before putting him or her to death.

For these reasons, I hope that we can join together—a majority of us already have—and I hope this time an overwhelming majority of us will join together to support the legislation before us offered by the Senator from Pennsylvania.

In light of the new information, both the refutation of the claims made by proponents of the partial-birth abortion procedure, as well as those made by the various physician committees that have now emerged in support of the abolition of this practice, it seems to me that it is time for us to end this horrible procedure.

I just want to make two other comments, Mr. President. They go to part of the debate which I have been watching for several days now and recollect from last year, and that is the argument that we hear because we are not doctors in this body, we lack the expertise to deal with these issues. It is true that only one of us is a doctor, but we have heard from him, and I think he has been very compelling in his statements on the floor that it is time for us to end the partial-birth abortion procedure. If a doctor's advice makes sense, the advice of our doctor from Tennessee should make sense to all of us.

It also is the case that we, as Members of the Senate, are called upon to act as experts in a variety of areas where our own experiences, education and training have not necessarily prepared us before our elections to do the people's business. None of us, I don't believe, in this body, are nuclear physicists, and yet we are regularly called upon to make important decisions with respect to nuclear policy. Not all of us in this body have expertise or have served in the military, and yet all of us are called upon to make extraordinarily difficult choices with respect to the defense of our Nation. On and on it goes across the spectrum of issues.

This is not a unique circumstance. It is consistent with the responsibilities we have here to make judgments, to learn the facts, to do the best we can and to consult the experts. We have done that on this issue, and that is why I believe a majority of Members in this Chamber are going to vote to end the partial-birth abortion practice.

I will just conclude with my own personal experiences, two of them. First involves the experience my wife and I had, which I have related before on this floor, and it is a major reason why I support this legislation. When our two oldest children were born almost 4 years ago, they were very early in the process. They were twins, and they came early. We were in a neonatal intensive care unit for several weeks with them.

We were lucky because our children were sufficiently developed that they were able to come home with us after a fairly brief stay, but we also got to know the families whose children came at an earlier point in the pregnancy, some who were born with birthweights under 2 pounds, some almost 1 pound—small, tiny children who would be potential victims of the partial-birth abortion procedure, struggling and surviving. We were lucky, as I say, because our daughters were born fairly well along in the process, so we only were in that circumstance for a couple of weeks.

But just a few months ago, we had it occur again in our family, this time my wife's sister, whose child was born I believe in the 28th week of pregnancy and was, therefore, in the neonatal intensive care unit for many, many weeks.

The experiences we have gone through, the familiarity we have developed with these tiny newborn babies and their struggle for survival makes at least this Senator extraordinarily committed to trying to protect and defend those babies. I believe, at a minimum, we should be able to protect them from practices such as the partial-birth abortion. For that reason, today I speak in support of the legislation.

I thank the Chair and yield the floor back to the Senator from Pennsylvania.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I thank the Senator from Michigan for his excellent statement and for his tremendous defense of the unborn, particularly on this particular issue. He has been a partner in providing information to Senators on the facts, the real facts of what has gone on here on the issue of partial-birth abortion. I want to address a couple of things the Senators from California talked about in closing my remarks.

The Senator from California said that conditions could differ; that there is always a chance that something could happen.

I will just refer again to the quote from over about 500 physicians, including many people who deal in the area of maternal fetal medicine, perinatology, people who deal with high-risk pregnancies. The experts—we hear so much about we are not the experts. I am not the expert. I am talking about the people who are the experts. This is what the experts say. They don't equivocate. Senator FRIST read from the head of obstetrics at Vanderbilt University, one of the most prestigious universities in our country. He agrees with this comment:

While it may become necessary, in the second or third trimester, to end a pregnancy in order to protect the mother's life or health, abortion is never required—i.e., it is never medically necessary, in order to preserve a woman's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester, and certainly not by mostly delivering the child before putting him or her to death. What is required in the circumstances specified by Senator Daschle—

Boxer-Feinstein—

is separation of the child from the mother, not the death of the child.

It is never necessary. According to doctors, not RICK SANTORUM, according to doctors who practice in this speciality, hundreds of them, it is not necessary, you don't have to kill the child.

Let's use your own common sense. Use our own common sense. Here is this procedure. You have dilated the cervix over 2 days, you brought the baby into position feet first, you have taken it out of the womb, you have taken it out of the uterus, out of the birth canal, the baby is completely out of the mother's uterus, birth canal, except the head. Tell me what health reason of the mother requires you to kill this baby? These babies are very small. You can see the hands of the physician compared to the size of this baby. This baby can fit in the palm of your hand. Why do you have to kill this baby?

There is no reason, as these doctors just said, that you cannot at least give this baby some chance, some chance of living. Why? In fact, the argument is made by several doctors who have written me that by puncturing the base of the skull like that in a blind procedure—you cannot see the area where you are inserting these scissors—that you risk, obviously, missing, causing damage, you risk—and this is graphic, but it, again, was written to me by several physicians—the splintering of the skull can cause problems. I know this is graphic stuff, but this is reality. This is what they want to keep legal, and they believe that this protects the woman's health. I guarantee you this does not protect the woman's health.

There is no reason at this point to kill this baby, but they insist upon having that choice. This is the choice right here. It is not a choice. It doesn't have to be a choice. It is not me saying it doesn't have to be a choice, it is doctor after doctor, specialist after specialist saying it doesn't have to be a choice.

Their legislation pretends to bar third-trimester abortions, postviability abortions with a narrow health exception, they suggest. What they say is that it comports with Roe versus Wade. We know what Roe versus Wade and Doe versus Bolton say that health is anything—mental health, depression, the mother is young. Those are all reasons approved by the courts to allow an abortion any time—any time—for any reason. Those are all legitimate health reasons. They continue to be health reasons.

They say we don't want elective abortions. Let me tell you what Dr. Warren Hern said—again, Dr. Warren M. Hern, author of ''Abortion Practice,'' what I am told is the definitive textbook on abortions who does second- and third-trimester abortions, said it yesterday in the Bergen County Record, and I will repeat it:

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

The Boxer-Feinstein amendment does not say anything about physical health. This is the Daschle amendment he is referring to, which also does not do anything. But there is never a case, according to Dr. Hern, where he cannot do an abortion and claim physical health.

He says it again, just in case he was misquoted, in today's USA Today:

I say every pregnancy carries a risk of death.

What this amendment does is nothing. If you want to stop partial-birth abortions, vote against the Boxer-Feinstein amendment.

The PRESIDING OFFICER (Mr. HAGEL). All time has expired. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

They yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 28, nays 72, as follows:

[Rollcall Vote No. 69 Leg.]

YEAS—28

Akaka	Inouye	Murray
Baucus	Jeffords	Reed
Bingaman	Kennedy	Robb
Boxer	Kerrey	Rockefeller
Bryan	Kerry	Sarbanes
Chafee	Lautenberg	Torricelli
Cleland	Leahy	Wellstone
Durbin	Levin	Wyden
Feinstein	Mikulski	
Glenn	Moseley-Braun	

NAYS—72

Abraham	Enzi	Lieberman
Allard	Faircloth	Lott
Ashcroft	Feingold	Lugar
Bennett	Ford	Mack
Biden	Frist	McCain
Bond	Gorton	McConnell
Breaux	Graham	Moynihan
Brownback	Gramm	Murkowski
Bumpers	Grams	Nickles
Burns	Grassley	Reid
Byrd	Gregg	Roberts
Campbell	Hagel	Roth
Coats	Harkin	Santorum
Cochran	Hatch	Sessions
Collins	Helms	Shelby
Conrad	Hollings	Smith (NH)
Coverdell	Hutchinson	Smith (OR)
Craig	Hutchison	Snowe
D'Amato	Inhofe	Specter
Daschle	Johnson	Stevens
DeWine	Kempthorne	Thomas
Dodd	Kohl	Thompson
Domenici	Kyl	Thurmond
Dorgan	Landrieu	Warner

The amendment (No. 288) was rejected.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from South Dakota.

AMENDMENT NO. 289

(Purpose: To amend title 18, United States Code, to prohibit the performance of an abortion where the fetus is determined to be viable)

Mr. DASCHLE. Mr. President, I have an amendment at the desk and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] for himself, Ms. SNOWE, Ms. MIKULSKI, Mrs. MURRAY, Ms. LANDRIEU, Ms. COLLINS, Mr. LIEBERMAN, and Mr. KENNEDY, proposes an amendment numbered 289.

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

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

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Comprehensive Abortion Ban Act of 1997''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As the Supreme Court recognized in Roe v. Wade, the government has an ''important and legitimate interest in preserving and protecting the health of the pregnant woman . . . and has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grow in substantiality as the woman approaches term and, at a point during pregnancy, each becomes compelling''.

(2) In delineating at what point the Government's interest in fetal life becomes ''compelling'', Roe v. Wade held that ''a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability'', a conclusion reaffirmed in Planned Parenthood of Southeastern Pennsylvania v. Casey.

(3) Planned Parenthood of Southeastern Pennsylvania v. Casey also reiterated the holding in Roe v. Wade that the government's interest in potential life becomes compelling with fetal viability, stating that ''subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother''.

(4) According to the Supreme Court, viability ''is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of State protection that now overrides the rights of the woman''.

(5) The Supreme Court has thus indicated that it is constitutional for Congress to ban abortions occurring after viability so long as the ban does not apply when a woman's life or health faces a serious threat.

(6) Even when it is necessary to terminate a pregnancy to save the life or health of the mother, every medically appropriate measure should be taken to deliver a viable fetus.

(7) It is well established that women may suffer serious health conditions during pregnancy, such as breast cancer, preeclampsia, uterine rupture or non-Hodgkin's lymphoma, among others, that may require the pregnancy to be terminated.

(8) While such situations are rare, not only would it be unconstitutional but it would be unconscionable for Congress to ban abortions in such cases, forcing women to endure severe damage to their health and, in some cases, risk early death.

(9) In cases where the mother's health is not at such high risk, however, it is appropriate for Congress to assert its ''compelling interest'' in fetal life by prohibiting abortions after fetal viability.

(10) While many States have banned abortions of viable fetuses, in some States it continues to be legal for a healthy woman to abort a viable fetus.

(11) As a result, women seeking abortions may travel between the States to take advantage of differing State laws.

(12) To prevent abortions of viable fetuses not necessitated by severe medical complications, Congress must act to make such abortions illegal in all States.

(13) abortion of a viable fetus should be prohibited throughout the United States, unless a woman's life or health is threatened and, even when it is necessary to terminate the pregnancy, every measure should be taken, consistent with the goals of protecting the mother's life and health, to preserve the life and health of the fetus.

SEC. 3. ABORTION PROHIBITION.

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

''CHAPTER 74—ABORTION PROHIBITION

''Sec.
''1531. Prohibition.
''1532. Penalties.
''1533. State regulations.
''1534. Rule of construction.

''§ 1531 Prohibition.

''(a) IN GENERAL.—It shall be unlawful for a physician to abort a viable fetus unless the physician certifies that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

''(b) GRIEVOUS INJURY.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'grievous injury' means—

''(A) a severely debilitating disease or impairment specifically caused by the pregnancy; or

''(B) an inability to provide necessary treatment for a life-threatening condition.

''(2) LIMITATION.—The term 'grievous injury' does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.

''(c) PHYSICIAN.—In this chapter, the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions, except that any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs an abortion in violation of subsection (a) shall be subject to the provisions of this section.

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

''§ 1532 Penalties.

''(a) ACTION BY ATTORNEY GENERAL.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any

Assistant Attorney General or United States Attorney specifically designated by the Attorney General may commence a civil action under this chapter in any appropriate United States district court to enforce the provisions of this chapter.

''(b) RELIEF.—

''(1) FIRST OFFENSE.—Upon a finding by the court that the respondent in an action commenced under subsection (a) has knowingly violated a provision of this chapter, the court shall notify the appropriate State medical licensing authority in order to effect the suspension of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding $100,000, or both.

''(2) SECOND OFFENSE.—If a respondent in an action commenced under subsection (a) has been found to have knowingly violated a provision of this chapter on a prior occasion, the court shall notify the appropriate State medical licensing authority in order to effect the revocation of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(d), or shall assess a civil penalty against the respondent in an amount not exceeding $250,000, or both.

''(3) HEARING.—With respect to an action under subsection (a), the appropriate State medical licensing authority shall be given notification of and an opportunity to be heard at a hearing to determine the penalty to be imposed under this subsection.

''(c) CERTIFICATION REQUIREMENTS.—At the time of the commencement of an action under subsection (a), the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General shall certify to the court involved that, at least 30 calendar days prior to the filing of such action, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney involved—

''(1) has provided notice of the alleged violation of this section, in writing, to the Governor or chief executive officer and attorney general or chief legal officer of the State or political subdivision involved, as well as to the State medical licensing board or other appropriate State agency; and

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

''§ 1533 Regulations.

''(a) REGULATIONS OF SECRETARY FOR CERTIFICATION.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of this chapter, the Secretary of Health and Human Services shall publish proposed regulations for the filing of certifications by physicians under section 1531(a).

''(2) REQUIREMENT.—The regulations under paragraph (1) shall require that a certification filed under section 1531(a) contain—

''(A) a certification by the physician (on penalty of perjury, as permitted under section 1746 of title 28) that, in his or her best medical judgment, the abortion involved was medically necessary pursuant to such section; and

''(B) a description by the physician of the medical indications supporting his or her judgment.

''(3) CONFIDENTIALITY.—The Secretary of Health and Human Services shall promulgate regulations to ensure that the identity of the mother described in section 1531(a) is kept confidential, with respect to a certification filed by a physician under section 1531(a).

''(b) ACTION BY STATE.—A State, and the medical licensing authority of the State, shall develop regulations and procedures for the revocation or suspension of the medical license of a physician upon a finding under section 1532 that the physician has violated a provision of this chapter. A State that fails to implement such procedures shall be subject to loss of funding under title XIX of the Social Security Act.

''§ 1534 Rule of Construction.

''(1) IN GENERAL.—The requirements of this chapter shall not apply with respect to post-viability abortions in a State if there is a State law in effect in the State that regulates, restricts, or prohibits such abortions to the extent permitted by the Constitution of the United States.

''(2) STATE LAW.—In paragraph (1), the term ''State law'' includes all laws, decisions, rules or regulations of any State, or any other State action having the effect of law.''.

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

''74. Prohibition of post-viability abortions ..... 1531''.

Mr. DASCHLE. Mr. President, for the information of all Senators, it is my understanding we have 5 hours of debate to be divided evenly, is that correct, beginning at 2:30?

The PRESIDING OFFICER. That is correct.

Mr. DASCHLE. Mr. President, the issue of late-term abortion has been a very troubling issue for a lot of us. For the past 6 or 7 months, I have been making an effort to better understand all of the implications and all of the circumstances surrounding this issue. I am repulsed by the practice of so-called partial-birth abortions, but I am also very sensitive to the extraordinarily personal circumstances that many women face as they face excruciating decisions involving their lives and the lives of their potential children.

I was troubled by the votes cast last fall, and indicated at that time that I was going to do whatever I could to see if we could find a compromise. Today, I come to the floor with the realization that I could not find a compromise. What I did do was seek out doctors, constitutional experts, people in virtually every walk of life, who have voiced their opinion about this issue.

The conclusion I reached was that rather than a compromise, an entirely different approach may be our best solution, not necessarily saying yes or no to what it was others have advocated with their partial-birth-abortion ban because that is a procedural prohibition.

My feeling—and the feeling expressed by many experts from whom I have sought advice—was that the pending legislation, the so-called partial-birth-abortion ban would not stop one abortion. This will not end abortion. This will simply force physicians to use other, equally troubling forms of abortion that I will address in a little while.

So my concern was: Could we find a constitutional way with which to address this issue and also find a way to provide a comprehensive ban on abortion?

In seeking ways in which to do that, I began with a series of conclusions and considerations that I want to talk about momentarily.

First of all, I was amazed to find that, in spite of all the statistics bandied about with regard to numbers, there are very few numbers upon which anybody can base their estimates with any reliability—very, very few. The numbers of the Alan Guttmacher Institute are considered the best and used by the Centers for Disease Control. They report that 89 percent of all abortions occur in the first 12 weeks, that 10 percent of the abortions occur in weeks 13 to 20, that eight-tenths of 1 percent of all abortions occur in weeks 21 to 24, and that six-hundredths of 1 percent of all abortions occur in the final weeks beyond that.

Those aren't my figures. They are the most legitimate estimations based upon the available evidence and the statistical data which is used by the Centers for Disease Control.

So that is one question. When do abortions occur? The answer by the Guttmacher Institute is this: 89 percent occur in the first 12 weeks.

The real issue, in my view, is not which procedure ought to be outlawed, because I find, as I have already indicated, the so-called partial-birth abortion of viable fetuses to be absolutely abhorrent, as I find other abortion procedures. The question is when, and under what circumstances, should the Government restrict abortion? It seems to me that really is what is going to cause us to deal with this issue in a way that will solve the problem and not simply force it into another context.

When and under what circumstances should the Government restrict abortion?

The Supreme Court has ruled on this matter on a number of occasions. They have already given us guidance that they require us to follow, if we are going to be within the constitutional parameters in answering the question that I just asked.

Obviously, Roe versus Wade is the basis upon which all decisions have subsequently been made, and Roe versus Wade simply asserts that a woman's decision whether or not to terminate her pregnancy is protected by the Constitution.

There have been proposals to change the Constitution in that regard, and I know some of my colleagues support a constitutional amendment to overturn Roe versus Wade. But that isn't the issue today.

Colautti versus Franklin in 1979 further clarified Roe versus Wade. The Court said, ''A fetus is considered viable if it is potentially able to live outside the womb, albeit with artificial aid.''

Why is that decision important? That decision is important because in 1973, the Court ruled that it was really on the basis of trimesters that we would make some decisions with regard to a woman's right and that it was within the first two trimesters—chosen to approximate the transition at viability—that a woman had a right during those first two trimesters to make the decision, and after that it would be up to the States to decide what limits they would impose on a woman's right to choose, because at that point there was clearly the possibility that a fetus could live outside the womb. They clarified the definition of viability in Colautti. They built upon it. They created a new set of criteria by which to make that decision in 1979. They said now with technology, viability is not something that neatly falls into the categories of trimesters.

Then in 1992, in Planned Parenthood versus Casey, the Court redefined the point at which the States could restrict abortion by incorporating the viability definition. The Court clarified the constraints and the circumstances under which a woman can consider an abortion. They have already decided now that the States may restrict abortion after viability. Now the question is, Are there any other circumstances? Well, in Casey the Court ruled that there can be a prohibition as long as it does not place ''a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.''

What do they mean by that? Basically they said if a fetus is viewed to be nonviable, you cannot put obstacles in the place of a woman. Viability is determined not only, of course, by time but also by the condition of the fetus.

So in cases throughout the 1970's, 1980's, and 1990's, the Court has made it very clear what it is they intend to do with regard to protection of the fetus as well as protection of the mother. Viability then—based upon the decisions made by the Court—is simply the ability to sustain survivability outside the womb with or without life support. If a fetus can live outside the womb with life support, that fetus has to be protected—has to be protected.

So our amendment very clearly says, in findings that I will read in a moment, it shall be the policy, the determination of this country, that we must make every medically appropriate effort to protect a viable fetus.

That viability, as I said a moment ago, occurs between the 23d and the 28th weeks. Who determines viability? I have heard people say, ''Well, abortionists determine viability.'' Abortionists. But we all know that to be a pejorative term. Of course abortionists may determine that. But a high-risk ob/gyn determines that, too. The question is, What is the alternative to that? What is the alternative to a doctor making the determination of viability? Based on the medical evidence, the medical information available in their best judgment, is a fetus viable? That is what the Court requires. That is what the Supreme Court rulings were all about: protecting viable fetuses after defining the concept of viability.

So the key questions posed by the bill that is pending seem to me to be, Should just one or all post-viability abortion procedures be banned given what the Court has ruled? Should it be just one, or should it be all of them? Should a mother's health be protected throughout pregnancy? Should that have any consideration at all?

Should a woman's constitutional right to choose before viability be preserved? Those seem to me to be pretty fundamental questions that this debate brings about. I think it is a legitimate, a very fair, an understandable debate around which there are very deeply divided opinions.

But those are the questions that I think are the most significant as we debate the legislative options we are debating right now.

So, Mr. President, my proposal, and the proposal cosponsored by a number of my colleagues on both sides of the aisle—not seeking again to compromise but to provide a different approach—simply does this. S. 6, or H.R. 1122, bans one procedure that I believe ought to be banned. I personally believe it ought to be banned. Our alternative bans all procedures.

S. 6, because it doesn't distinguish between pre- and post-viability, in my view—and because it doesn't address a woman's health at all—in my view would be ruled unconstitutional. What we have attempted to do is to recognize and to respect constitutional findings of the Supreme Court, to say that present viability—I must add I believe viability could conceivably be reached at less than 23 at some point in the future. So I believe it is a very honest way with which to determine on a timeline when a woman's right to choose ought to end in terms of being the sole constitutional consideration. But right now it is viewed to be 23 weeks, well into the 6th month. But we preserve the constitutionality by ensuring that a woman's right is respected as the Court has required. We also said that there are circumstances involving health in very, very extraordinary circumstances, even addressed by the AMA, that ought to be considered.

So, Mr. President, those are the two approaches that we have pending now this afternoon.

According to the Guttmacher Institute, 99 percent of the abortions are performed within the first 20 weeks. The right to choose is protected. Viability comes at week 23, approximately. The alternative protects the fetus after that period of time. H.R. 1122 and S. 6 ban abortion using that procedure only—before amd after viability. So from a timeline point of view, in that time before viability, we protect the right of the mother to choose, as the Court requires.

What about after viability, because this is really the crux of the whole debate? What do we do to protect a viable fetus?

This is what troubles me perhaps the most about where we are with regard to S. 6. We have seen the procedure graphically depicted, and I think that graphic depiction clearly compels one to want to respond in a way that says we have to end it, in some way. I have not chosen this afternoon to depict the alternatives on similar charts.

(Mr. HUTCHINSON assumed the chair.)

Mr. DASCHLE. But I must tell you I have seen them. So-called partial-birth abortion is technically called dilatation and extraction. There is another dilatation method called dilatation and evacuation. In that method a fetus is dismembered inside the womb and removed. You could depict that very graphically, too. S. 6 does not restrict that approach.

Induction is a method that you could graphically depict. Saline solution or other agents chemically poison the fetus and premature labor is induced. A chemical poisoning of the fetus could be graphically depicted.

You could graphically depict hysterotomies. Hysterotomies are preterm c-sections, an incision. A fetus is lifted outside the womb and the life is terminated. That could be graphically depicted.

You could graphically depict a hysterectomy used for purposes of abortion where a woman's womb is completely pulled out of her body.

Every one of the procedures that I have just verbally depicted would still be legal under S. 6. They are still legal. And what amazes me is that in spite of the fact that they are every bit as graphically repulsive, they are not addressed in S. 6. A doctor somehow is supposed to certify that the one procedure is inappropriate—dilatation and extraction is something that ought to be prohibited—but under S. 6 dilation and evacuation, induction, hysterotomy, hysterectomy are all OK.

We went onto the Web and looked at what National Right to Life Committee had said about these particular procedures. As of the first of May, National Right to Life said that dilatation and evacuation ''may cause cervical laceration.'' Why? Cervical laceration may be caused because when you shove the medical instrument into a woman's womb, you may puncture it. You may puncture it seriously. But there is no ban on this procedure. ''Bleeding may be profuse,'' according to Right to Life.

Induction, according to Right to Life, ''risks cervical trauma, infection, hemorrhage, cardiac arrest and rupture of the uterus. Death is not unheard of.'' Those are not Tom DASCHLE's words but those of the National Right to Life Committee. But guess what. No ban. No ban.

According to the National Right to Life Committee, hysterotomy, or c-section involves ''the highest risk to the health of the mother; potential for rupture during subsequent pregnancies.''

And there is no ban for that procedure. What is amazing, at least as of May 1, is that Right to Life cites no maternal health risks for the D&X procedure, and yet, lo and behold, that is the one that is banned.

Now, I understand why it is banned, and I am sympathetic to banning it. But does it not seem a little unusual that we would not consider these other approaches, that we would not worry about causing cervical lacerations, bleeding, that we would not worry about cervical trauma and infection and hemorrhage and cardiac arrest and uterine rupture?

Now, again, I could have a graphic illustration of a cervical laceration. I could have a graphic illustration of cervical trauma and infection and hemorrhages and cardiac arrest. But you do not need much of an imagination and you do not have to be married to a woman very long to be pretty sympathetic.

So who should decide, Mr. President? That is the question. Who should decide? Who should decide which medical procedure is appropriate? A woman and her doctor, knowing all these ramifications, or the Government? That is the question. That is what we are trying to grapple with. We are trying to make the best decision about what to do with these horrendous circumstances.

Well, the Court has also grappled with it. The Court has also tried to figure out a way constitutionally to address all of these issues. In Roe versus Wade, what the Court says is that a woman's health ought to be protected throughout pregnancy for the reasons cited, for all these reasons. These are the reasons the Court was concerned about health. You do not have to be a doctor to know that, given the circumstances involving a woman's health, we have to come up with some legal protection.

In the 1975 case of Planned Parenthood versus Danforth, the Court said you cannot force a woman and her physician to terminate her pregnancy by methods more dangerous to her health than the method outlawed. In other words, you cannot risk creating a more egregious health set of circumstances for the mother.

And then in Thornburgh versus American College of Ob-Gyn's in 1986, it says you cannot force a mother to bear an increased medical risk to save a viable fetus. You may not trade off the mother's health for the fetus's health.

That is what the Court says.

So, Mr. President, over the last 6 months, we have worked, asking, if we want to act in the Senate and not worry about being overturned by the Court 3 months later, how do we deal with these things? How can you ensure that we are not going to be back here this fall or next year having been declared unconstitutional? What do we do about these Court decisions? They are not just there as guidance. They are there as law. We do not have the luxury of saying we will agree or we will not agree unless we change the Constitution.

It is under those constraints and in that context that we attempt to find ways with which to address this issue, first in a comprehensive way, banning all procedures; and, second, in a constitutional way so that we do not have to do our work over again in 6 months or a year.

I know there have been a lot of different charts in the Chamber during this debate quoting physicians groups, and I know that you can say anything and use a quote to justify it. But I also know that the American College of Obstetricians and Gynecologists includes both pro-life and pro-choice physicians. I have talked to them. I know they are there. They have been very involved in this debate from the beginning because they, more than anybody else outside mothers who are affected, have to deal with this issue. Pro-life and pro-choice physicians have had to confront this matter. And so ACOG, as they are called, the American College of Obstetricians and Gynecologists, has said in a letter:

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

Now, we do not have to agree with that. All I am saying is that is what this group of Republican and Democratic, pro-life and pro-choice, doctors have said officially. That is their position. You can challenge it and others have, but I believe that they are perhaps the most respected organization directly involved with this particular issue. They do not deal with hearts. They do not deal with brains. They do not deal with feet. They deal with pregnancy. They deal with fetuses. They deal with wombs and uteruses and cervixes and all of the things we have had graphically depicted. They are the experts.

Here is what they also tell us, and they cite manuals like this, the Clinical Manual of Obstetrics, from the Medical School of the University of California, Davis, or the Manual of Obstetrics, with contributions from respected obstetric professors from around the country.

They say that there are cases when pregnancy termination is required. Pregnancy termination. Now, keep in mind, there is a difference between pregnancy termination by delivery and by abortion. I think everybody in this Chamber would agree that there are some cases when pregnancy termination is required, but pregnancy termination may be delivering a live fetus, a child. And what we are saying in our legislation is that in every case where it is possible to deliver a viable fetus a doctor must do that—must. But there are cases when, unfortunately, that will not provide the mechanism a doctor needs to respond to the crisis.

''Primary pulmonary hypertension, involves the sudden death or intractable congestive heart failure. Maternal mortality approaches 50 percent. This or other complications occur in 10 to 40 percent of patients with chronic hypertension.''

''Preeclampsia. Severe hypertension and accompanying renal or liver failure.'' Five to 10 percent of pregnancies in circumstances of that kind. ''Cardiomyopathy occurs late in pregnancy in women with no history of heart disease as a distinct well described syndrome of cardiac failure.''

These are diseases caused by the pregnancy, Mr. President, that doctors and manuals like these cite as reasons for pregnancy termination.

Now, there are also other cases, other situations unrelated to the pregnancy itself when a pregnancy complicates treatment.

''Cancers. Cancer occurs in approximately 1 in every 1,000 pregnancies. Pregnancy depresses mother's immune system; radiation and chemotherapy are harmful to the fetus.''

Again, the first consideration for termination of the pregnancy must be early delivery. If possible, deliver the fetus.

''Lymphoma. 50 percent cure rate with immediate treatment; likely death in 6 months if delayed; radiation and chemotherapy risk fetal mutation.'' Again, if you can deliver the child, do so. Do so.

Breast cancer. 1 in 3,000 pregnancies. ''Increased estrogen and lactose production during pregnancy accelerates cancer; immune system depressed.''

Those are cases, categories of cases, Mr. President, that are listed in obstetrics manuals because they can and do occur. Physicians should be prepared for them, and should know the proper ways to treat pregnant women who develop these serious conditions.

There are specific cases that graphically illustrate the answer to the question posed so often by those on the other side of this amendment: Why not deliver? I want to cite a few because I think this is really the crux of the issue.

These are the specific cases. A woman in her 25th week is hemorrhaging with internal injuries. Her blood would not clot, leading to uncontrollable bleeding. Delivery by c-section or induction was impossible, because c-section and its increased blood loss posed significant risks. Induced delivery would take too long. Because of the risks to the mother's life and health and the low chance of fetal survival, termination through abortion was chosen because it could not be delivered.

It has always concerned me that some say we ought to prohibit abortion except in cases of immediate life endangerment—that they are unwilling to recognize that there also may be cases involving serious health endangerment. How is it that life and

death are so clearly delineated, that health never falls in between them? If there are cases involving death, would there not also be cases involving health? And who but the doctor decides when the mother's life is endangered? If we are making liars of all ''abortionists,'' would we not be making liars of doctors who are doing their best to save the mother's life, who decide that termination of a pregnancy through abortion may be required, as is allowed in H.R. 1122?

Case No. 2: A 23-year-old woman in her 24th week presented with preeclampsia and deteriorating kidney function. Doctors tried to induce delivery early. After 3 days of unsuccessful attempts, induction was still not possible. At that time, the woman's failing kidneys became completely nonfunctional, risking permanent kidney failure. Recognizing that induction was impossible and c-section totally out of the question, the pregnancy was terminated to save the woman's health—terminated by abortion.

Mr. President, there are others. I will read one provided to us by a trauma surgeon whom I know well—highly regarded, nationally recognized. A patient in the 6th month of pregnancy was severely injured in a motor vehicle collision. She sustained multiple fractures to her extremities and a critical head injury, developed adult respiratory distress syndrome, massive pulmonary inflammation. Her lungs were stiff and it was impossible to ventilate. The trauma staff used every possible technique to improve the lung function, but the size of her uterus made the ventilator unable to inflate her lung. After agonizing, consulting with the family, the physicians came to the conclusion that to protect her heart and lungs, to save her life and her long-term health, they had to abort.

And finally, Mr. President, a doctor from my own State of South Dakota related to me a tragic circumstance that completely answers the question of why doctors sometimes absolutely cannot deliver a viable fetus. A 25-year-old woman arrived at the hospital in active, spontaneous labor in her 25th week of pregnancy. The fetus was in the breech position, its feet coming out first. Because of the breech position, the woman's cervix was not fully dilated. Even though most of a preterm fetus can pass through even a partially dilated cervix, a normal fetal head is sometimes too large to be fully delivered and becomes stuck. It is not stopped by the physician, prevented from coming out—it is tragically, but naturally, trapped.

In this case, the fetus was already in the process of preterm, spontaneous delivery, and because it could not be completely delivered, it was impossible to further dilate the woman artificially. Manual stretching of the cervix was necessary to create a wide enough opening for complete delivery. This South Dakotan doctor tried pulling at the woman's cervix—the only option left for the doctor—in order to widen the opening enough to deliver the fetus.

Manual stretching was not successful. In addition to being very difficult, it also poses great risks to the woman's health and future fertility because such stretching can permanently damage the cervix, risking hemorrhaging. Without complete dilation, the fetus suffocates. Evacuation must be effected by any means, and in this tragic case, that evacuation of the fetus was by the D&X procedure.

These were real cases. These did not come from ''abortionists.'' These were doctors trying their very best to help the fetus and the mother to survive. That is what they were trying to do. They were not in the business of abortion. They were in the business of life.

What do you do in cases like this? Say that the Government has ruled that these are all impossible? Would that be our response? ''The Government has ruled that none of these cases exist; it is all a figment of your imagination. You are trying to abort. Don't kid us, we know better. We are the Government. We can decide for you. We will tell you. None of these are possible. You are lying to us.'' Is that what we want to say? Do we really know better than this trauma surgeon? Do we know better than these physicians who have been there, who have had blood on their hands, who have tried to save a mother's life and a fetus?

Having thought through all of this, and having talked to a lot of our colleagues, this is the best, tightest, toughest language we know how to come up with:

> It shall be unlawful to abort a viable fetus unless the physician certifies that continuation of the pregnancy would threaten the mother's life or risk grievous injury—grievous injury—to her physical health.
>
> ''Grievous injury'' shall be defined as:
>
> (a) a severely debilitating disease or impairment specifically caused by the pregnancy.

That is case No. 1 that I outlined on the chart. Or:

> (b) an inability to provide necessary treatment for a life-threatening condition.

That is case No. 2 that I outlined in my chart.

> ''Grievous injury,'' we further elaborate, ''does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.''

The American College of Obstetricians and Gynecologists have been very helpful to us in trying to work through this. They say that this is acceptable—they have endorsed our substitute—because it includes ''an exception when it is necessary for a woman's health * * * physicians [have] to make judgments about individual patients,'' as these cases would dictate.

There is a similar recommendation in the AMA Board of Trustees draft report just released and so often raised on the floor in the last couple of days. You can agree or disagree with its findings, with its recommendations, but they did say, quoted in the report: ''Except in extraordinary circumstances, maternal health factors which demand termination of the pregnancy can be accommodated without sacrifice of the fetus. * * *''

And we say, ''Hurrah, absolutely. That is exactly what we are trying to do. Let us not end the fetus's life if it is at all possible.'' But keep in mind that first phrase, ''except in extraordinary circumstances.'' I have just tried to give you some extraordinary circumstances—not figments of somebody's imagination, but real life situations presented to us by real life doctors who said, ''We are going to do everything possible to save the fetus, but there are,'' as the AMA has said,'' extraordinary circumstances that cannot be wished away.''

So, who should decide when the medical risks are serious enough? Who should decide? The Government or the doctors?

I believe that H.R. 1122, having laid it out as clearly as I know how to lay it out, is unconstitutional. Because doctors can use other procedures, it will not stop a single abortion. I am still absolutely convinced it is a procedure that ought to be abolished. But if we are trying to find ways with which to deal with circumstances in real life, involving efforts to stop abortion after a fetus is viable, H.R. 1122 does not do it. It will not do it. What we do is simply say, look, the Constitution has said that prior to viability, whether you like it or not, unless you are willing to change the Constitution, prior to viability we may not restrict a woman's access to safe abortion. I support a woman's right to choose prior to viability. But that is not the issue, because it is the constitutional requirement.

Under our substitute, after viability, all procedures are banned with an exception only when life and health are seriously threatened. I have seen the criticisms. I have seen the arguments that, ''Well, a doctor certainly can do his own thing. Who is looking? A doctor can just lie.'' But a doctor who is caught lying—and the mother, the family, a nurse, somebody in the hospital, anybody, anybody can call attention to the fact that he lied—and when he is caught he is subject to perjury charges, $100,000 fine and revocation of his license in the first instance; the second time, permanent revocation of his license—the loss of his ability to practice—and a $250,000 fine.

I would be willing to look at any other way with which to ensure that we keep a doctor honest. But I must say, there is no assurance that a doctor is being honest under H.R. 1122. How do we know that a doctor did not perform a dilation and extraction procedure on a woman? How do we know that? He must certify—right? That is the only way we know, if he certifies. Actually,

under H.R. 1122, he does not even have to certify, as he must under our substitute. Under H.R. 1122, the doctor must simply assert that the abortion was necessary to save the mother's life if the situation is reported or investigated. Why is it that he cannot lie? Why is it that they are not just as vulnerable to doctors who may try to find a way around the law in this case? Why is it assumed doctors are less likely to lie about a woman's life being threatened than about her health being threatened?

Mr. President, I think the Washington Times last Friday had it right. We spare viable fetuses. Our proposal is stricter than the one pending.

There are a lot of people who wish to be heard, and I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I see a lot of Members here and I will keep my remarks brief in order to give them an opportunity to speak. But I, too, just want to get in a couple of points in response, and a comment. First the comment.

That is, I very much appreciate what the Senator from South Dakota has stated. I respect his opinion. I respect the fact that he is trying to make an effort to deal with a very serious issue, and that is abortion in this country, moving toward making it much more rare. Certainly, I do not doubt his intentions at all. I know this is an issue that not only he is struggling with, on the issue of partial-birth abortion, but other Members who I have talked to and who I have heard from directly and indirectly. This has been an issue that has been a very difficult issue for people to deal with. We are looking for answers and looking for different ways. I respect the effort of the Senator from South Dakota to do what he believes is right.

I hope, and I would just offer this—while I do not agree in the assessment of the Senator from South Dakota as to what his bill does, we have an honest disagreement on that. And I think it is one. I think it is simply a disagreement on what he believes his bill does. He believes it does some things. I will argue as to why I don't think it does what he says it does. Two people can reasonably disagree on that. And we will have that debate here today at length.

I will say that I certainly am open to working with the Senator from South Dakota, and anybody else in this Chamber, after this day is done and this issue is behind us, and hopefully it will be behind us soon, to look at other ways that we can get at these very, very prickly issues. We can do it in a way that can be bipartisan. The people who are generally concerned about unborn children—I know the Senator from South Dakota is. So I just want to start, having said that, and just address the two points which I see are the flaws in his legislation, as well-intentioned as I believe it is.

The Senator from South Dakota referred over and over again to how these different procedures that are not banned by the partial-birth abortion ban, H.R. 1122—he kept saying this is no ban, this is no ban. I suggest, as carefully as the Senator tried to construct this amendment, that in fact his bill is no ban either. It allows for two determinations to be made, two issues to be left to the discretion of the doctor, which creates the loophole by which not one single abortion will be banned under this procedure.

I do not say that lightly. I say that with the very strong conviction that what will happen as a result, if this bill were to become law and signed by the President, there would not be one less abortion done in this country. There would not be one abortion banned in this country.

The reason I say that—and I will talk about two particular areas. I will be brief. I will get into this in more detail later, because I know there are people who want to speak. I am going to be here. They have things to do.

I will talk first about the health exception. I showed the quote today from Dr. Warren Hern. Again, Dr. Hern is an authority on abortion procedures and techniques. He has written ''Abortion Practice,'' Warren M. Hern. This is the definitive textbook on teaching abortion. He does second- and third-trimester abortions.

He does them from all over the world. He instructs doctors through his book and directly on abortion practice. This is what Dr. Hern said yesterday to the Bergen County Record:

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

Dr. Hern, who does second- and third-trimester abortions, was commenting on the Daschle amendment. This is one of the leading people in this field. I just suggest that Dr. Hern, while I could not disagree more with what Dr. Hern says, the fact of the matter is that he can stand there and, in good conscience, say that to not only the Bergen County Record, but to USA Today—he repeated the statement in case there is no validity to the original statement, a different quote, similar in nature—that any pregnancy could be a threat and could cause grievous injury—I know this is the language the press keeps honing in on, ''grievous injury'' to physical health. Here it is.

I have a lot of other things I am going to say about health and why the health exception, as drafted in this amendment, is a very broad loophole and will not restrict abortions. The fact that the doctor is the one to certify, what does that mean? That is pretty much current law. The doctor certifies when there is a health reason to do an abortion, and we say we are going to ban these, but the doctors determine when there is an exception.

I use the example of recently in the Congress, we banned assault weapons. We said we were going to make assault weapons illegal, but we are going to give the person selling the gun the ability to determine what an assault weapon is. That is what we have done with the Daschle amendment. It has given the person performing the abortion certification dispositive, conclusive authority to determine what is a health reason.

I agree that is what Roe versus Wade says, but the fact that the Daschle amendment parrots that shows that there will be no change in the way doctors view this issue. There will be no change.

The second issue is the issue of viability, and I think Senator DASCHLE points up very accurately the progress we have made since Roe versus Wade in the area of viability, but, again, the only way you can for sure determine whether a child is viable is to try to save the child. There is no way that a doctor can look into the womb of a mother and say this child will survive and this one will not. You cannot do it. They might have guesses, but we have cases of children surviving at 22 weeks, 21 weeks, not many, very few, maybe only singular cases. But how do we know unless we deliver the baby alive, and births after 20 weeks are almost certainly alive if you deliver the baby without doing anything to it. The heart is beating. Unfortunately, they gasp for breath. They will be alive, but you never know whether they are going to survive until you try.

So to suggest that the doctor can then define viability by knowing in advance whether this baby is going to survive, you cannot do that. What you end up doing is, again, leaving the doctor absolute discretion, even at times—I think we are now up to the point at 26 weeks you are into roughly 80 percent survival, but you can still say, ''Twenty percent don't survive, and I make a determination this is one of the 20 percent.'' It is a reasonable judgment call. There is no way you can second-guess it, because there is no way to know for sure.

You have, literally, up until 26, 27—you can go on, there is not 100-percent certainty survival of viability until well into pregnancy, until maybe even in the 35th week where you have 100-percent chance. So the doctors can always say, ''This was one and I certify it, it is conclusive, it is dispositive,'' as it is under Roe versus Wade.

I am not saying he is changing current law, but by applying current law, codifying current law, he accepts the exception to the overall ban which nullifies the ban, and so what we have is a ban that does not do anything.

Again, I say to the Senator from South Dakota, I appreciate the effort he put behind trying to address this issue, but it does not accomplish what was intended. I feel bad about it. I wish I could stand up here and say this is something that is going to make a positive impact. Look, if I felt that this was going to do something to stop

children from being aborted, I would sign up right now, but I don't believe that it will.

I am willing to work in the future if we can come up with something that will save children's lives, count me in. I will say that I was not approached on this compromise. I was not asked for my input as the sponsor of the bill that is on the floor. That is the prerogative of the people who drafted the amendment. That is certainly within the realm of Hoyle around here. But if we truly want to reach out and try to work on something across the chasm, which unfortunately is a chasm that has been breached somewhat on the issue of partial-birth abortion, I am happy to say that maybe as a result of partial-birth abortion, we are beginning to see that there are real problems out there, even those who support abortion rights.

So I hope, while I have to stand and speak against this amendment and urge my colleagues to vote against this, because not only does the Daschle amendment create a ban that has no limits to it, there is no ban, the Daschle amendment wipes out the partial-birth abortion ban. So it wipes out the underlying legislation. In a sense, whoever votes for Daschle votes against banning partial-birth abortions because under the Daschle amendment, not one partial-birth abortion will stop. Not one. So if you vote for this amendment, you vote against the underlying bill and replace it with something that, as well-intentioned as it may be, does nothing to limit late-term abortions, the fifth, sixth month and beyond.

I had to rise in opposition. I respect the Senator from South Dakota. I look forward to engaging further in this debate. I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, let me respond quickly because many Senators are seeking recognition. I appreciate the tone of the Senator's response. I also acknowledge that the Senator from Pennsylvania is certainly well intentioned. I respect the fact that he is also trying to find a solution. I was perhaps sent the wrong message about his desire to become a constructive partner in the dialog when I read his criticisms of the effort several months ago. I take responsibility for perhaps misinterpreting his criticisms. But, nonetheless, I do believe he is well intentioned.

It is ironic that we both come to the same conclusion. The Senator from Pennsylvania has offered legislation that will clearly not stop one abortion because every other abortion procedure is available. He recognizes that. So I don't know how anyone could argue that his ban of a procedure is a ban of abortion, because it doesn't stop all of the other procedures. So how does it stop abortion?

As to Dr. Hern, that man is going to jail, and I will just tell him on the record in public right now, ''Dr. Hern, you're going to jail for perjury if this legislation passes and you lie about the need for unnecessary abortions you perform.'' If you don't go to jail, there is something wrong with our legal system, not with the law as it is written.

As to viability, I have no differences of opinion with the Senator from Pennsylvania on viability. He and I agree on the need to find a way to ensure that the viable fetus is a top priority, along with a mother's health in these circumstances, and if it can be delivered live, it ought to be, regardless of what week. So we have no disagreement on that.

With regard to making the determination, that it is up to the doctor, let me just say one last thing. I don't know what the Senator or any other Senator who supports H.R. 1122 would say if a doctor said, ''Well, I'm going to take Dr. Hern's approach 'to save the life of a mother,' '' which is a clause in their bill, ''I'm going to use dilation and extraction to save the life of the mother. I can do that. It's legal.'' Dr. Hern should love that language. That is still available.

So if we distrust the veracity of a doctor in my circumstances, I would think we would be reciprocal in distrusting the veracity of any doctor who could use any out and, indeed, they allow an out, not to mention all the other alternative abortion procedures.

So there are differences between us in spite of the good intentions we have, in spite of the fact I know we both want to come to the same conclusion.

Mr. President, I yield 15 minutes to the distinguished Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Thank you very much, Mr. President.

Mr. President, I rise in strong support of the Daschle alternative, and I do so because of three reasons: No. 1, it preserves Roe versus Wade; No. 2, it prohibits all postviability abortions; and No. 3, it provides an exception for the life and the health of the mother, which is both intellectually rigorous and compassionate at the same time.

The Daschle substitute respects the Supreme Court's ruling in the Roe decision. When the Court decided Roe, it was faced with the task of defining when does life begin. Theologians and scientists differ on this. People of good will and good conscience differ on this. So the Supreme Court used viability as its standard. Once a fetus is viable, it is presumed not only to have a body, but a mind, a spirit and a persona that has standing in our society and in our courts. Therefore, it has standing under the law as a person.

The Daschle alternative respects that key holding of Roe. It says after the point of viability, no woman should be able to abort a viable fetus. There would only be two exceptions: to immediately save her life, and the other may be when the woman faces a serious and debilitating threat to her health.

The bill before us, H.R. 1122, as proposed by the Senator from Pennsylvania, simply bans a particular abortion technique at any point in the pregnancy. Because it would ban the use of a technique during previability, it would violate the Supreme Court's standard on viability. Should this language be passed, in all probability, it would be struck down by the courts, and the proponents of the legislation do know this.

The Daschle alternative bans all postviability abortions. It does not create loopholes by allowing other procedures to be used. Therefore, this Daschle alternative is superior to H.R. 1122 because it does ban abortions, it doesn't just ban a procedure, it bans all abortions after the point of viability. Therefore, it is good public policy, it is good public health and also will stand up to the test of the Supreme Court.

I believe there is no Senator who thinks a woman should abort a viable fetus for frivolous or nonmedical reasons. It does not matter what procedure is used. It is wrong and we know it. Therefore, the Daschle alternative bans those abortions.

However, on the other hand, H.R. 1122 does not stop one single abortion. For those who think they support this approach, know that it is unconstitutional and is, therefore, both hollow and ineffective.

Let us be clear. A vote for the underlying bill will be both hollow and ineffective. It will attempt to ban a particular procedure, but allows doctors to simply go to another procedure.

The Daschle alternative does ban abortions. It says that a woman cannot have an abortion once the fetus is viable. We talk about then ''What is viable?'' It means surviving outside of the womb with or without life support. Medical advances are the ones that will determine what enables a fetus to be viable.

Let me tell you what else I like about the Daschle alternative. The health of the mother is rigorously, intellectually defined, but it is also compassionate. Under the Daschle alternative, the only time an abortion would be allowed—other than saving the life of the mother—is when the woman faces a medical crisis that is grave and severe. And it defines that as circumstances that ''threaten the mother's life or risk grievous injury to her physical health.''

But I want to be very clear in this. The Daschle alternative does not create a gaping loophole with its health exception. We are not loophole shopping when we insist that the Constitution requires, and the reality of women's lives demands, an exception for women's health.

The health exception in the Daschle alternative has been carefully developed. I know that the Senator has consulted with medical ethicists, physicians, as well as constitutional scholars. It is specific and not vague. It is meant to cover only the most severe types of medical conditions.

What kind would they be? Some of these conditions are caused or aggravated by the pregnancy itself. For instance, issues like severe hypertension or preeclampsia, which occurs in 5 to 10 percent of pregnancies. In severe instances, the woman would face severe renal failure, kidney failure, liver failure, and ultimately could die.

Other women find themselves at risk for serious heart damage as a result of peripartal cardiomyophy. These women have no previous history of heart disease. It is the pregnancy itself that puts them at risk for cardiac failure. Would anyone argue that this is not a profound health crisis?

There are other complications. Women with existing hypertension often find their condition dangerously aggravated by the pregnancy. Complications of hypertension occur in 10 to 40 percent of these patients. These women are at risk for organ failure, seizures, or even death.

Women who suffer from diabetes may find their condition exacerbated during pregnancy, so severe that it could lead to blindness or amputations. And in some instances, where the woman is carrying a fetus with severe anomalies, she is at risk of uterine rupture and the loss of future fertility.

These are real, undeniable severe medical complications. While they are rare, they do occur. Senator DASCHLE's alternative addresses this reality.

It recognizes that to deny these women access to the abortion that could save their lives and health would be unconscionable. When the continuation of the pregnancy is causing these sorts of profound health problems, a woman's doctor must have every tool available to respond.

There are also cases where a life-endangering condition, unrelated to the pregnancy, arises and cannot be properly treated because of the pregnancy.

For instance, in the course of her pregnancy, if a woman is defined as having breast cancer, leukemia or some other form of cancer, she could not have her chemotherapy or radiation because it would cause profound fetal mutation.

Doctors are faced with choices. Mothers and fathers will be faced with choices. The question is, who decides? I do not think it should be done on the floor of the U.S. Congress by politicians. I believe the decisions should be made in a clinical situation between a doctor, the mother, and her husband. I support the Daschle alternative because it would provide this health exception and allow the physician and the family affected to make the decision that is medically appropriate to address very grave health situations that a woman may face.

That is why the Daschle alternative is so important. That is why the Daschle alternative is critical to passage. For those who are serious about banning postviability abortions, the Daschle alternative is the only alternative. For those who really want to seek common ground, the Daschle alternative is compassionate, intellectually rigorous. It enables physicians to determine what is medically necessary.

I have been troubled by this issue ever since I came to the House of Representatives more than 20 years ago. I am associated as being a pro-choice U.S. Congresswoman, and now Senator. What does pro-choice mean? It is not that I am for abortion. I do not believe that abortion is an unlimited right. But I believe it is the woman, in consultation with the physician and the family affected, who should decide.

Through the grace of God, I have been granted the faith of being a Roman Catholic. I will be eternally grateful for that gift of faith. But with that gift came two other gifts, one of hope and one of compassion. I hope to live as a Catholic; I hope to be able to die a Catholic. I feel that the Daschle alternative gives us an option that is not only constitutionally defensible, but is medically and morally defensible. And I hope that finally we can bring this debate and this discussion to the end.

Last year, we voted 52 times on the subject of abortion. Was the public served by it? Were women served? I don't know. I do not think so. So, please, let us take politicians out of this conversation. Let us put doctors back in because if we truly cannot trust the decisions in the medical profession, then I do not know who we can trust. You ask the American people, who do you trust more, your doctor or your politician? I do not think they would debate as long as we will be debating this issue.

Before closing, let me just extend my deep appreciation for the work our Democratic leader has done on this issue. He has been heroic, faithful and determined.

He has reached out to every Member of the Senate. He has consulted a wide range of medical professionals, lawyers, and legal and ethical scholars. He has been absolutely committed to finding a solution that is passable, signable, and constitutional. I believe he has succeeded.

So I thank him. And I compliment his excellent staff, Laura Petrou, Caroline Fredrickson, and Amy Sullivan, who have done truly outstanding work in developing the alternative before us.

Mr. President, today we have the opportunity to do something very important. We can move beyond soundbites and politics, and do something real, something which I know reflects the views of the American people.

We can pass the Daschle alternative. We can say that we value life and we value our Constitution. We can make clear that a viable fetus should not be aborted. We can say that we want to save women's lives and women's health.

I urge my colleagues to support the Daschle alternative.

I respect people on the other side who have differing views. But I am also concerned that there might be a lack of clarity about some of those issues.

Before I yield the floor, I wonder if the distinguished Democratic leader would yield for two questions, if he might?

There is some question whether the woman's physician would be allowed—the alternative has been criticized because it allows the woman's physician to make the medical judgment regarding the woman's need.

Could you tell me what procedures your alternative provides so that a physician does not abuse the strict standards provided for in your measure, and what enforcement tools there would be so we could trust the doctors?

Mr. DASCHLE. Well, I appreciate the Senator's question.

Let me just say that, first of all, the circumstances involving a doctor's role are identical between the bill offered, which is pending, S. 6, and our legislation. A doctor makes the determination in their case whether or not a life is affected and can make the determination to use their procedure, the procedure that is outlawed, I should say, if in their opinion a life is affected.

What we say is that a doctor has to make the decision, but we limit the definition of ''health'' and ''life'' to include only grievous circumstances. And we define ''grievous circumstances'' as severely debilitating diseases specifically caused by pregnancy or an inability to provide necessary treatment for a life-threatening condition.

Then we say what it is not. It is not any condition that is not medically diagnosable or a condition for which termination of the pregnancy is not medically indicated.

In a previous provision of the bill, we say that termination of a pregnancy must first include the possibility of a live birth. It must include that. Then we say, if you violate it, you are going to lose your license, you are going to pay $100,000; and then $250,000 and you are going to lose your license for good, and you are going to be subject to charges of perjury if you lie.

We make anybody who wants to bring charges able to—a nurse, a family member, somebody in the hospital—anybody who has any question about whether or not the right decision was made can bring a charge.

So we have done everything we can, I would say to the Senator from Maryland, to get at the legitimate concern that somebody could abuse this.

Ms. MIKULSKI. Thank you, Mr. Leader. I appreciate that.

I think that spells that out.

Now, one of the reasons I support your alternative is because I truly believe it will prevent abortion, particularly postviability abortion.

Can you assure me that your alternative—assure those who also want to ban all postviability abortions that your alternative would do so?

Mr. DASCHLE. Well, that is really the fundamental difference between

the two pending bills. We ban abortion; they ban a procedure. They allow all the other abortion procedures available—dilation and evacuation, induction, hysterotomies—those are still legally available. But what we ban are all of those procedures, all of them, and affix the penalties that we have discussed.

So I would say with absolute certainty to the Senator from Maryland that we do everything within the constitutional parameters available to us to stop all abortions.

Ms. MIKULSKI. Many States have enacted their own laws on postviability abortion. My own State of Maryland has a law that bans postviability abortions. It was approved by the voters of Maryland in a referendum. The Maryland law says a postviability abortion is only allowed when it ''is necessary to protect the life or health of the woman; or the fetus is affected by genetic defect or serious deformity or abnormality.'' Other States have even more far-reaching bans.

How does the bipartisan alternative affect Maryland law, which the people of Maryland endorsed through referendum?

Mr. DASCHLE. The alternative does not prohibit a State that already has a postviability ban from retaining its State law. Especially in a State such as Maryland, where the people decided that the health definition you outlined was the most appropriate way to deal with women's health, States should be allowed to either retain their own laws, or enact this alternative. We believe we have provided an appropriately clear and tight definition. States with even more restrictive laws may disagree, and we do not preempt their laws, either.

The alternative would not displace any comprehensive State postviability abortion bans, in whole or in part, currently in effect. The bipartisan alternative would not displace any procedure-specific restrictions or any other abortion-related State statutes. However, if a State has no comprehensive postviability ban in effect—either because none has been enacted or because a ban has been repealed or invalidated by the courts—the bipartisan alternative would take effect in that State. The effect of the bipartisan alternative is to ensure that there is a postviability abortion ban in effect in every State.

Ms. MIKULSKI. The bipartisan alternative has a very narrowly drawn definition of the health situations under which a postviability abortion would be allowed. It says that the physician must certify that ''continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.''

Does this mean that there are no situations when a woman with a profound mental health problem would be permitted a postviability abortion under your bill?

Mr. DASCHLE. As we discussed last year during the debate over mental health parity, most of us now realize that there is a connection between mental and physical illnesses. They are not mutually exclusive. Women with serious psychiatric diseases who risk psychotic breaks that would leave them nonfunctional may have physical manifestations of those psychiatric conditions. If such physical manifestations take the form of severely debilitating impairments, they would be covered under the health definition. I do not know if any cases would fall under that strict standard, but we cannot anticipate every medical circumstance.

Ms. MIKULSKI. I thank the leader for his explanation.

I want to thank the Democratic leader for the excellent work he has done. I intend to support his alternative.

Mr. President, I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DEWINE. Mr. President, on behalf of the manager of the bill, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DEWINE. Thank you, Mr. President.

Mr. President, I rise in reluctance, but very strong opposition, to this amendment. I join with the comments that my friend, Senator SANTORUM, has made about our colleague, the distinguished minority leader. I think he has made a very honest attempt to deal with this issue. But I would like to explain over the next few minutes why I believe that this attempt has failed and why I believe that this amendment, however well intentioned I know it is, is a gutting amendment and how this amendment strips really everything away.

It is really not the Senator's fault. I do not know if it is anyone's fault. But the reality is, we have to live with previous Court decisions and we have to live with a whole body of law. Legislation that we write has to take that into consideration, how words have in fact been defined.

The Supreme Court has made it abundantly clear in the Bolton case how broad the language of ''health'' is, and when there is a health exception what that really does, and that everything is taken into consideration.

I understand the Senator has tried to craft this legislation maybe to deal with that. I do not think it can be done. I do not think, in light of those cases, that that really can be done at all.

But let us walk through, for a moment, what has to take place. The word ''certification'' is important because what this amendment says is—you have several issues, but they are all decisions, let us keep in mind, that are made by the attending physician, by the person performing the abortion.

You start with the issue of viability. Now, the reality is —you cannot change the reality—the vast majority of these occur before viability. And the vast majority of them—according to Dr. Haskell 80 percent—are elective abortions. That is a fact. Those are the facts. We cannot change those facts, which means that this amendment does not deal with that. It does not deal with all those abortions at all.

But let us go beyond that, because what this amendment says is the doctor has to certify. But even before he gets to the certification process, he makes a determination about viability. If he says ''not viable'' then that is it; it ends the debate. Only if he or she then says this child is viable, the fetus is viable, then the language kicks in. It says the doctor must certify.

I would submit that once the certification takes place, that is it. And, again, it is solely within the discretion of the doctor whether certification takes place or does not take place. The operative act is not an objective standard; it is the certification in and of itself. That ends the discussion. That is it.

Let me, if I could, Mr. President, recap where we are and what I think we have learned in the last few days. But before that, of course, with testimony in the Judiciary Committee on several different occasions, the other floor debates that we have had, I think we have established certain things, that certain things are uncontroverted.

We have all seen the graphic descriptions of what happens in this procedure. There is no dispute about that. There is no dispute about the horror. There is no dispute about the tragedy.

I believe it has been established and recognized from the AMA to Dr. C. Everett Koop that this procedure is never the only procedure that will save the life, or the health, of the mother.

I think we have established that even when the baby, for medical reasons, must be separated from the mother, there is no reason to kill the baby. The termination of pregnancy is not the same as an abortion.

I think the evidence is clear that the real reason this procedure is done is because it is easier for the abortionists. We have heard what Dr. Martin Haskell, the abortionist from Dayton, OH, has to say. I read his quote yesterday. This is what he says in part: ''The goal of your work is to complete an abortion.'' To complete an abortion. That is the goal.

So we know, Mr. President, why these babies are killed—not for health reasons, not because the mother needs it, not because the baby cannot be delivered and may be saved, but because an abortionist does not want the baby to survive.

That is the object. That is what Dr. Haskell says in his quote.

The amendment that is before the Senate purports to deal with the issue of health. The amendment would ban postviability abortions unless ''the physician certifies''—the operative language—''that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her health.''

As I mentioned in my statement yesterday, I believe it is clear this amendment—and the Court cases show—this amendment would do nothing to stop partial-birth abortion. To the contrary, it would allow any abortion, any abortion, Mr. President, to be performed.

Roe versus Wade provides, as we all know, that in the third trimester there is a legitimate State interest in prohibiting abortions after fetal viability. This amendment would add a health exception to the underlying bill. That sounds good on its face, it looks good, but when you look at the Court decisions and when you look at the reality of how this would work in the real world, we find that exception expands in practice.

There are no health circumstances, the evidence has clearly shown, that require a pregnancy be terminated by administering this particularly horrible procedure. Yesterday, I quoted Dr. Nancy Romer, chairman of ob-gyn and a professor at Wright State University Medical School in Ohio. Dr. Romer said,

> This procedure is currently not an accepted medical procedure. A search of medical literature reveals no mention of this procedure, and there is no critically evaluated or peer review journal that describes this procedure. There is currently no peer review or accountability in this procedure. It is currently being performed by physicians with no obstetric training in an outpatient facility behind closed doors and with no peer review.

Dr. Romer goes on to say,

> There is no medical evidence that the partial-birth abortion procedure is safer or necessary to provide comprehensive health care to women.

So, Mr. President, it is clear there are no medical circumstances that would require this procedure. Well, then you could argue, if that is true, Senator DEWINE, why, then, what is wrong with putting a health exception in? What harm would that do? If there are no such circumstances, why not add a health exception anyway? The answer is, this health exception is so broad that it would, in fact, swallow up the rule. It is so broad that, literally, any abortion would be permitted.

How do we know that? When the Supreme Court handed down its decision in Roe versus Wade, it also handed a decision entitled ''Doe versus Bolton.'' Bolton held that a State statute that forbade abortions based on a life exception had to be interpreted to mean that ''the medical judgment'' to provide abortion for health reasons ''may be exercised in the light of all factors—physical, emotional, psychological, the woman's age—relevant to the well-being of the patient.''

It is clear from other cases how that is interpreted. That is interpreted, basically, to mean that it cannot be enforced in any way, that health exception consumes everything.

If we pass the Daschle amendment and require this concept of physician certification, that the pregnancy would risk grievous injury, I believe that clearly would render this bill meaningless. The courts, in interpreting the meaning of the word ''health,'' were accorded the broad interpretation that the Supreme Court has consistently applied.

My colleague from Pennsylvania, Senator SANTORUM, has already read the quote from Dr. Warren Hern, but it is appropriate to hear it again because it is directly on point to this issue. Dr. Warren Hern, a Colorado abortionist who has performed hundreds of late-term abortions, has already stated that he will certify that any pregnant woman can meet the standard of the DASCHLE amendment. ''I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.'' Any pregnant woman.

So, Mr. President, there we have it. Under this exception, any abortion would be permitted. When we have the testimony of America's most respected doctor, Dr. C. Everett Koop, backed by the American Medical Association in support of the assertion that there is never a medical necessity for this procedure, it is clear what the health exception is.

Mr. President, unfortunately, tragically, that purported exception is a hoax, it is a sham, it is a smokescreen, however well-intentioned the authors are.

In conclusion, Mr. President, when you come down to it, I think it is a moral dodge. I think it puts us to sleep. It is a way we can try to convince ourselves that it is OK, this amendment is OK, even though, in effect, we are tolerating something very, very bad.

Mr. President, we are not OK. We know what is going on behind the curtain and we cannot wish that knowledge away, however much we would like to. We have to face it and we have to do what is right. That means passing this bill to ban this barbaric, inhuman, unconscionable practice.

Again, with respect to my distinguished colleague, the minority leader, it also means we must vote this amendment down.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. I listened with great interest to the distinguished Senator from Ohio. He mentioned Dr. Hern's remark that he would use life or grievous injury. That was his term, life or grievous injury as a reason to continue an abortion practice.

I cite his remark because, of course, H.R. 1122 uses life as a reason, justifiably, to allow the late-term abortion, the dilation and extraction method that the bill otherwise prohibits from being used. So, if Dr. Hern would use health, he would use life, as he indicated, making meaningless the language in H.R. 1122, as well.

I just hope we apply the same standards to both bills in our debate as to what the efficacy of language will be. Indeed, if people are going to find loopholes, they will find them in H.R. 1122, as in our bill.

But, again, I reiterate that Dr. Hern, with our language, will go to jail, will go to jail.

I yield 10 minutes to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. SNOWE. I thank the Senate minority leader for yielding me this time, but, more importantly, I secondly want to commend him for his refreshing approach in trying to craft a consensus on what is obviously a very difficult issue when it comes to the problem of late-term abortion. He has shown determination and persistence and dedication in arriving at this compromise. I think that if more people in this body took that approach on the most contentious issues, we would not be standing here today even debating this one.

This is a very difficult issue. But the compromise that the Senate minority leader has worked out clearly represents a serious attempt in bridging the differences on this issue, but also an attempt to address a very divisive issue.

I had to reread the legislation after I heard several interpretations of it today. The Senate minority leader's legislation will ban all postviability abortions. There is one area upon which we all agree, that no viable fetus should be aborted by any method unless it is necessary to protect the life and the health of the mother.

The difference here today is one issue: It is whether or not we are prepared to provide a health exception. I am very grateful to my colleague from South Dakota for trying to find common ground on this issue. All Members, pro-choice and pro-life, ought to be able to come together and agree.

Mr. President, 41 States, including my own State of Maine, already ban postviability abortions. We all agree that we need to ensure that healthy pregnancies are never terminated after a fetus is viable regardless of which procedure is used. That is why the Daschle approach is so important.

Furthermore, the Daschle substitute will lower, actually lower the number of abortions in this country as opposed to the legislation offered by the Senator from Pennsylvania.

The legislation of the Senator from Pennsylvania, S. 6, would not prevent a single abortion. Ironically, what it would do is force a woman to choose another potentially life-threatening procedure when it comes to her health.

It clearly does not make any sense to me that we here in the U.S. Senate are prepared to place a woman's health in jeopardy, place a woman in an unacceptable risk, while doing nothing to lower the number of abortions that occur in this country.

The Daschle amendment will decrease the number of abortions and will do so without putting a woman's life and health on the line. To critics who say the Daschle language contains a

loophole because it leaves it to the doctor to determine when the fetus is viable, I ask, who is in a better position than doctors to determine this? Certainly not the Federal Government. Certainly not the U.S. Senate. I know some would think they are omnipotent, but certainly not the U.S. House of Representatives. Certainly not politicians making this determination. This is a determination that should be made by the physician and the physician alone.

In fact, the report that has been touted here by the American Medical Association, which I find quite interesting, is a 35-page report. I know that proponents of S. 6 and the legislation supported by the Senator from Pennsylvania touts this report, but this report did not even come down in support of the Senator's legislation after 35 pages. But in this report that was released on Tuesday by the American Medical Association, it states, ''It is the physician who should determine the viability.'' Exactly.

But it is not only the American Medical Association who says the viability of determination should be left to the doctor. It is also the Supreme Court. In Planned Parenthood versus Danforth, the Supreme Court said,

> The time viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician.

Only doctors are equipped to make this determination. It is not those of us here in the U.S. Senate. It is not a bureaucracy. It is not the Government. We want our physicians to make that determination.

Now, critics say protecting a woman from a grievous injury to her physical health does not justify terminating a later stage pregnancy.

I ask again. Who are these politicians to make this heart-wrenching decisions for a family when a woman's life is in jeopardy? To the critics who say the Daschle language contains a loophole because doctors can interpret the health exception any way they want, as I say, read legislative language.

''Grievous physical injury'' is defined as a ''severely debilitating disease or impairment caused by the pregnancy,'' or ''an inability to provide necessary treatment for a life-threatening condition.''

That is very clear. It is very plain. It is very strict. It is a very narrow definition. And, as the Senator from South Dakota indicated, the penalties are extremely harsh, if the doctor didn't make that determination according to this definition.

If I were a doctor and I read the penalties in this legislation that became law, I can guarantee you the doctor would make that determination and that definition in terms of what was grievous, what was a severely debilitating disease or impairment caused by the pregnancy or an inability to provide necessary treatment for a life-threatening condition. Their definition is protecting women from the most serious and life-threatening health risk.

This narrow definition comports with again the American Medical Association's position that postviability abortion should only be used under those extraordinary circumstances when it absolutely is necessary to preserve the life and health of the mother. The Daschle substitute is narrowly tailored to allow postviability abortions only under these extraordinary circumstances.

This language could not be more clear. How can you second-guess what is grievous? How could you second-guess the penalties that are included in this legislation? How could you second-guess the notion of going to jail?

There is no question that any abortion is an emotional and difficult decision for a woman. When a woman must confront this decision during the later stages of her pregnancy because she knows that the pregnancy jeopardizes her very life and health, such a decision becomes a nightmare. And we have heard example after example. These aren't faceless individuals. These are human beings. These are women—women we know who have faced these circumstances who do not want the U.S. Senate or the U.S. Congress making that decision for them in these very limiting exceptional health circumstances. We have no right to be making that decision.

The Roe versus Wade decision was carefully crafted by the Supreme Court 24 years ago. It was designed to balance the rights of women in America with reproductive decisions that have to be made. And they said that the rights of women are paramount in those decisions. This decision held that women have a constitutional right to an abortion, but after viability States could ban abortions as long as they allow exceptions for cases in which a woman's life or health is in danger. Let me repeat that: Allow exceptions for cases in which a woman's life or health is endangered.

The Supreme Court has reaffirmed that decision time and time again. Forty-one States have passed legislation upholding that banning of abortions in the later stages of pregnancy, except when it comes to a woman's life or a woman's health.

The legislation offered by the Senator from Pennsylvania does not allow the exception for health. It does not allow it. In the last year, we heard, ''Oh, it provides a health exception.'' But it is so broad. It just says health. It is so broad you could drive a truck through it.

The Senate minority leader made a good-faith effort to come up with a very narrow definition of grievous injury. You couldn't get much stricter in its interpretation.

So that in certain situations, where a woman's life and health is in severe jeopardy, an exception can be made. The health exception for grievous physical injury can only be invoked under two circumstances.

The first involves those heart-wrenching cases where a wanted pregnancy seriously threatens the health of the mother. The Daschle language would allow a doctor in these tragic cases to perform an abortion because he believes it is critical to preserving the health of a woman facing cardiac failure:

Peripartal cardiomyopathy, a form of cardiac failure which is often caused by the pregnancy which can result in death or untreatable heart disease; preeclampsia, or high blood pressure, which is caused by a pregnancy which can result in kidney failure, stroke, or death; uterine ruptures, which could result in infertility.

Is anyone suggesting here that we should not allow exceptions in these very serious health circumstances—circumstances that are not excepted in the language that has been proposed by the Senator from Pennsylvania? Imagine: A form of cardiac failure that causes death would not be excepted. High blood pressure that can result in kidney failure, stroke, or death would not be excepted, or exempted; or infertility. Or the second circumstance that would be provided for as an exception under the Daschle language: When a woman has a life-threatening condition that requires lifesaving treatment.

It applies to tragic cases, for example, when a woman needs chemotherapy when pregnant. So the family faces a terrible choice of confronting the pregnancy, or providing lifesaving treatment.

These conditions include breast cancer, lymphoma, which has a 50-percent mortality rate, if untreated; primary pulmonary hypertension, which has a 50-percent maternal mortality rate.

Are we saying here that the U.S. Senate is saying, ''No, we will not provide any exception.'' I hope not. I hope that would not be the case. And the Daschle substitute allows for those very limiting but very serious instances of health circumstances that could jeopardize permanently a woman's life, if not resulting in death.

If this Chamber passes this bill without the Daschle amendment, it will represent a direct frontal assault on the health of American women. Make no mistake. Innocent women will suffer. We must not overlook that women's lives and health are at stake. They hang in balance. Women who undergo these procedures face a terrible tragedy of later-stage pregnancy that has through no fault of their own gone terribly, tragically wrong.

I urge my colleagues to support the Daschle language. It will ensure that no abortions will take place after viability unless it is absolutely necessary to avoid grievous physical injury to a woman while protecting the woman's life and health.

I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, a couple of comments before I yield to the Senator from Arkansas.

I want to repeat what was stated by George Will in a column talking about the Daschle amendment. He said, ''The Daschle amendment is a law that is impossible to violate.''

All these things sound really wonderful. We have these real tough definitions; real tough except for the fact that you can't violate the law because you are giving all of the authority to the doctor to determine whether he breaks the law, or she breaks the law.

Wouldn't you love to have a law where you are the self-enforcer of the law? You have to call it yourself because, once you sign that certification, it is a conclusion. You cannot be second-guessed. What doctor is going to say, ''Oh. I aborted this baby, and it would have been viable''?

First of all, no second-trimester baby is ever going to be viable by any doctor doing an abortion. They just won't because there is still a percentage that aren't, and they will just say, ''It is not viable.'' They will sign a certification saying it is not viable. Next, they will sign it saying there is a health problem. Like Dr. Hern said, you can't get away from the fact that the people who are doing these abortions—most of the folks who do them—do them for a living. They are not going to call it on themselves—that there really wasn't a health exception. They are not going to say, ''That is the reason I did this. I did this abortion wrong.''

What we have here instead of a judge, jury, and executioner is executioner, judge, and jury.

As far as I am concerned, George Will is absolutely right. This is a law that cannot be violated. As tough as all of this sounds, as persuasive as some of his arguments that they really care about limiting abortions, it will not stop one abortion.

At least what the underlying bill does is outlaw a procedure that is so far outside of what our country should permit, and at least take the step in the right direction of providing some sense of humanity to those little children.

I yield 10 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I thank the Senator from Pennsylvania for yielding.

Mr. President, I rise in respectful but very, very strong opposition to the Daschle amendment.

I want to commend the Senator from Pennsylvania for his courageous leadership on an issue that deserves to be debated and a ban which deserves to be passed.

I believe that abortion and the human life issue in this country are the great moral issues that confront our society.

I heard my colleague from Maryland, Senator MIKULSKI, say that we voted 52 times in the last Congress on the issue of abortion. And she said, ''Are we any better off?''

I would suggest that while we debate balanced budget amendments, while we debate chemical weapons treaties, and while we debate a host of important issues, there is no issue more important to the future of our country, to civilization, and to the kind of people we are going to be than the sanctity of human life. If it takes 52 votes, then it is worth it.

Many of today's politicians will run for cover at the very mention of abortion, even at the term ''partial-birth abortion.'' How do we call ourselves leaders if we are not willing to grapple, to debate, to struggle, to agonize and reach moral conclusions as to this great issue confronting who we are as a people and what kind of civilization we are going to be.

I heard over and over the proponents of the Daschle amendment, the opponents of the ban on partial-birth abortions, that it is hard to imagine that we would be debating on the floor of the U.S. Senate with those who would oppose a ban on the most horrific, barbaric procedure imaginable. But that is what we are doing. I heard them over and over say, ''Let's keep politicians out of it; shouldn't have politicians getting involved in such an issue''; suggested that Government should stay out of the abortion issue. If the protection of innocent human life is not Government's duty, then what is?

Thomas Jefferson once wrote, ''The care of human life, not its destruction, is the first and only legitimate objective of good government.'' Then Jefferson went on. He said, ''Legislative efforts to protect the weak and defenseless are right, and should be pursued.''

Isn't that the proper role of Government—to protect those who are weak, to protect those who are defenseless? Should we not, in Jefferson's words, ''pursue'' those legislative efforts? I believe we should.

To me it is the great irony of the Daschle amendment because in every speaker who has advocated and spoken in favor of the Daschle amendment there has been a dichotomy. There has been, ''Keep Government out. Oh, this is tough. This is a tough ban. Keep Government out of this. Leave it with the physician. But we will throw that physician in jail. The Daschle abortion ban spares viable fetuses, proposals stricter than the GOP measure. They will throw him in jail, and then, keep Government out.''

To my colleagues, I say you can't have it both ways. It is clever. It sounds good. The reason we have this amendment today is because the polls say that 70 percent of the American people support a ban on this terrible, terrible medical procedure, if you can call it a medical procedure—partial-birth abortion.

That is why this amendment is being offered. I hope that after this debate is over, Senator DASCHLE will offer this as a freestanding bill. I think it has problems. I do not think it will do all what he believes it will do, what I think he sincerely believes it will do, but if he is sincere in this, it will be offered as a freestanding bill, and we will take this up through the legislative process.

The reason the President has said he will support the Daschle amendment, in my opinion, is simply that he knows it is no ban. It is, in the words of George Will, ''a law that can't be violated.'' In fact, the ultimate arbiter becomes the physician, in this case the abortion provider.

Seventy percent of the American people say we need this ban and support it. In March of this year, Arkansas, my home State, joined with seven other States in banning such a procedure. The State legislature passed the bill. Gov. Mike Huckabee signed the bill into law. And I believe that the home State of our President has, in enacting that legislation, in passing our own partial-birth abortion ban in the State of Arkansas, they have sent a message to the President of the United States, our former Governor, our native son, that the people of his home State do not want this procedure legal in this country.

Partial-birth abortion is barbaric; it is uncivilized; it is shockingly close to infanticide; and no civilized country should allow it. It is that simple. Any woman knows that the first step of a partial-birth abortion—breech delivery—is something to avoid, not something to cause purposely.

The rhetoric surrounding this issue is amazing. Those who would allow unlimited partial-birth abortions characterize the procedure as one that is used very rarely and only in an absolute emergency and only where no other procedure is available. They would have you believe that all those who have this procedure want to carry their pregnancy to term and have the child. These claims are simply wrong and they are unfounded. A quote that is extremely interesting to me is from Jean Wright, associate professor of Pediatrics at Emory University. Ms. Wright was testifying against the argument that fetuses who are candidates for a partial-birth abortion do not feel pain during the procedure. She testified that the fetus is sensitive to pain, perhaps even more sensitive than a full-term infant. She added, and this is the part that is especially striking, ''This procedure, if it was done on an animal in my institution, would not make it through the institutional review process. The animal would be more protected than this child is.''

It is incredible. We are protecting animals better than we protect unborn, viable fetuses. Making one class of humanity expendable, I believe, devalues all humanity. In fact, the rejection of life's sanctity begins a downward journey toward human debasement.

I was interviewed, as we all have been interviewed, by a reporter. I was

interviewed yesterday, and the reporter asked an interesting question. She asked this: Won't this ban start us down a slippery slope that will end up banning all abortions? Interesting choice of words, ''slippery slope,'' because now in this country we debate assisted suicides, we debate partial-birth abortions. The slippery slope has been in our slow debasement and devaluing of the worth and sanctity and dignity of human life. That is the slippery slope.

Over the last few months there has been some breakthrough, I think, in information that is being disseminated. The confession of Ron Fitzsimmons was very telling when he admitted that he ''lied through his teeth'' to the Nation. I cannot help but wonder after this vote is over if 2 months, 3 months down the road we will not find again that there has been a campaign of disinformation to prevent this ban from being enacted. I even now ask my colleagues to look deep within their souls. They have been misled. They have been sold a bill of goods. They have every justification for switching a vote and voting for this ban and voting to override an expected veto.

In the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus.

That is what Ron Fitzsimmons said. That is what he admitted. He is an advocate of abortion. He goes on to say that

the abortion-rights folks know it, the anti-abortion folks know it, and so probably, does everyone else. One of the facts of abortion is that women enter the abortion clinics to kill their fetuses. It is a form of killing. You are ending a life.

That is what the head of the National Coalition of Abortion Providers confessed. Syndicated columnist Richard Cohen admitted he ''was led to believe that late-term abortions were extremely rare and performed only when the life of the mother was in danger or the fetus irreparably deformed.'' Realizing the mistake, and I quote again, he said, ''I was wrong.''

Wouldn't it be refreshing if some of those who were misled would simply say, ''I was wrong. I will change my vote.''

Could I ask the Senator from Pennsylvania for an additional 5 minutes?

Mr. SANTORUM. The Senator is yielded such time as he may consume.

Mr. HUTCHINSON. Now we have the Daschle amendment before us. The facts have not changed. I think many are beginning to see the truth on this issue, the truth behind the partial-birth abortion myth.

The next myth that we have to overcome in this debate is that the President and his congressional allies have a viable alternative to the partial-birth abortion ban, that this amendment that we are debating even now is a legitimate alternative to a ban on partial-birth abortions.

Well, that is a myth. George Will said, ''It is a law that's impossible to violate.'' He is right. It is an amendment that pro-abortion allies can support so they can tell their constituents they supported a ban, I believe. And, again, I hope that this will be introduced as a freestanding bill because I think in that situation, we will be able to see exactly where the flaws are as it is debated in a committee, as it is scrutinized.

The Daschle proposal would explicitly allow abortion even in the third trimester if an abortionist simply asserts that ''continuation of the pregnancy would risk grievous injury to the mother.'' That is all he has to say. That's all the abortionist has to say. In effect, the Daschle amendment would allow partial-birth abortions on demand in the fifth and sixth months of the baby's development when the vast majority of such abortions are performed. So the vast majority of partial-birth abortions—this procedure that is universally condemned—would be permitted under the Daschle amendment, it would not affect them at all, would not stop a one, even though we know that many of those preborn infants can now survive even before the third trimester because of advanced technology.

I recently visited the Children's Hospital in Little Rock, AR. I was absolutely amazed at the neonatal unit and what is being done today in lowering the age of viability. On the basis of recent published interviews with abortionists who perform these procedures as well as the head of the National Coalition of Abortion Providers, Ron Fitzsimmons, it appears likely that 90 percent or more of partial-birth abortions are performed in the fifth and sixth months, not the third trimester. The Daschle amendment will not affect those partial-birth abortions at all.

One of Senator Daschle's arguments against adding second-trimester language is that Roe versus Wade prohibits second-trimester abortions. But in the official report of the House Judiciary Committee on the bill, the committee argues that the partial-birth abortion procedure is not protected by Roe versus Wade. It is not protected by Roe versus Wade since the baby is mostly outside the womb throughout the procedure, and Roe versus Wade refers to fetuses inside the womb.

So to say we cannot address the second-trimester issue of partial-birth abortions because it is protected by Roe versus Wade is to beg the issue and to avoid, I think, good legal opinion.

Many lawmakers who support Roe versus Wade also support the Partial-Birth Abortion Ban Act, some of them explicitly citing the Judiciary Committee's constitutional argument. In addition, several States have passed bills to ban partial-birth abortions at any point in the pregnancy with only a life-of-the-mother exception. It appears, therefore, that many State legislators do not share the Democratic leader's view that they are powerless to prevent partial-birth abortions in the fifth and sixth months.

My home State of Arkansas, as I mentioned earlier, is one of those States that does not share in that opinion.

Moreover, the Physicians Ad Hoc Coalition for Truth, a coalition of over 500 physicians, including professors and department chairmen in obstetrics and gynecology, has emphasized that not only is a partial-birth abortion never necessary to preserve a woman's health or future fertility, but this procedure can, in fact, pose a significant threat to both.

While there may be a medical circumstance which requires a fetus to be delivered early, there is none—none—which requires killing the fetus and certainly none requiring that a fetus be partly delivered and then killed as during a partial-birth abortion.

The Daschle proposal would allow any abortionist to kill a baby even after viability merely by signing a permission slip to himself, a so-called certification, and once the abortion provider signs such a piece of paper, this amendment would give that abortion provider complete immunity from any penalty, even if there is overwhelming objective evidence that he aborted a healthy, viable baby of a mother who is not at risk, because he signed that certification.

The House passed H.R. 1122, its version, with a margin sufficient to override a Presidential veto. I hope my colleagues in the Senate will join our House colleagues in such a vote here. There is nothing, I believe, that will define us as a people, there is nothing that will define us as a civilization more than how we speak on this issue.

Mr. President, I ask unanimous consent that a letter dated May 7, 1997, from PHACT be printed in the RECORD.

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

PHYSICIANS' AD HOC
COALITION FOR TRUTH,
May 7, 1997.

LETTERS TO THE EDITOR,
The Washington Post,
Washington, DC.

DEAR EDITORS: Senator Tom Daschle lists several medical conditions as indications for a ''termination of pregnancy'' in the health interests of the mother (''Late Term Abortion—In Rare Cases Only,'' The Washington Post, 5/2/97). However, he confuses ''termination of pregnancy'' with abortion—the deliberate destruction of the unborn (or, in the case of the partial-birth abortion procedure, the mostly born) human fetus. The two things are not the same.

As specialists in the care and management of high risk pregnancies complicated by maternal or fetal illness (perinatology), we have all treated women who, during their pregnancies, have faced the conditions cited by Senator Daschle. We are gravely concerned that the remarks by Senator Dashle and those who support the continued use of partial-birth abortion may lead such women to believe they have no other choice but to abort their children because of their conditons. While it may become necessary, in the second or third trimester, to end a pregnancy in order to protect the mother's life or health, abortion is never required—

i.e., it is never medically necessary, in order to preserve a women's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester, and certainly not by mostly delivering the child before putting him or her to death. What is required in the circumstances specified by Senator Daschle is separation of the child from the mother, not the death of the child.

Fetal indications have been cited in attempts to justify partial-birth abortion, including hydrocephaly, triscomy, omphalocele and encephalocele. Such fetal anomalies alone do not threaten a mother's life or health and therefore do not require the death of the child for the mother's medical well-being.

Sen. Daschle would limit his ''ban'' to the third-trimester or ''post-viability.'' Again, there is no medical necessity for killing a post-viable child. If maternal conditions require the emptying of the womb post-viability, the standard would be to induce labor and simply deliver the child. By definition, the post-viable child delivered early is simply a premature baby.

Moreover, because Sen. Daschle limits his proposal to the third trimester, it would do little to end the practice of partial-birth abortion. The majority of partial-birth abortions—estimated at some four to five thousand annually—take place in the fifth and six month (late second trimester) and mostly on healthy mothers with healthy children. But even at this earlier stage of pregnancy, a standard induction of labor, in terms of the mother's health, is far preferable to partial-birth abourtion as the means for emptying the womb.

Finally, it should be noted that at 21 weeks and after, abortion is twice as risky for women as childbirth: the risk of maternal death is 1 in 6,000 for abortion and 1 in 13,000 for childbirth. If the chief concern is to minimize health risks to women who show indications for a termination of pregnancy in the second or third trimester, then, as these numbers clearly show, termination by induction of labor and delivery is clearly preferable to abortion.

With on-going advances in the care and management of high risk pregnancies, even women suffering from those conditions cited by Senator Daschle can often be brought safely to term and their child delivered. In those cases where a second or third trimester preterm termination of pregnancy is indicated, abortion, and certainly partial-birth abortion, is never medically required or necessary to achieve this. We agree with Senator Daschle that it is ''appropriate . . . for Congress and the public to consider when, and under what circumstances the government may restrict access to abortion by any procedure.'' Having the medical facts straight is a necessary part of this process.

While we support Sen. Daschle's goal of banning abortion after the fetus is viable—because they are never medically indicated or necessary—his proposal would do nothing to achieve this goal, while leaving the practice of partial-birth abortion virtually untounched.

Sincerely,

Steve Calvin, M.D., Assistant Professor, Ob/Gyn, Division of Maternal-Fetal Medicine, University of Minnesota; Thomas M. Goodwin, M.D., Associate Professor, Ob/Gyn, Duivision of Maternal-Fetal Medicine, University of Southern California; Curtis R. Cook, Maternal Fetal Medicine, Buttersworth Hospital, Michigan State College of Human Medicine; Byron Calhoun, M.D., Associate Clinical Professor, Ob/Gyn, Division of Maternal-Fetal Medicine, Uniformed Service University of Health, Sciences, F. Edward Hebert School of Medicine, Bethesda, MD; Nathan Hoeldtke, M.D., Maternal-Fetal Medicine Fellow, Madigan Army Medical Center, Tacoma, WA; John M. Thorp, Jr. M.D., Maternal-Fetal Medicine, Chapel Hill, NC.

Mr. HUTCHINSON. I thank the Senator from Pennsylvania. I yield the floor.

Mr. DASCHLE. Mr. President, I yield 15 minutes to the Senator from Illinois.

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the Senator from Illinois.

Mr. DURBIN. I thank the Chair.

There is an old saying that ''virtue is its own reward.'' I would have to say to the minority leader, Senator DASCHLE, that when he undertook this project and this responsibility to try to craft a reasonable answer to this national debate on partial-birth abortion, as it is characterized, he truly understood the daunting task which he faced. I have seen the advertisements against the Senator, full-page ads which have called the Senator every name in the book. But I know, having tried to do the same thing, that the Senator addressed this issue in an honest and forthright way, that the Senator worked for months to come up with the right language that was, first, constitutional; second, sensitive to reality; and, third, which addressed a serious national concern about late-term abortions. I am proud to be a cosponsor of Senator DASCHLE's amendment.

When this issue came before the House of Representatives, and I served in that body, I sat in the Chamber of the House and listened to every minute of debate. I have never, ever in my public career viewed a vote on abortion as an easy vote. I have always sat down and thought carefully about what is the right thing to do, and some of the votes have troubled me because it is a troubling issue. Since our national debate on slavery, I cannot think of another issue which has divided America over such a protracted period of time.

And the reason, of course, is that in this debate we are addressing one of the most enduring debates in the history of man, the appropriate role of Government. At what point do the rights of the individual end and the rights of society and the Government begin? This classic question, pitting individual liberty against the responsibility of Government, is clearly at issue when we discuss abortion.

Religions and moralists draw clear lines of belief, but where does a diverse society like America draw the line? Where do the rights of a woman to control her body end, and the rights of the fetus, or potential life, begin? The Supreme Court, in Roe versus Wade, tried to draw a bright line on this clouded issue. The absolute rights of a woman in America to privacy and to the control of her body yield when the fetus can survive outside the mother. Thus, viability is the dividing line in this national debate. Before viability, when the fetus cannot survive, then the mother's rights and decisions are paramount. After viability, the fetus is protected except in the most extraordinary cases.

Senator DASCHLE, what I find interesting is this: Had you presented this bill 2 or 3 years ago, and said that you wanted to take the Doe versus Bolton case, which said that we would allow abortions after viability to protect the mother's life or health, but you wanted to take that language and clarify it so that the word ''health'' was better understood and that those violating it would be subject to serious penalties, I would daresay that you would have been applauded by many of the people who are going to vote against you today.

But they do not accept your sincerity in this, and I do. I share your feeling. I believe that after viability we should apply a strict test as to whether any abortion procedure is going to be allowed.

The Senator from Pennsylvania, in banning one procedure, previability and postviability does not address this. And he would have to admit, in all honesty, that Senator DASCHLE addresses the specific procedure he would like to ban and any other abortion procedure after the moment of viability. His ban, his restriction is much more specific, but much less respectful of the Constitution, women, and fetuses, than that being offered by the Senator from Pennsylvania.

I find it interesting, too, that Senator DASCHLE's proposal faces criticism on the grounds that the doctor is going to make the decision as to whether there is a possibility of risk to the mother's life or a possibility of grievous injury, which is very carefully defined. If the doctor does not make this decision, who will? The local Congressman? A U.S. Senator? Some Federal employee? I have been to a lot of town meetings, hundreds of them. People have asked my opinion and help in many, many situations, but never, never have they asked me to come to their homes when their family has to make an important medical decision and give them the Government's point of view. Quite honestly, Senator DASCHLE addresses this in the only way that you can. This is a situation to be certified by a doctor.

The Republican side has said, well, what if the doctor lies? What if he misleads people? What if, in fact, there is not a threat of grievous injury and he goes ahead with the procedure? And then they quote ''Dr. Will,'' who says, well, this is a law that can never be violated. But there will be other people in that operating room. There will be other witnesses to this act. If that doctor's certification is fraudulent, I daresay he or she runs the risk that they will be held responsible. So, to say that this is unenforceable is, I think, unfair.

The problem with this debate, as I see it, is that many times it deteriorates very quickly. There was an advertisement, a full page ad that was

bought by a religious group, which listed the reasons a woman seeks a late-term abortion. It was an embarrassment to read that ad. At one point they said, ''Some women seek an abortion because they no longer fit in their prom dresses.'' Perhaps that is the case. Perhaps not. But for those who are arguing this issue, I hope, I sincerely hope that they have taken the time, as I have, to speak to women who faced tragic circumstances, and never made a casual decision.

I, for one, have met six different women who have been faced with this challenge and have undergone this procedure. They remind me that this debate is not about politics. It is not about legal jargon. It is about our daughters, our sisters, our wives and our friends. It is about families. One woman in my home State of Illinois, when she heard this debate, came forward and said: This isn't fair. The way they are characterizing this procedure and the decision that I faced is not fair. I want to tell my story. My husband and I have decided we have to tell our story.

This is their photograph. Vikki Stella of Naperville, IL, the mother of two daughters, 32 weeks pregnant with her third child whom she had named Anthony. She had painted the nursery. They were prepared, expectant parents, again, for the happiness of another baby, their first son. And then they learned through a sonogram that Anthony suffered from a serious deformity. Anthony had no brain. Anthony would not survive birth but for a few moments. And, if she continued the pregnancy, she ran the risk of jeopardizing her ability to ever have another baby.

So her dying infant would be the last child she ever would bear. Vikki Stella tells the story about she and her husband, hearing this tragic news—imagine, 8 months into the pregnancy—and then being faced with the awful decision as to whether to terminate the pregnancy. They prayed over it. They cried over it. They went forward with it. Afterward, she held Anthony in her arms and understood it was the only thing that she and her family could do. And she came back home.

Last year I had a chance to be introduced to Nicholas. He is in the picture here. He is the little boy in her arms. Nicholas is their new son. I was not really introduced to him because he was asleep in a stroller. But the fact of the matter is, Vikki Stella's story is what this debate is all about. Do you really want to say to this family that we don't care whether or not this family ever has another child; that it makes no difference, the government is going to decide this one for you? Do you really want to say that? I don't think so. This was no casual decision. This was no perfect infant, as some of your illustrations try to prove. This was a sad situation and this family in grief faced a tragic situation and made a difficult decision. This bill that is being offered by the Senator from Pennsylvania would preclude the very procedure which Vikki Stella's doctor recommended. That is not fair.

If you value life, look in the eyes of Nicholas and understand that life came from this decision. There would not have been more life had she been precluded from ending that first pregnancy. It would have been the end of her ability to bear any children. Six different women I have spoken to on this, each one of them a gripping story.

Let me just concede a point. Are casual decisions made? Are there some abortions where you and I might agree, oh, wait a minute, come on, that is not a serious case? Yes, I think that is true. But that is what Senator DASCHLE addresses with his amendment. He says when you are late in the pregnancy you cannot terminate that pregnancy unless you have a serious reason: The life of the mother is at stake, or she risks a grievous injury. We have gone beyond the abstract, we have gone beyond the casual, we are into the serious situations which he has described. And that is why the Daschle amendment is one which I hope those who decry abortion will think about.

The Senator from Arkansas, my colleague, just said, ''Search your conscience and soul.'' I would ask you to do the same over the Daschle amendment. What TOM DASCHLE is offering today is a sensible statement of policy for this Nation. It does not preclude any State from saying we are going to impose a stricter standard. But it says that, for a national policy, we will preclude all late-term abortions except in the most serious situations.

He does not stand alone here. This is not a political calculation. The American Medical Association stands with him, as does the American College of Obstetricians and Gynecologists.

We have so many people practicing medicine on the floor of the Senate today, I am sure that those who are tuning in must wonder whether or not we have diverted from passing law. I do not profess to have any expertise when it comes to medicine. But the people who do, the American Medical Association, the American College of Obstetricians and Gynecologists, have said the Daschle amendment is sensible, it is reasonable, it will preserve for doctors the discretion they need to make the very important decisions about a woman's pregnancy, and terminate it. I respect that. I think all of us should.

Let me also say that, as this issue divides America, it divides this Chamber, it divides political parties, it divides members of our families. I would hope that at the end of this debate, whatever the outcome, we can lower the volume of rhetoric on this difficult issue and try to find some common ground on issues that we might all agree on. How can we implement policies in this Nation to reduce the number of unintended pregnancies? Whether you are pro-life or pro-choice, can we try to find some common ground there? Would that not be good for this Nation and good for this issue—whatever your position on abortion?

How can we make certain that children, wanted children, receive appropriate pre-natal nutritional care during the pregnancy? Should we not all agree on that, pro-choice or pro-life? I think there are so many things which we can address which really speak to our reverence for life. But today I stand in the midst of this long and maybe intractable debate, and urge my colleagues to seriously consider the amendment offered by the minority leader. I believe it is responsible and I believe it addresses late-term abortions in terms that every family can concede are realistic. Yes, we want to reduce the number of abortions. We want to make them rare. But let us never preclude that option, when we have the life of the mother at stake, or the situation that faced Vikki Stella. She had her chance because abortion is legal and safe in America. As a result, she is, in this photo, with her son Nicholas.

I yield my time.

Mr. SANTORUM. Mr. President, I yield 5 minutes to the Senator from Kansas.

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

Mr. BROWNBACK. Mr. President, I appreciate very much the Senator from Pennsylvania leading this critical dialog that we are having. I note my appreciation for what the Democrat leader is putting forward, and appreciation as well for his discussion, what he is saying, that what we need to be talking about is limiting abortion. I think folks should note the change that is taking place. We are finally talking about stopping the destruction from occurring here. We are finally addressing that, rather than saying let us continue and let us continue the growth of that. I appreciate his efforts in putting that forward.

I would note, the American Medical Association has said that this is not a needed procedure at all, the partial-birth abortion procedure. This is not a needed procedure. Regardless of the statements of the Senator from Illinois or others, this is not a necessary procedure. Indeed, it is a heinous procedure. The partial-birth abortion is something that pricks our conscience because we cannot even stand the concept of it for pets or for animals, let alone for children and for babies in this country or any other country around the world.

But, if I could, I would like to stand here and sound a hopeful note for us, us as a people, us as a nation, we as a body as the U.S. Senate. I want to stand here and sound a hopeful note because it seems to me we are finally talking about and starting to really wrestle with one of those things that has been one of the parts of the decline in the American culture. I have shown these charts before, but I want to show them during this debate because I

think they are an important part about this debate, about what has happened to the American culture during the past 30 years.

Look at this chart. This is about child abuse and neglect reports in the United States since 1976. This is about children being abused, being neglected in America. We had a lot in 1976. We had nearly 600,000 taking place then. In 1976, 600,000 children being abused. What do we have today? I don't know if it will be surprising to anybody. Over 3 million children are being abused or neglected in America today. That is the state of our culture.

What about violent crimes? I chair the District of Columbia Subcommittee. We have no shortage of violent crimes here. We have had three police officers murdered, assassinated, actually. I have had three staff members who have suffered break-ins in my short service in the U.S. Senate. I have been here 4 months. This is a violent society. Look at the numbers per 100,000. About 160 per 100,000 in 1960; 746 per 100,000 in 1993. My goodness, a shocking amount of violent crime taking place in this society.

What have we had taking place in abortion during this period in our society and our culture? In 1973 we had a little under 800,000 abortions in America occurring, in this country an awful lot. Look, it has nearly doubled, 1.6 million per year in America.

If you are an astute observer you will notice some inconsistencies here between a couple of these charts. You will say, ''Wait a minute, shouldn't child abuse have gone down if we had children who were not wanted who did not come into the world?'' We were promised that an expansion of legal abortion would make every child a wanted child and reduce abuse and neglect, yet child abuse has gone up during that same period of time that we have nearly 1.6 million abortions in America annually.

What has happened here? What is going on? I think it just talks about—it is a debate everybody is familiar with, the coarsening of our culture, the lack of love, the lack of respect. You can call it, really, whatever you want to. It is just that this culture has been in decline for the past 30 years. We get child neglect on the rise, and violent crimes, and 1.6 million abortions a year in America. But do you know what the hopeful note is here? It is we are finally talking about how we limit some of this.

We all, everybody in this body, want this number to go down. Everybody in this body, regardless of whether you are pro-life or pro-choice, wants this number to go down. Now we are finally talking about it. How can we help bring this number down?

I oppose Senator DASCHLE's amendment. I don't think his does it. I don't think we will have any fewer of these taking place. I don't know how many we are actually talking about with the bill of the Senator from Pennsylvania, and nobody really knows, but I think what we are really talking about is we, as a nation, don't really like this. We want it to be less. We want to stop it. We want it to go down.

Mother Teresa was here in this country 3 years ago. She is a saint to all of us. She is probably today the most respected person in the world. She addressed the National Prayer Breakfast 3 years ago, and she stood there, this small, frail little woman, and said, ''Can't you care for your children? If you can't, send me your children and I will care for them. Send me your children. I'll care for your children.'' She also noted at that point in time, as she noted previously, America is not a rich nation; America is a poor nation—it is poor in love and caring.

I hope historians will look back on this debate and say this was the start of us changing this culture from destruction to caring, from saying how can we go down to how can we start back up, and that is the hopeful note I have here. That is why I support Senator SANTORUM's proposed bill to eliminate, to ban this procedure of partial-birth abortion.

Mr. President, let me close by noting the heading the Democrat leader has blown up from the Washington Times, suggesting his alternative is more comprehensive. Mr. President, now that the details are known, the Washington Times printed today on an article with the headline, ''Daschle bill may not ban anything.'' And I would like to ask unanimous consent that a copy of that article be included in the RECORD.

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

[From the Washington Times, May 15, 1997]

DASCHLE BILL MAY NOT BAN ANYTHING

(By Frank J. Murray)

A bill written by Senate Minority Leader Tom Daschle that is designed to head off a ban on ''partial-birth'' abortions proposes a mix of state and federal sanctions that critics say hinges entirely on the judgment of the abortionist.

''[A doctor would] pretty much have to indict himself,'' said one Capitol Hill aide involved in efforts to stop abortions once a fetus can live outside the uterus.

Even when violations are found, federal officials would not be able to act until 30 days after notifying a state's governor and medical licensing board—and then only if needed ''to secure substantial justice,'' according to a text of Mr. Daschle's bill obtained by The Washington Times.

The South Dakota Democrat says his bill would bar aborting any fetus capable of living outside the uterus. A doctor's certification that a pregnancy risks a woman's life or ''grievous injury'' to her health would be required to perform such an abortion.

The bill's unusual and complex division of authority was termed an unenforceable ''scam'' yesterday by interests as diverse as Douglas Johnson, lobbyist for the National Right to Life Committee, and Dr. Warren Hern, who literally wrote the textbook on ''Abortion Practice.''

The Denver gynecologist said the fact of occasional death in childbearing can justify any abortion, no matter how late it is done.

''I will certify that any pregnancy is a threat to a woman's life and could cause ''grievous injury' to her 'physical health.'' Dr. Hern said, using key words from the ''Daschle bill, which he criticized as an unwise political stunt to keep pace with pro-life Republicans.

Although Dr. Hern said some doctors would be frightened into complying with the Daschle ban, Mr. Johnson predicted most would follow Dr. Hern's lead.

''In their world, they're not doing anything unethical to sign these certifications. They think it would be unethical not to. They won't see it as lying or bad faith at all,'' Mr. Johnson said.

The lobbyist would not be drawn into discussing how the partial-birth abortion ban, which would bar a specific type of late-term procedure, and the Daschle bill might be merged.

''You'd still be putting lipstick on a pig,'' Mr. Johnson said, adding that he is unwilling to help Mr. Daschle ''change the subject.''

Lingering doubts about whether physical ''impairment'' mentioned in the Daschle bill would cover psychological stress or depression were unanswered by its text or those who would comment on it.

As many as 41 states have legislation restricting late-term abortion, but pro-life groups say only New York and Pennsylvania have set a time, both at 24 weeks.

That disparity was listed as a congressional finding to justify uniformity so that women cannot cross state lines for abortions once viability occurs.

Dr. Hern said that, in the past year, he performed 13 abortions on women beyond week 26 who ''came to me from all over the world.''

Among other untested legal questions the Daschle measure poses:

Whether the Supreme Court would let Congress exercise powers that its Roe vs. Wade ruling assigned to states. The bill's ''findings'' say the court indicated it is constitutional for Congress to act, but a quote from the ruling is edited to omit specific reference to states having that power.

How civil or criminal courts might examine a physician's belief that ''continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.''

Whether the 1973 Doe vs. Bolton ruling, issued as a companion on the same day with Roe vs. Wade, forbids second-guessing a physician's ''professional that is his best clinical, judgment.''

Kristi S. Hamrick, communications director for the Family Research Council, faulted Mr. Daschle for not releasing the text and asking the Senate ''to put aside the Partial-Birth Abortion Ban Act in favor of an unseen bill hidden behind the legislative equivalent of Monty Hall's door No. 2.''

The draft bill obtained yesterday by The Times, after a spokesman insisted it had not yet been prepared, would bar all abortions ''after the fetus has become viable.''

Although a Daschle fact sheet titled ''The Bipartisan Alternative'' includes extensive descriptions of potential medical complications, the proposed statute's entire definition of grievous injury is: ''(A) Severely debilitating disease or impairment specifically caused by the pregnancy or (B) an inability to provide necessary treatment for a life-threatening condition.''

The bill also would bar enforcement through private lawsuits when government will not act.

There may not even be federal jurisdiction, said a House Judiciary Committee aide to Rep. Charles T. Canady, Florida Republican who sponsored the Partial-Birth Abortion Ban Act that passed the House March 20 by the veto-proof vote of 295–136.

''How does the federal government have any way to get into court on this? It's a civil

suit, there's no criminal case here. I don't think they even have a federal nexus,'' said the aide, who asked not to be named.

In effect, the draft measure would give a doctor, or nonphysician allowed to do abortions, the last word on the likelihood a fetus would survive outside the uterus, as well as calculating risks of ''grievous injury'' to the mother if she continues the pregnancy.

The bill would assign the Department of Health and Human Services to regulate a doctor's certificate that ''in his or her best medical judgment the abortion involved was medically necessary.'' False statements to federal agencies are felonies.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to make a couple comments. The Senator from Illinois made his comments, as did the Senator from Maine.

They keep focusing on the reason we need a health exception, that the Daschle amendment will do some things, ''We provide for a mother's health as well as provide for taking care of these viable babies.'' I don't know how many times I have to repeat it from how many different sources, but it needs to be repeated again and again and again, and it is being repeated, frankly, without contradiction. These people who I am quoting are people who are involved in maternal fetal medicine. These are people who deal with high-risk pregnancies, pregnancies that are talked about as so important to keep this health option open, that those of us who want to ban partial-birth abortion without a health option, which everyone knows is an open door to do abortion on demand—the courts have said it is, it is an open door—there is no need for a health option in second- and third-trimester abortions. That is not RICK SANTORUM saying it. I don't know how many times I have said this. I am not saying this.

I will give you another physician who is a specialist in maternal fetal medicine, a perinatologist at the Medical College of Pennsylvania who testified under oath—under oath—in U.S. Federal District Court in the Southern District of Ohio. This is Dr. Harlan Giles, who specializes in high-risk obstetrics and perinatology and also performs abortions. This is not someone who is pro-life. Under oath, a specialist in the field who performs abortions, and here is what he says:

After 23 weeks—

This is a 23-week case—

After 23 weeks, I do not think there are any maternal conditions that I'm aware of—

This is 23 weeks, which is what Senator DASCHLE termed as ''viability''—

. . . I do not think there are any maternal conditions that I'm aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated.

In other words, you do not have to kill the baby, even in viable babies:

In my experience for 20 years, one can deliver these fetuses either vaginally, or by cesarean section for that matter, depending on the choice of the parents with informed consent. . . But there's no reason these fetuses cannot be delivered intact vaginally after a miniature labor, if you will, and be at least assessed at birth and given the benefit of the doubt.

The Senator from Illinois said, ''You don't care about the health of the woman, you want to take these decisions away.'' It is a decision, unfortunately, of too many doctors in this country and we know this—one thing I learned in being involved, unfortunately, as I have with health care problems personally with my family is that doctors don't know everything. Not every doctor is up on all the literature, not every doctor knows what is out there. So, unfortunately, a lot of people get a lot of bad advice.

Yes, they get a lot of bad advice as to when to abort a baby, far, far, far too often. Maybe it is bad advice because they just don't know or they haven't taken the time to figure it out, or maybe it is because they just don't want to deal with that high-risk pregnancy because that is not their speciality and they would rather just take the easy way out. You don't get sued for performing an abortion, you get that little consent. In fact, most of the consents on abortions waive the right to be sued. So you get that consent and no one is sued for doing abortions wrongfully. But doctors are sued for wrongful birth. Can you believe that? We don't sue people for doing abortions; we sue them for having babies with deformities or abnormalities. Interesting country we live in.

But the fact of the matter is that no health exception is necessary under the Daschle proposal, because after viability, if you will, there is no reason to kill the baby to protect the health of the mother. No reason; never, never. I have 400 physicians who sent a letter saying never. I have a doctor who is a perinatologist who performs abortions—never. I don't know what else we need.

We talk so much. I know the Senator from California often said, ''You're not doctors, and we shouldn't be making decisions here because we're not doctors.'' I think the Senator from Michigan was right. We are not nuclear scientists, but we make decisions on nuclear energy, and we are not generals, but we make decisions on defense. That is our job. It may not be that we are the best qualified in all cases to make decisions, but that is what we are here to do, and we do it.

I can tell you the Senator from California is not shy about telling other people how to live their lives in a whole lot of other areas. So I just suggest that what we are talking about are the experts telling us to stop the tragedy, and what we have done with the partial-birth abortion ban is to stop the tragedy.

What the Daschle bill does is continue the status quo. It does nothing to stop. You have seen this picture. Donna Joy Watts. Every doctor who looked at Donna Joy Watts in utero said she was not viable. The Daschle amendment would not have stopped doctors, and there were many of them who wanted to abort Donna Joy Watts.

This is a little girl who was born to Joe and Sandra Mallon who live in Upper Darby, PA. This is Kathleen. Kathleen had the same condition, hydrocephalus. She would not be viable, she would not be protected from abortion under the Daschle amendment. The list goes on and on and on.

The fact of the matter is, there is a loophole in this amendment that nullifies the whole good intent that everyone is going around talking about. This does nothing. What it does is provide political cover for those who do not want to vote for a partial-birth abortion ban.

Even if you believe the Daschle amendment does what he says it does, even if you believe that it bans ''postviability abortions,'' most partial-birth abortions are done at 20 to 24 weeks, which is just at the edge of viability. So most partial-birth abortions would, undoubtedly, continue to be legal under the Daschle amendment.

I suggest that we stick to what we know are the facts. We know the fact is that the partial-birth abortion procedure is a brutal, barbaric procedure that should not be legal in our country. We should abolish it. We have the opportunity to do that. If the Senator from South Dakota, and the other Members who are part of his team, want to work on further restricting abortions, count me in, but this amendment does not do that.

Mr. DASCHLE. Mr. President, I yield 10 minutes to the Senator from Maine.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maine for 10 minutes.

Ms. COLLINS. Thank you, Mr. President.

Mr. President, I rise in support of the substitute offered by the distinguished minority leader and my colleague from Maine, Senator SNOWE, to H.R. 1122, the partial-birth abortion legislation.

Let me be clear at the outset that I do not favor abortion. Like most women, I do not believe that abortion should be used as a means of contraception, and I am extremely pleased that the incidence of abortion is on the decline in my State of Maine. In fact, it has dropped by more than 43 percent over the past 10 years.

Moreover, while I respect the right of a woman to choose to terminate a pregnancy during the early stages, even if it is not a choice that I personally would ever make, I am strongly opposed to all late-term abortions that are not necessary to preserve the physical health or the life of the mother.

Fortunately, these procedures are exceedingly rare in my State where just one abortion involving a fetus 20 weeks or older was recorded in all of 1995.

We have heard some graphic and extremely disturbing descriptions of the partial-birth-abortion procedure during

the debate on this bill. However, all of the procedures used to perform late-term abortions are equally gruesome and horrible and troubling.

I agree with the minority leader that this debate should not be about one particular method of abortion, but rather should focus on the larger question of under what circumstances should late-term abortions be legally available. My belief is that late-term abortions, whatever the procedure used, should be banned, except in those rare cases where the life or the physical health of the mother is at serious risk.

In my view, Congress is not well equipped to make judgments on specific medical procedures. As the American College of Obstetrics and Gynecologists has said:

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

Most politicians have neither the training nor the experience to decide which procedure is most appropriate in any given case. These medically difficult and highly personal decisions should be left for families to make in consultation with their doctors.

While I do not believe that it is appropriate for us to dictate medical practice, I do believe that Congress does have an appropriate duty to consider the circumstances under which access to abortion by any procedure should be restricted.

The Supreme Court, in Roe versus Wade, has set certain parameters for our task by identifying ''viability''—the point at which the fetus is capable of sustaining life outside the womb with or without life support as the defining point in determining the constitutionality of restrictions on abortion.

The amendment we are proposing today goes beyond S. 6 which simply prohibits a medical procedure and will not prevent a single abortion. I think that is a point that has been missed frequently in this debate. By contrast, the Daschle-Snowe substitute would prohibit the abortion of any viable fetus by any method unless the abortion is necessary to preserve the life of the mother or to prevent grievous injury to her physical health.

Mr. President, some have expressed concern that providing a general exception for the health of the mother creates too large a loophole, that it will allow late-term abortions to be performed simply because the mother is depressed or feeling stressed by the pregnancy. I share this concern. I completely agree. And that is why I opposed the amendment offered by the Senators from California, and it is why I have worked so hard to carefully and tightly limit the exception in this amendment to grievous injury to the mother's physical health.

''Grievous injury'' is narrowly and strictly defined by the amendment as either a ''severely debilitating disease or impairment specifically caused by the pregnancy'' or an ''inability to provide necessary treatment for a life-threatening condition.'' Moreover, grievous injury does not include any condition that is not medically diagnosable or any condition for which the termination of the pregnancy is not medically indicated. This language is far more restrictive, and rightly so, than the broad ''health'' exception debated earlier.

Mr. President, we are not talking about healthy mothers aborting healthy fetuses in the final weeks of pregnancy. We are not talking about hypothetical examples developed by rogue doctors as excuses for performing abortions. What we are talking about are the severe medically diagnosable threats to a woman's physical health that are sometimes brought on or aggravated by pregnancy. Let me give my colleagues a few examples.

Primary pulmonary hypertension, which can cause sudden death or intractable congestive heart failure;

Severe pregnancy-aggravated hypertension with accompanying kidney or liver failure;

Complications from aggravated diabetes, such as amputation or blindness;

Or an inability to treat aggressive cancers, such as leukemia, breast cancer, or non-Hodgkins lymphoma.

These are all conditions that are cited in the medical literature as possible indications for pregnancy terminations. In these rare cases, I believe that we should leave the very difficult decisions about what should be done to the best judgment of the women, their families, and the physicians involved.

Mr. President, last month, after weeks of heated debate and discussion, the Maine State legislature rejected a bill to ban partial-birth abortions.

During the course of that emotional debate—and this was a very difficult and agonizing debate for all of us—Republican Senator Betty Lou Mitchell of Etna, ME, talked about the decision her daughter-in-law faced 12 years ago. Well into her much-wanted pregnancy, at more than 5 months, the expectant mother learned that her fetus was seriously brain damaged and could not live in the world for more than a few months. Moreover, she was told that carrying the baby to term would prevent her from ever having another child. Faced with this devastating news, she made the heartwrenching decision to terminate the much-wanted pregnancy.

Maine State minority leader Jane Amero told me of a similar experience of a friend's daughter who suffered an extremely serious infection very late in her pregnancy. If she had not terminated that pregnancy, this young woman, who very much wanted to be a mother, would have been left sterile at the age of 25.

The stories told by these two Maine State senators revealed the reality behind the rhetoric in this highly charged emotional debate. Thankfully, most of us here will never face such wrenching decisions. But we know that there are women who do. And the question is, whether this highly personal choice, under such difficult and tragic medical circumstances, should be made by these women and their families or by the Federal Government.

In my judgment, the substitute before us will ensure that late-term abortions are severely limited and limited to only those rare and tragic cases where the life or the physical health of the mother is in serious jeopardy. I urge adoption of the substitute.

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

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I yield such time as he may consume to the Senator from New Hampshire who, I might add, while we have had many speakers come to support this partial-birth abortion legislation—this time in effect we have 42 cosponsors on this legislation—when the bill first came to the U.S. Senate, Senator SMITH, and, frankly, Senator SMITH alone, was standing, debating this issue and defending this position. He was a crusader and someone who stood out when few were willing to speak up. And he is truly the champion of this legislation. It is an honor to yield whatever time he would like to talk about it.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. I thank my distinguished colleague from Pennsylvania for his very kind remarks, and want to join many of my colleagues in applauding his efforts on this issue the way that he has pursued this, I think in fairness and in looking for every opportunity to proceed along this course which basically, as we all know, is the taking of innocent life. And Senator SANTORUM has stood up for those innocent children, time and time again on the floor.

I do know what it feels like to do that, but you know, when you look back in the great debates of history—and this is one of the great debates of history; it will be so judged, I will say to my colleagues—it will be judged up there with the debate on slavery and other great moral issues of our time, which some say we ought not to be debating here on the floor. But the truth of the matter is, this is a very appropriate place to debate these kinds of things.

Slavery was wrong. It was morally wrong. And people stood up against the popular tide at the time and opposed it. Because they did, slavery was ended.

I sincerely hope—and I know that there has been enough rhetoric said on all sides of this issue to make everybody tired of it, I am sure. And I do not intend to be loud. I like to try to be as quiet and unassuming, but firm, as I can.

As I sat here listening this afternoon, and also as I have listened to so much of it on the monitor over the last day,

I could not help but wonder what those who have been the victims of abortion would say if they could vote. They cannot.

Some of our constituents who disagree with us or agree with us, whatever the case may be, have the opportunity to so judge you at election time, but not—not—the victims that we are talking about in this debate, which is somewhat ironic to say the least.

And I know that I have seen pictures from both sides of the debate presented from those children who were born because a young woman had another opportunity to have a child and also from those children who were born because a young woman did not have an abortion. So I have seen the pictures. But, Mr. President, I go beyond pictures.

I had the opportunity about a year-and-a-half ago to be at an event where a young woman—I will not use her name—but she was aborted in the eighth month by her mother, and she survived. And she was a 22-year-old young woman who had a slight disability as a result of the procedure. Other than that, she had nothing wrong with her. The abortion that this young child was the victim of was purely for convenience.

Now, that is not the debate here—and I do not mean that it is on the Daschle amendment—but she was aborted. And to listen to her, Mr. President, stand before an audience of probably 800 to 1,000 people, say, No. 1, ''I forgive my mother. And she is my mother,'' she said, and, No. 2, listening to her sing ''Amazing Grace''—now, if you want something to tear at your heartstrings, endure that. I have. But that is nothing as to what this young woman endured.

I remember her testifying here before congressional committees where she was taunted by Members of Congress. We all know that story. And I bring that up to simply make the point that these are innocent children, the most innocent of society, unborn, but still children.

I remember engaging in a dialog with one of my colleagues earlier on this issue—and it is a tough issue; there is no question about it—but this person—and I will not mention the name; it is not necessary; the record speaks for itself—but this person indicated that they felt that they looked at the issue and did not feel there was viability in these young months, therefore, there was not life. And I guess I would simply respond by saying: I started at conception.

If there is anybody out here that did not, I would like to hear from them. But I started at conception. I do not know of any way to get where I am now without starting at conception. Now, if there is a way, I would like somebody to tell me what it is.

The truth of the matter is, no matter how you define these terms—you can say ''fetus,'' you can talk about ''viability,'' and ''medical procedure'' and ''abortion,'' you can talk about all these words—but it boils down to children, innocent, unborn children.

And in the case of partial-birth abortion, I might make the point, as Senator MOYNIHAN has done, that it is probably children, born children, and borders on infanticide. Senator MOYNIHAN is a very respected individual in this body, and one who does, by his own admission, call himself pro-choice, and I believe, unless he has changed his mind—I do not think he has—supports the ban on the partial-birth abortions.

So, Mr. President, I would just like to preface my remarks by, again, making the point that we are talking about real children here, children who have no say, no opportunity to be heard.

And, again, I would just ask my colleagues to reflect, as we have these next few votes on this issue, to think about that. They cannot vote against us. They cannot vote for us. They cannot criticize us. They cannot say anything. And they will never get the opportunity. And you know, I cannot help but wonder. I think about this a lot. I do not know. There are some 20 million-plus children that have been aborted, not partial-birth abortions.

But let us just take partial-birth abortions. We know there have been thousands who have been aborted through this process. So let us focus on that group.

How many children in that group may have grown up to be a President of the United States, a Senator, a doctor who maybe finds the cure for cancer, a teacher who perhaps saves a dozen, 15, 20 children during the course of his or her teaching career, saving these children from going astray, a clergyman who saves a soul? How many people, how many people would there be in that group? We will never know. We will never know.

That is the issue, Mr. President. I hope as we continue this debate—and I know it is tough—I hope we can separate all of this rhetoric and all of the harsh words and the hard feelings, just put that aside and think about what we are really thinking about here, an unborn child—yes, created at conception, at some point along the way, denied the access to life, to being born. That is the issue.

Now, I know how hard my colleague from South Dakota has struggled with this issue because we have talked, and I respect him very much and he knows that. I had to think long and hard and very carefully about what the Senator proposed to do. He is my friend. I cannot understand the amendment. I want to make some points about this amendment that I think perhaps the Senator has not thought about—I do not know if that is true or not. There have been a lot of things said out here, and it is probably unlikely there is something he has not thought about.

I believe this amendment, as presented by the Senator from South Dakota, represents, even though it is not intended, an extremist position on this issue, on the abortion issue, because the Daschle substitute amendment explicitly permits abortions even in the 7th, 8th, and 9th month of pregnancy, so long as the abortion claims, ''Continuation of the pregnancy would risk grievous injury to the mother.''

Think about that, Mr. President. Babies in the 7th, 8th, and 9th month have already developed to the point where they can survive. In fact, babies can survive even earlier than that, survive in the sense that I mean survive outside the body of their mother. They can survive independently.

Then let me ask this question, for anybody who may be undecided, and there probably are not many, if any. If you have a child that can live independently of the mother, why abort it? Why not deliver the baby alive? By definition, abortion means taking the life of a child. Why do we have to do that? Why do we have to take the life of a child?

I am not a doctor and I do not pretend to be, but I do listen to medical advice and medical comments. I listen to the point of view of a group called the Physicians Ad Hoc Coalition for Truth, an organization of 600 doctors nationwide who have been providing an enormous public service by working to get the true medical facts out about partial-birth abortions. In a statement they issued on May 12 of this year, they said, as follows: ''If maternal conditions require the emptying of the womb''—and these are not my words; these are the words of physicians—''If maternal conditions require the emptying of the womb postviability, the standard would be to induce labor and deliver the child. By definition, the postviable child delivered early is simply a premature baby. Senator DASCHLE's legislation never addresses the reason why it may ever be necessary to kill a premature baby, including those in the process of being born,'' as is the case in partial-birth abortion, ''in order to preserve the health of the woman.''

The Catholic Diocese in Sioux Falls, SD, Reverend Carlson, made a statement saying, ''The substitute bill allows abortions, including partial-birth abortion procedures in the last weeks of pregnancy, because in the case of certain serious illnesses a physician may have to 'terminate' a pregnancy after viability to save the mother, yet in such cases a physician can simply deliver the child. Nothing in the medical literature indicates a need to abort or kill a child in such cases.''

See, that is the issue here. By definition, you are saying ''viability.'' Viability by definition means that the child can survive outside the body of the mother. Then why kill the child?

Mr. President, let me repeat the latter part of the statement that was made by these physicians. The Daschle legislation never addresses the reason why it may ever be necessary to kill a premature baby, including those in the process of being born in order to preserve the health of a woman. It does not address that. That is the flaw, the main flaw, as I see it, in the amendment, as well-intended as it is.

I remember having a debate with one of my colleagues a couple of years ago when I was out managing this same bill. It was very interesting, and I ask Members to reflect for a moment. We all know in the partial-birth-abortion procedure, first of all, it does not always happen in the 7th, 8th, and 9th month. Sometimes it happens earlier than that, and, of course, the Daschle amendment would not protect those children.

I remember in the debate having a very interesting dialog with one of my colleagues in which I pointed out that in order to ensure the opportunity to take a child's life through partial-birth abortion, you have to turn the child in the womb and deliver the child breach, or feet first, and in the process, stop the child's head from coming into the world. Now, my colleague that I was debating said, ''That is fine. That child is not born yet because the head is still in the birth canal.'' I said, ''OK, I do not agree, but fine. Let me turn it around. What happens if the child comes into the birth canal head first and only 10 percent of the body comes into the world, for example, just the head?'' And the answer was, ''That is life, that is life.''

So now what we have done is define a certain part of the baby's body as being life and another part of the baby's body as not. There is no logic here. There is absolutely no logic here. I am not trying to sensationalize this. These are facts. You turn the child around because if the baby is born head first, you cannot use the needle and destroy the child. So 10 percent in the world, head first, it is a child according to the critics; 90 percent in the world, feet first, it is not. Does anybody really believe that? Does anybody really in here, never mind up here, in here, does anybody believe that? If you believe that, you ought to vote against the partial-birth abortion ban; you ought to vote for Daschle if you really believe that.

Why is it necessary, ever, to kill a premature baby? That question has not been answered yet in this debate, including those in the process of being born in order to preserve the health of a woman. How does it help the health of a woman to restrain a child from coming the rest of the way through the birth canal—that is what a partial-birth abortion is, restraining a child from coming into the world so you can kill it. That is the purpose.

As Senator MOYNIHAN said, it is bordering on infanticide. Indeed, it probably is infanticide. This is not abortion. It is probably misnamed. It is killing a child in the hands of the doctor. Nothing impersonal about this one. There are many impersonal ways to commit abortions. We all know, we have all heard about them. Nothing impersonal about this one. You are holding the child in your hand when you do it.

With all the problems we have in the world and in our country—you name it, race problems, poverty problems, problems of protecting ourselves and national defense, anything, all the problems we have, infrastructure—do we really want to spend time doing this to our children? Do we?

In May 1997, in the Washington Post, and again on the Senate floor, Senator Daschle said every effort should be made to save the baby. I know he means that. But with all due respect, the amendment is trying to have it both ways. It does not focus on the baby, it focuses only on the mother.

How can you say you are for saving a baby when your amendment explicitly authorizes an abortionist to kill a baby? The assertion is that the Daschle amendment somehow requires doctors to try to save the life of the viable baby that they are aborting. Yet, the language to this effect, which includes a wide open health exception, appears on page 4 of his amendment in the nonbinding findings. I say you put this in the nonbinding findings, but you do not have it in the main language of the amendment.

This language would not have the force of law. It would, if it were in the main bill, in the amendment, but it is not. It is in the language. So if we want to truly write some protection for the viable fetus into this proposed criminal statute, we could put it in the statute itself, not in the nonbinding finding section and certainly not with a wide open health exception.

We all know and respect and support, I believe, the principle of self-defense. If the health of the mother is a problem and the life of a mother is a threat, try to save both. What is wrong with that? Why do we say we are going to say something is viable and then kill it? If you say it is viable, if you make the admission, which this amendment does, that this child is viable any time after the sixth month, if it is viable, then when you abort it you are killing it because you said it is viable by your own definition.

This is really a pretty logical debate here, Mr. President. Sometimes we get off on other tangents. After viability, doctors can terminate the pregnancy without killing the baby. It happens all the time. They can do this by delivering the baby by cesarean section or directly through the birth canal. Sometimes they must do that in order to protect both the mother and the child. That is not an abortion. It is a premature delivery. It happens every day in America. There is no reason why it cannot happen here.

Dr. Harlan Giles, a professor of high-risk obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures before viability, and in sworn testimony before the U.S. District Court for the Southern District of Ohio in November 1995, Giles had this to say about abortions after viability. This is a doctor who performs them:

> [After 23 weeks] I do not think there are any maternal conditions that I am aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated. In my experience for 20 years, one can deliver these fetuses either vaginally, or by cesarean section for that matter, depending on the choice of the parents with informed consent . . . But there's no reason these fetuses cannot be delivered intact vaginally after . . . labor, if you will, and be at least assessed at birth and given the benefit of the doubt.

That is the doctor's own words who perform abortions.

Mr. President, the question that I ask to the proponents of the Daschle amendment is the same one I have been asking over and over and over again, year after year, on this issue, with those who support partial-birth abortion on demand. And it is on demand and we know that. I repeat the question in a moment.

We know that because of the statements made by an individual who performed them, and I stood on the Senate floor a year and a half ago or 2 years ago, and took flak from every direction, from my opponents on the other side of this issue, accusing me of making that up, that it was only a few hundred abortions a year this way, done in this manner, when, in fact, we now know it is thousands, and that they admitted they lied. But to the individual's credit, he told the truth now. But the question is, why is it necessary to kill a partially born baby? Will somebody come out on the floor of the Senate and answer me that question, when you have a baby in the birth canal, 90 percent born but for the head, somebody give me one reason why we have to take that baby's life in order to protect the mother's life or health when you literally restrain that child from coming the rest of the way out of the birth canal.

Nobody has been able to tell me that. Why not just deliver the baby alive. And I will tell you why, Mr. President, because you have a problem when the baby is alive, don't you? And you know what another real dark secret is here? And they do not talk about it much. Do you know what happens oftentimes? You get the baby in the position, the abortionist is prepared with the needle, the head is still in the birth canal and, whoops, the baby comes out. You look around and you do it.

That is not abortion, Mr. President. Do not let anybody tell you it is. That is killing an innocent child, a live, born child, and it happens. That is the dirty dark secret, one of them, about partial-birth abortion. Why not just deliver the baby. Her body, her shoulders are already out of the womb and in the birth canal. Why not just complete the delivery? Why kill her before completing the delivery?

Unfortunately, that is what this amendment will allow. Why propose an amendment that explicitly authorizes abortions to kill viable children? That is not saving lives. And I know what the intent here is by the Senator, but we are killing viable children in seventh, eighth, and ninth months of pregnancy. We are protecting the mother

but why not protect the child, too? It is not necessarily one against the other.

In his May 2, Washington Post opinion article Senator DASCHLE cited certain conditions for termination of pregnancy such as hypertension, kidney failure, coma, breast cancer, et cetera. However, what was not said was why the Senator and the supporters of the amendment believe that it would ever be necessary to kill that viable baby because of the medical conditions that he cites.

Think about it. Why would you have to kill the child for any of those reasons: hypertension, kidney failure, coma, breast cancer. Remove the child alive. It can be done. It is done every day.

Once again, let me point out that physicians, not Senators, physicians, across America address these complicated pregnancies day in and day out and they do it by delivering babies. This amendment, even though it is not intended to do that, would give abortionists the legal authority now under law to perform abortions in these cases whenever they want to without any consideration to the law.

Before the Senate closes debate, and I know we are getting close—for the benefit of my colleagues, I am shortly going to yield—before the Senate closes debate on this amendment, I hope that we will have an answer to the question that I have posed. I would really sincerely like to hear the answer as to why this child must be terminated, killed, taken dead from the womb of the mother when, in fact, you could perhaps save both?

I have one final point. Those proponents of this amendment assert that it would provide some limitation on postviability abortions because it includes what they say is a narrow health exception. The Senator's amendment says that postviability abortions are permitted if an abortionist certifies that a woman is threatened with some ''risk,'' no matter how remote, of a ''grievous injury'' to her health. Unfortunately, the ''grievous injury'' exception does not protect one single viable unborn child, not one. Not one. And if the intent of the authors of the amendment and the proponents of the amendment is to save lives, babies' lives, the amendment does not do it. If it is the intent to save mothers' lives at all costs, I think it does do that and I support that part of it, saving mothers' lives, but it does not do anything to save a baby's life.

Dr. Warren Hern, a leading third-trimester abortionist, who has written a major treatise on the subject of the ''grievous injury'' exception, in an interview published on May 14, yesterday, in the Bergen County Record, said:

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

In other words, no matter what the grievous injury it is the health exception that the abortionist will use. That is not what the Senator from South Dakota intends but is the result of this amendment. Any doctor who wishes to do it can do it.

So we have a leading third-trimester abortionist who basically says, hey, pass that thing. Then I can kill all kinds of babies and not have to worry about a thing. Just pass it. He is an expert, and he is saying this will allow him to perform an abortion on a viable child any time he wants to. So you could not ask for more compelling testimony, in my opinion, that this amendment, the Daschle amendment is a prescription for abortion on demand even after viability, and it is the main reason that it should be defeated and that we should pass the ban on partial-birth abortions as prescribed by the bill introduced and supported by the Senator from Pennsylvania.

I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the vote occur on or in relation to the Daschle amendment at 7 p.m. and that the time between now and then be equally divided between Senators SANTORUM and DASCHLE.

Mr. DASCHLE. Mr. President, reserving the right to object, I have a request for 45 minutes of time that I would be willing to lock in, but I think that would mean a slight difference in the amount of time allocated to both sides. So with the understanding that I could have 45 minutes, I have no objection.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Let me respond briefly to the distinguished Senator from New Hampshire prior to the time I yield time to the Senator from Louisiana. He asked the question, why not allow a child to live? And my answer is that is exactly what we want to happen. On page 3 of the bill we say:

> Even when it is necessary to terminate a pregnancy to save the life or health of the mother, every medically appropriate measure should be taken to deliver a viable fetus.

Termination of a pregnancy does not necessarily mean abortion. We want to provide the opportunity for that child to live. And on page 3 we assert that.

On page 4:

> Abortion of a viable fetus should be prohibited throughout the United States unless the woman's life or health is threatened, and even when it is necessary to terminate the pregnancy every measure should be taken, consistent with the goals of protecting the mother's life and health—

Which is the constitutional requirement—

> to preserve the life and health of the fetus.

On page 3 and on page 4 of the bill we assert that as unequivocally as possible.

Now, he indicates that this is the findings. Well, the findings are designed to instruct the Court on how to interpret the law. That is what the findings do. There is no more appropriate place than in the findings to tell the Court this is how we want you to interpret whether or not a doctor is in compliance with the law.

I would be more than ready to state that assertion on every page of the bill if it would make my colleague from New Hampshire more confident that the intent of our legislation is to do just as I have asserted. But this is the language in the bill. We want the child to live.

Now, with regard to permitting abortions in the seventh, eighth, and ninth month, I find it ironic that anybody supporting H.R. 1122 would use that as a criticism of our amendment because that is exactly what the partial-birth abortion ban does. It allows abortions. It allows dilation and evacuation. It allows induction. It allows hysterotomies. It allows abortion. H.R. 1122 is banning only one procedure here. They are not banning abortion with their bill. We, by contrast, ban them all. So I hope that no one would cite that as a reason to oppose our amendment.

I yield 10 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. I thank the Chair. I begin by thanking my distinguished colleague from South Dakota, Senator DASCHLE, for his hard work and excellent work. He has been working for months, talking with medical doctors, advocates for children and families, and affected women to try to help us arrive at a balanced approach, that will resolve this very difficult of issues.

To my distinguished colleague from New Hampshire, who just spoke, I say that I am here today because I want to join with you in ending late-term abortions. The young woman about whom the Senator spoke so beautifully, would have a chance to live under our amendment because it will ban all procedures except in the very rarest of circumstances. With due respect, under the bill that the gentleman is supporting, that wonderful child could still be aborted, because the mother would still be free to choose another procedure.

My colleagues on the opposite side continue to make reference to a Dr. Hern. I want to say again that when this bill passes, he will lose his license. He will not be able to practice.

My distinguished colleague from New Hampshire has made the excellent argument for the minority of people in this country who believe that abortion should be banned at all times, in every circumstance, in every case, but the majority of Americans in my State of Louisiana and in this country want reason. They want to abide by the Constitution which gives the woman the right to terminate a pregnancy in the early stages, but they want most certainly to ban and prohibit late-term abortions. That is what this amendment does.

We have heard all day about one or two doctors that might say they would never perform a late-term abortion. That is their right under the law. But the American Medical Association, 37,000 strong, has said, and I want to quote again for the debate:

In recognition of the constitutional principles regarding the right to an abortion articulated by the Supreme Court and in keeping with the science and values of medicine, the AMA recommends that abortions not be performed in the third trimester except in the cases of serious fetal abnormalities, incompatible with life. Although third-trimester abortions can be performed to preserve the life or health of the mother, they are in fact generally not necessary for those purposes except in the most extraordinary circumstances.

That is what my distinguished colleague from South Dakota along with the two Senators from Maine, have tried to craft, a very narrow health exception with tight restrictive language.

Mr. President, I rise today in support of the Snowe-Daschle amendment to Senate Bill 6.

Mr. President, the distinguished Supreme Court Justice Felix Frankfurter wrote:

Great concepts like liberty were purposely left to gather meaning from experience. For they relate to the whole domain of social and economic fact, and the statesmen who founded this nation knew too well that only a stagnant society remains unchanged.

We are not a stagnant society and changes in reality and our perceptions have brought us here today. It has been nearly 25 years since the Supreme Court decided Roe versus Wade. The Roe decision encompassed a lot of the experience and wisdom that our nation had acquired regarding personal liberty. In 1973, it affirmed the new understanding that Americans had developed about the role of women in society and the role of government in our personal lives.

However, 25 years after Roe, our country has had more time to reflect on its experiences. Social and economic factors have altered the world in which we live. Breakthroughs in medicine have changed our understanding of human development and have allowed us to deliver premature babies at ages never before possible. We have reached the appropriate time to review our definition of liberty in the context of a woman's right to end a pregnancy.

Those of us who support Roe versus Wade understand this was not a decision which allowed for abortion on demand, but rather it was a decision which balanced the rights of privacy and liberty on one hand—and State's authority to protect prenatal life on the other. In writing his decision, Justice Blackmun clearly stated:

A state may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in the pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision.

One of the questions we face today is what is the approximate point at which prenatal life becomes sufficiently compelling and what are the appropriate regulations to the termination of pregnancy.

In reviewing both Roe and Casey, it is clear that the Court has given us one sure point on which to balance individual liberty and prenatal life. That point is viability. Before a fetus is viable, the rights of privacy and personal liberty found in the Constitution require us to provide safe and accessible method to terminate a pregnancy. After viability, the State's interest in prenatal life should prevail. Our first woman on the Supreme Court, Sandra Day O'Connor, framed the delicate balance our society has reached in the Casey decision when she stated:

While [Roe] has engendered disapproval, it has not been unworkable. An entire generation has come of age, free to assume Roe's concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions . . . and no changes of fact have rendered viability more or less appropriate as the point at which the balance of interests tips.

Viability presents a bright line—a legal standard—that we can use to govern our decisions about regulating abortion.

Mr. SANTORUM's bill violates the viability standard and does nothing to end late-term abortion. On the other hand, Mr. President, Senator DASCHLE and Senator SNOWE's alternative method would indeed make clear that all late-term abortions by any procedure are prohibited. I thank them for their leadership in bringing this alternative to the floor. They have both displayed a willingness to reach across the aisle and provide us with a bill which reflects the consensus that the American people have already reached.

A 1996 Gallup Poll indicated that 64 percent of Americans support a woman's right to have an abortion during the first 3 months of pregnancy. This is a strong indication of a national consensus that abortion should be an available, legal, and safe option for women in the early stages of pregnancy.

When you ask those same people how they feel about abortions in the third trimester, the consensus flips the other way. Only 13 percent of those surveyed supported abortion, 82 percent would prohibit it. Those 82 percent of the people who oppose abortion in the third trimester are not just opposed to a particular procedure; they are opposed to all procedures. They believe that once a fetus reaches the point where it could sustain meaningful life, they are opposed to abortion.

That is precisely what is accomplished by the Snowe-Daschle amendment. We make clear, with appropriate penalties, that late-term abortion by any procedure will not be allowed, except in the rare and extraordinary circumstances when a woman's life or physical health is gravely threatened. Yes, a doctor would certify the viability and health risk to the mother, but who else would be qualified to make such medical decisions? The local judge or city council?

Without this amendment, S. 6 would accomplish very little. The partial birth abortion ban concentrates on banning only one procedure, it does nothing to stop late-term abortions. What possible good is accomplished by bringing this very heart-wrenching subject before the Congress and the American people, only to pass a bill that does not affect abortions? As written, this bill is simply an opportunity for people to congratulate themselves on having done something important, when in fact they have accomplished nothing. If we pass S. 6 unamended, it would be like outlawing armed robbery with an Uzi, but allowing criminals to hold you up with a handgun. The American people will see through this facade and be even more disillusioned with this institution and its members.

Maybe the most significant advantage of the Snowe-Daschle amendment is that it can be passed, signed by the President and will meet constitutional scrutiny. The bipartisan approach of this amendment is our best chance to address post-viability abortions, while also preserving our understanding of liberty in the 25 years since Roe versus Wade.

I would be remiss if I did not add that when the government acts to restrict abortions, as is its right in certain circumstances, it has an increased obligation to make the choice to support life more compelling. We cannot on one hand require women to forego the option of abortion and at the same time undermine all the programs that support a woman as she struggles to bring a child into the world. Since the Roe decision, a number of steps have been taken to make abortion safer and more accessible. We need to act affirmatively to make abortion more rare and less necessary. We can do that by vigorously supporting pregnancy prevention strategies that would minimize or preclude the need for abortion.

A key component of this effort must be adoption. This Nation needs to make adoption more affordable through tax credits and Congress should work to implement State and Federal laws and regulations that encourage families to build through adoption.

We must continue to reform our foster-care system to make permanent placement for children a reality and a loving family for every child an achievable goal.

We should invest more in prenatal care and health insurance for our children so that young mothers deliver healthy babies, taxpayers save money, and children have a real chance at a decent life.

We ought to concentrate on effective pregnancy prevention efforts in our schools. Our children need to understand the serious ramifications of sex outside of marriage so that we are faced with fewer unplanned pregnancies. We have had years of experience with sex education programs in

this country. We should, state-by-state, replicate those successful programs nationwide.

It is important that we in the Congress and in this Chamber understand that a commitment to life means more than just talk. In a time of tight budgets, the true test of peoples' priorities is where they are willing to commit scarce resources. We can all agree that we should make every effort to preserve human life. However, it is a hollow promise to bring life into the world and then abandon it when it arrives. If life is a priority for this Congress, we should reflect it by making our policies and pocketbooks available to nurture young lives.

Mr. President, the debate surrounding late-term abortions has been a valuable opportunity for the American people to take stock of what we mean by liberty. I believe that the Snowe-Daschle amendment is an excellent reflection of what our experience has taught us since Roe. It restores a balance to our national dialogue about abortion and premises it upon the clear standard of viability. I urge my colleagues to support this amendment.

Thank you very much.

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

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, first, I would like to compliment my colleague from Pennsylvania, Senator SANTORUM, in addition Senator SMITH of New Hampshire, who brought this issue to the floor of the Senate last Congress and maybe educated everybody in the Congress and maybe in the country about this very gruesome procedure which, unfortunately, happens all too many times. The President said it doesn't happen very many times. But now we found out it happens thousands of times. In one clinic in New Jersey it happened 1,500 times.

So I compliment my colleagues from Pennsylvania and from New Hampshire, and also Senator DEWINE and Senator FRIST, who spoke very eloquently about this issue. It is not an easy issue. It is not one that I think a lot of us look forward to debating.

Mr. President, I speak on this issue on occasion. Again, it is not one that I particularly like to speak on. Maybe I did it for a lot of reasons. Somebody said, ''Why does Congress always have debates on abortion?''

I think part of the premise goes back to the fact that the Supreme Court legalized abortion. They legalized abortion in the Roe versus Wade decision. Everybody acknowledges that. I have a problem any time the Supreme Court legalizes or legislates in any area. I look at the Constitution. Article I says Congress shall pass all laws—Congress being comprised of the House and the Senate, elected bodies.

People have a choice. If they don't like the laws we pass, they can change Members of Congress.

In 1973, the Supreme Court legalized abortion. They overturned laws in almost every State that had some restrictions dealing with abortion and basically decided by trimesters what was legal and what was not legal. I object to that process.

Colleagues who really think that we should legalize abortion or preempt all State laws, or some State laws, should introduce such legislation, and, if they have the votes, they can codify Roe versus Wade, or they can change it. But they should do it through legislative process not do it through a nonelected judicial process of the Supreme Court.

So I object to the Supreme Court legislating. I think that they have done a pretty crummy job in their legislating.

Our colleagues are aware of the fact—because we had this debate last year and now we have this debate before us today—that there is a procedure called partial-birth abortions where the baby is almost totally delivered, yet its head is held inside, scissors are inserted into the baby's head, and the brains are sucked out. Then the dead baby is delivered.

We are trying to ban that procedure. Senator DASCHLE has an amendment. I looked at the headline. It says: ''Daschle Abortion Ban Spares 'Viable' fetuses.''

If I believed that headline, I would support the amendment. But I look at the amendment. What does it do? In the first place, it is a substitute. If it was in addition to the language before us, maybe we would have something to talk about. But it isn't. It is a substitute. It strikes the language.

If you look at the language of the amendment, it strikes all of the prohibition on banning partial-birth abortions and says let's insert the following.

So it totally eliminates the bill that has already passed the House of Representatives by an over two-thirds vote, and a bill that we voted on last year when we had overwhelming support. We didn't have two-thirds. It strikes that, and says let's start over.

We just saw the language today. It was just inserted today. We have not had enough time to totally review it. But I have read it. I have some problems with it.

If the real purpose of it is to spare viable fetuses, I am going to support it. But I don't think that is the case. I want to go into the language and maybe point out what I think is deficient in the language and then tell my colleagues and my friend, the minority leader, that I will be happy to work with him. Maybe we can come up with language that would accomplish the objective of sparing viable fetuses. I will work with any Senator to try to do that. I will be happy to. But I don't think the language that we have in front of us today does that. I will go into a statement to illustrate it.

Mr. President, the amendment that we have before us includes the health exception that is said to be ''stricter than the Republican measure,'' what it says on the headline. But, in reality, the exception contained in this amendment is no exception at all, but a large hole, a large protection for late-term abortions.

The proposal is—as George Will accurately characterized it in his April 24, 1997, column—''a law that is impossible to violate.''

That's one reason this amendment has been termed by critics ''the abortionist empowerment clause.''

While this amendment claims to protect viable unborn children from abortion, a closer look shows that it provides no protection at all.

The amendment would make it ''unlawful for a physician to abort a viable fetus. * * *''

Who determines whether a particular fetus is viable?

There is no definition of ''viability'' in federal law. Nor does this amendment define ''viability.''

The prevailing standard of viability in federal law was set by the Supreme Court in Planned Parenthood of Central Missouri versus Danforth. In that case, the Court held:

The determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician.

In other words, the person who performs the abortion decides whether the baby he or she is aborting is viable. This is the standard that governs the Daschle amendment.

The abortionist decides whether the baby is viable. The abortionist doesn't even have to certify his decision. Unless he voluntarily says to a U.S. attorney that the baby he aborted is viable, no civil penalty can be brought against him.

Let's say that an abortionist tells a U.S. attorney that he has aborted a viable baby. In order to avoid civil action, the abortionist need only ''certif[y] that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.''

To whom does the physician certify? Does he file a certification with the Justice Department? With HHS? With the state licensing authority? With a notation in the patient's file? The amendment doesn't say.

When does the physician certify? Before he performs the abortion? After he performs the abortion? After he is called into question for having performed the abortion? The amendment doesn't say.

It merely says that by ''certifying,'' he avoids civil action for having aborted a viable infant, and it leaves it to the Secretary of HHS to develop regulations defining what the certification entails.

A physician who aborts a viable child must certify that ''the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.''

While the amendment defines ''grievous injury,'' it does not define ''risk.''

The risk of continuing a particular pregnancy may be small, but that is irrelevant under the Daschle amendment.

The risk of carrying a pregnancy to term may carry less risk in a particular case than the risk of terminating the pregnancy, but that doesn't matter under the Daschle amendment.

The only relevant question is ''does the abortionist believe that the ''continuation of the pregnancy'' poses any risk of ''grievous injury?'' Since every pregnancy poses at least some risk, an abortionist can justify any abortion under the Daschle amendment.

The Daschle amendment states that a physician must certify—under penalty of perjury—''that, in his or her best medical judgment, the abortion involved was medically necessary.''

Unfortunately, as with other provisions of this amendment, the perjury penalty is very difficult, if not impossible, to enforce.

The abortionist only has to sign a paper that asserts that ''in his or her best medical judgment,'' the abortionist believes that ''the continuation of the pregnancy would . . . . risk grievous injury to her physical health.''

The certification is based not on objective medical facts but on the abortionist's subjective judgment.

If the certification by an abortionist was challenged in an action for perjury, the question before the court would not be about medical facts but on whether the physician believed that he had exercised his best medical judgment. Impossible, impossible to bring a conviction.

I think that every abortionist would certify he had exercised his best judgment when he aborted a baby, whether viable or no. For example, Dr. Warren Hern, who performs third-trimester abortions in Colorado, said of this amendment: ''I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.'' So long as Dr. Hern says he used his best medical judgment in making these certifications, he could not be prosecuted for perjury under this amendment. So this amendment, in my opinion, would be ineffective, totally ineffective in protecting viable unborn infants.

Mr. President, I ask the sponsor if I can have an additional 2 minutes.

Mr. SANTORUM. I yield 2 minutes to the Senator.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. NICKLES. Mr. President, we have to ask the question Senator SMITH asked us: Why kill a viable baby? That is another aspect of this amendment that troubles me a lot. The amendment allows for the destruction of viable unborn children.

A group of physicians headed by my colleague from Oklahoma, Dr. TOM COBURN, and the Physicians' Ad Hoc Coalition for Truth, states that it is ''never medically necessary, in order to protect a woman's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester of pregnancy.'' He is an obstetrician. He has delivered hundreds, thousands of babies. I have not. But he has made that statement. Dr. Koop has made that statement. I happen to give them credit. I think the child would like for us to give them that credit.

So the Daschle amendment would be ineffective in protecting viable unborn infants.

Mr. President, a big difference between the Daschle amendment and the amendment by the Senator from California that was defeated earlier today is that the Daschle amendment does not include a ''mental health'' exception.

The distinguished Democratic leader, in speaking with the press earlier this week, said that his amendment does not contain ''a simple mental health loophole.''

But he then added, ''It's my understanding based upon an extraordinary number of conversations and consultations that mental problems ultimately, in situations involving pregnancy and abortion, evidence themselves physically.''

Thus, while the amendment does not contain a simple mental health loophole, the author of the amendment believes that mental illness can have physical manifestations that would possibly justify late-term abortions.

The Daschle amendment would not eliminate the vast majority of all partial-birth abortions.

Ron Fitzsimmons, the executive director of the National Coalition for Abortion Providers admitted he lied about the frequency and necessity of partial-birth procedures.

He told the American Medical News that the vast majority of partial-birth abortion are performed in the 20-plus week range on healthy fetuses and healthy mothers. ''The abortion rights folks know it, the anti-abortion folks know it, and so, probably, does everyone else.''

Yet this amendment would permit most partial-birth abortions since they are usually performed during the 2d trimester of pregnancy.

The amendment prohibits abortions of viable infants unless there is a risk of grievous injury to the mother's life or health.

Abortionists who violate this law are subject to fines and suspension of their medical licenses. No provision is made for any review of the physician's certification or the medical basis for it.

Unfortunately, since the abortionist determines the health of the mother and the viability of the baby, no punishment would result no matter what the evidence.

In order for someone to be prosecuted under this amendment they would have to voluntarily report that the child they had aborted was viable and that the abortion they had performed was not medically necessary.

Does anyone imagine a physician would ever volunteer for such a penalty?

It would be as if we allowed each driver to decide whether or not he or she was speeding. The only people who would receive speeding tickets would be those who voluntarily reported to the police that they had exceeded the speed limit.

Self-enforcement is no enforcement. And that is what the Daschle amendment would put in place.

I just conclude with the statement, Mr. President, this is a vitally important issue. I do not question the motives of my colleagues on the other side of this issue. I hope maybe we can come up with some type of a ban on aborting viable fetuses. But I believe this language in the first paragraph of the bill, language that says it shall be unlawful for a physician to abort a viable fetus when the physician makes that determination, unless the physician certifies—and he can do that, basically, by saying it is his best medical judgment that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health—any risk, every pregnancy has risk—I am afraid that this language is so riddled with loopholes that it would provide no protection whatsoever, that it would have no real impact whatsoever.

So I urge my colleagues to vote ''no'' on the Daschle amendment, to support the ban on partial-birth abortions, and then let us see if we cannot work together in the intervening couple of months, through the proper committees, have hearings, have suggestions from experts, health experts, and maybe we can refine language comparable to this to provide real protection for unborn children.

I ask unanimous consent an article by Charles Krauthammer, ''Saving the Mother? Nonsense,'' which is dated March 14, and also a letter from the Physicians' Ad Hoc Coalition for the Truth, be printed in the RECORD.

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

[From the Washington Post, Mar. 14, 1997]

SAVING THE MOTHER? NONSENSE

(By Charles Krauthammer)

Even by Washington standards, the debate on partial-birth abortion has been remarkably dishonest.

First, there were the phony facts spun by opponents of the ban on partial-birth abortion. For months, they had been claiming that this grotesque procedure occurs (1) very rarely, perhaps only 500 times a year in the United States, (2) only in cases of severe fetal abnormality, and (3) to save the life or the health of the mother.

These claims are false. The deception received enormous attention when Ron Fitzsimmons, an abortion-rights advocate, admitted that he had ''lied through his teeth'' in making up facts about the number of and rationale for partial-birth abortions.

The number of cases is many times higher—in the multiple thousands. And the majority of cases involve healthy mothers

aborting perfectly healthy babies. As a doctor at a New Jersey clinic that performs (by its own doctors' estimate) at least 1,500 partial-birth abortions a year told the Bergen record: ''Most are for elective, not medical, reasons: people who didn't realize, or didn't care, how far along they were.''

Yet when confronted with these falsehoods, pro-abortion advocates are aggressively unapologetic. Numbers are a ''tactic to distract Congress,'' charges Vicki Saporta, executive director of the National Abortion federation. ''The numbers don't matter.'' Well, sure, now that hers have been exposed as false and the new ones are inconvenient to her case.

Then, the defenders of partial-birth abortion—led by President Clinton—repaired to their fall-back position: the heart-tugging claim that they are merely protecting a small number of women who, in Clintons' words, would be ''eviscerated'' and their bodies ''ripped . . . to shreds and you could never have another baby'' if they did not have this procedure.

At his nationally televised press conference last Friday, Clinton explained why this is so: ''These women, among other things, cannot preserve the ability to have further children unless the enormity—the enormous size—of the baby's head is reduced before being extracted from their bodies.''

Dr. Clinton is presumably talking about hydrocephalus, a condition in which an excess of fluid on the baby's brain creates an enlarged skull that presumably would damage the mother's cervix and birth canal if delivered normally.

Clinton seems to think that unless you pull the baby out feet first leaving in just the head, jam a sharp scissors into the baby's skull to crack it open, suck out the brains, collapse the skull and deliver what is left—this is partial-birth abortion—you cannot preserve the future fertility of the mother.

This is utter nonsense. Clinton is either seriously misinformed or stunningly cynical. A cursory talk with obstetricians reveals that there are two routine procedures for delivering a hydrocephalic infant that involve none of this barbarity. One is simply to tap the excess (cerebral spinal) fluid (draw it out by means of a small tube while the baby is still in utero) to decompress (reduce) the skull to more normal size and deliver the baby alive. The other alternative is Caesarean section.

Clinton repeatedly insists that these women, including five he paraded at his ceremony vetoing the partial-birth abortion ban last year, had ''no choice'' but partial-birth abortion. Why, even the American College of Obstetricians and Gynecologists, which supports Clinton's veto, concedes that there are ''no circumstances under which this procedure would be the only option to save the life of the mother and preserve the health of the woman''—flatly contradicting Clinton.

Moreover, not only is the partial-birth procedure not the only option. It may be a riskier option than conventional methods of delivery.

It is not hard to understand that inserting a sharp scissors to penetrate the baby's brain and collapse her skull risks tearing the mother's uterus or cervix with either the instrument or bone fragments from the skull. Few laymen, however, are aware that partial-birth abortion is preceded by two days of inserting up to 25 dilators at one time into the mother's cervix to stretch it open. That in itself could very much compromise the cervix, leaving it permanently incompetent, unable to retain a baby in future pregnancies. In fact, one of the five women at Clinton's veto ceremony had five miscarriages after her partial-birth abortion.

Why do any partial-birth abortions, then? ''The only possible advantage of partial-birth abortion, if you can call it that,'' Dr. Curtis Cook, a specialist in high-risk obstetrics, observes mordantly, ''is that it guarantees a dead baby at time of delivery.''

Hyperbole? Dr. Martin Haskell, the country's leading partial-birth abortion practitioner, was asked (by American Medical News) why he didn't just dilate the woman's uterus a little bit more and allow a live baby to come out. Answer: ''The point is here you're attempting to do an abortion. . . not to see how do I manipulate the situation so that I get a live birth instead.''

We mustn't have that.

DASCHLE ABORTION PROPOSAL DOESN'T PASS MUSTER WITH MEDICAL PROFESSIONALS

ALEXANDRIA, VA.—The more than 600 doctors nationwide who make up the Physicians' Ad-hoc Coalition for Truth (PHACT) maintain that Sen. Daschle's recently announced legislative proposal regarding ''post-viability'' abortion will leave the practice of partial-birth abortion virtually untouched, and fails to address why late-term abortions are ever medically necessary.

PHACT agrees with Sen. Daschle that it is appropriate for Congress and the American people to consider when and under what circumstances the government may restrict access to any abortion procedure. Having the medical facts straight is a necessary part of this process.

It is never medically necessary, in order to protect a woman's life, health or future fertility, to deliberately kill an unborn child in the second or third trimester of pregnancy, and certainly not by mostly delivering the child before putting him or her to death. While it may become necessary, in the second or third trimester, to terminate a pregnancy because of maternal illness, abortion is never required. What is required is separation of the child from the mother, not the death of the child.

Senator Daschle would limit his legislation to third trimester or ''post-viability'' abortion. This would leave virtually untouched the practice of partial-birth abortions, since the vast majority of partial-birth abortions take place in the second trimester, several thousand times a year on mostly healthy mothers with healthy children.

If maternal conditions require the emptying of the womb post-viability, the standard would be to induce labor and deliver the child. By definition, the post-viable child delivered early is simply a premature baby. Senator Daschle's legislation never addresses the reason why it may ever be necessary to kill a premature baby, including those in the process of being born, in order to preserve the health of a woman.

At 21 weeks and after, abortion is far riskier to a woman's health than childbirth. According to the Alan Guttmacher Institute (affiliated with Planned Parenthood) the risk of maternal death at 21 weeks and after is actually twice as great for abortion as for childbirth. If the chief concern is to minimize health risks to women who show indications for a termination of pregnancy in the second or third trimester, then as the statistics show, termination by induction of labor and delivery is clearly preferable to abortion.

Nowhere does Senator Daschle every explain the need to kill a post-viable child in order to protect a woman's health. Medically, he cannot, for there is no medical reason, either in the second or third trimester of a pregnancy, to prefer killing the child to delivering the child.

The PRESIDING OFFICER (Mr. BENNETT). The Democratic leader is recognized.

Mr. DASCHLE. I yield the Senator from Connecticut 10 minutes.

Mr. LIEBERMAN. Mr. President, today the Senate once again returns to the morally perplexing question of abortion, a question which has not only divided the Senate and divided America, but I would say that it divides individual Senators and individual Americans. I must say, as I have listened to this debate today, I am proud to be serving here, as difficult as the question before us is, because of the thoughtful, sincere and civil way in which this debate has proceeded.

We have in front of us two responses to the problem of abortion: one that would prevent use of a specific medical procedure, intact dilation and extraction, which is used for abortion, and, a second that would prevent almost all abortions from being performed after viability. I believe that the second alternative, Senator DASCHLE's, more broadly and appropriately responds to the mix, the difficult mix, of moral and legal concerns at issue here, and, therefore, I will vote for Senator DASCHLE's amendment.

In Pope John Paul II's Encyclical Letter on the Value and Inviolability of Human Life, His Holiness writes that, ''The direct and voluntary killing of an innocent human being is always gravely immoral.'' I respect, with humility, the depth of the Pope's statement and the moral conviction of millions of Americans of all religions who recoil from abortion and believe that any abortion at any stage of pregnancy is a taking of life. The Pope's statement, and others by those who oppose all abortions regardless of how early in pregnancy are powerful expressions driven by deep convictions and high moral principles. I respect and value the sincerity and depth with which those convictions are held and expressed—certainly so by the Senator from Pennsylvania, who is the sponsor of the underlying proposal. In fact, I personally share many of those convictions.

But the question for me today—and each of us must decide this personally—remains the same as it was when I was called upon to pass public judgment during my time as a State senator in Connecticut in the 1970's after the Roe v. Wade decision was passed down: What is the appropriate place for my personal convictions about abortion, my personal conviction that potential life begins at conception, and, therefore, my personal conviction that all abortions are unacceptable? How do I relate that appropriately to my role as a lawmaker?

I struggled with this over and over again in the 1970's in the Connecticut State Senate. How does one, appropriately, as a lawmaker, balance the right of the mother to life, the right of the potential life to protection by the State, and the right of privacy of the woman, the right of the woman to choose, which is recognized by our courts?

These competing interests that exist throughout the pregnancy are what we in the Senate are called upon, each in our own way, to try to balance and resolve. Our role here, it seems to me, calls on us to resolve that competition in a way that respects and reflects our own convictions, our constituents', and finally our Constitution.

I was shaken, as I would imagine many Members of the Senate were, as the debate over this partial-birth-abortion ban went on, and it sent me back to the conflicts that I faced in the 1970's in the Connecticut State Senate because the partial-birth abortion, the intact dilation and extraction, is horrific; it is horrifying. Yet, the more I focused on it, the more I got concerned about the number of these abortions that are being performed—and as small as that number is—the number is unacceptable—the more I had to face my own personal conclusion that any abortion is unacceptable. Any abortion is horrific.

It brought me back to the question of what the role of a body of lawmakers is in reconciling the interests of the mother, the interests of the fetus, potential life, and in respecting the judgments of our courts. In the end, again today, I resolve that conflict with a sense of humility about my authority as one lawmaker, about my capacity, about my judgment in the face of the uniquely private personal judgment and right to choose that a woman has up until the point of viability of the fetus, when that right is equalized by the right of the fetus to be protected by the State.

The amendment in front of us, offered by the Senate Democratic leader, does, in fact, ban all abortions of viable fetuses, regardless of procedure, except where the physician certifies that continuation of the pregnancy threatens the mother's life or risks grievous injury to her physical health.

It was my honor to work with Senator DASCHLE, Senator SNOWE and many others in preparing this amendment. My personal conclusion, and here I speak as a lawyer, as a former attorney general, is that this amendment will, in fact, ban almost all postviability abortions that might otherwise be performed in this country.

The definition of the exception, particularly with the addition of the words ''physical health'' tied to ''grievous injury,'' is very narrow. Senator DASCHLE's amendment sets up a procedure where the Department of HHS, Health and Human Services will, in fact, promulgate regulations about certification, will require the doctor to file a certification with the Department.

What doctor, and there are only a few who perform postviability abortions, would certify inappropriately under the narrow definition in this law and risk losing his or her medical license? Tying the State's protection of the fetus to viability extends protection in a way that I do not believe we have before, to those fetuses that need all the assistance, postviability, that today's technology and medical science make available. It is a remarkable advance, if you will, for the pro-life movement in that regard.

As I read Senator DASCHLE's amendment, and I have spoken with him about this and he has spoken to this, it would prevent abortions of any fetus that could survive outside the mother's body with or without life support. I asked him this question, ''What about a fetus postviability that a test reveals is disabled or may have Down's syndrome, but yet can survive with life support outside the mother's body?'' Senator DASCHLE said quite clearly to me that is a viable fetus which could not be terminated under his amendment.

The term ''viability'' allows the protection of the law to move as medical science advances. When Roe v. Wade was handed down, fetuses under 28 or 29 weeks of gestation were not considered viable. Similarly, for many developmental and genetic defects that led to the death of a fetus or the inability to survive without the mother's bodily support, medicine has found ways to save those babies. Medical science has advanced, and with it, younger and sicker fetuses now are able to live. The term ''viability'' will allow the Government's responsibility to protect potential human life to move with medical science.

I want to pick up on something that the Senator from Oklahoma, Mr. NICKLES, said a short while ago. The truth is Senator DASCHLE, Senator SNOWE and the others who sponsored this amendment have reached common ground. I think he has established a common ground here that both pro-choice and pro-life Members of this Senate can support. I understand that many will not support it today because it is a substitute for the underlying legislation proposed by Senator SANTORUM, and the Daschle amendment clearly does not protect fetuses previability.

But if this amendment fails today, I believe that it is such an advance and provides such an opportunity for common ground that I hope Members of the Senate, regardless of their position on it, on this difficult and perplexing issue, will come together and help us on another day, if not today, pass this legislation.

I thank the Senate Democratic leader and his staff and all who have worked conscientiously on both sides of the aisle for the thoughtful, constructive approach which will save a lot of fetal life, if it is passed—if and when it is passed.

I thank the Chair.

I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I yield to the Senator from Tennessee, the only physician in the Senate.

The PRESIDING OFFICER. Senator from Tennessee.

Mr. FRIST. I rise in opposition to the Daschle amendment. I also want to congratulate him because I know he worked very, very, very hard with people around the country to fashion an amendment that would, as narrowly as possible, define ''health,'' which I really think this debate is balanced on, ''health of the mother.''

He has done his very, very best. But what he has tried is impossible. It has not been done in this bill. And I think it probably cannot be done, defining the ''health of the mother'' in such a narrow, narrow fashion.

His proposal is a substitution bill and, thus, that means he would put aside what the underlying bill does, and that is to ban the partial-birth abortion procedure, a procedure that we all know is brutal, that is vicious, that is a fringe procedure and that destroys life. We have heard very little today that this is not a vicious, brutal procedure.

Thus, I think the Daschle amendment attempts to shift the focus away from the underlying bill that is banning this vicious procedure, and I think it is not going to be accepted tonight. I urge opposition and voting against it because I think, even if you look at the substance of it, it does nothing—it does nothing—to decrease the number of abortions in this country. And I will come back and cite why.

No. 2, his bill, an amendment which is a substitution amendment, would still allow this vicious procedure to be performed if certain criteria are met.

This procedure should be outlawed. It should be banned. Again, we have seen the graphs and we have seen the charts.

Let me refer to the paper ''Dilation and Extraction for Late Second Trimester Abortion'' by Martin Haskell, presented at the National Abortion Federation, Risk Management Seminar, September 13, 1992. This describes the procedure in medical terms, not with charts, not with cartoons and not with all the other figures. Basically, we have gone through it before. This is a medical paper. But it says:

> When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity. The surgeon then applies firm traction to the instrument causing an inversion of the fetus . . . and pulls the extremity into the vagina. . . .
>
> With a lower extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities. . . .
>
> At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and ''hooks'' the shoulders of the fetus with the index and ring fingers (palm down). . . .
>
> While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt, curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

Reassessing the proper placement of the closed scissors tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening.

The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.

This is not somebody's description of the procedure.

Mr. President, I ask unanimous consent that it be printed in the RECORD in its entirety.

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

DILATION AND EXTRACTION FOR LATE SECOND TRIMESTER ABORTION

(By Martin Haskell, M.D.)

INTRODUCTION

The surgical method described in this paper differs from classic D&E in that it does not rely upon dismemberment to remove the fetus. Nor are inductions or infusions used to expel the intact fetus.

Rather, the surgeon grasps and removes a nearly intact fetus through an adequately dilated cervix. The author has coined the term Dilation and Extraction or D&X to distinguish it from dismemberment-type D&E's.

This procedure can be performed in a properly equipped physician's office under local anesthesia. It can be used successfully in patients 20–26 weeks in pregnancy.

The author has performed over 700 of these procedures with a low rate of complications.

D&E evolved as an alternative to induction or instillation methods for second trimester abortion in the mid 1970's. This happened in part because of lack of hospital facilities allowing second trimester abortions in some geographic areas, in part because surgeons needed a ''right now'' solution to complete suction abortions inadvertently started in the second trimester and in part to provide a means of early second trimester abortion to avoid necessary delays for instillation methods.[1] The North Carolina Conference in 1978 established D&E as the preferred method for early second trimester abortions in the U.S.[2, 3, 4]

Classic D&E is accomplished by dismembering the fetus inside the uterus with instruments and removing the pieces through an adequately dilated cervix.[5]

However, most surgeons find dismemberment at twenty weeks and beyond to be difficult due to the toughness of fetal tissues at this stage of development. Consequently, most late second trimester abortions are performed by an induction method.[6, 7, 8]

Two techniques of late second trimester D&E's have been described at previous NAF meetings. The first relies on sterile urea intra-amniotic infusion to cause fetal demise and lysis (or softening) of fetal tissues prior to surgery.[9]

The second technique is to rupture the membranes 24 hours prior to surgery and cut the umbilical cord. Fetal death and ensuing autolysis soften the tissues. There are attendant risks of infection with this method.

In summary, approaches to late second trimester D&E's rely upon some means to induce early fetal demise to soften the fetal tissues making dismemberment easier.

PATIENT SELECTION

The author routinely performs this procedure on all patients 20 through 24 weeks LMP with certain exceptions. The author performs the procedure on selected patients 25 through 26 weeks LMP.

The author refers for induction patients falling into the following categories: Previous C-section over 22 weeks; Obese patients (more than 20 pounds over large frame ideal weight); Twin pregnancy over 21 weeks; and Patients 26 weeks and over.

DESCRIPTION OF DILATION AND EXTRACTION METHOD

Dilation and extraction takes place over three days. In a nutshell, D&X can be described as follows: Dilation; More Dilation; Real-time ultrasound visualization; Version (as needed); Intact extraction; Fetal skull decompression; Removal; Clean-up; and Recovery.

Day 1—Dilation

The patient is evaluated with an ultrasound, hemoglobin and Rh. Hadlock scales are used to interpret all ultrasound measurements.

In the operating room, the cervix is prepped, anesthetized and dilated to 9–11 mm. Five, six or seven large Dilapan hydroscopic dilators are placed in the cervix. The patient goes home or to a motel overnight.

Day 2—More Dilation

The patient returns to the operating room where the previous day's Dilapan are removed. The cervix is scrubbed and anesthetized. Between 15 and 25 Dilapan are placed in the cervical canal. The patient returns home or to a motel overnight.

Day 3—The operation

The patient returns to the operating room where the previous day's Dilapan are removed. The surgical assistant administers 10 DU Pitocin intramuscularly. The cervix is scrubbed, anesthesized and grasped with a tenaculum. The membranes are ruptured, if they are not already.

The surgical assistant places an ultrasound probe on the patient's abdomen and scans the fetus, locating the lower extremities. This scan provides the surgeon information about the orientation of the fetus and approximate location of the lower extremities. The tranducer is then held in position over the lower extremities.

The surgeon introduces a large grasping forcep, such as a Bierer or Hern, through the vaginal and cervical canals into the corpus of the uterus. Based upon his knowledge of fetal orientation, he moves the tip of the instrument carefully towards the fetal lower extremities. When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity. The surgeon then applies firm traction to the instrument causing a version of the fetus (if necessary) and pulls the extremity into the vagina.

By observing the movement of the lower extremity and version of the fetus on the ultrasound screen, the surgeon is assured that his instrument has not inappropriately grasped a maternal structure.

With a lower extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities.

The skull lodges at the internal cervical os. Usually there is not enough dilation for it to pass through (The fetus is oriented dorsum or spine up.)

At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and ''hooks'' the shoulders of the fetus with the index and ring fingers (palm down). Next he slides the tip of the middle finger along the spine towards the skull while applying traction to the shoulders and lower extremities. (The middle finger lifts and pushes the anterior cervical lip out of the way.)

While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

Reassessing proper placement of the closed scissors tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening.

The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.

The surgeon finally removes the placenta with forceps and scrapes the uterine walls with a large Evans and a 14 mm suction curette. The procedure ends.

Recovery

Patients are observed a minimum of 2 hours following surgery. A pad check and vital signs are performed every 30 minutes. Patients with minimal bleeding after 30 minutes are encouraged to walk about the building or outside between checks.

Intravenous fluids, pitocin and antibiotics are available for the exceptional times they are needed.

ANESTHESIA

Lidocaine 1% with epinephrine administered intra-cervically is the standard anesthesia. Nitrous-oxide/oxygen analgesia is administered nasally as an adjunct. For the Dilapan insert and Dilapan change, 12cc's is used in 3 equidistant locations around the cervix. For the surgery, 24cc's is used at 6 equidistant spots.

Carbocaine 1% is substituted for lidocaine for patients who expressed lidocaine sensitivity.

MEDICATIONS

All patients not allergic to tetracycline analogues receive doxycycline 200 mgm by mouth daily for 3 days beginning Day 1.

Patients with any history of gonorrhea, chlamydia or pelvic inflammatory disease receive additional doxycycline, 100mgm by mouth twice daily for six additional days.

Patients allergic to tetracyclines are not given proplylactic antibiotics.

Ergotrate 0.2 mgm by mouth four times daily for three days is dispensed to each patient.

Pitocin 10 IU intramuscularly is administered upon removal of the Dilapan on Day 3.

Rhogam intramuscularly is provided to all Rh negative patients on Day 3.

Ibuprofen orally is provided liberally at a rate of 100 mgm per hour from Day 1 onward.

Patients with severe cramps with Dilapan dilation are provided Phenergan 25 mgm suppositories rectally every 4 hours as needed.

Rare patients require Synbalogos DC in order to sleep during Dilapan dilation.

Patients with a hemoglobin less than 10 g/dl prior to surgery receive packed red blood cell transfusions.

FOLLOW-UP

All patients are given a 24 hour physician's number to call in case of a problem or concern.

At least three attempts to contact each patient by phone one week after surgery are made by the office staff.

All patients are asked to return for check-up three weeks following their surgery.

THIRD TRIMESTER

The author is aware of one other surgeon who uses a conceptually similar technique.

*Footnotes to appear at end of article.

He adds additional changes of Dilapan and/or lamineria in the 48 hour dilation period. Coupled with other refinements and a slower operating time, he performs these procedures up to 32 weeks or more.[10]

SUMMARY

In conclusion Dilation and Extraction is an alternative method for achieving late mestar abortions to 26 weeks. It can be used in the third trimester.

Among its advantages are that it is a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia.

Among its disadvantages are that it requires a high degree of surgical skill and may not be appropriate for a few patients.

FOOTNOTES

[1]Cates, W. Jr., Schulz, K.F., Grimes D.A., et al: The Effects of Delay and Method of Choice of the Risk of Abortion Morbidity, Family Planning Perspectives, 9:266, 1977.

[2]Borell, U., Emberey, M.P., Bygdeman, M., et al: Midtrimester Abortion by Dilation and Evacuation (Letter) American Journal of Obstetrics and Gynecology, 131:232, 1978.

[3]Centers for Disease Control: Abortion Surveillance 1978, p. 30, November, 1980.

[4]Grimes, D.A. Cates, W. Jr., (Berger, G.S., et al, ed): Dilation and Evacuation, Second Trimester Abortion—Perspectives After a Decade of Experience, Boston, John Wright—PSG, 1981, p. 132.

[5]Ibid, p. 121–128.

[6]Ibid, p. 121.

[7]Kerenyi, T.D. (Bergen, G.S. et al, ed): Hypertonic Saline Instillation, Second Trimester Abortion—Perspectives After a Decade of Experience, Boston, John Wright—PSG, 1981, p. 79.

[8]Hanson, M.S. (Zatuchni, G.I. et al, ed): Midtrimester Abortion: Dilation and Extraction Preceded by Laminaria, Pregnancy Termination Procedures, Safety and New Developments, Hagerstown, Harper and Row, 1979, p. 192.

[9]Hern, W.M. Abortion Practice. Philadelphia, J.B. Lippincott, 1990, p. 127. 144–5.

[10]McMahon, J., personal communications, 1992.

Mr. FRIST. Mr. President, the American Medical Association has afforded to me a statement, because a number of people on both sides have mentioned the board of trustees report. The Senator from Louisiana just quoted it. Let me say that the trustee report that people have been referring to has not been approved, has not been approved by the American Medical Association.

It is OK for people to cite it, I would think, but it does not become AMA policy until it is approved by the house of delegates. And it has not yet been approved. It has not been sent to the house of delegates yet.

No. 2, it has been suggested that the AMA supports one side or the other. It was suggested earlier that the AMA is for the Daschle amendment. I quote the AMA in a press release released about 30 minutes ago. ''The report,''—meaning the board of trustees report—''does not directly address any pending legislation regarding 'partial-birth abortion.' The AMA does not support any legislative proposals at this time.'' So I think we need to make that very clear.

So the substitution bill—amendment really—addresses a whole different issue, not the procedure that we are here to ban, this vicious procedure.

But let us look at the piece of legislation that the Democratic leader has introduced. This is a real problem, a real fundamental problem. I do say this as a physician, as somebody who spent 4 years in medical school, somebody who is board trained. I have my boards in general surgery. We are talking about surgical procedures. I spent about 14 years in trauma centers. When we talk about trauma, we talk about the heart and pulmonary hypertension and we talk about other related diseases.

So I want to comment, with that as my background. And I have delivered babies. I am not an obstetrician, but I do want people to know I know a little bit about the medical literature. I want to comment on my view as a U.S. Senator, but also as a physician.

Basically, this bill says that: It shall be unlawful for a physician knowingly to perform an abortion after the fetus has become viable unless the physician certifies that the continuation of the pregnancy would threaten the mother's life—I think most people agree with everything so far—or risk grievous injury to her physical health. That is the problem. ''Grievous injury'' is not a medical term. It is not even accepted as a medical term. It is not in the medical dictionary. It is a term that was crafted, I think, by the Democratic leader to try to allay people's feelings.

It defines ''grievous injury'' as ''a severely debilitating disease.'' Well, again that sounds pretty good, but I can tell you what is a severely debilitating disease to one physician is not going to be the same to another. To me, in heart disease, a severely debilitating disease is when a patient is going to die in 3 months.

To other physicians, a severely debilitating disease would be maybe some heart attack. To me, that is not severely debilitating. But another physician thinks a heart attack is severely debilitating. Why? Because I am a heart transplant surgeon. The people I see are all, without intervention, going to die shortly.

My point is that ''severely debilitating disease'' depends on who the person is, who the physician is, what his or her experiences are.

Depression. Is that a severely debilitating disease?

Remember, 39 cases—Dr. McMahon in California has been cited earlier. There were 39 cases in which he did the procedure called or referred to as a partial-birth abortion. In 39 cases he did it for depression—he did it for depression. Is that a severely debilitating disease or is that a physical disease?

I can tell you today that if somebody is depressed, it is going to affect them physically. It might affect their heart rate. It is going to affect their attitude. They may not have any appetite. You cannot separate mental health from physical health, especially in a bill or statute like this. I cannot do it as a physician. I will guarantee you, other physicians cannot.

So to throw physical health in there to attempt to narrow this down does not work. It just does not work. We know that physical health influences mental health and mental health influences physical health. We do know that abortions are performed today for depression, for emotional reasons. And this bill has a huge loophole by this definition of ''grievous injury'' meaning ''severely debilitating disease.''

The only other definition of ''grievous injury'' in this amendment is ''impairment specifically caused by the pregnancy.''

I have done five heart transplants on cardiomyopathy, postcardiomyopathy people who I have transplanted. Those five women are alive. Their children are alive. Did their pregnancy cause the cardiomyopathy or the bad pumping heart that I had to replace? I do not know if it caused it or not, was associated with it. But it says for ''grievous injury,'' ''a severely debilitating disease or impairment specifically caused by the pregnancy.'' I have taken hearts out of people that I guess one could say was caused by the pregnancy. They had normal children. But I am a little hesitant to allow this loophole as well.

It comes down to supporting, I think, this whole big loophole. We know that in Doe versus Bolton in 1973, health is defined as ''all factors: physical, emotional, psychological, mental, the women's age relevant to the well-being of the patient.'' And that is the problem. The health can be anything you want it to be. It can be emotional health, physical health, mental health. And it is really hard to separate out the two. In fact, I would say it is impossible as a physician to separate physical from mental health. It is impossible to do.

I am a trauma surgeon. I am a heart surgeon, lung surgeon. I have my boards in cardiothoracic surgery and general surgery. But I am not an obstetrician. So I simply called my expert friends around and asked them a very specific question. Point blank, is there ever a time when it is necessary to destroy a viable fetus? Remember, a viable fetus is one that, at the point in time when you took it out of the womb, would live, would grow up, have a job, have a family. Do you ever destroy that opportunity? Is it ever necessary for the health of the mother, physical or otherwise, ever necessary for emotional reasons or financial reasons or social reasons, which all can be called health, but necessary for her physical health? And the answer—the answer—is a resounding ''No.''

So, while I support the Democratic leader's attempt to narrow the definition, it cannot be done. It is not done in this amendment, and I would contend that it cannot be done.

So I asked Dr. Koop—in fact, I have a letter from Dr. Koop. I ask unanimous consent to have it printed in the RECORD.

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

THE G. EVERETT KOOP
INSTITUTE AT DARTMOUTH,
Hanover, NH, May 13, 1997.

Hon. WILLIAM FRIST, MD,
U.S. Senate
Washington, DC.

DEAR BILL: It is never necessary to destroy a viable fetus in order to preserve the health of the mother. Although I can't think of an example, if it were deemed beneficial for the mother to be without the fetus, it could be delivered by induction or C-section. Abortion is truly more traumatic than either and exposes the mother to future problems with an incompetent cervix, miscarriage, and infertility.

Sincerely yours,
C. EVERETT KOOP, MD, ScD.

Mr. FRIST. This letter from Dr. Koop is dated May 13, 1997. It is a letter to me. It says the following:

DEAR BILL:

It is never necessary to destroy a viable fetus in order to preserve the health of the mother. Although I can't think of an example, if it were deemed beneficial for the mother to be without the fetus, it could be delivered by induction or C section. Abortion is truly more traumatic than either and exposes the mother to future problems with an incompetent cervix, miscarriage, and infertility.

Sincerely yours, C. Everett Koop.

The first sentence: ''It is never necessary to destroy a viable fetus in order to preserve the health of the mother.''

That is from Dr. Koop.

Steadman's Dictionary, the dictionary we use to define ''viable fetus'' denotes a fetus that is ''sufficiently developed to live outside the uterus.''

As a physician, I have tried to think of a circumstance where you can justify destroying that viable fetus. I cannot. Not only do we have alternatives, which we have—the delivery of a normal child.

So I asked a number of people, and my colleagues have said, no, they cannot think of a circumstance. So it seems to me to be pretty simple. When you have a viable fetus, once it is removed from the womb or leaves the womb, do you kill it? Do you allow it to progress to delivery? Or do you allow the pregnancy to continue throughout the entire 9 months? Remember, it is a viable child.

So, Mr. President, I think we see, as we step back, that we have an underlying bill that is brutal, vicious, that we need to ban—and that is the partial-birth abortion. The attempt today has been made to put that bill aside, put in a bill which basically cannot define the health of the mother, that leaves a huge loophole that I contend might even increase the number of abortions, because once you put in writing what this loophole is, everybody is going to say that the health of the mother is debilitating, is grievous. And once that is certified by a physician, all of a sudden you do the procedure. You can even do a partial-birth abortion, this vicious procedure, if you meet that certification criteria laid out in the bill.

Mr. President, I feel strongly—feel strongly—that we must defeat the Daschle proposal, that it does not address the underlying issue. I urge all of my colleagues to support and continue to support the ban on the partial-birth abortion.

Mr. DASCHLE. I yield 5 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. President.

Mr. President, I rise today as a cosponsor of the Daschle amendment that is before us. I want to take a minute to thank and applaud the Democratic leader for the amount of work that he has put into this very difficult and divisive issue, to try to find common ground that not only Members of the Senate can agree on but people across this country can find common sense in.

The majority of Americans do support Roe versus Wade and want to protect a woman's right to choose previability. The Daschle amendment does that. The vast majority of Americans want to ensure that if there is a healthy baby in a healthy woman, that that baby is born in this country, and the Daschle amendment does that.

The vast majority of Americans also want to ensure that, if a woman's life is at risk, she is not forced to keep a pregnancy and lose her life herself or have a grievous injury as a result of that. The Daschle bill protects a woman's health.

I know we have heard a lot of arguments about this. We have listened to this debate all day long. For my colleagues, I want us to remember this is not about choice or termination of unwanted pregnancy. This debate right now is about women's health.

The Santorum bill that is pending before the Senate today does not and will not end late-term, postviability abortions. As the Democratic leader has pointed out, there are other alternatives out there. What this bill does do is subject women to more dangerous procedures that could render them infertile. What the Santorum bill will do is forever eliminate the ability of a physician to take whatever steps are necessary to protect the health of his or her patient. If the Santorum legislation is enacted over the objections of the President, doctors who try to provide the best care possible for their patients will be arrested. I can tell my colleagues that I have more faith in a physician to make these decisions than I do in the U.S. Senate.

This debate is about the health of a woman. This is about women across this country and their ability to make sure that their health is protected. That is what the Daschle amendment does.

I listened to my colleagues time and again on this floor, come to the floor to say they are protecting women's health. We have had many debates about women's health, with many champions of women's health on this floor. I hope those Senators who so quickly rush to this floor to be those champions will be here to vote for the Daschle amendment.

I ask all of my colleagues to think of your wife or your daughter or your sister. If they are faced with a threatening, serious and grievous illness like cancer, would you not want their doctor to have every option available to save their life? We should remember this is about protecting the women.

I urge my colleagues to seriously think about the grievous consequences of the decision that this body is making today. I urge them to support the thoughtful, commonsense solution that Senator DASCHLE and others have put forward and to reject the Santorum bill.

I thank the Senator from South Dakota and yield my time back to him.

Mr. DASCHLE. Mr. President, I yield 5 minutes to the distinguished Senator from Connecticut.

Mr. President, I withdraw that request.

Mr. GRAMM. Go ahead, I might be enlightened.

Mr. DODD. Hope springs eternal.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I thank my colleague from Texas, and my Democratic leader, Senator DASCHLE, for yielding some time.

Mr. President, I have some brief remarks, and I begin by commending the Democratic leader, Senator DASCHLE, for offering what I think is a very thoughtful and reasonable substitute proposal before the Senate. I want to associate my remarks with those of my colleague from Connecticut, Senator LIEBERMAN, who spoke a few moments ago about the difficult decision that Congresses over the last quarter of a century have grappled with since the adoption of Roe versus Wade by the Supreme Court of the United States. It is never an easy issue.

Mr. President, let me also state at the outset that I have deep respect for those who have differing views on this issue. By and large, people in this body have held out a great deal of respect for those with opposing views on this issue. It is not easy. There are those who take the position except where the life of the mother is involved, abortion ought to be banned. I respect that view. I disagree with it. There are those who take the view that abortion ought to be allowed under any circumstance during pregnancy. I respect that view. I disagree with it.

What Senator DASCHLE has offered here today, I think, is a reasonable approach to dealing with the issue of postviability abortion. It does so by addressing concerns that have been raised over the years, putting aside the particular procedure which is the subject, of course, of the proposal being offered by our colleague from Pennsylvania. That is, it tries to limit and define the circumstances under which a fetus would be aborted in the postviability period.

I say with all due respect, obviously with the exception of one of our colleagues, none of us are physicians. We

are Senators. We are public figures. I have a great deal of hesitancy, Mr. President, to engage in debate and discussion on the floor of the U.S. Senate and to try to take on responsibilities where we lack expertise.

What the proposal of our colleague from Pennsylvania suggests is that we ban a particular procedure. I respect that but I do not feel in any way adequately prepared to be engaged in deciding whether or not certain medical procedures are adequate or inadequate. I note that the College of Obstetricians and Gynecologists, on behalf of some 38,000 physicians, has endorsed the Daschle proposal. I do not suggest that everyone has. I suspect there are those who disagree within the medical profession about abortion, just as physicians disagree about other medical issues, and just as there are those who are not physicians who have disagreements.

But I believe that Senator SNOWE and Senator DASCHLE, as I said, have offered a carefully crafted measure that will actually reduce the number of abortions performed in this country in the postviability period. I share the hope expressed by my colleague from Connecticut, Senator LIEBERMAN, a few moments ago. It appears there will not be enough votes to support the Daschle amendment. I hope that is not the case, but it may be such. I also hope that we will come to the point where this reasonable proposal becomes the position of the majority, if not unanimously, of Members of this body. There are those who have disagreed on this issue and will continue to do so, but if we can find common ground on this particular proposal where we would deal with the issue in a broader context than the issue of approaching this situation procedure by procedure by procedure by procedure, sitting here as a body trying to determine whether each and every one of those procedures is medically sound or proper or right.

The procedure of abortion itself, no matter how it is performed, can be described, of course, in the most brutal terms, and all of us understand that. It does not mean, necessarily, that you are going to ban all the procedures at any time except, of course, if you subscribe to the notion that abortion ought to be banned from conception.

So this proposal here, I think, does offer people of different views on this issue a chance to come together to do something in a positive and constructive way and deal with this issue in a much more generic way than the effort to do so on a procedure-by-procedure basis—an effort, by the way, that would not stop a single abortion.

Mr. President, regarding the issue of the health of the mother, when a woman and her fetus are both healthy and the fetus is able to survive outside the womb, we should not and do not permit abortion. Roe versus Wade and subsequent decisions do not permit abortion in these circumstances. The Senator from South Dakota's legislation does not permit abortion—by any method—in these circumstances. But, we also recognize that a woman's life and physical health, when either is seriously threatened, should be protected.

Tragically, that is sometimes the case when a woman is in the later stages of pregnancy. Thankfully, such instances are rare. But they do occur. And when they do, abortion is sometimes the only way to save the woman's life or preserve her health from grievous, lasting, physical damage. I cannot turn my back on women who, along with their husbands, desperately want the children with whom their are pregnant and then tragically find themselves with their physical health at grievous risk. Such cases should be excepted under a ban on post-viability abortions, and that is what the Daschle proposal does.

Some argue, Mr. President, that there are never health circumstances that would require partial-birth abortion. Others say that post-viability abortions are never necessary. Viable babies, they argue, can just be delivered. Mr. President, in those cases where the mother faces a serious health risk and a viable baby can still be delivered alive, it is. But sadly, that is not always the case. As the American College of Obstetricians and Gynecologists has explained, after viability, ''terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother.''

The Senator from South Dakota, along with the Senator from Maine, worked very, very hard to craft language here that would ban post-viability abortions except to deal with life endangerment or grievous, serious, physical conditions. That is an effort reached through serious consultation. I think all of our colleagues here, as the Senator from Tennessee indicated earlier, have deep appreciation for the time and effort that the Democratic leader has put into this effort. This was not legislation or wording crafted by staff here trying to come up with some words that would make all of us feel comfortable. Rather, the Senator from South Dakota went about the business of asking people all across this country who are knowledgeable to define language which they could support and could relate to. The fact that the College of Obstetricians and Gynecologists supports this language, I think, is a good indication that they feel comfortable that this would do what the Senator wants to do. They do not necessarily agree with what he wants to do, but they believe they can function as medical professionals and define clearly what must be done.

The fact there is a certification process here is important. The suggestion that this certification is somehow going to allow for widespread violation of the ban is, I think, mistaken. As the Senator from Connecticut, Senator LIEBERMAN, my colleague, pointed out, a certification process which would place in jeopardy the medical license of a physician has to be taken very, very seriously. I cannot believe that the overwhelming majority of doctors in this country, when considering whether or not circumstances existed which would warrant having a postviability abortion, would not want to know very, very carefully whether or not those circumstances were being met as dictated by the substitute of the Senator from South Dakota. I don't think any doctor would violate this ban when doing so would mean loss of his or her very livelihood.

I believe this is a real solution. I believe it would make a difference. I believe it would give this body an opportunity to really speak in a far broader and meaningful way on this issue that I think the Nation would applaud. There will be some who obviously disagree with this because they think it does not go far enough, others who think this goes way too far. But from my point of view, Mr. President, I think this strikes the reasonable balance and reflects where most people are on this issue. None feel terribly comfortable with this. I know of very few who enjoy any sense of comfort in discussing, or considering even, this issue.

So, today, we are given an opportunity to do something meaningful on this, not on a procedure-by-procedure basis, but to deal fundamentally with the issue of what and how a woman, her doctor and her family can act under the most serious and troublesome circumstances. I applaud the Senator from South Dakota for this effort. I support this effort. I hope my colleagues will do so, as well.

Mr. HATCH. Mr. President, I rise today to speak in support of H.R. 1122, the Partial Birth Abortion Ban Act of 1997.

I understand that many people on both sides of this issue have very strongly held beliefs. I respect those whose views differ from my own. And I condemn, as I know every other Member of this body does, the use of violence or any other illegal method to express any point of view on this issue. Unfortunately, Mr. President, it ought to be noted the expression of points of view on the issue of partial-birth abortion has been marked by half-truths and the knowing or reckless deception of the American people.

Let us be very clear about what is at issue in this legislation. Despite the rhetoric of the bill's more extreme opponents, it is not about the right of a woman who so chooses to have an abortion. H.R. 1122 does not address whether all abortions after a certain week of pregnancy should be banned, nor whether late-term abortions should be permitted only in certain circumstances. The Partial-Birth Abortion Ban Act of 1997 bans one, and only one, specific abortion procedure.

During a joint hearing of the Senate Judiciary Committee and the House Judiciary Subcommittee on the Constitution on partial birth abortions,

held March 11, 1997, Dr. Curtis Cook, a board-certified obstetrician/gynecologist and a subspecialist in maternal-fetal medicine, also known as high risk obstetrics, described the partial-birth abortion procedure as follows:

An instrument is then inserted into the uterus to grasp the leg of her living baby and drag it down into the cervix and into the vagina. The baby is then delivered up to the level of the after-coming head, before grasping the baby's chest and stabilizing the skull. The base of the skull is then punctured with a sharp instrument, and a suction instrument is then [placed into the hole] after it has been enlarged. The brain contents are then sucked out, thereby killing the fetus and collapsing the skull, allowing the infant to thereby deliver.

Only this inhumane procedure, which our colleague from New York, Senator MOYNIHAN, has described as ''close to infanticide,'' would be prohibited under this legislation.

The record in support of this legislation is long. At the March 1997 Senate-House joint hearing, we heard from 10 witnesses, including representatives of the major organizations on both sides of this issue and a medical doctor who specializes in maternal-fetal medicine. In November 1995, the Judiciary Committee held a comprehensive, 6½-hour hearing on the subject of partial-birth abortions. The committee heard from a total of 12 witnesses presenting a variety of perspectives on this issue, including a registered nurse who had worked as a temporary nurse for 3 days in the clinic of a doctor who performs this procedure and who testified as to her personal experience in observing the procedure, from four ob-gyn doctors, from an anesthesiologist, from an ethicist, from three women who had personal experience either with having or declining to have a late-term abortion, and from two law professors who discussed constitutional and legal issues raised by this legislation.

I find it difficult to comprehend how any reasonable person could examine the mountain of evidence and continue to defend the partial-birth abortion procedure. The indefensibility of this procedure is so evident, even to those who oppose this legislation, that, to date, few have tried to defend partial-birth abortions. Instead, abortion advocates embarked on what became a pattern of dissemblance and deception intended to make this procedure appear less barbaric and thus more palatable to the American people.

Even worse, opponents of the bill not only misrepresented the partial-birth abortion procedure—which is bad enough—but also spread potentially life-threatening misinformation concerning the effects of anesthesia on the fetus of a pregnant woman that could prove catastrophic to women's health. By falsely claiming that anesthesia kills the fetus, opponents spread misinformation that could deter pregnant women who might desperately need surgery from undergoing surgery for fear that anesthesia could kill or brain-damage their unborn child.

In a June 23, 1995 submission to the House Judiciary Constitution Subcommittee, the late Dr. James McMahon, one of two doctors who had, at the time, admitted performing partial-birth abortions, wrote that anesthesia given to the mother during the procedure caused fetal demise. In a so-called fact sheet circulated to Members of the House, Dr. Mary Campbell, medical director of Planned Parenthood who testified at the Judiciary Committee hearing, wrote: ''The fetus dies of an overdose of anesthesia given to the mother intravenously . . . [The anesthesia] induces brain death in a fetus in a matter of minutes. Fetal demise therefore occurs at the beginning of the procedure while the fetus is still in the womb.'' This claim was picked up and reported by the media, as in a November 5, 1995 editorial in USA Today which stated, ''The fetus dies from an overdose of anesthesia given to its mother.''

When Senator ABRAHAM referred to that statement during the medical panel at the 1995 Judiciary Committee hearing, the president of the American Society of Anesthesiologists, Dr. Norig Ellison, flatly responded, ''There is absolutely no basis in scientific fact for that statement.'' The American Society of Anesthesiologists had sought the opportunity to set the record straight and, although they did not take a position on the partial-birth abortion ban, to their credit they came forward out of concern for this harmful misinformation.

The March 1997 Senate-House hearing, appropriately entitled ''Partial Birth Abortion: The Truth,'' documented how the leaders of major pro-abortion groups repeated, over and over again, their false mantra that partial-birth abortions were extremely rare and performed only in exceptional circumstances. These charts contain a sampling of such statements. On this first chart, we have statements from the National Abortion and Reproductive Rights Action League, including one by Kate Michaelman, dated December 8, 1995, in which she stated ''These are rare procedures, performed under only the most compelling circumstances of life endangerment. . . .'' The next chart contains similar statements from Planned Parenthood of America, typified by a November 1, 1995 Planned Parenthood press release which states ''The procedure . . . is extremely rare and done only in cases when the woman's life is in danger or in cases of extreme fetal abnormality.'' As recently as February 25, 1997, the National Abortion Federation was spreading the false message, via its Internet web page, that ''[T]his particular procedure is used only in about 500 cases per year, generally after 20 weeks of pregnancy, and most often where there is a severe fetal anomaly or maternal health problems detected late in pregnancy.''

For a time, the pro-abortion lobby's campaign of misinformation, aided by a media which, as was demonstrated at the March 1997 hearing, all too often passively accepted false or inaccurate information from pro-abortion sources and reported it, unexamined, as news, succeeded in misleading the American people and their elected representatives about the horrible reality of partial-birth abortion. How many times during the Senate debate on this issue in the last Congress did we hear that such procedures were extremely rare and performed only to save the life of the mother in cases of severe fetal abnormalities?

One of the greatest strengths of our free society is that the truth usually manages to emerge into the light. And so it is with partial-birth abortions.

The recent admissions by Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, as reported in the American Medical Association's weekly newspaper, American Medical News, dated March 3, 1997, have finally broken through the abortion extremists' smokescreen of deception and confirmed what many already knew to be true, that Fitzsimmons, like others, had ''lied through my teeth'' when he said the partial-birth abortion procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged. As he himself admits, ''I just went out there and spouted the party line.''

The terrible truth is that this grisly procedure is, according to Fitzsimmons, used as many as three or four thousand times a year, with the vast majority of such abortions performed in the 20-plus week range on healthy fetuses and healthy mothers. As Fitzsimmons put it: ''You know they're primarily done on healthy women and healthy fetuses and it makes you feel like a dirty little abortionist with a dirty little secret.''

The truth is that partial-birth abortions are being performed on an elective basis, where the abortion is being performed for non-health related reasons on healthy fetuses and healthy mothers, and even though there are equally safe alternative abortion procedures available.

As Congress has considered this issue, and, in particular, as more and more members of the medical community have spoken out with respect to partial-birth abortion, it has become abundantly clear that there is no medical necessity or justification for the use of this inhumane procedure to protect either the life or the health of the mother. Indeed, partial-birth abortion can be harmful to a woman's health.

The absence of any medical justification for partial-birth abortion is now well-documented in the legislative records of the 104th and 105th Congresses. Several of my colleagues will discuss this particular issue in greater detail. Let me just quote former Surgeon General C. Everett Koop, who said in an interview in the American Medical News, that ''in no way can I twist my mind to see that the late-term abortion described—you know, partial

birth and then destruction of the unborn child before the head is born—is a medical necessity for the mother. It certainly can't be a necessity for the baby. So I am opposed to . . . partial-birth abortions.''

In addition, a group of over 400 obstetrician-gynecologists and maternal fetal specialists have unequivocally stated that ''partial-birth abortion is never medically necessary to protect a mother's health or future fertility.'' In fact, the opposite is true: The procedure ''can pose a significant threat to both her immediate health and future fertility.''

Let me address one important aspect of the debate over the Partial-Birth Abortion Ban Act; the argument raised by opponents of this bill that it would violate the right of women to obtain abortions and is therefore unconstitutional under Roe versus Wade.

The constitutional arguments raised in opposition to the Partial-Birth Abortion Ban Act reflect a fundamental misunderstanding of constitutional principles and of the Supreme Court's abortion jurisprudence. This is not only my view, but the view of numerous respected constitutional scholars at our Nation's finest law schools, including Douglas Kmiec of the Notre Dame Law School, Michael McConnell of the University of Utah College of Law, and of other authorities on constitutional law, such as William Barr, former Attorney General of the United States. Congress can constitutionally, and should morally, prohibit the particular, inhumane abortion procedure addressed by this legislation.

Banning partial-birth abortions does not violate the Supreme Court's holding in Roe versus Wade, or any of the Court's other abortion decisions. I differ strongly with the Court's ruling in Roe, and believe the jurisprudence willed by the Court was fundamentally flawed. Nevertheless, I recognize that Roe is the law, and that we should endeavor to craft legislation that is consistent with its progeny.

While the Court in Roe did hold that the word ''person,'' as used in the 14th amendment, does not include the ''unborn,'' it has never addressed the constitutional status of those who are in the process of ''being born,'' and there is no controlling legal authority on this precise issue. Indeed, the Supreme Court specifically noted in its decision that the plaintiffs in Roe did not challenge the constitutionality of the Texas statute which prohibited killing of a child during the birth process.

The child involved in a partial-birth abortion is unquestionably one in the process of being born. The statutory definition of partial-birth abortion contained in H.R. 1122 is clear and precise: ''the term partial-birth abortion means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.''

Because of the timing in the birth process at which this particular type of abortion is performed, when the fetus is literally just inches away from birth, these fetuses may actually qualify as persons under the Constitution as interpreted by the Court in Roe and its progeny, entitled to all of the protections of law that all other American citizens enjoy. The Supreme Court's decision in Roe makes clear that the Court did not even consider—let alone decide—whether partial-birth abortion could be prohibited. Congress is, therefore, free to address and decide this issue on its merits, and to pass a statute protecting such partially born children.

Even if one believes that a partially born child is not a person under the 14th amendment, Supreme Court jurisprudence on abortion, principally articulated in Planned Parenthood of Southeastern Pennsylvania versus Casey, fully permits Congress to ban partial-birth abortions.

While the Supreme Court in Roe versus Wade established a right for a woman to choose to have an abortion, the Court explicitly rejected the argument that the right to an abortion is absolute, and that a woman is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses.

In Planned Parenthood versus Casey, the Court established a bifurcated approach to determine whether an abortion statute is constitutional, drawing a line at fetal viability. In reviewing a statute regulating abortion, a court must first determine whether the statute imposes an undue burden on the mother's right to choose to have an abortion. If the statute does not impose an undue burden on the mother, the court must then determine whether the statute reasonably relates to a legitimate governmental purpose. Once the fetus is viable, the Government can prohibit abortion.

Under Casey, pre-viability regulation of abortion is constitutional so long as it does not constitute an undue burden on the abortion liberty. The essence of the undue burden test is whether the law, on its face, places a substantial obstacle on the woman's liberty interest that effectively deprives her of the right to make the ultimate decision of whether or not to have an abortion. Writing for the Court, Justice O'Connor wrote:

> A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. . . . What is at stake is the woman's right to make the ultimate decision, not a right to be insulated from all others in doing so. . . .''

A prohibition on partial-birth abortions would not unduly burden a woman's right to have an abortion even in pre-viability cases. Just as the right to have an abortion first recognized in Roe versus Wade did not guarantee a right to ''abortion on demand,'' so, too, the undue burden test adopted in Casey does not guarantee an absolute, unrestricted right to have an abortion at the request of a woman under any and all circumstances.

H.R. 1122's ban on partial-birth abortions clearly passes muster under the Casey undue burden standard. The record before Congress establishes that there are several safe, standard abortion techniques for providing abortions other than the partial-birth procedure. Congress's fact finding is entitled to considerable respect and deference from the courts. H.R. 1122 does not prevent a woman from having an abortion, nor does it force a woman to undergo an unacceptably dangerous or painful medical procedure. H.R. 1122 merely bars a physician from performing an abortion in one particular manner. It has neither the purpose nor effect of prohibiting or restricting abortions other than those performed by the partial-birth procedure, and leaves in place alternative methods of abortion. It thus would not constitute an undue burden on a woman's right to choose to have an abortion.

Since banning partial-birth abortions does not place an undue burden on a mother's right to choose to have an abortion, H.R. 1122 will be upheld as constitutional if it is reasonably related to a legitimate government interest. The Supreme Court has recognized many legitimate—and even compelling—interests that may justify abortion statutes such as this.

In Roe itself, the Court acknowledged the government's legitimate interest in safeguarding health, maintaining medical standards and in protecting potential life. The Court has also recognized as legitimate interests: protecting immature minors, promoting general health, promoting family integrity, and encouraging childbirth over abortion.

In addition, this act serves the legitimate government interest of protecting human life, that of the child who is otherwise killed after being partially delivered from his mother's womb. Partial-birth abortion would be criminal infanticide but for a mere three inches. Banning this procedure would protect children from being killed during the delivery process.

The act also serves the interests of protecting the dignity of human life and preventing cruel and inhumane treatment. The partial-birth procedure is a particularly heinous method of abortion, one that inflicts excruciating pain on the child. No one would question a statute prohibiting the treatment of animals in such a manner. In fact, we have laws and regulations preventing harsh and painful treatment of laboratory animals in government research projects. Surely the government has a legitimate interest in extending at least the same level of protection to living children in their last seconds before birth.

Mr. President, when Ron Fitzsimmons finally came forward to confirm the truth about the terrible procedure called partial-birth abortion, there was one more thing he said which

bears remembering. He reminded us that women who enter abortion clinics do so to kill their unborn children. He said that abortion is ''a form of killing . . . You're ending a life.''

And that, Mr. President, is the ultimate truth which should be remembered by each Senator, and by each American, during this debate. We are deciding whether this nation will continue to permit partially born children, children just three inches away from life, thousands of children each and every year, mainly healthy children from healthy mothers, to be killed in a particularly painful, dangerous, inhumane and medically unjustified and unnecessary manner.

We now know the truth about partial-birth abortions. The question is whether we will have the courage to do what I believe each member of the Senate knows, in his or her heart, to be the right, the moral, thing. With respect to this one terrible and unnecessary procedure, let us finally say, as a nation, enough. Here, on the edge of infanticide, is the line that we will not cross. I urge my colleagues to vote to pass H.R. 1122.

Mrs. BOXER. Mr. President, The Daschle amendment narrows the definition of health to such a degree that in practice it would lead to physical and mental harm to women in emergency situations.

I believe the amendment is inconsistent with Supreme Court decisions on this issue.

At this time, I ask unanimous consent that excerpts from a letter by Prof. Laurence Tribe, of Harvard University Law School, be printed in the RECORD. These excerpts outline in some detail my concerns.

The Feinstein-Boxer-Braun alternative essentially codifies Roe versus Wade and offers a clear alternative to H.R. 1122, which would cause grave harm to women.

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

The upshot is that the Daschle language would criminalize at least three categories of post-viability abortions that, under *Roe* and *Casey*, may not be prohibited.

First, abortions that are regarded by the woman and her physician as necessary to avoid medically diagnosable injury to mental health, including suicidal depression that might result from having to carry to term a fetus so severely deformed (as in a case of anencephaly, for instance) that it would be born only to die hours later after a brief and painful life;

Second, abortions that are required because, in the judgment of the woman and her physician, continuing the pregnancy would seriously and permanently threaten the woman's physical and/or mental health but not by bringing about what the physician could certify is a ''severely debilitating disease or impairment specifically caused by the pregnancy;''

Third, and to some degree encompassed within the second point above, abortions that are medically required because continuing the pregnancy would preclude the provision of necessary treatment for a condition that, although not life-threatening, would indeed amount to a ''severely debilitating impairment''—such as, for instance, permanent inability to bear children in the future, or permanent impairment of some important bodily capacity or function such as e.g., vision—but not an impairment that is ''specially caused by the pregnancy.''

Mr. REED. Mr. President, I rise in support of the Feinstein and Daschle amendments and in opposition to H.R. 1122.

The decision to proceed with a potentially lethal pregnancy or one that would endanger the future health of the mother should rest with a woman and her doctor. As a general principle, the Government's role in such a difficult decision should be secondary to that of the woman who must inevitably come to terms with her own personal moral, religious, and philosophical beliefs.

H.R. 1122 supersedes the medical judgment of trained physicians and criminalizes medical procedures that may be necessary to preserve the life and health of the woman. Indeed, it seeks to restrictively and coercively dictate what constitutes appropriate medical practice.

Furthermore, H.R. 1122 does not provide an exception for the health of the mother, thus rejecting the constitutional standard governing postviability abortions set forth in the Supreme Court's decision in Roe versus Wade. Let us make no mistake, Roe versus Wade does not allow a healthy mother of a healthy fetus to have a postviability abortion.

During this emotionally charged debate, it is important to keep in mind those unfortunate women who have faced unpredictable, tragic, and life-threatening pregnancies. For instance, two women who endured such grave circumstances shared their stories recently before a joint House-Senate Judiciary Committee hearing. They testified to the heart-wrenching circumstances surrounding their decision—a decision that would have been illegal under this legislation. We have heard these and other equally compelling stories shared by many of my colleagues during this debate today.

The amendments offered by Senator FEINSTEIN and Senator DASCHLE, however, both take into consideration the woman's life and health. The Feinstein amendment bans all postviability abortions, except those necessary to preserve the life of the woman or to avert serious adverse health consequences. The Daschle amendment also bans all postviability abortion, but makes an exception for those necessary to save the mother's life or to protect her from grievous injury to her physical health. I will support these amendments because their sponsors seek to preserve the core principles of Roe versus Wade.

Of these two amendments, the Feinstein approach is preferable to meet the tragic and trying circumstances of women facing this agonizing decision. I am concerned that the Daschle amendment may not ensure appropriate medical options for all the possible health-related difficulties faced by some women. If it is the true intention of H.R. 1122's proponents to address late term abortions, I would urge my colleagues to support the Feinstein and Daschle amendments which accords with the Supreme Court's decisions in this area and have been endorsed by the President.

Mr. President, the debate on the issue of abortion involves profound questions. Questions of a moral, personal, and religious nature. I do not personally favor abortion. However, my duty as a Senator is to uphold the Constitution and ensure that the power of the State is not used to compel citizens in a manner which contradicts an individual's protected religious and moral beliefs.

Mr. MURKOWSKI. Mr. President, in March, the House of Representatives—in a bipartisan manner—overwhelmingly voted 295–136 to end the horrible procedure known as partial birth abortion. That strong endorsement for the ban came in the wake of a confession by a prominent proponent of abortion who admitted that he lied through his teeth when he said that partial birth abortions were very rare and only performed in the most dire of circumstances.

On February 27, 1997, Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, an association of over 200 abortion providers, recanted his earlier statements that partial birth abortions were used only in extreme medical circumstances. Fitzsimmons admitted that: In actuality, 5,000 partial birth abortions are performed every year as an elective procedure on a healthy mother with a healthy fetus that is 20 weeks or more along.

Fitzsimmons justified his lie by saying that he just went out there and spouted the party line. The party line Fitzsimmons referred to, of course, is the party line agreed on among the Washington-based pro-abortion groups.

Unfortunately, President Clinton justified his veto of this ban by spouting the same party line lies—that this procedure is medically necessary in certain compelling cases to protect the mother.

Mr. President, here is the truth about partial birth abortions:

According to reputable medical testimony given before this Congress by partial birth abortion practitioners, partial birth abortions occur as many as 5,000 times a year. They are used predominantly for elective purposes and are seldom necessary to safeguard the mother's health or fertility.

Former Surgeon General C. Everett Koop confirmed that President Clinton was misled by his medical advisors and stated that ''In no way can I twist my mind to see that the late-term abortion as described as partial birth is a medical necessity for the mother.''

Other physicians agree: In a September 19, 1996, Wall Street Journal editorial, three obstetricians declared

that ''contrary to what abortion activists would have us believe, partial birth abortion is never medically indicated to protect a woman's health or her fertility.''

Here's another truth: Partial birth abortions are violent. The procedure is one in which four-fifths of the child is delivered before the abhorrent process of killing the child begins. Sadly, throughout this procedure, the majority of babies are alive and may actually feel pain during this ordeal. Ms. Brenda Schaffer, a nurse who observed the procedure, made this moving statement before a congressional committee:

The baby's little fingers were clasping and unclasping, and his little feet were kicking. Then the doctor stuck the scissors in the back of his head, and the baby's arms jerked out, like a startle reaction, like a flinch, like a baby does when he thinks he is going to fall.

The doctor opened up the scissors, stuck a high-powered suction tube into the opening, and sucked the baby's brains out. Now the baby went completely limp.

Mr. President, it's not easy to discuss this topic, but unfortunately, those are the stark and brutal realities of a partial birth abortion. My good friend and colleague Senator MOYNIHAN declared that the practice of partial birth abortions is ''just too close to infanticide.''

Mr. President, the vote today is not an issue of pro-life or pro-choice—it's an issue of putting an end to an inhumane procedure. This infant is within inches from being declared a legal person in every State of the Union. The time has come for this body to legally protect that person.

During the last Congress, a ban on partial birth abortion failed because of misinformation. This year, may the truth prevail. As we in Congress and the President finally hear the truth about this procedure—that it cannot be defended medically nor morally.

I ask my colleagues to look into their consciences to make the right decision: To ban this painful, unnecessary, and morally offensive procedure of terminating the life of a viable child.

Mrs. FEINSTEIN. Mr. President, consistent with my remarks made both on the 14th and today, it will be my intention to vote against the Daschle substitute amendment to H.R. 1122.

I made the argument that I believe both H.R. 1122 as well as the Daschle substitute are unconstitutional.

With respect to the Daschle amendment, my reading of it indicates that, even if a severely, horribly deformed fetus were capable of only 1 hour of life outside the womb, a woman would be forced to carry that pregnancy to full term and deliver that child, without consideration of what may be severely debilitating consequences to her health.

For me that is not enlightened public policy, and I cannot support it.

Additionally, I ask unanimous consent to have printed in the RECORD a letter to me from Laurence Tribe, professor of constitutional law at Harvard University, which more definitively spells out the constitutional vulnerability of the Daschle amendment.

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

HARVARD UNIVERSITY LAW SCHOOL,
Cambridge, MA, May 15, 1997.

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

DEAR SENATOR FEINSTEIN: I've been surprised to learn that some people are evidently confused about whether the health exception contained in Senator Daschle's proposed legislation complies with the constitutional requirements set forth in Roe and Casey. You've asked me to put in writing my explanation of why the Daschle exception is constitutionally insufficient, and I'm glad to do so.

Both Roe and Casey unambiguously hold that a state may not prohibit any post-viability abortion that is ''necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'' The Daschle language would forbid abortion of a viable fetus unless the physician certifies that continuing the pregnancy ''would threaten the mother's life or risk grievous injury to her physical health,'' and goes on to explain that even this narrowed health exception—which impermissibly excludes medically diagnosable risks, however severe, to the woman's mental health and which requires the physician to certify that the physical injury to the woman would be ''grievous''—is inapplicable unless the ''severely debilitating disease or impairment'' that the physician believes requires termination of pregnancy is ''specifically caused by the pregnancy.'' Thus, although a pregnancy may be terminated without violating Daschle if its continuation would cause what the proposed statute calls ''an inability to provide necessary treatment for a life-threatening condition,'' a pregnancy may not be terminated without violating Daschle if its continuation would cause only an inability to provide necessary treatment for a severely debilitating but not life-threatening condition.

The upshot is that the Daschle language would criminalize at least three categories of post-viability abortions that, under Roe and Casey, may not be prohibited:

First, abortions that are regarded by the woman and her physician as necessary to avoid medically diagnosable injury to mental health, including suicidal depression that might result from having to carry to term a fetus so severely deformed (as in a case of anencephaly, for instance) that it would be born only to die hours later after a brief and painful life;

Second, abortions that are required because, in the judgment of the woman and her physician, continuing the pregnancy would seriously and permanently threaten the woman's physical and/or mental health but not by bringing about what the physician could certify is a ''severely debilitating disease or impairment specifically caused by the pregnancy;''

Third, and to some degree encompassed within the second point above, abortions that are medically required because continuing the pregnancy would preclude the provision of necessary treatment for a condition that, although not life-threatening, would indeed amount to a ''severely debilitating impairment''—such as, for instance, permanent inability to bear children in the future, or permanent impairment of some important bodily capacity or function such as, e.g., vision—but not an impairment that is ''specifically caused by the pregnancy.''

I should stress the arbitrariness of the exclusion, from the Daschle language, of impairments in the latter category. If a woman is pregnant with a viable fetus in circumstances where the pregnancy itself, unless terminated, would cause a severe impairment (say, to kidney function), the Daschle bill would permit her to obtain an abortion. If the same woman is pregnant with the same viable fetus where the pregnancy itself causes no impairment but where the continuation of that pregnancy would make impossible the use of certain drugs or procedures (because those drugs or procedures would cause severe deformity in the fetus, for instance, as is often the case with chemotherapy or radiation therapy) without which the woman would suffer an even more severe impairment (say, to kidney and liver function and future reproductive capacity), the Daschle bill would make it a crime for her doctor to perform the same abortion. This arbitrary distinction would in all likelihood violate the Due Process Clause of the Fifth Amendment even apart from Roe and Casey, bit in any event it seems undeniable that it would violate the principles laid down in those decisions, which quite pointedly focus on whether the abortion is necessary to preserve ''the life or health of the mother,'' not on the (quite irrelevant) issue of whether the pregnancy itself endangers her life or health.

The Daschle bill recognizes that the key question is the necessity of the abortion and not what the pregnancy itself might cause when it comes to what it calls ''life-threatening'' conditions, making clear that a pregnancy may be terminated if it causes an ''inability to provide necessary treatment'' for such conditions. The glaring omission of any parallel provision for terminating a pregnancy that causes an inability to provide necessary treatment for severely debilitating even if not life-threatening conditions, or an inability to provide procedures that would prevent the development of such conditions, cannot be squared with the requirements of Roe and Casey.

For these reasons, I cannot understand how anyone could doubt the inconsistency of the Daschle language with the requirements of the Constitution as construed in Roe and Casey. I can readily understand the political temptation of some to sign onto a measure that seems less drastic and dangerous from some perspectives than Santorum, and this letter is not intended to address the political pros and cons of various positions. I think it would be a tragedy, however, for Senators, or the White House, to proceed on the basis of demonstrably indefensible readings of the Daschle language or of Roe v. Wade or both.

Sincerely yours,

LAURENCE H. TRIBE.

Mr. BYRD. Mr. President, I commend the Minority Leader for his good efforts to bring about a thoughtful compromise on this difficult issue. He and his staff have worked long and hard to develop the language we have before us in the form of this amendment. The Daschle alternative would ban all post-viability abortions while presenting an exception for the life of the mother and a meaningful, narrowly tailored exception for serious health risk to the mother. The amendment also contains penalties for a first violation of the law in the form of a fine of up to $100,000 or the loss of the physician's license.

While I am generally opposed to abortion, I also believe that there should be the ability to protect the mother. This issue is a very difficult

and a very emotional one. I have grappled with it long and hard. While some may argue that this amendment is a paper tiger, I disagree. This amendment, unlike the underlying bill, would address all late-term abortion procedures, not just the partial-birth abortion procedure.

Again, I appreciate the efforts of the Minority Leader, and I will cast my vote in support of his amendment.

Mr. BIDEN. Mr. President, I supported and still support the partial-birth abortion bill. I voted for it in 1995 and voted to override the President's veto last year. The bill was a step in the direction of ending late-term abortions. But, it was not a perfect solution. It did not, as I would have liked, ban all post-viability abortions.

There is no dispute that under the Supreme Court's Roe versus Wade decision, the government can ban post-viability abortions. But, I was and still am concerned that in banning only partial-birth abortions, we do not go far enough. In fact, there is a legitimate concern that in banning partial-birth abortions, not a single abortion would be prevented. The result would be merely to shift the type of procedure used in performing an abortion.

Today, Mr. President, we have a better solution—a solution that goes beyond the ban on a single procedure by actually banning all late-term abortions. The Daschle proposal would make all post-viability abortions—regardless of the method used—illegal, except in very limited circumstances consistent with Roe versus Wade. As an article in The Washington Times put it—and the Times is one of the most conservative newspapers in America—''Mr. DASCHLE's plan would go further in restricting abortion than the . . . partial-birth plan.''

If the goal is to reduce the number of abortions in America and to eliminate late-term abortions consistent with Roe versus Wade—and that has been my goal from day one—then the Daschle proposal is the answer because the Daschle proposal bans all post-viability abortions. The only exception is when an abortion is necessary to save the woman's life or in the small number of cases where continuation of the pregnancy would, to quote the amendment, ''risk grievous injury to her physical health.''

Now, I wish to address for just a minute the health exception. Critics often claim that a health exception is a gigantic loophole—a loophole so big, some have said, that it would allow a teenage girl to get a late-term abortion just because she could not fit into her prom dress. That is an outrageously untrue claim to begin with, regardless of the language of the health exception. But, the rhetoric aside, the health exception under the Daschle proposal is extremely narrow. It must be a severely debilitating disease caused by the pregnancy or it must be a case where a woman cannot undergo necessary treatment for a life-threatening condition as long as she is pregnant. This is not mental health. This is not a minor ailment. This is grievous physical injury.

There are some, Mr. President, who simply do not believe that there should ever be a health exception no matter how narrow. I disagree. There needs to be a narrow health exception. Take, for example, a woman who, during pregnancy, is diagnosed with breast cancer. Her life is not directly endangered by the pregnancy, but her long-term prospects for survival are. Early detection and treatment of breast cancer can increase survival rates by 30 percent. But, a pregnant woman cannot undergo chemotherapy treatment unless her pregnancy is terminated because the chemotherapy can result in permanent damage, even mutation, of the fetus. And, a continued pregnancy will weaken her body's immune system, making it harder for her to fight the cancer. That decision should be between the woman and God, not the government.

Cases such as these are tragic situations—rare and tragic. But, it would be even more tragic to say that ipso facto a woman cannot have an abortion unless her life is threatened by giving birth. That is why the Supreme Court has required a health exception and why the Daschle proposal includes a very narrow health exception.

Mr. President, I admit I am faced with a dilemma here. I can vote to ban one particular abortion procedure that I find repugnant—but in the process, allow late-term abortions to continue. Or, I can vote to eliminate more abortions, by banning all late-term abortions—but in the process allow the so-called partial-birth abortion procedure to continue under limited circumstances. I wish we were not faced with the choice of one or the other. I would like to do both. But, I must cast my vote now for the proposal that I believe will result in fewer abortions. In my view, that is the Daschle proposal. But, let me also be clear. If the Daschle proposal fails, I will again vote for the bill to ban partial-birth abortions.

Mr. SPECTER. Mr. President, I am voting against the amendments offered by Senator FEINSTEIN and Senator DASCHLE because I believe those amendments are so broad as to negate the purpose of the bill.

In my judgment, as detailed below, once the child is partially out of the mother's womb, it is no longer abortion. It is infanticide.

As a legal matter, infanticide would be justified only by analogy to self-defense to save another life—the life of the mother. That legal conclusion is based on the judgment that infanticide is not warranted for the lesser values of averting ''serious adverse health consequences to the woman''—Senator FEINSTEIN'S amendment—or avoiding ''grievious injury to her physical health''—Senator DASCHLE'S amendment.

I adhere to the fuller statement of my views set forth in my floor statement of September 26, 1996:

This is among the most difficult of the 6,003 votes I have cast in the Senate because it involves a decision of life and death on the line between when a woman may choose abortion and what constitutes infanticide.

In my legal judgment, the issue is not over a woman's right to chose within the constitutional context of Roe versus Wade or Planned Parenthood versus Casey. If it were, Congress could not legislate. Congress is neither competent to micromanage doctors' decisions nor constitutionally permitted to legislate where the life or health of the mother is involved in an abortion.

In my legal judgment, the medical act or acts of commission or omission in interfering with, or not facilitating the completion of a live birth after a child is partially out of the mother's womb constitute infanticide. The line of the law is drawn, in my legal judgment, when the child is partially out of the womb of the mother. It is no longer abortion; it is infanticide.

This vote does not affect my basic views on the pro-choice/pro-life issue. While I am personally opposed to abortion, I do not believe it can be controlled by the Government. It is a matter for women and families with guidance from ministers, priests, and rabbis.

If partial-birth abortions are banned, women will retain the right to choose during most of pregnancy and doctors will retain the right to act to save the life of the mother.

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

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I want to first say how proud I am of two of our colleagues here, Senator SANTORUM and Senator DEWINE. I have delayed coming over to speak until the end because, quite frankly, I think they have done a better job of defending the position that I hold than I could possibly do. I think their arguments over the last few days have been a great testament to the seriousness with which we take our business. I was thinking, since I was chairman of the National Republican Senatorial Committee when they were both elected, that if I found myself at the Pearly Gates and St. Peter added up my good deeds and found me coming up short, I would say as my final argument, SANTORUM and DEWINE, I had a little something to do with their being elected. I am convinced that would be instrumental in getting me through the gates.

We have had a lot of things said here, and I want to get back to the basic point, which I think often gets lost. This is not a debate about a woman's right to choose. This is not a debate about the rights of the unborn. We are debating, today, a gruesome procedure that no civilized society would condone.

We are back here again today because every day since we had the first debate more facts have come out, often contradicting the very arguments that were used against this bill when we debated it last year on the floor of the Senate. As people learn more about this procedure, they become stronger in their conviction that it should be stopped. We are here today because many members who voted against this bill last year have constituents back

home who, as they have gotten to know more about this procedure, feel that a mistake was made. We are here today because even the people who opposed the bill before are deeply troubled by this procedure that we are trying to ban.

Now, I am not a physician. I first got involved in this debate when back in 1995, I came over to give one of my dull lectures on economics. While waiting to speak, Senator SMITH was standing here talking about this procedure. I knew little about its gruesomeness prior to that time. A Senator rose to object. That Senator was offended by what Senator SMITH was trying to demonstrate. It suddenly struck me, if we are offended by somebody simply talking about this procedure, for God's sake, we ought to be offended that it is happening to thousands of children in America. I cosponsored Senator SMITH's bill. That marked the beginning of my involvement.

The bottom line here is that we are trying to ban a gruesome procedure which is inhumane, uncivilized, and clearly unnecessary.

I am not sure about all that the Daschle amendment purports to do. Many people see it doing many different things. But I am sure that the one thing it does not do is ban partial-birth abortion. Should we as members of the greatest of all civilized societies continue to condone a procedure? An unborn living child is completely delivered, except for the child's head, and that child is literally 3 inches from the full constitutional protections afforded every person in this country. Only at that point is that child's life terminated.

I think the American people who have come to understand this procedure want it stopped. If you want it stopped, you can't stop it with the Daschle amendment. You have to stop it by banning partial-birth abortion.

So I urge my colleagues to vote no on the Daschle amendment and to vote for this bill.

Mr. DASCHLE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Democratic leader has 8 minutes remaining. The other side has 7 minutes remaining.

Mr. DASCHLE. Mr. President, I yield 5 minutes to the distinguished Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Thank you, Mr. President. I thank the distinguished minority leader for yielding.

Mr. President, for 25 years the question of abortion has been among the most divisive in our Nation. It divides our families and poisons our political debate.

We come to this floor today still holding, I know, fundamentally different views on this question. I believe strongly that the issue of bringing a pregnancy to term remains with a woman in consultation with her conscience and her doctor. I know others have fundamentally different views.

But there is a real chance at long last, at least for this moment, for one narrow part of this issue, to find some common ground. Because, on this day, there is a chance to address at least the issue of postviability, late-term abortions. And the question largely rests with those who have dedicated these years in opposition to abortion rights generally.

The Senator from South Dakota [Mr. DASCHLE] has offered an alternative—that it is constitutional because it deals only with postviability pregnancies. It, and it alone, can pass the constitutional test of Roe versus Wade. It alone does not have an undue burden or a substantial obstacle, as outlined in Casey versus Planned Parenthood. And it alone will get the signature of the President of the United States.

Yet, there are those who passionately want to prohibit this procedure but will not be voting with us on this occasion. It raises the question of whether they avoid this chance to end late-term abortions because they seek to preserve a political issue more than to end the procedure which many Americans find offensive.

Mr. President, I will be voting with Senator DASCHLE because, while I strongly believe—as our Supreme Court has affirmed—that there is an inherent right to privacy, that every woman has a constitutional right to reach her own judgment about whether to bring to term or terminate a pregnancy before viability, there is a legitimate public policy question affirmed by the courts on whether or not this procedure or any other should be allowed to continue postviability.

Senator DASCHLE, in the alternative that he brings to the Senate today, prohibits not only the late-term abortion procedure described in detail by those supporting Mr. SANTORUM's legislation, but he also prohibits other alternatives dealing with postviable fetuses. And he alone does so.

It again begs the question whether or not this Senate is intending to actually prohibit late-term abortions, or whether, cynically and regrettably, this is genuinely an effort to maintain a political issue, because, if Senator DASCHLE fails, our opponents may, in fact, outlaw this single procedure, but at least three other procedures also dealing with postviable fetuses would be allowed to continue, and many women whose lives would be better protected, their health better assured, would be forced to use other procedures that are more dangerous.

Mr. President, I urge the adoption of Senator DASCHLE's alternative. It is constitutional. It protects a woman's choice. It is a better balance. It is the only chance for common ground. Let us resume the fight tomorrow and today to end this late-term abortion struggle.

Mr. SANTORUM. Mr. President, I yield 6 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, why do we argue with the Daschle amendment that sounds, on its face, reasonable? Why do we argue to say that it is a gutting amendment? Let me give my colleagues, very quickly, four reasons.

When you look at the language of the Daschle amendment, you find that it creates a subjective standard. The underlying bill has an objective standard.

The amendment says ''would threaten the mother's life,'' or ''risk grievous injury to her physical health.'' ''Risk'' is the key word.

We have quoted Dr. Hern in Colorado who said, ''I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health''—''could cause.'' We cited this. But, frankly, I don't believe anyone, if you look just at the language, would disagree with what the doctor said. The reality is that any pregnancy has a risk. We are dealing with subjective language.

Second, it is doctor self-certified. The operative language, the key language, is certification. No way you can look beyond and behind that certification. Once the certification is made, that is it.

Third, the issue of viability: Before you even get to the question of certification, you have the issue of viability. All the doctor has to say is ''not viable.'' Who is going to look behind that?

Senator NICKLES has pointed out very well in citing the Supreme Court case that says when we are dealing with the issue of viability it is left up to the discretion of the physician. We look to the physician. My friends on the other side of the aisle can say, ''Well, who else would you look at?'' That is fine. But the reality is, you can't then tell me it is an objective standard. It is a subjective standard. It is self-certification, self-decided by the person who is performing the abortion.

Finally, the fourth reason: The courts have historically given a very liberal interpretation to the whole issue of health as it pertains to a bill having to do with abortions.

Four reasons, Mr. President, and Members of the Senate, why this very good-sounding amendment is a gutting amendment which really destroys the underlying bill.

The PRESIDING OFFICER. Who yields time?

Mr. DASCHLE. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Democratic leader has 2 minutes and 43 seconds. The Republican side has 4 minutes and 15 seconds.

Mr. DASCHLE. Mr. President, does the Senator from Pennsylvania wish to consume any of the remaining time prior to the time of vote?

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, several comments have been made about

what the minority leader's legislation attempts to do, postviability abortions, and that ours doesn't do that. That is correct. That was never the intention of the bill. What our bill does is stop the infanticide.

We have had a change in the debate here. We have had a debate about the late-term abortion. But what we have been debating—maybe the other side didn't realize it—here is stopping the killing of children, ''infanticide.'' That is not my word. The Senator from New York, Senator MOYNIHAN, says this looks like infanticide. This baby is outside of the mother, a fully formed little baby.

That is what this debate is about. We have gotten off track here a little bit and tried to talk about late-term abortions and trying to define it.

I think you heard the Senator from Tennessee define how this doesn't do anything. But that is one. The Senator from South Dakota said you have the same procedures, as far as doctors determining life of the mother in partial-birth abortions.

The difference is there is no certification procedure in the partial-birth abortion—none. By giving a certification procedure in your bill, you raise that as a standard that is dispositive. We do not do that in this bill. We leave that up to a judge and a jury.

In the case of the Daschle bill, as I said before, the executioner is the judge and the jury. In our bill, that is not the case.

So there is a substantive difference in how we deal with this.

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

I hope that we have opposition to the Daschle amendment.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. How much time remains?

The PRESIDING OFFICER. Two and one-half minutes.

Mr. FRIST. Thank you, Mr. President.

In closing, I simply also urge opposition to the Daschle amendment and support for the underlying bill to ban partial-birth abortion.

The Daschle amendment, although well-intended and with a good, strong effort to narrow the definition of health of the mother, simply does not accomplish what it intends. The bill tries to close the loophole. It is a loophole in the sense that there are many people, unfortunately, who exploit the definition of health of a mother to their benefit, to perform abortions very late, second trimester, third trimester. Unfortunately, there are people like that. We have heard about them. We have described their cases. Some of them exploit the loophole of health of the mother to use the partial-birth-abortion procedure.

I have argued that the Daschle amendment does not outlaw, does not ban, the partial-birth abortion. And if the criteria are met in his bill, people will still be performing the partial-birth procedure.

Second, the bill, although it tries to narrow the definition, fails. Why? Because you can't separate physical health from mental health, from emotional health. That is why you can't define health of the mother so narrowly.

Mr. President, I have had the opportunity to deliver babies as a physician, as a resident in training. It is a miraculous process. It is a beautiful process to see and help deliver that child, to come into the real world. Many of us as fathers have participated in that process.

Remember, we are talking about banning a procedure that at one point in time in this miraculous, this beautiful process is said to be OK, but 1 second later, 3 inches later, we call it murder.

It is a procedure that is brutal, inhumane, and deeply offensive to our sensibilities as human beings. It must and should be banned.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, we agree. We want to ban the procedure. But we also respect the Constitution. We recognize how critical it is that if we are indeed desirous of passing legislation that will remain constitutional, we have to live within the bounds of the Constitution.

I respect greatly the distinguished Senator from Tennessee, and admire him immensely. He is a distinguished physician as well as a distinguished Senator.

But the American College of Obstetricians and Gynecologists disagrees with his position.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the American College of Obstetricians and Gynecologists (ACOG) statement of policy, a letter of endorsement from ACOG, a report from the American Medical Associations Board of Trustees concerning late term abortion techniques, and examples of serious maternal health conditions as noted in obstetrics manuals.

I would like to note that the recommendations of the American Medical Association regarding the use of late term abortion techniques are wholly consistent with the goals and intent of my amendment.

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

ACOG STATEMENT OF POLICY

(As issued by the ACOG Executive Board)

STATEMENT ON INTACT DILATATION AND EXTRACTION

The debate regarding legislation to prohibit a method of abortion, such as the legislation banning ''partial birth abortion,'' and ''brain sucking abortions,'' has prompted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

The American College of Obstetricians and Gynecologists (ACOG) believes the intent of such legislative proposals is to prohibit a procedure referred to as ''Intact Dilatation and Extraction'' (Intact D & X). This procedure has been described as containing all of the following four elements: (1) Deliberate dilatation of the cervix, usually over a sequence of days; (2) instrumental conversion of the fetus to a footling breech; (3) breech extraction of the body excepting the head; and (4) partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus.

Because these elements are part of established obstetric techniques, it must be emphasized that unless all four elements are present in sequence, the procedure is not an intact D & X.

Abortion intends to terminate a pregnancy while preserving the life and health of the mother. When abortion is performed after 16 weeks, intact D & X is one method of terminating a pregnancy. The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

According to the Centers for Disease Control and Prevention (CDC), only 5.3% of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. A preliminary figure published by the CDC for 1994 is 5.6 percent. The CDC does not collect data on the specific method of abortion, so it is unknown how many of these were performed using intact D & X. Other data show that second trimester transvaginal instrumental abortion is a safe procedure.

Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother. Intact D & X is one of the methods available in some of these situations. A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. An intact D & X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are critical to the lives and health of American women. The intervention of legislative bodies into medical decision making is inappropriate, ill advised and dangerous.

Approved by the Executive Board, January 12, 1997.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, May 13, 1997.

Hon. THOMAS A. DASCHLE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR DASCHLE: On behalf of the American College of Obstetricians and Gynecologists (ACOG), an organization representing 38,000 physicians dedicated to improving women's health. I am endorsing the legislative language of your substitute amendment to H.R. 1122. Although it does not take a position on the findings enumerated in your proposal, ACOG believes that by banning abortions on viable fetuses except when continuing the pregnancy threatens a woman's life or risks serious injury to her health, your substitute legislative language provides a meaningful ban while assuring women's health is protected.

ACOG believes this amendment is preferable to H.R. 1122 for the following reasons:

It provides a meaningful ban, while allowing an exception when it is necessary for a woman's health. This preserves the ability of physicians to make judgments about individual patents, an issue of critical importance to physicians.

The amendment does not dictate to physicians which abortion procedures can or cannot be performed.

In conclusion, ACOG supports your amendment and urges the Senate to adopt this language as an alternative to H.R. 1122.

Sincerely,

RALPH W. HALE, MD,
Executive Director.

FROM THE REPORT OF THE BOARD OF TRUSTEES OF THE AMERICAN MEDICAL ASSOCIATION, APRIL 1997

(Report is subject to review by the AMA House of Delegates in June, 1997)

RECOMMENDATIONS

The Board of Trustees recommends the adoption of the following statements of policy and that the remainder of this report be filed:

(1) The American Medical Association reaffirms current policy regarding abortion, specifically policies 5.990, 5.993, and 5.995.

In summary: The early termination of pregnancy is a medical matter between the patient and physician subject to the physician's clinical judgment, the patient's informed consent, and the availability of appropriate facilities; abortion is a medical procedure and should be performed by a physician in conformance with standards of good medical practice; support of or opposition to abortion is a matter for members of the AMA to decide individually, based on personal values or beliefs. The AMA will take no action which may be construed as an attempt to alter or influence the personal views of individual physicians regarding abortion procedures; and neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles.

(2) The term ''partial birth abortion'' is not a medical term. The American Medical Association will use the term ''intact dilatation and extraction'' (or intact D&X) to refer to a specific procedure comprised of the following elements: Deliberate dilatation of the cervix, usually over a sequence of days; instrumental or manual conversion of the fetus to a footling breech; breech extraction of the body excepting the head; and partial evacuation of the intracranial contents of the fetus to effect vaginal delivery of a dead but otherwise intact fetus. This procedure is distinct from dilatation and evacuation (D&E) procedures more commonly used to induce abortion after the first trimester. Because partial birth abortion is not a medical term it will not be used by the AMA.

(3) According to the scientific literature, there does not appear to be any identical situation in which intact D&X is the only appropriate procedure to induce abortion, and ethical concerns have been raised about intact D&X. The AMA recommends that the procedure not be used unless alternative procedures pose materially greater risk to the woman. The physician must, however, retain the discretion to make that judgment, acting within standards of good medical practice and in the best interest of the patient.

(4) The viability of the fetus and the time when viability is achieved may vary with each pregnancy. In the second-trimester when viability may be in question, it is the physician who should determine the viability of a specific fetus, using the latest available diagnostic technology.

(5) In recognition of the constitutional principles regarding the right to an abortion articulated by the Supreme Court in Roe versus Wade, and in keeping with the science and values of medicine, the AMA recommends that abortions not be performed in the third trimester except in cases of serious fetal anomalies incompatible with life. Although third-trimester abortions can be performed to preserve the life or health of the mother, they are, in fact, generally not necessary for those purposes. Except in extraordinary circumstances, maternal health factors which demand termination of the pregnancy can be accommodated without sacrifice of the fetus, and the near certainty of the independent viability of the fetus argues for ending the pregnancy by appropriate delivery.

(6) The AMA will work with the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics to develop clinical guidelines for induced abortion after the 22nd week of gestation. The guidelines will address indications and contra-indications for such procedures, identify techniques which conform to standards of good medical practice and, whenever possible, should be evidence-based and patient-focused.

(7) The American Medical Association urges the Centers for Disease Control and Prevention as well as state health department officials to develop expanded, ongoing data surveillance systems of induced abortion. This would include but not be limited to: a more detailed breakdown of the prevalence of abortion by gestational age as well as the type of procedure used to induce abortion at each gestational age, and maternal and fetal indications for the procedure. Abortion-related maternal morbidity and mortality statistics should include reports on the type and severity of both short- and long-term complications, type of procedure, gestational age, maternal age, and type of facility. Data collection procedures should ensure the anonymity of the physician, the facility, and the patient.

(8) The AMA will work with appropriate medical specialty societies, government agencies, private foundations, and other interested groups to educate the public regarding pregnancy prevention strategies, with special attention to at-risk populations, which would minimize or preclude the need for abortions. The demand for abortions, with the exception of those indicated by serious fetal anomalies or conditions which threaten the life or health of the pregnant woman, represent failures in the social environment and education. Such measures should help women who elect to terminate a pregnancy through induced abortion to receive those services at the earliest possible stage of gestation.

This should not be considered an exhaustive list of serious maternal health conditions. These are merely examples of conditions listed in obstetrical textbooks as possible medical indications for pregnancy termination.

DISEASE OR IMPAIRMENT CAUSED BY PREGNANCY

Preeclampsia with accompanying renal, kidney, or liver failure, onset of severe hypertension during pregnancy: ''Preeclampsia often occurs early and with increased severity. Deterioration of maternal renal function or uncontrolled hypertension is an indication for pregnancy termination.''[1] Preeclampsia occurs in 5–10% of pregnancies and is severe in less than 1%. Eclampsia (complication characterized by seizures) occurs in approximately 0.1% of pregnancies.

Peripartal cardiomyopathy, heart failure in late pregnancy: ''Characterized by its occurrence in women with no previous history of heart disease and in whom no specific [origin] of heart failure can be found, peripartal cardiomyopathy is a distinct, well-described syndrome of cardiac failure in late pregnancy.''[1]

Pregnancy-aggravated hypertension, acceleration of existing hypertension: ''Maternal indications include organ failure such as renal failure, seizures associated with the development of eclampsia [progression from hypertension/preeclampsia characterized by seizures and can result in cerebral hemorrhage], and uncontrollable hypertension.''[2] Complications develop in 10–40% of patients with chronic hypertension.

Primary pulmonary hypertension, complication of existing hypertension (abnormally high blood pressure): ''The natural course of the disease terminates either by sudden death or by the development of intractable congestive heart failure resistant to therapy. Maternal mortality with primary pulmonary hypertension approaches 50%.''[1]

LIFE-THREATENING CONDITIONS REQUIRING IMMEDIATE TREATMENT

Bone marrow failure, severe form of anemia: ''The role of pregnancy termination [in bone marrow failure treatment] is unclear. Therapeutic abortion is inconsistently associated with remission. It may be necessary, however, in order to treat the patient with anabolic steroids.''[1] Additionally, ''bone marrow transplant has become the treatment of choice. Termination of the pregnancy would be necessary if a suitable donor could not be found.''[1] It should be noted that bone marrow transplant is also a treatment for other conditions such as leukemia.

Cardiac arrest, heart failure: Most incidents of cardiac arrest are secondary to other acute events, such as anesthetic complications, trauma, or shock. According to several obstetrics manuals, pregnancy termination—whether by delivery or abortion—is often recommended.[1][2] CPR can generally be expected to generate only 30 percent of normal cardiac output, and during pregnancy the uterus obstructs this cardiac output even further.

CANCER

Cancer complicates approximately 1 out of every 1,000 pregnancies. Issues that must be addressed in pregnancies affected by cancer include the effect of pregnancy on the malignancy, the need for pregnancy termination, and the timing of therapy. Radiation and chemotherapy may be contraindicated during pregnancy due to documented risks of fetal mutation. Additionally, pregnancy inhibits a woman's ability to fight off cancer because the immune system is often depressed, and her nutritional intake is divided between herself and the fetus.

Lymphoma, cancer of lymphatic system: ''High-grade Non-Hodgkin's lymphoma is a rapidly progressive disease with a median survival of six months. Since cure rates approach 50%, it is imperative therapy not be delayed.[2] In this situation, delay of therapy could mean the loss of an opportunity to cure the mother. Because both radiation and chemotherapy present mutation risks for the fetus, termination of the pregnancy is suggested in order to begin treatment for lymphoma.

Breast cancer, especially breast cancer diagnosed during pregnancy: ''Factors in pregnancy that could adversely affect this malignancy include . . . increased estrogen and prolactin stimulation [both factors that exacerbate breast cancer], and depression of the immune system''[1] The frequency of breast cancer in pregnancy is second only to cancer of the cervix, occurring in 1 out of every 3,000 pregnancies. In addition, adequate nutrition is a serious problem.

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[1] Footnotes at end of article.

FOOTNOTES

[1]Manual of Obstetrics: Diagnosis and Therapy, ed. Kenneth Niswander and Arthur Evans, University of California, Davis, School of Medicine.

[2]Clinical Manual of Obstetrics, ed. David Shaver and Frank Ling (University of Tennessee College of Medicine), Sharon Phelan (University of Alabama Department of Obstetrics and Gynecology), and Charles Beckmann (University of Wisconsin Department of Obstetrics and Gynecology)

Mr. DASCHLE. Mr. President, second, let me just say that the distinguished Senator from Pennsylvania said that only his bill allows a judge and jury to decide. I beg to differ. We have virtually the same standard with regard to the determination of illegality. They don't ''self-certify'' any more than we ''self-certify,'' and vice versa.

It ultimately comes down to whether or not someone believes a physician has broken the law. And we have very specific guidelines by which a person, a doctor, can be prosecuted if indeed he or she has violated the law.

The third question is simply this. If indeed we want to stop abortion, then we really have a choice. We can stop one procedure, which is what H.R. 1122 does. It only stops one procedure. It allows all the other alternatives to continue. Or we can stop them all.

There is only one bill pending—one piece of legislation pending—that allows the complete elimination of all methods of abortion.

Finally, Mr. President, let me just say, as much as one might like to get around the parameters required by the Supreme Court and the Constitution, that when it comes to health, there can be no doubt. A woman's health, as well as her life, needs to be protected.

That is exactly what this legislation does. It outlaws every one of the procedures. It doesn't allow doctors just to shift to another procedures as the colleagues on the other side who support this particular procedure will continue to allow.

It does not allow that, but it does say we are going to stay within the Constitution in prohibiting all these procedures but saving a mother's life and health. We can do no less. We need to support this legislation. I hope on a bipartisan basis we will do that now.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 36, nays 64, as follows:

[Rollcall Vote No. 70 Leg.]

YEAS—36

Akaka	Bryan	Collins
Baucus	Bumpers	Daschle
Biden	Byrd	Dodd
Bingaman	Cleland	Durbin
Feingold	Kohl	Reed
Graham	Landrieu	Robb
Harkin	Leahy	Rockefeller
Inouye	Levin	Sarbanes
Johnson	Lieberman	Snowe
Kennedy	Mikulski	Torricelli
Kerrey	Moseley-Braun	Wellstone
Kerry	Murray	Wyden

NAYS—64

Abraham	Feinstein	Mack
Allard	Ford	McCain
Ashcroft	Frist	McConnell
Bennett	Glenn	Moynihan
Bond	Gorton	Murkowski
Boxer	Gramm	Nickles
Breaux	Grams	Reid
Brownback	Grassley	Roberts
Burns	Gregg	Roth
Campbell	Hagel	Santorum
Chafee	Hatch	Sessions
Coats	Helms	Shelby
Cochran	Hollings	Smith (NH)
Conrad	Hutchinson	Smith (OR)
Coverdell	Hutchison	Specter
Craig	Inhofe	Stevens
D'Amato	Jeffords	Thomas
DeWine	Kempthorne	Thompson
Domenici	Kyl	Thurmond
Dorgan	Lautenberg	Warner
Enzi	Lott	
Faircloth	Lugar	

The amendment (No. 289) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, just to confirm, again, this is the last vote for tonight. The next recorded vote will not occur before 5 o'clock on Monday. However, we are now working with the leadership on both sides of the Capitol and the Budget Committees, with the idea of having the Budget Committees markup the budget resolution, and we hope to get to the budget resolution early next week. We will continue to work to get the budget resolution out of the committee either tomorrow or Monday, and we will bring it to the floor as soon as we can get it completed and get an agreement as to how that will proceed, knowing what the rules require, but, also, wanting to work in good faith in a bipartisan way, which we think we are going to be able to do.

For the information of all Senators, as I said, there will be no further votes this evening. The Senate will next consider S. 476, relative to the Boys and Girls Clubs of America, for debate only, and a rollcall has not been requested on passage. There will not be a rollcall on that passage. We are going to take that up tomorrow, and we will be able to pass it without rollcall vote.

The Senate will be in session tomorrow for morning business to accommodate Senators' requests, although there will be no votes tomorrow.

Again, I think we have reached a final agreement on the package that will go to the Budget Committee.

MORNING BUSINESS

Mr. LOTT. I ask unanimous consent there now be a period for the transaction of routine morning business, with Senators permitted to speak for up to 5 minutes each.

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

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

THE RIM ROCK RUN

Mr. ALLARD. Mr. President, the Mesa Monument Striders have held a road race inside the beautiful landscape of Colorado National Monument since 1993. Over the past 4 years, participation in the race has soared. This year, 250 Rim Rock Run participants will be shut out of the park in an effort by the National Park Service to snuff out a Colorado legacy.

Yesterday, Deputy Regional Director, Robert Reynolds, upheld the ruling of the park's superintendent to prohibit the race—all in the name of traffic congestion. But this is a 2 hour race held on an early Sunday morning in November. This is a slap in the face to the State of Colorado and the spirit of recreation which national parks were established for. I have watched the culmination of this dispute evolve from an irrational rejection of a race permit to a national dispute over the unjustified actions of a bureaucracy that refuses to listen to the voice of the people.

The people of western Colorado have bent over backwards to reach a compromise with the park's superintendent. Countless meetings have been held offering rescheduled times and dates or proposals to scale down the size of the race. The sheriff's department has committed their entire force to the security and coordination of the run. The local paper has arranged for a shuttle service to alleviate traffic inconveniences. It is clear to me that no amount of effort to compromise will sway the park service's decision to forbid the race.

Well, I will not stand for this decision. I am requesting to meet with the acting director of the Park Service to demand a justification for this ludicrous ruling. Next month, this same Park Service is sponsoring the closure of a 13 mile stretch of George Washington Parkway for a road race right here in our Nation's Capital. This might inconvenience a few thousand drivers, but I don't see any Park Service officials challenging the legitimacy of this popular race. If this is the precedent we want to set for holding an event in a national park, then let's just call off the hundreds of events already planned this year in all national parks.

This controversy is only the latest example of public land managers consistently trying to restrict public access to lands which were set aside for the public to use and enjoy. It is not an isolated case. I am convinced that this fight in Colorado is only symptomatic of a much larger problem.

This is not finished. I will continue to fight this outrageous ruling until