

of Defense on-site search teams. And seven other American servicemen who have since died from the complications of injuries suffered during the Vietnam war. It is my hope, Mr. President—no, it is my prayer—that this will be the last time such additions are made to this memorial.

How do you thank each of these brave Americans? How do you let them know that as a nation, we are indebted to them for their bravery, their valor, and their courage in fighting a war that was never officially recognized by the country which asked them to put their lives on the line? How do you tell them that they are truly American heroes?

You do this by keeping their memories alive and by never forgetting them.

The Vietnam Veterans Memorial Wall helps to keep those memorials alive, and it helps the human emotional process which includes mourning, healing, and remembrance. This visual reminder keeps their memory alive in our hearts where they will never be forgotten. And I would like to add that I know this from first-hand experience.

Mr. President, last year I took part in a trade mission to Vietnam with several of my colleagues here in the Senate. Before leaving, one of the most important things I did to prepare myself for travel to Vietnam, was to walk alone along the Vietnam Veterans' Memorial, to clear my mind of all thoughts, except for those involving the overwhelming number of American names etched upon the wall. In that moment, I knew that one of the most important reasons for my visit to Vietnam was to be a voice for those brave men and women whom I will never be able to thank.

On November 11, 1996, Veteran's Day, I was in Hanoi urging top Vietnamese officials to keep the resolution of the POW/MIA issue a top priority, and to cooperate in every way with the United States. As I met with Vietnam Party General Secretary Do Muoi, I told him about my walk along the wall, and presented him with a copy of "The Wall," a pictorial of veterans and their families who come to pay tribute at the Vietnam Veteran's Memorial. Inside the cover of that book, I inscribed: "We have shared a tragic past together. Now let us work to share a bright future together." Our discussion then centered on building our relationships as nations on the basis of mutual compassion. General Secretary Do Muoi was very animated in his response and said, "We deserve compassion, it is consistent with our history so full of blood and tears. Compassion is the key to our relationship."

Mr. President, compassion is truly the key to honoring those who paid the ultimate sacrifice for our country. I would hope that we, as a nation, never lose that compassion for our veterans, and never, ever allow their memories to be taken from our hearts.

The wall is indeed a beautiful and somber monument which will ever remind us of those painful sacrifices made by these brave men and women.

Mr. HAGEL. Mr. President, I have two final comments to make regarding this resolution commemorating the 15th anniversary of the Vietnam Veterans Memorial.

First, the recognition of the vision, the heart, the soul, and the leadership behind it, a remarkable man, Jan Scruggs. It was Jan Scruggs who many, many years ago came home one night after a movie, sat down with his wife, and said, "We are going to do something to recognize those who served in the Vietnam." It was a great dream, an impossible dream.

One of the collaborators with Jan Scruggs was one of our colleagues, Senator JOHN WARNER. Without Senator JOHN WARNER's leadership, and without his force, and without Jan Scruggs' vision and leadership and love, this Wall would never have been built. It is very appropriate to recognize Jan Scruggs and Senator JOHN WARNER because those two great Americans led this effort and have given us a magnificent monument and memorial.

Mr. President, I ask unanimous consent that the resolution, Senate Resolution 87, be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 87) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 87

Whereas 1997 marks the 15th anniversary of the construction and dedication of the Vietnam Veterans Memorial in Washington, D.C.;

Whereas this memorial contains the names of more than 58,000 men and women who lost their lives from 1957 to 1975 in the Vietnam combat area or are still missing in action;

Whereas every year millions of Americans come to this monument to pay their respects for those who served in the Armed Forces;

Whereas the Vietnam Veterans Memorial has been a source of comfort and healing for Vietnam veterans and the families of the men and women who died while serving their country; and

Whereas this memorial has come to represent the legacy of healing that has occurred and demonstrates the application all Americans have for those who made the ultimate sacrifice: Now, therefore, be it

Resolved, That the Senate—

(1) expresses its support and gratitude for all of the men and women who honorably served in the United States Armed Forces in defense of freedom and democracy during the Vietnam War;

(2) extends its sympathies to all Americans who suffered the loss of friends and family in Vietnam;

(3) encourages all Americans to remember the sacrifices of our veterans; and

(4) commemorates the 15th anniversary of the construction and dedication of the Vietnam Veterans Memorial.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PARTIAL-BIRTH ABORTION BAN ACT OF 1997

The PRESIDING OFFICER. The clerk will report H.R. 1122.

The assistant 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.

AMENDMENT NO. 290

(Purpose: To provide a procedure for determining whether a physician's conduct was necessary to save the life of the mother)

Mr. SANTORUM. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. SANTORUM) proposes an amendment numbered 290.

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

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

The amendment is as follows:

On page 2, line 16, strike the semicolon and all that follows through "purpose" on line 17.

On page 3, between lines 8 and 9, insert the following:

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

On page 3, between lines 21 and 22, insert the following:

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

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

On page 3, line 22, strike "(d)" and insert "(e)".

Mr. SANTORUM. Mr. President, this is an amendment that I took the floor yesterday to talk about. It is an amendment that I worked out, along with Senator FRIST and Representative CANADY in the House, and with the American Medical Association to tighten up some of the language to address some of the concerns that the physician community had about the definition of what is partial-birth abortion.

I believe it is a good amendment, whether it would have gotten the AMA endorsement or not. I think it is a good amendment because I think it is language that is much tighter, and puts in the requisite mens rea, or thought processes that the physician must have been going through at the time of doing the procedure. I think that is important for a criminal statute.

I think it would be a sad state if, in fact, we passed this legislation and overrode the President's veto, or if the President would see otherwise and decide to sign the bill, that, in fact, this bill would be thrown out for vagueness of criminality, the criminal statute itself would be considered too vague, and it would be OK on the abortion ground but not OK on the criminal statute ground. But I think what we have done is tighten up the language and have taken care of the concerns mentioned here, both on the House and Senate floors, about the vagueness of the statute.

I don't think anyone will now look at this as a vague statute. It is a very precise statute. It is a complete criminal statute now.

I am very happy that we were able to work it out, and in working with the AMA I believe we have improved the bill and improved its chances when we reach the stage of the courts which I am very hopeful that we will do because that means that we will have passed the bill and it would have been signed into law, and the President's veto would have been overridden.

Of the other two provisions in the bill, one clarifies the life of the mother exception and takes out some surplus language which we agreed to which didn't add anything, and we agreed that it was, in fact, surplus language.

The third element of the amendment deals with the issue of a medical review panel; if a medical review panel was asked by the AMA for the reason of an intermediary step between the indictment of the physician under the statute and a trial. This would be an opportunity for State medical boards to put together a panel of physicians to look at what happened in the case, to do a peer review determination of the procedures that was done by the physician being charged, and to come up with findings. Those findings would then be admissible in court.

I think that is an appropriate step. It gives the professionals in the field who license, in fact, the physician, an opportunity to make a review of what happened in the context of that as well as add medical expertise to be considered at trial. I think that is only helpful. The fact of the matter is that we are all aware that, if someone is charged under this statute, they are going to have their medical experts testify as to one set of circumstances and the prosecution will have their medical experts.

So, with having some neutral party, if you will, come up with a more objective standard of review I think helps

and provides a professional review of what took place in a case.

So I think we are making a step forward.

I am not aware of any objections to this amendment. Whether you are for, or against this amendment, it is a technical amendment in most respects. It is one that hopefully will be supported by everyone.

I yield the floor at this point to determine whether anyone wants to speak against the amendment.

I understand now there is no one to speak against the amendment. So I ask unanimous consent the amendment be agreed to.

The PRESIDING OFFICER. Pursuant to the unanimous-consent agreement, the pending amendment is considered agreed to. The motion to reconsider is laid on the table.

The amendment (No. 290) was agreed to.

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

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

The bill was read a third time.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I now understand that we are commencing the final 3 hours of debate, that the time is going to be equally divided between the Members who are for the bill and Members who are against. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. SANTORUM. I thank the Chair. I yield myself such time as I may consume.

Let me first start out by indicating how important I believe the endorsement of the AMA is here as we approach final passage of this legislation. We have heard over and over and over again that the principal reason this procedure needs to be made legal is to protect the health of the mother. We have in the case of the AMA an organization that is on record as being for abortion rights. This is not the Christian Coalition. This is not the Catholic Conference of Bishops. This is an organization of physicians that is on record as being for a woman's right to choose, if you will, that has come out and said this procedure is not good medicine, this procedure is not necessary to protect the life or health of a mother. So for all of the arguments that we have heard that there is a split of opinion out there as to whether this is an appropriate procedure, I have put forward letter after letter after letter from obstetricians, from perinatologists, experts in maternal fetal medicine who have said that this procedure is never medically indicated, that in fact this procedure is more dangerous to the mother. I will discuss those things today.

Now I believe the charade is over. We have the preeminent medical authority, organization in the country saying that this procedure should be outlawed; there is no medical reason to keep this procedure legal.

That is a very powerful statement which debunks all of the arguments people might want to hide behind in saying that, yes, they agree this procedure is brutal; yes, they agree this is barbaric and should never be used, but we want to leave open the possibility that in the case of, and then they go on with the health concerns.

What we know for a fact is that 90 percent of partial-birth abortions are not done for any health-related reasons. Let me clarify that. Ron Fitzsimmons, who heads up an abortion provider organization of some 200 abortion clinics, said that 90 percent of partial-birth abortions occur in the fifth and sixth months of pregnancy on healthy mothers with healthy babies. They are for birth control purposes. This is fifth- and sixth-month abortions for birth control purposes where you take a baby out, deliver it all but the head and then take a pair of scissors and stab the baby in the base of the skull, suction its brains out and kill it for birth control purposes, not for health reasons.

Those are what we know as the facts, that information provided to us by people who oppose the bill. These are not facts people who oppose abortion are putting forward. These are people who are adamantly pro-choice who run the clinics where some of these abortions take place, providing us with the information contrary to what you have heard, statements in the Chamber that these are done for the health of the mother, that 90 percent of them are done for birth control purposes, late in pregnancy. The other percentage is done later in pregnancy, and they argue, most of the reasons you hear, because of a fetal abnormality. All of the cases that you hear described with the pictures of the family are the baby was going to die anyway or the baby had a severe defect and that we should allow abortions in those situations, this kind of brutal abortion in those situations because the baby is not perfect or may not live long.

That takes us off into another area that I think has very, very severe consequences for this country, when we start to say that we should be able to kill children because they are not perfect or that abortions should be legal up until the time of delivery; that we should be able to do this brutal procedure because the little baby may not live long or may have medical complications.

I found it absolutely ironic that the day the partial-birth abortion ban came to the floor of the Senate, minutes before we passed the Individuals With Disabilities Education Act. What is that? That is an act to guarantee civil rights, the right for disabled children to be educated so they can maximize their human potential. The very

same day 30-some Senators who voted for that legislation and advocated giving rights to the disabled, those same 30-some Senators who are against the partial-birth abortion ban said we are willing to give you rights if you survive the womb, but we are not going to give you any rights as a disabled child up until the time you are born. You are eligible to be killed just because of your disability. You are different than any other child. If you are a child that is normal, then they do not believe you have a right to be killed. In fact, that is what these amendments are that we heard about. Well, if the baby is healthy and the mother is healthy, we need a health exception. If the baby is fine and the mom is fine, then we do not believe the baby should be killed. If the baby is abnormal, we can kill it.

These are the same people who believe in special civil rights for the disabled. I do not know how you legitimately can stand and argue those two points. I do not know how you draw the line there with any sense of consistency of care for the disabled. I support IDEA. I support civil rights for the disabled because I know that there are challenges out there, but there is no greater challenge to the disabled in this country today than the challenge of getting born in the first place. And I will discuss, as I have before, Donna Joy Watts and her family and how they had to overcome incredible odds and adversity beyond what you would imagine in this country just to have this little girl born and be treated because she was seen as disabled, not viable, not important to our society.

I want to talk in specific about the health issue because I think it is important, it is the remaining barrier that many Members hide behind in not supporting the partial-birth abortion bill because it does not have a "health exception." Let me explain, No. 1, we have the American Medical Association on record now supporting this bill, saying there need not be a health exception to this bill, this bill takes care of all the problems that we as physicians see and that there is no health reason to do this procedure.

Let me share with you a statement from Dr. Camilla C. Hersh, who is a member of the American College of Obstetrics and Gynecology. She says, and I quote from her statement:

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

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

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

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

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

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

Never—

I underline the word—

is the partial-birth abortion procedure necessary:

Not for polyhydramnios (an excess of amniotic fluid collecting around the baby), . . .

Not for anencephaly (an abnormality characterized by the absence of the top portion of the baby's brain and skull),

Not for hydrocephaly (excessive cerebrospinal fluid in the head).

In the case of Donna Joy Watts, I would parenthetically say she had hydrocephaly. Her parents were counseled to have an abortion. They chose not to. They had the baby delivered and she is now 5½ years old.

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

The legislation proposed clearly distinguishes the procedure being banned from recognized standard obstetric techniques. I must point out, even for those who support abortion for elective or medical reasons at any point in pregnancy, current recognized abortion techniques would be unaffected by the proposed ban.

Any proponent of such a dangerous procedure is at the least seriously misinformed about medical reality or at worst so consumed by narrow minded "abortion-at-any-cost" activism to be criminally negligent.

This procedure is blatant and cruel infanticide and must be against the law.

Again, this is a statement by Camilla C. Hersh, an obstetrician-gynecologist practicing here in northern Virginia.

And other statements by other medical doctors in cases that were mentioned here on this floor as reasons that partial-birth abortion must continue to be legal. And I have this as a note. Senator FEINSTEIN brought up the case of preeclampsia, and I have a letter here from Dr. Steve Calvin, MD, who is a specialist in maternal fetal medicine.

What does that mean? A specialist in high-risk pregnancies. These are people who deal with the very difficult cases that come up in pregnancy where the mother's life and health and the baby's life and health are in jeopardy during pregnancy.

Dr. Calvin responds to Senator FEINSTEIN's claim that preeclampsia is a reason to do a partial-birth abortion.

Preeclampsia (with any number of its complications, including renal failure), cardio-

myopathy, breast cancer, and lymphoma are all potential maternal medical disorders that may complicate pregnancy. In some situations the pregnancy must be ended to save the life of the mother.

The proposed ban on this destructive procedure already includes an exemption for the so far theoretical instance when it may be necessary to save a pregnant woman's life. The opponents of the ban realize that they cannot prevail on the merits of their arguments and are therefore resorting to blowing a virtual blizzard of medical terms during the debate. They hope to overwhelm the media and the public so that the fundamental points are missed. I will not try to answer them point by point on each medical condition. The importance of protecting nearly born fetal life is crucial.

Especially in light of Lori Watts' and Donna Joy Watts' story.

The fact of the matter is that it is never medically necessary, under any of these conditions, according to Dr. Calvin and dozens of others who are specialists in maternal fetal medicine. As Dr. Calvin said in another letter, none of these procedures are done by groups that specialize in high-risk pregnancies. They are not done in universities. They are not done in hospitals that specialize in these kinds of problems. They are done in abortion clinics. They are not done by experts in maternal fetal medicine, perinatologists; they are done by abortionists at abortion clinics who are not experts in high-risk pregnancies.

In fact, this procedure was developed not by an obstetrician/gynecologist, not by someone who is an expert in maternal fetal medicine who is concerned about the life and health of the mother; this was developed by a family practitioner who does abortions at an abortion clinic for the convenience of the abortionist.

So all of these claims about health are just simply a smokescreen. There is no health reason to do this procedure. In fact, as Dr. Hersh says, and hundreds of other physicians have said, obstetricians and gynecologists, including—he is not an obstetrician; that is, C. Everett Koop, the former Surgeon General of the United States, is not an obstetrician. But what is he? A pediatric surgeon who has done surgery on all these little babies who have had these disabilities and saw high-risk pregnancies firsthand, dealt with the consequences of these pregnancies, so he knows the issue well. He said, as well as hundreds of other doctors, that it is never medically necessary. I would like to read the entire quote signed by, I believe, at least a dozen experts in maternal fetal medicine, a group of almost 500 physicians, including Dr. Koop, and obstetricians who oppose partial-birth abortion:

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 and 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, Senator BOXER, Senator FEINSTEIN and others—is separation of the child from the mother, not the death of the child.

Let me just put it simply, for purposes of this particular debate, while a mother may present herself in a condition that may require separation of the child from the mother, it is not necessary to kill the child in that process, to use partial-birth abortion. I don't know why any doctor who is practicing good, solid medicine would deliberately reach in and pull the baby out in the breech position to deliver the child while the mother's life is in danger, while you go through a 3-day process of dilating the cervix over 2 days, risking infection because the cervix is now dilated and the womb is exposed to infection, risking infection, No. 1; No. 2, risking an incompetent cervix, which means the inability to carry future children.

Unfortunately, one of the reasons cited by President Clinton as needing this procedure to save her health and future fertility was a woman who has had five miscarriages since that procedure was done to her. To make the argument this is necessary for that is just not true. But a woman presents herself with a health problem, and for 2 days, to say, "Here are some pills, we're going to dilate your cervix, go home, present yourself back after 2 days," where you risk increased infection and increased complications, "come back to the abortion clinic"—not a hospital, because these are not done at hospitals—"come back to the abortion clinic to have this procedure done." And then what happens? The baby is pulled out feet first, delivered all but the head.

Why would you, even if you decided to go through that procedure for the health of the mother, why would you, as Dr. Hersh suggests, why would you take a blunt instrument in a blind procedure and stab the baby blindly in the base of the skull, causing all of the damage that could occur, as Dr. Hersh has set forth? Why would you do that? Why wouldn't you just deliver the head and give the baby a chance to live? It may not live. But at least give it the dignity of being born and accepted into our human community without this brutality, this unwarranted, unnecessary, unhealthful, dangerous, brutal stabbing and killing of a baby who is this far away, 3 inches away, from its first breath. Yes, its first breath. Even at 20 weeks, babies live. It is considered a live birth even at 20 weeks. Babies will not be able to survive long because they don't have sufficient lung development, but that baby will be alive when it is born unless you kill it.

Why kill the baby when it is more dangerous to the mother to do that, when it presents more complications to do it? Why does that option have to be necessary that is more dangerous to her health? Why would we want to keep a procedure legal that threatens a woman's health, that is an absolutely

rogue procedure, not done by specialists, not done in hospitals, developed by a nonobstetrician? Why do we want to keep this legal? What possible reason do we want to say that we need to endanger a woman's health to allow this procedure to be legal? The only reason I can think of is what Dr. Hersh said, and I will quote from her again because I think she said it very, very well:

Any proponent of such a dangerous procedure is at the least seriously misinformed about medical reality or at worst—

And I daresay that we may be looking, certainly in the case of the abortion rights advocates, we are looking at our "at worst" here—

at worst, so consumed by narrow minded "abortion-at-any-cost" activism, to be criminally negligent.

There is no health reason to do this. Anybody who stands up on the floor in the face of now the AMA, hundreds of obstetricians and gynecologists, specialists in maternal fetal medicine, who stand up in the face of overwhelming evidence that this procedure is necessary, given the characteristics of the procedure, a rogue procedure, not done in hospitals, not done by specialists, done by family practitioners or people who have no speciality at all in delivering children, just doing abortions, you are defending not the health of the mother when you argue that, you are not defending the life of the mother, you are defending, as Dr. Hersh says, abortion at any cost, any time, anywhere for any reason; that the child, no matter how late, no matter how healthy, is not to be considered.

That is not where America is. I know where the majority of the Senate is. We will find out today whether it is where 67 Senators are, because that is the magic number, 67. We need 67 votes to override the President's veto.

I want to have additional items printed in the RECORD. I know this has been printed in the RECORD before, but I want to put it in.

This is a letter from C. Everett Koop to BILL FRIST, May 13, 1997—BILL FRIST, the only doctor in the U.S. Senate, who has spoken eloquently, and will again today, on this issue.

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 would be delivered by induction—

Vaginal delivery—

or C-section. Abortion is truly more traumatic than either and exposes the mother to future problems with an incompetent cervix, miscarriage and infertility.

Let me get away from the specifics of the partial-birth issue and give you another reason why this is not healthy, and I want to share with you some statistics from the Alan Guttmacher Institute. What is that organization? This is an organization that signed letters last year with NARAL and Planned Parenthood and a whole lot of

other groups—NOW, National Organization for Women—in opposition to partial-birth abortion legislation for allowing this procedure to be legal. They are an abortion advocacy group. I guess they are considered a think tank or some sort of data collection folks, but they are advocates for abortion. Here is what they say, again, to the extent I can—I am using the other side's information, taking what those who oppose the bill say as fact, and even with their information, you can't defend this procedure. This is what the Guttmacher Institute says:

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 1 per 6,000 at 21 weeks or more.

When, I might add, partial-birth abortions occur. They occur after 20 weeks, sometimes at 20 weeks.

So you are 10 times more likely, according to their numbers, to die as a result of an abortion than in the first 8 weeks of pregnancy.

You say, "Well, OK, that's interesting, a 1-in-6,000 chance of a mother dying as the result of an abortion. But what are the chances of her dying as a result of delivering the baby by inducing or cesarean section, which would be a 'normal' delivery?" We happen to have those numbers:

It should be noted that at 21 weeks and after, abortion is twice as risky for the woman as childbirth: The risk of maternal death is 1 in 6,000—

As you saw before—
for abortion and 1 in 13,000 for childbirth.

So let me lay it out again. Set the arguments aside for partial-birth abortion as to why that is more dangerous, and it is. Abortion, period, is more dangerous to a mother. Abortion, period, is more dangerous to a mother than delivery by inducement or by cesarean section. Now why would you get up here on the floor and say we need to keep the more dangerous option generally available, compound that with a procedure that is even more dangerous than other abortion techniques, that we need to keep that legal also? If you are truly concerned about the life and the health of the mother, you don't come to the Senate floor and argue for dangerous procedures to continue to be used that threaten health, future fertility, life and, at the same time, kill a baby that would otherwise be born alive. There is no argument here.

You will hear and see pictures of people: "Oh, well, they needed this." As Dr. Hersh said and said eloquently, these people were misinformed. Look, not every doctor is a great doctor. Not every doctor knows everything, but you don't see those doctors on the record here. Where are the doctors who did all the procedures in all these cases, where have they testified that that was the only thing they could have done. They couldn't stand the light of day here. They couldn't stand the cross-examination here. They would never, never come up here and try to defend that position.

It is a sad fact that in thousands of instances every year, women are counseled, encouraged, told they have no choice but to have an abortion and do so only to find out later that some doctor either misinformed them or, frankly, was so afraid of malpractice that the doctor took the easy way out. That should never be a reason. Using bad medicine should never be a reason to keep the procedure legal. The fact that there are some doctors out there who practice bad medicine should not be a reason to keep this procedure legal.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Pennsylvania has 60 minutes remaining.

Mr. SANTORUM. Mr. President, I do not want to use up all my time. I do not see anyone from the other side. I ask unanimous consent that when I ask to go into a quorum call the time be deducted from the other side's time.

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

Mr. SANTORUM. Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise briefly to make several comments and to review a little bit some of the myth that has surrounded the debate on our attempts to ban a brutal procedure, a procedure called the partial-birth abortion.

It has been fascinating to watch where we started really about 2 years ago in the evolution of learning about this procedure, recognizing that it is performed, recognizing that it is as close to infanticide as one can possibly get in our civilization today, and to track the misinformation, the organized misinformation campaigns that have been carried out, instigated by a number of parties that have made it all the way to the Presidency of the United States of America—a misinformation campaign that I think and I hope was the reason he vetoed this ban that is so supportive in a bipartisan way by Congress, and that is clearly supported by the American people.

I give the President the benefit of the doubt because I had the opportunity—I will refer back to it shortly, some of the statements he made in his press conference and the people he brought forward. But since that time—I guess that is what I am excited about—people have come forward and said, even

the people who are providing this information, it was a misinformation campaign. People said they lied through their teeth in giving that information to the American people.

But, in spite of all that, the truth has finally bubbled to the surface. It has bubbled to the surface on the floor of the U.S. Senate and in the House of Representatives, but also throughout the media. Discussions have taken place in hospitals. Discussions have taken place among the organized medical groups. We all recognize that whether it is ACOG, the group of obstetricians and gynecologists, or the American Medical Association, which represents all physicians, that none of these organizations really speak for everybody. But when you put it altogether—and it has been put together, mixed up, dissected and looked at—gradually it is beginning to crystallize in a very clear way. And I think it is worth talking about a little bit on the floor of the U.S. Senate once again.

On a momentous occasion yesterday, after 2 years of looking at the issue, the American Medical Association essentially said that restricting this procedure is something that should be done by the American people and by the U.S. Congress. Again, this is after a lot of debate, a lot of discussion, and a lot of examination of the facts within the medical community, with the American people, by ethicists and by religious communities. There is a mass movement to ban this brutal procedure which offends the sensibilities of every American, everybody in our civilization today. This procedure, when described, offends their sensibilities.

I mentioned the American Medical Association. Again, the American Medical Association, the largest physician group in the country, issued a letter yesterday that said really—let me refer to the letter. This is the letter in its entirety. It was written to Senator SANTORUM, who, obviously, has done a wonderful job, an outstanding job, in helping America understand what the significance of this ban is.

I will go through the letter. The key sentence is the last sentence. It basically says, "Thank you, for the opportunity"—remember, this is from John Seward, from the American Medical Association, representing their conclusions.

It says: "Thank you for the opportunity to work with you towards restricting a procedure we all agree is not good medicine."

I guess a sentence like that does lead me to question how the President of the United States could continually, every day, hide behind a threat of a veto talking about the health of women, because for health of women we have to look at the American Medical Association, which represents obstetricians, gynecologists, family practitioners, internists, cancer specialists, heart disease—all of these groups of people focus on their No. 1 goal, which is to promote the health of this Nation, the health of individuals.

Then to have the President stand up and hide behind this veiled threat of a veto having to do with health is a juxtaposition which I don't understand. I hope the President, after we deliver this bill to him, will recognize what health of individuals really is. I am talking about health, not just of the infant, who, in fact, is being sacrificed in this procedure, but also the health of the mother. It requires support of this ban.

The letter says:

DEAR SENATOR SANTORUM: The American Medical Association is writing to support H.R. 1122, "The Partial-Birth Abortion Ban Act of 1997," as amended * * * the AMA has supported such legislation * * *

They go on in the first paragraph to say:

Although our general policy is to oppose legislation criminalizing medical practice or procedure, the AMA has supported such legislation where the procedure was narrowly defined and not medically indicated.

Narrowly defined, which this ban is.

There was an attempt last week to take this very narrow ban, carefully proscribed—protections for the mother, protections clearly for the child, protections for the medical profession. An attempt was made last week to push that aside with a much broader issue that needs to be continually debated. But now we are back on the narrow definition.

The AMA says it is not medically indicated, not medically indicated, not just for the baby but for the mother. It is not medically indicated, according to the American Medical Association, the largest organization representing more physicians than anyone in the United States of America.

The second paragraph outlines the three principles that, after much discussion and much debate within the AMA, were agreed to:

First, the bill would allow a legitimate exception where the life of the mother was endangered, thereby preserving the physician's judgment to take any medically necessary steps to save the life of the mother.

For the life of the mother, any steps can be taken, spelled out very clearly in the bill:

Second, the bill would clearly define the prohibited procedure so that it is clear on the face of the legislation what act is to be banned.

The attempt was made last week to ban all abortions, and that needs to be debated. But this bans a very specific procedure—a procedure, I might add, that is performed quite frequently around the country but tends to be performed in abortion clinics, many times outside of peer review of other physicians, very rarely in the hospital where you have nurses around to ask questions, and when you have other physicians around or hospital administrators asking, "What is the ethics of a procedure that so brutally sacrifices an infant upon three-fourths completion of delivery?"

No, these are performed with relatively high frequency, when you are

talking about hundreds or thousands of infants that are, in fact, murdered. But they are being performed outside the peer review and, I would say, the ethics of the medical profession.

In the letter from the American Medical Association endorsing the bill, supporting the ban, it said:

Finally, the bill would give any accused physician the right to have his or her conduct reviewed by the State Medical Board before a criminal trial commenced. In this manner, the bill would provide a formal role for valuable medical peer determination in any enforcement proceeding.

I think this is important to say because as a physician I have to admit before coming to the Senate the idea that this body or the Congress would pass a law to tell me what I could or could not do in terms of what I thought was in the best interest of my patient bothered me, not this particular ban but just the idea of having somebody in Washington, DC, inside the beltway telling me how to practice medicine and then making something a criminal procedure.

It is easier as a physician to say, no, I don't want any part of anything like that, and I think that is what we were hearing from some of the medical community, a fear that they would be thrown in jail for doing what they think is right for the patient, and they didn't want this to be set as a precedent. I think this letter and the bill shows that, no, that is not what is being done. Basically, we are banning a very specific procedure that is on the fringe, and you are going to have the opportunity for peer review to know what is accepted medical practice even in the event you are accused in this manner.

Then the letter goes on.

Mr. President, I ask unanimous consent that I have another 5 minutes.

Mr. SANTORUM. I yield the Senator another 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for another 5 minutes.

Mr. FRIST. Then the final sentence, again which really summarizes it, and that is why I started with it: "Thank you for the opportunity of working with you toward restricting a procedure we all agree is not good medicine."

I am proud that as Americans we have not lost our ability to discern what is right from what is wrong, and despite the vim of the well-worn rhetoric that we have heard broadly in the media and on the floor in the past, we now have listened to our hearts and we know that nothing can justify a procedure such as this one that is a mere 3 inches—a mere 3 inches—from criminal infanticide.

Several myths. Myth No. 1. Partial-birth abortion is necessary to preserve the health of the mother. It has been used again and again. The President of the United States continued to use it yesterday; I am sure he will say something about it today until this bill is delivered to him.

December 13, 1996. President Clinton described a hypothetical situation where without a partial-birth abortion a woman could not—and I use quotations here—"preserve the ability to have further children." He said that he would not, using his words again, "tell her that I am signing a law which will prevent her from having another child. I am not going to do it," said the President.

That is heart wrenching. When you see just that clip, we tend to empathize with what the President is saying. But the bottom line is partial-birth abortion is never ever necessary to preserve the health of a woman. The College of Obstetrics and Gynecology has issued a statement that said they "could identify no circumstance under which this procedure would be the only option to save the life or preserve the health of the mother." There are always—always—other procedures that will preserve the health of the mother.

The AMA task force convened on this issue also concluded, "There does not appear to be any identified situation in which intact D&X is the only appropriate procedure to induce abortion."

Thus, even if there are health reasons—and health is defined very, very broadly—even if there are health reasons, there are other safer procedures for the mother.

Myth No. 2. It goes like this. The D&X procedure, partial-birth abortion, is a rare and difficult medical procedure. It is usually performed only in extreme cases to save the life of the woman or in cases of severe fetal abnormalities.

Well, again, it is just not true. If we look to what Ronald Fitzsimmons said, executive director of the National Coalition of Abortion Providers, Mr. Fitzsimmons, I think, has shown amazing integrity in coming forward when he said that he admits he—I am using his words—lied through his teeth when he said partial-birth abortion was rarely used or only on women whose lives were in danger.

In a recent American Medical News article he explained that he could not justify lying to the American people any longer saying—and remember, he was an advocate; he opposed the ban initially. He said, "They are primarily done on healthy women and healthy fetuses, and it makes you feel like a dirty little abortionist with a dirty little secret."

It is no longer a secret. It is no longer a secret. We have talked about it in the Chamber. The media understands it. The American people understand it. It is time to ban this procedure.

Dr. James McMahon, another partial-birth abortion practitioner, testified before Congress that 80 percent of the partial-birth abortions he performed were for purely elective reasons—purely elective reasons. The examples he gave: nine babies because they had a little cleft lip, which can be easily repaired today. Many others, at least 39,

he said, were aborted because of the psychological and emotional health of the mother, despite the advanced gestational age and health of the child.

So we can see that if you use a health exception, you have a huge door through which you can drive a truck and continue to perform this procedure. If you throw in a so-called health exception, as good as it sounds, it really goes back to what *Doe versus Bolton* in 1973, the Supreme Court case defined as health. They defined health to include "all factors—physical, emotional, psychological, familial, and the woman's age—relative to the well-being of the patient."

That is the big door through which, if you are an abortionist, if you do not follow the ethics of the American Medical Association or the medical profession today, you can continue to do this brutal, inhumane procedure by saying, oh, it is for the health of the mother. The mother is a bit down in the dumps because she feels like this baby must be sacrificed, and therefore I can certify and say that is the health of the mother.

Again, in *Doe versus Bolton*, the law of the land, the Supreme Court case in 1973 included "all factors—physical, emotional, psychological, familial, and the woman's age—relative to the well-being of the patient." People in the abortion industry understand that there are many late-term abortions for social reasons as well as health reasons. It is recognized; people know it.

A 1993 National Abortion Federation internal memorandum said, "There are many reasons why women have later abortions," and they include, "Lack of money or health insurance, social psychological crisis, lack of knowledge about human reproduction."

So when you see legislation in the Chamber allowing this procedure or even putting in amendments or supposing it should be allowed for health of the mother, just recognize, if that is the case, that anybody—anybody—can continue doing this procedure at the same rate as they do today by providing this huge loophole, which again sounds like it is not a loophole but in practice is a huge loophole. One last myth.

Mr. President, can I ask for another 5 minutes?

Mr. SANTORUM. Five additional minutes.

The PRESIDING OFFICER. The Senator is asking for another 5. The Senator is recognized for another 5 minutes.

Mr. FRIST. One last myth goes like this. This procedure could possibly be the best procedure in a woman's situation for her health. In other words, now people realize and they didn't really a month ago or 6 months ago, and the President may not realize it today, there are a range of procedures when, for example, it is life of the mother. But there are some people who would say this is the best procedure.

Let me just say that as a physician, as one who has taken an oath to take

care of that individual who comes into the office, who comes into the room, to preserve the life and the health of every patient, I find this very disconcerting. I have talked to obstetricians. We have had the quotations in the Chamber. We have consulted many. They have basically told us that this is not the best procedure, that there are other alternative procedures if there is the indication, for example, of life of the mother. Many practitioners had never heard of it. The people in Tennessee, the high-risk obstetricians whom I have talked to across the State of Tennessee, they have not performed this procedure and many have not heard of this procedure.

Remember, this procedure was fashioned, described—in fact, the only article in the literature that we can really find describing it so it can be presented among other people is from Dr. Haskell, who is not an obstetrician. He is not a board certified obstetrician but, rather, a family-practice medical doctor. These procedures are being performed but not endorsed, not the procedure. Nothing from the obstetrics and gynecologic association has come out and said we support this procedure.

Now, when people say, well, it could be the best or it could not be the best, that is that noncommittal approach that some physicians have taken. And why? Because there is this great fear that big brother Government, the Federal Government is going to come down and jump into that doctor-patient relationship and tell us what we can or cannot do. That is the fear physicians have. Remember, this bill takes one brutal, unaccepted procedure in the medical profession and bans it.

Let me just recap and then I will close, Mr. President. We have a brutal, basically repulsive procedure that is specifically designed to kill a living infant outside the birth canal except for the head, specifically designed to kill a living infant outside of the birth canal with only the head remaining inside. The leading providers of women's obstetrical and gynecological services condemn it. They recommend that it not be used. They refuse to endorse it. They highlight its risks for the mother and say that there are other safe and equally effective alternatives available.

I guess I can understand some of the reasons why those practitioners, or a few of them, urge us not to ban it. They say it would be violating the sanctity of the physician-patient relationship. Mr. President, as a physician, as one who has taken the same oath to preserve the health and the life of others, and I also say as a father, I submit that any provider who performs this partial-birth abortion procedure has already violated that sanctity, that sanctity of the physician-patient relationship. The AMA, in essence, has said that when they say they appreciate the opportunity to work with us toward restricting a procedure which all agree is not good medicine. Partial-birth abor-

tions cannot and should not be categorized with other medical procedures. They should not be allowed in a civilized country.

With the reintroduction of the partial-birth abortion ban legislation in the Senate, we have the opportunity right now to right a wrong. Now, once again, the American people are calling upon us to listen not to our political advisers, not to listen to the various interest groups that come forward but to listen to our conscience. It is going to take moral courage to stop propaganda which is going to continue to come forward. It is going to take moral courage to make sure that good information makes it all the way to the President of the United States when he has to decide whether or not to veto this piece of good legislation. But we all, including the President, have at our disposal today the information with which to do the right thing.

So for the sake of women, and I think women especially, for the sake of their children, and really for the sake of our society, our society as a future civilization, we must put a stop once and for all to partial-birth abortion. I support the ban and urge all of my colleagues today, when we vote in several hours, to support the ban, and I urge the President not to veto this very good piece of legislation.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I commend the Senator from Tennessee for his terrific statement, as always. He has been on the floor for the past several days debating this issue from a position of authority, I might add, as the only physician in the Senate. But I also thank him for his tremendous work in working with me and Representative CANADY and the AMA to come up with the language changes that were necessary to secure this very important endorsement of the medical community. He was right on the frontlines working to make sure that happened, and he made a great contribution to the debate on this whole issue, whether or not we get enough votes in the Senate today, of consciousness of the American public, and I thank him for that.

Mr. President, I do not have a speaker here at this point, so I ask unanimous consent again that when I suggest the absence of a quorum, the time be deducted from the Democratic side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. FAIRCLOTH. Mr. President, I urge my colleagues to vote in favor of the Partial-Birth Abortion Ban Act. As the recent debate on this issue illus-

trates, this is not simply an issue of a woman's "right to choose" whether or not to have a child. It is also an issue of protecting the life of an unborn child. However much we may disagree about whether life begins at conception, when it comes to late term abortions, we are clearly talking about a baby. And therefore, it is entirely reasonable to place restrictions on such abortions, especially when the procedure in question is as barbaric—and as unnecessary—as this one.

Last September 26, when the Senate was debating whether or not to override President Clinton's veto of this measure, the Wall Street Journal made the same point in this way:

Up till now the abortion debate, if you'll pardon the metaphor, has managed to ignore the 800-pound gorilla in the room. For the first time, people are also talking about the fetus, not about women alone. A fetus may or may not be human, but on the other hand, it's not nothing. At 20 weeks of gestation, when the partial-birth abortion debate begins, a fetus is about nine inches long and is clearly becoming human.

Opponents of the effort to ban this procedure based their argument largely on claims about the relative safety and medical necessity of this procedure which we now know to be false. We all know by now about the admission by Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, that he lied through [his] teeth about the frequency of and justification for this procedure. And even the doctor who invented the procedure has admitted that 80 percent of these procedures he has performed were purely elective. In other words, they were not performed to preserve either the life or the health of the mother.

Mr. President, the majority of Americans agree that abortion on demand—at any time during pregnancy, for any reason—is wrong. Even a majority of people who describe themselves as pro-choice believe it is reasonable to restrict abortion under some circumstances. It is time we decided where to draw that line. This is certainly a good place to draw it.

Mr. LEVIN. Mr. President, H.R. 1122 would seek to ban a particular medical procedure, the intact D&X procedure. I believe we cross a dangerous threshold when we seek to legislate which particular medical procedures may be used, and which may not be used, by physicians. Dedicated doctors and nurses, through official statements of their associations, urge us not to adopt H.R. 1122, and not to politicize this issue.

The American College of Obstetricians and Gynecologists, an organization representing 38,000 physicians whose lives are dedicated to bringing babies into the world and keeping them and their mothers safe, issued a policy statement on January 12, 1997, relative to the bill before us which states that:

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 potential exists that legislation prohibiting specified 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.

Their position was reiterated yesterday. I ask unanimous consent that their letter dated May 19, 1997, be printed in the RECORD.

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

(See exhibit 1.)

Mr. LEVIN. The president of the American Medical Women's Association, Inc., in a March 10, 1997, letter, wrote the following on behalf of more than 10,000 women physicians and medical students nationwide,

I would like to register our strong opposition to . . . [S. 6], which seek(s) to outlaw intact D&E. . . . We do not believe that the federal government should dictate the decisions of physicians and feel that passage of this legislation would in effect prescribe the medical procedures to be used by physicians rather than allow physicians to use their medical judgment in determining the most appropriate treatment for their patients. The passage of this legislation would set a dangerous precedent—undermining the ability of physicians to make medical decisions. It is medical professionals, not the President or Congress, who should determine appropriate medical options.

Their position was reiterated today. I ask unanimous consent that their letter dated May 20, 1997, be printed in the RECORD.

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

(See exhibit 2.)

Mr. LEVIN. The Executive Director of the American Nurses Association, wrote to me in November, 1995, and stated:

It is the view of the American Nurses Association that this proposal would involve an inappropriate intrusion of the federal government into a therapeutic decision that should be left in the hands of a pregnant woman and her health care provider. ANA has long supported freedom of choice and equitable access of all women to basic health services, including services related to reproductive health. This legislation would impose a significant barrier to those principles.

It is inappropriate for Congress to mandate a course of action for a woman who is already faced with an intensely personal and difficult decision. This procedure can mean the difference between life and death for a woman.

The American Nurses Association is the only full-service professional organization representing the nation's 2.2 million Registered Nurses through its 53 constituent associations. ANA advances the nursing profession by fostering high standards of nursing practice, promoting the economic and general welfare of nurses in the workplace, projecting a positive and realistic view of nursing, and by lobbying the Congress and regulatory agencies on health care issues affecting nurses and the public.

Their position was reiterated today. I ask unanimous consent that their let-

ter dated May 20, 1997, be printed in the RECORD.

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

(See exhibit 3.)

Mr. LEVIN. I have other concerns with this bill as well. For example, while banning one abortion procedure, this bill leaves legal other abortion procedures which can be used, procedures which are just as destructive to the fetus but which could be less safe for the mother.

The Supreme Court has held that States may not ban pre-viability abortions but may ban post-viability abortions except when necessary to protect a woman's life or health. The bill under consideration would ban certain pre-viability abortions, and it does not allow for an exception required by the Supreme Court to preserve a woman's health relative to post-viability abortions.

Mr. President, in summary, the bill before us ignores the strong advice of the specialists and nurses acting officially through their associations. The bill before us violates Supreme Court opinions. The bill would risk the health of a mother while not preventing one abortion. We are usurping in this bill medical judgments relative to individual women, in perhaps the most dire and tragic circumstances they will ever face. This is not the way legislators should create crimes.

EXHIBIT 1

THE AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, May 19, 1997.

Hon. TRENT LOTT,
Senate Majority Leader
Washington, DC

DEAR SENATOR LOTT: In light of the slight modifications being proposed to HR 1122, the "Partial-Birth Abortion Ban Act of 1997," we wanted to take this opportunity to reiterate our opposition to this legislation. Our statement on this issue is attached.

Sincerely,

RALPH W. HALE, MD,
Executive Director.

EXHIBIT 2

AMERICAN MEDICAL WOMEN'S
ASSOCIATION, INC.,
Alexandria, VA, May 20, 1997.

Hon. RICK SANTORUM,
U.S. Senate,
Washington, DC.

DEAR SENATOR SANTORUM: On behalf of the American Medical Women's Association (AMWA), I would like to reiterate our opposition to H.R. 1122, the so-called "Partial-Birth Abortion Ban Act of 1997," as amended. AMWA does not endorse legislation which interferes with medical decisionmaking, particularly when it fails to consider the health of the woman patient.

Our opposition to this legislation is based on the following issues. First, we are gravely concerned that this legislation does not protect a woman's physical and mental health, including future fertility, or consider other pertinent issues such as fetal abnormalities. Second, this legislation would further erode physician-patient autonomy forcing physicians to always avoid legislatively prohibited procedures in medical decisionmaking, including in emergency situations when physicians and patients must base their decisions on the best available information

available to them. Third, medical care decisions must be left to the judgment of a woman and her physician without fear of civil action or criminal prosecution. We do not support the levying of civil and criminal penalties for care provided in the best interest of the woman patient.

AMWA remains committed to ensuring that physicians retain authority to make medical and surgical care decisions that are in the best interest of their patients given the information available to them.

Sincerely,

DEBRA R. JUDELSON, MD,
President.

EXHIBIT 3

AMERICAN NURSES ASSOCIATION,
Washington, DC, May 20, 1997.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: I am writing to reiterate the opposition of the American Nurses Association to H.R. 1122, the "Partial-Birth Abortion Ban Act of 1997," which is being considered by the Senate this week. This legislation would impose Federal criminal penalties and provide for civil actions against health care providers who perform certain late-term abortions.

* * * * *
Sincerely,
GERI MARULLO, MSN, RN,
Executive Director.

Ms. MIKULSKI. Mr. President, I rise in opposition to the Santorum bill. I oppose this bill for three reasons. First of all, it will not stop a single abortion from occurring. Second, it is unconstitutional. Finally, it does not provide any protection for a woman whose health is grievously threatened by the pregnancy.

I want to ban all post-viability abortions, not a particular procedure. I believe the only time an abortion should be allowed after the point of viability is when the woman's life is threatened or her health is at serious risk of substantial impairment.

I supported the Daschle alternative. The Daschle alternative would have meant fewer abortions. It banned all abortions once a fetus had achieved viability. In other words, once a fetus could survive outside the womb—with or without life support—a woman could not obtain an abortion.

It provided only two exceptions: first, when the woman's life was threatened by continuing the pregnancy, and second, when she was at risk of grievous injury to her health. If the Daschle alternative had been adopted there would be fewer abortions.

The bill before us bans one procedure. It does not ban one single abortion. It bans a method of abortion. It enables a doctor to choose any other abortion procedure—even ones that might cause a greater health risk to the woman. So no abortions would be stopped by this bill.

I want to support a bill that is constitutionally acceptable. The bill before us fails the test of constitutionality. The Supreme Court has always insisted that prior to the point of viability, the woman's right to abortion is constitutionally protected. This bill infringes on that right by banning a procedure even before viability.

The Supreme Court has also held that in any legislation restricting abortion, the woman's life and health must be protected. A physician must place the woman's health as the paramount concern. There can be no trade off of the woman's life and health for that of the fetus.

By refusing to include any exception for instances where the woman's health is at risk, H.R. 1122 is constitutionally unacceptable. The Daschle alternative, on the other hand, was respectful of the requirements of the Constitution. It focused only on abortion procedures after the point of viability. And it ensured that a woman's health could be protected.

I want to support legislation that provides for the health of the woman. I know that health of the woman is viewed by some as merely a loophole. But even those who hold that view must acknowledge that there are medical crises that arise during pregnancy that could cause profound harm to a woman's health.

Conditions like severe hypertension or peripartur cardiomyopathy are caused by the pregnancy itself. These can lead to organ failure or put a woman at risk of cardiac failure. Other conditions, like leukemia or breast cancer, cannot receive the aggressive treatment they require so long as the pregnancy continues.

I don't believe that anyone would argue that these are minor health problems. Yet the Santorum bill does not allow any health exception for women facing these major health threats.

The Daschle alternative, on the other hand, did provide a carefully crafted exception for the woman's health. It said that a physician could abort a viable fetus when the pregnancy would "threaten the mother's life or risk grievous injury to her physical health." Grievous injury was narrowly defined to include only the most debilitating problems caused by the pregnancy itself and cases where the pregnancy caused an inability to treat a life-threatening condition. It required that such conditions be medically diagnosable, and ruled out any condition for which termination of the pregnancy was not medically indicated.

This was not loophole shopping. This was a serious, careful, intellectually rigorous effort to deal with the realities of women's health and women's lives.

I was proud to support the Daschle alternative. I was disappointed that it did not receive broader support. It would have prevented abortions. It was respectful of the Constitution. It safeguarded women's health.

I am disappointed that the American Medical Association has chosen to endorse this bill. I am particularly troubled that their decision seems to be based not on what is best for women's health but on what is best for doctors. The changes they sought in the bill were designed only to protect a physician from legal endangerment.

The American College of Obstetricians and Gynecologists, on the other hand, endorsed the Daschle alternative. They represent 38,000 physicians who are experts in women's health and issues related to pregnancy. They endorsed the Daschle alternative because it would have provided a meaningful ban while assuring women's health is protected.

Let me say that I do not for one moment question the sincerity of those who have called and written me in support of H.R. 1122. They want to stop abortions, and I respect the depth of their convictions.

But let me also say that if this bill is enacted, it will be a hollow victory. I believe the Supreme Court will reject this bill as unconstitutional. In the end, even if it were somehow to pass constitutional muster, it will not stop a single abortion. It will merely divert physicians to other abortion procedures.

So this bill will not save lives. It will not save the lives and health of women. And it will not save the lives of fetuses. It is a hollow victory indeed.

I will oppose this measure.

Mr. JEFFORDS. Mr. President, today we will vote on the legislation offered by the Senator from Pennsylvania [Mr. SANTORUM] to ban the dilation and extraction, or D&X, procedure used by doctors. I will be voting against this ban for the third time in as many years.

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

Second, with the *Roe* decision, the Supreme Court wisely gave States the responsibility to restrict third-trimester abortions, so long as the life or health of the mother were not jeopardized. As of 1997, all but nine States have done so. To me, the rights of States to regulate abortions, when the life or health of the mother are not in danger, is an adequate safeguard. In the event the States pass unconstitutional regulations on this point, the appropriate remedy is with the courts. I realize that this policy leads to differences in law from State to State, but just as families differ, so too do States. As I said during debate on this topic in 1995:

When the *Roe versus Wade* decision acknowledged a state interest in fetuses after viability, the Court wisely left restrictions on post-viability abortions up to states. There are expert professional licensing boards, accreditation councils and medical

associations that guide doctors' decision-making in the complicated and difficult matters of life and death.

Nothing has changed since then. My reasons for voting against Senator DASCHLE's substitute amendment last week included this very principle: That Congress should not restrict those reproductive health decisions made by a woman and her doctor.

Third, the legislation before us would prevent doctors from using the D&X procedure where it is necessary to save the life of the mother. This clearly goes against the holding of the Supreme Court in *Roe*, as it required the health of the mother be safeguarded when States regulate late-term abortions. I will not vote for a bill that is neither constitutional, nor takes into account those situations where carrying a fetus to term would cause serious health risk for the mother. This is simply unacceptable. My vote in favor of the Feinstein substitute amendment underscored my commitment to safeguarding a doctor's options to protect the health of the mother in cases where a late-term procedure is necessary.

Finally, I believe that women who choose to undergo a D&X procedure do so for grave reasons. If there are women who abort to fit into their prom dress, I trust the States to regulate these incidents—if they do, in fact, occur. We have established a delicate legal framework in which to address late-term abortions and we should not shift the decisionmaking to the Federal Government.

Mr. SMITH of New Hampshire. Mr. President, I rise in strong support of H.R. 1122, the Partial-Birth Abortion Ban Act of 1997.

Mr. President, it has been nearly 2 years since I first introduced the Partial-Birth Abortion Ban Act in the Senate. At that time, only my distinguished colleague, Senator GRAMM of Texas, joined me as an original cosponsor. We have come a long, long way since that time. We are not there yet, but we have made tremendous progress.

When the Partial-Birth Abortion Ban Act first passed the Senate on December 7, 1995, it did so with the support of 54 Senators. When the Senate voted on whether to override President Clinton's veto of the Partial-Birth Abortion Ban Act on September 26, 1996, 57 Senators voted in favor of the bill.

Today, we believe that we have at least 62 Senators who are prepared to vote for this legislation. We remain several votes short of the 67 votes that we will need to override President Clinton's promised veto of this bill, but we are getting closer. I am hopeful that in the wake of yesterday's dramatic announcement that the American Medical Association has endorsed the Partial-Birth Abortion Ban Act of 1997, we will get there.

Mr. President, one of the principal reasons why we are making so much progress in the Senate toward our goal of outlawing partial-birth abortion is

that more and more Senators are realizing that the opposition to this bill in the last Congress was built on a foundation of lies. When I use the word "lies," Mr. President, I am using the very word that one of the Nation's leading abortion industry lobbyists—Ron Fitzsimmons—used when he publicly admitted earlier this year that he "lied through [his] teeth" when he helped orchestrate the campaign against the partial-birth abortion ban legislation in the last Congress.

In an interview published in the New York Times on February 27, 1997, and in an article published in the American Medical News on March 3, 1997, Mr. Fitzsimmons made the surprisingly candid admission that he had "lied" when he claimed that partial-birth abortions are rare. In those same interviews, Mr. Fitzsimmons also conceded that he "lied" when he claimed that partial-birth abortions are performed only on women whose lives are endangered or whose unborn children are severely disabled. "It made me physically ill," Mr. Fitzsimmons told his interviewer. "I told my wife the next day, 'I can't do this again.'"

In seeking to justify his veto of the Partial-Birth Abortion Ban Act last year, the New York Times points out, "President Clinton echoed the argument of Mr. Fitzsimmons." In other words, in justifying his veto, Mr. Clinton relied on the same statements of "fact" that have now been conceded by a key leader of the abortion industry to be "lies."

The truth, Mr. Fitzsimmons told the New York Times, is that "[i]n the vast majority of cases, the [partial-birth abortion] procedure is performed on a healthy mother with a healthy fetus that is 20 or more weeks along." And, as Mr. Fitzsimmons told the American Medical News, "[t]he abortion-rights folks know it, the anti-abortion folks know it, and so, probably, does everybody else." Except, Mr. Fitzsimmons might have added, for President Clinton, who still promises to veto this bill even though the reasons he gave to justify his previous veto have turned out to be "lies."

Mr. President, following Mr. Fitzsimmons's startling revelations, on March 4, 1997, the Washington Post ran an unusually blunt editorial entitled "Lies and Late-Term Abortions." After recounting Mr. Fitzsimmons' lies and his candid admissions that he lied, the Post editorial drew the following conclusion:

Mr. Fitzsimmons's revelation is a sharp blow to the credibility of his allies. These late-term abortions are extremely difficult to justify, if they can be justified at all. Usually pro-choice legislators such as Sen. Daniel Patrick Moynihan and Representatives Richard Gephardt and Susan Molinari voted for the ban last year. Opponents of the ban fought hard, even demanding a roll call vote on their motion to ban charts describing the procedure from the House floor. They lost. And they lost by wide margins when the House and Senate voted for the ban. They probably will lose again this year when the

ban is reconsidered. And this time, Mr. Clinton will be hard-pressed to justify a veto on the basis of the misinformation on which he rested his case last time.

There you have it, Mr. President. One of the abortion industry's most prominent leaders has admitted that the case against the partial-birth abortion ban was based on "lies." Not my word, his word—"lies." The New York Times points out that in attempting to justify his veto of the Partial-Birth Abortion Ban Act, President Clinton "echoed" those lies. And the Washington Post points out, in a great understatement, that President Clinton will be "hard-pressed" to base another veto on Mr. Fitzsimmons's and his friends' "misinformation."

Pulitzer Prize-winning columnist George Will drew the following conclusion in an opinion article published on April 24, 1997, in the Washington Post:

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.

Mr. President, even though President Clinton seems bound and determined not to take another look at his stand on partial-birth abortion even in the face of Mr. Fitzsimmons's stunning admissions, I urge my colleagues who voted against this bill in the last Congress to do just that—take another look. Many, if not most, of you voted against this bill because you believed Mr. Fitzsimmons and his friends when they told you that partial-birth abortions are rare and they are only done on women facing grave physical threats or whose unborn children are hopelessly deformed. I urge you to take another look, reconsider your position, and on reconsideration, support us. Partial-birth abortions aren't "rare"—they're common—and they are done, in the overwhelming majority of cases, on perfectly healthy women with perfectly healthy unborn children.

Mr. President, aside from the Fitzsimmons revelations, I believe that another reason why the Partial-Birth Abortion Ban Act continues to attract greater and greater support in the Senate is that Senators are coming to realize that this issue really transcends abortion. Indeed, as one Senator who did not vote for this bill the first time, but supported us on the veto override last year, Senator MOYNIHAN, put it, partial-birth abortion is "too close to infanticide." That was a starkly truthful way to put it, Mr. President, and it took courage for Senator MOYNIHAN to say it. I commend him for it.

Mr. President, another Senator who did not support this bill the first time around, but who also joined us on the veto override vote, Senator SPECTER, also believes that partial-birth abortion is more like infanticide than it is abortion. Listen to what Senator SPECTER had to say on the Senate floor on September 26, 1996. "In my legal judg-

ment," Senator SPECTER said, "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," Senator SPECTER concluded, "when the child is partially out of the womb of the mother. It is no longer abortion; it is infanticide."

Once again, Mr. President, those are strong words and they are truthful words. Senator SPECTER is a pro-choice Senator, and it took courage for him to support this bill. But he did so, again, Mr. President, because he recognized that partial-birth abortion is more like infanticide than it is abortion.

So, Mr. President, we are steadily picking up more and more support in the Senate because, as I have argued here today, more and more Senators are realizing that the case against this bill was built on a foundation of what are now conceded to have been "lies." We are also picking up greater and greater support because more and more Senators are realizing that this issue transcends abortion—that the tiny little human being whom we are talking about is a partially born baby who is just inches from drawing her first breath.

To those Senators who are still considering joining the ever-increasing majority of Senators who support the Partial-Birth Abortion Ban Act, let me address a few more comments to you. Perhaps the Nation's most respected and revered doctor—"America's Doctor"—is the former Surgeon General of the United States, C. Everett Koop. I am particularly proud of Dr. Koop because he is a part-time resident of my home State of New Hampshire.

This is what Dr. Koop has to say: "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility. On the contrary, this procedure can pose a significant threat to both her immediate health and future fertility." We all know that Dr. Koop is not a man who uses words lightly. On the contrary, Dr. Koop is a doctor who chooses his words with care and precision. Listen to those words again: "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility."

Now, of course, Mr. President, as I mentioned earlier, even the American Medical Association, which is pro-choice on abortion, has endorsed the Partial-Birth Abortion Ban Act. So, my colleagues, if you are worried about protecting women, listen to the words of Dr. Koop and listen to the American Medical Association. They are for the Partial-Birth Abortion Ban Act because partial-birth abortion is never necessary to protect a woman's health.

Finally, Mr. President, I urge my colleagues who are still undecided about this bill to look at it in light of our beloved Nation's history. We all know those beautiful and majestic words

that Thomas Jefferson wrote for our Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of happiness."

Mr. President, one does not have to agree with my view that human life begins at conception to see that a living baby who is in the process of being born has, in Jefferson's words, been endowed by her creator with the unalienable right to life. Can anyone seriously doubt where that great American, Thomas Jefferson, would stand on that question?

Mr. President, another of America's greatest leaders, Abraham Lincoln, made one of the most dramatic and prophetic statements of his life in a speech that he delivered on June 16, 1858. In that speech, Abraham Lincoln said "I believe this government cannot endure permanently, half slave and half free." Today, Mr. President, as we debate this Partial-Birth Abortion Ban Act in this great Capitol of the Union that Lincoln saved, I would say this: The moral foundation of this Government cannot endure permanently when even the half born are not free to live. Can anyone, Mr. President, really doubt where that moral giant, Abraham Lincoln, would have stood on the question before us here today?

Mr. President, let us rise to the moral level to which our Nation's history calls us. Let us recognize the unalienable, God-given right to life of the partially born. Let us protect the partially born from a brutal death. Let us be worthy of the Nation that Jefferson helped create and that Lincoln surely saved. Let us pass the Partial-Birth Abortion Ban Act with a two-thirds' majority in the Senate and then dare President Clinton to turn his back on the moral legacy of Jefferson and Lincoln.

Mr. GORTON. Mr. President, from the time that I first became involved in national politics, it has seemed to me that, for mature adults, under most circumstances, the law was not an appropriate method of determining what are ultimately moral choices for the people most intimately involved with those choices. I believe that my views probably reflect those of a majority of the American people who believe that this should be a matter of an individual woman's choice and that of close family—under most cases.

But, Mr. President, when we talk about late-term abortion and when we speak specifically about partial-birth abortion, we are not dealing with most cases. I think it is clear that the majority of the American people, as they have come increasingly to understand exactly what this procedure is, are horrified by it.

I have been disturbed by the nature of this debate, by the intentional deceit and misinformation about the frequency and necessity of this practice.

Only recently, have the opponents of this ban have admitted "lying through their teeth" about the facts on the number of partial-birth abortions performed and grounds for this horrific procedure.

It is clear, Mr. President that this practice is not necessary. Just last week, the American Medical Association Board of Trustees said there is "no identified situation" that requires the use of this procedure and as of yesterday, endorsed this bill. The American College of Obstetricians and Gynecologists state that there are "no circumstances under which this procedure would be the only option to save the life of the mother".

This is a practice that is not compassionate, nor is it within the bounds of civilized or humane behavior. My colleagues have described it in detail, and I don't need to repeat that detail. But I do think that it is significant that those who oppose this bill generally speaking, talk in circumlocution, disguise the language, resist and object not only to a description of the procedure itself, but even to the title-partial-birth abortion. They speak about slippery slopes rather than the procedure itself and attempt to avoid the true brutality and extreme nature of the procedure.

It is simple, this procedure is brutal, inhumane and clearly unnecessary. This vote will be a defining issue about our own society, about our feelings for indifference to brutality, about violence, about uncivilized, inhumane behavior. For all of those reasons, Mr. President, I am convinced that we should pass the Partial-Birth Abortion Ban Act, and I deeply hope that a sufficient majority of my colleagues will vote to do that.

Mr. BYRD. Mr. President, once again we find ourselves addressing the very difficult and emotional issue of partial-birth abortion. The bill the Senate is considering today would criminalize the performance of the partial-birth abortion procedure, unless it is necessary to save the life of the mother. I still have many unanswered questions about this matter, and, as I have indicated in the past, I am extremely hesitant to thrust the Congress into the role of the physician. I am concerned that this measure seemingly ignores the Supreme Court's determinations regarding the role of the state in banning abortions pre- and post-viability and with regard to the health of the mother. I have also noted concerns that this might be the first step in a process which may lead Congress to play the role of doctor again and again and again on specific medical procedures.

As in the past, I have given this issue a great deal of thought and I have particularly considered the new information brought to light by Ron Fitzsimmons of the National Coalition of Abortion Providers. His remarks made clear that this particular procedure is performed far more often than origi-

nally thought and not just under certain extreme circumstances which severely threaten the life and the health of the mother. In addition, an endorsement of the ban by the American Medical Association (AMA), which represents a large number of our Nation's doctors, certainly allays some of my earlier concerns about this measure. In previous votes, I had opposed banning this specific procedure; however, in light of the fact that it is not as rare as some claimed and that there appear to be other alternatives, I cannot, in good conscience, continue to oppose a ban on this specific procedure.

Due to my concern about the serious health risk to the mother that can, unfortunately, occur during pregnancy, I voted in support of the alternative measure offered by Senator DASCHLE. I believe that the Daschle amendment would have been more effective in addressing warranted concerns about post-viability abortions while ensuring that severe, serious health risks to the mother are taken into account. However, that amendment was rejected by the Senate.

Like so many West Virginians and Americans who have heard about this specific procedure, I find it extremely disturbing. Mr. President, I will cast my vote in support of H.R. 1122 to ban the partial-birth abortion procedure that is done in too many questionable circumstances.

Mr. DOMENICI. Mr. President, I rise in support of the Partial-Birth Abortion Ban Act of 1997. Let me first begin by stating that an abundance of misinformation has characterized the debate on the partial-birth abortion procedure. I am deeply troubled at how abortion activists have misled the American public, Members of Congress, and especially the President, on the number of partial-birth abortions performed each year and the reasons for them.

The debate on this issue reminds me of a variation of the old courtroom saying: If you have the facts, then argue the facts. If you have the law, then argue the law. If you have neither the law or the facts, then don't tell the truth.

The proponents of the partial-birth abortion have neither the facts nor the law, so they argue with lies.

Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, which represents approximately 200 independently owned abortion clinics across the country, recently admitted in February of this year, that he "lied" through his teeth when he said that the procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged. According to Mr. Fitzsimmons, he "spouted the party line" about the procedure—even though he believed his statements were wrong.

In debating a procedure as grotesque as the partial-birth abortion, the facts regarding its use and necessity are important. Because the facts about this

procedure are so damaging, pro-abortionists like Mr. Fitzsimmons, have tried to distort or withhold facts from the American people. Let me highlight some of the mistruths that have surrounded this issue.

Proponents of the partial-birth abortion claim that the procedure is rare—only occurring about 500 to 600 times a year. However this is not true. The number of partial-birth abortions is closer to 4,000 to 5,000 a year. In New Jersey alone, at least 1,500 procedures are done each year.

Proponents of the partial-birth abortion also claim that the procedure is necessary to save the life or health of the mother. This is not true. According to the more than 600 doctors nationwide who make up the Physicians' Ad-hoc Coalition for Truth, it is never medically necessary to kill an unborn child in the second or third trimester of pregnancy in order to protect the life, health, or future fertility of the mother. Former Surgeon General C. Everett Koop has stated that the "partial-birth abortion is never necessary to protect a mother's health or her future fertility." Even the American College of Obstetricians and Gynecologists has admitted 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."

The fact is that partial-birth abortions are elective and not performed for medical reasons. As one abortion doctor stated most of the abortions were performed on women who didn't realize, or didn't care how far along they were.

Proponents of partial-birth abortion fail to mention that the 3-day-long procedure actually increases the risk of harm to the mother. After 21 weeks, an abortion is two times as risky for the mother as childbirth.

Finally, proponents of the partial-birth abortion claim it is used only in extreme cases of fetal abnormality. This is not true. Mr. Fitzsimmons admitted that the majority of these procedures are performed on healthy fetuses and healthy mothers. In a March 3, 1997, article in American Medical News, Mr. Fitzsimmons admitted that he called around to doctors who performed the procedure. According to Mr. Fitzsimmons, "I learned right away that this was being done for the most part in cases that did not involve those extreme circumstances."

It is disheartening that the debate on this issue has been so clouded by misinformation. The simple truth is that partial-birth abortions are common and the majority of the procedures are performed on healthy mothers and babies.

On an issue as emotionally charged and divisive as abortion, elected officials have a heightened responsibility to carefully gather the facts and to vote their consciences.

Mr. FEINGOLD. Mr. President, I will vote against H.R. 1122, the so-called

partial-birth abortion bill that would outlaw a particular abortion procedure, the intact dilation and extraction, sometimes called intact D&E. I do support a ban on post-viability abortions, if it contains important and constitutionally required exceptions to protect the life and health of the woman. I am disappointed that the proponents of H.R. 1122 have steadfastly refused to accept any amendment, no matter how tightly crafted, which would include provisions to protect women's health.

I have said repeatedly here on the floor of the Senate, during hearings in the Judiciary Committee, and at listening sessions held across the State of Wisconsin that I believe that a law to ban this controversial procedure could have been enacted last year with one simple addition—an exception that would allow physicians to perform the procedure on women whose health is at risk. Such an exception, in combination with the bill's existing exception to save the life of the woman, is an important and necessary provision. I am sensitive to the fears of the bill's proponents that such an exception could prove to be a major loophole, and I agree that the health exception should be narrow. But it needs to be there.

Let me remind my colleagues that the Supreme Court has clearly ruled that, although States have the right to restrict post-viability abortions, exceptions must always be made to protect the life and health of the mother. Women cannot be required to trade off their well-being in order to increase the likelihood of fetal survival.

Last Thursday, I voted for the bipartisan alternative amendment to H.R. 1122 introduced by Senator DASCHLE and others. I voted for this amendment because it took a comprehensive approach to banning abortions on viable fetuses, rather than merely banning a single procedure. In addition, Mr. President, this amendment contained the critical, constitutionally necessary exception to protect the life and health of the woman.

I believe that the health exception in the Daschle amendment was sufficiently narrow to satisfy most reasonable people's concerns about creating a loophole in the law. It would have required a physician to certify that continuation of the pregnancy would threaten the woman's life or risk grievous injury to her physical health. Grievous injury was defined in the amendment as a severely debilitating disease or impairment specifically caused by the pregnancy, or an inability to provide necessary treatment for a life threatening condition.

The other side claims that abortion is never necessary to protect a woman's health. But Mr. President, I have met women whose doctors believed differently. The American College of Obstetricians and Gynecologists supports them, and has stated that although the intact D&E procedure is never the only option to save a woman's life or preserve her health, it sometimes may be

the best or most appropriate procedure, depending on the woman's particular circumstances.

Members on both sides of this debate can cite respected physicians who will support their positions. But precisely because I am not a doctor, I say again that it is essential to include a health exception in any bill we pass. The point is, Mr. President, that there is a dispute within the medical community about the necessity for and the risk associated with intact D&E. And that is where it should be resolved. It should be women and their doctors, not politicians, who decide which medical procedure is appropriate in those circumstances where an abortion is performed.

If some doctors believe that it is never necessary to perform an intact D & E on a viable fetus to protect a woman's health, then they would not recommend such an intervention. But for those physicians who disagree, I do not think it is the place for this Senator or any other government entity to override that judgment. A decision regarding which medical intervention is necessary is best decided on by individual women and their physicians, in light of their individual circumstances.

Another equally important aspect of the Daschle alternative amendment was its comprehensive ban on post-viability abortions. Rather than taking the approach of H.R. 1122, which would prohibit a single procedure, regardless of the stage of pregnancy, this amendment took a broader approach. It would have protected women's constitutional right to choose an abortion before the fetus is viable. But once the fetus is determined by a physician to be viable, usually around the 24th week of pregnancy, this amendment would have outlawed abortion, except in the situations I have already addressed, in which the woman's life is threatened or her health is at risk of grievous injury.

This bipartisan alternative amendment struck the right balance between protecting women's constitutional right to choose abortion and the right of the State to protect future life. It would have protected a woman's physical health throughout her pregnancy, while insisting that only grievous, medically diagnoseable conditions could justify aborting a viable fetus. Both fetal viability and women's health would have been determined by the physician's best medical judgment, as they must be. It was a sensible and responsible amendment.

Unfortunately, Mr. President, the Daschle amendment was rejected. This is particularly disappointing, because if the underlying bill were to become law, it would not prevent a single abortion. It would merely deny physicians the right to exercise their best medical judgment, and it would force women in critical health situations who would have opted to have an intact D&E to use different, and perhaps less safe, options.

Finally, Mr. President, let me address a related topic. We all know that

this debate has unfortunately been characterized by a great deal of misinformation and distortion of the facts. One particular piece of misinformation has been widely circulated by the proponents of this legislation, and I frankly don't think it is helpful to a truthful debate. It involves the deliberate misinterpretation of a conversation that I had with the junior Senator from Pennsylvania last year.

During last year's floor debate over the veto override, Senator SANTORUM and I had a brief exchange on the Senate floor which proponents of this legislation have used to suggest that I support infanticide—that is, killing an infant after it has been fully delivered. Obviously, that is untrue. I was answering the question I thought I had been asked. I was addressing the issue of who should decide whether the life or health of a woman was at risk.

Let me be clear, for the record. Once a child has been born, there is no conceivable argument that would suggest a woman's life or health would be at risk any longer. The distortion of our exchange by the National Right to Life Committee and others is the kind of tactic which undermines efforts to reach an agreement that would ban late term abortions except in the most narrow of circumstances where a woman's life or health is at stake.

We are near the end of Senate debate on this issue for the time being, but I suspect that this issue will arise again when this body attempts to override another Presidential veto. As we continue to engage in this volatile and emotional debate, both on the Senate floor and in the media, I hope we will make an effort to recognize that there are strong feelings about this issue on all sides. We should respect these differences, avoid efforts to confuse or trick each other and the public, and maintain a level of debate that reflects the importance of ascertaining the truth about this issue and finding responses that are sensitive and constitutionally sound.

Mr. SANTORUM. Mr. President, we are now down to 36 minutes of debate on both sides. And I agreed with the other side that I would take up some of the time to bring down some of our time.

I want to bring up a point, discuss a point that I believe is very important for two reasons: No. 1, I think it is important that Members understand the issues of constitutionality that have been raised by some about this legislation and whether it is constitutional in light of *Roe* versus *Wade* and *Doe* versus *Bolton* and other decisions on the subject of abortion; and, No. 2, I want to put down a marker for this piece of legislation when it does, if it does, any time in the near future go before the courts.

I hope that by the actions of the Senate today, and hopefully the actions of the President later on, that he will now decide to sign this legislation in light of all the new evidence that has been presented since his initial veto.

I wanted to discuss some of the elements of constitutionality, and in so discussing, I would like to read a letter that was sent to Senator ORRIN HATCH, the chairman of the Judiciary Committee, by 62 law professors from universities all over the country, to state to Senator HATCH their opinion on the constitutionality of the statute.

I will remark that this letter was written May 8, prior to the amendment that we adopted here on the bill today which I believe tightens the language up even more and makes it more impregnable to constitutional overruling by the courts.

I will read the letter sent to Senator HATCH:

DEAR SENATOR: We write to you as law professors in support of the Partial-Birth Abortion Ban Act, S. 6. We do not write as partisans. We are both Democrats and Republicans, and we are of different minds of various aspects of the abortion issue. We are concerned, however, that baseless legal arguments are being offered to oppose a ban on partial-birth abortions, and we are unanimous in concluding that such a ban is constitutional.

We have learned that some Senators are concerned about claims that a ban on second trimester partial-birth abortions, or a ban on third trimester procedures without a "health" exception, would be unconstitutional under *Roe v. Wade* and later abortion decisions.

The destruction of human beings who are partially born is, in our judgment, entirely outside the legal framework established in *Roe v. Wade* and *Planned Parenthood v. Casey*. No Supreme Court decision, including these, ever addressed the constitutionality of forbidding the killing of partially born children. In fact, *Roe* noted explicitly that it did not decide the constitutionality of that part of the Texas law which forbade—and still forbids—killing a child in the process of delivery.

Continuing on.

Even should a court in the future decide that a law banning the partial-birth procedure is to be evaluated within the *Roe Casey* "abortion" framework, we believe such a ban would survive legal scrutiny thereunder. The partial-birth procedure entails mechanical cervical dilation, forcing a breech delivery, and exposing a mother to severe bleeding from exposure to shards of her child's crushed skull. Before viability, an abortion restriction is unconstitutional only if it creates a "undue burden" on the judicially established right to have an abortion. A targeted ban of a single, maternal-health-endangering procedure cannot constitute such a burden.

To the extent of its constitutionally delegated authority, Congress may also ban all forms of abortion after viability, subject to the health and life interests of the mother. Under the most recent Supreme Court decision concerning abortion, *Planned Parenthood v. Casey*, there is no reason to assume that the Supreme Court would interpret a post-viability health exception to require the government to tolerate a procedure which gives zero weight to the life of a partially-born child in which itself poses severe maternal health risks. Furthermore, according to published medical testimony, including that of former Surgeon General C. Everett Koop "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility. On the contrary, this procedure can pose a significant threat to both her immediate health and future fertility." Even the American College of Obste-

tricians and Gynecologists—which opposes the bill—acknowledges that partial-birth abortion is *never* the "only option to save the life or preserve the health of the woman." Banning this procedure does not compromise a mother's health interests. It protects those interests.

In short, while individuals may have ideological or political reasons to oppose banning the partial-birth procedure, those objections should not, in good conscience, be disguised as legal or constitutional in nature.

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

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

MAY 8, 1997.

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To the extent of its constitutionally delegated authority, Congress may also ban all forms of abortion after viability, subject to the health and life interests of the mother. Under the most recent Supreme Court decision concerning abortion, *Planned Parenthood v. Casey*, there is no reason to assume that the Supreme Court would interpret a post-viability health exception to require the government to tolerate a procedure

¹ 410 U.S. 113, fn. 1 (1973), citing Art. 1195, of Title 15, Chapter 9. (Presently, this law is codified at Vernon's Ann. Texas Civ. St. Art. 4512.5.) A similar ban remains in effect in Louisiana (LA. Revised Statutes 14.87.1). The Texas and Louisiana statutes are also consistent with existing case law in California. See *People v. Chavez*, 77 Cal. App. 2d 621 (1947) ("It should equally be held that a viable child in the process of being born is a human being within the meaning of the homicide statutes, whether or not the process has been fully completed."); accord *Keeler v. Superior Court*, 2 Cal. 3d 619 (1970).

which gives zero weight to the life of a partially-born child and which itself poses severe maternal health risks. Furthermore, according to published medical testimony, including that of former Surgeon General C. Everett Koop: "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility. On the contrary, this procedure can pose a significant threat to both her immediate health and future fertility." Even the American College of Obstetricians and Gynecologists—which opposes the bill—acknowledges that partial-birth abortion is never the "only option to save the life or preserve the health of the woman." Banning this procedure does not compromise a mother's health interests. It protects those interests.

In short, while individuals may have ideological or political reasons to oppose banning the partial-birth procedure, those objections should not, in good conscience, be disguised as legal or constitutional in nature.

Respectfully submitted,

Rev. Robert J. Araujo, S.J., Gonzaga Law School; Thomas F. Bergin, University of Virginia School of Law; G. Robert Blakey, University of Notre Dame Law School; Gerard V. Bradley, University of Notre Dame Law School; Jay Bybee, Louisiana State University Law Center; Steven Calabresi, Northwestern University School of Law; Paolo G. Carozza, University of Notre Dame Law School; Carol Chase, Pepperdine University School of Law; Robert Cochran, Pepperdine University School of Law; Teresa Collett, South Texas College of Law.

John E. Coons, University of California, Berkeley; Byron Cooper, Associate Dean, University of Detroit Mercy School of Law; Richard Cupp, Pepperdine University School of Law; Joseph Daoust, S.J., University of Detroit Mercy School of Law; Paul R. Dean, Georgetown University Law Center; Robert A. Destro, The Catholic University of America; David K. DeWolf, Gonzaga Law School; Bernard Dobranski, Dean, The Catholic University of America; Joseph Falvey, Jr., Assistant Dean, University of Detroit Mercy School of Law; Lois Fielding, University of Detroit Mercy School of Law.

David Forte, Cleveland-Marshall College of Law, Cleveland State University; Steven P. Frankino, Dean, Villanova University School of Law; Edward McGlynn Gaffney, Jr., Dean, Valparaiso University School of Law; George E. Garvey, Associate Dean, The Catholic University of America; John H. Garvey, University of Notre Dame Law School; Mary Ann Glendon, Harvard University Law School; James Gordley, University of California, Berkeley; Richard Alan Gordon, Georgetown University Law Center; Alan Gunn, University of Notre Dame Law School; Jimmy Gurule, University of Notre Dame Law School.

Jacqueline Nolan-Haley, Fordham University School of Law; Laura Hirschfeld, University of Detroit Mercy School of Law; Harry Hutchison, University of Detroit Mercy School of Law; Phillip E. Johnson, University of California, Berkeley; Patrick Keenan, University of Detroit Mercy School of Law; William K. Kelley, University of Notre Dame Law School; Douglas W. Kmiec, University of Notre Dame Law School; David Thomas Link, Dean, University of Notre Dame Law School; Leon Lysaght, University of Detroit Mercy School of Law; Raymond B.

Marcin, The Catholic University of America.

Michael W. McConnell, University of Utah College of Law; Mollie Murphy, University of Detroit Mercy School of Law; Richard Myers, University of Detroit Mercy School of Law; Charles Nelson, Pepperdine University School of Law; Leonard J. Nelson, Associate Dean, Cumberland School of Law, Samford University; Michael F. Noone, The Catholic University of America; Gregory Ogden, Pepperdine University School of Law; John J. Potts, Valparaiso University School of Law; Stephen Presser, Northwestern University School of Law; Charles E. Rice, University of Notre Dame Law School. Robert E. Rodes, Jr., University of Notre Dame Law School; Victor Rosenblum, Northwestern University School of Law; Stephen Safranek, University of Detroit Mercy School of Law; Mark Scarberry, Pepperdine University School of Law; Elizabeth R. Schiltz, University of Notre Dame Law School; Patrick J. Schiltz, University of Notre Dame Law School; Thomas L. Shaffer, University of Notre Dame Law School; Michael E. Smith, University of California, Berkeley; David Smolin, Cumberland School of Law, Samford University; Richard Stith, Valparaiso University School of Law; William J. Wagner, The Catholic University of America; Lynn D. Wardle, Brigham Young University; Fr. Reginald Whitt, O.P., University of Notre Dame School of Law.

Mr. SANTORUM. Thank you, Mr. President.

Does the Senator from Michigan seek some time?

Mr. ABRAHAM. Yes, I do.

Mr. SANTORUM. I yield the Senator from Michigan 3 minutes.

Mr. ABRAHAM. That would be fine.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Thank you very much, Mr. President.

I thank, again, the Senator from Pennsylvania who is doing an outstanding job to try to work with all sides on this issue. I believe the approach which he has taken has been very constructive. And now the endorsement of the American Medical Association, I think, is a further indication that this legislation is on the right course.

I just want to basically reiterate some points I made the other day when I spoke on this issue. At that time I responded to some of the arguments on the other side. Those arguments were that because Members of Congress were not themselves physicians somehow we were not the appropriate people to be addressing issues with respect to partial-birth abortion that fall within the area of medical procedures.

As I said at that time, Members of Congress—many of us are not farmers, yet we deal with agriculture issues here on this Senate floor. Virtually none of us are nuclear physicists, and yet we deal with nuclear issues pertaining to nuclear weapons and issues pertaining to the disposal of nuclear waste, a variety of other highly scientific issues. Only a few of us, such as

the Presiding Officer, have served in the military in combat, and yet we are asked to be experts with regard to issues pertaining to national security.

So with this issue as well we are called upon to get the best information possible and seek to make the best decisions as a result.

However, now we actually have some additional information that comes from the experts who have been referenced in previous debates. The endorsement of the American Medical Association of the partial-birth abortion bill, combined with the endorsement and strong support of that legislation by the one Member among us who is a physician, I think buttresses better than virtually anything else said during this debate the case that this procedure is never needed for the medical reasons that its advocates have claimed to protect the health of the mother.

So in my judgment, Mr. President, we now have an overwhelming case in favor of the passage of this legislation, legislation which will I think help us move in the right direction as we consider a variety of other issues that pertain to abortion in the months and years ahead.

So I just wanted to once again come to the floor to express my support for the bill, and to thank the Senator from Pennsylvania for his many efforts in furtherance of its passage.

I thank the Senator and I yield the floor.

Mr. SANTORUM. I thank the Senator from Michigan for his statement and being here on the floor to add to the debate and for his terrific work that he has done on this issue in the past now 2 years. I thank the Senator very much.

Mr. President, I do not have a speaker at this point.

I ask unanimous consent that when I suggest the absence of a quorum the time come off the other side.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. BOXER. Mr. President, I ask what the time situation is between Senator SANTORUM's side and this side.

The PRESIDING OFFICER. The Senator from Pennsylvania controls 27 minutes, 13 seconds, and the Senator on the other side of this argument controls 27 minutes and 25 seconds.

Mrs. BOXER. Mr. President, I yield myself up to 20 minutes.

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

Mrs. BOXER. Mr. President, throughout this debate we have heard both

sides accuse each other of misstatement and worse. We have heard charges and countercharges. Today, as we close down this argument, I am not going to engage in any of those charges and countercharges. I am going to talk about what both sides know to be fact.

Fact: This Santorum bill will outlaw a procedure known as an intact dilatation and extraction.

Fact: This procedure is used by obstetricians and gynecologists in circumstances where they believe it is in the best interests of the woman, to save her life or to save her health.

Fact: Those very same physicians who use this procedure oppose this bill. The American College of Gynecologists and Obstetricians confirmed today that they oppose this bill.

Fact: This bill is opposed by the California Medical Association.

Fact: This bill is opposed by the American Medical Women's Association, an organization of women physicians.

Fact: This bill is opposed by the American Nurses Association.

Fact: This bill is opposed by the Society of Physicians for Reproductive Health.

Fact: The American Medical Association endorsed this bill in a 4-day reversal of opinion. Having done that, they have taken a position against the very doctors who handle these procedures.

Fact: We have a series of women who have come forward to testify, about their pain, their grief, that this procedure—that would be outlawed in the pending Santorum bill saved their lives and their health, retained their fertility in many cases, and in the opinion of their doctors was the humane procedure to use for all concerned.

Fact: Most of these women, whose photographs I have behind me, most of these women who came forward to share their stories are very religious, and many say they are opposed to all abortions, but they decided after all the facts were on the table and after consulting their families and many doctors—many went to several doctors, in many cases five or six, to try and come up with another solution to a tragedy—they decided this was their only choice after they consulted with these many doctors, with their families, with their clergy, and with their God.

Several went on to have healthy pregnancies. Coreen Costello was among them. You can see little Tucker in this photograph, who was born after Coreen underwent the procedure.

I will quote from some of the letters we have received from doctors organizations against the Santorum bill.

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

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

THE AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, May 19, 1997.

Hon. TRENT LOTT,
Senate Majority Leader,
Capitol Building, Washington, DC.

DEAR SENATOR LOTT: In light of the slight modifications being proposed to HR 1122, the "Partial-Birth Abortion Ban Act of 1997," we wanted to take this opportunity to reiterate our opposition to this legislation. Our statement on this issue is attached.

Sincerely,

RALPH W. HALE, MD,
Executive Director.

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%. 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.

AMERICAN MEDICAL
WOMEN'S ASSOCIATION, INC.,
Alexandria, VA, May 20, 1997.

Hon. RICK SANTORUM,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SANTORUM: On behalf of the American Medical Women's Association (AMWA), I would like to reiterate our opposition to H.R. 1122, the so-called "Partial-Birth Abortion Ban Act of 1997," as amended. AMWA does not endorse legislation which interferes with medical decisionmaking, particularly when it fails to consider the health of the woman patient.

Our opposition to this legislation is based on the following issues. First, we are gravely concerned that this legislation does not protect a woman's physical and mental health, including future fertility, or consider other pertinent issues such as fetal abnormalities. Second, this legislation would further erode physician-patient autonomy forcing physicians to always avoid legislatively prohibited procedures in medical decisionmaking, including in emergency situations when physicians and patients must base their decisions on the best available information available to them. Third, medical care decisions must be left to the judgment of a woman and her physician without fear of civil action or criminal prosecution. We do not support the levying of civil and criminal penalties for care provided in the best interest of the woman patient.

AMWA remains committed to ensuring that physicians retain authority to make medical and surgical care decisions that are in the best interest of their patients given the information available to them.

Sincerely,
DEBRA R. JUDELSON, MD,
President.

AMERICAN NURSES ASSOCIATION,
Washington, DC, May 20, 1997.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: I am writing to reiterate the opposition of the American Nurses Association to H.R. 1122, the "Partial-Birth Abortion Ban Act of 1997," which is being considered by the Senate this week. This legislation would impose Federal criminal penalties and provide for civil actions against health care providers who perform certain late-term abortions.

It is the view of the American Nurses Association that this proposal would involve an inappropriate intrusion of the federal government into a therapeutic decision that should be left in the hands of a pregnant woman and her health care provider. ANA has long supported freedom of choice and equitable access of all women to basic health services, including services related to reproductive health. This legislation would impose a significant barrier to those principles. It is inappropriate for Congress to mandate a course of action for a woman who is already faced with an intensely personal and difficult decision.

The American Nurses Association is the only full-service professional organization representing the nation's 2.2 million Registered Nurses through its 53 constituent associations. ANA advances the nursing profession by fostering high standards of nursing

practice, promoting the economic and general welfare of nurses in the workplace, projecting a positive and realistic view of nursing, and by lobbying the Congress and regulatory agencies on health care issues affecting nurses and the public.

The American Nurses Association appreciates your work in safeguarding women's access to reproductive health care and respectfully urges members of the Senate to vote against H.R. 1122.

Sincerely,

GERI MARULLO, MSN, RN,
Executive Director.

Mrs. BOXER. The American Medical Women's Association says, in part, in a letter to Senator SANTORUM, "On behalf of the American Medical Women's Association, I would like to reiterate our opposition to H.R. 1122." This letter is dated today.

The organization does not endorse legislation which interferes with medical decisionmaking, particularly when it fails to consider the health of the woman patient.

Our opposition is based on the following issues. First, we are gravely concerned that this legislation does not protect a woman's physical and mental health, including future fertility, or consider other pertinent issues such as fetal abnormalities. Second, this legislation would further erode physician-patient autonomy forcing physicians to always avoid legislatively prohibited procedures in medical decisionmaking, including in emergency situations when physicians and patients must base their decisions on the best available information * * *

That is the American Medical Women's Association letter, in part.

The American College of Obstetricians and Gynecologists, after learning of the opposition of the AMA, wrote a letter to Senator LOTT dated yesterday.

In light of the slight modifications being proposed to H.R. 1122, we wanted to take this opportunity to reiterate our opposition to this legislation.

They attach their statement in which they say:

Terminating a pregnancy is performed in such 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 * * * and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision.

Is it not interesting, an organization of obstetricians and gynecologists oppose this bill and have to plead the case that they are the ones who should make this decision—not Senator SANTORUM, not Senator BOXER, not Senator COATS, not Senator FEINSTEIN, not Senator HELMS. This is not our job. Our job is tough enough. We do not come close to being doctors. We have one physician in this body, but he is not an obstetrician and gynecologist.

A letter dated today from the American Nurses Association:

I am writing to reiterate the opposition of the American Nurses Association to H.R. 1122 * * *

It is the view of the American Nurses Association that this proposal would involve an inappropriate intrusion of the federal Government into a therapeutic decision that

should be left in the hands of a pregnant woman and her health-care provider * * *

The American Nurses Association is the only full-service professional organization representing the Nation's 2.2 million registered nurses throughout its 53 constituent associations.

Now I want to tell you some of the real life stories that have been presented to us by some of the women who have undergone the procedure that this bill would ban. Many have heard these stories before, but they are worth repeating because not every woman who has had this procedure has come forward. These stories are representative of those women.

I talked to you about Coreen Costello pictured here with her newborn son, Tucker. She was able to have Tucker because it saved her fertility to undergo the procedure that is banned in the Santorum bill. She is a registered Republican, describes herself as very religious. She is clear that she and her family do not believe in abortion. When she was pregnant, she was rushed to the emergency room because her baby was having seizures, and found out something was seriously wrong with her baby.

She named the baby Katherine Grace. This is a woman and family who wanted that child desperately. And to hear women like this referred to as women who kill their babies to me is an absolute disgrace.

The baby had not been able to move for months—not her eyelids, tongue, nor her lips. Her chest cavity was unable to rise and fall for air, and her lungs and chest were left severely undeveloped almost to the point of non-existing. Her vital organs were atrophied. The doctor told Coreen and her husband that the baby would not survive, and they recommended terminating the pregnancy. To Coreen and to Jim, this was not an option. Coreen wanted to go into labor naturally. She wanted her baby born on God's time and did not want to interfere. The family spent 2 weeks going from expert to expert.

Again, I have heard my colleagues on more than one occasion demean these women, saying, "Well, if only they had checked, they would have found another option." There are always other options, say my colleagues who don't know anything about medicine.

Coreen and her family were told they couldn't consider inducing labor. They considered a caesarean section. But the doctors were adamant that the risks to her health and her life were too great.

Then Coreen finally said, "There was no reason to risk leaving my two children motherless if there was no hope of saving Katherine Grace."

My colleagues, women like Coreen Costello deserve our love and deserve our support. They don't deserve the kind of treatment they would get if this bill becomes law. They have come forward. They were saved. But they are coming forward to spare other families the tragedy they went through.

Coreen writes to us, "The birth of Tucker would not have been possible without this procedure. Please give other women and their families this chance."

"Let us deal with our tragedies without any unnecessary interference from our Government. Leave us with our God. Leave us with our families and our trusted medical experts."

I could go on. I will show you a picture of Vikki Stella, a mother of two. She went through a very similar case. She tried in every way to save her baby, but was told that her life was at risk if she didn't use this procedure. The surgery preserved her fertility.

Here she is shown with her son Nicholas. She calls him our darling son, Nicholas, who was born in 1995. This was after she had undergone the procedure that the Santorum bill seeks to outlaw.

So the procedure saved Vikki's life. It preserved her family. Vikki's situation was heart-wrenching.

Mothers and fathers need to be able to make medical decisions like that with their God and with their doctors, not with Senators. We don't belong in that room.

We have offered alternatives, alternatives that go to the heart of another matter, which is the decision *Roe v. Wade* that is the law of the land, which basically says in the early stages of a pregnancy a woman has the right to choose and the State does not have a right to interfere. But after viability, *Roe* says the State does have a right to interfere. And I agree with that.

Senator FEINSTEIN and I offered an alternative that would have said no abortion after viability. But we make two exceptions, consistent with compassion, consistent with caring, consistent with *Roe* and the Court cases. We say no abortion after viability except to preserve the life of the mother or to spare her serious adverse health consequences.

My colleagues on the other side have said, "Senator BOXER and Senator FEINSTEIN believe in abortion on demand." They have misstated our position day in and day out. What we are saying is there should be absolutely no abortion after viability except to save the life and the health of the woman. That is the option that would be endorsed, I think, by the majority of the American people. The bill that is before us doesn't do anything about late-term abortion. It deals with one procedure, a procedure that in fact doctors say is necessary to save the life and the health of a woman.

I would like to read parts of an opinion piece that appeared in the Los Angeles Times written by Ellen Goodman.

I ask unanimous consent that the entire article be printed in the RECORD.

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

[From the Los Angeles Times]

CONGRESS CAN'T LEGISLATE MATERNAL
HEROISM

(By Ellen Goodman)

You cannot hear it in the cacophony of outraged voices arguing about the so-called partial-birth abortion ban. But it is there. The theme song of the abortion controversy is being repeated, the soundtrack replayed:

Just how much are we willing to require of a woman for the sake of having a baby? Just how much can the government force a woman to sacrifice for a fetus?

The Senate debate has not really been about banning an abortion method. It's been about permitting exceptions to that ban. Senators led by Pennsylvania's Rick Santorum have refused to allow an exception even to protect the woman from serious harm to her health. President Clinton has refused to sign a bill without it.

So the push for a veto-proof majority to ban this rare procedure has drawn a line as clear as possible in this unrelenting and murky struggle. A line around a woman's health.

From the beginning abortion opponents have said that "health" is nothing but a loophole for women who would abort a pregnancy to fit into a prom dress. But pro-choice supporters have countered with real women whose bodies were at serious risk. Underlying it all has been the issue of women and sacrifice.

Last week, pro-lifer Kristi S. Hamrick argued against any exception, saying, "Any woman who has ever been pregnant can tell you that every pregnancy carries potential risk." Indeed, women once died in pregnancy and childbirth with appalling frequency.

But while the focus is on health, is it fair to ask whether the law can force pregnant women to sacrifice more for "unborn children" than it can force parents to sacrifice for those who are born?

Imagine a different bill going through Congress. This one requires mothers and fathers to give up a kidney for their child. Or maybe it just allows the government to extract bone marrow against their will for an ailing son or daughter.

If such a bill got to the Senate floor, would Santorum decry "the selfishness, the individual self-centeredness" of its opponents? Surely, we expect a parent to eagerly exchange bone marrow for a child's life. But we would not assume the state's right to go in and take it.

"No case has ever been upheld that says you can intrude on the body of a genetic parent to protect a born child," says Eileen McDonagh, who raises such matters in a provocative book, "Breaking the Abortion Deadlock." Indeed, in Illinois, a court ruled that the law could not even require a blood test to see if a relative could be a potential donor.

Can the law then require a woman to suffer "serious health effects" for the sake of a fetus? A central question in the abortion debate, says McDonagh, is: "What are the means the state can use to protect the fetus? One benchmark is to ask what the means are the state can use to protect a born child."

The issue is government intrusion: who decides. How much more serious is this decision when we are talking, not about extracting bone marrow, but about losing a uterus or a kidney? Is it up to Congress to overrule the doctor? To overrule the "selfish" woman defending her health?

An outraged Santorum screamed that this procedure "is killing a little baby that hasn't hurt anybody!" But the whole point of a vote about a health exception is that this fetus—however unintentionally, well or deformed—is hurting someone: the pregnant woman.

This is a tough-minded argument about those few pregnancies that have gone most tragically awry. Pregnancy is risky. Many women embrace heroic procedures to have children.

But the bill is not really about banning one procedure. If dilation and extraction is the first method banned without exceptions, it won't be the last. The goals of abortion opponents are unequivocal.

Not was the losing bill by Democrat Tom Daschle a true "compromise." Allowing late abortions for physical, "real" health reasons but not mental health? What would that distinction mean to a woman forced to carry an anencephalic (brainless) baby to term?

We already have compromises. The Supreme Court decisions weigh the interests of the woman with those of the developing fetus. The law allows states to severely limit abortion after viability. But at no point does it give the government the right to seriously damage a woman's health to protect a fetus.

This is at the primal heart of the matter. No Congress can be allowed to legislate a new flock of sacrificial women.

Mrs. BOXER. Mr. President, Ellen Goodman writes:

The Senate debate has not really been about banning an abortion method. It's been about permitting exception to that ban. Senators led by Pennsylvania's Rick Santorum have refused to allow an exception even to protect the woman from serious harm to her health. * * *

Is it up to Congress to overrule the doctor? To overrule the "selfish" woman defending her health?

The bill is not really about banning a procedure. If dilation and extraction is the first method banned, without exception it won't be the last. The goals of abortion opponents are unequivocal. And, indeed, in, I thought, a good debate that the Senator from Pennsylvania and I had on Sunday, I think he was very straightforward about that. The Senators who have been speaking on the other side of the aisle on this subject all would tell you they are against all abortions from the first moment of a pregnancy.

Ellen Goodman writes:

We already have compromises. The Supreme Court decisions weigh the interests of the woman with those of the developing fetus. The law allows states to severely limit abortion after viability. But at no point does it give the government the right to seriously damage a woman's health to protect a fetus.

This is at the primal heart of the matter.

She concludes:

No Congress can be allowed to legislate a new flock of sacrificial women.

What does she mean, sacrificial women? That is, women who will be sacrificed because of politics, because of laws that are made right here. And when abortion was illegal, women died.

There are those of us who will stand here as long as it takes to make sure we don't go back to those dark days. This bill should not be about politics, though, sadly, it might turn out to be. This bill should not be about 30-second misleading commercials, though, sadly, it might turn out to be. This bill should not be about fear, fear of doing the right thing, though, sadly, it might turn out to be.

What this should be about is at least the basic bottom line that we should

keep in mind when we pass any legislation. And that bottom line should always be do no harm. Do no harm. Yet, we are told by physicians that this bill does harm. It has no exception for physicians who believe the banned procedure is in the best interests of the woman for her very survival and for her very health.

My colleagues, please do not relegate women to a status that says their life and their health do not matter. Please look inside your hearts. Ask yourself how you would feel if your daughter was told that the safest procedure in a pregnancy turned tragically wrong was an intact D&E, and, yet, the doctor fearing jail refused to use it. Look in your heart. Think about how you would feel. You would drop to your knees. You would pray to God that the doctor could use the option that was safe, that would save the life and the health of your daughter. And then, if this bill was the law, you would go to court to defend that doctor. But the rules would be stacked against him or her.

Just read this bill.

My colleagues, that is the wrong way to go. These women have been saved because this Congress didn't outlaw the procedure that was necessary to save their lives and their health.

There will be other women who look like this, who have families like this, who might be, as Ellen Goodman said, sacrificed because of politics. I say that we should save these women who are relying on us to protect them.

This isn't about them versus their babies. They wanted their babies. They desperately wanted their babies. But in circumstances that no one seemed able to predict, in rare circumstances, in tragic circumstances, they needed an intact D&E.

We are not doctors—not even close. Every speaker I have heard—I may be wrong on this—on the side of the Santorum bill has been a man. Again, I may be wrong on this. But I am 99 percent sure that every one of them would support outlawing all abortions. They do not know what it is like to find yourself in a desperate situation as a woman—as a woman. Situations like Vikki's or Coreen's or Eileen's, or any of the women who were told they needed an intact D&E to save their lives or their health.

Mr. President, I have a letter dated today from these women I have been talking about. They have listened to this debate. This is what they say:

Please don't forget us, and the stories that brought us to Washington to meet with so many of you over the last two years. We are just a sampling of the women and families who have had very wanted pregnancies go wrong, and whose doctors have wept with us as they explained the options that could help us maintain our health and our fertility. We know the truth about the so-called "partial-birth abortions" that you debate in Washington, because we needed the surgery that doctors call intact dilation and evacuation.

* * *

The AMA endorsement of this legislation, and the superficial changes added today do

not change the fact that this ban still contains no provision to protect the health of women like us.

Mr. President, I ask unanimous consent that this letter in its entirety be printed in the RECORD, along with the following letter from the California Medical Association, which says, in part, "The California Medical Association is opposed to this bill and is saddened that the debate appeals to the emotive, rather than the reasoning, segment of America."

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

May 20, 1997.

DEAR SENATORS: Please don't forget us, and the stories that brought us to Washington to meet with so many of you over the last two years. We are just a sampling of the women and families who have had very wanted pregnancies go wrong, and whose doctors have wept with us as they explained the options that could help us maintain our health and our fertility. We know the truth about the so-called "partial birth abortions" that you debate in Washington, because we needed the surgery that doctors call intact dilation and evacuation.

We and our families stood with President Clinton last year when he vetoed similar legislation that would have banned the surgery that we needed. This ban would have torn families apart, robbing us of the ability to make the most private and personal decisions about our own well-being. It would have subjected women like us to unwarranted medical risks and even greater heartbreak than the loss of our precious babies had already caused. President Clinton did the right thing when he courageously vetoed this legislation and protected our health and that of the women who come after us. These are decisions that can only be made by a woman in consultation with her family and her doctor. Congress can't begin to know what's best for us as we face our own personal tragedies.

As you consider your vote on HR1122, we hope that you will take a few moments to remember us, and to recall that this is a bill that affects real people—American women and their families. Please don't compound the tragedies of families like ours. The AMA endorsement of this legislation, and the superficial changes added today do not change the fact that this ban still contains no provision to protect the health of the women like us.

Please vote "no" on HR1122.

Sincerely,

CLAUDIA CROWN ADES,
COREEN COSTELLO,
MARY-DOROTHY LINE,
VIKKI STELLA,
TAMMY WATTS.

CALIFORNIA MEDICAL ASSOCIATION,
Sacramento, CA, May 20, 1997.

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

DEAR SENATOR BOXER: We have reviewed the amendments to HR 1122 and believe that they make no substantive changes to the legislation. While the debate over late-term abortion is painful, both within the medical community and the general citizenry, we believe these decisions must be left to physicians and patients . . . acting together.

While late-term abortions may have occurred inappropriately in some instances, they have also saved women's lives and the health and well-being of many American families. In a society where values are as-

saulted on every side . . . and technology often seems to replace human relationship . . . the bond between healer and patient is ever more important. Passage of HR 1122 would be one more step in eroding that relationship. The California Medical Association is opposed to this bill and is saddened the debate appeals to the emotive, rather than the reasoning, segment of America.

Sincerely,

ROLLAND C. LOWE, M.D.,
President.

Mrs. BOXER. Mr. President, I say that we need to listen to these women. I say that we need to listen to these doctors. I say that the doctors who work with this every day of their lives know best. And I hope we will vote against the Santorum bill.

I reserve the remainder of our time on this side.

Mr. SANTORUM. Mr. President, I yield to the Senator from Indiana, who has done terrific work on this issue which deals with protecting children. He has been an outstanding spokesperson for a long time in the Senate.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I thank my friend from Pennsylvania for his kind words. The real credit goes to the Senator from Pennsylvania for his effective and unrelenting advocacy on behalf of life. The Senator has expressed in many, many ways and provided us with many, many facts that I think gives all of us pause and that has given us a reason to give great deliberation and consideration to this most fundamental of issues.

I also think it is appropriate to mention the efforts of Senator SMITH of New Hampshire who had the courage to come to this floor some time ago and introduce the Senate to a procedure none of us had ever heard of. He was vilified on this floor and in the press. He had the courage to raise an issue that many didn't want to talk about. We have come a long way since that day when Senator SMITH walked onto this floor.

We are close. And we clearly have a majority in both the House and the Senate now in favor of banning partial-birth abortion. We have more than a two-thirds majority necessary to override a Presidential veto in the House, and we are hopeful that we can achieve that level today. We will know at 2:15 this afternoon.

Mr. President, I think it is most appropriate that we are debating this issue on the Senate floor because we are talking about one of the most fundamental, if not the most fundamental, of all issues that we debate on this floor. That is the meaning of life itself. It is a right that is guaranteed or enunciated in our Declaration of Independence. It is labeled an inalienable right, meaning it is not created by government; it is not taken away by government; it is not the purview of government. It is an inalienable right, according to our Founding Fathers, the right to life being the very first enunciated, written—inalienable right, part of the

very fabric of the foundation of this society, not endowed by government but endowed by the Creator. Over the 200-years-plus history of this country and of this Congress, we have had monumental civil rights debates, appropriate debates on the meaning of inclusion in the American experiment of what it means to be part of this greatest in all experiments in human history, of democracy, of being part of a system which allows each individual the dignity of being part, an equal part, of this democracy.

Great civil rights debates have taken place in this Chamber, the debates about allowing women equal opportunities, equal rights to vote, equal rights to participate in society, the rights of handicapped, reaching out and providing within the American experiment to include them, the weakest of our society, the most disadvantaged of our society. And now we come to the weakest of all, now we come to the most disadvantaged of all, those who have no voice of their own, those who have no political action committee, no caucus, no ability to march, to speak for themselves, but those who have every right to be included in this great experiment in democracy.

I do not know what the vote count is going to be this afternoon. I am obviously hoping it will exceed the 67 votes needed to overcome the President's intransigence on this issue, the President who pledged to the American people and to the Congress that he wanted abortion to be safe, legal and rare, the President who is confronted with the information that this is not a rare procedure, that this is a procedure that is done thousands and thousands of times mostly for the convenience not of the woman but of the abortionist, a procedure that is more convenient for the abortionist than it is recognizing concerns of women and certainly the rights of the child to live.

I do not know what that vote count is going to be, but win or lose, we have fundamentally altered the nature of this debate. Win or lose, we are now debating the meaning of life and the right to life in this society, and that is where the debate should have been centered and where the debate needs to be centered.

I am pleased that we have finally arrived at this point. I do not question the motives of other Members, those who vote for or those who vote against. That is why I did not question the motives of the minority leader when he stated that he thought we ought to engage in the debate on the viability of the child. It advances the debate one way or another. Some are skeptical about his efforts, about his amendment. I do not think it is an appropriate amendment because I thought the exceptions allowing the decision to be in the hands of the abortionist himself or herself was not appropriate to defining the right to life. But by placing in the Chamber the question of viability, we will now center the debate on

what is the meaning of life. When does life begin? What are the rights of that life as well as the rights of the woman? So I am pleased that we have arrived at this point. As I said, win or lose, we are now focusing the debate where it ought to be.

Several years ago, Justice O'Connor made the statement that *Roe versus Wade*, the decision of the Court in *Roe versus Wade*, was on a collision course with medical science because medical science was demonstrating to us the viability of life at earlier and earlier ages. Sonograms, listening to heart beats, and the ability to perform fetal research, the protection of the infant in the mother's womb, and the rights of that infant in cases of negligence, in cases of attempted murder, in a whole number of areas of the law have demonstrated to us that there is a life with a heart beating within the womb of that mother, and that life deserves our consideration in terms of the protections that we give it.

Recently there has been a lot of talk about new discoveries of brain activity and a lot of focus on that, focus brought to this floor by those who say we must make sure we give children ages zero to 3 the right opportunities so that their brain can develop in ways that medical science tells us it needs to develop to a fully competent human being. We need to ensure that that takes place.

What medical science is also telling us and what we have not discussed on this floor is that we now know that brain activity exists much earlier than we thought. Never has the conflict between science and abortion been more dramatic than in the recent discoveries about the science of the brain. We know that a human embryo at 10 or 12 weeks after conception has astonishing brain activity. We know that by the fifth month of gestation the brain is fully wired, as the scientists say, with the connections between neurons largely complete. Astounding evidence. We know that these neurons are firing with impressive complexity once a minute, shaping the brain itself, and we know that when this process is interrupted by malnutrition or drug abuse or a virus, the results can follow a child its entire life, and we know that a child may be born knowing the distinctive sound of its mother's and father's voices. In short, our mental development, not just our physical development, the mental development, the process of learning begins well before birth.

If we look at the evidence—not the rhetoric, not the anecdotes, but the evidence, the facts—it is increasingly evident that human life is a continuum in which birth is really not a particularly decisive moment. An essential part of who each of us is, who we are, including the shape of our minds, is determined even before we are born. Even those who do not call themselves pro-life have to find this a troubling experience and troubling knowledge. They

have to because abortion not only destroys the body; it extinguishes a complex, developed mind. This point, I think, has particular relevance in this debate on partial-birth abortion because the very procedure itself destroys the brain. Yes, it kills the body, but when we understand the complexity of that brain, when we understand the development of that brain, mostly fully wired at the point of termination, we have to understand that plunging a scissors into the back of that skull and sucking out the brain has enormous implications.

Mr. President, I ask for just 2 additional minutes.

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

Mr. COATS. So here we are on this floor debating something that is very much in the role of the Senate. If it is not in the role of a Senator to make moral judgments, then we might as well close the place up because there is very little else to do. Most of what we do here has moral implications. There are some things that do not, but most things do. If that is the case, then I think a lot of people are going to have to remove their names from sponsorship of legislation that mandates mammograms for women under a certain age. Some Senators are going to have to remove their names from support for laws that require 48-hour hospital stays after birth. Some Senators are going to have to remove their support for laws and legislation that condemns genital mutilation. Are those not medical procedures? So if we are going to leave all that to the world outside of this Chamber, I think a lot of Senators are going to have to rethink their positions on a lot of issues.

I also think it is inappropriate to suggest that this is some kind of male conspiracy against women. I think when the vote is taken today, we will see women voting to terminate this procedure. I think when the polls are taken and women are addressed throughout our society, we will find there are as many women in opposition to this procedure and in abhorrence of this procedure as there are men.

It is also wrong to say that this is only some kind of a pro-life Senate movement. There are a number of people here who have openly stated they are pro-choice Senators but are voting to ban this procedure. So let us tone down the accusations and let us deal with the facts.

I think the facts and medical science that have been presented to us so outstandingly by the Senator from Pennsylvania need to be carefully considered by each and every one of us. A civil right to the weakest among us, the inalienable right to life as enunciated in the most fundamental of all the documents of democracy, our Declaration of Independence, can be honored here today by our vote to ban this procedure.

Mr. President, I thank the Senator from Pennsylvania particularly for his

outstanding work and yield back whatever time I have remaining.

Mr. SANTORUM addressed the Chair. The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, if you will notify me when I have 4 minutes remaining.

The PRESIDING OFFICER. The Senator has 14 minutes and will be notified by the Chair when 4 minutes are remaining.

Mr. SANTORUM. I thank the Chair. I thank the Senator from Indiana for his excellent work. I want to address a couple issues the Senator from California raised.

One, she mentioned support of the American College of Gynecologists. I have 50 letters here from fellows of that organization who are outraged at the organization for the position they have taken. We have a group of over 500 obstetricians and gynecologists who have signed on saying they are supporting the ban on partial-birth abortions and are also outraged at the position taken by the board here in Washington that was not voted on by the general membership.

So I just suggest that this, as the Senator from California noted but I want to reemphasize, is not speaking for all physicians, certainly not all obstetricians and gynecologists, because we have read plenty of statements from them as to why this procedure is never medically necessary.

She went through her facts. Let me tell you the first fact. This is not about abortion. This is about infanticide. This is about taking a baby that is born, in the process of being born, fourths outside of the mother, moving outside of the mother and killing that baby. We can talk about abortion. I know the Senator likes to get it back to the issue of abortion. The reason we believe, as I just read a letter from 62 law professors, it is not governed by *Roe versus Wade* is because the baby now has rights. It is being born. So do not keep focusing back on this issue of abortion. This is about infanticide.

If the Senate today does not muster up the moral courage for 67 votes, it will be validating infanticide—not the woman's right to choose, infanticide.

As one of the listed facts, the Senator from California said the fact is this procedure is done by obstetricians and gynecologists acting in the best interests of the mother to save her life or health. That is not a fact, and we all know that. Even people who support the position of the Senator from California know that is not a fact, admit it is not a fact. It is very difficult to get engaged in a real debate when the other side keeps using misinformation about what is going on here.

Ron Fitzsimmons, the director of an association of 200 clinics, said that 90 percent of the abortions done, partial-birth abortions done, are done on healthy mothers and healthy babies in the 5th and 6th months of pregnancy for birth control reasons.

Now, that is not, as the Senator from California suggested, a procedure done by obstetricians and gynecologists.

Let me make a parenthetical remark there. This procedure was not invented by an obstetrician or gynecologist. It was invented by a family practitioner who does abortions. Obstetricians and gynecologists do not do this procedure. This is not done in hospitals. It is done in clinics, not by, in many cases, obstetricians and gynecologists. So to suggest that this procedure is done by obstetricians and gynecologists acting in the best interests of the mother and that's the fact is not in fact the case.

This is done by abortionists—some of whom are obstetricians, many of whom are not—who perform in clinics, not in hospitals, who do it on healthy mothers and healthy babies. Those are the facts. That is why this is such a troubling debate today. That is why we have seen the movement across this country and in the Senate today, because the alleged facts that the Senator from California was offering again as the truth muddy the waters a little bit. But now we know what the real truth is from people who support her position. But yet we keep hearing these repeated allegations that have no basis in reality anymore, but they still find themselves on the Senate floor as a defense for an indefensible procedure, and this procedure is indefensible.

Mr. President, we have heard comments about women who suffered with a pregnancy that had gone tragic. Let me first say that my heart goes out to each and every one of the people whose picture we have seen displayed on the floor of the Senate. I know, I know personally the difficulty that these families face with a child that you hoped for and dreamed for and had something go wrong; that a life that you had hoped to be with and to mother and father would be cut short. I know what they went through.

I am just suggesting that the fact that the women came to testify, not the doctors, tells you something about the medical reality of what occurred. You have not seen any of these doctors who did these procedures come to the U.S. Senate, the House, or anyplace in a public arena and talk about what they did, because they know that they would not stand the light of day in front of any peer review. In fact, none of these procedures is peer reviewed. None of them is peer reviewed. None of these cases has been peer reviewed, none of them. They would not open up to any discussion by other experts in the field as to whether they acted correctly.

That is the problem, you see. We hide behind the emotion, and it is real, tragic, and I empathize, but we are hiding behind emotion when we are talking about the life and death of little babies. We owe it to them, we owe it to these mothers who are dealing with these tragic situations today to talk about the facts, to let the light shine in as to what are really the options,

what is really necessary, not to hide behind pictures and emotional pleas that have no basis in medical fact, in medical practice.

I will give you a counterexample. This is a little baby girl, named Donna Joy Watts, who was born with hydrocephaly, the same condition that some of the children of the people Senator BOXER shared had. Her mother and father, Lori and Donny Watts, refused to abort this child. The genetics counselor and the obstetrician suggested a partial-birth abortion for this little baby. They said she couldn't survive, she wouldn't live. She had to go to four hospitals—four places—just to get this baby delivered. They wouldn't deliver her baby.

We worry so much about the right to choose. How about the right to choose life, to give your baby a chance? Well, Donny and Lori fought for this chance. This baby was born finally by cesarean section. And, by the way, the issue of future fertility, we hear that a lot, Lori and Donny now have another little baby. But this little baby was born and hooked up to IV's to give hydration to, water to, and for 3 days. These doctors, who will never come to testify before the Congress, all these doctors who recommend abortion, who never come to justify before a peer review panel what they do, called this little baby lying there breathing a fetus for 3 days. Do you want to know what some of the obstetricians and gynecologists think about little babies who are just not perfect? They called this baby a fetus 3 days after it was born. It is not a fetus, it is a baby. What they wanted to do was kill this baby by stabbing her in the base of her skull and suctioning her brains out, and Lori and Donny said no.

Through a lot of hard work, a lot of pain, a lot of suffering, a lot of forcing them to treat her daughter because they wouldn't treat her for 3 days, 5½ years later, this is little Donna Joy Watts, who is in my office right now. She would have been up in the gallery of the Senate were it not for the objection of the Senator from California prohibiting her from being there. She is in my office and watching this debate. She is watching to see whether the U.S. Senate is going to allow other doctors to misinform their mommies and daddies so we won't have other little Donna Joy Wattses to be with us, to ennoble us, to give us pride in our culture and in our civilization, that we care even for those who are like little Donna Joy—who runs around and plays in my office, who colors with my kids—but just didn't have the chance.

I reserve the remainder of my time.

The PRESIDING OFFICER. Four minutes are reserved. Who seeks time? Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask that I be allotted such time as I may consume in the remaining time.

The PRESIDING OFFICER. Five minutes is remaining.

Mrs. FEINSTEIN. I thank the Chair. Mr. President, I myself find this a sad day. In a sense, it is a watershed debate, and I very much fear it is the first major legislative thrust to set this Nation back 30 years with respect to freedom of choice.

I am going to speak about what freedom of choice really means. Essentially, to me it means that Government will not become involved in these most intimate decisions that a woman has to make, not become involved in legislating a woman's reproductive system, what she must do, when she must do it, and how she must do it, but that government will essentially leave those intimate decisions to the physician, to a woman, to her faith, and to medicine. And here we have the Congress of the United States essentially saying that every woman in this country who may find out in her third trimester that she has a horribly, severely deformed child with anomalies incompatible with life, and if that child can be born, even if it is a major threat to her health, she must deliver that child.

Unfortunately, no Member of this body is going to be present, no Member of this body is going to hold that mother's hand and tell her that it is OK if she jeopardizes her health perhaps for the rest of her life. No Member of this Congress is going to be present in that delivery room and see a child who is incompatible with life, a baby that may not have a brain, a baby that may have a brain outside the head or other major physical anomalies. No Member of this Congress will be there to see that child delivered to live an hour, 6 hours, a day, 4 days and then die, and the woman's health may be seriously, adversely harmed in a major way for the rest of her life. No one will be there. No one will say, "I'm so sorry, I didn't know about you when I cast this vote."

We are all accustomed to legislating, and when we legislate, we legislate for a majority, not for the exception. We legislate with some knowledge, or should, of what we are doing. But I think in this case, it is a very skewed knowledge. It is based on a case that the distinguished Senator from Pennsylvania put forward of a young woman who I believe could have and would have been born in any event and saying that this one case typifies all mothers that we are talking about. In fact, it doesn't.

I must express my profound dismay. My father was chief of surgery at the University of California Medical Center. My husband, Bert Feinstein, was a distinguished neurosurgeon. And all my life, I have lived in a medical family. As I read the AMA's letter, essentially what they are doing is providing some protection for doctors, but they are doing nothing to see that a woman's health is protected, and I feel very badly about that. Both my husband and my father were members of the American Medical Association.

I take some heart in letters from the California Medical Association which indicate their opposition to this legislation and clearly state that they believe the amended legislation before us today falls very short of the mark. They indicate their strong opposition to this bill. I ask unanimous consent to include in the RECORD two letters I received from the California Medical Association.

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

CALIFORNIA MEDICAL ASSOCIATION,

San Francisco, CA, May 20, 1997.

Senator DIANNE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: We have reviewed the amendments to HR 1122 and believe that they make no substantive changes to the legislation. While the debate over late-term abortion is painful, both within the medical community and the general citizenry, we believe these decisions must be left to physicians and patients . . . acting together.

While late-term abortions may have occurred inappropriately in some instances, they have also saved women's lives and the health and well-being of many American families. In a society where values are assaulted on every side . . . the bond between healer and patient is ever more important. Passages of HR 1122 would be one more step in eroding that relationship. The California Medical Association is opposed to this bill and is saddened the debate appeals to the emotive, rather than the reasoning, segment of America.

Sincerely,

ROLAND C. LOWE, M.D.,

President.

CALIFORNIA MEDICAL ASSOCIATION,

San Francisco, CA, May 14, 1997.

Re opposition to H.R. 1122.

Senator DIANNE FEINSTEIN,

Hart Senate Office Bldg., Washington, DC.

DEAR SENATOR FEINSTEIN: The California Medical Association is writing to express its strong opposition to Congressional intrusion into the physician-patient relationship, as exemplified by the above-referenced bill, which would ban "partial-birth abortions." We believe that it is wholly inappropriate for a legislature to make decisions which prevent physicians from providing appropriate medical care to their patients. Physicians must be allowed to exercise their professional judgment when determining which treatment or procedure will best serve their patients' medical needs.

The obstetricians and gynecologists have already eloquently expressed the medical justifications for this procedure in rare but very real circumstances. CMA certainly does not advocate the performance of elective abortions in the last stage of pregnancy. However, when serious fetal anomalies are discovered late in a pregnancy, or the pregnant woman develops a life-threatening medical condition that is inconsistent with continuation of the pregnancy, abortion—however heart-wrenching—may be medically necessary.

CMA respects the concern that performing this type of abortion procedure late in a pregnancy is a very serious matter. However, political concerns and religious beliefs should not be permitted to take precedence over the health and safety of patients. CMA opposes any legislation, state or federal, that denies a pregnant woman and her physician

the ability to make medically appropriate decisions about the course of her medical care. The determination of the medical need for, and effectiveness of, particular medical procedures must be left to the medical profession, to be reflected in the standard of care. It would set a very undesirable precedent if Congress were by legislative fiat to decide such matters. The legislative process is ill-suited to evaluate complex medical procedures whose importance may vary with a particular patient's case and with the state of scientific knowledge.

CMA urges you to defeat this bill. Many of the patients who would seek the procedure are already in great personal turmoil. Their physical and emotional trauma should not be compounded by an oppressive law that is devoid of scientific justification.

Sincerely,

ROLLAND C. LOWE,

President.

Mrs. FEINSTEIN. Mr. President, I believe the California Medical Association still represents the largest group of physicians anywhere in this Nation. No one seems to care about the Constitution, that this bill constitutes a direct challenge to the Roe versus Wade Supreme Court decision. The Supreme Court held that in Roe, a woman has a constitutional right to choose whether or not to have an abortion. It set for the different trimesters, some specific limitations on that right, that before viability, abortion cannot be banned; after viability, the Government can prohibit abortion, except when necessary to protect a woman's life or health.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. FEINSTEIN. This bill, the bill before us, says the woman's health doesn't matter, it is of no consideration. I must tell you, to me a woman's health matters. It should be of direct consideration.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. FEINSTEIN. So I will vote no on this bill, and I really regret that this day is upon us. I thank the Chair.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I just suggest the American Medical Association and the other hundreds of doctors understand the point that seems to elude the Members of this Chamber. By outlawing this procedure they are, in fact, protecting the health of the mother, because this is an unhealthy procedure, this is a dangerous procedure. This procedure, as said by over 500 physicians "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 and third trimester, and certainly not by mostly delivering the child before putting him or her to death."

I will quote another obstetrician/gynecologist, Dr. Camilla Hersh:

Any proponent of such a dangerous procedure is at least seriously misinformed about medical reality or at worst so consumed by narrow minded "abortion-at-any-cost" activism to be criminally negligent.

What we are doing here is, in fact, advocating for the life health of the mother by banning a procedure which is a rogue procedure, not performed at hospitals, performed at abortion clinics, not even performed by obstetricians, invented by someone who is not an obstetrician. That is why the AMA wrote to me yesterday supporting H.R. 1122 as it now appears on the floor of the U.S. Senate saying:

Thank you for the opportunity to work with you toward restriction of a procedure we all agree is not good medicine.

In other words, it is not in the interest of the health or life of the mother to do this procedure. It is wrong to do this procedure because you are killing a little baby. You are killing a baby that is fourth-fifths born, that is moving outside of its mother. How can we accept that when there are other options available?

As I suggested before, here is living proof of other options available: a little girl who is here today on Capitol Hill, who will be right out here by the elevators during that vote. I ask Members to go over and to look into her eyes, to talk to her, because if her parents would have listened to all the expert doctors who knew what was best for their child, she wouldn't be here today.

She would have had this brutality, this violence, this vile procedure done on this innocent little girl who now walks and talks and writes notes—"Donna" with a hand there, reaching out asking that this procedure not be made available, so little girls like her, little boys like her, be given a chance at life.

The Senator from California said, these kids who are not well enough to make it. Who are we to decide whether they are well enough to make it? Who are we to say they should die because they are not perfect?

Give them a chance. Give them the dignity of being born and brought into this world with love, not violence and brutality. Give them a chance. Give them a chance.

I yield the floor.

RECESS

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

Thereupon, the Senate, at 1:01 p.m., recessed until 2:15; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SMITH of New Hampshire).

PARTIAL-BIRTH ABORTION BAN ACT OF 1997

The Senate continued with consideration of the bill.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. What is the pending business?