We are not there right now. It is time to move on with the business of the Senate and the American people.

I yield the remainder of my time.

Mr. BIDEN. Mr. President, I rise to comment briefly on why I will vote against the motion to proceed to S. 1692, the Partial-Birth Abortion bill. I support this legislation. I have voted for passage of this bill in the past, and I have twice voted to override the President's veto. I think we should take up this bill in the Senate, and I am quite certain we will get to it. Yesterday, in fact, we offered to move to this bill by unanimous agreement and, had that been accepted, we would be on it now.

The problem with this procedural tactic of having a recorded vote on this motion is that it ends the Senate's work on campaign finance reform, and we are not finished with that bill yet. We started debating campaign finance reform last week, and we have a chance to make some genuine improvements in American politics. We should finish what we have started.

Mr. MCCAIN. Mr. President, I intend to vote against the motion to proceed to S. 1692, legislation to ban partial birth abortions.

This is an unnecessary parliamentary maneuver designed solely to displace S. 1593, the campaign finance reform bill, from the floor. A unanimous-consent agreement was offered, with no known opposition, to temporarily lay aside the campaign finance reform bill so that the Senate could consider the partial birth abortion ban legislation. Under that procedure, when the Senate finishes its work on the latter bill, we could then return to complete the debate on campaign finance reform. But if this procedural vote is successful, the McCain-Feingold bill will be returned to the Senate calendar, effectively cutting off the debate, well short of the time promised to consider this important issue.

I want to make very clear, my strong support for this bill and my unequivocal and long-standing opposition to the practice of partial birth abortion. I am pro-life and oppose abortion except in the case of rape or incest, or when the life of the mother is in danger. Partial birth abortion is a repugnant procedure and an abomination, which should be outlawed.

I am a cosponsor of this legislation, as I was in previous years. I have voted five times over the past 5 years to ban this repugnant and unnecessary procedure, including two votes to overturn the President's veto of this legislation. When the Senate votes on S. 1692, I will again vote for the ban.

As I stated yesterday, I will not give up the fight to enact meaningful reform of our campaign finance system. If the McCain-Feingold bill is pulled from the floor today, I will return to the Senate floor with amendments on campaign reform this year, next year, and as long as it takes.

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

The legislative clerk called the roll.

The PRESIDING OFFICER (Mr. GRAMS). Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 52, nays 48, as follows:

[Rollcall Vote No. 332 Leg.]

YEAS—52

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

NAYS—48

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

The motion was agreed to.

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

Mr. COVER DELL. I move to lay that motion on the table.

Mr. LEVIN. I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 333 Leg.]

YEAS—53

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

NAYS—47

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

The motion was agreed to.

PARTIAL-BIRTH ABORTION BAN ACT OF 1999

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 1692) to amend Title 18, United States Code, to ban partial-birth abortions.

The Senate proceeded to consider the bill.

Mr. SANTORUM. Mr. President, we now, somewhat belatedly, begin the debate on partial-birth abortion. To review the actions of this body on this issue and the actions of the Congress, this is the third time this bill or some form of this bill has been voted on to pass the Senate. We passed this bill in 1995 and in 1997. Here we are again in 1999. We had two override attempts of the President's veto in 1996 and 1998, and I am fairly sure we will probably have another attempt on a Presidential veto override next year, in the year 2000.

Each time this bill has been voted on, succeeding Congresses picked up votes. In other words, we have gotten closer to the two-thirds necessary, 67 Senators, to override an anticipated Presidential veto. I am hopeful we will continue that trend. We started in 1995 with a vote of 55 or 56 Senators supporting banning this procedure. As of the vote last year, we were up to 64 Senators in this body agreeing this procedure is not necessary. It is, in fact, unhealthy and it is a threat to the health and life of the mother, as well as being a brutal and barbaric procedure.

I am hopeful through the course of this debate we can have a fair debate about this issue. Some have tried to turn this into a broader debate about abortions and view this as just the first shot at Roe v. Wade, an attempt to put a chink in the armor, intimating there is a grand agenda to try to chip away abortion rights that were given by the Supreme Court in Roe v. Wade.

Let me assure my colleagues that is not my intention. This bill is a straightforward piece of legislation that deals with a specific procedure. In fact, I am hopeful we will be able, through an amendment process, to make it even more clear we are referring simply to the procedure known as

partial-birth abortion. I will describe what that procedure is in a moment. But there is no such intent here. In fact, one of the reasons we are offering this amendment is because we believe this comports with Roe v. Wade; that this is a constitutional restriction and, in fact, it falls outside the concerns of Roe v. Wade because the baby is outside of the mother. The baby is no longer in the mother's womb.

So decisions have been made in the courts across the country. There have been several State bans that have been held unconstitutional, one that was held constitutional. So my guess is we will continue to see States deal with this issue, courts continue to be all over the map, some saying it is unconstitutional, some saying it is constitutional, until we get, finally, to the Supreme Court and they can look at it. I am confident it is constitutional.

Having said that, we just finished a debate on campaign finance reform where the very Members who stand before the body to say we cannot pass this because it is unconstitutional voted for campaign finance reform bills that are clearly unconstitutional, clearly in violation of the Supreme Court's edict on allowing unlimited soft money. But they come here and say: We think the Court is wrong and we are going to ban it anyway. This is directly on point with a Supreme Court decision.

In our case, with partial-birth abortion, where the baby is killed in the process of being born, the baby is outside the mother, under Roe v. Wade they let stand a Texas statute that was under appeal under Roe v. Wade prohibiting the killing of a child in the process of being born.

So in a sense we have a case on point in Roe v. Wade that says this kind of thing is, in fact, constitutional. Yet you will hear the arguments, I am sure, at length in the next day or two that we cannot pass this because some courts have said this is unconstitutional. I think at best that is an unclear argument. At worst, I would argue it is clearly constitutional because of the Roe v. Wade decision.

To make that argument the very day—or the day after, now—many of the Members making this argument vote for something that is clearly unconstitutional because they want to send it to the Court and have the Court take another look at it strikes me as a little disingenuous; that you would make one argument one day and do a 180 degree turn and say we cannot pass it because it is unconstitutional when the day before you pass what you know is unconstitutional and you hope the Court will change its mind.

I think now what I want to do is go through briefly what a partial-birth abortion is, how it is performed, when it is performed, who performs it, where it is performed, and why. If I could first start out with a chart that describes the procedure, you can see this is a baby. By the way, that is at least 20 weeks of gestation. During a 40-week gestational period, partial-birth abortions are performed on babies who are at least 20 weeks. So this is a late-term abortion. This is a second- and in some cases a third-trimester abortion. Let me start with how it starts.

First, the mother presents herself to the abortion clinic. The abortionist decides what procedure he or she wants to use to kill the baby. In a small percentage of second- and third-trimester abortions, a partial-birth abortion is used. It is not the most common method of abortion in late trimester. In fact, it is relatively rare. We are not sure of the numbers. The reason we are not sure of the numbers is we have to rely on the abortion industry—which, by the way, opposes this bill—to give us their numbers on how many they say they do. The Federal Government does not keep track of the method of abortion used in the second and third trimester. In fact, they don't keep track of the method of abortion period. So we do not know from any Government statistics or any independent source how many of these abortions are performed. We only can go by what the opponents of this bill tell us is the number.

They originally told us there were just a few hundred. Then a report came out in a paper in northern New Jersey, the Bergen County Record, and they just happened to have a good reporter who thought maybe he would ask his local abortion clinic how many of these abortions were performed. He took the time, as reporters I think would want to do, to find out the accuracy of the story he was reporting. He contacted an abortion clinic in northern New Jersey and the abortion clinic there said they did 1,500 a year at that clinic. Where the national organization said they did 500 nationally, there were 1,500 done at that clinic. The person at the clinic who said they did 1,500 there said they had trained a couple of other abortionists who perform them in New York, in addition to the 1,500 that were done there.

So when I say a small percentage, that is what has been reported to us, again, by the people who oppose this and who realize the more they report the harder it is for them to defend. Because, again, what you hear the President and other advocates of this procedure talk about is this is a rare case—just to protect the mother's health or life, in the case of a severely deformed baby, so it is very rarely done. What we found is that is not the case.

I think it is clear and many have admitted since within the abortion industry, that is just not true. So what we have is a case where we do not know how many are performed but we believe, according to them, it is around 5,000 or more a year. I want to stop right there and pause for a minute. I want everybody to think if we heard about the murder of 5,000 children a year through a procedure or some act of violence—if we heard about 5,000 a year, people would be marching on Congress and saying: How can you let 5, much less 5,000, babies be killed in such a horrific way? But because we put it under the rubric of abortion, it is OK.

What I want to show today, looking at this procedure, is this is not like abortion. This is like infanticide. This is a baby who is all but born and then killed. So I think we need to look at it and have this debate focus on not the issue of abortion because there are plenty, as is evidenced by the numbers, of other procedures available to perform abortions. This is a rogue procedure that is infanticide. That is why Members on both sides of the aisle who are supporters of abortion rights have joined with us because they believe this is a step too far. We have drawn the line in the wrong place. Once the baby is in the process of being born, we have to say: Wait a minute; this baby is now outside of the mother, almost outside of the mother. This is not abortion anymore.

What happens is the mother presents herself to the abortionist and the abortionist decides they would like to do an intact D&E, or a partial-birth abortion. What happens is the abortionist will give the mother pills to dilate the mother's cervix so the abortionist can then perform the abortion. Not immediately; this is a 3-day procedure. The mother comes back in 2 days. On the third day, after she has taken the pills the first day and the second day, she presents herself back to the abortionist with the cervix dilated.

I can get into all the health reasons why this is dangerous and could lead to infections and problems, and what we have seen, not just infections but it can lead to and, in fact, has led to babies being born as a result of the dilation of the cervix. The mothers go into labor and babies are born and born alive. In fact, we have cases in the last few weeks where a baby who was to have been aborted through a partial-birth abortion was born alive and is alive today. By the way, this is a perfectly healthy little girl. So when the argument is these babies wouldn't live or these babies are deformed or it is for the health of the mother, none of this is true. None of this is true.

Now we have cases—in fact, just in the last few weeks, a case where this baby is alive today. Another baby was born alive but not attended to by the abortionist, not attended to. They let the baby die.

Again, the point I am trying to make is, the line is a very important one. You can see from the case where the baby was allowed to die that once we begin to think of this little baby outside the mother as just a disposable item, then we have lost something. We have blurred the line, which I do not think we as a society want to allow to be blurred, about who is protected by our Constitution and our right to life.

Clearly, I hope we all believe that once a baby is born, that baby is entitled to life. Where we draw the line as

to when that occurs is significant. That is why many people who are, again, for abortion rights say: Once the baby is outside, I am a little uncomfortable saying you can kill the baby, as well they should.

The mother presents herself, on the third day of the cervix being dilated, to the abortionist. The abortionist uses an ultrasound to examine the mother and guide the abortionist to insert forceps in through the cervix, up into the uterus.

Those of you who have been involved in the birth of children know—we have six children—babies are usually at that age in a head-down position. They move around, but as they go further in pregnancy, the baby usually has its head in the down position.

They reach up with the forceps and grab the baby by the foot or the leg. Again, this is a 20-week-plus baby. We have plenty of documentation that this has gone on at 22, 23, 24, 25, 26, and even older—but rare as it gets older, I admit that. This is a fully developed baby that would otherwise, if delivered at this week of gestation, be born alive.

They take the baby and grab the leg with the forceps. Then they turn the baby around in the uterus. Many of you are familiar with the term ''breech birth.'' When you present yourself for delivery of a baby and you are told your baby is in a breech position, bells and whistles go off. Obstetricians get very nervous because there are a lot of difficulties with delivering a baby in a breech position. There are a lot of complications, obviously for the baby, but also for the mother. To deliberately turn a baby into a breech position, by common sense, endangers the mother. Obviously, in abortion it dramatically endangers the baby.

They take the leg, and they pull the baby feet first out of the uterus through the birth canal. All of the baby is delivered except for the head. The entire baby is outside the mother with the exception of the baby's head. Again, we get back to the question, Is this an abortion or is this infanticide?

The reason this debate is so crucial is that it is where worlds intersect. It is the line we are going to draw. There are a lot of people who are for abortion rights who say: Look, the line is, the baby is inside the mother; the mother can abort the baby, period. And they say: But yes, obviously, when the baby is outside the mother, you cannot kill the baby.

This is where the worlds intersect because we have a situation where the baby is almost outside the mother. This baby would be born alive because this procedure occurs after 20 weeks. What the abortionist does is deliver the baby, all but the head. Why? Because the head is the largest part of the body at that age, so the most difficult to deliver.

There is also some question that if the baby comes out head first and once the head is delivered, will the Constitution treat it differently, if the head comes out first as opposed to the feet coming out first? Some have argued that once the baby's head is through the cervix, that is birth, so maybe they are under constitutional rights.

Do you see how fuzzy this line is, and do you see why some on both sides of this issue believe it is important to draw the line so we do not get into this rather difficult situation?

The baby is delivered, all but the head. The abortionist then does a barbaric thing. I even think those who support this procedure would argue and would agree with me that this is barbaric. This is a living baby, a human being. It is delivered outside of the mother. Its arms, its legs, its torso are outside the mother. The doctor, because they cannot see; it is a blind procedure—the baby is face down—feels up the spine to the base of the neck, base of the skull, top of the neck, finds the point at the bottom of the base of the skull, takes a pair of scissors, and jams it into the base of the baby's skull.

I do not have to tell you, a baby at 20-plus weeks has a fully developed—I should not say fully—has a developed nervous system and feels pain, acutely some have suggested, more than you would feel pain. A medical doctor takes a pair of scissors and jabs the baby in the skull.

Nurse Brenda Shafer, who testified before the Senate and House Judiciary Committees, described the reaction of one of the babies when this occurred. The baby threw out its arms and legs. If you ever held a little baby and you gently bounced them in your arms, they stick out their arms because they are not sure, they lose their equilibrium. She said it was just like that. The little baby lost its equilibrium and then fell down.

The baby is dead now. The abortionist has killed the baby that was 3 inches from being protected by the Constitution. Three inches more and everybody in America would say—everybody but a couple of people in Princeton—that baby should no longer be able to be killed. But for those 3 inches, that little baby is allowed to be executed in the most painful, brutal, insensitive, barbaric fashion of which I think any of us have heard.

To add insult to injury—let me put it a different way. To add insult to execution, they take the suction catheter, insert it in the hole made by the scissors, and they suction out the baby's brains. And a baby's skull is soft. It has those plates that move, grow, allow the baby's head to expand. The baby's head just collapses as a result of the suction. And then this otherwise beautiful, healthy, normal baby—that would otherwise be born alive and, in a vast majority of the numbers, particularly after 22 weeks, would not only be born alive but would be viable outside the mother—is then extracted completely from the womb.

If you described what I just described as a procedure done on any human being in some foreign country as a way of torture, the American public would be aghast, they would be outraged, outraged that such barbarism could occur in a civilized country. But this barbarism occurs every single day in America. Thousands of times a year, little babies are killed in this brutal fashion. Why? I will get to that in a minute.

Who performs this? And where, by the way? Is this performed in hospitals? The answer to that is no. No hospital would do an abortion such as this. Is this in the medical literature? The answer is no. It is not taught in any medical school. It is not taught anywhere except by the developer and another person from Ohio who developed this procedure.

Is the person who developed this abortion technique a well-known obstetrician, someone who is board certified, someone who is an expert in internal fetal medicine? No. No. Not only is this person not board certified, not only is this person not an expert in internal fetal medicine, this person is not even an obstetrician.

The person who developed this procedure was a family practice doctor who, I guess, could not make it saving children so went into the abortion business and developed this procedure, not because this was a procedure that was in the best interest of anybody concerned, except the abortionist, but because this is a much simpler procedure in the sense it takes less time, so you can do more abortions during a day. It takes less time than other late-term abortions, so you can do more of them. And, of course, when you get paid for these, the more you can do, the more money you make.

Why is this procedure done? You will hear arguments today that this procedure is done to protect the life and health of the mother—that is what you will hear: life and health—and another thing which is health related: the future fertility of the mother. We will have a long debate about that. I am not going to take a lot of time in my opening statement about that, but I do want to address it briefly.

No. 1, life. There is a clear life-of-the-mother exception in this bill. If this procedure needs to be used to protect the life of the mother, it can be used. Having said that, the person who developed this procedure, the person who does, from what we know—again, we do not have good information—most of these kinds of procedures, a guy named Dr. Haskell from Ohio, has said under oath in a court of law—in a court of law, under oath—that this procedure is never used to protect the life of the mother.

Under oath, in a court of law, what would seemingly be an admission against his own interest, in one of these suits that challenges the constitutionality of this, he admitted, as, frankly, has everybody else—except a few folks on the other side of the aisle who have it in their mind that somehow this is needed to save the life of the mother—it is never used.

Do you know what we say? Fine. It is never used? We will still put it in the bill. If there is some strange occurrence that no obstetrician I have heard of has come forward with to say needs to be used to protect the life of the mother, it is covered.

Think about this intuitively. This is why the doctor arrived and why everybody who has looked at this issue has arrived at the conclusion that this is never used to protect the life of the mother.

If you had a mother who presents herself in a life-threatening situation, would you give her two pills and say come back in 3 days? You do not have to be an obstetrician to figure this one out, folks. If someone is in a life-threatening situation, you do not give them two pills and say go home and come back in 3 days, and dilate their cervix during that 3-day period.

So the argument that this is somehow used to protect the life of the mother is as bogus as a number of other lies I will go through here in a minute that have been put forward by the other side to stop this procedure from being banned.

Second, health. Again, same doctor, same case. Different question: Is this procedure ever necessary to protect the health of the mother? Again, the abortionist who helped develop the procedure, who uses it more than anybody else, testifying in court, under oath: Is this necessary to protect the health of the mother? Answer: No. No.

But you will see people come to the floor and talk about, oh, how this is absolutely necessary, how this is an important health issue for women. We have over 400 obstetricians, most of them board certified, many of them specialists in maternal-fetal medicine, who have written letters, who have signed documents, including the AMA—which is not a pro-life organization, I might add—who have signed letters saying this is bad medicine; it is never necessary to protect the health of the mother to do this procedure.

Yet people will come down to this floor and say: Well, I can't be for this because I need a health-of-the-mother exception and put up ''cases'' where this was done and, as a result of this, the mother was able to have more children, was able to do other things; and if this procedure were not done, then they would not have this opportunity.

I would not argue that this procedure could result in a positive outcome for the mother's health. Certainly it could. But that is not the question. The question here is, Is it necessary—the answer is, no—to protect the health of the mother or the life of the mother.

And second, is it the best method? Clearly, given what we know about this procedure and its profound implications on who we are as a society, the answer has to be emphatically—I hope from this body, which is so concerned about the consuming problem of violence in our society—I think a group of people who stand up and complain about shootings at Columbine will look at this and say: Wait a minute. If we're saying this kind of brutality is OK, if the Senate and the President of the United States say this kind of brutality of our children is OK, then how in the world can we be aghast when other violence is done to our children?

If we can stand here, with straight faces, and with passion in some cases, and argue that this kind of execution is not only legitimate but preferable, proper, constitutional, necessary, how can we be even the least surprised that young people, looking at what goes on in the world around them—obviously, they get a lot of bad messages from Hollywood and from the media, but they only need to look to the Senate and to this President to get their cue. The cue is violence is OK, as long as there is some purpose to be served. And the purpose is to make sure we don't have a chink in the armor of abortion rights. That is the purpose.

The question is, Why are they fighting this so hard? What is really the problem? Why are they fighting what is an abomination? It is uncomfortable to talk about it. I am sure for those listening it is very difficult to listen. This is not a pleasant subject. Why would you want to get up year after year and fight this issue? What is the great cause at stake that we have to draw the line in the sand?

They will argue it is the health of the mother. It is not true. That has never stopped them from arguing that. But when you have the people who perform the abortions saying under oath that it is not true, it is darn hard to come here and say this is why we want to do it, and for those of us who have to listen to it, to say: Is this really what is at stake? Is this really the issue? Or is there something else going on? Is there an agenda?

I can tell you what the agenda is on our side. The agenda is very simple. At a time when we are faced with senseless, irrational violence, with a culture that is insensitive to life and promotes death through our music, through videos, just a little beacon of hope, a little grain of sand of affirmation that life is, in fact, something to be cherished, not to be brutalized; that there are lines in our society that we can't blur, that we shouldn't cross, because when we do that, we throw in doubt, for millions of children and adults, the issue of, well, maybe this isn't so wrong. We cloud the issue, the issue of life for children that are 3 inches away from constitutional protection. Don't you think that is a good place to draw the line? Don't you think that is a reasonable place to say, OK, enough is enough?

No one is standing here arguing overturning Roe v. Wade. In fact, I will make the argument, this is legitimate under Roe v. Wade. There is nothing here that will, even if it goes to the Court, overturn Roe v. Wade. It is not our intention with this act.

This act is an attempt, and I would argue a feeble attempt—many of you listening were around 30, 40 years ago. Could you imagine walking onto the Senate floor 40 years ago, turning on the television and seeing Walter Cronkite report on the debate on the Senate floor about whether this should be legal in America? Can you imagine 40 years ago that we would even have a debate in the Senate about whether this would be allowed in America?

There isn't a person in the Senate who, 40 years ago, would have said this is OK. They would have been appalled. Well, maybe in Nazi Germany or maybe in the Soviet Union, but in America, this? No. But how far we have come. How much more civilized we have become. How culturated we have become that now 40 years hence we can have these kinds of rational debates and people can come to the floor of the Senate and say that thrusting a pair of scissors in the base of the skull of a little baby is OK. How far we have come. How humanity has grown and developed. How sophisticated we are that we can find precise legal arguments that will weave us through this web of destruction and say, but it is OK. Americans go to sleep at night knowing that thousands of children, almost born, inches from reaching toward that constitutional protection, can be executed. We are all better for it. We are better as a society for this.

They will not say that, but underneath the argument is this: This being legal is better for America. When people come and cast their votes, you will have to cast the vote saying that allowing this to occur in America is better for us. It is preferable in the United States of America that this occurs. We want this to continue. We believe this is right. We believe this is just. We believe this is humane. We believe this is in the best spirit of America, liberty, and freedom.

How twisted, how twisted we have become. How we contort ourselves to find that path through rights to allow this to be the best that we are in America. We are better than that. This country stands for higher ideals and principles than that. A majority of the Senate will agree with me. A majority of the House will agree with me, a majority of Americans. But that is not enough.

So this contorted construction of freedom will continue to be legal. Can you envision our Founding Fathers with these charts in front of them saying: This is the product of liberty? This is the product of the high ideals that we suffered through in revolutionary, civil, and major world wars to preserve? This is what it has come to? This is the personification of liberty in America today? It is no wonder we are concerned when we tuck our children into bed at night and we see what kind of world is ahead of them. How much more will we be able to twist freedom and liberty to destroy their true freedoms? I tuck five little ones in bed every night. I wonder, I wonder what is in store for them, if we continue as the Senate, the greatest deliberative body

in the world, to allow this wanton destruction of the most vulnerable in our society. Where are we headed?

Mr. President, I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, for those who have followed this debate since it opened about an hour ago, you have heard that those of us who will fight on the floor of the Senate for moms, for our daughters, for their health, for their lives, are somehow evil and bad people. You have heard in this debate, in some of the most inflammatory language, which I think is, in essence, very dangerous for this country, that those of us who stand up to fight to make sure that every child is a wanted child, that every child who comes into this world is wanted and loved, that every woman has a right to be respected—you have heard that somehow we want to bring violence to children. You have heard the word ''executioners'' relating to doctors who take an oath ''to do no harm,'' who save lives, who bring babies into the world. Executioners. I am stunned by the tenor of the debate. I am troubled by the tenor of the debate.

The majority leader was sent a letter by a number of groups asking him to please not bring this issue up this week, could he wait a week. They noted that on Saturday, we will have the 1-year anniversary of the assassination of a doctor, Dr. Barnett Slepian, who was murdered in his home, through a window, by a coward who took this man from his family. The majority leader was told there have been five sniper attacks on U.S. and Canadian physicians who performed abortions since 1994. All of those victims were shot in their homes by a hidden sniper who used a long-range rifle. Dr. Slepian was killed, and three other physicians were seriously wounded in these attacks—for making sure that women had their legal rights protected and their health protected.

I think it is sad that we would have this debate, with the most inflammatory language I have ever heard on the Senate floor to date. I know the FBI and the Attorney General are going to be ever more vigilant because of this debate. I know that and I am glad about that. It is very hard for me to imagine that we could not have put this off a week. Here we are. And instead of having a debate that should be based on the merits of the discussion, it has been inflamed.

Yesterday, I said if 100 doctors walked into the Senate and sat down in our chairs to practice being Senators, they would be arrested and dragged out of here. Yet here we are in the Senate—100 of us, and not one of us an obstetrician, not one of us a gynecologist—deciding what procedures should or should not be used, and under what circumstances, in a matter that should be left to the medical profession, left to the families of this country, left to loving moms and dads. So here we are practicing medicine in the Senate and not even doing a very good job of it, I might say, if you listen to the physicians who have written to us on this matter.

I am going to place into the RECORD several letters from organizations consisting of physicians. Here is one from the Society of Physicians for Reproductive Choice and Health—the people my colleague has called ''executioners.''

Ladies and gentlemen of the Senate and of this country, these are the people who bring our children into the world. These are the people who save their lives when they are hurt. These are the people we run to when they have to go to an emergency room.

This is the statement:

In what it claims as a tribute to mothers, the United States Senate today will vote on a bill criminalizing a procedure . . .

. . . legislators supporting this ban are not celebrating mothers—but, in fact, are dishonoring and condemning motherhood by placing pregnant women at greater risk for infertility and death.

These are the people to whom we turn when we are sick, and they are telling us not to pass the SANTORUM bill. They bring back the days before 1973:

Prior to abortion's legalization in 1973, the leading cause of maternal death in this nation was illegal abortion. As Congress attempts to ban abortion, procedure by procedure, more and more pregnant women will die. As physicians concerned about the health and lives of our women patients, we believe this is a shameful celebration of motherhood.

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

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

STATEMENT ON SANTORUM BILL (H.R. 1122/S. 6) BANNING A PROCEDURE KNOWN MEDICALLY AS DILATATION AND EXTRACTION, MAY 20, 1997

In what it claims is a tribute to mothers, the United States Senate today will vote on a bill criminalizing a procedure known medically as dilatation and extraction. Ironically, legislators supporting this ban are not celebrating mothers—but, in fact, are dishonoring and condemning motherhood by placing pregnant women at greater risk for infertility and death.

Congressional supporters of this ban are hiding from women and their families the true consequences of this bill: it makes unavailable to physicians and their women patients a safer, less risky medical option during health- and life-threatening events that can occur during pregnancy. Women, their families and their physicians must be alarmed by Congressional plans to deny a medical option that preserves women's health and lives.

Contrary to popular belief, it already is illegal to perform a third trimester abortion on a healthy mother carrying a healthy fetus. Abortion opponents who present graphics of darling, full-developed babies being aborted are gravely misleading and misinforming the public and policymakers. Opponent admit these graphics are false, but continue to use them anyway.

Annually, 300 to 600 third trimester postviability pregnancies are terminated legally for specific medical complications that can develop during the pregnancy's course. These conditions pose severe health and life threats to the women—including infertility and death. When maternal complications develop, these pregnancies are terminated only after attempts are made to deliver the fetus safely while preserving the health and life of the mother. Decisions to terminate pregnancy at this stage are not considered by one physician alone. In fact physicians and their patients seek second and third medical opinions.

Some severe complications that can affect pregnancy include; The development of cancer during pregnancy; severe pre-eclampsia (toxemia) accompanied by kidney or liver failure; uncontrollable health failure; longstanding insulin dependent diabetes causing declining renal kidney function; Lou Gehrig's disease and other conditions causing respiratory failure; or, severe hypertension (high blood pressure) diseases causing maternal organ failure and maternal death.

The severity of these complications may make labor or caesarean section fatal.

Approximately one percent of all legal abortions occur late in the second trimester before fetal viability. Some are performed on women facing medical complications described earlier. Other women carry fetuses with serious genetic or developmental anomalies, including abnormal fetal kidneys, heart and brains—complications not usually detected until the second trimester.

Legal late second trimester abortions also are performed on women who, lacking health insurance and access to healthcare facilities, are unaware they are pregnant or unable to terminate the pregnancy earlier. Some women with irregular menstrual cycles may be unaware of their pregnancy. For some of these women, dilatation and extraction is the safest medical option because the fetal head is disproportionately large and trapped in the dilated cervix during delivery.

Banning dilatation and extraction will force competent physicians to choose riskier medical options that increase danger to patients. For women, these options are lengthy and painful, including the placement of surgical instruments into the uterus, increasing the risk of uterine perforation and infertility. Another option uses medication to induce labor, increasing the risk of maternal death from blood clotting failure and hemorrhage.

Prior to abortion's legalization in 1973, the leading cause of maternal death in this nation was illegal abortion. As Congress attempts to ban abortion, procedure by procedure, more and more pregnant women will die. As physicians concerned about the health and lives of our women patients, we believe this is a shameful celebration of motherhood.

Physicians for Reproductive Choice and Health oppose the Santorum Bill (H.R. 1122/S.6).

Mrs. BOXER. Mr. President, we have a letter from the executive vice president of the American College of Obstetricians and Gynecologists. These are the men and women who bring life into the world. These are the men and women who deliver our babies. I find it interesting when the Senator from Pennsylvania talks about breach births—I had a breach birth; I don't think he ever did, and I know what it is. I know what the risks are. I am a mother of two beautiful children. I am a grandmother of one beautiful grandson, and I tuck him in and I read him stories and I love him. I want him to

grow up in a world where families are respected, where physicians are respected, where no one stands up on the floor of the Senate and calls a physician an executioner. I don't think that is a good country. I don't think that is respect. I don't think that brings healing to this issue.

The American College of Obstetricians and Gynecologists said:

[This bill] is vague and broad. . . . It fails to use recognized medical terminology and fails to define explicitly the prohibited medical techniques it criminalizes.

That is an important point. Bills just like this one have been ruled unconstitutional 20 times. One of those decisions was in the State of Arkansas, and I am going to share those decisions with you because I think it is important. So many of us say: local control, let the States decide.

The States have passed these laws, and not one of them yet has been proven constitutional or declared constitutional. But they have been declared unconstitutional because of what the doctors are saying—the language in this bill is so vague. And the language in all those bills is that they would, in fact, outlaw all abortion at any particular time during the pregnancy.

So when my colleague from Pennsylvania says, well, we don't want to overturn Roe v. Wade—and perhaps we will have a chance to vote on that as well—but when he says that, that is not what the courts are saying. The courts are saying his law does, in fact, make all abortions illegal and would criminalize abortion.

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

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

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
WOMEN'S HEALTH CARE PHYSICIANS,
Washington, DC, October 7, 1999.

Hon. THOMAS DASCHLE,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR DASCHLE: The American College of Obstetricians and Gynecologists (ACOG), an organization representing 40,000 physicians dedicated to improving women's health, continues to oppose S. 928, the ''Partial Birth Abortion Ban Act of 1999.'' ACOG urges the Senate to reject this legislation.

ACOG believes that S. 928, as amended, continues to represent an inappropriate, ill advised and dangerous intervention into medical decision-making. The amended bill still fails to include an exception for the protection for the health of the woman.

Further, the bill violates a fundamental principle at the very heart of the doctor-patient relationship: that the doctor, in consultation with the patient, based on that patient's individual circumstances, must choose the most appropriate method of care for the patient. This bill removes decision-making about medical appropriateness from the physician and the patient.

S. 928 is vague and broad, with the potential to restrict other techniques in obstetrics and gynecology. It fails to use recognized medical terminology and fails to define explicitly the prohibited medical techniques it criminalizes. In the most recent court action, the Eighth US Circuit Court of Appeals ruled that the ''partial birth'' abortion laws in three states were unconstitutionally vague.

Moreover, the ban applies to all stages of pregnancy. It would have a chilling effect on medical behavior and decision-making, with the potential to outlaw techniques that are critical to the lives and health of American women. Chief Judge Richard Arnold wrote in the Eighth Circuit decision that, ''Such a prohibition places an undue burden on the right of women to choose whether to have an abortion.''

Sincerely,

RALPH W. HALE, MD,
Executive Vice President.

Mrs. BOXER. Mr. President, there is a letter from the American Medical Women's Association.

Are these executioners, too? They work in the medical field. They say they are gravely concerned with governmental attempts to legislate medical decisionmaking through measures that do not protect a woman's physical and mental health, including future fertility, or fail to consider other pertinent issues such as fetal abnormality. And they strongly oppose governmental efforts to interfere with physician-patient autonomy.

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

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

STATEMENT OF THE AMERICAN MEDICAL WOMEN'S ASSOCIATION ON ABORTION LEGISLATION IN THE 105TH CONGRESS

ALEXANDRIA, VA (MAY 20, 1997).—The American Medical Women's Association, ''is committed to protecting the reproductive rights of American women and has opposed any legislative intervention for medical and or surgical care decisions,'' says current AMWA President Debra R. Judelson, MD. This week, AMWA reitrated its opposition to H.R. 1122 and S. 6, which seek to ban a particular medical procedure.

It is the opinion of AMWA's Executive Committee that legislative efforts to regulate abortion have been flawed. Concerns in the following areas have prevented AMWA from taking a position on recent legislative efforts focusing on abortion in the 105th Congress.

AMWA is gravely concerned with governmental attempts to legislate medical decisionmaking through measures that do not protect a woman's physical and mental health, including future fertility, or fail to consider other pertinent issues, such as fetal abnormalities. Physicians and their patients base their decisions on the best available information at the time, often in emergency situations. AMWA strongly opposes governmental efforts to interfere with physician-patient autonomy.

It is irresponsible to legislate a particular test of viability without recognition that viability cannot always be reliably determined. Length of gestation is not the sole measure of viability because fetal dating is an inexact science.

AMWA resolutely opposes the levying of civil and criminal penalties for care provided in the best interest of the patient. AMWA strongly supports the principle that medical care decisions be left to the judgment of a woman and her physician without fear of civil action or criminal prosecution.

Any forthcoming legislation will be carefully reviewed by AMWA based on the criteria outlined above, and AMWA will seek to ensure that there is no further erosion of the constitutionally protected rights guaranteed by *Roe v. Wade.* Says AMWA President Debra R. Judelson, MD, ''AMWA firmly believes that physicians, not the President or Congress, should determine appropriate medical options. We cannot and will not support any measures that seek to undermine the ability of physicians to make medical decisions.''

AMWA has long supported a woman's right to determine whether to continue or terminate her pregnancy without government restrictions placed on her physician's medical judgment and without spousal or parental interference.

Founded in 1915, the American Medical Women's Association represents more than 10,000 women physicians and medical students and is dedicated to furthering the professional and personal development of its members and promoting women's health.

Mrs. BOXER. Mr. President, the American Nurses Association—are they executioners or are they loving people who choose this field of work because they want to make people well because they have compassion in their hearts—what do they say about this?

They oppose the Santorum bill. They say 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. They represent 2.2 million registered nurses. They ask us to defeat this.

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:

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

Hon. BARBARA BOXER,
United States 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, RN,
Executive Director.

Mrs. BOXER. Mr. President, if someone wants to stand up here on the Senate floor and attack a whole part of our America, and if they want to use cartoons on the floor of the Senate to depict a woman's body, that is up to them. But I ask the American people to be the judge both of the substance of what is happening here, the techniques that have been used, and the inflammatory level of the debate.

I want you to meet a real person. I want to picture a real face—not a cartoon, but a real face—on the floor of this Senate. I want to tell a little bit about her story.

This is Tiffany Benjamin:

My husband and I waited until we established in our careers and could provide the best possible environment for a child. In 1994, we were thrilled with the news that we were expecting a baby. My first five months were joyous months of pregnancy. During a routine checkup my physician performed a standard AFT test. The results were abnormal. So my doctor ordered another test. Unfortunately, this test was also irregular. In my 20th week of pregnancy we discovered that our child had trisomy 13.

In plain English, each cell of her body carried an additional 13th chromosome. Doctors advised that her condition was lethal.

No one could offer us hope. Sadly we determined that the most merciful decision for our child—

Our child in our family—

would be to terminate my pregnancy. Although the years have passed, for us the depth of our loss is vivid in our mind. We are astounded that anyone could believe that this type of decision is made irresponsibly and without a great deal of soul searching and anxiousness. These choices were undoubtedly the most painful decisions of our lives. Please don't compound the pain of other families like ours by taking away our ability to make the difficult choices that only we can make in consultation with our physician. Please reject S. 1692 and protect our families from this dangerous legislation.

I ask you to look at Tiffany with her child. Does she look like an executioner to you? Does she look like someone who didn't want to have this child and suddenly woke up and said: I have changed my mind? No. This is a loving woman, a loving family member. She had to have this procedure, and this legislation would stop her from having it.

I want to tell you about another woman, Cindy, a 30-year-old mother of five living in Kansas City who said very proudly that she is a Catholic.

In June of 1998, Cindy noticed a lump on her neck and called her doctor. Within weeks, she found that she had thyroid cancer and, after surgery, began iodine radiation treatment. Contrary to medical protocol, she was not given a pregnancy test prior to the radiation treatment. Cindy's body did not respond to the radiation, and blood results indicated her body still contained the deadly disease. After returning to the hospital for another treatment, her blood was drawn for a pregnancy test, but the staff did not wait for the results; they gave her another iodine radiation pill.

Due to the radioactive iodine in her body, she was placed in an isolation room. No one could enter—not her husband, or her nurses, or her physician.

Two hours later, she received a phone call from her physician telling her they had made a terrible mistake. Her pregnancy test came back positive. She immediately started drinking water because the doctors told her all she could do in an attempt to shield her baby from the radiation was to drink a lot of water.

The next day, a second pregnancy test confirmed the first and a sonogram was ordered. That is when Cindy and her husband learned that not only was she 13 weeks pregnant but she was expecting twins, the twins they had always hoped for.

Imagine the feeling of that family. Within hours, the family learned that their babies would not survive, not grow, not develop. The radiation her babies received was equivalent to the bomb dropped on Hiroshima.

Cindy says:

We decided that termination would be best for our family and our babies. Through our research, our insurance company told us, however, that we were on our own.

And she adds:

You see, as a Federal employee my insurance will not pay for elective abortions.

She says because this abortion was meant to preserve her health, because of the votes in this Congress, she could not get help. She says:

I have five little ones at home who depend on their mommy ever day. I didn't want to have an abortion but I needed one. And the abortion that I had would have clearly been banned by this bill, and I thank God that this bill didn't tie my doctor's hands.

Let me just say that again. This is a woman who is religious. This is a woman who says to us thank God that bill wasn't law, the bill that the Senator from Pennsylvania is fighting so hard to become law. She says thank God it wasn't the law. She says this is clearly an intensely private, torturous decision.

Are proponents willing to tie the hands of both parents and physicians and say to a woman: You must carry your child to term despite the fact that it has been determined the child won't live and your health will be affected?

I have to say that these women who are proud to come forward to help us in a very difficult issue deserve our thanks because here they are being called the worst names in the book, being essentially told that they don't love children, that they don't care about children, when in fact these are loving moms and, in many cases, quite religious.

This is the third time the Republican leadership has brought this bill before the Senate. Again, it is playing doctor without one obstetrician or one gynecologist among us. The obstetricians and the gynecologists say we shouldn't do this. The women who have had this procedure say we shouldn't do it.

We are going to have a lot more debate. I know my colleague from Illinois is here, and he has a very important piece of legislation to offer. But before I give up the floor this time, I want to talk about what has happened in the courts because my colleague from Pennsylvania has made a statement I think that is fairly dismissive of what has actually happened. He says some of the courts have upheld this procedure and some have not.

I will discuss what the courts have done not because I am telling my colleagues to vote against their conscience; if they want to vote for something unconstitutional, that is their right. They ought to hear the arguments made in the 20 States in which this particular procedure has been called unconstitutional.

This chart shows which States have enjoined these bans. I put ''partial-birth abortion bans'' in quotes because there is no such thing. This is the political terminology. Nearly every court to rule on the merits of an abortion ban since the Senate last voted on the issue has ruled this abortion ban is unconstitutional. These are the States that have so far enjoined this Santorum-like legislation from going into effect: Alaska, Arizona, Arkansas, Florida, Idaho, Illinois, Iowa, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, Ohio, Rhode Island, West Virginia, Wisconsin, and in Georgia and Alabama there has been limited enforcement.

We have a string of decisions. I will read quotes of judges from these States—and as so many of my colleagues have said, as our President has said, we ought to listen to the States. Let's hear what the State judges are saying when they have overturned these types of bans.

First, from a Federal judge in Arizona:

The term ''partial-birth abortion'' is not a term found in the medical literature.

Let me repeat that. The judge writes:

The term ''partial-birth abortion'' is not a term found in the medical literature. The testimony of witnesses at trial indicates that this term is ambiguous and susceptible to different interpretations.

The important point is, when my colleague from Pennsylvania says he only means it to be a handful of procedures, this particular judge, Judge Bilby in Arizona says no, the term is so vaguely worded it could apply to many other abortions, and that essentially would overturn a woman's right to choose.

In Arkansas, Judge Richard Arnold says:

As we shall explain, ''partial'' delivery occurs as part of other recognized abortion procedures, methods that are concededly constitutionally protected. Under precedents laid out by the Supreme Court, which is our

duty to follow, such a prohibition is overbroad and places an undue burden on the right of women to decide whether to have an abortion.

This is a judge in Arkansas saying the Santorum-type language is so broad and the procedure is so broadly explained it could, in fact, apply to any type of abortion. He ruled it unconstitutional.

In Illinois, U.S. District Court Judge Charles Kocoras, said:

First, the statute, as written, has the potential effect of banning the most common and safest abortion procedures.

He looked at the Santorum-like bill and said it also was unconstitutional.

U.S. District Court Judge Heyburn in Kentucky says:

By choosing words having a broader scope, the legislature moved from arguably firm constitutional ground—banning a very limited procedure use for late-term abortions—to a quagmire of constitutional infirmity.

There is a common thread among the judges—by the way, from very conservative areas of our country—who are saying the Santorum-type of ban is so broadly worded it would take away a woman's right to choose even at the early stages of pregnancy.

In Nebraska, Judge Richard Arnold says:

The law refers to ''partial-birth abortion'' but this term, though widely used by lawmakers and in the popular press, has no fixed medical or legal content.

It would also prohibit in many circumstances the most common method of second trimester abortions . . . under the controlling precedents laid down by court, such a prohibition places an undue burden on the right of women to choose whether to have an abortion.

For colleagues who say vote for Santorum; it doesn't take away a woman's right to choose, we have 20 court decisions that say it does. In certain States, they have stopped performing abortions because the doctor was afraid he would be arrested for performing an early-stage abortion.

In summing up, we were elected to be Senators. We have a lot of work to do. We weren't elected to be the American College of Obstetricians and Gynecologists. They have their own organization. We should vote down this unconstitutional bill. If we do not—because I know this is political—why else would it be before the Senate? This is politics at its worst. This is the third time the President will veto this bill. We all know we will have the votes to sustain that veto. Why go through this if not for politics?

This is a debate we should not be having right now. It has been, unfortunately, in my view, very divisive so far. I hope we can get back on solid ground. Let Members not call people executioners; let Members not call families unimportant; let Members not demean women, and say the other side says the health of the woman is important. Yes, the health of women, the health of men, the health of families, that should be our paramount concern. We are not physicians. Within the context of the law, Roe v. Wade, which was decided in 1973, let Members make the decision as to what is best for our women, our families, and our children.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I consider my service in the Senate representing the people of Illinois to be the highest honor I have ever been given. I continue to believe it is the very best job in American politics. As I go back to my home State and meet with people who have entrusted me with this responsibility, I literally thank them for giving me this opportunity.

However, this debate may be one of the most painful aspects of serving in the Congress, and specifically in the Senate, because it raises before the Senate an issue which most Senators would rather not look at again. In the course of 17 years, I have voted on this abortion issue countless times. Each time has been a struggle.

I am sure those who are listening to this debate might question what I just said. Don't you get used to it? Isn't it automatic? Don't you just vote the same way you did last time?

That has never been the case for me. I have tried in every instance to be honest about the specific debate that was involved. My views on this issue have changed over the years as I have listened to the debate of those with various positions.

I have come to a position now that I am at peace with personally. Though I know that I am at peace, the people I represent may see differently.

The best I can say in the course of this debate is what I am about to say and what I am about to offer in terms of an amendment which represents my best good-faith effort to deal with a painful issue. This is not like most issues we face in the Senate. I can go home after a week of working most times and people do not have a clue as to what we have even talked about or debated. I can go to family reunions and get-togethers and people do not ask me how did you vote on a certain bill involving grazing rights in the West. It never comes up.

But this issue, the issue of abortion, is one that most Americans have an opinion on because we have been confronted, since the Roe v. Wade decision, with a huge national debate, a very divisive debate as to whether the Supreme Court was correct or incorrect in giving a woman in the United States the right to choose whether to have an abortion procedure.

There are people dug in on both sides of this debate. What I am saying, I am sure, is no surprise to anyone who observes it. There are some who believe that Roe v. Wade was just plain wrong; that the Supreme Court never should have legalized abortion procedures under any circumstances. There are those on the opposite side of the spectrum who believe that Roe v. Wade did not go far enough with respect to a woman's right to choose and her privacy. I think you will find the majority of Americans in between those two groups; struggling, on one hand, I think, to keep abortion safe and legal but, on the other hand, to put restrictions on it which are common sense.

The Senator from Pennsylvania comes before us today with a bill which seeks to address one aspect. He has focused on one particular abortion procedure. It goes by a lot of different names. The common parlance is partial-birth abortion. There are some who say that is just a made-up name for politics; it has nothing to do with medical terminology. But for better or for worse, that is how this debate is characterized, the partial-birth abortion debate, which has been around so many times on this floor and in Congress.

It now has a further shorthand, PBA. I do not think that is fair to the Senator offering the amendment, the Senator from Pennsylvania, nor to the gravity of the issue. This is a serious issue. The Senator from Pennsylvania focuses on this procedure which I will tell you, as I view it, is a gruesome procedure. It is gruesome. I don't know if his description of it is accurate, but if it is close to accurate it is gruesome.

He believes this procedure should be banned at every stage of pregnancy. Let me address that from two perspectives. First, there has been a lot said on the floor already this morning as to whether or not this kind of procedure is ever medically necessary. I am not a doctor. I cannot reach that conclusion on my own. I have to turn to others for advice.

Let me tell you what I did last year, in July. I had just read an article published in the Chicago Tribune in my home State that quoted former Surgeon General Everett Koop. Because of that article and what I read and my respect for him, I sent a letter. My letter was addressed to Dr. Ralph Hale, the executive director of the American College of Obstetricians and Gynecologists here in Washington.

I am going to read the letter because I want you to understand I tried my very best to give an open-ended opportunity for this medical doctor in the specialty of obstetrics and gynecology to tell me his professional opinion. Let me read the letter:

DEAR DR. HALE, enclosed is a commentary that appeared in yesterday's Chicago Tribune. It quotes former Surgeon General C. Everett Koop as saying that ''Partial-birth abortion is never medically necessary to protect a mother's health or future fertility.''

I am writing to request your College's response to this statement. In the medical judgment of the experts among your members, is it true that partial-birth abortion is never medically necessary to protect a mother's health or future fertility?

As I am sure you know, this is a matter of great concern to many members of Congress including myself, and I would appreciate your timely response to this important question.

I sent that letter on July 28, 1998. I received a reply on August 13, 1998,

from Dr. Ralph Hale, executive vice president of the American College of Obstetricians and Gynecologists. When I finish reading it, I will ask it be printed in the RECORD. But I would like to read it in its entirety so there is no doubt I asked an open-ended question of experts in the field, and this is Dr. Hale's reply:

DEAR SENATOR DURBIN: I am writing in response to your July 28th letter in which you asked for the College's response to Dr. Koop's statement that ''Partial-birth abortion is never medically necessary to protect a mother's health or future fertility.''

The letter went on to say:

The College's position on this is contained in the statement of policy entitled Statement on Intact Dilation and Extraction. In that statement we say, ''Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother.'' It continues, ''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.'' Our statement goes on to say, ''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.'' For this reason, we have consistently opposed ''partial-birth abortion'' legislation.

It goes to say:

Please find enclosed ACOG's statement on intact D & X. Thank you for seeking the views of the College. As always, we are pleased to work with you.

Sincerely,

RALPH W. HALE, MD,
Executive Vice President.

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

Mr. DURBIN. I yield for the question.

Mr. SANTORUM. I thank the Senator very much for yielding. The reason I am going to ask the question is an article written by two Northwestern health care physicians from Northwestern University in Evanston, IL, who cited the same statement out of the select panel. They went on to say, after they quoted what you quoted in your letter:

However, no specific examples of circumstances under which intact D&X will be the appropriate.

In fact, in subsequent communications with ACOG and others, we have asked, give us one set of medical—any set of medical circumstances where you believe that this ''may be—whatever.''

Never have we gotten any circumstance where that was the case. So they say it may be, but no one to date has provided any circumstance, as hypothetical as you want, where, in fact, it would be.

Just to say it may be without giving evidence of what it was, I think my question is—I think the next question to which you hopefully can get an answer, I can't—you say it may be. Give me a for instance. So far, we have not been able to get any for instance.

Mr. DURBIN. I thank the Senator from Pennsylvania. That is a reasonable question.

I would say to him, though, there is clearly, at least, a difference of opinion within the medical community as to medical necessity.

Dr. Koop, whom I respect very much and have worked with on a lot of issues, says: Never. The American College of Obstetricians and Gynecologists says it is never the only thing you can do, but it may be the most appropriate thing to do for the health of the mother. And then, of course, you go on to say give us some examples. I think that is reasonable.

I ask we continue the debate at least to find out what those examples might be. That is reasonable.

But you have to say at this moment in time there at least is a difference of opinion, based on the letters introduced by the Senator from California, among medical professionals as to whether this is ever medically necessary or the most appropriate thing.

This raises a policy question. When we get to the point where doctors differ about the use of a procedure, is it appropriate, then, for the Senate to decide that we will ban a procedure, a medical procedure? That is what the Santorum amendment does. I think the Senator from Pennsylvania would concede it.

He attempts to ban the use of this procedure. Based on this letter I received from the American College of Obstetricians and Gynecologists, to do so would say to doctors in some circumstances: You may not use the safest procedure for my wife, my daughter, my sister; Congress has banned that procedure. That is where I struggle with what the Senator from Pennsylvania is attempting to do.

I am not the doctor. I will not play one in the Senate. When I rely on doctors' opinions, they are at best divided on the question.

Let me address the second issue in relation to the Santorum legislation, and that is why we are doing this again and again. I do not question the sincerity of the Senator from Pennsylvania. I know his feelings on this subject are heartfelt, but I do question why we continue to bring this same legislation time and time again before the Senate, not because it is not important to the Senator from Pennsylvania and others, but, frankly, we have been getting readings from courts across America that this language he is proposing today is, on its face, unconstitutional.

We are spending our time in a debate over a bill which 19 States have stricken. These States have all tried to model some type of legislation based on his banning this procedure, and time after time, Federal courts have come forward and said, no, this is unconstitutional. The judges making the decisions are not so-called liberal jurists. You will find within their ranks appointees of President Reagan and President Bush, some very conservative jurists who say on its face this is not constitutional.

We took an oath as Members of the Senate to uphold that Constitution. There are times when interpretations can differ as to what that oath means. But in this case, the Santorum legislation before us has consistently been stricken by the courts, I believe, with only one exception, in the United States. Because of that, I have to ask this question, not questioning the Senator's sincerity, but why are we doing this? Why are we engaged in this debate over language which time and time again has been found unconstitutional and enjoined in my home State of Illinois and across the Nation?

This is a political exercise. It is not an attempt to pass a bill which will become a law. Forget for a moment the President's veto, if you will, and take a look at the merits of the legislation which time and time again has been found by the courts to violate the Constitution.

I would think that at this point in time, the author, whose feelings on this are heartfelt, would have changed his approach, changed his language, tried to address some of the constitutional questions, but it has not happened. We get a rerun every year. This is all about a record vote. This is all about raising this issue for public consciousness and a record vote of the Members of the Senate.

Some people want a scorecard. Some people want to use it politically. So be it. That happens around here. It is a shame that it happens on an issue of this gravity and importance because, honestly, I do believe there are things we can and should do which will address what I raised earlier. The feeling of the vast majority of Americans is that abortions should remain safe and legal and that restrictions on abortion should be in place only when necessary.

I am going to offer an amendment shortly which addresses my approach to this. As I said earlier, although I am honored to have nine cosponsors, nine other Senators who join me in this amendment—it is a bipartisan amendment—including the two Senators from the State of Maine, both Republican, I do not suggest it is the point of view of anyone other than ourselves. A vote will demonstrate whether I am right or wrong. I hope a majority sees this as a reasonable way to bring this contentious debate to a constitutional and fairminded conclusion.

If we do not, I predict we will have another vote next year on the unconstitutional Santorum legislation and perhaps in years in the future. But what will we have achieved? Contentious, painful debate with no resolution other than a political scorecard, and that for me is a troubling outcome.

I hope we can find a better way to do it because I believe there is a more sensible way. Let me tell you why I think there is.

I am going to offer an amendment which addresses not an abortion procedure but addresses a stage in pregnancy. It is a stage which is known as postviability, that moment in time where the decision is reached that the fetus can sustain survival outside the womb with or without artificial support. That is a moving target. Viability has changed because medicine has changed. Go into any neonatal intensive care unit in America and look at the size of the babies who are surviving. They are smaller than your hand, tiny little babies who are surviving.

Viability is a moving target, and it was a standard that was used in the Roe v. Wade decision. They said until that moment in time when that fetus is viable, could survive outside the womb, then there are certain legal rights in this country. But once viability is reached, those rights change, and we start acknowledging the fact that this fetus has now become a potential human being at birth. Roe v. Wade said we will define the laws of America based on viability.

The problem with the Santorum legislation, the reason why this bill and versions similar to it have been found unconstitutional time and again, is they refuse to accept this basic premise, the premise of Roe v. Wade, the premise of existing law in this country. They will not acknowledge that you should have a law banning a certain procedure only after viability. Each time it is stricken because it would, in fact, restrict the right to abortion before viability, before the fetus can survive. Court after court after court has stricken down State laws that have followed this Santorum model. Yet here we are again.

My amendment, the one which I will offer to the Santorum bill, accepts the Roe v. Wade premise that any changes which we are going to make have to be consistent with Roe v. Wade, and this is what it says: Any late-term abortion—that is, an abortion after viability—is disallowed or prohibited under law. We are talking usually 7th, 8th, 9th month of gestation. Those abortions are prohibited under law except in two specific cases: where continuing the pregnancy threatens the life of the mother or in those cases where continuing the pregnancy poses a risk of grievous physical injury to the mother. That is it. Grievous physical injury. There are those who disagree with me and say it should include emotional injury as well. I have drawn this line at physical injury.

Here is why I believe this is a reasonable standard: At this late stage in the pregnancy, the 7th, 8th, or 9th month, I believe Roe v. Wade tells us we have to look at the pregnancy in different terms. We are now postviability. We are now in a position where the fetus can survive. In those circumstances, what I have said is, the only reason legally you could terminate the pregnancy is if continuing it could literally kill the mother or continuing it could subject her to the possibility of grievous physical injury, which is defined in the amendment.

I go on. One of the objections customarily made is that if you allow a doctor to certify that a mother's life is at stake or she runs the risk of grievous physical injury if the pregnancy continues, you are playing right into the hands of the people who perform the abortions.

I have heard this argument so many times on the other side of the aisle. They argue doctors will say anything, the ones who perform these procedures, because they just want to make the money; they don't care.

I take an additional step. I require a second doctor to certify. You will have two doctors in those decisions, two doctors who come forward and say: If this pregnancy continues, this mother could die, or, if this pregnancy continues, this mother could risk grievous physical injury.

What risks do these doctors take if they are falsifying this information? Substantial fines and the suspension of their licenses to practice medicine are included in this amendment. It is very serious.

When we get to this stage in the pregnancy, I do believe the rules should be a lot stricter. That is why I am offering this as an alternative, one which I believe deals with some very fundamental questions.

S. 1692 is the bill offered by Senator SANTORUM. We have to ask ourselves several questions:

Should just one or all postviability abortion procedures be banned? Senator SANTORUM addresses one. The amendment I offer addresses all postviability abortion procedures.

No. 2: Should a mother's health be protected throughout pregnancy? Under the Santorum legislation that is before us, the mother's health is not an issue; only if her life is at stake could you engage in certain procedures. In the amendment I offer, it will protect a mother's life and a mother's health, the health in terms of the risk of grievous physical injury.

No. 3: Should a woman's constitutional right to choose before viability be preserved? There are differences of opinion on this. Perhaps the Senator from Pennsylvania has a difference of opinion. But Roe v. Wade said—and I agree—that previability, a woman, in consultation with her doctor, her husband, her family, and her conscience, has the right to make this decision. They protect that right in Roe v. Wade.

Oh, I know there are those who disagree. I respect that. I have been in lots of debates with them. That is where I come down. The reason the Santorum language has been rejected in court after court after court as unconstitutional is that, I believe, those on his side just do not accept the basic premise that, previability, this is a decision, a choice, to be made by a mother and her doctor.

As I said, I respect their position, but as long as they fly in the face of this basic principle, as long as they defy Roe v. Wade, with the language in the Santorum bill or the language in the State legislation, it will continue to fall time after time after time; we will continue to go through these political exercises; we will debate until our voices are gone. Then we will have a vote, and then we will go on to the next item of business. And, unfortunately, we will have missed an opportunity to do something that is meaningful. That is why I offer this amendment.

My amendment—I will go to the second chart—in comparison to the Santorum approach, can be spelled out with three specifics.

The Santorum approach bans only one procedure and allows others in its place. Make no mistake, if the Senator from Pennsylvania is successful someday in somehow enacting this legislation, he will not even tell you that is going to stop abortion from occurring. He deals with one procedure. My amendment bans all postviability abortions regardless of procedure.

The Santorum bill violates a woman's constitutional right to have her health protected. We preserve exceptions for life and health of the mother—narrowly defined.

The Santorum approach violates a woman's constitutional right to choose under Roe v. Wade before viability. My amendment specifically protects a woman's constitutional right to choose before viability.

Let me tell you what I am talking about when I talk about grievous injury. Grievous injury in this amendment is narrowly defined. And I quote:

> a severely debilitating disease or impairment specifically caused or exacerbated by the pregnancy; or
>
> an inability to provide necessary treatment for a life-threatening condition.

What could that be? You can all understand the first part: If continuing the pregnancy could kill the mother is clear. But what would the second one be? What if you diagnosed a mother, during the course of her pregnancy, with serious cancer? And what if you found continuing the pregnancy somehow compromised your ability to treat her for that cancer? That is what I am driving at here, to make sure it is serious and grievous, because we are literally talking about late-term, where I think the rules should be much stricter, as does the Court in Roe v. Wade.

My amendment also requires the attending physician who makes the call on these decisions to have the benefit as well—and it requires it—of an independent physician to certify, in writing, that in their medical judgment the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

I make an exception. I want to make it clear for the record. The certification requirement by the doctors can be waived in a medical emergency. But the physician would have to subsequently certify, in writing, what specific medical condition formed the

basis for determining that a medical emergency existed.

This legislation will reduce the number of late-term abortions. In contrast, the so-called partial-birth abortion ban will not stop a single abortion at any stage of gestation. The partial-birth abortion ban, by prohibiting only one particular procedure, will merely induce physicians to switch to a different procedure that is not banned by Senator SANTORUM.

Other procedures, such as induction, hysterotomy, or dilation and evacuation, can all pose a greater risk to the mother's health in certain cases. My alternative amendment will stop abortions by any method after a fetus is viable, except when medical necessity indicates otherwise.

Can we or should we try to define ''viability'' in this? I did not. And the courts have warned us: Don't even try. That is a medical judgment and, as I mentioned earlier, is a moving target. Viability today, in other words, fetal survivability today, is different from what it will be tomorrow or next month because these procedures are changing so dramatically in terms of saving the fetus and giving it an opportunity for life.

My alternative fits clearly within the constitutional parameters set forth by the Supreme Court for government restriction of abortion. In Planned Parenthood v. Casey, the Supreme Court reiterated Roe's determination that, after viability, the State may limit or ban abortion.

In contrast, the partial birth abortion ban, by prohibiting certain types of abortions before viability, breaches the Court's standard that the Government does not have a compelling interest in restricting abortions prior to viability.

Nineteen Federal courts in 19 States have enjoined, have stopped, the enforcement of the so-called partial-birth abortion bans Senator SANTORUM brings to the floor. The States include: Alaska, Arkansas, Arizona, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, Ohio, Rhode Island, Wisconsin, and West Virginia.

The Santorum bill is clearly unconstitutional. It will be struck down by the courts and have no lasting impact.

My alternative retains the abortion option for mothers facing extraordinary medical conditions, such as breast cancer discovered during the course of pregnancy, uterine rupture, or non-Hodgkins lymphoma, for which termination of the pregnancy may be recommended by the woman's physician due to the risk of grievous injury to the woman's physical health or life.

In contrast, the partial-birth abortion ban provides no such exception to protect the mother from grievous injury to her physical health.

To this point, this debate has been fairly general. To this point, with the exception of the Senator from California, in noting a few mothers who have been through experiences which they have shared publicly, we have talked in generalities.

The Senator from Pennsylvania has brought up a chart that is not a human depiction; it is an effort to put forth some drawing that depicts this procedure.

We have talked about the Constitution. But I will tell you this. My ambivalence over this issue—I was ambivalent when I first heard of this procedure—was put to rest because I sat down with real people, with mothers and fathers, husbands and wives, who faced medical emergencies. And when each of them told me their stories, I thought to myself: How can I possibly vote for the Santorum bill which would have endangered the life of the woman I am talking to? That is why I opposed his legislation in the past and will continue to do so. For the record, I will at this point tell two or three stories that have been a matter of public record and testimony before Congress and that I think demonstrate when you get beyond the theory of this debate and to the reality of it, life gets complicated, very complicated. It is easy to step back and make a moral decision involving other people, if you are not in their shoes. Listen to some of these and you will see what I mean.

This is the story of Coreen Costello from Agoura, CA. Coreen, her husband Jim and their son Chad and daughter Carlyn live in Agoura, CA. Coreen is a full-time stay-at-home wife and mom. She describes herself as a registered Republican and very conservative. She does not believe in abortion. In fact, she never thought she would be testifying before Congress supporting an abortion procedure, which is exactly what she did, on March 21, 1996, before the House Judiciary Subcommittee on the Constitution.

In March 1995, the Costellos were joyfully expecting their third child. However, when she was 7 months pregnant, Coreen began having premature contractions and had to be rushed to the hospital. After reviewing the results of the ultrasound, Coreen's doctor informed her he did not expect the baby to live. Coreen's child, a girl she had named ''Katherine Grace,'' was unable to absorb the amniotic fluid. As a result, the fluid was puddling into Coreen's uterus. Katherine Grace had a lethal neurological disorder and had been unable to move for almost 2 months. Her chest cavity was unable to rise and fall to stretch her lungs and prepare them for air. It was as if she had no lungs at all. Her vital organs were atrophying. Katherine Grace was going to die.

A perinatologist recommended terminating the pregnancy. All the doctors agreed. The Costellos' safest option was an intact D&E, the very procedure banned by this bill by the Senator from Pennsylvania. For Coreen and her husband, this was not an option. They chose to wait to go into labor naturally, which wouldn't be long. Due to the excess amniotic fluid, a condition called polyhdramnios, premature labor, was imminent. Despite the difficulty of knowing her baby was going to die, Coreen continued with the pregnancy. Over the course of the next few weeks, she saw many experts. If possible, the results were even grimmer than those she had earlier.

Her baby's body was rigid and wedged in a transverse position in her womb. Most babies are in a fetal position. Katherine Grace's position was exactly the opposite. It was as if she were doing a swan dive. The soles of her feet were touching the back of her head. Her body was in a U-shape. Due to swelling, her head was already larger than that of a full-term baby. Coreen, her mother, did daily exercises trying to change Katherine Grace's position so she could be delivered naturally.

Meanwhile, the amniotic fluid continued to puddle in Coreen's uterus. In the ensuing weeks, the condition had grown worse. Everyone started to fear for the mother's health. The mother could no longer sit or lie down for more than 10 minutes because the pressure on her lungs was so great. During one of her last ultrasounds, Coreen's doctor told her she could not deliver the baby via caesarean under the circumstances because the risk was too great. The doctor told Coreen there was a safer way for her to deliver. It was at this point Coreen realized this was not a choice anymore, that it was not up to her or her husband. There was no reason to risk leaving her children, Chad and Carlyn, motherless, if there was no hope of saving their new baby.

The Costellos drove to Los Angeles for a D&E. They expected a cold gray building. They found a doctor and a staff willing to help them. It was at this point Coreen realized she had done the right thing. This was the safest thing for her. The fact this option was open to Coreen is important in this story. This option would be closed to her by the Santorum bill.

After the procedure, she went on to say Katherine Grace was beautiful. She was not missing part of her brain. She had not been stabbed in the head with scissors. She looked peaceful and she did not suffer. Because of the safety of this procedure, Coreen became pregnant again with another baby, after losing Katherine Grace. Thanks to the skill and compassion of the doctors and the procedure she was forced to use under these extraordinary circumstances, Coreen was able to have a healthy baby.

If you outlaw the surgical procedure, which the Santorum bill seeks to do, women such as Coreen will be denied the safest and best medical procedure they need under these emergency circumstances and their ability to have more children and the happiness in life which children bring us will be compromised severely.

The next story is about a lady who I met several times. I like her a lot. Her

name is Vikki Stella. She is from my home State of Illinois, and she came to Washington, DC, to tell her story. Vikki, her husband Archer and their two daughters, Lindsay, age 11, and Natalie, age 7, live in Naperville, the western suburbs of Illinois right outside Chicago.

In 1993, Vikki discovered she was pregnant with a much-wanted son. Because she is diabetic, she had more prenatal tests than most pregnant women—amnios, ultrasounds, the works.

After the first round of tests, her doctor brought her in and said: Your pregnancy is disgustingly normal. Then at 32 weeks, she went in for another ultrasound, and everything fell apart—32 weeks into the pregnancy. Vikki's son was diagnosed, the one she was carrying, with nine major anomalies, including a fluid-filled cranium with no brain tissue at all. Vikki's much-wanted son would never survive outside her womb. The only thing keeping him alive was his mother's body.

The Stellas found the only answer they could: a surgical abortion procedure performed by a physician in Los Angeles. Because Vikki was diabetic, the controlled gentle nature of this surgery was much safer than induced labor or a C section. Vikki's son died peacefully and painlessly from the combination of steps taken in preparation for the surgery. He was brought out intact and the family was able to hold him and say their goodbyes.

That is a sad story about a couple that dearly wanted a baby and then found late in the pregnancy this terrible news that the baby would not survive and continuing the pregnancy could threaten the life of the mother. The procedure Vikki Stella used is the procedure banned by the Santorum bill, a procedure which her doctor thought was best for her.

There is an end to this story which is much happier. The ending to the story is that in 1995, Vikki gave birth to a little boy. They finally got their son. She came up to Capitol Hill with the little fellow in a stroller and a big smile on everyone's face.

It is hard for me, when I hear the intense rhetoric of this debate, to believe we are talking about the same thing. Some people refer to this as ''cruel'' and ''execution-like.'' This family didn't ask for this medical emergency. They wanted to have their little boy and be happy, as all of us. They found late in the pregnancy something terrible happened. When they went to the doctor, the doctor said, this is what you have to do, and they did it. As painful as it was, they did it. This bill says, no, this will not be a decision of the Stella family, the mother and father in a room with the doctor. This will be a decision of the Stella family in a room with the doctor and the Federal Government. If that doctor decides this procedure is the safest to save this mother's life or to give her a chance to have another baby, the Santorum law will say, no, the Government will make the decision—not a decision by a mother and father and a physician, a decision which has to be so painful and emotional.

The last story is about a lady who testified before the Senate Judiciary Committee in 1995 named Viki Wilson. She is a registered nurse, 18 years of experience, 10 in pediatrics. Her husband Bill is an emergency room physician—a nurse and a doctor.

We have three beautiful children: Jon is 10, Katie is 8, and Abigail is in heaven with God.

In the spring of 1994, I was pregnant and expecting my third child on Mother's Day. The nursery was ready and we were very excited anticipating the arrival of our baby. Bill had delivered our other two children, and he was going to deliver Abigail. Jon was going to cut the cord and Katie was going to be the first to hold her. She had already become a very important part of our family.

At 36 weeks of pregnancy all of our dreams of happy expectations came crashing down around us. My doctor ordered an ultrasound that detected what all my previous prenatal testing, including a chorionic villus sampling, an alpha fetoprotein and an earlier ultrasound had failed to detect, an encephalocele. Approximately two-thirds of my daughter's brain had formed on the outside of her skull.

Viki Wilson said:

I literally fell to my knees from the shock.

This is a woman who was a nurse. When she heard this news, she literally fell to her knees from the shock.

I immediately knew that [my baby] would not be able to survive outside my womb. My doctor sent me to a perinatologist, a pediatric radiologist, and geneticist, all desperately trying to find a way to save [the baby girl].

Her husband is a doctor.

My husband and I were praying that there would be some new surgical technique to fix her brain. But all the experts concurred. Abigail would not survive outside my womb. And she could not survive the birthing process, because of the size of her anomaly, her head would be crushed and she would suffocate. Because of the size of her anomaly, the doctors also feared that my uterus would rupture in the birthing process, most likely rendering me sterile. It was also discovered that what I thought were big, healthy, strong baby movements were, in fact, seizures. They were being caused by compression of the encephalocele that continued to increase as she continued to grow inside my womb.

Viki Wilson asked:

''What about a C-section?'' Sadly, my doctor told me, ''Viki, we do C-sections to save babies. We can't save [Abigail]. A C-section is dangerous for you and I can't justify those risks.''

The biggest question for me and my husband was not ''is [Abigail] going to die?'' A higher power had already decided that for us. The question now was: [Am I going to die? Is the mother going to die with the child?] ''How is she going to die?'' We wanted to help her leave this world as painlessly and peacefully as possible, and in a way to protect my life and health and allow us to try again to have more children.

They used the procedure that would be banned by the Santorum legislation, which is before us today.

Mr. President, I give these three examples because I think it is important for all of us, despite our values and principles and the things we hold dear, to listen to people who struggle with these tragedies. I didn't think in any of those cases, the 5 or 6 women I have met who ever used this procedure to save their lives or protect their health, that I ever detected selfishness or greed. In every single case, these were mothers and fathers who wanted their babies. They had painted nurseries, and they had given them names. They were prepared for this joyful home coming that never happened.

This was not some casual decision. This was a decision that would haunt them for a lifetime. Why had they been singled out to lose that baby? Why did they have to go through the emotion and the trauma of all the decisions that came with that? I can't answer that. All I can do is sympathize with them for what they had to live through and to say to myself as a Senator, do you really want to say that you know better in terms of that mother's life and health? That is what the Santorum legislation says. It says we know better; we want to be the doctors here; we want to decide which abortion procedure you can use and which you can't use.

As I said at the outset, I am not a doctor, and I am not going to play one in the Senate. The doctors that I have relied on and the patients I have spoken to have led me to conclude that the Santorum approach is the wrong approach. I know that it will be an issue in every campaign forever. I have already faced that. I am sure I will face it again. But I am confident in my position that I can go back not only to my home State but even to my family where this is debated and explain to them why I have done what I am doing today.

This amendment I am offering is a sensible approach. It is one consistent with Roe v. Wade. It deals with late-term abortion, and it is one that is sensitive to a mother's health. It is one that attempts to protect that mother when she runs the risk of grievous physical injury.

AMENDMENT NO. 2319

(Purpose: To provide a complete substitute.)

Mr. DURBIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself, Ms. SNOWE, Ms. COLLINS, Mr. TORRICELLI, Ms. MIKULSKI, Mr. LIEBERMAN, Ms. LANDRIEU, Mr. BINGAMAN, Mr. AKAKA, and Mr. GRAHAM, proposes an amendment numbered 2319.

Mr. DURBIN. 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:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Late Term Abortion Limitation Act of 1999''.

SEC. 2. BAN ON CERTAIN ABORTIONS.

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

''CHAPTER 74—BAN ON CERTAIN ABORTIONS

''Sec.
''1531. Prohibition of post-viability abortions.
''1532. Penalties.
''1533. Regulations.
''1534. State law.
''1535. Definitions

''§ 1531. Prohibition of Post-Viability Abortions.

''(a) IN GENERAL.—It shall be unlawful for a physician to intentionally abort a viable fetus unless the physician prior to performing the abortion—

''(1) certifies in writing that, in the physician's medical judgment based on the particular facts of the case before the physician, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health; and

''(2) an independent physician who will not perform nor be present at the abortion and who was not previously involved in the treatment of the mother certifies in writing that, in his or her medical judgment based on the particular facts of the case, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

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

''(c) MEDICAL EMERGENCY EXCEPTION.—The certification requirements contained in subsection (a) shall not apply when, in the medical judgment of the physician performing the abortion based on the particular facts of the case before the physician, there exists a medical emergency. In such a case, however, after the abortion has been completed the physician who performed the abortion shall certify in writing the specific medical condition which formed the basis for determining that a medical emergency existed.

''§ 1532. Penalties.

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

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

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

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

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

''(1) has provided notice of the alleged violation of this chapter, in writing, to the Governor or Chief Executive Officer and Attorney General or Chief Legal Officer of the State or political subdivision involved, as well as to the State medical licensing board or other appropriate State agency; and

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

''§ 1533. Regulations.

''(a) FEDERAL REGULATIONS.—

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

''(2) REQUIREMENTS.—The regulations under paragraph (1) shall require that a certification filed under this chapter contain—

''(A) a certification by the physician performing the abortion, under threat of criminal prosecution under section 1746 of title 28, that, in his or her best medical judgment, the abortion performed was medically necessary pursuant to this chapter;

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

''(C) a certification by an independent physician pursuant to section 1531(a)(2), under threat of criminal prosecution under section 1746 of title 28, that, in his or her best medical judgment, the abortion performed was medically necessary pursuant to this chapter; and

''(D) a certification by the physician performing an abortion under a medical emergency pursuant to section 1531(c), under threat of criminal prosecution under section 1746 of title 28, that, in his or her best medical judgment, a medical emergency existed, and the specific medical condition upon which the physician based his or her decision.

''(3) CONFIDENTIALITY.—The Secretary of Health and Human Services shall promulgate regulations to ensure that the identity of a mother described in section 1531(a)(1) is kept confidential, with respect to a certification filed by a physician under this chapter.

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

''§ 1534. State Law.

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

''(b) DEFINITION.—In subsection (a), the term 'State law' means all laws, decisions, rules, or regulations of any State, or any other State action, having the effect of law.

''§ 1535. Definitions.

''In this chapter:

''(1) GRIEVOUS INJURY.—

''(A) IN GENERAL.—The term 'grievous injury' means—

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

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

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

''(2) PHYSICIAN.—The term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions, except that any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs an abortion in violation of section 1531 shall be subject to the provisions of this chapter.''.

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

''74. Ban on certain abortions ..... 1531.''.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I appreciate the remarks of the Senator, and I appreciate his good faith in offering this amendment. I am not going to discuss that amendment specifically right now, although I certainly will.

I have a couple of comments. First off, it has to be noted here that partial-birth abortions are performed—this is according to the people who perform them—well over 90 percent of the partial-birth abortions that are performed—and some have suggested much higher than 90 percent—on healthy babies and healthy mothers. Healthy babies, healthy mothers. A very small percentage are the cases that you have heard brought up here today.

The question is then posed: Well, who are we to make the decision about these tough cases? I think even the Senator from Illinois would say, if it is a healthy mother and baby and this procedure isn't necessary, I have some problems. I think a lot of Members who have voted against this bill have said, if it is that case—but there are these cases. I am happy to address those cases, but let me do it in a broader context.

The reason we inject ourselves is the same reason the Supreme Court has injected itself into the debate on second-

and third-trimester abortions. It is because we are not talking about removing a tumor. It is not where we are going to say you should not remove this cancerous tumor this way or that way or that appendix that way. What we are talking about here is killing a baby—from my perspective, particularly killing a baby in such a barbaric fashion—which is almost born and is almost protected by the Constitution. So I understand the concern that we should not be practicing medicine. No one is practicing medicine here. What we are doing here is drawing a very important line about what we will allow in our society when it comes to killing a living human being. I don't think anybody is going to question that the baby is living and it is a human being. So what we are talking about here is how can you kill a living human being?

What we are saying is you should not be able to kill a living human being that is almost born, especially in a brutal fashion. The reason is because of how horrendous this is. It creates some real slippery slopes when the Senator from California gets up and says, ''I want every child to be wanted.'' So now if you are not wanted, you are not protected by the Constitution and that is the way it works? If you are not wanted as a child, you don't get protection. What if you're not wanted as a Senator. Do you not get protection? I don't think we want to go down that road.

I am concerned, particularly as we talk about this procedure, where the baby is three inches away from protection from the Constitution, and when you get into this area and say, people have to have all the rights to do whatever they want. That is not what the Constitution says. That is not what we have said here. We have drawn a line because we think it is important for society to draw lines about what is, in fact, legal and what is not.

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

Mr. SANTORUM. Yes.

Mr. DURBIN. I want to explore this, because I really want to understand what we are driving at here. I gave an example of a baby inside a mother's womb with its brain outside of its skull. This brain was growing in size. It was very clear that the baby was alive through the mother that continued to detect a fetal heart beat, and there is an obvious question as to whether this baby could ever survive. At the moment, they had to make a decision. They knew if they went through certain procedures, the mother could have her uterus rupture because of the size of this abnormal growth of the baby, and they decided to use the procedure that the Senator would ban.

Now, conceding everything you have said, does the Senator from Pennsylvania not acknowledge the fact that the baby's life was something that, frankly, was not going to last but a few seconds? As soon as that baby was disconnected from the mother's umbilical cord, the placenta, that baby was not going to survive at that point. The doctor had to say: This baby is not going to live and if I don't use the procedure that you are going to ban here, I can do damage to this woman where she would never have another baby. That is the kind of case. I understand the Senator says it is a living thing, but it is living because of the mother's body and it cannot live on its own.

Mr. SANTORUM. I understand that very well. I just say this. What we have been told by the overwhelming amount of medical evidence—and, again, it gets back to the discussion we had earlier about whether this procedure is the only appropriate procedure—what we have been told over and over again is that this is never medically necessary. In this circumstance, this is not the only procedure that could be used, No. 1.

Again, we have overwhelming medical evidence saying that this is, in fact, not the safest—in fact, is the most dangerous. Even the person who wrote the textbook on second- and third-trimester abortions, a guy by the name of Warren Hern, who talks about this procedure—he does more second- and third-trimester abortions than any other abortionist in the country—says, ''I have serious reservations about this procedure. You really can't defend it. I would dispute any statement that says this is the safest procedure to use.''

This is an abortionist from Colorado who does more third-trimester abortions than anybody in the country.

My point is not that we should say you can't have an abortion if that is what the person wants at that point. But there are other options other than an intact D&E. There are other abortion options, as the Senator explored in his statement. There is the caesarean section, depending on what the problem is. You have the Alan Guttmacher Institute which looked at statistics on abortion. They say that abortion is twice as risky to the life of the mother as is delivery in the second- and third-trimester.

Mr. DURBIN. Will the Senator yield so I understand the Senator's point of view?

I don't want to put words in his mouth. But what I hear him say is you can find some other abortion procedure in that instance other than the one you are banning. That is fine. The Senator may not personally like abortion at all. But from his point of view, he is saying just as long as you use a different kind of procedure, this bill is OK.

Mr. SANTORUM. That is correct.

Mr. DURBIN. This bill is going after one procedure.

Mr. SANTORUM. We are very clear. I don't think this is a problem under Roe v. Wade. I think we are very clear, and are, frankly, working on making it clearer in the definition dealing with the issue of vagueness because that has been raised, as the Senator mentioned, in the court cases across the country. Even though one case held it to be constitutional, we are looking into ways in which we can tighten that definition.

To make sure, what we are saying is, look, if an abortion is what the mother chooses, or a family chooses, it is legal under certain circumstances in the second- and third-trimester, in almost all circumstances. But we are saying this procedure, because of the very difficult slippery slope of having an almost born child being killed, should not be allowed.

Mr. DURBIN. Will the Senator yield for another question?

Let me say this: The American Council of Obstetricians and Gynecologists comes to a different conclusion. They say in some circumstances this is the safest.

Mr. SANTORUM. But they do not identify any.

Mr. DURBIN. Having said that, there are choices where these women use this procedure under extraordinary circumstances. In the cases the Senator was talking about, they were literally dealing with the birth of a fetus which was not going to survive which was so abnormally sized that it caused a danger and the possibility that the mother would never have another child. Why would we want to preclude any medical procedure that might save that mother's life or give her a chance to have another child, if the Senator from Pennsylvania concedes that he is not arguing against all abortion procedures?

Mr. SANTORUM. Because there are safer alternatives available according to all of the medical literature, and we have definitive statements from obstetricians, hundreds of them, as well as people from Northwestern—I will be happy to share the article with the Senator—from a fairly reputable medical school; I am sure the Senator would say one of the best medical schools. But we have overwhelming evidence that there are safer procedures to use, that this is a rogue practice. It is not used much. And, again, according to Warren Hern, he can't defend this procedure. It is something that should not be used. It is not safe.

I will show you arguments. I don't have it handy, but we will enter into the RECORD an analysis of the cases that you have made by obstetricians who will say under these circumstances there would have been a safer course, a better course than what was done by the physicians in this case. What we are saying is it is not the best medicine, period. It is not medically necessary, period. And it is a barbaric infringement on the rights of an almost born child.

I agree. This is a very narrow bill.

Mr. DURBIN. Let me ask this question, if I might. I ask this question in good faith because I think we should have this dialogue.

Step aside from the argument about whether we should have abortion at all, and go to the first two points; that this

procedure is never medically necessary and is especially risky.

Before I was elected to Congress, I used to practice law as a trial lawyer in medical malpractice cases.

I ask the Senator from Pennsylvania, why would any physician subject themselves to a medical malpractice case if the two points that the Senator made are so obvious; that is, this procedure is never medically necessary, and it is more dangerous than other procedures for the mother? Why in the world would they ever take the risk of a lawsuit by using this procedure unless they believe they could justify that it is medically necessary and that in effect it was the safest procedure for the mother to use?

Mr. SANTORUM. This is not commonly practiced. It is only practiced with a few thousand abortions a year. Given the fact there are 1.4 million abortions, a few thousand abortions, it is not something that is practiced in every abortion clinic. I think a lot of abortion clinics will say this is a rogue practice. That is not to say people do not practice medicine that is somewhat strange. There are a lot of people who do things in medicine that are not considered to be medically sound judgments. That doesn't mean that they aren't done. They are, in fact, done. This is a situation where we believe that is the case. This is a rogue procedure. Someone may be sued. I don't know. Maybe someone has. I am not aware of someone being sued. But, again, the person most likely to sue would be the child that is dead. I am not too sure that in the case of the mother that is necessarily a most common thing you will see. I don't think a lot of abortionists are sued, period.

I would like to address a couple of issues that the Senator from California brought up, and then the Senator from Illinois.

First, to state very clearly what the Senator from California said, talking about the murder of abortionists and snipers firing at people, I am against murder. I think everybody who supports this legislation—and, frankly, everybody in this Chamber agrees—believes that acts of violence against anybody on the issue of abortion is counterproductive to an effort that seeks to affirm life. Certainly, taking the law into their own hands is an outrage, is offensive to me, is wrong, and should be prosecuted to the fullest extent of the law. There is no room in a movement that talks about nonviolence—and violence toward babies in utero—for condoning actions of violence of any sort, whether it is murder or attempted murder or destruction of property, et cetera. I don't stand here condoning that, and I would join with the Senator from California to condemn it and condemn it in the strongest words possible. That is no service to those who are trying to get the country's ear in defense of innocent human life.

I want to correct what the Senator from California said also about no court has found our language in this bill constitutional. That is not true. The court in Wisconsin has found this language to be constitutional. It is now being appealed to the Seventh Circuit. The law is enjoined upon appeal. But, again, we have a district court that has found this to be constitutional.

I would like to go through again, quoting from the Journal of the American Medical Association, an article printed in 1998, a year ago in August, by two obstetricians from Northwestern University, and go through again why this procedure—it keeps coming back to two issues, as the Senator from Illinois talked about.

One, the term is too vague. The definition is too vague.

I will be addressing that. Hopefully, in the next couple of days we will work on that, although I think, frankly, the definition is perfectly clear. We are willing to work and to see whether we can make it a little bit more definitive.

Second, that this may be necessary to protect the health of the mother, again, that is the discussion in which the Senator from Illinois and I were just engaged.

I want to restate again how overwhelming the evidence is of people who can definitively state without question that over 400 obstetricians around the country say it is never medically necessary.

C. Everett Koop—as the Senator from Illinois said, is never medically necessary. It is a pretty strong term to say it is never medically necessary.

What do we have on the other side? We have some anecdotes about cases where it was used, but in no case do they state that was the only option or that was the best option.

On our side we have the abortionist, Dr. Haskell from Ohio, who probably does more of these abortions than any other person. He says it is never—underline never—medically necessary to protect the life of the mother and not medically necessary to protect the health of the mother. The abortionist himself says that.

On the other side, we have the statement from the American College of Obstetricians and Gynecologists. That is the argument on the other side. This whole debate on health is centered around an organization that is very pro-abortion that says they put together a select panel that:

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

This is an organization that opposes this bill. This is an organization they rely upon to hold on to the ''health exception.'' That is the cover behind not voting for this bill.

There are two arguments: Health of the mother—we need that, otherwise we can't vote for this if we don't have that—and it is too vague, the definition is too vague.

The organization they rely upon says they can:

> . . . identify no circumstances under which this procedure would be the only option to save the life or preserve the health of the woman and that an intact D&X, however—

This is what they hold on to—

> . . . may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of the woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances, can make this decision.

That is their rationale. It ''may be,'' and we should ''leave it to the doctor and the patient.'' ''May be.'' OK, fine. It may be.

We have asked this organization to provide one circumstance—just one. By the way, we have asked them now for 3 years to give one circumstance where we can have peer review by obstetricians, have them look at their circumstance where this ''may be'' the best option. Give a hypothetical; give an example we can actually examine.

What is the answer from that organization? Nothing.

They say it ''may be.'' We can't say how, we can't give any evidence of it, but ''it may be.'' Because it may be—which is not substantiated—that is the health exception they need.

It is pretty lame. If they cannot come forward and give facts, we need a health exception because it ''may be,'' but if we cannot give circumstances where that is the case, where is the health exception?

They admit it is not the only way. The AMA has said it is not good medicine; it is a rogue procedure, and the AMA is a pro-choice organization. That is what their board votes.

Again, it is hard for me to argue against ''May be's,'' without specifics. That is what we have. Members are hiding behind ''we need a health exception because it may be.'' This is a debate about facts. We have hundreds and hundreds of physicians who say it may be never the best option; it will never be the best option; there are always better alternatives.

From the point of view of someone who is on the Senate floor and whose job it is to look at all the information, to be able to make a judgment, don't hide behind a health exception that doesn't exist and is not substantiated. Just because it is substantiated by anecdotes of people who used them because it happened to save them, that doesn't mean there weren't better options at the same time. Just because this worked to save the health of the mother doesn't mean there weren't better options.

Mr. President, 400 years ago we used to bleed people, and it probably helped some people, but that doesn't mean there weren't better options. We are saying, what is the best option? Why do we want the best option? This is not removing a tumor. This is killing a baby that is outside the mother. That is why we don't like this procedure.

This is not practicing medicine and telling doctors how to do their business. If this were about an ingrown toenail, we wouldn't care. This is about

killing a living human being—about killing a living human being. I don't think anybody on the floor will argue with that. We are talking about killing a living human being. That is this far away from the Constitution saying ''no.'' This far.

I will read from this article the rationale given by these physicians as to why they believe this is not the best procedure for mothers from a health perspective.

There exist no credible studies on intact D&X—

This is a rogue procedure—

. . . that evaluate or attest to its safety. The procedure is not recognized in medical textbooks nor is it taught in medical schools or in obstetrics and gynecology residencies. Intact D&X poses serious medical risks to the mother. Patients who undergo an intact D&X—

Intact D&X is a partial-birth abortion as defined in the bill—

are at risk for the potential complications with any surgical midtrimester termination, including hemorrhage, infection, and uterine perforation. However, intact D&X places these patients at increased risk of two additional complications.

So a traditional late-term abortion has certain risks associated with it, according to these doctors from Northwestern University. But this procedure has two other complications in addition to the ones already inherent in a late-term abortion:

First, the risk of uterine rupture may be increased. An integral part of the D&X procedure is an internal podalic version, during which the physician instrumentally reaches into the uterus, grasps the fetus' feet, and pulls the feet down into the cervix, thus converting the lie to a footling breach. The internal version carries risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus.

The second potential complication of intact D&X is the risk of iatrogenic laceration and secondary hemorrhage. Following internal version and partial breech extraction, scissors are forced into the base of the fetal skull while it is lodged in the birth canal. This blind procedure risks maternal injury from laceration of the uterus or cervix by the scissors and could result in severe bleeding and the threat of shock or even maternal death.

These risks have not been adequately quantified.

None of these risks are medically necessary because other procedures are available to physicians who deem it necessary to perform an abortion late in pregnancy. As ACOG policy clearly states, intact D&X is never the only procedure available. Some clinicians have considered intact D&X necessary when hydrocephalus is present.

Water on the brain.

However, a hydrocephalic fetus could be aborted by first draining the excess fluid from the fetal skull through ultrasound-guided. . .[procedures.] Some physicians who perform abortions have been concerned that a ban on late term abortions would affect their ability to provide other abortion services. Because of the proposed changes in federal legislation, it is clear that only intact D&X would be banned.

I can and I will, throughout the course of the next couple of days, provide letter after letter signed by hundreds and hundreds of obstetricians, the best in their field, perinatologists, people who deal with maternal and fetal medicine, who say this procedure is dangerous, more dangerous to a woman. So the issue of health is a bogus one. It is a bogus issue.

Again I go back to Warren Hern, the author of ''Abortion Practice,'' the author who does more third-trimester abortions, I am told, than anybody else in America. He says:

I have very serious reservations about this procedure. You really can't defend it. I would dispute any statement that this is the safest procedure to use.

This is not a fan of this bill. So, again, all these comments and concerns about ''we have to protect health, we have to protect health''—if we outlawed this procedure, we would be protecting health. We would be protecting the health of women where doctors who do it do it for the convenience of the abortionist.

Do you want to know why it is done? It is done for the convenience of the abortionist, because they can do more in 1 day. That is why this procedure was developed. That is what they will tell you. That is, the doctor who invented this procedure, he will tell you that is why he did it.

On the other issue—and we will get to this a little later in the debate—the issue of vagueness, the Senator from California said every court in the country that has ruled on this has ruled it is vague or ruled it is unconstitutional.

First off, that is not true. Wisconsin ruled in fact it is constitutional. But I am willing to work with those who have genuine concerns about the issue of vagueness, to get a definition that makes people perfectly comfortable that we are not talking about any other form of abortion because it is not my intent, as has been ascribed to me, that what I am trying to do is eliminate all second- and third-trimester abortions.

What is clear about this debate and the debate that has been going on now for three Congresses is that we are not trying to do that. I think we have stood on the floor and said that is not our intent. Our intent is to get rid of a dangerous procedure. Yes, it is painful to the baby. Yes, it is dangerous to the mother. But it is also dangerous to our society, to be able to kill a baby that is this close to being born. I think it is something we have to stand up and draw the line on clearly, and that is what we are asking to do.

So to me it is pretty simple. We have no evidence this jeopardizes the health of the mother—none. We have speculation, no facts. We have the vagueness concern. Again, I am willing to work on that issue. If that is a genuine concern that people have, I am willing to work on it to make sure we can make people comfortable that what we are talking about is only this procedure.

But once you get past those two concerns, I do not know what is left. I do not know why you defend this. I do not know why you defend killing a baby this far away from being born who would otherwise be born alive. I do not know how you defend it.

So I look forward to this debate over the next couple of days. I know the Senator from California feels very passionately about this, but I think the issue of where we draw the line constitutionally is very important. I am sure the Senator from California agrees with me. I think the Senator from California would say that she and I, the Senator from Illinois, the Senators from Arkansas and Kansas, we are all protected by the Constitution with the right to life.

Would you agree with that, Senator from California? Do you answer that question?

Mrs. BOXER. I support the Roe v. Wade decision.

Mr. SANTORUM. Do you agree any child who is born has the right to life, is protected by the Constitution once that child is born?

Mrs. BOXER. I agree with the Roe v. Wade decision, and what you are doing goes against it and will harm the women of this country. And I will address that when I get the floor.

Mr. SANTORUM. But I would like to ask you this question. You agree, once the child is born, separated from the mother, that that child is protected by the Constitution and cannot be killed? Do you agree with that?

Mrs. BOXER. I would make this statement. That this Constitution as it currently is—some want to amend it to say life begins at conception. I think when you bring your baby home, when your baby is born—and there is no such thing as partial-birth—the baby belongs to your family and has the rights. But I am not willing to amend the Constitution to say that a fetus is a person, which I know you would. But we will get to that later. I know my colleague is engaging me in a colloquy on his time. I appreciate it. I will answer these questions.

I think what my friend is doing, by asking me these questions, is off point. My friend wants to tell the doctors in this country what to do. My friend from Pennsylvania says they are rogue doctors. The AMA will tell you they no longer support the bill. The American Nurses don't support the bill. The obstetricians and gynecologists don't support the bill. So my friend can ask me my philosophy all day; on my own time I will talk about it.

Mr. SANTORUM. If I may reclaim my time, first of all, the AMA still believes this is bad medicine. They do not support the criminal penalties provisions in this bill, but they still believe—I think you know that to be the case—this procedure is not medically necessary, and they stand by that statement.

I ask the Senator from California, again, you believe—you said ''once the baby comes home.'' Obviously, you don't mean they have to take the baby out of the hospital for it to be protected by the Constitution. Once the

baby is separated from the mother, you would agree—completely separated from the mother—you would agree that baby is entitled to constitutional protection?

Mrs. BOXER. I will tell you why I don't want to engage in this. You had the same conversation with a colleague of mine, and I never saw such a twisting of his remarks.

Mr. SANTORUM. Let me be clear, then. Let's try to be clear.

Mrs. BOXER. I am going to be clear when I get the floor. What you are trying to do is take away the rights of women and their families and their doctors to have a procedure. And now you are trying to turn the question into, When does life begin? I will talk about that on my own time.

Mr. SANTORUM. If I may reclaim the time?

The PRESIDING OFFICER (Mr. BUNNING). The Senator from Pennsylvania has the floor.

Mr. SANTORUM. What I am trying to do is get an answer from the Senator from California as to where you would draw the line because that really is the important part of this debate.

Mrs. BOXER. I will repeat. I will repeat, the Senator has asked me a question——

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mrs. BOXER. I am answering the question I have been posed by the Senator, and the answer to the question is, I stand by Roe v. Wade. I stand by it. I hope we have a chance to vote on it. It is very clear, Roe v. Wade. That is what I stand by; my friend doesn't.

Mr. SANTORUM. Are you suggesting Roe v. Wade covered the issue of a baby in the process of being born?

Mrs. BOXER. I am saying what Roe v. Wade says is, in the early stages of a pregnancy, a woman has the right to choose; in the later stages, the States have the right—yes—to come in and restrict. I support those restrictions, as long as two things happen: They respect the life of the mother and the health of the mother.

Mr. SANTORUM. I understand that.

Mrs. BOXER. That is where I stand. No matter how you try to twist it, that is where I stand.

Mr. SANTORUM. I say to the Senator from California, I am not twisting anything. I am simply asking a very straightforward question. There is no hidden question here. The question is——

Mrs. BOXER. I will answer it again.

Mr. SANTORUM. Once the baby is born, is completely separated from the mother, you will support that that baby has, in fact, the right to life and cannot be killed? You accept that; right?

Mrs. BOXER. I don't believe in killing any human being. That is absolutely correct. Nor do you, I am sure.

Mr. SANTORUM. So you would accept the fact that once the baby is separated from the mother, that baby cannot be killed?

Mrs. BOXER. I support the right—and I will repeat this, again, because I saw you ask the same question to another Senator.

Mr. SANTORUM. All the Senator has to do is give me a straight answer.

Mrs. BOXER. Define ''separation.'' You answer that question.

Mr. SANTORUM. Let's define that. Let's say the baby is completely separated; in other words, no part of the baby is inside the mother.

Mrs. BOXER. You mean the baby has been birthed and is now in the mother's arms? It is a human being? It takes a second, it takes a minute——

Mr. SANTORUM. Say it is in the obstetrician's hands.

Mrs. BOXER. I had two babies, and within seconds of them being born——

Mr. SANTORUM. We had six.

Mrs. BOXER. You didn't have any.

Mr. SANTORUM. My wife and I did. We do things together in my family.

Mrs. BOXER. Your wife gave birth. I gave birth. I can tell you, I know when the baby was born.

Mr. SANTORUM. Good. All I am asking you is, once the baby leaves the mother's birth canal and is through the vaginal orifice and is in the hands of the obstetrician, you would agree you cannot then abort the baby?

Mrs. BOXER. I would say when the baby is born, the baby is born and would then have every right of every other human being living in this country, and I don't know why this would even be a question.

Mr. SANTORUM. Because we are talking about a situation here where the baby is almost born. So I ask the question of the Senator from California, if the baby was born except for the baby's foot, if the baby's foot was inside the mother but the rest of the baby was outside, could that baby be killed?

Mrs. BOXER. The baby is born when the baby is born.

Mr. DURBIN. Will the Senator yield?

Mrs. BOXER. That is the answer to the question.

Mr. SANTORUM. I am asking for you to define for me what that is.

Mrs. BOXER. I can't believe the Senator from Pennsylvania has a question with it. I have never been troubled by this question. You give birth to a baby. The baby is there, and it is born, and that is my answer to the question.

Mr. SANTORUM. What we are talking about here with partial birth, as the Senator from California knows, is the baby is in the process of being born——

Mrs. BOXER. In the process of being born. This is why this conversation makes no sense, because to me it is obvious when a baby is born; to you it isn't obvious.

Mr. SANTORUM. Maybe you can make it obvious to me. What you are suggesting is if the baby's foot is still inside of the mother, that baby can then still be killed.

Mrs. BOXER. I am not suggesting that.

Mr. SANTORUM. I am asking.

Mrs. BOXER. I am absolutely not suggesting that. You asked me a question, in essence, when the baby is born.

Mr. SANTORUM. I am asking you again. Can you answer that?

Mrs. BOXER. I will answer the question when the baby is born. The baby is born when the baby is outside the mother's body. The baby is born.

Mr. SANTORUM. I am not going to put words in your mouth——

Mrs. BOXER. I hope not.

Mr. SANTORUM. But, again, what you are suggesting is if the baby's toe is inside the mother, you can, in fact, kill that baby.

Mrs. BOXER. Absolutely not.

Mr. SANTORUM. OK. So if the baby's toe is in, you can't kill the baby. How about if the baby's foot is in?

Mrs. BOXER. You are the one who is making these statements.

Mr. SANTORUM. We are trying to draw a line here.

Mrs. BOXER. I am not answering these questions.

Mr. SANTORUM. If the head is inside the mother, you can kill the baby.

Mrs. BOXER. My friend is losing his temper. Let me say to my friend once again—and he is laughing——

Mr. SANTORUM. I am not laughing.

Mrs. BOXER. Let me say, this woman is not laughing right now because if this bill was the law of the land, she might either be dead or infertile. So if the Senator wants to laugh about this, he can laugh all he wants.

Mr. SANTORUM. Reclaiming my time, Mr. President. All I suggest is I was not laughing about the discussions. It is a very serious discussion.

Mrs. BOXER. Well, you were.

Mr. SANTORUM. I was smiling at your characterization of my demeanor. I have not lost my temper. I think I am, frankly, very composed at this point. What I will say—and the Senator is walking away—is the Senator said, again, the baby is born when the baby is born. I said: If the foot is still inside the mother? She said: Well, no, you can't kill the baby. If the foot is inside, you can't, but if the head is the only thing inside, you can.

Here is the line. See this is where it gets a little funny.

Mrs. BOXER. Parliamentary inquiry, Mr. President. Let the RECORD show that I did not say what the Senator from Pennsylvania said that I did. Thank you.

Mr. SANTORUM. Mr. President, I hate to do this, but could we have the clerk read back what the Senator from California said with respect to that question?

I understand it will take some time for us to do that. I will be happy—

Mrs. BOXER. I say to my friend, I know what I said. I am saying your characterization of what I said is incorrect. I didn't talk about the head or the foot. That was what my colleague talked about. And I don't appreciate it being misquoted on the floor over a subject that involves the health and

life of the women of this country and the children of this country and the families of this country.

Mr. SANTORUM. It also involves—and that is the point I think the Senator from California is missing—it also involves when in the process—that is why people on both sides of the abortion issue support this bill, because it also involves what is infanticide and what is not. A lot of people who agree with you on the issue of abortion say this is too close to infanticide. This is a baby who is outside the mother.

Again, I will not put words in the Senator's mouth, but what I heard—and again I am willing to have that corrected by the RECORD and the Senator can correct me right now—what I heard her say is if the foot is inside the mother, no, you cannot kill the baby, but when the head is, you can. That is a pretty slippery slope.

Mrs. BOXER. I say to my friend, what I said was I wasn't answering those questions. What the Senator was trying to do was to bait me on his terms of how he sees this issue.

We have a situation where this procedure is outlawed. It will hurt the women and the families of this country. My friend can disagree with that, but I never got into the issue of when is someone born. I said to you I am very clear on that, and I understand that completely, but it was my friend who kept on asking these questions, which to me do not make any sense because the issue here is an emergency procedure that my friend from Pennsylvania wants to make illegal, and it will hurt the women and it will hurt the families of this country.

Mr. SANTORUM. If I can reclaim my time, first off, the Senator from California said this was an emergency procedure. Name me an emergency procedure that takes 3 days. That is what the procedure takes. That is one of the things that was put forward early in the debate, now risen again, that this is somehow an emergency procedure. It is not an emergency procedure. It is a 3-day procedure.

No emergency do you present yourself in an emergency condition and get sent home with pills for 3 days to present yourself back.

Again, I want to finalize, and then the Senator from Arkansas has been waiting for quite sometime, and I want to allow him to speak. This is not a clean issue. This is not a removal of a tumor. We are talking about drawing the line between what is infanticide and what is abortion, and that is why many of us are disturbed about this. No one is trying to reach in and outlaw abortions.

The Senator from Illinois and I were very clear about the limited scope of this bill. What we are saying is, this is too close to infanticide. This is barbaric. This fuzzies the line that is dangerous for the future of this country. And what you saw, as the Senator from California was hesitant to get involved in that because she realizes how slippery this slope is, that you can say the foot does, the head doesn't, maybe the ankle—folks, we don't want to go there. It is not necessary for the health of the mother, it is not necessary for the life of the mother, and if you don't believe me, believe the person who developed it because they said so.

I think we need to have a full debate, not just on narrow issues, but on the broader issue of what this means to the rights of every one of us born and unborn, sick and well, wanted and unwanted. I think the line needs to be a bright one. I yield the floor.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I am pleased to rise in support of this legislation to ban the partial-birth abortion procedure. I commend the Senator from Pennsylvania for his passionate, eloquent, and articulate explanation in defense of this legislation.

I had the privilege of presiding during Senator SANTORUM's statement. I cannot say as well, I cannot say as passionately what the Senator from Pennsylvania said so very well in explaining the need for this legislation and why we are taking the time on the floor of the Senate to debate it and to vote on it. I am here so he might not stand alone, and he does not stand alone.

There will be better than 60 percent of the Senate voting for this legislation, and better than 80 percent of the American people support a ban on this horrible procedure. But this is not a subject, it is not a topic, it is not an issue about which people like to talk. It is not something Senators feel comfortable coming down and talking about; it is not something I feel comfortable talking about, but I do think it is very important.

Once again, I commend my colleague for the leadership he has shown on this issue.

Mr. President, the Nation was shaken with a sense of disbelief over 5 years ago in 1994 when we discovered that a young mother in South Carolina, Susan Smith, had murdered her own children and then pretended they had been kidnapped.

In my home State of Arkansas, in recent days, a young woman in her ninth month of pregnancy was savagely attacked by three young men who had been hired by the woman's boyfriend and the father of her unborn child to force her to lose her baby. That was the reason he contracted with these thugs, to, in effect, murder that unborn child. They beat her with severe blows to her stomach and explicitly told her that their intent was to kill her child, a child the father did not want.

As we were dealing with the shock of this gruesome tragedy, we learned of a Memphis man who confessed to driving across the river last summer into the Arkansas Delta with his wife and throwing the couple's 18-month-old child down into a 15-foot levee, leaving the child to die a slow and painful death of exposure to the elements. After this horrific event, the same couple allegedly returned 3 days later and drowned their other child in a pond.

Last month, the Washington papers were filled with the news of a Maryland man who stands accused of killing his two small children and then reporting their deaths as the result of a carjacking.

Unfortunately, these kinds of incidents become all too frequent today. The list goes on and on.

The question I raise is, Are the tragedies I have recounted, and the scores of others that could be enumerated, related to the debate that we are having about partial-birth abortion?

I know there are people who will howl there is no connection. There will be people who would object strenuously to even the suggestion being made that the all-too-frequent violence toward children could be related to a society's permissive attitude toward a procedure that would allow a baby to be partially born and then killed.

But I would suggest that, in fact, there is a connection; that violence begets violence; that dehumanizing one part of mankind contributes to the dehumanizing of all vulnerable human beings—whether they are the disabled, whether they are the elderly, or whether they are the newborn.

Many Americans were shocked—I was shocked—to hear of the Princeton professor of bioethics, who was recently hired, assumed a seat on the faculty at Princeton University, one of our most distinguished universities—a professor of bioethics, ironically—who said:

> I do not think it is always wrong to kill an innocent human being. Simply killing an infant is never equivalent to killing a person.

A professor of bioethics, at a major American university, who can say that publicly and be defended.

The questions Senator SANTORUM posed a few moments ago to the Senator from California—well, Professor Singer would not have had difficulty in answering the questions that he posed. He simply says: It is not always wrong to kill an innocent human being. Killing an infant is not the equivalent of killing a person.

Is this where we are going?

This professor believes parents should be allowed, 28 days after the birth of a severely disabled child, to decide whether or not they want to kill the child or keep the child.

It was suggested earlier in the opening comments of the Senator from Pennsylvania that the debate we are having about this kind of procedure, 40 years ago, would have been unheard of in our society. No one can doubt that in this so-called age of enlightenment we have moved so far in what we view as acceptable in the area of taking the lives of those who are innocent.

I listened very closely to the objections to this legislation as I presided in

the chair during the opening statements of both sides earlier today. It seemed to me that every issue that was raised in opposition to this legislation was an effort to divert attention from the horror of this procedure.

There was the issue of the timing of the vote. Whether this vote occurs this week or whether this vote would have occurred last week or next week does not change the horror of what we are talking about; it does not change the terrible nature of a procedure that kills a child that is partially born.

I think every objection that has been raised is an effort to turn our attention away, divert our attention away from that chart that Senator SANTORUM had on the floor earlier today, which was far from being a cartoon but was very similar to medical charts.

Then there was the objection that we were practicing medicine; that the Senate was seeking to practice medicine; that we should not make this decision; that it is a decision that should be made within the profession.

It was Thomas Jefferson who said—and I will say it as close to his words as I can: The first and fundamental purpose of Government is the protection of innocent human life.

There is no more fundamental goal and object of Government than the protection of its citizens, the protection of human life. We could not find a subject more relevant to what Government ought to be doing than this subject.

To say we should not be involved in it because it is a medical issue is simply an effort to divert us from what really is the issue; that is, whether human life should be protected by law or not.

It is always ironic to me that those who say Government should not be involved in this issue are the first to say Government should pay for this procedure, or at least abortions in general.

Then there was the argument that the courts may rule this unconstitutional; therefore we should not even be voting on this because the courts, and the Supreme Court eventually, might rule this legislation unconstitutional.

Isn't that ironic? Because I just listened to 4 days of debate in which the constitutionality of campaign finance reform proposals were argued on the floor of this Senate. No one said, well, we shouldn't even debate this proposal because the courts—in fact, the evidence is the courts have and will rule many portions of the so-called Shays-Meehan legislation unconstitutional as a violation of the first amendment—but it did not prevent us from having a healthy, prolonged debate about the need for campaign finance reform.

I think it is an absolute red herring to say: Well, ultimately when the Supreme Court makes a definitive ruling on this subject, they may or may not rule that it is constitutional. That, in no way, abrogates our responsibility to debate it and to pass legislation that we believe is not only constitutional but in the best interests of this country.

Then it was said: Well, we have had repeated votes on this before. We have had repeated votes on a lot of issues. The fact is, we have new Senators now. We are going to have some different votes. We voted repeatedly on campaign finance reform. It is a debate, I suspect, that will go on year after year.

Because we have voted on this legislation before is no reason that we should not, once again, raise what many believe is the fundamental moral issue facing our culture today; that is, the issue of life.

Senator SANTORUM so eloquently demonstrated the folly of where this ultimately leads. If killing an unborn child, who is partially delivered, with only his or her head still within the body of the mother, is legal, where then do we draw the line? Could we have a more basic, fundamental issue of gravity before this body than that? So time and time again we will hear, during the debate, the effort to take our attention away from where the focus should be, and that is unborn child and this horrible procedure.

Every effort will be made to bring up the timing of the vote, the issue of whether or not this is in our purview, the practicing of medicine, which, of course, is very much within our purview, this issue of human life; the fact of what the courts have ruled or may yet rule on this or similar legislation—all of these are efforts to take the Nation's eyes off what this legislation is all about, and that is eliminating a barbaric, uncivilized procedure that no right-minded person can surely defend.

It is a Federal crime to harm a spotted owl or a bald eagle or even its egg, but a helpless infant, completely dependent on its mother, is not accorded the same protections we afford the spotted owl or the bald eagle.

In this body—I say to my colleagues who say we shouldn't take the time of the Senate to debate this issue—in this body, we debated an amendment to the Interior appropriations bill that would have prohibited the use of steel leg hold traps. Perhaps that was a debate we should have had, but I believe it pales in comparison to the gravity and the seriousness of the issue we are now debating. We would protect the spotted owl, the bald eagle, or the inhuman practice of steel leg hold traps, but we have trouble protecting infants who are pulled from their mother's womb by the legs and killed.

One of the finest writers in this Nation, I believe, hails from the State of Arkansas. He is a Pulitzer Prize-winning journalist whose name is Paul Greenberg. He is one of the most brilliant and, I think, articulate defenders of human life I have ever had the opportunity to read. I want to read for the record a couple of short paragraphs from the many columns this Pulitzer Prize winner has written:

> As always, verbal engineering has preceded social engineering. The least of these must be aborted in words before it becomes permissible to abort them in deed. Those whom we want out of the way must first be dehumanized or something within might hold us back.

I wonder why there was such objection to even the term ''partial-birth abortion.'' Clearly, it describes what this procedure is. I think the author, Mr. Greenberg, has said it right: We have to do the verbal engineering before we do the social engineering, because to use the term ''partial-birth abortion'' suggests the humanity of that child.

Then Greenberg wrote:

> What once would have inspired horror is now the mundane, even the scientific, the advanced, the enlightened. What once might have inspired dread is now sanctioned in the elastic name of constitutional right and individual freedom.

That is what we are hearing today. We are hearing the defense of an indefensible procedure, sanctioned in the elastic name of constitutional right and individual freedom. When a question is raised, it is simply: I support Roe v. Wade; that is our right. What an elastic right it has become, to defend under Roe v. Wade a procedure that no one, no civilized person, could suggest is either good medicine or humane practice.

I ask my colleagues to not be diverted from the issue but to think about the baby, think about the procedure, this horrible procedure, think about the pain that little baby feels, think about what kind of country we want to be.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I will make a unanimous consent request. I hope it is OK with my colleague from Pennsylvania. I would like to speak for 2 minutes. I would like to ask unanimous consent that following that, Senator WELLSTONE take 10 minutes and, following that, Senator LIEBERMAN be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. If I may amend that to say, following that, Senator BROWNBACK would be recognized after Senator LIEBERMAN.

Mrs. BOXER. Absolutely.

The PRESIDING OFFICER. If the Senator will repeat the understanding.

Mrs. BOXER. I will repeat it, as amended by my friend from Pennsylvania. It would be BOXER for 2 minutes, WELLSTONE for 10 minutes.

How much time would Senator LIEBERMAN like to have?

Mr. LIEBERMAN. Ten minutes is fine.

Mrs. BOXER. Ten minutes for Senator LIEBERMAN, at which time we would go to Senator BROWNBACK for 10 minutes. That is my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. BOXER. I thank the Chair.

Let me say, the Senator from Arkansas said the charge of government is to protect innocent life. We all want to protect every life. But when it comes to pregnancy, we do have a law that prevails in this country, which my friend may not agree with —I have a hunch he doesn't—called Roe v. Wade. It was decided in 1973. In that decision, the Court said when it comes to abortion, in the first trimester a woman has the right to choose, without any interference by the Government; and after that time, the States can regulate and restrict, but always the life of the woman and the health of the woman must be protected. That is Roe. That is, it seems to me, a very sound decision.

What we have in the Santorum bill is an out-and-out attack on that philosophy because there is no exception for health.

My friend from Illinois, Senator DURBIN, is trying to deal with that issue. I say to him, my compliments for working on his bill.

The bottom line for this Senator: I want to make sure if my daughter or anybody else's daughter is in an emergency situation, that the doctor or doctors do not have to open up the law books and decide whether or not they can do what is necessary to save the health and life of my daughter.

When one talks about innocent life, one must look at the faces involved. Here is a face of a beautiful young woman who wanted desperately to have children. I will tell her story later. She is an innocent person. Roe protects her; the Santorum bill leaves her out in the cold.

So the Senator from Pennsylvania can engage me in debates all he wants as to when I believe life begins and when I think a baby is born. To me, it is very obvious when a baby is born. When it leaves the mother, it is born. That is pretty straightforward.

I would prefer to leave the medical emergencies to the physicians. I think they know. This isn't a Roe procedure we are talking about. This is a procedure that the American College of Gynecologists and Obstetricians supports. They say they need it in their arsenal when they work to protect a woman's life and her health. The American Nurses Association—I could go on and on.

At this time, I yield the floor and will come back to this as often as we have to until this debate concludes.

I know Senator WELLSTONE has something to offer to the debate.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I thank the Senator from California. I shall be brief. First, I ask unanimous consent that I be included as an original cosponsor of the Durbin amendment.

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

Mr. WELLSTONE. Mr. President, I will describe the amendment one more time for those who are following this debate. I think it is important what the amendment says. It would ban all postviability abortions, except in cases where both the attending physician and an independent nontreating physician both certify in writing, in their medical judgment, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health, with then a very strict and very clear definition of ''grievous injury.'' That is what the amendment says.

It would actually reduce the number of late-term abortions. This legislation fits in with the constitutional parameters set forth by the Supreme Court for government restriction of abortion. This legislation retains the abortion option for mothers facing extraordinary medical conditions such as breast cancer or non-Hodgkin's lymphoma. At the same time, this amendment clearly limits the medical circumstances where postviability abortions are permitted. By doing that, this legislation protects fetal life in cases where the mother's health is not at high risk.

I came to the floor to speak about this amendment because I believe the Durbin amendment is, if you will, where I am kind of within me. This is what I believe. I think it makes sense to move in this direction. I think it makes sense to set up a strict standard. I think it is terribly important, when we look at postviability abortions, to have this test, to have this standard that has to be met. I am certainly not going to vote for an amendment or a piece of legislation which is so open-ended that where there clearly are the medical circumstances, the life of a mother is threatened, she can't go forward with this procedure.

Here is why I come to the floor. I don't understand why those who want to see some change would not support this compromise. If you are interested, I say to my colleagues, in trying to make a difference, if you are concerned about some of these late-term abortions, if you think there ought to be a more stringent standard, then that is what this Durbin amendment says. If you are interested in passing legislation, if you are interested in making a change, if you are interested in passing a bill that isn't going to be vetoed by the President, if you are interested in passing legislation, as opposed to one more time going through this political war and making this a big political issue, then you ought to support this amendment.

There are some people from the other side who think this amendment is a mistake. They don't want to see this amendment pass. I think this amendment is reasonable. I think it is a compromise that makes sense. I think it deserves our support.

I actually will make this not at all personal in terms of what other Senators have said. It is simply not true that there aren't many people in the Senate who are not concerned, that don't share some of the concerns that have been reflected by speeches given on the floor. Sheila and I have three children, and we also were confronted with two miscarriages—6 weeks and over 4 months. Anybody who goes through that knows what this debate is all about. I also know it is about a woman, a mother, a family having their right to choose. I am very nervous about a State coming in and telling a family they are going to make this decision. But I also understand the concerns, especially the concerns—again, I go to the language about postviability abortions. But here we have an amendment that says it will ban this except in the cases where the attending physician and an independent, nontreating physician certify that, in their medical judgment, if you don't do this, then you are going to see a threat to the mother's life or she is going to risk grievous injury to her physical health.

Isn't that reasonable? I am so tired of the sharp drawing of the line and the polarization and the accusations and the emotion and the bitterness. Why don't we pass this amendment? It is a reasonable compromise.

For those who want to overturn Roe v. Wade, that is never going to happen. That is the law of the land. But if we want to make a difference and we have this concern, I think we should support this Durbin amendment. I come to the floor of the Senate to thank him for his effort. I am comfortable with this amendment. I think it would make a difference. I think it would meet some of the agonizing concerns that I and other Senators have. I am not about to support legislation that is so open ended that it makes no allowance at all for the health of a mother. That is my position.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut is recognized for 10 minutes.

Mr. LIEBERMAN. Mr. President, I rise to support the amendment offered by my colleague from Illinois, Senator DURBIN. The underlying bill and this amendment bring us back to these morally perplexing questions. We heard it in the sincerity of the speech by the Senator from Minnesota and the sincerity of all of my colleagues speaking on either side, for either of these approaches.

This problem, more than any I have confronted in my public life, seems to me to join our personal value systems, our personal understanding about profound philosophical medical questions, such as ''When does life begin?'' with our role as legislators, with our role as lawmakers, with the limits of what our capacities are in making law and, ultimately, of course, also with what the reality is that the courts have stated as they have applied our Constitution, as the ultimate arbiter of our values and our rights in this country.

I support this proposal of Senator DURBIN's because, once again, I think it actually will do what I believe most everybody—I would say everybody—in this Chamber would like the law to do, and that is to reduce the number of abortions that are performed. I support it also because I think it can be upheld as constitutional, and I sincerely and respectfully doubt the underlying proposal, the so-called Partial-Birth Abortion Act, will be upheld as constitutional.

I remember I first dealt with these issues when I was a State senator in Connecticut in the 1970s, after the Roe v. Wade decision was first passed down by the Supreme Court, and the swelter of conflicting questions: What is the appropriate place for my convictions about abortion, my personal conviction that potential life begins at conception and, therefore, my personal conviction that all abortions are unacceptable? How do I relate that to my role as a lawmaker, to the limits of the law, to the right of privacy that the Supreme Court found in Roe v. Wade?

This proposal that deals with partial-birth abortion, or intact dilation and extraction, brings us back once again to all of those questions. I have received letters from constituents in support of Senator SANTORUM's proposal. I have had calls and conversations with constituents and friends—people I not only respect and trust but love—who have urged me to support Senator SANTORUM's proposal.

When you hear the description of this procedure, it is horrific; it is abominable. There is a temptation, of course, to want to respond and do what the underlying proposal asks us to do in the law by adopting this law. And then I come back to my own personal opinion, which is every abortion, no matter when performed during pregnancy—this is my personal view—is unacceptable and is, in its way, a termination of potential life.

So as I step back and reach that conclusion, I have to place the proposal Senator SANTORUM puts before us and the one Senator DURBIN puts before us now in the context, one might say, of some humility of what the appropriate role for each of us is as lawmakers, what the appropriate role for this institution is as a lawmaking body, and what does the Court tell us is appropriate under the Constitution. I cannot reach any other conclusion, personally, than that Senator SANTORUM's proposal is not constitutional, that Senator DURBIN's is, and will, in fact, reduce the number of postviability abortions and, therefore, the number of abortions that are performed in our country.

That is why I have added my name as a cosponsor to Senator DURBIN'S proposal.

The courts have created well-defined boundaries for legislative action. Under Planned Parenthood versus Casey, the Supreme Court held that ''subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'' Partial birth legislation has been challenged 22 times in the courts resulting in 19 injunctions. The court-imposed constraints must be reflected in legislative efforts if we are going to achieve our goal of reducing late-term abortions. Enacting legislation that courts have struck down time and again is unlikely to reduce abortions.

Most recently, of course, that conclusion was reached by the Eighth Circuit Court on September 24, little less than a month ago, when the court said:

> Several states have enacted statutes seeking to ban ''partial-birth abortion.'' The precise wording of the statutes, and how far the statutes go in their attempts to regulate previability abortions, differ from state to state. The results from constitutional challenges to the statutes, however, have been almost unvarying. In most of the cases that reached the federal courts, the courts have held the statutes unconstitutional.

So the constitutional impediment to the proposal Senator SANTORUM makes is that, notwithstanding the horrific nature of the so-called partial-birth abortion, the intact dilation and extraction method of abortion, you cannot prohibit by law, according to the Supreme Court of the United States, any particular form of terminating a pregnancy at all stages of the pregnancy. You can prohibit almost all forms of terminating a pregnancy after viability. That is what the Durbin amendment will do.

Incidentally, viability as medical science has advanced, has become an earlier and earlier time in the pregnancy.

There are exceptions.

Incidentally, the language in the Durbin proposal is not full of loopholes. It is very strict and demanding. It requires a certification by a physician that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health. Those are serious requirements not meant to create a series of loopholes through which people intending to violate the law can go.

As has been said, a new provision has been added to this amendment which requires that an independent physician who will not perform nor be present at the abortion, who was not previously involved in the treatment of the mother, can affirm the first physician's opinion by a certification in writing.

A physician who knowingly violates the act may be subject to suspension of license and penalties as high as $250,000.

The limitations are specific. They are narrow. And they are, if I may say so, inflexible. In that sense, they respond in the most narrow way to the health exception required by the Supreme Court.

This is such a good proposal which Senator DURBIN has offered that I hope we may come back to it at some other time when it is not seen by the proponents of Senator SANTORUM's legislation as a negation of that legislation because this amendment in that sense never gets a fair vote or a clear vote. I think if we brought it up on its own, perhaps it could allow us the common ground on this difficult moral question toward which I think so many Members of the Chamber on both sides aspire. I hope we can find the occasion to do that.

I thank the Chair. I thank my friend from Illinois for the work he has done in preparing this amendment and bringing it before us.

I yield the floor.

Mrs. BOXER. Mr. President, I know Senator BROWNBACK is going to speak.

The PRESIDING OFFICER. Senator BROWNBACK is recognized.

Mrs. BOXER. Will the Senator yield for a unanimous-consent request so that Senator MIKULSKI could follow the Senator?

Mr. BROWNBACK. I have no objection.

Mrs. BOXER. Mr. President, I ask unanimous consent that Senator MIKULSKI follow Senator BROWNBACK and be recognized for 10 minutes.

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

Mr. BROWNBACK. Thank you very much. I thank my colleague, Senator SANTORUM, for once again bringing this important issue in front of this body and to this floor.

Once again, I join Senator SANTORUM as an original cosponsor of this legislation to end partial-birth abortion in this country. Last year, the Senate failed to override the President's veto by three votes. President Clinton has twice vetoed similar measures in 1996 and 1997. We will continue, however, to raise this issue until the President signs this into law, or until this procedure is banned for forever.

I follow my colleague from Connecticut, who I rarely disagree with on matters of this nature. But this happens to be one of those which I do. I view this as an abhorrent procedure, as my colleague from Connecticut does as well. I also view it as a constitutional issue that we can raise, that we can deal with, and this body should deal with.

This goes to one of the most fundamental issues for us as a country, for us as a people, and that is when life begins and when it should be protected. These lives should be protected.

As I sat and listened to much of this discussion, I have to say I am sad as I listened to this discussion because it is so difficult, and it is such an awful thing—the birth of a child, and then it is killed by a blunt instrument.

I think some medical facts bear mentioning at this point in time.

Brain wave activity is detectable in human beings at 41 days after conception—just 41 days. A heartbeat is detectable 24 days after conception.

Consistently, State statutory or case law establishes a criteria of dead as the

irreversible cessation of brain wave activity or spontaneous cardiac arrest.

In short, these are lives of individuals that are ended by this process. It is death. These are heartbeats and brain waves. They are stopped. They are denied life by this abhorrent procedure.

I would like to share some thoughts with you from a writer, a Jewish writer, Sandi Merl, when he was asked about this procedure of partial-birth abortion. He said this:

When I think of Partial-Birth Abortion, I hear only the first two words—''partial birth.'' To me, this procedure is not abortion. It is pre-term delivery followed by an act of destruction leading to a painful death . . . This is infanticide, clearly and simply, and must be stopped . . . This is about leaving no fingerprints when committing a murder of convenience.

That is why I will once again vote to end partial-birth abortion when it comes to the Senate floor. It is a cruel and shameless procedure which robs us of our humanity with every operation performed. It is not true that the anesthesia kills the child before removal from the womb. Instead, it is the fact that the baby is actually alive and experiences extraordinary pain when undergoing the operation.

Nor is this brutality only reserved for the most extreme circumstances. According to the executive director of the National Coalition of Abortion Providers, the ''vast majority'' of partial-birth abortions are performed in the fifth and sixth months of pregnancy on healthy babies of healthy mothers.

The facts speak for themselves. Bluntly put, this involves the death of a child in a brutal fashion, and all of it legally condoned by the current President of the United States.

Our institutionalized indifference to this extraordinary suffering makes me wonder, what has happened to our collective conscience as a nation? Are we really so callous that we knowingly condone this form of death for our very weakest, which we would never force on any adult, no matter how bad the crime? Even murderers on death row are given more consideration when executed. Yet our babies are painfully killed while conscious. This extraordinary cruelty should cause us to bow our heads in shame.

In a Wall Street Journal article, Peggy Noonan rightly labeled events such as that at Columbine High School as evidence of a much deeper problem, one she identified as the ''culture of death.'' Quoting Pope John Paul II from his recent visit to Mexico City, he urged a rejection of this increasingly influential culture of death, instead embracing the dignity and principles of life for everyone.

It is obvious, especially after the Columbine tragedy, that a culture of death is playing in our land. Lately, the volume has been turned up very loudly. The words to this song include the extremes we know now by heart: Excessively high murder rates, the repeated rampages of violence by schoolchildren against schoolchildren, the unending tawdriness of television programming and other media, to name only a few cultural malfunctions.

As Noonan went on to observe:

No longer say, if you don't like it, change the channel. [People] now realize something they didn't realize ten years ago: There is no channel to change to.

Perhaps our increasingly violent culture has dulled our consciences and worn us down to this place where it no longer is politically expedient to protest the obscene suffering of infants. This explains why we continue to tolerate such a brutal practice as partial-birth abortion—what a dreadful name. I hope it isn't so. It is to this conscience that I appeal. I appeal to those who recognize the suffering and do not turn their heads, who take personal responsibility to correct this course of destruction, no matter the political consequences.

Please, please, open your hearts and listen. Hear that voice in there, the cries of thousands of little children, saying: Hear me, let me live.

Every once in a while, something happens which shakes us from our dullness. I want to share an event reported in the Washington Times that described an incident in April of this year in Cincinnati where a botched partial-birth abortion resulted in the birth of a little girl who lived for 3 hours. It is reported that the emergency room technician rocked and sang to her. After the inevitable death of the baby, the staff members grieved so badly that hours were spent in counseling and venting to get over the emotional trauma of the incident. One person observed that the real tragedy is that no laws were broken.

I hope we will continue to let ourselves be troubled by this event and by this practice and instead of turning a cold heart to it or saying, ''I'm tied into a certain political position I can't change.'' I hope we will prayerfully consider and at night go and search ourselves and ask: Is this something we want to continue in America? Is this something I want to be a part of allowing to continue in America?

People of great tradition serve in this body who seek to protect and to serve the poorest of the poor and the weakest of the weak in our culture and society. They serve so admirably, and they speak glowingly about the need to protect those who are weakest. Yet, is it not this child in the womb who is the weakest of all in our society and in our culture? And that child cries right now. If we will just for a moment listen, we will hear the cry of that child. Can't we just for a moment turn from our locked in, dug in positions and say, OK, just for a moment I will listen, I will see if I can hear that small voice that is crying out to me: Just let me live. Let me have that God-given life that has been promised to me. Let me have that God-given life of which we speak so eloquently in our Declaration of Independence and our Constitution.

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. . . .

Let's live. Let's stop this culture of death from going forward. Let's appeal to that inner voice that says let that life live.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise to speak against the Santorum amendment and on behalf of the Durbin amendment of which I am a cosponsor. I wish to speak on the merits of the amendment, but I will say a few words before I debate the amendment about an issue the Senator from Kansas has raised. I have had the opportunity to get to know and so respect the position of the Senator from Kansas.

The Senator spoke about the culture of death. I believe we should have a debate on the culture of death here in the Senate. I believe it should occur among Members privately, when we are having conversations in the lunchroom. I believe one of the things we should do as we end this century, which has been such a ghoulish, grim, violent century, is think about how we can affirm a life-giving culture.

I speak to my colleague from Kansas with all due respect and a desire to work with him on those issues. The Pope, the leader of my own faith, and the Catholic bishops of America have spoken about the culture of death. They say when we choose life, it is ending all forms of violence—the violence of poverty, hunger, armed conflict, weapons of war, the violence of drug trafficking, the violence of racism, and the violence of mindless damage to our environment.

In other statements from both the Pope and the bishops, they speak out on famine, starvation, the spread of drugs, domestic violence, and the denial of health care.

I say to my colleagues in the Senate, when we think about a defense against the culture of death, we need a broader view. We are need to talk not only about one amendment or one procedure—which I say is quite grim—but also to talk about what we are going to do to address these other critical issues.

We rejected a judicial nomination last week because of the nominee's position on the death penalty. I don't know how we can be against the culture of death and yet vote against a distinguished man who makes serious, prudent, judicial decisions on certain death penalty cases.

We defeated an arms control treaty, with no real serious opportunity for full debate and development of side agreements. There were legitimate ''yellow flashing lights'' about the agreement that deserved thorough debate. But we rushed to a vote with only hasty, last minute hearings and no opportunity for complete investigation of the treaty.

I say to my colleagues, let's look at what we are going to do to protect our own families and how we can look at promoting a culture of life. I say that with sincerity. I say it with the utmost respect for people whose position I will disagree with on this amendment. We need to reach out to each other, think these issues through, and put aside message amendments, put aside tactical advantages, put aside partisan lines.

I say to my colleague from Kansas, I know he is deeply concerned about the issues of culture in our own country. Many of those issues I do share. I reach out and say to my colleagues, let's think through what we are doing.

Having said that, I rise to support the Durbin amendment. In this debate, I say to my colleagues, the first question is: Who really should decide whether someone should have an abortion or not? I believe that decision should not be made by government. I believe when government interferes in decisionmaking, we have ghoulish, grim policies.

Look at China, with their one child/one family official practice. The government of China mandated abortions.

Look at Romania under the vile leadership of Ceausescu, who said any woman of childbearing age had to prove she was not on any form of birth control or natural method. They were mandated to have as many children as they could.

I don't want government interfering. I think government should be silent. We have a Supreme Court decision in Roe v. Wade. We should respect that decision. I think it is in the interests of our country that government now be silent on this. We should move forward. Medical practitioners should make decisions on medical matters. It should not be left up to politicians with very little scientific or theological training.

There is a substantial difference on when life begins. Science and theologians disagree on this. Some say at the moment of conception. St. Thomas Aquinas, in my own faith, said the soul comes into a male in 6 weeks, but it takes 10 weeks for the soul to enter the body of a woman. We would take issue with Thomas Aquinas on that. Our Supreme Court said that given conflicting scientific viewpoints, fetal viability should determine to what extent a state may limit access to abortion.

The Durbin amendment is consistent with the Court's framework. It would ban all post-viability abortions except when the life or health of the woman is at risk. The Durbin amendment provides clear guidelines, which are narrowly but compassionately drawn, to allow doctors to use a variety of procedures, based on medical necessity in a particular woman's situation. It must be medically necessary in the opinion of not one but two doctors. Both the doctor who recommends this as a procedure and then an independent physician must certify that this is the medically necessary and appropriate course for a particular woman facing a health crisis.

This is why I think the Durbin amendment is a superior amendment. It acknowledges the grave seriousness of the possibility of a medical crisis in a late-term pregnancy that can only be resolved with the family and the physician. To single out only one procedure means other procedures could be used, equally as grim. What we want to do is preserve the integrity of the doctor-patient relationship, and make sure there is no loophole, by requiring two physicians to independently evaluate the woman's medical needs.

So I believe the Durbin amendment is a superior way to address this most serious issue, and I intend to support the Durbin amendment. I recommend to my colleagues that they, too, give the Durbin amendment serious consideration.

Let me say again what I think this debate is about. I believe it is about the right of women facing the most tragic and rare set of complications affecting her pregnancy to make medically appropriate or necessary choices.

This is not a debate that should take place in the U.S. Senate. This is a discussion that should remain for women, their health care providers, their families and their clergy. The Senate has no standing, no competency and no business interfering in this most private and anguishing of decisions a woman and her family can possibly face.

That is why I so strongly oppose the Santorum bill. It would violate to an alarming degree the right of women and their physicians to make major medical decisions.

And that is why I rise in strong support of the Durbin amendment. I support the Durbin alternative for four reasons.

First, it respects the constitutional underpinnings of Roe v. Wade.

Second, it prohibits all post-viability abortions.

Third, it provides an exception for the life and health of a woman which is both intellectually rigorous and compassionate.

Finally, it leaves medical decisions in the hands of physicians—not politicians.

The Durbin alternative addresses this difficult issue with the intellectual rigor and seriousness of purpose it deserves. We are not being casual. We are not angling for political advantage. We are not looking for cover.

We are offering the Senate a sensible alternative—one that will stop post-viability abortions, while respecting the Constitution. We believe that it is an alternative that reflects the views of the American people.

The Durbin amendment respects the Supreme Court's ruling in the Roe v. Wade decision. When the Court decided Roe, it was faced with the task of defining ''When does life begin?'' Theologians and scientists differ on this. People of good will and good conscience differ on this.

So the Supreme Court used viability as its standard. Once a fetus is viable, it is presumed to have not only a body, but a mind and spirit. Therefore it has standing under the law as a person.

The Roe decision is quite clear. States can prohibit abortion after viability, so long as they permit exceptions in cases involving the woman's life or health. Let me be clear. Under Roe, states can prohibit most late term abortions. And many states have done so.

In my own state of Maryland, we have a law that does just that. It was adopted by the Maryland General Assembly and approved by the people of Maryland by referendum. It prohibits post viability abortions. As the Constitution requires, it provides an exception to protect the life or health of the woman.

Like the Maryland law, the Durbin alternative respects that key holding of Roe. It says that after the point of viability, no woman should be able to abort a viable fetus. The only exception can be when the woman faces a threat to her life or serious and debilitating risk to her health.

The bill before us—the Santorum bill—only bans one particular abortion procedure at any point in a pregnancy. By violating the Supreme Court's standard on viability, this language would in all probability be struck down by the courts.

In fact, this language has already been struck down in many states because of this very reason. The proponents of the legislation know this.

The Durbin alternative, though, bans all post viability abortions. It doesn't create loopholes by allowing other procedures to be used.

I believe there is no Senator who thinks a woman should abort a viable fetus for a frivolous, non-medical reason. It does not matter what procedure is used. It is wrong, and we know it.

The Durbin alternative bans those abortions. It is a real solution.

On the other hand, S. 1692, proposed by Senator Santorum and others, does not stop a single abortion. For those who think they support this approach, know that it is both hollow and ineffective.

S. 1692 attempts to ban one particular abortion procedure. All it does, though, is divert doctors to other procedures. Those procedures may pose greater risks to the woman's health. But let me be clear—late term abortions would still be allowed to happen. And for that reason, the Santorum approach is ineffective.

The Durbin amendment provides a tough and narrow health exception that is intellectually rigorous, but it is compassionate as well. It will ensure that women who confront a grave health crisis late in a pregnancy can receive the treatment they need.

The Amendment defines such a crisis as a ''severely debilitating disease or

impairment caused or exacerbated by pregnancy.'' And we don't leave it up to her doctor alone. We require that a second, independent physician also certify that the procedure is the most appropriate for the unique circumstances of the woman's life.

But I want to be very clear in this. The Durbin amendment does not create a loophole with its health exception. We are not loophole shopping when we insist that an exception be made in the case of serious and debilitating threats to a woman's physical health. This is what the Constitution requires and the reality of women's lives demands.

Let's face it, women do sometimes face profound medical crises during pregnancy. Some of these traumas are caused or aggravated by the pregnancy itself. I'm referring to conditions like severe hypertension or heart conditions.

I'm referring to pre-existing conditions—like diabetes or breast cancer—that require treatments which are incompatible with continuing pregnancy. Would anyone argue that these are not profound health crises?

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

I readily acknowledge that the procedure described by my colleagues on the other side is a grim one. I do not deny that. But there are times when the realities of women's lives and health dictates that this medical tool be available.

I support the Durbin alternative because it is leaves medical decisions up to doctors—not legislators. It relies on medical judgement—not political judgement—about what is best for a patient.

Not only does the Santorum bill not let doctors be doctors, it criminalizes them for making the best choice for their patients. Under this bill a doctor could be sent to prison for up to two years for doing what he or she thinks is necessary to save a woman's life or health. I say that's wrong.

In fact, those who oppose the Durbin amendment say it is flawed precisely because it leaves medical judgements up to physicians.

Well, who else should decide? Would the other side prefer to have the government make medical decisions? I disagree with that. I believe we should not substitute political judgement for medical judgement.

We need to let doctors be doctors. This is my principle whether we are talking about reproductive choice or any health care matter.

Physicians have the training and expertise to make medical decisions. They are in the best position to recommend what is necessary or appropriate for their patients. Not bureaucrats. Not managed care accountants. And certainly not legislators.

The Durbin alternative provides sound public policy, not a political soundbite. It is our best chance to address the concerns many of us have about late term abortions. The President has already vetoed the Santorum bill and other similar legislation in earlier Congresses. I believe he will veto it again.

But today we have a chance to do something real. We have an opportunity to let logic and common sense win the day. We can do something which I know reflects the views of the American people.

Today we can pass the Durbin amendment. We can say that we value life and that we value our Constitution. We can make clear that a viable fetus should not be aborted. We can say that we want to save women's lives and women's health. The only way to do all this, Mr. President, is to vote for the Durbin amendment.

I urge my colleagues to support the Durbin amendment.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 2320 TO THE TEXT INTENDED TO BE STRICKEN BY AMENDMENT 2319

Mrs. BOXER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 2320 to the text intended to be stricken by amendment 2319.

Mr. HARKIN. 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:

At the end of the bill, add the following:

SEC. . SENSE OF CONGRESS.

It is the Sense of the Congress that, consistent with the rulings of the Supreme Court, a woman's life and health must always be protected in any reproductive health legislation passed by Congress.

AMENDMENT NO. 2321 TO AMENDMENT NO. 2320

(Purpose: To express the sense of the Congress in support of the Supreme Court's decision in Roe v. Wade)

Mr. HARKIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes amendment numbered 2321 to amendment No. 2320.

At the appropriate place, insert the following:

SEC. ___. SENSE OF CONGRESS CONCERNING ROE V. WADE.

(a) FINDINGS.—Congress finds that—

(1) reproductive rights are central to the ability of women to exercise their full rights under Federal and State law;

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

(3) the 1973 Supreme Court decision in *Roe v. Wade* established constitutionally based limits on the power of States to restrict the right of a woman to choose to terminate a pregnancy; and

(4) women should not be forced into illegal and dangerous abortions as they often were prior to the *Roe v. Wade* decision.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) *Roe v. Wade* was an appropriate decision and secures an important constitutional right; and

(2) such decision should not be overturned.

The PRESIDING OFFICER. The Senator from Iowa.

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

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HARKIN. I will ask it again, Mr. President.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. HARKIN. Mr. President, I believe I had the floor. I had the floor.

The PRESIDING OFFICER. The Chair will note the Senator lost the floor when he asked for the yeas and nays.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. HARKIN. Mr. President, I withdraw my request for the yeas and nays.

The PRESIDING OFFICER. The question is on the amendment.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, the amendment I have offered will basically express the sense of the Congress in support of the Supreme Court's decision in Roe v. Wade. With all of the amendments that keep coming up and trying to chip away at Roe v. Wade, Senator BOXER and I decided that it was important for us to see if there was support in the Congress for Roe v. Wade.

I know there are some groups around the United States that believe Roe v. Wade should be overturned. I do not believe that. I think it was an eminently wise decision. As time goes on, and as we reflect back, the decision enunciated by Justice Blackmun becomes more and more profound and more elegant in its simplicity and its straightforwardness.

However, it seems as we get wrapped up in these emotionally charged debates on partial birth abortion, we lose sight of what it is that gave women their full rights under the laws of our Nation and our States.

I was interested a couple of minutes ago in what Senator MIKULSKI pointed out; that the eminent theologian, St. Thomas Aquinas, had basically stipulated that in soul man—that is the putting of the soul in the human body—occurred 6 weeks after conception for a

man but 10 weeks after conception for a woman. That was a theology that held for a long time.

I studied Saint Thomas Aquinas when I was in Catholic school. He was an eminent theologian, as I said. We look back and we say: That is ridiculous. The very division of 6 weeks for a man and 10 weeks for a woman is kind of ridiculous. Medical science has progressed. We know a lot of things they did not know at that time. What will we know 50 years from now that we do not know today?

Women, through the centuries, as we have developed more and more the concept of the rights of man—and I use man in the terms of mankind, all humans, the human race—that as we enlarge the concept of human rights—those rights we have that cannot legitimately be interfered with or trespassed upon by the power of any government—as we progressed in our thinking about those human rights, all too often women were left out of the equation.

It was not until recent times, even in our own country, that women had the right to own property. It was not until recent times that women even had the right to vote in this country, not to say what rights are still denied women in other countries around the globe.

As we progressed in our thinking of human rights, we have come a long way from Thomas Aquinas who said that for some reason a man gets a soul a lot earlier than a woman gets a soul. Yes, we've come a long way.

I believe our concept of human rights now is basically that human rights applies to all of us, regardless of gender, regardless of position at birth, regardless of nationality or station in life, race, religion, nationality; that human rights inure to the person.

One of the expansions of those human rights was for women to have the right to choose. After all, it is the female who bears children. That particular right inures to a woman. It was the particular genius of Roe v. Wade that Justice Blackmun laid out an approach to reproductive rights that basically guarantees to the woman in the first trimester a total restriction on the State's power to interfere with that decision. In the second trimester, the State may, under certain inscriptions, interfere. And in the third trimester, after the further decision of the Casey case, the States may interfere to save the life or health of the mother.

We have a situation now where women in our country are given—I should not use the word ''given''—but have attained their equal rights and their full human rights under law.

That was Roe v. Wade. Since that time, many in the legislatures of our States and many in this legislature, the Congress of the United States—the House and the Senate—have sought repeatedly to overturn Roe v. Wade; if not totally to overturn it, but to chip away at it—a little bit here, a little bit there, with the final goal to overturn Roe v. Wade.

According to CRS, only 10 pieces of legislation were introduced in either the House or Senate before the Roe decision. Since 1973, more than 1,000 separate legislative proposals have been introduced. The majority of these bills have sought to restrict abortions.

Unfortunately, what is often lost in the rhetoric and in some of this legislation—is the real significance of the Roe decision.

The Roe decision recognized the right of women to make their own decisions about their reproductive health. The decision whether to bear a child is profoundly private and life altering. As the Roe Court understood, without the right to make autonomous decisions about pregnancy, a woman could not participate freely and equally in society.

I do not believe that any abortion is desirable—nobody does. As Catholic and a father, I've struggled with it myself. However, I do not believe that it is appropriate to insist that my personal views be the law of the land.

I think there are some things that Congress can do to prevent unintended pregnancy and reduce abortion by increasing funding for family planning, mandating insurance coverage for contraception and supporting contraception research.

Mr. President, I strongly urge my colleagues to support this resolution. I believe it would establish the one important principle that we can agree on—that despite the difference in our views, we will not strip away a woman's fundamental right to choose.

So I think we need to make it clear, we need to make it clear that we have no business—especially we in the Congress of the United States—have no business interfering with a woman's fundamental right to choose.

Mrs. BOXER. Would my friend yield for a question?

Mr. HARKIN. Without losing my right to the floor, I would be delighted to yield for a question.

Mrs. BOXER. I am very grateful to the Senator from Iowa for this amendment. It is interesting to me; in all the years I have been in the Senate, we have never had a straight up-or-down vote on whether this Senate agrees with the Supreme Court decision that gave women the right to choose.

Mr. HARKIN. Yes.

Mrs. BOXER. So I am very grateful to my friend for giving us a chance to talk about that because I wonder if my friend was aware that prior to the legalization of abortion, which is what Roe did in 1973, the leading cause of maternal death in this Nation was illegal abortion. Was my friend aware of that?

Mr. HARKIN. Yes, I was. I didn't know the exact figure, but I knew many women died or were permanently injured and disabled because of illegal abortions performed in this country—because they had no other option.

Mrs. BOXER. Exactly.

Mr. HARKIN. I say to my colleague from California, I want to thank her for her stalwart support and defense of Roe v. Wade through all these years. I follow in her footsteps, I can assure you. But I remember as a kid growing up in a small town in rural Iowa, that it was commonplace knowledge, if you had the money, and you were a young woman who became pregnant, you could go out of State; you could go someplace and have an abortion. But if you were poor and had nowhere else to go, you went down to sought out someone who would do an illegal abortion. Those are the women who suffered and died and were permanently disfigured.

Mrs. BOXER. I say to my friend, I remember those days. Further, even when women who did have the wherewithal, sometimes they resorted to a back-alley abortion and paid the money——

Mr. HARKIN. Sure.

Mrs. BOXER. Under the table and risked their lives and their ability to have children later and were scarred for life.

Mr. HARKIN. Sure

Mrs. BOXER. So the Roe v. Wade decision, as my friend has pointed out, in his words, was an ''elegant decision.'' And why does he say that? Because it did balance the mother's rights with the rights of the fetus. Because it said, previability, the woman had the unfettered right to choose and in the late-term the State could regulate.

Roe v. Wade was a ''Solomon-like'' decision in that sense. I again want to say to my friend, I greatly appreciate him offering this second-degree amendment to my amendment. I think it is important for us to support Roe v. Wade in this Congress. I think if we do, it will be a relief to many women and families in this country who are concerned that that basic right might be taken away because there are many people running for the highest office in the land who do not support Roe, who want to see it overturned, who might well appoint Judges to the Court who would take away this right to choose, which is hanging by a thread in Court as it is. So I, most of all, thank my friend for offering this amendment.

Mr. HARKIN. I thank the Senator from California. I thank her for the question. I will elaborate on that in just a minute.

Again, I say to the Senator from California, we do need to send a strong message that the freedom to choose is no more negotiable than the freedom to speak or the freedom to worship. It is nonnegotiable.

This ruling of Roe v. Wade has touched all of us in very different ways. As the Senator from California just pointed out, it is estimated that as many as 5,000 women died yearly from illegal abortions before Roe.

In the 25 years since Roe, the variety and level of women's achievements have reached unprecedented levels. The Supreme Court recently observed:

> The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.

I will also quote Justices O'Connor, Kennedy, and Souter in the Casey case:

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

I think that is what this is all about—whether we will use the heavy hand of the State to enforce certain individuals' concepts of when life begins, how life begins, when can a person have an abortion, when can a person not. People are divided on this issue. Some people are uncertain about it. I quarrel with myself all the time about it because it is as multifaceted as there are individual humans on the face of the Earth.

I would not sit in judgment on any person who would choose to have an abortion, especially a woman who went through the terrifying, agonizing, soul-wrenching procedure of having a late-term abortion because her health and her life was in danger. That must be one of the most soul-wrenching experiences a person can go through.

And you want me to sit in judgment on that? The Senator from Pennsylvania wants to be able to say: Here it is. You can't deviate from that. I am sorry; that is not our role; that is not the role of the Government or the State.

That is why, again, I believe it is particularly important that we cut through the fog that surrounds this issue and get to the heart of it, which is Roe v. Wade.

I used the word ''elegant.'' It means simplistic, simplicity. Elegant: Not convoluted, not hard to understand, not shrouded and complex, but elegant, straightforward, simple in its definition. That is Roe v. Wade.

There are now those who want to come along and change it and make it complex, indecipherable, benefiting maybe one person one way, adding to the detriment of another person another way, so that we are right back where we were before Roe v. Wade.

So I believe very strongly that we need to express ourselves on this sense-of-the-Senate resolution. That is why I will be asking for a rollcall vote at the appropriate time because it is going to be important for us to send a message on how important it is to preserve a woman's fundamental right to choose under Roe v. Wade.

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

Mr. HARKIN. I am delighted to yield for a question.

Mr. DURBIN. I want to make sure it is clear, for those who may be following this debate, that the underlying bill is the Santorum bill, which would ban a particular procedure at any point in the stage of pregnancy.

Mr. HARKIN. Right.

Mr. DURBIN. This type of approach has been stricken, I believe, in 19 different States as unconstitutional.

I offered a substitute which related strictly to late-term abortions, those occurring after viability, after a fetus could survive, and said that we would only allow an abortion in an emergency circumstance where the life of the mother was at stake or the situation where continuing the pregnancy ran the risk of grievous physical injury to the mother. I believe, of course, the Court will, if it comes to that, ultimately decide what I have offered, being postviability, is consistent with Roe v. Wade which drew that line. Before that fetus is viable and can survive outside the womb, the woman has certain rights. When the viability occurs, then those rights change, according to Roe v. Wade.

To make sure I understand, the Senator from Iowa is offering an amendment that is not antagonistic to my amendment but, rather, wants to put the Senate on record on the most basic question about Roe v. Wade as to whether or not the Senate supports it.

My question to the Senator is this: Is the Senator saying in his amendment, in the conclusion of the amendment, Roe v. Wade was an appropriate decision and secures an important constitutional right, and such decision should not be overturned—that is the conclusion of his amendment—is he saying that if we are to keep abortion legal in this country and safe under Roe v. Wade, we vote for his amendment and those who believe abortion should be outlawed or prohibited or illegal would vote against his amendment? Is that the choice?

Mr. HARKIN. The Senator from Illinois has stated it elegantly, very simply and straightforward. That is the essence of the amendment, and the Senator is correct. Voting on the amendment, which I offered, a vote in favor of my amendment would be a vote to uphold Roe v. Wade and a woman's right to choose. A vote against it would be a vote to overturn Roe v. Wade and to take away a woman's right to choose.

The amendment I have offered would be consistent with the amendment offered by the Senator from Illinois.

Mr. DURBIN. I thank the Senator from Iowa.

A further question to the Senator from Iowa, if he will yield. The Senator is from a neighboring State. There are many parts of Iowa that look similar to my State, particularly in downstate Illinois. On this controversial issue—there are those who have heartfelt strong feelings against abortion, Roe v. Wade; those who have heartfelt strong feelings on the other side in support of a woman's right to choose and Roe v. Wade—I have found the vast majority of people I meet somewhere in between. It is my impression most people in America have concluded abortion should be safe and legal, but it should have some restrictions. I ask the Senator from Iowa, has the Senator from Iowa had that same experience in his State of Iowa?

Mr. HARKIN. I answer the Senator affirmatively. I have had that same experience, yes.

Mr. DURBIN. If I might further ask the Senator from Iowa a question, what he is saying is this vote on the Harkin amendment tries to answer the first and most basic question: Should abortion procedures in America remain safe and legal, consistent with Roe v. Wade, should we acknowledge a woman's right of privacy and her right to choose with her physician and her family and her conscience as to the future of her pregnancy within the confines of Roe v. Wade? That is the bottom line, is it not, of his amendment?

Mr. HARKIN. The Senator is absolutely correct.

Mr. DURBIN. I say to the Senator, in closing, I think this is an important vote. I think we have walked around this issue in 15 different directions in the time I have served on Capitol Hill. I commend the Senator from Iowa for offering this amendment. I think it gets to the heart of the question as to those who would basically outlaw abortion in America and those who believe Roe v. Wade should be continued.

Mr. HARKIN. I thank my colleague and friend from Illinois for enlightening this issue and for clearly drawing what this amendment is all about.

Again, a vote in favor of the amendment which I have offered states we will support Roe v. Wade, that Roe v. Wade should be the law, that a woman's right to choose should be kept under the provisions of Roe v. Wade, as further elaborated in the Casey case. A vote against my amendment would say you would be in favor of overturning Roe v. Wade and taking away a woman's fundamental right to choose.

I agree with the Senator from Illinois.

In closing my remarks, knowing others want to speak, the Roe decision recognized the right of women to make their own decisions about their reproductive health. The decision is a profoundly private, life-altering decision. As the Roe Court understood, without the right to make autonomous decisions about pregnancy, a woman could not participate freely and equally in our society.

I think there are some things we ought to be doing to prevent unintended pregnancies and reduce abortions. We could, for example, increase funding for family planning. Every time we try to do that, there are those who are opposed to increasing funding for family planning. We could mandate insurance coverage for contraception. That could help. But, no, there are those who say we shouldn't do that either. We could have more support for contraception research. There are those who say, no, we shouldn't do that either. And those who are opposed, by and large, to increasing funding for family planning and insurance coverage for contraception and contraception research are the same ones who want to overturn Roe v. Wade or take

away a woman's right to have a late-term abortion in the case of grievous health or life-threatening situations.

A little bit off the subject of Roe v. Wade, but which I think is particularly important to point out, is that Saturday, October 23, 3 days from today, will mark the 1-year anniversary of the assassination of Dr. Barnett Slepian, who was murdered in his home in Amherst, NY, 1 year ago this Saturday. As most are aware, there have been five sniper attacks on U.S. and Canadian physicians who perform abortions since 1994. Each of these attacks has occurred on or close to Canada's Remembrance Day, November 11.

All of the victims in these attacks were shot in their homes by a hidden sniper who used a long-range rifle. Dr. Slepian tragically was killed. Three other physicians were seriously wounded in these attacks.

I am reading a letter sent to the majority leader, Senator LOTT, dated October 18, signed by the executive director of the National Abortion Federation, the president of Planned Parenthood Federation of America, the executive director of the American Medical Women's Association, the executive director of Medical Students for Choice, the president and CEO of the Association of Reproductive Health Professionals, and the executive director of Physicians for Reproductive Choice and Health. All of these signed the letter to Senator LOTT spelling out what I said. The letter goes on:

Federal law enforcement officials are urging all women's health care providers, regardless of their geographic location, to be on a high state of alert and to take appropriate protective precautions during the next several weeks. Security directives have been issued to all physicians who perform abortions for clinics or in their private practices, and to all individuals who have been prominent on the abortion issue.

Senator Lott, on behalf of our physician members, and in the interest of the public safety of the citizens of the US and Canada, we urge you to reconsider the scheduling of a floor debate on S–1692 at this time. As you are aware, each time this legislation has been considered, extremely explicit, emotional and impassioned debate has been aroused.

We have grave fears that the movement of this bill during this particularly dangerous period has the potential to inflame anti-abortion violence that might result in tragic consequences.

We sincerely hope that you will take the threats of this October-November period as seriously as we do, and that you will use your considerable influence to ensure that the Senate does not inadvertently play into the hands of extremists who might well be inspired to violence during this time. We urge you to halt the movement of S. 1692. Please work with us to ensure that the senseless acts of violence against U.S. citizens are not repeated in 1999.

I ask unanimous consent that the full text of this letter be printed in the RECORD.

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

OCTOBER 18, 1999.

Hon. TRENT LOTT,
United States Senate,
Washington, DC.

DEAR SENATOR LOTT: Saturday, October 23, will mark the one-year anniversary of the assassination of Dr. Barnett Slepian, who was murdered in his home in Amherst, New York. As you are undoubtedly aware, there have been five sniper attacks on U.S. and Canadian physicians who perform abortions since 1994. Each of these attacks has occurred on or close to Canada's Remembrance Day, November 11. All of the victims in these attacks were shot in their homes by a hidden sniper who used a long-range rifle. Dr. Slepian was killed. Three other physicians were seriously wounded in these attacks.

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VICKI SAPORTA,
Executive Director, National Abortion Federation.
EILEEN MCGRATH, JD, CAE,
Executive Director, American Medical Women's Association.
WAYNE SHIELDS,
President and CEO, Association of Reproductive Health Professionals.
GLORIA FELDT,
President, Planned Parenthood Federation of America.
PATRICIA ANDERSON,
Executive Director, Medical Students for Choice.
JODI MAGEE,
Execuvite Director, Physicians for Reproductive Choice and Health.

Mr. HARKIN. Mr. President, there is one other thing I want to mention. I am going to read a letter because this person is a personal friend of mine, someone I have gotten to know over the years. I believe the Senator from California has a picture of Kim Koster. I ask a page to bring me the picture back here, if I may have that.

This photo is Kim Koster and her husband, Dr. Barrett Koster. They are both friends of mine, whom I have known for I guess about 3 or 4 years. I am going to read her letter in its entirety:

My name is Kim Koster. My husband, Dr. Barrett Koster, and I have been married for more than seven years. We have known since before we were married that we wanted very much to have children.

To our joy, in November of 1996 we discovered that we were expecting. The news was a thrill, to us and to our family and friends. We were showered with gifts and hand-me-downs, new toys, books and love. Barry's family gave us a 19th-century cradle which had rocked his family to sleep since before his grandmother Sophie was born more than 100 years ago.

Our first ultrasound was scheduled a little more than four months into the pregnancy. On Thursday, February 20, we saw our baby and spent five short minutes rejoicing in the new life, and then the blow fell. The radiologist informed us that he had ''significant concerns'' about the size of the baby's head. His diagnosis was the fatal neural tube defect known as anencephaly, or the lack of a brain. After four months of excitement and joy, our world came crashing down around us.

Once the diagnosis was made, there was no further medical treatment available for me in our hometown, and we were referred to the University of Iowa Hospitals and Clinics in Iowa City. Our first OB appointment there was set for Monday morning. My husband and I spent that long weekend, the longest of our lives, doing research on anencephaly, talking with family and friends, and hearing personal stories about the fate of anencephalic babies.

In Iowa City, a genetics OB specialist examined a new ultrasound and immediately confirmed the diagnosis. An alpha-feto-protein blood test and amniotic fluid sample only drove the truth harder home. Our fetus had only a rudimentary brain. There were blood vessels, which enabled the heart to beat, and ganglion, which enabled basic motor function. There was no cerebellum and no cerebral cortext. There was no skull above the eyes.

I had been preparing for pregnancy for more than a year with diet, exercise and prenatal vitamins, including the dose of folic recommended to prevent neural tube defects. Yet we still lost our child to one of the most severe and lethal birth defects known. Our baby had no brain—would never hear the Mozart and Bach I played for it every day on our great-grandmother's piano, would never look up into our eyes or snuggle close to our hearts, would never even have an awareness of its own life.

On Tuesday, February 25, 1997, my husband and I chose to end my pregnancy with a common abortion procedure known as ''D and E.'' As difficult as it was, I literally thank God that I had that option. As long as there are families who face the devastating diagnosis we received, abortions must remain a safe and legal alternative.

In 1998, Barry and I discovered to our delight that I was pregnant again. Although we were overjoyed, our happiness was tempered by the knowledge that we had a 1-in-25 chance of a second anencephalic pregnancy. This time, we asked our loved ones to hold off on the baby gifts, we played no Bach, and every week was a mix of excitement and unavoidable worry. And on July 17, 1998, an ultrasound revealed the worst. We had a second anencephalic pregnancy—a second daughter lost to this lethal birth defect.

Fortunately for my medical care, the so-called ''partial birth abortion'' bans have been vetoed by President Clinton, and my doctors were able to provide me with a safe, compassionate procedure that brought this second tragic pregnancy to an end. And thanks to those doctors and their ability to give me that care, my recovery has been rapid—enabling Barry and I to plan to try again.

But if this bill becomes law, we would not be able to do so. For the chances of our having a third anencephalic pregnancy are all the way up to 1 in 4, and this bill would ban any procedures that would help us. It would force me to carry another doomed child through all nine months. That idea is far more horrifying than all the unreal anti-choice rhetoric that can be manufactured, for the reality is that this is a terrible law, a grievous interference between doctor and patient, and would only compound the tragedy and heartache faced by families like us.

Please protect the health of women and families like mine, and reject S. 1692.

There is nothing one can add to that. S. 1692 would say that the Kim Kosters in families across the country that we legislators—I am not a doctor, I am not a theologian, I am not a psychiatrist or a psychologist; but the bill proposed by the Senator from Pennsylvania would say that we know more than all of them, that we stand in the judgment seat of the Mrs. Kosters: We are going to decide for you.

Attorneys? I am an attorney. Maybe some of us are teachers, I don't know. Maybe some are social workers or business people. There are a variety of different people here on the floor of the Senate. But somehow we get to tell you: Mrs. Koster, you and your husband have no right to decide. We are going to do it for you. Our decision is, no matter what—even under these terrible circumstances—you are going to have to carry that to term and bear the consequences of that. Maybe there are some in this body who want to sit in that kind of judgment seat. Count me out. Count me out. I leave these decisions to Kim and her husband, to her doctor, to her own faith, to her own religion to make those very profound, anxiety-producing, soul-wrenching decisions. That is why I have fought for this amendment—to state loudly and clearly that Roe v. Wade gave women that right and we don't want it overturned.

I yield the floor.

Mrs. BOXER. Mr. President, will my friend hold the floor for a moment so I may ask him a question?

The PRESIDING OFFICER. Does the Senator from Iowa yield the floor?

Mr. HARKIN. I yield for a question. I didn't realize. I apologize.

Mrs. BOXER. Thank you very much.

I say to my friend that I thank him for sharing the story on the floor of the Senate. He has the photo of Kim and her husband up there. He read the story into the RECORD. I think it is very appropriate that the Senator from Iowa do so because this is a couple whom he knows.

I am, in a way, happy that my friend was not on the floor when the Senator from Pennsylvania used some very tough words in talking about this procedure and calling doctors who perform it executioners.

I say to my friend, in light of the poignant story he read to us, when he thinks of the doctor who helped this couple through a traumatic, horrific experience twice, what are his feelings about the doctor who performed that particular procedure?

Mr. HARKIN. I am sorry if someone referred to them as executioners. That, I think, is totally inappropriate and inflammatory and could lead to tragic consequences in our country.

I don't know the doctors who helped Kim Koster. But from talking to her, they were sensitive. They are doctors who wanted Kim and her husband to know every facet of what was happening and wanted them to make their own decision. They are doctors who have a lot of compassion and professionalism and, under the legal framework, were able to help this couple get through a very bad time and enabled them to move on with their lives and to plan on another child.

If that had not been there—if we had taken Roe v. Wade away or if we had adopted S. 1692—I don't know what would have happened to Kim Koster and her husband or whether they would be here today planning to try again to raise a family.

I say to my colleague from California that I believe Kim Koster is an extremely brave individual. In fact, I would say to anyone who wants to talk to her about what happened to her, she is out in the reception room right now. She would be glad to tell them why it is important to not only adhere to Roe v. Wade but to defeat S. 1692 that would have taken away her reproductive rights and under very tragic circumstances.

Mrs. BOXER. Mr. President, I ask my friend a final question. Will my friend be willing to read one more time, if he can find it, the statement that was made by Justices O'Connor, Kennedy, and Souter, all Justices appointed under a Republican President, when they made their statement on Casey because I really hope colleagues will listen to this. I think if they listen to it, they will vote for my friend's amendment to reaffirm Roe v. Wade and will also be against the Santorum underlying bill.

If my friend would repeat that, I would greatly appreciate it.

Mr. HARKIN. I thank my friend from California because I believe this statement by Justices O'Connor, Kennedy, and Souter is really aimed at us. They are aiming it at legislators who somehow sit in judgment—legislators who would put themselves in the position of defining for women what their reproductive rights are. Here is the quote:

At the heart of liberty—

At the heart of liberty—

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

That is the quote. I believe it is directed at us.

Mr. President, I don't know how long people want to talk on this. I know the day is getting late. I ask unanimous consent that we have 30 minutes equally divided before we have an up-or-down vote on this amendment.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HARKIN. Mr. President, I ask unanimous consent that we have 60 minutes equally divided before a vote.

Mr. SANTORUM. I will be happy to work out—reserving the right to object—a time arrangement once people on our side want to proceed. But at this point I have to object. We would be happy to work something out. Right now, I just can't do that.

Mr. HARKIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Thank you, Mr. President.

I am not going to debate the Harkin amendment. The Harkin amendment has nothing to do with the bill that is before us. The bill that is before us, as I have said over and over again, and I will say it again, is not about Roe v. Wade. One of the reasons we believe this bill is getting bipartisan support, as well as supporters on both sides of the abortion issue, is that it is outside the realm of Roe v. Wade.

I remind everyone that this is a baby in the process of being born. This is a baby who is almost outside of the mother except for 3 inches.

Again, I repeat that in Roe v. Wade, the original decision, which the Senator from Iowa was referring to, the Court let stand a Texas law that said you cannot kill a baby in the process of being born.

Again, we can have a vote on this. But we might as well be having a vote or another vote on the chemical weapons treaty. It is as related. This is not the subject. It is a completely different subject. If they want to have a vote on it, obviously the Senator has the right to offer an amendment. That is within the rights here in the Senate, and I certainly will stand by his right to offer that.

But to suggest somehow that the underlying bill is an assault on Roe v. Wade is again proof positive that when it comes to the real factual debate on what this procedure does, the response is: Well, let's change the subject.

I don't want to change the subject. Let's focus in on the facts. The facts are not anecdotes from people who aren't physicians about what happened to them. What happened in these cases you see and the pictures you see—I always believe, if you argue the facts, argue the facts; if you can't argue the facts, argue the law; if you can't argue the law, then appeal to the sentimentality or emotion of the situation.

That is what this is. These are horrible situations, tragic situations, of pregnancies that have gone awry late in pregnancy. I sympathize with these people more than you know, to have something such as this happen for a child that you want desperately. I know the difficult decisions they have to make. I know what doctors tell you and how they influence your decision.

But the fact of the matter is, we can't in a legislative forum dealing with such an important issue deal with emotional stories as powerful as they are unless we look at the facts underlying those stories. The facts underlying those stories are very clear.

I ask unanimous consent to have printed in the RECORD letters from the Physicians' Ad Hoc Coalition for Truth—fact—about two cases discussed by the Senator from Illinois where they talk about how this was the only option available, or this saved our life, or our future fertility, et cetera. Again, letters from this Physicians' Ad Hoc Coalition for Truth. One is from Pamela Smith, a director of medical education of the Department of Obstetrics and Gynecology at Mount Sinai Medical Center in Chicago, about the case of Vicki Stella and the case of Coreen Costello, another letter from the Physicians' Ad Hoc Coalition for Truth.

I ask unanimous consent to have those printed in the RECORD.

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

PHYSICIANS' AD HOC
COALITION FOR TRUTH,
Alexandria, VA, September 23, 1996.

DEAR MEMBER OF CONGRESS: My name is Dr. Pamela E. Smith. I am a founding member of PHACT (Physicians' Ad-hoc Coalition for Truth). This coalition of over three hundred medical providers nationwide (which is open to everyone, irrespective of their political stance on abortion) was specifically formed to educate the public, as well as those involved in government, in regards to disseminating medical facts as they relate to the Partial-Birth Abortion procedure.

In this regard, it has come to my attention that an individual (Ms. Vicki Stella, a diabetic) who underwent this procedure, who is not medically trained, has appeared on television and in Roll Call proclaiming that it was necessary for her to have this particular form of abortion to enable her to bear children in the future. In response to these claims I would invite you to note the following:

1. Although Ms. Stella proclaims this procedure was the only thing that could be done to preserve her fertility,the fact of the matter is that the standard of care that is used by medical personnel to terminate a pregnancy in its later stages does not include partial-birth abortion. Cesarean section, inducing labor with pitocin or protoglandins, or (if the baby has excess fluid in the head as I believe was the case with Ms. Stella) draining the fluid from the baby's head to allow a normal delivery are all techniques taught and used by obstetrical providers throughout this country. These are techniques for which we have safety statistics in regards to their impact on the health of both the woman and the child. In contrast, there are no safety statistics on partial-birth abortion, no reference of this technique on the national library of medicine database, and no long term studies published that prove it does not negatively affect a woman's capability of successfully carrying a pregnancy to term in the future. Ms. Stella may have been told this procedure was necessary and safe, but she was sorely misinformed.

2. Diabetes is a chronic medical condition that tends to get worse over time and that predisposes individuals to infections that can be harder to treat. If Ms. Stella was advised to have an abortion most likely this was secondary to the fact that her child was diagnosed with conditions that were incompatible with life. The fact that Ms. Stella is a diabetic, coupled with the fact that diabetics are prone to infection and the partial-birth abortion procedure requires manipulating a normally contaminated vagina over a course of three days (a technique that invites infection) medically I would contend of all the abortion techniques currently available to her this was the worse one that could have been recommended for her. The others are quicker, cheaper and do not place a diabetic at such extreme risks for life-threatening infections.

3. Partial-birth abortion is, in fact, a public health hazard in regards to women's health in that one employs techniques that have been demonstrated in the scientific literature to place women at increased risks for uterine rupture, infection, hemorrhage, inability to carry pregnancies to term in the future and material death. Such risks have even been acknowledged by abortion providers such as Dr. Warren Hern.

4. Dr. C. Everett Koop, the former Surgeon General, recently stated in the AMA News that he believes that people, including the President, have been misled as to ''fact and fiction'' in regards to third trimester pregnancy terminations. He said, and I quote, ''in no way can I twist my mind to see that the late term abortion described . . . is a medical necessity for the mother . . . I am opposed to partial-birth abortions.'' He later went on to describe a baby that he operated on who had some of the anomalies that babies of women who have partial-birth abortions had. His particular patient, however, went on to become the head nurse in his intensive care unit years later!

I realize that abortion continues to be an extremely divisive issue in our society. However, when considering public policy on such a matter that indeed has medical dimensions, it is of the utmost importance that decisions are based on facts as well as emotions and feelings. Banning this dangerous technique will not infringe on a woman's ability to obtain an abortion in the early stage of pregnancy or if a pregnancy truly needs to be ended to preserve the life or health of the mother. What a ban will do is insure that women will not have their lives jeopardized when they seek an abortion procedure.

Thank you for your time and consideration.

Sincerely,

PAMELA SMITH, M.D.,
Director of Medical Education, Department of Obstetrics and Gynecology, Mt. Sinai Medical Center, Chicago, IL, Member, Association of Professors of Obstetrics and Gynecology.

THE CASE OF COREEN COSTELLO—PARTIAL-BIRTH ABORTION WAS NOT A MEDICAL NECESSITY FOR THE MOST VISIBLE ''PERSONAL CASE'' PROPONENT OF PROCEDURE

Coreen Costello is one of five women who appeared with President Clinton when he vetoed the Partial-Birth Abortion Ban Act (4/10/96). She has probably been the most active and the most visible of those women who have chosen to share with the public the very tragic circumstances of their pregnancies which, they say, made the partial-birth abortion procedure their only medical option to protect their health and future fertility.

But based on what Ms. Costello has publicly said so far, her abortion was not, in fact, medically necessary.

In addition to appearing with the President at the veto ceremony, Ms. Costello has twice recounted her story in testimony before both the House and Senate; the New York Times published an op-ed by Ms. Costello based on this testimony; she was featured in a full page ad in the Washington Post sponsored by several abortion advocacy groups; and, most recently (7/9/96) she has recounted her story for a ''Dear Colleague'' letter being circulated to House members by Rep. Peter Deutsch (FL).

Unless she were to decide otherwise, Ms. Costello's full medical records remain, of course, unavailable to the public, being a matter between her and her doctors. However, Ms. Costello has voluntarily chosen to share significant parts of her very tragic story with the general public and in very highly visible venues. Based on what Ms. Costello has revealed of the medical history—of her own record and for the stated purpose of defeating the Partial-Birth Abortion Ban Act—doctors with PHACT can only conclude that Ms. Costello and others who have publicly acknowledged undergoing this procedure ''are honest women who were sadly misinformed and whose decision to have a partial-birth abortion was based on a great deal of misinformation'' (Dr. Joseph DeCook, Ob/Gyn, PHACT Congressional Briefing, 7/4/96). Ms. Costello's experience does not change the reality that a partial birth abortion is never medically indicated—in fact, there are available several alternative, standard medical procedures to treat women confronting unfortunate situations like Ms. Costello had to face.

The following analysis is based on Ms. Costello's public statements regarding events leading up to her abortion performed by the late Dr. James McMahon. This analysis was done by Dr. Curtis Cook, a perinatologist with the Michigan State College of Human Medicine and member of PHACT.

''Ms. Costello's child suffered from at least two conditions: 'polyhydramnios secondary to abnormal fetal swallowing,' and 'hydrocephalus'. In the first, the child could not swallow the amniotic fluid, and an excess of the fluid therefore collected in the mother's uterus. The second condition, hydrocephalus, is one that causes an excessive amount of fluid to accumulate in the fetal head. Because of the swallowing defect, the child's lungs were not properly stimulated, and an underdevelopment of the lungs would likely be the cause of death if abortion had not intervened. The child had no significant chance of survival, but also would not likely die as soon as the umbilical cord was cut.

The usual treatment for removing the large amount of fluid in the uterus is a procedure called amniocentesis. The usual treatment for draining excess fluid from the fetal head is a procedure called cephalocentesis. In both cases the excess fluid is drained by using a thin needle that can be placed inside the womb through the abdomen (''transabdominally''—the preferred route) or through the vagina (''transvaginally.'') The transvaginal approach however, as performed by Dr. McMahon on Ms. Costello, puts the woman at an increased risk of infection because of the non-sterile environment of the vagina. Dr. McMahon used this approach most likely because he had no significant expertise in obstetrics and gynecology. In other words, he may not have been able to do it well

transabdominally—the standard method used by ob/gyns—because that takes a degree of expertise he did not possess. After the fluid has been drained, and the head decreased in size, labor would be induced and attempts made to deliver the child vaginally.

Ms. Costello's statement that she was unable to have a vaginal delivery, or, as she called it, 'natural birth or an induced labor,' is contradicted by the fact that she did indeed have a vaginal delivery, conducted by Dr. McMahon. What Ms. Costello had was a breech vaginal delivery for purposes of aborting the child, however, as opposed to a vaginal delivery intended to result in a live birth. A cesarean section in this case would not be medically indicated—not because of any inherent danger—but because the baby could be safely delivered vaginally.''

Given these medical realities, the partial-birth abortion procedure can in no way be considered the standard, medically necessary or appropriate procedure appropriate to address the medical complications described by Ms. Costello or any of the other women who were tragically misled into believing they had no other options.''

Mr. SANTORUM. They clearly state this was not medically necessary; this, in fact, was not in the best interests of the patient in this case; and this was, in fact, not good medicine.

Did it have a good result? Yes, it did in the sense the health of the women was not jeopardized. That does not mean there is a good result. It was the best practice. A lot of things are done that turn out OK that may not have been the best thing to do. I think that is what we are saying. More importantly, it is not medically necessary. In fact, it is medically more dangerous.

A group that said it ''may be'' necessary, the American College of Obstetricians and Gynecologists, 3 years ago said: Clearly, it is not the only option. The proponents of partial-birth abortion are saying it is medically necessary. They want to keep this option open. If they don't, it is a violation of Roe v. Wade.

They stand behind anecdotes. In some cases, including the Viki Wilson case that Senator DURBIN brought up, it is clear from her testimony she did not have a partial-birth abortion. She says in her testimony the baby was dead inside of her womb and then the baby was delivered. If the baby dies inside the womb, it is outside the definition of the bill. The definition of the bill says a living baby is born. The baby was not living.

I don't want to pick apart the very tragic stories and make a very difficult situation even more difficult for these people because I understand the pain they have gone through. Our job is to not be clouded by personal anguish and tragic circumstances. Ours is to look at the underlying facts of what happened and what can happen in the future.

Again, we have over 600 obstetricians and gynecologists, specialists in perinatology, who say this is never medically necessary. The AMA says it is never medically necessary and is bad medicine. It is not a peer review procedure. It is not in the medical textbook. It is not taught in medical schools. It is not performed in hospitals. It is only performed at abortion clinics. Again, this is a rogue procedure.

They present case after case, as if this is some wonderful creation of medical science by some genius in obstetrics. I remind Members the person who created this procedure is not an obstetrician, much less a specialist in perinatology or difficult pregnancies. It is a family practitioner who only does abortions.

Again, I stress over and over again what seems to be the compassionate argument is a smokescreen. It is a smokescreen. It is not true. There is no compassion in allowing a procedure that is dangerous to the health of the woman to be continued any more than it is compassionate to prescribe any kind of medical treatment that is inappropriate. We have an overwhelming body of evidence saying it is bad medicine; it is inappropriate.

On the other side we have two things: One, stories, stories that turned out OK. In other words, the procedure was used—not in all cases; sometimes some of the people brought up in stories actually didn't have the procedure, and even those who did may have resulted in a good outcome—but it wasn't the proper course according to the overwhelming body of evidence.

The only thing counter, as far as factual comments by physicians, is the American College of Obstetricians and Gynecologists. The pillar upon which they rest the health-of-the-mother exception, the select panel they put together says they:

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

It is not the only option. It is not the only option.

From the Wisconsin case that upheld the Wisconsin statute, quoting the judges:

Haskell, who invented the procedure, admitted that the D&X procedure is never medically necessary to save the life or preserve the health of the woman.

We have the person who invented it saying it is not medically necessary.

ACOG goes further and talks about whether it is preferable in some cases. Here is what they say:

An intact D&X [partial-birth abortion] 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.

We have asked them to identify one of these circumstances. Give an example. They cannot say this may be the best thing for the health and life of the mother, may be preferable, and yet give no situation which can be reviewed by the medical community. That is what we have to base the judgment on. The medical community is saying it is necessary to protect the health of the mother. Yet they give no example, give no example as to when this, in fact, would be preferable.

We have a thorough smokescreen, anecdotes with many of the cases having nothing to do with partial-birth abortions; those that did, argued by hundreds of physicians as being bad practice of medicine, were an improper course of conduct. Then we have the only scientific group that says it is never medically necessary, never the only option, only that it ''may be'' the best thing. Yet they give no example and after repeated inquiry are still giving no examples.

Again, we come back to the health question. There is a dearth of evidence to support the position.

I am hopeful the Senator from Iowa can debate his amendment, saying somehow this is important vis-a-vis Roe v. Wade. I argue the opposite. This legislation has nothing to do with Roe v. Wade. I think when we are looking at specific amendments to deal with that issue, the constitutional issue of vagueness—again, that is not necessarily a Roe v. Wade issue, although it gets into the issue of undue burden. From my point of view, if we can tailor that definition narrowly to make sure we are talking about partial-birth abortion, it leaves open other methods of abortion to be used. It gets to the counterargument some have suggested, that all we are doing is trying to outlaw abortion, trying to restrict a woman's right.

No. All we are doing is, for gosh sakes, drawing a line about who is protected. When a baby is 3 inches from being completely born, that is too close. That is too close. We are going to get into a whole lot of issues when we start drawing lines. In fact, we have gotten into a lot of issues with respect to drawing the line. Now we are talking about assisted suicide. We talk about quality of life instead of life itself.

As the Senator from California said, we want everyone to be wanted. What if everyone isn't wanted? Is that license to get rid of them? It certainly is if you are in the womb. Now we are suggesting it certainly is if you are just outside the womb; it certainly is if you are within 3 inches of being born. If you are not wanted, too bad. If we draw the line that close, it is not a very long way to go to get where our new theologian at Princeton University, Dr. Singer, is coming from. He suggested that it is, in fact, the moral thing to do; that once the baby is born, if we don't like it, to kill it.

One might suggest this is outrageous; this could never happen in America. This is a professor at Princeton, whose works, unfortunately, have been published in the popular press and hundreds of thousands of copies of this radical—I would consider it radical but on this floor maybe it is not radical. Maybe killing a baby after it is born, if it is not a healthy baby, is not a radical thing anymore. Certainly killing a

baby who is 3 inches from being born is not a radical thing anymore, so I don't know where 3 inches—maybe that does not make any difference. If you do not like what you have, then you can sort of exchange it.

But that is where we are. Someone suggests: Senator, this is outrageous. How can you make the comment that once a baby is born you can kill it?

I am not making that argument. But Dr. Singer is, and there are those who follow him. There will be judges who follow him. There will be judges who say the mother was distraught and she killed her baby, but it is sort of normal. If the baby was not perfect, it is probably better—we are probably all better off.

But what is the rationale given for partial-birth abortion, as extreme as that sounds, that Dr. Singer is proposing? What is the rationale for partial-birth abortion? Why do we need to keep it legal? Because we have pregnancies that have gone awry and these babies, they are not perfect. They might not live long. They may have cleft palate—in fact, yes, many partial-birth abortions were performed because the babies had cleft palate and mom and dad just didn't want the baby because it was not perfect.

So we have gotten to the point where the defenders of partial-birth abortion are defending it on the basis that things go bad in pregnancy and these children just do not deserve our protection because they are not normal like you and me. They should be given less rights. Because of their imperfections, they should be allowed—why would you bring a baby into this world who is going to die? Kill it first before it has a chance to die. That is the argument. It sounds rough. Let's cut to the chase. That is exactly what they are saying.

All we are suggesting is, first off, we do not stop you from doing that. This bill does not stop anyone who wants to have a late-term abortion from having it. If you want to have a late-term abortion, you can have a late-term abortion if this bill we propose passes. All we say is, don't have the baby outside the mother, don't have the baby 3 inches away from the protection of the Constitution, and then brutally execute the baby. That is just too close. That creates this nebulous area that the Dr. Singers of this world will gladly fill in. Because if we say 3 inches, then why not 3 inches later? What is the big deal? If the baby is not wanted, the baby is not wanted.

Many listening to this will say that is a ridiculous argument. There is no such slippery slope. Although, by the way, the people who oppose these often themselves provide a slippery slope argument. Certainly they do here. They say, if you restrict this right in abortion, it is a slippery slope; we are going to get rid of Roe v. Wade completely. That is why we have this amendment, to get at the Roe v. Wade amendment, to make sure we are not providing the slippery slope. Fine. Let's have a Roe v. Wade amendment to show we don't have a slippery slope. No problem. Let's have a vote.

But allowing a baby who is almost born to be killed, that is not a slippery slope? The Senator from California—we were talking about what if the foot or the leg were the part not born, would it be OK to kill the baby? I have the transcript, by the way. I asked that question. I will read it:

What you are suggesting—

This is me talking.

What you are suggesting is if the baby's toe is inside the mother you can, in fact, kill that baby.

Mrs. Boxer. Absolutely not.

So she said if the toe or foot is inside the baby, you can't kill the baby. But if the head is, you can. No slippery slope there, is there? No problems with a bright line there, is there?

We are headed down a very dangerous path if we start differentiating between what body part is outside the mother and what is inside the mother, as to whether an abortion is legal or not. The reason we have trouble differentiating is because this is not about abortion. This is about killing a baby. It is in the process of being born that under Roe v. Wade was protected. The Texas law was not stricken under Roe v. Wade that said you couldn't kill a baby in the process of being born.

Under Roe v. Wade, the seminal decision of the right of privacy, even that Court understood that once the baby is in the process of being born you should not be able to kill it. That is what we are saying. We are not restricting the right of Roe v. Wade. Roe v. Wade ruled on this by not striking that law down.

So fine, we are going to have a vote on Roe v. Wade. Fine, have a vote on Roe v. Wade. But this is not about Roe v. Wade. This is about infanticide. A lot of folks want to try to change the subject. They want to talk about these difficult cases.

Again, there is no one in this Chamber who sympathizes as much with these men and women, mothers and fathers, who dealt with a pregnancy gone awry. It is incredibly painful to have that hit your family. I hesitate to talk about it because I know how painful it is to revisit them. But they have brought their situation into the public square to prove a point. The problem is, it does not prove the point.

Again and again there is no medical reason. It is never medically necessary to do this procedure. So I hope we can get to the facts, that we can stay away from anecdotes that are inapplicable or not relevant; and we can get to, hopefully, from the other side, a factual discussion as to when this is medically necessary. Once I would like to see a peer-reviewed document where everyone examined the case and someone will say: You know what, there is a situation where this is medically necessary, where no other option is as safe or safer.

To date, that has not occurred. Let me underline that. To date, no such evidence has ever been put before the Senate.

Yet there are people who will stand here and say, ''We need it, we need it to protect the health of the mother,'' when there is not a shred of evidence, not a shred of evidence before the Senate, these stories aside. There is not a shred of evidence that suggests these stories, or all the other instances that have been brought up, were the most safe or there were not things as safe that could be used in place of a procedure that is infanticide. What we are hoping is we can get to that discussion.

I understand the process now; we want to play some games on Roe v. Wade. But that is not the issue before us. I cannot reiterate that enough. The issue before us is should this procedure remain legal. And it should be overturned. It should not remain legal.

It does not surprise me we are seeing smokescreens. This is the Roe v. Wade smokescreen. We have the anecdote smokescreen. We can get the charts up about the previous attempts by supporters of this procedure. They have tried case after case to misinform the Senate. The advocates of this legislation, the abortion rights groups, have deliberately—and this is according to their own people now who have come clean—deliberately misled the Congress, deliberately lied, as Ron Fitzsimmons, who is a lobbyist for a great number, if not all, of the abortion clinics in America, said that he lied through his teeth and that the industry lied through their teeth.

Now after lie after lie—and I will go through all the lies—after lie after lie, they now are going to come up with new stories and say: Well, no, believe us now; OK, yes, we may have lied to you before, but believe us, health is really an issue.

There is not one shred of substantive evidence to support that claim—not one shred of substantive evidence. And yet, a group of people that has come to the Congress in opposition to this bill, they have lied in at least six cases, and, after those, we are now supposed to believe them when they have no evidence to support what they are asserting.

What are they? The National Abortion Federation called illustrations of the partial-birth abortion procedure ''highly imaginative and artistically designed, but with little relationship to the truth or to medicine.''

You heard the Senator from California talk about the cartoons that showed how a partial-birth abortion is done, and proponents of the procedure argued early on: These are cartoons; they are not factual; they have nothing to do with how the procedure actually works, until Dr. Haskell publicly described this procedure at the National Abortion Federation meeting on September 1992. Dr. Haskell told the AMA News the drawings depicting partial-birth abortion were accurate ''from a technical point of view.'' Strike 1.

Argument 1: This does not occur; this thing is not factually correct; this is

not how partial-birth abortions are done; you are wrong. Strike 1.

By the way, they went even farther than that. Many of them argued this did not exist. First they said this is just a cartoon, these things do not happen at all, much less the drawings, but Dr. Haskell straightened them out.

Believe it or not, people actually came to committee meetings in the Capitol and suggested the anesthesia that is given to the woman during this procedure ensures the fetus feels no pain; in other words, it passes through and assures us the fetus does not feel any pain during this procedure.

Again, this is Dr. James McMahon, who is one of the originators of this procedure:

> The fetus feels no pain through the entire series of the procedures. This is because the mother is given narcotic analgesia at a dose based upon her weight. The narcotic is passed, via the placenta, directly into the fetal bloodstream. Due to the enormous weight difference, a medical coma is induced in the fetus. There is a neurological fetal demise. There is never a live birth.

That was testimony before Congress under oath. When this happened, the American Society of Anesthesiologists went bananas. Why? Again, having gone through six births, one of the options available to women during childbirth is to receive a narcotic to help with the pain. Women were justifiably very nervous about receiving a narcotic for pain that would kill their baby. One of the pain management procedures during childbirth is, in fact, the giving of a pain killer, a narcotic.

Immediately we got response from them and this letter later on:

> In my medical judgment, it would be necessary in order to achieve neurological demise of the fetus in a partial-birth abortion to anesthetize the mother to such a degree as to place her own health in serious jeopardy.

The community of experts responded saying this is not true; you would have to give so much in the way of narcotics, you could jeopardize the life of the mother, which is certainly something I am sure no one on either side would like to do.

Lie No. 2: The baby does not feel any pain. The fact is that after 20 weeks, babies have developed nervous systems; they feel pain. In fact, some have suggested because their nervous system is, in fact, not in a full developmental state, they feel increased pain as a result of this procedure. As described by Nurse Brenda Shafer when she witnessed a partial-birth abortion, when that scissor was plunged into the base of the skull, when those scissors were rammed into the base of that skull, the baby's arms and legs shot out, similar to if you held a little baby and the baby thought it was going to fall; it would spasm out, and then the baby's arms fell limp and legs fell limp.

Again, in October of 1995, during this period of time after McMahon's testimony, ''the fetus dies of an overdose of anesthesia given to the mother intravenously.''

Again we have Dr. Haskell, who is another one of these abortion providers—Dr. McMahon is one and Dr. Haskell; they are the two who do the most in the country—who says: Let's talk about whether or not the fetus is dead beforehand.

Haskell says: No, it's not. No, it's really not.

That is pretty clear. Again, people fighting this bill are putting information out that is not true. Why? To try to get support for this position.

Fourth: Partial-birth abortion is a rare procedure.

We had this debate the first time. We are in a very difficult situation because we have to rely upon the information of the abortion industry. When Senator SMITH, who is here, argued this debate 4 years ago, he had to deal with a deck that was stacked against him. He did not have the information we have today.

The organizations out there were saying—there were just a couple hundred of these—it was very rare, only done on babies who were sick and mothers whose health was in jeopardy or life was in jeopardy, but this was a very rare procedure.

This is the Alan Guttmacher Institute, Planned Parenthood, National Organization of Women, Zero Population Growth, Population Action International, National Abortion Federation, and a whole list of other organizations that wrote to Congress saying:

> This surgical procedure is used only in rare cases, fewer than 500 per year. It is most often performed in the cases of wanted pregnancies gone tragically wrong, when a family learns late in the pregnancy of severe fetal anomalies or a medical condition that threatens the pregnant woman's life or health.

Lie. What is the truth? We have two sources outside of the industry. By the way, we still do not know the truth. We do not know the truth because the folks who provide us with the statistics on partial-birth abortions are the very organizations that oppose the bill. How would you like to go into a courtroom and argue with a set of facts that is given to you by your opponents? That is what we have to do here right now.

Most of what we have to deal with certainly on this issue—the numbers—we have to take from people who vehemently oppose this bill.

We have one source of independent judgment. Our crack news staff on the Hill of which—let me look up in the news gallery: Gee, nobody is up there. Our crack news staff on the Hill, whom we have challenged time and time again to get the facts, why don't you ask a few abortion clinics how many of these they do. A couple of people have. I know a reporter for the Baltimore Sun did. Do you know what the abortion clinics said in Baltimore? ''None of your business; none of your business. We don't have to tell you.''

Maybe some other crack staff, who really, I am sure, in their heart of hearts, want to get down to the bottom of this because I know they care deeply about this issue, will call around some of their communities and find out what the Bergen County Record did in New Jersey.

What did they find out? That at least 1,500 partial-birth abortions are performed each year, three times the national rate at one clinic in northern New Jersey.

Mr. SMITH of New Hampshire. Would the Senator yield for a question?

Mr. SANTORUM. I am happy to yield to the Senator from New Hampshire.

Mr. SMITH of New Hampshire. I ask the Senator if he is aware, during the time a few years ago when I stood on the floor and debated this issue, as well, that there were a number of people who said this was only happening a few times a year; some said as few as 15 or 20 times a year; some said, well, maybe it happened a couple hundred times a year, that it was the exception rather than the rule; it was usually when there was an anomaly?

Is the Senator also aware, we began to receive testimony from inside the abortion industry itself, which indicated—from those who had performed them—that this, indeed, was not the case, that we found that in about 80 percent of the cases, if not more, the child was perfectly healthy? So the idea that these were performed in only a few cases, when the child was in a so-called anomaly, if you will, is clearly untrue.

I would also ask the Senator from Pennsylvania, is he aware that there is numerous medical testimony, much medical testimony to the effect of how one partially delivers a child, and then restrains the child from exiting the birth canal? And how does that, in fact, help the safety, the health, or even to promote the life of the mother? Is the Senator also aware that on numerous occasions doctors have said, it doesn't?

As a matter of fact, I wondered if the Senator was aware that when President Clinton had several women down at the White House a short time ago after one of these override votes that he is so good at, he also indicated that these were people who had ''needed'' these for their own health. Then we found one particular case of a woman by the name of Claudia Ades, who appeared by telephone on a radio show in which she said during the course of the show: ''This procedure was not performed in order to save my life. This procedure was totally elective. This is considered an elective procedure, as were the procedures of all the other women who were at the White House veto ceremony.''

So I think the Senator would probably agree with me that this was orchestrated and used to promote this terrible procedure which, as the Senator has so eloquently described, is infanticide, is the killing of children.

And to think that somehow you are basically coming to the conclusion that this is OK, based on the part of the child that is outside of the birth

canal. I did not hear whether the Senator pointed this out, but is the Senator aware that if you were to turn the child around, and the head would exit first, that would be illegal under the law? That child could not be killed in this way. Yet 90 percent of the child is still inside the mother's body.

So it is an outrageous procedure. I want to compliment him for his leadership and look forward to joining him a little later on in the debate.

Mr. SANTORUM. I thank the Senator from New Hampshire. The Senator from New Hampshire is someone who deserves a tremendous amount of credit for his courage in coming to the floor 4 years ago, offering this bill, fighting for this, and beginning the battle in the Senate. And he continues to be a stalwart supporter and someone who deserves a lot of credit for the movement that has occurred already.

I will finish my charts, and that is, again, getting back to where this abortion procedure is ''rare.'' Ron Fitzsimmons on ''Nightline,'' in 1997, said that between 3,000 and 5,000 partial-birth abortions could be performed annually. They say they didn't even know because, again, they do not get reports—at least we are told they do not get reports as to how many of these late-term abortions are done in this manner.

The Centers for Disease Control does not track the method of abortion. So we know 1,500 are done in one clinic. And the people at that clinic said they have trained others to do it in New York City. So I hesitate to guess of the thousands upon thousands of living human beings—living human beings—who are brutalized in this fashion, 3 inches away.

As the Senator from New Hampshire just said, if that baby was born head first, even though a smaller portion of the baby's body is out, I think most people in this body would say: Well, you couldn't kill the baby then.

Isn't that funny? Isn't that funny in the sense that we draw these artificial lines that don't exist? We would say, it depends on which way the baby exited the mother as to whether you could kill the baby or not. Think about that. This is the bright line. This is the bright line that we will never cross in our society as to who deserves the protection of our Constitution or not. That is the issue, folks. That is the issue.

Who in this Senate Chamber, who within the sound of my voice is safe if that is the bright line? Who is safe from a group of Senators who think they are being compassionate, who decide that maybe we are better off drawing the line somewhere else, maybe drawing the line that after the baby is born, if the baby isn't what we want. As, again, Dr. Singer, a noted professor at Princeton University, now suggests, why don't we draw the line afterwards?

There is not much difference, folks, is there? There really isn't. Let's get honest about this. What is the difference? It is just a couple of inches. We will be back someday. If we keep this procedure legal, we will be back someday. We will be back someday arguing whether that 3 inches really means anything. It is an artificial line. That will be the argument. Come on. ''What is the difference because it is 3 inches if the baby is really deformed? Let it die. Kill it. Put it out of its misery. This baby is going to die anyway.''

The arguments you are hearing this very day about children who are not wanted because they are not perfect, in our eyes—I know whose eyes they are very perfect in. In the eyes that matter most in this; they are perfect little children. But to those on the Senate floor who argue that because of their imperfection we have to keep this legal, so we can dispose of unwanted, imperfect children—3 inches from legal protection—folks, when the issue is 3 inches, it might as well be 1 inch or half an inch and eventually it is no inches because the 3-inch line is the Maginot Line. It will be blown through at some point when it suits the majority of Americans that they do not want to be bothered with this burden—with this burden. ''It would be better off for this child,'' I am sure the argument will be, ''that we let this baby die or we kill this baby. Why let it suffer?'' That is the argument now—3 inches from protection.

Oh, how those 3 inches will shrink; mark my word. This is not a far-out debate. It is the mainstream of political debate right now that we can kill children 3 inches from birth because they are not perfect. That is the argument. That is the mainstream of thought in America right now.

On the horizon, the Dr. Singers of this world will say: Why quibble over 3 inches? I remind you, step back in your mind, those of you who were here on this Earth 40 years ago, and imagine—close your eyes and imagine—the Senate Chamber without television cameras, without the bright lights, without the microphones, and people on the Senate floor debating whether it is OK to kill a child who is almost born. It would be beyond anyone's possible comprehension that that could have occurred in Manhattan, much less Washington, DC, here in the Senate Chamber. But here we are. Where will we go from here? The Senate can take a stand on that. So far it hasn't in the numbers necessary, but we are working on it.

Lie No. 5: Partial birth abortion is used only to save the woman's life and health and when the fetus is deformed.

Again, Ron Fitzsimmons said:

> The procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged.

That was 1995. Fast forward to 2 years later. Ron Fitzsimmons admitted he lied through his teeth when he said the procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged. Yet that is the debate you continue to hear on the floor of the Senate, case after case after case after case of this.

But what did Ron Fitzsimmons say:

> What the abortion rights supporters failed to acknowledge [the people on this floor] is that the vast majority of these abortions are performed in the 20-plus week range on healthy fetuses and healthy mothers. The abortion rights folks know it, the anti-abortion folks know it, and so, probably does everyone else.

Would you please inform the rest of the Senate, Mr. Fitzsimmons, so they can begin to discuss the facts of this case, not the smoke and the mirrors of this legislation. I guarantee my colleagues, we will have clouds and clouds of smoke hovering over this Chamber over the next 2 days in an attempt to obfuscate what really is going on.

Lie No. 6: Partial-birth abortion protects a woman's health.

> I understand the desire to eliminate the use of a procedure that appears inhumane but to eliminate it without taking into consideration the rare and tragic circumstances in which its use may be necessary would be even more inhumane.

The argument that this protects a woman's health.

President Clinton, again, veto message of 1997:

> H.R. 1122 does not contain an exception to the measure's ban that will adequately protect the lives and health of a small group of women in tragic circumstances who need an abortion performed at a late stage of pregnancy to avert death or serious injury.

A, there is a provision in the bill that says life of the mother is an exception to the ban. Factually incorrect. There is a life of the mother exception. I think it is agreed on all sides that that is not necessary because it would never be used, but we have a prohibition there anyway.

Going to the truth:

> The American Medical Association endorsed the Partial-Birth Abortion Ban Act. The AMA stated that partial-birth abortion is not medically indicated.

I have talked about hundreds of physicians, over 600 obstetricians, not medically necessary.

> The partial-birth abortion procedure, as described by Martin Haskell [the nation's leading practitioner of the procedure] and defined in the Partial-Birth Abortion Ban Act, is never medically indicated and can itself pose serious risks to the health and future fertility of women.

Over 600 obstetricians signed this, over 600, pro-life, pro-choice, signed this.

Those are the facts. This attempt by those who oppose this bill to change the subject to get to Roe v. Wade doesn't obscure those facts.

I will get back to that.

MOTION TO COMMIT

Mr. SANTORUM. Mr. President, I move to commit the bill, and I send a motion to the desk.

The PRESIDING OFFICER (Mr. SESSIONS). The clerk will report.

The legislative clerk read as follows:

> The Senator from Pennsylvania [Mr. SANTORUM] moves to commit the bill to the HELP Committee with instructions to report back forthwith.

Mr. SANTORUM. I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is not.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

AMENDMENT NO. 2322 TO THE INSTRUCTIONS OF THE MOTION TO COMMIT

Mr. SANTORUM. Mr. President, I send an amendment to the desk to the motion to commit with instructions.

The PRESIDING OFFICER. Until the Senator has the yeas and nays on the motion, the amendment is not in order.

Mr. SANTORUM. I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SANTORUM] proposes an amendment numbered 2322.

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

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

The amendment is as follows:

At the end of the instructions, insert the following:

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

FINDINGS.—Congress finds that—

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

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

SENSE OF CONGRESS.—It is the sense of the Congress that—

Partial birth abortions are horrific and gruesome procedures that should be banned.

Mr. SANTORUM. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. SANTORUM. Mr. President, I ask unanimous consent that a vote occur on or in relation to the SANTORUM amendment No. 2322 and the DURBIN amendment No. 2319 in 10 minutes, with the time between now and then to be equally divided, and if the amendment is agreed to, it be considered as an amendment to the bill and the motion to commit be immediately withdrawn.

I further ask consent that there be 2 hours total for debate equally divided prior to a motion to table amendment No. 2321, with the minority time under the control of Senator BOXER, and the vote to occur on or in relation to the amendment no later than 11 a.m. on Thursday, and the Boxer amendment, as amended, if amended, be agreed to without any intervening action.

Mr. DURBIN. Reserving the right to object, may I inquire of the Senator from Pennsylvania on my amendment whether or not it is a straight up-or-down vote on the amendment or a motion to table.

Mr. SANTORUM. I will move to table the amendment.

Mr. DURBIN. Is that the same situation in terms of the amendment offered by the Senator from Pennsylvania and the Senator from Iowa?

Mr. SANTORUM. They could be tabled under this unanimous consent agreement.

Mrs. BOXER. If I may ask my friend to yield for a question, it appears to me that everyone is going to wind up tabling someone else's amendment. So if he can make that clear, it would be helpful.

Mr. SANTORUM. It does say ''on or in relation to'' the amendment, so that means on the amendment or in relation, which is a tabling motion. It is clear under the UC.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 2319

Mr. DURBIN. Mr. President, I ask unanimous consent to add two additional cosponsors to my amendment No. 2319: Senator BLANCHE LAMBERT LINCOLN and Senator CHRIS DODD.

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

Ms. COLLINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I rise in support of the amendment offered by my friend and colleague from Illinois, Senator DURBIN, and the senior Senator from Maine to ban all late-term abortions, including partial-birth abortions that are not necessary to save the mother's life or to protect her health from grievous physical harm.

Let me be clear from the outset. I am strongly opposed to all late-term abortions, including partial-birth abortions. I agree they should be banned. However, I also believe that an exception must be made for those rare cases when it is necessary to save the life of the mother or to protect her physical health from grievous harm. Fortunately, late-term abortions are extremely rare in my State where, according to the Maine Department of Human Services, just two late-term abortions have been performed in the last 16 years.

This debate should not be about one particular method of abortion but, rather, about the larger question of under what circumstances should late-term or postviability abortions be legally available. The sponsors of this amendment—and I am pleased to be a cosponsor—believe that all late-term abortions, regardless of the procedure used, should be banned except in those rare cases where the life or the physical health of the mother is at serious risk.

In my view, Congress is ill equipped to make judgments on specific medical procedures. As the American College of Obstetricians and Gynecologists, which represents over 90 percent of OB/GYNs and which opposes the legislation introduced by the Senator from Pennsylvania, has said:

The intervention of legislative bodies into medical decisionmaking is inappropriate, ill advised, and dangerous.

Most of us have neither the training nor the experience to decide which procedure is most appropriate in a given case. These medically difficult and highly personal decisions should be left for families to make in consultation with their physicians and their clergy. The Maine Medical Association agrees with this assessment. I ask unanimous consent that an April 1999 statement from the Maine Medical Association be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Ms. COLLINS. Mr. President, in its statement, the Maine Medical Association states that ''such a ban would deny a patient and her physician the right to make medically appropriate decisions about the best course for that patient's care. . . . The intervention of legislative bodies into medical decisionmaking is inappropriate, ill advised and dangerous.''

The MMA statement goes on to say:

. . . when serious fetal anomalies are discovered or a pregnant woman develops a life or health-threatening medical condition that makes continuation of the pregnancy dangerous, abortion—

Unfortunately, I add—

may be medically necessary. In these cases, intact dilation and evacuation procedures may provide substantial medical benefits or, in fact, may be the only option. This procedure may be safer than the alternatives . . . [may] reduce blood loss, and reduce the potential for other complications.

That is what the experts are telling us. That is what the doctors are telling us.

Our amendment goes far beyond, in many ways, what the Senator from Pennsylvania is attempting to accomplish. His legislation would only prohibit one specific medical procedure. It will not prevent a single late-term abortion. Let me emphasize that point. The partial-birth legislation before us would not prevent a single late-term abortion. A physician could simply use

another, perhaps more dangerous, method to end the pregnancy.

By contrast, the Durbin-Snowe proposal would prohibit the abortion of any viable fetus by any method unless the abortion is necessary to preserve the life of the mother or to prevent grievous injury to her physical health.

We have taken great care to tightly limit the health exception in our bill to grievous injury to the mother's physical health. It would not allow late-term abortions to be performed simply because a woman is depressed or feeling stressed or has some minor physical health problem because of pregnancy.

Moreover, we have included a very important second safeguard. The initial opinion of the treating physician that the continuation of pregnancy would threaten the mother's life or risk grievous injury to her physical health must be confirmed by a second opinion from an independent physician.

This second opinion must come from an independent physician who will not be involved in the abortion procedure and who has not been involved in the treatment of the mother. This second physician must also certify—in writing—that, in his or her medical judgment, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

What we are talking about are the severe, medically diagnosable threats to a woman's physical health that are sometimes brought on or aggravated by pregnancy.

Let me give you a few examples: Primary pulmonary hypertension, which can cause sudden death or intractable congestive heart failure; severe pregnancy-aggravated hypertension with accompanying kidney or liver failure; complications from aggravated diabetes such as amputation or blindness; or an inability to treat aggressive cancers such as leukemia, breast cancer, or non-Hodgkins lymphoma.

These are all obstetric conditions that are cited in the medical literature as possible indications for pregnancy terminations. In these extremely rare cases—where the mother has been certified by two physicians to be at risk of losing her life or suffering grievous physical harm—I believe that we should leave the very difficult decisions about what should be done to the best judgment of the women, families, and physicians involved.

The Durbin-Snowe-Collins amendment is a fair and compassionate compromise on this extremely difficult issue. It would ensure that all late-term abortions—including partial-birth abortions—are strictly limited to those rare and tragic cases where the life or the physical health of the mother is in serious jeopardy. This amendment presents an unusual opportunity for both ''pro-choice'' and ''pro-life'' advocates to work together on a reasonable approach, and I urge our colleagues to join us in supporting it.

EXHIBIT 1

The Maine Medical Association takes no position on the moral or ethical issue of abortion. Our membership includes individuals who are ''pro-choice'' and ''pro-life.''

Still, abortion currently is a legal medical procedure in the United States. Accordingly, the Maine Medical Association opposes any legislation proposed to ban any legal medical procedure whether that be abortion, ''intact dilation and extraction'' (partial birth abortion), or another medical procedure. Such a ban would deny a patient and her physician the right to make medical-appropriate decisions about the best course for that patient's care. The determination of the medical need for and effectiveness of a particular medical procedure must be left to the patient and her physician acting in conformity with standards of good medical care.

In addition, imposing civil or criminal sanctions on physicians who perform abortions would have a chilling effect on physicians' willingness to perform legal abortions. Doing so would limit patients' access to safe abortions. The Maine Medical Association opposes such efforts to ''criminialize'' the practice of medicine.

An abortion performed in the second or third trimester or after viability is extremely difficult for everyone involved. The Maine Medical Association does not support elective abortions in the last stage of pregnancy. However, when serious fetal anomalies are discovered or the pregnant woman develops a life or health-threatening medical condition that makes continuation of the pregnancy dangerous, abortion may be medically necessary. In these cases, intact dilation and evacuation procedures may provide substantial medical benefits or, in fact, may be the only option. This procedure may be safer than the alternatives, maintain uterine integrity, reduce blood loss, and reduce the potential for other complications. Also, this procedure permits the performance of a careful autopsy and, therefore, a more accurate diagnosis of a fetal anomaly. This would permit women who wish to have additional children to receive appropriate genetic counseling and better prenatal care and testing in future pregnancies. The intact dilation and extraction procedure may be the most medically appropriate procedure for a woman in a particular case.

The intervention of legislative bodies into medical decision-making is inappropriate, ill-advised, and dangerous. The Maine Medical Association urges the Maine Legislature and the People of Maine to allow the patient and her doctor to determine the most appropriate method of care based upon accepted standards of care in the medical profession and upon the patient's individual circumstances.

The PRESIDING OFFICER. The 5 minutes on the majority side has expired. The Senator from Illinois has 5 minutes.

Mr. DURBIN. May I inquire of the Chair, pursuant to the unanimous consent request, I understood 10 minutes would be allotted for discussion on my pending amendment, and if the Presiding Officer can please clarify what is the current status of that time request.

The PRESIDING OFFICER. The 10 minutes allotted to Senators was for two amendments.

Mr. SANTORUM. I ask unanimous consent that I be given 5 minutes against the Durbin amendment and the Senator from Illinois be given 5 minutes for the Durbin amendment. It will be 5 minutes. I was not aware the Senator was using our time.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, since we are adding some time here—and I think we should—I want to have about 2 minutes to speak before we vote on the Santorum amendment.

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

Mr. DURBIN. Mr. President, one last inquiry, so I understand it. As it presently stands, there will be 12 minutes of debate before two votes: First on the Santorum amendment, then the Durbin amendment; then in that 12-minute period, 5 minutes allotted to me, 5 minutes to the Senator from Pennsylvania, and 2 minutes to the Senator from California?

The PRESIDING OFFICER. The Senator is correct.

Mr. DURBIN. I thank the Chair.

I want to say something to my colleagues who are following this debate in their offices. There are not that many on the floor, but many do watch these debates in their offices.

We are coming perilously close to reaching a consensus opinion on one of the most divisive topics that this Congress has ever faced. The Senator from Maine, Ms. COLLINS, and my colleague, Senator SNOWE, on the Republican side of the aisle, and about 10 Members on the Democratic side, finally have said: Let us try to get down to the bottom line and see if we can come out with some commonsense answer to such a divisive issue as late-term abortions.

I respect the Senator from Pennsylvania and his heartfelt views on this. I have said it repeatedly on the floor. But I think if we are going to finally be able to say to the American people, we have followed what we think are your feelings; first, keep abortion safe and legal for women across America; but second, restrict abortions so that they are in situations which are necessary, postviability in particular, that is what the Durbin amendment strives to do. And I thank the Senator from Maine for her kind words.

Here is what it says, very basically: All late-term abortions, regardless of the type of procedure, are prohibited after the fetus is viable; that is, after the moment when it can survive outside the womb, except for two specific exceptions: One, if continuing the pregnancy threatens the life of the mother, or if continuing the pregnancy means the mother runs the risk of grievous physical injury.

We then go on to say—we are serious about this—not only the treating doctor but an independent physician has to certify, in writing, that one of those two conditions are met for any late-term abortion postviability. If the doctor misleads or states something that is not truthful in that certification, he is subject to a civil fine, and with repeated offenses the fine grows and his license to practice medicine can be suspended.

The reason I think we should take care—and I hope my colleagues will

look carefully at this amendment—is that we would finally emerge from this tangled debate with something that many of us can agree on.

I am characterized as a pro-choice Senator. I am offering an amendment which some pro-choice groups do not support. I would hope that some on the pro-life side would look at this as a reasonable way to restrict late-term abortions.

If Senator SANTORUM's amendment passes, and restricts one rare procedure, it will reduce the number of abortions that are involved in that procedure, and they are very small relative to the total number. In all honesty, if my amendment passes, the bipartisan amendment, even more abortions will be restricted after viability. So for those on the pro-life side, it is a situation they should accept, too.

I urge my colleagues to seize this opportunity. It has come along so seldom in the time that I have been up here on this contentious issue. I hope they will understand that ours is an attempt to strike a good-faith compromise, consistent with Roe v. Wade, consistent with the Constitution, that protects a woman's health, as well as her life, in medical emergency circumstances.

I think if we pass this amendment that I have offered, with the help of so many of my colleagues on both sides of the aisle, we will finally say to the American people: Yes, we did come together on the issue of late-term abortion, and we think this is a reasonable way to deal with it.

I will readily concede there are differences of opinion and those on both sides of the aisle who see it differently. But I think I can go before my voters in Illinois, and my family because we talk about this, and explain to them the case histories that I presented on the Senate floor—where mothers, anxious for the birth of their babies, having painted the nursery and named the baby, found, at the last minute in the pregnancy that some terrible complication had occurred, and the doctor said: If you continue the pregnancy, you could die. And if you don't die, you might lose your chance to ever have another baby. Think about that, what the families face; and the doctors said, in that circumstance: We have to go forward with an abortion procedure.

Some of the women involved said: I've been conservative, antiabortion my whole life, and it struck me that it was going to hit me right in the face. I had to deal with it. And they did.

Frankly, any of our families faced with that would want to have every available medical option to save the life of the mother or to protect her from grievous physical injury.

I urge my colleagues to please look carefully at this amendment. We are perilously close to doing something by way of consensus that is a commonsense answer to a very contentious issue.

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

Mr. DURBIN. I yield back my time.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

PRIVILEGE OF THE FLOOR

Mr. SANTORUM. Mr. President, first, I ask unanimous consent that Heather MacLean and Adam Pallotto from my staff have access to the floor during the consideration of this bill.

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

Mr. SANTORUM. I thank the Chair.

Mr. President, the Durbin amendment purports to ban certain kinds of abortion, and I wish that were true because I think that would be constructive. But it does not.

I do not question the motives of Senator DURBIN, Senator COLLINS, and many others, who, I think, are trying to find some ground where we might be able to meet. But the problem with this amendment is the problem with all these amendments that deal with the issue of health of the mother.

The courts have defined ''health'' so broadly that it includes everything. This definition in the amendment talks about serious, grievous physical injury, and it requires a second opinion.

Here is the second opinion. If I put the phone number on here, and if this bill were to become law, you could call Dr. Warren Hern, who performs many second- and third-trimester abortions, and he will say this: ''I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.''

See, the problem is there are lots of people in this country who would argue that pregnancy itself, following through with a pregnancy, can cause grievous physical injury. And in fact, it could.

So signing a document that says if we did not do this abortion, grievous physical injury would occur, is, by definition, something any doctor—or at least any doctor, Dr. Hern would say—could sign in good faith.

So what you have is a loophole, a loophole that would make this prohibition void. So as good as it sounds—and I do not question the intentions. Senator DASCHLE had offered this amendment in the past, and I certainly did not question his intention. I think there is an honest attempt to say, and I take the speakers at their word, that they do not want to see these kinds of abortions performed. However, when you provide a health exception, in reality the health exception becomes the operation of the bill, which is: There is no limitation.

So as much as I would like to see what the Senator from Illinois purports to have happen with his amendment, his language does not accomplish what he purports to accomplish. So voting for something that, frankly, is hollow, is not effective.

Our bill would, in fact, ban a particular procedure, period, and that is with the life of the mother exception.

If the Durbin amendment was amended to just provide for the life-of-the-mother exception, it would be a different story. But it does not do that.

So as much as I, again, commend those who have signed on to this as an attempt on their part to try to search for some sort of middle ground, I do not think they have found it yet. I am hopeful that good faith and open-mindedness will continue and that they will understand where I am coming from.

This is not a limitation at all, and to put forward such as a limitation would be misleading and I think not particularly constructive to getting at the real problem.

Again, I say—and my amendment that we will be voting on, which is a sense of the Senate, alludes to this—this is a debate about a procedure. And the reason we are debating this procedure is because it is the line in our society that we have drawn about who is covered by our Constitution and who isn't.

I think everyone will agree, once the baby is born, you have constitutional protections. When the baby is inside the womb, the Court has been very clear: you don't. The point is, when the baby is in the process of being born, it is almost completely outside of the mother. How can one suggest that that baby does not have some additional protection or full protection?

We heard the Senator from California say, if the foot was in the mother, they wouldn't be entitled to protection. What is the difference between the foot being inside the mother and the head being inside the mother? Why does one give protection and the other one doesn't? We are going to get into that very kind of fuzzy line. I am not too sure that is a line we want to say is our line of demarcation as to when rights begin or not.

I think we want to be very clear: Once the baby is in the process of being born, that is where the right to abortion ends and that is where infanticide begins. I am hopeful the Senate will make that choice today.

The PRESIDING OFFICER. The time requested by the distinguished Senator has expired.

The Senator from California is recognized for 2 minutes.

Mrs. BOXER. Mr. President, I urge Senators to read the text. It was the Senator from Pennsylvania who talked about the feet. I talked about a baby and when a baby is born.

The Santorum amendment, just as his bill, is a direct overturning of Roe v. Wade, which gave women the right to choose in 1973. Before Roe, 5,000 women a year died because of illegal abortion. Now abortion is safe, and it is legal. Why don't we keep it that way? It is working. It is working for women and their families. It balances the rights of the woman with the rights of the fetus. That is why it says in Roe, in the beginning of a pregnancy, a woman has an unfettered right to choose, and later there can be restrictions. But this is where the Santorum bill steps over

the line. It makes no exception for the health of the woman. Senator DURBIN reaches to that issue. I commend him for his effort.

The fact is, if you make no exception for the health of the woman, you are overturning Roe; there is no question about it. And by using the term ''partial-birth abortion,'' which has never been in any medical directory in the history of medicine—it is a political term—it is so ill-defined that the courts have ruled it would in fact make most abortion illegal.

Listen to what some of the judges have said. In the State of Alaska: It would restrict abortion in general; in the State of Florida: This statute may endanger the health of women who might seek abortion; in Idaho: The act bans the safest and most common method of abortion used in Idaho and, therefore, imposes an undue burden on a woman. It goes on and on.

Nineteen States have said this Santorum language goes against Roe, endangers the life, the health—in particular, the health—of a woman.

I hope we will table the Santorum amendment.

The PRESIDING OFFICER. All time has expired.

Mrs. LINCOLN. Mr. President, I ask unanimous consent to speak for 2 minutes on the Durbin amendment.

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

The Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I rise today to support the Late Term Abortion Limitation Act of 1999.

I would like to thank Senator DURBIN for working with me and others who oppose later term abortions like the procedure being discussed today, which some have called partial-birth abortion.

Let me start by saying that this is a difficult issue for anyone to discuss. And it is an emotional issue. It is not easy for any of us in this Chamber to discuss terminating a pregnancy.

As a mother who has gotten infinite joy from twin 3-year-old boys and was blessed with a safe and healthy natural delivery, it is an especially sensitive topic for me.

Like many of the people that I represent in Arkansas, I do not believe the so-called partial-birth abortion should be an elective procedure.

We should put an end to all forms of abortion after viability except in cases where a late term abortion is medically necessary to save the life of the mother or when ''grievous injury'' could harm the mother.

Congress has attempted to eliminate what some people call partial-birth abortions in the past. And 30 states have enacted similar legislation. But most efforts to end this horrific procedure have been unsuccessful thus far because the courts have overturned them.

As I have shown during debate on HMO reform and tax reform, I am result-oriented. I believe we're here to get things done, to effect change, instead of scoring political points.

For that reason, I have chosen to support Senator DURBIN's approach to eliminating late term abortions because Senator DURBIN has taken care of the concerns raised by courts and because this legislation will actually reduce the number of late term abortions.

I should point out that, while serving in the House of Representatives, I twice voted in favor of a ban on partial-birth abortions, expressing my concern that the life and serious health of the mother be considered.

Much has happened since then. Nineteen courts have overturned laws very similar to the one I supported. Some rule that the term ''partial-birth abortion'' is too vague.

While I am not a lawyer, I understand the courts' point because all of the doctors I have discussed this issue with tell me that there is no such procedure as partial birth abortion.

In addition, the courts have noted that states cannot regulate or prohibit abortion prior to viability. So it is very important, if we want results from this debate, to specify that we are talking about post-viability.

Senator DURBIN has corrected these prior legislative flaws by referring to abortions after viability rather than partial-birth abortions.

In addition, the Durbin late term abortion ban would eliminate elective late term abortions by requiring not one but two doctors to certify the need for a late term abortion to save the life or serious health of the mother.

I support the Durbin amendment because if Senators really want to ensure that we stop late term abortions, then we should pass legislation that can stand the test of the courts.

The Durbin amendment could stand the test and become law. It has the best chance of producing results.

So if results are what we're looking, if stopping late term abortions—including the so-called partial-birth abortions—is our goal, then this is the right option.

If we vote for other vague measures, we will be right back here next year, and the next year, still debating this issue—without results.

Let's do the right thing and ban unnecessary late term abortions by voting for the Durbin amendment which can stand up to federal court tests.

Mrs. BOXER. Mr. President, I move to table the Santorum amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 2322. The yeas and nays have been ordered. The clerk will call the roll.

The legislative assistant called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

The result was announced—yeas 36, nays 63, as follows:

[Rollcall Vote No. 334 Leg.]

YEAS—36

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

NAYS—63

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

NOT VOTING—1

McCain

The motion was rejected.

The PRESIDING OFFICER. Without objection, the yeas and nays are vitiated.

The question now is on agreeing to the Santorum amendment, as modified.

The amendment (No. 2322) was agreed to, as follows:

At the appropriate place in the bill, insert the following:

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

FINDINGS.—Congress finds that—

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

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

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

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2000—CONFERENCE REPORT

Mr. LOTT. I ask consent that the Senate proceed to the conference report on the bill (H.R. 2670) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2000,