



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149

WASHINGTON, WEDNESDAY, SEPTEMBER 17, 2003

No. 128

Senate

The Senate met at 8:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, ruler of all nature, enlist our strength today to make a good and just world. Give us moral courage that will produce clear thinking and clean living. Stimulate our minds so that our affections will reside in heavenly places. Lord, lead us so surely that one day we may stand before You unashamed. Give Your Senators today fresh vigor to meet the challenges of our time. Give them Your wisdom to choose the hard right. May we never think of You as absent from our world. We pray in Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

SCHEDULE

Mr. SANTORUM. Mr. President, this morning the Senate will resume consideration of the House message accompanying S. 3, the partial-birth abortion ban bill. The Senate will continue that debate until 10:30 this morning. At 10:30, the Senate will begin consideration of the Interior appropriations bill. Amendments are expected on that legislation. Therefore, rollcall votes will occur throughout the day.

In addition, the Senate may consider judicial nominations that are on the Executive Calendar cleared for action. Therefore, if necessary, rollcall votes will be scheduled on those nominations throughout the day as well.

I thank all Members for their attention.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 3, which the clerk will report.

The assistant legislative clerk read as follows:

Message from the House of Representatives to accompany S. 3, an act to prohibit the procedure commonly known as partial-birth abortion.

The PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. will be equally divided between the Senator from Pennsylvania, Mr. SANTORUM, and the Senator from California, Mrs. BOXER, or their designees. The Senator from California.

Mrs. BOXER. I thank the Chair.

Mr. President, I thank my colleague for agreeing to a time split this morning where I will speak for 30 minutes and, at the end of that time, Senator SANTORUM will speak for 30 minutes, and then we each expect to have other Senators speaking. We will figure out at that point how to divide the time.

We are here this morning because there is a strong disagreement between the House and the Senate on the issue of Roe v. Wade, a Supreme Court decision that occurred in 1973 which ruled that it was unconstitutional to take away a woman's right to choose and that found a privacy right in the Constitution.

The Senate has gone on record several times supporting the Roe decision. In S. 3, the bill that was brought to us by the Senator from Pennsylvania and others, which for the first time banned an approved medical procedure—the first time ever—without a health exception, Senator HARKIN added an amendment to support Roe. I will show you what that amendment was and what the debate is about.

Senator HARKIN's language in S. 3 that was disagreed to by the House is the following:

It is the sense of the Senate that—

(1) the decision of the Supreme Court in Roe v. Wade—

And it cites the ruling—

was appropriate and secures an important right; and

(2) such decisions should not be overturned.

This is the simple language that the Senator from Iowa, who spoke quite eloquently last night, made part of S. 3.

The Senate had a debate about the Harkin amendment. It was an extensive debate about why it is important that a woman's right to choose remain the law of the land, why it is important that the Court not overturn it.

The House, which says it very much wants to ban the procedure that is banned in S. 3 without a health exception, could have simply taken the Senate bill and sent it off to the President, and we would have had the argument about this underlying bill in the Supreme Court, where it is going to go, by the way, where I believe it will be ruled unconstitutional because the centerpiece of Roe is that a woman's health and life must always be protected.

Let's look at the language in Roe which provides for the woman's health to always be protected and why, to those of us who believe Roe v. Wade was rightly decided, it is so important.

The important point about Roe, which people sometimes don't get, is

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



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that it is a very modest decision, a very moderate decision. It balances all the interests in a way that is fair. It says that in the early stages of a pregnancy, a woman has a right to decide whether to carry this child to term. She makes that decision after searching her soul, talking to her family, her doctor, her God.

Guess what. Government isn't in the picture, Senators are not in the picture, Congresspeople are not in the picture, Senator BOXER is not in the picture, when a woman is making this decision. Neither is Senator SANTORUM nor Senator FRIST nor Senator STEVENS nor Senator DASCHLE. As far as this Senator is concerned—and I represent the largest State in the Union—that is the way it should be.

I support everyone making their own decision as Roe states they should have the right to do in the early stages of a pregnancy. In the late stages of a pregnancy, after viability—that is when a fetus can live outside the womb—this is what the Court said in Roe:

The State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe—

Meaning ban—

abortion, except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

It is a very sensible law. After viability, any State in the Union can ban abortion but always making an exception for the life and health of a woman.

We have a decision, that I believe was very carefully thought out, that balances everyone's views, or let's say the majority of views, and indeed the majority of the people support Roe. In my particular State, it is overwhelming, but it is a strong majority across the country.

Here is why it is so important. I guess my colleagues said: Why is Senator BOXER having us vote to disagree with what the House did? The House tossed out the support of Roe in S. 3 and said: We don't want it. Therefore, the two bodies will go to conference.

Why do I want to take the time and have a debate about Roe? First of all, it is a very serious worry to many people in this country that with the Supreme Court at roughly a 5-to-4 vote on Roe, we could lose this right, and with the Senate now only having 52, 53, or 54 people in favor of Roe, which is diminishing, this is a problem. With the House anti-choice, this is a problem. They believe that making sure people understand what Roe actually did, what the decision actually did, is very important. So I think for that reason, to remind all of us what Roe v. Wade actually said and actually did, it is important.

The other reason is, the underlying bill goes completely against Roe. Why? Because Roe v. Wade said, yes, the State—meaning the Government—can even go so far as banning abortion but always having an exception for the life and health of the mother. This bill makes no exception for the health of the mother.

Now, why is this important? What could happen to a woman if she cannot have the particular procedure that is being banned, as Members of the Senate and the House play doctor, and for the first time decide that they are going to outlaw a procedure?

Let us look at what could happen to a woman's health. The night before last I put in documentation, letters, that laid out these problems. This is what doctors tell us could happen if the procedure that is banned in this bill cannot be used to save the health of a woman. I want everyone to think about whether they want their wife, their daughter, their sister, their friend, their aunt, or anyone else they love to go through this.

A woman might have a hemorrhage, a hemorrhage that could get worse and worse and could lead to serious, long-term damage. Her uterus could rupture, meaning she may well never have another child. She could get blood clots, and everyone knows how serious that is. She could have an embolism, a stroke, damage to nearby organs, even paralysis. This is what doctors tell us.

We do not have one OB/GYN in the Senate. The OB/GYNs tell us these are the things that could happen if a safe procedure that is recognized is not available to a woman, and yet this bill, S. 3, bans this procedure, does not give a whit about this in the end because there is no health exception. Believe me, my colleagues tried to offer very tight health exceptions and oh, no, the other side would not give an inch—no health exception.

This is what could happen to a woman, and the only saving grace of S. 3 is that it has the Roe language in it that we support in Roe. What does that say? It says to the Supreme Court across the street that even though the Senate passed S. 3 and banned a procedure, it also at the same time said, do not overturn Roe. Roe has a clear statement that the health of the mother must always be protected.

I hope everyone on the other side votes for this. I have heard it is possible because there is a technicality here. If this amendment or this motion to disagree goes down, then there will be no conference and the bill cannot go forward. I hope all my colleagues on the other side vote for this, I really do, because I want a strong signal to go out that this Senate disagreed with what the House did when they said strip out the Roe language.

If everyone on the other side, or a lot of my colleagues on the other side, vote with us and we get a strong vote, that sends a message to the conferees that most of the people wanted to keep the Roe language. I trust they will come back after conference with the Roe language. Send this bill into conference with a strong vote for Roe, and we expect Roe will come back in the bill.

I think it is important to look at what happened before Roe so I am going to read a couple of statements.

Dr. Douglas Black, Concord, NH, was then—pre-Roe, pre-1973—an OB/GYN. He did his specialty training in New York City from 1959 to 1963. During that time he saw hundreds of botched back-alley abortions, and many women died. But that was only the tip of the iceberg. For every one woman who died, there were many others who were rendered pelvic cripples. He said it was not a pretty sight, and he remembers doing hysterectomies on 13-year-old girls. Also, he and others were often unable to treat women until the women told police where they had gotten the abortion.

Dr. Black says:

I can vividly remember pot-bellied, cigar-chomping detectives picking on some young, very sick kid, bleeding excessively, with shaking chills of fever and a high temperature.

That is what it was like pre-Roe. That is why Senator HARKIN offered this amendment. That is why the Senate voted for it and that is why we disagree with the House stripping out this amendment supporting Roe.

Let me read another one. This one is from Philadelphia, PA, Dr. Louis Gerstley. Dr. Gerstley has been an obstetrician and gynecologist since the early 1950s. From 1956 through 1967, he worked at the Philadelphia General Hospital, where a 32-bed ward was kept purely for the end results of badly botched abortions. Imagine that, they had beds set aside for women who had to go to the back alleys and sneak and pass dollar bills across a table to some back-alley abortionist. The beds were constantly filled, and Dr. Gerstley saw women who were sick, who were dying, and who died.

He remembers one 22-year-old woman in particular who came into the ward suffering from septic shock from a botched abortion. He and others worked on her for 6 hours and finally decided to give her a hysterectomy to save her life. The procedure was performed without anesthesia because she had no blood pressure and no pulse. The patient died. Dr. Gerstley has said:

I never want to see that again.

He opposes the criminalization of abortion. That is why we are here, because we want a strong vote going into conference that Roe v. Wade should not be reversed.

Let us look at Senator HARKIN's language again. It is very temperate, very clear, and very important. It is worth a debate. I appreciate the fact that we have a debate about Roe.

It is the sense of the Senate that the decision of the Supreme Court in Roe v. Wade was appropriate and secures an important right; and such decisions should not be overturned.

It is very simple, very elegant.

We do not want back-alley people, who are not doctors, who are not trained, to touch a young girl in trouble, or anyone who deserves to have their health protected. Their health must be protected. That is why Roe is so important.

Dr. Robert Prince from Dallas, TX, has been an OB/GYN since 1958. At the end of his third year of medicine, he did a research fellowship in Nashville, TN. One of his duties was to perform autopsies. Since abortions were illegal, any death attributed to an abortion required an autopsy. In his own words:

My first case was that of a 20-year-old college student, who had been brought into the emergency room by her boyfriend for vaginal bleeding. She had gone to a nurse's aide, who had attempted to place a catheter in the cervix to effect an abortion. A vital blood vessel was damaged, and the patient was in shock when she arrived at the emergency room. . . . In a clinic setting, this patient would have survived in spite of the injury . . . if abortions were legal, she would have survived. How often did this happen in the pre-Roe years? Multiply the scenario by a thousand.

Rollyn Carlson, Austin, TX, was 20 years old in the summer of 1971 and pregnant. She decided to have an abortion and found an office in Mexico on the other side of the Texas border. After the abortion, she bled heavily and ran a high fever for 3 days. She was one of the lucky ones. She married and had two children. She now has a teenage daughter and is concerned about her. What if she got pregnant? What if she needed an abortion? Rollyn worries that if abortion is illegal, her daughter would have to have an illegal abortion and could die.

Here is the point. People in our country can make their own decisions in a personal, private, difficult moral, sometimes religious, decision. Some will decide to have the child, to keep the child, to love the child. Some will decide to put the child up for adoption. Some will decide to have a legal abortion in the early stages.

Under Roe v. Wade, if a person waits until the end, that is a time when the State can step in, always, and say, no—but always protecting the health and the life of the woman. Again, that is why Roe is so important. That is why being pro-choice is so important, because it says that I respect you. I will do anything I can to protect your right to decide however you want to decide. I will not force you to decide the way I want you to decide.

I wasn't elected to be God. I am a Senator. I was elected to respect you and respect your freedom and to pass laws that balance your rights with other rights. Roe v. Wade was that type of decision. It is very important that it not be overturned. It is very important that it be part of this law that is in front of us because the law that is in front of us makes an exception for the health of a woman.

If we have the Roe language, we are sending a signal that, yes, a majority wants to ban this procedure. They couldn't get the votes to have an exception for health, but we still support Roe. That is why this is important. This is not some technical matter that we voice vote. This is a moment in time where we can discuss and debate the wisdom of the Harkin amendment, which is very clear and simply says Roe is important.

I want to read this. Some of the stories are very hard. This woman's name is Romanita, from Pittsburgh, Pa. Romanita married and had three children, one, her daughter Norma, with spinal bifida. Her husband was a heroin addict and had left the home. One day he showed up and he raped her. He then disappeared and she found that she was pregnant. She sought an illegal abortion and experienced bleeding for 2 weeks. She lived to tell the tale.

Again, our being here is not frivolous. I hope the other side will not paint it as such. We have so many issues facing our country today that are so important. We have an economy that has lost 3 million jobs in the last couple of years. We have deficits as far as the eye can see. We have to deal with that. We have environmental laws that have been rolled back. We have to deal with that. We have our young men and women in Iraq in terrible danger, without much help from the international community, unfortunately. We have a request for \$87 billion. We have to deal with that. We have to work that out in a way that protects the troops and yet makes sure we have some kind of exit strategy and we are not turning our back on the needs of our own people. We want to make sure procurement reform is done, so when

Iraq is rebuilt it is done in a way that is fair.

All those issues are before us. I don't come to the floor in a frivolous manner because I am working on all those issues. I have an important hearing today that involves a big industry in my State that is in some kind of trouble. We are having a hearing about that. So, no, I have come here early in the morning because I want to make the case to my colleagues as to why we are calling for a vote on this issue of Roe v. Wade. We are asking our colleagues to strongly disagree with what the House did when they stripped out the Harkin language. We want to send a strong message—hopefully, a very large number of votes will come our way on this one—to the conferees: Keep the Harkin language in the bill, please. We know we differ with the House. But we are right on this one.

I thank you, Mr. President, and I thank my colleague from Pennsylvania for being so gracious as to allow me to open this debate. I know he will have a vigorous dissent, and I respect that. I suspect we will dissent on this matter many times in the future if we are both here to be able to do that. Of course that is up to the people of our States.

I yield the remainder of my time and yield the floor.

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

Mr. SANTORUM. I would like to ask a question of the Senator from California. I know she has to leave, so I will not take long. The Senator from California and the Senator from Iowa for the last few days have been using the figure 5,000 women a year who died from abortion prior to Roe v. Wade. I have before me, which I will enter into the RECORD, a chart titled "Maternal Mortality, Vital Statistics of the United States, 1942 to 1974." This chart tracks the total maternal deaths in the country and total abortion deaths in the country.

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

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

TABLE 2.—MATERNAL MORTALITY: VITAL STATISTICS OF THE UNITED STATES, 1942–1974*

Year	Total abortion deaths			Other maternal deaths			Total maternal deaths		
	White	Non-White	Total	White	Non-White	Total	White	Non-White	Total
1942	917	314	1,231	4,598	1,438	6,036	5,515	1,752	7,267
1943	853	312	1,165	4,610	1,422	6,032	5,463	1,734	7,197
1944	695	201	896	3,953	1,421	5,473	4,468	1,622	6,369
1945	602	286	888	3,520	1,260	4,780	4,122	1,546	5,668
1946	535	225	760	3,272	1,121	4,493	3,807	1,346	5,253
1947	385	200	585	3,170	1,223	4,393	3,555	1,423	4,978
1948	321	175	496	2,432	1,194	3,626	2,753	1,369	4,122
1949	236	158	394	1,863	959	2,822	2,099	1,117	3,216
1950	193	123	316	1,680	964	2,644	1,873	1,087	2,960
1951	170	133	303	1,608	901	2,509	1,778	1,034	2,812
1952	196	124	320	1,428	862	2,290	1,624	986	2,610
1953	162	132	294	1,317	774	2,091	1,479	906	2,385
1954	156	131	287	1,124	694	1,818	1,280	825	2,105
1955	150	116	266	984	651	1,635	1,134	767	1,901
1956	138	83	221	880	601	1,481	1,081	684	1,765
1957	126	134	260	871	615	1,486	997	749	1,746
1958	136	123	259	802	520	1,322	938	643	1,581
1959	138	146	284	789	515	1,304	927	661	1,588
1960	147	142	289	789	501	1,290	936	643	1,579
1961	163	161	324	734	515	1,249	897	676	1,573
1962 ¹	149	148	305	658	467	1,160	807	615	1,465
1963 ¹	161	107	280	636	512	1,186	797	619	1,466
1964	117	130	247	634	462	1,096	751	592	1,343

TABLE 2.—MATERNAL MORTALITY: VITAL STATISTICS OF THE UNITED STATES, 1942–1974*—Continued

Year	Total abortion deaths			Other maternal deaths			Total maternal deaths		
	White	Non-White	Total	White	Non-White	Total	White	Non-White	Total
1965	106	129	235	550	404	954	656	533	1,189
1966	96	93	189	509	351	860	605	444	1,049
1967	76	84	160	495	332	827	571	416	987
1968	58	75	133	426	300	726	484	375	859
1969	65	67	132	398	271	669	463	338	801
1970	57	71	128	388	287	675	445	358	803
1971	43	56	99	337	232	569	380	288	668
1972	38	32	² 70(83)	342	200	542	380	232	612
1973	15	21	² 36(51)	259	182	441	274	203	477
1974	13	14	² 27(47)	244	191	435	257	205	462
1975				Not yet available					

*Statistics in Table 2 are published by the National Center for Health Statistics (NCHS) of the Department of HEW in Vital Statistics of the United States, Part II—Mortality. These figures are derived from death certificates.

¹In 1962 and 1963 New Jersey did not report race classification. The white and non-white figures do not include the state of New Jersey, but the totals for each category do.

²Beginning in 1972 CDC in Atlanta has kept records on abortion-related maternal mortality (figures in parentheses). The CDC figures are slightly higher because of special investigative work into particular cases and causes. For the years 1972, 1973, and 1974 these figures are subdivided into legal at, respectively, 21, 24 and 23; illegal at 40, 19 and 6; and spontaneous at 22, 8, 18. See CDC Abortion Surveillance, 1973, Figure 6; CDC Abortion Surveillance, 1974 (in press).

Mr. SANTORUM. In the year prior to Roe v. Wade, 1972, the total maternal deaths in the United States—total maternal deaths from all causes—was 612. According to the Centers for Disease Control, the total abortion-related deaths were 83. So I ask the Senator from California how they can continue to use the number 5,000, when the official statistics of the United States say the total number of maternal deaths in the country were 612, and those related to abortion were 83?

Mrs. BOXER. Let me say to my friend, one death is too many, if it is your wife. We could debate the numbers. I gave you cases, cases, cases here. A woman who was raped and had to go get an illegal abortion. I have so many more of these.

I have the data and I have the sources. I will, before the end of the morning, have them printed in the RECORD. But, again, there are varying estimates. I have never heard the one, 83, as being a serious estimate.

Be that as it may, Roe v. Wade says that you always protect the life and health of a woman. That is a basic disagreement you and I have.

Mr. SANTORUM. I appreciate the basic disagreement. I think we are allowed to disagree on our opinions. We are not allowed to argue and disagree with the facts. The facts are what they are. This is from the Centers for Disease Control. These are numbers out of the abstract. I will be happy to give them to the Senator. But these are from the National Center for Health Statistics of the Department of HEW. This was in 1975, so that is from the Department of Health, Education and Welfare at the time. These were the official statistics of the United States.

Again, I am not challenging the remarks of the Senator that every life is important. But I think presenting accurate evidence is also important if we are going to have a discussion about what the case was. Let's look at the case of abortion-related deaths. In 1942 there were 1,231; total maternal deaths were 7,267. Every single year, without fail, every single year, the total number of maternal deaths went down because medicine improved. The total number of abortion-related deaths went down. Why? Every year, I believe, without fail—there are 1 or 2 years where it popped back up and dropped back down—it went down almost in a direct line and was continuing to go

down. So the idea that Roe v. Wade is saving even—in 1973 there were 36. The bottom line is that very few—given the number of pregnancies that were occurring in those years—very few women died as a result of “botched” abortions. The idea that thousands and thousands were—well, I will quote for you Bernard Nathanson, who was an abortion doctor at that time. He says:

How many deaths are we talking about when abortion was illegal? In NARAL [that's the National Abortion Rights Action League] we generally emphasize the drama of the individual case.

You heard the Senator from California come back when I said the statistics are wrong.

We talk about the individual case, not the mass statistics. But when we spoke about the latter it was always 5,000 to 10,000 deaths a year. I confess I knew these figures were totally false and I suppose the others did too if they stopped to think about it. But in the morality of our revolution it was a useful figure, widely accepted, so why go out of our way to correct it with honest statistics?

The bottom line is we are making a policy decision based on, hopefully, factual evidence. I want to make that clear.

A couple of other things about what the Senator from California said and last night the Senator from Iowa said, that a majority of Americans support Roe v. Wade. Maybe if you asked the question, “Do you support Roe v. Wade?” a majority of Americans would say, “Yes, it is the law of the land.” Most people, if it is the law, generally comply with the law and so most people say it is probably fine, although if you describe what the law is without saying it is Roe v. Wade and ask if they agree, you find that a majority of Americans do not agree with Roe v. Wade.

In fact, there was a study done a couple of months ago by the Center for the Advancement of Women. Faye Wattleton, a very well known abortion rights advocate, formerly affiliated with Planned Parenthood—I believe the head of Planned Parenthood—instituted a study this summer, and they asked the question about abortion to women—not to men, to women. They found that 17 percent of women in America—this is a pro-choice group—17 percent of women in America said abortion should be banned, period—never legal. Another 34 percent said it should be against the law except in the

case of rape, incest, and life of the mother. If you add 17 and 34—I will get one of the pages to add that up for me—it is 51; 51 percent of American women are either against abortion, period, or only in the case of rape, incest, and life of the mother, which if you ask people in this Chamber if you are against abortion except in the case of rape, incest, and life of the mother, you are considered pro-life. Most people in this Chamber who are pro-life are for the exception of rape, incest, and life of the mother.

So the majority of American women, according to an abortion rights group—who, by the way, described the results of this as “disappointing”—don't agree with Roe v. Wade. A majority of American women do not agree.

Let me broaden that even further. They asked this question, as an option: It should be available but under stricter limits than now. In other words, it should be less available than Roe v. Wade allows. Add another 17 percent to that. Now we are up to 68 percent of women in this country who believe Roe v. Wade is wrong; 68 percent of women disagree with Roe v. Wade.

Now, the fourth category was: It should be generally available to those who want it. This is a very tricky thing. It should be generally available. It did not say, it should be what Roe v. Wade is, the law: It shall be available for any reason at any time. That is what Roe v. Wade is. This idea that this is a moderate, reasonable provision, Roe v. Wade, is nonsense.

Roe v. Wade and its subsequent decisions have established an absolute right to an abortion at any point in time. The Senator from California says the State can prohibit abortions, late-term abortions. I asked the Senator, and I have asked her more than once in these debates, and today—she has not provided any evidence—I asked her to give me one example where an abortion was stopped in this country under Roe v. Wade, an example where someone wanted an abortion and, because of the Supreme Court decisions, was barred. It does not happen. Why? The Senator says, well, there is this health exception that is very important. There always has to be a health exception.

Look at the Supreme Court cases that define what a health exception is.

According to *Doe v. Bolton*, the companion case to *Roe v. Wade*, health means any health: Mental health, physical health, economic health, stress, distress. Anything that could possibly affect mental or physical health is a health exception.

What does that mean? This is an exception that swallows the rule. The health exception means that abortion is legal, period, up until the moment that the child is completely separated.

The point of the partial-birth abortion debate is the child is all but separated. The child is completely delivered except for the head. And you do not believe *Roe v. Wade* is extreme? Under *Roe v. Wade*, this Supreme Court said that 3 inches from separation still is covered by *Roe v. Wade*. At 38 weeks, 3 inches from being born, you can still kill your child.

It was interesting, when the Senator from California went through the different options a woman has. She said you can deliver your child and take it home, you can deliver your child and give it up for adoption, or you can terminate the pregnancy. She did not say—she used the term “child” in the first two instances, but in the third instance it is “terminated pregnancy,” as if the child does not exist.

The third option is to kill your child. That is the option. It is very stark. It sounds rather cold, chilly, but it is.

In the extreme nature of *Roe v. Wade*, if really known by the American public, these numbers I have been reading would be even higher—this 30 percent that says it should be generally available.

If you ask the question, Should it be available for all circumstances at any time up to the moment of separation, including up to 39½ weeks, I daresay the number of people who would be supportive of *Roe v. Wade*, which is the law, would be in the very low double digits and, I would hope, single digits. But I don't know that. I have not seen any polling on that because no pollster asks the question of what the law really is. They put it in fuzzy terms to gather more people. But even with this fuzzy language, even written in a way for the pro-choice groups to get the best number they possibly can, two-thirds of the American people oppose *Roe v. Wade*.

I find it remarkable the Senator from Iowa last night got up and called my opposition to this extreme when two-thirds—I said of people, two-thirds of American women—say what the Senator from Iowa is doing is extreme, is wrong, is not what they believe. He does not represent them. His extreme views—and they are extreme, not by my definition, not by my morality, not by my theology, but looking at what the American public believes. Extreme means out of the mainstream, on the edge.

If you look at the polling data now on abortion, *Roe v. Wade* is on the edge; it is not where the American public is. One of the reasons for that, I

happen to believe, is medical science. I saw a TV commercial the other day of what I think is called the 4-D sonogram, where you can actually see these 3- or 4-D images—I don't know what they are—but color images of a child in the womb. I saw an article in the paper talking about how they can see a baby in the womb smile and have facial expressions. It gave rise to a study or discussion as to whether children of the womb feel pain, or how much.

It is very hard for the American public—and I know this is a battle that people usually internalize, and most people do not talk about abortion—when they see those images, see this little baby in the womb. There is a commercial. It is a GE commercial, and I thank them for the courage to run the commercial. I know it was incredible the amount of heat they got. From whom? From these organizations that call themselves women's rights organizations, pressuring General Electric to pull the ad.

These are women's rights organizations that don't want women to know what is going on within their own body, but they are women's rights organizations. They want to hide facts from the very people they want to, “give rights to.” They don't want them to see. They want to keep the deception to the very people whose rights they say they are protecting.

But General Electric, to their credit, kept the ad about this incredible new technology. At the end of the ad, you see this closeup of this baby in the womb—this little face—and then it dissolves into the face of the baby, subsequently, after the baby is born—the same face. It is not a different baby. It is not one baby in the womb and another baby in its mother's arms a couple months later. It is the same baby.

But the other side, the “women's rights” organizations, don't want you to know that. They don't want you to see that. They don't want you to understand what abortion is.

The reason I have been so passionate about the issue of partial-birth abortion is because, for a long time in this country, the whole debate about abortion was about the rights of women only—only. You never saw the baby because in an abortion, you do not see the baby. In partial-birth abortion, you cannot miss the baby. It is a baby. It is moving. This baby would otherwise be born alive because of the late-term nature of when these abortions are done. We are being called extreme because we do not want to allow a procedure which allows the baby—who would otherwise be born alive, who in 99 percent of the cases is healthy, with a healthy mother—to be delivered in a breach position, and have a pair of scissors thrust into the back of the baby's head, when they are literally inches away from being born? We are extreme if we want to stop that?

George Orwell, in 1984, could not have thought we could twist the English

language so much that such horrendous actions would be twisted to somehow we would be the extremists in trying to defend the rights of these little children not to be treated in such a horrible fashion.

No. No. We are going to proceed. And we are going to proceed with this debate on the motion to disagree with House amendments. And I make a request of every one of my colleagues from both sides of the aisle to vote to disagree with the House amendment. Why? Because that is the way you get to conference.

This is a procedural motion. I never, in my 9 years, recall that we ever had a debate about what is strictly a procedural motion to go to conference. But some point is trying to be made, which, frankly, escapes me, that somehow if we vote for the disagreement, somehow we are arguing that we are for the Senate version versus the House version. What we are for is a bill that will be passed by both Chambers and signed by the President, and that will be the original contents of S. 3, which I suspect will pass here and pass, hopefully, by a very large margin.

I want to go through some of the points the Senator from California made. She talks about the medical evidence, and she put a chart up of all of the things that could go wrong with a woman in the cases of not having a partial-birth abortion available. I think we just need to review the facts. Again, you are entitled to your own opinion. You are not entitled to your own facts.

Five thousand people dying from abortion prior to *Roe v. Wade* a year—factually incorrect, unsupportable. We have people who were involved in the movement, as I commented earlier, who said they made up the number. Yet 30 years later, they are still using the number in spite of the National Center for Health Statistics, the Federal agency at the time that was responsible for keeping track of the number of maternal deaths, deaths of mothers due to abortion, saying—actually, there were two organizations. One was the Center for Disease Control. They said 83. They just began that year keeping track. And then the National Center for Health Statistics said 70. So somewhere between 70 and 83, not 5,000.

You are not entitled to your own facts to influence the decisionmaking of the American public or Members of Congress. If you are going to make your argument, you are entitled to your opinion. I can respect your opinion. A lot of people hold that opinion in this country, and it should be represented here, but it should be represented honestly. It should be an honest debate about what the case was before *Roe v. Wade*, and an honest debate as to what the case is now. I would argue that neither has been put forward by the other side.

They exaggerate claims of what was going on before. They minimize what is going on now. They minimize the real

effects of *Roe v. Wade*. You never hear them talk about the 1.3 million abortions a year that go on. I am not talking about 5,000 or 83. I am talking about 1.3 million children die from abortion in this country—a third of all pregnancies; somewhat less than a third now. Thankfully, it has come down. But for roughly a third of all children conceived in this country, their lives end before they have a chance to enjoy the freedoms this country provides.

Last night, I had a discussion of how this country on this issue is out of whack, how we have put the liberty rights of a woman above the life rights of her child. As I said last night, the last time we did that in this country was back in the early 1800s. We put the liberty rights of the slave owner above the life rights of the slave.

I refer and have referred to the *Roe v. Wade* decision as *Dred Scott II* because it is the second time in the history of this country we have taken the fundamental premise of our country—the founding document of our country, the Declaration of Independence, which said, “We hold these truths to be self-evident”—back then we actually used very lofty terms such as “truths,” absolute things that we all agreed on, the truth. They believed there was a truth and that you could actually find what that truth is.

We said: We hold these truths to be self-evident that all men are created equal—all—and that they are endowed by our Creator with certain inalienable rights. And they listed three—the three foundational rights upon which this country was founded—life, liberty, and the pursuit of happiness—not liberty, happiness, life; not happiness, life, liberty—life, liberty, happiness. Why? Because it sounded better? Life, liberty, pursuit of happiness sounds better than happiness, liberty, life? Is that why they did that? It sounded better? Jefferson was good at writing, and he just said: Boy, this sounds better. I will put life, liberty, pursuit of happiness. That sounds nice?

How many people think that is the reason they did it that way?

Of course not. He wrote it that way because that is the way you have to write it. You can't have happiness without freedom and liberty. How can you truly be happy, how can you truly pursue what God has called you to do in this life if you are not free to do it, if someone tells you what you must do or what you must say, what you must believe. Likewise, how can you be free, how can you have liberty if you are dead or the equivalent of dead in the case of the slave? They are there for a reason, and they are in that order for a reason. *Roe v. Wade* scrambles them, just like *Dred Scott* scrambled them. It was wrong then. It is wrong now. It was legal then. Why? Because the Supreme Court said so. It is legal now. Why? Because the Supreme Court said so.

Back then a bunch of people stood up on this very floor and said no. Millions

of people across America said no. We had great leaders in our country, including President Lincoln, who said no. Remember the mainstream view was, who are we to tell others how they should live their life? Who are we? I am not God. How can I tell a slaveholder they can't do something they did in the Bible, own slaves? That has been the tradition of this country. Who am I to make those choices for other people? I trust them. I trust their judgment. I trust their morality. How dare you not trust these people that they are not treating these people kindly, that they aren't doing the right thing for them? How uneducated of you to feel that way.

Do these arguments have a somewhat familiar ring to them? It is the same debate. It is just as wrong. For it is our job here to say what is right and what is wrong. That is what laws are. Laws are the reflection of the collective morality of our country. *Roe v. Wade* was a usurpation of that collective morality. It was a hijacking of the collective morality of this country by nine Justices of the Supreme Court who decided they would play God. Now we just follow along as so many did in the early 1800s. They just followed along. Why? Because it was the law. And who are we to judge these people who own these slaves? Who are we? Who are we? That is a question all of us need to ask: Who are you? How much are you standing up for what you believe is right and what, in many cases, we know is right, and how often do you just sort of turn away and say: Well, that is the law? It is an uncomfortable issue and we will just leave it alone. And so we pass language, sense-of-the-Senate language that says this law, *Dred Scott II*, is something that should continue in America.

I believe, as much as I believe that I am standing right here today, that this law will be overturned, not by the courage of Senators, not by the courage of Governors or judges, but by the wisdom of the American people. We are seeing it happen. The more people find out about the injustice that abortion is and the extremeness of *Roe v. Wade*, people are changing. That is why there is this desperate attempt to hang on, to codify *Roe v. Wade* or to support *Roe v. Wade*, to prop it back up, this wretched decision that is affecting so much of society.

We are going to have a chance in a few weeks, once we pass this resolution of disagreement, to vote on the conference report on S. 3, which is the partial-Birth Abortion Ban Act. We will have an opportunity—I hope it will not be filibustered—to vote straight up or down on whether to send this bill to the President, which he said he will sign, and send it across the street. That is where it is going to end up. Across the street from the Senate happens to be the Supreme Court of the United States. They will have another opportunity to look at this procedure based on the factual record.

Again, I challenge any Member on either side of the aisle to come forward with a reason why this procedure needs to be legal for the health of the mother. Not one piece of evidence has been entered in the record ever that this procedure was ever necessary to protect the health of the mother. No one even makes an argument that it protects the life of the mother, but there has never been a case introduced that has not been refuted 30 different ways that suggests that this procedure is necessary for health. So the health exception of *Roe v. Wade*, as a result, is not applicable here because there is no medical reason why this procedure needs to be legal.

In addition, we have tightened the language. The other concern in the Court was that it was vague and could have included other late-term abortion procedures. There are many in this Chamber who would like to ban all late-term abortion procedures. That is not what this bill does. It simply bans a procedure which the vast majority of the American public, anywhere from 70 percent to 80 percent, believe should be banned. By the way, if you are with 70 or 80 percent of the American public, you are hardly on the extreme. By definition this can't be extreme if 70 to 80 percent of the American public support what you are doing.

We have tightened the language to ban a procedure, just one—this one. So there is no doubt now that the Court had before, because of the language in the Nebraska statute, that we might include other abortion techniques. We are including one technique, this one, a technique that is never used to protect the health or life of the mother. *Roe v. Wade* is as expansive a right as there exists today. Let me repeat that: The right to an abortion in America is more absolute than the right of free speech, than the right of freedom of assembly, than the right of freedom of the press. Under constitutional interpretation, there is no limitation on the right to abortion—none—where these others all have limits. I would argue not great limits, but they are all limited in some fashion by the Court and by statutes that have been found constitutional by this Court. Except abortion, there is no limit. There is no practical limitation on the right to an abortion.

This—candidly and unfortunately, in some respects—is not a limitation on abortion either because if it were a limitation on abortion, the Court would find it unconstitutional. But it is not.

It is a rogue procedure that candidly is unhealthy. We have mountains of evidence from experts in the maternal field of medicine who say this procedure is the least healthy option for women. Obviously, it is the most horrendous and brutal to the child.

That is our plea. It is a modest one. It is so modest that many people do not understand why we are even pursuing it on both sides of this issue.

They ask, Why are you suggesting this? It is not going to do anything. It will bar one procedure that is not used very much—a few thousand times a year. But, as the Senator from California says, every life matters. Every case is a tragedy. So we should do it if we can. We should, and we will, hopefully in a few weeks.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, thank you very much. I have gone to one meeting. And I have another hearing. I appreciate my colleague from Pennsylvania being so gracious as to work the time so I could continue to come back and forth.

Before I left the floor, I promised him I would put in the RECORD the various publications that have stated that approximately 5,000 women a year died from illegal abortions before Roe.

Mr. SANTORUM. Mr. President, will the Senator yield for a question?

Mrs. BOXER. In a moment.

The Senator read from the CDC figures. I realized as I left the floor that at the time women were having these illegal botched abortions and were dying—it made some of them infertile, and they were suffering from trauma—they were not supporting the CDC or any government entity because they would have been put in prison because abortion was illegal. Any claim that the CDC would know the accurate number of illegal abortions just flies in the face of all common sense. Women were not cooperating with the Government. They were in fact standing up to the Government which had outlawed the procedure.

I am glad to yield to the Senator.

Mr. SANTORUM. In how many States in 1972 were abortions illegal?

Mrs. BOXER. I could tell you it was illegal in my State. I will be happy to give you all of that. That isn't the point. At the point in time when the CDC was collecting these numbers, many of the women were having abortions. In my State—probably the most populous State at that time—they were not reporting these things.

My friend challenged me. I come back with the fact that I don't believe the Senator could say the United States Government knew. But I will tell you who did know.

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

Mrs. BOXER. I have a book that has stated that number.

I am glad to yield.

Mr. SANTORUM. I can't imagine that—first of all, this number was derived from death certificates. If a person is dead, they are not going to report an abortion. There is no concern about a woman reporting her own death because she fears being prosecuted. These numbers were derived from death certificates from hospitals and the cause of death of the women who died. It has nothing to do with self-reporting. They are dead. The idea

that somehow these women aren't reporting because they are afraid of being prosecuted—with all due respect, they are dead.

Mrs. BOXER. I am talking about the number of illegal abortions.

Mr. SANTORUM. That is not the number used. The Senator used the number of 1,000 deaths.

Mrs. BOXER. Excuse me. I don't interrupt the Senator, if he would allow me to respond.

I am saying to the Senator that the collection of data at that time would not be done by someone who feared prosecution. If a person dies, I can tell you that right now doctors weren't reporting these things. Families didn't want to say their child did something illegal. The Senator is the only one I have ever met in the movement to outlaw Roe who would put the number of deaths at 83. But I want to tell the Senator that 83 deaths of women—and I have read stories and my friend has heard them, and they are brutal stories about 13-year-old girls, and women who were raped who were afraid—these people died. You can take your number of 83 which is the CDC and which would, I say, make no sense because people were afraid to death, frankly, and families were afraid to report that. Or you can take the number of 5,000 which has been written about quite a bit in science magazines, or you can take some other number in the middle. My friend can pick whatever number he wants. He has chosen the number of 83 women who died. That is 83 families destroyed. But you can belittle. That is fine.

The bottom line is that Roe v. Wade said the Government has a right after viability to ban abortions. But there is always an exception for the health of the woman.

My friend can sugar-coat his bill any way he wants. But the fact is even the people who want to ban abortions have written—and I just read an account today where one gentleman who was a big leader in this movement to overturn Roe said this bill is unconstitutional.

That is the reason why it is important for us to say we support Roe, because this Senate shouldn't be reporting language that is unconstitutional and which jeopardizes the health of a woman.

Mr. SANTORUM. Will the Senator yield?

Mrs. BOXER. I yield for one more question. I appreciate having a chance to finish my remarks.

Mr. SANTORUM. I want to clarify and put a question to the Senator. Using my numbers—these are not my numbers; these are the numbers from Department of Health, Education and Welfare back in 1975. The Senator says people didn't want to report that. I want to clarify for the RECORD that these are figures derived from death certificates. My question is, Is the Senator suggesting that doctors lied on death certificates about the reason for

the death? That is what the Senator is suggesting.

Mrs. BOXER. I am suggesting to my friend that when people could go to prison because a woman had an abortion in the early stages of her pregnancy—this is my opinion—I don't believe there is going to be accurate reporting. I think it had a terrible impact on people. People were so frightened.

We have testimony from a doctor who said that while a woman was on the table bleeding to death, the doctor was afraid to perform an abortion because—he was allowed to do it because the woman was raped, but he was afraid until the police cleared it.

The bottom line is this was a period in our history where women were made to feel like criminals. I remember those days. Women's lives were lost. The number of illegal abortions is hard to determine. It is hard to determine the cause of death. The fact of the matter is I don't know too many people who believe the number of 85. There are people who lived in those days who saw how many women were having these abortions. Perhaps they were raped. Perhaps it was a situation where they wanted a family, and that wasn't to be. Whatever the reason, it was happening. They weren't reported, and I don't believe the deaths were accurately reported.

The point is, Why are we here having this debate? Would I still be standing here if I believed that "only" 85 women a year died? Yes, I would be, because that is too many deaths, if it is your friend, if it is your mother, if it is your sister, or if it is your aunt.

The question isn't only how many illegal abortions there were and how many women died. The Senator made no reference to how many women became infertile. Then the Senator says something that is totally untrue—that we have never placed into the RECORD at all any statement that shows that by banning this procedure which is banned in this bill with the health exception there could be health damage.

There is testimony of Anne Davis before a hearing of the Subcommittee on the Constitution of the House Judiciary Committee. She is a physician licensed to practice medicine in New York, and she is a board-certified OB/GYN. She got her education at Columbia. She is a fellow of the American College of OB/GYN.

With all due respect to my colleague from Pennsylvania—and I totally respect his right to his opinion and would fight for his right to have it—I trust an OB/GYN more than I do him on matters pertaining to a woman's health and her body.

She says this bill will severely limit physicians' ability to provide the best medical care to their patients. She says it is confusing; it is contradictory; it would be difficult for physicians to interpret. And she says she believes after reading it, the bill appears to ban safe and common abortion procedures

used well before fetal viability. By the way, this was another ground on which the Supreme Court overturned a similar Nebraska statute. It said it was vague.

She says the bill leaves physicians with an untenable choice of not being able to provide the appropriate medical care and, she says, it poses grave risks to the patient. Let me repeat that. My colleague said there was not one bit of evidence that the procedure that is banned—not one bit of evidence—that it could hurt a woman and that I put none in the RECORD.

I refer to my colleagues the testimony of Anne R. Davis, M.D., before the House Subcommittee on the Constitution on March 25, 2003.

Mr. President, she says it puts patients at risk, and she goes on about it. She goes into great detail. I will not take the Senate's time because it is highly technical and it has to do with medicine, and this is not, as I said, a doctor's office. It is the Senate floor.

It goes on for pages and pages. The bottom line is, she is saying there are times when this procedure that is banned is the one that is necessary to protect women. As a matter of fact, she has a whole section titled: "The bill lacks necessary exceptions to protect women's health and their lives." And she goes through that.

This is the first document in the RECORD. It is 11 pages. I hope Senator SANTORUM will take the time to look at that.

Then I have a very important letter from another OB/GYN. As a matter of fact, she is an adjunct professor in the Department of Obstetrics, Gynecology, and Reproductive Sciences at UC-San Francisco where she directs the Center for Reproductive Health Research and Policy. She says she represented the United States at the International Conference on Population and Development. She served on a number of boards of organizations that promote emergency contraception and new contraceptive technologies and supports reducing teen pregnancy. I hope my friends agree that is a good idea. Her area of expertise is family planning and reproductive health.

Very clearly in her four-page letter to us—again, a lot of which is technical—she lists these very problems of what could happen to a woman if there is no health exception in the bill. Here is what she says: Death, infertility, paralysis, coma, stroke, hemorrhage, brain damage, infection, liver damage, and kidney damage.

The Senator from Pennsylvania said I never put anything in the RECORD that said if they cannot use this procedure that is banned in this bill there would be problems. Here is another, Felicia Stewart, M.D., with the highest qualifications you would ever want to have if you ever needed to go to an OB/GYN, which none of my male colleagues would ever have to do, but my female colleagues would have to do.

I ask unanimous consent to print this letter in the RECORD.

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

MARCH 5, 2003.

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

DEAR SENATOR BOXER: I understand that you will be considering Senate S. 3, the ban on abortion procedures, soon and would like to offer some medical information that may assist you in your efforts. Important stakes for women's health are involved: If Congress enacts such a sweeping ban, the result could effectively ban safe and common, pre-viability abortion procedures.

By way of background, I am an adjunct professor in the Department of Obstetrics, Gynecology and Reproductive Sciences at the University of California, San Francisco, where I co-direct the Center for Reproductive Health Research and Policy. Formerly, I directed the Reproductive Health program for the Henry J. Kaiser Family Foundation and served as Deputy Assistant Secretary for Population Affairs for the United States Department of Health and Human Services. I represented the United States at the International Conference on Population and Development (ICPD) in Cairo, Egypt, and currently serve on a number of Boards for organizations that promote emergency contraception and new contraceptive technologies, and support reducing teen pregnancy. My medical and policy areas of expertise are in the family planning and reproductive health, prevention of sexually transmitted infections including HIV/AIDS, and enhancing international and family planning.

The proposed ban on abortion procedures criminalizes abortions in which the provider "deliberately and intentionally vaginally delivers a living fetus . . . for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus. . . ." The criminal ban being considered is flawed in a number of respects: it fails to protect women's health by omitting an exception for women's health; it menaces medical practice with the threat of criminal prosecution; it encompasses a range of abortion procedures; and it leaves women in need of second trimester abortions with far less safe medical options; hysterotomy (similar to a cesarean section) and hysterectomy.

The proposed ban would potentially encompass several abortion methods, including dilation and extraction (dtx, sometimes referred to as "intact d&e), dilation and evacuation (d&e), the most common second-trimester procedure. In addition, such a ban could also apply to induction methods. Even if a physician is using induction as the primary method for abortion, he or she may not be able to assure that the procedure could be effected without running afoul of the proposed ban. A likely outcome if this legislation is enacted and enforced is that physicians will fear criminal prosecution for any second trimester abortion—and women will have no choice but to carry pregnancies to term despite the risks to their health. It would be a sad day for medicine if Congress decides that hysterotomy, hysterectomy, or unsafe continuation of pregnancy are women's only available options. Williams Obstetrics, one of the leading medical texts in Obstetrics and Gynecology, has this to say about the hysterotomy "option" that the bill leaves open:

Nottage and Liston (1975), based on a review of 700 hysterotomies, rightfully concluded that the operation is outdated as a routine method for terminating pregnancy. (original in bold). Cunningham and McDonald, et al, Williams Obstetrics, 19th ed., (1993), p. 683.

Obviously, allowing women to have a hysterectomy means that Congress is authorizing women to have an abortion at the price of their future fertility, and with the added risks and costs of major surgery. In sum, the options left open are less safe for women who need an abortion after the first trimester of pregnancy.

I'd like to focus my attention on that subset of the women affected by this bill who face grievous underlying medical conditions. To be sure, these are not the majority of women who will be affected by this legislation, but the grave health conditions that could be worsened by this bill illustrate how sweeping the legislation is.

Take for instance women who face hypertensive disorders such as eclampsia—convulsions precipitated by pregnancy-induced or aggravated hypertension (high blood pressure). This, along with infection and hemorrhage, is one of the most common causes of maternal health. With eclampsia, the kidneys and liver may be affected, and in some cases, if the woman is not provided an abortion, her liver could rupture, she could suffer a stroke, brain damage, or coma. Hypertensive disorders are conditions that can develop over time or spiral out of control in short order, and doctors must be given the latitude to terminate a pregnancy if necessary in the safest possible manner.

If the safest medical procedures are not available to terminate a pregnancy, severe adverse health consequences are possible for some women who have underlying medical conditions necessitating a termination of their pregnancies, including: death (risk of death higher with less safe abortion methods), infertility, paralysis, coma, stroke, hemorrhage, brain damage, infection, liver damage, kidney damage.

Legislation forcing doctors to forego medically indicated abortions or to use less safe but politically-palatable procedures is simply unacceptable for women's health.

Thank you very much, Senator, for your efforts to educate your colleagues about the implications of the proposed ban on abortion procedures.

Sincerely,

FELICIA H. STEWART, M.D.

Mrs. BOXER. Mr. President, I have another letter from the American Public Health Association. The American Public Health Association opposes the bill because it fails to include adequate health exception language and where certain procedures may be determined by a physician to be the best way to preserve the health of the woman.

There we go, the American Public Health Association is concerned about women's health.

I ask unanimous consent that this letter from the American Public Health Association be printed in the RECORD.

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

AMERICAN PUBLIC HEALTH
ASSOCIATION,

Washington, DC, March 31, 2003.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: On behalf of the American Public Health Association (APHA) the largest and oldest organization of public health professions in the nation, representing more than 50,000 members from over 50 public health occupations, I write to urge your opposition to H.R. 760, the Partial-Birth Abortion Ban Act of 2003.

APHA has long-standing policy regarding the sanctity of the provider-patient relationship and has long advocated for a woman's

right to choose from a full range of reproductive health options. We believe that a physician in consultation with the patient should make the decision regarding what method should be used to terminate a pregnancy.

We are opposed to H.R. 760 because we believe this and other legislative and judicial restrictions to safe, medically accepted abortion procedures severely jeopardize women's health and well-being. APHA also opposed the bill because it fails to include adequate health exception language in instances where certain procedures may be determined by a physician to be the best or most appropriate to preserve the health of the woman. We urge members of the House of Representatives to oppose this legislation.

Thank you for your attention to our concerns regarding the negative effect this legislation would have to a woman's right to a safe, legal abortion.

Sincerely

GEORGES C. BENJAMIN, MD, FACP,

Executive Director.

Mrs. BOXER. Mr. President, I have another letter from Lynn Epstein, president of the American Medical Women's Association in Alexandria, VA. They strongly oppose this ban, and they say it fails to protect the health and safety of women and their children. So that is another.

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

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

AMERICAN MEDICAL WOMEN'S
ASSOCIATION, INC.,
Alexandria, VA, March 25, 2003.

Hon. JERROLD NADLER,
*House of Representatives,
Washington, DC.*

DEAR CONGRESSMAN NADLER: The American Medical Women's Association (AMWA) strongly opposes HR 760, the "Partial-Birth Abortion Ban Act of 2003." While the Association has high respect for each member and their right to hold whatever moral, religious and philosophical beliefs his or her conscience dictates, as an organization of 10,000 women physicians and medical students dedicated to promoting women's health and advancing women in medicine, we believe HR 760 is unconscionable.

AMWA has long been an advocate for women's access to reproductive health care. As such, we recognize this legislation as an attempt to ban a procedure that in some circumstances is the safest and most appropriate alternative available to save the life and health of the woman. Furthermore, this bill violates the privilege of a patient in consultation with her physician to make the most appropriate decision regarding her specific health circumstances.

AMWA opposes legislation such as HR 760 as inappropriate intervention in the decision-making relationship between physician and patient. The definition of the bill is too imprecise and it includes non-medical terminology for a procedure that may ultimately undermine the legality of other techniques in obstetrics and gynecology used in both abortion and non-abortion situations. At times, the use of these techniques is essential to the lives and health of women. The potential of this ban to criminalize certain obstetrics and gynecology techniques ultimately interferes with the quality of health and lives of women. Furthermore, the current ban fails to meet the provisions set forth by the Supreme Court in *Steinberg v. Carhart*, a ruling that overturned a Nebraska statute banning abortion because it contained no life and health exception for the mother.

AMWA's position on this bill corresponds to the position statement of the organization on abortion and reproductive health services to women and their families.

AMWA believes that the prevention of unintended pregnancies through access to contraception and education is the best option available for reducing the abortion rate in the United States. Legislative bans for procedures that use recognized obstetrics and gynecological techniques fails to protect the health and safety of women and their children, nor will it improve the lives of women and their families. If you have any questions please contact Meghan Kissell, at 703-838-0500.

Sincerely,

LYNN EPSTEIN, MD,

President.

Mrs. BOXER. Mr. President, here is another letter from the Physicians for Reproductive Choice and Health. They are located in New York. They say the legislation is dangerous because it is vague and there is no health exception. They also add something I think they are absolutely right on about. Politicians should not legislate medicine.

This is the first time any Congress has ever outlawed a medical procedure that is supported by the medical community. You may find a few doctors who don't, but the organizations all do. They are very concerned that women's health is not being respected or cared about.

I ask unanimous consent to print this letter from Physicians for Reproductive Choice and Health in the RECORD.

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

PHYSICIANS FOR REPRODUCTIVE
CHOICE AND HEALTH,
New York, NY, March 10, 2003.

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

DEAR SENATOR BOXER: We are writing to urge you to stand in defense of women's reproductive health and vote against S. 3, legislation regarding so-called "partial birth" abortion.

We are practicing obstetrician-gynecologists, and academics in obstetrics, gynecology and women's health. We believe it is imperative that those who perform terminations and manage the pre- and post-operative care of women receiving abortions are given a voice in a debate that has largely ignored the two groups whose lives would be most affected by this legislation: physicians and patients.

It is misguided and unprincipled for lawmakers to legislate medicine. We all want safe and effective medical procedures for women; on that there is no dispute. However, the business of medicine is not always palatable to those who do not practice it on a regular basis. The description of a number of procedures—from liposuction to cardiac surgery—may seem distasteful to some, and even repugnant to others. When physicians analyze and debate surgical techniques among themselves, it is always for the best interest of the patient. Abortion is proven to be one of the safest procedures in medicine, significantly safer than childbirth, and in fact has saved numerous women's lives.

While we can argue as to why this legislation is dangerous, deceptive and unconstitutional—and it is—the fact of the matter is that the text of the bill is so vague and mis-

leading that there is a great need to correct the misconceptions around abortion safety and technique. It is wrong to assume that a specific procedure is never needed; what is required is the safest option for the patient, and that varies from case to case.

THE FACTS

(1) So-called "partial birth" abortion does not exist.

There is no mention of the term "partial birth" abortion in any medical literature. Physicians are never taught a technique called "partial birth" abortion and therefore are unable to medically define the procedure.

What is described in the legislation, however, could ban all abortions. "What this bill describes, albeit in non-medical terms, can be interpreted as any abortion," stated one of our physician members. "Medicine is an art as much as it is a science; although there is a standard of care, each procedure—and indeed each woman—is different. The wording here could apply to any patient." The bill's language is too vague to be useful; in fact, it is so vague as to be harmful. It is intentionally unclear and deceptive.

(2) Physicians need to have all medical options available in order to provide the best medical care possible.

Tying the hands of physicians endangers the health of patients. It is unethical and dangerous for legislators to dictate specific surgical procedures. Until a surgeon examines the patient, she does not necessarily know which technique or procedure would be in the patient's best interest. Banning procedures puts women's health at risk.

(3) Politicians should not legislate medicine.

To do so would violate the sanctity and legality of the physician-patient relationship. The right to have an abortion is constitutionally-protected. To falsify scientific evidence in an attempt to deny women that right is unconscionable and dangerous.

The American College of Obstetricians and Gynecology, representing 45,000 obgyns, agrees: "The intervention of legislative bodies into medical decision making is inappropriate, ill advised and dangerous."

The American Medical Women's Association, representing 10,000 female physicians, is opposed to an abortion ban because it "represents a serious impingement on the rights of physicians to determine appropriate medical management for individual patients."

THE SCIENCE

We know that there is no such technique as "partial birth" abortion, and we believe this legislation is a thinly-veiled attempt to outlaw all abortions. Those supporting this legislation seem to want to confuse both legislators and the public about which abortion procedures are actually used. Since the greatest confusion seems to center around techniques that are used in the second and third trimesters, we will address those: dilation and evacuation (D&E), dilation and extraction (D&X), instillation, hysterectomy and hysterotomy (commonly known as a c-section).

Dilation and evacuation (D&E) is the standard approach for second-trimester abortions. The only difference between a D&E and a more common, first-trimester vacuum aspiration is that the cervix must be further dilated. Morbidity and mortality studies acquiring valuable information regarding hereditary illness or fetal anomaly; and there is a decreased risk of injury to the woman, as the procedure is quicker than induction and involves less use of sharp instruments in the uterus, providing a lesser chance of uterine perforations or tears and cervical lacerations.

It is important to note that these procedures are used at varying gestational ages.

Neither a D&E nor a D&X is equivalent to a late-term abortion. D&E and D&X are used solely based on the size of the fetus, the health of the woman, and the physician's judgment, and the decision regarding which procedure to use is done on a case-by-case basis.

THE LEGISLATION

Because this legislation is so vague, it would outlaw D&E and D&X (and arguably techniques used in the first-trimester). Indeed, the Congressional findings—which go into detail, albeit in non-medical terms—do not remotely correlate with the language of the bill. This legislation is reckless. The outcome of its passage would undoubtedly be countless deaths and irreversible damages to thousands of women and families. We can safely assert that without D&E and D&X, that is, an enactment of S.3, we will be returning to the days when an unwanted pregnancy led women to death through illegal and unsafe procedures, self-inflicted abortions, uncontrollable infections and suicide.

The cadre of physicians who provide abortions should be honored, not vilified. They are heroes to millions of women, offering the opportunity of choice and freedom. We urge you to consider scientific data rather than partisan rhetoric when voting on such far-reaching public health legislation. We strongly oppose legislation intended to ban so-called "partial birth" abortion.

Sincerely,

NATALIE E. ROCHE, MD,
*Assistant Professor of
Obstetrics and Gynecology,
New Jersey
Medical College.*

GERSON WEISS, MD,
*Professor and Chair,
Department of Obstetrics,
Gynecology and Women's
Health, New Jersey
Medical College.*

Mrs. BOXER. Mr. President, here is another one. Senator SANTORUM said we had no documentation that the ban would hurt women's health. This is testimony of Vanessa Cullins, vice president of Medical Affairs of Planned Parenthood. She is a board-certified OB/GYN with a master's degree in public health and business administration. She talks about the fact that this bill prevents doctors from exercising necessary discretion and how that is dangerous. She says it outlaws techniques that are critical to the lives and health of American women.

Mr. President, I refer to my colleagues the testimony of Vanessa Cullins, M.D., before the House Subcommittee on the Constitution on March 25, 2003.

Mr. President, then there is the UCSF Center for Reproductive Health Research and Policy. Their first objection to the bill: It fails to protect women's health by omitting an exception for women's health.

I ask unanimous consent to print this letter in the RECORD.

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

UNIVERSITY OF CALIFORNIA, CENTER
FOR REPRODUCTIVE HEALTH RE-
SEARCH & POLICY

San Francisco, CA, March 5, 2003.

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

DEAR SENATOR BOXER: I understand that you will be considering Senate S. 3, the ban on abortion procedures, soon, and would like to offer some medical information that may assist you in your efforts. Important stakes for women's health are involved: If Congress enacts such a sweeping ban, the result could effectively ban safe and common, pre-viability abortion procedures.

By way of background, I am an adjunct professor in the Department of Obstetrics, Gynecology and Reproductive Sciences at the University of California, San Francisco, where I co-direct the Center for Reproductive Health Research and Policy. Formerly, I directed the Reproductive Health Program for the Henry J. Kaiser Family Foundation and served as Deputy Assistant Secretary for Population Affairs for the United States Department of Health and Human Services. I represented the United States at the International Conference on Population and Development (ICPD) in Cairo, Egypt, and currently serve on a number of Boards for organizations that promote emergency contraception and new contraceptive technologies, and support reducing teen pregnancy. My medical and policy areas of expertise are in family planning and reproductive health, prevention of sexually transmitted infections including HIV/AIDS, and enhancing international and family planning.

The proposed ban on abortion procedures criminalizes abortions in which the provider "deliberately and intentionally vaginally delivers a living fetus . . . for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus . . ." The criminal ban being considered is flawed in a number of respects: It fails to protect women's health by omitting an exception for women's health; it menaces medical practice with the threat of criminal prosecution; it encompasses a range of abortion procedures; and it leaves women in need of second trimester abortions with far less safe medical options: hysterotomy (similar to a cesarean section—and hysterectomy).

The proposed ban would potentially encompass several abortion methods, including dilation and extraction (d&x, sometimes referred to as "intact d&e"), dilation and evacuation (d&e), the most common second-trimester procedure. In addition, such a ban could also apply to induction methods. Even if a physician is using induction as the primary method for abortion, he or she may not be able to assure that the procedure could be effected without running afoul on the proposed ban. A likely outcome if this legislation is enacted and enforced is that physicians will fear criminal prosecution for any second trimester abortion—and women will have no choice but to carry pregnancies to term despite the risks to their health. It would be a sad day for medicine if Congress decides that hysterotomy, hysterectomy, or unsafe continuation of pregnancy are women's only available options. Williams Obstetrics, one of the leading medical texts in Obstetrics and Gynecology, has this to say about the hysterotomy "option" that the bill leaves open: "Nottage and Liston (1975), based on a review of 700 hysterotomies, rightfully concluded that the operation is outdated as a routine method for terminating pregnancy." (Cunningham and McDonald, et al., Williams Obstetrics, 19th ed., (1993), p. 683.)

Obviously, allowing women to have a hysterectomy means that Congress is au-

thorizing women to have an abortion at the price of their future fertility, and with the added risks and costs of major surgery. In sum, the options left open are less safe for women who need an abortion after the first trimester of pregnancy.

I'd like to focus my attention on that subset of the women affected by this bill who face grievous underlying medical conditions. To be sure, these are not the majority of women who will be affected by this legislation, but the grave health conditions that could be worsened by this bill illustrate how sweeping the legislation is.

Take for instance women who face hypertensive disorders such as eclampsia—convulsions precipitated by pregnancy-induced or aggravated hypertension (high blood pressure). This, along with infection and hemorrhage, is one of the most common causes of maternal death. With eclampsia, the kidneys and liver may be affected, and in some cases, if the woman is not provided an abortion, her liver could rupture, she could suffer a stroke, brain damage, or coma. Hypertensive disorders are conditions that can develop over time or spiral out of control in short order, and doctors must be given the latitude to terminate a pregnancy, if necessary, in the safest possible manner.

If the safest medical procedures are not available to terminate a pregnancy, severe adverse health consequences are possible for some women who have underlying medical conditions necessitating a termination of their pregnancies, including: Death (risk of death higher with less safe abortion methods), infertility, paralysis, coma, stroke, hemorrhage, brain damage, infection, liver damage, and kidney damage.

Legislation forcing doctors to forego medically indicated abortions or to use less safe but politically-palatable procedures is simply unacceptable for women's health.

Thank you very much, Senator, for your efforts to educate your colleagues about the implications of the proposed ban on abortion procedures.

Sincerely,

FELICIA H. STEWART, M.D.

Mrs. BOXER. Here you go. We have all of these documents that clearly say the problem with this bill is it makes no health exception; it is vague; it is dangerous for women.

The fact is, the bill passed the Senate. We had these arguments and the bill passed the Senate, but the great news about that debate is that TOM HARKIN offered his amendment, and that is the subject of the vote we are going to have, where I hope everyone votes to disagree with what the House did because what the House did is it stripped out of the bill this very important language that deals with Roe v. Wade.

What did it say? The decision of the Supreme Court in Roe v. Wade was appropriate and secures an important right and such decisions should not be overturned.

It just shows you the real desire of the anti-choice Members of the Congress. They could have taken this language, which has no force of law—it is a basic statement, an important statement, a crucial statement, in my opinion, but it has no force of law. It doesn't say we say Roe v. Wade shall never be overturned and we pass legislation which embodies Roe. We have not done that. I wish we could, I hope

we will, and I think some day we will. I think it is going to take a pro-choice President, but I think some day we will make Roe a law that is actually signed rather than just a court decision. I have offered bills to do that. We have not moved forward because we have had to fight off so many other attempts to restrict Roe.

Indeed, the House could have taken the bill which bans this procedure without a health exception with this language, and it would have been on the President's desk. But they are so against Roe—that is what this is all about—that they had to strip it out, even to slow down the bill.

That is what we are here today discussing: whether the House was right to strip out this sense-of-the-Senate Harkin amendment. We have had a good debate so far. We have some time left. Senator DEWINE is going to speak for the rest of the time this morning, and we will have more time to finish our debate, whether it is before the storm comes or after the storm comes. I don't know how we will resolve that situation.

We will have more debate. It is a very important debate. It is an important debate because before Roe became the law of the land, women died. One could argue how many. I am not going to get into the argument. I have evidence it was 5,000. Senator SANTORUM says his evidence is it is 85. One is too many.

Abortion should be legal in the very early stages, as Roe says. After that, the State should be able to come in and set rules and to say after viability one cannot have any abortion, except to save the life and health of the woman. That is the bottom line of Roe, and that is why we are arguing so strongly that this Senate should go on record disagreeing with what the House did so that when this bill goes over across the street to the Supreme Court they can look at this record, which we will make sure they look at, and see that the Senate, while voting to ban this procedure without a health exception, also said do not overturn Roe.

To me, that is a signal to the Supreme Court that they should rule the bill unconstitutional. We would have been happy to vote for that bill with the health exception. I do not understand why a group that calls itself pro-life will not stand up for the life and health of a woman. I do not understand it.

Look, I respect it because this is America and everyone has a right to his or her opinion, as strong as it may be. I do not mind that. I think it is great. It is what makes our democracy great, that we can have these debates and discussions, but I do not understand how a movement that calls itself pro-life can be that disinterested in the health and the lives of women.

Women are not just vessels that carry babies to term. Women are human beings who deserve to be respected, admired. They need dignity. A woman does not just say, oh, I woke up

one morning; I do not want this baby at the late stage; I think I will change my mind. If my colleagues think that about women, they do not know women. We are the nurturers.

Roe v. Wade was a decision that weighed the rights of women with all the other rights that compete, and it came up with what I consider to be a very wise and moderate decision, which is before viability a woman has the right to choose and Senator BOXER, Senator DEWINE, Senator SANTORUM, no Senator, no matter how powerful, no House Member, no President has a right to get involved in the decision that she makes with her doctor, her God, and her loved ones.

We are not her loved ones. I know we want to be loved by everyone—most politicians do—but I can guarantee, we are not. We do not belong in the lives of our citizens at a point where the Court has clearly stated that they have the right and respect to make that choice themselves.

So what did Senator HARKIN do? He said: Let us have an amendment that says Roe v. Wade should not be overturned. We did it. We passed it and the House stripped it out. We are saying we want to vote to disagree with the House. This is Roe:

... the preservation of the life or the health of the mother—

Must always be considered.

I am very happy I was able to place into the RECORD the scientific articles which stated that, in fact, there were 5,000 women who died every year of illegal abortions. I pointed out that I do not trust numbers from the Government when the Government was about prosecuting people who had abortions. So I do not trust those particular numbers at that time.

I also was able to place into the RECORD a number of articles, a number of letters, testimony from doctors who deal with these issues every day, not Senators who make up and do this for politics but doctors who take the Hippocratic oath to do no harm to their patients, who are telling us, please, do not go down this path; you are jeopardizing the lives of women.

The Supreme Court is going to get this case, but I hope the Supreme Court also will note that we voted overwhelmingly to disagree with what the House did by stripping out the Harkin amendment that simply says Roe should not be overturned.

I yield back my time, and I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Ohio.

Mr. DEWINE. Mr. President, first, I would like to thank my colleague from Pennsylvania, Senator SANTORUM, as well as Senator BROWNBACK, Senator GRAHAM of South Carolina, and Majority Leader FRIST for their unending and unwavering efforts to put a permanent end to this horrible partial-birth abortion procedure.

During the time we have served together in this body, they have never

given up hope that this Congress and this country would put an end to this barbaric procedure.

Let me also thank my colleague from the State of Ohio, Congressman CHABOT, for his tremendous work in this area as well. He has remained dedicated and continues to be focused on this effort.

It is time that this Senate, this Congress, this country banned a procedure that is inhumane and that has absolutely no medical purpose and that is, quite simply, morally reprehensible. There is no debate about these facts. There is no debate about what takes place during a partial-birth abortion. I submit to my colleagues that the more we know about this procedure, the worse it is. The more we know about it, the clearer it is that we must oppose it. The more we know about it, the easier it is to ban it once and for all.

This is a procedure in which the abortionist pulls a living baby feet first out of the womb and into the birth canal, except for the head, which the abortionist purposely keeps lodged just inside the cervix. As many of us have explained in detail on this Senate floor before, the abortionist then punctures the base of the baby's skull with a long scissors-like surgical instrument and then inserts a tube into the womb removing the baby's brain with a powerful suction machine. This causes the skull to collapse, after which the abortionist completes the delivery of the now-dead baby.

These are the essential facts. No one has ever come to the Senate floor to dispute these facts. This is what a partial-birth abortion is. No one can deny the facts. I can think of nothing more inhumane and indifferent to the human condition.

Every year the tragic effect of this extreme indifference to human life becomes more and more apparent as the procedure is performed all over this country. It is also, of course, performed in my home State of Ohio and actually performed within 20 miles of my home in Ohio. I have spoken on the Senate floor many times before about two particular partial-birth abortions that occurred in Ohio, and I will take a few minutes to recount these tragedies again. They were two typical partial-birth abortions, typical except for the way they turned out.

On April 6, 1999, in Dayton, OH, a woman entered the Dayton Medical Center to undergo a partial-birth abortion. This facility was and tragically continues to be operated by Dr. Martin Haskell, one of the main providers of partial-birth abortions in this entire country. Usually, the partial-birth abortion procedure takes place behind closed doors where it can be ignored, where people do not really know much about it, but in this particular case the procedure was different. There was light shed upon it.

This is what happened, and this is how light was shed upon it: This Dayton abortionist inserted a surgical instrument into the woman to dilate her

cervix so the child could eventually be removed and then killed. We have to understand that this procedure usually takes 3 or 4 days. This is not a quick procedure. It takes 3 days to do it. The woman went home to Cincinnati, expecting to return for the completion of the procedure in 2 or 3 days.

In this case, though, her cervix dilated too quickly and, as a result, shortly after midnight of that day she was admitted to the Bethesda North Hospital of Cincinnati, in her hometown, and the child was born. The medical technician pointed out the child was alive but, sadly, apparently the chance of the baby's survival was slim and after 3 hours and 8 minutes the baby died.

The baby was named Hope. On the death certificate, of course, there is a space for cause of death or method of death. In the case of baby Hope, the method of death is listed as "natural."

We, of course, know that is not true. We know all the facts. There was nothing natural about the events that led to the death of this tiny little child because baby Hope did not die of natural causes. Baby Hope died the victim of a barbaric procedure that is opposed by the vast majority of the American people. In fact, a Gallup poll conducted in January of this year shows well over 70 percent of the American people want to see this procedure permanently banned because the American people know it is wrong. They feel strongly about it. We as a Senate, Members of the Congress, should listen to the American people. But more importantly, besides listening to the American people, we need to listen to our own conscience. We know this is wrong.

To almost underscore the inhumanity of this procedure, 4 months later it happened again; again in Ohio, again with the same abortionist. This time, though, something quite different occurred. Once again, in Dayton, this time on August 18, 1999, a woman who was 25 weeks pregnant went to Dr. Haskell's office for a partial-birth abortion. As usual, the abortionist performed the preparatory steps for this barbaric procedure by dilating the mother's cervix. The next day, the woman went into labor and was rushed to Good Samaritan Hospital—again, not what was expected.

Remember, the procedure normally takes 3 full days, but she was rushed there in labor. This time, however, despite the massive trauma to this baby's environment, a miracle occurred and, by the grace of God, this little baby survived and, quite appropriately, she is today called baby Grace.

These types of tragedies have been recounted by medical professionals who have been shocked by the events. There are other stories I would like to tell the Members of the Senate.

Brenda Pratt Shafer, a registered nurse, was assigned to an Ohio abortion clinic in the early 1990s. She was assigned to the same Dr. Haskell abortion clinic.

Nurse Shafer observed Dr. Haskell use the procedure, this procedure, to abort babies. In fact, she testified about it before our Senate Judiciary Committee in 1995. I would like to share with my colleagues what she said because she gave—this nurse did—very gripping, very telling testimony. Nurse Shafer described a partial-birth abortion she witnessed on a child of 26½ weeks. This is what she observed:

The young woman was 18, unmarried, and a little over 6 months pregnant. She cried the entire 3 days she was at the abortion clinic. The doctor told us I am afraid she is going to want to see the baby. Try to discourage her from it. We don't like them to see their babies.

Nurse Shafer continues:

Dr. Haskell went in with forceps and grabbed the baby's legs and pulled them down into the birth canal. Then he delivered the baby's body and arms, everything but the head. The doctor kept the head right inside the uterus. The baby's little fingers were clapping and unclapping, his little feet were kicking. The baby was hanging there and the doctor was holding his neck to keep his head from slipping out. The doctor took a pair of scissors and inserted them into the back of the baby's head and the baby's arm jerked out with a flinch, a startle reaction like a baby does when he thinks he might fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening, and sucked the baby's brains out.

Now the baby went completely limp. He cut the umbilical cord and delivered the placenta. He threw the baby into a pan along with the placenta and the instruments he had just used. I saw the baby move in the pan. I asked the other nurse and she said it was just reflexes. The baby boy had the most perfect angelic face I think I have ever seen in my life.

When the mother started coming around, she was crying. "I want to see my baby," she said. So we cleaned him up and put him into a blanket. We put her in a private room and handed her the baby. She held that baby in her arms, and when she looked into his face, she started screaming: "Oh, my God, what have I done? This is my baby. This is my baby."

It is my prayer that there will come a day when I don't have to retell Nurse Shafer's story, that there will come a day when my colleagues, like Senator SANTORUM and Senator BROWBACK, the Presiding Officer, Majority Leader FRIST, and the rest of us who have fought this battle will not have to come to the Senate floor and talk about partial-birth abortion. Nobody wants to talk about this. But until that day comes when this procedure has been outlawed in our country once and for all, we will have to continue to fight against this ghastly procedure.

Now is the time to ban this awful procedure. It simply is the right thing to do. This Senate must do that.

(The remarks of Mr. DEWINE pertaining to the introduction of S. 1629 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I ask unanimous consent to have the time until Senator BOXER returns.

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

Mrs. MURRAY. I am pleased to join with Senators BOXER and HARKIN in the debate to reaffirm the protections guaranteed to women in the landmark Roe v. Wade decision.

Let's be clear: The Republican leadership is trying to do something extraordinary on the Senate floor, something everyone who cares about the Constitution and women's rights should pay attention to. They have already done it in the House. The Senate, now, is the last line of defense.

It is helpful if we look at the history of this debate to see why the Republican approach is a threat to women's constitutionally protected rights. Earlier this year, the Senate debated the so-called partial-birth abortion ban. I joined with many of my colleagues in speaking against that proposal. I noted the bill was unconstitutional based on the Supreme Court's ruling in Stenberg v. Carhart. In that case, the Supreme Court struck down a similar law in Nebraska because it was too broad and because it did not include an exception for women's health.

We made that case in the Senate, but we were repeatedly turned back. We also offered reasonable amendments to make sure this legislation would not threaten the lives or the health of women and to reduce the number of abortions in America. Opponents rejected almost all of our amendments. That showed me their real goal was not to reduce the number of abortions or to protect women but to use the power in Congress to overturn Roe v. Wade.

As the debate continued in the Senate, my suspicion was confirmed. For example, I introduced a prevention amendment to reduce the number of abortions. My amendment would have provided contraceptive equity in health plans, expanded education about emergency contraceptives, made emergency contraceptives available in the emergency rooms for victims of rape, and would have offered CHIP health insurance coverage to protect women. My amendment was defeated on a budget point of order.

Senator FEINSTEIN offered an amendment to protect the health of a woman. That amendment was defeated as well. That brings us now to the Harkin-Boxer amendment and the reason we are having a debate today. That amendment reaffirmed the Senate's support for the Roe v. Wade decision. It passed the Senate with a bipartisan vote of 52 to 46. The Senate was firmly on the record supporting the Roe decision. Eventually, that so-called partial-birth abortion bill passed the Senate, including the language supporting Roe.

Then something happened, something completely undermined the will of this Senate. The Republican leadership tried to bring up the House version of the bill and send it to conference. Many Members objected. That is why we are here today, to completely disregard the will of the Senate. To disregard the fundamental rights afforded

all women in this country by the United States Supreme Court is unacceptable.

I urge my colleagues to support this motion and send the amendment back to conference. The Senate needs to send the right message to the Supreme Court and to women across this country—that their inherent right of privacy and their right to make reproductive health care decisions will not be jeopardized. This is another attempt to circumvent the Supreme Court's ruling in the *Stenberg v. Carhart* case. The authors of this bill tried to get around the law of the land by inserting a section of congressional findings in their unconstitutional bill. These findings dispute the basis for the Supreme Court's decision, and they state that Congress finds the partial-birth abortion ban legislation to be constitutional.

The authors of this legislation claim that congressional findings are all that is necessary to ensure a law is constitutional. That is a bit optimistic on their part, and it ignores past congressional findings that were ignored by the Court.

The Court struck down the Nebraska law for one reason. It did not contain any consideration for the health of the woman as prescribed in the original Roe decision.

Telling the Court that Congress does not find women's health to be important does not meet the constitutional test.

It is somewhat surprising that opponents of this motion would now argue that talking about Roe or the constitutional protections provided in Roe is not relevant.

One of the reasons I opposed S. 3, the so-called Partial Birth Abortion Act, was because I know this legislation is unconstitutional. It simply does not meet the constitutional test that requires providing some consideration for the health of the woman.

The Court has been extremely clear on this point.

We are voting to ban a legal, safe medical procedure that is used to save the life and health of women. Proponents of this legislation will argue that S. 3 does not undermine Roe, that it does not jeopardize a woman's life or health, and that it simply bans one procedure. I think we all know the true objective here. It is to overturn Roe piece by piece.

The other side claims they are not seeking to overturn Roe but, rather, to protect women and the unborn. If they really believe this and they are not concerned with a constitutional challenge, they should support the Harkin-Boxer amendment. This amendment should be part of any final legislation.

I think it is important to discuss what Roe did and did not say.

I often hear that Roe allows for abortion on demand at any stage of the pregnancy. That is simply not true. The Justices worked very hard to achieve a balance between the privacy

of the woman and the interests of the state. They found this balance by distinguishing between pre- and post-viability. The underlying issue in Roe was privacy.

The Roe case built on the precedent established in *Griswold v. Connecticut*, which outlawed State laws that criminalized or hindered the use of contraception because they violated the right to privacy.

In the Roe decision, the Supreme Court used this same right of privacy to prohibit laws that banned abortions performed before viability. After viability, the Court did rule that the State does have a prevailing interest to restrict abortion, which is why so few abortions are performed late in pregnancy. Eighty-eight percent of abortions are performed before the end of the first trimester of pregnancy, and 98 percent occur during the first 20 weeks.

What the Court said regarding post-viability is that the State could restrict access, but the law must include a health and life exception. The Supreme Court found that the State's right to restrict or regulate abortion could not—and let me repeat, could not—jeopardize the life or health of the woman.

It is disheartening to me that efforts to overturn or restrict the rights afforded in the Roe decision often exclude any consideration for the life or health of the woman.

I have heard supporters of S. 3 claim that so-called partial-birth abortions jeopardize a woman's health and are never necessary to protect the health of the woman. If anyone doubts that Roe was not important for the life and health of a woman, they should consider the world before Roe.

In 1973, abortion, except to save a woman's life, was banned in nearly two-thirds of our States. An estimated 1.2 million women each year were forced to resort to illegal abortion, despite the risks associated with unsanitary conditions, incompetent treatment, infection, and hemorrhage.

Because the procedure was illegal, there is no exact figure on the number of deaths caused by illegal abortions in the U.S. One estimate that was made before 1973 attributed 5,000 deaths a year to illegal abortions.

According to a 1967 study, induced abortion was the most common single cause of maternal mortality in California. The number of deaths per 100,000 legal abortion procedures declined from 4.1 percent to 0.6 percent between 1973 and 1997. The choices women had prior to 1973 were often the choice between life and death.

The Roe decision, coupled with the *Griswold* decision that gave women the right to contraceptives, finally gave women full and just reproductive choice.

But again the Roe decision does not allow for abortion on demand. The decision placed the appropriate restrictions on late-term abortions without forcing women into the back alleys.

Currently, 41 States have laws that restrict or ban post-viability abortions, except to save the life and health of the woman. This is consistent with Roe. Clearly, Roe did not result in abortion on demand at any stage in the pregnancy.

Today we are ready to turn back much of what was achieved in Roe by banning a safe medical procedure at any stage of the pregnancy regardless of the threat to the woman. S. 3 removes any consideration of the health of the woman. Personally, I believe the Court will strike down this misguided legislation when it passes. However, we should send the right message to the Court that the U.S. Congress supports the Roe decision and believes that the right of privacy is an important protection for all Americans.

I am fortunate to represent a State that has twice voted to reaffirm Roe and to protect a woman's right to reproductive choice. In fact, in 1998, a similar effort to ban a safe and legal abortion procedure was defeated in Washington State. People in Washington State understand the need to provide for the health and the life of a woman.

In fact, a recent ABC News poll shows a majority of Americans support a health exception for the woman for late-term abortion. The poll—which was just conducted in July—asked, if a late-term abortion would prevent a serious threat to the woman, should it be legal? Twenty percent said it should be legal in all cases, 41 percent said it should be legal if health is threatened—a total of 61 percent. This poll shows what many of us believe, that a woman's health is an important factor and consideration.

This motion will give Members the chance to cast their vote either in support of Roe or in support of overturning this landmark decision. If you believe that women in this country should be afforded full reproductive choice, then you must vote to ensure that the Harkin-Boxer amendment remain part of any final conference agreement on S. 3. If you oppose this amendment, you are saying that you do not believe that the Constitution provides women with the right of privacy and that there should be no consideration for the health and life of the woman.

I hope we don't turn back the clock on the floor of the Senate and place women in this country at risk again.

ROE ROE. V. WADE

Mr. DODD. Mr. President, I express my cooperation, sense of solidarity with my colleague from California, Mrs. BOXER, and others under very unusual procedural circumstances. In my almost 24 years in the Senate, I cannot recall ever rising to speak on a motion to disagree with a House amendment on a Senate bill and request a conference. As all of my colleagues know, these motions are rarely if ever debated. They are routinely adopted. And