

available for expansion and investment or whether it is going to have to be saved for payments on those things.

We have the workforce investment reauthorization. This will improve job training by focusing on core skills and encouraging effective cooperation among job training partners so people will be better prepared to take on the jobs that are available. Certainly what is happening in this economy is it is a more high-tech economy and more training is needed.

We have the Foreign Competitiveness Act, which we are dealing with now in the Finance Committee, where the tax situation we have now has caused a WTO objection. But we can change that so it does fit into our foreign trade operation and at the same time continue to create more jobs and to have businesses do better.

The Small Business Administration bill is there. That would help ensure that SBA programs will continue to provide products and services essential for small businesses. That is where most of our jobs are, particularly in a State such as mine, Wyoming. Almost all of our jobs are small businesses. So the SBA bill is certainly extremely important.

The Homeland Investment Act is pending, too. That allows the Internal Revenue Code to change with the objective of encouraging reinvestment of foreign earnings in this country. You would be surprised at the amount of money that is involved, if we allowed companies that do some of their work overseas to take some of their profits home with a reasonable tax payment, and we would have more money for investment.

So we have a lot of things to do. We have some great opportunities. Jobs certainly has to be the priority for all of us. The stock market is great. We love to see that grow up. But the fact is, jobs are the key to our success. We want to continue to improve there.

Finally, let me say quickly that I certainly hope we can come out of the committee and finish our work on the supplemental to supply funding for our Armed Forces overseas and to do something in Iraq so we can move ahead.

I had the occasion to be in Iraq and Afghanistan a week ago for a week. Certainly it was an interesting situation. There is a little different view there than what you hear from here. Certainly our troops have done an outstanding job, and continue to do an outstanding job not only on the war, not only on terrorism, but also helping to rebuild. We, obviously, have some continuing problems there with terrorism and that has to be handled, but we are moving toward having the Iraqis and their own police force moving into that.

But my point is, I hope we can get over there and put Iraq more quickly in a position to take care of themselves so we can bring our troops home. In terms of overall expenditure, that of course would be our greatest saving.

I yield the floor and yield back the remaining time we have in morning business.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany S. 3. The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion, having met, have agreed that the Senate recede from its disagreement to the amendment of the House, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

(The Conference Report was printed in the House proceedings of September 30, 2003.)

The PRESIDING OFFICER. Under the previous order, there will be up to 4 hours for debate equally divided between the majority leader or his designee and the Senator from California or her designee.

The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I would like to enter into a time agreement for the first portion of the time allotted in this debate. I ask unanimous consent I be given the first 20 minutes until 11 o'clock; following that, the Senator from California be recognized for 20 minutes; following the Senator from California, the Senator from Alabama, Mr. SESSIONS, be recognized for 10 minutes; following the Senator from Alabama, the Senator from Kansas, Mr. BROWNBACK, be recognized for 20 minutes; following Senator BROWNBACK, the Senator from California would then be recognized for 30 minutes. We will stop there and go from that point.

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

Mrs. BOXER. I have a question. That would take Senator BROWNBACK until 11:40 or 11:45?

Mr. SANTORUM. To 11:50, and the Senator from California would have until 12:20.

Mrs. BOXER. I thank the Senator.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, we are here today on the verge of something the United States has done on two previous occasions; that is, pass a conference report to ban a partial-birth abortion procedure to be done in the United States of America. The only difference this time is we have a Presi-

dent who has said he is willing to sign this legislation. This is a very important day for this country and for those babies who would be the object of this brutal procedure. Having it banned in the United States of America is a historic event and a step forward in human rights for this country.

We have overcome two Presidential vetoes but now have a President who will sign this legislation.

The other thing that stopped this legislation from moving forward and becoming law was the United States Supreme Court decision in the Nebraska partial-birth abortion case. We have addressed those issues. There were two issues the court cited as its reason—in a 5-to-4 decision—for finding the Nebraska partial-birth abortion statute unconstitutional.

Those two reasons were, No. 1, that the statute was vague. We have amended the language of this statute to make sure that the description of a partial-birth abortion is clear to include only those types of abortions and not other late-term abortion procedures, which was the concern of the court. We did so by a couple of things, but the most essential part was that the court found that the prior description could have included other forms of abortion because during other types of late-term abortion procedures there may be a portion of the baby's body that at some point during the abortion procedure may come outside of the mother.

As a result of that, this could have been broadly construed to abolish those procedures, also.

In our language we are very clear. We say that the term "partial-birth abortion" means an abortion which the person performing the abortion:

(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, [all new language] the entire fetal head is outside of the body of the mother, or, in the case of breech presentation, [that is, feet first] any part of the fetal trunk past the navel is outside of the body of the mother . . .

Now, that specificity of talking about the way in which the child is delivered and then killed is fundamentally different than anything we had before. All we said before was that some portion of a living, intact fetus must be outside of the mother. That, the court found, was a little too vague for them. It could have included other types of abortions. So we are being very clear. There is no other abortion procedure which the entire fetal head would be presented with the child still being alive out of the mother, or the child would be delivered all but the head at this point and then be killed. There can be no confusion as to what procedure we are talking about in this case.

We believe with the language we have put in this bill we have now solved the constitutional problem of vagueness.

The second issue is the issue of women's health. We have a substantial section of findings in this legislation.

Much of those findings occurred since the case was tried at the district court level of Nebraska, which was the record upon which the Supreme Court made its decision. There has been a substantial amount of evidence that has been printed in the record in Congress at congressional hearings that show not only the overwhelming weight of evidence but the dispositive weight of that evidence in this procedure is never—I underscore never—necessary to protect the health of the mother.

So the court found there needed to be a health exception because there may have been, according to the record they looked at in the Nebraska case, there may have been an instance in which this could have been necessary.

We have, without question, clarified that record to make sure that the court knows that there is no medical evidence out there that this procedure is ever necessary to protect the health of a mother, and therefore falls outside of *Roe v. Wade* where a health exception is necessary. In fact, the overwhelming weight of medical evidence suggests this is a dangerous procedure, a much more dangerous procedure for a woman than the other abortion procedures that are used at this time in pregnancy.

We believe this bill is constitutionally sound and obviously very necessary from the standpoint of who we are as a society and, I argue, for just basic human rights.

The question is, Why are we doing this? Let me describe the procedure. I did not do that when we had the conference report being moved to conference, but I think it is important for people who may not be familiar with this procedure to see this procedure. I hope sensibilities are shaken to the point where I do not have to explain why we want to ban this procedure; that by going through this procedure and showing what happens to a baby who is at least 20 weeks of gestation—in other words, at least halfway through the pregnancy; with 40 weeks gestation, this is at least 20 weeks, and in many cases, 21, 22, 23, 24 weeks, and in rarer cases, beyond that—but these are babies who would otherwise, had they been delivered, be born alive.

Now, in the case of 20 and 21 weeks, the chance of them surviving are not particularly high, although there are cases in which babies at 21 weeks have survived. But the point is these are children who would otherwise be born alive, and the people who perform these abortions, the abortion provider organizations, have testified that these abortions are performed on healthy mothers with healthy children. These are healthy children who otherwise would be born alive had this procedure not been performed on them. I put that in the context of this is what we are doing to healthy children, with healthy mothers who otherwise would be born alive. These are children who, again, the medical evidence has been presented, that experience and feel pain.

The partial-birth abortion takes 3 days. That is the normal time. What the doctor does when the mother presents to the abortionist—and I say the “abortionist” because these are only done—again, this is clear from the record—these are only done in abortion clinics. The person who designed this procedure did so, and he testified to this, for his convenience because he can do more of them quicker. He can do more abortions more often. He is in business. These late-term abortions are more complicated than earlier term abortions, and they take more time using other methods, so he designed a method that would take less time. So this method was designed not to protect the health of the mother.

In fact, it is less healthy; it is not to protect the mother's life. It is never done in the case of an emergency.

You would not do this in the case of an emergency because it takes 3 days to do this. It is done for the convenience of the abortionist, for them to make more money.

So this procedure was designed for the mother to be presented, to be given something to help dilate the cervix. So when the mother re-presents in a couple of days, her cervix is dilated, the doctor has access to the baby at this point.

What happens is, the doctor then takes the baby—because usually at that gestational age the baby is in a breach position—and goes into the uterus and grabs the child by one of the limbs, usually the leg or the foot, and then—if the next chart will come up—pulls out the baby through the birth canal, feet first.

Now, I have been blessed to have my wife deliver seven children. One of the fears of any pregnancy is having the child being in a breach position. Every obstetrician knows, everybody who has ever gone through a pregnancy knows, that a breach position is a dangerous position for the baby to be in; it is not the natural position to deliver a child. So what we are doing here is performing a procedure that is inherently dangerous; that is, delivering in a breach position.

So you are pulling the baby through the birth canal. Again, this baby is alive. If the baby is not alive, it is not a partial-birth abortion under the definition of the statute. The baby has to be alive and intact. So the baby is being pulled by these forceps from the mother.

Again, it is being pulled out completely—and, again, the definition that is in the statute—until the trunk is exposed, at least past the navel. So at least the lower extremities of the baby are exposed outside of the mother. As such, the term “partial birth” comes from the fact that the baby is partially born, is in the process of being delivered.

The physician—as you can see—is holding the baby in his or her hand. This child weighs about 1 pound. This is a fully formed baby. It is not com-

pletely formed, obviously, because it is of only 20 weeks gestation, but hands, arms—everything—legs, toes, ears, et cetera, all these things you see here, that is what a baby at that gestational age looks like. And the relative size, vis-a-vis the size of the hand, is a pretty accurate depiction. This is not a cartoon. This is an accurate scale medical drawing.

As you can see from the next depiction, the baby is born, really, with the exception of the head. The thing that grabs at me is, here is this child who is literally inches away from being born, who would otherwise be born alive, and in almost all cases is a healthy child—it is not being done for any health reason of the mother or life reason of the mother; it is simply being done because the mother wants to terminate her pregnancy very late in the pregnancy—and the doctor has to hold this living child in his or her hand, with the heart beating, with the baby, who is probably in shock at this point, but moving and alive.

Then what the procedure calls for is these scissors, called Metzenbaum scissors. The doctor feels up the baby's back. The doctor finds the base of the skull and then takes these sharp scissors and probes in to find the point right at the base of the skull—and, as you know, a baby's skull is soft. So they take these scissors and they thrust them into the baby's skull.

Now, Nurse Brenda Shafer, who has testified before Congress, said that when that thrusting action took place, she saw the baby's arms and legs spasm out like this—like a baby you would hold, and if you pretended you were going to drop the baby, how the baby sometimes would spasm their arms and legs out like that. That is what she said happened.

Then, as you see from this picture, the baby's arms and legs go limp, because when you thrust a pair of scissors in the back of baby's skull, you kill the baby.

But that is not enough. Now we have to remove the rest of the baby. So what the abortionist does is take a suction catheter, a vacuum hose, and, in the hole created by these scissors, they place a vacuum hose, and they suck the baby's brains out to collapse the skull. It is a soft skull. At that point, the rest of the baby can then be removed from the mother's womb.

This goes on in America virtually every day, maybe more than once or twice a day, depending on whom you believe, anywhere from a few hundred times a year to a few thousand times a year. We never have very good information because the very people who collect that information are the people who oppose this procedure being banned, so they try not to publicize too much about what they do.

But the fact is, if it occurred once in America a year, this kind of treatment to an innocent child, who would otherwise be born alive—was healthy, with a healthy mother—there is no excuse for it.

So when people ask the question, "Senator, why do you keep bringing this procedure back up to the Senate floor; it only stops one procedure; you are not banning other procedures that are used," my answer is, "Because this is horrendous."

In America, whether we like it or not, we are the beacon of freedom, but in many cases we are also the model of what is right and just. The world looks to us as Americans, as free people, as people who, probably uniquely in the world, get a chance to determine what our law should be, what our collective morality should be, what our culture looks like because of the enormous freedom we have.

The heart and soul of America is reflected through our laws, unlike other countries that do not allow that democratic process to work so effectively. So when America passes laws, or when America allows certain behavior to occur, the world looks at that law or that behavior as supported by the collective consciousness and morality of the American public.

When they see this, what do they think of us? What do they think of us? What kind of culture do you think the rest of the world thinks America is all about? What kind of morality or ethics do you think the world thinks America is all about when they look at us and see that we allow this to be done to innocent little children?

So I think it is important for us to have laws that proscribe things that we would not want our children to see, that I know a lot of people do not want their children to see. My goodness, this goes on and you want little children to see this? We don't want the rest of the world to see that we allow this kind of brutality to occur to innocent little children.

So the answer is, we need to do this for ourselves. We need to police ourselves in what we are going to allow in our culture. We cannot allow this kind of brutality to corrupt us, to corrupt our soul. And that is what it does. It makes us a much more brutal and harsh country if we stand here and say, yes, for whatever reason, we are going to allow this to occur. It coarsens us, it dulls our senses, and that dulling of the senses has a corrupting effect on not just how we treat little ones here but how we treat each other in every aspect of our lives.

Madam President, I yield the floor.

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

Mrs. BOXER. Mr. President, do let me know when I have 2 minutes remaining out of my 20 minutes.

The PRESIDING OFFICER. The Chair will so advise the Senator.

Mrs. BOXER. Mr. President, I stand before my colleagues as a Senator from California but also as a mother who had two complicated pregnancies and two wonderful, fabulous children, and also as a proud grandmother. I stand before you to tell you this is a very sad day for the women of America, a very

sad day for the families of America, because what is about to happen here is this Senate is about to pass a piece of legislation that for the first time in history bans a medical procedure without making any exception for the health of a woman. This is a radical thing that is about to happen.

Let's clear something up for the record. When the clerk read the bill, she said this is banning something commonly called partial-birth abortion. There is no such term in medicine as partial-birth abortion. There is either a birth or there is an abortion. There is a miscarriage. There is no such thing as partial-birth abortion. It is a made-up term to inflame passions.

My friend knows very well, if he was willing to agree to a health exception to protect the health of women, if he would have sat down with us on our side, we are ready to ban all late-term abortion. We are ready to ban all late-term abortion on our side, as long as there is an exception for the life and the health of a woman, which is the centerpiece of *Roe v. Wade*. If he was willing to do that, we would not be taking the time of the Senate. This would be done.

This is more a case of wanting to keep an issue alive out there to make people believe those on the other side are cruel, whether we are mothers or grandmothers or aunts. That is what it is about. It took me a while to figure that out. But once I saw this bill come back to us in this form—clearly unconstitutional, clearly without a health exception, clearly vague, and all those who have discussed this with me tell me it is clearly going to be declared unconstitutional because it is practically identical to other bills that have been declared unconstitutional—I saw what this is about. This is about politics. That is what I believe. Because we could have a bill today, as long as we protected the health of the women of this country.

Why would anyone in this Chamber be so callous as to pass a law knowingly keeping out a health exception for women? Well, if you listen to my friend's words and you hear the words he uses, you will understand why this is happening from the other side. My colleague uses the term "killing the child." As the author of the Violence Against Women Act and the Violence Against Children Act, I take deep offense at that language—deep offense. Women do not want to kill their child. Women who have had this procedure have come to the Congress, have begged Members of Congress: Do not pass this without a health exception for the mother. If I didn't have this procedure, I would have been made infertile.

I am going to go into those stories later in the debate. But here is the situation. If you listen to the language "killing the child," you must come to the conclusion my colleague believes abortion is murder and women are murderers and doctors are accomplices.

I thought we moved away from that when *Roe v. Wade* became the law of the land.

Why are we here today? I will be honest with you: because I didn't want this bill to go through, and neither do people who believe women are important. Women deserve to have their health and lives protected and their fertility protected and their organs protected. Women want to take a look at what this debate is all about. I have already told you we were willing to go down the aisle with my friend and ban this, as long as it was not vague and had a clear health exception for women. Forget all this other talk about how cruel we all are. We were ready to do that. But no, my friend and his colleagues had to keep this thing going. It is their way or the highway.

Forget about what the Supreme Court has said about vagueness. Forget about what the Supreme Court has stated many times. This is basically a Republican court that has upheld *Roe v. Wade*.

With the next breath my colleague says: This bill is consistent with *Roe v. Wade*. It doesn't do anything to *Roe v. Wade*.

If that is the case, why in the conference—and I was a conferee along with the Senator from Pennsylvania—did they say—and they run the Senate and the House and the White House—we are taking out the Senate amendment authored by TOM HARKIN which simply said: The Congress believes that *Roe v. Wade* ought to be upheld?

There are two things in my friend's verbiage that show exactly what this is about. One, the term, used over and over again, "killing a child," which gives me a very chilling feeling that what this whole thing is about is eventually saying women are murderers and should to go jail, and doctors are their accomplices and they should go to jail. When you listen to verbiage, you hear a lot around here. And then, no problem, this bill, he says, is just in concert with *Roe v. Wade*, even though there is no health exception because they declared, in writing this bill, that this procedure is never necessary to save the health of a woman, which I will prove to you is made up.

The Senators on the other side who are pushing this are not doctors. There is one, but he is not an OB/GYN. I would rather listen to the doctors. I would rather listen to the health organizations rather than my friend from Pennsylvania. I like him. We are friends. That is not the point. We just strongly see this very differently. And we will continue to see this very differently as this issue goes on and on.

There we are. We are sitting in a conference committee. Here is where we are. The House and the Senate passed different bills. What was different about our bill, S. 3? Senator HARKIN put in language, and the Senate voted on it twice—twice: once was unanimous, once was a majority—to keep *Roe v. Wade* in the bill, a simple statement of support of *Roe*. So I come to

the conference committee ready, along with Senator FEINSTEIN, and other Congress people, to debate this issue. After all, my friend says here, we don't have any problem with Roe. This has nothing to do with Roe.

Fine. Let's keep it in the bill, folks, a sense of the Senate that Roe v. Wade should not be overturned. The Senate voted for it twice.

Let me tell you how long it took them to kick that amendment out. It was about 5 minutes. Not even a real discussion, not even a discussion about an amendment that passed this Senate twice, not even a discussion about a law which was a landmark law which passed in 1973, which has been upheld by the Supreme Court over and over and over. That is the kind of attitude you find from the other side when it comes to a woman's right to choose. They threw out Roe v. Wade faster than you could blink an eye. That is what they want the Court to do, and that is what this bill is about. That is why I want to take time here.

I know this thing is going to pass. I know exactly that it is going to pass. I have respect for that. I wish my friends would have respect for the fact that Roe passed also and leave it in this bill, so we do not send a confusing signal to the women of this country that their health no longer matters.

The Senator from Pennsylvania says, no problem, there is no reason ever to use this procedure. Let's look at what some of the doctors' organizations say. Let's hold up some of our charts on that. I will tell you something; I never dreamed I would be down here with Senators who think they know more than doctors, but that is what happens. Let me read you a statement by the American College of OB/GYNs:

Especially for women with particular health conditions, there is medical evidence that D&X [that is the procedure being banned] may be safer than available alternatives. A select panel convened by ACOG concluded that D&X may be "the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman."

Look at this. You are in the Supreme Court and you are hearing this case, S. 3; this bill is coming before you. They are going to quote Senator SANTORUM that never is this needed to save the life—though he will not say that—of a woman. It is not a problem. Are you going to believe Senators or the doctors who deal with this every day of their working lives? Common sense tells me, when I want to go to the doctor, I don't go to the Senator from Pennsylvania. We might have a nice chat about things, a good political talk, but I don't want him telling me or my daughter; I want a doctor who knows what they are talking about.

The doctors tell us this is necessary. Let's look at some other statements. This is a very important letter from the University of California-San Francisco, Center for Reproductive Health Research and Policy. This is a very important letter signed by a very impor-

tant physician. What does she tell us. This print is too small to read, so let's get the large one that lists the problems women can face. What Dr. Stewart tells us in very clear terms is there are serious health consequences of banning safe procedures, which she considers the procedure that is being banned in this bill to be, a safe procedure: hemorrhage, uterine rupture, blood clots, embolism, stroke, damage to nearby organs, and paralysis. This is a partial list of what doctors tell us could happen to a woman if this procedure that is being banned is no longer an option.

Who do you think the Supreme Court will listen to? Senators with no degree in OB/GYN or doctors who are telling us this is what could happen to a woman? Do you think we are doing the right thing by banning a procedure without which a woman could face damage to a nearby organ, paralysis, or a blood clot? What is it about this bill that makes it so sacrosanct that you cannot add an exception for the health of the mother? We tried everything. The straight health exception is the one that is the most constitutional. Others around here said serious adverse health consequences. Oh, no, that wasn't good enough.

There wasn't anything we could say on behalf of the women in this country that the other side would not shoot down. I don't understand it. I do not understand that kind of mentality. Don't we love our wives and our daughters and our aunts and all the women in our lives? How could we pass a bill that would say even if a woman's health is threatened, this procedure cannot be used, when we could have walked down the aisle together and passed a bill with a health exception?

So when I come before the Senate this morning, it is with a very heavy heart. But it is also with the knowledge that I think this Court is going to throw out this bill, regardless of whether colleagues say in the beginning there is no problem, no relation to a woman's health, because doctors have told us the serious health consequences of banning this procedure include all these horrible things. By the way, what is not listed here is infertility. Later today I will show you the cases of women who were spared that problem because this procedure was used on a very complicated, difficult, emergency abortion where the brain was outside the baby's head, where the child would have suffered.

I am telling you that I don't know where the compassion is, when we would have agreed to do this with a health exception. I don't know where the compassion is on the other side. My friend talked about a civilized society. I want a civilized society. That means you care about the women of this country. That means you care about their pregnancies. That means you want to help them through the most difficult times. That means you don't play doctor here because you are not a doctor.

We are about to play doctor in a big way. Fortunately, across the street in the Supreme Court they will see right through it.

So there are many things I could tell you about this bill. I will show you some others. Let's see what the Supreme Court said about why we believe this bill is unconstitutional. There was a case called Stenberg v. Carhart. The Supreme Court found their ban of this procedure in this State—it was Nebraska, I believe—was unconstitutional. They said it put an undue burden on women because the definition is vague.

Now the other side said they fixed that problem. We don't think they did. That will be decided. The second reason it was thrown out is there is no exception to protect women's health. I have to tell you that on both of these counts S. 3 failed the Supreme Court test. It failed it. Even some of the most anti-choice people out there have written letters criticizing the other side because they said why don't you do something that matters.

This is going to be overturned in the Supreme Court. So why are we going through this, seeing these pictures? Once I was on the Senate floor and a colleague wanted a 5-year-old to sit up there and look at these pictures. I objected to that. That is inflaming passions. I can show pictures of what it looks like when a woman gets a blood clot or when a woman is in a wheelchair and paralyzed, but I would not do that because this is not about sensationalizing anything. It is about doing the right thing.

I will yield the floor at this time. I see the Senator from Alabama here. I will return to continue this debate.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from California. I know she cares deeply about this. I just suggest that things are not as a lot of people think with regard to the question of abortion—particularly partial-birth abortion, which we are talking about today. That is all this bill has to do with.

I will just note that Faye Wattleton, a former president of Planned Parenthood, a very pro-choice group, and now head of a new organization, the Center for the Advancement of Women, recently commissioned a survey by the Princeton Survey Research Associates. It involved 3,329 women. This was a scientific survey. That is a very large number. A lot of polls on Presidential elections don't have that many people polled.

That survey found that 51 percent of the women, who are supposed to be offended by this small, but horrible procedure, wanted to ban abortion altogether, or limit it to cases of rape or incest or where the mother's life is in danger.

Another 17 percent said abortion—this is abortion in general—should be available under stricter laws than now

apply. That means that 68 percent of women polled think we ought to tighten up the laws. This idea, that dealing with partial-birth abortion is offensive to women, does not strike me as being sound based on that poll. But, of course, polls are not what we are about here. We are here to do what is right.

I do not believe this is the kind of action that most women in America are going to be offended by. I suspect if they knew the nature of partial-birth abortion, as Senator SANTORUM has explained, the numbers would be higher than 68 percent opposing it. I think we are having a growing understanding of the issue.

I thank Senator SANTORUM for raising this issue. He has been a good advocate of it. It is time now that we take a step that will make America a better place. We must just say no to this procedure. There are some activities that we can't allow. There are some activities that can't be justified and are so beneath the decency of a nation as great as America that we ought to ban.

I remember the debate a number of years ago when Senator Bob Smith, a former Senator from New Hampshire, raised this issue for the first time in this Chamber. He was attacked bitterly as being an extremist, talking about things he ought not to be talking about on the floor of the Senate. But Bob Smith stood firm, as he always did, for what he believed in. He said this was wrong. But year after year has gone by. We have had hearings, and I was on the Judiciary Committee when we had hearings on it. We heard the implacable opposition from the pro-abortion forces. They wanted no yielding, no compromise, nothing that would give an inch on this issue, and they dismissed facts and figures. Senator Bob Smith will now be vindicated. He displayed courage and determination in bringing this issue up and making sure that the American people understood what it is about and why this is a significant step in protecting the innocent unborn, but certainly does not have any broad impact throughout the abortion debate.

Many people probably did not believe what Senator Smith was saying at the time, frankly, but we have seen more about it. I think it is true that many people have not wanted to know about the gruesome details of this procedure: How a child, a baby, just 3 inches from complete birth is deliberately and systematically killed. That is not something about which we want to talk. We cringe to say the words. I wish they were not true, but unfortunately, they are true.

The destruction of a partially born child continues to this day. It is an affront to the decency of America, and I do believe this is a rational and appropriate legislative response on behalf of the American people.

The Senate is on record as agreeing with this view. Last year, we answered a very important question when we passed the Born Alive Infant Protec-

tion Act. This legislation basically said that if a child is accidentally born during a partial-birth abortion procedure—that is, the baby was actually born and removed from the mother—if the head was to move that final couple of inches, then that child's life would be protected. What else could we do? Why should we even have a law that would say that you have a right to kill a child who has been removed from the mother? The Born Alive Infant Protection Act was passed unanimously by this body. Partial-birth abortion inflicts pain and suffering on the child being born. That we know today. A few years ago, we were told by the experts that the anesthetic given to the mother would ensure the child feels no pain. However, we have learned this is just not true. Professional societies of anesthesiologists have refuted this claim.

The most mind-boggling aspect of this procedure, however, is that it is absolutely unnecessary. Almost all of the partial-birth abortion procedures that are performed in America are elective and not due to any danger to the mother's life. A number of people during this debate have expressed concern about the life of the mother, and that is a valid concern. I heard this argument during my time on the Senate Judiciary Committee. We had a number of hearings on the subject.

There are exceptions included in this bill to protect the life of the mother if it is in danger, although the evidence suggests that such circumstances virtually never occur.

Even in extremely rare circumstances where the life of the mother may be endangered by a pregnancy, the only medical requirement is that she be separated from the child. There is no requirement that the child be killed. The legislation provides, however, for a contingency in which the life of a mother is threatened. It would permit this partial-birth abortion procedure but only "to save the life of a mother whose life is endangered by physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself."

That is a pretty broad protection to a mother who may be endangered, but I really think it is unnecessary. The fact is the American Medical Association, a major institution in America, one that has consistently defended abortion rights, has declared this procedure is never medically necessary. That is an official position of the American Medical Association that it is never medically necessary. This is not what we need to be doing when there is a danger to the life of the mother. It is not necessary, and it should be outlawed.

The support for ending this procedure goes beyond our traditional debate on abortion. The support exists overwhelmingly in a bipartisan way because the partial-birth abortion procedure deeply offends our sensibilities as a people, as human beings who care about one another, who know that life

is fragile, and who believe that all human beings need to be treated with respect and dignity, even though they may be weak.

The Declaration of Independence notes life, liberty, and the pursuit of happiness as the ideals of the American life. Without this bill, a child partially born has those rights ripped away in a most vicious way. Allowing partial-birth abortion is a dangerous policy. It is a thin line. There is a thin thread that can justify this procedure that is, in essence, I believe, infanticide, as said by the former Senator Daniel Patrick Moynihan from New York.

This is a dangerous line we are pushing. If we say that a child partially born can be killed—

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

Mr. SESSIONS. Mr. President, I ask unanimous consent that I be given 4 additional minutes?

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, we certainly have no problem with that request, just that it come out of the time of the Senator from Pennsylvania, Mr. SANTORUM.

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

Mr. SESSIONS. Mr. President, the pro-abortion groups implacable in their opposition to any reduction in so-called choice powers, emphatically insisted and went around the country declaring that the number of partial-birth abortions performed every year was small.

They insisted these despicable procedures were only performed in extreme medical circumstances. Therefore, they said the Federal Government should not pass laws to stop it, but that was a flat out lie. I do not use that word often, but I will repeat it. It was not just an error. It was a lie.

These claims were either manufactured or disseminated in an attempt to minimize the significance of the issue and to dismiss the issues raised by Senator SMITH. In my view, it was based on an ends justify the means theory.

As reported in a 1997 front-page article in the Washington Times, Mr. Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers—let me say that again, the executive director of the National Coalition of Abortion Providers, who had been traveling the country saying these procedures were rare, had a change of heart. In his own words, he publicly admitted that he had "lied through his teeth" about the number of partial-birth abortions that were performed.

He estimated that "up to 5,000 partial birth abortions are performed annually, and that they are primarily done on healthy women and healthy fetuses." That is what we are dealing with today.

So I say to my colleagues on both sides of the aisle, how can we answer to our children and our constituents, our highest ideals as Americans, if we

allow children to be destroyed in this way? If we are a nation that aspires to goodness, that aspires to be above the coarse and to meet minimum standards of decency, this legislation is most strongly needed.

I find it very puzzling that there continues to be strong resistance by a few to the banning of this one brutal procedure. I ask myself: Why is that? I have heard it said that the people who oppose partial-birth abortion do so for religious reasons, as if that is an illegitimate reason to consider as one evaluates public policy.

Was it illegitimate when Dr. Martin Luther King marched for freedom based on his belief in the Scriptures? Religious principle is not an illegitimate reason for a motivation, but that has been a complaint about those who question the procedure.

I have analyzed the opposition to this bill and I cannot see that it can be founded on the law. I cannot see that it can be founded on science; the AMA says it is not necessary. I cannot see that it can be founded on ethics; certainly not. Why is it? The only thing I can see is that there is a sort of a secular religious opposition to any control whatsoever on abortion that is, I believe, driven by an extremist group. We are going to allow these procedures to go forward as long as abortionists wish to perform them, they say, and you, Congress, just have no say in it whatsoever.

I do not believe that is a rational argument. It is not justified. This legislation is specific.

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

Mr. SESSIONS. I ask unanimous consent that I have 1 additional minute.

Mr. REID. Mr. President, under the same conditions previously asked.

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

Mr. SESSIONS. Mr. President, this legislation would ban one simple, gruesome, unjustifiable procedure for destroying the life of a partially born child. I do not believe that threatens anybody's principles, but I will say one thing, not doing it threatens the decency and morality of the American people. Every day that it continues is a stain on the conscience of America.

I support this legislation, and I thank the Senator from Pennsylvania for his leadership.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 20 minutes.

Mr. BROWNBACK. Mr. President, this is an historic day. For the first time since *Roe v. Wade*, we are going to deal with the issue of abortion and limit the practice in one significant way. This is an historic day for life; for establishing and supporting a culture of life in the United States; for freedom; and for human rights—for the dignity of the weakest and most vulnerable amongst us, which we all profess to support.

This is will go down in history as a pivotal day, where we start to recognize that the child in the womb is a child. The child in the womb is not a piece of property. The child is, indeed, a person with dignity and rights and is entitled to life. That is a very important thing for us to recognize and for the United States to support.

I will begin my comments by showing a picture of a very young child. Thanks to modern technology, we are able to see a lot more these days. We now have what is called 4D, four dimensional, CAT scans of children in the womb. We can see children smiling and yawning in the womb at a very young age.

I recently had a gentleman in my office—we actually had him testify in front of the Commerce Committee—who performs surgeries on children in the womb—in utero surgeries. This gentleman works on children in the womb a great deal, and in doing these surgeries, for example, he says a child in the womb acts just like a child outside the womb. One has to go into the womb, when they are performing the surgery, to anesthetize the child. When a doctor goes in with a needle to poke the child in the womb, they have to chase them. There is a confined area that the child can run around in the womb, but as they go in with that needle the child jerks back, holds their buttocks back. They do not like to get the needle in them.

Having five children myself—two of them are five now—I know it is a major procedure for us to go in and get immunizations in the doctor's office. For us to get two children immunized, it takes five people—two holding down, one giving the shot, and a couple of us saying, there, there, it is all right.

It turns out that children in the womb are very similar. They do not like the pain. They feel it. They pull back from it. They repulse, and yet it is something we need to do.

I wish to continue my remarks by talking about a famous young child who is probably more famous before he was born than most people are during their life—Samuel Alexander Armas. I had him testifying about 2 months ago. He is now 3 years old. Samuel is a unique and beautiful child. He actually testified in front of the committee.

This is his hand coming out of his mother's womb. He had spina bifida, which a number of people recognize is a very difficult thing. The spinal cord does not develop. The child generally has great difficulty in mobility and can also be deaf resulting from that. Yet we have now found a way that in utero, in the womb, that we can operate on that child and close that area.

When Samuel testified at age 3 in front of my committee, he was fine; though, he does have some mobility problems with his legs. When his parents discovered that he had spina bifida, they had recommendations from their physicians that the pregnancy should be terminated. The parents said, no, no, we believe in life. We are not

going to do this to our child. At that time, they had even named him Samuel. They asked: What else can we do? They were told of in utero surgeries, and they decided to try it.

This in utero surgery actually took place at 21 weeks of age, which is about the timeframe that partial-birth abortions occur—21 weeks. I want to show a positive side of this. They went in and did the surgery on Samuel. They fixed the problem of the spina bifida. As they were concluding the surgery on Samuel, this picture was taken of his mother's womb. The surgery on Samuel was resolved and a photographer from USA Today was in the room taking pictures. USA Today had asked previously if they could be present at the surgery, taking pictures. This surgery was being done at Vanderbilt University Medical Center. The photographer was there. He had taken pictures throughout the surgery. The surgery was just wrapping up when all of a sudden they saw the womb shake a little bit and Samuel's hand comes out of the womb.

The doctor is looking at it. Out of curiosity, I guess, as much as anything, he puts his finger near the womb and Samuel grabs the doctor's finger—21 weeks of age, and Samuel holds onto it.

The photographer, in just a moment's notice, just clicks it. He doesn't know if he even gets the picture. He just senses that there is something important that has just happened. The hand lets go and goes back into the womb—Samuel likes it better in the womb at this point in time—and they close up the womb. The surgery is successful.

This picture that appeared in USA Today—it has actually been all over the world and is one of those famous pictures—has been renamed "The Hand of Hope," as Samuel reaches out from the womb and grabs hold of that next generation already there, seeking and yearning to join them.

The photographer was stunned about it. He was stunned how the picture had come out. He was stunned by the response that he received around the world. He gets e-mails on a regular basis, all the time, frankly, in response to this "Hand of Hope." It has appeared in USA Today and in newspapers around the world multiple sets of times.

We had Samuel in to testify. We had his parents testify about what they went through to undergo this surgery. We had a doctor testify about the number of things we can now cure in utero. I think it is important that we start to cover children in utero because, when you have these sorts of surgeries, they are expensive, but they are important and they are better covered at that point in time. This is a heroic thing. It is a beautiful thing.

It is the other end of the tragedy that we close here today because Samuel, until this procedure is banned, could be

aborted legally and killed by this brutal procedure called partial-birth abortion. Partial-birth abortion is a procedure that we have had gruesomely described to the American public on numerous occasions. So while at this stage of life, Samuel has a hand of hope. He also could legally be killed at this point in time by that brutal procedure, partial-birth abortion, which involves no anesthetic, nothing—just a brutal, gruesome procedure that we will not stand for anyplace in the world, being the country that we are that believes in freedom and hope and in opportunity for everybody. We believe in life and liberty and the pursuit of happiness.

The central debate we are finally getting into is this little hand of Samuel, and asking is that the hand of a person or is that the hand of a glob of tissue? Is it the hand of an individual? Is it the hand of an extension of the mother? Is it a person or is it a piece of property? That is the central question, and it is a question we have wrestled with before. We wrestled with this question on the slave issue when we—in that original sin of the United States of having slavery—would not recognize an individual as a person but rather as a piece of property. It was a horrible thing, a horrible chapter. We have all recognized that and we say it was a bad thing.

Now we are on the same debate. Here is little Samuel's hand. Is it the hand of a person or the hand of a piece of property? If it is property, we can dispose of it as we choose to see fit. If it is a person, it has rights and we have responsibilities towards that beautiful child; that Samuel is and is on a continuum, this child, from that point of time as well.

Do we want that child killed or do we want that child cured? Do we want that child in our society or do we want that child somehow just kind of done away with for whatever reason the case might be?

I do hope we get into a substantial and long-term debate about the nature of Samuel and his hand of hope as he reaches out from the womb and, by that little hand, says to us: I am a person. I am yearning to be free, yearning to live. I have much to give to you. I have much to give to this society. I have much to help with, and I want to do it and I want to be able to help you. I want to be there with you when my time comes. And Samuel did. He came out, and he is now with us.

We are this day moving forward on an issue of human dignity that I think is incredibly important. I think it is also an obligation for us to stand and recognize that human life—at whatever stage—is sacred, unique, and a precious gift. Each day when we have the call that says we lost a soldier in Iraq—two—three—each of us in this country just gets sick at the stomach because that person was somebody's brother; that person was somebody's sister; that person was somebody's father or moth-

er; that person is unique, sacred, and that person is precious to us.

Is Samuel Alexander Armas any less unique and sacred and precious? If you kill him at this point in time, isn't he dead for the rest of his life? Is it somehow that because he is in the womb he is not a life continuum at that point in time? Is there something different here?

At this point in time he is property, and then when he comes out of the womb he becomes a person with rights and responsibilities? Why? Is it that he is dependent here in the womb? He is dependent when he is born, but he is property here that can be disposed of, and he is a person who must be protected when he is born? His hand speaks to us. His hand challenges us. His hand is a hand of hope to us as a society that says, yes, we recognize the rights of the most vulnerable amongst us, and we are going to protect them. We are going to stand for them. We are not going to let them be killed.

This is an enormous day. This has been a long, 7-year fight about the issue of partial-birth abortion. In many ways it has been instructive to us as a country. I am absolutely convinced the American people are convinced that Samuel is a child and not somehow a piece of property or a lump of tissue. People in this country do not want children killed. They do not want that to take place.

As this debate has gone on and on, what we found is the American public has shifted. Now, particularly amongst young women of child-bearing age, you are seeing for the first time since this has been recorded that they are more pro-life than pro-choice. They are recognizing this is a child, it is a person, it has rights, it has beauty, it has things it wants to contribute. It is important that we let that child contribute.

Last weekend was a celebration of Mother Teresa's beatification. It is quite something. A number of people in this body had a chance to meet Mother Teresa—a great contributor to the society around the world to the most weak and defenseless. She often came to the United States and graced us with her presence. She talked about the beautiful things, and she would talk about each of us having our own Calcuttas, where we can help people wherever we are. She talked about poverty in America. Actually, she was talking about the poverty of love.

She was most harsh about the institution of abortion, where a mother would end the life of her own child. She cared deeply for the mother and she cared deeply for the child.

She once said this: If we can accept that a mother can kill her own child, how can we tell other people not to kill one another?

She asked this sort of haunting, piercing question. If we allow this in society, don't we spawn a continual culture of death instead of a culture of life at the very inception of things?

What do we say to Samuel later on? Well, OK, we could have killed you by a brutal procedure at this point in time, legally, and that would have been fine, or we could have saved your life. There was no protection in particular one way or the other.

This is an important day for life. It is an important day for a transition in the culture of life. I ask people who are opposed to this ban to look at this hand of Samuel.

My colleague from California cares passionately about this issue, and about the issue of choice and the right of a woman to choose. But I don't know that she or anybody else can deny that this is the hand of a child, and we have some responsibilities to that child as well. Maybe we can call a hand a piece of property. But I don't know how else biologically it could be defined. I don't know how else physically it could be defined.

With each passing day, and our technology getting better and better and better, I really do ask people on the other side, Is this not a child?

Am I not a person? Am I not a brother? A sister? Am I not?

Others care deeply about the right to choose. I respect that. But we all have choices to make. Is it one that we choose to terminate a brother or sister, a person who could be a parent, a person who could be a contributor, or do we not?

It really is a defining moment. I hope people on the other side would look at this picture and say: Yes, I cannot deny the humanity of that hand, the hand of hope. I support the ban on partial-birth abortion and look forward to the day when it is signed.

I yield the floor.

THE PRESIDING OFFICER. The Senator from California is recognized for 30 minutes.

Mrs. BOXER. Mr. President, will you let me know when I have used 7 minutes and I will yield time to the Senator from New Jersey.

I am very pleased to be joined by Senator LAUTENBERG. I will respond with my comments to the comments of the Senator from Kansas who was very eloquently talking about the most vulnerable among us.

As the author, when I was in the House, of the Violence Against Women Act, as the person who offered the amendment which allowed abortion after rape in the House—and that passed for Medicaid patients—and as the author of the Violence Against Children Act today—and I hope my colleague will cosponsor that bill because it is a wonderful way to highlight the most vulnerable among us—the example the Senator talked about, the case of Samuel, illustrates why the pro-choice position is so much the right position—In that case, the doctor recommended an abortion but the parents made another choice. The parents acted and said to the doctor: We do not agree. So they had the right to choose what they wanted to do. And good for them.

But if we legislate bans on this and bans on this—you have to have a child, you do not—and we turn into China or countries like Romania that said you shall have the babies, on the one hand, or you may not ever have a baby, on the other, then we lose the ability for families, with their God, with their conscience, with their doctor, to make the decision they want to make.

The important thing is that the family have the choice. That is why I stand here today.

Mr. BROWNBACK. Will the Senator yield?

Mrs. BOXER. I will not yield time because Senator LAUTENBERG is in a rush.

Mr. BROWNBACK. I ask that it not be taken off your time.

Mrs. BOXER. I yield for a short time.

Mr. BROWNBACK. Is this the hand of a child?

Mrs. BOXER. Senator, you did not listen to what I said, because you were talking to your staff, when I stood up.

Mr. BROWNBACK. I am responding to what you were saying.

Mrs. BOXER. No, you did not. I said, good for the parents for making the choice and standing up for the doctor who gave them another suggestion. Fine. That is what a pro-choice position is. That is why I am so much for Roe v. Wade. That is why I stand here as a mother, as a grandmother, as a Senator from a very large State, admitting, Senator, and admitting to all my friends in the Senate, in the CONGRESSIONAL RECORD for all times, that I am not a doctor and I am not God. I am a human being. I trust other human beings to make these decisions. I trust Samuel's family to make the decision they made. The doctor gave his opinion.

Mr. BROWNBACK. Will the Senator yield?

Mrs. BOXER. And I will not yield at this time.

Mr. BROWNBACK. Just a question.

Mrs. BOXER. I will not yield at this time. I will continue my statement. I do not want to lose my trend of thought because we are about to do something today that, although hailed by the other side, is the first time in history that the Senate is going to ban a medical procedure that is considered by many doctors—and we have put it in the RECORD, pages and scores, and I ask unanimous consent that they be printed in the RECORD—doctors and nurses have told us this procedure is often essential to protect the life and health of a woman.

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

THE AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, March 6, 2003.

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

DEAR SENATOR BOXER: The American College of Obstetricians and Gynecologists (ACOG) reaffirms its Statement of Policy on

Intact Dilation and Extraction, initially approved by the ACOG Executive Board in 1997. Sincerely,

RALPH HALE, MD,
Executive Vice President.

Attachment.

ACOG STATEMENT OF POLICY
STATEMENT ON INTACT DILATION AND
EXTRACTION

The debate regarding legislation to prohibit a method of abortion, such as the legislation banning "partial birth abortion," and "brain sucking abortions," has prompted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

The American College of Obstetricians and Gynecologists (ACOG) believes the intent of such legislative proposals is to prohibit a procedure referred to as "Intact Dilation and Extraction" (Intact D & X). This procedure has been described as containing all of the following four elements:

1. Deliberate dilatation of the cervix, usually over a sequence of days;
2. Instrumental conversion of the fetus to a footling breech;
3. Breech extraction of the body excepting the head; and
4. Partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus.

Because these elements are part of established obstetric techniques, it must be emphasized that unless all four elements are present in sequence, the procedure is not an intact D & X.

Abortion intends to terminate a pregnancy while preserving the life and health of the mother. When abortion is performed after 16 weeks, intact D & X is one method of terminating a pregnancy. The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

According to the Centers for Disease Control and Prevention (CDC), only 5.3% of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. A preliminary figure published by the CDC for 1994 is 5.6%. The CDC does not collect data on the specific method of abortion, so it is unknown how many of these were performed using intact D & X. Other data show that second trimester transvaginal instrumental abortion is a safe procedure.

Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother. Intact D & X is one of the methods available in some of these situations. A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. An intact D & X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are crucial to the lives and health of American women. The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.

Approved by the Executive Board.
January 12, 1997.

AMERICAN MEDICAL WOMEN'S
ASSOCIATION, INC.,
Alexandria, VA, 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 Stenberg 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 believe 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.

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 misleading 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 ob-gyns, agrees: "The intervention of legislative bodies into medical decisionmaking 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: dil-

ation 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 indicate that this surgical method is preferable to labor induction methods (instillation), hysterotomy and hysterectomy.

From the years 1972-76, labor induction procedures carried a maternal mortality rate of 16.5 (note: all numbers listed are out of 100,000); corresponding rate for D&E was 10.4. From 1977-82, labor induction fell to 6.8, but D&E dropped to 3.3. From 1983-87, induction methods had a 3.5 mortality rate, while D&E fell to 2.9. Although the difference between the methods shrank by the mid-1980s, the use of D&E had already quickly outpaced induction, thus altering the size of the sample.

Morbidity trends indicate that dilation and evacuation is much safer than labor induction procedures, and for women with certain medical conditions, e.g., coronary artery disease or asthma, labor induction can pose serious risks. Rates of major complications from labor induction were more than twice as high as those from D&E. There are instances of women who, after having failed induction, acquired infections necessitating emergency D&Es, which ultimately saved her fertility and, in some instances, her life. Hysterotomy and hysterectomy, moreover, carry a mortality rate seven times that of induction techniques and ten times that of D&E.

There is a psychological component which makes D&E preferable to labor induction; undergoing difficult, expensive and painful labor for up to two days is extremely emotionally and psychologically draining, much more so than a surgical procedure that can be done in a few hours under general or local anesthesia. Furthermore, labor induction does not always work: Between 15 and 30 percent of cases require surgery to complete the procedure. There is no question that D&E is the safest method of second-trimester abortion.

There is also a technique known as dilation and extraction (D&X). D&X is merely a variant of D&E. There is a dearth of data on D&X as it is an uncommon procedure. However, it is sometimes a physician's preferred method of termination for a number of reasons: it offers a woman a chance to see the intact outcome of a desired pregnancy, thus speeding up the grieving process; it provides a greater chance of 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 out-

come of its passage would undoubtedly be countless deaths and irreversible damage 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 Ob-
stetrics, Gynecology
and Women's
Health, New Jersey
Medical College.*

MARCH 5, 2003.

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

DEAR SENATOR BOXER: I understand that your 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 (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 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 hysterectomy, 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 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 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.

CENTER FOR REPRODUCTIVE RIGHTS,
Washington, DC, March 6, 2003.

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

DEAR SENATOR BOXER: On June 29, 2000, in *Stenberg v. Carhart*, 530 U.S. 914 (2000), the

U.S. Supreme Court held that Nebraska's sweeping ban on abortion—misleadingly labeled a ban on so-called "partial-birth abortion"—was unconstitutional. I was one of the attorneys who represented LeRoy Carhart, M.D., the Nebraska physician who challenged the ban in that case.

In *Carhart*, the Court held that Nebraska's abortion ban was unconstitutional for two reasons. First, the Court held that the ban did not prohibit only one type of abortion procedure, but instead outlawed several methods, including the safest and "most commonly used method for performing pre-viability second trimester abortions," *Carhart*, 530 U.S. at 945, and therefore constituted an undue burden on women's right to choose. Second, the Court held that the Nebraska ban was unconstitutional because it failed to include an exception for women's health. The Court noted that "a State may promote but not endanger a woman's health when it regulates the methods of abortion" and that "the absence of a health exception will place women at an unnecessary risk of tragic health consequences." *Carhart*, 530 U.S. at 931, 937.

The new federal bill (H.R. 760, S. 3) contains the same two flaws. Like the Nebraska law, the federal bill fails to limit the stage of pregnancy to which the bill's provisions apply, so the ban could criminalize abortions throughout pregnancy (nor just post-viability or "late term" abortions, as the bill's sponsors often claim), and the definition of "partial birth abortion" in the bill is broad enough to criminalize numerous safe abortion procedures, including the safest and most commonly used method for performing abortions early in the second trimester, the D&E method (not just one abortion procedure, as the bill's sponsors misleadingly imply). Moreover, the federal bill fails to limit its prohibitions to abortions involving an "intact" fetus, fails to explicitly exclude the D&E technique or the suction curettage abortion method from the law's prohibitions, and fails to include definitions of key terms such as "living" or "completion of delivery." Like the Nebraska law, the federal bill also fails to include the constitutionally mandated health exception. Therefore, the federal bill is unconstitutional for the same reasons as the Nebraska law struck down in *Carhart*.

Because the U.S. Supreme Court has already struck down legislation containing the same constitutional flaws contained in the new federal bills, these bills can only be seen as a direct attack on the Supreme Court's decision, on the safest and most common abortion procedures in the second trimester, and on the protection for women's health that have been consistently reaffirmed throughout three decades of abortion jurisprudence.

Please feel free to contact me with any further inquiries.

Sincerely,

PRISCILLA SMITH,
Director.

Mrs. BOXER. Let me reiterate who is being compassionate. Our side of the aisle, down to every person, and the pro-choice side of the aisle. On the other side we have a few. We agree to this ban if there is an exception for the health and life of a woman. The other side said no. And the clear fact is, when the other side says there will not be an exception for the health of the woman, the other side is not being compassionate.

Let me tell you, when a woman is told—and we will take out what could happen to a woman if this is not avail-

able—some of the health consequences, when a woman is told she could have a stroke, that she could wind up paralyzed, that she could wind up hurting or harming other organs, we are talking about a major problem to women.

To say you are being compassionate and you are being caring to the most vulnerable when you turn your back away from the fact that a woman could have a hemorrhage, she could have her uterus ruptured, she could be made infertile, she could have blood clots, embolism, a stroke, damage to nearby organs, or paralysis if this particular procedure is not available to her—if you have no compassion, if you smile when you look at this, if you do not feel what it is like for a woman to face this, if you put this in the back of your mind, I am sorry, in my view you are not for the most vulnerable at all.

We could have banned this procedure if we had added a health exception. But the other side is so demagogic on this, they will not walk down the bipartisan aisle with us. That is a very sad commentary. They said the health exception is too broad. They do not trust women. Face it, they think a woman is going to make something up?

We said, OK, add "serious adverse health consequences." No, they would not do that either.

The Supreme Court decided a very similar ban was unconstitutional. What the Supreme Court said about the fact that there was no health exception in the *Stenberg v. Carhart* case, that came out of Nebraska law, that had no health exception and was vague—first, they said the bill bans more than one procedure:

Even if the statute's basic aim is to ban D&X, its language makes clear that it also covers a much broader category of procedures.

Some would say that is the intent of the other side, to take away a woman's right to choose. So they say they are banning one procedure when, in fact, it is so vague that maybe they are banning more.

I would have more respect and admiration for my friends on the other side if they just said, let's just ban abortion, just call it killing, put away the women into jail who have an abortion, send the doctors to jail. That is what is in their heart. But no, they do not want to do that.

My colleague from Alabama talked about a poll. I have other polls that did not track that which I will print in the RECORD. The polls I have do not go along with those polls.

The PRESIDING OFFICER. The 7 minutes the Senator asked to be notified of have elapsed.

Mrs. BOXER. I will take 3 more minutes before I yield as much time as he may consume to my colleague from New Jersey.

The poll I have is very difficult. We have a majority of 56 percent believing abortion should be legal in all or most cases. That is a very recent poll. It has a margin of error of 1 to 3 points; 55

percent believe the Government should not be involved in this private medical decision. I ask unanimous consent to have that printed in the RECORD.

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

NARAL PRO-CHOICE AMERICA 2004
PRESIDENTIAL POLL

Anna Greenberg of Greenberg, Quinlan, Rosner Research Inc. conducted this poll for NARAL Pro-Choice America between June 5, 2003 and June 12, 2003 among 1,200 likely voters with a margin of error of 1/3.

While the 2004 election will be shaped by the economy, security and the war on terrorism, a woman's right to choose will play an important role in the presidential contest. Protecting a woman's right to choose, especially when it is framed as protecting her right to privacy and freedom from government interference, can move important swing voters including Independents and suburban voters toward a pro-choice Democratic candidate.

Here are our findings:

The country is pro-choice. A majority, 56 percent, believes that abortion should be legal in all or most cases.

The country does not want the government involved in a woman's private medical decisions. Eighty percent of voters believe that abortion is a decision that should be made between a woman and her doctor as compared to just 11 percent who say it's a decision that should be made by the government. Only 27 percent of those who are identified as "pro-life" believe that government should make the decision. Even a majority of those who identified as "pro-life" (55 percent) believe that a woman and her doctor should make the decision.

The presidential race will be competitive and choice can play an important role. After a fully informed debate that includes the candidate's position on a woman's right to choose, the race between President Bush and a generic Democrat tightens considerably. Initially, a generic Democratic candidate trails President Bush 15 points, 38 to 53 percent; after hearing the candidates' competing agendas that includes support for a woman's right to choose, the race tightens to a 6-point race, 44 to 50 percent.

Choice moves swing voters. After hearing two statements describing the Democratic candidate and President Bush's position on choice, support for a generic Democratic candidate increases from 44 to 46 percent, while support for President Bush drops 2 points, 48 to 46 percent. This movement is driven by moderately pro-choice voters who did not yet support the Democratic candidate at that stage of the survey (more below).

A principled commitment to privacy is the strongest message a pro-choice can make about choice. The privacy message is the strongest pro-choice message for a Democratic candidate and is consistent with the values promulgated in recent Supreme Court decisions. Fully 71 percent of voters say the privacy argument is a convincing reason to support the Democratic candidate for president; a majority (52 percent) says it is a very convincing reason.

A woman's right to choose is a private and very personal choice, and it should remain that way. The decision to have an abortion should be a decision made between a woman and her doctor. The government should stay out of private medical decisions.

Important swing voters move towards a pro-choice Democratic candidate. After a fully informed debate that includes the candidate's position on choice, there is a 16-

point shift toward the Democratic candidate among Independent voters, a 12-point shift among suburban voters and a 10-point shift among moderate voters.

A pro-choice Democratic candidate can improve his or her standing with moderately pro-choice voters. Voters who describe themselves as pro-choice move from a 7-point margin for a Democratic candidate (49 to 42 percent) in the initial vote to vote to a 28-point margin for a Democrat (61 to 33 percent) in the final post-choice positioning vote.

Democrats have a strong advantage on gender issues. Whether that means women's rights, a woman's right to choose or abortion, voters believe that Democrats do a better job on these issues. The strongest advantage is on a woman's right to choose with 60 percent of voters saying Democrats do a better job on the issue as compared to just 19 percent who believe Republicans do a better job on the issue.

Other findings of interest: 61 percent of Americans know someone who had an abortion, including 56 percent of those who identified themselves as "pro-life."

Mrs. BOXER. We have different polls. But my friend from Alabama is totally correct. This is not about polls. He can prove in one poll that he is right; I can prove in one poll that I am right. The issue is in our hearts. We do not agree with each other.

If you want to make a woman a criminal, make a doctor a criminal, come here, we will have a vote up or down on that. Do not chip away, chip away, chip away, and hurt women in the process. The Court has stated that this is unconstitutional, bottom line.

On the other hand, my colleague said: our bill that bans this procedure is not violative of Roe because we have declared in the findings that the health issue is immaterial.

Well, good luck. When you have doctors testifying, when you have nurses testifying, when you have health professionals testifying, when you have women testifying, "We have had this procedure," because they knew they might die if they did not or they would be made infertile, and compare that to Senators or Congresspeople, I think the Court will look at the professional judgment of doctors because we are not doctors here. And we are certainly not God.

So let's call it what it is. It is not compassionate to pass a bill today that turns its back on the health of women. That is not compassionate. And the Supreme Court, let's see what else they said about this particular philosophy that you are going to get in this bill and why they overturned the last one that did the same thing.

Even if it only banned D&X, meaning the proposal my colleagues say they are banning, this ban would pose grave health risks. This is the Supreme Court:

The record shows that significant medical authority supports the proposition that, in some circumstances, D&X would be the safest procedure.

This is the Court, the same Court that is going to hear your ban that has no health exception:

A statute that altogether forbids D&X creates a significant health risk. The statute

consequently must contain a health exception.

I ask my colleague if he is ready to speak because I am ready to yield the floor.

Mr. LAUTENBERG. Yes.

Mrs. BOXER. Here is what we know so far. We have a bill that has no health exception. It bans a procedure doctors say is needed. We have a bill that looks just like the Supreme Court case, and the Supreme Court said it is unconstitutional. And in the course of the conference, the conferees on the other side threw out the language that supports the Roe v. Wade decision.

This is a bad package for the families of America. I know the handwriting is on the wall that it will pass, but the issue is not going away.

I yield to my colleague as much time as he may wish to consume, Senator LAUTENBERG from New Jersey. I thank him for coming over today.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank my colleague from California for her courage to stand up here and take a position when what we are seeing on the other side, with its pictures and statements about how this process is running rampant through America. It is not. We ought to face up to reality.

My position is kind of: There they go again. There they go again, wanting to curb people's rights, rights that are abundant and ought to remain in place without us touching them, civil rights such as affirmative action, rights such as the ability to have your day in court to make your case, and not have it snatched away to protect the gun industry from lawsuits no matter how reckless their behavior.

We do not hear anything nor have we ever seen a picture here of a gunshot victim who may never be able to walk again. We know Jim Brady will not walk again on his own, because of a gunshot wound. Do we see those kinds of pictures, the horror? Do we see surgical procedures depicted here in the Chamber, pictures of people having their intestines removed or something of that nature? Sure, they are ugly, but the point is that sometimes doctors have to do them to preserve someone's health, and that's a positive purpose.

At any rate, the other side wants to take away workers' rights to join unions and get overtime pay. The other side wants to promote judicial nominees who are anti-choice, anti-union, and anti-civil rights.

This is an attempt to regulate people's behavior.

I have noticed one thing here since this debate has begun: We have not seen one woman talk in favor of the side that says: This procedure ought to be banned. Put the doctors in jail. We have 15 women in the Senate, but not one is here defending the position that says: Take away the doctors' ability to practice medicine as they see fit.

Listen. I want to be clear here. And I want everybody to hear my voice: I am

not pro-abortion. I am pro-choice. I believe a woman has the right to make a decision, in concert with her doctor, about her health.

What happens if she has another sick child or she herself suddenly finds that her health is being ruined, physically or mentally? Does she have a right to make her decision? I think so.

I have a child who is now pregnant with my 10th grandchild. We do not talk about abortions. Thank God, my other grandchildren and their mothers have been healthy. But we had their health checked to make sure everything was going to be OK because nothing is more important than having my three daughters and my daughter-in-law available to take care of the children they have and to make sure that their families stay intact.

But here, in what I call the "male-garchy" that is the United States Senate, we have the men deciding what ought to happen with women who, with their doctor, want to make a decision to protect their health.

The Senator from California was eloquent. She said: Provide those exceptions for the health and well-being of a mother. But no, that is not good enough: We don't like the way these women are making these decisions. We don't like it. We don't think they are mature enough to make these decisions. They are mature enough to be a mother, but are they mature enough to make their own decisions about their body? No, not according to the "Big Boys' Club" here; they should not be allowed to do that.

This is always a very difficult discussion. I don't think my friends who are on the opposite side are evil; they just happen to be wrong, in my view. I do not attribute anything to them except that I want to expose what I think is the truth; and that is, this growing trend to regulate people's behavior in this free, democratic society about which we talk so much.

When our young people fight in Iraq, when they fought in Vietnam, or in other wars—I fought in World War II—the fight has been to protect people's freedoms—freedoms. What are we doing trying to take away a right, and threatening doctors who perform a procedure they judge necessary to protect the life and health of the mother?

I voted against this bill, and I intend to vote against the conference report. A woman's right to choose is in greater danger now than it has been at any time since the Supreme Court issued its decision in *Roe v. Wade* 30 years ago.

Supporters of this bill use the term "partial-birth abortion." There is no medical term "partial-birth." It is a term deliberately concocted by the anti-choice movement to inflame passions. Make no mistake: the procedure(s) covered by this phony term are not chosen lightly. Does anybody here think that a woman who is 6 or 7 months along in her pregnancy, who falls prey to illness or disease, or dis-

covers for some other reason that the pregnancy must be terminated—does anybody think that is an easy decision? It absolutely is not.

I am the father of 4 and, as I mentioned, the grandfather of 9—Lord willing, 10 soon.

But how can such a decision be challenged? How can the woman's decision, made in concert with her doctor, who says, "I recommend this as a necessary procedure"—be challenged? Well, here in the "Boys' Club," a woman and her doctor won't be allowed to make that decision. In my opinion, that is not right. I think the message the other side is sending to women is: Your behavior is abominable. We don't want you to do it. And here we have these poor people, these poor woman, who are risking their own health, carrying a fetus for 6 or 7 or 8 months—never a pleasant experience, I assure you.

As I said, there is no such medical term as "partial-birth abortion," and that is intentional because this bill is not designed to ban one particular abortion procedure but many safe and legal medical procedures. If S. 3 is ultimately passed, and President Bush signs it into law, as he has promised, he will become the first U.S. President to criminalize safe medical procedures.

Nobody is fooled by the real objective here, which is to chip away at a woman's right to choose and, ultimately, to criminalize legal and safe abortion procedures.

No. When people know what this bill is really about, they are opposed. An ABC News poll showed that 61 percent of Americans oppose criminalizing abortion procedures if a woman's health is threatened.

The bill is deceptive. It is extreme. We already know this bill won't pass the constitutional test. When we debated this bill back in March, many of us who are pro-choice said clearly, directly, that we would accept this bill if the bill's proponents would just make an exception for the life and health of the mother. That is what we were asking for. What is wrong with that? I don't understand the other side's objection to that.

Their obstinance shows the true position of those who want to police our conduct and decide how people ought to behave. It is too bad. It is not right.

The sponsors of S. 3 have repeatedly resisted reasonable attempts to include a health exception such as the Feinstein substitute, which was defeated. This bill is purely political. Everybody here knows it will be ruled unconstitutional. Five members of the current Supreme Court have struck down a State ban on so-called partial-birth abortions. The same fate awaits this legislation. And in New Jersey, my State, the State Supreme Court overturned a similar ban in 2000.

About a month ago we had a very enlightening debate on the Senate floor over an important amendment offered to S. 3 by our colleague, Senator HARKIN. The amendment reaffirmed sup-

port for the Supreme Court's decision in *Roe v. Wade*. The House Republican leadership decided that the Senate did not have the wisdom, and their leadership and their anti-choice friends removed Senator HARKIN's language in conference. Stripping this bill of the Harkin amendment that reaffirms *Roe v. Wade* shows us what the President and his anti-choice allies are really after. They want to overturn *Roe v. Wade*. It has been said many times. Unfortunately, this bill puts them on that path.

During the previous debate on this bill, the junior Senator from Pennsylvania characterized the Harkin amendment, a reaffirmation of current law, as extreme. That is absurd. Not being willing to protect a woman's health is extreme. It is extreme, and it is wrong.

We know where this administration is headed. We know the true motives of the anti-choice administration and its allies in Congress. Look no further than the recent decision in 2002 made by the Bush administration to amend the State Children's Health Insurance Program to provide coverage for fetuses and embryos rather than for pregnant women.

This rabid ideology extends so far that the administration won't allow the United States to participate in international family planning programs. We are so paranoid about this, it is ridiculous.

I urge my colleagues to think this whole matter through, to put women's health and access to safe medical care before ideology, not to vote for this thinly veiled attempt to overturn *Roe v. Wade*. I urge that they vote against this unconstitutional bill before us.

I yield the floor.

Mrs. BOXER. Mr. President, how much time do I still retain?

The PRESIDING OFFICER. The time remaining is 76 minutes.

Mrs. BOXER. I mean under the agreement.

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mrs. BOXER. I thank the Chair. I will use the 6 minutes and then the time will revert to my colleague from Pennsylvania.

I thank my colleague and friend from New Jersey for coming to the Chamber to lay out so many of the unstated issues that revolve around this debate. The points he made today are important. Before he leaves, I want to ask him a question on my time. I know he is the proudest grandpa of 9, soon to be 10, we hope and expect. You have served for many years not only in public life but as a leader in business and leader of the community.

We hear from the other side about the need to protect the vulnerable. My friend stands with me as a supporter of the Violence Against Women Act, a supporter of the Violence Against Children Act and the need to do everything we can for the most vulnerable, to protect them from environmental hazards.

I find it interesting that they will talk on the other side and show pictures on the other side of fetuses before

they are born. And the compassion, I don't doubt that for a minute. I have no doubt that my colleagues feel such compassion. Believe me, I do as well. Having given birth to two premature babies, I totally understand the love and compassion you give to the child you are carrying.

But I want to say to my friend, isn't there something missing here from this discussion of compassion? Should we not show compassion for a woman who desperately seeks to have a child and is told in the 7th month, the 6th month, something has gone terribly awry, that the baby's head is so large, the brain perhaps is developing outside of the skull, there are other problems, that the doctor says, to spare this woman a terrible life-threatening illness or to spare her infertility, that he recommends or she recommends that this procedure that is now being outlawed is the only way to, A, spare the woman from these possible health consequences which are serious and long term, could even land her in a wheelchair, render her unable to take care of her other children, and to spare that fetus, if it were born, the worst nightmare of a brief and short life? This happens to women. Does my friend not see the compassion in working with this family in a way that would give the woman dignity, preserve her health, the fetus dignity? I will talk about this because we have pro-life women, very religious, who went through this to spare the indignity to the fetus, to spare the pain to the fetus, to spare their own health. Is there not compassion in that decision and in that choice?

Mr. LAUTENBERG. Mr. President, in fact, the question is a very good one. It addresses the issue we are discussing. Why is there no agreement to the request of so many of us to go along and outlaw certain procedures altogether, get rid of them, as long as the health and well-being of the mother is taken care of?

I endowed initially—and it is still in existence—a cancer research center. It is called the Lautenberg Cancer Research Center, paid for with my own funds and people from whom I have raised money. We focus on breast cancer and other issues. We try to protect the women's health at all costs. We are not as generous here as we are to the fat cats who are going to get those huge tax cuts. Oh, no, they are entitled to theirs. But when it comes to potentially taking care of women's health, a child's health, men's health, all of it—well, it is OK to do that to a point. But to let women make their own decisions is outrageous.

There is nothing more tragic than to see a woman unable to take care of herself or her family as a result of continuing with a pregnancy that robbed her of her well-being.

Mrs. BOXER. Well, my friend is right. I just hope we recognize, because I know the Supreme Court recognizes it, that if we turn our backs on the

women of this country as we are going to do today, first, it will never hold up across the street in the Supreme Court—no way.

Second of all, we are threatening the health of so many women. Before my friend leaves, I want to give him two brief stories. Eileen Sullivan of California—and these women are so courageous to tell the stories—is a Catholic with 10 brothers and sisters. Eileen had long awaited her first child. She and her husband were devastated to discover, at 26 weeks of pregnancy, that testing revealed overwhelming fatal abnormalities in their son, including an improperly formed brain, a malformed head, no lungs, and a nonfunctioning liver. The severe anomalies were incompatible with life.

The PRESIDING OFFICER. The Senator's time is up.

Mrs. BOXER. I ask unanimous consent for just 1 more minute.

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

Mrs. BOXER. Eileen and her husband sought the advice of medical specialists, but the prognosis grew worse with each additional test. Finally, the Sullivans, religious Catholics, made the decision they thought was most compassionate for their son, safest for Eileen, and most likely to allow them to have a healthy child in the future. Eileen had a D&X abortion in July of 1996.

I will conclude by saying I don't think it is compassionate to take away the choice of a woman such as this who is grappling with her religion, ethics, and making a decision with her family to do what is right for her family and for this unborn child. I think it is such a statement that there is no respect for the people of this country, there is no value given to their values, their souls, their religion, to their way of dealing with tragedy.

I don't understand how my friends from the other side of the aisle, who always talk about Big Brother interfering, could move into this area and turn their backs on the American families.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, it is very clear to me that the Senator from New Jersey and I have a fundamental difference on how we view this issue. For the Senator from New Jersey to liken this procedure to the removal of an intestine, to compare the killing of a fetus—

Mr. LAUTENBERG. Will the Senator yield?

Mr. SANTORUM. To compare the killing of a fetus to the removal of an intestine—a fetus like in this picture, where you can see that little hand, that is a 21-week-old. That is the age at which these children are killed by partial-birth abortion. To compare the killing and extinguishing of life to the removal of an intestine is—

Mr. LAUTENBERG. Will the Senator yield for a very brief question? My fa-

ther was 42 when he was stricken with colon cancer and he had his intestine removed to try to save his life. It was an ugly, painful procedure. As I equate this with any painful procedure that is surgically necessary. They tried to save his life but were unsuccessful.

Mr. SANTORUM. The Senator from New Jersey is equating the removal of tissue that was damaging to the person involved—removing an intestine to preserve that health or life. This little child, in almost every situation—in fact, the industry agrees: healthy mothers, healthy children—that little child is not a threat to this mother. It is not a cancerous lesion. It is not a defective or deformed part of that person's body that is threatening their health. This is a living organism. It happens to be a human being inside of the mother, and it is being killed not for the health of the mother or for the life of the mother but because the mother no longer wants the child.

The father of the Senator from New Jersey whose operation was performed was removing something that was damaging his health and potentially threatening his life. That is not the case here. To compare the two shows you the fundamental difference in our view.

What are we saying to people when we liken little children to cancerous parts of someone's body? We just see these little children as, what, threats? As something to be excised because they are not wanted? Is that the way we look at children? Is that how we see them—as cancerous lesions? Then we wonder why we have so much child abuse in this country, why one-third of the pregnancies end in abortion, why our culture is degraded, because we compare them to cancerous intestines on the floor of the Senate.

I yield 10 minutes to the Senator from Nevada.

Mr. ENSIGN. Mr. President, the first thing I want to address is: the other side has been talking about the health of the mother and that this bill includes a provision if the life of the mother is threatened. As far as the health of the mother is concerned, a select panel convened by the American Medical Association could not find any "identified circumstance" where a partial-birth abortion was the only appropriate alternative.

We have heard a lot of testimony from OB/GYNs and all kinds of medical experts that this procedure is never necessary. To argue that it is somehow medically necessary is a false argument. This procedure is so grotesque that when it is described, it makes people shudder. I once described this procedure when I spoke to some high school kids, and I used it as an example. I got complaints from the parents because we talked about such a gruesome procedure in a school. I can understand why they would be upset.

But people have to understand that this gruesome procedure is happening in the United States. What we are trying to do now in the Congress is to say

this is so outrageous that we need to ban it.

I am a health care professional and I cannot even imagine a doctor or a nurse being involved in one of these procedures, delivering the baby out of the birth canal up to about here, the neck—arms and legs moving, holding that little baby in their hand, feeling life in their hand, a little heartbeat—and voluntarily taking forceps and jabbing them into the back of the skull. The skull is too big to come out so they have to collapse the skull down, sucking out the contents of the skull—the brains, basically. The baby at that point can feel pain. It is documented. In fact, it feels pain more than a normal child that has inhibitory pain fibers. We are saying this is somehow humane for the child, and that is literally beyond me.

This procedure is completely, in my mind, indefensible; it is infanticide. I want to talk about abortion in general because the other side is saying this is just chipping away at the rights of abortion. I remember when President Clinton said that abortion should be safe, legal, and rare. I think those were his terms. I was thinking to myself, safe, I can understand that; legal, from his perspective, I can understand that; but if you don't believe it is wrong, who cares whether it is rare?

If there is nothing wrong with abortion, why should it be rare? Who cares? If it is not a baby, if it is just a blob of tissue, like the other side says, who cares whether it happens all the time? Why do we care whether it is rare?

The reason even somebody like Bill Clinton says it should be rare is because there is something in our conscience that is telling us abortion is wrong. Eighty-six percent of Down syndrome babies are aborted today—86 percent. We have an incredible young man right out here who runs the elevators. His name is Jimmy. He has Down syndrome.

We have a great organization in Las Vegas called Opportunity Village which deals with a lot of people. It employs a lot of people, finds them a job, people with either congenital problems, whether Down syndrome or other problems, or whether they have had a brain injury. We are saying to those people: You don't have the right to live. We are saying to the Jimmys of the world: You know what, you aren't perfect, so you don't have the right to live. That is what abortion is about. Is it going to be difficult? Yes, but life isn't guaranteed to be easy.

Mr. President, we have to look at what we are becoming as a society. If we do not value human life to the point where it is OK to have little imperfections, what are we becoming as a society? Haven't we seen in history the societies that have tried to create the perfect race, how immoral that was? Isn't that what we are trying to do somewhat with abortions and some of the other new medical technologies that are coming out?

This is a very emotional issue, and I understand people who believe abortion should be legal. There are a lot of women who have had abortions, who have gone through incredible stress—post-abortion syndrome, as it is known. It is likened to post-traumatic stress syndrome. I feel badly, and I feel pain for those women and men who have been involved with abortions.

Sometimes as a defense mechanism, one tries to justify what one did. I think it is important for us to show compassion for those people who have been involved and it is important not to judge other people's motives. But at the same time, we have to look, as a country, at whether it is right or wrong. If it is a baby, it is wrong. It just is. If it is a baby, it is murder. If it is not a baby, if it is some tissue, like the other side says, that is exactly right, it should be legal. It should be absolutely legal, if it is just tissue. But if it is a human life, then that human life deserves to be defended. That innocent human life deserves all the protections of the law, whether they have Down syndrome, spina bifida, or any other congenital ailment. They deserve the same protection under our law any other "normal" healthy child has.

We have to look at ourselves as a society and what type of a society we want to have going into the future. America's greatness has been because we have had strong moral standards. This is the great moral problem of our day about which we have to do some soul-searching as a country, to be on our knees in prayer to figure out the right course of action. For me, it is clear.

I urge all of our colleagues to do a lot of soul-searching on this issue. I believe if you are honest, people will see the rights of a baby deserve to be protected.

I thank the manager of the bill and others who have been involved in this issue for the great work they have done. This is truly a fight worth doing and worth doing right.

I thank the Chair. I yield the floor.

RECESS

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

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. DEWINE).

The PRESIDING OFFICER. The Senator from Pennsylvania.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003 CONFERENCE REPORT—Continued

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

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I commend the Senator from Pennsylvania,

Mr. SANTORUM, and Senator FRIST for their leadership on this particular issue. Both have worked extremely hard. I also commend the Presiding Officer for his leadership for the rights of the unborn.

I am pleased to be a cosponsor of the Partial-Birth Abortion Act, which is S. 3. This legislation is designed to help protect unnecessary suffering of the unborn child and also to protect the mother. It prohibits a partial-birth abortion, which is a partial delivery of a living baby, the killing of a baby before complete delivery.

The bill allows partial-birth abortion except for the life of the mother, and in cases where there is endangerment by physical disorder, illness, and injury.

I will go through some of the bill's definitions, which I think say a lot about what this bill is all about.

The term "partial-birth abortion" means an abortion which, first, "the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus." That is the way it is defined in the bill. Further, the term "partial-birth abortion" means an overt act, other than completion of delivery, that "kills the partially delivered living fetus with this procedure."

This type of abortion is called a D&X abortion, which would be prohibited, also referred to as a dilation and extraction abortion. The bill defines "extraction" as: "Extraction from the uterus and into the vagina of all of the body of a fetus except the head, following which the fetus is killed by extracting the contents of the skull." After the baby's skull tissue is rooted out, then the remains of the baby are removed.

I emphasize, this bill does not prohibit other abortions. For example, it does not prohibit what is commonly referred to as D&E, or dilation and evacuation, a procedure which includes dismemberment of the baby inside the uterus, induction of preterm labor with the fetus forced from the uterus, and suctioning of the baby out of the uterus. It does not prohibit suction abortion, which involves scraping the fetus apart from the placenta, or suctioning the baby out of the uterus. It does not prohibit all other types of abortion that might be applied, such as a Caesarian section or a hysterotomy.

The bill protects the life and safety of the mother. Partial-birth abortion was never intended to be a procedure to protect the health of the mother. This procedure has become a form of abortion. On the contrary, we need a ban in order to protect the health of the mother. It is a dangerous procedure, it is a fringe procedure, and it is outside the mainstream of routine medicine.