good start in trying to get this bill done in a timely fashion this week, and I thank him for his cooperation.

With respect to the issue of the judge, if the Senator does not want to vote on a judge, I know our leader would like to have a vote this morning, whether it is on a judge or some procedural matter. The leader would like to get Members to the Chamber for this discussion. Obviously, this is a vitally important discussion. The role of advise and consent is one of the more fundamental issues we have to grapple with, and our leader would like to have as much participation as possible. As is the case in the Senate, we usually cannot get that participation unless Senators are in the Chamber for a vote, and I think that is his intention.

We will certainly work with the other side in making sure we can come up with some accommodation that will suit both sides.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 3, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SANTORUM. We resume today the debate on the issue of partial-birth abortion and Congress's fourth attempt to ban this procedure. There have been comments in the past about some of the descriptions we have used on the floor as to whether they are accurate, and whether some of the charts we have used are medically accurate charts. Some suggested in the line drawings we had depicted a fetus that was larger than the size of most in partial-birth abortions. In working with people from the medical community, we have come up with more realistic drawings to depict the actual procedure so people can graphically understand what is described in this legislation.

I will read the description in the legislation and show how the chart behind me is representative of this description. We have tightened the definition. The reason we tightened the definition was in response to the U.S. Supreme Court that found the original definition in the congressional bill, which is similar to the one in Nebraska, was unduly vague, and, therefore, unconstitutional because of vagueness. We have taken further steps to make sure that by banning this procedure we are not including any other procedure that is used for late-trimester, late-term abortions.

Let me read what is in the legislation today and then go through the charts to show how that comports with this definition.

(1) the term ''partial-birth abortion'' means an abortion in which—

(A) 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 . . .

Now, I break from the text as to what partial-birth abortions are. The procedure itself is done in a breech position, but there may be a case—and this is what we are taking into consideration, here, the presentation—where the doctor makes a mistake and cannot deliver the child for some reason in a breech position. As I know, having been the father of seven children, you do not want a breech delivery. That is a dangerous delivery. That is not a normal delivery.

To authorize or to start a delivery in breech is a higher risk to the mother, No. 1. No. 2, for purposes of this procedure, that is what is described, that is what the doctors have said is the procedure which they would recommend. But there are always, in these medical procedures, chances for things to go awry so we take into consideration that if for some reason during this procedure the head is presented first, that will still be covered.

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; and

(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

Now, that is the description that is in the bill.

Let me show graphically the process by which this abortion takes place. This is a picture of a fetus inside the mother's uterus with the gestational age of roughly 24 weeks. The gestational period is 40 weeks for normal development. We are talking about now 24 weeks, or better than halfway through the pregnancy. That is when the vast majority of partial-birth abortions occur. In fact, all of them occur after 20 weeks. Most of them occur 22, 24, 26 weeks.

In the first picture we see the baby in the womb, in the normal fetal position. What has happened before this procedure occurs is the mother presents herself to the abortionist. And the abortionist, in making a determination to do a partial-birth abortion, gives the mother a medication to dilate her cervix so this procedure can then be performed. This dilation occurs over a 2-day period. The woman presents one day, the next day she stays at home, and the third day she arrives at the abortion clinic.

I use abortion clinic advisedly because this procedure is not performed in hospitals. It is not taught at medical schools. It is done solely at abortion clinics. The doctor who created this procedure testified that the reason he created this procedure was not because this was a better medical procedure for women. This was not designed for women's health. He said, and I am quoting him, he designed this procedure because other late-term abortions, when women presented themselves into his office, took 45 minutes. He could do this procedure in 15 minutes. Therefore, he said, he can do more abortions; he can make more money. So the person who designed this procedure, the person who put the medical literature out on this procedure is very clear as to why he designed this procedure. It is quick. It is easier for him. And he can make more money because he can do more abortions in a day.

So the mother, having been presented at the abortion clinic 2 days before, takes this drug. We heard from the Senator from Ohio yesterday, Senator DEWINE, of instances where mothers in Ohio, two cases—remember, this procedure was invented by a doctor in Ohio—two cases from a Dayton abortion clinic where the mother was given medicine to dilate her cervix and in two separate cases, because of the dilation, labor was induced and two different women delivered babies. One named Baby Hope lived 3½ hours and was not given medical treatment. I don't know all the facts as to why. Maybe it was an assessment that the child was too premature to live. The second baby, Baby Grace, was born and survived as a result of the live birth.

So we are talking about children here. This is very important. We are talking about this little infant here, this fetus, that would otherwise be born alive. The definition of the bill, I repeat one more time, of a baby delivered in a breech position:

. . . any part of the fetal trunk past the navel is outside the body of the mother for the purposes of performing an overt act that . . . will kill the . . . fetus.

You cannot kill a fetus if it is not alive. So this is a very important part of this definition. When the baby is delivered, the baby must be alive. If the baby is dead, we are not talking about an abortion because the baby is already dead. We are talking about a living fetus, living baby.

The first step now, the women presents herself, the cervix has been dilated, the physician goes in and grabs the baby's foot and begins to pull the baby into the birth canal in a breech position. Again, I repeat, no one preferably delivers a child in a breech position. It is just not what is medically recommended, but in this case we have the child being presented in a breech position.

Again, you can see the size of the baby in relationship to the size of the hand of the doctor. Some will say, well, that baby is much bigger than a baby. This is a blown-up chart. Of course it is bigger. Look at the size of the child relative to the size of the hand of the physician who is performing this abortion. You will see the size is about the size of the hand, 8, 9 inches in length, which is roughly the size of a child at that gestational age.

The child is pulled through the birth canal and presented.

Remember, here is the child outside of the mother as described in the bill, outside of the mother beyond the navel. The child is alive. The child is alive and is being delivered in this breech position. But the child is alive at this point in time.

But for what I am going to describe in charts 4 and 5, this child could be born alive. It would be born alive. It had the potential to survive. But that doesn't occur in the case of the partial-birth abortion.

What happens next is the abortionist takes a pair of sharp scissors and, probing with their fingers to find the base of the baby's skull, the softer point here, below the bone that protects the brain, finds a soft spot and thrusts a pair of scissors into the base of a living child's head who would otherwise be born alive.

One of the nurses who testified before Congress said she witnessed a partial-birth abortion and she witnessed the reaction of a child who was killed by one of these procedures and she said she saw the child's arms go out, flinch like a baby would do if you dropped it—sort of let it go. They let their arms and legs sort of go out. That is what this little child will go through as a result of this procedure.

Can this child feel pain? Most assuredly. Its nervous system is developed. In fact, going back to the first chart, when the doctor is reaching in to try to grab the leg, as has been described in testimony, the child tries to get away from the instrument that is grabbing its foot. The scissors are thrust into the base of the skull. That very well may kill the child. I don't know. In some cases it probably would. Probably in most cases it would.

But we are not done yet. We have to add insult to the injury. The doctor takes a suction catheter and, through the hole which is now in the base of the child's skull, he inserts a suction tube, and with that suction—tube he turns it on and suctions out the baby's brain. It collapses the baby's skull.

For those of you who have held newborns, you know that their skull is very soft, pliable. So without anything inside, it has been suctioned out through force, the baby's head collapses, and the rest of the baby can be delivered.

This is a procedure that is barbaric. It is barbaric. On a little baby who would otherwise be born alive—and if there is any question about that, I point to you Baby Hope and Baby Grace, who were ticketed for partial-birth abortions but were delivered prior to that.

What we have suggested in the Senate now, for the fourth Congress in a row, is that a procedure that was developed by a doctor who testified that the reason he developed this procedure was that he could do more abortions, make more money, is not medically necessary under any circumstances.

I have a quote here from Warren Hern. Warren Hern is a noted third-trimester abortionist. He has written books on late-term abortions. He does a lot of them. When he says, ''I have very serious reservations about this procedure . . . you really can't defend it . . . I would dispute any statement that this is the safest procedure to use . . . '' this isn't RICK SANTORUM who has trouble with abortion, period—I admit that—this is someone who does abortions. This is someone who does late-term abortions. As I said, Dr. Warren Hern is the author of the standard textbook on abortion procedures. We have a situation where this procedure was designed simply so they could do more late-term abortions quicker.

There is plenty of evidence—I will get into this later—that this procedure has profound, long-term health consequences to women. This is not, as Dr. Hern says, the safest procedure for women.

There is no case—and I am going to underscore this 100 times, and I challenge anyone who opposes this legislation—anyone: If you are on the floor of the Senate, listening back home, listening—if anyone here, anyone across America, anyone around the world—and I want the Supreme Court to hear this—anyone can present to me a case, a factual situation where a partial-birth abortion is medically necessary vis-a-vis other types of abortions, if you can present to me one case, I will be shocked. That is because I have been asking this question for 7 years here on the floor of the Senate, outside, to groups—the folks who agree with me, the folks who disagree with me.

I have asked one question: Tell me why this is medically necessary. Tell me why, when even abortionists say it is not medically necessary, where no medical school in the country teaches this procedure, tell me why we have to keep this brutality of killing a child literally inches away from being born, why we have to keep up this brutality that is done purely so doctors who are abortionists can make more money, legal in America.

I ask again, anybody who comes here to the floor to debate this issue, who says we need a health exception, give me one case—one case. Seven years I have asked this question. Seven years I have asked this question. One case. Never has anyone even tried to put one together here on the Senate floor.

I am hopeful the Senate will act on this bill. I am happy the minority whip, Senator REID, has given us a list of amendments so we can proceed in an orderly fashion on this legislation.

I see the Senator from Washington is here to offer her amendment. I certainly want to give her the opportunity to do that. I am looking forward to debate, not only on these amendments but to have a really good, honest debate—I underscore the word ''honest.'' There has been a lot of information—I will go through that, too—that has been put out by people who oppose this ban, everything from saying the anesthesia kills the baby to on down the line. There has been a lot of information that has been erroneous that has been put out by the other side.

I am looking forward to a good, honest debate on this issue. I hope we can get an overwhelming vote in the Senate to ban a procedure that is horrific, brutal, and never medically necessary for any purpose. It is only necessary so we can have abortionists who do late-term abortions earn more money, and that isn't a good reason to allow this barbaric procedure to proceed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 258

(Purpose: To improve the availability of contraceptives for women)

Mrs. MURRAY. Madam President, here we are, once again debating this issue. Since we began debating how to criminalize women's health choices yesterday, the Dow Jones has dropped 170 points; we are 1 day closer to a war in Iraq; we have done nothing to stimulate the economy or create any new jobs or provide any more health coverage. But here we are, debating abortion in a time of national crisis.

Since we are debating S. 3, I want to expose this proposal for what it is. It is deceptive, it is extreme, and it is unconstitutional.

First of all, it is deceptive. The other side wants you to think that this just affects one procedure performed in the third trimester, but that is not true. We need to remember what Roe v. Wade clearly spells out. Up to viability, a woman and her doctor make the choice. However, any late-term abortion can only be performed to save the life or health of the woman. But the language in S. 3 is broad. It is so broad as to apply to many procedures, and it would impact women in the second trimester.

That is exactly why the Supreme Court struck down a similar State law in Nebraska. It is deceptive because it would not just be limited to what the other side implies it does.

Partial-birth is a political term. It is not a medical term. Despite all of the hot rhetoric we hear, this bill is neither designed nor written to ban only one procedure. It would also apply well before viability and could ban possibly more than one procedure.

Second, this bill is extreme. It is just the first in a long march to dismantling a constitutionally protected freedom. Don't take my word for it. Listen

to the President of the United States who declared in 1994:

I will do everything in my power to restrict abortion.

On the issue of women's reproductive freedom, the President has kept his word. He and his staff have worked tirelessly to turn back the clock on women's health choices. In only 2 years, the President has issued a rash of executive actions that could severely restrict stem cell research, thus threatening lifesaving medical advances; reimposed the global gag rule on international family planning programs; made a fetus eligible for health insurance but not the pregnant woman who is carrying the fetus; packed the Federal courts with anti-choice judges; and appointed stanch opponents of reproductive choice throughout all levels of the executive branch.

We will hear the Republicans use the most graphic and disturbing descriptions they can find to try to sour the public on something that was decided by the U.S. Supreme Court years ago. And it still opens the door to future politicians banning additional safe and legal procedures.

Third, this ban is unconstitutional. The U.S. Supreme Court has already ruled that this very type of restriction violates the Constitution. Last year, in the case of Stenberg vs. Carhart, the U.S. Supreme Court ruled a similar law at the State level unconstitutional for two reasons.

First, the language is so broad that it bans other constitutionally protected procedures. The Supreme Court's rulings state:

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

The bill before us is similarly unconstitutional because it covers too many constitutionally protected procedures.

Second, the Supreme Court found the State law unconstitutional because it did not contain an exception to protect the woman's health. Let me read that part of the ruling.

The governing standard requires an exception where it is necessary and appropriate medical judgment for the preservation of the life or health of the mother.

Our cases have repeatedly invalidated statutes that in the process of regulating the method of abortion impose significant health risks.

Guess what. The Republican bill before us fails the same constitutional test. It is too broad, and it does not contain an exception to protect the health of the mother. And the Supreme Court has said it is unconstitutional.

We have Republicans offering today a clearly unconstitutional bill on at least two counts. Proponents of the ban will argue that they have addressed the concerns addressed by the Supreme Court. However, a statement of congressional findings is not binding on the Court. The other side is using misleading and deceptive arguments to ram through an extreme and unconstitutional measure.

If the goal of the Republican Senate, the Republican House, and the Republican White House is to have fewer abortions in this country, then let us have an honest attempt to accomplish that goal. To show a real commitment to reducing abortion, my colleagues should support the amendment I will offer. It will help prevent unintended pregnancies and abortions in the first place.

The Murray-Reid amendment which we intend to offer would do three things: It would reduce unintended pregnancies, reduce the number of abortions, and improve the health of low-income women.

I will offer this amendment on behalf of Senator REID and myself. Senator REID has been a long-time champion of women's health issues, and especially for access to family planning. I thank Senator REID for his leadership on the amendment I will offer.

The Murray-Reid amendment would raise awareness about emergency contraceptives and ensure that insurance companies treat contraceptives fairly and ensure that low-income women have access to health care before, during, and after pregnancy.

First of all, the Murray-Reid amendment would reduce the number of abortions in America. I think that is something we can all agree on, and it is something we all would support.

By educating women about the availability of emergency contraception, an emergency contraceptive known as an EC could help prevent a pregnancy when taken within 72 hours. It is sometimes called the morning-after pill. An EC does not induce an abortion. An EC is not RU–486. It is simply a high dose of conventional birth control taken soon after contraceptive failure, unprotected sex, or rape.

ECs are safe and they are legal. They reduce the number of abortions and unintended pregnancies.

In fact, a study by the Alan Guttmacher Institute found that emergency contraception prevented 51,000 abortions in 2000. Unfortunately, too few women know that they are available. It has been reported that 50 percent of all pregnancies in our country are unintentional. The best way to ensure a healthy child and reduce the infant mortality rate or birth defects is to ensure that the woman is healthy prior to pregnancy. Public awareness campaigns targeting women and health care procedures will help remove many of the barriers to emergency contraception and will help bring this important means of preventing unintentional pregnancies to American women.

My amendment simply improves the awareness about emergency contraceptives.

According to the American College of Obstetricians and Gynecologists, only one-third of women of reproductive age know about emergency contraception.

Mr. President, again I will be offering my amendment shortly. One of the provisions will be to improve awareness about emergency contraceptives. As I said, according to the American College of Obstetricians and Gynecologists, only a third of women of reproductive age know about emergency contraception, and only one in five physicians regularly discuss it with their patients.

What the Murray-Reid amendment does is improve awareness about emergency contraceptives by providing $10 million in each of the next 5 years to establish a public education program. It will educate women and medical professionals across the country about the use of emergency contraceptives. It will allow the Department of Health and Human Services to provide grants to groups of providers working on this education campaign.

Not long ago I visited an organization in my State that provides bilingual pamphlets to clinics and providers in eastern Washington on the availability of ECs and how the drug combinations work to prevent pregnancy. I also know that Planned Parenthood of Washington is working to provide education on ECs as part of their overall family planning counseling.

State public health agencies could also apply for a funding grant to further their efforts to educate women on this safe and effective means of preventing pregnancy.

My amendment also makes emergency contraceptives available to victims of rape in the emergency room. When a woman has been raped and is brought to the emergency room, she may not even be aware that there is a safe and legal way to prevent her from becoming pregnant. We know that counseling in many emergency rooms on the availability of safe and effective contraceptives is simply being ignored. Providing emergency contraceptives or even information about them is still, amazingly, not standard protocol for treating a rape victim. Educating women will ensure that women are more aware. The unfortunate truth is that rape victims are not getting the care they need. Our amendment would allow doctors in the emergency room to just simply tell a rape victim about this safe and legal alternative to abortion.

Let me turn to the second part of my amendment, which requires insurance companies to treat contraceptives fairly. Today, amazingly, many insurance companies will cover drugs such as Viagra, but they will not cover contraceptives. We should eliminate this discrimination in insurance and improve women's health.

Today, 20 States, including Washington State, do have some form of contraceptive equity requirement. Recently, a court decision in my home State of Washington affirmed access to contraceptives as a civil rights protection. Most Americans would agree that when you talk about preventing unintentional pregnancies and protecting women's health, you must have contraceptive equity.

The average annual cost of oral contraceptives can range from $400 to $700 a year. Women of reproductive age spend 68 percent more than men on out-of-pocket health care services. While there are several factors that cause this disparity, the lack of contraceptive equity plays a very big role. A recent survey of health plans showed that 49 percent of large group plans do not routinely cover a contraceptive method. Many States, including my own State of Washington, have taken steps to correct this obvious inequity. But without Federal legislation, the change will be slow, and it will lack a comprehensive commitment to protecting women's health.

This debate is not about costly new mandates or even about moral judgments; rather, it is about eliminating economic discrimination and protecting women's health.

Under my amendment, if health insurance plans offer prescription drugs, they would have to cover contraceptives and treat them equally. If we are going to jeopardize women's health by banning certain safe and legal procedures, then we must ensure access to contraceptives and effective family planning services.

Finally, my amendment would increase health coverage for low-income women through all stages of pregnancy. Not long ago, the administration said States should use SCHIP dollars for the care of the unborn fetus, but it did not extend that to the pregnant woman. That is ridiculous. The clinical guidelines of the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics both indicate that the woman and the fetus should be treated together. It just makes sense.

So my amendment would ensure States can provide medical coverage for pregnant women from the SCHIP fund. That will help reduce infant mortality and ensure that both the woman and the child get the medical care they need.

This part of my amendment comes from a bipartisan bill, the Mothers and Newborns Health Insurance Act, that was introduced by Senators BINGAMAN, LINCOLN, and CORZINE, who have been huge champions of this issue.

Before I end this morning, I just want to share a story with my colleagues of a 34-year-old woman named Audrey Eisen. She and her husband Tom desperately wanted to have children. After trying for 2 years, they became pregnant. And after experiencing the sadness of a miscarriage in July of last year, Audrey and Tom were elated to learn they were pregnant. The checkups during the first few months indicated that the embryo was developing normally. At 13 weeks, they planned to have a special ultrasound. Unfortunately, they discovered the fetus was developing an abnormal number of fingers and toes and that the condition could indicate a much more serious complication, trysomy 13.

Trysomy 13 is a chromosomal condition in which there are three, rather than two, of the 13th chromosome. This syndrome is characterized by multiple abnormalities, many of which are not compatible with life beyond a couple of months. Most fetuses with trysomy 13 die in utero. Of those who make it to birth, almost half do not survive past the first month, and roughly three-quarters die within 6 months, and long-term survival is 1 year.

Unfortunately, neither life nor death comes easily for these children. It is a painful existence, marked by periods of breathing cessation and seizures. When Audrey returned for another ultrasound to get a better image of the fetal brain, her worst fears were confirmed. Here is what Audrey wrote:

> The first thing my OB examined during the ultrasound was the fetal brain. He did not say anything. I could tell he was holding something back and asked that he tell me what he saw. He said: ''It is not normal.'' The rest of the scan was a blur as tears ran down my cheeks and those of my mother and husband who had accompanied me. Following the scan, the doctor left us alone to compose ourselves, after which we met with the genetic counselor. I cried with my whole body from the depths of my soul.

Audrey underwent additional testing in which she found that their fetus had a complete duplication of the 13th chromosome. It also exhibited a failure of the forebrain to properly develop and separate from the rest of the brain, a ventricular septal defect in the heart and a herniation of a portion of the abdominal organs into the umbilical cord.

Audrey's letter continues:

> At this point we discussed our options with the genetic counselor. My husband and I both felt strongly that it was in both the child's and our best interest to terminate as quickly as possible. The genetic counselor told us that we could either have a D&E or be induced. My doctor prescribed both procedures and we decided that a D&E was clearly best for me. The procedure was performed four days later on the first day of my 16th week of pregnancy. I don't think that I really understood this issue emotionally or intellectually until I was in the position of having to terminate my much desired pregnancy. Along with my sadness came a realization that if such legislation passed, the right to safe second trimester termination of pregnancies might not remain available to those women who come after me. In this event, I don't know how these women will endure. I don't know how I could have endured.

Audrey Eisen had to make a terrible decision that no mother ever wants to make. But this Senate wants to inject itself between Audrey Eisen and her doctor.

As I mentioned at the start of my remarks, I find it outrageous that as our Nation stands on the brink of war and our citizens struggle with a stagnant economy, the Republican Senate can find no more important topic to debate than criminalizing women's health decisions. When a woman is lying in pain in the operating room and doctors are telling her that her dream of a healthy baby has been replaced by a nightmare of medical complications and that under these harrowing circumstances she must immediately make a life altering decision that could determine whether she lives or dies or whether she can have children ever again, that woman should be able to make that decision with her family, her doctor, and her faith. The Senate should not make that decision for her.

This bill is an unconstitutional, extreme measure being sold through misleading arguments. If the proponents truly are interested in reducing unwanted pregnancies and reducing the number of abortions, they should support the Murray-Reid amendment which would also improve health care for low-income women. I urge my colleagues to reject the underlying bill. The Senate should not substitute its judgment for the judgment of a woman in one of the most intensely personal decisions she is ever likely to make. But if the Senate is going to ram through this unconstitutional, extreme measure, the least we can do is temper it with safe, responsible access to emergency contraceptives, fair treatment of contraceptives by insurers, and health care for low-income pregnant women.

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Washington [Mrs. MURRAY], for herself, Mr. REID, and Mrs. BOXER, proposes an amendment numbered 258.

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

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

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DASCHLE. Mr. President, I commend Senator MURRAY for this amendment. I appreciate very much the leadership she has shown in providing a real opportunity to prevent late-term abortions to begin with. That is exactly what this amendment does. I appreciate very much her willingness to step forward.

I want to quickly state three things prior to the time that we have the opportunity to hear from Senator MURRAY more extensively about the importance of this amendment.

No. 1, I can recall so vividly on so many occasions over the last couple of years when Republicans cried crocodile tears about legislation that came to the floor without having first gone through committee. Crocodile tears. They did everything but throw things on the Senate floor, they were so upset, every single time somebody would suggest that amendments or bills be offered that had not been considered in committee. Yet right out of the box, one of the very first pieces of legislation presented to our colleagues today

is legislation that didn't go through committee. That was rule under rule 14 on the floor. The double standard and the hypocrisy is amazing to me.

The second issue I think ought to be stated is that we may be going to war within the next 10 days. I hope not. I have said publicly and privately I hope we never consider war inevitable. But I must say, as we consider what is now occurring in North Korea, as we consider the extraordinary repercussions of what may occur in Iraq, as we consider the constant deliberations in the United Nations with regard to our actions, you would think the Senate would express itself, if not through resolutions, at least with our dialog, with our consideration of these issues, with our opportunities to express ourselves, and with more opportunity to avoid concern for all of these issues and others going into such a dramatic historic and consequential moment in our Nation's history. And yet we find ourselves debating this issue. I think it is an ironic juxtaposition. And I am disappointed we would be spending our time on it this week, given all of the other issues we have to address.

The third thing I would simply say is that, as with so many issues on the Senate floor, this issue is packed with emotion on both sides. We are the Nation's leaders. We set the tone. We are the ones who create a sense of perspective with regard to these debates. The more shrill we are, the more shrill we can expect the American people to be. The more confrontational and personal we are, the more confrontational and personal we can expect the American people to be.

So I urge my colleagues, as we go through this emotional debate, to demonstrate civility, to demonstrate a recognition that it is very easy to generate emotional fervor on this issue. It is out there already. I hope, in the tradition of the Senate, a debate as important as this would recognize our responsibility to deal with these issues sensitively, to deal with them in a way that recognizes the importance of civility, to recognize, as well, that tone can be an important factor in effecting substance.

So I only urge my colleagues on both sides of the aisle to recognize, to accept our responsibility to debate this issue with civility, with respect, with sensitivity, and with a recognition that our voices are heard way beyond these Chambers.

I thank again the Senator from Washington and again applaud her for her efforts.

I yield the floor.

Mrs. MURRAY. Mr. President, I thank the Democratic leader for his comments and his timely reminders, and I appreciate his comments at this time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that during the time from 11 to 12:30, the time for the Democrats be divided with DASCHLE, 10 minutes; LEAHY, 10 minutes; KENNEDY, 10 minutes; DURBIN, 5 minutes; SCHUMER, 5 minutes; and REID, 5 minutes.

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

Mr. REID. Mr. President, in a great Nation such as ours, we are fortunate to have democratic values and institutions so American citizens can openly and freely voice their opinions and attempt to influence government policies. The abortion debate has been a divisive one for our Nation for many years. People on both sides of this issue feel strongly and have argued, demonstrated, and protested with emotion and passion.

We all recognize that the issue is not going to go away anytime soon. One side will not be able to suddenly convince the other to drop its deeply held beliefs. But there is a need and, I believe, an opportunity for us to find common ground and take steps toward a goal all of us share; that is, reducing the number of unintended pregnancies in America.

I believe it is both possible and necessary for us to come together and enact effective legislation that will prevent unintended pregnancies, reduce the number of abortions performed, and address unmet health needs of American women.

We cannot only find common ground, but also commonsense solutions in the women's health amendment that Senator MURRAY and I have offered this morning. Our amendment will help to reduce the staggering rates of unintended pregnancies and reduce abortions. Our women's health amendment will also improve access to prenatal and postpartum care for pregnant women.

Specifically, our amendment will: No. 1, end insurance discrimination against women. Let me say that this amendment was offered many years ago by Senator SNOWE and me. I express my appreciation for her tireless efforts, for working with us in ending insurance discrimination against women. The Senator from Maine has been a stalwart in this regard.

No. 2, our amendment will improve awareness and understanding of emergency contraception and ensure that rape victims have information about and access to emergency contraception.

Lastly, it will promote healthy pregnancies in babies by allowing States to expand coverage for prenatal and postpartum care.

This is really unbelievable, but it is true: About half of all pregnancies in our country are unintended and about half of those will end in abortions. We must work together on this public health problem. It does not have to be this way. Most of these unintended pregnancies and resulting abortions can be prevented.

One of the most important steps we should take to prevent unintended pregnancies is to make sure that American women have access to affordable, effective contraception. I have been in a number of debates on this issue about contraceptive use. I can remember on a national radio program a woman called in from Texas. She said: I am now pregnant with my fourth child. I have diabetes. She went on to outline the many problems she would have having this baby. But she did say that the reason she is pregnant is because she and her husband could not afford prescription contraception. They tried other things that didn't work, and, as a result, she was going through this pregnancy.

What our amendment is all about is allowing women to have the choice to have contraceptives that work. Insurance companies, as the Senator from Washington so well outlined, provide money for all kinds of things. Why not contraceptives? It would be cheaper and certainly save a lot of money and aggravation in the long run.

As a result of medical innovation and pharmaceutical research, there are numerous forms of safe and highly effective contraception that are available by prescription. If used correctly, they would greatly reduce the rate of unintended pregnancies. However, one of the greatest obstacles to the usage of prescription contraception by American women is their cost.

The woman who called in to the national radio show is only one example. There are all kinds of examples of people who have insurance and do not have access to, for example, the pill—which is so effective in preventing women from becoming pregnant.

We know that women, on average, earn less than men. Yet they must pay far more than men for health-related expenses. According to the Women's Research and Education Institute, women of reproductive age pay 68 percent more in out-of-pocket medical expenses than men. Why? A lot of reasons, but one is due to their reproductive health care needs. Because many women cannot afford to pay for the prescription contraceptives they would like to use, many go without it, resulting in unintended pregnancies. Far too often that is the case.

This week is Cover the Uninsured Week—a major effort by a coalition of groups from all over the country to raise awareness to one of the fundamental problems of our society. About 44 million Americans lack health insurance. In addition to the 44 million, many other Americans are underinsured. The number who have no health insurance includes women and children. Most of the families affected are working families.

This is a tragedy that demands our attention. We have tried to get their attention, but we have not done very well. The high cost of prescription contraceptives is not only a problem for the millions of women without health insurance, it is also for millions of women who have health insurance because even having a plan that includes a prescription drug benefit does not

guarantee that the prescription drugs you rely on are included.

Such is the case for a majority of women in this country who are covered by health insurance plans that do not provide coverage for prescription contraceptives. As a result, women are forced to either do without contraceptives or to bear this expense out of pocket. This is unfair to women and unfair to families. It is bad policy that causes additional unintended pregnancies, adversely affecting women's health.

As I indicated earlier, I have been trying since 1997 to remedy this, and we have accomplished a few things. We have been able to get women who work in the Federal sector to have their insurance cover this, but we have been unable to get it for the rest of the country. That is too bad.

Today, as part of our women's health amendment, we are again proposing commonsense legislation that has received bipartisan support in the past. The Equity in Prescription Insurance and Contraceptive Coverage Act, or EPICC, as we call it, requires insurance plans that provide coverage for prescription drugs to provide the same coverage for prescription contraceptives.

The woman in Texas—I cannot adequately convey to you the desperation in this woman's voice when she called in saying: I am a sick woman. All I needed was the ability to have a prescription where I would get a contraceptive that would work, but I didn't, and I am pregnant. It is going to affect my health adversely, and I don't know what will happen to the baby. I cannot convey in words the desperation, the concern in this woman's voice.

We are not asking for special treatment of contraceptives—only equitable, fair treatment within the context of an existing prescription drug benefit. This legislation will help increase the playing field a little bit for women. They spend more for their health care costs. This will help a little bit. Making contraception more affordable and available will enable more women to use safe and effective means to prevent unintended pregnancy. I hope that is a goal we all share. I believe it is.

Contraceptive coverage is much cheaper than other services. As the Senator from Washington pointed out, it is certainly cheaper than performing an abortion; it is cheaper than sterilizations and tubal ligations, and most insurance companies routinely cover these.

The Federal Employees Health Benefits Programs, which has provided contraceptive coverage for several years as a result of an amendment we offered on the floor, shows that adding such coverage doesn't make the plan more expensive. In fact, it saves money. Unintended pregnancies cost society money, cost families money.

As I indicated, this was first introduced by Senator SNOWE and me 6 years ago. We have been working across party lines and across the ideological spectrum to gain support in the Senate. It had 44 cosponsors last year in the Senate.

This is commonsense, cost-effective legislation that is long overdue. Promoting equity in health insurance coverage for American women, while working to prevent unintended pregnancies and improve women's health care, is the right thing to do. We should also take additional steps that would improve women's health and further reduce unintended pregnancies.

Our amendment would increase the awareness and availability of emergency contraception, an important yet poorly understood form of contraception.

I have never said this publicly, and I will not use her name, but she knows who she is. A very good friend of mine who worked for me for many years—she started off in high school as a runner in my office. She came to me one day, and I knew something was wrong. I said: What is the matter?

She looked at me with tears in her eyes and said: I was jumped last night.

I never heard that term before, but she was driving through a rough neighborhood and they stopped her car and she was raped—a teenager, Mr. President. I didn't know what to do or say. I called my wife's gynecologist/obstetrician, who is a friend of mine, and I said: Doctor, here is the situation . . . will you see her?

He said: Of course, I will see her.

So she went to him. She didn't become pregnant, but that is fortunate. Now, I wished, then, we had the ability to have emergency contraception. It would have relieved everybody's mind and made everybody feel better. I will never forget that. That was a traumatic night in her life, to say the least.

We have made progress since then—scientific progress—to make problems like that one something that can be dealt with. She would not have had to come to someone like me, her employer, and be humiliated by telling some one older than her about the problem. But she was one of the fortunate ones. She had somebody she could come to, and I had the opportunity to send her to my wife's gynecologist.

So, in effect, our amendment would increase the awareness and availability of emergency contraception, an important, yet poorly understood form of contraception. Approved for use by the FDA, emergency contraception pills work to prevent pregnancy, and they cannot interrupt or disrupt an established pregnancy. That is a scientific fact.

A woman could use emergency contraception in an emergency, such as if she had been raped and doesn't want to become pregnant.

The availability of an emergency contraception is particularly important for women who survive sexual assault, like my friend.

It is difficult to imagine the physical, psychological, and emotional pain that a woman who is raped endures. In addition to the violent attack to which these women have been subjected, they must also consider the possibility that in addition to the trauma of the rape, they could become pregnant as a result.

Compassion is a word we have heard a lot from political leaders in recent times. Actions speak louder than words. Surely, I acknowledge—and I think we should all acknowledge—it would be compassionate to make emergency contraception available to women to prevent them from becoming pregnant by the rapist who brutalized and traumatized them.

It would be compassionate to make emergency contraception available to a woman to prevent her from becoming pregnant by the rapist who brutalized and traumatized her.

I hope we can all agree on this legislation which would require hospitals receiving Federal health dollars to provide information about emergency contraception and make it available to sexual assault survivors when they are being treated in the emergency room.

Simply put, emergency contraception should be made available in every emergency room in America. Women who have been raped should be informed of all their options, including learning about emergency contraception. If they choose emergency contraception, it should be made available to them. It should be a choice.

Women who have been raped should be informed of all their options, including learning about emergency contraception, and if they so choose, it should be made available to them.

EC, emergency contraception, has been studied extensively and has been regarded as a safe and effective method to prevent unintended pregnancies.

Once I was on a radio show talking about my contraceptive coverage legislation. Someone called in and said: I think it is awful, and I am opposed to contraception of any kind. Mr. President, that is a person's right. Some people do not believe in contraception, and that is their right. Nothing in our legislation forces a woman to take any form of contraception. That should be a choice of a woman who has a health plan or a woman who has been raped. That is all we are saying.

EC has been studied extensively and regarded as a safe and effective method to prevent unintended pregnancies, I say again. Its use has been recommended by leading American authorities, including the American Medical Association, the American College of Obstetricians and Gynecologists, and it has been approved by the Federal Food and Drug Administration.

It is believed this would prevent hundreds of thousands of pregnancies and likely hundreds of thousands of abortions in America each year. Unfortunately, however, emergency contraception remains, for the most part, a well-kept secret. Most of the women who would benefit from it and would use it

in an emergency to prevent an unintended pregnancy are unaware of its existence or do not know where to get it, where it is available. Even many health care providers do not understand what it is, how it works, and who could use it.

To reduce unintended pregnancy by raising awareness of emergency contraception, Senator MURRAY and I are proposing in this amendment to authorize $10 million in funding for the Centers for Disease Control and the Health Resources and Services Administration to develop and distribute information about emergency contraception to public health organizations, health care providers, and the public. This would prevent hundreds of thousands of unintended pregnancies and, of course, abortions.

These are just some of the simple, but I think necessary, steps we can and should take to prevent unintended pregnancies and reduce abortions.

To further improve the health of women and children, we should give States the option of covering pregnant women in the State Children's Health Insurance Program, called SCHIP, for the full range of their health needs, including prenatal, delivery, and postpartum care.

A number of years ago, a couple of neonatologists came to visit me. They were Nevadans. One was with a public hospital in southern Nevada. They had a number of messages. They wanted to see if we could get money to build a neonatal unit there. We have done that at the University Medical Center in southern Nevada. It is wonderful to go there and see those babies being saved because of modern technology.

Another message they wanted to deliver to me is that children are having children, and many of these children having children come to the emergency room—and they have never seen a doctor—to deliver the baby. They have never seen a doctor. It happens all the time. They were saying: We need to do something to allow these children to have a place they can go to get the care. Why don't they get care? There are a lot of reasons, but mainly it is a money situation.

I think this amendment is wonderful, and I like this part of our amendment very much, but I personally believe every woman in America, whether it is the wife of a billionaire or a woman who is on welfare and has nothing, and is 12 years old or 14 years old, should all be able to have free prenatal care. Every woman in America should be able to have free prenatal care. It would save this country so much money.

These doctors told me when they came to visit me that there are many million-dollar babies who, because of lack of prenatal care, are born with all kinds of problems. Had they had some prenatal care—some of these girls do not realize they should not smoke or take dope. They do not know. These are kids. If they had a place to go for prenatal care—there are grown women who need advice and counseling as to what should and should not be done during pregnancy.

I really believe all women should have free prenatal care. There should not be means testing. I think every woman should have free prenatal care in our country. We would save so much money as a society by doing that. That is another battle down the road some other day.

This amendment would give States the option of covering women in the State Children's Health Insurance Program for the full range of their health needs, including prenatal delivery and postpartum care. The mortality rates for infants and for mothers remain alarmingly high in the United States. We can, we should, and we must reduce these rates by extending coverage for prenatal care and pregnancy-related services. Unfortunately, the administration imposed a regulation last year that allows the fetus to be insured through SCHIP but excludes—excludes—the mother from coverage. Let me say that again. Through an administrative fiat, regulation, order, mandate, this administration imposed a regulation last year that allows a fetus to be insured through SCHIP, but excludes the mother of that fetus from coverage. Try to logically figure that one out. This is illogical, I think it is shameful, and I think it is absurd.

It, in effect, punishes women and certainly does not improve their health care. In any case, how can one claim to care about the health of an unborn child and not provide for the health and needs of his or her mother? The administration's policy means pregnant women are not covered during their pregnancy for medical emergencies, accidents, broken bones, mental illness, cancer, or even lifesaving surgery. Only procedures considered medically necessary for the fetus are covered. No postpartum care, of course, is included.

Remarkably, Health and Human Services Secretary Thompson tried to defend this policy by suggesting—listen to this—that the regulation which explicitly denies postpartum care is more comprehensive than legislation which provides full coverage including postpartum care. That is what he said. Do not try to figure out what it means because I cannot. This strains the credulity of anyone reading this and studying this situation. It flies in the face of common sense. We cannot have healthy babies if we ignore the health of the expectant mother. So States should be able to provide pregnant women with a full range of health services through SCHIP.

We should embrace these measures to protect the health of women and babies, prevent unintended pregnancies, and reduce abortions.

I am very happy to work with the distinguished Senator from the State of Washington, who is always on the cutting edge of things that relate to being compassionate and caring about people. It is an honor to join with her in helping us find common ground, commonsense solutions and show some compassion.

Let us find common ground. Let us agree on commonsense solutions and let us show compassion. There are four elements of this amendment. I hope we will move on and pass this unanimously. I do not know how anyone could oppose these commonsense amendments, but time will only tell.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, we have roughly 10 minutes before we proceed to a debate on the constitutional role of the Senate in the advise and consent process. I do not have a sufficient amount of time to respond to all of the comments made by my colleagues from Washington and Nevada. We are looking at the amendment. We may have some amendments to it. My understanding is there are two jurisdictional pieces to this amendment. One is in the Finance Committee. The other is in the HELP Committee. We are still getting feedback from those committees.

My understanding is that some of these provisions have been offered at the committee level previously and the chairmen of those respective committees are letting us know what they would like to do.

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

Mr. SANTORUM. I am happy to yield for a question.

Mr. DURBIN. Will the Senator tell me if the underlying legislation, S. 3, went through the committee before it came to the floor?

Mr. SANTORUM. As the Senator from Illinois knows, this is the fourth Congress in which this legislation has been considered. It has gone through committee in previous Congresses. As I mentioned before, there are some changes to this legislation, but the basic underlying procedure that we attempt to ban is one that is very familiar to the Senator from Illinois and very familiar to other Members. It is obviously familiar to members of the committee. While this is a bill that, again, I would argue has some differences in it that are important from a constitutional perspective, this is an issue very familiar to every Member of the Senate and there was not really a sense that this was one that needed to go through the process again.

Mr. DURBIN. If the Senator will yield for two brief questions, and I will not dwell on this any longer.

Mr. SANTORUM. Yes.

Mr. DURBIN. Will the Senator please tell us when was the last time this bill went through the committee process, for example, the Judiciary Committee? Secondly, has this bill, which is virtually identical to the Nebraska statute rejected by the Supreme Court, gone through committee hearings since the Supreme Court rejected this very same language in the Nebraska statute?

Mr. SANTORUM. I will get the answer to the first question. I do not have the answer, but I will get that, No. 1. No. 2, this is different than the Nebraska statute. In fact, it was drafted in response to the Supreme Court's ruling in the Carhart v. Stenberg case.

To the other question, have there been hearings conducted about it, the answer is, no, there have not been hearings in the Senate. I do not know whether the House has conducted hearings on this language or not, but I can certainly find that out.

We are making the case and we will continue to make the case, and I assume those who oppose this legislation will make their case, as to the constitutionality of this legislation in its amended form that was struck down by the U.S. Supreme Court. I will go through those arguments repeatedly. I do not have time now because we only have about 5 minutes and I do have some other things I want to say.

Clearly, we believe we have addressed the issue of health. The Supreme Court, in the Carhart v. Stenberg case, took the record of the lower court. The lower court found that the health exception was needed based on the record, and the U.S. Supreme Court took the findings of fact from the district court and applied the standard that they would apply to this case, that the district court was clearly erroneous in coming to that decision. They did not find that standard to be met and so they accepted the underlying premise.

Congress has, on repeated occasions, made findings of fact in preparation for review by the courts, and in a vast number of these cases, the courts have been very deferential to Congress, as a body, that gets into much more detail through the process of hearings. We have had numerous hearings about this procedure in both the Senate and the House.

So while the Senator from Illinois has asked if we have had any recent hearings, we have had plenty of hearings on this issue and plenty of hearings about the medical necessity of this procedure. I ask the Senator from Illinois or any Senator who opposes this legislation, please come to the floor and present one case where this procedure is medically necessary. I do not think we need any more hearings. All I need is one case where this procedure would be medically necessary. In 7 years, no one has come to the floor of the Senate, no one has come to a hearing, no one has come before a hearing, no one has come anywhere, publicly, privately or otherwise, and presented a case where this is medically necessary for the health of the mother. So if there are no cases where it is medically necessary for the health of the mother, it is by definition outside of the rubric of Roe v. Wade. Now, that is a finding of Congress. That is a finding of Congress that is continuing to be substantiated by the inaction of those who oppose this to come up with a case.

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

Mr. SANTORUM. Sure, I am happy to yield.

Mr. REID. Let me say, through the Chair, to the Senator from Pennsylvania, the manager of this bill, the majority leader asked Senator DASCHLE and I to try to do something to move this legislation along. In good faith, we have narrowed the number of amendments to seven or eight that we have offered. The reason Senator MURRAY and I did this amendment is we thought we would get all the prevention issues out of the way quickly.

The point I am trying to make to my friend is that we are going to offer these together or separately. We are going to have votes on these amendments one way or the other. That is why we have asked that there be no second-degree amendments. Everyone should understand that we will come back and reoffer these.

In good faith, we are trying to move this legislation along. There is no effort to stall or to delay in any way. In good faith, we are trying to work this out with the other side. I only say this because the Senator said the committees wanted to look this over. Senator MURRAY and I are going to get a vote on these four issues. We would like to do it all at once. That would be the best way to do this. I want to make sure the leader hears from us what we are trying to do.

Mr. SANTORUM. I certainly respect the desire of the Senator from Nevada to get votes on these amendments, and we may well be able to accommodate that in a clean fashion directly, but I do not know the answer to that. I am still waiting to hear from the chairmen who have just seen this amendment a few minutes ago, to get a sense as to whether they believe there are some things that can be done to improve upon this recommended language.

The second point, in response to the Senator from Illinois, is the issue of vagueness. That was the other issue with which the Supreme Court dealt. We have come up with a much clearer definition.

The Senator from Washington said this is a deceptive amendment, that this language is very broad language and it does not limit it to a partial-birth abortion. I ask the Senator from Washington, or the Senator from California who was on the floor last night with the same argument, if they could describe a procedure that would be banned by the language in this bill. Give me another procedure and give me the definition of that procedure and tell me how that procedure would be banned by this bill.

The Senator from Washington brought in a case which certainly is a very distressing case, one that I can relate to on a personal basis, of a child who was discovered in utero with a fetal abnormality. The abortion performed on that child was done at 16 weeks. It was not a partial-birth abortion and under this legislation would continue to be legal. So we did not restrict at all the procedures that are done in any hospital in this country, because hospitals do not do this procedure. Abortion clinics do this procedure.

As I have said many times, they do it for one reason: the convenience of the abortionist to do more abortions in a shorter period of time. The doctor who developed this procedure developed it, in his words, so he could do more late-term abortions. He said this procedure takes 15 minutes. The other one takes 45. So he could do more abortions in 1 day. That does not strike me as one that was developed for medical necessity or to protect the health of women, but to protect the pocketbook of an abortionist, and that is not the kind of medicine that we should confirm or affirm in the Senate.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The VICE PRESIDENT. Under the previous order, the hour of 11 a.m. having arrived, the Senate will now go into executive session and resume consideration of Executive Calendar No. 21, which the clerk will report.

The assistant legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

The VICE PRESIDENT. Under the previous order, the time until 12:30 p.m. shall be equally divided between the two leaders or their designees.

The majority leader is recognized.

Mr. FRIST. Mr. President, thank you for presiding this morning. I appreciate your participation as our Presiding Officer in what we all recognize is an important moment for the Senate, the Senate that we all serve.

I have asked for this session over approximately the next hour and a half because one of our most important roles as Senators is to vote on executive nominations, including judges, lifetime appointees, who serve such a vital role in our constitutional design.

Because of the current debate, I have looked to our Founders for some guidance. John Adams, who helped create our Federal judiciary with his independence and its lifetime appointments, gave us a guide. He wrote that judges should be:

> Men of experience on the laws, of exemplary morals, invincible patience, unruffled calmness, indefatigable application. . . (and) subservient to none.

This is a high standard for a nominee and one I believe that Miguel Estrada has met. But it is also a charge for our Senate as the steward of an independent judiciary. Has the Senate met