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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

O God, You are life, wisdom, truth, and blessedness. You are our hope and the center of our joy.

Lord, the Founders of this great land walked in Your guidance and rested in Your compassion. Unite us so that we can do Your will. Remove from us all evil desires and empower us to embrace the good. Speak to our Senators so that they may understand Your will for our Nation and our world.

Illuminate their understanding with beams of celestial grace. Make us thankful for the privilege of prayer. May we never take it for granted. Let us see Your goodness in our daily bread and in the gift of each new day. And, Lord, touch our world with Your peace. We pray this in Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore. I ask the distinguished assistant Democratic leader to lead us in the Pledge of Allegiance to our flag.

The Honorable HARRY REID led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning there will be a period for morning business to allow Senators to make statements. At 10:30 today, the Senate will begin consideration of the conference report to accompany the partial-birth abortion ban bill. Under a unanimous consent agreement, there will be up to 4 hours of debate on that conference report. Under a previous order, the Senate will stand in recess from 12:30 until 2:15 for the respective party caucus meetings. After that recess, the Senate will continue consideration of the partial-birth abortion ban, with a vote on the conference report expected this afternoon. That vote will be the first vote of the day.

Following the vote on the partial-birth abortion ban, the Senate will resume consideration of the motion to proceed to S. 1751, the class action fairness bill. I remind my colleagues that we had hoped to begin consideration of the class action legislation yesterday. Unfortunately, there was an objection to proceeding which is why it was necessary for us to proceed to move to that bill. Yesterday, we filed a cloture motion on the motion to proceed and that vote will occur tomorrow morning.

It is important that we are able to proceed with that bill. I understand there are differences on the substance of the legislation. However, the Senate should be allowed to consider those issues through debate and votes, as appropriate. Therefore, I once again encourage my colleagues on the other side of the aisle to allow us to begin work on the bill to bring some sense to the overall class action process.

I was also disappointed with the objection to proceeding to the Healthy Forests initiative. Chairman COCHRAN and others on both sides of the aisle have been working in good faith to bring that bill to the floor in a way to consider some concerns that may exist on the Democratic side. Again, there was an objection to proceed to that measure. I hope Members can, over the course of this morning and today, rethink that objection and allow debate to begin on this very important initiative, the Healthy Forests legislation.

We are also working hard to clear for Senate action a number of other important issues, including the fair credit reporting bill, the so-called spam legislation, as well as an agreement to move forward on the charitable giving bill.

I remind my colleagues, both the Senate and the House have already passed their respective versions of that legislation and it is now time for us to move to conference and reconcile those differences. Having said that, we will continue to work with the Democratic leadership in an effort to reach an agreement to move forward on all of the bills I just mentioned.

As we approach the last weeks of this session, we need to redouble our efforts to stay focused and disciplined on these agreements so we can allow the Senate to consider all of these bills. I thank my colleagues in advance for their cooperation.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The assistant Democratic leader is recognized.

Mr. REID. While the majority leader is in the Chamber, I say on behalf of the minority, we acknowledge the importance of class action, Healthy Forests, charitable choice. Those are the ones I remember the leader speaking of. For example, charitable choice could be done within a matter of minutes and sent directly to the House. There has been a decision made by the majority—and I think not a proper one—to take it to conference. We could send it immediately to the House.

We are working very hard to try to cooperate with the majority on the most important piece of legislation, class action. A vast majority of Members on this side of the aisle want to do something on class action. We have had

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as our point person on this JOHN BREAUX, and he has had contact with the majority to try to come up with something on this issue. I think we are very close to working something out.

Healthy Forests, as the leader knows, is a difficult issue. For Western States it is extremely important. We hope that can be resolved quickly.

I bring to the leader's attention, however, we also have those appropriations bills we need to do. I spoke very briefly this morning with the distinguished Presiding Officer. He has been in contact, as I am sure the leader knows, with Senator BYRD. Maybe there is still something we can do on those appropriations bills to get, if not all of the six we have not passed here done, at least some of them completed. We have those most important conferences. We have had, as far as I am concerned, a difficult time getting a conference completed on the energy and water appropriations bill. That has been a bill we usually bring up first because it is so important to Members in the House and Senate. I spoke this morning to Majority Leader DELAY, saying we need a little help from the leadership in trying to move that.

I hope, in addition to these other important items the leader has mentioned, we can work together to come up with some program to get some of the appropriations bills passed. I think it is important for the country.

Mr. FRIST. Mr. President, I appreciate the comments just made by my colleague and I think his comments reflect the amount of work we absolutely must accomplish in the next few days. I say that because in terms of the numbers of days in the weeks remaining, there are very few legislative days. We should all redouble our efforts and focus on each and every one of these bills. They are all very important.

I know it may seem, as the Republican leader, I am encouraging the resolution of these bills by bringing them to the floor. That is exactly what I am doing, so we can all redouble our efforts to accomplish what really we want to do mutually: Go through each of these, have the appropriate debate and amendment on the floor as we go forward.

Mr. REID. One bill I did not mention that I feel strongly about is fair credit reporting. That is also very important. I bet my office has received 100 phone calls in the last couple of legislative days dealing with that legislation. We hope something can be worked out on that also.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business until the hour of 10:30 a.m., with the first half of the time under the control of the Democratic leader or his designee and the second half of the time under the control of the Senator from Texas, Mrs. HUTCHINSON, or her designee.

The majority leader.

ECONOMIC GROWTH

Mr. FRIST. Mr. President, on leader time, I want to make a very brief comment to highlight a few of the encouraging developments on our economic front. I know we will be going to morning business, and some of my colleagues will be talking shortly on the issue of our economy and where we are in terms of jobs and job creation.

There have been some very encouraging developments on the economic front. When the third quarter GDP figures are released next week, it is anticipated we will very possibly see growth as high as 6.5 percent. All signs, at this point, point to a very robust holiday buying season.

The Department of Commerce reports consumption is strong. In the third quarter, consumption grew by an annual rate of over 12 percent. Many economists tell us this third quarter consumption may be the strongest we have seen over the last 4 years—again, very good news.

Likewise, the Department of Labor reports the initial jobless claims are at their lowest levels since February. In August, the nonfarm sector employment rose by 57,000 jobs. In the area of manufacturing, mid-Atlantic manufacturing is showing promising signs of recovery. The index for new orders showed the highest gains in 8 years, and the monthly index of regional manufacturing significantly topped the economists' expectations. Inflation, meanwhile, remains very low. Short-term interest rates are also at historically low levels. There is much to cheer about in this positive news.

Smart, progrowth fiscal policy is helping lead this creation of new jobs. But we have a lot more work to do. There are some structural problems we need to tackle on this Senate floor in order to strengthen the marketplace. We need a more efficient marketplace, a more transparent marketplace. We need to make it less risky for businesses to go out and hire workers and to retrain those workers, and we can do that by focusing on appropriate reforms such as strengthening trade; reducing health care costs; reducing litigation costs; reducing insurance costs; strengthening energy policy, which we are doing in conference right now; and, I would also add, enacting strong asbestos reform. These are the sorts of policies that will increase productivity. They will increase predictability in the marketplace, and they ultimately will stoke the engines of economic growth.

I am really, for the first time, becoming optimistic that we have turned this corner and that we will see continued improvement. The agenda items we are working on to complete this session—many of which we just discussed—will lead to more jobs, more prosperity, and a solid economic recovery.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

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

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

ORDER OF PROCEDURE

Mr. REID. Mr. President, before the majority leader leaves, I ask unanimous consent that in morning business each side get their full half hour. That would extend the vote a few minutes this afternoon.

The PRESIDENT pro tempore. That would add 12 minutes to the time.

Mr. REID. Yes.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Does the Senator from Nevada yield time?

Mr. REID. Yes. Mr. President, I yield 15 minutes to the Senator from North Dakota, Mr. DORGAN; 5 minutes to Senator KOHL; and 10 minutes to Senator STABENOW.

The PRESIDENT pro tempore. I thank the Senator.

The Senator is recognized.

APPROPRIATIONS, ENERGY, AND CUBA TRAVEL

Mr. DORGAN. Mr. President, let me make a comment about the appropriations bills, then about the Energy conference, and then I want to talk a bit about the Department of Homeland Security and the ban on travel to Cuba.

First, the appropriations bills.

Our colleague, the majority leader, Senator FRIST, talked just a bit about that today in response to questions by the Senator from Nevada. My understanding is the bills are all ready to come to the floor of the Senate. We were told in early September that we would, when returning from the August break, be on appropriations bills. We passed all 13 appropriations bills through the Appropriations Committee in the Senate. Yet since we passed a continuing resolution, because we did not have the appropriations bills done by October 1, since that time we have not completed even one additional appropriations bill.

I know the chairman of the Appropriations Committee wants to get these bills to the floor. But instead the leader is scheduling other issues. I am not suggesting the other issues are unimportant, but we have a responsibility to meet a deadline with appropriations bills; and the question is, Where are they, and why are they not being brought to the floor of this Senate?

I do not understand it, nor do most of my colleagues.

If the Committee on Appropriations has finished its work on the bills, why

are they not being debated on the floor of the Senate? If there is an intention to do one, big, continuing resolution, one large omnibus bill, and not have us consider on the floor of this Senate up to six appropriations bills, then the opportunity for a good many Senators to offer amendments and deal with these in a routine legislative way will be lost. I suspect that is what some are wanting to have happen. It is not something that looks like the legislative process as I know it.

Mark Twain once said: The more you explain it, the more I don't understand it. That is the case with these appropriations bills. They are ready. They ought to be brought to the floor, and they ought to be a priority now. I hope the majority leader and others who are doing the scheduling here in the Senate will understand that and bring appropriations bills to the floor.

Mr. President, let me now just talk for a moment about something else that is happening that concerns us. We have an Energy conference. My colleague Senator BINGAMAN spoke on the floor about this yesterday. We have an Energy conference. I am a conferee. I have not been invited to a conference meeting at this point because the Republicans have decided they will not allow Democratic conferees to be a part of the process.

What they are saying is, they will give us the conference report 24 hours ahead of time, and then we will have a meeting. Apparently that is now planned for next week. We were told it was going to be last Saturday, then perhaps a meeting this Monday. Now it will probably be next Friday, and a meeting the following Monday.

In any event, there are a couple hundred pages of that report which have been agreed to by Republicans dealing with very important, very complicated pieces of legislation—the electricity title, the ethanol title—and yet we are told, despite the fact it is now agreed to and completed, that those of us who were never invited to a conference are not allowed to see the conference report.

It is inexplicable to me. It is, in my judgment, a legislative process that is broken. I have told the chairman of the committee on this side, he would not stand for that in a moment. He would be on this floor pointing into the noses of those who are doing it to say that is not the way to legislate. To ask representatives of 49 Senators here in the Senate to simply sit by patiently while a conference occurs and while Democrats are excluded is an arrogance I think that is fundamentally wrong and unsound, and I think it threatens the future of an energy bill. It is the wrong way to get cooperation and the wrong way to write an energy bill.

It seems to me there are good ideas on both sides of the aisle in the Congress, and they ought to be available in a conference, as conferences are usually held, to be able to improve and write a bipartisan energy bill. But, once again, quoting Mark Twain: The more you explain it, the more I don't understand it.

The fact is, you can talk about this 100 different ways, and there is no justification for two people in the Congress to decide: We are going to convene in a room someplace, shut the door, and tell you what the energy policy is going to be for this country. It risks, I think, the ability to get an energy bill. I believe we need an energy bill for this country's future.

Having said that, Mr. President, let me just talk about another issue that has gotten very little attention but ought to, in my judgment.

The President gave a speech a couple of weeks ago saying he is going to crack down on travel in Cuba, because there is a law against traveling in Cuba.

Inexplicably, Americans cannot travel in Cuba. This country is trying to punish Fidel Castro for his abuses, and I agree with that. But in order to slap Fidel Castro around and punish Fidel Castro, this administration is going to limit the American people's freedom to travel. Oh, the American people can travel almost anywhere else—to Communist China, Communist Vietnam—but you cannot travel in Cuba.

The President gave a speech, I suspect aimed mostly at voters in Florida, saying we are going to crack down on casual travel in Cuba. He did not say ''casual travel.'' But I know it is casual travel because they are chasing retired schoolteachers who rode bicycles in Cuba. They are denying licenses to farm groups who want to go and promote and sell agricultural products in Cuba, part of which is now legal because of an amendment that I and then-Senator Ashcroft got passed in the Senate that became law. But they are trying to stop farm groups from promoting agriculture products in Cuba by denying licensees travel in Cuba.

The President said we are going to have the Department of Homeland Security, which is designed to protect this country against a terrorist attack, exert its resources to clamp down on travel in Cuba. Here is what the Department's Web site says: ''The Department of Homeland Security will use intelligence and investigative resources to identify travelers or businesses engaged in activities that circumvent the embargo.''

We are going to have the Department of Homeland Security, which is supposed to be protecting us from terrorists, now using investigative resources and also intelligence resources to try to track down people who are traveling in Cuba. They are doing that at the direction of the President.

Well, let me just give as example one of the kind of people they are going to use their intelligence and investigative capabilities to track down: Joan Slote. Joan, as you can see from this picture, rides a bicycle. She is in her mid 70s. She is a Senior Olympian. She joined a bicycle tour of Cuba with a Canadian group.

She had no idea it was illegal for an American to bicycle in Cuba. But she went there and came back and discovered she was fined $7,630 by the U.S. Department of Treasury. They slapped her around. Shame on you for bicycling in Cuba. We will fine you $7,630.

I said to the Department of Treasury's Office of Foreign Assets Control, which is called OFAC: You ought to be ashamed of yourselves. You are supposed to be tracking financial records of terrorists, and you are tracking little old ladies who ride bicycles in Cuba. They agreed, after some embarrassment, to reduce her fine to $1,900. Then 2½ months after she sent them a check, she got a letter from a collection agency saying they were going to enforce collection, and they were going to begin to take her Social Security payments. This was after she had paid the fine.

But there are more than just Joan Slote. Let me give other examples of whom they are investigating. Cevin Allen decides to take the ashes of his dead father to Cuba to sprinkle on the lawn of the church where his father ministered. It was his father's last request. They fine him for illegal travel to Cuba. That is who Department of Homeland Security now says they will use intelligence and investigative methods to track, people who travel illegally in Cuba, taking your dead father's ashes to sprinkle on the ground in Cuba.

Marilyn Meister, a 72-year-old Wisconsin schoolteacher, she also had a bicycle trip to Cuba. She was fined $7,500. Donna Schutz, a social worker from Chicago, went on a tour, she was fined $7,600; Kurt Foster. Tom Warner, 77 years old, a World War II veteran, posted on his Web site the schedule for the February annual meeting of the U.S.-Cuba Sister Cities Association in Havana. He never even went to Cuba. But this administration, clamping down on Cuban travel, said Warner was ''organizing, arranging, promoting, and otherwise facilitating the attendance of persons at the conference without a license.'' He did not attend the conference. And the conference was licensed by OFAC. All he was doing was posting information on his Web site. He was given 20 days to tell OFAC everything he knows about the conference and the organizations that participate in it. He has now hired a lawyer.

What is going on? We are chasing Joan Slote who rode a bicycle in Cuba for thousands of dollars of civil fines, and now the President says we want to use the Department of Homeland Security to investigate and use intelligence resources to identify Americans who travel to Cuba. It is the most preposterous thing. Have they lost all common sense?

I understand the President's announcement. That is pure politics. But ordering the Department of Homeland Security to use precious assets? Do you

know that we inspect less than 5 percent of the 7.6 million containers that come into this country every year on ships. Yet we are going to use Homeland Security assets to track little old ladies riding bikes in Cuba so we can slap a $7,500 fine on them? It is unbelievable to me. Yet nobody seems to be too concerned about it. We are going to hurt Fidel Castro by limiting the right of the American people to travel.

We have enough votes to lift the travel ban. You can travel virtually anywhere else in the world. I happen to believe the best way to get rid of Fidel Castro is travel and trade. Just as we argue that is the case with Communist China, just as we argue that is the case with the Communist country of Vietnam, it is clear to me that the quickest way to change the Government in Cuba is travel and trade. That Government will not be able to resist the influences of travel and trade. It will undermine it.

But a 40-plus year embargo has failed. It is time to understand that. It makes no sense. I am wondering how many of my colleagues really support this, having the Department of Homeland Security use scarce investigative and intelligence assets to identify travelers who are going to Cuba to ride a bicycle or perhaps to take their dead father's ashes to sprinkle on the church where he ministered. Is that what we should be doing? I think not. Yet the President gives a speech aimed directly at the center of the bull's eye of Florida politics and says: We are going to tighten up. We are getting tough. I will have the Department of Homeland Security investigate and use intelligence to track Americans who travel in Cuba. It is unbelievable.

I hope we can get a vote on this. One of the reasons we may not is we may not get appropriations bills on the floor of the Senate because a half a dozen of them are through the Appropriations Committee and are not being brought to the floor. If they are here, we have a chance to offer an amendment. Without it, when they are put in an omnibus, there will be no amendments. So we will see. If there is in the future some omnibus appropriations bill that is cobbled together by the leadership in the month of October with appropriations bills that have not previously been considered on the Senate floor, we will not be able to. We will be prevented from offering amendments.

I yield the floor.

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

HEALTH CARE

Ms. STABENOW. Mr. President, I thank my colleague from North Dakota for his comments and associate myself with them as well.

As we move through Appropriations Committees, there are a number of important issues that confront us. I rise to speak to the issue of health care and add my voice to the growing chorus of people who are concerned about our Nation's health and want us to have a sense of urgency about health care.

We have just passed a bill that will allow our tax dollars to be used in Iraq for a universal government-paid health care system for the Iraqis. There are people in the United States asking: What about us; what about making sure each of us has health care as well?

There are businesses seeing their premiums double. The average small business is seeing their premiums double now every 5 years, and that is, in fact, growing even higher. Large businesses, negotiating contracts, find themselves dealing with the issue of health care as the top concern of both the business and employees.

When we look internationally at our ability to compete around the world, the health care system that is tied to employment has created a situation where our large businesses competing in the world are having more difficulties competing successfully in this competitive environment where every dollar counts. We are hearing from unusual places a call for a focus on health care, a focus on a more universal kind of system that will allow us to have the health care we want for our families and our businesses to be able to compete both within our country and around the world.

What is most disturbing is when we look at the numbers in terms of the costs going up and the number of people now without insurance. A new survey by the Kaiser Family Foundation and the Health Research and Education Trust found that employer-sponsored health insurance premiums increased almost 14 percent this year. This is the seventh straight year of premium increases and the largest increase since 1990. Premiums now average over $9,000 a year for the typical family health insurance policy. And for an individual, it is $3,383. Rising premiums are placing a very heavy financial burden on our families and are making it increasingly difficult for families to find and afford health care.

Because there is no successful plan to stimulate the economy right now, we are seeing more and more Americans go without health care and other basic needs. According to a recently released U.S. Census Report, the number of Americans without health insurance has jumped by 5.7 percent to almost 44 million people. That equals the populations of 24 States plus Washington, DC. Think about that. The number of people who are uninsured now equals the population of 24 States and Washington, DC. If this is not a crisis, if we do not need a sense of urgency, I don't know when we will, when we look at what is happening.

Families U.S.A. has done their 2001–2002 survey and determined that in Michigan 2.3 million Michiganians under age 65 went without health insurance sometime within that year. That means one in four people in my great State of Michigan, under the age of 65, went without health care during this time period. This is not acceptable and we need a sense of urgency about these issues.

Who are these people? Well, the majority of them are working. Actually, more than 80 percent of the uninsured live in working families. The majority of those who are uninsured are working. So this is a small business issue. This is an issue of people who are working but are not in businesses that can afford health insurance themselves for their employees, which is why we need to tackle this issue working with our small business community as well as our large business community.

When one member of a family is uninsured, it can affect all of the family and their quality of life. We know many young people going out into their first jobs are not insured and run a high risk of something happening and of their not being able to deal with it in a productive way.

One of my major concerns right now, as we move forward in the work on a Medicare prescription drug benefit, is that we not forget that there are important parts of cost containment in that legislation that would affect all of those who need health insurance, or have health insurance. We know that about half of the reason the cost of insurance premiums is going up for businesses right now is because of the cost of prescription drugs.

So one of the primary ways we can help businesses to be able to afford health insurance and be able to provide more opportunities for people to have health insurance is to lower the price of prescription drugs. The average prescription brand name drug is going up faster than three and a half times the rate of inflation. So when we look at what we are debating right now under Medicare, there are two very important focus areas for us. One is to eliminate patent loopholes that stop patents from coming to an end and allow lower cost, unadvertised brands to be able to go on the market through our generic drug process.

We passed a bipartisan bill in the Senate not once but twice since I have been here in the last 2½ years. This needs to be passed by the entire Congress and put on the President's desk this year, whether it is part of the Medicare conference report or whether it is done separately.

We also know that if we create more competition by tearing down this artificial border which doesn't allow Americans to purchase safe FDA-approved prescriptions from other countries, particularly Canada, where we know their supply chain and safety processes are virtually equivalent to ours, if we do that, we can also create great competition to lower prices.

There are a lot of stories right now in the paper about concerns about the safety of prescription drugs at home as well as abroad—legitimate issues that deal with what is happening with

wholesalers in our country, issues that need to be addressed by the FDA and all of us. We need to be increasing the ability for the FDA to have the inspectors and enforcement powers against those kinds of activities that create unsafe medication.

But when you talk about the issue of what has been called importation, we are talking about a process that allows the local pharmacist, the licensed pharmacist at the local pharmacy or the local hospital, to have the same ability to do what every part of the pharmaceutical industry does right now, which is to do business with those in another country and bring a supply chain of prescription drugs back to the local pharmacies.

The reason we are seeing so much activity now, so many ways people are trying to find prescription drugs that are affordable to them, is because prices are too high. The fact is that people cannot afford their cancer medicine, their blood pressure medicine, and those other kinds of medicines they need to be able to live productive lives or, in many cases, be able to survive.

The reason we are seeing so many people looking for other ways to find prescription drugs is because the prices are too high. We need to work together to have a system with integrity and with safety, that creates a product that is affordable, that creates a product that can be available to our citizens who desperately need these lifesaving medicines.

If we do that, we address half the reason health care costs are rising. We then need to focus on the question of the uninsured and how we partner to be able to make sure people have access to health care, so we can bring those prices down.

In closing, we need a sense of urgency about health care. We need a sense of urgency here just as every business, every employee, every family has a sense of urgency about health care now and whether it will be available to their families. I hope we will make that a top priority for this Senate.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Delaware is recognized.

Mr. CARPER. Madam President, before the Senator leaves the floor, I have observed that she has been diligent in continuing to focus on health care issues, including our need to somehow effect and moderate the growing cost of health care in this country. She has seen an exodus of manufacturers out of her State and millions of manufacturing jobs from the United States. Among the reasons why they are leaving is the extraordinary cost of health care. Companies also tell us they are considering other places to locate and do business because of litigation costs, legal costs that flow out of the costs of doing business in our country. Those costs could deal with asbestos litigation, which has taken down now over 60 companies that have gone bankrupt.

Unfortunately, a lot of people who have been hurt or exposed to asbestos haven't gotten the kind of money their families deserve, and people who haven't been sick have taken away money from those who need it.

Another area with respect to legal costs that will get a lot of attention on this floor this week is the cost of class action litigation and whether or not the way our class action system works in this country is appropriate or needs to be changed.

Let me say from the outset that I think when a person is hurt or damaged in some way by the acts of another person or a company, that person should be compensated. They should be made whole. When a number of people, or a class of people, are hurt or damaged in some way by the actions of a company or business, that class of people should be compensated and made whole as well.

I submit to my colleagues today that our sense of balance, though, has been lost. We are seeing national class action litigation not taking place in Federal courts but in many instances taking place in local courts with locally elected judges against defendants from other States.

When the Framers of our Constitution provided for a Federal judiciary, one of the reasons they did so was to say when you have plaintiffs in one State and you have defendants in another State, just to make sure there is an objective legal system, we need a Federal judiciary to help provide for that leveling of the playing field.

All too often today national class action litigation pits plaintiffs in one State and defendants in another State in a local court where you have a locally elected judge whose election or reelection depends in no small part on their ability to satisfy the plaintiffs within their State. We've just lost our sense of balance.

There have been efforts for five years now to try to make changes with respect to class action litigation. It started out far different than where it has ended up. The current bill is much more moderate than those that came before it. Also, there is no effort with this bill to cap noneconomic or attorneys' fees. There is no effort to limit joint and several liability.

I want to talk about the bill that will come to the Senate floor if we agree to the motion to proceed tomorrow.

First of all, the legislation that will come to us is not perfect. It might need to be amended or changed further. It is certainly not the final product, but it is a good starting point. If we agree to the motion to proceed tomorrow—it takes 60 votes—we will have the opportunity for those of us on our side, the Democratic side, and the Republican side, to offer amendments, to have a full and open debate and decide whether or not we are going to change the bill. It can be improved, and I certainly will support amendments. I may talk about those later today or tomorrow.

Let me take a minute to describe the legislation that may come to the floor. The issue we are trying to get at is venue shopping, where you have, in some cases, litigation that is being brought and litigation of national scope that ought to be in a Federal court, where the attorneys who brought the lawsuit are looking for a venue where they can get a friendly judge and friendly jury.

In some places, it is almost a cottage industry, whether it is Madison County, IL; Jefferson County, TX; and other places, such as Alabama and Mississippi. There is a perception that a defendant is not going to get a fair shake in a national class action litigation in those venues.

The PRESIDING OFFICER. The time controlled by the minority for morning business has expired.

Mr. CARPER. I thank the Chair. I will have more to say about this later today.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Madam President, I ask that the next 15 minutes be equally divided between the Senator from Idaho, Mr. CRAIG, and the Senator from Oregon, Mr. SMITH.

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

Mr. CRAIG. Madam President, I and my colleague need to be off the floor by 10:30 a.m. Will the Chair alert me when 5 minutes have passed?

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

ENERGY AND THE ECONOMY

Mr. CRAIG. Madam President, I am here this morning to talk about the reality of U.S. prosperity and how it is so closely tied to a reliable, affordable energy supply. The U.S. economy has suffered for the last 3 years because of severe energy price fluctuations. Energy supplies have often been barely adequate and, in most instances, in high demand. I believe failure to enact an Energy bill will have dire consequences on all Americans, especially our economy, our workforce, and those who are building the American dream.

There is a growing sense of urgency amongst American manufacturers, small businesses, and others that they simply cannot remain competitive unless we have enough reasonably priced energy to meet their demands at a time when certain costs in our energy sector are skyrocketing, and that, in my opinion, has been a major factor in contributing to the prolonging of a recession.

Rising fuel costs helped cause the deepening of the recession in the past four recessions we have recorded: In the 1970s, in the early 1980s, in 1990 and 1991, and now the 2000 recession. When we look backward, when we talk with economists who study this issue, all of them will tie it to a spike in energy prices and the cost of energy rippling across the economy.

Abundant, affordable energy stimulates economic growth. Fluctuating energy prices have cost America many jobs in the last 3 years. The manufacturing sector has experienced over the past 2 years consecutive job losses, having lost over 2 million jobs. The National Manufacturing Association said that it has been caused in significant part to energy price spikes in 2000.

During the winter of 2000 and 2001, natural gas prices skyrocketed. Curtailments became common in the Northeast and in the upper Midwest. Skyrocketing natural gas prices of last winter went even higher than 2 years ago. Now many companies that have tried to secure this gas are shutting down simply because they can't afford to blend it into their stream. They can't afford the costs, and their product produced by it becomes noncompetitive. As a result, significant job loss has occurred.

The U.S. chemical, plastics, and fertilizer industries have been among the hardest hit, largely due to their dependency on affordable natural gas in the face of fierce international competition.

Electric utilities continue to build natural gas generation. Houses continue to be built and are plugged into the gas lines.

The Energy bill we are working on will both save jobs and create jobs by bringing affordable natural gas out of Alaska. The Presiding Officer certainly knows about this. Some 35 trillion cubic feet of natural gas can be brought to the lower 48 States. That and the construction of that pipeline could well create over 400,000 jobs. Federal royalties could flow from it at $48 billion, a new Federal revenue to reduce our deficit and again create jobs.

The Energy bill we are completing in conference calls for the investment of hundreds of millions of dollars in research and development in new energy technologies. This investment creates new jobs in engineering, math, chemistry, physics, science, and all related fields are tied into this kind of investment, this kind of development.

The bill increases America's stake in nuclear energy, encouraging the construction of a Federal advanced nuclear reactor for the production of electricity and hydrogen and new technology, driving that industry forward and, once again, allowing America to lead the world in this kind of technology, this kind of advancement: Clean, manageable, safe forms of electrical production.

Our bill will facilitate the expansion and the modernization of our national electrical grid. It will create additional opportunities for investments in pipelines and transmission lines and encourage the private investment in electricity transmission—all this creating more jobs.

The Energy bill will provide $2 billion in investment and clean coal technology, creating engineering and research jobs. The investment also protects existing coal mining jobs and processing jobs to ensure the longevity of the American coal industry.

We protect jobs in the gas and oil industry by encouraging deep well exploration of oil and natural gas at a time when domestic oil production is dropping and that level of production is flat.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. CRAIG. I will proceed for 1 more minute.

By stimulating our production of oil and gas, we not only produce the energy necessary to fuel our economy, we not only protect tens of thousands of jobs, but we will create abundant new jobs.

Lastly, we had Federal Reserve Chairman Alan Greenspan, who spoke before the Energy Committee, both of the House and the Senate, and he said:

> It is essential that we do not lose sight of the policies needed to ensure long-term economic growth. One of the most important objectives of these policies should be an assured availability of energy . . . Developments in energy markets will remain central in determining the longer run health of our nation's economy.

We all understand that. Now is the opportunity and the time to finalize a national energy policy, to pass it out of the Congress and put it on our President's desk. It is our future. It is one of the greatest job creators on which the Senate will ever vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

THE ECONOMY

Mr. SMITH. Madam President, along with my colleague from the State of Idaho, I will talk in morning business about the economy. We have heard for 2½, nearly 3 years of the Bush Presidency that President Bush is responsible for the economic downturn. Little is said about the economic facts that existed when he took his oath of office; specifically, that the economy was in a tailspin, that Wall Street had lost at least $7 trillion of equities, and unemployment was rising dramatically.

Indeed, President Bush inherited a situation that was not of his making and frankly not even of President Clinton's making, because we had witnessed the bursting of a stock market bubble and the dashing of hopes of tens of thousands of pensioners all over this country.

It is a fact of political life that politicians are given too much credit and too much blame for the natural, immutable cycles of a free market economy. The latest casualty in this judgment on politicians is probably Governor Gray Davis of California. I remember during the heydays, the bubble days, California was held up as the miracle model and Governor Davis was hailed as a hero. He accepted the credit.

I heard, with some pain, frankly, the other day when he acknowledged how much economic trouble they were in and that he had gotten too much credit for the good times and now was getting too much blame for the bad times. Guess what. Governor Davis was right. The truth of the matter is we in public life do not control a free market economy, and if we ever do, we will have a socialist economy which will ill serve the American people.

Before I came to this Chamber, I ran a business. On a seasonal basis, we employed as many as 1,200 people. During the Reagan years, they were boom years; they were wonderful years. In trying to expand my business, I always remembered the factors that helped me make a decision whether to invest in a new piece of equipment or to acquire another plant. It had little to do with who the President of the United States was. It had little to do with the fact that I was proud that Ronald Reagan was my President.

Two of the factors Government did have an impact upon, beyond regulation, were interest rates, which are controlled by the Federal Reserve, and taxes, which are controlled by the Congress and the President.

In those days, taxes were coming down, interest rates were falling, and the American economy was booming. Then during the Clinton years, there was a business correction under President Bush. As President Clinton took his oath of office, the American economy again boomed with productivity and prosperity, and President Clinton was great to take credit for the conditions of our free market economy but wanted nothing to do with its collapse as he left the Presidency. Again, too much credit, too much blame, for President Clinton and President Bush.

As I listen to those who aspire to the Presidency to replace our current President, I hear them speak of the Bush economy in the most derisive of terms, but I wonder how they are beginning to factor in all the good news that is beginning to come out about the American economy, as the immutable cycles of supply and demand, the falling of tax rates, the falling of interest rates, are beginning to show up in the lives of the American people. How will they deal with the fact that consumption has been rising and topped 12 percent on an annual rate last month, and that has the potential to translate into economic growth, GDP, of 6 percent? I suspect it will probably top out somewhere around 4 percent, but that is a very healthy economy. How will they deal with the fact that jobless claims are falling, and quickly, in many parts of our country? In fact, jobless claims are now lower than they were in February.

More good news: production in our Nation's factories has increased, not decreased. Home-building starts are now at record levels. Over 1.9 million new homes on an annual basis are on the books now and being built as we speak. This is the second highest level of home building in 17 years.

I believe consumers understand that things are improving and there is reason to feel that once again morning is coming to America and good days are ahead. But we can yet do more. I think we can do that in the FSC bill that has gone through our Finance Committee and is now in a conference committee. It contains a feature I helped get into the bill, as a most important provision, called repatriation. This is a provision that will bring at least $300 billion of new investment in the next year into the United States. What does it mean to companies in Oregon such as Nike, Intel, and Hewlett-Packard, which are our biggest employers? It means they can bring these foreign profits back for investment in American jobs.

Some say it is not good tax policy. Some say it is not fair. I say, do we want the jobs or do we not? If one wants to understand what this means in very real human terms to this country, recently Dr. Allen Sinai completed a study on what repatriation would mean to this country. He said it would mean up to 650,000 additional jobs created in the first 2 years. He said $70 billion of the deficit would be eliminated. He said that increased GDP could be enhanced by 7 to 9 percent by 2005. He also said business capital spending, primarily of equipment, could peak at $75 billion by 2005. We can do more and Government should do what it can. It cannot control the cycles of supply and demand, but we can keep downward pressure on interest rates. We can keep downward pressure on taxes. We can keep rules and regulations reasonable and we can allow the genius of the American people to be manifested again in a free market economy.

Finally, I think it is very important to note that our friends on the other side who say the key to American prosperity is to invest in public things, in public investments, are right at the margins, but they are not right at the center. What makes America work is entrepreneurial spirit with the right environment to invest to produce quality products we can afford, and to provide a service that makes us happy.

Ultimately, those who come with great jobs bills of public works—if that really could make an economy hum, then Japan would be leading the world and many European countries would be leading the world because they have fallen for this short-term, sugar-coated candy that says the government can do it, private industry does not need to do it, and it can be done through public works. If that were true, then the New Deal would have ended the Great Depression, but it did not. World War II did.

If that were true, then Japan and Europe would be leading the economies of the world instead of waiting for the American free market economy to begin taking off again.

In conclusion, I think the good news is the American economy is beginning to hum again. For that, I am very thankful.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Wyoming.

Mr. THOMAS. Madam President, I will take the remainder of our time to talk a little bit about jobs, an issue that has been highest on our agenda on this side of the aisle for a good long time, and continues to be. First, I have to react a little bit to some of the comments that were made earlier about moving forward. I am very frustrated that each bill brought to this floor is slowed down either by objection or by a week's discussion and debate of amendments. Of course, everyone is entitled to offer amendments. But when you have to stay with a bill that is fairly simple and be there for a week and a half and then complain about not getting our jobs done, that is sort of ironic.

Obviously, we have at least four things that need to be done in the next several weeks. We have to continue the supplemental bill to pay for our Armed Forces in Iraq as well as to get Iraq in a position to allow us to leave and take care of themselves.

We do have appropriations left. We have six that are not done yet. So we do have to worry about that and move forward.

We have the opportunity to do something with health care, particularly pharmaceuticals and Medicare, and we are in a position to do that.

We also have an opportunity to do more with energy than we have done for a very long time. I recall, having been on the Energy Committee both this year and last year, when we were in conference. We had a conference last year, you recall, and never succeeded in getting the bill finished.

So we have some real challenges. Frankly, I have become surprised at the kind of reaction we get off the floor, that almost every issue is designed to be critical of the Bush administration. What we ought to be doing is doing our job, to do the things that need to be done and that are pending for us to do and that we can do and will do some great things for the country.

I would like to talk a little about jobs. Of course they are most important to all of us. There are some good signs in the job market. The Labor Department reported on October 3 that employment rose by 57,000 last month, the first increase since January. The unemployment rate held steady. So we seem to be having some signs of getting that job situation back where we would like it to be.

We have had on our agenda a list of things that are designed to help create jobs and, as the Senator from Oregon indicated, the economy is what creates jobs—not the Government. But we can do things that help stimulate the economy which cause job growth.

One of them that is most important, and that has already been talked about by my friend from Idaho, an issue that is very important to me, is energy security, the Energy bill. Energy security for this country means job security and the creation of jobs.

The comprehensive Energy bill we are talking about here has been scored to have about 700,000 jobs that could be accentuated and could be encouraged by the passage of this bill. Many of the jobs will come from construction. Some have to do with the possibility of a pipeline in Alaska. Others have to do with domestic production.

Of course, energy has a great deal to do with our whole business community, our whole business interest. Everyone relies on available and affordable energy. Certainly one of the things we have to continue to recall is we have become almost 60-percent dependent on foreign oil. We need to do something about that. We have seen our gas supply in great demand and the prices rise while at the same time we have resources of gas that can be made available. We need to encourage that development.

We have an Energy bill that is quite balanced, it seems to me. We talk about research that will make coal more clean so we can use the coal, which is our largest fossil resource that we have available to us for electricity.

We have renewables in there. We will continue to work on electric energy created by wind and make that more efficient. We have some things in there for conservation. We can make better use of our energy and certainly that ought to be important to us as well.

In addition to that, and perhaps more important in the short term, is to increase domestic production. To do that, one of the opportunities is to make it economically possible for those who are developing it through some tax changes. Those seem to be held up now. We are hopeful we can move forward and get that job done. It is available for us to do immediately—this week, next week. We can get this done for the first time in a number of years.

There are other items on the agenda that have to do with jobs. There is tort reform, asbestos litigation reform—which is available now to come to the floor. There are different views about that, of course. There is nothing wrong with that. But the fact is that would create new jobs by allowing companies to divert some of their dollars from litigation toward new investment, which creates jobs. The litigation defense costs are tied directly to offset expenditures relating to 138,000 jobs that could be replaced if we can do something about those distortions in the economy.

Class action reform is here. In fact, we are going to vote on the opportunity to proceed with it tomorrow because it has been stopped by the other side of the aisle. Here again, class action litigation causes a good deal of confusion and uncertainty about the marketplace. Industries do not know whether their money is going to be

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 President 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 completely 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 important 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 Protection 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 difficult 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 out 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 mother; 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 Dilatation and Extraction'' (Intact D & X). This procedure has been described as containing all of the following four elements:

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

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

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

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

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

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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: dilation and evacuation (D&E), dilation and extraction (D&X), instillation, hysterectomy and hysterotomy (commonly known as a c-section).

Dilation and evacuation (D&E) is the standard approach for second-trimester abortions. The only difference between a D&E and a more common, first-trimester vacuum aspiration is that the cervix must be further dilated. Morbidity and mortality studies 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 outcome 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 Obstetrics, 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 hysterotomy, hysterectomy, or unsafe continuation of pregnancy are women's only available options. Williams Obstetrics, one of the leading medical texts in Obstetrics and Gynecology, has this to say about the hysterotomy ''option'' that the bill leaves open:

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

Obviously, allowing women to have a hysterectomy means that Congress is 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 previability 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 available—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 ''malegarchy'' 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 discovers 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 support 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. Striping 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 father 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.

The American Medical Association, for example, which is an organization that is committed to medical excellence on behalf of patients and professionals, opposes this procedure. The AMA has described this procedure as unsafe and dangerous. The American Medical Association has stated it is ''not good medicine,'' ''not medically indicated.''

There are some specific exceptions: If the mother's life is in danger. The bill allows abortion if endangered by physical disorders or illness or injury.

In the bill, again, it says:

> Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

I went through a lot of the procedures of the bill just to let the Members of the Senate know how grotesque this procedure is. This bill is necessary and important.

This legislation is designed to protect infants. Testimony in committee indicates there is pain to the baby when this partial-birth abortion procedure is conducted. Professor Robert White, who is director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, testified before the Constitution Subcommittee in 1995. These are his exact words:

> The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain. Without question, all of this is a dreadfully painful experience for any infant subject to such a surgical procedure.

The procedure should not exist or be permitted, in my view. It is painful, morbid, inhumane, and simply barbaric. A majority of Americans believe we should end this practice and it should be illegal except if necessary to save the life of the mother.

The House and Senate have passed a number of times on this legislation. We passed a partial-birth abortion bill from this body in the 104th, 105th, and 106th Congresses. In the 108th Congress, both the House and the Senate passed this ban—with a vote in the House of 181 for, 142 against. It was a bipartisan vote. Again, we had a bipartisan vote in the Senate, where we had 64 for and 33 against.

It is important that we pass this particular legislation. The President strongly supports S. 3. President Bush, in his State of the Union Address, asked Congress to:

> . . . protect infants at the very moment of birth, and end the practice of partial-birth abortion.

We need to act now. I again thank my colleagues in the Senate who have been such strong advocates of eliminating partial-birth abortion except in situations threatening the life of the mother. I am pleased we are acting now, and I thank my colleagues for their support of this important ban for the Nation's children.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. After conferring with my colleague from California, we set this in place. I will yield to the Senator from Illinois for 10 minutes. I ask unanimous consent that following that 10 minutes, the Senator from Ohio be recognized for 10 minutes.

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

Mrs. BOXER. Mr. President, I yield 10 minutes to the Senator from Illinois. If he needs further time, I agree to an additional 5 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, this debate is not something I look forward to on the floor of the Senate. This is one of the toughest issues any elected official ever has to face. It is highly controversial. In my home State of Illinois, in my hometown of Springfield, virtually everywhere I travel, there is a strong difference of opinion on the issue of abortion.

I understand that, and I really have to say as to all those who come to the floor today on either side of this issue, we should never question their motives because I think each and every one of us has tried to search our soul to find out what is fair and what is just. In many instances here, we are talking about things beyond our expertise as individuals. Some of us are lawyers, some have other backgrounds. Very few, if any of us, have medical credentials. But we come today to consider something which is historic, and that is that we would ban in the United States a medical procedure.

To my knowledge, that has never been done. It is being done here under the pretense that it is the humane and right thing to do. Yet when you speak to the professionals, those who do this for a living, the obstetricians and gynecologists, they basically tell you, be careful, because you can't really predict in every instance what a mother might face late in a pregnancy. But this bill has decided that regardless of the medical emergency that might face a mother late in her pregnancy—regardless, we are going to eliminate once and for all this medical procedure. I think that is a very historic and very dangerous action.

I wonder if, in retrospect, we would do it in any other area of medicine. But when it comes to the politically controversial area of abortion, many politicians and elected officials just come roaring through the door and say: Let me tell you what we are going to do and what we are not going to do.

I have tried to look at this in honest and fair terms. Let me tell you what I believe. I believe all late-term abortions should be strictly construed and prohibited in almost every case. I only allow two exceptions for any type of late-term abortion procedure: The life of the mother, and where the mother faces grievous physical injury if she goes through the pregnancy.

I said in an amendment I brought to the floor, just to make certain we know what we are doing, two doctors have to certify that either her life is at stake or, in fact, she runs the risk of grievous physical injury. I can stand behind that. I can say in good conscience that those are the only two exceptions for which I will stand.

But the bill before us today does not allow those two exceptions. If a mother faces the possibility of grievous physical injury if she continues the pregnancy, this bill will still ban a procedure which some doctors believe is best for her under those circumstances. Consider that for a moment. Consider what we are saying. Even if the woman faces grievous physical injury, she has to continue the pregnancy, or at least seek some other way of terminating the pregnancy that might not be as good for her.

Don't take my word for it. Again, I am a lawyer, I am a legislator. But the American College of Obstetricians and Gynecologists was asked about this procedure, and this is what they said. When abortion is performed after 16 weeks, intact D&X, which is what is called partial-birth abortion here, is one method of terminating a pregnancy. This is the important language from the professionals, from the obstetricians and gynecologists. Listen closely:

> The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

If it were your wife whose life was at stake, whose physical well-being were at stake, isn't that the standard you would want, that the doctor and your wife and family would make the best decision, appropriate to her medical circumstances? There is no doubt in my mind. There is no doubt in the minds of the women who have come to tell me of the sad stories of their pregnancies that ended so badly.

Yet in this bill we are saying, as politicians and legislators, we want to step into that room in the doctor's office, we want to stand between the doctor and the patient, and we want to make the decision. We want to say to that doctor, regardless of what you think is best for this woman who faces grievous physical injury if she goes forward with the pregnancy, regardless of what is best for her in your medical, professional opinion, we are going to take away from you one procedure which you can use. It might be the best one for her, but it is not the best one politically. That is why this bill is before the Senate. That is a sad circumstance.

In one of the most frightening times in a woman's life, when she is so late in her pregnancy that they have decorated the room for the baby, picked the

name, they know what they will do when the baby comes home, she gets the tragic news that something has happened no one anticipated. One of the ladies from my State came forward. I met her a few years ago. Vicki talked about having two children and a third child on the way. Here she was, late in her pregnancy. She described the pregnancy as disgustingly normal. At 32 weeks in the pregnancy, 8 months into the pregnancy, she went in for an ultrasound and discovered the little boy she was carrying had at least 9 major anomalies, including a fluid-filled cranium with no brain tissue at all, compacted, flattened vertebrae, congenital hip dysplasia, skeletal dysplasia, and hyperteloric eyes. The doctor told her this baby will never survive outside the womb and because of her physical condition he said she should terminate the pregnancy if she wanted to live and if she ever wanted to have another child.

Her husband, a doctor, sat down with her. They told me, personally, of crying through the night, making this decision and finally deciding they had to do this. And they did. She terminated this pregnancy with the very procedure that is being banned by this bill. She did it because she thought she had no choice. The doctor told her she had no choice. Frankly, if this bill passes, that procedure would not be available to her.

What has happened to Vicki since? The good news is she became pregnant again and she delivered a son, Nicholas, a little boy I met right outside the Capitol. This is a woman who did not want to be a mother, who did not want to be pregnant? No. It is a woman who, through no fault of her own, found herself facing a medical emergency and deciding at the last moment, with her husband and her conscience, what was the best thing to do. She chose the very procedure which is going to be banned and prohibited by this bill.

That is unfortunate. There has been so much publicity back and forth about abortion procedures. Trust me, there is no way to terminate a pregnancy which is clean and sanitary and something you would want to publicize on television. It is a gruesome procedure at any stage in the pregnancy. Yet we have been led to believe this termination of pregnancy is somehow much different.

When I came before the Senate and said, all right, I will go along with terminating all late-term abortion procedures except when the mother's life is at stake or she is running the risk of grievous physical injury, we will require two doctors to certify that and will penalize a doctor if he misrepresents or lies about that, I thought, finally, we found a reasonable middle ground. Those who are opposed to virtually all abortions still would not vote for that amendment. Even though we had support of people who are pro-life and pro-choice, they could not support it.

The Supreme Court, across the street, has told us what happens to bills such as the one we are passing today. If you do not include a provision in there to consider the health of the mother, grievous physical injury, for example, if you do not include that provision, then you fail by the Roe v. Wade test.

Do not ask this Senator to stand here and make this statement with no evidence. The Court already mandated that decision in Stenberg v. Carhart. Nebraska, in that case, struck it down, with virtually the same language before the Senate today. They said it lacks any exception for the preservation of the health of the mother. This bill lacks any exception for the preservation of the health of the mother.

Why are we here today? Because some people understand that regenerating this issue on a regular basis is good for some politically. But it is not good for this Nation, not to have closure on an issue or at least some reasonable compromise where we can limit all late-term abortion procedures.

There are some who are opposed to all forms of abortion. I respect their point of view. I respect the principles that bring them to that decision. But for those who believe, as I do, that abortion should be rare and should be safe, that we should limit it to the most extraordinary cases, particularly late-term abortions, I offered an amendment to do that. It was rejected. Instead, we have this bill coming before the Senate, headed to the Supreme Court, which does not include the exception necessary to protect the health of the mother—protect the health of the mother I met, a woman who faced an extraordinary medical emergency.

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

Mr. DEWINE. Mr. President, I thank my friend and colleague from Pennsylvania, Senator SANTORUM, Senator BROWNBACK, Senator GRAHAM, Majority Leader FRIST, also my colleague, Senator ALLARD, who spoke just a moment ago, for their unending and unwavering efforts to put a permanent end to this horrible partial-birth abortion procedure.

We are here today because a civilized society cannot tolerate this type of procedure. With all due respect to my colleague, my friend from Illinois, this is not about politics. This is about what kind of a society we have, what kind of a country, what kind of a people we are.

This will be the third time for the Senate and the Congress to vote to ban this inhumane procedure—a procedure which, I point out, has absolutely no medical purpose. Time and time again, the testimony we heard in front of our Judiciary Committee is this procedure is never—I repeat, never—medically indicated. I also point out, just to make sure there is a a provision in this bill that provides for a life-of-the-mother exception, the testimony time and time again from all the experts was this is never medically indicated.

This has been before the Senate before. We have voted on this before. The difference today is after Congress votes to ban this procedure this time, this time the President of the United States will sign this bill into law. Soon, once this becomes the law of the land, the abortionist will not be able to legally perform this brutal act on our society's most innocent victims. Once this becomes the law of the land, the abortionist will no longer pull living babies feet first out of their mother's wombs, puncturing their skulls and sucking out their brains. Those are the facts, much as we hate to talk about them.

I have come to the Senate before and talked about different specific stories. I have talked about the story of Baby Hope. The stories of little children like Baby Hope will no longer occur. I described before in the Senate in detail the story of Baby Hope. This was the story where the abortionist, Dr. Mark Haskell, in Dayton, OH, inserted, as he has done thousands of times, a surgical instrument into this little child—in this case, Baby Hope—into Baby Hope's mother to dilate her cervix so Baby Hope could eventually be removed and killed. In this case, Baby Hope's mother went home to Cincinnati expecting to return 3 days later to Dayton for the completion of the procedure. This is a 3-day procedure. In this case, the mother's cervix dilated too quickly and as a result Baby Hope was actually born but died shortly thereafter.

Mr. President and Members of the Senate, on the death certificate there is a space for the cause of death or ''Method of Death.'' In Baby Hope's case, the method of death is written in with the word ''natural.'' Well, that, of course, is simply not true. There is nothing natural about the events that led to the death of this tiny little child. We all know that Baby Hope did not die of natural causes.

We cannot nor should we ever forget this tragedy, nor others like it as recounted by medical professionals.

My colleagues may recall the story of Brenda Pratt Shafer, a registered nurse who was assigned to Dr. Haskell's abortion clinic one morning in the early 1990s. I have told this story on the Senate floor many times.

Nurse Shafer observed Dr. Haskell use the partial-birth abortion procedure to abort babies that day. In fact, she testified before our Senate Judiciary Committee in 1995.

I would like to share with my colleagues again—and I pray that this time will be the final time we have to tell this story on the Senate floor—exactly what the nurse saw and what she testified to in front of the Judiciary Committee.

Nurse Shafer gave very gripping, very telling, very truthful testimony. This is what she said. She described the partial-birth abortion she witnessed on a child that was 26½ weeks. This is what she said:

The young woman was 18, unmarried, and a little over six months pregnant. She cried the entire three days she was at the abortion clinic. The doctor told us, ''I'm afraid she's going to want to see the baby. Try to discourage her from it; we don't like them to see the babies.''

The nurse continues:

Dr. Haskell went in with forceps and grabbed the baby's legs and pulled them down into the birth canal.

Then he delivered the baby's body and arms—everything but the head. The doctor kept the head right inside the uterus. The baby's little fingers were clasping and unclasping and his little feet were kicking.

The baby was hanging there, and the doctor was holding his neck to keep his head from slipping out. The doctor took a pair of scissors and inserted them into the back of the baby's head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks he might fall. The doctor opened up the scissors, stuck a high-powered suction tube in the opening and sucked the baby's brains out.

The nurse continues:

Now the baby went completely limp. We cut the umbilical cord and delivered the placenta. He threw the baby in a pan along with the placenta and the instruments he had just used. I saw the baby move in the pan.

I asked another nurse and she said it was just reflexes. The baby boy had the most perfect angelic face I think I have ever seen in my life. When the mother started coming around, she was crying—''I want to see my baby.''

''I want to see my baby.''

So we cleaned him up and put him into a blanket. We put her in a private room and handed her the baby. She held that baby in her arms and when she looked into his face, she started screaming—''Oh my God, what have I done? This is my baby.''

Soon we will rest more easily knowing we are very near the end, very near the day when we do not have to retell Nurse Shafer's story—the day when my colleagues, such as Senators SANTORUM and BROWNBACK and GRAHAM and Majority Leader FRIST and the rest of us who have fought this battle, will not have to come to the Senate floor and talk about partial-birth abortion. Nobody wants to talk about this act. Nobody wants to tell the story, to tell Nurse Shafer's story.

Now is finally the time we will ban this horrible, horrible procedure. I look forward to this forthcoming vote in just a few hours and our subsequent delivery of this bill to the President for his prompt signature.

This is the right thing to do. The facts are there. The facts are that this procedure is not medically indicated; it is not medically necessary. We should be judged, I believe, not just by what we do in society; I think we also should be judged by what we put up with, by what we tolerate.

I say to my colleagues, no civilized society should tolerate this type of action. We should say today, by our vote, we simply will not tolerate this, that this is wrong. We cannot allow this to continue in this great country of ours.

Mr. President, I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). Who yields time?

The Senator from California.

Mrs. BOXER. Mr. President, could you tell us how much time remains on Senator SANTORUM's side and how much time remains on our side?

The PRESIDING OFFICER. The Senator from Pennsylvania has 38 minutes remaining. The Senator from California has 58½ minutes remaining.

Mrs. BOXER. Would the Presiding Officer be so kind as to tell me when I have used 20 minutes?

The PRESIDING OFFICER. Yes.

Mrs. BOXER. Thank you very much.

Mr. President, you have heard a tragic story here of a woman who had an abortion who really did not want to have one. I have to tell you, that is why I am so proud to be a pro-choice Senator, a pro-choice American, a pro-choice Californian, fighting for that woman's right to never, ever, ever have to have an abortion if she decided she did not want one.

At the same time, I want the other side to understand that Roe v. Wade is the law of the land and that at the early stages of a pregnancy Government should stay out of a personal, private, moral, and religious decision. That is exactly what being pro-choice means. It means the woman described by my friend must never be forced to have an abortion, ever, no matter what goes wrong with the pregnancy—no matter what—if she insists on going through with it and wanting to have that child. Regardless of the risk to her health, she has the right to do it. That is what being pro-choice is about. Being anti-choice means that Government will dictate that situation.

What we have here today and why our side has decided we wanted to have another debate on this is because, just as the other side has said, the anti-choice side has said this is a historic day, we agree. This is, indeed, a historic day because, for the first time in history, Congress will be banning a medical procedure that is considered medically necessary by physicians, physicians who know. And we will put those statements in the RECORD once again.

My colleague, Senator DEWINE, very eloquently said this debate is about what kind of a country we are. That is true. What kind of a country would say to half of its population, ''We don't trust you; We think you would choose murder''? What kind of a country would say to its doctors, who take the Hippocratic oath, ''Do no harm. We don't trust you. You are going to jail''? In this bill, they will go to jail if they use this technique and it was not to save the life of a mother.

Imagine the circumstance where a doctor is making this decision: I think my patient might die if I don't use this. My God, I have to read the law. Oh, my God, she might live. How could I be sure? I am not positive. I think she might die.

That woman lying in front of that doctor is in great danger. That is why so many medical organizations and OB/GYNs are saying: Please, Senators, stop playing doctor. When we were kids, we had a doctor's set. We put on the white coat. If we want to do that, we should go get our medical degree. But don't stand here and talk about the fact that we can just make this a better country by outlawing medical procedures without an exception for the health of the woman. What kind of country does that? What kind of country says to half of its population: Yes, you are important, but if you are lying on the table and you could wind up being paralyzed or getting a stroke, you are just not that important. What kind of country says that to women? That is why I am here today. This bill is going to pass overwhelmingly. We know the drill. This President is going to sign it. There is going to be a big signing ceremony. There is going to be an immediate court suit. The bill will be stayed. The debate will occur across the street in the Supreme Court. This bill is the same bill essentially that was declared unconstitutional before because the judges understand—maybe better than my colleagues over here understand—the life and the health of a woman is very important, and it must be protected in accordance with the law.

We have been told by physicians—we have the statements in the RECORD—that by banning this procedure, a woman might get a hemorrhage. She might rupture her uterus. She could get very serious blood clots. She could get a stroke, an embolism. She could have damage to nearby organs. She could be paralyzed for life. Do you want to vote that way? You have a chance. If you don't make a health exception, then you are essentially saying women are just not that important.

If you love your mother, don't vote for this bill. If you love your daughter, don't vote for this bill. Because if she finds herself in this horrific circumstance of a pregnancy gone desperately wrong, where the doctor informs her, perhaps, that the baby's brain is outside of the skull, that there would be excruciating pain if the baby is born, that she could lose her fertility, that she could perhaps suffer a stroke, she won't be able to do anything about it. Is that what we want to do here in the Senate?

In many ways this is an exercise in politics, because we believe very strongly this bill will be overturned when it gets across the street. It is not an exercise I take lightly when colleagues think so little of the women of this country, of the mothers of this country, of the daughters of this country that they would pass a bill with no health exception.

I don't think that is what Americans want. When they really understand this, they turn against it. If you hear it without the full explanation, of course we say: Let's not do this procedure. But if you say, but it may be necessary to save the life or health of a woman, people say: OK, then at least allow it in those circumstances.

There isn't a Democrat on this side of the aisle who wouldn't have voted for a health exception along with a life exception, and this procedure would be banned. As a matter of fact, we have proposed—and I have written legislation—banning all late-term abortions except for a health exception and a life exception.

We all come here and say we know what Americans want. It is interesting because, of course, we are trying to determine that. Senator SESSIONS had a poll that said women in this country no longer want the right to choose. That is what he said. I have a poll that shows everyone in this country believes Roe is a fair balance and should continue. But let me tell you what I think Americans want. Let me tell you what I know Californians want. I don't speak for every Californian. I couldn't. There are 35 million of us. But the vast majority of us—and we have had amazing polls on this point—want American women protected. They want children protected. They want privacy protected. They want women respected. They trust women more than they trust Senators. They want us to do the right thing, and they know what the right thing is.

They understand Roe v. Wade took a very difficult decision and explained it in a way that is a balance between all the rights involved.

Here is what Roe v. Wade essentially says: In the first 3 months after pregnancy, a woman has the right to choose and the Government cannot get involved. After that, the Government can get involved. As a matter of fact, after viability, the Government could ban all abortion, which I support, except for the life or health of a woman. I happen to believe that was a Solomon-like decision. It balanced all the concerns. But the most important thing it did is it respected women for the first time.

This was a struggle. Women died. The Senator from Pennsylvania says it was only 85 women a year who died before Roe. We have evidence and we have articles to put in the RECORD today that will show you we believe the 5,000-a-year figure is more on the mark, because the 85 is only a report to the CDC from States where abortion was legal and in many States abortion was illegal in those years. Thousands of women died.

As I said before, let's face it, that is what the underlying tension is in the debate, because this particular procedure is done very rarely. What is really at stake here is Roe v. Wade.

How do I know that? I know it because of the language used on the other side over and over again: Killing children, killing children, killing children. My God, as someone who wrote the Violence Against Children Act, I have to hear people talk about the fact that women are out there every day killing children, that doctors are out there killing children.

Roe v. Wade is not about killing children. Roe v. Wade is about respecting women to say this is a moral issue. This is a religious issue. This is a family issue. This is a privacy issue. Government should stay out in the early stages. In the later stages, government can in fact legislate.

If you take the rhetoric used in the Chamber today and you extrapolated it in a logical fashion, it means the other side thinks all abortion is murder from the minute of conception. If there is a murder committed, there is a murderer, and you have to say that is the woman because, if you listen to their rhetoric, that is what it is about. The doctor is an accomplice in this act. Frankly, I would have more, shall we say, legislative respect for my colleagues—I have personal respect for them, but I would have more legislative respect for them—if they just came out and said, call it what it is: Abortion is murder. That is why we threw out the Harkin amendment that was in this bill supporting Roe. We think abortion is murder. We want women in jail. We want doctors in jail. Maybe they even want the death penalty for a woman. I don't know. I haven't probed them on it.

That is really what this debate is about. It is why it is important to take the debate to the American people. The beauty of being pro-choice is you totally respect the woman regardless of her view.

If she is 18 years old, or 17, or 19, and she wants to have that child, a pro-choice American says: What can we do to help you make it easier? But if she doesn't and it is something she wants to deal with very early in the pregnancy, then just the same way, we say it is your choice; we respect that choice.

This debate is a very important one, a very historic debate. It is true that this bill has passed several times. We expect it to pass today. But this is the first President who will ever sign a bill outlawing a medically necessary procedure.

Now, I am going to prove it is a medically necessary procedure because I am going to put in the RECORD a series of letters. First is the ACOG statement, the American College of Obstetricians and Gynecologists. We can play doctor all we want here. These are the folks who are out there birthing our children, out there telling us month after month, as we go back for our checkup when we are pregnant, how important it is to have good nutrition, not to smoke, not to have alcohol, how to protect that fetus and have a healthy baby. These are the people who want healthy babies born. What do they say? They say:

> The intervention of legislative bodies into medical decisionmaking is inappropriate, ill-advised, and dangerous.

I will repeat that. The obstetricians and gynecologists from all over this country told us that:

> The intervention of legislative bodies into medical decisionmaking is inappropriate, ill-advised, and—

The last word is powerful—

dangerous.

This bill, if it is upheld by the Court—which I don't believe it will be—is putting women's lives in danger. Don't ask me; ask the doctors. The testimony of Anne Davis is clear. She is a physician. She is very eloquent on the point. She even says that the life exception in the bill is very narrow, which is something I agree with, but I hope the Court will look at that. She says this procedure that is about to be banned by this bill may well be the safest procedure for women in certain circumstances. She was very clear in her testimony.

I commend to my colleagues her testimony on March 25, 2003, before the House Subcommittee on the Constitution.

Mr. President, the American Public Health Association writes:

> We are opposed to [this bill] because we believe this and other legislative and judicial restrictions to safe, medically accepted abortion procedures severely jeopardize women's health and well-being.

You are going to hear my colleagues on the other side say: This bill doesn't hurt women's health—not a problem, not an issue. This bill doesn't conflict with Roe. Why? Because they wrote in the findings that this bill has nothing to do with the health of a woman. Please. Give women just a little bit of credit here.

So here is the American Public Health Association clearly telling us why they believe this is a jeopardy to women's health and their well-being.

Then we have the American Medical Women's Association in a letter they wrote to us. They strongly oppose this ban, and this is what they say, because I think it is a very important thing they say here:

> 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 [this bill] is unconscionable.

Doctors are telling us this bill is ''dangerous.'' These doctors are telling us that this bill puts women's health ''in jeopardy.'' Doctors are telling us loudly and clearly that this bill is ''unconscionable.'' But it is going to be passed and it will get the signature of the President and, if not overturned, it is going to hurt the women of our country.

They go on to say:

> Legislative bans for procedures that use recognized [OB/GYN] techniques fail to protect the health and safety of women and their children, nor will it improve the lives of women and families.

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

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

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

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

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

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

AMWA opposes legislation such as HR 760 as inappropriate intervention in the decision-making relationship between physician and patient. The definition of the bill is too imprecise and it includes non-medical terminology for a procedure that may ultimately undermine the legality of other techniques in obstetrics and gynecology used in both abortion and non-abortion situations. At times, the use of these techniques is essential to the lives and health of women. The potential of this ban to criminalize certain obstetrics and gynecology techniques ultimately interferes with the quality of health and lives of women. Furthermore, the current ban fails to meet the provisions set forth by the Supreme Court in 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 believes that the prevention of unintended pregnancies through access to contraception and education is the best option available for reducing the abortion rate in the United States. Legislative bans for procedures that use recognized obstetrics and gynecological techniques fails to protect the health and safety of women and their children, nor will it improve the lives of women and their families. If you have any questions please contact Meghan Kissell, at 703–838–0500.

Sincerely,

LYNN EPSTEIN, MD,
President.

Mrs. BOXER. Then you have the Physicians for Reproductive Choice and Health. They make a very good point—a point we have made over and over again: 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 cannot even define it, which is one of the things the Court said was too vague a definition. So why do you think my colleagues are banning something called partial-birth abortion when there is no such thing, according to physicians, as partial-birth abortion? I will give you 10 seconds to think it over.

The PRESIDING OFFICER. The Senator has used 20 minutes.

Mrs. BOXER. I ask unanimous consent for 10 additional minutes.

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

Mrs. BOXER. I gave you 10 seconds to think about why we are banning something called partial-birth abortion when there is no such medical procedure. The answer is, it is a highly charged bunch of words. There is no such thing as partial-birth abortion in the medical literature; you either have a birth or an abortion. But it charges people up. It gives you a picture that is not accurate.

This is what the Physicians for Reproductive Choice and Health tell us:

Physicians need to have all medical options available in order to provide the best medical care possible. It is unethical and dangerous—

There is the word again ''dangerous''—

for legislators to dictate the details of specific surgical procedures. Banning procedures puts women's health at risk.

''Risk,'' ''danger,'' ''jeopardy,'' and ''unconscionable'' are the words that go along with this bill. They are not my words. They are words of physicians who have lived their life to help women have babies. That is what they are about.

Politicians should not legislate decision-making by doctors.

They call it medical decisionmaking.

To do so would violate the sanctity and legality of the physician-patient relationship. To falsify scientific evidence in an attempt to deny women their right is unconscionable.

There it is. ''Unconscionable,'' ''dangerous,'' ''jeopardy,'' and ''at risk'' are the words we are being told. But we are going to vote for this bill because it is about politics. It is easy to say I cannot buy this procedure. We could have banned it completely. We could have banned all late-term abortion completely with a life exception, health exception. But, oh, no, I think the other side would rather have an issue than make progress. That is not just me talking, that is very anti-choice people who have said this is going to be overturned across the street in 5 minutes.

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

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

PHYSICIANS FOR REPRODUCTIVE CHOICE AND HEALTH,
New York, NY.

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

DEAR CONGRESSMAN NADLER: We are writing to urge you to stand in defense of women's reproductive health and vote against H.R. 760, legislation regarding so-called ''partial birth'' abortion.

We are practicing family physicians; obstetrician-gynecologists; academics in obstetrics, gynecology and women's health; and a variety of other specialties in medicine. 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 decision-making in 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 refine surgical techniques, it is always for the best interest of the patient. The risk of death associated with childbirth is about 11 times as high as that associated with abortion. Abortion is proven to be one of the safest procedures in medicine, significantly safer than childbirth, and in fact saves 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 nay abortion 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 the details of 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 medical decision-making.

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 Gynecologists, representing 45,000 ob-gyns, agrees: ''The intervention of legislation bodies into medical decision making is inappropriate, ill advised, and dangerous.''

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

THE SCIENCE

We know that there is no such technique as ''partial birth'' abortion, and we believe this

legislation is a thinly-veiled attempt to outlaw all abortions. Those supporting this legislation seem to want to confuse both legislators and the public about which abortion procedures are actually used. Since the greatest confusion seems to center around techniques that are used after the first trimester, we will address those: dilation and evacuation (D&E), dilation and extraction (D&X), instillation, hysterectomy and hysterotomy (commonly known as a c-section).

Dilation and evacuation (D&E) is the standard approach for second-trimester abortions. The D&E is similar to first-trimester vacuum aspiration exception that the cervix must be further dilated because surgical instruments are used. Morbidity and mortality studies indicate D&E is preferable to labor induction methods (instillation), hysterotomy and hysterectomy because of issues regarding complications and safety.

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); the 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.

Morbidity trends indicate that dilation and evacuation is much safer than labor induction procedures and for women with certain medical conditions, labor induction can pose serious risks. Rates of major complications from labor induction, including bleeding, infections, and unnecessary surgery, were at least twice as high as those from D&E. There are instances of women who, after having failed inductions, acquired infections necessitating emergency D&Es as a last resort. 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 can be extremely emotionally and psychologically difficult, much more so than a surgical procedure that can be done in less than an hour under general or local anesthesia. Furthermore, labor induction does not always work: Between 15 and 30 percent or more 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). There is a limited medical literature on D&X because it is an uncommonly used variant of D&E. However, it is sometimes a physician's preferred method of termination for a number of reasons: It offers a woman the chance to see the intact outcome of a desired pregnancy, to speed up the grieving process; it provides a greater chance of acquiring valuable information regarding hereditary illness or fetal anomaly; and D&E provides 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 decreased chance of uterine perforations or tears and cervical lacerations. The American College of Obstetricians and Gynecologists addressed this in their statement in opposition to so-called ''partial birth'' abortion when they said that D&X ''may be the best or most appropriate procedure in a particular circumstances to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based on the woman's particular circumstances, can make this decision.''

It is important to note that these procedures are used at varying gestational ages. Both D&E and D&X are options for surgical abortion prior to viability. D&E and D&X are used solely based on the size of the fetus, the health of the woman, and the physician's judgment, and the decision regarding which procedure to use is done on a case-by-case basis.

THE LEGISLATION

Because this legislation is so vague, it would outlaw D&E and D&X (and arguably techniques used in the first trimester). Indeed, the Congressional findings—which go into detail, albeit in non-medical terms—do not remotely correlate with the language of the bill. This legislation is reckless. The outcome of its passage would undoubtedly be countless deaths and irreversible damage to thousands of women and families. We can safely assert that without D&E and D&X, that is, an enactment of H.R. 760, 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,

MEMBER PHYSICIANS.

Mrs. BOXER. Mr. President, I am going to read you the story of Viki Wilson. Viki is a pediatric nurse. She lives in California. Her husband Bill is an emergency room physician. The Wilsons were expecting their third child when they received a devastating diagnosis at 36 weeks of pregnancy.

I hope every colleague will listen to this story and, for a moment, think about this couple and what they faced.

Viki was married to an emergency room physician. They were told after 36 weeks of pregnancy, of looking forward to this baby, that a large portion of the brain was formed outside the skull and most of the baby's tissue was abnormal. They were told by several physicians, including geneticists and perinatologists that their daughter they named Abigail could never survive outside her mother's womb, and that the so-called healthy baby kicks that Viki had thought for sure she was feeling were, in fact, seizures caused by the pressure as the baby's head had lodged in her pelvis.

Think about how you would feel if you were that father, if you were that mother, if you were that grandma, if you were that grandpa, if you were the mother of Viki or the mother-in-law or the father or the father-in-law or you were the brother of Viki or you were the brother-in-law or you were the sister or you were the aunt. They learned this pregnancy was doomed. They learned the baby they wanted so much could never live outside the womb. They learned the risks of this continued pregnancy to Viki, the very severe risks she faced.

They decided this procedure that is being banned today was the safest and best procedure for Viki. They talked about it; they prayed on it; they discussed it with their family; they discussed it among themselves with their physicians. They brought in every specialist one can think about, and they decided this was the best thing for Viki's family and for her children and for her children she hoped to have in the future.

The Wilsons held a funeral for Abigail, and a playground at their children's Catholic school is named in her honor. And then, very soon after, the Wilson family welcomed a baby son, actually through adoption. Is this the kind of person you want to harm? Is this the kind of woman you want to put at risk? Is this the kind of couple to which you are saying: Sorry, even if your doctors say Viki might have a stroke, Viki might be paralyzed, no can do; we can't help you because Senators playing doctor decided this procedure should no longer be a choice, an option for a woman in a severe and tragic circumstance.

I have to tell you, I have looked inside my heart up and down. I do not understand how we move forward as a society, how we move forward as a compassionate country when we do something that can conceivably hurt thousands and thousands of women and thousands and thousands of families. We could have passed this bill in a nanosecond. Just make a health exception. It would have met the objections of the Court with the health exception and a little bit less vagueness on the procedure, and we would have done something that would have been important. But, oh, no, I guess in the end the women of this country just don't matter that much.

I think this record is very clear. The physicians who know what they are talking about, who deal with these pregnancies every day don't want us to do this. The women, many of them very religious, who have been faced with this crisis tell us: Please, please make a health exception because if we didn't have this procedure, A, we might have died; B, we might have been paralyzed; C, we might have been made infertile; D, we might have had a stroke or embolism or damaged our nearby organs.

Why are we doing this? There is no such procedure called ''partial-birth abortion.'' It is in every letter from the physicians. There is no such procedure. It is a made-up term to make this debate what it really is not about. It is a very sad day for us that we are banning a procedure that I have proven, by putting into the RECORD letter after letter from physicians, is necessary sometimes to save the life and health of a woman. We are banning this with no health exception. This is not the right thing to do.

This bill was stripped of the supportive language of Roe v. Wade that this Senate passed twice—not once but twice—saying that Roe v. Wade should remain the law of the land. Oh, no,

they were so radical in that conference committee, they kicked out that very simple statement where most Americans agree that Roe v. Wade, making this decision in the early stages of a pregnancy in private—Government stay out of it; Senator BOXER, I might think you are really a good gal, but stay out of my private life. They are right. I don't deserve to be in it.

Senator HARKIN has just come to the Chamber. He is the one who had that amendment which was adopted by this Senate twice, and how proud I was to stand with him. I wonder if it is OK with my colleagues, since Senator HARKIN has arrived, if I give him 10 minutes.

Mr. President, can Senator HARKIN take about 10 minutes? Does the Senator want more time?

Mr. HARKIN. Yes, if I can have a couple minutes.

Mrs. BOXER. Fifteen minutes, 20? I yield up to 20 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized for up to 20 minutes.

Mr. HARKIN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. HARKIN. Mr. President, are we under time constraints on this measure?

The PRESIDING OFFICER. Yes, we are.

Mr. HARKIN. Will the Chair please state for the Senator what the situation is right now in terms of this conference report?

The PRESIDING OFFICER. The Senator from California has 27½ minutes. The Senator from Pennsylvania has 37, almost 38 minutes.

Mr. HARKIN. I thank the Presiding Officer.

Mr. President, I wish to take a few minutes to talk about this pending measure. First and foremost, I applaud the Senator from California, Mrs. BOXER, for her unwavering leadership and commitment in protecting a woman's right to privacy and to choose. No one has fought harder and longer, both in the House and in the Senate and in all of their public life, to protect a woman's right to choose than Senator BOXER of California.

Senator BOXER has my highest esteem for all the work she has done to make sure that the women of this country are not controlled by ideology, by one religious belief, or by the actions of a male-dominated Senate and House of Representatives and, I might add, now a male-dominated Supreme Court.

We are going to vote this afternoon on this so-called late-term abortion bill. I have serious questions about whether it will pass constitutional muster. I don't believe it will. So what we are doing is really a political exercise. This is what I call something to go out and get the vote for, by exciting passions, arousing fears, and by trying to state in overblown terms what this is all about.

The bottom line and what it really comes down to is whether or not the health of the mother is a constitutionally protected right of women in this country.

In 2000, the U.S. Supreme Court said similar State legislation was not constitutional because it lacked a health exception. It was not constitutional because there was no protection for the health of the mother. So what does the Senate and the House do? Pass legislation that still lacks the health exception. That is why it is unconstitutional.

I am also very disappointed that the conferees stripped from the bill my sense-of-the-Senate resolution about a woman's right to privacy. I had offered, as I had before, a simple statement that it was the sense of the Senate that we supported the Roe v. Wade Supreme Court decision and it should not be overturned. It passed 52 to 46. It was attached to this late-term abortion bill which also passed the Senate. The Senator from California said the conference took less than 5 minutes to drop my resolution, without discussion.

Roe v. Wade is the moderate, mainstream policy American women have come to rely on, and it took the conferees less than 5 minutes, without discussion, to drop it. What that says to me is very startling. Congress has turned its back on America's women—their right to privacy, their right to choose. America's women are now second-class citizens.

Let me again give a brief review of what I am talking about. On January 22, 1973, the U.S. Supreme Court announced its decision in Roe v. Wade, a challenge to a Texas statute that made it a crime to perform an abortion unless a woman's life was at stake. That was the Texas law. The case had been filed by Jane Roe, an unmarried woman who wanted to safely and legally end her pregnancy. Siding with Roe, the Court struck down the Texas law. In its ruling, the Court recognized for the first time the constitutional right to privacy ''is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.''

It also set some rules. The Court recognized the right to privacy is not absolute and that a State has a valid interest in safeguarding maternal health, maintaining medical standards, and protecting potential life. A State's interest in ''potential life'' is not compelling, the Court said, until viability, the point in pregnancy at which there is a reasonable possibility for the sustained survival of the fetus outside of the womb.

A State may but is not required to prohibit abortion after viability, except when it is necessary to protect a woman's life or health.

That is what my resolution was all about, to say we agree that Roe v. Wade was an appropriate decision and should not be overturned.

Before the 1973 landmark ruling of Roe v. Wade, it is estimated that each year 1.2 million women resorted to illegal abortions, despite the known hazards of frightening trips to dangerous locations in strange parts of town, of whiskey as an anesthetic, of ''doctors'' who were often marginal or unlicensed practitioners, sometimes alcoholic, sometimes sexually abusive, unsanitary conditions, incompetent treatment, infection, hemorrhages, disfiguration, and death. By invalidating laws that forced women to resort to back-alley abortions, Roe was directly responsible for saving women's lives.

It is estimated as many as 5,000 women died yearly from illegal abortions before Roe. Only 10 pieces of legislation were introduced in either the House or the Senate before the Roe decision, but in the 30 years since the ruling more than 1,000 separate legislative proposals have been introduced. The majority of these bills have sought to restrict a woman's right to choose.

Unfortunately, what is often lost in the rhetoric and in some of those proposals is the real significance of the Roe decision. The Roe decision recognized the right of women to make their own decisions about their own reproductive health.

The decision whether to bear a child is profoundly private and life altering. As the Roe Court understood, without the right to make autonomous decisions about pregnancy, a woman could not participate freely and equally in society. Roe not only established a woman's reproductive freedom, it was also central to women's continued progress toward full and equal participation in American life.

In the 30 years since Roe, the variety and level of women's achievements have reached a higher level. As the Supreme Court observed in 1992:

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

As I have often said, the freedom to choose on the part of women is no more negotiable than the freedom to speak or the freedom to worship in our Constitution.

I do not believe any abortion is desirable. I do not think anybody does. I have struggled with this issue all my adult life as a father. However, I do not believe it is appropriate to insist my personal views be the law of the land and that I impose those on anyone else. So I urge my colleagues to vote against the final bill, first because it is unconstitutional, but also because by dropping the resolution we adopted saying Roe v. Wade should continue to be the law of the land, it sends the wrong message to American women. What it says is they are not equal to men. They cannot make decisions for themselves. We men will make those decisions for them. They do not have the same protections under the Constitution in this bill. Somehow they are second-class citizens.

I say to the women of this country, as I have said before on the floor, they must be concerned about this.

We passed the resolution on Roe v. Wade 52 to 46. Well, that was a win, I guess one might say, for upholding the belief that Roe v. Wade continue to be the law of the land, but 46 Senators basically voted to say Roe v. Wade ought to be overturned, that it should not be the law of the land, that we need to go back in time to prohibit all abortions, regardless.

I say to those who may think this is just one particular procedure that we are somehow prohibiting here—and again I want to point out, as the Senator from California so eloquently pointed out time after time, this is the first time in the history of this Senate that Senators have decided against a medical procedure, the only time we have somehow put on the cloak of knowing better than doctors, professionals, and women that somehow we politicians know better.

Aside from that, if my colleagues think this is all this is about, they are sadly mistaken. That is not what this is about. I say to the women of America, this is step one. I say especially to young women, who sort of take it for granted—I mean, Roe v. Wade was 30 years ago, ancient history in the United States of America—especially young women who believe, as they have grown up, having this freedom to choose, having the right to control their own reproductive health, if they think this is something that inures to them because they were born in America, they have another think coming. There are people who do not want them to have that right. There are people in this Senate who want to turn the clock back and say women have no right to make any decision on their reproductive health. But, then again, isn't that what we had in Texas before Roe v. Wade? That is what this country was like before that.

The Supreme Court said no, there is something else that has to do with the health of a woman, too, and a woman's right to control her own body and a woman's right to privacy.

Again, I see where this is going with 46 votes in the Senate. Just think, a couple of votes here or there in the next election, you can kiss Roe v. Wade goodbye, because that is what will happen. And with one or two Justices on the Supreme Court who feel this way, that will be the end of Roe v. Wade. That will be the end for women who think they have the right to control their own reproductive health in this country—to make their own decisions. That is where this is headed.

I know Senators, many Senators have personal feelings about that. Fine. There are Senators who believe very deeply that Roe v. Wade should not be the law of the land, who believe it never should have been decided that way, who believe that women should not have a right over their reproductive health. There are people who believe that.

Fine, if they want to believe that for themselves, that's their belief structure. But in this pluralistic society in which we live, in which we respect each other's rights but do not try to impose our own personal religious or moral beliefs on others, the Supreme Court really did, in fact, reach a logical and I think fair and balanced approach.

Yet there are those who want to strip that away—that no matter what—a woman does not have the right to make her own decisions and the right to privacy. And what does that mean? Well, it will mean we're going back to the back alley.

This, really, to me is more than just an issue about some narrow procedure, I say to my friend from California. This is about whether or not the women of this country are going to be treated as equals with men or as second-class citizens. I ask the Senator from California, rhetorically, what other times has the Senate said there are certain medical procedures which applied to men that cannot be conducted? What is next? Is there something else coming down the pike we don't know about? I don't think it will affect men but it will affect women. It is a holdover from mediaeval times, a holdover from the days in which women did not have the right to participate fully in society. That is what this is about more than anything else.

I thank the Senator from California for her courage, for her wisdom, for her judgment, and for being so stalwart, making sure we know what this battle is about. I think we see the writing on the wall here. It is going to pass. It is going to pass. If the Supreme Court adheres to its previous decisions, it will throw it out because there is no exception for the health of the mother. I guess then there will be a political issue to whip up emotions around the countryside.

I wish we could take emotions out of this and just talk about it on the basis of what women want. I will close on this. I have often asked, think to yourself, what would happen if we had 100 women sitting here? I mean a cross section of America, liberal, conservative, moderate, different religions, different ethnic backgrounds—just a good cross section of women in America. Do you really think, down deep in your heart, this would be passed before the Senate? No way. No way would this ever pass. Or, if you had a majority of the women in the House of Representatives? Absolutely not.

Women do make up more than half of our society. I forget, how many women Senators do we have now?

Mrs. BOXER. Fourteen.

Mr. HARKIN. There are 14 out of 100. So women are drastically underrepresented in the body. They are underrepresented on the Supreme Court.

Women have made great strides. Fourteen is more than there were when I came here—there were only one or two at the time I came here. They are making strides.

What this says is we are going to turn the clock back. I don't want to turn the clock back and neither does the Senator from California. We have to make sure women in America have their constitutional right to privacy, just like men. That is what this is really about.

I thank the Senator. I am proud to be on her side.

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I yield 10 minutes to the chairman of the Judiciary Committee who has done incredible work on this legislation now for a fourth Congress that he has been involved in moving this forward. This moment of accomplishment here would not have happened except for the great work of the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 10 minutes.

Mr. SANTORUM. I ask unanimous consent that following the remarks of the Senator from Utah, the Senator from California be recognized under Senator BOXER's time for 15 minutes.

The PRESIDING OFFICER. The Senator should be advised——

Mr. SANTORUM. Mr. President, while I have the floor, let me ask unanimous consent that the vote on adoption of the conference report to accompany S. 3, the partial-birth abortion ban bill, occur at 5 p.m. today, provided that the time between the expiration of the current time allocation and 5 p.m. be equally divided between Senators SANTORUM and BOXER or their designees.

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

The Senator from Utah is recognized for 10 minutes.

Mr. HATCH. Mr. President, I rise today because it is difficult for me to understand how anybody could support this barbaric, heinous approach toward abortion. The Senate passed S. 3, the partial-birth abortion ban of 2003, with strong bipartisan support, 64 to 33, back in March of this year. The legislation passed the House in June with similarly strong bipartisan support, 282 to 139. We were then forced to debate the motion to go to conference in September.

We completed the conference in September. Now we are finally able to vote on passage of the conference report. Let's get on with it. This has taken a long time in this Congress, but it also has taken 7 years to get to this point. Even though the Congress has passed similar legislation before, finally we will be able to send it to President Bush, who will sign it into law.

I know the people of my home State of Utah recognize the importance of this effort. The vast majority of people in Utah and, I believe, in our country, recognize that the practice of partial-birth abortion is immoral, offensive,

and impossible to justify. This procedure is so heinous that even many who consider themselves pro-choice cannot defend it.

Senator SANTORUM should be applauded for his tireless efforts to achieve this goal. His leadership has been essential and very much appreciated. I admire his efforts to protect innocent human life, especially here, where it is so graphically obvious this procedure cannot be defended.

By now we have all seen Dr. B. Benoit's film of the 3-dimensional ultrasound of the baby in utero, yawning and even smiling. This appeared in the Evening Standard in London. It is a picture of an unborn baby smiling inside the womb. It says: ''Picture Exclusive, Proof Babies Smile in Womb.'' It is truly amazing and enlightening what advancing technology has enabled us to see. This truly is an incredible window into the mother's womb, where it has to be clear to all who view it that this is a living human being, a living baby.

Yet there are those who want to protect the ability to violently crush this young life. In the case of the procedure we seek to ban with this legislation, it is a baby just inches away from being born. Yes, inches away from being born.

For those who may not have a clear understanding of this procedure, let me describe it. This is a little graphic, I agree, but we need to ensure that the American people understand what is going on. How anyone can justify this barbaric procedure is beyond me. A baby is almost fully delivered with only her head remaining inside the birth canal when the doctor stabs scissors into the base of the baby's skull to open a hole into which he then inserts a suction tube and sucks out the brain so the skull collapses. Then they pull the baby out and say it is not a living human being even though just seconds before this was a full human being, a living human being with legs dangling and kicking. I honestly do not know how anyone can avoid being truly sickened when they see a baby being killed in this gruesome manner. It is not done on a mass of tissue but to a living baby capable of living outside the womb, capable of feeling pain, and at the time this procedure is typically performed, capable of living outside the womb.

All this legislation does is ban the one procedure. As the testimony in the House made clear, the fact is, there is no medical need to allow this type of procedure. It is never medically necessary, it is never the safest procedure available, and it is morally reprehensible and unconscionable.

As I mentioned when we debated the bill in the spring, we have all heard in recent years about teenage girls giving birth and dumping their newborns into the trash can. One woman was criminally charged after giving birth to a child in a bathroom stall during the prom and strangling and suffocating the baby before leaving the body in the trash. Tragically, there have been several incidents around the country in the past few years. This should not surprise us. This is what happens when we continue, as some would do here, to devalue human life—those who would like to stop this bill by and large.

William Raspberry argued in a column in the Washington Post:

> . . . only a short distance [exists] between what [these teenagers] have been sentenced for doing and what doctors get paid to do.

He got it right. When you think about it, it is incredible that there is a mere 3 inches separating a partial-birth abortion from murder. Partial-birth abortion simply has no place in our society and rightly should be banned. President Bush has described partial-birth abortion as ''an abhorrent procedure that offends human dignity.'' With that, I wholeheartedly agree.

Basic human decency, I hope, will prevail. I pray that never again will it be legal in this country to perform this barbaric procedure. Unfortunately, I am sure the opponents of this measure will seek to challenge the law in court where I hope good judgment will ultimately prevail.

In Stenberg v. Carhart, the Supreme Court confirmed:

> . . . by no means must physicians [be granted] unfettered discretion in their selection of abortion methods.

The House has already passed this conference report. It is time for this Congress to finish its work and send this bill to the President for his signature.

Oddly enough, young girls out there, young women, are becoming more and more opposed to abortion. I believe it has been this debate, this barbaric procedure that is the cause for them to think it through and to acknowledge that inside that womb of the mother is a living human being, a living baby, and especially one capable of living outside the mother's womb.

This is a serious debate. This is as serious a bill as we can have before the Senate. I hope our colleagues will vote overwhelmingly to pass the conference report as we simply have to get rid of this barbaric and inhumane procedure.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I yield myself 20 minutes.

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

Mrs. FEINSTEIN. I rise in opposition to the conference report accompanying S. 3 which some, I think inaccurately, call the partial-birth abortion bill. In fact, this bill, originally introduced by Senator SANTORUM, is more accurately called the unconstitutional anti-choice bill, given the fact that it is flagrantly unconstitutional and its primary result will be to chill second-trimester abortion procedures.

I voted against this conference report in the recent House-Senate conference on this bill and also on the floor of the Senate last March.

This is the first bill since Roe v. Wade in 1973 that outlaws safe medical procedures and recriminalizes abortion. It is a major step forward in the march to obliterate a woman's right to control her own reproductive system and to eviscerate the entire choice movement in this country.

This bill is unconstitutional, I believe, for two reasons. First, it uses a vague definition of dilation and extraction abortion, or D&X abortion. This technique is also called intact dilation and evacuation, or intact D&E. It is also sometimes called, inaccurately, partial-birth abortion.

The sponsors of the bill have refused to use a definition of D&X that I suggested and that tracks the medical definition submitted by the American College of Obstetricians and Gynecologists. Why? Why would they refuse to use a definition suggested by the elite medical group of obstetricians and gynecologists who deal with this issue—a definition that would enable those obstetricians and gynecologists to know exactly what this legislation makes a crime?

I believe there is a reason. I believe that this bill deliberately uses a vague definition of D&X in order to affect other kinds of second-trimester abortions and thus impact the right to choose. Because its definition is so loose, the bill would ban and otherwise interfere with perfectly legal, permissible abortion techniques. It will also have a chilling effect on doctors, who will be afraid to perform abortions other than D&X for fear they will be subject to investigation and prosecution. Why? Because the bill does not use an accepted medical definition of D&X.

Second, the bill lacks any health exception. This has been spoken about before, and I will do it again. The Supreme Court ruled in Stenberg v. Carhart that any ban must have a health exception. This bill has no health exception. Why are we bothering to pass a bill that is so clearly unconstitutional?

The only reason I can think of is the proponents of the bill do not believe the health of a mother is sufficient reason to interrupt a pregnancy.

In fact, the supporters of the bill are not trying to remedy its constitutional defects. Rather, they are just making minor alterations to the findings in the bill.

I also oppose the bill because it omits language a majority of the Senate added last March recognizing the importance of Roe v. Wade and stating that this important opinion should not be overturned.

Unfortunately, as has been said, this language was stripped out in conference over the strenuous opposition of Senator BOXER, Congressman NADLER, Congresswoman LOFGREN, and myself.

As an initial matter, I want to lay one myth to rest; that is the myth that

most Americans support this bill. Supporters of the bill have repeatedly and erroneously argued that a majority of the country supports banning D&X abortion.

For example, in introducing this bill, Senator SANTORUM stated on the floor that ''the American people clearly believe this is a procedure that should be prohibited.''

However, such statements are not borne out by recent polls. For example, last July, ABC News released a nationwide poll which showed 61 percent of Americans oppose bans on so-called partial-birth abortion procedures if a woman's health is threatened. The bill now before us contains no health exception. That means a substantial majority of Americans think this bill is wrong.

I also want to mention a poll taken by Greenberg, Quinlan, Rosner Research, Inc. between June 5, 2003, and June 12, 2003, of 1,200 likely voters. The poll found a majority of Americans—56 percent—believe abortion should be legal in all or most cases.

In addition, this poll found the country does not want the Government involved in a woman's private medical decisions. Eighty percent of voters believe abortion is a decision that should be made between a woman and her doctor. In fact, even a majority of those who identified themselves as pro-life said a woman and her doctor should make the decision.

In stark contrast, this bill criminalizes safe abortion procedures, and it puts the abortion decision in the hands of the Government and in the hands of politicians, not the woman and her doctor.

I would now like to mention Randall Terry, the founder of Operation Rescue, and the man who the New York Times called ''an 'icon' of the pro-life movement.'' Mr. Terry is one of the staunchest foes of the right to choose in the entire Nation. He is known for harboring views so strong on the abortion issue that he has been jailed dozens of times for blocking clinics and for having a human fetus delivered to former President Bill Clinton. He is also known for speaking his mind.

Let me read some quotes from Mr. Terry in a press release issued through the Christian Communication Network, dated just a month ago, September 15, 2003. This press release is entitled: ''Randall Terry, Founder of Operation Rescue Says, 'Partial-Birth Abortion Ban is a Political Scam but a Public Relations Goldmine.''

Let me repeat that: ''Partial-Birth Abortion is a Political Scam but a Public Relations Goldmine.''

Mr. Terry says the bill before us is a ''Political Scam.'' Specifically, he states:

> This bill, if it becomes law, may not save one child's life. The Federal courts are likely to strike it down. . . .The bill provides political cover in an election season to cowardly ''pro-life'' political leaders who have done little for the pro-life cause.

That is not me. I am quoting Randall Terry, the founder of Operation Rescue.

Let me repeat: ''This bill, if it becomes law, may not save one child's life. The Federal courts are likely to strike it down. . . .''

And he is right.

Mr. Terry then goes on to say:

> If the President and Congress want to accomplish a small, but real, step they should outlaw all abortions after 20 weeks—the age when a baby can live outside the womb.

Interestingly enough, his suggestion is similar to an amendment I offered on the floor of the Senate and in the joint House-Senate conference on this bill. This amendment would have banned all postviability abortions except and unless a doctor determines such an abortion is necessary to protect the life and health of the woman.

This is the way to go. If someone truly believes these abortions, which are not medically defined in the bill, should not take place, and if one believes the child is capable of life, then ban postviability abortions. I was prepared to see that enacted into law. But it was voted down twice, on the floor and in the conference committee.

I would like to take a moment to explain in detail why I think this bill is poorly drafted and is virtually certain to be struck down by the courts.

The conference report bill is unconstitutional for two reasons.

First, it attempts to ban the specific medical procedure it calls ''partial-birth abortion,'' but it fails to use the accepted medical definition of what surgical procedure constitutes partial-birth abortion. The refusal of the sponsors of the bill to accept the medical definition of intact D&E is revealing. It makes it clear they are not really intent or interested in banning intact D&E or D&X, but, rather, they seek to muddy the waters to make it harder for women to get legal abortion using other legal and acceptable techniques. That, in my view, is the underlying purpose of the bill.

The Supreme Court ruled in Stenberg v. Carhart that any ban must have a health exception. This bill clearly, despite many attempts by this senator and others to put one in, has no health exception. The other side has repeatedly opposed a health exception.

Here is what Justice O'Connor said in her deciding opinion in Stenberg v. Carhart:

> [B]ecause even a post-viability proscription of abortion would be invalid absent a health exception, Nebraska's ban on pre-viability partial birth abortions, under the circumstances presented here, must include a health exception as well. . . .The statute at issue here, however, only excepts those procedures necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness or physical injury. This lack of a health exception necessarily renders the statute unconstitutional.

Now, I must ask you, why would anybody, after this case, with the swing judge making that statement, draft a bill that so clearly violates the Supreme Court's decision? Justice O'Connor has very clearly said the ''lack of a health exception necessarily renders the statute unconstitutional.''

The fact the sponsors are ignoring the clear words of the Supreme Court is suspect to me. It is even more suspect given the fact that just last year the U.S. Government took the position in court that any ban on D&X must include a health exception. The Santorum bill, then, not only contravenes the Supreme Court but also flies in the face of the position taken by the U.S. Department of Justice.

Let me read from a brief filed by the United States in February of 2002 in Women's Medical Professional Corporation v. Bob Taft, a case in the Sixth Circuit involving an Ohio statute prohibiting late-term abortion including D&X. According to this brief:

> the Court [in Carhart] stressed that the Nebraska statute prohibited the partial birth method of abortion except where that procedure was ''necessary to save the life of the mother,'' . . . in violation of the Court's prior holdings in Roe v. Wade . . . and Planned Parenthood of Southeastern Pennsylvania v. Casey . . . that a State must permit abortions, ''necessary in appropriate medical judgment, for the preservation of the life or health of the mother . . .''

The original brief even has the words ''or health'' underlined.

In other words, according to a brief filed by the United States Government last year, under Carhart, Roe, and Planned Parenthood, a State ''must'' provide a health exception for the woman. Yet we fly merrily in the face of that. It is ridiculous.

Supporters of the Santorum bill argue that they can ignore this language by throwing into the bill some questionable factual findings that a health exception is unnecessary. Baloney. They argue that these so-called findings make irrelevant the Supreme Court's constitutional determination in Carhart that a health exception is necessary.

The Framers of the Constitution did not intend that Congress be able to evade Supreme Court precedent and effectively amend the Constitution just by holding a hearing and generating questionable testimony from handpicked witnesses. In fact, the Supreme Court has made crystal clear that Congress cannot simply ignore a constitutional ruling they dislike by adopting a contrary legislative finding and telling the Court that they have to defer to it. That is just what is being done here.

Let me quote Chief Justice Burger on this point:

> A legislature appropriately inquires into and may declare the reasons impelling legislative action but the judicial function commands analysis of whether the specific conduct charged falls within the reach of the statute and if so whether the legislation is consonant with the Constitution.

So make no mistake about it. You can say anything you want in the findings, and it isn't going to be dispositive

as to whether the statute meets the test of the Constitution of the United States.

I also want to quote from U.S. v. Morrison, 529 U.S. 598 (2000), a decision that struck down part of the Violence Against Women Act. I personally disagree with this decision, but it is controlling law. In that case, the Supreme Court held that ''the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality'' of the challenged provision of the Violence Against Women Act. That is on page 614.

So why are these findings in the bill? I believe the other side is well aware of U.S. v. Morrison and other cases. Why are they doing it this way then? There has to be a reason.

Here the sponsors of S. 3 are trying to do exactly what the Supreme Court said the Congress cannot do: Use congressional findings to do something that is clearly unconstitutional. The sponsors of this bill are effectively trying to overturn binding Supreme Court precedent and rewrite the Constitution by enacting a bill that on its face violates Stenberg v. Carhart. They have clearly overstepped their bounds.

Mr. President, one of the most disappointing aspects of this debate is that a majority of the House-Senate conference on this bill decided to thwart the will of the Senate and strip out language recognizing the importance of Roe v. Wade. This decision clearly unmasked the sponsor's clear intention in introducing this bill: to strike at Roe. The provision stripped out of the bill was a simple sense-of-the-Senate resolution. Let me read its exact language:

One, the decision of the Supreme Court in Roe v. Wade, 410 U.S. 113, 1973, was appropriate and secures an important constitutional right.

Two, such decision should not be overturned.

They struck this language out. Why? Because they want Roe overturned. That is the reason.

I am pleased that the Roe v. Wade amendment was added to the bill last March on a bipartisan vote of 52 to 46. Unfortunately, the House-passed late-term abortion bill lacked the language. The House refused to agree to it.

While I oppose the criminalization of safe abortion techniques in S. 3, I strongly support the Roe v. Wade language we added to that legislation.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator has used 20 minutes.

Mrs. BOXER. Mr. President, I yield 4 additional minutes and retain the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Senator from California.

In the past 30 years, since the Supreme Court upheld a woman's right to choose, a great deal has changed for women in America. But now, in 2003, we are about to push women back to where they were in the 1950s, a generation that I remember well, a generation of passing the plate to raise money for abortions in Mexico, a generation of back alley abortions, a generation of tremendous mortality and morbidity for women, a generation of fear. It makes no sense.

The fact that a majority of the House-Senate conference stripped out sense-of-the-Senate language that merely summarized Federal abortion law should be exhibit A for anyone who doubts that this bill is really a frontal political attack on choice in America.

I am also disappointed that the conference refused to accept a common-sense amendment I offered to the bill before us today. That amendment, as I said, would have banned all postviability abortions except if determined by the doctor that such an abortion was necessary to protect the life and health of the woman.

With that amendment, the sponsors of this bill could have gotten what they wanted legally. Why didn't they take it? The reason they didn't take it is because if you have an anti-choice bill with a nebulous, vague definition, you can chill all legal second trimester abortions.

Let me tell you one more thing about the amendment I offered. To ensure compliance with the amendment, we even provided that a doctor who would perform a postviability abortion on a woman whose health or life is not at risk could be fined up to $100,000. That amendment would have put medical decisions back into the hands of doctors but, at the same time, prevented abuses. In my view, if a doctor believes such a procedure is necessary to protect a woman's life or health, then he or she should be able to perform that procedure.

Why do some Senators believe that the Federal Government even needs to be involved in this issue?

Why is this legislation even necessary? Roe v. Wade clearly allows States to ban all postviability abortions unless it is necessary to protect a woman's life or health, and 41 States already have bans on the books. All States are free today to do so if their State legislatures so choose.

The fact is, abortions this late in the pregnancy are rare and usually performed under tragic circumstances, such as a brain outside of a child's skull or vital inner workings outside of the body that cannot be connected.

Mr. President, the whole focus of many in this Congress and in the conservative movement has been to give power and control back to the States and eliminate the Federal Government from people's lives. So anyone who believes in States' rights must now question the logic of imposing a new Federal regulation on States in a case such as this, where States already have the authority to ban postviability abortions and where a dominant majority of States—41—have already enacted such a law.

Is Federal legislation really necessary? No. I say to my colleagues that this clearly is a political bill designed to fan the flames and invade Roe v. Wade and weaken it substantially. It attempts to ban a medical procedure without properly identifying that procedure in medical terms.

Mr. President, I ask unanimous consent that a number of letters demonstrating that this legislation poses a serious threat to women's health be printed in the RECORD.

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

ASSOCIATION OF REPRODUCTIVE HEALTH PROFESSIONALS,
Washington, DC, October 20, 2003.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: We are writing on behalf of thousands of health care providers to urge you and your colleagues to oppose federal legislation criminalizing safe abortion procedures (S. 3, the so-called ''Partial Birth Abortion Ban Act of 2003'').

This bill is deceptive, is based on a number of flawed assumptions, and is unnecessary. First, ''partial-birth abortion'' is not a medical term but a non-scientific and politically biased rhetorical expression invented by activists to convey misrepresentations about safe and medically necessary abortion procedures. The term ''partial-birth abortion'' is not used by any of the major national medical organizations, including the American College of Obstetricians and Gynecologists, the American Medical Women's Association, the American Public Health Association, and the Association of Reproductive Health Professionals (ARHP).

Second, the bill is deceptive because it does not specify any particular stage of pregnancy—contrary to assurances by its sponsors that the bill's intent is to focus only on third trimester abortions.

Finally, abortions during the third-term are already illegal in almost every state except to save the woman's life or health, and are rarely performed. This legislation is unnecessary and is an example of political ideology trumping science and appropriate medical decision-making.

Published literature attests to the fact that placing restrictions on abortion services is harmful to the health of women and that medical decisions should be left to health care providers. ARHP is concerned because S. 3 dictates health care methodology to the clinicians who must provide medical care under the most difficult of circumstances. Restrictions imposed by the government on abortion services will not reduce the need for abortion or the quantity of abortions performed, it will only make abortion less safe.

If you or members of your staff have any questions or would like additional information, please contact Wayne C. Shields at the ARHP office at (202) 466–3825 or wshields@arhp.org.

Sincerely,

FELICIA H. STEWART, MD,
Chair, ARHP Board of Directors.
WAYNE C. SHIELDS,
President and CEO.

OCTOBER 17, 2003.

U.S. SENATE,
Washington, DC.

DEAR SENATOR FEINSTEIN: The National Latina Institute for Reproductive Health (NLIRH) strongly opposes S. 3, the ''Partial-Birth Abortion Ban Act of 2003''. As an organization that is dedicated to ensuring the

fundamental human right to reproductive health care for Latinas, their families, and their communities, we cannot support the proposed legislation which would drastically inhibit a woman's right to choose, as well as prohibit medically safe procedures which are often necessary to protect and save the life of the woman.

NLIRH supports the right of every Latina to be in charge of her own life, to determine if and when to have children, and, to seek the full range of reproductive health options available. These health options include access to quality gynecological care, family planning and contraception, fertility treatment, and all abortion services. Contrary to popular belief, Latinas do access abortion services, and 51% of Latinas actively identify as pro-choice. While abortion may not be an option for every Latina, we support the right of every Latina to make her own personal and private decision about abortion and we also support efforts to restore public funding for abortion. For Latinas, accessing abortion services is often difficult already, due to cultural, linguistic, legal, and economic barriers, and banning safe abortion procedures would only further impede upon our rights to choose what is medically and personally appropriate for us.

Restricting and criminalizing any abortion procedure would undermine the fundamental human right to self-determination, and would endanger the lives of women for whom abortion may be medically necessary. Decisions regarding when to have children are often difficult, personal, and morally complicated, and should be made only by the woman.

We appreciate your attention to our concerns, and strongly urge you to vote against the so-called ''Partial-Birth Abortion Ban of 2003.''

Sincerely,

———.

MEDICAL STUDENTS FOR CHOICE,
Oakland, CA, October 19, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of Medical Students for Choice, a national organization representing more than 7,000 medical students and residents, I write to urge your opposition to H.R. 760/S. 3, the (so-called) Partial-Birth Abortion Ban Act of 2003.

Medical Students for Choice is dedicated to ensuring that woman's right to choose from a full range of reproductive health options is preserved. We believe that a physician, in consultation with the patient, should make the decision regarding what method should be used to terminate a pregnancy. Physicians need to have all medical options available in order to provide women with the best medical care possible.

We are opposed to H.R. 760/S. 3 because we believe this and other legislative and judicial restrictions to safe, medically accepted abortion procedures severely jeopardize women's health and well-being. We also oppose the bill because it fails to include adequate health exception language in instances where certain procedures may be determined by a physician to be the best or most appropriate to preserve the health of the woman. This bill ties the hands of physicians and endangers the health of women. Further, we believe that this bill is deceptive and represents a thinly veiled attempt to restrict women's access to all abortion procedures. ''Partial birth'' is a political term, not a medical term. Despite the anti-choice political rhetoric, this bill is neither designed nor written to ban only one procedure. The bill's prohibitions would apply well before viability and could ban more than one procedure. These so-called ''partial birth'' abortion bans are deliberately designed to erode the protections of Roe v. Wade.

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

Sincerely,

ANGEL M. FOSTER, D.Phil.,
President.

MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND,
Washington, DC, October 14, 2003.

Re Conference Report H. Rept. 108–288—The Partial Birth Abortion Act of 2003.

DEAR SENATOR: I am writing on behalf of the Mexican American Legal Defense and Educational Fund (MALDEF) to urge you to oppose Conference Report H. Rept. 108–228, the so-called Partial Birth Abortion Act of 2003 (the Act). MALDEF, a national nonprofit organization whose mission is to protect and promote the civil rights of the over 35 million Latinos living in the United States, believes this legislation is unconstitutional and harmful to women's health.

The Act is unconstitutional for at least three reasons. First, the legislation does not include a health exception. The Supreme Court has held that laws regulating abortion must adequately safeguard a woman's health. This legislation does not include such an exception. Contrary to the legislative findings indicating that a health exception to the ban is never necessary, many physicians have stated that this legislation would prevent them from performing procedures that are necessary to protect a woman's health. Second, the legislation is unconstitutional because the language of the ban is overly broad. The ban is not limited to specific medical procedures and actually could prohibit the safest abortion techniques in certain cases, thereby unduly burdening a woman's right to choose. Finally, determining which procedure is medically necessary is a medical decision that should be made by a physician and his or her patient, not by the federal government. The Supreme Court has emphasized the need for physicians to have adequate discretion to make these types of medical decisions.

The Supreme Court directly addressed this type of ban in *Stenberg* v. *Carhart*, 530 U.S. 914 (2000). In *Stenberg*, the Court found Nebraska's ban on so-called partial birth abortion unconstitutional because the legislation's language was overly broad and it lacked a health exception. The federal version of the ban now pending before you contains the same flaws and is similarly unconstitutional.

This legislation is an unprecedented attempt by the federal government to restrict women's access to abortion that ultimately jeopardizes the health of women. MALDEF strongly opposes this legislation and urges you to do so as well. If you have any questions please contact Angela Hooton at (202) 293–2828.

Sincerely,

ANTONIA HERNÁNDEZ,
President and General Counsel.

NATIONAL LATINA INSTITUTE
FOR REPRODUCTIVE HEALTH,
Brooklyn, NY, October 17, 2003.

U.S. SENATE,
Washington, DC.

DEAR SENATOR FEINSTEIN: The National Latina Institute for Reproductive Health (NLIRH) strongly opposes S. 3, the ''Partial-Birth Abortion Ban Act of 2003''. As an organization that is dedicated to ensuring the fundamental human right to reproductive health care for Latinas, their families, and their communities, we cannot support the proposed legislation which would drastically inhibit a woman's right to choose, as well as prohibit medically safe procedures which are often necessary to protect and save the life of the woman.

NLIRH supports the right of every Latina to be in charge of her own life, to determine if and when to have children, and to seek the full range of reproductive health options available. These health options include access to quality gynecological care, family planning and contraception, fertility treatment, and all abortion services. Contrary to popular belief, Latinas do access abortion services, and 51% of Latinas actively identify as pro-choice. While abortion may not be an option for every Latina, we support the right of every Latina to make her own personal and private decision about abortion and we also support efforts to restore public funding for abortion. For Latinas, accessing abortion services is often difficult already, due to cultural, linguistic, legal, and economic barriers, and banning safe abortion procedures would only further impede upon our rights to choose what is medically and personally appropriate for us.

Restricting and criminalizing any abortion procedure would undermine the fundamental human right to self-determination, and would endanger the lives of women for whom abortion may be medically necessary. Decisions regarding when to have children are often difficult, personal, and morally complicated, and should be made only by the woman.

We appreciate your attention to our concerns, and strongly urge you to vote against the so-called ''Partial-Birth Abortion Ban of 2003.''

Sincerely,

SILVIA HENRIQUEZ,
Executive Director.

NATIONAL BLACK WOMEN'S
HEALTH PROJECT, INC.,
October 20, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the Black Women's Health Imperative (formerly National Black Women's health Project), I am writing to convey our opposition to H.R. 760, the Partial-Birth Abortion Ban Act of 2003.

As the only national organization that is solely dedicated to the health of the nation's 19 million Black women and girls, the Black Women's Health Imperative (the Imperative), has focused on issues that disproportionately affect Black women from access to healthcare, inclusive of reproductive health care. The Imperative has been in the forefront advocating for a comprehensive agenda that includes the full range of medical and socially available technologies and services for fertility management.

We believe that H.R. 760 would restrict safe, medically acceptable abortion procedures that would severely endanger women's health and well-being, disproportionately affecting low-income African American women. Moreover, we feel that this legislation fails to include adequate health exception language in instances where certain procedures may be determined by a physician to be the most appropriate to preserve the health of the woman.

For the past 20 years, the Black Women's Health Imperative has been instrumental in highlighting disparities in health and will continue to play an essential role in helping to shape policies that seek to improve African American women's overall health. On behalf of our constituency, we urge the United

States Senate to oppose H.R. 760, the Partial-Birth Abortion Ban Act of 2003.

Sincerely,

LORRAINE COLE, PhD.

[From Medscape General Medicine, June 25, 2003]

THE FEDERAL BAN ON SO-CALLED ''PARTIAL-BIRTH ABORTION'' IS A DANGEROUS INTRUSION INTO MEDICAL PRACTICE

(By Paul D. Blumenthal, MD, MPH)

Congress has passed the ''Partial-Birth Abortion Ban Act of 2003,'' the first federal legislation ever enacted that bans abortion procedures. This unprecedented intrusion by Congress into medical practice will reduce access to second-trimester abortions and defines the doctors who perform them as criminals. Moreover, by undermining a woman's right to select the reproductive healthcare most appropriate for her and interfering with a physician's ability to make medical decisions, Congress derogates the physician-patient relationship.

Proponents of this law claim that it bans only a particular procedure. However, the legislation does not define what is being banned in such a way that a physician can know exactly what is prohibited. There is no formally recognized medical procedure to which the term ''partial-birth abortion'' used in this legislation applies; it is therefore vague and medically incorrect. None of my colleagues know or could state whether the abortion procedures they now perform are covered under this law. Indeed, as I read the definition of the banned procedures, any of the safest, most common abortion methods used throughout the second trimester of pregnancy could proceed in such a manner as to be outlawed. One can only assume that by intimidating medical providers with the constant threat of criminal accusations, the intent of this law is to frighten the medical community—the same community that swears an ancient oath to use its knowledge and skills to serve and protect the lives of its patients—from performing pregnancy terminations at all.

The practice of high-quality medicine requires that physicians be knowledgeable about and able to perform variety of procedures to accomplish a given treatment or therapy. Planning any procedure is done in consultation with the patient, and it is based on the medical judgment, experience, and training of the provider, and the individual circumstances of the patient's condition. Sometimes, as a result of developments during a surgery or in a patient's condition, it becomes necessary to adapt and choose a different course or modify the procedure as it progresses. These decisions are often quite complex and mandate that physicians use their best professional and clinical judgment, most often right on the spot. These are decisions that should be made by physicians and their patients stone. Indeed, when performing surgery, there is not time for a call to Congress, the Supreme Court, or anyone else in order to obtain clarification of the statutory intent or to request a waiver. This law evokes a preposterous image of physicians with their attorneys present in the operating room advising and counseling them at each step, and perhaps even in the middle of surgery suggesting a physician alter a technique deemed best for the patient to avoid committing a federal crime. Physicians and surgeons should be allowed to practice their art in accordance with time-honored peer-reviewed standards and with only the interests of the patient at . . . .

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. I yield myself such time as I may consume.

Mr. President, I have listened to this debate on both sides, and I continue to hear a lot of the same things. I just think it is important to set the record straight with respect to what many have heard today.

First, the Senator from California, Mrs. BOXER, has objected to my using the term ''killing'' the child when describing the diagrams of the partial-birth abortion. So I wanted to make sure I was not using terms that were inflammatory or inaccurate. She said I was referring to the fetus as a child instead of the fetus. I looked up the definition of fetus: ''An unborn child.'' So I don't think referring to a fetus as a child is incorrect when the definition of a fetus is ''an unborn child, from the third month until birth.'' This child is obviously in excess of 3 months into gestation, so it is obvious I am using a correct term.

She objected to me using the term ''killing.'' I will quote some people in the abortion movement to justify my using of this term. This is from Faye Wattleton, former president of Planned Parenthood:

I think we have deluded ourselves into believing that people don't know that abortion is killing. So any pretense that abortion is not killing is a signal of our ambivalence, a signal that we cannot say, yes, it kills a fetus, but it is a woman's body and ultimately her choice.

So say even those in the abortion movement.

Judy Arcana, a pro-choice author and educator, said:

Sometimes a woman has to decide to kill her baby. That is what abortion is.

I understand how people want to avoid talking about the baby, the child, the fetus, or whatever term you feel most comfortable using. It is what it is. It is a human being. I understand we like to use terms that don't refer to the human being. In fact, in all the debate we have heard today on the other side, we hear this concentration and talk about the woman and the right to choose. We hear very little discussion about what the choice is all about. I know most Americans like choices and they like the right to choose. But I think it is important that people know what the choice is all about, what we are choosing.

What we are choosing here is to kill a human being. Yet many on the other side just don't want to consider what is being chosen here. What many on that side like to think is that we are choosing a medical procedure. The Senator from New Jersey earlier referred to it being similar to the removal of a cancerous intestine. Maybe some people look at babies as this sort of cancer or this thing that they don't want anymore, that somehow affects them in some way. But I think it is important for us, if we are going to make decisions that impact millions of lives, to face up to what we are doing and we don't try to couch it in terms that sound nice, that sound American—words such as ''freedom'' and ''choice'' and words such as that.

What we are choosing is to take away a fundamental right of every person in America, and that is the right to life. So, yes, I will use the term ''killing'' because that is exactly what it is, the extinguishing of a life. It is a child, it is a baby, an infant, a fetus, a living human being.

Second, the Senator from California has suggested that this is not a medical term. Well, I had my staff run and look it up in Webster's Medical Dictionary. In Webster's, the term ''partial-birth abortion'' is in fact defined:

Abortion in the second or third trimester in which the death of the fetus is induced after it is passed part way through the birth canal.

As to this idea that it is not a term used, it is in the dictionary. It is interesting that the Senator from California would say that this is not a medical term, that this doesn't exist. Yet she has repeated many times that this thing that doesn't exist is a great threat to women. If we abolish something that doesn't exist, somehow or another this is a horrible thing we are doing to women. That doesn't necessarily make sense to me. Then she goes on and says this thing that doesn't exist—she claims it doesn't exist—is medically necessary at times. I have a hard time grappling with this argument in the alternative. First you argue it doesn't exist, and then it does exist and it is medically necessary.

The Senator from California, last month, put in the RECORD statements from Physicians for Reproductive Choice and Health, and in this letter in the CONGRESSIONAL RECORD, they say:

So-called partial-birth abortion does not exist. There is no mention of the term partial-birth abortion in any medical literature.

That is not true.

Physicians are never taught a technique called partial-birth abortion; therefore, they are medically unable to define the procedure. We know that there is no such technique as partial-birth abortion.

She makes the argument that it doesn't exist, and then she argues that it is necessary. I don't know how you can have it both ways. It either does exist and it is necessary or it doesn't exist and it is not necessary. We find interesting arguments that don't seem to hold up upon closer examination.

Another thing that doesn't hold up under examination is the repeated attempts by those who oppose this legislation to misinform the public as to what it does. I am not only going to go through the most recent example of this, but the chronology of events around this legislation, which started with Charles Canady in the House of Representatives and Bob Smith in the Senate, who did an outstanding job.

I remember when Bob first came to the Senate floor. He was ridiculed as being this extreme person who would bring this medical procedure to the floor and it was an outrageous thing for a Senator to do. He had the courage to stand up for his convictions and follow through. But I remember at hearings, they were saying this procedure

didn't exist, first, and, second, the anesthesia given to the mother would kill the baby, and that this was only done on mothers who were in a position where the baby was badly deformed or the mother's health was in danger, and it was only done a few dozen times a year.

Every one of those things I have mentioned has been debunked. They are simply not true. Yet here we are just days away from passing this bill again in the Senate for the third time, but the fourth time we have debated, and we see a statement by Planned Parenthood last month that says:

S. 3 is a bill to outlaw the medical procedure used primarily in emergency abortions.

''Primarily in emergency abortions.'' Let me, again, without reading the comment below, state this is a 3-day procedure. This is a procedure where the woman presents herself to the abortionist, and I say abortionist because this procedure is only done in abortion clinics. It is not done in hospitals, as this organization that Senator BOXER submitted for the RECORD said. They don't teach this procedure in medical school. It was designed by an abortionist for the convenience of the abortionist.

She presents herself to an abortionist who gives her something to help dilate her cervix and tells her to return 2 days later.

Can you possibly imagine someone in an emergency situation presenting themselves to a health care professional who is in an emergency situation because of her pregnancy, who is given something to dilate her cervix and sent home for 2 days?

On the face of it, it makes no sense. But yet they persist in spite of the fact that Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, is quoted in the New York Times on February 26, 1997—1997, not February 26, 2003, 2002—6½ years ago:

Mr. Fitzsimmons recalled the night in November 1995, when he appeared on ''Nightline'' on ABC and ''lied through my teeth'' when he said the procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged.

''Lied through my teeth'' in 1995, he said, on ''Nightline.'' But in 1997, he came clean. He said:

In the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus that is 20 weeks or more along, Mr. Fitzsimmons said. The abortion rights folks know it, the antiabortion folks know it, and so probably does everyone else, he said in the article in the Medical News, an American Medical Association publication.

They knew it. In 1997, they knew this. A month ago they were still saying it.

I don't mind having a good honest debate, and the Senator from California, Mrs. FEINSTEIN, brought up legitimate legal issues, a proper, good debate, but when the organization that is principally behind the stopping of this bill a month before this bill gets presented continues to try to misinform the American public, I think you have to ask yourself a question as to the credibility of that organization and the credibility of their case.

There are a couple other comments that were made on which I have to set the record straight. The Senator from California, Mrs. BOXER, said this abortion procedure needs to remain legal out of respect for women and ''because it gives the fetus dignity.''

Anyone who looks at this abortion procedure and suggests that pulling a child feet first through the birth canal at 20 weeks of gestation, who otherwise would have been born alive, and have a pair of scissors thrust in the base of their skull and have their brains suctioned out is an act of dignity I think has to rethink what the word ''dignity'' means. To treat any human being, to treat any living thing in that fashion is insulting to that life. It certainly is not an act that I would call a dignified act or an act that shows respect for that child.

A lot has been made by both Senators from California and others about the need for a health exception. This gets in to the meat of this debate with respect to its constitutionality. The Court did state that there were two reasons for the Nebraska law on partial-birth abortion to be overturned. One was that it did not have a health exception that was required by Roe v. Wade.

Step back and think about this debate in a larger context. I don't think most Americans, if I can put up the last chart of the diagram of the procedure—I don't think most Americans contemplate that Roe v. Wade covers abortions done late in pregnancy by healthy mothers with healthy babies who would otherwise be born alive being treated in such a brutal and barbaric fashion. I don't think most Americans see the scope of Roe v. Wade as including that type of abortion but it does.

That is really the wake-up call for America here: That Roe v. Wade is not what they claim it to be. If it is later in pregnancy, it is mothers who have health issues or the child has health issues. No, that is not what we are talking about here. We are talking about there needs to be a health exception, according to this court, for a procedure done late in pregnancy on healthy mothers with healthy babies treated in a brutal fashion such as this. I don't think most Americans would have said: Gee, we need a health exception here or Roe v. Wade covers this issue, but that is what they say; that based on the evidence they compiled in the Federal district court in Nebraska, the court examined the evidence and determined that a health exception was necessary, based on the evidence that was submitted at trial.

We believe strongly the evidence submitted at trial was incomplete; that there has been a lot of evidence submitted to the Congress and in publications that is counter to what the Nebraska district court found, and that the overwhelming weight, and I would argue the dispositive weight, of evidence presented to this Congress, which is a finder of fact just as the district court is, is that it is never medically necessary.

The Senator from California has said the American College of Obstetrics and Gynecology has written a letter saying that it may be medically—that is the term, ''may be medically necessary.'' Yet in the letter she has entered into the RECORD, which she has entered many times before, they do not present one example of a case in which it would be medically necessary.

For 8 years I have stood on the floor of the Senate and have asked for such a case from the American College. To date, the American College has never replied to my request. They have not sent one case to be submitted into this RECORD as to where this may be medically necessary actually is medically necessary.

One has to wonder the validity of the statement that it may be medically necessary if they can't find a case in fact where it is. Cases have been submitted by both Senators from California where some obstetricians have said this was medically indicated in this case. For every 1 letter that has been submitted, we have had 6, 7, 8, 9, 10 letters from maternal fetal medicine specialists—they are specialists in high-risk pregnancies—perinatologists who say not only aren't those cases good cases but they are contraindicated.

It is bad medicine. So we do not really have any uncontrovertible case where it is medically necessary. I think that is important for the Court to consider. I think it is also important for the Court to consider that the Congress, which has had multiple hearings of fact, unlike the Court, was able to make a determination and have a vote overwhelmingly in both the House and Senate that these facts are as we say they are. I believe we have a right as a body to make that determination.

We hope, just as we listen to the Court in matters of law because that is their responsibility, that as finders of fact they would listen to what we come up with. I know many on the Court think it is a one-way street. They just tell us what they think and we have to do whatever they tell us and we have no input into what the Court decision is.

That is not the way our Framers envisioned it. I found it sort of humorous that the Senator from California said the Framers did not envision the Congress amending the Constitution by legislative findings. I will assure the Senator from California that our Framers did not envision the Supreme Court amending the Constitution by judicial fiat but they do. Roe v. Wade is a case in point.

So there are lots of things our Framers did not envision, I say the most

grotesque of which is the Court activism that we have seen across the street.

With respect to this health exception, it is overwhelmingly clear that it is never medically necessary.

Why do we go to such length in saying that a health exception is not medically necessary? Well, because if we had a health exception to this bill—and many have suggested, just put in a health exception. I mean, are you not concerned about women's health?

Well, I do not think anyone is not concerned about women's health. In fact, the evidence presented is overwhelming that this procedure is a riskier procedure than other abortion procedures and is never medically indicated. So if one looks at the overwhelming body of evidence and they are concerned about women's health, they would be for banning this procedure because it is never medically indicated. It is done only for the convenience of abortionists and is, in fact, unhealthy. So if one's concern is women's health, then they would be for banning this procedure.

The interesting point is, why are they pushing so hard for this health exception and why are we resisting it so much? Well, what does the health exception mean? This is the little secret that to those who have not followed the abortion debate may say, what is the big deal? Why do you not put in a health exception? That sounds reasonable.

The problem with the health exception is that it is so broad an exception it swallows up the bill because a health exception—when Roe v. Wade was decided, there was a companion case decided called Doe v. Bolton, and in that case health was defined as: Medical judgment may be exercised in the light of all factors: physical, emotional, psychological, familial, and the woman's age relevant to the well-being of the patient. All of these factors may relate to health. This allows the attending physician the room he needs to make the best medical judgment.

So over time what this has been interpreted to mean is health means anything: emotional, physical, spiritual, psychological, whatever it is, stress, anxiety. Some have even brought it to economic concerns.

Health is an exception that swallows the rule. So as long as the doctor says the woman obviously exhibited anxiety, stress, discomfort, she had a headache or whatever, it does not matter. It does not say severe. It just says anything. So what this provision did, and that is what the Court wanted to do, was to give absolute latitude to the doctor to do whatever the doctor wanted to do in consultation with the patient. So the health exception is no exception at all. It is a barred antiprohibition. So understand that the health exception bars the bill, stops the bill from having any effect. So that is why we resist.

In our case, we think we are outside this health exception because it is actually unhealthy for the woman and it is never medically necessary.

Before I move on to the next topic, I want to go through some of the health risks as outlined—we have a series of letters which I will submit for the RECORD—that partial-birth abortion poses serious health risks for women.

First, as I mentioned before, the physician has to dilate the cervix a couple of days before the abortion is performed, creating a risk, according to several physicians, to an incompetent cervix, a leading cause of future premature deliveries or infection, and is the main cause of subsequent infertility.

As we can see, the baby is brought in feet first through the birth canal. When they reach in to pull the baby out of the uterus—reaching into the uterus to pull the baby's feet through the cervix is a dangerous procedure, risking the tearing of the uterus. It poses an increased risk of uterine rupture, abruption, amniotic fluid embolus and trauma to the uterus as a result of converting the child into a footling breech position. Grabbing the baby's legs could perforate the uterus, which could result in severe hemorrhage and possibly a hysterectomy. Then the procedure that follows where the Metzenbaum scissors are placed in the base of the baby's skull to kill the baby and puncture the baby's skull, putting the scissors into the baby's brain is a partially blind procedure. As we can see, the physician has no way of seeing where those scissors are entering the baby or if they are even entering the baby.

This blind procedure with a sharp instrument may expose the uterus to sharp bone shards, bone shards from the baby's skull upon the puncture. They may lacerate different parts of the woman's body and cause hemorrhaging and could necessitate a hysterectomy to save the mother's life. This is not a riskless procedure. This is a risky procedure.

I reiterate, this is not taught in medical schools. There are no peer review journals published that suggest this is a superior way, much less an appropriate way, to deal with an abortion. There are no studies that have been done, that are controlled in nature, to show that this is a proper procedure. This is a rogue procedure. It is medically unhealthy and it is medically unnecessary.

Both Senators from California talked about their recollection of the pre-Roe v. Wade days. The Senator from California, Mrs. BOXER, suggested the debate we had a month ago with respect to the number of maternal deaths as a result of abortion prior to Roe v. Wade were women in all States—in some States, abortion was legal, not in all States—that women as a result of that had higher incidents of maternal death. The Senator from California continued to indicate that there were some 5,000 deaths per year as a result of abortion not being legal everywhere in the United States.

I entered information in the RECORD from the Bureau of Vital Statistics, including more recently the Centers for Disease Control, suggesting at the time of 1972, prior to the decision being made, there were 83 maternal deaths. The Senator from California suggested that is only because the only reported deaths were States in which abortion was legal.

That is not the case from the statistics. Had that been the case—it is not, according to the information we have gathered, but had it been the case, then why were there 1,231 reported deaths from abortion in 1942, where abortion was not legal in any State in the country?

So if her information was correct, if they were only reporting cases in States in which abortion was legal in 1942, there would have been no deaths because there were no States in which abortion was legal. But in fact they were reporting from States where abortion was legal and illegal.

What you saw from 1942 down to 1972 was a decrease, from 1,231, almost straight line down to 83 deaths in 1972. Why? Because medicine improved. Antibiotics, first and foremost, is probably the principal reason, because of infection, but there were a whole variety of reasons. The improvement of medical science is why those numbers continued to decrease. So the idea that somehow or another there were thousands of women dying prior to Roe v. Wade is just not backed up by the facts.

We have an obligation; as much as we would like to paint a picture for the eyes particularly of young people who didn't live then, as much as we would like to paint this picture to young people to convince them of the justice or righteousness of the right to abortion, that things were really bad, that women were dying in droves, there was a horrible situation prior to Roe v. Wade, we cannot. You have to deal with the fact that was not the case with respect to the amount of maternal deaths.

There may be other factors that you consider and you are welcome to make the arguments about how people felt at the time. That is fine. But you cannot play with the facts to present a case that is not true.

I want to quote Bernard Nathanson who was, at the time of 1972, an abortionist. He says:

> How many deaths were we talking about when abortion was illegal? In N.A.R.A.L.—

A group he helped found, the National Abortion Rights Action League—

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

This is a very serious issue. I would argue it is the greatest moral issue of

our time. I think we have an obligation to use honest statistics, at least honest statistics—honest statistics, honest cases. The Senator from California brought up the case of Vicki Wilson, as she has repeatedly throughout this debate over the past several years. She said Vicki Wilson needed a partial-birth abortion because of a medical condition she and the baby had. Let me quote from Vicki Wilson's own testimony to Congress.

My daughter died with dignity inside my womb, after which the baby's body was delivered head first.

Not feet first. Vicky Wilson did not have a partial-birth abortion. Yet it is a case that is continually used here to justify a partial-birth abortion being kept legal.

The case was also made she needed to have one done. Quoting Vicki Wilson:

I knew I could go ahead and carry the baby until full term but knowing, you know, that this was futile, you know, that she was going to die, I felt like I needed to be a little bit more in control in terms of her life and my life.

Vicki Wilson did not have a medical emergency or a health need, from the standpoint of what most people would consider to be a health need, which is physical health.

I caution, when people listen to this debate, that they listen to the debate of what is real, what the facts are, and what the consequences are. There is no question in my mind that the consequences of this debate are the most profound consequences we face as a country and more specifically as a culture as to who we are. Because ultimately what this is about, banning this procedure, is about who we are going to accept in our human family. Do we accept this little baby? You can pull out the photo Senator BROWNBACK showed earlier. If we can accept this little baby at 20 weeks or 21 weeks into our human family, or do we say no, no, you may look like us, you may have hands and feet and you may have a heartbeat, you may be perfectly normal, you may have looked like us when we were that age, but we are not going to include you in the human family. We are not going to call you an American. We are not going to give you the rights provided to you under the Constitution.

It really is about who we accept. I would argue it is about who we are going to love, who we are going to nurture, who we are going to support.

Today in the Senate we have a chance to say in some very small way—and I admit, I will agree with the Senators from California and others that this will do very little to limit the number of abortions. I agree with that. But in some small way we are acknowledging this little child, this little child is a member of our family.

The Senator from Iowa, Senator HARKIN, as well as the Senator from California, Senator FEINSTEIN, talked at length about the striking of the Roe v. Wade language from this bill that passed the Senate. The language stated Roe v. Wade was the law of the land and should continue to be the law of the land. It passed by a couple of votes here in the Senate.

I think many of us found that to be somewhat in contrast with the underlying purpose of this bill, in the sense that this was a very small tip of the hat, recognition of the humanity of this child, we were not going to treat this child in this grotesque fashion. That is all.

It doesn't say that child couldn't be killed in some other fashion that was medically safer for the woman. But it says when it comes to delivering a child and having that child just inches away from being born, we were not going to go that far. This, really, was too close. So we gave a small nod, a small nod to the humanity of that child in the process of being born.

So many of us thought, sort of restating this sense of the Senate about the primacy of Roe v. Wade was an insult to even this little nod that I would argue is outside of Roe v. Wade. Unnecessary, is what it is. Roe v. Wade is, according to the Court, how they will decide abortion cases.

I vehemently disagree with them and I will continue to fight on this floor and anywhere else I can to make sure that law, that Court decision taking the decision away from the American public—which is where it was prior to Roe v. Wade—taking the decision of great moral import away from the American public, is returned to the people.

We just saw an election in California where the people rose up and said they wanted to take back control of their State. We don't have such a process here. The Court is insulated from the public rising up and saying no, we don't like your decision—or even from the Congress. It takes a huge amount of effort. It is a very difficult process to amend the Constitution, pass both Houses of Congress by a constitutional majority, 67 percent; plus get three-quarters of the States to ratify a constitutional amendment. Yet this Court by a whim can amend the Constitution with five votes, and did so. They amended the Constitution like that.

I don't think that is the way the Framers wanted it. I think they set forth a constitutional amendment process because that is the way they wanted to create new rights or change the Constitution, not to allow the Court to do it.

I have likened the Roe v. Wade decision—I was fortunate enough Sunday to be in St. Louis, MO and had the opportunity to walk by the courthouse, which is right in downtown St. Louis, where the Dred Scott case was initially decided. That is where the district court was.

You look back, and people in St. Louis have great pride in the fact that case was there, and many Missourians stood up and fought against what that case was all about. I would argue that Roe v. Wade is exact in kind as the Dred Scott decision. Like the Dred Scott decision, Roe v. Wade—unlike, if you think back, and think of any other major Supreme Court decision, where rights, individual rights were dealt with—almost every other Supreme Court decision in which individual constitutional rights were dealt with, over time the public grew to accept. That is because over time, the public grew to understand the justice of that decision.

The most recent one is civil rights decisions. But in Dred Scott the abolitionist and so many others knew of the injustice—yes, it was the law; that is what the court said. They decided the case. There were too many in this country who said, no, I don't believe that is right.

It is amazing if you see the polling of young people in America, there is actually a higher pro-life sentiment among young people than older people, but you would think people who grew up, knowing this was the law—because when people hear the law they think, if it is the law, it must be right; it must be just; it must be ethical; it must be moral; otherwise, it would not be the law. The law is a great teacher. It is the greatest teacher to young people as to what is right and what is wrong. Young people, knowing the law, still say there is something inside me that says this is not right. Just like young people in the 1850s and 1860s, who said there is something inside me that tells me this is not right.

Abraham Lincoln said a house divided against itself cannot stand. So here we are today, with the American public deeply divided on this issue, deeply divided because so many people for 30 years have only known the law and the popular culture. Does the popular culture depart at all from what the law is? Is there anything you see coming out of Hollywood or New York that at all disagrees with this, the Supreme Court notion of what the law should be? Of course not. Yet this feeling is out there, this sentiment, like the abolitionists of the 1860s who said it may be the law, but in this case that does not make it right. That does not make it just. So while we had a great debate on Roe v. Wade, this will have no impact. It is just a debate that will continue to go on.

The final point I make about this is one I have made before. Why are Dred Scott and Roe v. Wade alike? Because the Dred Scott decision put the rights, the property rights, the liberty rights of the slaveholder above the life rights of the slave. In our founding document, the Declaration of Independence, Thomas Jefferson wrote: We are endowed by our creator with certain inalienable rights. Then he listed them: The right to life, liberty, the pursuit of happiness. In that order—life, liberty, pursuit of happiness.

In Dred Scott, we took the fundamental right, life—for without life you cannot have liberty; without liberty you cannot pursue happiness. So they are put in order for a reason. What

Dred Scott did was take the life rights of a slave and put them under the liberty rights of someone else.

And Roe v. Wade, the reason I compare it to Dred Scott, does the same thing. It puts the life right of this little human being that we have decided not to accept in our society as a person and subjugates them to the liberty rights, the choice of someone else, in this case the baby's mother.

The Senator from California says why don't we trust women more? I do. But you cannot ignore the fact that one-third of all pregnancies in America end in abortion. This is a very small piece of legislation, I will admit that. But it is important just for a brief moment, just for some rather small piece of legislation that affects, if you consider 1.3 million abortions, less than 1 percent of all abortions, far less, .1 of all abortions, but in some small way it begins to recognize the humanity that we have to display toward this child and not treat this child in such a brutal fashion.

I conclude by thanking my colleague from California and all those who have been involved in this debate over the years. We have had a vigorous debate. That is important in the Senate that we debate these very important issues. I thank all those on both sides of the aisle who have engaged in that. I thank Senator SMITH for his courage in bringing this bill up; Senator DEWINE, in particular, who has been a tremendous champion on this issue; along with Senator BROWNBACK, Senator ENSIGN, Senator VOINOVICH, and so many others who have come to the Senate and taken on this issue.

I thank my staff: Heather MacLean, for the tremendous work she has done in supporting me in every way possible in getting the information I need when I need it, to carry this debate forward; and Michelle Kitchen; prior to her, Wayne Palmer, my legislative director; and all the members of my staff.

Finally, I thank all who have been sending your prayers to Washington, DC, through this debate. They have made a difference.

Mr. DOMENICI. Madam President, I rise today to support adoption of the conference report to accompany the ''Partial-Birth Abortion Ban Act of 2003.'' I compliment the distinguished Senator from Pennsylvania, Mr. SANTORUM. He has carried this bill and I offer him my congratulations for his efforts in this regard.

I have always been a supporter of the rights of the unborn. And, after many years of debate on this issue, I am very pleased that this body is going to pass this measure, and that the President has said he will sign it.

In March, I came to the floor and I discussed this very issue. At that time, I quoted one of our very distinguished former colleagues, Mr. Daniel Patrick Moynihan. Senator Moynihan described the Partial Birth Abortion procedure as follows:

I think this is just too close to infanticide. A child has been born and it has exited the uterus. What on Earth is this procedure?

That is what the distinguished Senator from New York said.

And, the Senator was right. This debate is not about Roe v. Wade; this is not a pro-life or pro-choice vote. This debate is about humanity and necessity. The procedure of partial- birth abortion, to put it candidly, is cruel and inhumane. The issue here today is whether we should prohibit a form of abortion that borders on infanticide. As Senator Moynihan said, ''what on Earth is this procedure?''

By now, many Americans are uncomfortably aware of the details of a partial-birth abortion. They have heard the testimony of doctors who perform this procedure and nurses who witness it. They have also most likely seen information ads or read descriptions of the procedure. Maybe they have even watched us debate the issue on prior occasions. I will not go through the details of the procedure. I will only say that at a minimum it is cruel and inhumane, and when this debate is completed, I hope that the Senate will take a stand and ban a procedure that diminishes the life of a child that has been born and has exited the uterus.

This debate today is about protecting a fetus, a baby, a life that is now destroyed in a cruel and inhumane way. It is about a life that is unnecessarily destroyed and it need not happen. We are not really talking about banning abortion here, we are talking about banning a form of infanticide and it is for this reason that I will gladly vote in favor of the ''Partial Birth Abortion Act of 2003.''

Mr. VOINOVICH. Madam President, today is a glorious day. Today is the day that we finally send the Partial-Birth Abortion Ban Act to the President for his signature, and we can now begin to save human lives. Today's vote is only marred by the fact that it took us so long to get here. Just imagine the number of lives we could have saved if we had sent this bill to the President 8 months ago, when we first passed it.

The subject of partial-birth abortion is not a new one for me. Eight years ago, when I was Governor of Ohio, we were the first State to pass a partial-birth abortion ban, which was unfortunately struck down by the courts. Subsequent to that, I watched the partial birth abortion ban make its way through the 104th and 105th Congresses, only to be vetoed by President Clinton. After I arrived in the Senate in the 106th Congress, I gave a speech in support of a partial birth abortion ban that passed both chambers but never made it to Conference. I am overjoyed that we finally got this done in the 108th Congress!

During debate on this bill, I listened to my colleagues quote statistics and spout off facts about medical necessity and the health of the mother. Well, we can all quote different statistics, but the bottom line is that there is no need for this procedure. Most of these partial birth abortions are elective. They take 3 days to complete and are never medically necessary.

The victims of the partial-birth abortions are human beings. I find it interesting that they are sometimes called living fetuses. Whether they are called babies or fetuses, no one seems to dispute the fact that they are living. In fact, they are human babies and they can feel pain.

I would like to thank all of my colleagues who voted for this very important legislation. We can certainly be proud of what we have accomplished today!

Mr. BUNNING. Madam President, today I come to the floor with joy in my heart knowing we will finally put an end to the death of unborn children through partial-birth abortions. I am joyful that our efforts will not go in vain this year because President Bush is eager to sign this bill.

But my heart is also heavy knowing that this procedure has gone on too long. Too many children have died in this horrific way. The vast majority of Congress has been trying for the better part of a decade to ban partial-birth abortions but has been stymied by President Clinton and the current minority party in the Senate. I am glad the days of obstruction and vetoes have come to an end and this bill will become law.

I can think of no more clear-cut case between right and wrong. All one needs to know is a description of the process to understand how wrong partial-birth abortions are. First, an abortionist induces dilation of the mother so the baby can be almost fully delivered. Next, the baby is delivered to the point that only its head remains inside the mother. Third, the child is stabbed in the back of the skull with scissors or some other sharp object. Finally, a tube is used to suck the child's brains out of the hole left by the stabbing.

There is no gray area or middle ground when it comes to this procedure and there are no justifications for it. The child is delivered to within inches of breathing its first breath. If the doctor lets the head of the baby slip just an inch or two, the child would be born and the doctor would be prosecuted for murder. Nevertheless, some abortion supporters cannot see through the fog of their fervor to realize just how wrong that is.

I do not mean to suggest that there is widespread support for partial-birth abortions. There is not. The vast majority of the American people want the procedure to end. Congress has voted overwhelmingly many times in the last few years to enact a ban like the one before the Senate today. Most doctors oppose the procedure including quite a few who perform other forms of abortion.

There is no evidence that this procedure is ever necessary to preserve the health of the mother. In fact, it is quite dangerous. Babies being killed in this manner can feel the pain of its skull being pierced and have been seen

writhing in pain, flailing tiny arms and legs until its skull collapses after its brains have been vacuumed out. I do not understand how anyone can believe this should go on.

Doctors and medical researchers have made great progress in fetal health care. Babies can be operated on while still in the womb. Premature babies can survive outside their mother at younger and younger ages. With those and other advancements Americans are continually placing a greater value of life. By passing this law Congress will further advance the cause of life and send an unmistakable message that ours is a just society that values every human being and believes in the sanctity of life.

I look forward to President Bush signing this bill into law. I am proud of his support of this bill and for life.

Mr. NICKLES. Madam President, as I am sure all of my colleagues know by now, the procedure banned by this bill—the partial-birth abortion procedure—defies description. I am not going to go into the terrible details of this procedure which is performed on a living child late in pregnancy.

This is a truly shocking procedure—absolutely indefensible. The term ''partial-birth'' is perfectly accurate. Some prominent defenders of partial-birth abortions insist that anesthesia kills the babies before they are removed from the womb. This myth has been refuted by professional societies of anesthesiologists. In reality, the babies are alive and experience great pain when subjected to a partial-birth abortion.

It has been asserted that this procedure is the only way to prevent serious health damage. However, partial-birth abortions are performed thousands of times annually on healthy babies of healthy mothers.

Hundreds of ob-gyns and fetal/maternal specialists, along with former Surgeon General Koop have come forward to unequivocally state that ''partial-birth abortion is never medically necessary to protect another's health or her future fertility.'' Thus, the first section of S. 3 contains Congress' factual findings that, based upon extensive medical evidence compiled during congressional hearings, a partial-birth abortion is never necessary to preserve the health of a woman.

In January 2003, even the Alan Guttmacher Institute—an affiliate of Planned Parenthood—published a survey of abortion providers that estimated that 2,200 abortions were performed by the method in the year 2000. While that figure is surely low, it is more than triple the number that AGI estimated in its most recent previous survey, for 1996.

The stark fact is that unless this bill becomes law, more innocent unborn children will have their lives brutally ended by the inhumane partial-birth procedure.

It is unbelievable to me that this unspeakable abortion procedure even exists in this country, much less that we are having to take legislative action to ban such a procedure. It is further unbelievable to me that anyone in good conscience can even defend the partial-birth abortion procedure. It is a fiction to believe that it is all right to end the life of a baby whose body, except the head, is fully delivered. In order to engage in such a fiction, one has to take the position that curling fingers and kicking legs have no life in them. Those who subscribe to such a fiction, are at best, terribly misguided.

As Former Surgeon General C. Everett Koop stated: ''. . . in no way can I twist my mind to see that the late-term abortion as described—you know, partial birth and then destruction of the unborn child before the head is born—is a medical necessity for the mother. It certainly can't be a necessity for the baby.'' American Medical News, August 19, 1996.

Now it is time for the Senate to approve a ban on partial-birth abortions. It is time to end this injustice and the practice of this inhumane procedure. I urge my colleagues to join me in ending this atrocity.

Mr. BOND. Madam President, I rise today in support of the conference report to the Partial-Birth Abortion Ban Act. I am pleased to be a cosponsor of this legislation, and I look forward to the day when partial-birth abortion is banned once and for all.

Medical experts agree, partial-birth abortion is not good medicine. The Physicians Ad Hoc Coalition for Truth, PHACT, a group of over 500 doctors, mostly specialists in OB/GYN, maternal and fetal medicine, and pediatrics, have stated that partial-birth abortion is never medically necessary to protect a woman's health or her fertility. In fact, the exact opposite is true; the procedure can pose a significant threat to both the pregnant woman's health and her fertility.

Today we move one step closer to putting an end to this brutal procedure. One of life's greatest gifts is our children, and we cannot allow them to be victims of this heinous and cruel procedure.

I have cosponsored this legislation in the past three Congresses, and I am a cosponsor of the bill before us today. I am pleased to rise once again in support of protecting human life. I hope that Congress will deliver this bill to the President, who is eager to sign this bill into law.

Ms. MIKULSKI. Madam President, I rise today in support of the Roe v. Wade decision that was made by the Supreme Court over 30 years ago, and in opposition to the late term abortion conference report before the Senate.

The Supreme Court's acknowledgement of the fundamental ''right to privacy'' in our Constitution gave every woman the right to decide what to do with her own body. Since that historic day, women all across the country and the world have had improved access to reproductive health care and services. However, Congress is on the brink of turning back the clock.

Last month, my colleague from California, Senator BOXER, led a fight on the Senate floor to keep Senate passed language in support of Roe v. Wade in the late term abortion bill, S. 3. I was disheartened to hear that the conference committee stripped the Senate passed Roe v. Wade language. The Roe v. Wade decision is important to women's rights, women's health, and public health.

I believe that this bill is the first step in a plan by the leadership of this Congress to overturn Roe v. Wade. When President Bush signs this bill, he will become the first President since Roe V. Wade to recriminalize abortion procedures.

As I have stated previously on the Senate floor, the bill before us is unconstitutional. Just 3 years ago the Supreme Court ruled in Stenberg v. Carhart that a Nebraska State law that bans certain abortion procedures is unconstitutional. The Supreme Court ruled it was unconstitutional for two reasons. First, it did not include an exception for a woman's health. Second, it does not clearly define the procedure it aims to prohibit and would ban other procedures, sometimes used early in pregnancy.

S. 3 is nearly identical to the Nebraska law the Supreme Court struck down. The proponents of this legislation say they have made changes to the bill to address the Supreme Court's ruling. They have not. It still does not include an exception to protect the health of the woman. It still does not clearly define the procedure it claims to prohibit. Let me be clear about this. S. 3 is unconstitutional. That is why I supported the Durbin substitute when the Senate considered this legislation.

I supported the Durbin amendment because it was consistent with my four principles. These are my principles: It respects the constitutional underpinnings of Roe v. Wade. It prohibits all post-viability abortions, regardless of the procedure used. It provides an exception for the life and health of a woman, which is both intellectually rigorous and compassionate. And it leaves medical decisions in the hands of physicians—not politicians. The Durbin alternative addressed this difficult issue with the intellectual rigor and seriousness of purpose it deserves.

I strongly support a woman's right to choose and have fought to improve women's health during the more than two decades I have served in Congress. Whether it is establishing offices of women's health, fighting for coverage of contraceptives, or requiring federal quality standards for mammography, I will continue the fight to improve women's health.

Congress must protect a woman's freedom of choice that was handed down by the Supreme Court over 30 years ago. This Congress must not turn back the clock on reproductive choice for women. I urge my colleagues to vote against the conference report for the late term abortion bill.

Mr. NELSON of Florida. Madam President, today the Senate considers the conference report to accompany S. 3, the Partial-Birth Abortion Ban Act, and I want to take this opportunity to explain my vote. I am opposed to the procedure known as partial-birth abortion, except in cases where the life or physical health of the mother is in jeopardy. This legislation does not include an exception to provide for the physical health. That means that a physician could determine that a woman could be paralyzed for life, and it would not be considered an adequate exception under this legislation. Therefore, I must respectfully vote against this bill.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD)

● Mr. EDWARDS. Madam President, I rise today to express my opposition to the conference report to accompany S. 3, the late term abortion ban bill.

As we know, the Supreme Court has ruled on this issue. The Court said that a ban on later-term abortion procedures must protect a woman's health. In Stenberg V. Carhart, the Court ruled that an abortion ban must include a health exception when ''necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.''

The bill before us today does not include an exception for a woman's health. If this bill becomes law, a woman would be refused this procedure even if other procedures would cause her grave harm. While late-term abortions should occur only in rare circumstances, this bill bans them in all circumstances. That is not constitutional and it is not fair to the women who are in the rare circumstances where this procedure is required. For this reason, I cannot support this bill.●

Mr. FEINGOLD. Madam President, earlier this year, the Senate passed S. 3, the Partial Birth Abortion Ban Act. I opposed that bill and instead supported a constitutionally sound alternative offered by my colleague, Senator DURBIN. The Durbin alternative would ban post viability abortions unless the woman's life is at risk or the procedure is necessary to protect the woman from grievous injury to her physical health.

I understand that people on all sides of this issue hold sincere views. I respect those who oppose abortion on principle. Like most Americans, I would prefer to live in a world where abortion is unnecessary. I support efforts to reduce the number of abortions through family planning and counseling to avoid unintended pregnancies. I have always believed that decisions in this area are best handled by the individuals involved, in consultation with their doctors and guided by their own beliefs and unique circumstances, rather than by government mandates.

I support Roe v. Wade, which means that I agree that the government can restrict abortions only when there is a compelling state interest at stake. I feel very strongly that Congress should seek to regulate abortions only within the constitutional parameters set forth by the U.S. Supreme Court.

Unfortunately, the conference report fails to cure the flaws in the bill that make it unconstitutional on its face. The conference report's description of the procedure that it would ban is so vague and overbroad that it could place an undue burden on a women's right to choose by encompassing safe and common abortion procedures used prior to viability.

I am also disappointed that the conference report failed to adopt the Senate's language in S. 3 reaffirming the Senate's commitment to Roe and its belief that Roe should not be overturned. The Senate had a straight up-or-down vote on this language, which was offered by my colleague Senator HARKIN. A majority of the Senate agreed to support the Harkin amendment. The House was wrong to remove this language during its consideration of the bill, and I am disappointed that the conference report failed to adopt the Senate's position on this issue.

The Senate should only legislate in this area in a way that is constitutionally sound. This conference report does not meet that test and I cannot support it.

Ms. CANTWELL. Madam. President, I rise today to express my opposition to the conference report to S. 3 the so-called Partial-Birth Abortion Ban Act of 2003. This is an unconstitutional piece of legislation that puts women's lives in jeopardy.

Supporters of this bill will argue that this legislation bans only one procedure but this is not the case. Make no mistake about it. This bill puts us on a path outlawing abortion. The language in this bill is vague, and this law could be used to ban other safe and legal procedures. Moreover, this legislation imposes an undue burden on a woman's ability to choose by banning abortion procedures at any stage in a woman's pregnancy. This bill does not only ban post-viability abortions, it unconstitutionally restricts women's rights regardless of where the woman is in her pregnancy.

In 1973, in Roe v. Wade, the Supreme Court found that women have a constitutional right to choose. However, after the point of viability—the point at which a baby can live outside its mother's body—States may ban abortions as long as they allow exceptions when a woman's life or health is in danger. The bill before us, however, restricts abortions before viability and it does not include a health exception. Let me repeat that. This bill is fundamentally flawed because it does not protect the women when her health is in danger.

In June 2000, the U.S. Supreme Court reinforced the importance of this health exception in Stenberg v. Carhart, which determined that a Nebraska law banning the performance of so-called ''partial birth'' abortions was unconstitutional under Roe v. Wade.

The Supreme Court has stated unequivocally that every abortion restriction, including bans on so-called ''partial-birth abortion,'' must contain a health exception. The Court emphasized that, by failing to provide a health exception, the Nebraska law would place a woman's life in danger. That is exactly what the legislation before us today does as well: it places a woman's life in danger.

Despite the Supreme Court's very clear mandate, this underlying legislation does not provide an exception for the health of the mother. For this reason, this legislation, like the measure that was struck down in Stenberg, is unconstitutional.

I am very disappointed that this conference report does not include language passed by the Senate that abortion has been a legal and constitutionally protected medical procedure throughout the United States since the Supreme Court decision in Roe v. Wade; and that the 1973 Supreme Court decision in Roe v. Wade established constitutionally based limits on the power of states to restrict the right of a woman to choose to terminate a pregnancy.

Furthermore, the amendment firmly laid out the sense of the Senate that the decision of the Supreme Court in Roe v. Wade was appropriate and secures an important constitutional right and that the decision should not be overturned.

I fundamentally believe that private medical decisions should be made by women in consultation with their doctors—not politicians. These decisions include the methods by which a physician chooses to treat his or her patients. Why should we decide that here on the Senate floor? Congressional findings cannot possibly make up for medical consultation between a patient and her doctor. This bill, however, would undermine a physician's ability to determine the best course of treatment for a patient.

Physicians must be free to make clinical determinations, in accordance with medical standards of care, that best safeguard a woman's life and health. Women and their families, along with their doctors, are simply better than politicians at making decisions about their medical care. And I don't want to make those decisions for other women.

During the course of this debate we heard painful stories about women who were anxiously awaiting the birth of a child when something went horribly wrong. We heard true stories of women who were devastated when they discovered that their child had severe health problems and would not survive. We heard stories about women who wanted to complete their pregnancy and were told by their physicians that, should they do so, they would put their health at risk. The truth is that this is a

heartbreaking, painful, personal decision that should be made by solely a woman with the advice of her doctor.

I trust the health care providers and organizations like the American College of Obstetricians and Gynecologists, and the American Medical Women's Association who oppose this ban. These physicians know their patients, they know their stories, and the painful choices that many make, and they know that this ban is wrong. Most importantly, I trust the women in my State and around this country to make the decision that is right for them. During such a difficult, private time, women should be surrounded by those who love and support them. Women should not have to listen to rhetoric that demonizes their heartbreak, but should be able to receive medically accurate information from a trusted health care professional.

Three States, including my home State of Washington, have considered similar bans by referendum. All three failed. We considered this debate in my home State in 1998. The referendum failed decisively—by a vote of 57 to 43 percent.

These so-called ''partial-birth'' abortion bans—whether the proposals that have been before the Senate in the past or the one before us today—are deliberately designed to erode the protections of Roe v. Wade, at the expense of women's health and at the expense of a woman's right to privacy.

The Supreme Court, during the 30 years since it recognized the right to choose, has consistently required that, when a State restricts access to abortion, a woman's health must be the absolute consideration. This legislation does not only disavow the Supreme Court's explicit directive, but the advice of the medical community, and the will of the American people. We must continue to ensure that the women of America have the right to privacy and receive the best medical attention available.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I understand I have a minute, 51 seconds remaining.

The PRESIDING OFFICER. The Senator is correct.

Mrs. BOXER. I understand Senator FRIST will take some leader time and Senator DASCHLE has given me 4 minutes of his leadership time, so I will speak for about 6 minutes if that is all right.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, the Senator may use the leader's time.

Mrs. BOXER. Madam President, I, too, thank everyone involved in this debate on both sides because I think it has been a very enlightening debate. I have been on the Senate floor about this bill many times. This particular debate brought out so many issues.

I also thank the many women who experienced this procedure, who were able to come to Washington on many occasions to tell us what their world was like when they found out late in the pregnancy that something had gone horribly wrong and the doctor told them that their baby could never live outside of their womb and the doctor told them if they did not have the procedure that is being banned in this bill, they could suffer a stroke, they could suffer paralysis, they could lose their fertility. These women came out and put a face on this issue, a real, human face; many of them very religious, many anti-choice, who said this was an excruciatingly difficult choice, but they knew it was right for themselves and their baby.

What we are about to do today—and I have no illusions; I know this bill will pass—we are about to ban a procedure that doctors say is needed to save the life and health of a woman. If I went up to you on the street and I said, I know there is a medical procedure that is sometimes necessary to save the life and health of a woman, would you want to ban it or would you be willing to ban it except for those occasions when it is necessary. I think and I know most Americans would do the humane thing and say absolutely, we want to make an exception for life and health. That is not what is done in this bill.

The doctors tell us this is a dangerous piece of legislation. The doctors tell us this is an unconscionable piece of legislation. The doctors tell us that women's lives and health will be put at risk if we pass this. I happen to believe, on issues such as these, we have to turn to the women themselves who have faced this agonizing decision, and to the doctors, the OB/GYMs whose job it is to bring life into the world.

Well, when we have done that, they have told us not to go this route, that if we are going to ban the procedure, always to have an exception, always for the life and health of the woman. Yet this Senate is going to turn its back on the women of this country, turn its collective back on the doctors of this country, and basically outlaw a procedure they say is necessary.

When the President signs this bill—and he will do so—it will be the first time in history any President of either party has banned a medical procedure that is necessary to save the life and health of the people of this country. I think that is a historic moment, and I think the people of this country will understand all of the ramifications. There is no question about that.

To make it clear, I will reiterate what many of my colleagues who are pro-choice have said. We believe Roe v. Wade was rightly decided. We believe it balanced all the interests that were before the Court. We believe when the Court said, in the very early stages of a pregnancy, Senators, Congress people, stay out of this decision, they were right. When the Court said, in the late stages of a pregnancy, the State can control what occurs in an abortion, but always with an exception for the life and health of a woman, we believe that is right.

Now the other side tells us: Oh, well, this bill has nothing to do with Roe v. Wade. It does not in any way challenge Roe v. Wade. Well, that is just untrue on its face. The Court has already ruled in the Nebraska case that when you do not make an exception for health, when you have vague definitions, that is violative of Roe.

What we are doing is passing a piece of legislation that will be signed with great fanfare, and it will be declared unconstitutional across the street. Instead, we could have joined hands across party lines, we could have joined hands across ideological lines, we could have banned every single late-term abortion with an exception for life and health, but the other side refuses to do this—refuses to do this. I do not understand how you can stand here and say you are doing the right thing by the women in this country and not make an exception to protect the health of a mother.

I hope many of us will vote this down. I have no illusions in the final vote, but it has been an excellent debate. I hope America was listening.

I thank you very much.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I know I just have a few seconds, but I do want to recognize the tremendous effort and work the majority leader has made over the years on this issue. His presentation, when he first came to the Senate, as the only physician in the Senate, was compelling, persuasive, and I think one of the things that allowed us to get the 60-plus votes we needed to have this bill passed on previous occasions and now gives us the margin we have today. He is to share a significant amount of credit for today's victory.

Thank you, Madam President.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, on leader time, I will use just a remaining few minutes.

The partial-birth abortion ban is finally at the finishing line. I expect today the Senate will vote for the last time to end this morally reprehensible procedure. We will have a bill on the President's desk, and this President will sign the ban into law.

As a physician and as a board-certified surgeon, I can say without equivocation that partial-birth abortion is brutal, it is barbaric, it is morally offensive, and it is outside of the mainstream practice of medicine.

Contrary to the claims of its supporters, partial-birth abortion is a fringe procedure outside of the mainstream. It is not performed by people who are board-certified surgeons. It is not found in common medical textbooks. It is not taught in our surgical residency programs.

The sole purpose of this partial-birth abortion is to deliver a dead baby. It is not, as some insist, to protect the life of the mother. In fact, partial-birth

abortion, as we have heard again and again, is dangerous to the health of the mother, more dangerous than other alternatives. We could go on and on with these undeniable medical facts in greater detail, but something larger is at stake, and we speak to that powerfully with this vote today.

Beyond even the ethical practice of medicine, our Nation's charter, the Declaration of Independence, asserts our Creator has blessed us with certain rights—rights from which we, as beings made in God's image and likeness, cannot be alienated.

In destroying the body of a mature, unborn child, we are alienating that child from his or her most essential right; and that is, the right to life.

In doing so, we are violating the very premise of our Republic—that our rights are enduring gifts of God, not privileges to be revoked by human whim.

In Evangelium vitae, Pope John Paul II tells us true human freedom is rooted in a ''culture of life.''

We will reaffirm in this Chamber that human personhood is precious, that doing no harm is still the bedrock of medical morality, and that we have the will to stop a practice we know is evil and morally reprehensible.

I yield back the remainder of the time.

Mrs. BOXER. Madam President, I ask unanimous consent that I be allowed to speak for 2 minutes from Senator DASCHLE's leader time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. Thank you.

Madam President, I want to reply to what the good Senator has said, with great respect, when he says this procedure is outside the mainstream. I want to point out, I respect his opinion, but I think doctors who have gone into OB/GYN, if that is their field—I do not believe the American College of OB/GYNs—45,000 doctors—are out of the mainstream. I do not believe the American Medical Women's Association—10,000 female doctors—are outside the mainstream. Nor do I believe the American Public Health Association—thousands of doctors—are outside the mainstream.

So although I totally respect the opinion of my colleague, and I would fight for his right to have it, and his right to believe what he does, I think it is a bit dismissive of the mainstream OB/GYN doctors in this country, all of whom have told us, please do not pass this ban that they have said is dangerous to women. They have said, to use their words, it is risky to women, and they are very upset about it.

I did not want the Senate to believe these organizations back this bill, because they do not. We have put those letters into the RECORD.

I thank you very much.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, obviously we have a strong disagreement in the statements that were just made. Let me finally close by saying this is a brutal procedure. It is a barbaric procedure. It offends the sensibilities of 90 percent or more of Americans. It is outside of mainstream medicine as practiced in the United States of America today.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the conference report. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Texas (Mrs. HUTCHISON) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) is necessarily absent.

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

The result was announced—yeas 64, nays 34, as follows:

[Rollcall Vote No. 402 Leg.]

YEAS—64

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Bayh	Dorgan	Murkowski
Bennett	Ensign	Nelson (NE)
Biden	Enzi	Nickles
Bond	Fitzgerald	Pryor
Breaux	Frist	Reid
Brownback	Graham (SC)	Roberts
Bunning	Grassley	Santorum
Burns	Gregg	Sessions
Byrd	Hagel	Shelby
Campbell	Hatch	Smith
Carper	Hollings	Specter
Chambliss	Inhofe	Stevens
Cochran	Johnson	Sununu
Coleman	Kyl	Talent
Conrad	Landrieu	Thomas
Cornyn	Leahy	Voinovich
Craig	Lincoln	Warner
Crapo	Lott	
Daschle	Lugar	

NAYS—34

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Bingaman	Graham (FL)	Nelson (FL)
Boxer	Harkin	Reed
Cantwell	Inouye	Rockefeller
Chafee	Jeffords	Sarbanes
Clinton	Kennedy	Schumer
Collins	Kerry	Snowe
Corzine	Kohl	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Levin	
Durbin	Lieberman	

NOT VOTING—2

Edwards	Hutchison

The conference report was agreed to.

Mr. MCCONNELL. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLASS ACTION FAIRNESS ACT OF 2003—MOTION TO PROCEED

The PRESIDING OFFICER. The Senate will resume consideration of the motion to proceed to S. 1751.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, parliamentary inquiry: Is it in order at this point in time for the Senator to speak as in morning business for about 10 minutes?

The PRESIDING OFFICER. The Senator should seek consent for that purpose.

Mr. REID. I could not hear the Senator's request. I am sorry.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. The Senator from Virginia simply asked the parliamentary situation, could I proceed as in morning business for 15 minutes?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

REMARKS BY SERVICE MEMBERS

Mr. WARNER. Madam President, the press have reported comments made by a general officer, General Boykin, and those remarks have been the subject of considerable concern. They are also regrettably a subject of great discussion in the Arab press.

I also am concerned, and I rise to advise my colleagues and others of a recommended course of action. I do so by first reading a letter signed by Senator LEVIN and myself dated last Friday. We wrote this letter jointly in the course of the debate on this floor in response to the request by the Commander in Chief, the President, for some $87 billion to support our military and to support our reconstruction efforts in Iraq and elsewhere. I was a strong supporter and was happy to vote for it. Fortunately, the measure has passed and is now subject to the conferees.

It is interesting, at the very time that we were passing this legislation, which are taxpayer funds in considerable amounts, the object was to provide freedom and quality of life for the people of Iraq. The people of Iraq largely follow the Muslim religion in teaching, in tenets, and it is dear to their hearts. At the same time, the coverage in the United States is about comments made by a distinguished officer, a man who has shown great personal courage in the profession as a soldier.

Nevertheless, there are allegations with regard to these remarks that have been reported in the press. Senator LEVIN and I felt it was our duty, as chairman and ranking member of the Armed Services Committee, to make a recommendation to the Secretary of Defense.

I am about to read that letter we sent on Friday, because I think it is a very responsible way to deal with a high-profile situation.

Dear Mr. Secretary:

Enclosed are copies of articles that have appeared in the press recently about public statements allegedly made in uniform by LTG William G. Boykin, U.S. Army, the Deputy Under Secretary of Defense for Intelligence. In matters pertaining to religious beliefs, the practice and expression, the Armed Forces have traditionally permitted as much latitude as possible,

consistent with the requirement of good order and discipline in the military's ability to accomplish its mission. We recognize the right of every American to free speech. However, as is well established, in part—I add, part in law—there are limits on the right of expression for service members. Public statements by a senior military official of an inflammatory, offensive nature that would denigrate another religion and which could be construed as bigotry may easily be exploited by enemies of the United States and contribute to an erosion of support within the Arab world and perhaps—I underline perhaps—increased risk for members of the U.S. Armed Forces serving in Muslim nations. It is the responsibility of the United States Senate to render constitutional ''advice and consent'' with respect to the officer corps. Implicit in this confirmation process is our judgment that officers, especially those of flag and general rank, are persons possessing sound judgment and respect for the rights and beliefs of others. We recommend, therefore, that you refer this matter to the Department of Defense Inspector General for a thorough review of the facts and a determination as to whether or not there has been any inappropriate behavior by Lieutenant General Boykin. Please advise the committee of the results of this review.

I now read from a press account of today, which purportedly carries—and I have to rely on the authenticity of the press reports. I have no reason to disagree with them—an exchange between Secretary of Defense Rumsfeld and members of the press corps. The question: Mr. Secretary, last week here you were referring to Lieutenant General Boykin, you and General Myers said in effect he has the right to freedom of speech and the freedom of expression and yet, as we all know, we are responsible for what we say. How can you keep a man in a senior position on your staff whose views are so diametrically opposed to those of the President and to yours? End of question.

Response by Secretary Rumsfeld: Let me make several hopefully precisely put sentences on this subject. First of all, I appreciate your question because it correctly indicated that the President's views and my views, or the President's views are that this is not a war against a religion. And all I did, despite the columnists and the press reports to the contrary, all I did was precisely state what the President and what I think are—I am having some difficulty reading this but I just have to literally read it as printed. I have not seen General Boykin's comments. I have since seen one of the network tapes and it had a lot of very difficult to understand words and subtitles which I was not able to verify. So I remain inexpert on precisely what he said and I was told he used notes and not text. And so I will stop there.

General Boykin has requested an Inspector General review of this matter, and I have indicated if that is his request, I think it appropriate.

I know that General Pace, who was apparently with the Secretary, has talked to him more recently. You may want to comment as well.

General Pace: Yesterday, Jerry and I were just waiting for a meeting to begin and he just mentioned to me how sad he was that his comments have caused the furor that they have. There is no doubt in my mind, in talking to him, that if he could pick his words more carefully he would. There is also no doubt in my mind that he does not see this battle as a battle between religions. He sees it as a battle between good and evil. He sees it as the evil being the acts of individuals, not the acts of any religion or affiliation with religion. So clearly, in my very short conversation with Jerry, which he instigated, he is sad that this is the way that it is, but he is anxious to have the investigator do the investigator's job.

I commend the Secretary of Defense, and I commend General Boykin. I think Senator LEVIN and I took the proper step. We had the option to put this letter into the public domain on Friday, but purposely I said to my colleague and to others—by the way, there were a number of others, as Senator LEVIN and I just discussed, on his side of the aisle and on my side of the aisle who expressed concern and asked of us, as the chairman and the ranking member, what we intended to do. Well, we made this recommendation and we purposely withheld it from public delivery, public release, as a consideration to the Secretary, such that he might take it into consideration as he dealt with this matter. I just presume he saw it and that he did take it into consideration. But I think at this point in time, while we have young men and women patrolling the streets in Iraq, Afghanistan, and other areas of the world, it is best we try to take this matter, hopefully, off the front pages, with the representation to the American public and others that the proper authorities are reviewing it—the Inspector General of the Department of Defense, and I anticipate my committee and indeed perhaps others here in the Senate will review the matter. But in fairness to this distinguished officer, such that he can devote his full time and attention to dealing with this issue, I am recommending—not calling for, not demanding but recommending, having spent some time in the Department of Defense myself—that without any prejudice this officer be detailed from his present position, a position that deals with the war on terrorism throughout the world, that he be detailed elsewhere temporarily until such time as the Inspector General comes back with his report, at which time we can have further deliberations.

That is in fairness to so many people who are deeply concerned about this issue, and indeed the men and women of the Armed Forces, and indeed the integrity of the military itself. When an officer wears that uniform and he stands before the people of the United States, or wherever he may be, and he makes remarks, people see in that uniform that he has been appointed to that position by the President of the United States of America and confirmed by the Senate of the United States. In that confirmation process we look at the professional credentials, we examine all the material that comes before us, but implicit in our confirmation by this body, the Senate, pursuant to the Constitution, implicit therein is that we feel this individual should be promoted and given the rank to which the President has appointed him because we have confidence in him that he has good, sound judgment—I repeat that: good, sound judgment—in the exercise of his freedom to speak.

That is the question that remains to be answered. He is in a very high-profile position with global responsibilities on the war on terrorism. I think temporarily, without any prejudice whatsoever, asking him to take on another assignment until this matter is fully examined and studied and a report made to the Secretary of Defense and the Senate is in the interests of all concerned and indeed this officer.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I want to express my appreciation for the thoughtfulness of Senator WARNER. He has served his country for many years as a marine, a naval officer, as a Secretary of the Navy, and now the Senate chairman of the Armed Services Committee. I know he takes this issue very seriously.

I do believe this officer should be entitled to a hearing, have an inspector general look at these very delicate matters. When we talk about people's personal religious beliefs as to whether one theology is valid and another one is not, we wouldn't expect a person of the Islamic faith to ratify the Christian faith or other faiths to say they validate the faith of someone else. That is just the way we see things, as we deal with matters of personal faith.

But I think it is a delicate matter, particularly when a person is in uniform. I think going forward with a look at this and some thoughtful analysis as to what would be the right procedure would be appropriate. I thank our chairman of the Armed Services Committee for his comments.

Mr. WARNER. I thank my colleague because you formerly served as attorney general. You have full comprehension of the importance of being fair to everyone. This recommendation I have is in the sense of fairness. I think it is in the interest of all, and I thank the Senator for his remarks.

Mr. SESSIONS. I think it would be good for all of us to think a bit about the subject and what would be appropriate to ask of an officer in a church proceeding and whether uniforms make a difference and those kinds of things.

I was going to speak about the class action reform. Did the Senator from Illinois have some comments?

Mr. DURBIN. If the Senator from Alabama would yield for a moment, I would like to address the same issue and then yield back to him to discuss class action reform.

Mr. SESSIONS. Would 5 minutes be sufficient? I am pleased to yield to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I commend the Senator from Virginia. There are times when he and I have come together and I think good things have happened. I think this may be such a moment. I hope it is. I came to the floor to address this issue involving General Boykin, fully cognizant of the great contribution which he has made to this country in his military capacity over many years, risking his life and serving our Nation well, but feeling at this moment in time important questions need to be asked and answered about the things he said and did. I believe the Senator from Virginia—I do not want to mischaracterize his remarks—has suggested he be detailed to another position while these important questions are asked and considered and answers are brought forward. Am I correct in that conclusion?

Mr. WARNER. Madam President, the Senator is correct, to simply give full and complete opportunity and have him temporarily detailed elsewhere. I think until such time as this thing is resolved factually—what did happen, what didn't happen—as the Secretary of Defense said, he didn't fully have all the facts at his command at this point in time and was asked a question. Although I must say I have read press accounts where the general was trying to explain what he did say, you and I know from experience in public life, when you try to explain what you tried to say, you need time out to do a little study.

Mr. DURBIN. I thank the Senator from Virginia. I do say that is a very judicious and thoughtful approach. We want to be fair to this man who served his country well, but we also understand his remarks were viewed by many in a very negative light at a very critical moment in our history. I think what we should ask of everyone in the service of our country is what the President has asked, and that is to keep it very clear ours is a war against terrorism and not a war against the Islamic faith or people who adhere to it. We could no more expect General Boykin to embrace the Islamic faith and its principles than we would expect someone of the Islamic faith to accept Christian principles or Jewish principles and values. But we can expect every member of our Government to be tolerant and sensitive of other people's values and principles. I think that is a standard we should all live by in public life, whether appointed or elected.

I think what the Senator from Virginia has done today is an important step forward. I would say his extraordinary service to this country in the military and as Secretary of the Navy and in the Senate I think means his recommendation will be understood as a heartfelt recommendation and taken seriously by the administration. I hope they do. I hope they follow his counsel and follow it quickly. The sooner we can defuse this matter the better for all, including the general, and I think the sooner it will be that we can bring some stability and perhaps some coherence to our position so we can fight this war on terrorism in terms all Americans, including the President, agree with.

I thank the Senator from Virginia.

Mr. WARNER. I thank my colleague.

Muslims and Christians and people of other faiths all over this world are united in this fight against terrorism. We must make it very clear of our mutual respect for one another's faith.

I yield the floor.

Mr. DURBIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank the Senators for their comments. I fail, but I attempt to take my faith seriously. I respect followers of the Islamic faith who take their faith seriously, who study the scriptures and act in accordance therewith. We may disagree, but we respect one another. That is the way I was raised as an American, to respect one another's faith. I think respect for one another's faith makes me somewhat sympathetic to General Boykin, who goes to a church and shares some of his insights and beliefs. But then again he is an officer of the United States and has a position in a time of conflict, in a sensitive period, and maybe at one point apparently he may have worn the uniform while he made those remarks.

I think it is appropriate for us to take some time out and look at this. I thank the chairman for that.

Madam President, we are now to undertake and begin debate on the motion to proceed to the Class Action Fairness bill, S. 1751.

Unfortunately, we are seeing a trend in which there are more and more pieces of legislation that deserve an up-or-down vote being subjected to a filibuster and 60-vote procedural hurdles. That is unfortunate. We should proceed with this legislation and discuss it and not be obstructive about going forward with it.

The Class Action Fairness Act represents modest reform. It is a restrained bill that will address a number of very serious problems with the current status of class action lawsuits such as the plaintiff receiving coupons while trial lawyers pocket millions of dollars in fees.

This body has a duty to address problems with the legal system. It is something we are required to do and should not have to overcome 60-vote hurdles. I am disappointed we may have to overcome another filibuster as we move forward.

Obstructionism is always available, but I don't believe there is strong opposition to this bill. There is bipartisan support. If we let the debate go forward and people honestly consider whether it ought to be law or not, we would be willing to accept an up-or-down vote. That is a concern I express.

The distinguished Senator from Delaware is here. He is very thoughtful on these matters. I know he would like to speak for approximately 15 minutes. I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Delaware.

Mr. CARPER. I express my thanks to the Senator from Alabama for his kind words. I appreciate the opportunity to work with him on these and other issues. Tomorrow morning around 11 o'clock, an important vote will occur in the Senate. At the heart of this vote, for me, is to determine whether or not we go forward, Democrats and Republicans, to actually take up and debate the way we allow people who are harmed, hurt, or injured—in many cases, by business—to be compensated.

Most would agree that if you or I, as individuals, are damaged by the actions of another or by the actions of a business, we should be made whole. I believe the same protection should inure to a group of people or a class of people who may be harmed or damaged in some way by the actions or products of some business.

Over time we seem to have lost our sense of balance in the way we litigate class actions. When our Founding Fathers came up with our Federal courts, we did not have class actions. We did not have mass actions. We did not have private attorneys general actions. We did not have any of that. We had a concern on the part of our Founding Fathers that if a group of people in one State were harmed by a business or person in another State, maybe we ought to have a Federal court system, to ensure that the case is not heard by the potentially biased judges in the injured party's home state.

The trial bar gets a bad rap in a lot of quarters, but I believe they play a very helpful and constructive role in this country. They sometimes do not get credit for that. One of the things they do is try to make sure, where people are harmed, they get compensated.

Our system has lost the right kind of balance. Too often today—not always but too often—we end up debating national class action not in a Federal court but in a local court—in some cases, in a court where the judges are locally elected and the defendant is placed at a real disadvantage. I will give an example because this does not make much sense to me.

Say I were poisoned by food we bought from a fast food restaurant. Say I decided to sue. If the amount in dispute were less than $75,000, my case could be heard in State court. If I sue for more than $75,000; it would be heard in a Federal court.

On the other hand, if thousands of people, or tens of thousands of people,

bring a class action against that same restaurant for some alleged sin they have committed—and it may involve tens of millions of dollars—it may well end up in a State court, not in a Federal court. That does not seem right to me.

There has been an effort to try to establish or reestablish the sense of balance in these kinds of cases. It started about 5 years ago, in the 105th Congress. Over time, I believe a more thoughtful approach has evolved and has led to the introduction of a bill this year, S. 274, called the Class Action Fairness Act. That bill has gone through hearings, I think in the last Congress, and hearings in this Congress. It has been through regular order. The Senate Judiciary Committee has had an opportunity to hold hearings, to debate the bill, to vote on amendments to the bill and ultimately to report the bill out.

There are a number of aspects of the legislation that recommend it to me. I am a cosponsor of the legislation, and it enjoys bipartisan support. Among the original cosponsors are Senator GRASSLEY and Senator KOHL of Wisconsin. The bill was reported out on a bipartisan vote. More Republicans voted for it than Democrats, but it had some bipartisan support.

I will discuss how the class action system will work in our country if this legislation or something akin to it becomes law. First, it is not a perfect bill. I have an amendment or two that I want to offer to perfect the legislation. I noticed Senator LIEBERMAN does as well. I have talked to other colleagues, including Senator LANDRIEU, who have ideas for amendments they want to offer. It is a work in progress. It is one that can be improved and should be improved.

In order for us to be able to offer our amendments to the bill to perfect and improve it, we have to go through a vote tomorrow at 11 o'clock on the motion to proceed, which, understandably but unfortunately, is opposed by leadership on my side. The fear, the concern, is we will get on to the bill and the opportunity for those who would like to offer amendments may not end up to be realized; the opportunity for us to offer amendments, to be fairly heard and vote will not occur. Therefore, they are reluctant to go to the bill without some further assurance.

In the end, the only way we know for sure if our amendments are going to get a fair hearing, and have the opportunity to be debated and adopted, is to go to the bill, to take it up. I hope tomorrow, when we vote, that is what we will vote to do.

Let me talk briefly about how I understand our legal system would work a little differently if this were to become the law of the land.

First, the question is, Is this litigation going to be heard in State court or Federal court? Under the legislation, for a matter to be heard in Federal court or for the defendant in the case to be able to argue successfully that a case ought to be in Federal court as opposed to a State court, there would have to be a certain dollar amount at stake, and it would be $5 million. If it is under $5 million, it will be in State court.

Second is the number of people in the plaintiff class. If you have less than 100 people in your plaintiff class, this litigation is going to be heard in a State court.

Third, if a case is filed in a State court, and the defendant says, no, this ought to be in a Federal court, and they go to Federal court to try to get it removed to the Federal court, and the Federal court says, no, this remains in the State court, then it goes back to the State court. And unless the plaintiffs change the plaintiff class, or unless the plaintiffs somehow change their complaint, it is going to stay in State court.

There are no caps on pain and suffering, no caps on punitive damages, no caps on noneconomic damages, no caps on attorney fees. We leave joint and several alone.

In some States they apparently do not have class actions; they have mass actions—a few States such as West Virginia, Mississippi—where they aggregate a number of individual claims. The question is whether those are more properly heard in a Federal court or a State court.

I think Senator SPECTER has negotiated a pretty good compromise in those instances. In some cases, if it were a major incident, such as an explosion or a fire or a catastrophic incident that involves people in one State, then it would basically be handled in State court; if not, it would be in a Federal court.

Senator FEINSTEIN had an issue on these private attorneys general cases, which apparently you or I could stand up or any citizen can stand up and say they represent a group of people on a particular wrong that has been committed. In some cases that is the way they really go about class action. Her amendment was adopted as part of the final agreement. If the bill comes to the floor, the private attorneys general agreement would be within the purview of State courts, not the Federal court.

Senator FEINSTEIN also offered I think quite a thoughtful amendment and one that addresses a concern raised by the Judicial Conference that we heard discussed earlier. My colleagues will recall the Judicial Conference is actually headed up by the Chief Justice of the United States, Chief Justice Rehnquist. But they, from time to time, will opine on things that are before us and maybe share their opinions with us. They suggested, when asked back in March, that there were some real concerns that they had with S. 274, and that it would cause a lot of cases that are now heard in State courts to end up flooding the Federal courts. They suggested that we ought to do something about it, that the Judiciary Committee ought to do something about it.

Well, the Judiciary Committee did something about it. What they did is they adopted the Feinstein amendment in their markup back in April. The Feinstein amendment says basically this. It says: The plaintiff class, the people who are bringing the grievance, if two-thirds or more are from the same State of the defendant, automatically that case is heard in the State court. It says, if fewer than one-third of the plaintiff class are from the same State as the defendant, automatically it is heard in a Federal court. If the percentage of the plaintiff class is somewhere between one-third and two-thirds who are from the same State as the defendant, then it is up to a Federal judge in that area to make the final decision based on criteria. There are five pieces of criteria spelled out in the bill.

So, again, if there are more than two-thirds of the plaintiff class in the same State as the defendant, it is a State matter; if fewer than a third of the plaintiffs from the same State as the defendant, it is in the Federal court; and between one-third and two-thirds are from the same State as the defendant, it is kind of a jump ball. The Federal judge in the area is asked to make the decision based on the criteria spelled out in the bill.

Interestingly, the Judicial Conference came back after this amendment was adopted and the legislation was about to be reported out and they seemed to suggest, in a letter that they sent to the ranking Democrat on the Judiciary Committee, that their earlier concerns had been addressed. I think the Judicial Conference sent a similar letter to the folks in the House of Representatives suggesting the same thing in the month of May.

A concern has been raised, a legitimate concern, about what percentage of cases are now going to end up in Federal court as opposed to State court under this bill. Some pretty smart people actually took the data from the last 5 years in States where they collected this data to look to see—in States such as New York, Massachusetts, Maine, where data is available—what percentage of cases in those States over the last 5 years would have ended up in a Federal court as opposed to a State court. Sixty percent or more of the cases in those states in the last 5 years would still have ended up in a State court. I think that is a good point to be mindful of.

I do not know if any of us going forward could say what the future is going to be, but we should sure look back over the last 5 years and say if this were the law of the land, again, 60 percent or more of the cases would have stayed in State court.

Let me close with this thought, if I could. Senator LIEBERMAN is prepared to offer an amendment, I think a real good amendment, to the bill that addresses an issue for Connecticut. It is

similar to an issued raised for Indiana, and similar to an issue I have heard raised, I think, for New Mexico.

This is the issue that was raised. Let's say in Connecticut you have a river that has been polluted by a plant that damages people in Connecticut under Connecticut law. The plant is in Connecticut but owned by a company in another State. Again, the people who are damaged, the plaintiff class, if you will, are in Connecticut. The damage was in Connecticut and there are two defendants, one in Connecticut—the plant that did the pollution—and the owner of the plant that is in another State.

What Senator LIEBERMAN has come forth with and said is, in a case such as that, it ought to really be in a Connecticut court. I think he is right.

Senator LIEBERMAN will offer an amendment that says in those cases State law should prevail. They should not be moved someplace else. State law should prevail. He will offer that amendment if we have the opportunity—if we have the opportunity—to actually go to the bill, take it up, and debate it. In order to do that, we have to vote tomorrow for the motion to proceed.

There is a real test that is going to take place here. If we actually vote for the motion to proceed and go to the bill, there is a burden of proof that rests on our colleagues on the other side of the aisle. They need to act in good faith. We need to actually have the opportunity to offer our amendments. We need to have the opportunity for a fair and open debate on reasonable perfecting amendments. If we do, then I think it may act as a confidence builder and maybe establish a measure of trust around here where, frankly, there is not too much. On the other hand, if our Republican colleagues take a different course and seek to cut off debate and reasonable amendments and not support reasonable amendments, perfecting amendments, then that sends a different message.

I think there is more at stake for this body than just whether or not we are going to take up a class action bill. There is a whole lot more at stake. My hope is tomorrow, when we vote, if we vote to proceed, that our colleagues on the other side will keep that in mind and that their actions in the days or week or so ahead will reflect as much.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise today to speak on behalf of the Class Action Fairness Act, a bill to stop unfair and abusive class action settlements that ignore the best interests of injured plaintiffs. It tickles the cockles of my heart that this is the first time I can recall that my colleague from the State of Delaware and I have spoken out on the same position on a bill before the Senate. Senator CARPER and I have worked together for many years in the National Governors Association. We have been looking for an opportunity to collaborate and support legislation on the floor of the Senate. It is a particular pleasure for me to follow the Senator from Delaware. We both believe this is good legislation for the people in our districts and for our country.

This legislation is sorely needed to help people understand their rights in class action lawsuits and protect them from unfair settlements. It is also needed to reform the class action process which has been so manipulated in recent years that U.S. companies are being driven into bankruptcy to escape a rising tide of frivolous lawsuits and has resulted in the loss of countless numbers of jobs, especially in the manufacturing sector.

I believe that for the system to work, we must strike a delicate balance between the rights of the aggrieved parties to bring lawsuits and the rights of society to be protected against frivolous lawsuits and outrageous judgments that are disproportionate to compensating the injured and made at the expense of society as a whole. I believe that is what this legislation does, and I am proud to be a cosponsor of it.

Since my days as Governor of Ohio, I have been very concerned with what I call the ''litigation tornado'' that has been sweeping through the economy of my State and throughout the United States. Ohio's civil justice system is in a state of crisis. Ohio doctors are leaving the State, and too many have stopped delivering babies because they cannot afford liability insurance. Ohio businesses are going bankrupt as a result of runaway asbestos litigation. Today, one of my fellow Ohioans can be a plaintiff in a class action lawsuit that she doesn't even know about that is taking place in a State she has never visited.

In 1996, as Governor of Ohio, I was proud to sign H.B. 350, strong tort reform legislation that became law in Ohio for a while. It might have helped today's liability crisis, but it never got a chance. In 1999, the Supreme Court of Ohio, in a politically motivated decision, struck down Ohio's civil justice reform law, even though the only plaintiff in the case was the Ohio Academy of Trial Lawyers, the personal injury bar's trade group. Their reason for challenging the law: They claimed their association would lose members and lose money due to the civil justice reform laws that were enacted. That is how they got standing in court. It was an incredible situation that I hope we never see again.

While we were frustrated at the State level, I am proud to have continued my fight for a fair, strong civil justice system in the U.S. Senate. To this end, I worked with the American Tort Reform Association to produce a study titled ''Lawsuit Abuse in Ohio'' that captured the impact of this rampant litigation on Ohio's economy with a goal of educating the public on the issue and sparking change. Can you imagine what this study found? In Ohio, the litigation crisis costs every Ohioan $636 per year, and every Ohio family of four $2,500 per year. These are alarming numbers. This study was released on August 8, 2002. Imagine how these numbers have risen in 1 year. In tough economic times, families cannot afford to pay over $2,500 to cover other people's litigation costs. Something needs to be done, and the passage of this bill will help.

This legislation is intended to amend the Federal judicial code to streamline and curb abuse of class action lawsuits, a procedural device through which people with identical claims are permitted to merge them and be heard at one time in court. In particular, this legislation contains safeguards that provide for judicial scrutiny of the terms of the class action settlements in order to eliminate unfair and discriminatory distribution of awards for damages and prevent class members from suffering a net loss as a result of a court victory.

This bill is designed to improve the handling of massive U.S. class action lawsuits while preserving the rights of citizens to bring such actions. Class action lawsuits have spiraled out of control with the threat of large overreaching verdicts holding corporations hostage for years and years. In fact, America's civil justice system had a direct cost in 2001 of $205.4 billion or almost 2.5 percent of GDP. That is a 14.3-percent jump from the year before, the largest percentage increase since 1986. Thousands of jobs have been impacted by that litigation.

I emphasize to my colleagues that this is not a bill to end all class action lawsuits. It is a bill to identify those lawsuits with merit and to ensure that plaintiffs in legitimate lawsuits are treated fairly through the litigation process. It is a bill to protect class members from settlements that give their lawyers millions while they only see pennies. It is a bill to rectify the fact that over the past decade, State court class action filings increased over 1,000 percent. It is a bill to fix a broken judicial system.

I am a strong supporter of this bill, and I urge my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I understand the Senator from Illinois would like to speak on this subject. First, I ask unanimous consent that Senator VOINOVICH be added as a cosponsor to S. 1751, the Class Action Fairness Act.

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

Mr. SESSIONS. I ask the Senator from Illinois how much time he thinks he might need?

Mr. DURBIN. Twenty minutes.

Mr. SESSIONS. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, this is an important debate. The average person listening to it may wonder why.

First you have to understand what a class action lawsuit is. I will try to define it in the simplest of terms. It is when not just one person but a group of people believe that they have been wronged, either financially or otherwise, and go to court and bring a lawsuit against a corporation, for example. So you have a large group of plaintiffs bringing the lawsuit, usually suing one defendant, a corporation. And oftentimes, this large group of people who have been harmed don't live in the same State. They may be from across the Nation. And so they have to decide where they are going to file the lawsuit. And that is what this comes down to.

You say to yourself: Why is it so important to understand where you are going to file a lawsuit? Well, when I explain it from my point of view, perhaps you will understand why so much time and so much lobbying is going on behind this whole question about where you can file your lawsuit.

First understand this: In my State of Illinois and virtually every other State in the Union, if you are a business and you want to do business in Tennessee or Illinois or Alabama or South Carolina, you can't just start up your business. The laws of your State will require you to register in that State that you are going to do business in. In my State of Illinois you register so they know you are there, who you are, what your home headquarters happens to be, and where it is located. Then you also have to do something in my State and most other States: You have to say where you can be served process. In other words, if you are sued by someone in the State of Illinois, and you are a registered corporation, you have already told the State of Illinois where they can find you.

Why is that? Because the understanding is, if you want to have the advantage of selling your product in Illinois to Illinois citizens, you also have to submit yourself to the jurisdiction of Illinois law. That law will govern your business in the State of Illinois.

It is very basic. If, in fact, someone believes that your product is defective, or you have done something wrong, they have to know where to find you. You don't want a situation where the corporation is unidentifiable, unapproachable. So every company—major companies in particular—understands the rules. If you want to do business in Illinois, you submit yourself to the jurisdiction of Illinois law.

Now let's go back to the earlier example. This group of plaintiffs, this class, decides they are going to sue XYZ Corporation for something wrong. Where will they sue them? The corporation has already said, by virtue of doing business in Illinois, that we are prepared to be served process. We are prepared to submit ourselves to Illinois laws. We are prepared to go before Illinois courts. That is a pretty simple outcome. If you do your business in Illinois, you submit to that jurisdiction. You submit to those courts. And if people want to sue you, they know exactly where to find you to bring you into an Illinois court and let the court decide whether the plaintiff recovers or doesn't recover.

Now, that is the simplest explanation of jurisdiction that I can remember from law school so many years ago and how it applies to States. In Federal courts it is a little different. If you have a defendant from one State and a plaintiff from another State, if you have a certain amount in controversy—I think it is $75,000—you have diversity of jurisdiction, so you can go into the Federal courts.

In this case, this whole bill is about in which court you can file a class action lawsuit. You say to yourself, why does it make any difference if you are going to go into a State court in Illinois or into the Federal court in Illinois for your class action lawsuit? Why would it make any difference? The substantive law is supposed to be the same Illinois law. Why do you want to go to Federal court?

Therein lies the reason for the bill. The people who are pushing this legislation understand that Federal courts are more conservative, less likely to let people have a lawsuit, to certify a class. When it comes to liability, Federal courts are more restrictive in liability than State courts.

Don't take my word for that. I will tell you about several cases. This one is Birchler v. Gehl. Federal law discourages Federal judges from providing remedies for violation of State law. The Seventh Circuit—where Illinois sits—stated:

> When we are faced with opposing plausible interpretations of State law, we generally choose the narrower interpretation which restricts liability, rather than the more expansive interpretation which creates substantially more liability.

That was a 1996 case. Go to Federal court and it is less likely your class will be certified and you will receive any damages.

Another case is Accord Werwinski v. Ford Motor Company, a 2002 case. A class action was brought by purchasers of Ford vehicles. The cars Ford sold had defective transmissions that cracked prematurely and inadequately lubricated gears that caused numerous car failures such as sudden acceleration or shifts into reverse. Plaintiffs who bought the cars presented evidence that Ford knew about this defect long before it was corrected but continued selling the cars. The case was originally filed in State court, but Ford Motor Company removed it to Federal court which dismissed the claims of the people who bought the Fords. In affirming the court's decision to dismiss the class action, the Third Circuit stated that when faced with two competing interpretations of State law, a Federal court ''should opt for the interpretation that restricts liability, rather than expands it. . . .''

Those are two cases in the Federal law that explain why we are here today. The idea is to move the cases out of State court in the hopes that the defendant corporation that has been sued will have the case dismissed or, if there are damages, they will be reduced. It is not a question of whether they are liable or guilty; it is a question of where they are going to get the best deal.

So the bill before us is an effort on behalf of the corporation defendants across America to push these cases into the Federal court. So for all the good reasons given for this class action reform, the real reason is that defendant corporations don't want to be held responsible for their misconduct. If held responsible, they want to pay less money. That is what it comes down to. That is what this is all about. They want to protect themselves and limit their liability.

Under current law, Federal diversity jurisdiction for a class action doesn't exist unless every member of the class is a citizen of a different State from every defendant, and every member of the class is seeking damages in excess of $75,000.

This bill would create a ''minimal diversity'' standard in two ways. In other words, you can get into Federal court. First, the amount-in-controversy requirement is met if the total amount of the damages at stake exceeds $5 million, notwithstanding the amount of damage suffered by each individual plaintiff.

Second, diversity can be achieved one of three ways: any member of a class of plaintiffs is a citizen of a State different from any defendant; two, any member of a class of plaintiffs is a foreign state or a citizen or a subject of a foreign state and any defendant is a citizen of a State; three, any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

This is what it gets down to. We are trying to find, through this bill, ways to move more cases into Federal court. So what does the Federal court system think of this idea?

Well, the man who is at the top of the Federal court system, Chief Justice William Rehnquist, in a rare, rare occurrence, sent a letter to Congress saying: Don't do this; don't push these cases into Federal court. We don't have the expertise, the judges, or the time to consider the class action cases coming out of State courts into Federal court. It is understandable.

The Federal court's first responsibility is in criminal cases, such as on the war on terrorism, and all the concerns we have about criminal procedure and criminal prosecution. That is their first responsibility.

Then they have their own civil docket, where you have individuals suing one another, and companies suing one another. Chief Justice Rehnquist says: Do me no favors, U.S. Senate; don't push all these class action cases into the Federal courts; we cannot handle them.

You would think, would you not, that some of the Members of the Senate, when coaxed by the Chief Justice of the Supreme Court not to push all these cases into Federal court, might stop. But they will not. The reason they are pushing this bill is they have their eye on the prize. The prize is that the corporate defendants found guilty and liable want to be protected from liability or want their liability reduced. They don't care what the Chief Justice has to say. They certainly don't care what the consumers have to say.

I have some examples of class action cases so you can understand for a minute why these cases should be of concern to everybody. These are not cases that involve large corporations alone; they involve a lot of ordinary citizens.

To give you an example, do you remember the Jack-in-the-Box restaurant scandal a few years back? In that scandal, it was found that Jack-in-the-Box restaurants were selling products which had been undercooked and, because of this, they were adulterated, dangerous, and there were children dying as a result. So a class action lawsuit was brought against the company that owned Jack-in-the-Box, Foodmaker, Inc., on behalf of some 500 victims—mainly children who had been to Jack-in-the-Box and got sick. Those 500 victims came together to hold Jack-in-the-Box, a Washington State corporation, liable. The court decided, yes, it should be held liable to the tune of $14 million for 500 plaintiffs.

Now, what this bill tries to do is to move that case out of the State court in Washington and into a Federal court so the amount of the verdict—if there was one—would be considerably less. That is good for the bottom line of that corporation. Is it fair to the families who went to the Jack-in-the-Box restaurants in States across America and thought they were going to get a wholesome product, safe for their children to eat, and then the parents watched their children die from E. coli, and not have their day in State court, where Jack-in-the-Box said they were submitting to the jurisdiction? I don't think so.

There was a class action lawsuit in California against Beech-Nut Corporation and its parent company, Nestle. They were guilty of selling something they called apple juice which, after being examined, turned out to be nothing more than sugar water. Parents were buying what they thought was nutritious apple juice for their infants, and the company was selling them fraudulently a product marked apple juice but was literally sugar water and a little coloration. Blame went back and forth between companies and suppliers, and the court ultimately decided these two companies, Beech-Nut and Nestle, were liable to the tune of $3.5 million to be reimbursed to consumers across America.

What companies such as Nestle are trying to do with this bill is reduce their liability and make it even more difficult for parents, each of which may have been out only $10 or $20, but each had given a product to their children that was misrepresented and fraudulently labeled. This is designed to help those powerful special interest groups and corporations at the expense of consumers such as those parents whose children were receiving this adulterated product.

Ford Motor Company had a class action to replace defective ignition systems in millions of cars that stalled often on the highways.

Mobil Corporation entered into a $14 million settlement agreement in a class action suit because a fire at a refinery in New Orleans resulted in sending volatile and hazardous compounds into the air and it caused great health damage to the people living around them.

Blue Cross and Blue Shield paid a $14.6 million settlement in a class action suit because they fraudulently billed individuals and failed to pass on savings to consumers. They ended up paying for it.

American Airlines breached a contract with frequent fliers when it retroactively changed rules for redeeming mileage awards.

The point is that each and every one of these lawsuits, for each plaintiff, may seem small. But compounded, they represent a large amount of liability for the corporation and they represent, in fact, a large number of people, each with a small recovery.

Frankly, I think there are things we can and should do to make class action suits better in this country. JOHN BREAUX of Louisiana, who has been a friend of business and has worked with them over the years, has a good substitute bill. Many who have called me from the business community say I urge you, for goodness' sake, to take a look at the Breaux substitute. It is a sensible bill. It will clean up some of the worst abuses in class action lawsuits. But it is not going to get into this game-playing that is suggested in this bill that allows defendant corporations to literally pick the Federal court they want to go into in the hopes they will have reduced liability or no liability. That is what it comes down to.

I think this debate before us is a lot more important than some lead to believe. Some suggest we are merely modifying and reforming tort law in America. It is much more. It is a question of whether the courthouse door is open for the average citizen. It is a question of whether those people, wronged by giant corporations, have an opportunity for a day in court. Those who back this bill want to close that courthouse door and make it difficult to open. They want these plaintiffs to end up in a Federal court where they are less likely to succeed, and if they do succeed, they will have less in compensation. That to me is unjust and that is the reason we should oppose this legislation.

I hope my colleagues will think long and hard before they sign on to this bill thinking it has no impact. It has a great impact on a lot of innocent people who deserve a day in court. Justice is at stake here. I urge my colleagues not to accept the easy argument that this is a simple reform. It goes to the heart of justice in this country, and it does not affect the real abuses in the system which I believe the Breaux bill does.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I want to make one thing crystal clear: I am not here to provide any unfair benefit to any corporation or any defendant. We want fairness and justice in the legal system. But in a major class action case, under the current state of the law, a plaintiff lawyer who represents perhaps potential plaintiffs all over America—let's say it is a national case—can virtually choose any county in America to file the lawsuit. He can choose some counties that have only one judge, and perhaps he knows precisely what that judge thinks about plaintiff lawsuits. Or maybe he thinks that county has a most favorable jury.

Let me state what the Constitution says about it. Sure, a corporation has to register to do business in a State, but the Constitution, in article III, section 2 of the courts' power says this:

> The judicial Power shall extend to all Cases, in Law and Equity . . . between Citizens of different States. . . .

And corporations are considered domiciled in that place of domicile. Fundamentally, what has happened over the years is we have eroded the constitutional protection of diversity by rulings that allow plaintiffs to sue not only the foreign corporation from another State, but to sue some entity also as a defendant in that State, and the courts have concluded you have to have total diversity before you can remove it to Federal court. That has been a problem, allowing the real payor, the real target to be subject to jurisdiction in virtually any county in the country.

I am not here for any injustice. I think we have a pattern of injustice going on in class action lawsuits. We can make them better. They would be better in a more objective tribunal of Federal court where judges have lifetime appointments. They are not so tied to the plaintiff lawyer who may go to church with them or have contributed to their campaign or the jurors might not be buddies with some of the folks, and you have a more objective court. That is just a fact. That is why the Founding Fathers said what they said.

In sports we talk about home cooking. I know the hometown the Presiding Officer is from in Tennessee. It is such a wonderful place. It would treat foreigners just as fairly as local people, but most communities tend to favor the local guy from somebody

from out of town. That is why we have it set up so Federal judges hear these cases and give a little more objectivity, although the judge is from the local community, at least from the State, and the jurors are from the region. That is what we are about.

This bill would also fix some other situations. It would eliminate the coupon settlements. It would eliminate class notices that cannot be understood. The letter goes out to all the class members in language so complex nobody can understand. It eliminates negative awards. We have actually had cases in which the so-called plaintiffs, not even knowing they are plaintiffs, get a bill for attorneys fees and costs. It would protect against high awards for one group because they are from one area of the country, and it would eliminate the payment of bounties for lawsuits and help knock down some of the blackmail that has been going on: Filing these huge lawsuits costing so much money and embarrassing a defendant so they feel forced to pay rather than litigate for years at a very high cost.

Mr. President, those are the remarks I wish to make at this time. I will have some more later. I see the distinguished Senator from South Carolina is here, Senator GRAHAM, who is an experienced litigator in his own right. I know he wants to speak on this subject.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I will be brief. I wish to speak about class actions and echo what my friend from Alabama said. I have tried very hard during my time being a legislator at the State and Federal level to make sure when legal reform is accomplished it is done so in a balanced way.

I am not a big fan—I think many of my colleagues know this—of the Federal Government taking over State legal systems. If you can do it at home, it is better to do it at home. I am not a big fan of deciding what is fair before the jury meets. We have honest differences on some of those issues.

Having said all that, there is a huge need for legal reform. I cannot tell you one system in America that really doesn't need to be reformed, the legal system included. My friend from Alabama is absolutely right. What we are trying to do today is correct an abuse. The Constitution, as he read to us, envisioned a dynamic where we would have two people from different States and we would not want to put one person in the other person's backyard. The Constitution has survived so long and so well, and it spoke to that and said: Let's take that into Federal court, a neutral side.

As the diversity clause of the Constitution has been interpreted, it requires complete diversity of all plaintiffs and all defendants. About 100 years later, maybe 200 years later—I don't know when class action lawsuits came into being—there is another way of suing people. It has its place in our society to bring a bunch of people affected by a similar event in different places to try as a unit rather than doing hundreds or thousands of individual cases. But this class action concept flies in the face of why the Constitution speaks about diversity.

My friend from Alabama is exactly right. It is being abused. We have a situation where you may have many plaintiffs throughout the country with a single defendant, and it allows people to go into an area that is equivalent to home cooking. It really destroys the purpose of the diversity provisions in the Constitution. What we are trying to do is correct that. There are no damage limitations. There are no limitations on anybody making a claim at all. If you buy the idea this is unfair, then you buy the idea that the Federal court is unfair; that you can't get a good hearing by a Federal judge. I think that is absolutely wrong.

Justice Rehnquist has a problem on his hands. He has a lot of cases. He has a lot of overworked judges, and I am going to get to that in a minute. I have a way to help Justice Rehnquist. There are a bunch of people who need to help him, and I will talk about that in a moment.

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

Mr. GRAHAM of South Carolina. Yes.

Mr. SESSIONS. Is the Senator aware that the letter I believe the Senator from Illinois was referring to is actually a letter from the Judicial Conference, not from the Chief Justice and, in fact, they have written another letter on March 26 of this year in which they actually warm up to this idea, and that the legislation, as we are now proceeding, answers a number of the questions they had originally?

Frankly, I know they don't want any more work. Nobody does, I guess. But I think many of these problems may have been solved.

Mr. GRAHAM of South Carolina. Mr. President, I am more informed than when I began this debate. That is good for me and good for the public. I did not know that. It makes a lot of sense. I find it a little odd that people would be opposed to the level that was being portrayed.

The idea that we should not do this in Federal court, I think we can accommodate it. I am all for having more Federal judges, and we will talk about that in just a moment, but the bottom line, and the reason I am voting for this particular legislation is I think it corrects an abuse. It gets us back to the constitutional model that everyone envisioned where if you have a diversity—and this is what class action is all about, bringing a lot of people together from disparate places and groups to try it at one time, in a place that is convenient to everybody and in a logical way, that one would want a fair forum. I think Senator FEINSTEIN's amendment was perfect. If there are two-thirds of the plaintiffs in any one State, it stays in State court. If there are half the people in one State, the judge can decide whether to remove it. If less than a third are in a particular State, then it goes to Federal court. To me, that is a perfect compromise. It makes a lot of sense.

I have no problem voting for this because we are correcting abuses. This is one way to reform our State legal system.

Let me give a quick statement about home cooking. I am sure, as the Presiding Officer said, in Tennessee people will treat you fairly. I am sure that is true in Alabama, and in South Carolina I am sure that is true. But there are places that one does need to know who they are up in front of. I can remember very well one of the first cases I had as a young lawyer getting out of law school. It involved a speeding ticket of a friend of mine. We were going to go to magistrate's court. I was going to be Perry Mason, and we were going to make this great injustice right.

The highway patrolman was getting ready to testify and he said: Hello. And then he said: How are you doing, uncle?

So the judge was the uncle of the police officer. That struck me as not being quite right, and I said: Your Honor, nothing personal, but do you mind if we have a jury trial?

He said: Well, Lord, no.

He called his wife out, the aunt of the police officer, and she called up some of the cousins and we had a jury trial.

The point is, that was not a good experience. Part of it is true and part of it is embellished, but I do not want anybody to go into a situation, businesspeople or otherwise, where they believe they are being dragged to a place that is unfair, and that is what is going on.

There is a group of plaintiffs attorneys out there and they have a right to use the law to their benefit, and they are using it very cleverly to their benefit but in a way that is unfair and is hurting our economy. I am glad and proud to support this reform measure because I believe it does more good than harm, and that is what we in the Senate are all up here to do.

I ask unanimous consent to go into morning business or speak as if I was in morning business.

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. GRAHAM of South Carolina. I am trying to change subjects. May I make an inquiry to the Presiding Officer? Can I speak about Mr. Pryor's nomination as a judge now? Is that appropriate?

The PRESIDING OFFICER. The Senator is free to speak on any subject he wishes.

Mr. GRAHAM of South Carolina. Mr. President, I am liking these rules.

NOMINATION OF WILLIAM PRYOR

When we are speaking about judges and whether or not we need judges, we

really do. There is a backlog in this country in certain courts, and one of the people being nominated by President Bush is William Pryor from Alabama. He has been nominated to a seat that has been declared a judicial emergency by the Judicial Conference of the United States.

All I can say about this case is that my friend from Alabama should be very proud of the nominee who has been put forward by President Bush. Bill Pryor is the attorney general of Alabama. That is a political job, and ofttimes the hardest thing for lawyers to do is to be a good lawyer when politics are involved because the thing I love most about the law is that it is a place to go to where polling does not matter and where the popular cause does not always win out.

Sometimes the unpopular cause has its day and would win in a forum it could never win otherwise. Our Founding Fathers were brilliant in creating a system where popularity meant a lot in the area that we live, but a courtroom is a place where it should be quiet, and there are good men and women who are listening to the facts of one's case and no matter whether someone is rich, poor, regardless of their background, it is a place they can go to be listened to, where maybe the crowd would not listen to them. That is what I love so much about the law. It is a place where people who could not get a fair shake in the popularity world of politics could get a fair shake where people would actually listen to their individual claim, where the unpopular may have its day.

When one is attorney general, they get elected by their people, but they are also required to enforce the law, and the concept of the law is to give people who are not popular their day in court. What I am looking for in a judicial nominee is someone who can be very passionate about life's issues and questions but can also be very fair. President Bush has done us a great favor to send Bill Pryor forward. I have met him. I have talked to him. He is the kind of young man I think most of us would want our child to grow up to be, the son we would love to have. He is academically qualified, rated by the American Bar Association as extremely qualified. People from all walks of life who know him like him. If my colleagues met him, they would find he is a charming young man. He seems to be somebody who is sure of who he is and what he believes.

A lot of this filibustering that is going on now has behind it the issue of abortion. Special interest politics is very strong in America, and it has its place. Groups need to ban together and speak out about things they have in common. I think our job as Senators, when it comes time to look at judges, is not to judge somebody on whether they are just pro-choice or pro-life. I am a pro-life person, and I agree with Bill Pryor. He is a very passionate man. He is a very honest man about his pro-life beliefs.

There will come a day when there will be a Democratic President and maybe I will be in the Senate and that Democratic President may send up a pro-choice person. I think my job is to see whether or not they can take their beliefs on that issue and put them aside when it comes time to be a judge.

All I can say about Bill Pryor is that when he was attorney general he had the obligation to review a statute that the State of Alabama passed—the Senator may correct me if I am wrong—about partial-birth abortion, something we just did today. This is an emotional area. People are very emotional about partial-birth abortion. We are evenly divided on early-stage abortions, abortions in the early stages of pregnancy. It is about 50/50. But when it gets to the seventh, eighth, and ninth month, about 75 to 80 percent of Americans say we should not be having abortions on unborn children at that stage in pregnancy unless the mother's life is at stake.

We had about 60 Senators today vote for that. For 8 years now, we have been voting on that concept. So it is an extremely popular concept. A lot of people buy into it who are not strictly pro-life. There are some pro-choice people today who voted to ban partial-birth abortion. So that is an issue that has a lot of emotion and a lot of momentum behind it.

He read the statute and he issued an opinion that had to make him the skunk of the garden party. He issued an opinion that said: I read the statute and I do not think it will meet constitutional muster.

If anyone has talked to him at all, they know he is a very serious, pro-life person. So I argue to my colleagues, this is exactly the kind of young man or woman they would be looking for to promote, to be able to take the politically popular event, put a good legal analysis on the event, and make a decision that is not going to sell well. That is exactly what I am looking for in somebody to be a judge, and the Senators from Alabama should be very proud they have sent a very noble person forward.

There are other examples of doing things that just are tough. My State of South Carolina had in our constitution for the longest time a ban on interracial marriage. One does not have to be a rocket scientist to figure out how that all came about. Those of us in the South who have grown up in the South have had tremendous struggles to be fair to African-American citizens. There is a legacy there that no one should be proud of, but things are getting better, thank God. When we look into the past—and it is in other parts of the country, but it is particularly true in the South—when that is put into a State constitution, one can only imagine the passion that went into placing something like that in the constitution.

Well, now, later on in life, all of us realize that is unfair, that should never happen, but who wants to be the person to step forward and get that argument started all over again because it really was never used?

Well, Bill Pryor, as attorney general, had the courage to tell everyone, whether they agreed with him or not, that there is no place in our constitution for this kind of prohibition, and he led a charge to get rid of it, something I think tells a lot about the young man.

The bottom line is, we are going to have a lot of time to talk about Bill Pryor because there is a movement to keep him from being on the Federal bench, a movement that is driven by politics, a movement that, if it continues, will change over 200 years of how the Senate and the executive branch work.

The worst thing we could do, in my opinion, is to take the political disagreements we have in the early part of the 21st century and change the constitutional process, probably forever, the consequence being that good young men and women such as Bill Pryor can't become judges because a few special interest groups don't like them.

If Bill Pryor can't be a Federal judge, given his academic background, the way he has lived his life, and the qualifications he brings to the job, then America is hurting because we have let politics get into the judicial process in an unhealthy way.

There will be many more days and many more hours to talk about this. I look forward to talking to anybody who will listen about why I believe so strongly that we should allow the nomination of this young man to be voted on on the Senate floor—he has come out of committee—and why he would make a fine Federal judge.

I, again, let the Senator from Alabama know I am sorry that he and his colleagues from Alabama have to go through this. I am sorry for Mr. Pryor's family, that they have to go through this. But there will be some fighting back going on. I urge my colleagues on the other side of the aisle, if you continue to do this, inevitably here is what will happen.

The next time there is a Democratic President there will be special interest pressure placed on our party over here on the Republican side to do exactly the same thing to some other nominee who may be equally qualified. The next thing you know, we are going to have a situation where good men and women will not put themselves through this. They are going to say it is not worth it.

One of the things that came up in the hearing about Bill Pryor was that he and his wife were going to take their daughters, I believe, to Disney World. Disney World had Gay Pride Day that day, and they made a decision not to go on that particular day.

It is uncomfortable for me to talk about that. I imagine it is very uncomfortable for Bill Pryor to have to talk about things like that. That has no

place in the evaluation process, because what is the purpose of that? ''Yes, we got you now. You must hate gay people because you and your wife decided not to go to Disney World on a particular day.''

His answer was: It was a family decision that my wife and myself made. But I promise you that if anybody comes before me as a judge, that I will honestly and fairly deal with him.

We are getting into areas of people's personal beliefs and family decisions that are unhealthy, that will drive good men and women away if that is what you are going to have to put up with to try to serve your country.

The bottom line is, we are going to have some fussing and fighting about what is right for Bill Pryor and others, but if we don't wake up we are going to ruin 200 years of history that has worked and we are going to drive good men and women away from wanting to serve their country as a judge and all of us lose then.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from South Carolina. I, too, have some very strong feelings about Bill Pryor. He is one of the finest nominees ever to be submitted to this body. I have no doubt about that. He needs an up-or-down vote. If he receives one, he will be confirmed.

We started out the debate tonight talking about the class action reform bill that is before us. We are seeking to consider the bill, but we are still debating the motion to proceed to the class action bill. I see the distinguished chairman of the Finance Committee is here, Senator GRASSLEY, to speak on that legislation. I will be speaking on it further tonight, also.

I am pleased to yield to him.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I would like to address my colleagues, as I did last night, on a bill of which I am the sponsor. It came out of the Senate Judiciary Committee on which I serve with very broad bipartisan support. It is called the class action lawsuit reform legislation. There has been a lot said about that legislation today that I would like to address.

I did listen with great interest, yesterday and today, to speeches made by my colleagues across the aisle, and I fear they greatly misrepresent the bill and the problems facing the class action system, so I will spend a few minutes setting the record straight.

First, my colleagues are trying to characterize this bill as special interest legislation and are suggesting that the President is pushing this as part of some rightwing agenda.

Given that I introduced this bill with my Democratic colleague from Wisconsin 6 years ago, I am surprised that my colleagues think that this President Bush's idea is bad and part of some rightwing special interest agenda because Senator KOHL, a Democrat from Wisconsin, would not be interested in participating in any effort of a rightwing conspiracy.

Anyway, Senator KOHL and I put this bill together because there is unfairness in the current class action system. Lawyers are getting rich while consumers and plaintiffs are getting worthless certificates and coupons. The current system has select State county courts deciding policies and interpreting laws for people that ought to be decided on the Federal level, in the Federal court, when they affect all 50 States. Some county judge in Illinois should not be making a decision that is going to affect consumer law of 49 other States.

That flips, as you know, the Federal system on its head, and it needs to be fixed. Our legislation fixes it. I think that wanting to fix this problem makes sense. It is not part of some rightwing agenda. It is a very key economic issue in our country.

This term ''special interest legislation'' is amusing in several other ways. The real special interest here is the plaintiffs bar; they are fighting this bill with everything they have. Crafty class action lawyers who are making out like bandits by bringing frivolous class action lawsuits and settling cases where they get all the money are the ones with the big special interest in this legislation because, if this bill passes, judges will have to scrutinize settlements to make sure that lawyers are not unfairly getting more money for their professional services than they ought to get.

Also, if this legislation passes, these very same lawyers will not be able to do what we call forum shopping—finding the best county judge someplace in the country who is sympathetic to their cause, before whom they can go and win for sure.

Of course, we have the Judicial Conference. In this bill, it would be required to figure out a way to make attorney's fees more reasonable and settlements more fair. So it looks like the biggest special interest with a dog in this fight is the plaintiffs bar.

I heard a lot of talk on the floor about how critical class actions are, and I would be the first to suggest that there is a place in our legal system for class action suits. They are a great, important tool to help injured people collectively recover for their injuries in cases where it might not be worthwhile for an individual to do that by himself or herself.

Somehow, my Democratic colleagues think this bill is the end of class action suits, and that is entirely wrong. Our bill leaves the important tool of class actions right where it is, in rule 23 of the Federal Rules of Procedure, and similar rules in most of the individual States. But the bill just allows more class actions, those that ought to be nationally viewed and obviously national in scope, to be heard in the Federal courts. In-state class actions will continue right along in State courts and large national class actions will continue right along in the Federal courts. Consumers will still have their day in court. That is very important. Our bill does not take away their ability to sue as an individual or to sue as a class.

Another claim I heard yesterday was that our bill allows defendants to remove a case to Federal court at any time, even on the eve of a trial. Senator BREAUX says he is worried about this problem and his alternative would fix it. The claim is just plain wrong. Our bill does not change the current removal rule. Under that rule, a defendant can remove a case within 30 days of receiving notice that a case is removable. That is a good rule and one we do not need to change. I do not appreciate people saying we are changing it when we are not changing it. Our bill will function under that rule so a defendant can move only a case within 30 days of receiving a complaint or an amended complaint. To say a defendant under our bill can willy-nilly remove a case at any time or even while a jury is deliberating a case is just not true. That is not the case under the current rule. It is not the case with this bill which does not change the current rule.

There are some other potential problems with the proposal by my friend Senator BREAUX that he talked about yesterday, but I will be happy to look at any amendments he has available. One thing he said sticks out in my mind. Senator BREAUX suggested if a class of plaintiffs is all from Louisiana and a class is injured by an out-of-state meatpacker—that was the example he used—they should be able to sue the meatpacker in the State court. He describes a pure diversity case which under the Constitution belongs in the Federal court. He is proposing to turn constitutional diversity jurisdiction on its very head. That does not sound like a very good idea to me. His approach would allow the same rampant forum shopping we currently see in the system. Senator BREAUX's alternative would not fix any of these abuses and, in fact, his alternative plan makes things much worse.

Another misstatement that concerned me is this claim that the bill before the Senate is not the same bill that came out of committee; that the mass action language materialized out of thin air; that we are trying to pull the wool over our colleagues' eyes. Not true, again.

First, the Class Action Fairness Act—the bill before the Senate, the bill I am sponsoring—included a provision dealing with mass actions when it was first introduced. If my colleagues look at the transcript of the committee markup, they would find, and I think they would probably remember this, that Chairman HATCH of the Judiciary Committee agreed to strip the mass action provision in committee on the condition that Senator SPECTER and Senator FEINSTEIN worked on compromise language to be included in the

bill when it got to the Senate floor. It is in the RECORD. Nobody is pulling any wool over anybody's eyes.

Chairman HATCH, Senator SPECTER, and I collaboratively reworked the mass action language, had Senator FEINSTEIN look it over and sign off on it. In fact, we made modifications she requested and then we ran it by all of the original cosponsors of the Class Action Fairness Act. So the claim this bill is somehow unexpected and that we are hiding the ball is an unfair, untrue statement.

I also heard opponents of the bill claim this bill will hurt consumers, will hurt civil rights litigants, will hurt tobacco plaintiffs, and will hurt gun victims. The reality is these class actions will continue to be brought in both Federal and State court after this bill becomes law. I don't understand what the big fear is about the Federal courts deciding some of these cases. In fact, I remind my colleagues many of these cases against tobacco plaintiffs and gun manufacturers and civil rights violations have for years been routinely filed in the Federal courts of America. The claim that somehow taking a big national class action out of State court will hurt these folks just does not hold water.

Another claim we heard yesterday was Chief Justice Rehnquist opposes this bill. For months we have been hearing this claim, that the Chief Justice opposes the bill, and for months we have asked for proof of the claim. There is no proof. Why continue to quote him? Maybe this claim comes from a letter the Judicial Conference sent to the last Congress criticizing certain aspects of the older version of the bill. Justice Rehnquist is the de facto chair of the Judicial Conference. They must be making a gigantic leap to claim he had problems with parts of that old bill. The fact of the matter is, currently the Judicial Conference, which Chief Justice Rehnquist chairs, supports many things about this bill and has publicly thanked the Congress for taking up this issue. It offered a few ideas last spring for determining which cases should stay in the State courts and which ones should go to the Federal courts, and our Feinstein compromise addressed some of those very ideas suggested by the Judicial Conference Chief Justice Rehnquist chairs.

We are going to hear a lot about class actions during this debate. Many of them will be important cases. Two things I ask my colleagues to remember regarding a good, necessary class action: First, it is very possible our bill will not have any effect whatever on the case. Second, the only effect our bill might have is just to make the case eligible for Federal court where the case was filed. In fact, many of the cases discussed yesterday sounded to me as if they would either be unaffected by the bill or could be proceeded to in Federal court.

I know there are Members of this body who will not ever support this bill. They will never go up against the plaintiffs bar. They will never go up against those personal injury lawyers. They would say the present system, even though it gives lawyers millions of dollars and little old consumers a coupon for some product they will never want to buy, or for some part of an airplane ticket for some place they are never going to go, somehow is OK. I hope they will check their facts before they make statements against this bill even though they may never vote for it. They ought to be intellectually correct as they make their points.

I have taken this opportunity to set the record straight. That ought to give us the number of votes it takes to get beyond a Democrat filibuster and move forward on a bill that has passed the House three times in 6 years and ought to pass the Senate and ought to go to the President. We ought to have fairness in our court system. When consumers need to be protected, we ought to have consumers getting the benefit of winning the case, not their lawyer.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank the distinguished chairman of the Finance Committee, a senior member of the Judiciary Committee, for his leadership on this legislation for quite a number of years. He is a champion of commonsense fairness in the legal system. That is all we are talking about.

I agree with Senator GRASSLEY. I cannot imagine why somebody thinks that Federal courts, which have been the champion of liberties for Americans for years and years, are somehow now not fit to handle complex interstate class action lawsuits. It just boggles the mind. It is not sound logic. That argument is driven by the objections being made by the plaintiff lawyers who are interested in these cases. They want to be able to file them where they choose. They want no erosion of their ability to do so, and they are calling in their friends on the other side of the aisle, and some of them are responding.

It was referred to earlier that these are big corporations that need to be dealt with and we ought to be able to sue them, presumably, in any county in America you choose to sue them in. I do not believe that is what was contemplated by our Founding Fathers.

Let me tell you about another major industry in this country, the industry that is driving the objections to this bill; the plaintiff trial lawyer industry. A recent Tillinghast—I believe is the name of it—study showed their income last year was $37 billion. The income of the ''Trial Lawyers, Inc.'' is larger than that of Microsoft, Coca-Cola, and other companies of that size. It is a huge industry. They contribute aggressively to political campaigns, and they promote their agenda aggressively. It is a free country, and they have every right to do so. But I would just suggest that those who would argue that the only wonderful people in this deal are the plaintiff lawsuits may not be so correct.

Another study has shown 2 percent of the gross domestic product of this country goes to litigation costs. That is double what the other countries in the industrialized world are paying for litigation costs, and it is an extraordinary figure. It is a figure that is paid for not by just big corporations, it is paid for by every single American when they take out insurance.

I wish it were not so. If someone makes an error in America today, and you sue them, and then you seek punitive damages to punish them, the unfortunate reality is, probably they have insurance or the case would not have even gone forward. The lawyer would not proceed, probably, if they did not have money to pay and did not have insurance. They have insurance, so the punitive damage verdict gets rendered, and the insurance company pays it. What does the insurance company do? They raise the rates on everybody who is paying premiums. Innocent people are paying the penalty imposed by the litigation.

So we really need to think about how this system is working. I want it to work better. This is a modest step. As I noted earlier, the Constitution contemplates that lawsuits between people from two different States would be in Federal court. That is the diversity clause in the Constitution which has been the way things work for a long time. But the way things are working now, if you can name one defendant to be an in-State defendant, then in many instances you can make the case stay in State court. This process is allows a plaintiff to essentially pick the forum they want to pick.

If you are suing McDonald's for a problem in their entire system that affects people all over America, then that case ought to be in Federal court, unless you are located in the State where McDonald's is headquartered. That is what I think clearly was contemplated by the Founders. But by using the device of naming in-State plaintiffs for suing a defendant in the state he does business in, plaintiff lawyers have been able to break the diversity and keep it in State court.

We want people who have been injured to be compensated, and we want to make sure they are adequately compensated and that their compensation is legitimate and fair, and that the attorneys get paid a legitimate fee, and not get a huge fee and little or no compensation to the victims. The ugly truth is, in a lot of these cases, the corporations really just want the lawsuit to go away and have to take the plaintiff lawyer's word for what the plaintiff class wants in a settlement agreement. If the plaintiffs' lawyer says his clients—many of whom, virtually all of whom, he may never have met—would accept a coupon for a Blockbuster video, as long as the defendant pays the plaintiff lawyer's fees totaling $10 million, the defendant may be willing to pay that to get rid of the lawsuit.

So the clients get paid little and the attorney gets paid a lot. There is a conflict of interest and a tension there for people who are sensitive to it. We are seeing that in these cases. That is what Senator GRASSLEY was talking about. We are seeing that as a pattern. This legislation will help deal with that problem, help bring more integrity to the system, allow the courts to monitor it more closely, and ensure more fairness for the victims of wrongdoing.

Don't misunderstand me, class actions can be an effective and legitimate tool. Some people are so frustrated by the abuses that they just want to attack all class actions. That is not what we are doing with this bill. Class actions are effective tools for a large number of people who may have been wronged by a single defendant or by defendants acting in concert. This can happen in a bank. Banks have been known to overcharge people. For example, a bank does not pay proper interest on an escrow account, and they owe each depositor $2 in interest. But there are 1 million depositors, and it has been going on for 5 years. The calculations get worked out. It is appropriate that those people get the interest they are entitled to and often a class action is the appropriate way to get this done. They ought to be paid fully what the law says you ought to be paid on the escrow account. The question is, however, are those plaintiffs always getting the money, and are these cases being handled in a way that is fair and just? How it works is what we are talking about. Certainly, 100,000 lawsuits—and they can be brought that way—each brought individually for a $2 misappropriation in an escrow account is not an efficient way for lawsuits to be settled. That is why we allow them all to be brought in one court. Then all plaintiffs are bound by the result as well as the defendant.

Too often, in recent years, however, these lawsuits have become a vehicle by which some trial lawyers are cashing in at the expense of the plaintiff class. The most troublesome aspect is that in many of these class actions the lawyer does not even know the clients, and in some cases does not even have a client. In these situations a lawyer first discovers a potential claim he or she thinks is a good one, and then runs around and finds a client to be the named client as a vehicle for the lawsuit. The end result is often not justice for the plaintiffs, and enrichment for the attorney. I know of a case in which the client—the named plaintiff—in the case died, and the lawsuit went on with no real party there for months before the attorney discovered his client had died. The attorneys were running the lawsuit, proceeding as they chose, with so little communication with their supposed client that they did not even know the person had died.

Not always. This is not always the case. A lot of these lawsuits are handled fairly and objectively, but we are seeing abuses there on a regular basis.

For some cases they have not even been able to show any damages, yet the lawyers have still received huge amounts of money. For example, the Toshiba case. In this case, a class action suit was filed in Texas. It complained of an entirely theoretical defect in the ''floppy disk controllers'' of Toshiba laptops. There were no allegations that the asserted defect had resulted in injury to any user, and not one customer had ever reported a problem attributable to the defect. Facing potential liability of $10 billion, Toshiba decided they needed to settle this claim. They were willing to pay. The class members received as their payment between $200 and $400 off any future purchases of Toshiba products. In other words, they got a settlement—a discount on future purchases of a Toshiba product—only if they bought products from the defendant again in the future. The two named plaintiffs, the ones who were working with the attorneys, presumably, got $25,000, and the plaintiffs' attorneys received $147 million. That is a lot of money. The fact that most class members only benefitted from the lawsuit if did business with the defendant in the future is not good. It seems to me the company was wanting the lawsuit to be over, they were willing to pay the lawyers whatever fee they asked for, and give some sort of token settlement to the class members, and get out of this thing, just to make the suit go away, even though no real damages had happened to the class members as of that date.

Lawyers are supposed to represent real clients who have been truly harmed. They are ethically bound to represent the clients' interests foremost, far above their own interests.

Class action lawsuits are designed to be available when lawyers realize that an entire class of people have been harmed in the same way that his client has been harmed. However, class actions should not become a feeding trough for attorneys. Class actions should not be a situation where good advocates figure out a way, by adding unrelated defendants, to file actions in friendly circuits or to use other methods to utterly maximize the benefit from their side of the litigation, while ignoring the fairness overall.

I respect lawyers. I believe in them. I have litigated, many cases. I believe lawyers should maximize the ability to protect their clients. In my comments about some of these lawyers that say they are protecting their client's interests but are really protecting their own pockets, I mean to be critical. Some of the lawyers, in fact, deserve no real criticism because they are simply choose to file the lawsuit in the forum most favorable to their client, and they are not supposed to look at whether that forum is fair to the defendant or not. You have to admire lawyers that are genuinely seeking to protect their client's best interests.

But we must, as a legislative body, monitor these cases. We must, as a legislative body, work to make sure that fairness is occurring in our courts.

Let me cite the Bank of Boston case filed in my State of Alabama. I was attorney general of Alabama during part of this time and I heard about some of these complaints. It is a good example of the class action system and how it is broken.

In this case a class action was filed by a Chicago attorney in the circuit court, the county court of Mobile, AL. A Chicago attorney looked all over the country, and decided to file the lawsuit in Mobile. The case alleged that the Bank of Boston, MA, did not promptly post interest to the escrow accounts of its members. The settlement that was agreed to limited the maximum recovery for each individual class member to $9 each. However the class action attorneys received over $8 million in legal fees, an amount approved by the State court. It is shocking that the legal fees the class action attorneys received, were debited from the plaintiff class' bank accounts, averaging 5.3 percent of the balance in each account. Many of the bank members did not even know they were members of the plaintiff class, did not even know that attorneys were representing them, and most of all, had no idea that money would come out of their accounts to pay those attorneys. Imagine not even knowing you were involved in a class action until you realize that money has been taken out of your bank account to pay their legal fees.

What is even worse is that for a number of the accounts, the debit to the account exceeded the credit they obtained from the settlement, meaning that after the settlement, more money came out of their account than went back in.

Dexter Kamowitz of Maine—a plaintiff in Maine that is being bound by a county judge in Alabama—was one of those plaintiffs. He did not initiate the class action against the Bank of Boston. However, he received a credit of $2.19 to his account after the settlement. At the same time, the class action attorney debited Mr. Kamowitz's account for $91.33 in legal fees, producing a net loss of $89.14. Such results, as might be expected, produced outrage from class members in other States.

Judge Frank Easterbrook, reviewing the case as a Federal judge on the Seventh Circuit Court of Appeals asked: What right does Alabama have to instruct financial institutions [headquartered] in Florida to debit the accounts of citizens in Maine and other States?

I do believe that we need to be careful about expanding Federal jurisdiction. We don't want to do this willy-nilly. But we also need to be careful to ensure that State courts cannot unfairly include class members from all over the country and bind them by the verdict they render.

Federal jurisdiction is currently allowed in cases where there is a de minimis interstate commerce nexus. We

know that from civil rights cases and plaintiffs cases and civil cases. If there is a Federal nexus, you can file it in certain cases in Federal court. I believe it is certainly appropriate, when we are dealing with a national corporation, dealing with clients in every State in America.

The bill offered by Senators GRASSLEY and KOHL would help eliminate some of these class action abuses. We have talked about class action problems for a very long time. I believe it is time to stop talking and get moving and pass a bill that will help class action plaintiffs be treated fairly in this entire process. I hope we can have a healthy debate and move this legislation that reforms class action forward.

I am also pleased to see, as I conclude these remarks, the distinguished chairman of the Senate Judiciary Committee, Senator ORRIN HATCH. He has wrestled with the class actions issues from the beginning. As a skilled lawyer himself, he understands the issues ably. He is able to discuss them in a very intelligent way. He understands the history of this entire proceeding. It is a pleasure for me to serve with him on the Judiciary Committee. I know at this time he would like to share some remarks.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am sorry to keep the body a little bit later, but I do think we need to make some points that really need to be made. We should be debating the Class Action Fairness Act of 2003 rather than squandering away the Senate's time debating a motion to proceed to the bill. That has become typical around here. Anything that can delay, anything that can make it miserable, anything that can make it difficult to pass legislation or even consider legislation, we are finding the other side is doing to us.

Yesterday, my colleague from Vermont, the ranking member of the Judiciary Committee, observed accurately that the days remaining in this session are numbered and that floor time is indeed precious. But what puzzles me is if there is such a premium for time, then why in the world are we faced with a Democrat filibuster on the motion to proceed to a bill? Usually, if you are going to filibuster, you filibuster the bill. So we all know what is going on here.

From what I know, based on the remarks yesterday from the ranking member and others, I understand that there is an objection to proceeding to S. 1751 because it has been characterized by some as ''special interest legislation.'' What ''special interest'' are we talking about? Are we talking about the ''special interest'' of millions of consumers throughout the country who are affected every day by class action abuses, or are we talking about the ''special interest'' of the everyday American worker who stands to lose because his or her employer can't increase wages or offer better health benefits because of the commercial uncertainties created by uncontrolled class action litigation, or are we talking about the ''special interest'' of the general American public that is losing faith in the American civil justice system because of the outrageous class action coupon settlements that only benefit the attorneys?

On this whole special interest point, I would like to direct your attention to a recent poll showing that the overwhelming majority of Americans believe that class action lawsuits benefit lawyers at the expense of their clients.

Look at this chart. ''Opinions on class action lawsuits; who benefits most from class action lawsuits.'' Lawyers for the plaintiffs, the public says—47 percent believe the lawyers benefit the most. They are right, especially in these frivolous suits we have been referring to. Buyers of products, 5 percent; companies being sued, 7 percent; 9 percent of the American people think the plaintiffs benefit the most from class action lawsuits—the ones they are bringing the suits for. Only 9 percent of the American public think the injured parties, the so-called victims, are the ones who benefit; 12 percent don't know; 20 percent say the lawyers for companies. So of the total opinion of the American people in a poll conducted, with an error margin of plus or minus 3.5 percentage points, a total 67 percent of the American people believe the lawyers are the ones who benefit from these class action suits; 67 percent believe class action lawsuits are a virtual bonanza for lawyers. The public is not too dumb; they are right.

In stark contrast, the poll shows only 9 percent of Americans believe the class action lawsuits benefit the victims or the plaintiffs themselves. When the public perception of class action lawsuits in our civil justice system is so negatively skewed, I find it difficult to say with a straight face this bill somehow advances ''a special interest.''

Perhaps the ''special interest'' we are really talking about is that belonging to one Hilda Bankston. Who is Hilda Bankston? This is Hilda in the photo. A beautiful woman, a decent person. I can tell you with certainty she is not a tobacco company. She is not a gun manufacturer or somebody who pollutes the environment. Hilda Bankston and her husband Mitch owned Bankston Drugstore in Fayette, MS, a small local pharmacy where Mitch worked as a pharmacist. The Bankstons were dragged into hundreds of lawsuits filed by class action attorneys in the State of Mississippi by virtue of owning the only drugstore in Jefferson County. Their small business became a prime target for forum-shopping class action attorneys in pharmaceutical cases.

The Bankstons' nightmare began in 1999 when Bankston Drugstore was named a defendant in the fen-phen diet drug class action lawsuit simply for filling a prescription written by a doctor—something they were supposed to do. Since then, plaintiffs lawyers have filed hundreds of pharmaceutical lawsuits against Bankston Drugstore. Every time a big drug maker was sued, even if the company was located in New York, or California, the plaintiffs' lawyers added Hilda Bankston and her husband as defendants—this hard-working owner of a single drugstore—just because she sold that drug from her neighborhood drugstore, which was her obligation to do.

Even though Mrs. Bankston no longer owns the drugstore, she continues to be named a defendant in these lawsuits today and is buried under a mountain of discovery requests because of the litigation. On a more personal level, Mrs. Bankston describes to us the toll this ordeal has taken on her both personally and professionally. She testified that, ''no small business should have to endure the nightmares I have experienced. . . . I have spent many sleepless nights wondering if my business would survive the tidal wave of lawsuits cresting over it.''

Mrs. Bankston also suffered the loss of her husband when, within three weeks of being named as a defendant in the fen-phen case, her husband died of a heart attack. It is stories like Mrs. Bankston's—an every-day citizen just trying to fulfill the American dream—that makes this bill so compelling. I think to characterize this bill as appeasing ''special interests'' is not only disingenuous but it ignores the extensive mountain of evidence showing otherwise. It is pure, unmitigated bunk and they know it.

I also understand the ranking member expressed surprise and concern over the lone difference between S. 274 as reported out of the committee and the rule XIV version of the bill, S. 1751, that we are now trying to move forward. To set the record straight, we are simply invoking Senate rule XIV, which is procedurally proper, to simply accommodate the revised mass actions provision the committee had removed from the bill during markup on the condition that it would be modified and replaced in the bill before floor consideration. That is what we agreed to do. That is all we did. The rule XIV version of the bill, which is numbered S. 1751, is the identical bill we voted favorably out of committee, except for the return of the revised mass actions provision the members on the Judiciary Committee knew or should have known would be restored into the bill before floor consideration.

Just on Friday, the majority leader asked unanimous consent to bring up S. 274, substituting with the text of what is now S. 1751. There was an objection from the other side of the aisle which forced the majority leader to bring up S. 1751 under rule XIV. To now hear we are somehow not acting in

good faith is, at best, a misunderstanding and at worst a deliberate attempt to mislead. You make the decision, you make the judgment on that. I know what I think.

By way of background, I want to explain what happened with this provision. When the original bill, S. 274, was marked up during committee last April, the committee members agreed to an amendment offered by Senators FEINSTEIN and SPECTER striking two provisions from the bill only with the understanding that the language would be modified and replaced before floor consideration. The first provision defined private State attorneys general actions as class actions within the meaning of the bill. These are statutory actions a private citizen can bring on behalf of the general public. My colleague from California, Senator FEINSTEIN, expressed specific concern over this provision because she believed it would interfere with an existing California statute permitting such representative actions. This provision has remained out of the bill.

It is the second provision that necessitated the rule XIV alternative. This second provision is what we commonly refer to now as the mass actions provision. A mass action is a civil action seeking to try the claims en masse of all plaintiffs and defendants in a single trial, but pursued without the procedural due process prerequisites for litigating such a matter as a class action. Mass actions are used heavily in certain States such as West Virginia and have been used to unfairly consolidate for trial diverse claims of as many as 8,000 plaintiffs from over 35 States against over 250 defendants. These actions are especially problematic because they proceed without satisfying any of the standard class action prerequisites, such as commonality and typicality of claims.

Although the original bill contained a provision that defined mass actions to qualify as class actions, my colleague Senator SPECTER raised a specific concern over the scope of the provision and moved it be stricken. Because the committee didn't have a meaningful opportunity to evaluate the Senator's concerns before markup, I, as chairman, agreed to strike this provision, but only with the understanding that we would modify the provision and replace it before the bill reached the floor, which is exactly what we did.

After the extensive post-markup negotiations and other discussions among my staff and the staff of Senators SPECTER, FEINSTEIN, KOHL, and GRASSLEY, we were able to reach consensus on a revised mass actions provision in early September.

Let me stress there are no surprises here on what we were going to do with the mass actions provision. Everybody who appeared that day in the Judiciary Committee markup was aware the bill sponsors would work with the sponsors of the amendment, Senators SPECTER and FEINSTEIN, to develop compromise language. Indeed, we called specific attention to this understanding in our committee report on S. 274, which has been widely and publicly available since last July.

As for using rule XIV, which is an effective rule in the Senate, a rule that can be legitimately used, and has been used in this case, we gave advance notice to our Democratic counterparts, Senators FEINSTEIN and KOHL, over a month ago that there was a possibility we would have to use this procedural device to ensure the operative text reflected the understanding when the bill was reported out of committee.

I also understand from my staff that these offices then informed, among others, the ranking member on our committee about the potential use of the rule when we introduced S. 1751 last week. Simply put, we were open and above board. We didn't have to be, but we were. We didn't have to be because the rule is the rule. We are entitled to use it. The Democrats have used it time after time, as have Republicans. There are no surprises here. I was the most shocked to find claims that something somehow or another was askew and not properly handled. Again, that is pure bunk, and everybody knows it. But I suppose when we have television in the Senate, we are going to see that type of argument made from time to time, even though it doesn't hold water and can't stand the light of day.

We provided advance notice and opportunity to review the text to our Democratic sponsors and the sponsors of the amendment so they could all verify that no other changes were made. That is good faith, in my view. We gave advance notice of our intended use of this device for a provision we made clear to everyone we intended to modify. So I am particularly baffled as to why the ranking member of our committee is calling this a mystery. This is no mystery. We did exactly what we said we would do when we marked up this bill in committee, and the bill was voted out with a partisan vote of 12 to 7, but, of course, the distinguished Senator from Vermont didn't vote for the bill in committee. That may be what is behind these types of comments. He never has been for this bill.

I suspect all is fair in love and war. This being war, they can say whatever they want on the floor of the Senate, even though it is totally wrong.

I believe rule XIV is the most appropriate way of handling the unique set of circumstances leading to the revision of the class action provisions, especially in light of the limited number of days remaining in this session. Given the number of pressing appropriations issues facing the Senate in the coming months, I think it makes little sense to waste valuable floor time debating as a separate amendment a provision that the key Republican and Democratic members have already worked out in good faith. It is even more absurd to be forced to debate a motion to proceed to this bill.

There is only one reason for that. That is to delay, delay, delay, and hopefully bollix up everything at the end of this session so nothing good gets done. I ask my colleagues to support the motion to proceed to S. 1751, the rule XIV version, the Class Action Fairness Act of 2003.

A Senator got on the floor and made a number of what I thought were outrageous comments as well pertaining to this being a special interest piece of legislation. This is a people's bill. The biggest losers under the current system are the people. Lawyers sue companies and negotiate settlements in which they get all the money. So consumers get ripped off twice: Their lawyers rip them off by taking the settlement money that is supposed to go to them, and then they have to pay for the payoff to the lawyers at higher prices.

How about tax cuts for the wealthy? That was an argument made yesterday. The class action bill would not protect the wealthy. It is the opponents of the bill who are trying to protect the wealthy—the wealthy trial lawyers in this case. Although not all class action lawyers are to be criticized, some actually are good lawyers who actually do what is right within the law in fair class actions that really are brought to help people. We are talking about the ones who need to be reformed. Some of these wealthy lawyers who need reform amass their riches by ripping off consumers in bad settlements. We have shown that throughout this debate.

Senators raised the issue of defective products, protecting gun manufacturers. The only successful class action against gun manufacturers, the only case in which any relief was awarded was in Federal court. That is what we are trying to do here, and they act as if the Federal courts are not capable of handling these cases? This doesn't stop legitimate class actions. It just says there is no longer going to be these phony forum-shopped cases in corrupt jurisdictions where there are corrupt judges and where jurors don't realize they are saddling all of America with these outrageous verdicts that pay off the attorneys but do very little for consumers or for the plaintiffs who are supposedly the real victims.

We heard the argument yesterday that Justice Rehnquist is opposed to this bill. Opponents keep saying Chief Justice Rehnquist opposes the bill, but whenever we ask for a citation to that opposition, we get absolutely nothing. They talk about the Judicial Conference letters, but those letters do not express opposition to the bill that was reported out of committee.

How about forum shopping? Defendants cannot forum shop. The plaintiff always gets to choose where to file the lawsuit. If they file in State court, they can often choose precisely the judge who will hear the case. All the defendant can do is remove to Federal

court where the case will be heard by a randomly selected judge, not a stacked, forum-shopped deal with a corrupt judge or maybe not even a corrupt judge, but one who just believes the plaintiffs should win no matter what the facts are. Again, I think that is corruption. It is nonsense to say defendants can forum shop or that forum shopping is the purpose of this bill. That is nonsense. Yet that is what one of our distinguished Senators was saying yesterday.

How about the scalpel argument? Any suggestion that this class action problem is concentrated in a handful of State courts is wrong. It is a problem in many places, and if you fix it in one place, the party moves to some other court in some other town.

How about Madison County, IL, by the way? We had the two Senators from Illinois speak: One just found Madison County to be the most circumspect county in the world. The other basically called the judges and the lawyers, many of whom never practiced law in Madison County, people who were abusing the system. He even implied some of them were corrupt.

The figures in Madison County do indicate a problem. Look at the dramatic increase in the number of class actions, virtually all of which were nationwide class actions over a short period, an increase from 2 in 1998 up to over 75 last year. Why are all these people, all these attorneys from other States flocking to the middle of nowhere to file lawsuits in which none of the claimants and none of the defendants are from the area? Do we really need to ask why? We know why. Because of corruption—corrupt judges, or should we say misconceived judges, to be nice about it, or judges who always find for the plaintiffs or steer everything in favor of the plaintiffs or always find class actions to exist when they really shouldn't. That is corruption.

We hear statistics indicating half of the class actions have been certified, but what the distinguished Senator from Illinois should have said was ''certified so far.''

What I find curious is that the distinguished Senator from Illinois didn't give the number of class actions that were denied. What happens in Madison County is that the case is filed, and when the lawyer decides he wants to put the squeeze on the defendant to settle, he starts moving toward getting a class certified, but sometimes it takes a while.

By the way, just moving to get a class certified in Madison County where it is almost granted at will is enough to scare any corporation because once that happens, that corporation is in real trouble, and so are that corporation's employees who are likely to lose their jobs, their income, their health care, and their pensions if the company gets thrown into bankruptcy.

We have heard allegations that under the class action bill, a defendant can remove a case at any time, even on the eve of trial. The current removal statute, 28 USC section 1446(b), provides that a case must be removed to Federal court ''within 30 days after the defendant's receipt . . . of a copy of the [complaint] in the action.''

This class action bill would not change that rule. The allegation that a class action bill would allow a case to be removed to Federal court at any time is ridiculous. But that is what we are getting used to from those who argue against this issue.

Now why do they do that? Why can they not see these simple, easy to see facts of life? Well, I hate to say it but I think it comes down to the fact these trial lawyers are the biggest hard money funders of many of these people who will vote against this bill. They get whatever they pay for. They can rely on their friends in the Congress to ignore what really should be ethical and good changes in the law and to stand in the way of those changes. That is what is happening here.

That is taking the sugar coat off, but that is what is happening. The fact is that we have people in this body who will vote for the trial lawyers no matter how wrong they may be.

Now, when I say trial lawyers, I am speaking about this select group of trial lawyers who really are giving the legal profession a bad name, who are in it for the money so they can support their own political candidates, live in high style, be influential in their respective communities, most all of which are outside of Madison County, by the way, and who can just about afford to do anything they want to do and are used to doing anything they want to do.

I happen to know a lot of good trial lawyers who are honest and decent, who really fight hard for their plaintiffs, for people who were wronged, for victims, and who are disgusted with these trial lawyers who are taking procedural advantage, monetary advantage, of forum shopping in this country. It is coming to the point where even the American Trial Lawyers Association is starting to get split on these types of issues because they realize that some of these people are giving trial lawyers who are good, honest, decent, hard-working trial lawyers a bad name, because they are getting lumped into the term ''trial lawyers'' all the time with these people who are bad actors, who are in it for the money.

Now, they paint a very big picture about how they are in it for the little consumers, but look at the coupon settlements. Look at the amount of money they are getting in fees. Look at the way the consumers have been ripped off. Look at the cost to society. Look at the companies that are in shambles and can no longer employ people. Look at the unfairness of forum shopping. Look at the unfairness of corruption.

I commend trial lawyers who are honest and decent and who bring decent class actions. They know they can win in Federal court just as much as they can win in State court, but they also know they cannot forum shop as well in Federal courts.

Now, one can still forum shop but not nearly like they can in a number of jurisdictions in this country in certain counties where, as I say, judges are owned lock, stock, and barrel by various political interests.

Well, I have kept us long enough, but this is an important bill and to filibuster even the motion to proceed to the bill, at this late date, leads only to one conclusion and that is unfairness, delay, win at any cost, fear to debate this bill straight up and down, fear to have votes straight up and down. The reason they are afraid is because they know if Senators were permitted to vote their consciences this bill would pass overwhelmingly, if it were not for the untold influence of big class action money.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. If the Senator will yield, based on his experience, it is indeed an unusual thing that we have a filibuster of a motion to proceed to a bill that has this kind of bipartisan support. Is it not?

Mr. HATCH. No question that we usually do not have a filibuster on a motion to proceed, because if any of my colleagues are going to filibuster, they should filibuster the bill. By filibustering the motion to proceed, they can delay a vote on that for 3 days. Then they can filibuster the bill and delay that for another 3 days, which eats up 6 days at a crucial time of the year when we are trying to do all of the appropriations bills, a prescription drug benefit and Medicare reform, asbestos reform, judges, a whole raft of other very important issues, including the Energy bill. So by eating up all this time it makes it difficult to pass any of these matters, and it makes one wonder what in the world is behind all of this.

Mr. SESSIONS. I think it is particularly telling, I say to the Senator, because this is not like the circumstances we had when the Democrats were in the majority and Senator DASCHLE called up the entire Agriculture bill, or the entire Energy bill, which were huge bills, under rule XIV, that had not been addressed in the committee. This bill had hearings in committee and we voted for it 12 to 7. There was only one basic change to the bill.

Mr. HATCH. It was a bipartisan supported bill. Democrats and Republicans support this bill. It will pass if Senators are permitted to vote their consciences and are permitted to vote up or down without the phony delays of a filibuster, especially a filibuster on the motion to proceed.

By the way, rule XIV is an effective rule of the Senate. Both sides have

used that in order to expedite consideration of matters and everybody understands that, and everybody can then debate.

Mr. SESSIONS. I just recall when Senator DASCHLE was the majority leader, he brought up huge legislation outside of the committee that could not have been passed in the committee. We were forced to debate that legislation on the floor under rule XIV. To say there is some procedural problem here, when Senator HATCH has managed the bill through the committee process, when we have debated the bill, and when we have voted on the bill in committee, it came out 12 to 7, is baffling. As far as rule XIV is concerned, everybody was given notice of what would happen, this is just pure obstructionism. This is just an excuse to delay, delay, obstruct, obstruct.

We are coming to the end of this legislative session. We have a lot of things to do. One of the things we absolutely ought to do is to move this bipartisan bill to fix class action litigation in America. It is the right thing to do. It has the overwhelming majority support of the Members of this body. Yes, it has the opposition of a small but powerful little group of trial lawyers who put a lot of money in the political campaigns, but it is the right thing to do, and we ought to move forward with it.

I think there is every reason for those who believe in improving the legal system to be upset at the obstructionism that we are facing by a majority leader who has approved this. I think if we had some leadership on the other side by Senator DASCHLE, we could move this bill. To lay back is to allow the trial lawyers to control this matter.

There are a lot of reasons why we ought not have a single state judge in Madison County, as the Senator said, trying cases that have impact all over America. That is not good. A Federal court, with a Federal judge, with a quality group of law clerks, a fine staff, and by far a smaller caseload than most State judges have—I would say on the average, in my experience, that the State judges would carry maybe 10 times as many cases on their docket as a Federal judge has on the Federal court docket. The Federal judges give more attention to the cases and they have more ability to focus on a case. There is the ability to issue subpoenas nationwide and make things happen in ways that are more difficult in State court. So a major class action involving millions of dollars and thousands of plaintiffs from different states ought to be tried in Federal court when there is a majority of the people involved who are out of State.

This reform fixes some of the problems associated with class actions. It sets up legislation that gives special scrutiny for those abused coupon-related settlements, where the victims get coupons and lawyers get big fees.

It guarantees that notifications to class Members to be in plain English. It scrutinizes against a negative awards, where plaintiffs who may not have even known they were plaintiffs end up having to pay attorney's fees in a case they never authorized to go forward. It provides protection against unwarranted higher awards for certain class members, just because they are in a certain area of the country. And there are prohibitions on the payment of bounties.

It makes it more difficult, when you are facing a fair judge who you believe will rule on the law and give you a fair shake, not in a county that has a reputation of just hammering defendants in favor of the attorneys who file the cases. That allows defendants to litigate with integrity, and not feel they must just pay up, almost in the form of blackmail, to get the matter away so they can go on about their business. This is not a fair way to do business.

This bill has a lot of good things in it that will make this area of the law, class actions, better, more fair, and more objective.

I thank the chair and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO BRECK WALL

Mr. REID. Mr. President, I rise today to express my congratulations and best wishes to my longtime friend and fellow Nevadan, Mr. Breck Wall.

Born in Jacksonville, FL in 1934, Mr. Wall has lived an interesting and exciting life. As an entertainer, he has known many talented and famous people in the world of show business. He has also crossed paths with well-known people in other walks of life. In the early 60s, he performed in the Dallas nightclub owned by Jack Ruby, the man who shot Lee Harvey Oswald.

The Las Vegas Sun has called Breck ''one of the most durable performers in Las Vegas,'' and that is no exaggeration. This year he is celebrating the 45th anniversary of a show called ''Bottoms Up,'' which he created in 1959 at the old Adolphus Hotel in Dallas.

Breck based this show upon slapstick vaudeville comedy, which explains its long-running appeal. The show is very Las Vegas, therefore, is enjoyed all over America.

After producing ''Bottoms Up'' in Dallas and Houston for several years, Breck brought the show to Las Vegas in 1964 . . . and he has never left.

The show is now a Las Vegas institution. It has played at many of the finest hotels in town, including Ceasar's Palace and the old International Hotel where Elvis used to perform—now the Las Vegas Hilton. It is currently enjoying a run of several years at the Flamingo.

Breck has done more than 15,000 performances of this show, but he never gets tired of it . . . and neither do the audiences. The secrets of his longevity are a strong work ethic, and the kind of good nature that brings a smile and laughter to everyone who meets him.

I first met Breck in 1977 when I was chairman of the Nevada Gaming Commission. We were introduced by some mutual friends at an event, and we exchanged a few jokes. I could immediately sense Breck's warmth and his sharp wit.

We really became good friends a few years later, when I ran for Congress and Breck helped me with my campaign. Breck has produced shows for my campaign that have been exciting, entertaining and fun.

Helping other is typical of Breck Wall. Despite the demands of his travels and his work, he always finds time to contribute something to his community.

Most recently, he participated in the Golden Rainbow's 17th annual ''Ribbon of Life'' AIDS benefit at the Paris hotel in Las Vegas. This summer show helped raise more than a quarter of a million dollars for an organization dedicated to helping the men, women, and children living with HIV and AIDS.

I ask all my colleagues to join me in sending our good wishes to Mr. Breck Wall as he celebrates the 45th anniversary of ''Bottoms Up,'' a Las Vegas entertainment tradition.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a horrific crime that occurred in West Hollywood, CA. After hugging a male friend outside of his home in September 2002, actor Treve Brody was beaten with a baseball bat. Mr. Brody was in a coma, and spent 10 weeks in the hospital after being struck in the back of his head. He suffered memory loss and impaired vision that prevents him from reading or driving.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement

Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

MISCARRIAGE OF JUSTICE IN MEXICO

Mr. LEAHY. Mr. President, as one Member of Congress who believes that we have a strong interest in broadcasting and strengthening our relations with Mexico, I was appalled to read a recent Washington Post article entitled ''Three Americans Jailed in Bizarre Mexican Land Dispute.''

Mexico is a country of 100 million people. We share a border. We share a wide range of cultural, economic, political, and other interests. Yet our history has been a troubled one, and the election of Vicente Fox offered an historic opportunity to begin to build a new relationship based on trust, mutual understanding, and shared goals.

Regrettably, President Bush, who shortly after his inauguration spoke convincingly of his intention to give a high priority to U.S.-Mexican relations, has failed to turn those words into action. Little has been accomplished. I am afraid that once again, the hopes and aspirations of both Mexicans and Americans will be for naught.

The President needs to recognize that as important as the Middle East and the Persian Gulf are to U.S. and global security, we have vital interests right here in our own hemisphere. I remember how during the 1980s we spent billions of dollars to wage proxy wars in Central America. Yet when those wars were over, we turned our back. Today, with the exception of our counter-drug programs in the Andes, which as we have seen recently in Bolivia are of dubious merit, we spend a pittance to support economic and political development in these countries the majority of whose people remain impoverished and without meaningful political or legal rights. Our policy is short sighted and it will cost us in the long run.

Of all countries in the hemisphere, none is more important to U.S. interests than Mexico. it would be difficult to think of any issue—immigration, tourism, trade, infectious disease, water security, environmental pollution, democracy and the rule of law, organized crime—that does not cry out for broader cooperation. I hope President Bush, and his capable new Assistant Secretary of State for Western Hemisphere Affairs, Roger Noriega, will give renewed attention to these issues during the remaining years of President Fox's term.

I mention this because earlier this year, I sponsored, with Senator REID, Senator DASCHLE and others, an amendment which authorized $100 million to be spent in Mexico to promote micro credit programs, small business entrepreneurship, private property ownership, and support for small farmers who have been affected by adverse economic conditions. I felt it was important to make a strong statement, through legislation, that we need to devote significant resources to help address these problems. Our amendment was adopted, and it is my hope that we can include a portion of those funds for Mexico in the fiscal year 2004 Foreign Operations Act.

But my support for providing those funds will depend on whether the case which is the subject of the Washington Post article I mentioned is satisfactorily resolved. The three Americans who have been arrested are the victims of an absurd miscarriage of justice. Fortunately, according to the article, the American Embassy in Mexico is following the case closely, and recognizes that these three people have done nothing wrong. To the contrary, they have generously cared for an ailing, elderly American, Russell Ames, who lost his wife Jean Ames three years ago. Jean Ames was a wonderful woman, and her death was a great blow to Russell Ames. Ames, already in his late eighties at the time of his wife's death, would never have been able to continue to live in his home in a small village near Oaxaca, Mexico, without the around-the-clock care of Mary Ellen Sanger and the other Americans who lived on the property.

My office has conveyed my concern about the unlawful arrests and detentions of these three Americans to the Mexican Embassy in Washington. These people should be immediately released and the cases against them dismissed. And, just as important, President Fox, who has repeatedly said that his presidency stands for the rule of law, should determine whether the Mexican official who is responsible for this travesty should be removed from his position.

I ask unanimous consent to print the aforementioned article in the RECORD.

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

[From the Washington Post, Oct. 18, 2003]

THREE AMERICANS JAILED IN BIZARRE MEXICAN LAND DISPUTE

CARETAKERS OF MAN, 91, HELD IN STANDOFF INVOLVING A MEMBER OF PRESIDENT FOX'S CABINET

(By Kevin Sullivan)

OAXACA, Mexico—Three U.S. citizens, including a man dying of cancer, have been jailed here and face up to 14 years in prison in a land dispute involving a member of President Vicente Fox's cabinet.

The Americans, two men and a woman, are long-term friends and caretakers for a former U.S. college professor, Russell Ames, 91, who has lived in Oaxaca since 1959. Ames and his late wife sold their land to the University of the Americas in Mexico City in 1988 in exchange for lifetime rights to remain on the property. But now the university, whose president, Alejandro Gertz Manero, is on leave serving as Fox's minister of public security, is trying to force Ames off the land.

A municipal judge and a squad of state police officers arrived at Ames's property on Friday in an attempt to evict him. Neighbors said about 60 people who live in a nearby village, including the mayor and police chief, came to support Ames, blocking his removal.

Ames said that arresting his three friends on charges of trying to take over the land for themselves was a ''ridiculous'' attempt to intimidate him into leaving.

''These three Americans are innocent bystanders and the embassy feels what has happened to them is an outrage,'' said Laura Clerici, consul general at the U.S. Embassy in Mexico City, which has sent officials to monitor the case.

U.S. Ambassador Tony Garza has complained about the case to Gertz, who is also a university trustee. Gertz said the arrests were legal and that he has not improperly used his influence in the case.

The case is one of a number of land disputes involving Americans who live or own property in Mexico. Earlier this year an American couple was forced off land they owned in the southern state of Chiapas by local residents wielding machetes. Three years ago scores of U.S. citizens lost millions of dollars in investments when they were evicted from oceanfront homes they bought in Ensenada in the western state of Baja, California. U.S. officials at the time blamed the losses on a lack of consistency and transparency in Mexican property laws. At least half a dozen more major disputes are pending over property owned by Americans along the Caribbean coast.

''We are being held hostage,'' Mary Ellen Sanger, one of the three jailed Americans, said in an interview in a state prison here. Sanger, 45, a native of Schenectady, N.Y., said she had been assigned latrine-cleaning duty in the prison and slept on a concrete floor with 44 other women in a communal cell.

Sanger has been a caretaker, feeding, dressing and walking with Ames for almost three years. Joseph Simpson, widower who is about 72 and suffering from late-stage terminal throat cancer, has been a caretaker on the property for more than a decade. He is now under police guard at a Oaxaca hospital, where U.S. Embassy officials who visited him said he was in grave condition. John Barbato, 58, from Nevada City, Calif., a poet and artist who has known Ames since 1985, rents a small house on the property and is in prison with Sanger.

Despite their longstanding ties to Ames and the property, the three were arrested on Oct. 6 and charged with violently taking possession of the land on May 1. U.S. officials said the arrest warrant claimed the three Americans moved onto the property that day in a conspiracy to take the land for themselves, charges that carry a penalty of three to 14 years in prison.

''That's the stupidest thing I've ever heard,'' said Ames, who was being fed dinner and ice cream by Sanger when a squad of police arrived at his house to make the arrests. ''They took care of me for several years. I felt enormously lucky to be taken care of by them. Most people my age don't have anybody, or are just miserable.''

The underlying issue behind the arrests is the dispute over the land where Ames lives, a parcel worth an estimated $250,000 in one of Mexico's most popular tourist destinations.

Ames said the sale of his land to the university was part of a charitable donation. Records show that the property was in the name of his wife, Jean Ames, who transferred ownership to the university for $60,000, half of its assessed value at the time. Ames said he and his wife never received that money; the listed purchase price was simply a legal formality for tax purposes. In return, Ames said the university agreed to allow him and his wife to live on the land for the rest of their lives, and to pay them up to $4,000 a year.

Gertz, who became president of the university in 1995, said in an interview that the land deal was made with Jean Ames only. The notarized sale agreement specifies that only she would have lifetime rights to the land. But numerous letters contained in Ames' files show that his wife intended that both of them be allowed to live out their lives there.

''If he's saying that I have no rights here at all, that's ridiculous,'' Ames said. ''We were dealing with splendid people at the university back then. And they made a provision for me that I could live here for the rest of my life.''

Ames and his wife lived together on the land until Jean Ames died in 2000 at age 92. Then, in May of this year, Ames was served with an eviction notice by the university, giving him nine days to vacate the property and ordering him to pay nearly $40,000 in back rent—$1,000 a month since the death of his wife. Ames said he was stunned and angry. He hired a lawyer and filed a civil suit against the university, saying he no longer wanted it to have his land. That case is pending.

Gertz said that following the death of Jean Ames, Russell Ames should have sent the university a letter asking permission to remain on the property. However, despite the eviction notice, Gertz said Ames would ''of course'' be allowed to stay on the property until he dies if he seeks university permission now.

Gertz said Sanger, Simpson and Barbato never asked the university's permission to live on the land, so they were trespassing and deserved to be arrested. But Ames said he believes the three Americans were jailed on trumped-up charges to intimidate him into leaving his property and dropping his civil suit.

''I hope this is a big bluff, but I'm scared,'' Barbato said.

MAKING AMERICA STRONGER

Mr. LIEBERMAN. Mr. President, in September I issued a major report on restoring U.S. manufacturing. I commend this report to my colleagues. It can be found at www.Lieberman.Senate.gov.

The collapse of our manufacturing sector is heart breaking. We have lost 14,00 manufacturing jobs in the last 3 months and 2.8 million since July of 2000. And this is during what is supposed to be an economic recovery. In terms of jobs, the U.S. manufacturing sector has slipped every month for the last 38 months. In my own State of Connecticut we have lost more than 14 out of every 100 manufacturing jobs in the past 3 years, and it is cold comfort that we are not the worst.

Our manufacturing sector is hemorrhaging jobs at a dismaying rate. And not just jobs but industries. Economists at the Federal Reserve Bank of New York recently published an analysis of the current ''jobless recovery.'' Their conclusion is stark:

''Our inquiry into the reasons for the current labor market slump suggests that structural change has played an important role. Industries that lost jobs during the recession have continued to shrink during the recovery, and permanent job losses have eclipsed temporary layoffs.''—''Has Structural Change Contributed to a Jobless Recovery?'' (Erica L. Groshen and Simon Potter)

As the report highlights, there are many reasons behind these closed plants, these lost jobs, these devastated families. Fierce competition from overseas competitors—some of them playing on fields tilted distinctly in their favor—has played a major role. So did the severe recessions we are only now climbing out of. The collapse of the telecom industry had severe consequences for manufacturers that served the electronics and information technology industries. This report discusses a number of challenges and problems facing American industry.

But the most imperative question remains, ''What does the Bush administration intend to do about it?'' Its recent acknowledgment of foreign country manipulation of their currencies is welcome, but the Administration is not utilizing its current authority to remedy this abuse; this is the key point of my legislation, S. 1592, the Fair Currency Enforcement Act of 2003, discussed in depth in this report. Creating an Assistant Secretary for Manufacturing and Office of Industry Analysis simply rearranges existing boxes, and submerges them deep in the Commerce Department. This report recommends making the Commerce and Defense Secretaries themselves responsible. Their plan remains lacking in content and vision. It is all about gestures, not actions.

Forgive me, but the time has come to be blunt. Every sector of the American economy plays a role in the strength and security of our nation, but the role played by manufacturing is unique, and uniquely important. To do nothing, to roll over and play dead, is not the American way. Sadly, it seems to be the approach favored by the current Administration.

The problems we face are complex, the response needs to be thorough, broad-based, and coordinated. That is what this report is really about. Here we present the broadest, most comprehensive and insightful plan to revitalize U.S. manufacturing yet proposed.

We need to understand that trade is not the problem, it is part of the solution. And we need to deal with the obstacles raised in some countries to a free and fair trade in American goods. We need to invest in the future of manufacturing, in the research and development of new, path-breaking manufacturing processes. We need to invest in our workforce, in the training and education needed to excel and prosper in a world labor market. We need to reinvigorate partnerships between state and Federal Government, and between government and industry.

Indeed, this is not a task for government alone. The proposals outlined in this report call upon industry and academia, upon labor and management, upon the private and public sectors to contribute to the solutions we need.

It will require all of us, pulling together.

I want to thank Michael Baum, along with William Bonvillian and Chuck Ludlam of my staff, for their efforts in preparing what I believe will be a useful and timely report.

AUDITOR INDEPENDENCE AND TAX SHELTERS ACT

Mr. BAUCUS. Mr. President, I rise today in support of Senator LEVIN's bill, S. 1767, the Auditor Independence and Tax Shelters Act. I am pleased to be an original cosponsor. The Auditor Independence and Tax Shelters Act compliments the legislation that I introduced last year, the Tax Shelter Transparency Act.

Just this year, the Tax Shelter Transparency Act has been passed by the Senate Finance Committee four times—in the Energy bill, the CARE Act, the Jobs and Growth bill, and most recently as part of the Jumpstart Our Business Strength Act. The same legislation has passed the full Senate three times—in the Energy bill, the CARE Act, and in the Jobs and Growth bill.

Senator LEVIN's legislation shuts down tax shelter promotion from the audit and financial statement side of the equation. Specifically, S. 1767 would strengthen auditor independence by prohibiting them from providing tax shelter services to their audit clients. The legislation would also reduce potential auditor conflicts of interest by codifying four auditor independence principles to guide the audit committees of the Board of Directors of a publicly traded company, when that committee is required by the Sarbanes-Oxley Act to decide whether the company may provide certain non-audit services to the corporation.

The proliferation of abusive tax shelters has been referred to as our nation's most significant tax compliance problem. The development, selling, and buying of tax shelters has also been characterized as a ''race to the bottom.'' The New York State Bar Association said ''the constant promotion of these frequently artificial transactions breeds significant disrespect for the tax system, encouraging responsible corporate taxpayers to expect this type of activity to be the norm, and to follow the lead of other taxpayers who have engaged in tax advantaged transactions.''

Simply put, this is unacceptable. It has been 2 years since the collapse of Enron. The Sarbanes-Oxley Act took significant steps to restore confidence in corporate America. But, when it comes to ensuring auditor independence, Sarbanes-Oxley did not go far enough. The passage of the Auditor Independence and Tax Shelters Act will help ensure that last year's corporate reform efforts have their intended effect of restoring real independence to the ''independent audit.''

This morning, the Senate Finance Committee held a hearing on tax shelters. We learned that the tax shelter problem is widespread. Tax shelter schemes are not just an Enron and Arthur Andersen phenomenon. They are

developed and promoted by accounting firms, law firms, and investment banks. Many corporations and individuals purchase tax shelters.

To give you an idea of the burden they are placing on these honest taxpayers—during the 1990s alone—actions taken to shut down the tax shelters that we knew about saved the American taxpayer $80 billion. More recently, a study commissioned by the IRS estimates the current cost to honest taxpayers ranges from $14 billion to $18 billion a year. That is up to $180 billion over ten years. I am simply unwilling to tell the schoolteacher in Montana that he needs to pony up a little more because Congress is unwilling to shut down a loophole that is costing tens of billions every year.

However, since the collapse of Enron, the Congress has failed to enact a single piece of tax legislation to curb tax shelter abuses. The time has come to shut down these abusive practices. I urge all of my congressional colleagues in the House and the Senate—to support the Auditor Independence and Tax Shelters Act and the Tax Shelter Transparency Act and send both of these pieces of tax shelter legislation to the President for his signature by the end of the year.

TRIBUTE TO LUIS FERRÉ

Mr. CORZINE. Mr. President, today, an icon of Puerto Rico has passed away. I want to express my sadness at the passing of Luis Ferré, former Governor of Puerto Rico, only 4 months shy of his 100th birthday.

Luis Ferré was a great leader, businessman, and a faithful believer in social justice. Born February 17, 1904, in the city of Ponce, Puerto Rico, Ferré was a member of the Assembly that produced Puerto Rico's 1952 Constitution. In 1969, he became the Island's third Governor under its new constitution. He established the Luis A. Ferré Foundation to support the development of the arts and the culture, and in 1991, received the Medal of Liberty from President George H.W. Bush.

I extend my condolences to the Ferré family and to all Puerto Ricans, on the Island and here on the mainland.

IN MEMORY OF GREG PALLAS

Mr. BREAUX. Mr. President, I rise today to pay tribute to an extraordinary man, a former senior staff member to this body and a good friend, Greg Pallas. Greg lost a long and courageous battle with a rare form of cancer, and passed away on October 17, 2003.

Greg was born on June 27, 1952, in Los Angeles. He graduated from the New York Military Academy and United States Naval Academy Class of 1973. After graduation, Greg served as a Naval Officer aboard the USS *Kitty Hawk*, U.S. Pacific Fleet, and then went to work at the Pentagon.

Following his distinguished career in the military, Greg continued to serve his country as an outstanding staff member of the United States Senate. For 18 years, Greg was Legislative Director and later Chief of Staff to our friend and colleague, Senator J. James Exon of Nebraska where Greg was instrumental in managing the work of the Senate Budget Committee.

When Senator Exon retired in 1996, Greg left the Senate and became the Director of Congressional Liaison and Business Development at ITT Industries, Defense in McLean, VA.

Greg was a member of Emanuel Lutheran Church, the American Legion Post 199, the Military Order of the Carabao, the U.S. Navy Public Affairs Alumni Association and the Navy League.

Greg is survived by his loving and devoted wife, Diane McRee, one of my own dear friends and herself a longtime staff member to the United States Congress, and his cousin, Connie Traver.

I admired Greg. He cared deeply about the Senate and about his country. I know the entire extended family of the United States Senate joins me in sorrow at the loss of our friend.

We were privileged to know and to work with him, and we offer our condolences and prayers to Diane and to all of Greg's friends.

ADDITIONAL STATEMENTS

TRIBUTE TO THE FERN CREEK QUILT LOVERS

● Mr. BUNNING. Mr. President, I pay tribute to the Fern Creek Quilt Lovers for the charity and goodwill they have demonstrated to ailing children in Kentucky.

The Fern Creek Quilt Lovers, which is a group of approximately a dozen members, has been meeting for several years at the home of one of the members for ''quilt work day.'' The group sews in the morning, breaks for lunch, and then returns to the quilting work in the afternoon. This work has rendered over 500 quilts in the past several years, each of which has been donated to Kosair Children's Hospital.

Kosair Children's Hospital, a hospital in Louisville, KY, is home to many critically ill children. The most severely ill of these children in Kosair Children's Hospital each receive a quilt as a gift of love and compassion. Often, as the Fern Creek Quilt Lovers hope, these quilts provide more than just warmth and comfort to these children, but hope as well.

I am grateful to the Senate to allow me to honor and recognize the Fern Creek Quilt Lovers today. I appreciate their loyalty to Kentucky and their community. They have been a shining example of leadership, hard work, and compassion. They are an inspiration to all throughout the Commonwealth. Congratulations, Fern Creek Quilt Lovers. You are Kentucky at its finest.●

150TH ANNIVERSARY OF THE VERMONT STANDARD

● Mr. JEFFORDS. Mr. President, I congratulate The Vermont Standard on its sesquicentennial anniversary. The Vermont Standard is the hometown weekly newspaper of Woodstock, VT, which sits alongside the Ottauquechee River in Windsor County.

Every Thursday, residents of Windsor County can catch up on local sports scores, learn about their students' recent achievements, and read columns written by their neighbors about wildlife, the outdoors, and other community goings-on. Advertisements for area stores and businesses and photographs of neighbors at area events line the pages of the paper's sections. News from each town in the ''Town News'' section is written by people who live in each town and who understand each town. Everybody receives The Vermont Standard and everybody reads it.

The Vermont Standard traces its origins back to April 29, 1853, when owner Louis Pratt, Jr. and editor Dr. Thomas Powers began publishing The Vermont Temperance Standard with the goal of stopping the consumption of alcohol and spreading the ideals of temperance. In January 1857, Wilber P. Davis and Luther O. Greene bought the newspaper, removed the word ''temperance'' from the title, and rededicated its influence through its circulation to the abolition of American slavery. Following Greene's death, the newspaper enjoyed a long line of respected owners, including W. H. Brown, W. H. Moore, Robert H. Matteson, Benton Dryden, Edward J. Bennett, and its current publisher, Phillip Cabot Camp.

As The Vermont Standard and its community celebrate this milestone, a group of local historians have been assembled as advisors during its anniversary. I congratulate the members of this executive board, including Publisher Phillip Camp, General Manager Jon Estey, Editor Kevin Forrest, Howard Coffin, David Donath, Peter Jennison, Corwin Sharp, Kathy Wendling, and Don Wickman.●

MESSAGE FROM THE HOUSE

At 12:07 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed S. 1591, an act to redesignate the facility of the United States Postal Service located at 48 South Broadway, Nyack, New York, as the ''Edward O'Grady, Waverly Brown, Peter Paige Post Office Building'' without amendment.

The message further announced that the House has agreed to S. Con. Res. 66, a concurrent resolution commending the National Endowment for Democracy for its contributions to democratic development around the world on the occasion of the 20th anniversary of the establishment of the National Endowment for Democracy, without amendment.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 542. An act to repeal the reservation of mineral rights made by the United States when certain lands in Livingston Parish, Louisiana, were conveyed by Public Law 102–562.

H.R. 1446. An act to support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

H.R. 2048. An act to extend the period for reimbursement under the Fishermen's Protective Act of 1967, and to reauthorize the Yukon River Salmon Act of 2000.

H.R. 3068. An act to designate the facility of the United States Postal Service located at 2055 Siesta Drive in Sarasota, Florida, as the ''Brigadier General (AUS–Ret.) John H. McLain Post Office''.

H.R. 3288. An act to amend title XXI of the Social Security Act to make technical corrections with respect to the definition of qualifying State.

The message further announced that the Speaker of the House has signed the following enrolled bill:

H.R. 1900. An act to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of the Congress that there should be a national day in recognition of Jackie Robinson.

The enrolled bill, previously signed by the Speaker of the House, was signed by the President pro tempore (Mr. STEVENS).

At 5:54 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has disagreed to the amendment of the Senate to the bill (H.R. 3289) making emergency supplemental appropriations for defense and for the reconstruction of Iraq and Afghanistan for the fiscal year ending September 30, 2004, and for other purposes, and agreed to the request for conference asked by the Senate on the disagreeing votes of the two Houses; and appoints the following members to be managers of the conference on the part of the House: Mr. YOUNG of Florida, Mr. LEWIS of California, Mr. ROGERS of Kentucky, Mr. WOLF, Mr. KOLBE, Mr. WALSH, Mr. KNOLLENBERG, Mr. OBEY, Mr. MURTHA, Mrs. LOWEY, Mr. SERRANO, and Mr. EDWARDS.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 2535. An act to reauthorize and improve the program authorized by the Public Works and Economic Development Act of 1965.

H.R. 3076. An act to amend title VII of the Higher Education Act of 1965 to ensure graduate opportunities in postsecondary education, and for other purposes.

H.R. 3077. An act to amend title VI of the Higher Education Act of 1965 to enhance international education programs.

H.J. Res. 73. Joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes.

The message further announced that pursuant to section 201(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431 note), as amended by section 681(b) of the Foreign Relations Authorization Act, Fiscal Year 2003 (22 U.S.C. 2651 note), the order of the House of January 8, 2003, and upon the recommendation of the Minority Leader, the Speaker appoints the following member on the part of the House to the Commission on International Religious Freedom for a 1-year term ending May 14, 2004 to fill the existing vacancy thereon: Ms. Patricia W. Chang of California.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 542. An act to repeal the reservation of mineral rights made by the United States when certain lands in Livingston Parish, Louisiana, were conveyed by Public Law 102–562; to the Committee on Energy and Natural Resources.

H.R. 1821. An act to award a congressional gold medal to Dr. Dorothy Height in recognition of her many contributions to the Nation; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 2048. An act to extend the period for reimbursement under the Fishermen's Protective Act of 1967, and to reauthorize the Yukon River Salmon Act of 2000; to the Committee on Commerce, Science, and Transportation.

H.R. 2535. An act to reauthorize and improve the program authorized by the Public Works and Economic Development Act of 1965; to the Committee on Environment and Public Works.

H.R. 3068. An act to designate the facility of the United States Postal Service located at 2055 Siesta Drive in Sarasota, Florida, as the ''Brigadier General (AUS–Ret.) John H. McLain Post Office''; to the Committee on Governmental Affairs.

H.R. 3076. An act to amend title VII of the Higher Education Act of 1965 to ensure graduate opportunities in postsecondary education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

H.R. 3077. An act to amend title VI of the Higher Education Act of 1965 to enhance international education programs; to the Committee on Health, Education, Labor, and Pensions.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 1446. An act to support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

The following joint resolution was read the first time:

H.J. Res. 73. Joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–4831. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cove, Arkansas and Robert Lee, Texas)'' (MB Doc. No. 03–143, 03–146) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4832. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Mason and Fredericksburg, Texas)'' (MB Doc. No. 03–14) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4833. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Avoca, Freeland, and Wilkes-Barre, Pennsylvania)'' (MB Doc. No. 03–140) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4834. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Bangs, Texas and De Beque, Colorado)'' (MB Doc. No. 03–153) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4835. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ridgecrest, California)'' (MB Doc. No. 03–145) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4836. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ephraim, Wisconsin)'' (MM Doc. No. 00–238) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4837. A communication from the Deputy Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Universal Service Fund; Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Telecommunications Relay Service Fund'' (FCC03–232) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4838. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Grants, Milan, and Shiprock, NM, Van Wert and Columbus Grove, Ohio; and Lebanon and

Hamilton, Ohio, and Fort Thomas, Kentucky)'' (MM Doc. No. 01–118, –119, –122) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4839. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Junction, Dilley, Goree, Leakey, Sweetwater, Texas; Arnett and Sayre, Oklahoma; Hebbronville and Bruni, Texas; Rison, Arkansas; Matador, Turkey, and Richland Springs, Texas)'' (MM Doc. Nos. 01–198, –200, –2–2, –203, –204, –236, –237, –238, –239, –240, –270, –272, –274) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4840. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Arthur, North Dakota)'' (MM Doc. No. 01–12) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4841. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Dickson and Pegram, Tennessee)'' (MB Doc. No. 03–51) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4842. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Longview, Texas)'' (MB Doc. No. 03–121) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4843. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Alamo Community, New Mexico)'' (MM Doc. No. 01–158) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4844. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Manning and Moncks Corner, South Carolina)'' (MM Doc. No. 01–121) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4845. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Houston and Anchorage, Alaska)'' (MM Doc. No. 01–37) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4846. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Wickenburg, Bagdad, and Aguila, Arizona)'' (MM Doc. No. 00–166) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4847. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Rapid City, South Dakota and Gillette, Wyoming)'' (MM Doc. No. 00–186) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4848. A communication from the Deputy Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Part 2 of the Commission's Rules to Allocate the Band 33–36 GHz to the Fixed-Satellite Service for the Federal Government Use'' (FCC01–130) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4849. A communication from the Deputy Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Review of Part 15 and other Parts of the Commission's Rules'' (FCC03–149) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4850. A communication from the Deputy Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Parts 2 and 15 of the Commission's Rules to Further Ensure that Scanning Receivers Do No Receive Cellular Radio Signals'' (FCC01–160) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4851. A communication from the Deputy Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service'' (FCC02–221) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4852. A communication from the Deputy Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Streamlining the Equipment Authorization Process; Implementation of Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements'' (FCC01–141) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4853. A communication from the Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Reallocation and Service Rules for the 698–746 Spectrum Band (Television Channels 52–59)'' (FCC01–364) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4854. A communication from the Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems'' (FCC03–16) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4855. A communication from the Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Review of Part 15 and Other Parts of the Commission's Rules'' (FCC 02–211) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4856. A communication from the Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Communications Assistance for Law Enforcement'' (FCC 02–108) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4857. A communication from the Deputy Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities; Recommended TRS Cost Recovery Guidelines; Request by Hamilton Telephone Company for Clarification and Temporary Waivers'' (FCC01–371) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4858. A communication from the Chief, Enforcement Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 1.80(b) of the Commission's Rules'' (FCC97–2) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4859. A communication from the Chief, Enforcement Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation'' (FCC00–347) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4860. A communication from the Assistant Chief, Pricing Policy Bureau, Wireline Competition Bureau, transmitting, pursuant to law, the report of a rule entitled ''Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers'' (FCC03–139) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4861. A communication from the Deputy Division Chief, Competitive Policy Division, Wireline Competition Bureau, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996'' (FCC01–109) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4862. A communication from the Associate Chief, Enforcement Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Implementation of Section 245(g) of the Communications Act of 1934 as Amended; Review of the CPE and Enhanced Services Unbundling Rules in Interexchange, Exchange Access and Local Exchange Markets'' (FCC01–98) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4863. A communication from the Deputy Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Federal-State Joint Board on Universal Service'' (FCC03–20) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4864. A communication from the Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Schools and Librarians Universal Service Support Mechanism'' (FCC02–175) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4865. A communication from the Assistant Division Chief, Wireline Competition Bureau, Federal Communications Commission,

transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide'' (FCC00–256) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4866. A communication from the Deputy Division Chief, Policy and Rules Division, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Parts 2 and 97 of the Commission's Rules to Create a Low Frequency Allocation for the Amateur Radio Service'' (FCC03–105) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4867. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Imported Fire Ant; Approved Treatments'' (Doc. No. 02–115–2) received on October 20, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4868. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Change in Disease Status of East Anglia with Regard to Classical Swine Fever'' (Doc. No. 00–080–3) received on October 20, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4869. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Emerald Ash Borer; Quarantine and Regulations'' (Doc. No. 02–125–1) received on October 20, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4870. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Sapote Fruit Fly'' (Doc. No. 03–032–3) received on October 20, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4871. A communication from the Chief, Fee Section, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Schedule of Application Fees'' (FCC02–202) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4872. A communication from the Secretary of the Commission, Bureau of Consumer Protection, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Telemarketing Sales Rule Fees'' (RIN3084–AA86) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4873. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Final Rule and Technical Amendment to Amend Summer Flounder, Scup, and Black Sea Bass Quota Counting Procedures'' (RIN0648–AP65) received on October 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–4874. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, transmitting, pursuant to law, the report of a rule entitled ''Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Increased Assessment Rate'' (Doc. No. FV03–945–1 FR) received on October 20, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4875. A communication from the Secretary of Defense, transmitting the report of a retirement; to the Committee on Armed Services.

EC–4876. A communication from the Director, Office of Federal Housing and Enterprise Oversight, transmitting the Office's Strategic Plan for Fiscal Years 2003–2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–4877. A communication from the Director, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Reclassification of Lesquerella flilformis (Missouri Bladderpod) from Endangered to Threatened'' (RIN1018–AH59) received on October 20, 2003; to the Committee on Environment and Public Works.

EC–4878. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue, transmitting, pursuant to law, the report of a rule entitled ''Election of 4-year Ratable Spread of Income from Certain Partnerships or S Corporations'' (Rev. Proc. 2003–79) received on October 20, 2003; to the Committee on Finance.

EC–4879. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue, transmitting, pursuant to law, the report of a rule entitled ''Miscellaneous Excise Taxes Collected by Return'' (Rev. Proc. 2003–78) received on October 20, 2003; to the Committee on Finance.

EC–4880. A communication from the Independent Counsel, Office of Independent Counsel, transmitting, pursuant to law, the Office's 2001 Annual Report; to the Committee on Governmental Affairs.

EC–4881. A communication from the Chairman, National Endowment for the Humanities, transmitting the Endowment's multiyear strategic plan for the fiscal years 2004 through 2009; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPECTER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute:

S. 1132. A bill to amend title 38, United States Code, to improve and enhance certain benefits for survivors of veterans, and for other purposes (Rept. No. 108–169).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 1763. A bill to designate the facility of the United States Postal Service located at 14 Chestnut Street, in Liberty, New York, as the ''Ben R. Gerow Post Office Building''; to the Committee on Governmental Affairs.

By Mr. MILLER (for himself and Mr. CHAMBLISS):

S. 1764. A bill to designate the building located at 493 Auburn Avenue, N.E., in Atlanta, Georgia, as the ''John Lewis Civil Rights Institute''; to the Committee on Environment and Public Works.

By Mr. LOTT (for himself and Mr. SESSIONS):

S. 1765. A bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEAHY (for himself, Ms. SNOWE, Mr. BURNS, Mr. JEFFORDS, Mr. LAUTENBERG, and Mr. DODD):

S. 1766. A bill to amend the Food Security Act of 1985 to prohibit the use of certain conservation funding to provide technical assistance under the conservation reserve program; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. LEVIN (for himself, Mr. MCCAIN, and Mr. BAUCUS):

S. 1767. A bill to prevent corporate auditors from providing tax shelter services to their audit clients; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BUNNING (for himself and Mr. SHELBY):

S. 1768. A bill to extend the national flood insurance program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BREAUX:

S. 1769. A bill to provide for class action reform, and for other purposes; to the Committee on the Judiciary.

By Mr. CAMPBELL (for himself, Mr. INOUYE, and Mr. DOMENICI):

S. 1770. A bill to establish a voluntary alternative claims resolution process to reach a settlement of pending class action litigation; to the Committee on Indian Affairs.

By Ms. SNOWE (for herself and Mr. CONRAD):

S. 1771. A bill to amend title XIX of the Social Security Act to permit States to obtain reimbursement under the medicaid program for care or services required under the Emergency Medical Treatment and Active Labor Act that are provided in a nonpublicly owned or operated institution for mental diseases; to the Committee on Finance.

By Mr. GRAHAM of South Carolina (for himself and Mr. DURBIN):

S. 1772. A bill to amend title 11 of the United States Code to establish a priority for the payment of claims for duties paid to the United States by licensed customs brokers on behalf of the debtor; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CAMPBELL (for himself, Mr. INOUYE, Mr. DOMENICI, and Ms. STABENOW):

S. Res. 248. A resolution expressing the sense of the Senate concerning the individual Indian money account trust fund lawsuit; to the Committee on Indian Affairs.

ADDITIONAL COSPONSORS

S. 269

At the request of Mr. JEFFORDS, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 269, a bill to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species.

S. 333

At the request of Mr. BREAUX, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 333, a bill to promote elder justice, and for other purposes.

S. 453

At the request of Mrs. HUTCHISON, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 453, a bill to authorize the

Health Resources and Services Administration and the National Cancer Institute to make grants for model programs to provide to individuals of health disparity populations prevention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases, and to make grants regarding patient navigators to assist individuals of health disparity populations in receiving such services.

S. 473

At the request of Mr. FEINGOLD, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 473, a bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

S. 572

At the request of Mr. FRIST, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 572, a bill to establish a congressional commemorative medal for organ donors and their families.

S. 982

At the request of Mr. SANTORUM, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S . 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 985

At the request of Mr. DODD, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1087

At the request of Ms. MIKULSKI, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1087, a bill to provide for uterine fibroid research and education , and for other purposes.

S. 1103

At the request of Mr. HARKIN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1103, a bill to clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services and to enforce the Hazard Analysis and Critical Control Point (HACCP) System requirements, sanitation requirements, and the performance standards.

S. 1222

At the request of Mr. NELSON of Nebraska, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1222, a bill to amend title XVIII of the Social Security Act to require the Secretary of Health and Human Services, in determining eligibility for payment under the prospective payment system for inpatient rehabilitation facilities, to apply criteria consistent with rehabilitation impairment categories established by the Secretary for purposes of such prospective payment system.

S. 1353

At the request of Mr. BROWNBACK, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1353, a bill to establish new special immigrant categories.

S. 1368

At the request of Mr. LEVIN, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1368, a bill to authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement.

S. 1414

At the request of Mr. HATCH, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1414, a bill to restore second amendment rights in the District of Columbia.

S. 1558

At the request of Mr. ALLARD, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 1558, a bill to restore religious freedoms.

S. 1567

At the request of Mr. FITZGERALD, the names of the Senator from Oklahoma (Mr. NICKLES) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 1567, a bill to amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, and for other purposes.

S. 1568

At the request of Mr. HATCH, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1568, a bill to amend the Internal Revenue Code of 1986 to simplify certain provisions applicable to real estate investment trusts.

S. 1595

At the request of Mr. KERRY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1595, a bill to amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax with respect to employees who participate in the military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for activated military reservists who are self-employed individuals, and for other purposes.

S. 1612

At the request of Ms. COLLINS, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1612, a bill to establish a technology, equipment, and information transfer within the Department of Homeland Security.

S. 1628

At the request of Mr. ALEXANDER, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 1628, a bill to prescribe the oath of renunciation and allegiance for purposes of the Immigration and Nationality Act.

S. 1637

At the request of Mr. GRASSLEY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

S. 1645

At the request of Mr. CRAIG, the names of the Senator from Colorado (Mr. CAMPBELL), the Senator from Arkansas (Mr. PRYOR) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1666

At the request of Mr. COCHRAN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 1666, a bill to amend the Public Health Service Act to establish comprehensive State diabetes control and prevention programs, and for other purposes.

S. 1741

At the request of Ms. COLLINS, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1741, a bill to provide a site for the National Women's History Museum in the District of Columbia.

S. 1744

At the request of Mr. GRASSLEY, the names of the Senator from Oklahoma (Mr. NICKLES) and the Senator from Colorado (Mr. CAMPBELL) were added as cosponsors of S. 1744, a bill to prevent abuse of Government credit cards.

S. 1751

At the request of Mr. HATCH, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure

fairer outcomes for class members and defendants, and for other purposes.

At the request of Mr. SESSIONS, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 1751, supra.

S. CON. RES. 21

At the request of Mr. BUNNING, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. Con. Res. 21, a concurrent resolution expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

S. CON. RES. 58

At the request of Mr. DEWINE, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. Con. Res. 58, a concurrent resolution expressing the sense of Congress with respect to raising awareness and encouraging prevention of stalking in the United States and supporting the goals and ideals of National Stalking Awareness Month.

S. CON. RES. 72

At the request of Mr. DASCHLE, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. Con. Res. 72, a concurrent resolution commemorating the 60th anniversary of the establishment of the United States Cadet Nurse Corps and voicing the appreciation of Congress regarding the service of the members of the United States Cadet Nurse Corps during World War II.

S. CON. RES. 73

At the request of Mrs. FEINSTEIN, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. Con. Res. 73, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY (for himself, Ms. SNOWE, Mr. BURNS, Mr. JEFFORDS, Mr. LAUTENBERG, and Mr. DODD):

S. 1766. A bill to amend the Food Security Act of 1985 to prohibit the use of certain conservation funding to provide technical assistance under the conservation reserve program; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. LEAHY. Mr. President, today I am pleased to introduce bipartisan legislation with Senators SNOWE, BURNS, JEFFORDS, LAUTENBERG and DODD to restore the conservation funding commitment Congress and the administration made to farmers and ranchers in the 2002 farm bill.

Despite the historic conservation funding levels in the 2002 farm bill, family farmers and ranchers offering to restore wetlands, or offering to change the way they farm to improve air and water quality, continue to be rejected when they seek U.S. Department of Agriculture (USDA) conservation assistance. Producers are being turned away due to USDA's decision earlier this year to divert $158.7 million from working lands conservation programs to pay for the cost of administering the Conservation Reserve Program (CRP) and the Wetlands Reserve Program (WRP) despite a clear directive in the 2002 farm bill that the USDA use mandatory funds from the Commodity Credit Corporation (CCC) to pay for CRP and WRP technical assistance. In particular, USDA diverted $107.9 million from the Environmental Quality Incentives Program (EQIP), $27.6 from the Farmland and Ranchland Protection Program (FRPP), $14.6 million from the Grasslands Reserve Program, and $8.6 million from the Wildlife Habitat Incentives Program (WHIP) to pay for CRP and WRP technical assistance.

Although the 2002 farm bill clearly intended USDA to use CCC funds to pay for CRP and WRP technical assistance, USDA continues to ignore Congress's intent. The plain language of the statute and the legislative history, including a relevant colloquy, support this interpretation of the farm bill, and the General Accounting Office (GAO) concurred in a recent memo. I ask unanimous consent the GAO's memo be printed in the RECORD following my remarks.

Our legislation would override USDA's decision and prevent funds from working lands incentive programs like EQIP and WHIP from being diverted to pay for the technical assistance costs of CRP. The House Agriculture Subcommittee on Conservation has already approved similar legislation, H.R. 1907, requiring each program to pay for its own technical assistance needs. Our legislation parallels that effort, by requiring CRP to pay for its own technical assistance needs. Simply put, our amendment would require the Administration to honor the 2002 Farm Bill and mandate that technical assistance for each program is derived from funds provided for that program.

By providing more than $6.5 billion for working lands programs like EQIP and WHIP in the 2002 farm bill, Congress dramatically increased funds to help farmers manage working lands to produce food and fiber and simultaneously enhance water quality and wildlife habitat. For example, EQIP helps share the cost of a broad range of land management practices that help the environment, include more efficient use of fertilizers and pesticides, and innovative technologies to store and reuse animal waste. In combination, these working lands programs will provide farmers the tools and incentives they need to help meet our major environmental challenges.

Full funding for working lands incentive programs like EQIP and WHIP is vital to helping farmers and ranchers improve their farm management and meeting America's most pressing environmental challenges. Because 70 percent of the American landscape is private land, farming dramatically affects the health of America's rivers, lakes and bays and the fate of America's rare species. Most rare species depend upon private lands for their survival, and many will become extinct without help from private landowners. When farmers and ranchers take steps to help improve air and water quality or assist rare species, they can face new costs, new risks, or loss of income. Conservation programs help share these costs, underwrite these risks, or offset these losses of income. Unless Congress provides adequate resources for these programs, there is little reason to hope that our farmers and ranchers will be able to help to meet these environmental challenges.

In addition, USDA conservation programs promote regional equity in farm spending. More than 90 percent of USDA spending flows to a handful of large farmers in 15 midwestern and southern States. As a result, many farmers and ranchers who are not eligible for traditional subsidies—including dairy farmers, ranchers, and fruit and vegetable farmers—rely upon conservation programs to boost farm and ranch income and to ease the cost of environmental compliance. Unlike commodity subsidies, conservation payments flow to all farmers and all regions. But the farmers and ranchers who depend upon these programs—farmers and ranchers who already receive a disproportionately small share of USDA funds—have faced a disproportionately large cut in spending this year.

It is time for Congress and the administration to honor the intent of the 2002 farm bill, by fully funding working lands conservation programs. The failure to adequately fund these working lands conservation programs is having a dramatic impact on both farmers and the farm economy and could become worse in future years if Congress does not address this matter. I urge my colleagues to support this important legislation.

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

FUNDING FOR TECHNICAL ASSISTANCE FOR CONSERVATION PROGRAMS ENUMERATED IN SECTION 2701 OF THE 2002 FARM BILL, B–291241

OCTOBER 8, 2002.

Hon. HERB KOHL,
Chairman.
Hon. THAD COCHRAN,
Ranking Minority Member, Subcommittee on Agriculture, Rural Development, & Related Agencies, Committee on Appropriations, U.S. Senate.
Hon. HENRY BONILLA,
Chairman, Subcommittee on Agriculture, Rural Development, FDA & Related Agencies, Committee on Appropriations, House of Representatives.

Subject: Funding for Technical Assistance for Conservation Programs Enumerated in Section 2701 of the 2002 Farm Bill

This responds to your letters of August 30, 2002 (form Chairman Bonilla) and September 16, 2002 (from Chairman Kohl and Ranking Minority Member Cochran) requesting our opinion on several issues relating to funding technical assistance for the wetlands reserve program (WRP) and the farmland protection program (FPP). You asked for our views on the following issues:

(1) Does the annual limit on fund transfers imposed by 15 U.S.C. §714i (known as the section 11 cap) apply to Commodity Credit Corporation (CCC) funds used for technical assistance provided the WRP and FPP as authorized by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill)?

(2) Is the Department of Agriculture's Conservation Operations appropriation available for technical assistance for the WRP and the FPP? and

(3) Did the Office of Management and Budget's (OMB) July 18, 2002, decision not to apportion funds for technical assistance for the WRP and the FPP violate the Impoundment Control Act. [1]

For the reasons given below, we conclude that:

(1) the section 11 cap does not apply to funds for technical assistance provided for the conservation programs enumerated in section 3841, title 16, U.S.C., as amended by section 2701 of the 2002 Farm Bill;

(2) the Conservation Operations appropriations is not an available funding source for the WRP and the FPP operations and associated technical assistance; and

(3) OMB's failure to initially apportion WRP and FPP funds was a programmatic delay and did not constitute an impoundment under the Impoundment Control Act. Further, since OMB has approved recently submitted apportionments for these two programs, and since budget authority for both the WRP and the FPP was made available for obligation, there was no impoundment of funds in fiscal year 2002.

BACKGROUND

Section 2701 of the 2002 Farm Bill, Pub. L. No. 107–171, 116 Stat. 278, 279 (enacted on May 13, 2002) (codified at 16 U.S.C. §§3841 and 3842) amended section 1241 of the Food Security Act of 1985, 16 U.S.C. §3841, to provide that the Secretary of Agriculture (Secretary) shall use the funds of the CCC to carry out seven conservation programs, including the provision of technical assistance to, or on behalf of, producers. The WRP and the FPP are among the conservation programs named in the 2002 Farm Bill that are to be funded with CCC funds.

In its June 19, 2002, apportionment request, the Department of Agriculture (Agriculture) asked OMB to apportion a total of $587,905,000 in CCC funds to the Natural Resources Conservation Service (NRCS) for both financial and technical assistance related to section 3841 conservation programs. SF 132, Apportionment and Reapportionment Schedule for Farms Security and Rural Investment Programs, Account No. 1221004, July 18, 2002. Of the amount requested, Agriculture designated $68.7 million for technical assistance to be provided under the conservation programs. In its July 18, 2002, apportionment, OMB apportioned all of the funds for financial and technical assistance requested for the conservation programs, except $22.7 million designated for WRP and FPP technical assistance. *Id.* OMB reports that it did not apportion funds for WRP and FPP technical assistance at that time, because OMB believed that the section 11 cap, 15 U.S.C. §714i, limited the amount of funds that could be transferred from CCC to other government agencies for technical assistance associated with the section 3841 conservation programs, and that CCC funding of WRP and FPP technical assistance would exceed the section 11 cap. Letter from Philip J. Perry, General Counsel, OMB, to Susan A. Poling, Managing Associate General Counsel, GAO, September 16, 2002. In discussions with Agriculture regarding the use of CCC funds in excess of the section 11 cap for section 3841 technical assistance, OMB indicated to Agriculture that either CCC funds subject to the section 11 cap or Agriculture's Conservation Operations appropriation could be used to fund this technical assistance. *Id.*[2]

OMB reports that Agriculture recently submitted a new apportionment request for $5.95 million for WRP technical assistance (as well as the Conservation Reserve Program) which OMB approved on September 3, 2002. Id. OMB also reports that Agriculture submitted a new apportionment request for an additional $2 million in FPP financial assistance, which OMB approved on September 11, 2002, bringing the total apportionment for the FPP to the $50 million authorized by section 381. *Id.*

DISCUSSION

1. Section 11 Cap

The question whether the section 11 cap (15 U.S.C. §714i) applies to technical assistance provided through the conservation programs authorized by 16 U.S.C. §§3481, 3482, is one of statutory construction. It is a well-established rule of statutory construction that statutes should be construed harmoniously so as to give maximum effect to both whenever possible. B–259975, Sept. 18, 1995, 96–1 CPD ¶124; B–258163, Sept. 29, 1994. Based upon the language of the relevant statutes, we can read the statutes in a harmonious manner, and, in doing so, we conclude that the section 11 cap does not apply to technical assistance provided under the section 3841 conservation programs.

The section 11 cap is set forth in 15 U.S.C. §714i, which states, in pertinent part:

''The Corporation may, with the consent of the agency concerned, accept and utilize, on a compensated or uncompensated basis, the officers, employees, services, facilities, and information of any agency of the Federal Government, including any bureau, office, administration, or other agency of the Department of Agriculture . . . . The Corporation may allot to any bureau, office, administration, or other agency of the Department of Agriculture or transfer to such other agencies as it may request to assist it in the conduct of its business any of the funds available to it for administrative expenses. . . . After September 30, 1996, *the total amount of all allotments and fund transfers from the Corporation under this section* (including allotments and transfers for automated data processing or information resource management activities) for a fiscal year may not exceed the total amount of the allotments and transfers made under this section in fiscal year 1995.''

(Emphasis added.) We note that the section 11 funding limitation applies only to funds transferred by the CCC to other agencies under the authority of section 11.

The 2002 Farm Bill, which amended subsection (a) of section 3841, directs the Secretary to use CCC funds to carry out the WRP and the FPP and five other conservation programs, including the provision of technical assistance as part of these programs. As amended, 16 U.S.C. §3841 provides, in pertinent part, as follows:

''For each of fiscal years 2002 through 2007, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out the following programs under subtitle D (*including the provision of technical assistance*):

* * * * *

(2) The wetlands reserve program under subchapter C of chapter 1.

* * * * *

(4) The farmland protection program under subchapter B of chapter 2, using, to the maximum extent practicable—(A) $50,000,000 in fiscal year 2002 * * * ''

16 U.S.C. §3841(a) (emphasis added). Section 3841 provides independent authority for the provision of technical services to these programs.

The 2002 Farm Bill also added a new subsection (b) to section 3841. It is this provision that has generated the current dilemma: ''Nothing in this section affects the limit on expenditures for technical assistance imposed by section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i).'' 16 U.S.C. §3841(b). When read in the context of section 11, section 3841(b) makes clear that the section 11 cap applies only to funds transferred under section 11. Section 11 specifically imposes the cap on ''fund transfers . . . . under this section.'' Section 11 by its terms clearly does not apply to amounts transferred under other authority, such as section 3841(a). And we read section 3841(b) to make plain that, while the section 11 cap continues to apply to amounts transferred under section 11, it does not apply to amounts transferred by section 3841(a).

Accordingly, reading the above provisions harmoniously, we conclude that: (1) the section 11 cap by its own terms applies only to CCC funds transferred to other agencies under section 11; (2) 16 U.S.C. §3841(a) provides independent authority for the Secretary to fund the seven conservation programs named in that section out of CCC funds; and (3) 16 U.S.C. §3841(b) makes it clear that, while the section 11 cap still applies to funds transferred by the CCC to other government agencies for work performed pursuant to the authority of section 11, the section 11 cap does not apply to the seven conservation programs that are funded with CCC funds under the authority of 16 U.S.C. §3841(a).

Our conclusion that the section 11 cap does not apply to the seven conservation programs of section 384(a) is confirmed by a review of the legislative history of the 2002 Farm Bill, which shows that the Congress was attempting to make clear that section 3841 technical assistance was not affected by the section 11 cap. The legislative history to the 2002 Farm Bill unambiguously supports the view that the Congress did not intend the section 11 cap to limit the funding for technical assistance provided under the section 3841 conservation programs. In discussing the cap the Conference Committee stated: ''The Managers understand the critical nature of providing adequate funding for technical assistance. For that reason, technical assistance should come from individual program funds.'' H.R. Conf. Rep. No. 107–424 at 497 (May 1, 2002) (emphasis added). In discussing administration and funding of these

conservation programs, the Conference Committee further explained that:

The Managers provide that funds for technical assistance shall come directly from the mandatory money provide for conservation programs under Subtitle D. (Section 2701).

In order to ensure implementation, the Managers believe that technical assistance must be an integral part of all conservation programs authorized for mandatory funding. Accordingly, the Managers have provided for the payment of technical assistance from program accounts, The Managers expect technical assistance for all conservation programs to follow the model currently used for the EQIP whereby the Secretary determines, on an annual basis, the amount of funding for technical assistance. Furthermore, the Managers intend that the funding will cover costs associated with technical assistance, such as administrative and overhead costs.''

H.R. Conf. Rep. No. 107–424 at 48–499 (2002) (Emphasis added).

The ''EQIP model'' that the conferees referred to was established in the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104–127, Subtitle E, §341, 110 Stat. 888, 1007 (1996) (1996 Farm Bill). For fiscal years 1996 through 2002, the Secretary was to use CCC funds to carry out the CRP, WRP and the Environmental Quality Incentives programs (EQIP). [3] Id. (Former 16 U.S.C. §3841(a)). More specifically, the 1996 Farm Bill authorized the Secretary to use CCC funds for technical assistance (as well as cost-share payments, incentive payments, and education) under the EQIP program. 16 U.S.C. §3841(b). Id. [4] While the 1996 Farm Bill authorized the use of CCC funds to carry out the CRP and WRP programs, it did not specifically authorize the funding of technical assistance out of program funds as it did for EQIP.

Importantly, five days before enactment of the 2002 Farm Bill when the Senate was considering the Conference Report on the Farm Bill, a colloquy among Senators Harkin, Chairman, Senate Agriculture, Nutrition and Forestry Committee, Lugar, its Ranking Republican Member, and Cochran, an Agriculture Committee member, [5] makes it unmistakably clear that the section 11 cap was not meant to apply to the provision of technical assistance with respect to any of the conservation programs named in 16 U.S.C. §3841(a):

''Mr. LUGAR. Mr. President, I wish to engage in a colloquy with the distinguished Senators from Iowa and Mississippi. Mr. President, the 1996 farm bill contained a provision which led to serious disruption in the delivery of conservation programs. Specifically, the 1996 act placed a cap on the transfers of Commodity Credit Corporation funds to other government entities. Is the distinguished Senator from Iowa aware of the so-called ''section 11 cap?''

Mr. HARKIN. I thank the Senator from Indiana for raising this issue, because it is an important one. The Section 11 cap prohibited expenditures by the Commodity Credit Corporation beyond the Fiscal Year 1995 level to reimburse other government entities for services. Unfortunately, in the 1996 farm bill, many conservation programs were unintentionally caught under the section 11 cap. As a result, during the past 8 years, conservation programs have had serious shortfalls in technical assistance. There was at least one stoppage of work on the Conservation Reserve Program. The Appropriations Committees have had to respond to the problem ad hoc by redirecting resources and providing emergency spending to deal with the problem. This has been a problem not just in my state of Iowa or in your states of Indiana and Mississippi; it has been a nationwide constraint on conservation.

Mr. COCHRAN. I thank the Chairman for the clarification, and I would inquire whether the legislation under consideration here today will fix the problem of the section 11 cap for conservation programs.

Mr. HARKIN. I thank the Senator from Mississippi for his attention to this important issue. Section 2701 [16 U.S.C. §3841] of the Farm Security and Rural Investment Act of 2002 recognizes that technical assistance is an integral part of each conservation program. Therefore, technical assistance will be funded through the mandatory funding for each program provided by the bill. As a result, for directly funded programs, such as the Conservation Security Program (CSP) and the Environmental Quality Incentives Program (EQIP), funding for technical assistance will come from the borrowing authority of the Commodity Credit Corporation, and will no longer be affected by section 11 of the CCC Charter Act.

For those programs such as the CRP, WRP, and the Grasslands Reserve Program (GRP), which involve enrollment based on acreage, the technical assistance funding will come from the annual program outlays apportioned by OMB again, from the borrowing authority of the CCC. These programs, too, will no longer be affected by section 11 of the CCC Charter Act. This legislation will provide the level of funding necessary to cover all technical assistance costs, including training; equipment; travel; education, evaluation and assessment, and whatever else is necessary to get the programs implemented.

Mr. LUGAR. I thank the Chairman for that clarification. With the level of new resources and new workload that we are requiring from the Department, and specifically the Natural Resources Conservation Service, I hear concerns back in my state that program delivery should not be disrupted, and the gentleman has reassured me that it will not.''

148 Cong. Rec. S3979, 4020 (daily ed. May 8, 2002) (emphasis added). In our view, the Congress intended all funding for the seven conservation programs authorized in section 3841 (§2701 of the 2002 Farm Bill), including funding for technical assistance, to be mandatory funding drawn from individual program funds, rather than from CCC's administrative funds that are subject to the section 11 cap. Accordingly, based on the language of 3841, we conclude that the section 11 cap does not apply to funds for technical assistance provided under the conservation programs enumerated in section 3841.

2. Availability of the Conservation Operations Appropriation. The next issue is whether the Department of Agriculture's Conservation Operations appropriation is available for technical assistance for the WRP and the FPP. As noted above, this issue arose when OMB advised Agriculture that its Conservation Operations appropriation could be used to fund this technical assistance. For the reasons that follow, we conclude that Agriculture may not use its Conservation Operations appropriation to fund the WRP and FPP.

The fiscal year 2002 Appropriation for the Conservation Operations account provides in pertinent part:

NATURAL RESOURCES CONSERVATION SERVICE
CONSERVATION OPERATIONS

''For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutants); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests therein for use in the plant materials program by donation, exchange, or purchase. . . .''

Pub. L. No. 107–76, 115 Stat. 704 at 717, 718 (2001). In addition to its availability to carry out the provisions of the Act of April 27, 1935 (16 U.S.C. §590a–f), the fiscal year 2002 Conservation Operations appropriation is also available to carry out a variety of other specified programs such as those authorized by 7 U.S.C. §428a, 7 U.S.C. §2209b, 7 U.S.C. §2250a, §202(c) of title II of the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. §1592(c)): section 706(a) of the Organic Act of 1944 (7 U.S.C. §2225), for employment under 5 U.S.C. §3109 and 16 U.S.C. §590e–2.

OMB asserts that the language of the Conservation Operations appropriation and the Act of April 27, 1935 cited therein are broad enough to encompass the technical assistance that Agriculture will provide under the WRP, the FPP and the other section 3841 conservation programs. Since the technical services provided by Agriculture under the WRP and the FPP (and other section 3841 conservation programs) fall within the general purposes articulated in the fiscal year 2002 Conservation Operations appropriation, OMB considers the Conservation Operations appropriation as an additional available source of funding for technical assistance provided as part of the section 3841 conservation programs. In other words, the Conservation Operations appropriation is available to continue financing for the FPP and the WRP, when, in OMB's view, the section 11 cap limits the availability of CCC funds for those programs. We do not agree.

First, the Conservation Operations appropriation identifies specific programs that it is available to fund, including the authority to carry out the provisions of the Act of April 27, 1935 (16 U.S.C. §590a–f) cited by OMB above. However, none of the specific statutory programs identified in the Conservation Operations appropriation include the FPP or the WRP found in 16 U.S.C. §§3838h–3838i and 3837–3737f, respectively. The FPP and the WRP were authorized by Title XII of the Food Security Act of 1985, as amended, and the provisions of the Food Security Act of 1985 are not among the statutes listed in the Conservation Operations appropriation as an object of that appropriation. Thus, the Conservation Operations appropriation by its own terms does not finance Agriculture programs and activities under the Food Security Act. [6] [7]

Second, even if the language of the Conservation Operations appropriation could reasonably be read to include the WRP and the FPP, section 3841, as amended by the 2002 Farm Bill, very specifically requires that funding for technical assistance will come from the ''funds, facilities, and authorities'' of the CCC. Indeed, the statute is unequivocal—the Secretary ''shall use the funds'' of the CCC to carry out the seven conservation programs, including associated technical assistance. It is well settled that even an expenditure that may be reasonably related to a general appropriation may not be paid out of that appropriation where the expenditure falls specifically within the scope of another appropriation. 63 Comp. Gen. 422, 427–28, 432 (1984); B–290005, July 1, 2002.[8]

Third, this view is supported by the Senate colloquy on the 2002 Farm Bill Conference report:

''Mr. COCHRAN. It is then my understanding that, under the provisions of this bill, the technical assistance necessary to implement the conservation programs will not come at the expense of the good work already going on in the countryside in conservation planning, assistance to grazing

lands, and other activities supported within the NRCS conservation operations account. And, further, this action will relieve the appropriators of an often reoccurring problem.

Mr. HARKIN. Both gentlemen are correct. The programs directly funded by the CCC–EQIP, FPP, WHIP, and the CSP—as well as the acreage programs—CRP, WRP, and the GRP—*include funding for technical assistance that comes out of the program funds. And this mandatory funding in no way affects the ongoing work of the NRCS Conservations Operations Program.''*

148 Cong. Rec. S3979, 4020 (daily ed. May 8, 2002) (emphasis added). This colloquy underscores the understanding that the 2002 Farm Bill specifically requires that funding for technical assistance will come from the borrowing authority of the CCC and will not interfere with other activities supported by the Conservation Operations appropriation.

Furthermore, before passage of the 1996 Farm Bill, which made a number of conservation programs, including the WRP, mandatory spending programs, the WRP received a separate appropriation for that purpose. In other words, before the 1996 farm bill provided CCC funding to run the program, the WRP was not funded out of the Conservation Operations appropriation. Pub. L. No. 103–330, 108 Stat. 2453 (1994); Pub. L. No. 102–142, 105 Stat. 897 (1991). Moreover, Agriculture has previously concluded that the Conservation Operations appropriation is not available to fund technical assistance with respect to programs authorized under provisions of the Food Security Act. Their reasoning tracks ours—the provisions of the Food Security Act are not among the statutes cited in the Conservation Operations appropriation. Memorandum from Stuart Shelton, Natural Resources Division to Larry E. Clark, Deputy Chief for Programs, Natural Resources Conservation Service and P. Dwight Holman, Deputy Chief for Management, Natural Resources Conservation Service, October 7, 1998 (Conservation Operations appropriation is not available to fund technical assistance for the Conservation Reserve Program); GAO/RCED–99–247R, Conservation Reserve Program Technical Assistance, at 9 (Aug. 5, 1999).

Thus, the Conservation Operations appropriation is not an available funding source for WRP and FPP operations and associated technical assistance. To the extent that Agriculture might have used the Conservation Operations appropriation for WRP, Agriculture would need to adjust its accounts accordingly, deobligating amounts it had charged to the Conservation Operations appropriation and charging those amounts to the CCC funds. We note that in this event OMB would need to apportion additional amounts from CCC funds to cover such obligations.

3. Impoundment Control Act

The last question is whether OMB's July 18, 2002, decision not to apportion funds for technical assistance for the WRP and the FPP constitutes an impoundment under the Impoundment Control Act of 1974. Based upon the most recent information provided by OMB, to the extent OMB did not initially apportion funds for the FPP or the WRP, the delay was programmatic and did not constitute an impoundment of funds. Also, based on information recently provided by OMB, no impoundment of funds is occurring with respect to the FPP or the WRP.

We generally define an impoundment as any action or inaction by the President, the Director of OMB or any federal agency that delays the obligation or expenditure of budget authority provided in law. Glossary or Terms Used in the Federal Budget Process, Exposure Draft, GAO/AFMD–2.1.1, Page 52 (1993).[9] However, our decisions distinguish between programmatic withholdings outside the reach of the Impoundment Control Act and withholdings of budget authority that qualify as impoundments subject to the Act's requirements. B–290659, July 24, 2002. Sometimes delays are due to legitimate program reasons. Programmatic delays typically occur when an agency is taking necessary steps to implement a program even if funds temporarily go unobligated. Id. Such delays do not constitute impoundments and do not require the sending of a special message to the House of Representatives and the Senate under 2 U.S.C. §684(a). *Id.*

Here, OMB initially did not apportion funds for WRP and FPP technical assistance because it believed the section 11 cap was applicable and would be exceeded. OMB's General Counsel states that OMB reserved apportioning budget authority to discuss its funding concerns with Agriculture. These funding concerns generated a ''vigorous and healthy internal legal discussion'' between the Department of Agriculture and OMB. Letter from Nancy Bryson, General Counsel, Department of Agriculture to the Honorable Tom Harkin, Chairman, Senate Committee on Agriculture, Nutrition and Forestry, September 24, 2002. Since OMB delayed apportionment of technical assistance funds because of uncertainty concerning the applicability of statutory restrictions and since OMB approved Agriculture's subsequent apportionment requests, we conclude that OMB did not impound funds under the Impoundment Control Act. *See* B–290659, July 24, 2002 (delay in obligating funds because of uncertainty whether statutory conditions were met did not constitute an impoundment).

As noted above, according to OMB, Agriculture recently submitted revised apportionment requests for technical assistance for both the FPP and the WRP, and OMB has approved the revised apportionments. For the FPP, Agriculture requested an additional apportionment for financial assistance of $2 million, bringing the total amount available for obligation to $50 million. Thus, the entire $50 million in FPP funds authorized by section 3841 have been apportioned. Since OMB advises that it has apportioned the full funding amount and that is available for obligation, these funds were not impounded for the FPP.

As for the WRP funding, as noted above, on June 19, 2002, Agriculture asked OMB to apportion a total of $20,655,000 for WRP technical assistance. OMB did not apportion this amount. SF 132, Apportionment and Reapportionment Schedule for Farms Security and Rural Investment Programs, Account No. 1221004, July 18, 2002. On August 30, 2002, Agriculture requested an apportionment of WRP (and CRP) technical assistance for totaling $5,950,000. SF 132, Apportionment and Reapportionment Schedule for Commodity Credit Corporation Reimbursable Agreements and Transfers to State and Federal Agencies, Account No. 12X4336. On September 3, 2002, OMB approved this request and apportioned $5,950,000. Id. Since OMB apportioned the budget authority for the WRP and it was made available for obligation, there was no impoundment of funds in fiscal year 2002.

While the present record does not establish an impoundment of the fiscal year 2002 funds appropriated for the WRP and the FPP, we will continue to monitor this situation to ensure that any impoundment that might occur in fiscal year 2003 for conservation programs is timely reported.

We hope you find this information useful. If you have any questions, please contact Susan Poling, Managing Associate General Counsel, or Thomas Armstrong, Assistant General Counsel, at 202–512–5644. We are sending copies of this letter to the Secretary of Agriculture, Director of the Office of Management and Budget, the Chairman and Ranking Minority Members of the House and Senate Agriculture Committees and other interested Congressional Committees. This letter will also be available on GAO's home page at http://www.gao.gov.

ANTHONY H. GAMBOA,
General Counsel.

B–291241 Digests

1. 15 U.S.C. §724i authorizes the Commercial Credit Corporation (CCC) to use employees from other agencies, and, subject to a maximum limitation set at the fiscal year 1995 level (the ''section 11 cap''), CCC may make transfers from its funds available for administrative purposes to those agencies to reimburse them for their assistance to CCC in the conduct of its business. 16 U.S.C. §3841 (as amended by section 2701 of the 2002 Farm Bill, enacted May 13, 2002) specifically provides that the Secretary of Agriculture ''shall use the funds'' of the CCC to carry out seven conservation programs (including the wetlands reserve program and the farm protection program) named therein, including technical assistance. Based upon the language of the statutes, we conclude that the section 11 cap does not apply to technical assistance provided under the section 3841 conservation programs.

2. 16 U.S.C. §3841 specifically provides that the Secretary of Agriculture ''shall use the funds'' of the Commercial Credit Corporation (CCC) to carry out seven conservation programs (including the wetlands reserve program and the farm protection program) named therein, including technical assistance. Therefore, the Secretary is required to see CCC funds for the conservation programs named in section 3841, including for technical assistance, rather than funds from the Department of Agriculture's more general Conservation Operations appropriation.

3. Where the Office of Management and Budget (OMB) initially did not apportion funds for technical assistance for the wetlands reserve program (WRP) and the farm protection program (FPP) because of OMB's uncertainty concerning applicability of statutory funding restrictions, and where OMB subsequently approved the Department of Agriculture's revised apportionment requests for the WRP and the FPP, the delay in apportioning funds was programmatic and did not constitute an impoundment of funds.

NOTES

[1] In addition to the WRP and the FPP, Chairman Kohl and Senator Cochran asked about the Conservation Reserve Program (CRP) as one of the programs for which OMB had failed to apportion funds. The letter arrived after we had already received a response to a detailed set of inquiries sent to OMB and Agriculture regarding the WRP and the FPP. In the interest of time, we did not send a second letter asking OMB to address the CRP program. However, the CRP is covered by the same general authorities applicable to the WRP and the FPP. The CRP is also a program authorized by the Food Security Act of 1985, as amended. Therefore, to the extent funds were not apportioned for the CRP under the same circumstances as the FPP and the WRP, the same legal principles outlined herein should apply.

[2] The Department of Agriculture concurred with OMB's responses to our substantive questions regarding these issues. Letter from Nancy Bryson, General Counsel, Department of Agriculture to Susan A. Poling, Managing Associate General Counsel, GAO, September 16, 2002.

[3] EQIP is a voluntary conservation program for farmers and ranchers that promotes agricultural production and environmental quality as compatible national goals. EQIP

offers financial and technical help to assist eligible participants install or implement structural and management practices on eligible agricultural land. http://www.nrcs.usda.gov/programs/eqip.

[4] The 1996 Farm Bill required that for fiscal years 1996 through 2002, 50 percent of the funding available for technical assistance, cost-share payments, incentive payments, and education under EQIP be targeted at practices relating to livestock production.

[5] Chairman Harkin and Senator Cochran were Managers on the part of the Senate for the Conference Committee on the 2002 Farm Bill.

[7] For fiscal year 1999, the Natural Resources Conservation Service sought to add language to the Conservation Operations appropriation to provide authority to expand the use of Conservation Operations funds to support the technical assistance activities of other programs administered by NRCS such as EQIP, WRP and CRP. Hearings before the House Committee on Appropriations, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations for Fiscal Year 1999, 105th Cong., 2nd Sess., Part 3 at 776 (1998). The language was not included in the final version of the Agriculture Appropriations Act for fiscal year 1999.

[8] OMB cites language in the legislative history of the Fiscal Year 2002 appropriations act that appears to support the use of the Conservation Operations appropriation for conservation technical assistance, and in particular WRP and CRP assistance. Our own review of the legislative history finds language that indicates a congressional intent that technical assistance for the conservation programs in question must be funded from CCC funds. However, in view of the subsequent enactment of the 2002 Farm Bill, which specifically and unequivocally requires that funding for technical assistance for conservation programs named in 16 U.S.C. §3841 shall come from CCC funds, we do not consider the legislative history controlling.

[9] There are two types of impoundment actions—deferrals and rescissions. A deferral is a temporary withholding or delay in obligating or any other type of executive action which effectively precludes the obligation or expenditure of budget authority. Glossary of Terms Used in the Federal Budget Process, Exposure Draft, GAO/AFMD–2.1.1, Page 38 (1993). Deferrals are authorized only to provide for contingencies, to achieve savings made possible by changes in requirements or greater efficiency of operations, or as otherwise specifically provided by law. *See* 2 U.S.C. §684. A rescission involves the cancellation of budget authority previously provided by Congress (before that authority would otherwise expire) and can be accomplished only through legislation enacted by Congress that cancels the availability of budgetary resources previously provided by law. *See* Glossary of Terms Used in the Federal Budget Process, Exposure Draft, GAO/AFMD–2.1.1, Page 70 (1993).

S. 1766

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON USE OF CERTAIN CONSERVATION FUNDING FOR TECHNICAL ASSISTANCE FOR CONSERVATION RESERVE PROGRAM.

Section 1241(b)(1) of the Food Security Act of 1985 (16 U.S.C. 3841(b)(1)) is amended by inserting before the period at the end the following: ''(other than the conservation reserve program under subchapter B of chapter 1)''.

Ms. SNOWE. Mr. President, I rise today to join my colleagues, Senator LEAHY and Senator BURNS, in cosponsoring the Conservation Technical Assistance Act to preserve funding for our Nation's working lands conservation programs. Through these valuable programs, farmers across the country are able to participate in voluntary farmland, grassland, environmental and wildlife conservation programs that balance stewardship goals with on-farm production. For many States that do not receive large crop subsidies, including Maine, conservation programs are the principal source of Federal assistance and are a valuable tool for helping small and specialty crop growers enhance their production while caring for the land.

This legislation does not set new policy, rather it reinforces the mandates Congress made in the 2002 farm bill. Congress recognized the importance of conservation in agriculture by significantly increasing funding for the working lands conservation programs in the 2002 farm bill. Under the new farm law, the U.S. Department of Agriculture (USDA) should have expanded the opportunity for farmers to practice environmental stewardship.

Unfortunately, the USDA has not followed through on congressional intent. Over the past year, the USDA has diverted $158 million from the Environmental Quality Incentives Program (EQIP), the Farm and Ranchland Protection Program (FRPP), the Wildlife Habitat Improvement Program (WHIP), and the Grassland Reserve Program (GRP) to pay for technical assistance of the Conservation Reserve Program (CRP). As a result of these actions, countless numbers of farmers were prevented from participating in working lands conservation programs.

Without corrective action, farmers' conservation options will be curtailed even more severely as the USDA transfers funding to other programs in the Department. I join my distinguished colleagues today because I believe it is high time that Congress intervene with a solution.

The northeast is home to an incredible array of agricultural products grown by producers both large and small, and, in some cases, sold locally or nationally. In northern Maine, fields of potatoes stretch for miles along the rolling hills of Aroostook County. Along the eastern coast, wild blueberry barrens dot the maritime horizon. Diary farms populate much of inland Maine, and nearly every other type of speciality crop is grown in farms across the State. Despite the unique needs of each grower, the one common thread between these farmers is their nearly unanimous support for the additional commitment Congress made to working lands conservation programs in the 2002 farm bill.

These programs are the State's most effective and substantial source of Federal agricultural support. EQIP, FRPP, WHIP, and GRP make up the lion's share of funding for many States that do not grow traditionally subsidized row crops. Maine, with its diverse agricultural sector, is a prime example of a State that relies on working lands conservation programs to both enhance production and conserve our natural resources. Funds from these programs can be used for projects such as irrigation assistance, water quality, soil erosion control, crop rotation, and other practices. Yet, we are finding these very programs and the benefit they provide being cut by the very department that is tasked with funding them, the U.S. Department of Agriculture.

In fiscal year 2003, the USDA diverted over $158 million from key working lands conservation programs to pay for technical assistance for CRP. The funding shortfall created by this diversion has dramatically reduced the available resources for EQIP, FRPP, WHIP, and GRP and led our States to have to deny assistance to countless willing farmers. As more acres become available to be enrolled in CRP in future years and the program's technical assistance costs rise, the impact on working lands conservation programs will become more severe.

It would have been unnecessary to raid working lands conservation programs to pay for CRP had the Department adhered to the specific language in the 2002 farm bill. In fact, Congress anticipated the need to fund technical assistance for CRP and provided specific language in the 2002 farm bill directing the Department to use mandatory funding to pay for CRP technical assistance.

Until we can reach a broader agreement on implementation of the 2002 farm bill provision on conservation technical assistance, it is imperative that we take steps to hold our working lands conservation programs harmless. This legislation does this by simply, but explicitly, stating that the USDA may not take funding from working lands conservation programs to pay for CRP technical assistance. This clarification will allow EQIP, FRPP, WHIP, and GRP to retain the funding that Congress provides. It does not add or subtract funding from an account, rather it makes sure that the funds are used by the program for which Congress intended.

Maine's farmers and our farm community cannot afford to be short changed for another year. In fiscal year 2003, my state received a little more than $8 million in conservation funding compared with the promise for $12 million as required by the regional equity provision of the 2002 farm bill. This short-fall in funding not only meant less direct assistance to farmers, but it led the USDA to propose cutting 20 Natural Resource Conservation Service staff positions throughout Maine. While I am pleased that the USDA decided against laying off these NRCS workers, the specter of further conservation shortfalls in the future does not bode well for my State. I cannot allow both farmers and the professionals who support them to suffer because of USDA's actions.

In closing, I would like to again thank the Senator from Vermont and the Senator from Montana for working to craft a temporary solution to the conservation technical assistance problem. I believe that this is the right step to take and I hope to continue working with my colleagues to address the problem down the road. I urge my colleagues to support this measure.

By Mr. LEVIN (for himself, Mr. MCCAIN, and Mr. BAUCUS):

S. 1767. A bill to prevent corporate auditors from providing tax shelter services to their audit clients; to the Committee on Banking, Housing, and Urban Affairs.

Mr. LEVIN. Mr. President, today I am introducing with the cosponsorship of Senator MCCAIN and Senator BAUCUS the Auditor Independence and Tax Shelters Act, a bill designed to strengthen auditor independence by prohibiting audit companies from selling tax shelter services to the publicly traded companies they audit and to the officers and directors of those companies.

Last year, Senators MCCAIN, BAUCUS and I each participated in investigations conducted by our respective Committees, the Committees on Commerce, Finance, and Governmental Affairs, into corporate misconduct by Enron and other major U.S. companies, including participation in misleading accounting and tax practices. These investigations led each of us to focus on the role of accounting firms in, not only going along with publicly traded companies' using abusive tax shelters, but also selling them the very tax shelters they used to overstate their earnings on their financial statements.

In fact, the Permanent Subcommittee on Investigations, on which I am the Ranking Minority Member, has spent the last year investigating the roles played by accounting firms and other professional organizations such as banks, investment advisors and law firms, in developing, marketing and implementing abusive tax shelters. The Finance Committee held a hearing today on this same topic.

Tax shelters have become a huge business in this country. An 1998 article in Forbes magazine—five years ago—described how tax shelter use was growing even then:

> Pay attention. These letters are prime evidence of a thriving industry that has received scant public notice: the hustling of corporate tax shelters. These shelters are being peddled, sometimes in cold-call pitches, to thousands of companies. Will the shelters hold up in court? Maybe yes, maybe no, but many schemes capitalize on the fact that neither the tax code nor the IRS can keep up with the exotica of modern corporate finance. Hesitant at first to participate, respectable accounting firms, law offices and public corporations have lately succumbed to competitive pressures and joined the loophole frenzy.

A March 2003 article in BusinessWeek magazine states that U.S. corporations are some of the biggest players in the tax shelter game:

> The federal tax rate for corporations is 35%, but few pay that much. . . . Many have achieved the Holy Grail of corporate finance: steadily growing profits coupled with a dramatically shrinking tax burden. . . . [I]n the late 1990s, the hunt for tax breaks became a much bigger business. . . . Tax avoidance became a competitive sport, with even blue-chip companies aggressively benchmarking their effective tax rates against those of rivals. According to a recent Harvard University study, U.S. companies avoided paying tax on nearly $300 billion in income in 1998.

Recently, the New York Times reported that a consultant's report prepared for the IRS but not released to the public until now will show that ''corporate tax cheating in 2000 cost the government $14 billion to $18 billion'' in revenues during that one year alone.

Accounting firms are in the thick of the tax shelter activity, earning tens of millions of dollars in fees. According to Bowman's Accounting Report, the Big Four accounting firms, PricewaterhouseCoopers, Deloitte & Touche, KPMG, and Ernst & Young, brought in $5.6 billion of U.S. tax practice revenues in 2001, more than twice the tax-related revenues these companies posted in 1995. While some of these fees are the result of tax return preparation work, our Subcommittee investigation indicates that significant fees were generated by tax shelter services provided to wealthy individuals and corporations.

Increased tax shelter activity has not only led to substantial U.S. tax revenue loss, it has complicated U.S. tax enforcement efforts and undermined taxpayer confidence in the federal tax compliance system, leading the IRS to designate abusive tax shelters as an enforcement priority.

The IRS has accordingly begun a major effort to combat this form of tax avoidance. In 2002, for example, the IRS issued about 200 summonses seeking tax shelter related information from 30 accounting firms and other tax shelter promoters, and filed suit against two major accounting firms, KPMG and BDO Seidman, and two major law firms, Jenkens & Gilchrist and Sidley Austin Brown & Wood, to obtain information about their tax shelter activities. In addition, the Securities Exchange Commission and the new Public Company Accounting Oversight Board have expressed serious concerns about accounting firms that audit publicly traded companies while wearing two hats: those of the tax shelter promoter and those of the auditor auditing the same tax shelters it has promoted.

That issue is the focus of our legislation.

Auditors of publicly traded companies are supposed to be independent watchdogs charged with determining whether a company's financial statements are accurate and fairly report the company's finances. But multiple accounting scandals involving billions of dollars at companies like Enron, Tyco, Healthsouth, Aldelphia, and MCI-WorldCom have rocked investor confidence in auditors and severely damaged the reputation of the U.S. accounting profession. These accounting scandals showed again and again that our laws and financial systems were insufficient to ensure that U.S. auditors were doing their jobs.

In response, Congress passed the Sarbanes-Oxley Act of 2002. A primary purpose of that law was to strengthen auditor independence and restore investor confidence in U.S. financial statements. Among other measures, it established the new Public Company Accounting Oversight Board to strengthen auditing standards, investigate and discipline auditor wrongdoing, and oversee auditing practices to ensure adequate financial statement reviews. While the Sarbanes-Oxley Act is a landmark piece of legislation—replacing decades of self-policing in the accounting industry with independent oversight—a number of reform issues remain unresolved.

One key, longstanding issue that continues to compromise auditor independence is the role played by accounting firms in developing and selling tax shelters to public companies they audit.

As part of their review of public company financial statements, auditors are supposed to review the company's tax practices to ensure that the company is not understating its tax liability and overstating its earnings. But in some cases, the same accounting firm is also pitching tax shelters to that client, many of which rely on aggressive and novel interpretations of tax law. If a company buys one of these tax shelters from its accounting firm, the unacceptable result is that the accounting firm can then turn around and audit the company's financial statements and, in effect, audit its own work, a situation that strikes at the heart of auditor independence.

In some cases, the accounting firm may have even negotiated ''success fees'' which are contingent upon a tax shelter's success in reducing a client's tax burden. In such cases, accounting firms will audit tax transactions in which they have a direct financial interest, creating a conflict of interest between the firm's income and auditing responsibilities, and making it highly unlikely that questions will be raised about a tax shelter that the firm itself sold to its client.

Similar conflicts may arise when accounting firms offer tax shelter services to the officers and directors of the companies they audit. One case extensively discussed in the media involves a major accounting firm which not only audited Sprint Corporation, a publicly traded company, but also sold tax shelters to the Sprint CEO and other Sprint executives. These tax shelters supposedly eliminated taxes owed on millions of dollars in personal compensation from stock options given by Sprint to its executives. When the value of the stock options later fell,

the accounting firm apparently analyzed strategies that could have lowered the individuals' taxes but increased the company's taxes, pitting the individual against the company, with the same accountant on both sides of the equation. Sprint eventually fired several of the executives and recently announced it was also changing auditors. In addition, Sprint has instituted a new policy barring its auditor from providing any financial services to its executives.

Investors, our markets, and the American public deserve better. The legislation we are introducing today would end these auditor conflicts by prohibiting auditors from providing tax shelter services to both the publicly traded companies they audit and to those companies' officers and directors. In addition, the bill would codify four common-sense principles of auditor independence that would assist public companies in analyzing what services may compromise auditor independence.

Our bill would build upon the Sarbanes-Oxley Act which took the first step last year to address the conflict of interest problems that arise when accounting firms provide tax services to the companies they audit. Seeking to limit a wide range of possible conflicts of interest, the Act broadly prohibited auditors from providing any tax service to an audit client without first obtaining the approval of the audit committee of the company's board of directors.

The SEC took the next step when it proposed regulations to implement the Sarbanes-Oxley Act. The SEC issued a draft proposal that essentially would have prohibited auditors from selling any tax shelters to their audit clients. The draft SEC proposal also contained the four principles that would have helped company audit committees evaluate whether other tax services proffered by auditors would impair auditor independence. Unfortunately, under heavy lobbying pressure from accounting firms in the tax shelter business, the SEC dropped both of these important provisions from the final regulation.

So we need to legislate. Our bill would, first, prohibit accounting firms that audit publicly held companies in the United States from providing tax shelter services either to the companies they audit or to the companies' officers and directors. The bill defines tax shelter services by referring to existing law, using language in an existing definition of tax shelters in section 6111(d) of the tax code. The bill would prohibit auditors from providing to their audit clients those services related to designing, promoting or executing tax transactions which have tax avoidance or evasion as a significant purpose and which generate fees for the auditing firm exceeding $100,000. It is intended that questions about whether particular tax-related services fall within this definition would be resolved by corporate audit committees when asked by their accounting firm to approve the company's paying for the particular services. The audit committee could consult with the IRS, SEC, or other experts in reaching its decision.

If an audit committee were to approve tax shelter services that should have been barred, the bill does not provide new penalties or enforcement authority, but makes use of the existing oversight authority of the SEC and Public Company Accounting Oversight Board to enforce compliance with federal law. That means, for example, if an audit committee were to allow its auditor to provide prohibited tax shelter services, the SEC or Public Company Accounting Oversight Board could use their existing oversight authority to require the company to ''cease and desist'' paying for the services or to prohibit the accounting firm from providing the services. If appropriate, the SEC could also order the public company, the accounting firm, or both, to pay a monetary penalty for violating the tax shelter services prohibition.

The legislation would further reduce potential conflicts by codifying four principles of auditor independence that public company audit committees would be required to apply when determining what non-audit services an auditor can provide. These principles have been repeatedly cited in SEC efforts to strengthen auditor independence and were also cited during debate on the Sarbanes-Oxley Act. They provide that auditor independence is compromised when auditors: 1. audit their own work; 2. perform management functions for their clients; 3. act as advocates on behalf of their clients; or 4. act as promoters of their clients' stock or other financial interests.

To better ensure auditor independence, our bill would require audit committees to apply these four principles when considering what services, not otherwise prohibited, an auditor may provide to their company. If an audit committee were to find that the proposed auditor service would reasonably result in a violation of one of the above principles, the audit committee would have to disallow the proffered service.

Experts in the financial and accounting industries agree that auditors should not be permitted to provide tax shelter services to their audit clients. In January of this year, The Conference Board's blue-ribbon Commission on Public Trust and Private Enterprise, co-chaired by John Snow before he became Secretary of the Treasury, concluded the following:

> [P]ublic accounting firms should limit their services to their clients to performing audits and to providing closely related services that do not put the auditor in an advocacy position, such as novel and debatable tax strategies and products that involve income tax shelters and extensive off-shore partnerships or affiliates. . . . The Commission believes that any work performed by the company's outside auditors [should] be closely related to the audit. Auditors' development and recommendations of new tax strategies for their clients is not closely related to the audit, and, in our opinion, removes focus from their audit work and poses a potential conflict of interest. Furthermore, the development and recommendations of these strategies have often been accompanied by ''success fees.'' In turn these strategies, if implemented, were often then subject to an audit by the firm. This practice, in our opinion, is highly undesirable. The firm's need for impartiality in conduct of the audit is in direct conflict with the financial incentives to provide tax strategies which themselves must be audited.

William McDonough, Chairman of the Public Company Accounting Oversight Board, has indicated that the Board is also considering whether to ban auditors from providing tax shelter services to their audit clients and will be closely monitoring how accounting firms audit a company's tax liabilities and any company use of tax shelters. In testimony before the Finance Committee earlier today, Mr. McDonough stated:

> While the SEC made clear that it did not consider conventional tax compliance and planning to be a threat to auditor independence, it distinguished such traditional services from the marketing of novel, tax-driven, financial products, which the SEC noted raise some serious issues. . . . [T]he AICPA has also suggested that ''advice on tax strategies having no business purpose other than tax avoidance is an appropriate dividing line for activities that should be prohibited to auditing firms registered under the Sarbanes-Oxley Act.'' Thus, there appears to be consensus that auditors ought not to be selling abusive tax shelters to audit clients.

In an unrelated Wall Street Journal interview, Mr. McDonough was described as saying that ''[w]hat he finds problematic is 'very creative tax work' . . . . 'There is no way you can do that and claim to be independent,' he said.''

The Sarbanes-Oxley Task Force formed by the American Bar Association's Section of Taxation, has also expressed support for barring auditors from providing tax shelter services to their audit clients. In a comment letter supporting the proposed ban in the SEC regulations on auditor independence, the Task Force wrote:

> We believe that tax shelter products raise particular auditor independence concerns. Companies purchasing tax shelter products are exposed to a variety of risks over and above the calculation of tax liability. An accounting firm that markets a tax shelter product to a registrant should be prohibited from conducting the audit of the registrant because it cannot be expected to fairly evaluate the risks inherent in the tax shelter product.

Our legislation has been endorsed by a number of public interest groups working to strengthen auditor integrity, renew investor and consumer confidence in the financial statements of U.S. publicly traded companies, and curb abusive tax shelters. The Consumer Federation of America, Consumers Union, Consumer Action, U.S. Public Interest Research Group, and Common Cause have stated in a letter of endorsement: ''Passage of this bill is one of the most important steps Congress could take to ensure that last

year's corporate reform efforts have their intended effect of restoring real independence to the 'independent' audit and, with it, a reasonable level of reliability to public companies' financial disclosures.''

Our bill's reforms are straightforward. Auditors should not audit their own work, including evaluating a tax shelter that the auditor itself sold to its audit client. Auditors should not sell personal tax shelters to the officers and directors of its audit clients, due to the conflicts of interest that can arise. Publicly traded companies ought to have explicit guidance to help them avoid auditor conflicts of interest, and the best guidance we can give them is the four auditor independence principles that have long guided SEC and Congressional action in this area.

Together, a ban on auditors providing tax shelter services to their audit clients and a codification of the four auditor independence principles to guide public companies away from auditor conflicts of interest could go a long way to restoring the confidence of investors in the U.S. auditing profession, financial reporting system, and capital markets. I urge my colleagues to support this common-sense and much-needed legislation.

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

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

S. 1767

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Auditor Independence and Tax Shelters Act''.

SEC. 2. PROHIBITION ON AUDITORS PROVIDING TAX SHELTER SERVICES TO AUDIT CLIENTS.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended—

(1) in subsection (f)—

(A) in the first sentence, by striking ''section, the term'' and inserting the following: ''section—

''(1) the term'';

(B) by striking ''law. As used in this section, the term'' and inserting the following: ''law;

''(2) the term''; and

(C) by striking the period at the end and inserting the following: ''; and

''(3) the term 'tax shelter services' means services provided by a registered public accounting firm (or by an associated person of that firm) to an issuer, or an officer or director of an issuer, to design, organize, promote, assist, or execute any investment, entity, plan, arrangement, or transaction for which a significant purpose is the avoidance or evasion of Federal income tax by such issuer, or an officer or director of such issuer, whether acting as a direct or indirect participant, and for which such firm may receive fees in excess of $100,000 in the aggregate.'';

(2) in subsection (g)—

(A) in paragraph (8), by striking ''and'' at the end;

(B) by redesignating paragraph (9) as paragraph (10); and

(C) by inserting after paragraph (8) the following:

''(9) tax shelter services; and'';

(3) in subsection (h)—

(A) by inserting ''other than tax shelter services'' after ''tax services''; and

(B) by striking ''(9)'' and inserting ''(10)''; and

(4) in subsection (i)(1)—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following:

''(B) ASSURANCE OF AUDITOR INDEPENDENCE.—Before preapproving a non-audit service that is not otherwise prohibited under this section, the audit committee of an issuer shall—

''(i) determine whether there is a reasonable likelihood that provision of the non-audit service would impair the independence of the registered public accounting firm by resulting in the firm—

''(I) auditing its own work for the issuer;

''(II) performing a management function for the issuer;

''(III) advocating in a public forum for the issuer; or

''(IV) promoting the stock or other financial interest of the issuer; and

''(ii) if the audit committee determines that such a reasonable likelihood exists, the audit committee shall not provide advance approval of such service under this section.''.

SEC. 3. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of enactment of this Act, and shall apply to any tax shelter service, as defined in section 10A of the Securities Exchange Act of 1934, as amended by this Act, that is submitted for preapproval to the audit committee of an issuer or is provided by a registered public accounting firm to an issuer in accordance with that section 10A on or after the date of enactment of this Act.

Mr. MCCAIN. Mr. President, I am pleased to join my colleague from Michigan, Senator LEVIN, in sponsoring the Auditor Independence and Tax Shelters Act.

While the Sarbanes-Oxley Act and Securities and Exchange Commission rules rightly prohibit accounting firms from providing certain non-auditing services to the publicly traded companies they audit, auditors are not prohibited from providing tax shelter services to their audit clients.

The Auditor Independence and Tax Shelters Act is intended to address this gap in the law by prohibiting audit firms from providing such services to their audit clients. It would thereby significantly strengthen auditor independence and eliminate a fundamental conflict of interest that is adverse to the best interest of investors.

Although I believe that any firm that serves as an auditor of a company should generally be prohibited from providing any non-audit service to that company, I strongly support this bill because it is a significant step toward achieving true auditor independence.

I urge my colleagues to support this important bill to further protect investor confidence in our capital markets.

By Mr. CAMPBELL (for himself, Mr. INOUYE, and Mr. DOMENICI):

S. 1770. A bill to establish a voluntary alternative claims resolution process to reach a settlement of pending class action litigation, to the Committee of Indian Affairs.

Mr. CAMPBELL. Mr. President, today I am pleased to be joined by Senators INOUYE, DOMENICI and STABENOW in submitting a Senate Resolution urging settlement of the 8-year old Indian trust funds lawsuit, and by Senators INOUYE and DOMENICI in introducing a bill that I hope and believe will accomplish that goal, the ''Indian Money Claims Satisfaction Act of 2003''.

The saga of Cobell v. Norton did not start in 1996 with the filing of the lawsuit, it began long before any of us were born. In 1887 Congress enacted the General Allotment Act to break up the tribal landmass and teach Indians to be ''civilized''.

The legacy of that failed policy is still with us in the form of horribly fractionated Indian lands and the class action case filed in 1996 that is still ongoing.

The remedy the plaintiffs in the Cobell case are seeking is an accounting by the United States of funds that are or should be in the hundreds of thousands of individual Indian money accounts (IIMs) managed and maintained by the Federal Government.

Eight long years have passed without an accounting, and without a single penny being paid to an account holder. Last month, Judge Lamberth issued a 400-page decision and order that guarantees at least 5 more years of litigation, hundreds of millions and maybe billions more spent, with no end in sight to the lawsuit.

Those who insist that a decision by the Judge would mean the beginning of the end of this case are wrong: with likely appeals, Congressional squabbling over money spent on this effort, and additional lawsuits aimed at securing money damages, this case is just beginning.

The U.S. claims that pennies on the dollar are owed the plaintiffs but, without billions more spent on accounting activity, it cannot say for sure how much is in the accounts or should be in the accounts.

Preliminary cost estimates from the Interior Department suggest that it will take $10 billion or more to comply with Judge Lamberth's order on historic accounting. This money will be spent year after year through Fiscal Year 2008 at least.

I believe this money is better spent on re-constituting the Indian land base and building a forward-looking, state-of-the-art trust management system, and providing more dollars to Indian health care and education, which we know are underfunded.

The plaintiffs claim more than $175 billion dollars should be in these accounts, a number the Department has vigorously contested.

Today I am introducing a bill that I believe will end this lawsuit in a way to provide justice to individual Indian account holders and restore some sense of normalcy to the Interior Department.

Just as the Indian Claims Commission, the Trust Resolution Corporation,

and the Volcker Committee on Swiss Bank Accounts helped resolve cases of highly complex, historical-based litigation, the bill I am introducing will establish a 9-member, expert-filled ''Indian Money Claims Satisfaction Task Force'' to develop alternative methodologies to arrive at account balances.

The bill also establishes the ''Indian Money Claims Tribunal'' to provide binding arbitration for any IIM holder that contests the account balance provided by the Task Force.

I look forward to the swift enactment of this bill and with it, an honorable conclusion to this sad and destructive chapter of Federal-Indian relations.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1770

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Indian Money Account Claim Satisfaction Act of 2003''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) since the 19th century, the United States has held Indian funds and resources in trust for the benefit of Indians;

(2) in 1996, a class action was brought against the United States seeking a historical accounting of balances of individual Indian money accounts;

(3) after 8 years of litigation and the expenditure of hundreds of millions of dollars of Federal funds, it is clear that the court-ordered historical accounting will require significant additional resources and years to accomplish and will not result in significant benefits to the members of the class; and

(4) resolving the litigation in a full, fair, and final manner will best serve the interests of the members of the class and the United States.

(b) PURPOSE.—The purpose of this Act is to provide a voluntary alternative claims process to reach settlement of the class action litigation in Cobell v. Norton (No. 96cv01285, D.D.C.).

SEC. 3. DEFINITIONS.

In this Act:

(1) ACCOUNTING.—The term ''accounting''—

(A) with respect to funds in an individual Indian money account that were deposited or invested on or after the date of enactment of the Act of June 24, 1938 as provided in the first section of that Act (25 U.S.C. 162a), means a demonstration, to the maximum extent practicable, of the monthly and annual balances of funds in the individual Indian money account; and

(B) with respect to funds in an individual Indian money account that were deposited or invested between 1887 and the day before the date of enactment of the Act of June 24, 1938, means a demonstration of the probable balances of funds in an individual Indian money account that were deposited or invested.

(2) CLAIM.—

(A) IN GENERAL.—The term ''claim'' means a legal or equitable claim that has been brought or could be brought, asserting any duty claimed to be owed by the United States under any statute, common law, or any other source of law to an individual Indian money account holder that pertains in any way to the account holder's account, including the duty to—

(i) collect and deposit funds in the account;

(ii) invest funds in the account;

(iii) make disbursements from the account;

(iv) make and maintain records of activity in the account;

(v) provide an accounting; and

(vi) value, compromise, resolve, or otherwise dispose of claims relating to the account.

(B) INCLUSION.—The term ''claim'' includes a claim for damages or other relief for failure to perform, or for improper performance of, any duty described in subparagraph (A).

(3) CLASS ACTION.—The term ''class action'' means the civil action Cobell v. Norton (No. 96cv01285, D.D.C.).

(4) DE MINIMIS INDIVIDUAL INDIAN MONEY ACCOUNT.—The term ''de minimis individual Indian money account'' means an individual Indian money account that contains less than $100.

(5) ELIGIBLE INDIVIDUAL.—The term ''eligible individual'' means—

(A) a living individual who is or has been an individual Indian money account holder, except any such individual whose account holds or held funds only from the distribution of a judgment fund or a per capita distribution; and

(B) the estate of a deceased individual who—

(i) was living on the date of enactment of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and

(ii) held an individual Indian money account on that date or at any time subsequent to that date, except any such individual whose account holds or held funds only from the distribution of a judgment fund or a per capita distribution.

(6) IMACS TASK FORCE.—The term ''IMACS Task Force'' means the Indian Money Account Claim Satisfaction Task Force established by section 4.

(7) INDIVIDUAL INDIAN MONEY ACCOUNT.—The term ''individual Indian money account'' means an account that contains funds held in trust by the United States, established and managed by the United States on behalf of an individual Indian.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(9) TRIBUNAL.—The term ''Tribunal'' means the Indian Money Claims Tribunal established by section 5.

SEC. 4. INDIAN MONEY ACCOUNT CLAIM SATISFACTION TASK FORCE.

(a) ESTABLISHMENT.—There is established the Indian Money Account Claim Satisfaction Task Force.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The IMACS Task Force shall be comprised of not fewer than 9 members, appointed jointly by the majority leader and minority leader of the Senate and the Speaker and minority leader of the House of Representatives.

(2) QUALIFICATIONS.—

(A) BACKGROUND.—Members of the IMACS Task Force shall be selected from private enterprise and academia and shall not be employees of the United States.

(B) EXPERTISE.—Of the members appointed to the IMACS Task Force—

(i) 2 shall have expertise in the field of forensic accounting;

(ii) 2 shall have expertise in the field of Federal Indian law;

(iii) 2 shall have expertise in the field of commercial trusts;

(iv) 1 shall have expertise in the field of mineral resources;

(v) 1 shall have expertise in the field of economic modeling and econometrics; and

(vi) 1 shall have expertise in the field of complex civil litigation.

(3) IMACS TASK FORCE LEADER.—An IMACS Task Force Leader shall be chosen by majority vote of the members of the IMACS Task Force.

(c) COMPENSATION AND TRAVEL EXPENSES.—A member of the IMACS Task Force shall be entitled to—

(1) compensation, at a rate that does not exceed the daily equivalent of the annual rate of basic pay prescribed under level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the performance of duties the IMACS Task Force; and

(2) travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of title 5, United States Code.

(d) INFORMATION AND SUPPORT.—The Secretary of the Interior shall provide the IMACS Task Force—

(1) access to all records and other information in the possession of or available to the Secretary relating to individual Indian money accounts; and

(2) such personnel, office space and other facilities, equipment, and other administrative support as the IMACS Task Force may reasonably request.

(e) CONFIDENTIAL INFORMATION.—Section 10(b) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the IMACS Task Force.

(f) DUTIES.—

(1) IN GENERAL.—The IMACS Task Force shall—

(A) not later than 1 year after the date of enactment of this Act, complete an analysis of records, data, and other historical information with regard to the conduct of an historical accounting submitted by the parties in the class action to the district court in January 2003; and

(B) not later than 60 days after completing the analysis under subparagraph (A), hold meetings with representatives of—

(i) the plaintiffs in that civil action;

(ii) the Department of Justice and the Department of the Interior; and

(iii) any other parties that, in the discretion of the IMACS Task Force, are necessary to allow the IMACS Task Force to carry out its duties under this Act.

(2) ACCOUNT BALANCES.—

(A) METHODOLOGIES OR MODELS.—The IMACS Task Force shall develop 1 or more appropriate methodologies or models to conduct an accounting of the individual Indian money accounts.

(B) DETERMINATION.—Using methodologies or models developed under subparagraph (A), the IMACS Task Force shall conduct an accounting to determine in current dollars the balances of—

(i) first, all individual Indian money accounts opened in or after 1985;

(ii) second, all individual Indian money accounts opened on or after the date of enactment of the first section of the Act of June 24, 1938 (25 U.S.C. 162a), and before 1985; and

(iii) third, all individual Indian money accounts opened before the date of enactment of the first section of the Act of June 24, 1938 (25 U.S.C. 162a).

(C) NOTICE OF DETERMINATION.—On making a determination of the balance in the individual Indian money account of an eligible individual, the IMACS Task Force shall provide notice of the determination to the eligible individual and the Secretary.

(g) ACCEPTANCE OR NONACCEPTANCE BY ELIGIBLE INDIVIDUAL.—

(1) ACCEPTANCE.—If an eligible individual accepts the determination by the IMACS Task Force of the balance in the individual

Indian money account of the eligible individual—

(A) not later than 60 days after the date on which the eligible individual receives notice of the determination, the eligible individual shall submit to the Secretary a notice that the eligible individual accepts the determination of the balance;

(B) not later than 30 days after the Secretary receives the notice of acceptance under subparagraph (A), the Secretary shall make any adjustment in the records of the Secretary to reflect the determination;

(C) based on the adjustment made pursuant to paragraph (B), the Secretary shall make full payment to the eligible individual of the balance in the individual Indian money account of the eligible individual in satisfaction of any claim that the individual may have;

(D) the eligible individual shall provide the Secretary an accord and satisfaction of all claims of the eligible individual, which shall be binding on any heirs, transferees, or assigns of the eligible individual; and

(E) the eligible individual shall be dismissed from the class action.

(2) NONACCEPTANCE.—If an eligible individual does not accept the determination by the IMACS Task Force of the balance in the individual Indian money account of the eligible individual, the eligible individual may—

(A) have the amount of the balance determined through arbitration by the Tribunal; or

(B) remain a member of the class in the class action.

SEC. 5. INDIAN MONEY CLAIMS TRIBUNAL.

(a) ESTABLISHMENT.—There is established the Indian Money Claims Tribunal.

(b) MEMBERSHIP.—The Tribunal shall be comprised of 5 arbitrators drawn from the list of arbitrators maintained by the Attorney General.

(c) ELECTION TO ARBITRATE.—If an eligible individual elects to have the amount of the balance in the individual Indian money account determined through arbitration by the Tribunal—

(1) not later than 60 days after receiving the notice of determination under section 4(f)(2)(C), the eligible individual shall submit to the Tribunal, in such form as the Tribunal may require, all claims of the eligible individual, with an agreement to be bound by any determination made by the Tribunal; and

(2) the United States shall be bound by any determination made by the Tribunal.

(d) REPRESENTATION.—

(1) IN GENERAL.—An eligible individual may be represented by an attorney or other representative in proceedings before the Tribunal.

(2) ATTORNEY'S FEE.—No legal representative retained by an eligible individual for purposes of proceedings before the Tribunal may collect any fee, charge, or assessment that is greater than 25 percent of the amount of the balance in the individual Indian money account of the eligible individual determined by the Tribunal.

(e) TIMING.—To the extent practicable, the Tribunal shall—

(1) schedule any proceedings necessary to determine a claim to occur not later than 180 days after the date on which the eligible individual submits the claim; and

(2) make a determination of the claim, and provide the eligible individual and the Secretary notice of the determination, not later than 30 days after the conclusion of the proceedings.

(f) ACTION FOLLOWING DETERMINATION.—Not later than 30 days after the Secretary receives the notice of determination under subsection (e)(2)—

(1) the Secretary shall make any adjustment in the records of the Secretary to reflect the determination;

(2) based on the adjustment made pursuant to paragraph (1), the Secretary shall make full payment to the eligible individual of the balance in the individual Indian money account of the eligible individual in satisfaction of any claim that the eligible individual may have;

(3) the individual Indian money account of the eligible individual shall be closed;

(4) the eligible individual shall provide the Secretary an accord and satisfaction of all claims of the eligible individual, which shall be binding on any heirs, transferees, or assigns of the eligible individual; and

(5) the eligible individual shall be dismissed from the class action.

SEC. 6. JUDGMENT FUND AVAILABILITY.

The funds for any payment made pursuant to section 4(g)(1)(C) or 5(f)(2) shall be derived from the permanent judgment appropriation under section 1304 of title 31, United States Code (commonly known as the ''Judgment Fund''), without further appropriation.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) to carry out section 4, $10,000,000 for each of fiscal years 2004 and 2005; and

(2) to carry out section 5, $10,000,000 for each of fiscal years 2006 and 2007.

By Ms. SNOWE (for herself and Mr. CONRAD):

S. 1771. A bill to amend title XIX of the Social Security Act to permit States to obtain reimbursement under the Medicaid program for care or services required under the Emergency Medical Treatment and Active Labor Act that are provided in a nonpublicly owned or operated institution for mental diseases; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Medicaid Psychiatric Fairness Act of 2003, which will serve to improve access to mental health treatment and remove an unfunded mandate on our private mental health treatment centers. I am particularly pleased to introduce this bill with my good friend and colleague, Senator CONRAD, who like me believes we must improve access to treatment for many of the 18.5 million Americans who are afflicted with a mental health disorder.

Moving one step closer to achieving this laudable goal, our bill will require the Medicaid program to provide reimbursement to private mental health facilities that receive patients under the Emergency Medical Treatment and Labor Act, known as EMTALA. EMTALA requires hospitals to provide emergency care to patients, regardless of their ability to pay. However, this stands in conflict with Medicaid law, which in most cases prohibits payment for psychiatric treatment for people between the age of 21 to 65 years. Our bill takes the critically important step to provide Medicaid coverage for emergency treatment, which will expand access for acute care and will ensure that Americans receive the assistance they vitally need in a timely fashion.

Under current law, Medicaid payment for psychiatric treatment for patients between the age of 21 and 65 years is restricted to hospitals that have an in-house psychiatric ward. If a patient seeks care from a private psychiatric hospital or is transferred to a private facility from a community hospital that does not have a psychiatric treatment ward, Medicaid payment is not provided. In comparison, if that same patient seeks care under EMTALA from a hospital because of a physical ailment, Medicaid provides coverage regardless of the type of facility that provides the treatment. By introducing this bill, we are taking a vitally important step toward removing an unfunded mandate on private providers that has served to limit access to care for millions of Medicaid recipients.

It also is important to note that the current situation is jeopardizing Medicaid recipients' access to emergency treatment, and ultimately is overwhelming our emergency rooms and in many cases the criminal justice system. The U.S. Department of Justice estimates that on average 16 percent of inmates in local jails suffer from a mental illness and in Maine, NAMI, a state advocacy group for persons with mental illness, estimates that figure is as high as 50 percent. This is the result of a severe shortage of psychiatric beds in Maine, and as a result many people go without treatment. Action must be taken to provide access to care and we must start by ensuring that Medicaid reimburses facilities that provide treatment.

Senator CONRAD and I have joined together in introducing our legislation that will require Medicaid to pay for the cost of care associated with psychiatric treatment necessary to comply with EMTALA. No longer will private entities be required to shoulder the burden of this federal mandate, and no longer will Medicaid eligible beneficiaries go without access to necessary emergency treatments.

In my home State of Maine, 65,000 people have a severe mental illness and could benefit from this bill. Ensuring that our community treatment facilities are appropriately paid, we will be able to open access to vitally important treatment options.

This bill has been carefully crafted with input from both the provider and beneficiary communities to ensure assistance is directed to those who are most in need and to ensure that the coverage only extends to people who require emergency treatment. We have tied the legislation to the EMTALA statute to ensure that this new requirement cannot be exploited.

Demonstrating the importance of this legislation, we have received support from a number of leading national mental health and medical associations, including NAMI, the National Association of County Behavioral Health Directors, the American Psychiatric Association, the American Hospital Association and the National Association of Psychiatric Health Systems. I am especially pleased to have

also received endorsements from a number of Maine organizations, including the Maine Hospital Association, Maine chapter of NAMI, the State Department of Behavioral and Development Services and the Spring Harbor Hospital.

This legislative change is vitally important to ensure Medicaid patients have access to emergency mental health treatment. I want to thank Senator CONRAD for his help in crafting this policy and urge my colleagues to join us as cosponsors.

I ask unanimous consent that letters of support be printed in the RECORD.

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

NATIONAL ALLIANCE
FOR THE MENTALLY ILL,
Arlington, VA, September 8, 2003.

Hon. OLYMPIA SNOWE,
Hon. KENT CONRAD,
U.S. Senate,
Washington, DC.

DEAR SENATORS SNOWE & CONRAD: On behalf of the 210,000 members and 1,200 affiliates of the National Alliance for the Mentally Ill (NAMI), I am writing to express support for your legislation to addressing the growing crisis in access to acute care services for non-elderly adults living with severe mental illness. As the nation's largest organization representing individuals with severe mental illness and their families, NAMI is pleased to support this important measure.

As NAMI's consumer and family membership knows first-hand, the acute care crisis for inpatient psychiatric care is growing in this country. This disturbing trend was identified in the recently released Bush Administration New Freedom Initiative Mental Health Commission report. Over the past 15–20 years, states have closed inpatient units and drastically reduced the number of acute care beds. Also, general hospitals, due to severe budget constraints, have had to close psychiatric units or reduce the number of beds. This has resulted in a growing shortage of acute inpatient psychiatric beds in many communities.

Your proposed legislation would address an important conflict in federal policy that has contributed to restricted access to needed inpatient services—the Medicaid Institution for Mental Disease (IMD) Exclusion and the Emergency Medical and Labor Treatment Act (EMTALA). EMTALA requires hospitals to stabilize patients in an emergency medical condition, while the IMD exclusion prevents certain hospitals (psychiatric hospitals) from receiving Medicaid reimbursement for Medicaid beneficiaries between the ages of 21–64 in these circumstances.

Your legislation would allow Medicaid funding to be directed to non-publicly owned and operated psychiatric hospitals (IMDs) for Medicaid beneficiaries between the ages of 21–64 who require stabilization in these settings as required by EMTALA. Today, these hospitals are denied payment for care required under the EMTALA rules. The result is that psychiatric hospitals are forced to absorb these added costs of care to their already growing un-reimbursed care even though these patients have insurance through Medicaid.

This legislation will go a long way in addressing the growing psychiatric acute inpatient crisis, while creating fairness in the reimbursement structure for psychiatric hospitals under the limited circumstances required by the EMTALA law. Your leadership in carefully crafting and introducing this targeted legislation addressing a critical problem for persons with serious mental illnesses is much appreciated. NAMI looks forward to working with you and your Senate colleagues to ensure passage of this important legislation.

Sincerely,

RICHARD E. BIRKEL,
Executive Director.

THE NATIONAL ASSOCIATION OF
COUNTY BEHAVIORAL HEALTH DIRECTORS,
Washington, DC, September 5, 2003.

HON. OLYMPIA SNOWE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: The National Association of County Behavioral Health Directors (NACBHD), which is the behavioral health affiliate of the National Association of Counties (NACo), is writing to strongly support the legislation you are introducing to alleviate the crisis in access to acute hospital inpatient psychiatric services. A lack of acute inpatient services was recently highlighted in President Bush's New Freedom Commission on Mental Health report and is a problem in many counties. In twenty of the most populous States, counties have the designated responsibility to plan and implement mental health services.

Over the past 20 years most states have closed many of their state hospitals and returned these patients to the community for care. General hospitals have over the past 10–15 years begun to close psychiatric inpatient units due to cost restraints and the fact that general medical/surgical beds are more profitable. Freestanding psychiatric hospitals have been significantly reduced due to the reduction in reimbursements brought about with the advent of managed care. Over all, the availability of acute psychiatric beds, in many states, has decreased dramatically in the last 10 years. Given the shortage of inpatient acute beds, many individuals with serious psychiatric disorders end up in county jails or homeless rather than receiving basic psychiatric services in hospital.

Your legislation specially addresses the conflict in Federal between the Medicaid Institution for Mental Disease Exclusion (IMD) and the Emergency Medical and Labor Treatment Act (EMTALA). EMTALA requires hospitals to stabilize patients with emergency medical conditions. However, if freestanding psychiatric hospitals receive direct admissions of Medicaid eligible patients or if receive transfers from general hospitals whose psychiatric units are full under EMTALA regulations, they can't receive reimbursement under Medicaid because of the IMD exclusion.

The Snowe-Conrad legislation would allow Medicaid funding to non-publicly owned and operated psychiatric hospitals (IMD's) for Medicaid beneficiaries between the ages of 21–64 who require medical stabilization in these settings as required by EMTALA. Currently, these hospitals are denied payment for care required under the EMTALA rules and clearly represents an unfunded mandate to these hospitals.

The IMD exclusion also prevents counties from contracting with psychiatric hospitals, which are considerably less expensive, for care for the seriously mentally ill. This legislation would assist in creating fairness in the reimbursement structure for psychiatric hospitals under the current EMTALA law.

The National Association of County Behavioral Health Directors appreciates your leadership in introducing this specific legislation that will address this inherent conflict in Federal requirements and will assist in promoting access to acute psychiatric inpatient services. We look forward to working with you and your colleagues in getting this legislation passed through this Congress.

Sincerely,

THOMAS E. BRYANT,
Executive Director.

AMERICAN PSYCHIATRIC ASSOCIATION,
Arlington, VA, October 17, 2003.

Hon. OLYMPIA SNOWE,
Russell Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR SNOWE: On behalf of the 38,000 physician members of the American Psychiatric Association (APA), and most particularly on behalf of the patients they treat, please accept my thanks for your Senate sponsorship of the Medicaid Psychiatric Hospital Fairness Act of 2003.

The Emergency Medical and Labor Treatment Act, which requires hospitals to stabilize patients in an emergency medical condition, directly conflicts with the Medicaid Institution for Mental Diseases (IMD) exclusion. The IMD exclusion prevents non-public psychiatric hospitals from receiving Medicaid reimbursement for Medicaid patients between the ages of 21–64 that have required stabilization as a result of EMTALA regulations.

Your legislation will allow non-public psychiatric hospitals to receive appropriate reimbursement for Medicaid beneficiaries between the ages of 21–64 who require emergency treatment and stabilization as required by EMTALA.

Thank you for your foresight and leadership in your sponsorship of the Medicaid Psychiatric Hospital Fairness Act of 2003. Thanks are also due to the outstanding work by Catherine Finley, who ably represents you. The APA looks forward to working with you to make your bill a reality this year.

Sincerely,

MARCIA GOIN,
President.

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, October 17, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate,
Washington, DC.

DEAR SENATOR SNOWE: On behalf of the American Hospital Association's (AHA) nearly 5,000 member hospitals, health care systems, networks and other providers of care, I am writing to express our support for your bill, the Medicaid Psychiatric Hospital Fairness Act of 2003.

The Emergency Medical and Labor Treatment Act (EMTALA) requires hospitals to stabilize patients in an emergency medical condition including psychiatric hospitals. At the same time the Medicaid program, through the Institution for Mental Diseases (IMD) exclusion, prevents non-public psychiatric hospitals from receiving Medicaid reimbursement for Medicaid patients between the ages of 21–64 that require stabilization. These hospitals are burdened with an unfunded mandate in fulfilling their EMTALA obligations for this patient population.

Your legislation will allow non-public psychiatric hospitals to receive appropriate reimbursement for Medicaid beneficiaries between the ages of 21–64 who require emergency treatment and stabilization as required by EMTALA. This will relieve overcrowding in emergency departments and provide the appropriate care these patients deserve in a more timely manner.

Thank you for addressing this important issue. We support the Medicaid Psychiatric Fairness Act of 2003 and look forward to

working with you and your colleagues to ensure swift passage of this legislation.

Sincerely,

RICK POLLACK,
Executive Vice President.

NATIONAL ASSOCIATION OF PSYCHIATRIC HEALTH SYSTEMS
Washington, DC, September 10, 2003.

Hon. OLYMPIA SNOWE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: The National Association of Psychiatric Health Systems (NAPHS) strongly supports your legislation to alleviate the crisis in acute hospital services for persons with mental illnesses. NAPHS represents provider systems that are committed to the delivery of responsive, accountable, and clinical effective prevention, treatment, and care for children, adolescents, adults, and older adults with mental and substance use disorders. Members are behavioral healthcare provider organizations, including 300 specialty hospitals, general hospital psychiatric and addiction treatment units, residential treatment centers, youth services organizations, partial hospital services, behavioral group practices, and other providers of a full continuum of care.

Mental illness ranks first among all illnesses that cause disability in the United States, with about 5% to 7% of adults suffering from a severe mental illness in any given year. For those who are acutely ill, short-term psychiatric care provides stabilization and is a critical component of community-based care.

After reviewing reports and listening to testimony over the past year, the President's New Freedom Commission on Mental Health identified the lack of acute care as a serious concern. The Commission noted that many communities are experiencing severe problems with access to short-term inpatient care—with some areas reporting that the shortage has risen to crisis proportions. the result is that many emergency rooms are overwhelmed with patients in extreme psychiatric distress who have nowhere to go. I am attaching a report prepared by NAPHS on acute care that provides additional details on this issue for your review.

Your legislation will resolve an unintended and unfair conflict in federal law that has negatively impacted access to acute care. Currently, the Emergency Medical Treatment and Labor Act (EMTALA) provides that hospitals stabilize patients in an emergency medical condition, while Medicaid's Institution for Mental Disease (IMD) provision prohibits psychiatric hospitals from seeking reimbursement for services for beneficiaries between the ages of 21 to 64. General hospitals with psychiatric beds are not subject to the IMD exclusion.

The Snowe-Conrad legislation would increase access to acute care by allowing psychiatric hospitals to bill Medicaid for reimbursement just as general hospitals do for EMTALA patients who are Medicaid-eligible. We look forward to working with you and your colleagues on this important and timely piece of legislation.

Sincerely,

MARK COVALL,
Executive Director.

MAINE HOSPITAL ASSOCIATION,
Augusta, ME, October 20, 2003.

Hon. OLYMPIA SNOWE,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: On behalf of the Maine Hospital Association's 28 acute-care and specialty hospitals, I am writing in support of your bill, the Medicaid Psychiatric Hospital Fairness Act of 2003.

As you know, the Medicaid program, through the Institution for Mental Diseases (IMD) exclusion, prevents non-public psychiatric hospitals from receiving Medicaid reimbursement for Medicaid patients between the ages of 21–64 who require stabilization. When the Federal Government created Medicaid they prohibited Medicaid funding for services at IMDs because Washington viewed mental health services to be the responsibility of the State—particularly since at that time most psychiatric hospitals were State-owned hospitals. The Federal Government did provide funding through the DSH–IMD (Disproportionate Share Hospital Fund for Institutes for Mental Disease). Initially these funds were used solely by the private IMDs, however, in 1991, Maine, in response to a severe budget shortfall, began to shift costs associated with Augusta Mental Health Institute (AMHI) and Bangor Mental Health Institute (BMHI) into the Federal DSH–IMD pool rather than funding those costs with all general fund dollars.

In the mid-1990s the State passed a rule that entitled AMHI and BMHI to be paid first out of the DSH–IMD pool leaving the remainder for the two private hospitals. With a declining Federal cap on the DSH–IMD pool and increasing hospital expenses, there was less and less money with which to reimburse the two private psychiatric hospitals for services provided to this indigent population.

Maine has two private psychiatric hospitals: Spring Harbor Hospital in South Portland and The Acadia Hospital in Bangor. For fiscal year 2000, Acadia had inpatient admissions of 1,731 and Spring Harbor had 2,047. Both hospitals also provide a significant amount of outpatient services.

The two private hospitals play a pivotal role in the delivery of mental health services especially for low-income individuals. As the State has desired to encourage greater behavior services within communities, the Department of Behavioral and Developmental Services worked with both of these hospitals to increase the number of beds and services available to allow for certain patients to be placed in these hospitals rather than the State institutes. The inability of these two hospitals to effectively meet these patient needs would have a detrimental impact throughout the State especially because communities are already stressed attempting to develop needed community-based services.

Your legislation will allow non-public psychiatric hospitals to receive appropriate reimbursement for Medicaid beneficiaries between the ages of 21–64 who require emergency treatment and stabilization as required by EMTALA. This will relieve overcrowding in emergency departments and provide the appropriate care these patients deserve in a more timely manner.

Thank you for addressing this important issue. We support the Medicaid Psychiatric Hospital Fairness Act of 2003 and look forward to working with you and your colleagues to ensure swift passage of this legislation.

Sincerely,

STEVEN MICHAUD,
President, Maine Hospital Association.

NAMI MAINE,
August 29, 2003. Augusta, ME,

Senator OLYMPIA SNOWE,
U.S. Senate,
Portland, ME

DEAR SENATOR SNOWE: I am pleased to write this letter in support of legislation that would allow Spring Harbor Hospital to receive reimbursement for emergency psychiatric stabilization services to Medicaid-eligible patients between the ages of 21 and 64 under the Emergency Medical Treatment and Labor Act (EMTALA).

Chronic metal illness is a disease of impoverishment. Chronic mental health patients who need psychiatric stabilization within an acute-care setting usually are eligible for either charity care of Medicaid funding. Since Spring Harbor Hospital serves a population that by virtue of its illness is financially challenged, it strikes me as inequitable that they should also be denied reimbursement for acute stabilization services provided to Medicaid-eligible adults under EMTALA. Often during the last three years, I have trained Maine's jails to understand EMTALA laws and send suicide inmates to the hospital, rather than admit them to jail. With 30–50% of Maine's jail inmates having mental illness, this places an additional burden on hospitals like Spring Harbor Hospital.

I understand that care for this population in 2002 represented nearly 30% of Spring Harbor's adult psychiatric treatment at a cost of close to $7 million. I also know that Spring Harbor is increasingly viewed by the community as the place where Medicaid-eligible adults who cannot afford to pay for their acute psychiatric stabilization can referred—no question asked. And this is where the benefits of EMTALA turn problematic.

No business—and certainly not a nonprofit organization—can provide $7 million in non-reimbursable services without eventually jeopardizing its financial viability. And this is what concerns NAMI the most: that there will be an even greater lack of acute impatient stabilization services in Maine for the chronic and severely mentally ill individuals who most need-but can least afford—them.

I am hopeful that a legislative solution can be passed that will support Spring Harbor's ability to continue serving people with mental illness, both in keeping with EMTALA and yet without the inequitable financial burden that threatens the long term availability of these services in Maine. Please let me know what more I can do to support this legislation.

Sincerely,

CAROL CAROTHERS,
Executive Director,

STATE OF MAINE, DEPARTMENT OF BEHAVIORAL AND DEVELOPMENTAL SERVICES,
Augusta, ME, August 29, 2003.

Senator OLYMPIA J. SNOWE,
Russell Office Building,
Washington, DC.

DEAR SENATOR SNOWE: I would like to thank you for your insight and understanding of one of the problems confronting Maine's Mental Health System, reflected in your drafting legislation to amend Title XIX of the Social Security Act permitting Medicaid reimbursement to IMD's for services required under EMTALA.

Currently, as you know, non-public community hospitals, designated as Institutes for Mental Disease (IMD), cannot receive Medicaid reimbursement if a patient (age 22–64) is admitted under the EMTALA Laws. This prohibition is, I believe, inconsistent with the intent of the EMTALA regulations, places the IMD's in some financial jeopardy, and fails to recognize the critical role the non-public IMDs play in Maine's Mental Health System of care.

The State of Maine has 2 non-public designated IMD facilities; Spring Harbor Hospital located in South Portland; and Acadia Hospital, located in Bangor. These two facilities in partnership with the 2 State Psychiatric facilities, contain most of the high acuity psychiatric inpatient beds in Maine and as such, provide the safety net for Maine's Community mental health system. These 4 IMDs are constantly being called

upon to take clients who can no longer be stabilized within the existing network of community hospitals. Yet those community hospitals, under current EMTALA law, get reimbursed (rightfully) for services under Medicaid. The IMD's however, cannot access Medicaid reimbursement for that same service and hence a financial inequity and burden is placed on these non-public IMD's. Your proposed draft legislation, which I have had the opportunity to review, alleviates that unfairness and will provide some financial support for Maine's 2 IMD hospitals.

I want to offer you my support in helping pass this bill. Please let me know if there is something I can do or information I can provide that would be helpful to get this bill passed.

Sincerely,

SABRA C. BURDICK,
Acting Commissioner.

SPRING HARBOR HOSPITAL, MAINE'S COMPREHENSIVE MENTAL HEALTH NETWORK,
South Portland, ME, August 26, 2003.

Hon. OLYMPIA J. SNOWE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SNOWE: On behalf of both Spring Harbor Hospital in Maine and the National Association for Psychiatric Healthcare Systems, I would like to thank you for supporting legislation to enable freestanding private psychiatric hospitals in the US to receive payment for the emergency stabilization services they provide each year to thousands of Medicaid-eligible adult clients under the Emergency Medical Treatment and Labor Act (EMTALA).

As you know, it is becoming increasingly difficult for freestanding private psychiatric facilities to absorb the cost of treating Medicaid-eligible adults between the ages of 21 and 64 who are referred to them for emergency stabilization under EMTALA. At Spring Harbor alone, the cost of serving this population last year was close to $7 million.

Faced with both diminishing reimbursement streams and a concurrent rise in demand for inpatient stabilization services from overflowing emergency rooms across the country, private freestanding psychiatric facilities are quite literally caught between a rock and a hard place. In Maine and in many other places, freestanding private psychiatric hospitals are protecting their financial health by offering fewer and fewer adult psychiatric services in the inpatient setting. This tactic simply skirts the issue and creates a further void of services for individuals with acute mental illness, precisely at a time when it is widely accepted that the availability of mental health services in this country is substandard.

When all is said and done, these financial figures pale in comparison to the ultimate cost to our society when these adults fail to receive the treatment they deserve. It has been estimated that the lifetime cost of providing for an individual with an untreated serious mental illness is $10 million. Though this figure includes the financial impact of lost work days and the cost of providing Social Security disability benefits, it does not even begin to speak to the emotional toll of mental illness on friends or the scars mental illness can have on loved ones for generations to come. If we could quantify these numbers adequately, I am certain that I would not need to be writing to you today.

In closing, I would like to acknowledge the receptiveness of your office and that of Senator Collins to issues concerning the plight of the one in four adults and one in ten children in the US who will experience a mental illness this year. It is high time that the issues surrounding this illness were addressed with understanding, compassion, and a concern for our country's long-term mental health. I am both pleased and proud that the Maine congressional delegation is leading the way on these critical issues.

Best regards,

DENNIS P. KING,
Chief Executive Officer/President, Natl. Assoc. of Psychiatric Healthcare Systems.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 248—EXPRESSING THE SENSE OF THE SENATE CONCERNING THE INDIVIDUAL INDIAN MONEY ACCOUNT TRUST FUND LAWSUIT

Mr. CAMPBELL (for himself, Mr. INOUYE, Mr. DOMENICI, and Ms. STABENOW) submitted the following resolution; which was referred to the Committee on Indian Affairs:

S. RES. 248

Whereas, in exchange for ceding hundreds of millions of acres of land and other valuable consideration by Indian tribes, the United States was obligated to protect Indian funds and resources;

Whereas, since the 19th century, the United States has held Indian funds and resources in trust for the benefit of Indians;

Whereas the Senate reaffirms that in continuing to hold and manage Indian funds and resources for the benefit of the Indians, the United States should act in accordance with the highest fiduciary standards;

Whereas in 1996, a class action was brought against the United States seeking a historical accounting of balances of individual Indian money accounts;

Whereas after 8 years of litigation and the expenditure of hundreds of millions of dollars in Federal funds, the Senate believes that continued litigation will not provide significant benefits to, or serve the interests of, the members of the class; and

Whereas, subsequent to the filing of the class action, the Indians and the United States have tried without success to reach settlement of the Indian claims: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the interests of Indians and the United States would best be served by a voluntary alternative claims resolution process that will lead to a full, fair, and final settlement of potential individual Indian money account claims; and

(2) legislation is necessary to establish a voluntary alternative claims resolution process and achieve a full, fair, and final settlement of potential individual Indian money account claims.

AMENDMENTS SUBMITTED & PROPOSED

SA 1890. Mr. CAMPBELL submitted an amendment intended to be proposed by him to the bill S. 521, to amend the Act of August 9, 1955, to extend the terms of leases of certain restricted Indian land, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1890. Mr. CAMPBELL submitted an amendment intended to be proposed by him to the bill S. 521, to amend the Act of August 9, 1955, to extend the terms of leases of certain restricted Indian land, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 6 and insert the following:

SEC. 6. AUTHORIZATION OF LEASES OF RESTRICTED LAND FOR TERMS OF 99 YEARS.

The first section of the Act of August 9, 1955 (25 U.S.C. 415) (as amended by section 3), is amended by adding at the end the following:

''(h) AUTHORIZATION OF LEASES OF TRIBALLY OWNED RESTRICTED LAND FOR TERMS OF 99 YEARS.—

''(1) IN GENERAL.—Notwithstanding subsection (a), any restricted Indian land that is owned by an Indian tribe may be leased by the tribal owner, with the approval of the Secretary of the Interior, for a term of not longer than 99 years, for—

''(A) public, religious, educational, recreational, residential, or business purposes; and

''(B) any other purpose stated in subsection (a), unless the Secretary determines that the principal purpose of the lease is for—

''(i) exploration, development, or extraction of a mineral resource; or

''(ii) storage of materials listed as high level radioactive waste (as defined in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101)).

''(2) APPROVAL BY THE SECRETARY.—

''(A) TIMING.—The Secretary shall approve or disapprove a lease described in subsection (a) or an amendment to such a lease not later than the date that is 180 days after the date on which an application for approval of the lease or lease amendment is submitted to the Secretary.

''(B) FAILURE TO ACT.—If the Secretary fails to take action on an application for approval of a lease or lease amendment by the date specified in subparagraph (A), the Secretary shall be deemed to have approved the lease.''.

SEC. 7. BINDING ARBITRATION.

Section 2(c) of Public Law 89–715 (25 U.S.C. 416a(c)) is amended—

(1) in the first sentence—

(A) by inserting ''(including a sublease, substitute lease, or master lease)'' after ''Any lease''; and

(B) by inserting '', or any contract affecting land within the Salt River Pima-Maricopa Indian Community,'' after ''Reservation''; and

(2) in the second sentence, by striking ''entered into pursuant to such Acts''.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I announce that the Committee on Indian Affairs will meet on Wednesday, October 22, 2003, at 10 a.m. in Room 106 of the Dirksen Senate Office Building to conduct a hearing on the nomination of Mr. David W. Anderson to be the Assistant Secretary for Indian Affairs, U.S. Department of the Interior; to be followed immediately by a business meeting to consider pending committee business.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, October 21, 2003, at 9:30 a.m., in closed session to receive a classified operations/intelligence briefing regarding ongoing military operations and areas of key concern around the world.

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

COMMITTEE ON FINANCE

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, October 21, 2003, at 10 a.m., to hear testimony on ''Tax Shelters: Who's Buying, Who's Selling, and What's the Government Doing About It?''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, October 21, 2003, at the 9:30 a.m. to hold a hearing on U.N. Convention on the Law of the Sea.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, October 21, 2003, at 2:30 p.m. to hold a hearing on U.S. Energy Security: West Africa & Latin America.

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

COMMITTEE ON THE JUDICIARY

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, October 21, 2003, at 10 a.m., on ''Protecting Our National Security From Terrorist Attacks: a Review of Criminal Terrorism Investigations and Prosecutions,'' in the Dirksen Senate Office Building, Room 226.

Witness List:

Panel I: The Honorable Christopher Wray, Chief of the Criminal Division, U.S. Department of Justice, Washington, DC; The Honorable Patrick Fitzgerald, United States Attorney, Northern District of Illinois, Chicago, IL; and The Honorable Paul McNulty United States Attorney, Eastern District of Virginia, Alexandria, VA.

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

MEASURE READ THE FIRST TIME—H.J. RES. 73

Mr. SESSIONS. Mr. President, I understand that H. J. Res. 73 is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 73) making further continuing appropriations in the fiscal year 2004, and for other purposes.

Mr. SESSIONS. I now ask for its second reading and object to further proceedings on this matter.

The PRESIDING OFFICER. Objection is heard. The joint resolution will receive its next reading on the next legislative day.

MEASURE READ THE FIRST TIME—H.R. 1446

Mr. SESSIONS. Mr. President, I understand that H.R. 1446 which was just received from the House is at the desk. I now ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

A bill (H.R. 1446) to support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

Mr. SESSIONS. I now ask for its second reading and object to my own request on behalf of my colleagues.

The PRESIDING OFFICER. Objection is heard. The bill will receive its second reading on the next legislative day.

ORDERS FOR WEDNESDAY, OCTOBER 22, 2003

Mr. SESSIONS. I ask unanimous concept that when the Senate completes its business today, it adjourn until 9:30 a.m., Wednesday, October 22. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business until 11:30 a.m., with the time equally divided between the two leaders or their designees, with the first 30 minutes under the control of Senator HUTCHISON or her designee and the second 30 minutes under the control of the minority leader or his designee; provided further that at 11:30, following morning business, the Senate resume consideration of the motion to proceed to S. 1751, the Class Action Fairness bill, with the time until 12:30 p.m. equally divided between the two leaders or their designees.

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

Mr. SESSIONS. I further ask unanimous consent that at 12:30 p.m., the Senate proceed to a cloture vote on the motion to proceed on S. 1751.

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

PROGRAM

Mr. SESSIONS. For the information of all Senators, tomorrow, following morning business, the Senate will begin 1 hour of debate on the motion to proceed to S. 1751, the Class Action Fairness bill. At 12:30 p.m., the Senate will proceed to the vote on the motion to invoke cloture on the motion to proceed to S. 1751.

On behalf of the leader, I inform my colleagues that the cloture vote will be the first vote of tomorrow's session. If cloture is invoked on that motion, it is hoped that the Senate will be able to begin consideration of the Class Action Fairness legislation. Therefore, additional votes are possible during Wednesday's session.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. SESSIONS. If there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:17 p.m, adjourned until Wednesday, October 22, 2003, at 9:30 a.m.