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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. Lloyd John Ogilvie, offered the following prayer:

Gracious God, these days here in the Senate are filled with crucial issues, differences on solutions, and vital votes on legislation. We begin this session with the question You asked King Solomon, ''Ask! What shall I give You?'' We empathize with Solomon's answer. He asked for an ''understanding heart.'' We are moved with a more precise translation of the Hebrew words for ''understanding heart,'' meaning a ''hearing heart.''

Solomon wanted to hear a word from You about the perplexities that he faced. He longed for the gift of wisdom so that he could have answers and direction for his people. We are inspired by Your response, ''See, I have given you a wise and listening heart.''

I pray nothing less as You answer this urgent prayer for the women and men of this Senate. Help them to listen to Your guidance and grant them wisdom for their debates and decisions. All through our history as a Nation You have made good men and women great when they humbled themselves, confessed their need for Your wisdom, and listened intently to You. Speak Lord; we need to hear Your voice in the cacophony of other voices. We are listening. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TED STEVENS led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Pennsylvania, the acting majority leader, is recognized.

SCHEDULE

Mr. SANTORUM. Mr. President, this morning the Senate will resume consideration of the partial-birth abortion bill. We had a good and vigorous debate last night and all day yesterday and made substantial progress on the bill. I appreciate Senators' willingness to come forward and debate this measure. In fact, I encourage Members who have not made opening statements and want to speak on this legislation to come to the floor today. We are moving expeditiously. We got a good unanimous consent agreement yesterday that calls for votes later this morning, perhaps at the latest early this afternoon.

My understanding is we have, beyond the two amendments that are locked in right now, two additional amendments that could be offered this afternoon. There may not be any other amendments. I want to make sure Members know there is a chance we could end up even finishing today. If Members are waiting, thinking they have plenty of time to come down and speak on the underlying bill, I encourage them to come down. We will be debating two amendments this morning. Senator BOXER's amendment will be up first. Actually, it is not an amendment but a motion to commit the bill to the Judiciary Committee. There will be 2 hours of debate, equally divided, on that motion, which we will proceed to momentarily, and subsequent to that debate we will have an hour debate on the Durbin amendment. All of that time is equally divided. Then we will proceed to votes on both of those amendments.

If all time is used, we will have votes at roughly 12:30 this afternoon, if not earlier.

As I said, there are two other amendments of which we are aware that could be offered this afternoon. I encourage Members who wish to participate in this debate to please come to the floor and do so this morning or this afternoon.

I remind my colleagues that a cloture motion was filed on the Estrada nomination yesterday by our leader, and that motion will ripen tomorrow morning.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, through the acting majority leader I say to the majority leader, we believe we have the ability to finish this legislation very quickly. Anyone who wants to offer an amendment should get with floor staff forthwith because we are in the process of propounding a unanimous consent request to terminate this legislation. If people have amendments they want to offer, they should advise floor staff forthwith.

Also, we were able to work out yesterday, following the dialog I had with the majority leader on the floor, with Senator DASCHLE and people on our side to allow one of the circuit court nominees to go forward with debate, with up to 6 hours debate. Hopefully, we can complete that tomorrow also.

Mr. President, I ask unanimous consent, because the Senator from California has requested that the time on her amendment be the full 2 hours, and Senator SANTORUM and I have taken a little bit of time this morning—I ask that be the order.

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

RESERVATION OF LEADER TIME

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

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

PARTIAL-BIRTH ABORTION BAN ACT OF 2003

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

The legislative clerk read as follows:

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

Pending:

Durbin amendment No. 259, in the nature of a substitute.

The PRESIDING OFFICER. Under the previous order, the Senator from California, Mrs. BOXER, is to be recognized.

Under the previous order, there will now be up to 2 hours of debate equally divided on the motion to commit. The Senator from California.

MOTION TO COMMIT

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER] moves to commit the bill, S. 3, to the Committee on the Judiciary with instructions to hold at least one hearing on such bill and to report such bill back to the Senate after addressing the constitutional issues raised by the Supreme Court in its Stenberg v. Carhart decision.

Mrs. BOXER. Mr. President, this straightforward motion essentially says it is important that this bill receive the guidance and the wisdom of the Judiciary Committee, since issues have been raised at the Supreme Court that have not been addressed in this bill.

When I raised this in the beginning of the debate, a Senator on the other side said: We have debated this many times. Why do you want to go back to the committee?

Well, there is a big difference between the three previous occasions that we have debated this bill and this time, and that is, the Supreme Court has spoken. In June 2000, in the case of Stenberg v. Carhart, the Supreme Court ruled Nebraska's so-called partial-birth abortion law is unconstitutional. I am told very clearly by the lawyers who were involved in that case that the current bill before us, S. 3, is legally identical to the Nebraska bill.

The Supreme Court ruled that bill unconstitutional for two reasons. I would like to see the chart there. First, the bill contains no health exception. This is what the Supreme Court said:

The governing standard requires an exception where it is necessary in the appropriate medical judgment for the preservation of the life or health of the mother. Our cases repeatedly invalidated statutes that, in the process of regulating the methods of abortion, imposed significant health risks.

Mr. President, this bill contains no health exceptions. I am very pleased Senator DURBIN will be offering a health exception today, as well as Senator FEINSTEIN later, and there may be others. But the bottom line is the bill itself, as it stands, contains no health exception. It makes it unconstitutional.

The second reason the legally identical bill was declared unconstitutional by the Supreme Court is that it imposed an undue burden on women because the definition in the law is too vague. It covers more than one procedure. This is what the Supreme Court said:

Even if the statute's basic aim is to ban D&X—

By the way, there is no such mention of D&X in S. 3.

its language makes clear that it also covers a much broader category of procedures.

Therefore, it is putting an undue burden on the woman, Mr. President. With the Supreme Court's decision, we should at least have a bill before us that will pass constitutional muster.

If I may see the other chart that summarizes the two.

Here you see the summary of the problems with S. 3. Exactly the same as Stenberg: Undue burden on women because the definition is vague, and no exception to protect women's health.

I believe we have a responsibility to make sure this bill is constitutional, and I would think that those of my colleagues who support this bill, even without a health exception, which I think is cruel to a woman and I think goes against the American value of caring about mothers and caring about their health—even if you support that, without a health exception, you ought to care about this being constitutional. It should be our responsibility because what is the point of all this—the President said he is going to sign it—if, in fact, the Court turns around and says it is the same problem all over again?

You hear from others that this problem has been remedied and we have taken care of this in the findings, and they are tweaking some of the words, but the people who argued this law the last time said that clearly it is legally identical. I placed those letters in the RECORD, and I will read from them again.

So we are spending time on the bill that experts tell us is unconstitutional. Yet we have so many other matters we should be addressing. If we want to address this bill, at least send it to the Judiciary Committee so that when it comes back, they will have looked at this question of constitutionality. In the meantime, we are not looking at the loss of jobs in this country.

Yesterday, my colleagues on the other side voted down health insurance for poor, pregnant women—the ability for women to have contraceptives so they would avoid unintended pregnancies. Oh, this is amazing to me. These are the issues people confront every single day.

So we have 14 pages of findings that basically say the Supreme Court found this, found that, and we find this, we find that; therefore, essentially, what we are doing is constitutional. It is amazing to me the authors of this bill would bypass the committee their own party controls and bring this bill straight to the floor without stopping in the committee of jurisdiction after the Court has very clearly spoken that this S. 3—because it is identical to Stenberg in a legal sense—is unconstitutional. No health exception. How can anyone who has ever read the Stenberg case or, for that matter, case law regarding abortions since many years ago, argue that if you don't have a health exception, you are meeting the constitutional standard?

I guess the Justices have felt all these years that a woman's health is important, and I guess some people in this body don't feel that way. That is your choice. But it is not constitutional. I think a hearing would be salutary. We could hear from the scholars, hear from the people who were involved in the Stenberg case. We could once again hear from the women who have gone through this procedure, many of whom I have shown you on the floor of the Senate. They call themselves very religious, very pro-life. Yet they chose to have a procedure that their doctors told them was necessary to preserve their fertility, to make sure they would not wind up being paralyzed.

I am looking forward to Senator DURBIN's amendment. I want to hear people argue against Senator DURBIN's amendment when he spells out the health impact that could occur to a woman if this type of procedure is not available to her. We have a committee system and it ought to be used. I want to let the Senate know that this idea of taking a bill to committee is certainly not a new idea.

Let's see what some of the Republican leaders said about sending bills to committee. This is March 6, 2002. This is Senator DON NICKLES on bringing a bill directly to the floor and bypassing the committee, which is exactly what is happening today. This bill bypassed the committee of jurisdiction, the Judiciary Committee, and was brought to the floor. Let's hear what Senator NICKLES said:

Where is the committee report? One of the reasons we have markups in committees is to have everybody on the committee who has expertise on the issue to have input, to support it or oppose it—to issue a committee report so we can find out what is in it, so you can read what is in it in English, not just the legislative language, which is difficult to decipher. Our competent and capable staff prepare a committee report explaining in English, here is what this provision does, here is what this provision means.

This is why it is important to send bills to committee, particularly on a subject the Supreme Court has taken up and has found terrible problems, constitutional problems, with a similar, if not legally identical, bill.

Let's look at what else has been said. This is another statement by Senator NICKLES on bringing a bill directly to the floor and bypassing the committee:

I think that bypassing the committee and bringing a bill directly to the floor is a violation of Senate protocol—spirit, basically

telling the minority they don't matter. It doesn't make any difference if there are 49 members on the Republican side, you don't matter; you have no input.

I think this is quite amazing. And we have more statements as to why bills should go to committee by the Republicans who have bypassed committees just a year later—not even a year later.

Senator Frank Murkowski, now Governor of Alaska. He said this on bringing a bill directly to the floor and bypassing a committee:

The question is, why in the normal course of events would a bill under the jurisdiction of the committee not be referred to that committee? To suggest that there is an effort to obstruct the process by giving members input on the bill through the normal process of amendments is a travesty of the process associated with the traditions of the Senate.

That was February 5, 2002.

That is a statement of Senator Murkowski, Republican, now Governor of Alaska. ''It is a travesty of the process to bypass a committee.'' And this is about a bill that has, by the way, no constitutional problem as far as anyone knew, and here we are talking about a bill that comes out after a Supreme Court case and acting as if it never happened, in my view, because the operative language of the bill still does not meet the constitutional challenges laid out by the Court.

This is another statement on bringing a bill directly to the floor and bypassing the committee, by Senator NICKLES:

I am very disappointed in this process. This process should not be repeated. It should not be repeated by Democrats or Republicans.

Let me say that again:

This process should not be repeated by Democrats or Republicans. We have committees for a purpose. We have committees for a purpose: So we can have bipartisan input, so we can have the legislative process work, so we can have hearings on legislation so people can know what they are voting on, to where they can try to improve it, to where any member of the committee has an opportunity to read the bill and to amend it, to change it—win or lose, at least they have the opportunity to try.

We have a bill before us that should have gone to the Judiciary Committee. Senator TRENT LOTT's comments on bringing a bill directly to the floor and bypassing the committee:

If we bring these important issues to the Senate floor without them having been worked through committee, it is a prescription for a real problem.

What do we have? A bill that never went through the committee, a changed bill that never had a hearing at Judiciary, about a subject that is as important as life and death. Unbelievable.

So my motion to commit this bill to the committee—where, by the way, the Republicans have control—is a proposal that is not partisan and that is sincere because I believe, with all the problems we have in the world, the last thing we need to do is pass a bill that is unconstitutional and then have it brought back again, where we have to start all over, we have to have pictures that some of my constituents told me they could not even look at.

The Supreme Court said you must have a health exception:

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

My colleagues want to put themselves in the doctor's shoes and decide they know what is best in an operating room. They know. They may not have gone to medical school, but they know.

The Supreme Court wrote:

Our cases have repeatedly invalidated statutes that, in the process of regulating the methods of abortion, imposed significant health risks [to the mother].

The Supreme Court wrote:

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

What I have presented in my opening statement is the following: We have a bill that deals with a subject of life and death. We have a bill that, if it passes, makes no exception for the health of the mother. We have a bill that legal experts say is legally identical to the law that was ruled unconstitutional by the Supreme Court.

We have a bill that affects real people. We heard their cases, and we will hear them more when Senator DURBIN presents his amendment. At a minimum, could we have a little humility and send a bill such as that to the appropriate committee? Could we have a little humility? Could we be a little humble?

Senators are playing doctor, and that is wrong. Senators are ignoring a Supreme Court decision that says there must be an exception for the health of the mother. That is wrong.

My mother always said to me, there is right and there is wrong. You should be humble, and you should care about other people. Those are the values I grew up with.

As a mother of two children, having had two premature babies and, thank God—in those years it was not easy—they made it, with God's help, and as a grandmother who saw a daughter have a very challenging pregnancy, I know these things do not always go smoothly. And I know, because I have lived long enough to know, that if a doctor says to a mother or a father of a daughter or a husband of a daughter or family members of a woman, she could have a hemorrhage and die if we do not use this procedure, she could have a uterine rupture, she could be made infertile, she could have a blood clot, she could have an embolism, she could have a stroke, she could have damage to her nearby organs and she could be paralyzed for life if she does not have a procedure, it is a very serious matter.

This is not a list that was made up by anyone. It comes from physicians. I have the letter, and I have placed it in the RECORD. There are other things, such as a coma, that I did not put on the list.

I am saying to my colleagues, be a little humble. At the minimum, send this bill to the committee. Have these doctors come forward. Create a health exception that is fair. Do not give us a bill with no health exception because that is cruel, it is wrong, and it goes against American values of caring about each other.

I hope we will have a good vote and that this bill, S. 3, will go to the Judiciary Committee. Senator SANTORUM can appear before them. He can tell them why he believes he has met the Supreme Court case, the challenges that were laid down in Stenberg. I could be there, Senator FEINSTEIN, other colleagues who feel another way. We could present our witnesses, we could talk about it, and then the committee could decide which way to go on it.

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

Mrs. BOXER. I would be happy to yield.

Mr. REID. Is the Senator from California saying that no matter how one feels on the underlying issue, we would be better off as a Senate if it went back to the full committee for a hearing and they had witnesses come and testify before the committee, those who are in favor of the procedure, those who are against the procedure, and then bring the bill back to the floor? Is that what the Senator is saying should happen?

Mrs. BOXER. Yes. In addition, I say to my friend, have the lawyers who are familiar with the Stenberg case.

This chart shows the differences between this bill and the Stenberg case in terms of the legalese. Basically, they are identical. What we have is the Stenberg case that ruled that the Nebraska statute was unconstitutional because it placed an undue burden on women because the definition is vague and there is no exception to protect women's health.

Lawyers and constitutional experts tell us that the same problem exists in S. 3. So my friend is right. We would bring the legal people together. We would bring the women back. We could have another debate and then, regardless of how one feels—and I know the Senator and I may come down differently on this in the end—that is fine. I do not expect my position to prevail, let's be clear. But I think the Senate should, at the minimum, have the humility to hold a hearing and find out how they ought to draft this bill.

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

Mrs. BOXER. Absolutely.

Mr. REID. The Senator and I came to Washington to serve in Congress at the same time. We were elected the same year, 1982. Is it true that during the Senator's service in the House of Representatives, she sat through hundreds of hearings on a multitude of issues? Is that a fair statement?

Mrs. BOXER. That is correct.

Mr. REID. What, I say for the people who are watching this, would the Senator say as to why we have those hearings?

Mrs. BOXER. Clearly, we are trying to get an in-depth knowledge of the issues and the challenges. We want to make sure the bills we present to the full Senate, or the full House on the other side, are carefully thought out; they make sense; there are no unintended consequences that could occur. It is for all of those reasons. Of course, it becomes a place for the public to get involved, because right now—Senator FRIST, who is a doctor, his expertise is heart surgery and transplantation—we do not have anyone in the Senate who is an OB/GYN.

The other point I want to make while my colleague is in the Chamber, in addition to the fact that there is no health exception, is to bring out one of the things Senator NICKLES said last year about bypassing the committee.

This is a statement made by DON NICKLES when a bill bypassed the committee of jurisdiction and came straight to the floor. He said:

I am very disappointed in this process. This process should not be repeated. It should not be repeated by Democrats or Republicans. We have committees for a purpose. We have committees for a purpose: So we can have bipartisan input, so we can have the legislative process work, so we can have hearings on legislation so people can know what they are voting on, to where they can try to improve it, to where any member of the committee has an opportunity to read the bill and to amend it, to change it—win or lose, at least they have the opportunity to try.

That goes directly to my friend's question about why we have committees and what their purposes are.

Mr. REID. Will the Senator yield?

Mrs. BOXER. I am happy to yield.

Mr. REID. The Senator is asking in this motion filed to recommit this bill to the committee, basically what the chairman of the Budget Committee said last year, that this should be referred back to committee because this bill has not had a committee hearing before it came here, and after the Supreme Court decision, so that people who are involved or have some questions about the legislation can do as Senator NICKLES said, try to improve it, have an opportunity to amend it, change it. Win or lose, at least have the opportunity to try.

Mrs. BOXER. Yes. This is not a motion to recommit; it is a motion to commit.

Senator LOTT said, on bringing the bill to the floor and bypassing the committee:

If we bring these important issues to the Senate floor without them having been worked through committee, it is a prescription for a real problem.

I say to my friend, Senator REID, you may be interested in this statement of Senator MURKOWSKI:

The question is, why in the normal course of events would a bill under the jurisdiction of the committee not be referred to that committee? To suggest that there is an effort to obstruct the process by giving Members input on the bill through the normal process of amendments is a travesty of the process associated with the traditions of the Senate.

It is very unusual for me to bring out statements made by the other party when arguing for a position. I am not saying it any more eloquently than they said it.

I say to my friend, our assistant Democratic leader, what they are referring to is the energy bill. That never really had a constitutional question. We have here a situation where we have the Supreme Court ruling on a legally identical bill that this is unconstitutional.

I hope we will have support. I look forward to the remainder of the debate. I also look forward to Senator DURBIN's presentation on making sure we get a health exception. I hope colleagues will support that. That is what they ought to do if they really care about families and women and women's health, and we can move on, complete this bill, and have it, hopefully, committed to the Judiciary Committee where they can look at the constitutional questions and call on the doctors, have a good debate, and bring this back to the floor having had the benefit of the wisdom of the members of the Judiciary Committee, both Democratic and Republican.

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

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, to comment directly on the Senator's motion to recommit, she cites statements by Members of the Republican leadership concerning the practice last session of repeatedly bringing bills to the floor without having gone through committee. The bills we were referring to included a comprehensive energy bill, a bill about that thick, and the agriculture reauthorization, which was another rather thick and complicated piece of legislation, all brand-new material. The prescription drug plan, roughly $300 to $400 million in new Government spending, and a brand-new entitlement, never went through committee. And a whole host of other pieces of legislation. We are talking about major, complex, lengthy, pieces of legislation.

The corporate responsibility bill was dramatically changed and a whole list of others that came to this floor. Members were justifiably concerned that these rather extensive and expensive and complex pieces of legislation should have had some review at the committee level.

None of these measures, prior to their being placed on the floor of the Senate, had been on the floor of the Senate before, had not had any kind of consideration in any body.

Compare that to the legislation before the Senate. The legislation before the Senate is the same subject matter we have debated on the floor on four previous occasions. There have been two extensive Judiciary Committee hearings on this piece of legislation and there has been wide discussion both on the floor and off the floor about this particular procedure.

The Senator from California argues we should have this bill go before the Judiciary Committee now because it is a changed bill. These are her words: ''It's a changed bill.'' Earlier in her discussion she said this bill does not meet constitutional muster because it is identical to the bill we passed previously. So if it is identical, how can it be changed? If it is identical, why do we have to go back? If it is not identical, you can at least make the point we need to go back.

I make the argument the underlying issue we are dealing with here, the issue of banning this procedure, has not changed at all. Some of the legislative language has changed, but the Senate floor is eventually going to handle this issue anyway and is perfectly competent to review this legal language and make a determination on their own as to whether they believe this meets the constitutional standard as set forth in the Carhart decision. I don't believe it is hard. There is a unique expertise within the Judiciary Committee to deal with something that eventually we have to deal with on the floor. There is a lot of information written about this subject area, and it has been fully and openly debated on the Senate floor.

It is a very narrow issue. This is not a Medicare prescription drug plan. This is not a comprehensive energy strategy. This is not an agriculture reauthorization bill. This is not a corporate responsibility bill. This is a very narrow single issue. We are talking about the difference in this case between maybe 20 or 30 words. I don't think we need a Judiciary Committee hearing and markup for 20 or 30 words on a bill we have debated four times on the floor of the Senate. We are perfectly capable of handling it.

That leads me to the second issue, which is the issue of constitutionality the Senator from California brings up as a reason to commit this legislation back to committee.

Let me address those issues. First, the issue of vagueness. The Senator from California quotes the U.S. Supreme Court in saying, ''its language makes clear''—its language being the bill's language in Nebraska—''that it also covers a much broader category of procedures.'' As a result of that, the possibility with the language in the Nebraska statute covering procedures other than partial-birth abortion, the Court found it to be vague.

We have responded to that. We have responded to that with a much more detailed definition. Let me read the operative parts of the definition to show the difference in language in how we have responded to this concern. In S. 1692, which was virtually identical to the Nebraska statute, the definition was:

An abortion in which the person performing the abortion deliberately and intentionally vaginally delivers some portion of

an intact living fetus until the fetus is partially outside the body of the mother.

Let me repeat that:

. . . some portion of an intact living fetus until the fetus is partially outside the body of the mother.

The Court said there are other procedures done, late-term abortion procedures that are done, that in the process of doing that procedure, a portion of the body—maybe an arm or a leg or an appendage, may actually come outside of the mother while the child is still alive. So what they are saying is as a result of that, we could be banning this other procedure. In the course of doing another abortion procedure that is legal, not barred by the legislation before us today, that could occur.

We have addressed that issue. They clearly point to that particular example. We have changed the language by saying 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 a breech presentation, any part of the fetal trunk''—not an arm, not a hand, not a foot, not a leg—any part of the fetal trunk, which means, of course, the feet, the legs and the trunk ''past the navel, is outside the body of the mother.''

So we are not talking about performing a D&E, where the baby is killed in utero and dismembered and taken out a piece at a time. We are not talking about that procedure. We are talking about a procedure where—if we can get the chart so I can graphically show what we are talking about—there is no other procedure that could possibly be covered.

I ask those who are opponents of this bill if they can name for me another procedure where the child would be arms, legs, and trunk outside of the mother, all but the head. That is the procedure we are talking about here. No other medical procedure as defined in the medical literature has a baby in this position. Period. Period. There is no vagueness here. We are clear about this procedure.

We are very clear that the child is delivered in a breech position and then, if we put the previous chart up, these 8-inch long scissors—we can see the scissors are about as long as a human hand and the baby is roughly as long, maybe slightly longer than a human hand. This baby at this point is roughly, I believe, 24 weeks, which is roughly the time, 20 to 26 or 27 weeks, when the vast majority of these partial-birth abortions are performed.

I know the Senator from California said her constituents saw these pictures and they couldn't look at them. That is why we are trying to ban this procedure. Because this is horrific. You cannot look at it and not be affected.

The Senator from Washington, the day before yesterday, said that banning this procedure is an extreme measure. I would like to know what her definition of extreme is. Banning this procedure is an extreme measure. I asked her what she thought about the fact that 70 percent of the American public wanted to ban this procedure. Under my definition of extreme, it does not equate to 70 percent support of something being considered extreme. But she held fast. She said the reason it is 70 percent support is because they do not understand really what this procedure is all about.

I want to juxtapose that statement to the statement of the Senator from California who said the people in her State could not even look at the pictures. I suggest to you, what if every single American were forced to sit in front of a television set, or, worse yet, were required to come into an abortion clinic—these are not performed at hospitals; they are just performed at abortion clinics. What if every single American were required to come in and watch this occur to a little baby, to stand and watch a physician who is trained to heal, who is trained to save lives, who is trained, as the Senator from California said yesterday, to ''first do no harm,'' remove a 20-week to 26-week, 27-week—in some cases unfortunately later than that—little baby from its mother.

This is the part I just find chilling. Imagine yourself, close your eyes and imagine yourself in this abortion clinic watching this little child. I have witnessed the birth of our seven little children. I see these little people emerge miraculously, incredibly, from the birth canal, from their mother into the loving hands of a doctor whose job it is to heal, whose job it is to nurture and take care of that child.

But in this case those hands are not there to heal. These are not healing hands. They look like it, don't they? They have the gloves on, don't they? They are sterile, aren't they? But they are not healing hands. No, these hands are not there to heal this little child. Those hands are there to grasp that little child who is alive; who is alive. By definition, under this bill, this is not a partial-birth abortion, because it says ''delivers a living fetus.''

So, if this child is not alive, this procedure is not barred. This procedure is only barred if this baby is alive.

So you have hands of a doctor trained to heal, grasping a living child whose arms and legs are extended, whose heart is beating, whose nerves are sensing, whose brain is attempting to understand what is going on, and he's grasping this living being.

When you hold something that is alive, when you have it in your hands, whether it is a little rabbit, guinea pig, or little puppy, there is a feeling. There is a sense you have when you are holding something that is alive. This doctor is holding something he or she knows is alive and is 3 inches from being born, 3 inches from constitutional protection. This doctor is not there to heal. He is there to take these scissors, long, narrow scissors that come to a point at the end—they are called Metzenbaum scissors—his job is to do this blindly, because this is not done with a sonogram. This is not done where the doctor can see inside of the mother through a medical device. No, this is done blindly. The doctor is feeling, reaching his hands in to find the spot, the lethal spot, the soft spot here at the base of the skull, that soft spot in this little baby where he takes this sharp instrument and blindly thrusts it into this baby's skull.

As our majority leader said yesterday, it is a dangerous procedure for mothers. It is a blind procedure. It is done in an area of the body that is very susceptible to injury. It is a very lush area of the body. There is no protection for the mother. As the Senator from Tennessee yesterday said, those scissors could slip because it a blind procedure. They could perforate a uterus, or they could lead to incompetent cervix. They could lead to a variety of harm that other late-term abortion procedures do not do.

Not only is this lethal for this baby but it is dangerous for the mother. According to the doctor who designed this procedure, he said—again, this his testimony—that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome. His words: Never medically necessary. He personally designed the procedure and said often that the reason he designed this procedure was not because it was healthier for women, not because it was safer for women, and not because it was a better, more scientific way of doing this. This procedure is not taught in a single medical school in the country. It is not taught in a single hospital in the country. It is not, to my knowledge, performed by any obstetrician. It is performed by abortionists who are not board certified in obstetrics. But they are certified in destruction. That is what this procedure is. This is not a procedure to preserve the health of mothers. The doctor who designed this procedure said he designed this procedure because the other type of abortion, which we do not ban in this legislation, takes 45 minutes. This takes 15 minutes. In his words—not mine—''I can do more abortions in a day.''

Those scissors are thrust into this little baby's skull.

Again, you are in this room. Close your eyes. You are in this room, and you are watching this baby whose arms and legs are moving, who is alive, who but for this act that is being perpetrated upon it, would be born alive. That is not to say it would live substantially longer after birth; depending on its gestational age, maybe or maybe not.

We have cases the Senator from Ohio talked about where mothers who had partial-birth abortions or were to have partial-birth abortions—remember how this procedure works. You can go in and present yourself to the abortionist. The abortionist gives you a pill and

sends you home for 2 days. That is the reason it only takes 15 minutes of his time—because he sends you home with medication to dilate your cervix over a 2-day period of time and you present yourself again for the procedure. At that point, it only takes 15 minutes of his time. There are all sorts of complications which I will not get into right now.

Having dilation over a 2-day period of time could lead to women's inability to carry children long term after their abortion. In two cases in Ohio, women delivered children because their cervix dilated too quickly, which induced labor. It resulted in the delivery of two children, both of whom lived. One did not survive because she was too premature. The other lives today but was selected for this procedure.

Go back to the room again. You are watching this doctor with these hands that are holding a living child. The child fits, as you can see, very comfortably. The entire trunk and the body of the child fit into this physician's hand. The body is moving. But he finds the spot and thrusts the scissors into the base of the skull.

Nurse Brenda Shafer was assisting on a partial-birth abortion. By the way, she was not pro-life. She was working in an abortion clinic. But when she saw this and saw—her description—the arms and legs of the child shoot out like when you hold a little baby and you let it fall a little bit. The baby will react like that and shoot its arms and legs out, not knowing what is going on and not understanding what is being done to it because their ability to understand is limited to that. This baby doesn't have any time to understand because in that moment in which these little girl's or boy's arms spasm out like that, the baby is dead.

But the procedure doesn't end, the insult doesn't end, because the doctor then takes these scissors and pulls them, causing the scissors to pull the skull open—to break the skull apart so he can create a hole in the baby's head big enough for a suction catheter to be inserted into the base of the baby's brain.

They turn on this vacuum suction tube. Then they suction the baby's brain contents out—the cranial contents out. Because of the softness of the baby's skull, the skull collapses and the baby is then delivered dead.

As our majority leader, the doctor from Tennessee, said yesterday, the only advantage he can possibly conceive of for this procedure is that it guarantees the baby is dead before it is delivered.

We are not vague about the procedure we are describing. The court should not be under any misunderstanding about what we are attempting to bar. The language in this legislation is not really identical. If I were arguing for the plaintiff—that is their job. Their job is to go out and present the best argument they can. My guess is they will argue that it is not legally identical, and they will have three or four other arguments in the alternative that this court will not buy. That is the job of the lawyer representing their client.

Our job as Senators is to protect the decency of our society. It is to stop unnecessary brutality to the weakest among us—to stop procedures that are harmful to the health of mothers. There is not one physician who has testified who has said this procedure is the safest or is the best.

I ask this question again: As I repeated the last 3 days and I have asked for 7 years on this floor, give me a procedure, give me a case study where a partial-birth abortion is indicated, where it is necessary—this is the term, by the way, that the Supreme Court used as Senator BOXER's chart shows—where it is ''necessary and appropriate medical judgment for the preservation of the life or health of the mother''—where it is necessary. There is not one case, not one instance in 7 years when it has been brought to this floor, or to the floor of any State legislature, the floor of any courtroom, any hearing room. Not one case has been brought where it has been argued, because of the particular medical circumstances, it is medically necessary for this brutality.

Why? Because this isn't taught in any medical school. It isn't done in any hospital. It isn't done by any obstetrician. This is a rogue procedure for the convenience and economic benefit of abortionists and abortion clinics. Of course, it is not medically necessary. It is not even medically recognized. It is dangerous to the health of mothers.

Let me quote from the findings in the bill. By the way, this is all from congressional testimony. I understand the Senator from California wants us to commit this back to committee for congressional hearings. Here are the definitive hearings we have had on this legislation:

> Those risks include, among other things: an increase in a woman's risk of suffering from cervical incompetence—

As I said before, you have a 2-day period where the cervix is dilated. That leads to a variety of different risk factors, including infection, that could lead to cervical incompetence.

As the Senator from Tennessee said yesterday—the only physician in the Senate, who has delivered his share of babies—you do not put these kinds of instruments through the opening where the cervix is without having some consequence or potential consequences to the ability, long term, for a mother to carry a child.

> As a result of cervical dilation making it difficult or impossible for a woman to carry a subsequent pregnancy to term; an increased risk of uterine rupture—

Why? because of those scissors we showed you before, that suction catheter, if not properly placed, could cause a lot of damage.

> abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position—

Now, remember, any of you who have gone through the birth of a child—whether as a mother or a father or a relative—who have experienced the birth of a child, one of the things you always worry about is, is the child in the right position before delivery? Is the child in the right position? What is the right position? Well, head down.

What is one of the greatest fears of a mother and a father when they go in to deliver a baby? If the baby is not in the right position, and the delivery might have to be what? Breech. Breech deliveries are dangerous. They are potentially life threatening to the baby and could be very harmful to the mother.

What does this procedure deliberately do? It delivers the baby in a breech position. And:

> a procedure which, according to a leading obstetrics textbook, ''there are very few, if any, indications for [the breech position] other than for delivery of a second twin;'' and a risk of lacerations and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the . . . child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death.

Now, you have to ask a question, folks. Why are there people across this country in some of those organizations that are ''abortion rights organizations,'' and some Members here in the Senate coming here to argue to maintain the legality of a procedure which is a rogue procedure—not according to RICK SANTORUM, but according to the AMA, according to a variety of different organizations that are out there that are physician-oriented organizations. It is a rogue procedure—not taught in medical schools, not done in hospitals, not done by obstetricians—designed by abortionists for the convenience of the abortionist, that is a greater risk.

I show you a chart with Dr. Hern's comment. I show you a comment of an abortionist who does late-term abortions. In fact, he doesn't just do them, he is ''the'' expert in America. As they say, he wrote the book. This man wrote the book. He is the author of standard textbooks on abortion procedures, abortion practices, and performs many third-trimester abortions. This is what he said:

> I have very serious reservations about this procedure . . . you really can't defend it. I would dispute any statement—

listen—

> any statement that this is the safest procedure to use.

This is not someone who supports my side of the argument, by the way. But what he is suggesting is, this is the least safe. In fact, we have umpteen medical organizations and physicians' testimony, saying: Well, you know, we want to keep it as an option. Many of these groups say: And we don't want doctors to have any restrictions on their right to practice. But, no, there are safer procedures, certainly.

But the evidence is overwhelming. This is the least safe procedure. This is the most dangerous procedure to the health of a mother. So it is the most dangerous. And it is never medically indicated, never medically necessary.

So, again, why? Why do you oppose this? Of all the alternatives, it is the most dangerous to the health of the mother. So it is dangerous to the health of the mother, and it is never medically indicated. Well, then, why would you support keeping it legal?

What is so important, what value that you hold, what thing is so precious that would require you to come here and defend a procedure that is never medically necessary and more harmful to women than other alternatives? What is it? It is not women's health. No, no, no, it is not women's health, because this is the most dangerous. And this is not medically necessary. So what is it?

Well, as the abortion rights groups have said, this is an assault on the right to an abortion. This procedure is an assault on the right. I would argue, most people do not even believe you could have abortions at this stage. When you look at this little, fully formed, living child, most people in America cannot imagine that abortions are performed on healthy mothers with healthy babies at this point in pregnancy, because the other side has said, for years: Well, Roe v. Wade only allows first-trimester abortions. They are limited afterwards. Wrong. Wrong—healthy mothers, healthy babies.

How do we know? Well, Ron Fitzsimmons, who is the director of the organization of abortion clinics in America, said: I lied through my teeth when I said this was performed in rare circumstances only to protect the health of the mother, on children who are deformed or mothers who are in danger. I lied through my teeth, he said. He said: We all know that these abortions are performed on healthy mothers and healthy babies. The vast majority—his quote—the ''vast majority.'' We have better than a vast majority.

The State of Kansas, the only State in the Union that tracks these kinds of abortions, requires a reason for the abortion on the form the doctor has to fill out after he performs it. In Kansas, there were 182 partial-birth abortions in 1 year—in a State the size of Kansas. How many were for the health of the mother? How many were because the mother's life was in danger? How many were because the mother's future fertility was in danger? How many were because the mother was in danger of grievous medical injury, physical injury? How many were because this was medically necessary? How many? None. Zero. The reason given for all 182 brutal executions at the hands of a physician: mental health. They had to check a box somewhere: ''mental health.'' Well, they have to say a health reason. You can't do it for no reason. But mental health, of course, is fear, anxiety, stress—certainly things we should be concerned about, but I do not believe at this stage in pregnancy a sufficient reason in the American public's eyes to do this.

Is stress a reason for this? Is this a justification in the eyes of the American public? Seventy percent—I daresay if we had every American in the room when one of these procedures was performed, God, I hope at least 95 percent would agree it was not justified.

This is an evil in our midst. One of the great things I believe about America and about my colleagues is when they see evil, they have the courage to stand up and fight it. This is the face of evil. Those hands, those healing hands are a corruption of medicine that we cannot allow to continue.

Please vote against this motion to commit, this motion to delay the banning of this procedure that could save some little baby somewhere in America from having to go through this.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, we have reached a point of this debate where there has been screaming and yelling on the Senate floor. I will try to react to those screams as calmly as I can and say that this bill doesn't protect the health of women. It puts our daughters in harm's way. That is not groups saying that. That is 45,000 OB/GYNs. Talk about loving hands; they are saying that. It is women who have had the procedure. They are saying that. And guess what. The Supreme Court says that. Because of that, we need to send this bill back. Actually it is not back to committee; it never went to committee.

I never said it was identical. I said it was legally identical to the Stenberg case. I have said that over and over.

This morning we have been listening to a series of lectures about medicine. I guess I find that odd on the Senate floor, especially the one about breech babies because my daughter was delivered breech. I understand that. I don't need to be lectured about that, about what it is, about what the risks were to me or my baby because I lived it.

I do know one thing: My constituents are right to look away from this drawing. No one wants to look at abortion. We want abortion to be rare. We want it to be safe. We want it to be legal. The vast majority of people in the State I represent, a State of 35 million people, support Roe v. Wade because it is a moderate decision that balances all the interests. Yes, the health and life of the mother always, and the interest of the fetus where, after the first 3 months, States can in fact set the rules of abortion, but always, always with the life and health of the mother at the forefront.

This bill does not do that. Therefore, this bill is unconstitutional, in addition to being cruel, in addition to being dangerous, in addition to putting women in jeopardy.

Again, I say to my colleague that he has chosen to put this drawing here. I could have chosen to put a drawing of a woman having a hemorrhage behind me. I could have chosen to put a drawing of a woman's uterus rupturing and everyone running around in the emergency room desperately trying to save her. I could have chosen a drawing of a woman slipping into a coma, having an embolism. I could have put a drawing of a woman paralyzed for life because perhaps she couldn't get this procedure which my colleague has decided doctors say they don't need. That is false on its face, and that is the reason we need to have a hearing.

We have letters from doctors. We have letters that lay out why, in fact, this procedure is necessary and why this bill is unconstitutional. A letter from the University of California, San Francisco, signed by Felicia Stewart. She says this bill:

> . . . 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; it puts women in jeopardy.

She names the various abortion procedures which could be outlawed.

I would like to have this bill go to the Judiciary Committee because I would like to know why one procedure wasn't mentioned in the bill ever. It is on purpose because it is meant to cover more than one procedure. That is another unconstitutional provision.

By the way, the proponents of this said before that the laws before the court would be deemed constitutional. They were not. They were wrong then; they are wrong now. And surely if they think they are so right, why don't they want to take the time and have this bill go through the Judiciary Committee.

Dr. Stewart says:

> If the safest medical procedures are not available to terminate a pregnancy, severe adverse health consequences are possible . . .

And she lists them. They are even more than what is behind me.

The individual who argued the Supreme Court case that we are talking about, Stenberg, says the new Federal bill, S. 3 ''contains the same two flaws of the Nebraska bill that was ruled unconstitutional.'' And she goes on to explain why. I don't want to be terribly repetitive, but there were two problems in the Stenberg case. The ban was too vague and, therefore, there was an undue burden on the woman because she could be denied all kinds of procedures. Secondly, there was no health exception.

So, yes, I could have had a drawing that showed a woman in severe crisis and constituents would have turned away from that as well. That is why Roe v. Wade is such an important decision because it knows that this issue is so difficult. It weighed the competing interests and it said, in the first 3 months of a pregnancy, government stay out. A woman and her doctor can decide. Senator SANTORUM should not decide, although in his opinion, I know

he wants Roe v. Wade overturned. He thinks government should decide. I take issue with that. But there is no difference on the rest because I do believe later in a pregnancy, the State has a right to set the rules, always making an exception for the life and health of the mother.

I don't know what all the yelling is about because I could tell my colleague that we could probably get, if the leaders on his side of the anti-choice would agree, we could get a bill that could ban all late-term abortions—all—except for life and health of the mother. Wouldn't that be something we could do?

We will have the chance because, as I understand it, Senator FEINSTEIN will be offering that very bill. Let's see how our colleagues feel. They will have a chance to ban all late-term abortions with the life and health exception.

My colleague said, in answer to Senator NICKLES' comments about how important it is to send bills to the committee of jurisdiction—I wrote down what he said—they were talking about a complex piece of legislation, major complex piece of legislation. They were talking about a big piece of legislation, many pages. Well, I ask the question: What could be more important for the Senate Judiciary Committee to look at than a matter that deals with life and health? What could be more important for the Judiciary Committee to look at than a possible ban on a procedure that has no health exception, which could lead a woman into a life where she is paralyzed, where she has a stroke, where she cannot bear children anymore, where, in essence, she is taken away from her family? What could be more important to take 2 days on?

Are women not worth a couple of days of hearings here? Are women not worth it? They are your mother, they are your sister, they are your wife, they are our daughters.

Mr. DURBIN. Will the Senator yield further?

Mrs. BOXER. Yes.

Mr. DURBIN. I want to make sure this is understood by Members of the Senate and those following this debate, and I want to ask this question: Am I correct in my assumption that the exact language of S. 3, which is currently before us, was the same language in the Nebraska statute that was found unconstitutional by the U.S. Supreme Court?

Mrs. BOXER. It is legally the same. There are a couple of tweaks in the language, and there are a series of findings, but the lawyers who argued the other case tell us it is legally the same because there is no health exception and the language is so vague that it creates an undue burden.

I have behind me on a chart the two reasons the Court found that Stenberg was sufficient. Those issues remain in S. 3. That is why this motion to commit is an attempt to do the right thing by the women in this country, and for the children of this country, and for the families in this country, and for anybody who cares about this matter, and to have a couple of days of hearings to see if we can get a bill that would pass constitutional muster.

Mr. DURBIN. If I may ask another question of the Senator. So in 1999 we debated virtually the same bill on the floor?

Mrs. BOXER. Correct.

Mr. DURBIN. There was a vote taken and then the veto by President Clinton. Then subsequent to that the U.S. Supreme Court across the street took the Nebraska statute to consider whether or not it was constitutional, and that statute had the same language we are considering today. I can quote it. This was in the Nebraska statute, and this is in S. 3. Abortion is:

> necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, physical injury, including life and danger of physical condition caused by or from the pregnancy itself.

The identical wording to the Nebraska statute. So in the year 2000, the Supreme Court ruled this language unconstitutional. Yet we come back today with exactly the same language that was already rejected by the Supreme Court, and we are supposed to vote on this without any intervening committee hearing, without having people come before us and suggest that if you are going to approach this again, you certainly don't want to go down the same path as the Nebraska statute.

So the Senator's motion to commit is basically to take the language rejected by the Supreme Court—the language before us now—back to committee so that whether you are for or against this amendment, you can at least concede the obvious—that this language has already been rejected.

What we are going through here is, frankly, not a very productive undertaking. Is that the Senator's suggestion with the motion to commit?

Mrs. BOXER. Yes. I thank my friend. As an attorney, as he is, and as a member of the Judiciary Committee, he understands that this is in fact a wasted amount of time because there are so many other issues we could be dealing with here regarding the people of our country, who are struggling now under terrible economic times and are worried about foreign policy problems; and we are spending time on an extremely emotional issue. There is no question it is very difficult for this Senator to be here talking about it, because it deals with a situation where I believe the health of women could be jeopardized and doctors could be put in jail for trying to do the best for their patients. The other side gets very emotional as well. In the end, we have a piece of legislation that doesn't pass constitutional muster and this will be brought back again.

So it seems to me the intelligent thing to do is to bring it to the committee and make sure that this bill, as Senator SANTORUM says, meets the constitutional issues that were raised. Experts tell me it does not. The record is replete with references that colleagues on the other side thought the Nebraska case would pass constitutional muster and it did not either.

I also would like my friend to see a comment made by Senator NICKLES regarding the importance of going to committee because I think it stands out here as a way to make the point that, whether you are a Democrat or Republican, you should respect the fact that we have committees for a reason. When a bill bypassed the committee, he said he was very disappointed in this process, and this process should not be repeated, so that we can have bipartisan input, have the legislative process work, have hearings so people know what they are voting on, et cetera.

I think what we are doing makes a lot of sense because it impacts the health of women, the lives of women, and life and death itself, and it ought to go back.

Mr. DURBIN. Mr. President, I think two things ought to be brought up as part of the motion to commit. The first is that we are considering language already rejected by the U.S. Supreme Court—a 5-to-4 vote, by a fairly conservative Court. Yet we are being asked to vote on it again today. That does not suggest a learning process. It suggests that people are stuck in a political position that they are going to keep bringing up over and over again regardless of the Court. So the language is identical.

The second thing the Supreme Court said when they rejected the Nebraska statute still applies to this, and that is that there is no health exception, no situation where a mother's health situation is taken into consideration when an abortion procedure is allowed.

I might ask the Senator from California this. I listened carefully—and again I will defer to my colleague from Pennsylvania when it comes to his convictions and feelings on this issue; they are heartfelt, real, and sincere. I cannot listen to him without coming away with that impression. He said he believes that if every American could come into a medical setting and watch this abortion being performed, they would understand his position.

I would like to ask the Senator from California: Couldn't the same thing be said of the women who are finding late in their pregnancies that there has been a terrible complication which has occurred, which threatens their lives, threatens their health? Couldn't we also say, if you could sit down in a waiting room with a mother-to-be and her husband who have just been given tragic news at the end of what they thought was a normal pregnancy, and that in fact it is not normal, there are terrible complications, and that continuing this pregnancy may threaten this mother's life or threaten her ability to ever have children again? I wonder if you invited all of America into that waiting room to anguish with

these parents, what their conclusion would be.

I say to the Senator—and I ask for a response—there is no doubt about this. This is a painful and emotional issue on both sides. But in fairness, it has to be said that the other side is arguing they don't want to take into consideration the health of the mother, they don't want to create an exception for a mother in desperate circumstances, facing a medical crisis that is threatening her health and ability to ever bear another child.

In honesty and fairness, should we not be talking about both sides of this equation? I ask the Senator to respond.

Mrs. BOXER. I say to my friend that that is the whole point. When you are dealing with these emotional, difficult, terrible issues, you have to look at all of that. That is why, on our side, we are willing to say we would ban all late-term abortions, as the Senator's bill would do, except for life of the mother and, in your case, a health exception which is a pretty tough health exception.

Mr. DURBIN. Grievous physical injury.

Mrs. BOXER. I am going to support you. I am also going to support Senator FEINSTEIN's, which gives a little more leeway to the patient and the doctor. The point is that is the right approach to balance the fetus's rights and the mother's rights.

That is the whole point of Roe and why it was such a reasoned, reasonable, and moderate decision because all of this is difficult. For us to outlaw medical procedures which doctors tell us are necessary—and my colleague keeps saying they do not. I put in the RECORD the letter from the OB/GYNs, 45,000 strong, who say do not do away with this procedure and, if you do, make a health exception.

I have told stories and I want to quickly go through one—how much time do I have remaining on my side?

The PRESIDING OFFICER. Fourteen minutes, 40 seconds.

Mrs. BOXER. Can I be told when I have 5 minutes remaining?

The PRESIDING OFFICER. The Chair will advise the Senator.

Mrs. BOXER. I thank the Chair. Mr. President, I say to my friend, he posed a very good rhetorical question which was: Does the Senator believe if people could hear these stories of the women and their families who are going through these choices, would they not also be touched and be moved? The answer is clearly yes.

I wish to tell my colleague about Coreen Costello who went through this procedure. I want to tell you how she defines her own ideology and religion. She says:

> We are Christians and conservative. We believe strongly in the rights, value, and sanctity of the unborn. Abortion was simply not an option we would ever consider.

She was told the muscles of the baby she was carrying had stopped growing and her vital organs were failing. Her lungs were so underdeveloped they barely existed. Her head was swollen with fluid and her little body was stiff and rigid. She was unable to swallow and, as a result, the excess fluids were puddling in her uterus. They tried desperately to save the pregnancy.

She said:

> We wanted our baby to come on God's time, and we didn't want to interfere. We chose to go into labor naturally.

Eventually she was told if she did that, she could die.

> We asked our pastor to baptize her in utero. We named her Catherine Grace, Catherine meaning ''pure'' and Grace representing God's mercy.

We talk about the problems families face. These families are desperate to do the right thing for the family, for the child in utero, and eventually she had to have this procedure that the Senator wants to outlaw. She said it saved her life and it saved her health, and it was the only choice she had to save her fertility. She said:

> Losing our daughter was the hardest thing we ever experienced.

She said it has been difficult to come to Washington and tell her story.

Mr. DURBIN. If I may ask the Senator a question.

Mrs. BOXER. Yes.

Mr. DURBIN. I have heard that story, and I have personally met a woman from my State who faced a similar medical crisis, Vikki Stella, of Naperville, IL, a mother of two children who was pregnant with her third, anxiously awaiting the arrival of this little boy and learned very late in her pregnancy, much to her surprise, that her poor child was so deformed and abnormal that it could not survive outside the womb. The child was destined to die almost immediately after birth.

Of course, some people would say at that point: Why not just finish the pregnancy? Why do you have to do anything? Her doctor said to her, unfortunately: You are not the healthiest person in the world even as a mother of two children. You have a diabetic condition, and you have the chance of complications. Therefore, her doctor recommended that she terminate that pregnancy, using the same procedure which would be outlawed, banned, prohibited by this legislation.

Her husband was a practicing physician who was then in private business. She said in her testimony she almost had to be carried out of the waiting room after she was told this devastating information. They went home. I talked with her. She said they had sleepless nights about what is the right thing to do: Should I go ahead and risk my life and my health and finish this pregnancy or what?

They finally came to the conclusion that the best thing for her, her health, and her family was to go ahead and terminate the pregnancy of this poor malformed fetus that would never survive, and she did it. They used the very procedure which the Senator from Pennsylvania would prohibit and ban. The last time I saw her was here on Capitol Hill. She was pushing a stroller with her new baby boy.

I say to the Senator, a lot of this debate is premised on false premises that women that late in pregnancy would not take the termination of a pregnancy very seriously. I do not believe that. I think the overwhelming majority of women that late in a pregnancy are not going to end the pregnancy unless there is some extraordinary situation. That somehow the women who make this decision really never wanted to have a baby—look at Vikki Stella. Look at Mrs. Costello and others. They had a family and were hoping to add to their families. Frankly, there are lots of options which they could choose.

I say to the Senator from California, isn't that what we are finding, that these are extraordinary medical situations where we are asked now in the Senate to impose our medical judgment over the judgment of an obstetrician, over the judgment of a family doctor? We are going to make the medical decision on the floor of the Senate, a decision which should be made in a hospital, in a clinic, in a doctor's waiting room; isn't that what this comes down to?

I ask the Senator from California if she sees it as an issue that brings that kind of decision to the forefront.

Mrs. BOXER. I say to my friend, no one can be more eloquent than he. I think this whole debate is about Senators thinking they know more than families, doctors, the ability of families to sit around and choose the safest option in a real emergency situation.

My colleagues say it is not an emergency; the procedure takes 3 days. That does not even make sense to me. I think if you find out you are going to have a cancer operation and it takes a long time, it still is an emergency. The fact the procedure takes a while probably indicates it is even more of an emergency.

We have a lot to do. We have a lot of responsibilities. I do not want to do harm. I think that by sending this bill to the committee of jurisdiction to further explore the constitutional ramifications of this bill, which is legally identical to a law that was ruled unconstitutional by the Supreme Court, is the right thing to do. To listen, again, to some of the people who have lived through this is the right thing to do.

To do no harm is the minimum we should be doing. I think when the Senator offers his amendment to have a pretty narrowly drawn health exception, it ought to win because how do we stand here and say we have a heart when we ignore stories like Vikki Stella's?

Mr. DURBIN. If I may ask the Senator, too, after most of the debate yesterday, Senator SANTORUM came to the floor and told a very compelling story about a little girl who was born with some serious health defects and who survived and prospered. He showed us a

beautiful photograph—which I am sure he is going to refer to again—of this little girl who had survived and conquered all of these challenges.

I ask the Senator from California, we all know these stories and we admire the courage of the parents and of the children who make it, but doesn't the Senator from California believe, as I do, that we should have adopted the Murray-Reid amendment yesterday which would have guaranteed health insurance coverage for uninsured mothers with these children who are struggling with all of these medical problems? Doesn't the Senator believe that if we are truly committed to these families and these children that Senator MURRAY and Senator REID have the best approach in terms of family planning information so that they have wanted pregnancies and that they have health insurance for these children?

Does the Senator believe, as I do, that if one is committed to these children, these mothers, and these families, they should also be committed to health insurance coverage so they can have the care they need to survive and prosper?

Mrs. BOXER. I absolutely supported the Murray-Reid amendment, as did my colleague. I was stunned at how many people on the other side of the aisle, who stood up and defended the rights of the fetus, somehow cannot defend the rights of a child. It is a stunning thing to me to see people, who are speaking so eloquently on this, vote against the Murray-Reid amendment to help poor children get the help they need, to help them get the medical attention they need.

We ought to think about the pictures of these women, with their families, who faced this. This is not an issue that is an abstraction. It is an issue about real families struggling. And being told that to save the woman, to save her ability to have future children, to make sure she does not wind up paralyzed or with a stroke, that she have a chance, this Senate is going to move to outlaw this procedure, that could do that for this woman without a health exception—I think it is cruel. I think it is wrong. I think it is sad. I think it shows a lack of humility. And I hope the people of this country will understand what we are talking about: The willingness of the pro-choice Members of this Senate to outlaw all late-term abortion as long as the life and the health of the mother are excepted.

I thank my colleagues for listening, and I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, to address a few issues the Senator from California spoke about, I made a comment about her calling this bill identical, and she said she did not call it identical, that she called it legally identical.

I quote from the unofficial record from 6:51 p.m. Monday on the floor of the Senate, the Senator from California: The Supreme Court said in an identical bill, it is far broader than just one procedure—identical bill.

The Senator from Illinois just repeatedly said this is the exact same bill, exactly the same language—''identical bill.'' The Senator from California said that is correct. So she is saying this is an identical bill, and then she suggested we need to send it back to committee because we need hearings because it is a changed bill. Which is it? Is is a changed bill or an identical bill?

It is not an identical bill, I concede that point to her. It is different. The language is substantially different. The Senator from California said: We meant to cover more than one procedure with this language.

Why would we want to do that? The Supreme Court said: The reason we are striking down your language is that we believe it covers more than one procedure. So we are going to craft language so the Supreme Court can come back and say, well, it covers more than one procedure?

Maybe my colleagues think we are not serious about banning this procedure. Let me assure them, I am serious as a heart attack about banning this procedure, and we have crafted language to do just that, and only that.

The language is different. It is not identical to the Nebraska statute. The Nebraska statute said, as the previous bill we considered on the floor, that a partial-birth abortion is performed in which the person performing the abortion deliberately and intentionally vaginally:

delivers some portion of an intact living fetus until the fetus is partially outside the body of the mother.

The new language says:

deliberately and intentionally vaginally delivers a living fetus until, in the case of a head presentation, the entire fetal head is outside the body of the mother, or, in the case of a breech presentation, any part of the fetal trunk—

That means the arms, legs, trunk—

past the navel is outside the body of the mother.

Now, that is substantially different. It is not an identical bill. It is much more specific, to address the very issue the Court wanted us to address in the Stenberg v. Carhart case. So we are very clear. This is not vague, and this is an honest and sincere attempt to meet the constitutional strictures of the Supreme Court decision.

I will address Senator DURBIN's and Senator BOXER's point on some of the special cases, but the Senator from Minnesota is in the Chamber and I yield 10 minutes to him.

The PRESIDING OFFICER (Mr. FITZGERALD). The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I do not know if there is an issue we face in this Senate that is as charged and certain to elicit a whole range of emotional responses as the issue of abortion. A lot of us bring very passionate perspectives to this. My wife Laurie and I are parents of two children who were destined to die. Our first son, Adam, was born with a genetic condition that we found out about at the time of birth, at delivery. He lived for a very short time, not more than a couple of months. As a result of that, I can say that my sense about the value of life was forged in steel, that each life is precious, that each life has value. That is the perspective I bring.

Ten years ago, our fourth child, our last daughter, Grace—in between we have a son Jacob, who is going to be 17 tomorrow, Thursday, and a daughter Sarah, who is 13, but our daughter Grace was born with the same condition. We knew about a week before that she was going to have this genetic condition which is very rare.

My wife gave birth. We cared for Grace for a couple of months. We brought her home from the hospital very quickly. We knew she was destined to die. We made that choice for Grace to be part of our life, because we understand the incredible value that every life gives, that every life has, that every life is a gift from God.

I recognize that my friends across the aisle have heartfelt and passionate beliefs on the other side of the abortion issue. I understand that. We disagree. But in this debate about partial-birth abortion, this debate in which we talk about a child partially delivered and then crushing its skull, this debate is one in which Minnesotans certainly, I believe, and Americans at large, can find common ground. This should be an issue which, in spite of one's position on the life issue, in spite of their views on abortion generally—this issue is one in which we should come together and agree to ban partial-birth abortion. As divisive as the issue of abortion is, there are a few things in which we can find common ground.

It is not part of this debate, but I have to tell this story. A while ago, my 13-year-old went to get her ears pierced. I received a call from the folks who wanted to pierce her ears wanting to know if dad said it was okay. They had to have parental consent. I think most Americans and most Minnesotans would say that makes sense. If it is true for having one's ears pierced, it should be true for abortion.

Even on this divisive issue, there are those things that we, as Americans, can agree on and say let's move together, let's find the common ground, and banning partial-birth abortion is one of them. It is time to put an end to this gruesome procedure that claims the lives of thousands of unborn children every year. It is time to ensure that no child suffers this violent, tragic death.

We are under assault in this country. I have watched the debate and I respect the work of my distinguished colleague from Pennsylvania. In this debate, we have been besieged by a campaign of falsehoods about what this issue is about. It is about partial-birth abortion.

Some say that the procedure is rarely performed; we do not need to deal

with it. If it was performed even one time, most Americans would say is wrong and must be stopped.

So we are doing the right thing by finding common ground on this divisive issue and banning partial-birth abortion.

A recent survey by the Alan Guttmacher Institute, an affiliate of Planned Parenthood, released in January of 2003, reported that 2,200 partial-birth abortions were performed in 2000. In 1997, the executive director of the National Coalition of Abortion Providers estimated that approximately 3,000 to 5,000 abortions were performed by that method annually. This means that anywhere between 6 and 14 children die every day as a result of partial-birth abortion. This bill is a significant piece of child protection legislation and, again, one in which we should find common ground in spite of and regardless of one's position on abortion.

Abortion providers would have people believe this procedure is currently only performed when the mother's life is threatened or the fetus is deformed. This is simply not the case. Ron Fitzsimmions, executive director of the National Coalition of Abortion Providers, has stated:

> In the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus, as reported in the New York Times.

My colleague, the distinguished Senator from Illinois, has offered an amendment that he believes offers a reasonable compromise to provisions contained in S. 3. Sometimes your friends want to love you to death. In the guise of saying they will help, they want to kill what we are trying to do. What we are trying to do is very simple in this bill. It is very specific. It is very clear. It is uncomplicated. We are trying to ban a gruesome procedure known as partial-birth abortion. That is what this is about.

The Senator's amendment seeks to make it unlawful to abort a viable fetus unless a physician, prior to performing an abortion, certifies the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

In this case, the exception swallows the rule. The word ''viable'' makes the ban on partial-birth abortion virtually meaningless, as a large majority of the procedures are believed to be performed during the second trimester, and the term ''viable'' will likely be read by the courts to include only third-trimester abortions.

Further, there is no requirement to certify whether the unborn child is, in fact, viable. The capacity for a baby to survive independently of the mother with technological assistance is currently reached in the late weeks of the second trimester. Without certification of viability, there is little or no new protection against the partial-birth abortion procedure.

Equally alarming, this amendment requires that there be a risk, not significant risk—not even slightest risk—but risk to the mother's health. There is a risk involved in almost every type of medical procedure, including delivering a baby. In the guise of seeking to offer some common ground, what we really have—and folks have to understand it for what it is—is an attempt to try to kill what is a very clear, very straightforward, very unequivocal, very heartfelt, and a very strong consensus-building effort to move together on this divisive issue of abortion. We want to say that in the Senate we understand there is common ground, and that common ground is to put an end to partial-birth abortion.

The amendment from my distinguished colleague from Illinois offers no new protection against this violent procedure for unborn children, as the loopholes in the amendment are so large. It is time to stop this inhumane, gruesome procedure. It is the right thing to do, and this is what the American people are asking us to do. The people in Minnesota are asking it. I have received scores of messages and letters from folks saying move forward on this effort. It is the right thing to do.

Again, this issue is divisive. We bring deep, personal stories to the debate. In the final analysis, we have before us a common ground, clear common-sense thing to do, and that is put an end to this gruesome procedure.

I thank the Senator from Pennsylvania and stand in solid support with him.

I yield the floor.

Mr. SANTORUM. How much time remains?

The PRESIDING OFFICER. The Senator has 11 minutes and 9 seconds.

Mr. SANTORUM. I yield to the Senator from Illinois 7 minutes.

Mr. FITZGERALD. I thank my colleague from Pennsylvania for the excellent work he has been doing on this ban on partial-birth abortion. I am an original cosponsor of Mr. SANTORUM's bill. I applaud him for his hard work and toil on this issue, not just this year but for several previous years. In fact, Senator SANTORUM has been working on this issue for some 7 years.

When you reflect that it has taken this long for this body to get to this date where we are close to having a vote and we hope the bill will pass and be signed by the President, you have to wonder what kind of a society have we become that it has taken us so long to get to the point where we are close to banning what to me seems to be a very cruel and inhumane procedure. It has been made abundantly clear, both in this debate and in many Senate committee hearings on prior occasions, that banning partial-birth abortion is a simple step those of us on both sides of the abortion issue should be able to coalesce and find common ground over.

We are talking about banning a specific procedure in which a baby is partially delivered, scissors are stuck in the back of the baby's skull, a vacuum suction tube is inserted into the skull, and the baby's brains are sucked out. We are banning this type of abortion only. Can we not agree this is too cruel and inhumane a procedure to allow in the United States? As Senator SANTORUM has said, we are not banning other types of abortion.

I am struck that several times in the 4-plus years I have been in the Senate, we have on several occasions had debates on the Senate floor and votes in the Senate about banning cruel and inhumane treatment of animals. In fact, I remember several years ago we had a debate over an amendment brought by Senator Torricelli that would prohibit the use of funds in the Interior budget to facilitate the use of steel-jawed traps and neck snares for commerce or recreation in a national wildlife refuge.

During the debate on this amendment, my friend and colleague from Nevada, Senator REID, described the amendment to ban steel-jawed traps and neck snares as a ''no brainer.'' My colleague went on to say: ''These traps are inhumane. They are designed to slam closed. The result is lacerations, broken bones, joint dislocations, and gangrene.'' In concluding, Senator REID stated: ''In this day and age there is no need to resort to inhumane methods of trapping.''

Many Members were persuaded. I was persuaded. I voted to protect the animals out West, the coyotes, wolves, and bears that were being inhumanely trapped in these steel-jawed traps and neck snares. Why were many of us persuaded? Why were we all troubled by steel-jawed traps and neck snares? Is it because there is something in our gut that turns and twists over the unnecessary suffering and pain of creatures with whom we share this Earth; the majestic animals who are as much a part of God's wonderful creation as we are; wonderful animals who add richness and texture to our own experience of the planet; animals whom we thank God for allowing us to appreciate and admire?

The suffering of a bear or a deer can lead many of us to say no to a steel-jawed trap or neck snare, but what about the scissor through the head and neck of a child? What about sucking a baby's brains out? We would not treat a mangy raccoon this way.

I remember a couple years back the Senate acted to do more to fight the inhumane treatment of dolphins. I remember supporting an amendment offered by my friend and colleague, Senator BOXER, to the fiscal year 2000 Commerce, Justice, State appropriations bill to force countries to pay their fair share of the expenses of the Tuna Commission and delay the importation of tuna caught using fishing methods that unnecessarily harm and kill dolphin. During debate on this amendment, Senator BOXER spoke eloquently of the thousands of dolphin killed each year by fishing methods that cruelly and unnecessarily harass, chase, circle, maim, and kill dolphin

that happen to be swimming over schools of tuna. I appreciated her efforts and others' efforts in the name of humaneness.

I believe our Maker has touched our human conscience with something that makes us almost instinctively recoil from causing unnecessary pain and suffering to animals. I know there is a tender spot in the hearts of some who now oppose a ban on this cruel and inhumane procedure. I know it is there because I have seen it in debates in this body. But I don't understand how those who can hear the howl of the wolf or the squeal of a dolphin can be deaf to the cry of an unborn child.

If people were sticking scissors in the heads of puppies, we would not abide it. In the name of common decency and humanity, I urge my colleagues not to let this happen any longer to our own young. I applaud Senator SANTORUM for the good work he has been doing. We will keep fighting until we get this ban enacted into law.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Senator from Illinois for his support both here on the floor and things that we have done off the floor to get support for this legislation. He has been one of the champions. I appreciate his support as well as that of the Senator from Minnesota, his very heartfelt support for this legislation and the very touching personal story he related to the Senate.

How much time is remaining on both sides?

The PRESIDING OFFICER. The Senator from Pennsylvania has 3 minutes 10 seconds. The Senator from California has 3 minutes 53 seconds.

Mr. SANTORUM. Mr. President, just to reiterate, I do not believe we should support the motion to commit. As I stated before, this is a piece of legislation we have had on the Senate floor. This is the fifth debate on the floor of the Senate. The Judiciary Committee has held two hearings and reported the bill out.

It is not exactly the same. As I said before, it is not identical. We have addressed issues of health and vagueness, but the substance is the same. We are talking about the same thing. We are talking about changing roughly 20 words in the statute. I think that is a small enough change for Members of the Senate to digest without the Judiciary Committee going through and giving its opinion.

The Senator from Utah, Senator HATCH, came to the floor and addressed the issues. Other members of the Judiciary Committee have been here and done likewise, many of whom are cosponsors of this ban.

I believe this is, frankly, going to delay consideration of this legislation. It will not have any impact or import in the long run to our deliberations. I think Members of the Senate are fully able to make this decision at this time being well versed after this debate.

We have had a good debate over the last 3 days. We will continue to do so, prior to passage. I think it is time to move forward. I hope my colleagues will join me in opposing the motion to commit.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I want to start by answering Senator FITZGERALD, who complimented me on my work. We have worked together on saving dolphin and others. But since he couched it in the form of an attack, I think I would like to respond in this way.

My whole life has been dedicated to protecting children, women, the elderly, the infirm, and that is what my current position on this issue reflects. I want to ensure pregnancies are safe, that women have prenatal care so they have healthy babies and, yes, when a woman faces a crisis pregnancy, that she can be saved—women, like some of the women in the Senator's own State of Illinois, who have to choose this particular procedure that would be banned by his vote, without even an exception for the health of a woman. I find that position to be inhumane.

I want abortions to be safe, legal, and rare. I have to say to my colleague from Illinois, if he wants to go back to the days when abortions were illegal, I could share some stories about people I knew who were made infertile, and many whom I have read about who died. If you want to go there, we will talk about it.

But right now we are talking about a bill that is a very important bill because it bans a procedure that women need to have available to them on rare occasions. Because we are talking about a bill that is legally identical—if I didn't use the term ''legally identical'' in every case, I apologize—we are talking about a bill that is legally identical to the bill that was declared unconstitutional by the Supreme Court.

Senator LEAHY agrees. He is the ranking Democrat on the Judiciary Committee. I will ask unanimous consent to have printed in the RECORD, if it has not been done so, his statement.

He says:

Senators deserve the benefit of full consideration and vigorous debate before they are asked to cast a vote on such a significant and complicated issue.

He says:

The Judiciary Committee has not had an opportunity to fully debate the pros and cons of this issue in a hearing since 1997.

I would say to my colleagues, to heed the words of their own leaders—Senator DON NICKLES, who excoriated Democrats for bypassing the committees instead of bringing a bill to the floor, in which he said:

Bypassing the committee should not be repeated by Democrats or Republicans. We have committees for a purpose so we can have bipartisan input, so we can have the legislative process work, so we can have hearings on legislation so people can know what they are voting on.

It is the height of irresponsibility, it seems to me, when we are talking about a bill that would deny a procedure that 45,000 OB/GYNs say is sometimes necessary to save the health of the mother, not to have a hearing on this particular piece of legislation since we have not had one in a very long time and the Supreme Court chastised those who wrote the Nebraska law because, they said, it did not really make any exception for the health of the woman even though the kinds of risks that she faces are very serious.

Let's take a look at the risks that doctors tell us women face: Hemorrhage, uterine rupture, blood clots, embolism, stroke, damage to nearby organs, and paralysis.

So I say to my friends who come here with such compassion in their heart, to be compassionate toward the mothers, too, to understand what they may face. Let's send this to the Judiciary Committee. That is where it should be. Let them take a look at it and bring it back up.

I yield the floor.

Mr. LEAHY. Mr. President, when Senator SANTORUM introduced S. 3 on February 14, the leadership immediately placed the bill on the Senate Legislative Calendar, bypassing committee consideration of the bill. I rise today to support the motion to commit the bill for consideration by the Judiciary Committee.

Senators deserve the benefit of full consideration and vigorous debate before they are asked to cast a vote on such a significant and complicated issue. In fact, the Judiciary Committee has not had an opportunity to fully debate the pros and cons of this issue in a hearing since 1997. Since that time, we have welcomed many individuals to the Senate, and to the Judiciary Committee, who were not members of this body when the bill was last debated. In addition, since our last Committee hearing, there has been judicial review of similar legislation, including a Supreme Court decision, that should be fully vetted by the Judiciary Committee.

The committee referral process is there for a reason and we ought to respect it. My colleagues on the other side of the aisle have repeatedly called for the Senate to follow these well-established practices.

For example, the distinguished senior Senator from Oklahoma complained in relation to the prescription drug bill last year: ''What happened to the committee process? Shouldn't every member of the Finance Committee have a chance to say, 'I think we can do a better job?' Maybe we can do it more efficiently or better. No, we bypass the committee and take it directly to the floor.'' Other senior Republican Senators likewise complained about the need to involve Senate Committees and their expertise in development of prescription drug legislation, energy legislation and many other matters. How

quickly they have changed their position. I have some respect for the Senate's established procedures and processes. I urge all Senators to support the motion to commit this matter initially to the Judiciary Committee for a hearing and committee consideration. With Senator HATCH as the committee chair and with a majority Republican membership, I do not understand what the Republican majority fears by having fair proceedings before the committee before the Senate is asked to take final action.

AMENDMENT NO. 259

The PRESIDING OFFICER. All time under the previous order has expired. Under the previous order, the Senate will now resume consideration of the Durbin amendment, No. 259.

Under the previous order, there will now be 1 hour of debate equally divided on the amendment.

The Senator from Illinois.

AMENDMENT NO. 259, AS MODIFIED

Mr. DURBIN. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. Is there objection to modifying the amendment? If not, the amendment is so modified.

The amendment (No. 259), as modified, is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Late Term Abortion Limitation Act of 2003''.

SEC. 2. BAN ON CERTAIN ABORTIONS.

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

''CHAPTER 74—BAN ON CERTAIN ABORTIONS

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

''(a) IN GENERAL.—It shall be unlawful for a physician to intentionally abort a viable fetus unless the physician prior to performing the abortion, including the procedure characterized as a ''partial birth abortion''—

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

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

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

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

''§ 1532. Penalties.

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

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

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

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

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

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

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

''§ 1533. Regulations.

''(a) FEDERAL REGULATIONS.—

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

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

''(A) a certification by the physician performing the abortion, that, in his or her best medical judgment, the abortion performed was medically necessary pursuant to this chapter;

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

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

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

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

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

''§ 1534. State Law.

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

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

''§ 1535. Definitions.

''In this chapter:

''(1) GRIEVOUS INJURY.—

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

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

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

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

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

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

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

Mr. DURBIN. Mr. President, with no objection, let me explain what I have

done because it is significant. I want to make it clear at the outset of this debate what I have done. If either side wishes to address it, I want to explain my rationale.

In the original version of the amendment we said if the doctor certified that a woman who was pregnant was eligible for a late-term abortion, certifying that her life was at stake if she continued the pregnancy, or that she faced the threat of grievous physical injury—if a doctor made that certification, we wanted to make certain it was the truth. We provided in this bill that a doctor who knowingly certified that a woman was eligible for a late-term abortion when he knew it was not true ran the risk of losing his medical license, would no longer be able to practice medicine, and for the first offense a fine of $100,000, for the second offense a fine of $250,000.

There was also a provision later in the same bill which subjected that same doctor to a potential criminal penalty for perjury.

I have spoken to some doctors who have said to me: Senator, understand, even if a mother's life is at risk, what you are asking this doctor to decide, that he is willing—he or she is willing to risk their medical license to ever practice medicine again, face a fine of $100,000, and go to prison—how many doctors do you think, even under the most difficult circumstances, would then undertake getting involved in terminating a pregnancy even if a mother's life is at stake?

I have thought about that. I rolled around last night thinking about that. I came to the conclusion they are right. I think it is a sufficient penalty to say that a doctor who misrepresents on this certification whether a mother's life is at stake or she faces a grievous physical injury could lose his license to practice medicine and face a substantial fine.

The modification which has been accepted here removes the criminal penalty. But even the criminal penalty, which might be 2 years, is something that comes and goes. Losing your medical license for a lifetime is certainly a penalty felt by that person for the rest of his or her natural life.

I made this modification. There will be some who will say you have weakened this bill. I don't think the loss of a medical license and facing a fine is a weakening of this bill to the point where doctors are now going to be less vigilant in making certain that they enforce the provisions of my approach and my amendment.

Having said that, and having explained what I have done this morning with this modification, and addressed the concerns of doctors and those of my colleagues who raised it, let me go to the heart of the issue.

We have talked today about a gruesome abortion procedure. I am still touched by it every time it is described. Any sensitive human being would be touched by it. But I will tell you there is no abortion procedure which, if it is described in detail, would not touch your heart. You are talking about the elimination of a fetus, whether viable or not. You are talking about gruesome surgical circumstances. Why in the world do we allow this to happen in America?

In the earliest stages of the pregnancy, we say we don't believe the fetus has reached the point of being a person. The argument about whether the joining of the sperm and the egg creates a person has been going on for centuries. Different religions, different cultural traditions, different countries, and different leaders have come to different conclusions. Even people in medicine can't quite tell you when it becomes a person.

So the Supreme Court in Roe v. Wade came up with some definitions in trimester terms—the first three months, the second three months, and last three months of pregnancy. They basically said in the first 3 months if a woman learns she is pregnant, it is basically her decision as to whether she wants to continue with the pregnancy or end it. In the second three months, a more complicated decision. But in the last three months—the seventh, eighth and ninth month of the pregnancy—the Court has made it clear we will not terminate the pregnancy in that situation unless there are compelling circumstances involving a threat to the life of the mother or a threat to the mother's health.

We have to put this conversation and debate into context. We are talking about the termination of a pregnancy through an abortion procedure where we have reached such a medical crisis that a doctor says to a woman, I have to tell you, if you continue this pregnancy, it could threaten your life. You may never bear this child because of the complications of this pregnancy, because you may die or I can tell you this: You may go through this pregnancy and run the risk of endangering your health permanently.

You say to yourself: What kind of endangerments would lead a woman to terminate a pregnancy late in the pregnancy? Senator BOXER has listed them. You could be dealing with a uterine rupture in a pregnancy where the woman understands that if she continues the pregnancy, she may never be able to bear another child.

These are not theoreticals or hypotheticals dreamed up by Senate staff and Members of the Senate. These are told us by doctors and by obstetricians who literally have to sit across the desk from a mother-to-be and say, I have terrible news. Something has happened we never anticipated. This late in the pregnancy you are facing something which you didn't think would ever happen: The possibility of a hemorrhage that could endanger your life, a uterine rupture that could endanger the ability to have a child, blood clots, embolisms, stroke, danger to your organs of a permanent nature, and even paralysis.

I have spoken to women who have been through this. Believe me, this was not a casual, easy decision. These women, late in pregnancy, were counting the days when finally their back stopped hurting them and finally they could get back to normal clothes and have the baby in their arms. They were waiting expectantly for that, only to learn at the last minute in the pregnancy something had happened that no one had anticipated.

The amendment which I offer says let us make certain if we are going to draw the line on the termination of pregnancy late in the pregnancy, let us make certain we don't forget there are two things that need to be respected. One of those comes down to the basic premise of philosophy of the mother first. Hardly anyone argues with this. If it is a choice between the life of the mother and the life of a fetus, most religious traditions and most people would say, For goodness sakes, you save the mother. You save the mother.

The Durbin amendment says you can only terminate the pregnancy late in the pregnancy, after viability, in the final trimester, give or take a few days, you could only terminate it if the mother's life is at stake. I hope there is no argument about that.

The second part is equally important. This is the part where we have a division of opinion. We part company here in the Senate; that is, whether or not you should allow late-term abortions when a mother faces the possibility of a grievous physical injury, as I have described. I think you should. At least I think the option should be there.

If some mother in that circumstance takes the heroic position that she may never be able to have another child, but she wants to go forward with this pregnancy, that is her decision. That is the decision for her and her family and conscience. It is one she can make.

But what we are seeing here with the underlying bill is we don't want to create the possibility for that decision to be made. We want to foreclose the possibility that a woman facing the threat of grievous physical injury late in her pregnancy would make the decision to terminate the pregnancy.

I think it is a mistake. I think we have pushed ourselves into medical judgment and medical decisions in a way we never should have done. Whether you are pro-life or pro-choice, should we not create an opportunity for that mother who has just been hit between the eyes with the knowledge that what was a perfect pregnancy has sadly gone the wrong way and that now if she continues that pregnancy she may endanger her life or endanger her ability to have another child?

These are tough decisions.

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

Mr. DURBIN. As soon as I am completed, I would be happy to, and I will yield on the Senator's time and on his sides time.

But I will just say if we are going to err in judgment here, let us at least err

on the side of understanding that there are medical complications and there are medical problems which we cannot as simple lawyers and legislators even envision. Let us defer to the professionals, the obstetricians and gynecologists who have written to us and said, Please don't pass S. 3, the Santorum amendment. There are moments in time when we have to make critical medical decisions, and in those moments we have to do what is best for the woman involved here. Don't foreclose an opportunity. Don't tell us we cannot do it. Don't make it be prohibited under law.

That, I think, is what this debate is all about. I will tell you that this amendment which I have offered does not have universal acceptance either on the pro-choice or the pro-life side. Even this morning a pro-choice group notified me that people voting for the Durbin amendment are not going to be viewed in a popular and favorable light. I consider myself pro-choice in my approach to this decision. I know now that some pro-choice groups disagree with us because this amendment is very strict and very specific. It says when it comes to postviability abortions and late-term abortions, we are laying down very strict limitations and guidelines as to when you can be eligible for this.

This says it isn't just matter of a doctor performing the abortion reaching the decision. It is a matter that has to be confirmed by another doctor. An independent doctor has to certify, yes, if that pregnancy goes forward, that mother's life is at stake, if that pregnancy goes forward that mother is facing the risk of grievous physical injury, and if that doctor misrepresents the condition of the mother, that doctor stands to lose his medical license and faces fines up to a quarter of a million dollars. I think this is as tough as it can be, and as tough as it should be to make certain we don't have abortions in late-term pregnancies except for the most serious and tragic circumstances.

Mr. President, I ask unanimous consent that Senators HARKIN and LIEBERMAN be added as cosponsors to my amendment.

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

Mr. DURBIN. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to make four quick points. I had three and a half points as reasons to oppose the amendment, but now I have a full-fledged four reasons because of the modification that was just submitted.

No. 1, this amendment is in the form of a substitute, so the underlying partial-birth abortion statute is gone. We do not ban partial-birth abortions under this procedure. It is gone. This procedure remains legal in the law of the land. This Durbin amendment is a substitute. If you want to ban partial-birth abortions, you cannot vote for the Durbin amendment because it eliminates the ban. That is No. 1.

No. 2, it talks about this is a postviability ban. The problem with that is—there are many problems—No. 1, viability is not defined in the legislation, and it is solely up to the discretion of the abortionist performing the procedure.

I ask unanimous consent to have printed in the RECORD the chart that I have on survival rates.

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

Weeks	Number	Percent
22	1	0
23	42	36
24	61	69
25	77	71
26	76	87
27	92	83
28	105	96
29	100	95
30	141	92
31	184	96
32	267	98

Mr. SANTORUM. And even up to 32, 33 weeks, you still have a 1, 2, 3-percent chance where the baby would not be viable. So you have up until 32, 33 weeks to basically say the child is not viable. If that is the case, this statute is not operative. You cannot even come in under it. There is nothing. The statute does not exist. All you have to do is say it is not viable. So you create an exception that swallows up the entire ban. That is No. 2.

No. 3, even if, by some point, the abortionist will say it is viable, and then proceed with an abortion—which I cannot imagine any physician, in their right mind, doing; but assuming they would say it is viable and proceed with an abortion—they just have to say there is a risk of grievous injury to her physical health. The operative word here is ''risk''—a 1-percent risk, a .5-percent risk, a .001-percent risk—any risk.

Now, ''risk'' is, again, not clearly defined and is open. What this statute does say is it is subject to a second opinion from a doctor. Great. The problem is, there is no penalty anymore. That was half a problem because I thought the penalties were rather weak. Now, with the elimination of any potential prosecution under perjury, there are no penalties.

The Senator from Illinois says there could be a losing of your license. Well, that is not what his substitute says. It says the State has to develop procedures and requirements for what would happen if these things are violated. It does not say license revocation. It does not say that at all. It says they have to develop standards. And it could be suspension for a day for the first offense, 2 days for the second offense—half a day—it could be whatever the State would require it to be. And for the second offense, it is not that it must be revoked, it is not a must. It is an either/or. They could assess a fine. And the fine could be a dollar. It says up to $250,000, but it could be a dollar.

So now, having removed any criminal sanction, you are left with it being completely open-ended, with potentially no consequence for someone not telling the truth in this circumstance.

There are a whole host of other reasons this amendment does not work. But this amendment is fatally flawed. It was poor, in my opinion, as a substitute. But now it does not even have the criminal sanctions as even one potential hope for getting maybe some very late, third-trimester abortions banned. So I just suggest, while I understand why the Senator from Illinois modified his amendment—to try to get more folks to be supportive of his amendment—in so doing, he guts whatever is left of this amendment to actually ban any abortions in this country. As a result of that, I strongly oppose the amendment.

Mr. President, I yield 15 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I rise in opposition to the amendment to S. 3 that has been offered by my friend and colleague from Illinois. When the Senate considered the partial-birth abortion ban in 1999, we decisively rejected, in a vote of 61 to 38, a very similar amendment sponsored by my friend from Illinois. And, once again, I believe we should reject this amendment today.

Let me say to my colleague and dear friend from Illinois, he is a man of great integrity, great passion, and great compassion. He is someone with whom I have worked on this floor on many different issues. I know we will work together again on other issues. We worked together a few weeks ago on an amendment that we were successful in getting the Senate to pass to add additional money for the worldwide AIDS effort.

But I do believe the amendment he has offered—however well intended it is—is tragically flawed. The Senator from Illinois contends his current amendment would ban all partial-birth abortions after a fetus is viable unless two doctors certify that continuing the pregnancy would threaten the mother's life or risk grievous injury to her physical health. Now, this may sound very reasonable, and does. But in, reality, this amendment has loopholes so big that abortion providers would be able to continue to perform virtually all the partial-birth abortions they perform today.

Why? Why do I say that?

First, the amendment ties the availability of late-term abortions to the risk of grievous injury to the mother. That sounds reasonable. But let's be clear about this. Grievous injury is, of course, by definition, necessarily subject to the so-called medical judgment of the abortion provider. The effect of this amendment is ambiguous on its

own terms because the term ''medical judgment'' has, of course, a great deal of built-in flexibility. Specifically, under the precedent set by the U.S. Supreme Court, in 1973, in the Doe v. Bolton case:

> 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 these factors may relate to health. . . .

That is from Doe v. Bolton.

Clearly, this precedent shows us there is a wide range of factors that can legally be taken into account in assessing medical judgment, so many factors that they create a host of loopholes through which many partial-birth abortionists—such as Dr. Martin Haskell, whom I have referenced on the floor before, who lives in my home State of Ohio, in Dayton—could easily slip through.

Further, under this amendment, who would make the call that the mother's life is threatened or that her physical health is at risk? We know the answer. Naturally, it would be primarily up to the abortion provider.

Although in nonemergencies, the abortionist would need to get one other doctor to agree with him, the amendment of the Senator from Illinois contains a medical emergency clause which permits the abortionist to decide to do an abortion without certifying anything prior to doing the procedure. Even worse, Mr. President and Members of the Senate, in those situations when the abortionist declares an emergency, he or she does not need to get independent confirmation from anyone—from no one. In other words, it is totally up to the abortionist's discretion.

In practice, in the real world, this likely means there will be absolutely no limit on the will of the abortionist. The doctor who will be certifying these procedures is a person like Dr. Haskell, a man who admitted that most of the abortions he already performs are elective—elective. That is Dr. Martin Haskell, and that is what he does.

Why do I talk about Dr. Haskell? I talk about him because I am familiar with him because he lives in my home State, but much more importantly, because he is typical of the people who provide these abortions. They are not your ''Dr. Welbys.'' They are not your typical OB/GYNs. They are not surgeons. They are people who do this day in and day out, and that is what they do.

Let there be no misunderstanding. I want my colleagues, and I want the American people, to understand exactly who Dr. Haskell is and what it is that this man does for a living, what his livelihood is, what his mission is, what it is he does day in and day out to these innocent little babies. He kills them. That is what he does for a living.

Let's make no mistake about it. This man is going to do everything he can to maintain his livelihood.

He has a vested interest in performing partial-birth abortions. This amendment before us now is going to give him the ticket he needs to continue these procedures. The amendment by definition creates a loophole so big that Dr. Haskell and the other abortionists just like him could drive trucks through it. This amendment will allow them to continue to do what they do on a daily basis; that is, kill innocent babies, babies who, if given the chance, could be born and could grow up and could thrive and live productive lives and make positive contributions to our country.

Ultimately my colleagues need to know and the American people need to know that Dr. Martin Haskell in Dayton, OH is not your family practice physician. He is not ''Dr. Welby.'' He kills babies. That is what he does for a living. This is the person who, under this amendment, tragically, would be charged with making the medical judgments. When Dr. Haskell needs to seek a second opinion, which is provided under this amendment, from a so-called independent physician as required under the amendment to determine if the procedure is necessary, who do you think he is going to ask? Do you think he is going to really ask the local family practice doctor nearby? We know he is not going to. He is going to ask one of his other abortion provider friends. We know that is what the truth is.

That is the way the world works. That is what is going to happen. If anyone believes otherwise, they are not living in the real world. That is the world of abortionists; that is the way it is.

In practice, this amendment would likely put no limit on the will of the abortionist. The doctor who will be certifying is a Dr. Haskell or someone like him or perhaps a third-trimester abortionist such as Dr. Warn Hern who wrote the textbook ''Abortion Practice.'' Dr. Hern has argued that the fact of an occasional death in childbearing can justify any abortion, no matter how late in pregnancy it is performed. As he stated in the May 15, 1997 Washington Times:

> I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.

So even a so-called grievous injury exception potentially would allow an abortionist to perform a partial-birth abortion on any pregnant woman.

The second problem with the Durbin amendment is that its ban on partial-birth abortions is practically meaningless because the amendment on its own terms only applies to a fetus that is already viable. It does not apply to a fetus that is not viable. We know the overwhelming majority of partial-birth abortions—it has been estimated over 90 percent—occur between 20 and 26 weeks of pregnancy, not during the third trimester. Clearly, this amendment would not even apply to very many partial-birth abortions at all.

Even worse, the determination of viability is left entirely within the discretion of the abortionist. In other words, this amendment would allow someone like Dr. Martin Haskell to make the very subjective decision whether or not a fetus is viable. The amendment would allow Dr. Haskell to decide whether or not he even wanted to comply with the amendment. We all know what his decision would be in these cases. In fact, my fear is this amendment would allow thousands of these gruesome procedures to continue to be performed in the fifth and sixth months of pregnancy, horrific and painful and inhumane procedures performed on healthy babies of healthy mothers.

Yesterday I talked about Brenda Pratt Shafer, an experienced registered nurse who was assigned to an Ohio abortion clinic in the early 1990s. She witnessed partial-birth abortions. She saw what Dr. Haskell does for a living because she worked for a short time at Dr. Haskell's office. She testified before Congress about it. I would like to conclude today with her story because it clearly shows what happens when an abortionist like Dr. Haskell is left unrestrained. Here is what she said in describing one of the horrifying procedures she witnessed:

> The young woman was 18, unmarried, and a little over 6 months pregnant. She cried the entire 3 days she was at the abortion clinic. The doctor told us, ''I'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.'' We gave her some IV-valium to calm her down, but she was never totally knocked out.
>
> The baby's heartbeat was clearly visible on the ultrasound screen. I stood 3 feet from the doctor as he took the forceps and brought the baby's legs down through the birth canal.
>
> He delivered the baby's body and arms, everything but his little head. The baby's body was moving. His little fingers were clasping together.
>
> He was kicking his feet. 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. Then the doctor opened up the scissors, stuck the high-powered suction tube into the hole and sucked the baby's brains out. The baby went completely limp. Then, the doctor pulled the head out, and threw the baby into a pan.
>
> When the mother started coming around, she was crying ''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.''
>
> At that point, I couldn't take it. In my 14 years of nursing, I had been pretty strong. But this was different. I started choking. I excused myself and ran to the bathroom. It was horrible, and I didn't fully understand my reaction. Then, I had to go back and take that baby away from his mother. She was so hysterical, and all she kept saying was, ''It was a baby; he was so beautiful.''

Many other beautiful babies are dying the same tragic deaths. Quite simply, we as a country, as a people, should not tolerate it. We should not tolerate it anymore. We must not allow

it to continue. We must not pass amendments that would allow it to continue even under a legal ban of the partial-birth abortion procedure.

No matter how well-intentioned the amendment is, it is abundantly clear it would allow this partial-birth abortion procedure to continue. Therefore, I ask my colleagues to defeat the amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. BUNNING). The Senator from Illinois.

Mr. DURBIN. Mr. President, I yield 10 minutes to my colleague, the Senator from Louisiana.

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

Ms. LANDRIEU. Mr. President, I rise to speak to this important issue for a few moments and begin by saying that the event the Senator from Ohio described is indeed extremely troubling and would be classified as horrific by most people. If the Durbin amendment were adopted, that would not happen again unless the mother's life, through the determination of the physician, was in jeopardy, or her grievous physical health.

I argue with the Senator from Ohio and the Senator from Pennsylvania that if they were indeed—and I respect both Senators—serious about stopping what Senator DEWINE just described, the Durbin amendment has the best chance of stopping that from ever happening again than the pending bill by the Senator from Pennsylvania.

That is why I support the Durbin amendment. That is why I am a cosponsor of the Durbin amendment. Many of us come to the floor with very good intentions, to try to work to help fashion some compromises that would end what was just described, but also allowing for the Constitution to provide a framework according to Roe v. Wade, which does not represent—although it has been characterized inappropriately, and not clearly by both sides, because this debate, unfortunately, for 30 years or more, has been held hostage by the extremes on both sides.

I want to review, for the purpose of this debate, some writings from Roe v. Wade. To my friends on the pro-choice side, let me remind them of a paragraph in Roe v. Wade, written by Justice Blackmun:

> Some argue that a women's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reasons she alone chooses. With this we do not agree.

Roe v. Wade does not support that proposition. Let me read, for the pro-life community, from this decision, which was delicately crafted to address a very complex constitutional provision that was framed initially in the Bill of Rights, supported by the Constitution, and those principles are the principles of life, liberty, and happiness, not just for the fetus, for the unborn, for young children, but life, liberty, and happiness for people of all ages and all conditions in life, male and female, slave and free.

For the pro-life community, let me read what the Justices said:

> A State criminal abortion statute of the current Texas type, that excepts from criminality only a lifesaving procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved [obviously], is violative of the Due Process Clause of the Fourteenth Amendment.

I suggest unless there are a majority of Senators willing to change the Constitution and remove the 14th amendment, this debate is going nowhere. The fact is that the Constitution supports a framework in which life and liberty for everyone, including the unborn, have to be taken into consideration.

I argue that the Senator from Illinois puts forth a very good amendment on the floor because we want to attempt, as a society, to outlaw late-term abortions, which violates our sense of decency and morality, within the framework of the Constitution, unless the woman's life is at risk or unless the woman is in grave physical health.

The American people do not agree with the extremes on both sides. The fact is, with all due respect to the Senators from Pennsylvania and Ohio, this is not an amendment that anybody could put on the floor that they would agree to, because they are opposed to abortion in every case, under every circumstance. They believe it should be outlawed. They are entitled to that position, to represent it, and they are entitled to run on it, which they have, and they have gotten elected. But I say that the majority of people in the country believe that in some situations abortion should be legal and safe, and we are attempting to make it more rare. But without the support of either the right or the left, the Senator from Illinois puts forth this amendment in good faith, and I support him, and so do some Republican Senators.

The country is very torn. In reading this decision, as I just reviewed portions of it, you can understand that the Justices themselves thought it was a very delicate compromise that had to be put together based on the Constitution and the laws and views of the American public.

According to recent polling, only 33 percent, or less, of the population would ban all abortions under all circumstances; 29 percent would allow unfettered abortions; and the vast majority of Americans fall in the middle, which is understandable.

Late-term abortions are one of those positions we can actually do something about. While people have mixed views about it, this amendment would in fact outlaw all late-term abortions, all procedures.

The Santorum amendment only attempts to outlaw one procedure. I argue that once the Court is faced with it, it is not going to uphold it. So the end result of this debate is going to be not stopping one late-term abortion, when Senator DURBIN's amendment would actually accomplish that end.

The Durbin amendment draws a line at a place that—well, it is not crystal clear, but I ask you, what could possibly be crystal clear about this debate? Is anything crystal clear about it? Even though we think we are the smartest 100 people around, I think we can argue that we could not even make this debate crystal clear. There is no clarity about it. All you can do is do your very best. The Durbin amendment attempts to draw the line of viability. I argue that somebody else could put up another line. But at least viability has some clarity in medical terms. It is understandable, and I think acceptable, to the American people.

Viability is a line that was recognized by the Supreme Court as part of the original decision. As medical research gets clearer—not perfectly crystal clear, but as it brings forth new information, it is something we can use in terms of the measurement.

> The State has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes compelling.

That was also written by the Court.

The Durbin amendment says that when we reach the point of viability, the interest in the potential of human life is compelling; it cannot be ended without serious cause. This amendment raises the standards for late-term abortions from its current just general health to physical health, which is why many on the left cannot support it.

I think given the urgency of the Court and the Congress to protect viable life, perhaps raising the standard is necessary and I hope will be upheld by the Court.

If my colleagues are interested in actually banning late-term abortion—which I most certainly support, and the vast majority of people in Louisiana support—we should not engage in the politics of division but try to reach common ground to do this. I believe the Durbin amendment offers us that very opportunity.

I urge my colleagues to look beyond the rhetoric and to leave the fringe and move to the middle. Is this the answer to this whole question? No. But is it a step in the right direction to minimize abortions in this country? Yes. Is it something that would meet the constitutional test? Yes. Is it something that could be perfected over time? Yes. It is something that could have a direct impact on building the kind of compromise of which I think we could be proud. So I strongly urge my colleagues to support the Durbin amendment based on all that I have outlined.

I yield back the remainder of my time.

Ms. MILULSKI. Mr. President, I express my strong support for the Durbin amendment.

I support the Durbin amendment because it is 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 addresses this difficult issue with the intellectual rigor and seriousness of purpose it deserves. We are not being casual. We are not angling for political advantage. We are not looking for cover.

The Durbin amendment offers the Senate a sensible alternative, one that would prohibit post-viability abortions while respecting the Constitution and protecting women's lives. I believe it is an alternative that reflects the views of the American people.

I support the Durbin amendment because it is a stronger, more effective approach to banning late term abortions. The Durbin amendment respects the Constitution and the Supreme Court's ruling in Roe v. Wade. The Santorum bill before us does not. It is unconstitutional.

In fact, the Supreme Court ruled in Stenberg v. Carhart just 3 years ago 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.

The bill before us, the Santorum bill, 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. The Santorum bill is unconstitutional.

The Santorum bill violates the key principles of Roe v. Wade and other Court decisions. When the Court decided Roe, it was faced with the task of defining. ''When does life begin?'' Theologians and scientists differ on this. People of good will and good conscience differ on this.

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

The Roe decision is quite clear. States can prohibit abortion after viability so long as they permit exceptions in cases involving the woman's life or health. Under Roe, states can prohibit most late term abortions. And 41 states have done so.

In my own state of Maryland, we have a law that does just that. It was adopted by the Maryland General Assembly. It prohibits post viability abortions. It provides an exception to protect the life or health of the woman, as the Constitution requires. It also provides an exception if the fetus is affected by a genetic defect or a serious abnormality. This law reflects the views of Marylanders. It was approved by the people of Maryland by referendum.

Like the Maryland law, the Durbin alternative is consistent with Roe. It is a compassionate, Constitutional approach to prohibiting late term abortions.

It says that after the point of viability no woman should be able to abort a viable fetus. The only exception can be when the woman faces a threat to her life or serious and debilitating risk to her health as required by the Constitution.

The Durbin amendment is stronger than the Santorum bill. It bans all post viability abortions. Unlike the Santorum bill, the Durbin amendment doesn't create loopholes by allowing other procedures to be used.

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

On the other hand, Senator SANTORUM's bill does not stop a single abortion. It does not ban all late term abortions. It bans certain procedures and diverts doctors to other procedures. This approach is both hollow and ineffective. It bans procedures that may be the safest for a woman's health. But let me be clear. Under Santorum, late term abortions would still be allowed to happen.

It does not make late term abortions more rare. It makes them more dangerous. And for that reason, the Santorum approach is ineffective.

The Durbin amendment providers a tough and narrow health exception that is both intellectually rigorous and compassionate. It will ensure that women who confront a grave health crisis late in a pregnancy can receive the treatment they need. The Durbin amendment defines such a crisis as a ''severely debilitating disease or impairment caused or exacerbated by pregnancy'' or ''an inability to provide necessary treatment to a life-threatening condition.''

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

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

Let's face it. Women do sometimes face profound medical crises during pregnancy. Breast cancer, for example, occurs in one in 3,000 pregnancies. In some unfortunate circumstances, pregnant women in their second trimester discover lumps in their breasts and are diagnosed with invasive breast cancer. Continuing the pregnancy—and delaying medical treatment—would put a woman's health in grave danger.

The Durbin amendment recognizes that to deny a woman in a situation like this access to the abortion that could save her life and physical health would be unconscionable. To deny her other children a chance to know a healthy mother would be unconscionable.

When the continuation of the pregnancy is causing profound health problems, a woman's doctor must have every tool available to respond. I readily acknowledge that the procedure described by my colleagues on the other side is a grim one. I do not deny that. But there are times when the realities of women's lives and health dictates that this medical tool be available.

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

Not only does the Santorum bill not let doctors be doctors, it criminalizes them for making the best choice for their patients.

Under this bill, a doctor could be sent to prison for up to two years for doing what he or she thinks is necessary to save a woman's life or health. I say that's wrong.

In fact, those who oppose the Durbin amendment say it is flawed precisely because it leaves medical judgements up to physicians. Well, who else should decide? Would the other side prefer to have the government make medical decisions?

I disagree with that. I believe we should not substitute a political judgment for medical judgement. We need to let doctors be doctors. This is my principle whether we are talking about reproductive choice or any health care matter.

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

The Durbin amendment provides sound public policy, not a political soundbite. It is our best chance to address the concerns many of us have about late term abortions.

Today, we have an opportunity today to do something real. We have an opportunity to let logic and common sense win the day. We have an opportunity to do something that I know reflects the views of the American people. Today, we can pass the Durbin amendment.

We can say that we value life, and that we value our Constitution. We can

make clear that a viable fetus should not be aborted. We can say that we want to save women's lives and protect women's health.

The only way to do this, Mr. President, is to vote for the Durbin amendment. I urge my colleagues to support it.

Ms. SNOWE. Mr. President, I thank Senator DURBIN for introducing this very important measure for the women of this Nation. Today, we continue debate on the critical issue of allowing women to choose what is right for them, their health and their families.

In 1973—26 years ago now—the Supreme Court affirmed for the first time a woman's right to choose. This landmark decision was carefully crafted to be both balanced and responsible while holding the rights of women in America paramount in reproductive decisions. It is clear that the underlying Santorum bill does not hold the rights of women paramount—instead it infringes on those rights in the most grievous of circumstances.

Indeed, S. 3 undermines basic tenets of Roe v. Wade, which maintained that women have a constitutional right to an abortion, but after viability—the time at which it first becomes realistically possible for fetal life to be maintained outside the woman's body—States could ban abortions only if they also allowed exceptions for cases in which a woman's life or health is endangered. And the Supreme Court reaffirmed their support for exceptions for health of the mother just three years ago.

In Stenberg vs. Carhart, a case involving the constitutionality of Nebraska's partial birth abortion ban statute, the Supreme Court invalidated the Nebraska statute because it lacks an exception for the performance of the D & X, dilation and extraction, procedure when necessary to protect the health of the mother, and because it imposes an undue burden on a woman's ability to have an abortion. This case was representative of 21 cases throughtout the Nation. Regrettably, however, Senator SANTORUM's legislation disregards both Supreme Court decisions by not providing an exception for the health of the mother and providing only a narrowly defined life exception.

And let there be no mistake—I stand here today to reaffirm that no viable fetus should be aborted—by any method—unless it is absolutely necessary to protect the life or health of the mother, period.

Senator DURBIN's amendment, which I have cosponsored in the past and again this year, specifies that post-viability abortions would only be lawful if the physician performing the abortion and an independent physician certified in writing that continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health. It mirrors laws already on the books in forty-one states, including my home state of Maine, which ban post-viability abortions while at the same time including life and health exceptions mandated by the Supreme Court under Roe v. Wade.

Furthermore, this amendment will lower the number of abortions because it bans all post-viability abortions. S. 3, in contrast, will not prevent a single abortion. Sadly, it will force women to choose another, potentially more harmful procedure.

Is this what we really want? To put women's health and lives at risk? And shouldn't these most critical decisions be left to those with medical training—not politicians?

The findings in S. 3 would have you believe that this procedure is never necessary to preserve the life or health of the mother and that in fact it poses significant health risks to a woman. This is simply not true. Let me explain why there must be a health exception for ''grievous physical injury'' in two circumstances:

First, the language applies in those heart-wrenching cases where a wanted pregnancy seriously threatens the health of the mother. The language would allow a doctor in these tragic cases to perform an abortion because he or she believes it is critical to preserving the health of a woman facing: Peripartal cardiomyopathy, a form of cardiac failure which is often caused by the pregnancy, which can result in death or untreatable heart disease; preeclampsia, or high blood pressure which is caused by a pregnancy, which can result in kidney failure, stroke or death; and uterine ruptures which could result in infertility.

Second, the language also applies when a woman has a life-threatening condition which requires life-saving treatment. It applies to those tragic cases, for example,when a woman needs chemotherapy when pregnant, so the families face the terrible choice of continuing the pregnancy or providing life-saving treatment. These conditions include: Breast cancer; lymphoma, which has a fifty percent mortality rate if untreated; and primary pulmonary hypertension, which has a 50 percent maternal mortality rate.

Now, I ask my colleagues, who could seriously object under these circumstances?

Mr. President, I believe this is a common sense approach to a serious problem for American women and a contentious issue for the United States Congress. I am grateful to my colleague, Senator DURBIN, for championing this approach and I urge my colleagues—pro-life and pro-choice—to join together to support this amendment to ban all abortions after viability. Let's reduce the number of abortions in this country at the same time we protect the lives and health of women.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I want to review what the Senator from Louisiana said with respect to abortion. I think the Senator from Louisiana expressed her view as to what Roe v. Wade means. I sincerely believe that she feels that way. She would like the law to be that way, and I think most Americans would like the law to be more toward her direction than where it really is.

The law is pretty clear—Roe v. Wade and the companion cases—that in fact the right to an abortion is, in America today, at any time for any reason.

That is what happens. You can cite the case in Roe that talks about the issue of viability, but there was the Doe v. Bolton case that was decided with it; it was read together.

In Doe v. Bolton, the Court ruled abortion could be performed after fetal viability if the operative physician judged the procedure necessary to protect the life or health of the woman. That is where we come down, health of the woman. Under Doe v. Bolton, the health of the woman is anything—is anything. The Senator from Ohio just read this, and I will read it again:

> Medical judgments may be exercised in light of all factors—physical, emotional, psychological, familial, the woman's age—relevant to the well-being of the patient. All these factors may relate to health, and this allows the attending physician the room he needs to make his best medical judgment.

There is simply no restriction there. There is no limitation there, and there are people on the Court today who have interpreted that decision consistently with that no limitation. In fact, I would argue the Court is going even further in that direction. There is some scary language—this is the Carhart case—there is some downright scary language in this decision. I just wish the public understood how absolute this right is, how unfettered this right is, and how absolutely resistant the pro-abortion side is at keeping that pure right in place—unrestricted, unfettered right in place. But we are going even further than that.

We have a case here where we have two Justices of the U.S. Supreme Court, Justice Stevens and Justice Ginsburg, in a concurring opinion—thank God it is not the majority opinion—but in a concurring opinion in the U.S. Supreme Court, this is what Justice Stevens says, and this is what the Senator from Louisiana was saying:

> The liberty clause—

Oh, how words can be twisted.

> The liberty clause in the fourteenth amendment includes a woman's right to make this difficult and extremely personal decision, makes it impossible for me to understand how a State has any legitimate interest in requiring a doctor to follow any procedure other than the one he or she reasonably believes will best protect the woman in her exercise of this constitutional liberty.

Do you know what this means? This means he can do anything he wants, any procedure, none of them reviewable. That is why we had to pass a bill last year called the Born Alive Infant Protection Act. Why? Because Justice Stevens, one of the nine imperial Judges on the U.S. Supreme Court, unelected, had decided that if a doctor

wants to deliver a live baby and then kill it, that is a procedure. Do you know what. Justice Stevens said that if that is what the doctor believes, fine. That is how far we are going. That is the corruption of this entire issue of abortion. It is just so corrosive that it takes people who see words such as ''liberty'' and turns them into murder. Liberty means now murder, in the eyes of Justice Stevens and Justice Ginsburg. Oh, this is such a caustic issue that just corrodes the essence of the spirit of America.

Senator DURBIN—I have said it repeatedly—I believe in good faith is trying to put some restriction in place to what has gone off. By the way, Justice Stevens, unfortunately, and Justice Ginsburg are not alone. You have Peter Singer, whom the New Yorker magazine calls ''the most influential living philosopher''—the most influential living philosopher. As you will hear these statements, you may wonder, no, this is just some kook. No, Professor Peter Singer, distinguished chair, where? Princeton University. Peter Singer has argued that when the death of—what he argues—I will not quote him. I will submit this for the RECORD so there will be plenty of quotes in here because I do not have much time.

What he argues is that a child once born should be allowed to be euthanized up until—he has updated his opinions here. He believed it was only waiting 28 days after birth before deciding whether the baby has rights, but now he has said that is an arbitrary figure and it should be—''Oh, I think it should be somewhat short of 1 year but the point is not for me or anyone else to say, it should be up to the parents and, of course, the doctor.''

You say this is crazy, allowing a parent or society, in the case where the parent is not there, to euthanize a child; that is crazy. I can guarantee, go back 50 years and maybe there were debates on this floor that thought abortion would be a crazy thing and that could not happen in our society; we could not have 1.3 million abortions.

I heard the Senator from California, and I hear this over and over: We want abortion to be safe, legal, and rare. Twenty-five percent of all pregnancies in this country end in abortion. By anybody's estimation, is that rare? Twenty-five percent, is that rare? Forty-seven percent of abortions in this country are a woman's second abortion or more. Is that rare? Is there something corrupting our society here?

I understand the Senator from Illinois is trying to get at least some piece of it, but he fails. He fails. He fails on four counts, and let me quickly go through them, and more actually, the Senator from Ohio listed a few more.

Four major counts: No. 1, there is a substitute. It eliminates the ban on partial-birth abortion. Most partial-birth abortions are done in the 20- to 26-week area where there is a question of viability. You have—and I entered those in the RECORD—you have up to 75 percent viability at the time of 26 weeks. But, again, it is a substitute that eliminates all previous viability abortions. No. 1.

No. 2, it does not define viability, and it leaves it up to the doctor to determine what is viable. If the doctor says this child is not viable, there is no review, and as soon as you say it is not viable, the statute does not apply. So all you have to do, if you want to have an abortion, is say it is not viable; nobody has to review it and the statute is not operable.

No. 3, risk of grievous injury to the physical health of the mother. Again, it uses the term ''risk.'' It does not say how much risk. It can mean any amount of risk—one-half of 1 percent risk.

We have Dr. Warren Hern, who wrote the textbook on third-trimester abortions, the leading expert in this country, saying:

> I have very serious reservations about this procedure. You really can't defend it.

He also has a quote that says he would certify that every pregnancy has a risk of grievous physical injury to a mother—every pregnancy. What if he makes that statement and it is not true? What happens? The Senator from Illinois had criminal penalties potentially for perjury. Those are now removed from the bill. There is no criminal problem with that physician or the other physician who has come in to look at this from having any criminal sanctions.

What are the sanctions? He could lose his license. Not really. The State has to promulgate regulations under this statute to suspend or revoke a license. It does not say they have to revoke it or say how long the suspension is. It could be 1 day. I suspect in States such as New York, Connecticut, and Massachusetts, where abortions are overwhelmingly supported, you could have 2 hours of revocation, or something like that. It would be a ridiculous standard.

The bottom line is it mandates no revocation or suspension of license of any weight, and even at that, it is revocation or suspension or a fine up to $100,000 in the first case, $250,000 in the second, but it could be a dollar.

Again, there is no floor in the amount of money. So there really is the potential for no consequences in a lot of States, or maybe even in most States. It is a substitute. If one is against partial birth, they cannot be for this amendment. If it is understood that viability kicks one out of this statute to begin with, and it is only the decision of the doctor that determines viability and there is no review of that, that makes this statute basically inoperable, I would argue, for every abortion that is done in America.

Then if one gets in, there is the risk question, which again nullifies, really, any weight on the physician because risk can mean such a small amount of risk to make it almost inconsequential. Finally, there is no penalty if all that does apply.

So I suggest that while I believe the Senator from Illinois was trying to do something to attack what I described as an unfettered right to an abortion is the preeminent right in America—

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

Mr. SANTORUM. I thank the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I ask unanimous consent that Senator LINCOLN be added as a cosponsor to my amendment.

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

Mr. DURBIN. I yield 30 seconds to the Senator from California.

Mrs. BOXER. First, anyone who reads Roe v. Wade knows it is not an unfettered right. Clearly, at the later stages, Government can in fact restrict abortion. Secondly, the kind of talk we just heard on the Senate floor, where two Supreme Court Justices were essentially called murderers—if one reads back the words, it is essentially calling them murderers—I think is beyond inflammatory. I think it is dangerous rhetoric. It is wrong, and I am very sad that the debate has deteriorated to this point.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. How much time do I have remaining?

The PRESIDING OFFICER. Six minutes 45 seconds.

Mr. DURBIN. Mr. President, if one takes a walk through this Capitol building, a few feet from where we are standing is the old Senate Chamber. If one reads the history of the Senate, they will find that in the 19th century, in the 1800s, that Chamber was divided over the issue of slavery to the point where one Senator was almost beaten to death on the floor of the Senate.

It is hard to think of issues in America that divide us the way slavery divided us then and the issue of abortion divides us today. There is such strong emotional, honest, and heartfelt feeling that comes into this issue on both sides.

I greatly respect the Senator from Pennsylvania, even though I may disagree with him on this issue. I believe he is speaking from the heart. I equally respect the Senator from California, who is on the opposite side of the issue. I have known her for 20 years. I know she speaks from the heart.

So many of us come to this issue understanding that if we walked into a town meeting in my home State of Illinois and brought up the issue of abortion, we would see people folding their arms and would know what they are thinking. Some of them are thinking: I do not like it; I do not want you to talk about it; I do not know why it is legal in this country, and we are a worse nation for having it. With their arms folded, you just know what they are thinking.

Then we will see another group with their arms folded and we will know what they are thinking: I do not think

the Government ought to stick its nose in a woman's business when her health and her life are at stake. She, her doctor, her family, and her God ought to make that decision, not some politician. That is what we are going to get in most town meetings in most townhalls across America. But there is a group of people in the middle who are sitting there saying: I see both sides. I do not like the fact there are so many abortions in America. I do not like the fact you have circumstances where people need an abortion. We ought to find some way to work this out reasonably.

That is what the Supreme Court tried to do in the Roe v. Wade decision. They said: We are not going to allow abortions any time, anyplace, under all circumstances. We are going to kind of limit when a woman can have it, and under what circumstances.

Then the national debate started, and it has not ended. I do not know if it ever will. So I come today understanding that division in America, that division in my State, even that division of opinion within my own family. I understand this, I feel it, and I am trying with this amendment to strike a reasonable compromise.

Oh, the people with their arms folded on both sides of the hall will not like it. It does not ban abortion, which is what some people want. And it does not get the Government out of the picture completely, which is what others want. Instead, it tries to draw a reasonable, sensible line, a good-faith line, of where we will allow abortions in late-term pregnancies.

When we look at the sponsors of this amendment, unlike any other amendment on this subject, we will find we have the spectrum of opinion on abortion. Watch the rollcall vote. We are going to see Senators come forward who are pro-life and pro-choice who will support the Durbin amendment, and that says something, that when they have thought about it, maybe this is a reasonable middle ground.

I hope a majority of my colleagues will believe that it is. It says: Late in the pregnancy, after the fetus within the mother is viable and could survive, we are not going to allow you to terminate that pregnancy except under the most extreme situations.

The Senator from Pennsylvania says: What is viability? How do we know the fetus is viable? I cannot answer that question. No legislator can answer that question. The Supreme Court, in the case of Planned Parenthood of Central Missouri v. Danforth, said the determination of whether a particular fetus is viable is and must be a matter for the judgment of the responsible attending physician. They went on to say the time of viability is different in every pregnancy.

So I am using a standard the Supreme Court uses. The doctor has to decide: Have you reached a point where that fetus is more likely than not to survive outside the womb? If the answer is yes, then a woman knows she is very late in a pregnancy. Then, and only then, do two hard questions have to be asked before a pregnancy can be terminated. One, if that pregnancy is continued, will the mother die? If the answer is yes, certified not by one doctor but by two doctors, one being an independent doctor, that she is going to lose her life if she continues the pregnancy, then a consideration can be given to terminating the pregnancy, or one other possibility: If two doctors come forward, one independent as well as the one treating, and they conclude if the mother continues this pregnancy, at this point she runs the risk of suffering grievous physical injury. Those are the only two conditions, and that is it. Not if a woman feels like she wants to end the pregnancy. I cannot imagine a woman in that stage of her pregnancy even considering that possibility.

It goes beyond that. It goes to tangible, physical medical evidence, backed up by real doctors who are willing to certify. And this second doctor who has been written off by the critics of this amendment as just another ''abortionist,'' that is not what it says at all. The second doctor's opinion has to be an independent physician who will not perform nor be present at the abortion and who was not previously involved in the treatment of the mother. If one does not have that second doctor agreeing with the first doctor, the pregnancy cannot be terminated.

What is the risk for the doctor if they falsify it, if they lie about it, if they say, oh, we want to make a dollar here, so we are just going to put the certification down? If they lie about it, they run the risk of having their medical licenses suspended, on the second occasion revoked, facing fines up to $250,000. Is that a light penalty, that a doctor would lose his license for a lifetime? That is a pretty serious penalty. Would not any doctor think twice before conspiring to go ahead and certify it when, in fact, there is not medical evidence?

The Senator from Pennsylvania says we want abortions to be rare, but we do not do anything about it. The Durbin amendment will restrict more abortions and abortion procedures than the Santorum bill, S. 3.

Mr. SANTORUM's bill addresses one procedure, the partial-birth procedure, throughout a woman's pregnancy. My amendment addresses all late-term abortions, whatever the procedure.

Finally, when it comes to risk, he takes exception to the fact that I use the words ''risk of grievous physical injury.''

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

Mr. DURBIN. I thank the Chair.

Mr. President, before the vote begins, I ask unanimous consent that Senator DODD be added as a cosponsor of the amendment.

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

The PRESIDING OFFICER. All time has expired.

Mr. SANTORUM. I move to table the Durbin amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

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

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''no.''

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

The result was announced—yeas 60, nays 38, as follows:

[Rollcall Vote No. 46 Leg.]

YEAS—60

Alexander	Dayton	Lugar
Allard	DeWine	McCain
Allen	Dole	McConnell
Bennett	Domenici	Miller
Bond	Dorgan	Murkowski
Breaux	Ensign	Murray
Brownback	Enzi	Nelson (NE)
Bunning	Fitzgerald	Nickles
Burns	Frist	Roberts
Campbell	Graham (SC)	Santorum
Cantwell	Grassley	Schumer
Chambliss	Gregg	Sessions
Clinton	Hagel	Shelby
Cochran	Hatch	Smith
Coleman	Hollings	Stevens
Conrad	Hutchison	Sununu
Cornyn	Inhofe	Talent
Corzine	Jeffords	Thomas
Craig	Kyl	Voinovich
Crapo	Lott	Warner

NAYS—38

Akaka	Feingold	Lincoln
Baucus	Feinstein	Mikulski
Bayh	Graham (FL)	Nelson (FL)
Bingaman	Harkin	Pryor
Boxer	Inouye	Reed
Byrd	Johnson	Reid
Carper	Kennedy	Rockefeller
Chafee	Kohl	Sarbanes
Collins	Landrieu	Snowe
Daschle	Lautenberg	Specter
Dodd	Leahy	Stabenow
Durbin	Levin	Wyden
Edwards	Lieberman	

NOT VOTING—2

Biden	Kerry

The motion to lay on the table was agreed to.

MOTION TO COMMIT

The PRESIDING OFFICER. The question now occurs on the Boxer amendment. There are 2 minutes equally divided for each side.

Who yields time?

The Senator from California.

Mrs. BOXER. Mr. President, regardless of the vote on final passage of this bill, I think you ought to think about why it is important to commit this bill to the Judiciary Committee. Since we last debated this bill, the Supreme Court has ruled that an identical bill is unconstitutional based on two principles that I have here behind me.

Mr. KENNEDY. Mr. President, may we have order. The Senator is entitled to be heard. This is an important matter.

The PRESIDING OFFICER. The Senator will suspend.

May we have order. Please take your conversations off the floor.

The Senator from California.

Mrs. BOXER. Mr. President, since we last debated this bill, the Supreme Court has ruled an identical bill unconstitutional based on two principles: No. 1, there was a health exception; and this bill has none; and, No. 2, because of an undue burden on women because the procedure ban is so vaguely defined that it banned more than one procedure.

It has those same flaws and should be examined by the committee of jurisdiction.

The ranking member of the committee, Senator LEAHY, agrees. In his statement, Senator LEAHY said: ''Senators deserve the benefit of full consideration''——

The PRESIDING OFFICER. The Senator has used 1 minute.

Mrs. BOXER. I will take another 30 seconds.

—''of full consideration and vigorous debate before they are asked to cast a vote on such a significant and complicated issue.''

We are talking about—and I will show a picture of one of them—women such as Coreen Costello, a religious, self-described pro-life conservative woman who had no other option but this procedure if she wanted to preserve her health and have more children.

The PRESIDING OFFICER. The Senator has 30 seconds.

Mrs. BOXER. I retain those 30 seconds.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, we have debated this issue on the floor of the Senate for the fifth time. The issue is the same. There is a slight variation in the language of this bill—some 20 words. I think the Senate is perfectly capable of dealing with these changes and to address the issue of vagueness. I don't believe that after two hearings of the Judiciary Committee, after having gone through the committee on a couple of occasions and being debated here now for the fifth time, we need to commit this bill back to committee.

It has been asserted on the floor by the Senator from South Dakota that we are bypassing the committee, as was complained about in the past. I would just say that we are bypassing the committee on a bill that is this size with 20 different words—not this, which is the energy bill that bypassed the committee last year or the agriculture bill that bypassed the committee last year or on the prescription drug bill.

This has 18 titles in it.

I think there is a fundamental difference between asserting bypassing a committee with a bill which has been on the floor on five different occasions and one that is a brandnew piece of legislation with 18 titles and some 400 or 500 pages.

The Senate is ready to vote. The issue is well known. I hope we defeat the motion to commit and proceed to finish the bill in a timely manner.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, women such as the one shown in this picture deserve to have another hearing. These are the things that could go wrong if a woman is denied this procedure without a health exception: They could hemorrhage; they could have a uterine rupture, blood clots, an embolism, a stroke, have damage to nearby organs, or have paralysis.

We have not had a hearing on this bill since 1997, my friends. We have since had a Supreme Court decision that faults the bill because it does not have a health exception. At least vote with us, please, to commit this to the Judiciary Committee.

I yield the floor.

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

The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, the facts are as evidenced from the Judiciary Committee hearings, which basically have not changed. The facts are the same. The procedure that we are attempting to ban is riskier and has a greater likelihood of causing all those things than the alternative procedures which are taught in medical schools, done in hospitals, by obstetricians. This is not done in hospitals, not done by obstetricians, not taught in medical schools.

This is a rogue procedure that was designed for one reason. The abortionist who designed it said why. It was designed so he could do late-term abortions in 15 minutes as opposed to 45 minutes, so he could do more in one day; that is, all of these health risks are, in fact, bogus. It is a riskier procedure.

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

The question is on agreeing to the motion.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye.''

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 56, as follows:

[Rollcall Vote No. 47 Leg.]

YEAS—42

Akaka	Durbin	Levin
Baucus	Edwards	Lieberman
Bayh	Feingold	Lincoln
Bingaman	Feinstein	Mikulski
Boxer	Graham (FL)	Murray
Cantwell	Harkin	Nelson (FL)
Carper	Inouye	Reed
Chafee	Jeffords	Reid
Clinton	Johnson	Rockefeller
Conrad	Kennedy	Sarbanes
Corzine	Kohl	Schumer
Daschle	Landrieu	Snowe
Dayton	Lautenberg	Stabenow
Dodd	Leahy	Wyden

NAYS—56

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

NOT VOTING—2

Biden	Kerry

The motion was rejected.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. BUNNING. Mr. President, I rise in support of S. 3, the Partial-Birth Abortion Ban Act. It is totally unbelievable to me that Congress yet again is working on legislation to make partial-birth abortions illegal.

This is the fourth Congress in which the Senate will have considered this issue. In that time, innocent babies have been killed by this cruel and horrible practice. It is time to finally end it once and for all.

The Senate voted to ban partial-birth abortions in the 104th Congress, the 105th Congress, and the 106th Congress. The first two attempts to ban this gruesome act were sent to the White House and vetoed by President Bill Clinton.

In the last Congress, the House passed a partial-birth abortion ban. However, the Senate leadership refused to bring the issue up for consideration. I commend our leader, Senator FRIST, for moving quickly to address this issue early in the 108th Congress, and I commend Senator SANTORUM for his lead in this effort. I am confident that the President at the other end of Pennsylvania Avenue will act in defense of life by signing this proposal into law.

All forms of abortion are gruesome procedures, but I cannot imagine anything more hideous than partial-birth abortion. I will spare my colleagues a detailed description of this heinous procedure since it is so repulsive. We have already seen graphic pictures and illustrations outlining this infanticide. It is really hard to believe we have to go through this exercise every Congress because nobody, with a straight

face and a clear conscience, can stand up and defend this procedure.

The only way anyone can justify it is to say, hey, it doesn't matter because not that many partial-birth abortions are actually performed or they can try to cloud the issue by saying partial-birth abortions are only utilized in cases where the mother's life is in jeopardy. We know this just is not true. We know that some of the most ardent and visible defenders of abortion have actually lied about the numbers. It is not just a few hundred a year—it is in the thousands.

But the numbers really should not make any difference. If it is wrong and inhumane, we should ban it, whether it affects 1 or 1 million. But misleading facts about the numbers—trying to play down the prevalence and frequency of this procedure—are no justification for allowing this practice to continue.

This bill does not ignore the health needs of women. It clearly makes an exception when the life of the mother is in jeopardy. The plain language of this legislation clearly says that the ban on partial-birth abortions does not apply when such a procedure is considered necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury. So even though many medical experts insist that there is never any medical justification for a partial-birth abortion, this bill goes the extra mile and permits it if the mother's life is in jeopardy.

Personally, I don't think this makes much sense, but it just goes to show that those of us who support the bill are doing what we can to try to find a middle ground and to answer concerns that some of our colleagues still have.

No one can deny that partial-birth abortion is cruel. No one can deny that it is patently inhumane. No one can deny that it is gruesome and grotesque. In fact, in the 8 years we have been debating this bill, no one has really come up with a defense of partial-birth abortions that holds any water.

Therefore, I urge my colleagues to support this bill, support this ban; it is simply a matter of respect for human life.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Nevada is recognized.

Mr. REID. Mr. President, I yield to my friend from Pennsylvania.

ORDER OF PROCEDURE

Mr. SANTORUM. Mr. President, I ask unanimous consent that following the disposition of the Boxer motion to commit, Senator HARKIN be recognized to offer an amendment, the text of which is at the desk, provided that there be 2 hours 30 minutes for debate, equally divided in the usual form, prior to a vote in relation to the amendment, with no second-degree amendments in order prior to the vote.

I further ask that following the disposition of the Harkin amendment, Senator FEINSTEIN be recognized in order to offer an amendment, the text of which is at the desk, provided that there be 2 hours for debate, equally divided, in the usual form prior to a vote in relation to the amendment, with no second-degree amendments in order prior to the vote.

I further ask consent that following the disposition of the Feinstein amendment, the bill be read the third time, with no intervening action or debate. I finally ask consent that at 9:30 a.m. on Thursday, provided that the bill has been read a third time, the Senate proceed to a vote on passage of the bill, again with no intervening action or debate; provided further that any second-degree amendments to the aforementioned amendments be relevant to the first degree.

I further ask unanimous consent that following that vote, the Senate proceed to executive session and vote on the confirmation of Calendar No. 53, Thomas Varlan, to be U.S. District Judge for the Eastern District, with no intervening action; further, that following that vote, the President be immediately notified of the Senate's action, and the Senate proceed to a period for morning business until 11:30 a.m., with the time equally divided in the usual form.

Finally, I ask unanimous consent that at 11:30 a.m., the Senate resume consideration of the Estrada nomination in executive session and the time until 12:30 p.m. be equally divided in the usual form, with a vote on the motion to invoke cloture occurring at 3:30 p.m.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. As I understand it, we will have the Harkin amendment and the Feinstein amendment and final passage.

Mr. SANTORUM. The Harkin and Feinstein amendments will be voted on this afternoon or this evening potentially, and tomorrow morning a vote on final passage as the first order of business when we reconvene.

Mr. REID. Mr. President, I say to my friend, at the end of the first paragraph of the consent request, after the words ''further that''—it is the first long paragraph.

Mr. SANTORUM. Yes, ''further that.''

Mr. REID. I ask that the words ''if the above amendments are not tabled, if a tabling motion is made, any second-degree amendments'' be inserted and then it would be just as the Senator said it, ''and that they be debatable.''

Mr. SANTORUM. We can accept that.

Mr. REID. So I accept that, other than this, Mr. President: The junior Senator from Iowa, the author of this amendment, would like an up-or-down vote on his amendment. I was just informed of that.

Mr. SANTORUM. I am fine with giving him an up-or-down vote.

Mr. REID. Mr. President, I know the Senator from Pennsylvania does not like this, but we have given and taken, for lack of a better description, trying to work our way through this. I very much appreciate his allowing us to go forward. I ask that the consent request be agreed to.

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

Mr. SANTORUM. I thank the Senator from Nevada. The Senator hit the nail on the head, the head on the nail, whatever the case may be. The fact is, the Senator from Nevada has been very cooperative. This is not an extraordinary request. Even though I rather would have a motion to table, I am glad to accommodate the Senator. I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 260

(Purpose: To express the sense of the Senate concerning the decision of the Supreme Court in Roe v. Wade)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 260.

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE CONCERNING ROE V. WADE.

(a) FINDINGS.—The Senate finds that—

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

(2) 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.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the decision of the Supreme Court in *Roe v. Wade* (410 U.S. 113 (1973)) was appropriate and secures an important constitutional right; and

(2) such decision should not be overturned.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, the amendment I have offered basically expresses the sense of the Senate in support of the Supreme Court decision in Roe v. Wade. With all of the legislation that continues to come up and chip away at Roe v. Wade, I decided it was important for us in the Senate to go on record that this historic decision was appropriate and should not be overturned.

I let the clerk read the full text of the amendment because it is very short and to the point. I offered this amendment 4 years ago on similar legislation that came before this body. The disposition of that amendment at that time, if I am not mistaken, was 51 to 47 in passage. There were some who were

concerned about a couple of the findings. The difference between this amendment and the one I offered 4 years ago is basically two findings have been removed and the only findings left are just the findings that pertain only to Roe v. Wade.

This amendment is very simple, very straightforward. Basically, it puts us on record of saying the decision in Roe v. Wade on January 22, 1973, was appropriate and should not be overturned. I believe it is important that we remind ourselves about this decision as we get into the debate on this so-called partial-birth abortion—especially when this bill changes. That is different than what it was 4 years ago, as we try to parse words, trying to anticipate every medical procedure that might be performed by a doctor, getting into issues this Senator does not believe we are adequately prepared or equipped to do in terms of knowledge of all of the ramifications of certain medical procedures.

I want to make sure with all of this going on that we send a strong signal to the women of this country that Roe v. Wade is appropriate, it was a good decision, and it is not going to be overturned.

I assume maybe there are those in this body who want to see it overturned. I can accept that as their opinion and their view, but I think it is important for people to know where we stand on that decision.

As we all know, the U.S. Supreme Court announced its decision in Roe v. Wade as a challenge to a Texas statute that made it a crime to perform an abortion unless the woman's life was at stake. 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 that the constitutional right to privacy ''is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.'' But the decision also set some rules.

The Court recognized that the right to privacy is not absolute, and that any 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 in which there is a reasonable possibility for the sustained survival of the fetus outside 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 her health. I add that for emphasis, ''or her health.''

This is what my resolution is all about: To say that we agree that Roe v. Wade was an appropriate decision and it should not be overturned.

The constitutional right to a private decision in this matter is no more negotiable than the freedom to speak or the freedom to worship.

Before the 1973 landmark ruling of Roe v. Wade, it is estimated that each year 1.2 million women resorted to illegal abortion, 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; hemorrhage; disfiguration and death.

By invalidating laws that forced women to resort to back-alley abortion; Roe was directly responsible for saving women's lives.

Only 10 pieces of legislation were introduced in either the House or 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 sought to restrict a womans 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 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 26 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 said on many occasions in the past, going back almost 20 years, I do not believe that any abortion is desirable. I do not think anyone does. As a father, I have struggled with this issue many times in the past. However, I do not believe that it is appropriate to insist that my personal views be the law of the land, just as I do not think the personal views of the Senator from Pennsylvania, however strong he may hold them, ought to be the law of the land.

So what should Congress do?

If we are truly interested in both maintaining a woman's constitutional right to control her own reproductive life, and at the same time trying to limit the number of abortions in our society, there is action we can take. We can increase funding for family planning. Try getting that through on the floor of the Senate. We can increase funding for abstinence-only education. We have done some of that. We can mandate insurance coverage for contraception. We still need to do that. We do not, but we should mandate it.

We can provide more support for contraception research. Unfortunately, the Senate yesterday decided not to take these steps that could reduce the number of abortions. That was the amendment offered by my colleague from Washington, Senator MURRAY.

I strongly urge my colleagues to support this resolution. I believe it would establish the one important principle that we should agree on—that we will not strip away a woman's fundamental right to choose, and that is what this amendment does.

Further, I quote from Justices O'Connor, Kennedy, and Souter in Casey:

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

I am going to read that again because it is such a profound statement:

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

I think that is the essence of this issue, whether we will use the heavy hand of the State to enforce certain individuals' concepts of when life begins, how life begins, when a person can have an abortion, when a person cannot.

Yes, it is true, people are divided on this issue. Some people are uncertain about it. I quarrel with myself all the time about it, because it is as multifaceted as there are numbers of humans on the face of the Earth.

I would not sit in judgment on any person who would choose to have an abortion, especially a woman who went through the terrifying, agonizing, and soul-wrenching procedures of having a late-term abortion because her health or her life is in danger. That must be one of the most soul-wrenching experiences a person can go through. I just do not understand how we can be so presumptuous to think that we in the Senate can answer each one of those individual cases, with all the different facets that may be involved, and yet that is what some in the Senate believe the Senate and the Congress should do.

No, I do not want to sit in judgment on that, and I do not believe any of us ought to.

That is why, again, I think it is particularly important that we cut through all the folderol that surrounds this issue and get to the heart of it, which is Roe v. Wade. This is the heart of what we are talking about.

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

I believe very strongly that we need to express ourselves on this sense of the Senate resolution. I appreciate the agreement from the manager of the bill and our majority whip to have an up-or-down rollcall vote. I believe it is that important, and I appreciate their willingness to have that up-or-down vote.

I am sure I will have more to say later on. I believe there are 2 ½ hours of time divided equally, if I am not mistaken.

The PRESIDING OFFICER. Two hours and 20 minutes.

Mr. HARKIN. How much time have I consumed?

The PRESIDING OFFICER. The Senator has 61 minutes and 3 seconds.

Mr. HARKIN. I thank the Presiding Officer, and I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I rise in opposition to this amendment. Before I make a statement, I encourage Members who have statements on this amendment or on the bill—we have roughly 2 hours of time remaining to debate this amendment, but obviously I encourage anybody who has statements on the bill itself to come down. Senator KENNEDY is in the Chamber, Senator HARKIN and myself. So there is ample opportunity and time. There is not much of a wait.

Does the Senator from Massachusetts wish to proceed?

Mr. KENNEDY. Mr. President, I will be ready in about 2 minutes, and I would like to have 10 minutes.

Mr. HARKIN. I yield whatever time the Senator desires.

Mr. KENNEDY. I appreciate that.

Mr. SANTORUM. The Senator from Massachusetts needs a couple of minutes before he is ready. Therefore, I yield 2 or 3 minutes to the Senator from South Carolina for a statement.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Senator HARKIN is right. This is a difficult situation. I am often asked at town meetings: Why should the government be involved in the regulation of abortion? It is a personal matter. I suppose it depends upon who you believe the interested parties are. Obviously, the interested parties are the mother, but many in the country believe there is another party to the decision process, and the unborn child. Someone has to speak for the unborn child.

In a country where people are free to express themselves, that they would outlaw abortion—I find it amazing people who believe it is a woman's right to choose would idly sit by and not petition the government to change that. The converse is true. This is why we are here. This is part of democracy, defining what the law of the land is in terms of the beginning of life, the taking of life, and the terminating of a life.

I don't find it odd at all we have these debates. This is exactly what a democracy is built upon—the rule of law. There are no understandings about the basics of life—when it begins, who can terminate it, under what conditions it can be terminated. If it is left to everyone's whim and personal desire, that is chaos.

What we are trying to do in a very reasoned way, with much emotion behind the reason, is give our views about how the government, society, should deal with the issue of when life begins, what is life, and who has the right to terminate it, and under what circumstances. To me, that is the essence of the rule of law. I look forward to hearing my colleagues express themselves. I do disagree with the concept that the government has no role in determining when life begins, how it should be ended, and who can end it, in a democracy.

I yield the floor.

Mr. SANTORUM. I say to the Senator from South Carolina, I appreciate the comments.

The Senator from Iowa read the famous clause out of the Casey decision, determining one's own concept of meaning of existence, of the universe, of the meaning of the universe, of the mystery of human life. The Senator from South Carolina hit the nail on the head. If everyone has their own right to decide what life is, what existence is, what the universe means—if we are not bound at all by any kind of societal norms, if we have the right to decide all these things, the kids who rushed into Columbine had it right because they said: I am law. My view of the world is what counts and that is all that counts. That is what this clause says: What I say goes.

That is what this clause says. That is where we are. That is where the line of cases have taken us. It is simply about our brute force, our positive rights. Society does not matter; it is what we want. The Congress should not be involved in this. It is what you want.

That is not the country that our Founding Fathers put together. That is not the Constitution they drafted. That, by the way, is why the right to abortion is not written in the Constitution.

This is a slippery slope we are heading down. In deference to the Senator from Massachusetts who is in the Chamber, I will define that slope momentarily.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. HARKIN. I yield 10 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, the Republican leadership is wrong to ask the Senate to support legislation that has been ruled unconstitutional by numerous courts. Since the last debate in the Senate in 1999, the Supreme Court found a very similar law enacted by the State of Nebraska to be unconstitutional. This bill is unconstitutional as well.

The Republican leadership has chosen to make as its top priority a flatly unconstitutional piece of legislation at a time when so many families across the country are facing economic hardship, when communities are struggling to deal with homeland security needs, and being forced by State budget crises to cut back on education and health care.

Because of the Republican leadership's decision to act on this bill, we will do nothing this week to provide an economic stimulus plan for the Nation's families and workers. We will do nothing to provide new funding for communities struggling to protect themselves from new terrorist attacks. We will do nothing to help the millions of uninsured children in this country get the health care they need. We will do nothing for schools struggling to meet higher standards under the No Child Left Behind Act. We will do nothing to help college students struggling to pay tuition and relieve their debt. We will do nothing to help the millions of families across the Nation who are worried about their economic future.

Let us be clear as to what this bill does not do. This bill does not stop one single abortion. The proponents of this bill distort the law and the position of our side with inflammatory rhetoric, while advocating a bill that will not stop one single abortion. This bill purports to prohibit a medical procedure that is only used in rare and dire circumstances. It is not used for unhealthy mothers carrying unhealthy babies. If this bill is passed, a doctor could be forced to perform another, more dangerous procedure if it becomes necessary to terminate a pregnancy to protect the life, the health of the mother.

This bill does not protect the health of the mother. Nowhere is there language that will allow a doctor to take the health of the mother into consideration, even if she were to suffer brain damage or otherwise be permanently impaired if the pregnancy continued. And this bill is not needed to protect the life of the babies who could live outside the mother's womb because those babies are already protected under the law of the land.

In Roe v. Wade, the Supreme Court specifically held that unless there was a threat to the life, health of the woman, she did not have a constitutional right to terminate a pregnancy after viability.

So what is this legislation all about? It is about politics and inflammatory language and hot-button topics, but it is not about stopping abortion.

Because of the sound and fury and high emotion that surrounds this issue, I make my own personal views clear. I am pro-choice. But I believe that abortion should be rare. I believe we have an obligation to create an economy and the necessary support systems to make it easier for women to choose to bring children into the world. If the proponents of this legislation were serious

about limiting the number of abortions in this country, then we would be debating access to health care, quality education, the minimum wage, and other issues of economic security that are so important to parents bringing up children. Those issues are not on the Republican leadership's agenda.

Instead, for rank political reasons we are here this week debating the so-called partial-birth abortion. I do not believe it is the role of the Senate to interfere with or regulate the kind of medical advice that a doctor can give to a patient. The doctor-patient relationship and the protection of the health of the mother is what is in jeopardy with this legislation.

From the time of the 1973 decision in Roe v. Wade through to the Stenberg-Carhart decision, the Constitution allows States to restrict postviability abortion as long as there are protections for the life and the health of the mother. Indeed, 41 States already ban postviability abortions regardless of the procedure used. My own State of Massachusetts prohibits these abortions except when the woman's life is in danger, or the continuation of the pregnancy would impose a substantial risk of grave impairment of a woman's health. I would vote for a postviability ban that protects women's life and health today.

The role of the Senate is to protect and defend the Constitution of the United States. Each of us in this body has taken that oath of office, and that oath of office and the Constitution require me to oppose this legislation. This bill unconstitutionally seeks to restrict abortion in cases before viability. It does not provide an exception to protect the mother's health after viability. It also impermissibly attempts to interfere with the doctor-patient relationship. For all these reasons, I oppose this bill.

Finally, I commend my friend and colleague, Senator HARKIN, and indicate my strong support for his amendment. This is a reaffirmation of the 1973 Supreme Court decision. It gives focus to the underlying debate and the policy issues which surround this whole issue.

As the Senator remembers so well, before Roe as many as 5,000 women died from illegal abortions each year. Many others suffered serious complications. In the years since 1973, the number of deaths resulting from abortion procedures has decreased dramatically. In order to keep abortion safe, we must keep it legal. That is why I support Senator HARKIN's amendment and strongly urge my colleagues to do so as well.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I yield 15 minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, I will spend a little time today talking about the amendment. But I also want to talk about the underlying bill.

This is an incredibly emotional issue for people across America. It is an incredibly emotional issue for people in this body. There truly are good people on both sides of this issue.

I believe the people who support abortion are wrong. Those who support abortion look at myself and others on this side of the issue, and think that we are wrong. But I do not look at the other side, and think that the people are evil or that they have evil intentions. I just think that they are not seeing the truth about what abortion truly is.

To talk about the bill itself: it has been described—it cannot be described too often, what a so-called partial-birth abortion really is; a D&X procedure—whatever you want to call it. So let me describe that.

I am a veterinarian by profession, so I understand a little bit about surgery and medical procedures. When I read through this particular procedure, it is amazing to me, as a health care worker, how any physician or any nurse could participate in this procedure and not be horrified.

What happens is a woman goes in the first day, and she has some local anesthetic put on her cervix. Then she has some clips put on that will help her dilate. She comes in the next day; same procedure; it helps her dilate some more. The third day she comes in, she is treated with some medication, including pitocin, which is something to help—just like when a woman is having trouble delivering—it helps to stimulate the birthing process, to put it in the simplest of terms.

While the woman is on that drug, they use an ultrasound to look at the woman's abdomen; to look inside the uterus. Looking at the ultrasound picture, the doctor can insert a clamp—basically some forceps—to grab one of the legs of the baby. The baby is in there, moving around. This ultrasound allows them to grip one of the baby's legs and not grab part of the uterus, because obviously that would be very dangerous to the woman.

As he or she grabs that leg, they then pull it down into the birth canal. That one leg then comes out of the cervix. The physician then takes one of his other fingers and grabs the other leg and brings them, both of the legs, down. Once into the birth canal, the doctor kind of wriggles them down a little bit and gets them to where (this would be the back of the baby) everything except the head—the head is still inside what is called the cervical os, and at that point the head is usually too large to come down.

That is the point where the physician puts his fingers around this little—I will call it what it is. They call it a fetus, but it is a little human being, whether you call it a fetus or baby or whatever you call it. It is a little human being.

This little human being is alive. You can feel it. You can feel the heart beating. You can feel movement in the legs. There is no question that the person who is performing this procedure can feel life in their hands.

As he puts his fingers around there, he brings usually a pair of Metzenbaum scissors, a kind of curved scissor, around the back and has to make sure he doesn't cut the cervix, so he has to elevate the cervix away from the baby's skull. Then right at the back of the baby's skull he inserts some kind of a forceps, usually the scissors, and makes an opening right at the back of the skull; then he will slide an instrument in that will suck the baby's brains out.

Try to imagine this. You have this little baby in your hands, and you are going to suck that brain out. As you do, you will feel the life go out of that little baby. Anybody who can listen to what is done in this procedure and say that as a civilized country we should allow this to go on—it boggles my mind. At that point, the skull collapses and the baby is allowed to be delivered.

In our society, under our current laws, if for some reason that cervix dilated a little more and this baby, while it was being brought down, slipped out, came fully out, this doctor who performed that same procedure, now, this much farther down—that would be considered murder under our laws. So this procedure really is a question of distance. We are 3 inches away from murder by our own laws.

If the baby is 3 inches up the birth canal, it is just an abortion. Three inches down, it is considered murder. This procedure is infanticide. A civilized society should never allow this kind of thing to go on. That is why we need to ban it.

A study published in the New England Journal of Medicine reports that—we have heard the exception for the health of the mother. For the life of the mother, we all agree. If it is the life of the mother, you can't have them both live, so you have to choose. But at 15 to 16 weeks of gestation, that is the point at which an abortion becomes more dangerous than childbirth. Partial-birth abortion generally happens after 20 weeks of gestation.

We have heard that we need to have exceptions for the mother's health. Abortionists say that if the language that was proposed earlier is passed, they would be able to use that language ''health of the mother'' to be able to perform an abortion any time, any place, at any month of pregnancy, and use this procedure. It would be allowed. That is why the health of the mother exception we keep hearing about is such a bogus argument. It is healthier for the mother to allow it, the baby, to reach full gestation.

In the terrible case of what is called an anencephalic baby, one which is born with not enough neural tissue to develop, we know they are going to die a very short period of time after they are born; it is safer for the mother to have that child. I would even argue that it is safer for them from a mental

health standpoint. It is part of the grieving process we need to go through when we lose a child, just holding that child.

To just dismember it, or suck out its little neuro tissue, and deliver it that way can be worse for the mental health of the mother than actually allowing it to go full term, and then to go through the normal grieving process. All the mental health professionals tell us that denying mental grieving processes can actually be worse for people.

I think the health arguments are really not very good arguments. I think they are weak on their merits. It is just impossible to justify the type of things that go on with this procedure. We really should be banning it.

I appreciate the sponsor of the bill for the work he has done on this, and leading this country, I believe, in the right direction.

I want to make a couple of other comments on the underlying amendment, which is an amendment talking about Roe v. Wade.

Once again, really good people disagree on this issue. They look at it differently. I am the father of three. Actually, with my third child, the doctor didn't get there on time, and I, along with the nurse, delivered our third child. We could see him on the ultrasound throughout the process. Just being through the miracle of childbirth when every one of my children was born, I cried like a little baby. I didn't know which one was crying harder, the baby when it came out, or the father.

Appreciation for life is so important, I believe, in society. I think the whole idea of abortion has degraded the value of life in our society. We need to get back to valuing life. Life is so precious. We cannot take it for granted.

While I don't want to say anything against somebody else who feels or believes differently on the other side; if you really believe it is a baby, then we shouldn't be taking that innocent life. We should value it instead. I believe it is a baby from the time of conception. I believe that what we should be protecting are the babies, as human beings.

If you know anything about embryology—obviously veterinarians study a lot of embryology. Physicians study it, nurses, and any health care professional studies embryology. When a human being is conceived, it is not going to be anything but a human being. When you see the embryological picture, they may look like something else early on, but they are fully human. The full human chromosome complement is there from the time of conception. It isn't something that is added later. It is just in a different stage of development. It is very analogous to how my 5-year-old is at a different stage of development than that of my 11-year-old. They are both fully human, but they are at a different stage of development. A 1-month-old baby is not capable of taking care of itself. It is in a different stage of development than an adult. An 18-week or 16-week or 14-week human being in the womb is just at a different stage of development.

If we learn to protect and value human life, I would submit we would be better off as a country.

I think this debate gets too personal because we don't give credit to each side for having legitimate feelings on this issue sometimes. I respect people on the other side of this issue. I disagree with them, but I respect them. I hope more and more people will form relationships with people on both sides of this issue so that more and more dialog can happen and we can sit down together and try to look at this issue for what it really is. I believe that if we start seeing ourselves as children of God, that we, in the long run, will value human life, and some day we will stop abortion from happening in America.

I thank the author of this bill. I thank him for all of his great work on this. I consider him a great friend and a great American for doing this.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Madam President, I yield 15 minutes to the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Madam President, I thank my friend from Iowa. I thank him for introducing this important sense-of-the-Senate resolution amendment that will reaffirm Roe v. Wade, making it very clear that the policy of this Senate is for abortion to be legal, safe, and rare.

But I have to confess I am somewhat bewildered that we are having this debate at this time in our Nation's history. Obviously, the Republican leadership here in the Senate—along with the House and the White House—has made a choice. Of all the grave challenges facing our Nation at this moment in history, we want to work together to criminalize a private medical decision made by women and their physician. With so much at stake, and when our economic security, national security, and domestic security are at stake, I believe that is an unusual and, in my view, a misguided choice.

Today, 300,000 men and women wearing the uniform of our military stand in harm's way in the Persian Gulf. The other day we learned that Iran has progressed at an alarming rate for developing its own nuclear weapon capacity. North Korea continues to lob both rhetoric and missiles to demonstrate that it is wanting to be taken seriously as to the threat it poses to our immediate, imminent security.

Thousands of Americans continue to fight against al-Qaida in Afghanistan and search for Osama bin Laden. With so many American lives on the line, the Republican leadership has decided to spend its time working to criminalize a medical procedure that is used in very few cases and only when the health and safety of the woman is at stake.

Today, we know with all of these global uncertainties that we have a deepening economic crisis made worse because of the potential for war. Last month, we lost 312,000 private sector jobs—the steepest decline since the days following the attack of September 11. Consumer confidence has dropped to its lowest level since October 1993. The number of Americans who have been out of work for 6 months or longer has climbed to nearly 2 million. February marked the 20th consecutive month the private sector experienced negative job growth—the longest stretch of negative job growth since World War II.

With so many American families struggling to make ends meet until they can find work, the Republican leadership has made the choice to debate how best to criminalize a private medical decision made by women and their doctors.

Just last week, we learned the Federal budget crisis is far worse than was previously reported. The deficit is at a record $304 billion and climbing. Projections to eliminate our debt by 2008 have been replaced with new projections that have our debt level rising to historic highs.

You know about the $5.6 trillion surplus this administration inherited. It is gone, along with our Social Security and Medicare trust funds. Out in our States, our States, our cities, and our counties are facing incredibly difficult economic times. The States are facing a combined budget deficit of $85 billion—the worst financial crisis in a generation. We still have billions and billions of dollars of unmet homeland security needs.

With so much uncertainty here at home, the Republican leadership has made the choice to debate how best to criminalize a medical procedure for women.

I have to ask myself: Why was this moment chosen for this debate? Why aren't we debating the steps we could take to help the 8.5 million Americans who are out of work? Why aren't we debating how we can get our Federal budget back on the road to balance and begin to diminish these overwhelming deficits and this increasing debt load we will leave on the backs of our children?

Why are we not debating the necessity of our paying our bills? Why are we not debating what needs to happen if and when those 300,000 men and women in the military in the Persian Gulf are called to action, and in the days that would follow a military victory?

As I travel around, talking with people in my State, that is what they talk to me about: What about this war, Senator CLINTON? What is going to happen after a war, if it happens? What about homeland security? Are we as safe as we need to be here at home? Senator,

what can we do about the jobs that are disappearing, the stagnant economy? How on Earth can we deal with this overwhelming budget deficit? What about not funding No Child Left Behind and the burdens that are being put on public education as a result? When are we going to get around to a prescription drug benefit for our seniors who are suffering and having to face these large bills? What are we doing to protect our environment? We are, after all, stewards of our natural environment for future generations.

Those are the questions I am being asked. Not only do I believe this is an inappropriate and unfortunate time for this debate to be occurring, but I find it deeply ironic that it is taking place in the month of March, Women's History Month.

Apparently, some people believe that the purpose of Women's History Month is to literally bring us back to a time in history when women had no choices. Instead of celebrating our accomplishments and improving the health and safety of women in the United States and internationally, there are those who would put women's health at risk.

But if we are to debate this emotional issue, then we must do so with great care—care about the words we use and the laws we write. Every time we use inflammatory language in this Chamber, it limits our ability to talk about this very private, personal decision between a woman, her loved ones, and her doctor.

Emotions run high with this issue. And I deeply appreciate my good friend from Nevada and the way he acknowledged we have very serious differences. But this is not a place nor is this a subject where we should be using language as a weapon to divide Americans.

So I am very concerned about some of the words I have heard used on this floor over the last several days. ''Execution,'' ''murder''—those are very inflammatory words that do not do justice to this great Chamber, nor to the seriousness of this debate.

I am also concerned about some of the visual aids that have been used by some of my colleagues. They are as deceptive as they are heartbreaking. Because what do they show? They show a perfectly formed fetus, and that is misleading. Because if we are really going to have this debate, then we should have a chart that demonstrates the tragic abnormalities that confront women forced with this excruciatingly difficult decision. Where are the swollen heads? Where are the charts with fetuses with vital organs such as the heart and the lungs growing outside the body? Why would we choose not to demonstrate the reality of what confronts the women I know, women who come with medical diagnoses that have said the brain in the head is so swollen that the child, the fetus, your baby, is basically brain dead? Now, it can be kept alive because it is on life support in the mother's body, but let me tell you what the realities are: these children cannot live outside the womb for more than mere seconds or minutes. That is what these women hear when they go in for their medical examinations and get the worst news that any potential mother could receive.

So a picture is worth a thousand words, as long as it is a realistic picture about what it is we are confronting, because a large part of this debate is about words, the words that are left out of this bill: the health and well-being of the mother.

The way this bill is written, the choice of language eliminates the distinction of trimesters. The vagueness makes this bill applicable to many other procedures in addition to the ones explicitly named. This bill is extreme, deceptive, and unconstitutional.

As my colleague from Pennsylvania stated: This is the beginning of the end. And that is absolutely what he means. If this bill passes, it is the beginning of the end of Roe v. Wade, it is the beginning of the end of the right of women in this country to make the most personal and intimate decisions that any of us would ever be called upon to make.

Yesterday, I had the opportunity to sit down with several women who have gone through this terribly difficult decision. What was so sad about each of these women's stories was how much each of them wanted the child they were carrying—only to learn that a fatal abnormality had inflicted each one, creating an unshakable sorrow. Each woman knew that her baby would not live long in utero or for no more than seconds or minutes outside her womb.

One of the women in my office told such a sad tale of what had happened to her and her husband. After trying so hard to become pregnant, they were thrilled when she discovered she was pregnant. But her happiness quickly turned to grief when doctors explained that her daughter had a genetic syndrome called Trisomy 13.

Now, many fetuses with Trisomy 13 die in utero. And those who survive birth do not live for long.

Her choice was not easy, and it was a choice she made with professional medical advice and with her family.

This young woman, Audrey Eisen, a Ph.D. student, articulated her concern perfectly when she wrote:

> Along with my sadness came a realization that if such legislation passed the right to safe second trimester termination of pregnancies might not remain available to those women who come after me. In this event, I don't know how these women will endure; I don't know how I would have endured.

I also met with Maureen Britell yesterday. Her daughter had developed a disorder where the brain stem develops. It is a disorder instead of a brain. After consulting with the experts at New England Medical Center, her family, and friends, she terminated her pregnancy. And listen to what she says:

> Now I'm sharing my story not only as a mother who would be banned from having an abortion, but as a military wife. I find the timing of this bill highly offensive, as we military families are just days away from sending our loved ones into armed combat. I resent the administration using families like mine as a cloak in their effort to ban reproductive health care in this country.

Madam President, I ask unanimous consent that the full statements of both of these women be printed in the RECORD.

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

AUDREY EISEN IN OPPOSITION TO S. 3

I believe that I am not atypical—34 years old and desperately wanting children. My husband and I are both graduate students, pursuing our PhDs in physics and microbiology, respectively. Tom and I have been together for eight years, married for four, and trying to have a baby for two. In November of 2002, after successfully fighting hormone-related infertility and experiencing the sadness of a miscarriage in July, we were thrilled to find ourselves pregnant!

While still apprehensive, we consciously decided to be excited—another loss would hurt just the same, regardless of whether or not we had allowed ourselves to be happy. In the first few months, my endocrinologist performed ultrasounds about every week and a half to ensure that the embryo was developing normally. It was such a treat to be able to see our child growing. I keep the pictures and my thoughts in a pregnancy journal.

When it became evident that we were going to make it through the first trimester, my endocrinologist referred me to an obstetrician (OB). At my first appointment the nurse put a Doppler to my belly and, much to my amazement, from a seemingly great distance I hear the characteristic ''whoosh'' of my child's heartbeat. We were on top of the world thinking that, for sure, this one was going to make it.

At 13 weeks we had a special ultrasound scheduled. Upon examination of the fetal anatomy we discovered that the child had polydactyly (more than the normal number of digits). While at first we thought it was just the hands, we later learned that the feet were affected as well. At the time, my husband and I thought that this was no big deal—we had both known people with an extra finger. However, we soon found out that polydactyly is associated with over 100 syndromes, most commonly Trisomy 13.

Trisomy 13 is a chromosomal abnormality in which there are three, rather than two, of the 13th chromosome. This syndrome is characterized by multiple abnormalities, many of which are not compatible with life beyond a couple of months. Most fetuses with Trisomy 13 die in utero; of those who make it to birth, almost half do not survive past the first month; roughly three-quarters die within 6 months. Long-term survival is one year. Unfortunately, neither life nor death come easily for these children—theirs is a painful experience marked by periods of breathing cessation (apnea) and seizures. Because my OB was unable to get a good image of the brain during the 13th week ultrasound, we returned at 15 weeks.

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

a genetic counselor. I cried with my whole body, from the depths of my soul.

Shortly thereafter, I had amniocentesis. My doctor informed us that the full amnio results would take two weeks, but we could have FISH (fluorescence in situ hybridization) results in a couple of days. We had both studies done. The FISH results were as expected; our baby had Trisomy 13.

At this point we discussed our options with the genetic counselor. My husband and I both felt strongly that it was in both the child's and our best interest to terminate as quickly as possible. The genetic counselor told us that we could either have a D&E or be induced. My doctor described both procedures, and we decided that a D&E was clearly best for me. The procedure was performed four days later, on the first day of my 16th week of pregnancy.

Upon arriving home from the hospital following my D&E, a news story appeared on the television describing new legislation in the state senate aimed at banning ''partial birth abortion.'' I don't think that I really understood this issue, emotionally or intellectually, until I was in the position of having to terminate my much-desired pregnancy. Along with my sadness came a realization that if such legislation passed the right to safe second trimester termination of pregnancies might not remain available to those women who come after me. In this event, I don't know how these women will endure; I don't know how I would have endured.

Two weeks following the procedure, we received a letter from the genetic counselor with the full results of the amnio and a summary of the ultrasonic findings. Our child had a complete duplication of the 13th chromosome and exhibited holoprosencephaly, a failure of the forebrain to properly develop and separate from the rest of the brain, a ventricular septal defect in the heart, and omphalocele, a herniation of a portion of the abdominal organs into the umbilical cord. Our child was also a girl and we miss her very much. In our case, abortion was the only choice.

STATEMENT BY MAUREEN BRITELL ON S. 3

In February 1994, my family was happily awaiting the birth of Dahlia, our second daughter. My pregnancy was progressing smoothly and we were getting more excited as the days and weeks passed. At the time, my husband, Andrew, was on active duty in the Air Force and had been unable to come to any of my routine prenatal checkups. He wanted to share in the excitement, so when I was five months pregnant, we scheduled an additional ultrasound.

When we went in for our appointment, that joy dissipated. The technician was unable to locate my daughter's brain. After my doctor came in, he informed us that Dahlia had a fatal anomaly called anencephaly, where the brain stem develops, but not the brain.

I went to the New England Medical Center for a high level sonogram, which confirmed what my doctor had told me. The medical experts at the New England Medical Center reviewed our options with Andrew and me, but they all recommended the same thing: to protect my health, we should induce labor.

I am a Catholic and the idea of ending my pregnancy was beyond my imagination. I turned to my parish priest for guidance. He counseled me for a long time, and in the end, he agreed that there was nothing more I could do to help my daughter. With the support of our families and our priest, Andrew and I made the decision to end the pregnancy.

I was scheduled for a routine induction abortion in which medications are used to induce labor. My doctors anticipated that it would be a standard delivery and that because Dahlia had no brain she would die as soon as the umbilical cord was cut. After 13 long hours of labor, I started to deliver Dahlia. Unexpectedly, complications arose and Dahlia lodged in my birth canal. The placenta would not drop. Our doctors had to cut the umbilical cord to complete the delivery, and avoid serious health consequences for me. Dahlia died while still in my birth canal—the same description used in the so-called ''partial birth abortion.''

My husband and I still mourn the loss of Dahlia. However, because of the excellent medical care I received, I was able to become pregnant again and in June 1995, we welcomed Nathaniel into our family.

Now I'm sharing my story not only as a mother who would be banned from having an abortion, but as a military wife. I find the timing of his bill highly offensive, as we military families are just days away from sending our loved ones into armed combat. I resent the administration using families like mine as a cloak in their effort to ban reproductive healthcare in this country.

In a perfect world, I would never have to write you this letter. Every pregnancy would be wanted, healthy and happy—and no loved ones would be going off to war. Until that time, however, there will be other families like mine. And until that time, abortion must be kept safe, legal and accessible.

Mrs. CLINTON. Now, if these bills were to pass, each of these women would have been forced to carry their babies to term, only to see a child with such severe abnormalities die upon or shortly after birth. Their choices would have been limited not because of their moral and religious beliefs—which I deeply respect—nor because of their medical advice—which I can't possibly second-guess—but because of their Government.

I have to respectfully disagree with my colleagues about mental health. If we have learned anything in the last several decades, it is that there is no artificial divide between mental and physical health. The mind and the body are a totally integrated system. One affects the other. I believe that mental health is health. And I believe that forcing a woman to carry a child she knows will die is an assault not only on her mental health but on our values as a nation and a free people.

Part of the reason I feel so strongly about this is because as First Lady, I had the great privilege of traveling around the world representing our country. I have been to many places I never thought I would have gone in the past. I have seen what happens in other countries. I listened to women throughout the world.

The PRESIDING OFFICER. The Senator has used 15 minutes.

Mr. HARKIN. I yield an additional 5 minutes to the Senator from New York.

Mrs. CLINTON. I have listened to women throughout the world who have struggled against government regimes that forced them to bear children or to abort them. The decision was taken totally out of their hands. It was left to chambers such as this to make those most personal and intimate of decisions. I will give you a few quick examples.

In pre-democratic Romania, they had a leader named Ceausescu, a Soviet style Communist dictator, who decided it was the duty of every Romanian woman to bear five children so they could build the Romanian State. So they eliminated birth control, they eliminated sex education, and they outlawed abortions.

Here is what happened to you if you were a woman in Romania during the Ceausescu regime: Once a month you would be rounded up at your workplace. You would be taken to a government-controlled health clinic. You would be told to disrobe while you were standing in line. You would get up on the table. You would be examined by a government doctor with a government secret police officer watching. And if you were pregnant, you would be monitored to make sure you didn't do anything to that pregnancy.

When I first heard this, I was dumbfounded. I said: ''Please, that cannot be true.''

That is what happened. If a woman failed to conceive, her family was fined a celibacy tax of up to 10 percent of their monthly salary.

The terrible result was many children were born who were abandoned, who were left to be raised in government-run orphanages. We all know what happened when unfortunately HIV-tainted blood was used to help some of those children for medical reasons, and there was a huge outbreak of HIV/AIDS among these Romanian orphans.

Now go to the opposite side of the world and the opposite side of this debate. In China, local government officials used to monitor women's menstrual cycles and their use of contraceptives because they had the opposite view—no more than one child. So whether it was Romania saying you have to have children for the good of the state, or China saying you can only have one child for the good of the state, the government was telling us what we were supposed to do with our bodies.

If you wanted to have a child in China, you needed to get permission or face punishment. After you had your one allotted child, in some parts of China, you could be sterilized against your will or forced to have an abortion.

Today women in Romania and China are working to ensure their countries' family planning practices are voluntary and respectful of individual rights.

I don't think we could dismiss these examples. I have seen where government gets this kind of power, it can be quickly misused. The old standard maxim by Lord Acton: Power corrupts; absolute power corrupts absolutely.

I raise these issues not because they are part of the past or because they happened somewhere far away, but because I can guarantee you, standing here as a Senator, if we go down this path, you are going to have the same kind of overzealous, interfering prosecutors and police officials doing the

very same kinds of things in this country.

Why did we ever have to do Roe v. Wade to begin with? Some States like mine, let abortion, as long as it was done safely and legally, occur under certain circumstances before Roe. Why did we have to have a Supreme Court decision? We had to have it because in many parts of the country these kinds of decisions were not permitted to be made by individual women.

Look at the progress we have made. The U.S. abortion rate is now at the lowest level it has been since 1974. When I was First Lady, I helped to launch the National Campaign to Prevent Teen Pregnancy. We increased education and public awareness. And since 1991, teen pregnancy has also declined. We learned that prevention and education, teaching people to make good decisions, really did work. But that is not what we are talking about here. We are talking about those few rare cases.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. HARKIN. I yield the Senator an additional 5 minutes.

Mrs. CLINTON. We are talking about those few rare cases when a doctor had to look across a desk at a woman and say, I hate to tell you this, but the baby you wanted, the baby you care so much about, that you are carrying, has a terrible abnormality.

We had a chance yesterday to build on these successes and do even more for women's health and to prevent unwanted and unsafe pregnancies. Senator MURRAY's amendment would have increased access to contraceptive coverage by ensuring basic fairness for women in preventing health plans from discriminating against contraceptive coverage in their prescription drug plans. Yet my colleagues did not vote for that. They would much rather criminalize a health procedure than improve women's health. Senator MURRAY's amendment would have also provided Medicaid and CHIP coverage for pregnant women and their newborns. Yet again, we defeated that on a budget point of order because we are not really interested in women's health. That is not really what this debate is about.

I have to ask myself, why do we, as government officials, expect we can make these decisions? We know that people of means will always be able to get any health care procedure they deem necessary. That is the way it was before Roe v. Wade. That is the way it will be after this passes the Senate.

So who are we really leaving out? We are leaving out the vast majority of American women, middle income women, working women who can't get on an airplane to go to Sweden or some other place. I have also seen the results of that. In a hospital in northeast Brazil, a woman's hospital I visited, I went up and down the corridors. Half the women were there for the most wonderful of reasons, because they just had a baby. The other half were there because of problems they had encountered, mostly because of botched back-alley, illegal abortions. Some of them lost their fertility forever; some of them lost their lives.

When I asked the minister of health what they were going to do about this, he said to me: This is a classic case where it is the poor, the middle class that suffer. The rich can get whatever health care they need. We can make it illegal to get abortions. That doesn't bother the rich. There has always been a double standard. If you are rich, you get what you need. If you are poor, you are left to the back alleys.

That is one of the other reasons we had to do Roe v. Wade, because is it fair that we have that kind of distinction made on the basis of class or income instead of the basis of law?

We are facing a moment of historic importance, but not about what we should be debating at this time in our history. I only wish this legislation were not before us. But now that it is, we have to educate the American public.

I will end by referring again to the young woman, Mrs. Eisen, who was in my office yesterday, about 25 years younger than I am. Hard to imagine. She said: I had no idea that the decision I made with my husband and my doctor to deal with this genetic abnormality was something I could have never had under the laws of where I lived before, and that if this passes, it will become illegal in the future.

I said: Well, you didn't have to think about that. That was something that, thankfully, we took off the national agenda. But there are those who, from very deeply held beliefs, which I respect, would wish to substitute the Government's decision, just like they did in Romania and China, or substitute the roll of the economic dice, such as happens in Brazil and elsewhere for what should be a difficult, painful, intimate, personal decision.

This bill is not only ill-advised, it is also unconstitutional. I understand what the other side wants to do. They are hoping to get somebody new on the Supreme Court and to turn the clock back completely, to overrule Roe v. Wade, which is why the Senator from Iowa has such a timely amendment.

Is this bill really about what the sponsors say, or is it, as they candidly admit, the beginning of the end—to go back in this country to back-alley abortions, to women dying from botched, illegal procedures? I think you can draw your own conclusions.

It is up to the American public to determine whether they want medical decisions being criminalized by this Senate. Thank you.

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

Mrs. CLINTON. Yes, on the Senator's time.

Mr. SANTORUM. Yes. The Senator from New York said that the women she had in her office who had late-term abortions—you characterized it that they would be ''forced to carry their children to term'' if this bill passed. Do you stand by that statement?

Mrs. CLINTON. Yes, I do.

Mr. SANTORUM. So you believe if this legislation passes outlawing partial-birth abortion, no late-term abortions would be available?

Mrs. CLINTON. That is what I believe based on what I consider to be the slippery slope of the legislative language that you have carefully and cleverly crafted in this bill.

Mr. SANTORUM. OK. I suggest that the Senator from New York examine the language. It is very clear that this is one particular kind of abortion we have addressed, and we have addressed the vagueness, as put forth by the U.S. Supreme Court. And there are other techniques available for abortion that are late term in nature, and this bill would in no way stop other abortions. In fact, the previous speaker on the Democrat side, Senator KENNEDY, made that very point. He made the point that this will not stop abortions.

I respect your feelings and I also respect Senator KENNEDY's. You both oppose the bill and you have opposite opinions on this issue.

Mrs. CLINTON. Will the Senator permit me to respond to his statement?

Mr. SANTORUM. Yes.

Mrs. CLINTON. I heard the Senator from Massachusetts referencing the fact that, legal or illegal, this is not going to prevent abortions where they are necessary.

My reading of the legislative language you have put forth, makes a very clear argument that this is a slippery slope; that there are going to be not only difficulties in defining procedures, but the fact is that once you have criminalized this procedure, what doctor will perform any medically necessary procedure? There is no reason to believe any doctor would put his practice and his life at risk.

As we know right now, a trial is going on in Buffalo, NY, for the murder of a doctor who provided such services.

Mr. SANTORUM. I thank the Senator. I gave her an opportunity to answer, and I have a couple more questions. No. 1, you suggested that this procedure was extreme. Does the Senator know the most recent Gallup polls—the polls consistently have shown that the banning of this procedure is supported by anywhere from 65 to 75 percent of the American public? What is your definition of ''extreme''?

Mrs. CLINTON. I respond to the Senator from Pennsylvania that I think it is extreme when the Government prescribes medical procedures that may—despite their not being ones that most of us would ever hope to have experienced by any loved one—be necessary in certain specific events, that were medically determined.

Mr. SANTORUM. So you would suggest that something that is supported by—you are going to maintain your

comment that something that is supported by 70 percent of the American public is extreme?

Mrs. CLINTON. Well, I think the Senator from Pennsylvania is posing a false syllogism. Clearly, if people are told in a poll about the kinds of procedures that might be medically necessary out of context, I can certainly understand why the reaction might be that is not something that we want to talk about, not something we want to think about. But what I do think is extreme is making a decision in this body to outlaw a medical procedure that may be required and medically necessary.

Mr. SANTORUM. So you don't think the American public understands this issue well enough to be able to form a judgment—I think that is what you are saying—even though we have debated this issue and it has been very much in the literature across America now for 7 years. There have been referendums in States and wide debate. You just don't think the public understands it. I beg to differ with you on that. I think I could stipulate that something that has the support of 70 percent of the public is, by definition, not extreme. So if you don't agree, that is your position, and I respect that.

The other thing you said was the chart I had up is ''deceptive.'' I am very curious about how you came to that conclusion. Is it deceptive because it shows a perfectly formed baby?

Is the Senator aware of Ron Fitzsimmons who runs the Association of Abortion Clinics? He has said, when the argument was made by many of the people Senator BOXER and Senator MURRAY and yourself referred to, who came forward and talked about this being medically necessary or necessary because of complications late in pregnancy—Ron Fitzsimmons said he lied through his teeth when he gave that argument? That was his term. He said, ''I lied through my teeth'' that this was the case. He said it is a dirty little secret, and we all know—those are his terms—that late-term abortions are performed, and the vast majority of late-term abortions are performed on healthy mothers with healthy babies.

So do you believe it is deceptive to put before the American public the typical case of where a partial-birth abortion is performed, or would it be more deceptive to try to convince the American public that this is done for medical reasons, or on sick babies in the majority of cases, when it is not true?

Which would you say is more deceptive?

Mrs. CLINTON. You know, on the Senator's point, I am not arguing against any public education effort, any proselytizing, any means whatsoever to persuade people about what choice they should make. I don't, in fact, think that we have done enough to educate the public about reproductive health, about how to prevent unsafe and unwanted pregnancies, about how to improve contraception, and about what is really at stake in this debate over a women's right to make decisions about her own reproductive health. But for the Senator to imply that there are never instances of abnormalities and problems like the ones represented by the women in my office yesterday, which would be outlawed by your legislation, I believe is deceptive.

We could solve this, as we have now for 20, 30 years, by saying this is a debate that does not belong in the United States Senate. It belongs in the hearts, minds, consciences of women and their loved ones, and in the medical offices of America, not the U.S. Senate.

Mr. SANTORUM. I will challenge you to find anyplace in the record over the last 7 years where I said that was never the case. I have never said there are not difficult cases. What I have said repeatedly, because I wanted to be truthful with respect to the factual situations with which we are presented on the issue of late-term abortions and the instances in which partial-birth abortions are used—I refer the Senator to the State of Kansas where they have to report the reason for a partial-birth abortion; 182 were done last year, or the year before, and of those 182, none—zero—were done because of a problem with the child or a physical problem with the mother. They were classified as mental health.

So I suggest to the Senator that those in the abortion industry themselves say this is the typical procedure on the typical baby. There may be—and there are—a small number of cases that are late-term where you find out the child within the womb has a fetal abnormality and may not live. I just suggest—and you used the term—where is the brainless head? Where are the lungs outside the body? I will just say I will be happy to put a child with a disability up there. But, frankly, I don't see the difference in my mind—and I am not too sure the public does—with respect to that being any less of a child.

It is still a child, is it not? Maybe it is a child that is not going to live long, but do we consider——

Mrs. CLINTON. Will the Senator yield?

Mr. SANTORUM. In a moment. Do we consider a child that may not live long, or may have an abnormality, to be less of a child? Is this less of a human because it is not perfect? Have we reached the point in our society where because perfection is so required of us, that those who are not perfect don't even deserve the opportunity to live for however long they are ticketed to live in this country?

Are we saying we need these kinds of infanticides to weed out those who are not going to survive or those who are not perfect, and that somehow or another we have to have a method available that we only allow perfect children to be born? If that is the argument, I am willing to stand here and have that debate. If that is what you want us to show, I am willing to stand and show that.

I suggest this is the typical abortion that goes with partial-birth. That is exactly what the industry says is the case. If the Senator would like me to find a child that has a cleft palate, I can do that. That doctor from Ohio performs a lot of abortions. He says he did nine in one year because of that. If she would like me to show a case of spina bifida, I can do that. That may be a reason someone has to have a late-term abortion.

I would be happy to show those, but those are the exception rather than the rule, and I think it is imperative——

Mrs. CLINTON. Will the Senator yield?

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

Mr. SANTORUM. I will be happy to. It is imperative upon us to present the standard, the predominant case in which partial-birth abortions are done, and that is what we are doing. I will be happy to yield for a question.

Mrs. CLINTON. The Senator from Iowa got in first.

Mr. HARKIN. Go ahead. The Senator is engaged in debate. I have a question.

Mr. SANTORUM. Fine.

Mrs. CLINTON. Does the Senator's legislation make exceptions for serious life-threatening abnormalities or babies who are in such serious physical condition that they will not live outside the womb?

Mr. SANTORUM. No, if——

Mrs. CLINTON. That is the point.

Mr. SANTORUM. I understand the Senator's point. I guess my point in rebuttal is that if you want to create a separation in the law between those children who are perfect and those children who are not——

Mrs. CLINTON. No——

Mr. SANTORUM. Please, let me finish. If a child is not perfect, then that child can be aborted under any circumstances. But if that child is perfect, we are going to protect that child more. I do not think the Americans with Disabilities Act would fit very well into that definition. The Americans with Disabilities Act—of which I know the Senator from Iowa has been a great advocate, and I respect him greatly for it—says we treat all of God's children the same. We look at all—perfect and imperfect—as creatures of God created in his image.

What the Senator from New York is asking me to do is separate those who are somehow not the way our society sees people as they should be today and put them somewhat a peg below legal protection than the perfect child. I hope the Senator is not recommending that because I think that would set a horrible precedent that could be extrapolated, I know probably to the disgust of the Senator from Iowa, certainly to me.

No, I do not have an exception in this legislation that says if you are perfect, this cannot happen to you; but if you are not perfect, yes, this can occur. The Senator is right, I do not.

Mrs. CLINTON. To respond, if I could, to the Senator from Pennsylvania, my great hope is that abortion becomes rarer and rarer. I would only add that during the 1990s, it did, and we were making great progress. These decisions, in my view, have no place in the law, so they should not be drawing distinctions in the law. This ought to be left to the family involved.

The very fact the Senator from Pennsylvania does not have such a distinction under any circumstances, I think, demonstrates clearly the fallacy in this approach to have a government making such tremendously painful and personal and intimate decisions.

Mr. SANTORUM. I certainly respect the difference of opinion the Senator and I have on the underlying issue of abortion. Again, I think people can disagree on that. I, frankly, do not agree there should be a difference between children who are ''normal,'' in society's eyes—I do not know what that means anymore, what a society sees as normal—and those who happen to have birth defects, severe or not. I do not believe we should draw distinctions.

Mrs. CLINTON. If the Senator will yield for one final point, I want the RECORD to be very clear that I value every single life and every single person, but if the Senator can explain to me how the U.S. Government, through the criminal law process, will be making these decisions without infringing upon fundamental rights, without imposing onerous burdens on women and their families, I would be more than happy to listen. But based on my experience and my understanding of how this has worked in other countries, from Romania to China, you are about to set up——

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

Mr. SANTORUM. To liken a ban on a brutal procedure such as partial-birth abortion to the forced abortion policies of China is a fairly substantial stretch, and I do not accept that as an analogy. I do not think it holds up under any scrutiny.

With respect to the other issue, let the record speak for itself.

Mrs. CLINTON. Madam President, if I can ask the Senator for one final point.

Mr. SANTORUM. On the Senator's time. I have been more than generous on my time.

Mr. HARKIN. I ask the Senator to yield.

Mr. SANTORUM. On the Senator's time.

Mr. HARKIN. The Senator has been very good about yielding for questions. If the Senator needs more time, I will join him in getting unanimous consent to give the Senator more time, if he needs it, because he has been very good about getting into a discussion. Do not worry about time. We will give you whatever time you want.

Mr. SANTORUM. I thank the Senator from Iowa.

Mrs. CLINTON. Is the Senator aware that in the very poll he cited, there is another finding? When Americans were asked if a law should be passed with no health exemption, 59 percent said no, it should not pass.

Mr. SANTORUM. I appreciate that. Again, that is a good open item for debate. I would suggest that most Americans—and that is why this debate the Senator from Iowa has brought up is so important—do not understand what the breadth of health exception means. I suspect most Americans understand when they hear health exception, they believe there is some imminent danger to the health of the mother. Of course, that is not what Doe v. Bolton says.

Doe v. Bolton talks very broadly of health. I will be happy to give the actual language. Doe v. Bolton is very broad on health to include everything from emotional and mental health to familial health, age of the mother. It is as broad a term—in fact, the courts have interpreted it to mean anything. It is an exception that, frankly, swallows up any limitation, restriction on abortion.

Does the Senator from Iowa have a question?

Mr. HARKIN. I would like the Senator to yield, on my time or his.

Mr. SANTORUM. Yield on mine. If I need time, I will let the Senator know.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I wish to ask the Senator a question. There are a number of issues about the Senator's bill that bothers me. One is how tightly it is drawn and it affords no leeway whatsoever for certain special cases. We talked about the health of the mother. A woman who came to see me some time ago—I do not know if this case is atypical, but I know it happened to one person. I know it is happening to others.

She and her husband had been trying to have children. She became pregnant. She found out the child's—basically the brain was outside the head.

Mr. SANTORUM. Anencephaly is no brain, just a brain stem.

Mr. HARKIN. I do not know exactly what that all means. Anyway, I do know she was told by her doctor that there was a possibility—he did not know how remote—but there was a distinct possibility that if she carried this child to term, which was going to die right away, that because of other complications she had, she might not be able to have other children. I am telling you this is what was told——

Mr. SANTORUM. If I can respond to the Senator from Iowa, the Senator from Iowa brings up a very valid point. We reviewed this over and over in previous years, and I will address it again.

No. 1, there are cases where late in pregnancy there are health considerations that may cause the child to have to be separated from the mother. There is no question about that. The question is, Is there a need for this procedure? First off, is there a need for an abortion? I think most obstetricians would tell you, no, there is no need for an abortion, but there is a need for separation.

Separation can be through a normal delivery. It can be through a cesarean section. So separation is necessary; abortion is not necessary.

The point I am making is this procedure is never medically necessary. I have repeated that over and over, and I have asked the Senator from California and the Senator from Washington, and many others, if they can come forward with a case where this procedure is medically indicated, medically necessary. They have not come up with a case because there are none.

There may be cases that the Senator from Iowa has discussed where there may be a need for separation, but I would argue not necessarily for abortion. If there is such a case—and I am not that much of an expert to know that because I am focused on this procedure solely, but if there is such a case for abortion, then the answer would be there are other, safer—this is what I underscore—procedures done in hospitals, by obstetricians, who are trained in medical schools.

This procedure is done not by obstetricians, not in hospitals, not by doctors trained in medical schools.

I ask the Senator, if it was his daughter, would he want to send her to someone to have this procedure who is not an obstetrician, not in a hospital, someone who is not trained in medical schools or would he rather have her go to a board-certified obstetrician in a hospital and have a procedure that is taught in medical schools and has been peer-reviewed?

What would the Senator prefer?

Mr. HARKIN. I would prefer we stick with Roe v. Wade which would allow my daughter to go to a hospital and to have a doctor perform a procedure on her that in the doctor's best judgment was the safest for her.

If I can just respond further, if the doctor decided this type of procedure was safer than a cesarean section, for example, which I would submit to my friend from Pennsylvania is every bit as gruesome if you would like to describe it, but it is up to the doctor to decide what is the safest procedure. That is what I would want my daughter to have, so that is why I have my amendment on Roe v. Wade.

Mr. SANTORUM. I understand the Senator from Iowa. I would say if the Senator wants his daughter to go to the hospital and have an obstetrician give her the best procedure she wants, let me assure the Senator she will never have this procedure, because this procedure is not done by obstetricians and hospitals. It is not done.

I suggest to the Senator what we are doing is getting rid of a rogue procedure that has been demonstrably testified to that this is contraindicated. The AMA: Bad medicine. Their term, not mine.

I am saying this is a rogue procedure that is outside the medical arena. This is outside the standard of care.

The Senator knows about the issue of standard of care. He is involved greatly in health issues as the ranking member of the Health Subcommittee on Appropriations. I know he cares deeply about that and he knows the issue of standard of care.

Nowhere in the literature is this considered to be standard of care. As a result of that, I make the argument—in fact, I have made the argument—that this procedure is not healthy to women and as a result should be banned because it is the least safe procedure, and it is not appropriate.

I will answer one more question and then I would like to speak.

Mr. HARKIN. I say to my friend from Pennsylvania, I am not a doctor. I do not know. That is why these are the kinds of things that are not really up to us to decide to tell a doctor what is the safest and what is not the safest, or how to go about it.

Now, maybe we are getting somewhere. I heard my friend ask me about what I would want my own daughter to do if she was ever confronted with this, and I said I would want her to have the best care. I would want her to have a board-certified obstetrician/gynecologist take care of her in a safe, healthy, legal setting. That is why I have offered my amendment. That is why my amendment is pending right now because I want us to say once and for all again that Roe v. Wade is the law of the land, that if, God forbid, my daughter ever had a situation like that, she could go into a hospital, that she would not have the law hounding her, and that she could have a board-certified obstetrician.

So maybe we are getting somewhere. Maybe my friend is now going to support my amendment.

Mr. SANTORUM. No, I am not going to support the amendment of the Senator, but I would like an opportunity to speak.

Madam President, how much time is remaining on each side?

The PRESIDING OFFICER. The Senator from Pennsylvania has 30 minutes and 15 seconds. The Senator from Iowa has 23 minutes and 27 seconds.

Mr. SANTORUM. Madam President, first, I say again that in many of these difficult cases, if not all of them, to my knowledge—and I would be curious to hear if there is a case I am not aware of where there needs to be a separation of the mother from the child. I am not aware of any case, and I would certainly be anxious to hear any testimony to the contrary where separation necessarily means abortion. Separation does not necessarily mean abortion, and there are other ways to protect both the health of the mother and the health of the child. As a society, I think if that is possible, then that should be our preference.

Let me go back and talk about the overall issue of Roe v. Wade and where we have come as a result of that. Roe v. Wade was decided in 1973. Maybe the biggest problem I have with Roe v. Wade was that abortion was a matter that was decided by the people and by its elected representatives. It was, as every other issue is in America, decided in the public square, decided by this kind of debate.

I think this is wonderful. I think the people need to hear this. We do not get enough debate on the issue of abortion. It has sort of been put away in a corner. Why? I would argue this is the great moral issue of our time. It parallels very closely the issue of slavery back in the early 1800s, and the reason is because it is really the same issue.

The slavery issue was: Here is the African American, here is the black man and woman, and what we said in this country was we could look at this person, we could see this person, but under the Constitution it was not a person. We said this individual, this human being, was not conferred personhood under the Constitution. That is what slavery was all about. As a result, that person was property. What all of us knew to be a human being became property, and we had to fight a war to eventually overturn that.

Where are we with the issue of abortion? The child in the womb is not considered a person under the Constitution. Now, we can see it in a sonogram. That is one of the things that makes partial-birth abortion such an important debate because the baby can really be seen. One can see this is a human being; it is nothing but. But according to the Constitution, this child is not a person.

It is the same debate. It is the same argument. William Wilberforce in England, when he fought to overturn the slave trade, put together a poster. It was a picture of a black man. Underneath the picture, it said: Am I not a man?

I would simply say, look at this chart and under this picture could we not say: Am I not a child?

According to Roe v. Wade, according to the law of this great land, the answer to that question is, emphatically, no, and look what we can do to you.

Why? Because you are property. You are like the slave. You have no rights.

How we have twisted our Constitution, which is based on life and liberty. What is first, liberty or life? Think about that. Life, liberty, and the pursuit of happiness. Do we think the Framers sort of just threw those words together? Do we think they could have said, happiness, liberty, life, they sort of played around and said, which one of these is the right one? Did they put them in order for any reason? We can bet they put them in an order for a reason.

Can someone have liberty without life? No. There is no way possible, if one does not have the right to life, that they can have any liberty.

Can someone have true happiness without liberty? No. Life is a prerequisite to liberty. But what have we done in the case of Roe v. Wade? We have taken life and liberty and we have flipped them.

In Roe v. Wade, the Court put liberty ahead of life, and said the rights of a woman, liberty—this is the liberty clause, this is the grounds from which Roe v. Wade was derived. Of course, the right to abortion is not in the Constitution. But where does it come from? It comes from the what clause? The liberty clause.

So we took liberty and moved it ahead of life. What are the consequences of that? Obviously, we know what the consequences of that are for the child. What are the consequences of that for all of us? The consequences of that for all of us are that now one's freedom to do what one wants trumps someone else's right to exist.

In this case, it is just this little child in the womb. But if we set this precedent, which we have, that my right to my liberty trumps another's right to life—the Senator from New York talks about the slippery slope. Oh, what a slope we are on now. The Senator from New York talked about, you did not show the deformed child. Well, there is a guy in Princeton, NJ, by the name of Peter Singer who talks just about that issue. He talks about the deformed child. And what does he say? He says Roe v. Wade has it right. They put liberty in front of life, and that is right because some people are not worth having around. Yes, that is what he says. Is this guy a kook? Is this guy some sort of flake who is out there in the ether? No. He is a professor. Is he a professor at XYZ State University at Blackwater, PA? No. He is at Princeton University—a ''distinguished'' chair at one of our great universities.

What does he say? He writes: I should think it should be somewhat short of one year.

What does he mean, ''somewhat short of one year''?

Somewhat short of 1 year after birth that we should be able to—what? Kill these little deformed children who happen to be born. Why? Well, because they are not really useful. Their life doesn't mean much. Our liberty means more than their life. Here again, moving life in front of liberty. Oh, what a tangled web we weave.

This is the product of Roe v. Wade. This is the product of the Court taking from us who understand ordered rights—that rights are put in order for a reason. Our Founders had it right.

Those who proclaim the virtue of abortion as a right said this would be a blessing to our society. They said: This would be a great blessing. So many positive things will happen. Divorces will come down. Spouse abuse will come down. Infant abuse will come down. Child abuse will come down. Abortions, of course, will go up, but the benefit is domestic violence will go down, teen pregnancy will go down, infanticide will go down, abandoned children will go down. And of course, none of them did. None of them did. Quite the contrary. All of them have at least doubled since 1973 as a percentage.

So this nirvana that getting rid of these—because, see, they argue that since we are going to get rid of 1.3 million children—25 percent of all pregnancies end in abortion—since we are going to get rid of all these unwanted stresses in people's lives, problems in people's lives, then people will be better off, people will be happier, people will be more free; people won't do bad things because they won't have this stress that complicates their life.

But is that the lesson that people learn? No. Sadly, people are much smarter than that. They learned from the leaders of our great country that the value of life was diminished. And they learned from our great country that their personal liberty was more important than your life. Their liberty, their rights, trump you. That is what they learned.

As I mentioned earlier, that is why the two guys ran into Columbine, toting their guns and shooting people, screaming, ''I am the law,'' because that is what Roe v. Wade taught us. They taught us we can put down our neighbor, just like in the early years of this country we could put down the black man and woman.

We are on a very dangerous practice. I know we will celebrate and affirm Roe v. Wade. Our colleagues will support it because it is the law of the land and it is well accepted. I accept the fact that in this body I am a voice in the wilderness. But I will speak. This is not the most popular thing to come and talk about. These halls are not filled with people who want to speak on this issue. I understand, this is a tough one. You make a lot of people mad when you get up and talk about abortion because it is personal. I know. It is personal. But we have to step back.

I thank the Senator from Iowa for giving us an opportunity to step back and look at what we are doing, look at what we have done, and look at what may come of us if we do not turn away and give back to the people.

I was at a briefing the other day, and someone talked about the Iraqis and said: We are worried about them transitioning to democracy because historically they like being ruled. And I thought to myself: Just like Americans on abortion. They like being told what their position should be. They like the Court taking it and ruling. They do not want to have to think about it. They know they do not like it, but they do not want to talk about it, think about it, vote. They want someone else ruling for them. It is easier to give someone else your rights and let them make decisions for you. It makes your life a lot simpler.

I argue it is not making your life much better. No, what Roe v. Wade has done is separate the person, the human being—and there is no doubt, from the moment of conception this is a genetically human organism. It is human, fully human. Nothing is added. It is fully human. And it is, by definition, alive. How do we know? Because the definition of life is something that metabolizes, and this clearly is metabolizing. It is human life.

What did Roe v. Wade do? It took away the instantaneous bonding of human life and human person under the Constitution. It separated them. I repeat this for emphasis. It separated the human person from the human being. That precedent is now the law of the land. And you know what happens with precedent in this country; it is followed. Today for the unborn, tomorrow for—watch out. Watch out.

I remember in one of the early debates on this bill, I got an e-mail from a man from London who said he was sitting there watching the debate, hearing people talk about all these people with disabilities who needed to be destroyed through partial-birth abortion. Not because the mother's health was in danger—because they just were not perfect. He said: I am sitting in my wheelchair as a disabled man with spina bifida, knowing that they are talking about me. They are talking about me.

Today the child in the womb. Tomorrow?

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. How much time remains on our side?

The PRESIDING OFFICER. The Senator has 23 minutes 27 seconds, and the other side has 15 minutes 31 seconds.

Mr. HARKIN. I yield 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, it is really very interesting when we talk about disabled children that the man offering this amendment to reaffirm Roe v. Wade is the champion for the disabled. He has fought for the disabled all his life.

To somehow put out the idea that those who are pro-choice are not for the disabled is another terrible thing to say in this Senate. I have been in many of these debates over the years, and the comments made by some of my colleagues on the other side of this issue—in terms of their view toward women, women who want more than anything else to bear healthy children and have those children and, yes, even bear them if they are disabled—are extremely disturbing. The kind of comments we have heard about Supreme Court Justices border on, worse than inflammatory, dangerous comments. The comments we have heard about doctors and health professionals are very disturbing to me.

Let me reiterate that the AMA opposes this bill—my colleague keeps talking about the AMA—and they oppose it because it imposes criminal penalties on physicians who they say perform these procedures. So they are not in agreement with this bill at all. They find that S. 3 is something they must oppose.

The Senator from Pennsylvania keeps asking for specific cases of women who were told that this procedure was necessary as the safest procedure to save their health and their life. He keeps saying no one has come up with these.

I ask unanimous consent to have printed in the RECORD the full text of 10 statements by 10 women who so testified.

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

STATEMENT OF VIKI WILSON, CALIFORNIA IN OPPOSITION TO S. 3

I urge you to oppose S. 3. I understand that this bill is very broad and would ban a wide range of abortion procedures. Mine is one example of the many families that could be harmed by legislation like this.

In the spring of 1994, I was pregnant and expecting Abigail, my third child, on Mother's Day. The nursery was ready and our family was ecstatic. My husband, Bill, an emergency room physician, had delivered our other children, and would do it again this time. Jon, our oldest child, would cut the cord. Katie, our younger, would be the first to hold the baby. Abigail had already become an important part of our family. At 36 weeks of pregnancy, however, all of our dreams and happy expectations came crashing down around us. My doctor ordered an ultrasound that detected what all of my previous prenatal testing had failed to detect, an encephalocoele. Approximately two-thirds of my daughter's brain had formed outside her skull. What I had thought were big, healthy, strong baby movements were in fact seizures.

My doctor sent me to several specialists, including a perinatologist, a pediatric radiologist and a geneticist, in a desperate attempt to find a way to save her. But everyone agreed, she would not survive outside my body. They also feared that as the pregnancy progressed, before I went into labor, she would probably die from the increased compression in her brain.

Our doctors explained our options, which included labor and delivery, c-section, or termination of the pregnancy. Because of the size of her anomaly, the doctors feared that my uterus might rupture in the birthing process, possibly rendering me sterile. The doctors also recommended against a c-section, because they could not justify the risks to my health when there was no hope of saving Abigail.

We agonized over our options. Both Bill and I are medical professionals (I am a registered nurse and Bill is a physician), so we understood the medical risks inherent in each of our options. After discussing our situation extensively and reflecting on our options, we made the difficult decision to undergo an Intact D and E.

It was important to us to have Abigail come out whole, for two reasons. We could hold her. Jon and Katie could say goodbye to their sister. I know in my heart that we have healed in a healthy way because we were able to see Abigail, cuddle her, kiss her. We took photos of her. Swaddled, she looks perfect, like my father, and Jon when he was born. Those pictures are some of my most cherished possessions.

The second reason for the intact evacuation was medical: Having the baby whole allowed a better autopsy to be performed, to give us genetic information on the odds of this happening again.

Losing Abigail was the hardest thing that has ever happened to us in our lives, but I am grateful that Bill and I were able to make this difficult decision ourselves and that we were given all of our medical options. There

will be families in the future faced with this tragedy. Please allow us to have access to the medical procedures we need. Do not complicate the tragedies we already face.

TESTIMONY OF COREEN COSTELLO—1996

My name is Coreen Costello and I am writing to you on behalf of my family. I have testified before both the Senate and the House concerning the so-called ''partial birth abortion'' ban and my family was with the President when he vetoed this legislation. I have personal experience with this issue for at 30 weeks pregnant I had a procedure that would be banned by this legislation.

On March 24, 1995, when I was seven months pregnant an ultrasound revealed that our third child, a darling baby girl, was dying. She had a lethal neurological disorder and had been unable to move any part of her tiny body for almost two months. Her muscles had stopped growing and her vital organs were failing. Her lungs were so underdeveloped, they barely existed. Her head was swollen with fluid and her little body was stiff and rigid. She was unable to swallow amniotic fluid and as a result, the excess fluid was puddling in my uterus (a condition know as polyhydramnios). When we learned about our baby's condition, we sought out many specialists and educated ourselves to see what we could do to save our child. My husband is a chiropractor and we are very proactive about our health care. We are generally skeptical about the medical profession and would never rely on the advice or diagnosis of just one doctor. However, our doctors (five in all) agreed that our little girl would come prematurely and there was no doubt that she would not survive. It was not a matter of our daughter being affected by a severe disability—her condition was fatal.

Our physicians discussed our options with us. When they mentioned terminating the pregnancy, we rejected it out of hand. We are Christians and conservative. We believe strongly in the rights, value and sanctity of the unborn. Abortion was simply not an option we would ever consider. This was our daughter.

Instead, we wanted our baby to come on God's time and we did not want to interfere. We chose to go into labor naturally. It was difficult to face life knowing we were losing our baby. But it became our mission to make the last days of her life as special as possible. We wanted her to know she was loved and wanted. We asked our pastor to baptize her in utero. We named her Katherine Grace—Katherine meaning pure, and Grace representing God's mercy.

Another ultrasound determined Katherine's position in my womb. It was not conducive for delivery. Her spine was so contorted it was as if she was doing a swan dive, the back of her feet almost touching the back of her head. Her head and feet were at the top of my uterus. Her stomach was over my cervix. Due to swelling, her head was already larger than that of a full term baby. For two weeks I tried exercises in an attempt to change her position, but to no avail. Amniotic fluid continued to puddle into my uterus at a rate of great concern to my doctors. I was carrying an extra nine pounds of fluid. It became increasingly difficult to breathe, to sit or walk. I could not sleep. My health was rapidly deteriorating. My family and friends were much more aware of my health decline that I was. My complete focus was on Katherine.

As my condition worsened, we again considered our options. Natural birth or an induced labor were not possible due to her position and the swelling of her head. We considered a Caesarean section, but experts at Cedars-Sinai Hospital felt that the risks to my health and possibly to my life were too great. A Caesarean section is done to save babies. It can be a life saving procedure for a child in stress or one who cannot be delivered vaginally. It is not the safest for a woman. There is an increased mortality rate with Caesarean section. In my case, even if a Caesarean could be done, Katherine would have died the moment the umbilical cord was cut. There was no reason to risk my health or life, if there was no hope of saving Katherine. She would never be able to take a breath.

Our doctors all agreed that an intact D&E procedure performed by Dr. James McMahon was the best option. I was devastated. I could not imagine delivering my daughter in an abortion clinic. But Dr. McMahon was an expert in cases similar to mine. My situation and Katherine's condition were not new to him. He explained the procedure to us. My cervix would be gently dilated to maintain its integrity. Once I was dilated enough, Dr. McMahon could being the procedure. In order for Katherine to be delivered intact, cerebral fluid would be removed, which would allow her head to be delivered without damage to my cervix.

It took almost three hours to deliver our daughter. I was given intravenous anesthesia. Due to Katherine's weakened condition, her heart stopped beating during the procedure. She was able to pass away peacefully in my womb.

Some who support this bill have stated that I do not fit into the category of someone who had a so-called ''partial birth abortion'' because I contend my baby died while still in my womb. Is this relevant? When the procedure began, her heart was still beating—who could predict for certain when she would actually pass away? If this legislation were passed, an intact D&E would not have been an option for me. The fact is, I had the procedure outlined in this legislation. Since I present the procedure as humane, dignified, and necessary, somehow this means I must have had a different procedure and am not relevant to this bill. This is simply not true.

I come to you with no political motivation, rather I come with the truth. I have experience of an intact D&E. Some want you to believe their horrific version of this procedure. They have never experienced an intact D&E. I have. This procedure allowed me to deliver my daughter intact. My husband and I were able to see and hold our daughter. I will never forget the time I had with her, nor will I forget her precious face. Having this time with her allowed us to start the grieving process. I don't know how we would have coped if we had not been able to hold her. Moreover, because I delivered her intact, experts in fetal anomalies and genetics could study her condition. This enabled them to determine that her condition was not genetic. This was crucial for us in deciding whether or not to have another child.

No one can predict how a baby's anomalies will affect a woman's pregnancy. Every situation is different. We cannot tie the hands of physicians in these life and health saving matters. It is simply not right.

With my health maintained, my cervix intact and my uterus whole, we were able to have another child. On June 4, we were blessed with a beautiful healthy baby boy. He is our delight! He is not a replacement for his sister. There will always be a hole in our hearts where Katherine Grace should be. He is, to us, a sign that life goes on. We cherish every moment we have with Tucker, and with our two other children, Chad and Carlyn. What precious gifts God has given to us.

Losing our daughter was the hardest thing we have experienced. It's been difficult to come to Washington and relive our loss. And it's ironic that I, with my profound pro-life views, would be defending an abortion procedure. God knows I pray for the day when no other woman will need this procedure. But until there is a cure for the cruel disorders that can affect babies, women must have access to this important medical option.

TESTIMONY OF CLAUDIA CROWN ADES—1999

My name is Claudia Crown Ades. I live in Santa Monica, California. I have been married to Richard Ades for five joyous years.

Three years ago, when I was 26 weeks into what seemed a perfect pregnancy, I made the decision along with my doctor not to have an amniocentesis. At 33, there seemed no need. Then one day, feeling anxious and worried about declining that test, I went to my doctor. There was no basis for my anxiety; it was just an instinct. However, to set my mind at ease, I was sent to a radiologist, an ultrasound expert. ''Don't worry,'' my doctor told me. ''He can see a vein out of place.'' I was never expecting what came next.

The radiologist spent far too long conducting what was supposed to be a routine examination of a healthy baby. He told us that he wanted to review the images and that he would call us. The next day, when we returned from Rosh Hashana services, there was a message on the answering machine. ''I'd like you to come back in so that my partner can take a look at your ultrasound. Please don't worry. I don't think it's anything,'' he said. You can't tell a pregnant woman not to worry.

His partner, who wrote the authoritative book on ultrasound, immediately determined that there was a sac of fluid in my baby's brain. He called it a Dandy Walker Syndrome. He also told us that many people walk around with Dandy Walker Syndrome without any impairment. On the other hand, it could be more serious and he referred us to a perinatologist for more expert opinion. The doctor put his hand on Richard's shoulder and told him not to lose hope and that everything could be ok. You don't console someone if nothing is wrong.

Because of his suspicions, which we were unaware of at the time, the perinatologist rearranged her schedule to see me the next day resulting in an agonizing night of emotional torture.

The next day, we went into the perinatologist's office, apprehensive about what we might discover. She prepped me for an ultrasound, and within thirty seconds, the perinatologist said, ''I concur with your doctor.'' Concur with what? At this point we had no idea.

This was when our worst fears were realized. At that moment we learned that our son's Dandy Walker Syndrome was more serious than we had known. In addition to a fluid filled nonfunctional brain, he had a malformed heart with a large hole between the chambers that was preventing normal blood flow. He had also developed an extremely large cyst filled with intestinal matter, and hyperteloric eyes which was another indication of severe brain damage. We later found out that these symptoms added up to Trisomy 13, a fatal chromosomal disorder.

With each new bit of information, the tears flowed harder. Richard was holding me. I thought we were the only parents in the world who had ever heard such devastating news about their child. What were we going to do? We loved this baby. We wanted this baby desperately. This was our son. We were preparing our family and our world for him. And now, we had to prepare for a tragedy. Away went the baby name books. Away went the shower invitations. Away went the first birthday party, the baseball games, the bar mitzvah. Away went our dream.

Along with the tears, the questions flowed. Could a cardiologist fix our son's heart? Could a neurosurgeon repair his brain? Could an eye surgeon help him to see? Could this baby survive? Was there anything, anything at all, that could be done? The answers were emphatically no. It was our worse nightmare and it was real. Even if my son survived the pregnancy, he had no chance of life. Every day meant pain and torture for him. As his mother I could not, in good conscience, allow my child suffer.

By this time, a geneticist had joined us to discuss our options. We went through them all. I could carry to term. I could have a cesarean. I could induce pre-mature labor in the maternity ward. All of these posed risks for me. The doctors choose a procedure that would be the most appropriate for me, my baby, and for my future children.

The entire process took three days. No scissors were stabbed in the back of my baby's head; his brains were not sucked out and his skull was not crushed.

Ironically, the final day of the procedure was Yom Kippur, the holiest day of the Jewish year. On Yom Kippur, we are asked to mourn those who have passed and pray to God to inscribe us into the Book of Life. I prayed more than one person can pray. I was praying for all of us.

Although I never imagined I would be faced with such a difficult and painful decision I can honestly say that for many reasons, I feel very blessed. First, I was able to find out when I did. Second, I had access to the finest medical care in the world. And third, I live in a place where my rights as an individual have not been compromised.

Though I hope and pray that no one has to go through what my husband and I have, there are people who will. It can happen to anyone—to you, your wife, your sister, your daughter, your friends. All women should have the protection, the guidance and the access that modern medicine allows.

ERICA FOX

In October of 1995 I was pregnant with my first child. I had had amnio and that all came back fine. But at 23 weeks I had another ultrasound, which found that the fetus was suffering from Intra Uterine Fetal Growth Retardation. Further ultrasounds showed that the heart and other organs were very stressed. Two of the top neo-natal specialists told me that the fetus was in the process of dying and that if it made it to term, it would live a short and very painful life. I made the only decision that I, as a mother, could make. I chose to have an abortion. For the sake of my fetus and my health. I was sent to the best clinic in Los Angeles. And over the course of two days the intact D&E was performed. The doctor and nurses were the most compassionate people I have known. But it was a terrible time. And it was a time made more terrible when a few days later, the United States House of Representatives voted to ban the procedure. I watched with horror the lies about scissors stabbing the Gerber-like baby in the neck. The pain endured. The suffering. I knew the truth was different. The fetus I was carrying was not a Gerber baby. That it was not viable. That the sedatives used on me worked on the fetus. That the fetus was most likely dead long before it was ever taken from my body. I knew that the procedure had saved my reproductive system so that today I have a wonderful five-year-old son. Here he is. A boy so full of life and happiness.

TAMMY WATTS—1995

We found out I was pregnant on October 10, 1994. It was a great day in so many ways, because on the same day, my nephew, Tanner James was born. My husband and I ran through the whole variety of emotion—scared, happy, excited, the whole thing. We immediately started making our plans—we talked about names, what kind of baby's room we wanted, would it be a boy or girl. We told everyone we knew . . . and I was only three weeks pregnant!

It wasn't an easy pregnancy. Almost as soon as my pregnancy was confirmed, I started getting really sick. I had severe sickness, and so I took some time off work to get through that stage. As the pregnancy progressed, I had some spotting which is common, but my doctor said to take disability leave from work and take things a month at a time. During my leave, I had a chance to spend a lot of time with my newborn nephew and his mom, my sister-in-law. I watched him grow day by day, sharing all the news with my husband. We made our plans, excited by watching Tanner grow, thinking ''this is what our baby's going to be like.''

Then, I had more trouble in January. My husband and I had gone out to dinner, came back & were watching TV, when I started having contractions. They lasted for about half an hour and they stopped. But then the doctor told me I should stay out of work for the rest of my pregnancy. I was very disappointed that I couldn't share my pregnancy with the people at work, let them watch me grow. But our excitement just kept growing, and we made our normal plans, everything that prospective parents do.

I had had a couple of earlier ultrasounds which turned out fine, and I took the alphafetoprotein test, which is supposed to show fetal anomalies—anything like what we later found out we had. It came back clean.

In March I went in for a routine 7-month ultrasound. They were saying this looks good, this looks good, then suddenly they got really quiet. The doctor said ''This is something I didn't expect to see.'' My heart just dropped.

He said he wasn't sure what it was, and after about an hour solid of ultrasound, he and another doctor decided to send me to a perinatologist. That was also when they told us it was a girl. They said, ''Don't worry, it's probably nothing, it could even be the machines.''

We got home and were a little bit frightened, so we called some family members . My husband's parents were away and wanted to come home, but we told them to wait. The next day, the perinatologist did ultrasound for about two hours, and he said he thought the ultrasound showed a condition in which the intestines grow outside the body, something that's easily corrected with surgery after the birth. But just to make sure, he made an appointment for me in San Francisco with a specialist.

After another intense ultrasound with the specialist, the doctors met with us, along with genetic counselor. They absolutely did not beat around the bush. They told me, ''She has no eyes, six fingers and six toes and enlarged kidneys which are already failing. The mass on the outside of her stomach involves her bowel and bladder, and her heart & other major organs are also affected.'' This is part of a syndrome called Trisomy–13, where on the 13th gene there's an extra chromosome. They told me, ''Almost everything in life if you've got more of it, it's great. Except for this. This is one of the most devastating syndromes, and your child will not live.''

My mother-in-law just collapsed to her knees. What do you do? What do you say? I remember just looking out the window. . . . I couldn't look at anybody. My mother-in-law asked, ''Do we go on, does she have to go on?'' The doctor said no, that there was a place in Los Angeles that could help if we could not cope with carrying the pregnancy to term. The genetic counselor explained exactly how the procedure would be done, if we chose to end the pregnancy, and we made an appointment for the next day.

I had a choice. I could have carried this pregnancy to term, knowing everything that was wrong. I could have gone on for two more months, doing everything that an expectant mother does, but knowing my baby was going to die, and would probably suffer a great deal before dying. My husband and I would have had to endure that knowledge, and watch that suffering. We could never have survived that, and so we made the choice together, my husband and I, to terminate this pregnancy.

We came home, packed, and called the rest of our families. At this point there wasn't a person in the world who didn't know how excited we were about the baby. My sister-in-law and best friend divided up a phone book and called everyone. . . . I didn't want to have to tell anyone. I just wanted it to be over with.

On Thursday morning we started the procedure, and it was over about six pm Friday night. The doctor, nurses and counselors were absolutely wonderful. While I was going through the most horrible experience of my life, they had more compassion than I've ever felt from anybody. We had wanted this baby so much. We named her Mackenzie. Just because we had to end the pregnancy didn't mean we didn't want to say goodbye. Thanks to the type of procedure Dr. McMahon uses in terminating these pregnancies, we got to hold her and be with her and have pictures for a couple of hours, which was wonderful and heartbreaking all at once. They had wrapped her up in a blanket. We spent some time with her and said our good-byes and went back to the hotel. Before we went home, I had a checkup with Dr. McMahon, and everything was fine. He said, ''I'm going to tell you two things: first, I never want to see you again. I mean that in a good way. And second, my job isn't done with you yet until I get the news that you've had a healthy baby.'' He gave me hope that this tragedy wasn't the end, that we would have children just as we'd planned.

I remember getting on the plane, and as soon as it took off we were crying because we were leaving our child behind. The really hard part started when I got home. I had to go through my milk coming in, everything you go through if you have a child. I don't know how to explain the heartache. There are no words. There's nothing I can tell you, express or show you that would allow you to feel what I feel. Think about the worst thing that's happened to you in your life and multiply it times a million . . . maybe then you might be close. I couldn't deal with anybody, couldn't see anybody—especially my nephews. It was too heartbreaking.

Eventually I came around to being able to see and talk to people. I am a whole new person, a whole different person. Things that used to be important now seem silly. My family and my friends are everything to me. My belief in God has strengthened. I never blamed God for this, I'm a good Christian woman . . . however I did question. Through a lot of prayer and talk with my pastor, I've come to realize that everything happens for a reason, and Mackenzie's life had meaning. I knew it would come to pass someday that I would find out why it happened, and I think it's for this reason: I'm supposed to be here to talk to you, and say, ''You can't take this away from women and families. You can't. It's so important that we be able to make these decisions, because we're the only ones who can.''

We made another painful decision shortly after the abortion. Dr. McMahon called and

said, ''This will be very difficult, but I have to ask you this. Given the anomalies she had, so vast and different, there is a program at Cedars-Sinai, which is trying to find out the causes for why this happens. They would like to accept her into this program.'' I said, ''I know what that means. Autopsies and the whole realm of testing.'' But we decided, how can we not do this? If I can keep one family from going through what we went through, it would make her life have some meaning. So they're doing the testing now. And because Dr. McMahon does the procedure the way he does, it made the testing possible.

I can tell you one thing—after our experience, I know more than ever that there is no way to judge what someone else is going through. Until you've walked a mile in my shoes, don't pretend to know what this was like for me . . . and I don't pretend to know what someone else is going through. Everybody's got a reason for what they have to do. Nobody should be forced into having to make the wrong decisions. That's what you'll be doing if you pass this legislation. Let doctors be free to treat their patients in the way they think is best, like my doctor did for me.

I understand that this legislation would make doctors like mine criminals. My doctor was the furthest thing from a criminal in the world. Many times I've called him my angel . . . they say there are angels walking around the world protecting us, and I know he was one. If I wasn't led to Dr. McMahon, I don't know how I would have lived through this. I can't imagine where we'd be without my doctor. He saved my family, my mental stability, and my life. I couldn't have made it through this without him, and I know there are a great many women out there who feel the same way.

I've still got my baby's room, and her memory cards from her memorial service, her foot and handprints. Those are good things, good memories . . . but she's gone. The best thing that I can do for her is to continue this fight. I know she would want me to. So, for her, I respectfully ask you to reject this legislation.

TERESA M. TAUCHI—OCTOBER 11, 2000

I consider Julia Kiyono to be our first child. She was born on Thursday, April 20, 2000, but did not live long enough to receive a social security number. I have never seen her birth or death certificate. Outside of the hospital in which she was born and beyond our circle of family and friends, she never existed. But she will always be our first child.

The story of my pregnancy with Julia is like that of so many other women who receive poor fetal diagnoses. Shock. Denial. Bargaining with God. Hope. Anger. Grief. Acceptance. Moving forward. It has been the longest six months of my life.

At 23 weeks gestation, our baby was diagnosed with a lethal form of skeletal dysplasia, a bone development disorder more commonly known as dwarfism. The length of her femur and humerus were five-to-six weeks behind in growth. Her thorax was also measuring abnormally small—her heart nearly filled her chest cavity and her lungs had no room to develop. Two separate perinatalogists predicted respiratory failure shortly after birth. For our baby, survival outside of the womb was impossible.

We received the news on a Friday. Sam and I passed the entire weekend by ourselves, canceling all social engagements and deflecting the inquiries of our friends. We weren't prepare to tell anyone other than our immediate family. We wouldn't have known what to say.

Instead, we spent the weekend installing a gravel patio in our backyard. On that same Friday, several tons of sand, pebble and cobblestone had been dropped off on our driveway, a delivery that was too late to call off. It seems like a strange task to undertake when your world is falling apart, yet we consumed ourselves with the physical labor of moving rocks, and shaping and smoothing our garden. My six-month pregnancy hardly got in the way. The physical exercise seemed to encourage an already-active baby to turn even more somersaults and thrash more karate kicks inside of me. She felt so alive to me and I cherished every moment.

In between the loading and unloading of wheelbarrows full of Pamy pebbles, we took turns crying. We leaned on each other, held each other, and told ourselves that we would somehow get through this. We asked each other why this was happening. We talked about the decisions ahead of us and cried some more. We read through the various pamphlets we received from kindly genetic counselors and wept again. By the end of the weekend we had hardly slept and were physically exhausted, emotionally drained. And we knew that we would terminate our pregnancy.

It was not a decision we took lightly.

Letting go of this baby seemed, at time, unfathomable. Sam and I had been married a little over a year when we conceived her, and as our first child, this baby was the embodiment of our future, of our new life as a family. Yet she inhabited a body that could not sustain life. We chose to release her soul from that body that would only bring her a painful struggle for breath. Moreover, we wanted her to feel nothing but our happiness and our love—a connection that began from the moment of conception. We didn't wish for her to continue inside of a mother's body consumed by so much grief and anguish, to hear a father's voice filled with such sadness and heartache.

I checked into the hospital on Monday evening and was relieved to have my own OB admit me. The nurses were extremely kind and ushered us to a private room in a quiet and empty corner of the labor and delivery ward, away from those mothers and fathers who could feel joy in the anticipation of their arrivals.

The induction of labor took two and a half days. Our baby was delivered at 12:35 p.m. on Thursday, April 20, 2000. It wasn't until that moment that we learned we had a little girl—Sam had insisted, through everything, that we wait until the birth to find out the sex of the baby. With the assistance of the hospital chaplain and my sister as our witness, we named her Julia Kiyono. Julia was the first girl's name we had ever agreed on, long before we knew anything could be wrong with the pregnancy. Kyono was in honor of my late great-aunt, whom I grew up with as my grandmother and who had lost her only child, a four-year-old boy, in the internment camps during World War II. It wasn't until that moment, when I held our baby in my arms, that I finally understood the heartbreak that my grandmother had carried with her throughout her 99 years.

We kept Julia with us for the short time that she was alive. We cradled her and kissed her. We told her how happy we were to finally meet her and how much we loved her. And when her heart stopped beating two hours later, we whispered goodbye.

Today, we call the lush flowering vines, the budding fruit trees, and the fragrant sages that inhabit our backyard and surround the pools of gravel Julia's Garden. We have also planted a baby rose bush in her memory. It produces clusters of bright pink flowers that fade to white as they bloom. We have other reminders—her framed footprints that hang on our bedroom wall, a memory box that holds her receiving blanket, cards and photographs—of Julia's eternal presence in our lives.

Unfortunately, the legacy of prenatal testing, lethal diagnoses and termination—the memories we want to move beyond—too will endure. We learned shortly after Julia's death that her specific type of skeletal dysplasia was identified as Short-Rib Polydactyly Syndrome, a lethal condition that is inherited in an autosomal recessive manner. This means that my husband and I are both carriers of a recessive gene mutation and have a 25% chance of recurrence with each subsequent pregnancy. Through anecdotal evidence and my own research on autosomal recessive disorders, I have learned that carrier parents often have multiple affected pregnancies.

While there are plenty of reasons to believe that we will have a healthy child, I am a firm pragmatist. I know that it can happen to us again and that we will need to revisit the same heartbreaking decision every time—a choice that rightfully belongs to us and us alone.

TESTIMONY OF KIM KOSTER

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

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

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

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

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

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

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

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

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

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

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

TESTIMONY OF MIRIAM A. KLEIMAN, VOTERS FOR CHOICE—MARCH 10, 2003

My name is Miriam Kleiman. I am 36 years old. I have been happily married to my husband Jason Steinbaum for almost six years. We have a child named Zachary who is 19 months old. I am now pregnant again and am unfortunately unable to be with you today.

My pregnancy is currently in the 29th week. In July 2000, I was pregnant with another much-wanted child. My husband and I had been married three years and were excited and ready to be parents for the first time. We had selected furniture, car seats, and other items to help us keep our baby comfortable, warm, protected, and loved. As with many expectant mothers, I was scheduled for a regular obstetrical appointment. At that time, I assumed that this sonogram would be just another joyous look at the baby. I insisted that my husband join me for the appointment to share in the excitement and happiness of seeing our baby.

The sonogram technician, however, immediately detected severe problems. The OB was called in at once to tell us that the condition was extremely grave. We were transformed from happy, expectant parents to devastated, panicked people in immediate need of advice and options. We were rushed to a variety of hospitals where I was examined by several doctors, including a perinatologist, neonatologist, and radiologist. All told us that the baby had major brain abnormalities, including severe hydrocephalus and a malformed vein of galen. In other words, our precious baby boy would die at some point in utero or shortly after birth. Our world was shattered, and we needed to find a way to pick up the pieces.

After our consultations with these specialists, it was clear that there was no medical miracle to correct the baby's condition. Worse still, our doctors informed us that abortion was not an option because the pregnancy was past the legal limit for termination in most states. They said I had no choice but to wait and deliver our baby at term as if the pregnancy were proceeding normally. Third trimester abortions, they explained, are just not done. Desperate, we begged the head of our obstetric practice for any other options. He calmly explained that there were none—that I had no choice but to carry the baby more than two more months until delivery at full term unless the baby died in utero before that. We directly asked him about the possibility of termination. Our doctor glared at us and responded succinctly: ''We call that murder.''

We grasped for second, third and fourth opinions as we went from hospital to hospital. The radiologist we visited repeated the grim prognosis: The baby would die in utero or within days of birth. My husband turned to him and asked: ''if this were your wife, what would you do?'' He responded: ''I would find any way possible to terminate the pregnancy.''

If we did nothing, we would be on a death watch, merely waiting for our baby to die. This was totally unacceptable to me or my husband. Personally, I was prepared to go anywhere, at any expense to end our anguish and let us move on with our lives. We loved this baby boy too much and were too attached to him to suffer the misery of waking up every morning awaiting his impending death.

We made the dreaded phone calls to inform our parents that their long-awaited grandchild would not survive. Because Jason's father and sister are physicians with a network of colleagues, we learned that we had actually received incorrect information. There was, in fact, an option.

For the record, my abortion was performed in August 2000—my abortion was NOT a so-called ''partial-birth procedure.'' After the delivery, my husband and I, along with our mothers, held our intact baby, said a blessing, and bid him goodbye. He is buried at a cemetery in Northern Virginia.

We feel a strong obligation to tell our story to inform others of why it is necessary to preserve the right to choose. In doing so, we also feel we are remembering the baby we lost, but still hold dearly in our hearts. It is hard to stress strongly enough that we did NOT ''change our minds'' about being parents. This was a desperately wanted child, one who had been planned for, dreamed of, read and sung to, and long-hoped for. The hardest part for us to convey is how much we did then and continue to love our son, how we remember him and mourn his loss, but how we made a decision that we thought would be more humane. Even in retrospect, two years later, we know we made the right choice.

This week, the Senate will consider legislation to end abortions. This would effectively eliminate all options for others like us, who have desperately-wanted pregnancies but whose dreams turn to nightmares with news of devastating medical conditions. If this legislation passes, it would end the important work of the very place that helped us through the worst time of our lives.

It is my hope that someday in the future when my doctor and his staff face the harsh rhetoric from the so-called ''right to life'' movement or hear about ill-advised congressional restrictions on a woman's right to choose, they will not see the anger of the anti-choice activists, but will envision instead of face of our healthy son whose picture adorns their wall and will know that what they did for my family—and so many others—was right and helped us reach this day.

Mrs. BOXER. I am going to just read a paragraph out of each of their stories. The first is Viki Wilson, who writes:

Losing Abigail was the hardest thing that has ever happened to us in our lives, but I am grateful that Bill and I were able to make this difficult decision ourselves and that we were given all of our medical options. There will be families in the future faced with this tragedy. Please allow us to have access to the medical procedures we need. Do not complicate the tragedies we already face.

Coreen Costello writes movingly. All of these are so moving that I would say if every American could read these, they would know that what we are about to do is wrong because it makes no health exception. She says:

Losing our daughter was the hardest thing we have experienced. It has been difficult [to talk about our loss]. And it's ironic that I, with my profound pro-life views, would be defending an abortion procedure. God knows I pray for the day when no other woman needs this procedure. But until [then] . . . women must have access to this important medical option.

Claudia Crown Ades, at the end of her beautiful statement, writes:

Though I hope and pray that no one has to go through what my husband and I have, there are people who will. It can happen to anyone—to you, your wife, your sister, your daughter, your friends. All women should have the protection, the guidance and the access that modern medicine allows.

All of these women were told by their physician that the safest procedure is the one that the Senator is going to outlaw here, without any exception.

Then there is Vikki Stella. She is a diabetic. She was told she absolutely needed this. We went through her story.

Then there are a number for whom I do not have photographs. Audrey Eisen—she says: ''Along with my sadness came a realization that if such legislation passed,'' tragedy would happen to ''those women who come after me.'' Outlawing these procedures, ''I don't know how these women will endure; I don't know how I would have endured.''

Erica Fox said:

This procedure is not about murder. It's about finding way to go on. In the end, it's about life. A good life. A healthy life. The life I see every day shining at me in the eyes of my son.

Tammy Watts:

I understand the Senate is considering legislation that would ban the kind of surgery that I just had. . . .

She goes on to talk about this terrible decision. She begs us not to outlaw this procedure. She says:

I can't imagine where I would have been without [my doctor who performed this procedure.] He saved my family. . . . [He saved] my life. I couldn't have made it through this without him, and I know there are a great many women out there who feel the same way.

Theresa Tauchi writes us on October 11, 2000:

I know that it can happen to us again and that we will need to revisit the same heartbreaking decision every time—a choice that rightfully belongs to us and to us alone.

Kim Koster wrote to us. She said:

The reality is that this is a terrible law [this S. 3], a grievous interference between doctor and patient, and would only compound the tragedy and the heartache faced by families like us. Please protect [our] . . . families.

Miriam Kleiman; this is the last one I have.

It is my hope that someday in the future when my doctor and his staff face the harsh rhetoric from the so-called ''right to life'' movement . . . they will not see the anger of the anti-choice activists, but will envision instead the face of our healthy son whose picture adorns their wall and will know that what they did for my family—and so many others—was right and they helped us reach this day.

The reason Senator HARKIN's amendment is so important is that under Roe v. Wade, the right to choose is guaranteed to a woman in the beginning of a pregnancy, the first few months. And after that we can restrict, but always with an exception for the life and health of the mother. That is Roe.

Let me tell you why it was important that that decision be made. Because before Roe, 5,000 women a year died from back-alley illegal abortions. I don't hear anything about these women. It chokes me up.

Women had to go and have back-alley abortions in other places—not a clean hospital, not a State-licensed facility, no practitioner who knew what he or she was doing. Money was slipped across the table, and 5,000 women a year died. That is why this vote is so important. We must not go back. We cannot go back to those dark days before Roe.

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

Mrs. BOXER. Yes, I yield.

Mr. HARKIN. I thank the Senator for her stalwart support for all the years I have known her, for the principles and the law of Roe v. Wade, to ensure that the women of America have the right to choose. I thank her for her stalwart support, and I thank her for her comments this afternoon on behalf of this amendment I have offered.

I ask the Senator this question. We heard from our friend from Pennsylvania about certain polls that were taken about a certain procedure and this and that. But this amendment is about Roe v. Wade. Is the Senator familiar with polls taken in this country from women about whether or not they would support keeping Roe v. Wade or overturning Roe v. Wade? Is the Senator familiar with some of those polls?

Mrs. BOXER. I haven't seen any recent polls. I wonder if my friend could inform me. I assume overwhelmingly the people of this country support Roe because it is a moderate decision, a moderate mainstream decision.

Mr. HARKIN. That is exactly right. I say again to the Senator, when it is defined to people, both men and women, what Roe v. Wade really does in terms of the first 3 months and then after that what the State can do, but with exceptions for life and health of the mother, as the Senator so rightfully pointed out, the overwhelming majority of the American people say yes, that ought to inure to the individual and not to the Government.

Mrs. BOXER. Absolutely. I think people are horrified at the thought that a Senator would make such a personal, private decision. Our colleague from Pennsylvania wants to see Roe v. Wade overturned, and that is exactly what would happen. Government would be put in the middle of the lives, the private lives, of the people of this country. The people would no longer be trusted to make these decisions.

Mr. HARKIN. I further ask the Senator, would she concur in this view, that perhaps what this is all about is really not about a procedure but it really is about fundamentally getting at Roe v. Wade? I say that to my friend from California because 4 years ago when this came up, this Senator along with the Senator from California offered the same amendment. It said that Roe v. Wade—we recognize it as the law of the land and it should not be overturned.

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mr. HARKIN. I yield another 5 minutes to the Senator from California.

Is the Senator familiar with the outcome of that vote? That vote at that time—I remember it precisely—was 51 to 47. Two people who are not here had announced they were opposed to it, so it was 51 to 49. By 2 votes, the Senate—49 Senators said Roe v. Wade should be overturned. That is how close we are here. That is why the people of this country ought to recognize that is what this debate is about—getting at Roe v. Wade; nothing more, nothing less.

I thank the Senator.

Mrs. BOXER. I say to my friend, he is absolutely right. Because there is no health exception in S. 3, it is a complete reversal from Roe.

What is shocking is my colleagues on the other side won't even make a health exception that was narrowly drawn by Senator DURBIN. They couldn't even go that far. We all know what could happen to a woman if she does not have this safe procedure. Doctors are telling us. We put those statements in writing. They could have a hemorrhage, their uterus could rupture, they could have blood clots, embolism, stroke, damage to nearby organs, and paralysis. Yet S. 3 comes to us without a health exception.

I say to my friend, the rest of the time is his. I have concluded my remarks. I am very proud to stand with him. I think it will be a close vote, but I am hoping a winning vote, so the message can go out from here that Roe v. Wade, which balanced all the interests—the family interests, the interests of the fetus, and the interests of the mother, which said that previability a woman has a right to choose, she will make that decision with her God and her doctor and her loved ones—that should stand. Certainly later in the pregnancy there can, in fact, be restrictions, and always exceptions for the life and health of the woman.

I thank my colleague for again offering this amendment. I think it is very important. I hope people of the country will watch the vote and will think about the ramifications.

I yield the floor. Senator HARKIN retains the balance of time.

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

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I thank my colleague from Pennsylvania and my colleague on the other side of the aisle for this most spirited debate.

We are finally here debating the most difficult and contentious social issue of our day. This is one of those elephants in the living room that we in the country across America have been going around saying is not there; not wanting to focus on it; not wanting to confront it; but it is there. This is it, the issue of Roe v. Wade.

I was listening to colleagues, thinking of Mose's admonition: ''Choose ye this day life or death.'' Which will it be? We are finally having the debate, Roe v. Wade.

I would like to remind colleagues. I read it again about 3 months ago. It is about federalizing State laws so we are clear on this. It is a lengthy opinion where they said we are going to take all of these State laws in a patchwork regarding allowing abortions, or not allowing it, and we are going to federalize it. We are going to discover a right to privacy and say this is built within the overall thinking of the Constitution, the original Framers. We are going to say there is a right to privacy that applies to reproductive health. We are going to take the State laws of Kansas, California, Iowa, the Pennsylvania and North Carolina law, we are going to take all of those laws, throw them all out, and say this is the law of the land. We are going to say we found it to be constitutional. There are a lot constitutional scholars who have grave questions about the nature of the basic fundamentals in Roe v. Wade, regardless of the issue of abortion, but finding this constitutional right. Lots of people have questions about this decision. I hope fundamentally people will recognize that if you repeal Roe v. Wade, you go back to allowing the States to decide this issue, which is the way it was prior to Roe v. Wade. The States decided this issue. Kansas had a set of laws. Other States had sets of laws. This is how it was resolved and dealt with across the land. That is what we are talking about.

People are saying if you repeal Roe v. Wade, everything goes back into a back alley and no abortions would be allowed in the United States.

To be factually correct, what happens? This goes back to the States to

decide how they will handle this particular issue if you do not have Roe v. Wade. When people paint such a cataclysmic change, we recognize what we are truly legally talking about on Roe v. Wade. What has happened since Roe v. Wade? It has been 30 years now, or a little more. Forty million babies have been aborted in the United States. We are now back and debating this fundamental issue.

Really, when you boil it all down, it is what is the legal status of a young human. The Senator from Pennsylvania beautifully put forward the competing issues of interest here of one side—the mother and the child. Fundamentally, you have to look at it and ask yourself and decide why as a country we have not been willing to confront this issue. What is the legal status of the child in utero? What is it? Is it a person or it is a piece of property? It is one of the two.

When the child is out of the mother's womb, we have clearly decided. Five seconds ahead of that time when it is in the womb, what is this child? Five months in the womb, what is this child? Is it a person or is it a piece of property? You can say that is an odd way of putting the debate.

One of the people who inspired me in this legislative arena was a gentleman named William Wilberforce, a parliamentarian in England. He led the battle for ending the slave trade by Great Britain. They had this debate on the fundamental issue of what is a slave. Is it a person or a piece of property? They even did a Wedgewood plate on this. They had a person in chains as a slave. They put a question around it. ''Am I not a man and a brother?'' They asked society that question. ''Am I not a man and a brother?''

What is the child in the womb? Is it not a person and a brother? When will we decide? We just simply haven't been willing to say it. We have been willing to duck around different avenues on it. Now we are talking about research on the young human. We decided to treat it as property when talking about patenting young human life. You can't patent a person. Therefore, it must be property. But we are uncomfortable stating that in law because somehow it doesn't seem quite right.

When we let the child live, it becomes a person under everybody's definition. This actually happened in the slave debate. At one point in time in our Constitution we said a slave is three-fifths of a person because we weren't willing to say it was a person. It is property, so it is three-fifths. We all look back, that was horrible, and that was wrong. We know it was wrong.

Now you are finding that courts are hearing cases about frozen embryos and contesting between the mother and the father in a divorce case on whether to implant or not. They are asking the question in the divorce case: What is the frozen embryo, a person or piece of property? Now the courts are having to use the same sort of terms that were used in the slave debate. They are asking, Is it a quasi-human with the potential for life? They are still trying to get around the question of person or property. Which is it? It is one or the other. It is one or the other. The courts are trying to find that in a contorted way. It is not quite either because we don't want to face it now.

That is the fundamental question of Roe v. Wade. Is it a person or is it property? Am I not a man and a brother?

We have coarsened our society in a period of time since Roe v. Wade. Since 1973, approximately 40 million abortions have taken place in this country. We now have a debate in the Nation about whether we are going to have a culture of life or a culture of death. I think we would all agree we want a culture of life.

What does that mean? That means we support and stand for life. We stand for it in all phases of life. We stand for it in all difficulties and all types of life. It doesn't mean somebody who has some physical handicap has any less of a life than what I have or the Presiding Officer or anybody in this room. This is life we want to celebrate. We want to take that celebration to the weakest and most vulnerable in our society. We want them to be able to celebrate the culture of life. We want to project that and send that around the world, that we believe in the culture of life.

That is what this debate is about. Choose today life or death, culture of life.

Is a young human a person or property? I think scientific evidence clearly teaches over time, if it hasn't already, that this is a person. You can't treat it any other way.

I am glad we are having this debate. I am glad my colleague from Iowa raised this issue. It is an important one for us. I hope we can conclude this. We support the culture of life.

I yield the floor and reserve the remainder of time allotted to me.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. How much time do I have, Madam President?

The PRESIDING OFFICER. Eleven and one-half minutes.

Mr. HARKIN. I yield 5 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I rise today to support Senator HARKIN's Sense of the Senate that Roe v. Wade, the landmark 1973 decision recognizing a woman's constitutional right to choose, was rightly decided and should not be overturned; I also want to express my opposition to the underlying legislation.

Thirty years ago, the U.S. Supreme Court held that a woman has a constitutional right to privacy when making decisions concerning her personal reproductive choices. That decision, Roe v. Wade, was carefully crafted to be balanced and responsible while holding the rights of women in America paramount in reproductive decisions.

And Senator HARKIN's amendment is very simple: it asks the U.S. Senate to reaffirm that Roe v. Wade was rightly decided and should not be overturned. This amendment asks the U.S. Senate to reaffirm a woman's right to privacy in making her own personal medical and reproductive decisions.

Roe v. Wade held that women have a constitutional right to choose, but 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. Yet the legislation before us, which lacks an important health exception, fails to do just that: provide for a woman when her health or her life is in danger.

In June 2000, the U.S. Supreme Court reinforced the importance of a health exception with its decision in Stenberg v. Carhart, which determined that a Nebraska law banning the performance of so-called ''partial birth'' abortions violated the Roe ruling by the Supreme Court.

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 was structured so as to place a woman's life in danger. That's 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, the legislation before us today does not provide an exception for the health of the mother. For this reason, this legislation, like the one struck down in Stenberg, is unconstitutional.

While I assume the author of this legislation is referring to a specific procedure, the legislation is not clear on that fact. In fact the U.S. Supreme Court held in the Nebraska case that even if the statute's basic aim is to ban one specific procedure, its language was so broad that it will also ban other medical abortion 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 ban post-viability abortions, a limit I would support, but unconstitutionally restricts women's rights regardless of where the woman is in her pregnancy.

This legislation does not have a clear exception for women's health. I fundamentally believe that private medical decisions should be made by women in consultation with their doctors—not politicians. And this includes the methods by which a physician chooses to treat his or her patients. Why should we decide that here on the Senate floor?

And I do not believe that congressional findings make up for medical consultation between a patient and her doctor. But this ban 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.

Three states, including my home state of Washington, have considered these 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.

I also want to say that I am extremely disappointed that my colleagues voted down Senator MURRY's women's health amendment yesterday because the easiest way to reduce the number of abortions is to prevent unwanted pregnancies in the first place. One critical way to do this is through better access to contraception, both by improvements in insurance coverage of contraception, as well as by improving knowledge of, and access to, emergency contraception.

The Supreme Court, during the thirty 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 flouts the Supreme Court's explicit directive, 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.

I urge my colleagues to support Senator HARKIN's Sense of the Senate that Roe v. Wade, the landmark 1973 decision recognizing a woman's constitutional right to choose, was rightly decided and should not be overturned.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Iowa.

Mr. HARKIN. Madam President, I yield myself a couple minutes, and then I will close up. I know we have some people who need to vote here shortly.

Madam President, let us be clear about one thing. The amendment I have offered is, I think, as straightforward in its approach as Roe v. Wade is in its decision; that is, it simply just states Roe v. Wade is the law of the land and should not be overturned. That is what we are saying on this amendment.

I have not gotten much into the debate on the underlying bill itself. I may later on. I have left that to others. I just feel very strongly that in all the smoke and fog and haze and debate about this procedure and that procedure, and all of the kinds of philosophical debates that are being made—and some of them are very good. I thank the Senator from Pennsylvania. He has been very good about engaging in discussions on the floor. Maybe later on I will get into a little more philosophical debate with him on some of these things.

But this amendment simply is about Roe v. Wade. That is all this amendment is. It is for us to express ourselves, to express ourselves clearly and unequivocally that the Senate believes Roe v. Wade is the law of the land and should not be overturned.

Let us send a signal to the women of this country that we are not going to turn the clock back, we are not going to turn the clock back to what Senator BOXER from California said: the dark days when they went to back alleys.

If my daughter, God forbid, ever found herself in a position like that, as I said earlier, yes, I would want her to go to the best hospital, have a doctor, have a good obstetrician, and not be forced into a back alley. I want it legal. That is what Roe v. Wade is about, and that is what this amendment is about: to keep it safe, legal, and, yes, rare in the United States.

I yield back my time.

Madam President, I ask unanimous consent that Senator EDWARDS and Senator CANTWELL both be added as cosponsors, and Senator BOXER be added as a cosponsor, and Senator KERRY.

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

The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I want to address a couple issues and then make a closing argument.

One issue I want to address is the point Senator BOXER made, that there were 5,000 deaths of women because of abortions prior to Roe v. Wade.

Let me give a quote from the former medical director of the National Association for the Repeal of Abortion Laws, NARAL:

> How many deaths were we talking about when abortion was illegal? In NARAL, we generally emphasized the frame 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 that the figures were totally false and I suppose that others did too if they stopped to think of it. But in the ''morality'' of our revolution, it was a useful figure, widely accepted, so why go out of our way to correct it with honest statistics? The overriding concern was to get the laws eliminated, and anything within reason that had to be done was permissible.

So, obviously, it was not just used to get the law eliminated. It continues to be used to substantiate the law's existence. And what does this law do? It does many things. Let me summarize by mentioning two.

It takes from the American people the people's legitimate right to determine this crucial, moral issue. It was usurped from the people by fiat—not elegantly, I would suggest, but inelegantly by nine Supreme Court Justices, who decided to lord over the States and their elected representatives of the people their version of the world, their world view, their hackneyed interpretation of a constitutional liberty.

That is what happened with Roe v. Wade. It took from the people rights to decide their own fate, and rested it in an unelected body, at that time of nine old men. That is one thing Roe v. Wade did.

The second thing it did is it took a page, unfortunately, from our past, a page we thought we had learned a lesson from; and that is the page of the history of slavery.

Slavery was a situation in our country where we got our priorities out of whack. Our Founding Fathers said, we are endowed by our Creator with certain inalienable rights: life, liberty, pursuit of happiness. Ordered for a reason, for without life there is no liberty; without liberty, there is no happiness. They didn't say happiness, life, liberty; liberty, life, happiness. No, they are ordered for a reason. Life is a prerequisite to liberty.

But in the case of slavery, we put the liberty of the slave owner ahead of the life of the slave and turned the slave into property. We put the rights of the white person in America above the life of the black man or woman. We learned our lesson in a very painful way, but we didn't learn it well enough. The old saying: If you don't learn from history, you are doomed to repeat it. Here we stand, arguing this repetition of history and just like in this Hall, 150-plus years ago, people from areas of the country argued that this was not a reordering or a misordering of liberty. And so they do again today.

What we have done is put the liberty rights of people ahead of the life right of the unborn child. We have misordered our liberties. The pain that it has showered across the land of 40-plus million abortions and countless other maladies that have gone on, horrible social consequences result from that. We need to get our liberties back to where our Founding Fathers put them, where our Creator put them: Life, liberty, happiness. First among them is the right to life.

I know I will not be successful in this debate, but I hope my colleagues listen to the consequences of putting ordered liberties out of order. If you do that, the consequences to our society long term, the precedent we set with this constitutional case will poison the well of judicial decisions for many years to come. Today, it is the unborn child. Tomorrow and tomorrows after, it may be you.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. CORNYN). The question is on agreeing to amendment No. 260.

Mrs. BOXER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FRIST, I announce that the Senator from Kentucky (Mr. MCCONNELL) is necessarily absent.

Mr. REID, I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

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

The result was announced—yeas 52, nays 46, as follows:

[Rollcall Vote No. 48 Leg.]

YEAS—52

Akaka	Durbin	Lieberman
Baucus	Edwards	Lincoln
Bayh	Feingold	Mikulski
Bingaman	Feinstein	Murkowski
Boxer	Graham (FL)	Murray
Byrd	Harkin	Nelson (FL)
Campbell	Hollings	Reed
Cantwell	Hutchison	Rockefeller
Carper	Inouye	Sarbanes
Chafee	Jeffords	Schumer
Clinton	Johnson	Snowe
Collins	Kennedy	Specter
Conrad	Kerry	Stabenow
Corzine	Kohl	Stevens
Daschle	Landrieu	Warner
Dayton	Lautenberg	Wyden
Dodd	Leahy	
Dorgan	Levin	

NAYS—46

Alexander	Dole	Miller
Allard	Domenici	Nelson (NE)
Allen	Ensign	Nickles
Bennett	Enzi	Pryor
Bond	Fitzgerald	Reid
Breaux	Frist	Roberts
Brownback	Graham (SC)	Santorum
Bunning	Grassley	Sessions
Burns	Gregg	Shelby
Chambliss	Hagel	Smith
Cochran	Hatch	Sununu
Coleman	Inhofe	Talent
Cornyn	Kyl	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	
DeWine	McCain	

NOT VOTING—2

Biden	McConnell

The amendment (No. 260) was agreed to.

Mr. HARKIN. Madam President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized.

AMENDMENT NO. 261

Mrs. FEINSTEIN. Mr. President, I call up amendment No. 261 and ask for its immediate consideration. It is short, and I would appreciate it being read by the clerk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN] proposes an amendment numbered 261.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Post-Viability Abortion Restriction Act''.

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

(a) IN GENERAL.—It shall be unlawful, in or affecting interstate or foreign commerce, knowingly to perform an abortion if, in the medical judgment of the attending physician, the fetus is viable.

(b) EXCEPTION.—This section shall not apply if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life or health of the woman.

(c) CIVIL PENALTY.—A physician who violated this section shall be subject to a civil penalty of not to exceed $100,000. The civil penalty provided for by this subsection shall be the exclusive remedy for a violation of this section.

Mrs. FEINSTEIN. Mr. President, this amendment is simple and straightforward. It bans any abortion after viability, except when a doctor has determined that it is necessary to save the life or protect the health of the woman.

I have been a part of the Judiciary Committee now for 10 years and I have seen this bill come up in three Congresses and listened to or read testimony on this bill for three Congresses.

The first time it came up, it became very apparent to me that the definition of partial-birth abortion was too vague. I wondered why it was so vague. It looked like it covered different medical procedures. And now, about 8 years later, I believe I know why it is so vague. I believe it is so vague because it could actually cover all abortions and therefore be a major strike against a woman's right to choose. Eighty percent of the people of this country believe that abortion must be safe and legal to preserve a woman's health. People strongly believe that this is a decision between a woman, her clergy, her doctor, and her family.

I deeply believe politicians should not be in the business of making decisions about women's reproductive rights. In my view, the Santorum legislation, S. 3, is a Trojan horse. It is not what it purports to be. It supposedly bans one procedure, D&X, but actually confuses this procedure with another, D&E, the most commonly used abortion procedure. In fact, its wording is so vague that it could be construed to criminalize all abortions.

Yesterday's CONGRESSIONAL RECORD shows that Senator SANTORUM—and I have great respect for my distinguished colleague—stated:

I have not been asking about medical necessity. . . . I have not asked for someone's opinion on what ought to be or what could be. What I have asked for is an example. I wanted a fact circumstance to be provided as to where this would be the best, this would be appropriate, this would be medically indicated.

I would like to answer Senator SANTORUM's question at this time, through a letter. After we heard this question, we called the University of California San Francisco Medical Center, the Department of Obstetrics, Gynecology, and Reproductive Sciences, and talked to the chief of that department at San Francisco General Hospital, who is also a full professor. His name is Philip D. Darney. Dr. Darney just sent me this letter, and I would like to read that letter into the RECORD:

Dear Senator Feinstein: I write to provide examples of the need for a ''medical exemption'' to the proposed restriction of use of the so-called ''partial birth abortion'' technique which is now before the Senate. The medical term for the technique is ''intact D&E''.

I am Chief of Obstetrics and Gynecology at San Francisco General Hospital, SFGH, where my department provides about 2,000 abortions yearly to poor women from throughout Northern California. Patients who are in the second trimester and who have special medical problems are referred to SFGH for treatment because our staff has special competence in second trimester abortion and because we can provide specialized care for women who are more likely to have a complicated pregnancy termination. Although I have not reviewed medical records in order to count the number of times we have employed intact D&E, I will provide examples of cases in which the technique was critical to safe conduct of our surgery:

A 25 year old with two previous vaginal deliveries and bleeding placenta previa and a clotting disorder at 20 weeks was referred for termination of pregnancy. After checking her coagulation parameters and making blood available for transfusion, we dilated the cervix overnight with Laminaria and planned uterine evacuation when adequate dilation was achieved or bleeding became too heavy to replace. Within 12 hours cervical dilation was 3 cm and heavy bleeding had begun. We removed the placenta quickly and used the ''intact D&E'' approach to complete the abortion and accomplish quick control of blood loss. The patient required a transfusion of two units of whole blood and was discharged the next day in good health.

A 38 year old with three previous caesarean deliveries and evidence of placenta accreta was referred for pregnancy termination at 22 weeks because her risk of massive hemorrhage and hysterectomy at the time of delivery was correctly estimated at about 75 percent. After SFGH sonographic studies confirmed placenta previa and likely accreta we undertook cervical dilation with laminaria and made blood available in case transfusion was required. To reduce the 75 percent probability of emergency hysterectomy in the situation of disseminated intravascular coagulation (DIC is quite likely with accreta) we decided to empty the uterus as quickly as possible with the intact D&E procedure and treat hemorrhage, if it occurred, with uterine artery embolization before our patient lost too much blood and hysterectomy was our only option. This approach succeeded and she was discharged in good health two days later.

These two patients provide examples from my memory of situations in which the ''intact D&E'' technique was critical to providing optimal care. I am certain that a review of our hospital records would identify cases of sever pre-eclampsia, for example, in which ''intact D&E'' was the safest technique of pregnancy termination, I hope the law will not deny our patients the best treatment we can provide them under life-threatening circumstances. Sincerely, Philip D. Darney.

This letter is from the chief of obstetrics, gynecology and reproductive sciences at one of the best hospitals in the country. It answers Senator SANTORUM's question. It provides two examples of where D&X, or what some also call intact D&E, may well have been necessary to protect the health of the woman.

Heart disease, cancer, and grave fetal abnormalities are among the many conditions that can make pregnancy especially dangerous to a woman's physical health. Under S. 3, these patients would be forced to continue a dangerous pregnancy. That is why I am offering my health exception amendment today.

Indeed, there are many tragic situations that face women today, situations that most could never imagine. There is one thing that has always characterized these debates. That is that everyone looks at them from their own vantage point without taking into consideration the situations of others. If you have not encountered a difficult situation, such as a possibly dangerous pregnancy, it is hard to know what you would do. But women and their families face these situations daily.

That is as good a reason as any why the Senate should not intrude into this area, and why the reproductive choices of women should be left to the women, their clergy, their morality, their families, their doctors, and not to the Senate.

Having said that, the amendment I am offering strikes a balance between protecting a woman's health and ensuring the D&X procedure is not abused. This amendment would ban all post-viability abortions unless a doctor determines that these abortions are necessary to protect the life and health of the woman. To ensure compliance with this ban, a doctor who performs a postviability abortion on a woman whose health or life is not at risk could be fined up to $100,000.

What is wrong with S. 3? I will take a moment to explain why I believe Senator SANTORUM's bill is a bad bill. To begin with, it is unconstitutional because it lacks a health exception. I heard Senator SANTORUM say a health exception is not necessary. It is necessary. A review of the Supreme Court's abortion decisions and the record makes clear that any ban on D&X—or what supporters of the Santorum bill incorrectly call partial-birth abortion—must include a health exception. My amendment includes such an exception.

In 1973, Roe v. Wade grounded the abortion right in large part on the States' compelling obligation to protect maternal health. In fact, the Court states that the States' interest in preserving the health of a pregnant woman grows more important as a woman's pregnancy progresses. Thus, under Roe, the need for a health exception becomes even stronger with second- or third-term abortion procedures.

In 1992, as my colleagues have stated this many times on the floor, the Supreme Court explicitly reaffirmed Roe in Planned Parenthood v. Casey. Then in the year 2000, in Stenberg v. Carhart, the Supreme Court ruled that any ban must have a health exception. I have outlined two specific examples of why such a health exception is necessary. Yet Senator SANTORUM's bill does not have such an exception.

At the same time, S. 3 attempts to ban a specific medical procedure which it calls partial-birth abortion. But the bill offers no medical definition of partial-birth abortion. Now the American College of Obstetricians and Gynecologists, whose more than 44,000 members represent approximately 95 percent of all board-certified OB/GYNs practicing in the United States, has developed a medical definition of what is a D&X procedure. The American College of OB/GYNs's definition of the procedure is very different from Senator SANTORUM's.

I have to ask, why? Why wouldn't the proponents of this bill put in a medically acceptable definition so that those physicians who were practicing medicine and may encounter this kind of case would know precisely what is prohibited? I believe I know the answer. The answer is that the bill is calculated to cover more than just one procedure. I think it is calculated to ban all abortions. I believe if the bill becomes law, it would be struck down as unconstitutional.

I ask unanimous consent to have printed in the RECORD the letter from the American College of OB/GYNs.

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

ACOG STATEMENT OF POLICY

STATEMENT ON INTACT DILATATION 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 critical 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.

Mrs. FEINSTEIN. According to the American College of OB/GYNs, any definition of D&X must include all four of the elements I mentioned performed in the proper sequence.

The proponents have refused to use this definition, although the definition has been available for years. Rather, the language in S. 3 is so vague that far from outlawing just one particular abortion procedure, the way this bill is written, it virtually outlaws any abortion procedure. This, I believe, is the true intent of this bill—a major strike, and perhaps a fatal strike, against a woman's right to choose.

Everyone agrees that S. 3 lacks a health exception. It purposefully lacks a health exception. In the Stenberg case, the Supreme Court ruled ''significant medical authority supports the proposition that in some circumstances this procedure would be the safest.'' In her opinion, Justice O'Connor stated:

Because 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 only accepts those procedures necessary to save the life of the mother whose life is in endangered by a physical disorder, physical illness, or physical injury. This lack of a health exception necessarily renders the statute unconstitutional.

Let me repeat her words.

This lack of a health exception necessarily renders the statute unconstitutional.

Now, that is not my colleague, Senator BOXER, speaking. That is not the distinguished Senator from New Jersey speaking. That is not the distinguished Senator from Pennsylvania speaking. That is not the majority leader, a distinguished physician, speaking. That is the Supreme Court of the United States. That is the law of the land.

This language could not be more clear. However, supporters of the Santorum bill argue that they can ignore this language by throwing into their bill some questionable facts that a health exception is unnecessary. They argue that the so-called findings make irrelevant the Supreme Court's constitutional determination in Carhart that a health exception is necessary.

Now, it is not only Carhart. There are a series of other cases.

One is Richard Medical Center for Women v. Gilmore, in 1999, which was affirmed by the Fourth Circuit Court in 2000. I quote:

> The record contains significant evidence that the D&X procedure is often far safer than other D&E procedures.

Another is Rhode Island Medical Society v. Whithouse, in 1999, affirmed by the First Circuit in 2001:

> Defendants claim that a D&X could never be necessary to save a woman's health, but the evidence at trial failed to support that contention. Therefore, this court finds that the D&X could be used to preserve a woman's health and must be available to physicians and women who want to rely upon it.

If that is not enough, let me mention Hope Clinic v. Ryan, a 1998 decision.

> Intact D&E reduces the risk of retained tissue and reduces the risk of uterine perforation and cervical laceration because the procedure requires less instrumentation in the uterus. An intact D&E may also result in less blood loss and less trauma for some patients and may take less operating time.

Another example is Women's Medical Professional Corp. v. Voinovich, 1995, affirmed in 1997:

> After viewing all of the evidence and hearing all of the testimony, this court finds that use of the D&X procedure in the late second trimester appears to pose less of a risk to maternal health than does the D&E procedure. This court also finds that the D&X procedure appears to pose less of a risk to maternal health than the use of induction procedures.

These are all clear district court and appellate court decisions, plus a number of clear Supreme Court decisions, and yet S. 3 flies in the face of all of them. All it offers is 15 pages of weak factual findings.

The Framers of the Constitution did not intend that Congress be able to evade Supreme Court precedent and effectively amend the Constitution by holding a hearing and generating some questionable testimony from handpicked witnesses. Let me quote former Chief Justice Warren 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.

The supporters of this bill are effectively trying to overturn binding Supreme Court precedent and to rewrite the Constitution by enacting a bill that openly violates Stenberg v. Carhart and other Supreme Court opinions. This, in my view, clearly oversteps legislative authority.

The Santorum bill also presumes guilt on the part of doctors and forces them to prove that they did not violate the law. This is putting a burden on one group of people, the very people charged with protecting pregnant women from harm. The legislation provides that an accused physician could escape liability only by proving that he or she reasonably believed that the banned procedure—whatever that procedure turns out to be, because it is not defined in the legislation—was necessary to save the woman's life and no other procedure would have sufficed.

It also opens the door to the prosecution of doctors for performing almost any abortion method by forcing them to prove they did not violate a law that can be interpreted in many different ways. Indeed, this bill is a major step toward making all abortions illegal in the United States.

Why does the Federal Government need to be involved in this issue? Why is this legislation even necessary? Roe v. Wade clearly and unequivocally allows States to ban all postviability abortions unless necessary to protect the life and health of the woman. Forty-one States already have bans on the books. So the States have accepted the premise of Roe v. Wade. If they have been concerned about postviability abortions, as most are, they have taken action, as Roe so provides.

The fact is, abortions late in a pregnancy are rare and usually performed under very tragic circumstances. Some States have not seen the need to legislate in this area. Surely anyone who believes in States' rights must question the logic of imposing a new Federal regulation on States in a case such as this, where States have already legislated.

Finally, I say to my colleagues, the Santorum bill is a bad bill. It is clearly unconstitutional. I have cited district court cases. I have cited appellate court cases. I have cited Supreme Court cases. S. 3 fails to provide a straight health exception for the woman, which is necessary to stand the constitutional test. It is not the role of the Federal Government to make medical decisions. It should be up to the doctor and his or her medical judgment.

This bill is bad because it attempts to ban a medical procedure without properly identifying that procedure in medical terms; ergo, it muddies the water and it throws all procedures into risk. It could affect far more than the procedure it seeks to ban. And it presumes guilt on the part of the doctor, something that, in the case of physicians, may be unprecedented in American law.

In our criminal justice system, somebody has to prove you guilty. You are presumed innocent. This bill puts the burden on doctors, and it ignores the vital health interests of women who are often facing tragic complications in their pregnancies.

That is why I am offering this complete substitute to S. 3. This substitute amendment puts medical decisions back in the hands of doctors. If the doctor believes such a procedure is necessary to protect a woman's life or health, then he or she should be able to perform the procedure. I believe it is that simple.

I strongly believe that Congress should be supporting legislation that protects a woman's health. For the sake of all Americans, 80 percent of whom believe they should have the right to choose to protect the woman's health, from all walks of life, present and future, I urge my colleagues to join me in supporting this amendment.

Madam President, I yield 15 minutes of my time to the Senator from New Jersey.

Mr. SANTORUM. Can we go back and forth?

Mrs. FEINSTEIN. I have no problem with that.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Pennsylvania.

Mr. SANTORUM. I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I thank the distinguished Senator from Pennsylvania. I will not speak very long this evening.

Madam President, I would like to open my remarks by just talking a minute about what one of our very distinguished Senators, Mr. Patrick Moynihan, had to say about this procedure. We are not here arguing right to life or those who favor abortion. What we are here talking about is a procedure that has been described by Senator Patrick Moynihan as follows:

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

That is what the distinguished Senator from New York said.

We can spend all the time we would like in the Chamber talking about Roe v. Wade, about right to life and pro-abortion and where the American people are, where the American women are. But that is not the issue. The issue is, where do we stand on infanticide, that is to say, where do we stand on banning a procedure that reduces—that diminishes the life of a child that has been born and has exited the uterus? And, as Senator Moynihan said, what on Earth is this procedure?

I have been listening attentively. I understand the issue is a very personal one, a very serious one. It is one that is very difficult for many people to even come to the floor and debate, much less describe.

I don't choose to describe the procedure. I think my friend, the former Senator from New York, does it well enough in a few words when he says in this case what we are talking about is a child that has been born and has exited the uterus.

The question before us is what should we in the United States say about

whether or not a doctor should accommodate the killing of a child as so described?

To me, where people stand in this country on abortion or who wants Roe v. Wade and who doesn't isn't the issue. The issue is, where are we on the actual taking of the life of a child that has already been born and has exited the uterus?

Roe v. Wade—where our Supreme Court chose to enter this fray—does not address this issue because they are talking about a much earlier period in the development of a fetus in the mother's womb. Partial birth abortion takes place way past the Roe v. Wade time schedule and, in fact, a child is born and then a choice is made regarding the life of that child.

There are arguments made that this ban is not constitutional. This is not true. I believe, having read the case of Roe v. Wade itself and then the Nebraska case that followed, that it is perfectly clear to me that the Supreme Court is not saying you cannot have a valid statute if it properly describes the procedure and it says that a child who has been born and who has exited the uterus can be put to death. Clearly, the court is not saying in the Nebraska case, nor in the Roe v. Wade case, that you cannot legislate with regard to this issue. I don't believe one has to spend a great deal of time on the issue. It seems to me you are either against partial birth abortion or you are for it.

If you are against it, you vote for the bill of the Senator from Pennsylvania. In that event, the legislation will work its way through the Congress, as it already has twice before. It will go to the President, as it has twice before. And again, we will ask the President, Will you sign it or not?

I believe it is patently clear that Congress will speak again just as it has spoken heretofore twice—not just the House, the House and the Senate. Then it will go to the President, but this time it will be this President. It is my understanding he will sign it. Therefore, the overwhelming will of the U.S. Congress about an issue of grave significance and of great importance will have been decided by the policymakers and presented to the executive branch, and it will be signed.

I believe we minimize this issue by saying only a few of these procedures are done. I submit that I have read literature that says between 3,000 and 5,000 of these abortions are done. I don't believe anybody can prove that there are only a few done, but I submit if there are only a few, that is a few too many.

From my standpoint, I compliment the distinguished Senator from Pennsylvania. He has carried this bill. He has argued it not only valiantly but with professionalism. I commend him and suggest to him that his many years of effort in this regard will soon see daylight.

I yield the floor. I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 31½ minutes remaining.

Mrs. FEINSTEIN. Thank you, Madam President. I ask that 15 minutes go to the distinguished Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. I thank the Senator from California. I thank her for permitting me to speak.

Madam President, I have listened very carefully to the arguments being made. I think a fundamental question preempts much of the discussion that is taking place. I think the essentiality to be considered is who determines decisions about a woman's health? As far as I am concerned, it is a relatively simple proposal. Is it the Senate which determines what we do about a woman's health when her health could be in jeopardy and she makes the decision, in consultation with her physician? Should it be the President of the United States? Should it be idealogues who want to control the behavior of legitimate actions of other persons? Or should it simply be a patient in consultation with her doctor and her family, legitimately covered even in reviews by the Supreme Court?

The bill offered by the junior Senator from Pennsylvania says politicians know best. And I say that is wrong. Keep the politicians out of the doctor's office.

We should not interfere with the medical judgment of a licensed doctor. Only a woman's personal physician can make judgments about the health risks of child birth for that particular patient. If a decision to terminate the pregnancy is made, it should be only the woman and her family and her personal physician.

I notice the principal supporters of this legislation are the same men who want to take away decisionmaking from the women of this country for their own health. As of today, this bill has 44 cosponsors and all but one of them are males. This creates the establishment, as I see it, of ''male-ogarchy'' over women's rights.

I say let women decide how to protect their health and their families' well-being which is often a question associated with this.

I thought we overthrew the Taliban telling women exactly how they can act, when they can act, and what they should be able to do. I continue to hear a great deal of concern from the other side of the aisle about fetuses which they call unborn children. What about the born children?

I am reminded of what Congressman Barney Frank said. He is from Massachusetts. He said for some people, their zeal for life seems to begin at conception and then ends at birth.

Next week we are going to likely work on the budget resolution. I expect that the Republican budget will track the President's fiscal year 2004 plan.

What happens to born children under the President's budget?

What happens to pre- and postnatal health programs? What happens to child care and nutrition programs? What happens to education and afterschool programs? What happens to job training programs? I will give you just a few examples.

Under the President's budget, the Head Start Program is weakened by turning it into a block grant. We all know the purpose of turning it into a block grant. It is to make it easier to cut the funding for it. In effect, the President is saying to the States: Here, you take this. You figure it out. And by the way, we are going to cut it. The result is that thousands and thousands of children who currently participate in Head Start will be thrown out of the program. It is a very valuable program.

Under the President's education budget, millions of children are left behind. Even though the President named his education proposal No Child Left Behind, the President's budget falls $9.4 billion short of fully funding the new education law that he signed into law only last year. The President would leave more than 6 million born children behind by refusing to provide $6.2 billion in title I funding he promised for 2004.

The President wants to cut funding for schools for military children, of all things. The President's budget would eliminate Impact Aid education funding for 110,000 born children whose parents are being mobilized to fight the war on terrorism and against Iraq.

He wants to make it harder for poor children to get school breakfasts and school lunches that, in many cases, are the only nutritional meals they will get in a day.

The President cuts Pell grants and eliminates new funding for Perkins loans. The President wants to reduce the maximum amount for a grant. And the President would eliminate $106 million in funding for new Federal contributions to Perkins loans, which provide low-interest loans for undergraduate and graduate students with exceptional financial need.

What about the children of working-class families? The President is willing to eliminate child care services for 200,000 children over 5 years. These are born children. What about them?

If we want to help protect children, why hasn't there been a cry in this Chamber for sensible gun legislation to make our schools and communities safer? In the year 2000, my gun show amendment passed the Senate. It was designed to take away unlicensed dealers' prerogatives to sell guns to anybody they wanted to. But it was killed in the House by the Republican leadership.

There are many other sensible gun laws we could pass, including a requirement that guns have child safety locks. Each and every year, approximately

3,300 born children are killed by gunfire. What about them? Are we going to pass laws to help protect children from gun violence? Why isn't that on the agenda of the junior Senator from Pennsylvania?

I commend the President for his commitment to fight the global HIV/AIDS epidemic we see in front of us. But I ask, what is the President doing about the growing AIDS epidemic right here in the United States, where one-half of all new HIV infections are among people under 25? What about these born children?

Right now, the Senate is trying to limit the choices women and their doctors have in making the most personal and painful decision.

In 1995, Congress repealed the motorcycle helmet law—I was the author of that law—because it was seen as an intrusion by the Federal Government into people's lives. Close to 3,000 people—most of them under the age of 30—die each year in motorcycle accidents. But if we tried to bring back the helmet law, I am sure we would hear about how intrusive it would be in people's lives.

The bill currently before the Senate is nothing more than an egregious invasion of privacy and an affront to the doctor-patient relationship.

Some of my colleagues would like us to believe women casually decide to terminate a pregnancy after carrying that fetus well into the third trimester. The ugly, inaccurate, and unfair portrayal some of our colleagues offer about a decision to terminate a pregnancy simply is not true. In fact, 89 percent of all abortions in the United States are obtained within the first 12 to 13 weeks. Fewer than 1 percent of all abortions are performed after 20 weeks.

In the most gruesome terms, the supporters of S. 3 draw a revolting picture of a process that should be avoided if at all possible. But do they present an alternative scenario of a family with children and a mother who is too ill physically or emotionally to continue giving guidance, love, and strength to her family because we in Congress intervened and told her doctor what he or she could and could not do in providing appropriate medical treatment?

This issue is one of trust. Do you trust politicians to make complicated medical decisions affecting women's lives? Or will you leave it to medical experts consulting with families and with patients? I say, let's give women and their doctors—not politicians—the right to make the choice.

Another item, Madam President: I would note the junior Senator from Pennsylvania continually quotes from an article that appeared in the Bergen Record, a newspaper in my State. I want to set the record straight since the Senator from Pennsylvania invokes a newspaper in my State. Years ago, it was discovered this newspaper article contained false information. I refer my colleagues to the CONGRESSIONAL RECORD of September 26, 1996, in which I entered a letter into the RECORD from the health clinic at issue in the article. The letter showed the statistics cited in the newspaper article are false. It is now 6 years later, and I would say it is time for the junior Senator to refrain from using information that is demonstrably false.

There is an old saying: Everyone is entitled to their own opinion, but not their own facts.

The decision whether to vote for this bill ought to be an easy one. A recent Supreme Court decision struck down a Nebraska State law modeled on the very same legislation presented before the Senate by the junior Senator from Pennsylvania.

The Supreme Court held the Nebraska statute to be unconstitutional because it is too vaguely worded and it does not contain any exception for the health of the mother. That was the United States Supreme Court that said that.

The disregard for the health of a woman in this legislation is unconstitutional and it is offensive. I believe the Government should not intrude on these complicated decisions, or tell a woman with serious health or fertility risks how to make this difficult decision.

I am going to oppose this intrusion into the doctor-patient relationship. Let us continue to give women and their families—not politicians—the right to make these difficult choices. Let them determine what is right for their well-being and the well-being of their families.

Madam President, I urge my colleagues to oppose this intrusion. It is not a choice that should be made for a woman by politicians who do not feel the pain of this decision.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I ask unanimous consent to add Senator STABENOW and Senator EDWARDS as cosponsors of my amendment.

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

The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I yield 7 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Madam President, I rise in strong opposition to the amendment that has been offered by my friend and colleague from California.

A few hours ago, the Senate decisively rejected, in a vote of 60 to 38, a substitute amendment by my colleague from Illinois. The Feinstein substitute amendment we are now considering, frankly, is even worse than the failed Durbin substitute amendment. I would like to spend a few minutes to discuss this with my colleagues and explain exactly why I believe the Feinstein amendment simply is not good public policy.

The Feinstein substitute says that it would be ''unlawful'' to perform an abortion if ''the fetus is viable'' in the judgment of ''the attending physician.''

First, as I have stated earlier, most partial-birth abortions are conducted when the fetus is within 20 to 26 weeks, so, just as with the Durbin amendment, the Feinstein amendment does not even cover most partial-birth abortions.

Furthermore, the terms of the substitute, when you look at the language, make it practically useless in stopping these abortions.

What does the language in the Feinstein amendment mean? Very simply, it means the abortion provider—the person who will perform the abortion, the person who makes a living doing abortions—is the person who will make the decision of whether or not the abortion is legal.

What do I mean by that? Let me explain.

Specifically, the Feinstein substitute does not define when a fetus is viable.

It further imposes no restrictions on the abortionist. Instead the substitute would permit the abortionist to decide what viability means. The abortionist is the one under this substitute who makes that decision. As long as the abortionist says the fetus is not viable, then the Feinstein amendment would not apply. He could go ahead and perform the abortion. This is obviously not acceptable.

We don't have to search very far for an example of how abortionists would apply this standard. At least one abortionist who performs third-trimester abortions has publicly taken the position that viability occurs only when a baby can survive independently of the mother without any artificial assistance. Of course, that is not what most doctors mean when they refer to viability. It is not the standard understanding. But under the Feinstein substitute, this standard, as defined by this doctor, would be fine.

Even just this much discussion should be enough to convince everyone of the dangers of accepting this substitute, but there is more. Under the terms of the Feinstein substitute, even if an abortionist should, completely against his self-interest, declare the baby he has been hired to kill is, in fact, viable under the Feinstein substitute, he could still perform the abortion. All that would be required under the Feinstein substitute would be for the abortionist to determine, in the medical judgment of the abortionist, that the abortion was necessary to preserve the life or health of the mother.

As I discussed earlier today, the term ''health of the mother'' is almost impossible to clearly define, based on prior Supreme Court decisions. In fact, the Supreme Court has declared, in an abortion-context decision, that this term is extremely broad. I quote again for my colleagues from the Supreme Court case of Doe v. Bolton. Here is what the Court said:

[P]hysical, emotional, psychological, familial, and the woman's age—[are] relevant to the well-being of the patient. All these factors may relate to health . . .

That is the Supreme Court, Doe v. Bolton. Under this definition, almost any excuse would be enough to justify a late-term partial-birth abortion. Yet the abortionist would be within the law because he determined the health of the mother was at risk.

In fact, we have a real-life example of just how this power to define a mother's health would be used. Kansas is currently the only State in the Union that requires partial-birth abortions to be reported distinct and separate from other abortions. In 1999, Kansas abortionists reported they performed 182 partial-birth abortions. They also reported all 182 of these partial-birth abortions were performed on babies who the abortionists themselves found to be viable.

Further, they reported that all 182 of these postviability partial-birth abortions were performed for mental as opposed to physical health reasons. Those are very interesting statistics. They tell us a lot. Every single one of these partial-birth abortions, 182 out of 182, were reported by the abortionist as being performed on viable children for mental as opposed to physical health reasons.

Mr. SANTORUM. I yield the Senator 1 additional minute.

The PRESIDING OFFICER. Without objection, the Senator is recognized.

Mr. DEWINE. After all this, if somehow, somewhere, somebody were able to prove the abortionist had in some way violated this law—and I don't know how that would ever happen—the only penalty would be a fine, a civil penalty.

If you add it all up, the effects of this substitute amendment are clear. It would leave someone like Dr. Haskell, who I have talked about, a professional abortionist who only does partial-birth abortions, to perform partial-birth abortions practically at will. Accordingly, this amendment would allow thousands of these gruesome procedures to continue to be performed.

A vote for the Feinstein substitute is simply a vote to kill the Partial-Birth Abortion Ban Act. It is a vote simply to allow partial-birth abortions to continue.

Therefore, I ask my colleagues to defeat this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I am a cosponsor of the amendment, and on behalf of Senator FEINSTEIN, I yield myself 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized for 5 minutes.

Ms. STABENOW. I appreciate the deeply held views on all sides of this issue. But first I will indicate there is not a more fundamental issue for the women of this country that relates to our privacy, respect for our own decisionmaking, as well as our own religious beliefs, than this fundamental issue we are debating. I also remind my colleagues that the term partial-birth abortion, there is not a procedure called that, but the late-term abortion procedure is in fact one-tenth of 1 percent of all of those procedures, all abortions that are done every year. We are talking about a very small group of procedures done when there are real tragedies.

These are wanted pregnancies, women who have been excited about having babies and find out very late in the term of the pregnancy that there is a serious or fatal problem. And their families grieve. They grieve over the decisions they have to make about how to proceed, given the information.

I believe we need, as a governmental body under the Constitution, to respect their privacy, their religious freedom, for them to be able to struggle with their own decisionmaking, their family's and their faith, to be able to do what is best to protect their own life and their own health.

I rise to support the Feinstein amendment strongly and would be surprised, given the vote on the Harkin amendment, if this amendment did not pass. We just had a vote where 52 Members of this great body voted to uphold Roe v. Wade, voted to uphold the constitutionality, the decision made by the Supreme Court in that case. The Feinstein amendment does nothing more than repeat the language as it relates to the life and health of the mother. It repeats what is current law in terms of Roe v. Wade. So those who support Roe v. Wade, who supported the Harkin amendment, should be supporting this amendment as well.

I would like to share a couple of letters that talk about what we are really doing.

This is a statement by Maureen Britell, given on March 10 of this year. She writes:

In February of 1994, my family was happily awaiting the birth of Dahlia, our second daughter. My pregnancy was progressing smoothly and we were getting more excited as the days and the weeks passed. At the time, my husband, Andrew, was on active duty in the Air Force and had been unable to come to any of my routine prenatal checkups. He wanted to share in the excitement, so when I was 5 months pregnant, we scheduled an additional ultrasound.

When we went in for our appointment, that joy dissipated. The technician was unable to locate my daughter's brain. After my doctor came in, he informed us that Dahlia had a fatal anomaly . . . where the brain stem develops, but not the brain.

Madam President, can you imagine how that couple must have felt at that moment? As a mother of two children, I certainly can. She goes on to say:

I went to the New England Medical Center for a high-level sonogram, which confirmed what my doctor had told me. The medical experts [there] . . . reviewed our options with Andrew and me, but they all recommended the same thing: to protect my health, we should induce labor.

I am a Catholic and the idea of ending my pregnancy was beyond my imagination. I turned to my parish priest for guidance. He counseled me for a long time and, in the end, he agreed that there was nothing more that I could do to help my daughter.

Madam President, I ask the Senator for 2 additional minutes.

Mrs. FEINSTEIN. I yield 2 more minutes to the Senator.

Ms. STABENOW. She said:

With the support of our families and our priest, Andrew and I made the decision to end the pregnancy.

I was scheduled for a routine induction abortion in which medications are used to induce labor. My doctors anticipated that it would be a standard delivery and that because Dahlia had no brain, she would die as soon as the umbilical cord was cut.

Madam President, again, can you imagine writing this letter and the pain of this woman and her family?

After 13 long hours of labor, I started to deliver Dahlia. Unexpectedly complications arose and Dahlia lodged in my birth canal. The placenta would not drop. Our doctors had to cut the umbilical cord to complete the delivery, and avoid serious health consequences for me. Dahlia died while still in my birth canal—the same description used in the so-called ''partial-birth abortion.''

My husband and I still mourn the loss of Dahlia. However, because of the excellent medical care I received, I was able to become pregnant again and in June 1995, we welcomed Nathaniel into our family.

Now I'm sharing my story not only as a mother who would be banned from having an abortion, but as a military wife. I find the timing of this bill highly offensive, as we military families are just days away from sending our loved ones into armed combat. I resent the administration using families like mine as a cloak in their effort to ban reproductive healthcare in this country.

In a perfect world, I would never have to write you this letter. Every pregnancy would be wanted, healthy and happy—and no loved ones would be going off to war. Until that time, however, there will be families like mine. And until that time, abortion must be kept safe, legal and accessible.

Madam President, we have thousands of women who have shared similar stories. We have thousands who are asking for us to say no to this extreme legislation, to support the Feinstein amendment, and to join with us—all of us—in efforts to come forward to prevent unwanted pregnancies.

I was so disappointed that Senator MURRAY's amendment did not pass—a positive effort to focus on prevention, on coming together to focus on stopping the unwanted pregnancies on the front end. I was very disturbed to see even a more restrictive effort to show how extreme this effort is—even Senator DURBIN's amendment did not pass this body.

This is an extreme measure, which will take away the ability for women to respond when their life or their health is in jeopardy as a result of a pregnancy. This is not what we should be doing in the Senate. I urge my colleagues, reaffirm the vote on the Harkin amendment to support Roe v. Wade by supporting the language in the Feinstein amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Madam President, to address the letter the Senator from Michigan read, I want to assure the young lady who wrote that letter to the Senator from Michigan—and it is a very compelling story, one that has my sympathy, certainly—my heart goes out to her and her family for what she had to go through. Let me, please, assure her it is crystal clear from the language in the bill that what happened to her is not offered under this legislation. I will read it:

The term partial-birth abortion means an abortion in which the person performing the abortion deliberately and intentionally vaginally delivered the living fetus.

Here is the key operative language:

delivered the living fetus for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus.

The doctor in that case, first off, did not perform an abortion, did not deliver the child for the purpose of killing the child. So it is clear beyond a shadow of a doubt—and we have discussed this at hearings and on the floor multiple times—there are obviously times, unfortunately and tragically, where a birth is either induced, or a natural delivery where complications arise, and for the life of the mother the pregnancy is terminated. That is obviously a horrible and tragic situation. That is clearly outside of the bounds of this definition.

I just assure this young woman who wrote the Senator, and maybe even met with the Senator from Michigan, her case would not under any circumstances—if you are going through a procedure for the intention of delivering the child—this is for a person performing an abortion. This doctor was performing a delivery of a child who had complications, which resulted in having to terminate the pregnancy to save the life of the mother. That is clear in two cases. No. 1, they weren't performing an abortion. They didn't deliver for the purpose of performing an act that the person knows will kill the partially delivered fetus. No. 2, there is a life-of-the-mother exception in the bill. So in either case—predominantly the first case—the case the Senator from Michigan read——

Ms. STABENOW. Will the Senator yield for a moment?

Mr. SANTORUM. Yes.

Ms. STABENOW. I wanted to clarify that, in fact, given the situation, they were performing an abortion to do that. That was the intent of the procedure. It was an abortion. Additionally, I say the mother's life was not in jeopardy, but her health and future fertility were in question. There were a number of issues relating to her health as well.

I just indicate, with all due respect, I think the issue here, when we are debating medical procedures on the floor, really gets to the point about whether or not we in the Senate should be debating medical procedures. Earlier, there was a debate about whether a child which was born with a brain outside of its head was in fact to be categorized as a disabled child. All of these issues we are debating here as non-medical personnel, we don't know the facts or what happened in any individual case. So that would be my concern.

Mr. SANTORUM. Maybe I wasn't listening as attentively as I should have been. Maybe I heard it incorrectly. I am happy to review what the Senator read. I apologize if I got that wrong.

In either case, I wanted to clarify we are not talking about cases where there are not abortions being performed.

With respect to the statement that we should not be making these decisions, with all due respect, we make decisions here about everything under the sun—things that 50 years ago who would have thought we would be debating. To suggest we don't have the technical expertise to determine what is a brutal, gory, horrendous procedure and ban it—we make illegal in this country lots of things we find to be morally objectionable and offensive. I think we have every right—in fact, we have a duty to speak on this. To suggest we in the Congress don't have the right to make these decisions, that we have to give it up to the courts—unelected people, just give it up to them; I don't need to be ruled by a bunch of judges.

People elected me and the Senator from Michigan and everybody else in this Chamber to go forward and to make decisions about issues of importance to the people of our States. That is what we are going to do.

Ms. STABENOW. Will my colleague yield one more moment?

Mr. SANTORUM. I will be happy to yield.

Ms. STABENOW. I interject, we are not asking that this right be given up to the courts; we are asking that these decisions be left up to a woman, her family, and her faith.

Mr. SANTORUM. I appreciate the Senator's comments, but in all due respect, she is leaving it up to the courts because the courts have made this decision and the courts have dictated the law of the land. They have proscribed in elected representatives the right to have any impact on that. We had that debate just a few minutes ago with Senator HARKIN and his amendment.

The courts have completely trumped the legislature. They have decided to take an entire body of law away from us and the State legislatures. I believe the Senator was in the State legislature at one point. That is my recollection. They have taken it away from the State legislatures, taken it away from the Congress, taken it away from people in our democracy, in our Republic, and decided to hold it up across the street where nine, at the time men, decided to take the law into their own hands by creating a right that did not exist. It just did not exist. I do not know how you say this. All through time, all through the history of this country, this right was there and we did not find it. All of a sudden, we found this right in the middle of the Constitution in this liberty clause.

As I said before, they took the liberty clause of the Constitution, and within that clause they found this new right, this new right that took liberty and put it ahead of life, even though our Founders put life ahead of liberty because that is what our Creator did. We are endowed by our Creator with life, liberty, and the pursuit of happiness. Not liberty, life. You have to have life to enjoy liberty. What the Supreme Court did was put some person's liberty ahead of another person's life. That is fundamentally wrong, I do not care what your feeling is on abortion. It is wrong, and I suggest the Senator from Michigan and both Senators from California would agree with me that when the Supreme Court did that in the Dred Scott case, when they put the liberty of the slaveholder ahead of the life of the slave, the Senator from Michigan I am sure today would stand up and say: That is wrong; you cannot put someone's liberty rights ahead of someone's life rights.

What argument do you make in the case of abortion? Because that is it exactly. Remember, the liberty clause of the Constitution is the genesis of a right to an abortion. The liberty clause is the genesis of the right to an abortion, and it trumps the life of this other human being. That is the fact.

You can argue that it is a different case—people have—that somehow this child inside the womb is not a human being. But it is. It is genetically human. It is alive. It is a living human being. You can say in this case it is a special case. That is what they said in the 1850s, right here on this floor. They said it was a special case—a special case because, you know, these black people, they are not like us. These little children, they are not like us. But that is what they did in the 1840s and 1850s.

They put in the Dred Scott case that the liberty rights of the slaveholder trump the life rights of the slave. The slave was property. The child in the womb, under the Supreme Court Roe v. Wade decision, is property. Look at this case with open eyes. Look at this case and what it does, the history that is being repeated in the world today, and you wonder why people still march in the streets. It is the same reason—the same reason. It is the same case. It is Dred Scott, and for some reason we just choose not to see it.

What does this amendment do? It affirms Dred Scott. If you like Roe v. Wade, vote for this amendment because this is the law right now. Basically, the Harkin amendment makes no change. It takes the partial-birth statute, wipes it out, and just says: The law of the land is the law of the land. OK. We have accomplished nothing here. We have accomplished nothing over the last 4 days.

If you eliminate the underlying statute, which is the partial-birth abortion bill which we believe is constitutional, you wipe it out, all you do is restate the law, and that is what the Feinstein amendment does. So if you are for the partial-birth abortion bill and vote for this, do not go home and say you are for the partial-birth abortion bill because you are not because this amendment excises the underlying bill and replaces it with a restatement of Roe v. Wade. That is what this amendment does. Nothing else.

I suspect the Senator from California would agree with that. I do not think I am mischaracterizing her amendment whatsoever. It restates Roe v. Wade that says you cannot have abortions postviability except to protect the life or health of the mother. That is what Roe v. Wade said; that is what this amendment says.

In practice, of course, health means anything, so there is no restriction at all. In practice, this amendment will mean the same thing: There is no restriction at all.

With respect to the Durbin amendment—again, I said in all candor to him and I will repeat it on this occasion—at least I believe the Senator from Illinois was trying to find some restriction, was trying in a rather painful and I would argue ultimately failed way to find some movement, some attempt to reduce or put some stricture on postviability abortions. I think he failed in doing so, but I think he made an honest attempt to try. This does not even attempt to try. This basically restates Roe v. Wade.

Again, as far as I am concerned, this is the vote on the bill. If you vote for this, you basically vote to kill the bill and replace it with nothing. What you replace it with, again I would make the argument, is the Dred Scott case. That is what you replace it with. You replace it with putting people's liberty rights above people's life rights.

I repeat over and over, there is a reason the Founders put the ordered rights in the place they did. I will quote again:

> . . . they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

I think everyone in this Chamber would agree, you cannot pursue happiness if you are not free, and you cannot enjoy freedom if you are not alive. So, of course, you cannot put freedom ahead of life. You cannot put someone's freedom ahead of someone's life. That is not right. That is out of order.

As I said before, we did it once before in this country and we paid a horrible price, and we have left a horrible legacy that has stained this country. I would argue we are doing the same thing. We are repeating the failures of history. For some reason—as many people did in the 1840s and 1850s, good upstanding—in the movie ''Gods and Generals,'' people have objected to the fact all these people were God-fearing, southern generals and others; they were portrayed in almost a good, positive frame that these are good people; how can they believe that someone's liberty rights trump someone's life rights? How could they believe, these good, God-fearing people—these are faithful Protestants, Catholics, and Jews—how could they believe that? You just scratch your head and say they must have been bad people.

I do not think they were bad people, and I do not think the people on the other side of this issue are bad people. I think they just got it wrong. I think they do not understand the lessons, the wisdom of the people who wrote our founding documents, the wisdom of understanding basic rights and the ordering of those rights to give meaning to those rights because if you misorder the rights, they have no meaning. If you put happiness before liberty so that your right to happiness trumps my right to freedom, well, then, I am your slave. I am the object of your happiness for your own benefit. That is not fair. If you put my happiness in front of your life, well, obviously no one is going to say that is fair. And the same thing, if you put my freedom to do what I want in front of your right to life, most people would say that is not fair. But that is the law of the land. That does not say this is not a difficult issue. That does not say there are not cases that could pull at your heart strings and that the decisions people have to make are tough decisions. They are. But that is why——

Mrs. BOXER. Will the Senator yield for a question?

Mr. SANTORUM. In a moment. But that is why happiness is at the end. Because you know what, life and liberty are all about tough choices sometimes, all about making decisions which are not necessarily easy, and happiness results at the end, hopefully. We have to make a lot of tough decisions to get to that point. It is of lower priority. There are higher, more noble things than the pursuit of happiness. That is what our Founders understood. These basic rights, as painful, as troubling, and as difficult as they are to preserve, are important because without them there is no hope of freedom, there is no hope of happiness, there is no hope of prosperity. And so it is the case with the unborn. There is no hope of liberty, there is no hope of happiness, because we have misordered our priorities and rights in this country.

I know that is a tough message, and I know it is not a popular thing to hear, but I believe in my soul this is corrupting the body of this country, as slavery corrupted the body of this country for 200 years, and then some. We have an obligation to face history and to face the reality of what we are doing, and all we are asking is to end one little brutal procedure, one little insult to humankind. Three inches away from that legal status that would deem this person back in order, back in order where their life counts more than somebody else's liberty; 3 inches from coming under those founding documents that give them rights. But they might as well be 3 miles, for their life is ticketed for extermination in such a brutal fashion, in the hands of a doctor who was taught to heal.

We have an obligation to end and stop evil, even if it is just a little thing, even if it is only a few thousand times a year in this country. It almost boggles my mind to think that 3, 4, 5, 6, whatever thousands of these that occur a year is considered to be rare and infrequent. I say to my colleagues, if they are for the underlying bill, they cannot vote for the Feinstein amendment because it simply terminates this bill and replaces it with nothing, replaces it with current law.

No one who votes for this can say they are for the partial-birth abortion ban, because they are not. They are for eliminating that ban and replacing it with current law, a reinstatement of Supreme Court law, which is nothing as far as doing anything about this brutal procedure.

I am happy to yield. Can I yield on the Senator's time if that is okay?

Mrs. FEINSTEIN. May I ask, first, how much time we have remaining?

The PRESIDING OFFICER. The Senator from California has 10 minutes 36 seconds. The Senator from Pennsylvania has 25 minutes 23 seconds.

Mr. SANTORUM. I will yield on my time.

Mrs. BOXER. I appreciate that. I have two questions for the Senator. Is the Senator aware that 78,000 women a year around the world die of illegal abortions? And since he stated that the other figure I put out is false, I went back and got the World Health Organization number. Is the Senator aware of this?

The second question I have is: The Senator, in having a debate with Senator CLINTON, which I thought was probably one of the more instructive things that has happened this afternoon, talked eloquently about the rights of the disabled, and I wondered why the Senator, in the two last votes that we had, voted against the Individuals with Disability Education Act, IDEA funding, which would fund education for children with disabilities.

Mr. SANTORUM. As the Senator knows, I have been one of the strongest advocates for increase in funding for the disabled. I was one of the people who worked on this side of the aisle to try to get a dramatic increase. When I came to the Senate, IDEA was funded at 5 percent. It was promised at 40. One of the things I said on this floor and said repeatedly across my State, it was my objective to get it to where it was promised in 1975, which was 40 percent.

One of the concerns I had with the actual reauthorization of the legislation was not that we should not be putting more money in to help people with disabilities through the educational process. I disagreed with some of the substantive changes within the law,

particularly when it came to how we——

Mrs. BOXER. This is appropriations. These are two votes.

Mr. SANTORUM. In that case, you are talking about the mandatory spending issue, and I do not believe——

Mrs. BOXER. No.

Mr. SANTORUM. That is my understanding.

Mrs. BOXER. I appreciate the Senator has not seen it.

Mr. SANTORUM. I have not seen it. I know I voted against mandatory spending for IDEA, but I voted consistently for increases.

Mrs. BOXER. These are two votes for 2 years in a row.

Mr. SANTORUM. As the Senator from California knows, since Republicans took control of the Chamber in 1995, IDEA funding has gone up from 5 percent to, I believe, about 15 to 20 percent right now through the initiative of many of us who saw this as a real scourge on the Congress for mandating something, saying we would fund it, and then we do not.

I do support it. I may not support the level of increases. As the Senator knows, when a hefty increase is supported, then somebody comes along and tries to double or triple that and blow a hole in the budget. I think my record is clear that I voted for responsible and steady increases to get us up to the 40 percent, and I have made a pledge to do so.

Mrs. BOXER. I ask unanimous consent that the record of these votes be printed in the RECORD.

Mr. SANTORUM. I have no objection.

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

H.R. 4577

AMENDMENT NO: 3699

Harkin motion to waive section 302(f) of the Budget Act to permit consideration of the Harkin-Wellstone amendment which provides full funding for the Individuals with Disabilities Education Act (IDEA) by increasing it from $7.35 billion to $15.8 billion.

Motion rejected: Yeas—40; nays—55; not voting—5.

Mr. SANTORUM. I want to counter a couple of other things. The Senator from New Jersey says I keep referring to the Bergen County Record, and he made a statement that has been proven false. I can say that the Bergen County Record has never printed a retraction to the story and claims to this day that their investigative reporter was not wrong. So there is an honest disagreement. The paper stands by their story, has not printed a retraction, and has said publicly that they have no intention of doing so. So just because Senator LAUTENBERG found somebody who disagrees with the story does not mean it is not true.

I want to go, finally—and then I will be happy to yield back to the Senator from California—to what this health exception means.

Under Doe v. Bolton, the health exception means—and I am going to read the case. ''Health'' was broadly defined. Medical judgment may be exercised in light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment.

So just understand what this amendment does. It strips out the language of the partial-birth abortion ban, replaces it with the language basically from Doe v. Bolton, which is the current law, which is no exceptions. In other words, there are no limitations under current law, by the courts, for any abortion at any time. There simply are no limits.

So that may be where many Members of this Chamber are, and I respect that. I disagree with them, but I respect that. To simply restate the law and then claim that one is for the partial-birth abortion bill, I think, falls hollow on the Chamber and hopefully we can defeat this amendment.

UNANIMOUS CONSENT AGREEMENT EXECUTIVE CALENDAR NO. 38

Mr. SANTORUM. As in executive session, I ask unanimous consent that following the vote in relation to the Feinstein amendment, the Senate proceed to executive session, and an immediate vote on the confirmation of Calendar No. 38, William Quarles, to be U.S. District Judge for the District of Maryland, with no intervening action or debate; further, I ask that following that vote, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The Senator from California.

Mrs. FEINSTEIN. I want to make a couple of comments. The first comment is that comparing my amendment with the Dred Scott decision is ridiculous. Having said that, the distinguished Senator from Pennsylvania is right about one thing. In a sense, this is a codification of Roe.

I have sat on the Judiciary Committee. I ask my colleagues the question: What do you think of Roe v. Wade? Overwhelmingly, most would say it is well-settled law. The States have adapted to it, and Roe v. Wade allows States to restrict abortion severely, if the fetus is viable, that is, can be sustained outside of the uterus. And over 40 States have banned or severely restricted postviability abortions.

S. 3 is duplicitous because it says it does one thing but does another. It says that it bans partial-birth abortion, but it does not adequately define it, and so bans much more than this method. Moreover, the bill does not define D&X in a medical context.

Respectfully, Senator SANTORUM is not a physician, and, respectfully, he is not going to be carrying out a surgical procedure. But there are hundreds of thousands of physicians out there who are carrying out this medical procedure. And Senator SANTORUM wants to leave them with an unclear definition in this bill. And the precise, medically accurate definition I read into the RECORD, the definition of D&X as proposed by the American College of Obstetricians and Gynecologists, is not the definition in the bill.

What I have done is tried to write a simple, straightforward bill that essentially sustains Roe v. Wade. So those who believe in Roe v. Wade should vote for my amendment. It says that any abortion is illegal once the fetus is viable, once the doctor determines that the fetus can sustain itself outside of the womb, unless the life and the health of the woman are in jeopardy. That is Roe v. Wade. The amendment is also consistent with a whole host of federal court decisions which I read and in the Supreme Court's decision in Stenberg v. Carhart where Justice Breyer, Justice O'Connor, and three other justices very clearly said that a Nebraska statute very similar to S. 3 falls because there is no exception for the health of the woman.

The Senator has talked about the liberty clause. And Roe v. Wade, yes, did come from the liberty clause of the due process clause of the 14th amendment and other parts of the Constitution. Roe helped establish a basic right of privacy for women.

I get so annoyed when men constantly strive to take away hard-won rights from women. Respectfully, I don't want Senator SANTORUM taking away my reproductive rights. I respect his views. I respect his rights. I respect his moral code, his religion, his conversations with his physician. Why can't those who happen to be prochoice receive the same respect, particularly when a fetus is not viable, when a fetus cannot sustain life outside the womb? That is what this is all about.

Make no mistake, if you believe in choice, you will support my amendment. If you do not, you will support S. 3. That is the clear division of the house on this. If there were a clear medically accurate definition in S. 3, I would not be saying what I am saying. I would say: Members, you are voting on a particular medical procedure; you are prohibiting a particular medical procedure. But if you are voting for S. 3, you are voting to prohibit much more than just the medical procedure that has been put on this floor. You are also prohibiting D&E abortions as well. That has been the finding not of me but of obstetricians and gynecologists, some of them from the finest medical schools in our country, and numerous federal courts, including the Supreme Court.

S. 3's infringement on women's right to choose reminds me of another woman's right. It was not until 1920 that we got the vote. And when this Nation was founded and we go back to our days of—for some—glory, women could not

get a higher education, women could not own property, women could not inherit. Every single right we have won has been fought for. And the right to choose has been fought for as well.

There are probably few people in this body who have seen a young woman ready to commit suicide from an unwanted pregnancy. I have. I went to college when abortion was illegal in the United States. I saw what happened. I saw the back-alley abortionist set up and do business. And then later I set sentences for women who had been convicted of felonies for having illegal abortions. I did that for 6 years. And I saw the tragedy they caused. We cannot go back to those days.

This is a step—let there be no doubt about it—back to those days. We have before us an imprecise piece of legislation, not just banning D&X but covering many more abortion methods than the S.3's supporters have said they aim to cover. A vote for my amendment will be a vote with the 80 percent of the population who believe in a women's right to choose to protect their health because my amendment is, Senator SANTORUM is correct, in essence a codification of Roe v. Wade.

I am hopeful that those who voted for the Harkin Roe v. Wade amendment will also vote yes on this amendment.

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I appreciate the Senator from California in her direct response to the issue of what this amendment does. She said this codifies Roe v. Wade, but Members have had a chance to voice their opinion on Roe v. Wade. We just had an amendment on that. It is clear where our Members were.

That is not the issue before the Senate. The issue is not, Do we need another vote on Roe v. Wade. We already had one. The question is, Do we want a ban on partial-birth abortion? If you want a ban on partial-birth abortion, you do not get rid of the ban and replace it with nothing. I suggest you cannot vote for the bill on final passage and vote for this because you have just voted to kill the bill and replace it with nothing.

I think the Senator from California would agree with that. She says all we are doing is restating current law. So it does not accomplish anything.

At least the Durbin amendment, arguably, you could make the claim—I don't agree, but you could make the claim that this is accomplishing something. The Senator from Illinois made the claim, and you could stand up with the legislative crafting he did and at least make a claim to that. The Senator from California is not attempting to make a claim to that.

I encourage those who support the ban to vote against something that strips the ban and replaces it with nothing.

The Senator from California said that 80 percent of the public supports this right. That is not the case. There is simply poll after poll after poll after poll that shows if you understand what Roe v. Wade does—which is abortion any time, for any reason during pregnancy—probably less than 20 percent, in every poll I have seen, certainly less than 25 percent, support that.

In most polls I have seen, less than 20 percent support an absolute right to abortion. But that is Roe v. Wade.

I make the argument that 80 percent oppose Roe v. Wade. There may be a larger percentage. Certainly there is a larger percentage than 20 percent who support some limited right to abortion. But they do not support Roe v. Wade because Roe v. Wade is an absolute right to an abortion at any time during pregnancy. I wanted to make that clear.

If this bill passes, it will go to conference. We will report it back here and hopefully pass it and send it on to the President.

You are right. Several have said we are going to bring it to court. Of course it will go to court. The Supreme Court will have a chance to look at this, to see whether we have jumped through the hoops the Supreme Court made us jump through.

With respect to the amendment of the Senator again, going back to her amendment, I would posit a question. I don't know if anybody has the answer to it. I don't know if there are any statistics. How many human postviability abortions are stopped by Roe v. Wade today?

I believe Roe is an absolute right. I would have some Members who disagree with that, saying there are restrictions. If that is the case, I would certainly like to know how many abortions are blocked in this country because of Roe v. Wade. If there are some, I would certainly be interested in hearing. If the answer is none, then I think my statement stands, which is this is an absolute right to abortion in this country.

With respect to the statement of the Senator from California that I am comparing her amendment to the Dred Scott decision, that is not necessarily correct. I said her amendment is a restatement of Roe. And Roe is like the Dred Scott decision. I repeat, Roe is like the Dred Scott decision because Roe v. Wade put liberty rights ahead of life rights.

As I said, the founding documents stated we are endowed by our creator with certain inalienable liberties. We have ordered liberties—rights: Life, liberty, pursuit of happiness. Not liberty, life, pursuit of happiness. You must have liberty to enjoy life. You must have true liberty to enjoy happiness. They put them in order for a reason.

What Roe v. Wade does is take the liberty rights of an individual and puts them ahead of the life rights of another individual. That is exactly what happened in Dred Scott. They took the liberty rights of the slaveholder and put them ahead of the life rights of the slave.

So, as I said, I am not condemning her amendment or trying to say anything derogatory about what she put on paper. I am not saying that at all. I guess I am saying something derogatory about the decision of Roe v. Wade because I think it gets it wrong. The Supreme Court got it wrong.

The Senator from California said nominees coming before the Congress say Roe v. Wade is settled law. I suspect nominees in the 1850s and 1860, early 1860s, who came before the Senate said the Dred Scott case was settled law. That doesn't mean it was right. That does not mean it is constitutional, the way we look at liberty and the way we look at life, and the way we look at the order of those rights.

I just suggest these are important issues. But I underscore this. If you vote for this amendment, you vote to strip the bill and replace it with nothing. I think the Senator from California would agree with that. It is simply a restatement of law. That doesn't get you to a ban on this procedure and the eventual court challenge that we know is ahead of us on this issue.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I would like to respond in this way, if I may. The distinguished Senator said that if you vote for my amendment, you don't specifically ban D&X. That is true. You ban all postviability abortions, including all use of D&X postviability.

Let me also reiterate that S. 3 does not specifically ban D&X either. In fact, D&X procedure isn't defined in Senator SANTORUM's bill. The most knowledgeable people in the country have looked at S. 3, the nation's leading obstetricians and gynecologists, and what they tell me is that S. 3 will affect much more than D&X because S. 3's definition is incomplete and flawed. It is not me saying this, it is the American College of Obstetricians and Gynecologists. I have entered their letter into the RECORD.

The Senator could have used that definition in the bill, and then we would know what we were voting on. But he did not. I believe that, from the beginning, it has been intentional not to include a specific medically accurate definition in the bill. The bill is a Trojan horse. It could impact D&E abortions, the most common abortion method used, but the Senator refuses to admit it. The bill violates Roe and other Supreme Court opinions because it doesn't protect the health of the woman.

So what Senator STABENOW, Senator EDWARDS, and I have done in this amendment is say that any abortion after the point of a fetus' viability, as determined by the physician, is illegal—except to protect the health or life of the woman.

My amendment follows the Constitution. It is constitutional.

We just had 52 votes supporting Roe v. Wade. If those 52 votes are real, then

the same senators will vote for my amendment because both Senator SANTORUM and I agree that this codifies Roe v. Wade.

I have listened to the debate over D&X as a member of the Judiciary Committee now in three Congresses. In every Congress I have asked: Why don't you put in the medical definition? And in every Congress the other side refuses to put in the medical definition. It makes you suspicious. Why wouldn't their bill use the generally accepted medical definition, unless it truly is a Trojan horse? Unless they are truly trying to mask what they are trying to do, which is to strike at the heart of a woman's right to choose.

I think I will now close off this debate. I urge those who voted on the Harkin amendment to please sustain that vote, to vote consistently, and to vote for the Feinstein-Stabenow-Edwards amendment.

I yield the remainder of my time.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, having now gone through the process of trying to pass a piece of legislation that was found unconstitutional by the Court, let me be very clear, it is not my intention to try to pass another piece of legislation that is going to be unconstitutional. If the Senator is suggesting that my motive here is to pass a piece of legislation and pull one over on the Court, let me make very clear I have no intention of trying to pull one over on anybody. This Court is not a friendly Court on this issue.

I realize I have, and the people who have worked on the drafting of this legislation have, a heavy burden to carry. So I am not being cute. I am not being deceptive. I am simply trying, to the best of my ability, to adequately and sufficiently describe a procedure to include that procedure and exclude all others. Because that is what the Court asked us to do—to define this procedure so specifically as to exclude others.

The Court went through great detail, talking about other procedures where a child could still be alive and portions of that child could be outside the mother. They could be doing another form of abortion and an arm or a leg or some portion of the body could go outside of the mother in the process of killing the child in the womb. So they said the original definition was not clear enough. So we came back and made it crystal clear. We said the person performing the abortion:

> . . . deliberately and intentionally vaginally delivers a living fetus, in the case of head-first presentation the entire fetal head is outside the body of the mother.

You do not do any other procedures where you present the head. You don't do it. I don't think any doctor in the land would say you do any of these other abortions where you present the head. It is just not done.

Second:

> . . . or in the case of breech presentation, any part of the fetal trunk past the navel.

So it is not a hand or a foot or an arm. It is the legs, the feet, the buttocks, and the lower part of the abdomen is outside of the mother, and in most cases the arms—the hands and arms.

That is a pretty clear definition of this procedure and cannot be—from all of the descriptions we have received in testimony—confused with any other procedure.

The AMA board of trustees said:

> The procedure is ethically different from other destructive abortion techniques because the fetus, normally 20 weeks or longer in gestation, is killed outside of the womb.

These other procedures are done inside the womb. That doesn't mean maybe a portion of the baby may be outside. But it is killed by the doctor inside the womb.

> The ''partial-birth'' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own baby.

This is the American Medical Association. They recognize that this is different. Courts say they may recognize it is different, but you haven't adequately defined it. Now we have adequately defined it. We have said the entire baby, basically, except for the head is outside of the mother. That is a pretty clear definition.

This idea that it is somehow vague and we have not addressed that issue I reject. We have addressed that issue. We have gone through the health exceptions, the Senator from California did. And I will not argue against myself. I think we have been successful in stating that we have rebutted the health exception by the stipulations that we have made in the bill.

Let me remind Members this is a vote to excise the underlying bill, eliminate it, substitute for it, strike it, and insert existing law—nothing, no change. This bill would have the effect of being on the floor of the Senate and have no meaning whatsoever. It simply is a restatement of Roe v. Wade. If you are for eliminating this procedure, you cannot vote for this amendment. It doesn't even try to do anything else. At least the Durbin amendment was a substitute. You eliminated the partial-birth. You could make the argument that we were eliminating all postviability abortions.

The Senator from California says this wouldn't change the law one bit—not one bit. All you are doing is killing the underlying bill and replacing it with nothing. That means you are voting against the bill.

I hope a good, strong majority of Members will vote for this bill and not simply strip this bill and replace it with nothing because that would be a pretty clear sign they are not in favor of the bill.

I yield the remainder of my time.

Mr. LAUTENBERG. Mr. President, earlier this evening I pointed out that the junior Senator from Pennsylvania continues to refer to a September 15, 1996 article in the Bergen Record that contained incorrect information about the number and type of abortions performed at Metropolitan Medical Associates, MMA. After I spoke on the floor he offered the following rebuttal, which I am paraphrasing because a formal transcript isn't available yet:

> I want to counter a couple of things to the Senator from—the Senator from New Jersey says I keep referring to the Bergen Record I can just say that the Bergen Record never did print a retraction to the story and claims that their investigative reporter was not wrong. There is an honest disagreement. The paper stands by their story and has not printed a retraction and said publicly that they have no intention of doing so. So just because Senator LAUTENBERG found somebody who disagrees with the story doesn't mean it isn't true.

It so happens that the ''somebody'' who ''disagreed'' with the above mentioned Bergen Record article was the management of Metropolitan Medical Associates.

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

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

> DEAR MR. RITT, We, the physicians and administration of Metropolitan Medical Associates, are deeply concerned about the many inaccuracies in the article printed in September 15, 1996 titled ''The Facts on Partial-Birth Abortions''.
>
> The article incorrectly asserts that MMA ''performs 3,000 abortions a year on fetuses between 20 and 24 weeks, of which at least half are by intact dilation and evacuation.'' This claim is false as is shown in reports to the New Jersey Department of Health and documents submitted semiannually to the New Jersey State Board of Medical Examiners. These statistics show that the total annual number of abortions for the period between 12 and 23.3 weeks is about 4,000, with the majority of these procedures being between 12 and 16 weeks. The intact D&E procedure (erroneously labeled by abortion opponents as ''partial birth abortion'') is used only in a small percentage of cases between 20 and 23.3 weeks, when a physician determines that it is the safest method available for the woman involved. Certainly, the number of intact D&E procedures performed is nowhere near the 1,500 estimated in your article. MMA perform no third trimester abortions, where the State is permitted to ban abortions except in cases of life and health endangerment.
>
> Second, the article erroneously states that most women undergoing intact D&E procedures have no medical reason for termination. The article then misquotes a physician from our clinic stating that ''most are Medicaid patients . . . and most are for elective, not medical, reasons . . . Most are teenagers.'' This is a misrepresentation of the information provided to the reporter. Consistent with Roe v. Wade and New Jersey State law, we do not record a woman's specific reason for having an abortion. However, all procedures for our Medicaid patients are certified as medically necessary as required by the New Jersey Department of Human Services.
>
> Because of the sensitive and controversial nature of the abortion issue, we feel that it is critically important to set the record straight.
>
> THE MANAGEMENT OF
> METROPOLITAN MEDICAL ASSOCIATES.

Mr. SANTORUM. 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 amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Kentucky (Mr. MCCONNELL) and the Senator from Oklahoma (Mr. NICKLES) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) would vote ''aye''.

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

The result was announced—yeas 35, nays 60, as follows:

[Rollcall Vote No. 49 Leg.]

YEAS—35

Akaka	Dodd	Levin
Baucus	Durbin	Lieberman
Bayh	Feinstein	Lincoln
Bingaman	Graham (FL)	Mikulski
Boxer	Harkin	Murray
Cantwell	Inouye	Nelson (FL)
Carper	Jeffords	Reed
Chafee	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	

NAYS—60

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

NOT VOTING—5

Biden	Kerry	Nickles
Edwards	McConnell	

The amendment (No. 261) was rejected.

Mr. JEFFORDS. Mr. President, I rise today to express my concerns with S. 3, the ''so-called'' Partial-Birth Abortion Ban Act of 2003.

Shortly before my election to Congress, the Supreme Court made its landmark decision in Roe v. Wade to constitutionally protect a woman's right to choose. During my time in Congress, there has been no other issue that has engendered more passion or debate than this decision.

While I ardently support a woman's right to choose, I have spent my time in Congress trying to ensure that abortions are as rare as possible. We can reduce the number of abortions through strong support of Title X, encouraging adoption, educating on the use of emergency contraceptives, and requiring insurance policies to cover contraceptives. In that manner we can ensure that women control their own reproductive destiny.

The ''so-called'' Partial-Birth Abortion Ban Act is one of many attempts to overtly or covertly undermine and overturn the constitutional right afforded women in Roe v. Wade. It is imperative that Congress not be the entity making a woman's decision on this most personal of issues. This is a decision to be made by a woman in consultation with her doctor and others she chooses to include. The bill we consider today will place the Federal Government in the middle of the most intimate of discussions between a woman and her physician.

I would like to take this opportunity to discuss with my colleagues the constitutional deficiencies contained in this legislation. Let me start with the title of this legislation, the Partial-Birth Abortion Ban Act.

Ask any doctor if they have ever performed a partial-birth abortion and the response is no such medical term exists. So what are we banning? For that answer we turn to the definition of a partial birth-abortion contained in the bill. What we find is a very broad—overly broad—definition that is strikingly similar to the over broad definition found unconstitutional by the United States Supreme Court in the Carhart decision.

You will hear my colleagues say this definition is limited to late term abortions, or abortions performed during the third trimester or postviability. However, if you examine the definition contained in this legislation, its breadth would cover safe abortion procedures that are used in the second trimester or previability of the fetus. Why have my colleagues chosen to use a definition that is over broad?

Enactment of this legislation, if upheld, would erode the Roe decision by banning an abortion procedure that is used previability of the fetus. Thus, this legislation can be clearly seen as an attempt to undermine the legal underpinnings of the Roe decision.

Another critical constitutional deficiency in this legislation is the absence of a health exception for the mother. The original Roe decision, and most recently the Supreme Court Carhart decision, required that any ban on an abortion procedure have an exception for the health of the mother. The proponents of this legislation will point to the pages of findings contained in the legislation as to why it is unnecessary to have an exception for the health of the mother. There are two problems with this rationale, first the Supreme Court has shown an unwillingness to consider Congressional findings of fact in recent decisions, such as Morrison, VAWA, and Kimmel, ADEA. Second, during the debate on the Carhart decision, the Supreme Court had knowledge of these findings, yet still ruled that because the Nebraska statute did not have an explicit health exception the law was unconstitutional.

So why do my colleagues seek to move this legislation forward even with these glaring constitutional deficiencies? I can reach no other conclusion, based on the facts, than it is an attempt to erode the constitutional protections provided to women in the Roe decision. Mark my words, this legislation is one step in the process of attempting to overturn the Roe decision, and I will fight that outcome every step of the way.

Mr. FEINGOLD. Mr. President, I will oppose S. 3, the Partial Birth Abortion Ban Act, and instead will support a constitutionally sound alternative.

Mr. President, I understand that people on all sides of this issue hold sincere and strongly held views. I respect the deeply held views of those who oppose abortion under any circumstances. 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 the 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 government can restrict abortions when there is a compelling State interest at stake. I have previously voted to ban postviability 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, which is why I will again be voting for the Durbin alternative to S. 3.

Since the Senate last debated this issue in 1999, the Supreme Court has ruled on a statute that is almost identical to the language of the bill before us today. In June 2000, in Stenberg v. Carhart, the Court held that the State law, a Nebraska statute, banning so-called partial birth abortions was unconstitutional. The Court found that the law was so vague and overbroad that it posed an undue burden on a woman's right to choose by encompassing safe and common abortion procedures used prior to viability. The Court also found that, even in banning abortion procedures after viability, the State must include an exception for the health of the mother.

The Senate now has the Supreme Court's guidance, as we consider legislation regulating late-term abortions. This is guidance that the Senate did not have when we previously debated legislation like S. 3. I feel very strongly that Congress should seek to regulate abortions only within the constitutional parameters set forth by the

U.S. Supreme Court. Yet in light of the Supreme Court's 2000 decision, the bill before us today, S. 3, is unconstitutional on its face. It is so vague and overbroad that it, too, could unduly burden a woman's right to choose prior to viability.

I might add that I would have preferred that S. 3 had been first reviewed by the Judiciary Committee on which I serve, rather than having been brought straight to the Senate floor. The Judiciary Committee should hold hearings and review the bill prior to its consideration by the full Senate. This is especially important because the Supreme Court has now struck down a law that is almost identical to the bill before us today. There have been no hearings in the Senate Judiciary Committee to consider this bill since the Court's Carhart decision. Perhaps, if the Judiciary Committee had more thoroughly reviewed this legislation, it would have reported a bill that could have withstood constitutional scrutiny.

The Durbin alternative amendment would ban abortions by any method after a fetus is viable, except when serious medical situations dictate otherwise. I support the Durbin amendment because it recognizes that, in some circumstances, women suffer from severely debilitating diseases specifically caused or exacerbated by a pregnancy, or are unable to obtain necessary treatment for a life-threatening condition while carrying a pregnancy to term. The exceptions in the Durbin amendment are limited to conditions for which termination of the pregnancy is medically indicated. It correctly retains the option of abortion for mothers facing extraordinary medical conditions—such as breast cancer, preeclampsia, uterine rupture, or non-Hodgkin's lymphoma—for which termination of the pregnancy may be recommended by the woman's physician due to the risk of grievous injury to the mother's physical health or life. By clearly limiting the medical circumstances where postviability abortions are permitted, the Durbin amendment protects fetal life in cases where the mother's health is not at such high risk. In contrast, S. 3 provides no exception at all to protect the health of the mother.

I understand that the Carhart decision did not define the health exception or limit it to grievous physical injury. I recognize that it is not clear whether the narrow health exception contained in the Durbin amendment would be upheld, if it comes before the Court. To date, I have supported this narrow definition of the exception necessary to protect the physical health of the woman because I believe that it strikes the right balance between preserving a woman's right to choose and concerns that abortion procedures late in pregnancy should only be used in rare circumstances. I voted for the Daschle amendment in the 105th Congress and the Durbin amendment in the 106th Congress and again in this Congress, because they reflect this position.

The Durbin amendment properly seeks to ensure that the exceptions to the ban on postviability abortions are properly exercised. It requires a second doctor to certify the medical need for a postviability abortion. The second doctor requirement will ensure that postviability abortions take place only when continuing the pregnancy would prevent the woman from receiving treatment for a life-threatening condition related to her physical health or would cause a severely debilitating disease or impairment to her physical health.

The Durbin alternative strikes the right balance between protecting women's constitutional right to choose and the right of the state to protect future life after viability. It protects a woman's physical health throughout her pregnancy, while insisting that only grievous, medically diagnosable conditions justify aborting a viable fetus. Both fetal viability and women's health would have been determined by the physician's best medical judgement, as they must be, in concurrence with another physician.

I hope that, as the Senate considers this bill and the proposed amendments, we do so in full recognition of the strong feelings about this issue on all sides. We should respect these differences and strive to legislate in this area in a way that is constitutionally sound. That is why I will oppose S. 3 and instead will support the Durbin substitute amendment.

Mr. KENNEDY. Mr. President, the Republican leadership is wrong to ask the Senate to support legislation that has been ruled unconstitutional by numerous courts. Since the last debate in the Senate in 1999, the Supreme Court found a very similar law enacted by the State of Nebraska to be unconstitutional. This bill is unconstitutional as well.

The Republican leadership has chosen to make as its top priority a flatly unconstitutional piece of legislation at a time when so many families across the country are facing economic hardship, when communities are struggling to deal with homeland security needs, and being forced by state budget crises to cut back on education and health care.

Because of the Republican leadership's decision to act on this bill, we will do nothing this week to provide an economic stimulus plan for the Nation's families and workers. We will do nothing to provide new funding for communities struggling to protect themselves from new terrorist attacks. We will do nothing to help the millions of uninsured children in this country get the health care they need. We will do nothing for schools struggling to meet higher standards under the No Child Left Behind Act. We will do nothing to help college students struggling to pay tuition and relieve their debt. We will do nothing to help the millions of families across the Nation who are worried about their economic future.

Let us be clear as to what this bill does not do.

This bill does not stop one single abortion. The proponents of this bill distort the law and the position of our side with inflammatory rhetoric, while advocating a bill that will not stop one single abortion. This bill purports to prohibit a medical procedure that is only used in rare and dire circumstances. It is not used on healthy mothers carrying healthy babies. And if this bill is passed, a doctor could be forced to perform another, more dangerous procedure if it becomes necessary to terminate a pregnancy to protect the life and health of a woman.

This bill does not protect the health of the mother. Nowhere is there language that would allow a doctor to take the health of the mother into consideration, even if she were to suffer brain damage or otherwise be permanently impaired if the pregnancy continued.

And this bill is not needed to protect the life of babies who could live outside the mother's womb because those babies are already protected under the law of the land. In Roe v. Wade, the Supreme Court specifically held that unless there was a threat to the life or health of a woman, she did not have a constitutional right to terminate a pregancy after viability.

So what is this legislation all about? It is about politics and inflammatory language and hot-button topics. But it is not about stopping abortion.

Because of the sound and fury and high emotion that surrounds this issue, I would like to make my personal views clear. I am pro-choice. But I believe that abortions should be rare. I believe that we have an obligation to create an economy and the necessary support systems to make it easier for women to choose to bring children into the world. If the proponents of this legislation were serious about limiting the number of abortions in this country, then we would be debating access to health care, quality education, the minimum wage, and the other issues of economic security that are so important to parents bringing up children. But those issues are not on the Republican leadership's agenda.

Instead, for rank political reasons, we are here this week debating so-called partial birth abortion. I do not believe that it is the role of the United States Senate to interfere with or regulate the kind of medical advice that a doctor can give to a patient. And that doctor/patient relationship and the protection of the health of the mother is really what is in jeopardy with this legislation.

From the time of the 1973 decision in Roe v. Wade through the Stenberg v. Carhert decision in 2000, the Supreme Court of the United States has made clear that the Constitution allows states to restrict post-viability abortions as long as there are protections for the life and health of the mother.

Indeed, 41 states already ban post-viability abortions, regardless of the procedure used. My own State of Massachusetts prohibits these abortions except when the woman's life is in danger or the continuation of the pregnancy would impose a substantial risk of grave impairment of the woman's health. I would vote for a post-viability ban that protects women's life and health today.

The role of the United States Senate is to protect and defend the Constitution of the United States. Each of us in this body has taken that oath of office. And that oath of office and the Constitution require me to oppose this legislation.

This bill unconstitutionally seeks to restrict abortions in cases before viability and it does not provide an exception to protect the mother's health after viability. It also impermissibly attempts to interfere with the doctor/patient relationship. For all of these reasons, I oppose this bill.

Ms. SNOWE. Mr. President, I rise today in support of the amendment offered by Senator MURRAY, which would ensure that women have access to preventive health services—services like contraceptive coverage, and emergency contraception—to try to reduce the overall need for abortion by reducing the number of unintended pregnancies in this country. Furthermore, I support this amendment because just as critical to ensuring that women have the right to plan their families in ensuring that uninsured pregnant women have access to the care they need to have healthy pregnancies and pre-natal care.

The composition of this amendment provides women with the ability to have healthy families—which is what family planning is all about. Key to this effort is access to prescription contraceptives—including the most commonly used contraception by far, oral contraceptives. Access to these prescriptions are guaranteed under this amendment which includes legislation I have authored each year since 1997, the Equity in Prescription Insurance and Contraceptive Coverage Act.

I have led the fight for equitable coverage of contraceptives after having found out that in 1994, according to an Alan Guttmacher Institute, AGI, report, 49 percent of all large-group health plans and 49 percent of preferred provide organizations, PPOs, did not routinely cover all five methods of reversible contraceptives. That report led me to introducing EPICC for the first time in 1997. And while the statistics have improved there is more work to be done. According to a 2001 Kaiser Family Foundation report, while 98 percent of employers offer prescription drug coverage in general, still only 64 percent offer coverage of oral contraceptives. Again, this category is the most popular of all prescription contraceptives.

It's been 6 long years now since I first introduced EPICC, and according to an AGI report, in each of those 6 years women have spent over $350 per year on prescription oral contraceptives—for a total of over $2,100. Why? Because many insurance companies that already cover other prescription drugs do not cover prescription contraceptives. How can we continue to deny this fundamental coverage for prescription drugs that are a key component in women's reproductive health?

And that's no exaggeration, either. Take for example the known health benefits of oral contraceptives, which have been in use for over 40 years now. First, the pill has been demonstrated to lower the risk of pelvic inflammatory disease, and has been linked to reducing the risk of ovarion, endometrial and uterine cancers. And, the estrogen in the pill facilitates maintaining bone-density—a key component in the effort to fight osteoporosis and the debilitating and often life threatening results of bone fractures which are all too often faced by older women.

But if that's not enough, just consider the importance and impact of prescription contraceptives in context with what we're debating on the Senate floor this week. No matter where you are on the issues . . . no matter what your political stripe—there isn't a U.S. Senator who wouldn't want to reduce the number of abortions in America. I would guarantee that.

Knowing that approximately 50 percent of all pregnancies in the U.S. each year are unintended—the highest of all industrial nations—shouldn't that be a compelling reason to support this amendment, no matter which side of the abortion debate you're on? Indeed, I along with Senator REID—who has long been a Democrat lead on my legislation—have long believed the EPICC not only makes sense in terms of the cost of contraceptives for women, but also as a means of bridging, at least in some small way, the pro-choice pro-life chasm by helping prevent unintended pregnancies and thereby also prevent abortions.

Because, according to the Institute of Medicine Committee on Unintended Pregnancy, one of the reasons for the high rates of unintended pregnancies in the U.S. has been the failure of private health insurance to cover contraceptives—and half of these pregnancies end in abortion. Indeed, we know that there are 3 million unintended pregnancies every year in the United States. We also know that almost half of those pregnancies result from just the three million women who do not use contraceptives—while 39 million contraceptive users account for the other 53 percent of unintended pregnancies—most of which resulted from inconsistent or incorrect use.

In other words, when used properly, contraceptives work. They prevent unintended pregnancies—we know that. Yet, there are opponents of my legislation, regardless of what we know about what access to contraceptives does for both the health of women and their children by having pregnancies better planned, and better spaced. Why? Well, it certainly shouldn't be cost.

After all, a January 2001, OPM statement on EPICC-like coverage of federal employees under the FEHBP found no effect on premiums whatsoever since implementation in 1998. Let me repeat—no effect. In fact, some—like the Alan Guttmacher Institute—argue that improved access to and use of contraception nationwide would save insurers and society money by preventing unintended pregnancies, as insurers generally pay pregnancy-related medical costs—which can range anywhere from $5,000 to almost $10,000. Improved access to contraception would eliminate these costs and would reduce the costs to both employers and insurers.

In 1999, the New York Business Group on Health released estimates calculated by Pharmacia and Upjohn Pharmaceuticals on the cost to employers of providing contraceptive coverage. Taking into account the cost of unintended pregnancies, Pharmacia and Upjohn estimated an overall savings of $40 per employee when contraception is a covered benefit. An estimate that is supported by a study that estimated that not covering contraceptives in employee health plans would actually cost employers 15–17 percent more than providing the coverage due to the other pregnancy related costs.

Now, no one is saying that access to prescription contraceptives will solve the most vexing of social problems, but if access helps women plan their pregnancies, and includes in this planning assurances that they are in good health and that they will seek prenatal care, and that they have the financially stability to provide for their child—then, clearly, contraceptive coverage would significantly help improve the lives of millions of mothers and their future children.

While the facts demonstrate that this amendment is something that every senator regardless of their position on abortion should support it as it will reduce the instance of abortion while improving the health of women and their future children, I must also say that Senator MURRAY's amendment—her prevention package—even in its totality, is not enough to fix the problems in the underlying bill offered by my friend, Senator SANTORUM, which would ban late term abortions without providing for any clear exception to protect the life or the physical health of the mother. This is completely contrary to the 22-year-old landmark Supreme Court decision in Roe v. Wade that held that women have a constitutional right to an abortion, but after viability, States could ban abortions—as long as they allowed exceptions for cases in which a woman's life or health is endangered.

And there should be no doubt—the underlying legislation puts women's lives and health on the line. If we vote this week to send this legislation to the President without additional changes beyond the inclusion of this

amendment—which beyond the guaranteed access to prescription contraceptives provides information about emergency contraceptives for women and doctors, access to emergency contraceptives for sexual assault victims and finally, access to health care for pregnant uninsured women—we will bear the burden of putting women's lives and health at risk by substituting the judgement of politicians for the judgement of medical doctors. And that just isn't right.

The bottom line is, women should have control over their reproductive health—whether it be through access to contraceptives, access to health care when they are pregnant or through preserving the right to choose which should include the right to terminate a pregnancy post-viability if a doctor determines that continuance of the pregnancy would result in a grievous injury to the woman's physical health.

After all, allowing women to decide what is in their best interests serves not only the woman's overall health, but their children's and their future children's health. This goal will be furthered by the amendment offered by Senator MURRAY and other amendments expected to be offered later this week by others which will ensure that we are following the guidelines laid out for us in the landmark Roe v. Wade decision ensuring that a woman's physical health is paramount in these decisions.

In the meantime, I urge my colleagues to join us in supporting this important amendment.

EXECUTIVE SESSION

NOMINATION OF WILLIAM D. QUARLES, JR., OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of William D. Quarles, Jr., of Maryland, to be U.S. District Judge for the District of Maryland.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William D. Quarles, Jr., of Maryland, to be U.S. District Judge for the District of Maryland. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. FRIST. I announce that the Senator from Missouri (Mr. BOND), the Senator from New Mexico (Mr. DOMENICI), the Senator from Kentucky (Mr. MCCONNELL), and the Senator from Oklahoma (Mr. NICKLES) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Dakota (Mr. CONRAD), the Senator from South Dakota (Mr. DASCHLE), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) would vote ''aye''.

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

The yeas and nays resulted—yeas 91, nays 0, as follows:

[Rollcall Vote No. 50 Ex.]

YEAS—91

Akaka	Dorgan	Lugar
Alexander	Durbin	McCain
Allard	Ensign	Mikulski
Allen	Enzi	Miller
Baucus	Feingold	Murkowski
Bayh	Feinstein	Murray
Bennett	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Boxer	Graham (FL)	Pryor
Breaux	Graham (SC)	Reed
Brownback	Grassley	Reid
Bunning	Gregg	Roberts
Burns	Hagel	Rockefeller
Byrd	Harkin	Santorum
Campbell	Hatch	Sarbanes
Cantwell	Hollings	Schumer
Carper	Hutchison	Sessions
Chafee	Inhofe	Shelby
Chambliss	Inouye	Smith
Clinton	Jeffords	Snowe
Cochran	Johnson	Specter
Coleman	Kennedy	Stabenow
Collins	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wyden
Dodd	Lincoln	
Dole	Lott	

NOT VOTING—9

Biden	Daschle	Kerry
Bond	Domenici	McConnell
Conrad	Edwards	Nickles

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PARTIAL-BIRTH ABORTION BAN ACT OF 2003—Continued

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR NOS. 36, 52, AND 54

Mr. SANTORUM. Mr. President, as in executive session, I ask unanimous consent that on Thursday, following the cloture vote with respect to the Estrada nomination, regardless of the outcome, the Senate proceed to the consideration of Executive Calendar No. 36, Jay S. Bybee, to be U.S. Circuit Judge for the Ninth Circuit; provided further that there be 6 hours for debate equally divided in the usual form, and that following the use or yielding back of the time, the Senate proceed to a vote on the confirmation of the nomination. I further ask consent that immediately following the vote, the Senate immediately proceed to a vote on the confirmation of Executive Calendar No. 52, the nomination of William Steele, to be U.S. District Judge for the Southern District of Alabama, to be immediately followed by a vote on the confirmation of Executive Calendar No. 54, the nomination of J. Daniel Breen to be U.S. District Judge for the Western District of Tennessee; provided further that following those votes, the President be immediately notified of the Senate's action, and the Senate then resume legislative session, with all the above occurring without intervening action or debate.

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

The Democratic whip.

COMPLETING ACTION ON S. 3

Mr. REID. Mr. President, if everyone uses all the time, tomorrow will be a long day. We do not know how much time everyone will use, but at least we have completed this very difficult legislation today. We have a circuit judge the leader has been asking for, and we have two more district court judges. So I think we have accomplished quite a bit this week.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Senator from Nevada. Through this entire week, he has been working with this side in good faith to move forward this legislation. He did an outstanding job, in my opinion, in helping us proceed through this process. I want to thank him for the excellent work and for his willingness to move at times this heated and controversial discussion on the bill to this process where we are now poised to pass this legislation tomorrow morning. Hopefully, it will pass by a very strong vote, and we will get the bill into conference and get it back. I think the House will bring this up in a

couple of weeks and then possibly even get this bill back to the Senate within the month. So we are well on our way.

I want to thank all Members for their cooperation, for their willingness to offer amendments, and to come to the floor and debate it. Obviously, we have had a spirited debate, but one that has not just provided some heat but also hopefully provided a great deal of light as to the relative positions of the Senators on either side of this issue, and even the broader issue of abortion in general.

Mr. REID. Will the Senator yield?

Mr. SANTORUM. Yes.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. I have said this a couple of times during the past few weeks, and I want to say this again. The leader could have come and filed cloture on this legislation very quickly, but he has obviously made a decision the Senate works best when people are allowed to offer amendments and speak their piece. There is no better example of that than this controversial legislation. All the amendments offered were on our side, and I think it speaks well of the direction that the Senate is going. We still have some obstacles we have to get over, but I again state that the pattern set by the majority leader in allowing debate to take place is good for this body, and I think the debate has been healthy. It has been very adversarial. That is what the Senate is supposed to be. There has been very heated debate on this issue. I think the Senate is better for this.

This issue has been aired. There were procedural efforts made to take it back to committee, and there was a lot of good debate. Again, I direct this to the majority leader—and I speak on behalf of Senator DASCHLE and the rest of the minority—we appreciate allowing us to act as the Senate should act.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I do not want to go without praising my own majority leader also. He obviously set the tone for this debate not only by structuring the way by which this debate proceeded, but very importantly in coming to the floor and laying out, in very strong arguments, the case against this procedure from a perspective that is unique in the Senate, which is the perspective of a physician.

I am going to have a few more things to say in a few minutes, but before I do that, I thank my incredible staff for helping me through this process, Heather MacLean and Wayne Palmer. Heather and Wayne were terrific in preparing for this debate. There was an obvious range on a wide variety of things, things, frankly, we did not even anticipate. They did an outstanding job in preparation, and an outstanding job in getting information to make me look good, which, I am sure many Senators will confirm, is not the easiest thing in the world to do.

I thank them both very much for their excellent assistance. I am not surprised, by any stretch of the imagination, regarding their incredible work, but I am very grateful.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SANTORUM. 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. SANTORUM. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business.

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

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement 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 terrible crime that occurred August 26, 2001 in Las Cruces, NM. A gay New Mexico State University student was beaten by two fellow students. Prior to the beating, the two attackers asked the victim if he was gay. According to police, a friend of the victim was followed that same night by three other men who asked him several times if he was also gay.

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.

WINNING THE PEACE IN IRAQ

Mr. KENNEDY. Mr. President, as President Bush prepares for war with Iraq, the administration also must prepare to win the peace.

While I have grave reservations about this administration's rush to war with Iraq, we all hope that if the President goes forward, the war will be quick and our troops will be safe.

But we must also recognize that once war is launched, American obligations in Iraq are only just beginning. The instant we occupy Iraq, we become responsible for the security, care, and feeding of its people—even the education of its children. Years of reconstruction and assistance to the Iraqi people will be necessary to bring Iraq to independence into the family of nations. And we can expect an American presence in that country for months and even years to come.

This is an enormous enterprise and an extraordinary obligation. But to win the peace in Iraq, we must get it right.

Today the Council on Foreign Relations issued a report on how this might be accomplished. The experts who contributed to this thoughtful report bring years of experience in addressing post-conflict reconstruction issues in both Republican and Democratic administrations.

The task force that developed this report was chaired by former Ambassador Thomas Pickering and former Defense Secretary James Schlesinger. And the project director is Eric Schwartz, who served in the Clinton White House as a senior official in the National Security Council.

The administration and Congress would do well to heed their recommendations. And I ask unanimous consent that the executive summary of the report be printed in the RECORD.

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

IRAQ: THE DAY AFTER

REPORT OF AN INDEPENDENT TASK FORCE ON POST-CONFLICT IRAQ

Sponsored by the Council on Foreign Relations, Thomas R. Pickering and James R. Schlesinger, Co-Chairs, and Eric P. Schwartz, Project Director

EXECUTIVE SUMMARY

If the United States goes to war and removes the regime of Saddam Hussein, American interests will demand an extraordinary commitment of U.S. financial and personnel resources to post-conflict transitional assistance and reconstruction. These interests include eliminating Iraqi weapons of mass destruction (WMD); ending Iraqi contacts, whether limited or extensive, with international terrorist organizations; ensuring that a post-transition Iraqi government can maintain the country's territorial integrity and independence while contributing to regional stability; and offering the people of Iraq a future in which they have a meaningful voice in the vital decisions that impact their lives.

But U.S. officials have yet to fully describe to Congress and the American people the magnitude of the resources that will be required to meet post-conflict needs. Nor have they outlined in detail their perspectives on the structure of post-conflict governance. The Task Force believes that these issues require immediate attention, and encourages the administration to take action in four key areas:

Key Recommendation #1: An American political commitment to the future of Iraq: The president should build on his recent statements in support of U.S. engagement in Iraq by making clear to Congress, the American people, and the people of Iraq that the United States will stay the course. He should announce a multibillion dollar, multiyear post-conflict reconstruction program and seek formal congressional endorsement. By announcing such a program, the president would give Iraqis confidence that the United States are committed to contribute meaningfully to the development of Iraq and would enable U.S. government agencies to plan more effectively for long-term U.S. involvement.

The scale of American resources that will be required could amount to some $20 billion

per year for several years. This figure assumes a deployment of 75,000 troops for post-conflict peace stabilization (at about $16.8 billion annually), as well as funding for humanitarian and reconstruction assistance (as recommended immediately below). If the troop requirements are much larger than 75,000—a genuine possibility—the funding requirement would much greater.

For reconstruction and humanitarian assistance alone, the president should request from Congress $3 billion for a one-year period, and make clear the United States will be prepared to make substantial additional contributions in the future. This initial contribution would include $2.5 billion for reconstruction and $500 million for humanitarian aid. (However, if there are significant interruptions in the availability of Iraqi oil revenues for the Oil for Food Program, the figure for humanitarian assistance would need to be considerably higher).

Key Recommendation #2: Protecting Iraqi civilians—a key to winning the peace: From the outset of conflict, the U.S. military should deploy forces with a mission to establish public security and provide humanitarian aid. This is distinct from the tasks generally assigned to combat troops, but it will be critical to preventing lawlessness and reassuring Iraqis who might otherwise flee their homes. As women and children will constitute the majority of refugees and internally displaced persons, special efforts should be made to ensure that they are protected from sexual assault and that their medical and health care needs are met. The Bush administration should sustain this public security focus throughout the transition. None of the other U.S. objectives in rebuilding Iraq would be realized in the absence of public security. If the administration fails to address this issue effectively, it would fuel the perception that the result of the U.S. intervention is an increase in humanitarian suffering.

Additional recommendations—protecting Iraqi civilians: Assist civilian victims of any use of WMD. The U.S. and coalition partners should be ready to conduct rapid assessment of any WMD damage, publicize the results of such assessments, provide information to Iraqis on how to mitigate the impact of WMD use, and provide assistance to alleviate the health effects of WMD exposures should it occur.

Seek to ensure protection for displaced persons and refugees. Administration officials should press neighboring governments to provide safe haven in their countries to fleeing Iraqis. If the government of Turkey and other governments are determined to establish camps within the territory of Iraq, U.S. officials should seek to ensure that such camps are safe and secure.

Sustain, for the time being, the basic structure of the Oil for Food Program. U.S. officials should work closely and intensively with the World Food Program (WFP) to ensure the continuation of the distribution network that sustains the Oil for Food Program in central and southern Iraq. The program should be modified over time to ensure transparency and effectiveness in meeting Iraqi needs.

Actively recruit international civilian police (civpol) and constabulary forces. Constabulary units such as Italy's Carabinieri have equipment, training, and organization that enable it to maintain public order and address civil unrest. In addition, international civilian police could play an important role in vetting, training, and mentoring Iraqi police.

Key Recommendation #3: Sharing the burden for post-conflict transition and reconstruction: The Bush administration should move quickly to involve international organizations and other governments in the post-conflict transition and reconstruction process. This move will lighten the load on U.S. military and civilian personnel, and help to diminish the impression that the United States seeks to control post-transition Iraq.

The Bush administration will likely be reluctant, especially early in the transition process, to sacrifice unity of command. On the other hand, other governments may be hesitant to participate in activities in which they have little responsibility. The Task Force recommends that the administration address this dilemma by promoting post-conflict Security Council resolutions that endorse U.S. leadership on security and interim civil administration in post-conflict Iraq, but also envision meaningful international participation and the sharing of responsibility for decision-making in important areas. The resolutions could direct WFP or another international humanitarian organization to assume lead responsibility for humanitarian assistance (and involve NGOs and Iraqi civil society in aid management and delivery); indicate that the United Nations will take responsibility in organizing (with U.S. support and assistance) the political consultative process leading to a transition to a new Iraqi government; establish an oil oversight board for Iraq; authorize the continuation of the UN's Oil for Food Program; establish a consortium of donors in conjunction with the World Bank and the IMF, to consider Iraqi reconstruction needs as well as debt relief; and indicate that responsibilities in other areas could be transferred to the United Nations and/or other governments as conditions permit.

Key recommendation #4: Making Iraqis stakeholders throughout the transition process: The administration should ensure that Iraqis continued to play key roles in the administration of public institutions, subject to adequate vetting. Continuity of basic services will be essential, and will require that thousands of Iraqi civil servants continue to do their jobs. In addition, every effort should be made quickly to establish Iraqi consultative mechanisms on political, constitutional, and legal issues, so that the period of interim governance will be limited and characterized by Iraqi engagement on the political as well as administrative level.

Additional recommendation—making Iraqis stakeholders: Encourage a geographically based, federal system of government in Iraq. In northern Iraq, the Kurdish population has operated outside of regime control for over a decade. While decisions on Iraq's constitutional structure should be made by Iraqis, the Task Force believes that a solution short of a federal system will risk conflict in a future Iraq, and that U.S. officials should adopt this perspective in their discussions with Iraqi counterparts and with Iraq's neighbors.

OTHER ISSUES OF CONCERN TO THE TASK FORCE

The rule of law and accountability: Police training must be supplemented by efforts to build other components of a system of justice, especially courts. The Task Force thus makes the following recommendations: Deploy judicial teams, seek international involvement. The administration should promote the post-conflict deployment of U.S. and international legal and judicial assistance teams to help address immediate and longer term post-conflict justice issues.

Act early on accountability, seek international involvement in the process, and ensure a key role for Iraqis. Given the enormity of human rights abuses by the regime, the Task Force believes that accountability issues should be an early priority for the transitional administration. International involvement in the process, either through the creation of an international ad hoc tribunal, or the development of a mixed tribunal, will enhance the prospects for success. The Task Force notes that a truth and reconciliation process could be established concurrently with such a tribunal, as a complement to criminal accountability for those who bear greatest responsibility for abuses.

The Iraqi oil industry: U.S. officials will have to develop a posture on a range of questions relating to control the oil industry, such as how decisions on contracts for equipment and oil field rehabilitation will be made; who will consider and make judgments on the viability of executory contracts for development of oil fields, which have as a condition precedent the lifting of sanctions; and what will be required for transition from the Oil for Food Program to a transparent and accountable indigenous system to receive and disburse oil-related revenues?

The Task Force recommends that the administration strike a careful balance between the need to ensure that oil revenues benefit the people of Iraq and the importance of respecting the right of Iraqis to make decisions about their country's natural resources. In particular, the administration should undertake the following steps: Emphasize publicly that the United States will respect and defend Iraqi ownership of the country's economic resources, especially oil; seek an internationally sanctioned legal framework to assure a reliable flow of Iraqi oil and to reserve to a future Iraqi government the determination of Iraq's general oil policy. The removal of the regime will not alter Iraqi obligations under the existing, UN-managed, legal framework for oil, but it will likely result in the need for modifications. The Task Force believes that a new framework, which could be affirmed by a Security Council resolution, could establish a decision-making oversight board with international and significant Iraqi participation.

Address potential impact of regime change on Jordanian oil imports from Iraq. The Iraqi regime has provided the government of Jordan with free and heavily discounted oil. It is unclear whether such arrangements would continue in the post-conflict environment. In view of Jordan's economic situation and its important role on regional and international security issues, the administration should make efforts to address Jordanians needs in this area.

Regional diplomatic and security issues: In the Gulf, U.S. officials will confront the challenge of effectively downsizing the Iraqi military while seeking to promote a longer-term security balance in which Iraq's territorial integrity can be maintained. In the Middle East, a successful U.S. and coalition intervention in Iraq will raise expectations about a new U.S. diplomatic initiative on the Arab-Israeli dispute. On these issues, the Task Force makes the following recommendations: Closely monitor restructuring and professionalization of the Iraqi military, as well as disarmament, demobilization, and reintegration. These tasks are likely to be carried out largely by private contractors and/or international development organizations, and will require close supervision of what might otherwise be an uncoordinated effort. In addition, the Bush administration should promote programs in this area that include curricula emphasizing civilian control of the military and respect of human rights.

Consider a regional forum for discussion of security issues. The administration should strongly consider encouraging a security forum with states in the region. The forum could address confidence-building measures, and related issues such as external security guarantees and nonproliferation.

Initiate post-conflict action on the Middle East Peace Process. The Task Force encourages the administration to give high priority to an active, post-conflict effort to engage the peace process, and also believes that any such action by the administration must be accompanied by greater efforts by Arab states and the Palestinian leadership to discourage and condemn acts of terrorism and violence against Israelis and elsewhere in the region.

NOMINATION OF JUDGE GREGORY FROST

Mr. DEWINE. Mr. President, I rise to speak in strong support of the nomination of Judge Gregory Frost, whom the President has nominated to be United States District Court Judge for the Southern District of Ohio, and whom the Senate confirmed just two days ago. I have had the pleasure of knowing Judge Frost for many, many years and can say with confidence that he is exceptionally qualified for this position. I believe that he will be an excellent Federal Judge.

Judge Frost currently serves as Judge on the Licking County Common Pleas Court in Newark, OH. He has been on the Licking County bench for the past 19 years—serving first as a Municipal Court judge from 1983 to 1990 before being elected to his current position.

As I discussed during his Judiciary Committee hearing, while on the Licking County bench, Judge Frost was selected to take the lead in writing the jury instructions for the State of Ohio. This is no small undertaking. These jury instructions provide the framework in which all jury cases in the State of Ohio are deliberated. The fact that he was chosen to do this reflects the esteem in which his colleagues hold him.

Before serving on the bench, Judge Frost served in private practice and also served an assistant Licking County prosecutor from 1974 until 1978. Having seen how the trial process works from many different perspectives—as a prosecutor, a defense attorney, and a judge—Judge Frost knows what defines good judicial temperament, and I believe that he has it.

While on the bench, his graciousness and dedication have earned him the respect of those inside and outside of his courtroom. I received many letters of support for Judge Frost that attest to this.

Without question, Judge Frost will be a fine addition to the District Court. He has the experience, the temperament, and the dedication to be an excellent Federal judge. I strongly support his nomination and thank my colleagues for voting in support of his nomination.

JUSTICE NEEDED FOR THE MURDER OF PRIME MINISTER ZORAN DJINDIC

Mr. MCCONNELL. Mr. President, this morning's news of the assassination of Serbian Prime Minister Zoran Djindic is deeply saddening.

Prime Minister Djindic was a man of courage and determination—whether tackling economic and political reforms or securing the extradition of war criminal Slobodan Milosevic to The Hague. He understood and accepted the risks of leadership in a transitional Serbia, and bravely served his compatriots.

Prime Minister Djindic rightly believed that Serbia's future rests with the rule of law, free markets, and a democratic political system. Threats against his life—including an assassination attempt only last month—underscored that his reform agenda directly challenging entrenched segments of Serbian society, including organized crime and the cronies of Slobodan Milosevic who continue to serve in the government and military.

Prime Minister Djindic scoffed at the notion that his untimely demise would derail Serbia's reform efforts. After last month's incident, he said, ''If someone thinks the law and reforms can be stopped by eliminating me, then that is a huge delusion.''

Those who share the Prime Minister's vision of peace and prosperity for Serbia cannot—and must not—give up their struggle. There is no better way to honor Zoran Djindic than to redouble efforts to implement reforms and to strengthen the rule of law.

During this uncertain time, the champions of reform and democracy in Serbia should know that the U.S. Congress continues to stand by their side; crime bosses and war criminals should know that the United States is committed to aiding reformers in their defeat.

We will continue to closely follow developments in Serbia and throughout the region—and will remain vigilant in demanding justice for the murder of Zoran Djindic.

ADDITIONAL STATEMENTS

SUPPORT FOR COMMUNITY HEALTH CENTER

● Mr. NELSON of Nebraska. Mr. President, I would like to express my strong support for Lincoln, NE's application for a community health center. I met recently with Secretary Tommy Thompson and discussed the proposal with him. He reacted positively, assuring me that the application would be given top priority.

The need for this facility in Lincoln is great. Lincoln is experiencing an influx of immigrant families who lack health care coverage and are in critical need of medical care. And Nebraska, like other States, is facing budgetary constraints due to the downturn in the economy and reduced its Medicaid rolls leaving more people without health insurance.

The new health center, which will be called the Peoples' Health Center of Lincoln, will provide many services to the area including: primary medical care, primary dental care and oral health education, lab services, social work and health education. With the Federal funds, the community will be able to proceed to develop these health services to the uninsured and underinsured in Lincoln.

I look forward to HHS's grant announcement and am hopeful that Lincoln's application will be approved.●

HONORING DR. R. BRENT WRIGHT

● Mr. BUNNING. Mr. President, I speak in recognition of Dr. R. Brent Wright of Glasgow, Kentucky. Dr. Wright is a recipient of the American Medical Association's AMA Foundation Leadership Award at the 2003 AMA National Advocacy Conference held in Washington, D.C. earlier this month.

Each year the AMA takes an opportunity to honor young physicians who, in addition to offering patients quality medical attention, show a strong dedication to community affairs and leadership in the medical community. Only 25 young physicians in the nation receive this distinguished honor and I am proud that a fellow Kentuckian has been recognized for his innovative and hard work.

Dr. Wright serves as a family physician at the University of Louisville Health Science Center in Glasgow, Kentucky. No stranger to serving the needs of the community, he is Chair of the Community Medical Care Clinical Committee which offers assistance to uninsured and employed individuals. Dr. Wright is also active with medical associations, such as the AMA and the Kentucky Medical Association Congress of Delegates, and he serves as the Acting Program Director of the University of Louisville/Glasgow Family Medicine Residency Program.

His commitment to improving the health care system one patient at a time is certainly serving Kentucky well. I look forward to seeing the future accomplishments of his promising career, and I am pleased the Senate is joining me in honoring Dr. R. Brent Wright.●

IN RECOGNITION OF THE 35th ANNIVERSARY OF PROJECT REHAB

● Mr. LEVIN. Mr. President, today it is my great pleasure to recognize Project Rehab for 35 years of dedicated service promoting personal and community health throughout my home State of Michigan.

Since 1968, Project Rehab has functioned as a community-based outreach to people experiencing behavioral and mental health problems. Project in Rehabilitation began as the joint effort of Dr. William Kooistra and Dr. Chet Maternowski to offer counseling and treatment to heroin addicts in Grand Rapids, MI. Through their valuable service, Drs. Kooistra and Maternowski promoted awareness of drug addiction

in a community that was not then equipped to address this problem. Overcoming sometimes harsh criticism, they succeeded in establishing their organization as a place of hope for those needing drug abuse treatment.

Over the years, Project Rehab has grown to fit the changing needs of its clients. While maintaining a strong emphasis on treating addiction and substance abuse, Project Rehab now offers a broad range of services, including work-release programs for prisoners, employee counseling, and educational programs to encourage behavioral and mental health.

Today, Project Rehab serves 5,000 clients annually in cities across Michigan. Through its educational services, Project Rehab educates more than 9,000 students, warning them of the dangers posed by drug and alcohol use. Within its field, Project Rehab is recognized as an innovative force, bringing unique treatment to individuals in need. As one of the largest and longest running substance abuse programs in Michigan, I commend Project Rehab for improving the lives of many in Michigan and setting an example for other programs around the country.

I know that my colleagues in the Senate will join me in congratulating Project Rehab for their committed work and for the hope they have given to many.●

HONORING DR. DANIEL J. FINN

● MR. BUNNING. Mr. President, I speak in recognition of Dr. Daniel J. Finn of Bardstown, Kentucky. Dr. Finn is a recipient of the American Medical Association's, AMA, Foundation Leadership Award at the 2003 AMA National Advocacy Conference held in Washington, D.C. earlier this month.

Each year the AMA takes an opportunity to honor young physicians who, in addition, to offering patients quality medical attention, show a strong dedication to community affairs and leadership in the medical community. Only 25 young physicians in the nation receive this distinguished honor and I am proud that a fellow Kentuckian has been recognized for his innovative and hard work.

Dr. Finn practices pediatrics at Flaget Hospital in Bardstown, Kentucky. He focuses his attention on helping children combat obesity, an increasing problem facing the youth of America, by tailoring weight management programs for at-risk children. Dr. Finn also assists emotionally and behaviorally troubled youth by serving on the Advisory Council for Buckhorn of Lincoln Trail. He demonstrates his commitment to the medical community by being actively involved in the AMA, American Academy of Pediatrics and the Kentucky Medical Association.

His commitment to improving the health care system one patient at a time is certainly serving Kentucky well. I look forward to following and hearing more of his promising career. I thank the Senate in allowing me to honor Dr. Daniel J. Finn.●

HONORING KATHLEEN DANEK

● Mr. NELSON of Nebraska. Mr. President, today it is my honor to recognize Kathleen ''Kathy'' Danek for her many years of dedicated and selfless service to the State of Nebraska. Ms. Danek exemplifies true volunteerism: dependable, endless energy and passionate commitment to worthwhile causes.

Kathy Danek has long been a distinguished member of the American Postal Workers Union, AFL-CIO. Ms. Danek, through tireless work in several State and local agencies, earned the position as National Legislative Aide and Editor for the Auxiliary to the American Postal Workers Union. She has participated in numerous training activities to help auxiliary and union members understand the importance of grassroots involvement. Ms. Danek was also resoundingly elected to the District 1 Board of Education for the Lincoln Public Schools.

In addition to her service on the Board of Education and with the Postal Workers, Ms. Danek has always been an active member of St. Patrick's Catholic Church, often spending her free time teaching students and volunteering with St. Patrick's athletic programs. Her work also includes service with the Girl Scouts, the Lincoln Juniors Volleyball club, the Lancaster County Democratic Party, the YMCA as a softball and volleyball coach, and fundraising for the Doris Blair Softball Complex.

Because of her tireless work in the community, her peers have elected her President of the Lincoln Northeast High School Parent Advisory Board, President of the Lincoln Northeast High School Booster Club and Community Representative for the Lincoln Public Schools Graduation Requirement Committee. In addition, she has been selected as a member of the LPS High School Principal Selection Committee and was a community representative for the Northeast High School Media Center Committee. Ms. Danek has also devoted her time to Huntington and Dawes Middle schools.

Ms. Danek is a longtime resident of Lincoln, NE. She has been married to her husband Terry for 30 years. Together they have four daughters; Christine Goche, Wendy Danek, Kelly Witter, Megan Danek. They have two grandchildren, Bailey and Harrison Goche.

I am proud to represent Nebraskans like Ms. Danek who are committed public servants. Volunteer services are an essential part of communities. The selfless efforts of committed citizens like Ms. Danek, make our communities a better place to live and improve the quality of life for our neighbors. The city of Lincoln and State of Nebraska are fortunate to have Kathy Danek as a member of their community.●

MESSAGE FROM THE HOUSE

At 11:15 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate.

H.R. 441. An act to amend Public Law 107–10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2003 in Geneva, Switzerland, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 77. Concurrent resolution commemorating the 60th anniversary of the historic rescue of 50,000 Bulgarian Jews from the Holocaust and commending the Bulgarian people for preserving and continuing their tradition of ethnic and religious tolerance.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 441. An act to amend Public Law 107–10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2003 in Geneva, Switzerland, and for other purposes; to the Committee on Foreign Relations.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 77. Concurrent resolution commemorating the 60th anniversary of the historic rescue of 50,000 Bulgarian Jews from the Holocaust and commending the Bulgarian people for preserving and continuing their tradition of ethnic and religious tolerance; to the Committee on Foreign Relations.

MEASURE READ THE FIRST TIME

The following bill was read the first time:

S. 607. A bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1540. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''2002 Farm Bill Regulations—Termination of Peanut Marketing Quota Program and Revised Flue-Cured Tobacco Reserve Stock Level (0560–AG82)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1541. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Grazing Payments for 2001 Wheat, Barley, or Oats

(0560–AG22)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1542. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Collecting Guaranteed Loan Payments from FSA Farm Loan Program Borrowers (0560–AG44)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1543. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Limitations on the Amount of Farm Service Agency Guaranteed Loans'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1544. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Sale and Purchase of Flue-Cured Tobacco Across County Lines (Florida and Georgia) (0560–AG68)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1545. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Conservation Reserve Program—Good Faith Reliance and Excessive Rainfall (0560–AG37)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1546. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Dairy Indemnity Payment Plan (0560–AG08)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1547. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Non-Insured Crop Disaster Assistance for Sea Grass and Sea Oats (0560–AG82)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1548. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Non-Insured Crop Disaster Assistance for Sea Grass and Sea Oats (0560–AG82)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1549. 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 ''Payments for Cattle and Other Property Because of Tuberculosis Doc. No. 00–105–2'' received on March 12, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1550. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Amendments to the Tobacco Marketing Quota Regulations (0560–AG40)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1551. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Conservation Reserve Program—Farmable Wetlands Pilot Program (0560–AG38)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1552. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the report relative to the Farm Credit Administration 2003 compensation program, received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1553. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Payments Limits (0560–AG77)'' received on March 7, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1554. A communication from the Under Secretary of Defense, Acquisition, Technology and Logistics, Department of Defense, transmitting, pursuant to law, the Annual Report on operations on the National Defense Stockpile (NDS), received on March 7, 2003; to the Committee on Armed Services.

EC–1555. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, pursuant to law, the report relative to the plan to implement legislation concerning the transfer of Montgomery GI Bill (MGIB) entitlements to family members, received on March 7, 2003; to the Committee on Armed Services.

EC–1556. A communication from the Chairman, Medicare Payment Advisory Commission, transmitting, pursuant to law, the report relative to the Balanced Budget Refinement Act of 1999 and the implementation of the prospective payment system, received on March 7, 2003; to the Committee on Finance.

EC–1557. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Annual Report concerning compliance of the Farm Credit Administration with the Sunshine Act for Fiscal Year 2002; to the Committee on Governmental Affairs.

EC–1558. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of the Environmental Protection Agency's Inventory of Commercial Activities for 2002; to the Committee on Governmental Affairs.

EC–1559. A communication from the Deputy General Counsel, Veteran's Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Provision of Drugs and Medicines to Certain Veterans in State Homes (2900–AK34)'' received on March 12, 2003; to the Committee on Veterans' Affairs.

EC–1560. A communication from the Deputy Secretary, Division of Market Regulations, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''17 CFR 240.15c3–3—Customer Protection—Reserves and Custody of Securities 17 CFR 200.30–3—Delegation of Authority to the Director of the Division of Market Regulation (3235–AI51)'' received on March 12, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1561. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: MORAVAN a.s. Model Z242L Airplanes; Docket no. 2000–CE–05 (2120–AA64) (2003–0146)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1562. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E2 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE; Correction; Docket No. 02–ACE8 (2120–AA66) (2003–0048)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1563. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E 5 Airspace; Memphis TN; Docket no. 02–ASO–29 (2120–AA66) (2003–0061)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1564. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Realignment of Federal Airways V 72 and V 289; MO; Docket no. 02–ACE–6 [1–26/3–10] (2120–AA66) (2003–0049)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1565. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Larned, KS; Docket No. 03/ACE–11 [2–25/3–10] (2120–AA66) (2003–0050)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1566. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Cherokee; Docket no. 03–ACE–9 [2–25/3–10] (2120–AA66) (2003–0051)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1567. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification from Class E Airspace Herington, KS; Docket no. 03–ACE–10 [2–25/3–10] (2120–AA66) (2003–0052)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1568. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Clarinda, IA; Docket no. 03–AC0–12 [2–25/3–10] (2120–AA66) (2003–0053)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1569. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Wasilla, AK; Docket no. 02–AAL–7 [2–19/3–10] (2120–AA66) (2003–0054)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1570. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace Ankeny, IA; Docket no. 03–ACE–8 (2120–AA66) (2003–0055)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1571. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace Lebanon, MO; Docket no. 03–ACE–6 [2–19/3–10] (2120–AA66) (2003–0056)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1572. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Ames, IA; Docket no. 03–ACE–7 [2–19/3–10] (2120–AA66) (2003–0057)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1573. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Proposed Realignment of Federal Airways V 72 and V289; MO CORRECTION; Docket no. 02–ACE–6 (2120–AA66) (2003–0058)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1574. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Prohibited Area P 49 Crawford, TX Docket no. 03–AWA–1 [2–19/3–10] (2120–AA66) (2003–0059)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1575. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D Airspace and Modification of Class E Airspace; Topeka, Philip Billard Municipal Airport, KS; Docket No. 03–ACE–4 [2–10/3–10] (2120–AA66) (2003–0060)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. DOMENICI for the Committee on Energy and Natural Resources.

*Joseph Timothy Kelliher, of the District of Columbia, to be a Member of the Federal Energy Regulatory Commission for the term expiring June 30, 2007.

(*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. SMITH (for himself and Mr. WYDEN):

S. 601. A bill to authorize the Secretary of the Interior to acquire the McLoughlin House National Historic Site in Oregon City, Oregon, for inclusion in the Fort Vancouver National Historic Site, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DORGAN (for himself, Mr. HAGEL, Mr. JOHNSON, Mr. BROWNBACK, Mr. DASCHLE, Mr. BURNS, Mr. DAYTON, Mr. ROCKEFELLER, Mr. CONRAD, Mr. COLEMAN, Mr. DURBIN, Ms. LANDRIEU, and Mr. MILLER):

S. 602. A bill to reward the hard work and risk of individuals who choose to live in and help preserve America's small, rural towns, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. BAUCUS, Mr. BINGAMAN, Mr. ROCKEFELLER, and Mr. JEFFORDS):

S. 603. A bill to amend part A of title IV of the Social Security Act to give States the option to create a program that allows individuals receiving temporary assistance to needy families to obtain post-secondary or longer duration vocational education; to the Committee on Finance.

By Mr. BAYH (for himself, Mr. DOMENICI, and Mr. SANTORUM):

S. 604. A bill to amend part D of title IV of the Social Security Act to provide grants to promote responsible fatherhood, and for other purposes; to the Committee on Finance.

By Mr. SMITH (for himself, Mr. WYDEN, Mr. BAUCUS, Mr. ALLEN, Mr. WARNER, Mr. KERRY, Mr. KENNEDY, Mr. AKAKA, Mr. BURNS, Mr. COLEMAN, and Mr. DAYTON):

S. 605. A bill to extend waivers under the temporary assistance to needy families program through the end of fiscal year 2008; to the Committee on Finance.

By Mr. GREGG (for himself, Mr. KENNEDY, Mr. DEWINE, Mr. HARKIN, Mr. SMITH, Ms. MIKULSKI, Ms. COLLINS, Mr. BINGAMAN, Ms. SNOWE, Mr. SARBANES, Mr. KERRY, Mr. BAYH, Mr. CORZINE, Mr. DAYTON, Mr. DURBIN, and Mr. DASCHLE):

S. 606. A bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ENSIGN (for himself, Mr. GREGG, Mr. ENZI, Mr. THOMAS, Mr. VOINOVICH, and Mr. KYL):

S. 607. A bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; read the first time.

By Mr. REED (for himself and Mr. KENNEDY):

S. 608. A bill to provide for personnel preparation, enhanced support and training for beginning special educators, and professional development of special educators, general educators, and early intervention personnel; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEAHY (for himself, Mr. LEVIN, Mr. LIEBERMAN, Mr. JEFFORDS, and Mr. BYRD):

S. 609. A bill to amend the Homeland Security Act of 2002 (Public Law 107-296) to provide for the protection of voluntarily furnished confidential information, and for other purposes; 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. BROWNBACK (for himself, Mr. WYDEN, Mr. COLEMAN, Mr. CORNYN, and Mr. CAMPBELL):

S. Res. 81. A resolution expressing the sense of the Senate concerning the continuous repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women; to the Committee on Foreign Relations.

By Mr. BROWNBACK (for himself, Mr. WYDEN, Mr. COLEMAN, Mr. CORNYN, Mr. CAMPBELL, and Mr. KYL):

S. Res. 82. A resolution expressing the sense of the Senate concerning the continuous repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women; to the Committee on Foreign Relations.

By Mr. SANTORUM (for himself and Mr. BROWNBACK):

S. Con. Res. 19. A concurrent resolution affirming the importance of a national day of prayer and fasting, and expressing the sense of Congress that March 17, 2003, should be designated as a national day of prayer and fasting; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 15

At the request of Mr. GREGG, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 15, a bill to amend the Public Health Service Act to provide for the payment of compensation for certain individuals with injuries resulting from the administration of smallpox countermeasures, to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States, and to improve immunization rates by increasing the distribution of vaccines and improving and clarifying the vaccine injury compensation program.

S. 50

At the request of Mr. JOHNSON, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 50, a bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care, and for other purposes.

S. 54

At the request of Mr. SCHUMER, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 54, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

S. 120

At the request of Mr. BAYH, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 120, a bill to eliminate the marriage tax penalty permanently in 2003.

S. 120

At the request of Mrs. HUTCHISON, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 120, supra.

S. 140

At the request of Mrs. FEINSTEIN, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 140, a bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers.

S. 171

At the request of Mr. DAYTON, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 171, a bill to amend the title XVIII of the Social Security Act to provide payment to medicare ambulance suppliers of the full costs of providing such services, and for other purposes.

S. 227

At the request of Mrs. FEINSTEIN, the name of the Senator from Virginia (Mr. ALLEN) was withdrawn as a cosponsor of S. 227, a bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to certified or licensed teachers, to provide for grants that promote teacher certification and licensing, and for other purposes.

S. 238

At the request of Mr. REED, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 238, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 251

At the request of Mr. BREAUX, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 251, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 252

At the request of Mr. THOMAS, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 252, a bill to amend the Internal Revenue Code of 1986 to provide special rules relating to the replacement of livestock sold on account of weather-related conditions.

S. 271

At the request of Mr. SMITH, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 271, a bill to amend the Internal Revenue Code of 1986 to allow an additional advance refunding of bonds originally issued to finance governmental facilities used for essential governmental functions.

S. 272

At the request of Mr. SANTORUM, the names of the Senator from Minnesota (Mr. COLEMAN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 272, a bill to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low income Americans to gain financial security by building assets, and for other purposes.

S. 317

At the request of Mr. GREGG, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 317, a bill to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs for work and family, and for other purposes.

S. 322

At the request of Mr. INOUYE, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 322, a bill to amend the Internal Revenue Code of 1986 to exempt certain sightseeing flights from taxes on air transportation.

S. 377

At the request of Ms. LANDRIEU, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 377, a bill to require the Secretary of the Treasury to mint coins in commemoration of the contributions of Dr. Martin Luther King, Jr., to the United States.

S. 392

At the request of Mr. REID, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 392, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 451

At the request of Ms. SNOWE, the names of the Senator from Arizona (Mr. MCCAIN), the Senator from Hawaii (Mr. INOUYE), the Senator from Indiana (Mr. LUGAR), the Senator from Nevada (Mr. REID), the Senator from Alabama (Mr. SESSIONS) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 451, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes.

S. 457

At the request of Mr. LEAHY, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 457, a bill to remove the limitation on the use of funds to require a farm to feed livestock with organically produced feed to be certified as an organic farm.

S. 471

At the request of Mr. ALLEN, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 471, a bill to ensure continuity for the design of the 5-cent coin, establish the Citizens Coinage Committee, and for other purposes.

S. 480

At the request of Mr. HARKIN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 480, a bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 511

At the request of Mr. BINGAMAN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 511, a bill to provide permanent funding for the Payment In Lieu of Taxes program, and for other purposes.

S. 516

At the request of Mr. BUNNING, the names of the Senator from Nevada (Mr. ENSIGN) and the Senator from Illinois (Mr. FITZGERALD) were added as cosponsors of S. 516, a bill to amend title 49, United States Code, to allow the arming of pilots of cargo aircraft, and for other purposes.

S. 529

At the request of Ms. CANTWELL, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 529, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income loan payments received under the National Health Service Corps Loan Repayment Program established in the Public Health Service Act.

S. 544

At the request of Mr. DODD, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 544, a bill to establish a SAFER Firefighter Grant Program.

S. 560

At the request of Mr. CRAIG, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 560, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 566

At the request of Ms. MIKULSKI, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 566, a bill to amend the Public Health Service Act to provide for Alzheimer's disease research and demonstration grants.

S. 585

At the request of Mr. NELSON of Florida, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 585, a bill to amend title 10, United States Code, to repeal the requirement for reduction of SBP survivor annuities by dependency and indemnity compensation.

S. RES. 30

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. Res. 30, a resolution expressing the sense of the Senate that the President should designate the week beginning September 14, 2003, as ''National Historically Black Colleges and Universities Week''.

S. RES. 46

At the request of Mr. BINGAMAN, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. Res. 46, a resolution designating March 31, 2003, as ''National Civilian Conservation Corps Day''.

S. RES. 48

At the request of Mr. AKAKA, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Res. 48, a resolution designating April 2003 as ''Financial Literacy for Youth Month''.

S. RES. 70

At the request of Mr. CRAIG, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. Res. 70, a resolution designating the week beginning March 16, 2003 as ''National Safe Place Week''.

S. RES. 78

At the request of Mr. SPECTER, the names of the Senator from Oklahoma

(Mr. NICKLES) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. Res. 78, a resolution designating March 25, 2003, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy''.

S. RES. 79

At the request of Mrs. HUTCHISON, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. Res. 79, a resolution designating the week of March 9 through March 15, 2003, as ''National Girl Scout Week''.

S. RES. 79

At the request of Ms. COLLINS, her name was added as a cosponsor of S. Res. 79, supra.

AMENDMENT NO. 259

At the request of Mr. DURBIN, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of amendment No. 259 proposed to S. 3, a bill to prohibit the procedure commonly known as partial-birth abortion.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SMITH (for himself and Mr. WYDEN):

S. 601. A bill to authorize the Secretary of the Interior to acquire the McLoughlin House National Historic Site in Oregon City, Oregon, for inclusion in the Fort Vancouver National Historic Site, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. WYDEN. Mr. President, I rise today as an original co-sponsor of the McLoughlin House Preservation Act.

Dr. John McLoughlin, a powerful 6′4″ man, is known, officially and fondly, as the ''Father of Oregon.'' His compassion played a critical role in the settling of the Northwest by Oregon Trail pioneers. Dr. McLoughlin's generosity to these early pioneers who arrived in the Oregon Territory after their incredible five month journey sick, hungry and without provisions was often the difference between survival and failure during their first winter.

This bill is a testimony to the hard work that one community can achieve. Preservation of the McLoughlin House and the nearby Barclay House, located in Oregon City, Oregon, is important to the cultural identity of Oregon. This bill would make them part of the Fort Vancouver National Park Service administrative site, thereby highlighting the interwoven connection between Fort Vancouver, the fur trade and the beginnings of the Oregon Territory.

Dr. McLoughlin first came to the Northwest in 1824, arriving at Fort George, now called Astoria, Oregon, to establish a supply center for the Hudson's Bay Company. Within a year, he moved to a more favorable location on the northern side of the Columbia, in what is now Washington State, and built a new trading post and named it Fort Vancouver. As the Post Administrator, the good hearted doctor maintained a very good relationship with neighboring Indians and used his medical skills to tend to the terrible fevers that broke out among them.

The Fort belonged to the Hudson's Bay Company that was a rival of American trappers, and although company policy discouraged American settlers, Dr. McLoughlin was not one to refuse a helping hand to any trapper or settler in distress. When frustrated with the Hudson's Bay Company policy opposing American settlers, Dr. McLoughlin resigned and moved to Oregon City on the Willamette Falls. By 1848, Oregon had grown so much that it was officially designated a territory, and by 1859, it became the nation's thirty-third state. McLoughlin remained a vibrant public figure and became the Mayor of Oregon City in 1851. Many of the debates concerning Oregon's statehood are said to have taken place in McLoughlin's living room, and the Oregon State Legislature aptly named him the ''Father or Oregon.''

The McLoughlin House was designated as the National Historic Site, one of the first in the west, in 1941. I thank my constituents in Clackamas County, particularly John Salisbury and the McLoughlin Memorial Association, for all of their hard work to preserve this Oregon treasure. Additionally, I thank Tracy Fortmann with the National Park Service at Fort Vancouver for her advocacy on behalf of the McLoughlin House. Mayor Alice Norris and the former mayors of Oregon City who have worked together to bring this legislation to the attention of the Oregon delegation deserve our thanks as well. Finally, I thank Representative HOOLEY for having the foresight to introduce this legislation in the House of Representatives in the 107th Congress and again in the 108th.

By Ms. SNOWE (for herself, Mr. BAUCUS, Mr. BINGAMAN, Mr. ROCKEFELLER, and Mr. JEFFORDS):

S. 603. A bill to amend part A of title IV of the Social Security Act to give States the option to create a program that allows individuals receiving temporary assistance to needy families to obtain post-secondary or longer duration vocational education; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce ''The Pathways to Self-Sufficiency Act of 2003.'' I am pleased to be joined in introducing this important legislation by my colleagues Senators BAUCUS, BINGAMAN and ROCKEFELLER.

This legislation is based upon the highly esteemed Maine program called ''Parents as Scholars''. This program, which uses State Maintenance of Effort, MOE, dollars to pay TANF-like benefits to those participating in post-secondary education, is a proven success in my state and is a wonderful foundation for a national effort.

We all agree that the 1996 welfare reform effort changed the face of this Nation's welfare system to focus it on work. To that end, I believe that this legislation bolsters the emphasis on ''work first''. Like many of my colleagues, I agree that the shift in the focus from welfare to work was the right decision, and that work should be the top priority. However, for those TANF recipients who cannot find a good job that will put them on the road toward financial independence, education might well be the key to a successful future of self-sufficiency.

As we have seen in Maine that education has played a significant role in breaking the cycle of welfare and giving parents the skills necessary to find better paying jobs. And we all know that higher wages are the light at the end of the tunnel of public assistance.

''The Pathways to Self-Sufficiency Act of 2003'' provides States with the option to allow individuals receiving Federal TANF assistance to obtain post-secondary or vocational education. This legislation would give States the ability to use Federal TANF dollars to give those who are participating in vocational or post-secondary education the same assistance as they would receive if they were working.

We all know that supports like income supplements, child care subsidies, and transportation assistance among others, are essential to a TANF recipient's ability to make a successful transition to work. The same is true for those engaged in longer term educational endeavors. This assistance is especially necessary for those who are undertaking the challenge and the financial responsibility of post-secondary education, in the hopes of increasing their earning potential and employability. The goal of this program is to give participants the tools necessary to succeed into the future so that they can become, and remain, self-sufficient.

Choosing to go to college requires motivation, and graduating from college requires a great deal of commitment and work—even for someone who isn't raising children and sustaining a family. These are significant challenges, and that's even before taking into consideration the cost associated with obtaining a Bachelor's degree, with a four year program at the University of Maine currently costing almost $25,000. This legislation would provide those TANF recipients who have the ability and the will to go to college the assistance they need to sustain their families while they get a degree.

The value of promoting access to education in this manner to get people off public assistance is proven by the success of Maine's ''Parents as Scholars'', PaS, program. Maine's PaS graduates earn a median wage of $11.71 per hour after graduation up from a median of $8.00 per hour prior to entering

college. When compared to the $7.50 median hourly wage of welfare leavers in Maine who have not received a post-secondary degree, PaS graduates are earning, on average, $160 more per week. That translates into more than $8,000 per year—a significant difference.

Furthermore,the median grade point average for PaS participants while in college was 3.4 percent,and a full 90 percent of PaS participants' GPA was over 3.0. These parents are giving their all to pull their families out of the cycle of welfare.

Recognizing that work is a priority under TANF, and building upon the successful Maine model, the ''Pathways to Self-Sufficiency Act'' requires that participants in post-secondary and vocational education also participate in work. During the first two years of their participation in these education programs, students must participate in a combination of colas time, study time, employment or work experience for at lest 24 hours per week—the same hourly requirement that the President proposes in his welfare reauthorization proposal.

During the second two years—for those enrolled in a four year program—the participant must work at least 15 hours in addition to class and study time, or engage in a combination activities, including colas and study time work or work experience, and training, for an average of 30 hours per week. And all the while, participants must maintain satisfactory academic progress as defined by their academia institution.

The bottom line is that if we expect parents to move from welfare to work and stay in the work force, we must give them the tools to find good jobs. For some people that means job training, for others that could mean dealing with a barrier like substance abuse or domestic violence, and for others, that might mean access to education that will secure them a good job and that will get them off and keep them off of welfare.

The experience of several ''Parents as Scholar'' graduates were recently captured in a publication published by the Maine Equal Justice Partners, and their experiences are testament to the fact that this program is a critically important step in moving towards self-sufficiency. In this report one Las graduate said of her experience, ''If it weren't for 'Parents as Scholars' I would never have been able to attend college, afford child care, or put food on the table. Today, I would most likely be stuck in a low-wage job I hated barely getting by . . . I can now give my children the future they deserve.''

Another said, ''By earning my Bachelor's degree, I have become self sufficient. I was a waitress previously and would never have been able to support my daughter and I on the tips that I earned. I would encourage anyone to better their education if possible.

These are but a few comments from those who have benefited from access to post-secondary education. And,while these women have been able to attend college and pursue good jobs thanks tori the good will and the support of the people of Maine, Las has strained the state's budget. Giving States the option use Federal dollars to support these participants will make a tremendous difference in their ability to sustain these programs which have proven results. In Maine, nearly 90 percent of working graduates have left TANF permanently—and isn't that our ultimate goal?

I look forward to working with my colleagues to include this legislation in the upcoming welfare reauthorization. It is a critical piece of the effort to move people from welfare to work permanently and it has been missing from the federal program for too long.

By Mr. SMITH (for himself, Mr. WYDEN, Mr. BAUCUS, Mr. ALLEN, Mr. WARNER, Mr. KERRY, Mr. KENNEDY, Mr. AKAKA, Mr. BURNS, Mr. COLEMAN, and Mr. DAYTON):

S. 605. A bill to extend waivers under the temporary assistance to needy families program through the end of fiscal year 2008; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce legislation that would allow States with successful welfare to renew them for the next five years. In this effort, I am joined by Senators WYDEN, BAUCUS, ALLEN, WARNER, KERRY, KENNEDY, AKAKA, BURNS, and COLEMAN. All of our States and several others operate their welfare programs under waivers which allow them flexibility to design programs that work for people in their States.

The most comprehensive evaluation of welfare workforce strategies to date, commissioned and funded by the Department of Health and Human Services, demonstrated that a mixed strategy based on individual degree of job readiness was far and away the most effective way to transition families from welfare to work. This is the approach Oregon and others have taken, and I feel strongly that these States be allowed to continue their innovative and successful programs.

Oregon has long been considered a national leader in developing innovative strategies to serve its low-income citizens. Oregon's welfare waiver, known as ''The Oregon Option,'' was implemented just a few months before passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Oregon Option reflects Oregon's strong belief in moving families forward to sustainable employment. Consistent with Oregon's reputation as an innovator, the Oregon Option also rejects a ''one size fits all'' approach for its low income families.

Oregon uses a labor market test to assess each person's ability to work. Families are expected to engage in intense job search for 45 days and if that process identifies significant barriers to families finding and retaining employment, case managers will work with the families to identify resources available to address those barriers. The case managers then work to develop appropriate plans that engage families in barrier removal activities, such as education, substance abuse or mental health treatment, finding housing for victims of domestic violence, while moving them toward employment. Oregon officials estimate that at any time, approximately 50 percent of all TANF families have substantial barriers to employment.

Oregon has demonstrated success in moving families into employment by fully utilizing its flexibility under the Oregon Option waiver. Oregon, and other states that have used federal flexibility to design successful programs, must not be forced either to abandon their effective approaches or to try to find loopholes to circumvent the approach mandated by current reauthorization proposals.

The legislation that my colleagues and I are introducing today will allow all states with currently operational TANF waivers, and states with waivers expiring after January 1, 2002, the option of renewing their waivers for the next five years, until the next scheduled reauthorization of welfare in 2008. This will ensure that successful programs designed by local people for local people aren't eliminated in favor of a ''one-size-fits-all'' federal program.

By Mr. GREGG (for himself, Mr. KENNEDY, Mr. DEWINE, Mr. HARKIN, Mr. SMITH, Ms. MIKULSKI, Ms. COLLINS, Mr. BINGAMAN, Ms. SNOWE, Mr. SARBANES, Mr. KERRY, Mr. BAYH, Mr. CORZINE, Mr. DAYTON, Mr. DURBIN, and Mr. DASCHLE):

S. 606. A bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions; to the Committee on Health, Education, Labor, and Pensions.

Mr. GREGG. Mr. President, today, I am pleased to be joined by Senators KENNEDY, DEWINE, HARKIN, SMITH, MIKULSKI, COLLINS, BINGAMAN, SNOWE, SARBANES, KERRY, BAYH, CORZINE, and DAYTON in introducing the Public Safety Employer-Employee Cooperation Act of 2003. This legislation would extend to firefighters and police officers the right to discuss workplace issues with their employers.

With the enactment of the Congressional Accountability Act, State and local government employees remain the only sizable segment of workers left in America who do not have the basic right to enter into collective bargaining agreements with their employers. While most States do provide some collective bargaining rights for their public employees, others do not.

Studies have shown that communities which promote such cooperation enjoy much more effective and efficient delivery of emergency services.

Such cooperation, however, is not possible in the States that do not provide public safety employees with the fundamental right to bargain with their employers.

The legislation I am introducing today is balanced in its recognition of the unique situation and obligation of public safety officers. To accomplish this the bill: 1. Requires States, within 2 years, to guarantee the right of public safety officers to form and voluntarily join a union to bargain collectively over hours, wages and conditions of employment; 2. Protects the right of public safety officers to form, join, or assist any labor organization or to refrain from any such activity, freely and without fear of penalty or reprisal; 3. Prohibits the use of strikes, lockouts, sickouts, work slowdowns or any other action that is designed to compel an employer, officer or labor organization to agree to the terms of a proposed contract and that will measurably disrupt the delivery of services; 4. Continues to allow States to enforce right-to-work laws which prohibit employers and labor organizations from negotiating labor agreements that require union membership or payment of union fees as a condition of employment; 5. Preserves the right of management to not bargain over issues traditionally reserved for management level decisions; 6. Exempts all states with a State bargaining law for public safety officers that are equal to or greater than the rights granted under Federal law; 7. Gives States the option to exempt from coverage subdivisions with populations of less than 5,000 or fewer than 25 full time employees.

Labor-management partnerships, which are built upon bargaining relationships, result in improved public safety. Employer-employee cooperation contains the promise of saving the taxpayer money by enabling workers to give input as to the most efficient way to provide services. In fact, States that currently give firefighters the right to discuss workplace issues actually have lower fire department budgets than States without those laws.

The Public Safety Employer-Employee Cooperation Act of 2003 will put firefighters and law enforcement officers on equal footing with other employees and provide them with the fundamental right to negotiate with employers over such basic issues as hours, wages, and workplace conditions.

I urge its adoption and ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 606

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 ''Public Safety Employer-Employee Cooperation Act of 2003''.

SEC. 2. DECLARATION OF PURPOSE AND POLICY.

The Congress declares that the following is the policy of the United States:

(1) Labor-management relationships and partnerships are based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. Labor-management cooperation fully utilizes the strengths of both parties to best serve the interests of the public, operating as a team, to carry out the public safety mission in a quality work environment. In many public safety agencies it is the union that provides the institutional stability as elected leaders and appointees come and go.

(2) The Federal Government needs to encourage conciliation, mediation, and voluntary arbitration to aid and encourage employers and their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts through negotiations to settle their differences by mutual agreement reached through collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes.

(3) The absence of adequate cooperation between public safety employers and employees has implications for the security of employees and can affect interstate and intrastate commerce. The lack of such labor-management cooperation can detrimentally impact the upgrading of police and fire services of local communities, the health and well-being of public safety officers, and the morale of the fire and police departments. Additionally, these factors could have significant commercial repercussions. Moreover, providing minimal standards for collective bargaining negotiations in the public safety sector can prevent industrial strife between labor and management that interferes with the normal flow of commerce.

SEC. 3. DEFINITIONS.

In this Act:

(1) AUTHORITY.—The term ''Authority'' means the Federal Labor Relations Authority.

(2) EMERGENCY MEDICAL SERVICES PERSONNEL.—The term ''emergency medical services personnel'' means an individual who provides out-of-hospital emergency medical care, including an emergency medical technician, paramedic, or first responder.

(3) EMPLOYER; PUBLIC SAFETY AGENCY.—The terms ''employer'' and ''public safety agency'' mean any State, political subdivision of a State, the District of Columbia, or any territory or possession of the United States that employs public safety officers.

(4) FIREFIGHTER.—The term ''firefighter'' has the meaning given the term ''employee engaged in fire protection activities'' in section 3(y) of the Fair Labor Standards Act (29 U.S.C. 203(y)).

(5) LABOR ORGANIZATION.—The term ''labor organization'' means an organization composed in whole or in part of employees, in which employees participate, and which represents such employees before public safety agencies concerning grievances, conditions of employment and related matters.

(6) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer'' has the meaning given such term in section 1204(5) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(5)).

(7) MANAGEMENT EMPLOYEE.—The term ''management employee'' has the meaning given such term under applicable State law in effect on the date of enactment of this Act. If no such State law is in effect, the term means an individual employed by a public safety employer in a position that requires or authorizes the individual to formulate, determine, or influence the policies of the employer.

(8) PUBLIC SAFETY OFFICER.—The term ''public safety officer''—

(A) means an employee of a public safety agency who is a law enforcement officer, a firefighter, or an emergency medical services personnel;

(B) includes an individual who is temporarily transferred to a supervisory or management position; and

(C) does not include a permanent supervisory or management employee.

(9) SUBSTANTIALLY PROVIDES.—The term ''substantially provides'' means compliance with the essential requirements of this Act, specifically, the right to form and join a labor organization, the right to bargain over wages, hours, and conditions of employment, the right to sign an enforceable contract, and availability of some form of mechanism to break an impasse, such as arbitration, mediation, or fact finding.

(10) SUPERVISORY EMPLOYEE.—The term ''supervisory employee'' has the meaning given such term under applicable State law in effect on the date of enactment of this Act. If no such State law is in effect, the term means an individual, employed by a public safety employer, who—

(A) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment; and

(B) devotes a majority of time at work exercising such authority.

SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBILITIES.

(a) DETERMINATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination as to whether a State substantially provides for the rights and responsibilities described in subsection (b). In making such determinations, the Authority shall consider and give weight, to the maximum extent practicable, to the opinion of affected parties.

(2) SUBSEQUENT DETERMINATIONS.—

(A) IN GENERAL.—A determination made pursuant to paragraph (1) shall remain in effect unless and until the Authority issues a subsequent determination, in accordance with the procedures set forth in subparagraph (B).

(B) PROCEDURES FOR SUBSEQUENT DETERMINATIONS.—Upon establishing that a material change in State law or its interpretation has occurred, an employer or a labor organization may submit a written request for a subsequent determination. If satisfied that a material change in State law or its interpretation has occurred, the Director shall issue a subsequent determination not later than 30 days after receipt of such request.

(3) JUDICIAL REVIEW.—Any State, political subdivision of a State, or person aggrieved by a determination of the Authority under this section may, during the 60 day period beginning on the date on which the determination was made, petition any United States Court of Appeals in the circuit in which the person resides or transacts business or in the District of Columbia circuit, for judicial review. In any judicial review of a determination by the Authority, the procedures contained in subsections (c) and (d) of section 7123 of title 5, United States Code, shall be followed, except that any final determination of the Authority with respect to questions of fact or law shall be found to be conclusive unless the court determines that the Authority's decision was arbitrary and capricious.

(b) RIGHTS AND RESPONSIBILITIES.—In making a determination described in subsection (a), the Authority shall consider whether

State law provides rights and responsibilities comparable to or greater than the following:

(1) Granting public safety officers the right to form and join a labor organization, which may exclude management and supervisory employees, that is, or seeks to be, recognized as the exclusive bargaining representative of such employees.

(2) Requiring public safety employers to recognize the employees' labor organization (freely chosen by a majority of the employees), to agree to bargain with the labor organization, and to commit any agreements to writing in a contract or memorandum of understanding.

(3) Permitting bargaining over hours, wages, and terms and conditions of employment.

(4) Requiring an interest impasse resolution mechanism, such as fact-finding, mediation, arbitration or comparable procedures.

(5) Requiring enforcement through State courts of—

(A) all rights, responsibilities, and protections provided by State law and enumerated in this section; and

(B) any written contract or memorandum of understanding.

(c) FAILURE TO MEET REQUIREMENTS.—

(1) IN GENERAL.—If the Authority determines, acting pursuant to its authority under subsection (a), that a State does not substantially provide for the rights and responsibilities described in subsection (b), such State shall be subject to the regulations and procedures described in section 5.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on the date that is 2 years after the date of enactment of this Act.

SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Authority shall issue regulations in accordance with the rights and responsibilities described in section 4(b) establishing collective bargaining procedures for public safety employers and officers in States which the Authority has determined, acting pursuant to its authority under section 4(a), do not substantially provide for such rights and responsibilities.

(b) ROLE OF THE FEDERAL LABOR RELATIONS AUTHORITY.—The Authority, to the extent provided in this Act and in accordance with regulations prescribed by the Authority, shall—

(1) determine the appropriateness of units for labor organization representation;

(2) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit;

(3) resolve issues relating to the duty to bargain in good faith;

(4) conduct hearings and resolve complaints of unfair labor practices;

(5) resolve exceptions to the awards of arbitrators;

(6) protect the right of each employee to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and protect each employee in the exercise of such right; and

(7) take such other actions as are necessary and appropriate to effectively administer this Act, including issuing subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States, and administering oaths, taking or ordering the taking of depositions, ordering responses to written interrogatories, and receiving and examining witnesses.

(c) ENFORCEMENT.—

(1) AUTHORITY TO PETITION COURT.—The Authority may petition any United States Court of Appeals with jurisdiction over the parties, or the United States Court of Appeals for the District of Columbia Circuit, to enforce any final orders under this section, and for appropriate temporary relief or a restraining order. Any petition under this section shall be conducted in accordance with subsections (c) and (d) of section 7123 of title 5, United States Code, except that any final order of the Authority with respect to questions of fact or law shall be found to be conclusive unless the court determines that the Authority's decision was arbitrary and capricious.

(2) PRIVATE RIGHT OF ACTION.—Unless the Authority has filed a petition for enforcement as provided in paragraph (1), any party has the right to file suit in a State court of competent jurisdiction to enforce compliance with the regulations issued by the Authority pursuant to subsection (b), and to enforce compliance with any order issued by the Authority pursuant to this section. The right provided by this subsection to bring a suit to enforce compliance with any order issued by the Authority pursuant to this section shall terminate upon the filing of a petition seeking the same relief by the Authority.

SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.

A public safety employer, officer, or labor organization may not engage in a lockout, sickout, work slowdown, or strike or engage in any other action that is designed to compel an employer, officer, or labor organization to agree to the terms of a proposed contract and that will measurably disrupt the delivery of emergency services, except that it shall not be a violation of this section for an employer, officer, or labor organization to refuse to provide services not required by the terms and conditions of an existing contract.

SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

A certification, recognition, election-held, collective bargaining agreement or memorandum of understanding which has been issued, approved, or ratified by any public employee relations board or commission or by any State or political subdivision or its agents (management officials) in effect on the day before the date of enactment of this Act shall not be invalidated by the enactment of this Act.

SEC. 8. CONSTRUCTION AND COMPLIANCE.

(a) CONSTRUCTION.—Nothing in this Act shall be construed—

(1) to invalidate or limit the remedies, rights, and procedures of any law of any State or political subdivision of any State or jurisdiction that provides collective bargaining rights for public safety officers that are equal to or greater than the rights provided under this Act;

(2) to prevent a State from enforcing a right-to-work law that prohibits employers and labor organizations from negotiating provisions in a labor agreement that require union membership or payment of union fees as a condition of employment;

(3) to invalidate any State law in effect on the date of enactment of this Act that substantially provides for the rights and responsibilities described in section 4(b) solely because such State law permits an employee to appear on his or her own behalf with respect to his or her employment relations with the public safety agency involved; or

(4) to permit parties subject to the National Labor Relations Act (29 U.S.C. 151 et seq.) and the regulations under such Act to negotiate provisions that would prohibit an employee from engaging in part-time employment or volunteer activities during off-duty hours; or

(5) to prohibit a State from exempting from coverage under this Act a political subdivision of the State that has a population of less than 5,000 or that employs less than 25 full time employees.

For purposes of paragraph (5), the term ''employee'' includes each and every individual employed by the political subdivision except any individual elected by popular vote or appointed to serve on a board or commission.

(b) COMPLIANCE.—No State shall preempt laws or ordinances of any of its political subdivisions if such laws provide collective bargaining rights for public safety officers that are equal to or greater than the rights provided under this Act.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mr. KENNEDY. Mr. President, I am honored today to join Senator GREGG in introducing the Public Safety Employer-Employee Cooperation Act of 2003.

This bill is an important bipartisan effort to help protect our Nation's public safety officers on the job. The events of September 11 made clear that our Nation's true heroes are our fire fighters, police officers, and emergency medical technicians. We will never forget the sacrifices they made at the World Trade Center and the Pentagon. The photographs of tired, dust-covered, fire fighters confronting the unimaginable horror of that day are permanently emblazoned in our minds.

Thousands of public safety officers throughout the country serve in some of the country's most dangerous, strenuous and stressful jobs today. Every year, more than 80,000 police officers and 75,000 firefighters are injured on the job. An average of 160 police officers and nearly 100 firefighters die in the line of duty each year. It is a matter of basic fairness to give these courageous men and women the same rights that have long been enjoyed by other workers.

For more than 60 years, collective bargaining has enabled labor and management to work together to improve job conditions and increase productivity. Through collective bargaining, labor and management have led the way together on many important improvements in today's workplace—especially with regard to health and pension benefits, paid holidays and sick leave, and workplace safety.

Collective bargaining in the public sector, once a controversial issue, is now widely accepted. It has been widespread, since at least 1962, when President Kennedy signed an Executive order granting these basic rights to Federal employees. Congressional employees have had these rights since enactment of the Congressional Accountability Act almost a decade ago. It is long past time for State and local government employees to have Federal protection for the basic right to participate in collective bargaining agreements with their employers.

The bill we are introducing today extends this protection to firefighters, police officers, correctional officers,

paramedics and emergency medical technicians. The bill guarantees the fundamental rights necessary for collective bargaining—the right to form and join a union; the right to bargain over hours, wages and working conditions; the right to sign legally enforceable contracts; and the right to a means to resolve impasses in negotiations.

The benefits of this bill are clear and compelling. It will lead to safer working conditions for public safety officers. States that lack these collective bargaining laws have death rates for fire fighters nearly double the rate in States in which such bargaining takes place. In 1993, fire fighters in nine of the 10 States with the highest fire fighter death rates did not have collective bargaining protection. Because public safety employees serve on the front lines in providing firefighting services, law enforcement services, and emergency medical services, they know what it takes to create safer working conditions. They should have a voice in decisions that can literally make a life-or-death difference on the job.

This bill will benefit all of us, not just public safety officers. When workers who actually do the job are able to provide advice on their working conditions, there are fewer injuries, increased morale, better information on new technologies, and more efficient ways to provide the services, all of which improve the safety and security of the communities that our public safety officers serve.

This bill will also save money for States and local communities. Experience has shown that when public safety officers can discuss workplace conditions with management, partnerships and cooperation develop and lead to improved labor-management relations and better, more cost-effective services. A study by the International Association of Fire Fighters shows that States and municipalities that give firefighters the right to discuss workplace issues have lower fire department budgets than States without such laws.

This bill accomplishes its goals in a reasonable way. It requires that public safety officers be given the opportunity to bargain collectively, but it does not require that employers adopt agreements, and it does not regulate the content of any agreements that are reached.

In States with collective bargaining laws that substantially provide the modest minimum standards in the bill—as a majority of States already do—those States will be unaffected by this legislation. Where States do not have such laws, they may choose to enact them, or to allow the Federal Labor Relations Authority to establish procedures for bargaining between public safety officers and their employers. This approach respects existing State laws, and gives each state the authority to choose the way in which it will comply with the requirements of this legislation. States will have full discretion to make decisions on the implementation and enforcement of the basic rights set forth in this proposal.

This amendment will not supersede State laws which already adequately provide for the exercise of—or are more protective of—collective bargaining rights by public safety officers. It is a matter of basic fairness for these courageous men and women to have the same rights that have long been enjoyed by other workers. They put their lives on the line to protect us every day. They deserve to have an effective voice on the job, and I urge the Senate to approve this important bipartisan legislation.

By Mr. REED (for himself and Mr. KENNEDY):

S. 608. A bill to provide for personnel preparation, enhanced support and training for beginning special educators, and professional development of special educators, general educators, and early intervention personnel; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, I rise today to introduce the Personnel Excellence for Children with Disabilities Act of 2003 to ensure high quality personnel to serve students with disabilities.

I have long worked to improve the quality of teaching in America's classrooms for the simple reason that well-trained and well-prepared teachers, faculty, principals and administrators are critical to improving the educational performance and achievement of students.

As Congress turns to the reauthorization of the Individuals with Disabilities Education Act, IDEA, the focus shifts to increasing support for both new and veteran special education teachers, school principals, and the higher education faculty who train prospective special education teachers.

There are currently an estimated 6 million children who receive special education services. Yet, there are about 70,000 special education teaching vacancies in schools nationwide. The President's 2002 Commission on Excellence in Special Education report stated that ''the growing shortage of special education teachers alarms this Commission.'' Moreover, an estimated 600,000 IDEA students are taught by unqualified or underqualified teachers nationwide. In some urban and rural areas, close to half of special education teachers are unqualified.

I am joined by Senator KENNEDY, a leader in improving education for all children, in introducing legislation today which would address and improve current conditions by enhancing personnel preparation, recruitment and retention, support and training for beginning special educators, as well as professional development for special educators, general educators, principals, paraprofessionals, and related services personnel.

The Personnel Excellence for Children with Disabilities Act modifies and strengthens the current State Improvement Grant program to focus solely on personnel and professional development, including support to school districts to meet the personnel requirements under IDEA.

Our legislation also establishes two grant programs. One would fund partnerships of school districts, institutions of higher education, and elementary and secondary schools that focus on meeting the needs of beginning special educators, through an additional 5th year clinical learning opportunity or the creation or support of professional development schools. Professional development schools seek to improve the professional status of teaching through a renewal of schools and preservice teacher education, in-service education of veteran teachers, and research to add to the knowledge base. The other grant program seeks to ensure that general educators, including principals and administrators, have the skills, knowledge, and leadership training to improve results for children with disabilities in their schools and classrooms. Currently, approximately half of students with disabilities spend 79 percent or more of their time in regular classes, according to the Department of Education's Annual Report to Congress for 2001. Only 20 percent are served outside of regular classes for 60 percent or more of the time.

Lastly, our legislation enhances the personnel preparation programs under the current IDEA Section 673. These programs provide grants to institutions of higher education to enhance the preparation of special educators.

In sum, the Personnel Excellence for Children with Disabilities Act seeks to enhance: the teaching skills of special educators, general educators, early intervention personnel, paraprofessionals and related services personnel; the leadership skills of principals; collaboration among special educators, general educators, and other personnel; mentoring and other induction support for beginning special educators; and training programs at institutions of higher education. The Act would also boost the ability of educators and personnel to: involve and work with parents, implement positive behavioral interventions; improve early intervention services for infants, toddlers, and preschoolers; and provide transition services and postsecondary opportunities. It would also improve their ability to: use classroom-based techniques to identify student potentially eligible for services; use technology to enhance learning of children with disabilities and communicate with parents; and ensure an effective IEP process.

The time for action is now because 98 percent of school districts report that meeting the growing demand for special education teachers is a top priority. Annual attrition rates for special education teachers are over 13 percent: 6 percent for those who leave the field entirely; and an additional 7.4 percent who transfer to general education.

More than 200,000 new special education teachers will be needed in the next five years, according to U.S. Department of Education estimates. Investing in personnel preparation is critical for addressing these needs which, in turn, will improve outcomes and results for children with disabilities.

I urge my colleagues to join us in this essential endeavor by cosponsoring this legislation and working for its inclusion in the reauthorization of the IDEA.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 608

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 ''Personnel Excellence for Students with Disabilities Act''.

SEC. 2. STATE PERSONNEL AND PROFESSIONAL DEVELOPMENT GRANTS.

Subpart 1 of part D (20 U.S.C. 1451 et seq.) is amended to read as follows:

''Subpart 1—State Personnel and Professional Development Grants

''SEC. 651. FINDINGS; PURPOSE; DEFINITION.

''(a) FINDINGS.—Congress finds the following:

''(1) The right of all children with disabilities to a free and appropriate public education requires States to adopt a comprehensive strategy to address teacher shortages and ensure adequate numbers of teachers to serve children with disabilities.

''(2) In order to ensure that the persons responsible for the education of children with disabilities possess the skills and knowledge necessary to address such children's educational and related needs, States must promote comprehensive programs of professional development.

''(3) The dissemination of research-based knowledge about successful teaching practices and models to teachers and other personnel serving children with disabilities can result in improved outcomes for children with disabilities.

''(b) PURPOSE.—The purpose of this subpart is to assist State educational agencies and local educational agencies, and their partners referred to in section 652, in providing support for, and improving their systems of, personnel preparation and professional development to improve results for children with disabilities.

''(c) DEFINITION OF POSTSECONDARY OPPORTUNITIES.—In this subpart, the term 'postsecondary opportunities' includes the transition from school to postsecondary education, adult services, or work.

''SEC. 652. ELIGIBILITY AND COLLABORATION PROCESS IN GRANTS TO STATES.

''(a) ELIGIBLE APPLICANTS; DURATION OF ASSISTANCE.—A State educational agency may apply for a grant under this subpart for a grant period of 4 years.

''(b) PARTNERSHIPS AND CONSULTATIONS.—In order to be considered for a grant under this subpart, a State educational agency shall—

''(1) establish a formal partnership with local educational agencies, the lead State agency for part C, the State agency responsible for child care, the State vocational rehabilitation agency, the State agency for higher education, representatives of State-approved special education personnel preparation programs in institutions of higher education within the State, parent training and information centers or community parent resource centers, and other State agencies involved in, or concerned with, the education of children with disabilities; and

''(2) consult with other public agencies, persons, and organizations with relevant expertise in, and concerned with, the education of children with disabilities, including—

''(A) parents of children with disabilities and parents of nondisabled children;

''(B) general and special education teachers, paraprofessionals, related services personnel, and early intervention personnel;

''(C) the State advisory panel established under part B;

''(D) the State interagency coordinating council established under part C;

''(E) community-based and other nonprofit organizations representing individuals with disabilities; and

''(F) other providers of professional development and personnel preparation for personnel that work with infants, toddlers, preschoolers, and children with disabilities, and nonprofit organizations whose primary purpose is education research and development, when appropriate.

''SEC. 653. STATE APPLICATIONS.

''(a) IN GENERAL.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

''(b) PARTNERSHIP AGREEMENT.—Each application submitted pursuant to this section shall specify the nature and extent of the partnership among the State educational agency and other partners (as described in section 652(b)), including the respective roles of each member of the partnership, and shall describe how grant funds allocated to the State under section 655 will be used in undertaking the improvement strategies described under subsection (c)(3).

''(c) PERSONNEL AND PROFESSIONAL DEVELOPMENT PLAN.—

''(1) IN GENERAL.—Each application submitted pursuant to this section shall include a personnel and professional development plan that is—

''(A) based on the needs assessment described in paragraph (2);

''(B) developed by the State educational agency in collaboration with the partners described under section 652(b)(1);

''(C) designed to enable the State to meet the standards described in section 612(a)(15) and implement the comprehensive system of personnel development under section 612(a)(14); and

''(D) coordinated with other State professional development plans for educators and personnel working with children in early childhood education programs.

''(2) NEEDS ASSESSMENT.—Each personnel and professional development plan shall include an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel that serve infants, toddlers, preschoolers, and children with disabilities within the State. Such assessment shall be based on an analysis of—

''(A) current and anticipated personnel vacancies and shortages in local educational agencies and local early intervention agencies or providers throughout the State, including the number of individuals currently serving children with disabilities that—

''(i) are not highly qualified, consistent with section 612(a)(15);

''(ii) are individuals with temporary, provisional, or emergency certification; or

''(iii) are individuals teaching with an alternative certification;

''(B) the extent and amount of certification or retraining necessary to eliminate the vacancies and shortages described in subparagraph (A);

''(C) current preservice and inservice training and preparation programs and activities available and accessible in the State to personnel that serve infants, toddlers, preschoolers, and children with disabilities, including—

''(i) the number of degree, certification, and licensure programs that are preparing general and special education teachers and personnel to serve children with high-incidence and low-incidence disabilities;

''(ii) the number of noncertification programs designed to train and prepare personnel to serve infants, toddlers, preschoolers, and children with disabilities, including the number of programs designed to provide training in early intervention and transitional services; and

''(iii) the number of programs or activities designed to provide the knowledge and skills necessary to ensure the successful transition of students with disabilities into postsecondary opportunities; and

''(D) information, reasonably available to the State, on the scope and effectiveness of current training and preparation programs and activities available in the State to personnel that serve children with disabilities, including—

''(i) access of general education teachers to preservice and inservice training in early intervention and special education, including training related to the diverse learning and developmental needs of children with disabilities;

''(ii) rates of attrition of special education teachers and early intervention personnel throughout the State and a description of factors that contribute to such attrition;

''(iii) data and major findings of the Secretary's most recent reviews of State compliance, as such reviews relate to meeting the standards described in section 612(a)(15) and implementing a comprehensive system of personnel development described under sections 612(a)(14) and 635(a)(8); and

''(iv) data regarding disproportionality required under section 618.

''(3) IMPROVEMENT STRATEGIES.—Each personnel and professional development plan shall describe strategies necessary to address the preparation and professional development areas in need of improvement, based on the needs assessment conducted under paragraph (2), that include—

''(A) how the State will respond to the needs for preservice and inservice preparation of personnel who work with infants, toddlers, preschoolers, and children with disabilities, including strategies to—

''(i) prepare all general and special education personnel (including both professional and paraprofessional personnel who provide special education, general education, or related services)—

''(I) with the knowledge and skills needed to meet the needs of, and improve results for, children with disabilities;

''(II) to utilize classroom-based techniques to identify students who may be eligible for special education services or other services prior to making referrals for special education services;

''(III) to help students with disabilities meet State academic standards;

''(IV) to work as part of a collaborative team, especially training related to all aspects of planning, design, and effective implementation of an IEP; and

''(V) to utilize effective parental involvement practices needed to work with and involve parents of children with disabilities in their child's education;

''(ii) prepare professionals, including professionals in preschool settings, and paraprofessionals in the area of early intervention with the knowledge and skills needed to meet the needs of infants, toddlers, and preschoolers with disabilities;

''(iii) develop the knowledge and skills and enhance the ability of teachers and other personnel responsible for providing transition services to improve such services and postsecondary opportunities for children with disabilities;

''(iv) enhance the ability of principals to provide instructional leadership on, and teachers and other school staff to use, strategies, such as positive behavioral interventions, to address the behavior of children with disabilities that impedes the learning of children with disabilities and others; and

''(v) ensure that school personnel who work with students with significant health, mobility, or behavior needs receive training, as appropriate, prior to serving such students;

''(B) how the State will collaborate with institutions of higher education and other entities that (on both a preservice and an inservice basis) prepare personnel who work with children with disabilities to develop such entities' capacity to support quality professional development programs that meet State and local needs;

''(C) how the State will identify model certification programs that may be used to create and improve certification requirements for personnel working with infants, toddlers, preschoolers, and children with disabilities;

''(D) how the State will provide technical assistance to local educational agencies, schools, and early intervention providers to improve the quality of training and professional development available to meet the needs of personnel that serve children with disabilities;

''(E) how the State will work in collaboration with other States, especially neighboring States, when possible, to—

''(i) address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

''(ii) support or develop programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation; and

''(iii) develop, as appropriate, common certification criteria;

''(F) how the State will acquire and disseminate, to teachers, administrators, related services personnel, other service providers, and school board members, significant knowledge derived from educational research and other sources, and how the State will adopt promising practices, materials, and technology;

''(G) how the State will recruit and retain qualified personnel in geographic areas of greatest need, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, related services, and early intervention;

''(H) how the State will create collaborative training models and provide for the joint training of parents and special education, related services, and general education personnel in providing quality services and programs, and family involvement and support;

''(I) how the State will address systemic problems associated with meeting the standards described in section 612(a)(15) and implementing the comprehensive system of personnel development under section 612(a)(14), as identified in Federal compliance reviews, including shortages of qualified personnel; and

''(J) how the State will address the findings from the data required to be gathered under section 618 and the steps the State will take to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, including the measures that the State educational agency will use to evaluate and publicly report the progress of the State educational agency with respect to such steps.

''(4) COORDINATION AND INTEGRATION.—Each application submitted pursuant to this section shall—

''(A) include assurances that—

''(i) the personnel and professional development plan is integrated, to the maximum extent possible, with State plans and activities carried out under other Federal and State laws that address personnel recruitment, retention, and training, including plans carried out under titles I and II of the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, the Higher Education Act of 1965, and the Child Care and Development Block Grant Act of 1990, as appropriate;

''(ii) the personnel and professional development plan is integrated and based, to the maximum extent possible, on research and activities supported by grants under sections 672 and 673 and conducted by institutions of higher education throughout the State; and

''(iii) the improvement strategies described in paragraph (3) will be coordinated with activities undertaken by public and private institutions of higher education, as well as with public and private sector resources, when appropriate; and

''(B) contain a description of the amount and nature of funds from any other sources, including part B funds retained for use at the State level for personnel and professional development purposes under sections 611(f) and 619(d), and part C funds used in accordance with section 638, that will be committed to the systemic-change activities under this section.

''(5) OTHER INFORMATION.—A State educational agency shall submit to the Secretary, at such time and in such manner as the Secretary may require, such additional information regarding the preparation and professional development of personnel that serve children with disabilities in the personnel and professional development plan.

''SEC. 654. STATE USE OF FUNDS.

''(a) IN GENERAL.—A State educational agency that receives a grant under this subpart shall—

''(1) expend funds not reserved under paragraph (2) to carry out improvement strategies contained in the personnel and professional development plan under section 653(c)(3); and

''(2) in the case of a State educational agency serving a State that the Secretary determines has not met the standards in section 612(a)(15) or implemented the comprehensive system of personnel development under section 612(a)(14), reserve not less than 35 percent of funds made available through the grant to award subgrants to local educational agencies as described in section 657.

''(b) CONTRACTS AND SUBCONTRACTS.—Consistent with the partnership agreement described under section 652(b), a State educational agency shall award contracts or subgrants to local educational agencies and institutions of higher education with State-approved special education personnel preparation programs, and may award contracts or subgrants to the lead State agency for part C, or other nonprofit entities, as appropriate, to carry out such State educational agency's personnel and professional development plan under this subpart.

''(c) SUPPLEMENT, NOT SUPPLANT.—Funds received by a State educational agency under this subpart shall be used to supplement, and not supplant, non-Federal funds that would otherwise be used for activities authorized under this subpart.

''SEC. 655. STATE ALLOTMENTS.

''(a) IN GENERAL.—The Secretary shall make a grant to each State educational agency whose application the Secretary has approved under section 653. Each grant shall consist of the allotment determined for a State under subsection (b).

''(b) DETERMINATION OF ALLOTMENTS.—

''(1) RESERVATION OF FUNDS.—From the total amount appropriated under section 658 for a fiscal year, the Secretary shall reserve—

''(A) one-half of 1 percent for allotments for the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the freely associated States of the Marshall Islands, and the Federated States of Micronesia, to be distributed among those areas on the basis of their relative need, as determined by the Secretary, in accordance with the purpose of this subpart; and

''(B) one-half of 1 percent for the Secretary of the Interior for programs under this subpart in schools operated or funded by the Bureau of Indian Affairs.

''(2) STATE ALLOTMENTS.—

''(A) MINIMUM ALLOTMENT.—From the funds appropriated under section 658, and not reserved under paragraph (1), the Secretary shall allot to each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount for each fiscal year that is not less than $500,000.

''(B) ALLOTMENT OF REMAINING FUNDS.—For any fiscal year for which the funds appropriated under section 658, and not reserved under paragraph (1), exceed the total amount required to make allotments under subparagraph (A), the Secretary shall distribute to each of the States described in subparagraph (A), the remaining excess funds after considering—

''(i) the amount of the excess funds available for distribution;

''(ii) the relative population of the States; and

''(iii) the scope and quality of activities proposed by the States.

''(3) FUNDS TO REMAIN AVAILABLE.—Allotments made to States under this section shall remain available until expended.

''(4) REALLOTMENT.—If any State does not apply for an allotment under this subsection for any fiscal year, the Secretary shall reallot the amount of the allotment to the remaining States in accordance with this subsection.

''SEC. 656. EVALUATIONS.

''(a) IN GENERAL.—Each State educational agency that receives a grant under this subpart shall submit an evaluation to the Secretary at such time as the Secretary may require, but not more frequently than annually.

''(b) EVALUATION COMPONENTS.—Each evaluation submitted to the Secretary shall include—

''(1) the data contained in the needs assessment described in section 653(c)(2);

''(2) a description of the progress made by the State in implementing each of the strategies described in section 653(c)(3);

''(3) an assessment, conducted on a regular basis, of the extent to which the personnel and professional development plan has been effective in enabling States to meet the standards described in section 612(a)(15) and

implement the comprehensive system of personnel development under section 612(a)(14); and

''(4) such other information as the Secretary may require.

''(c) REPORT.—The Secretary shall submit to Congress a report on the evaluations received under this section.

''SEC. 657. SUBGRANT AWARDS TO LOCAL EDUCATIONAL AGENCIES.

''(a) IN GENERAL.—From funds made available under section 654(a)(2), a State educational agency shall award a subgrant to eligible local educational agencies to enable the eligible local educational agencies to recruit and retain special education teachers, paraprofessionals, and related services providers, to ensure that such agency meets the requirements in the policy adopted by the State in section 612(a)(15).

''(b) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—

''(1) IN GENERAL.—A local educational agency shall be eligible to receive a subgrant under this section if the local educational agency—

''(A)(i) has failed to meet, or is in danger of failing to meet, the standards described in section 612(a)(15);

''(ii) serves a high number or percentage of low-income students; and

''(iii) has a demonstrated need to prepare and train new or existing personnel to meet the needs of children with disabilities; and

''(B) collects and uses data to determine local needs for professional development, hiring, and retention of personnel, as identified by the local educational agency and school staff—

''(i) with the involvement of teachers, other personnel, and parents; and

''(ii) after taking into account the activities that need to be conducted—

''(I) to give general and special education teachers, paraprofessionals, and related services personnel the means, including subject matter knowledge and teaching skills, to improve results and outcomes for students with disabilities; and

''(II) to give principals the instructional leadership skills to help teachers and related services personnel provide students with the opportunity described in subclause (I).

''(2) CONSORTIUM.—The term 'eligible local educational agency' may include a consortium of such agencies.

''(c) APPLICATION.—

''(1) IN GENERAL.—An eligible local educational agency that desires to receive a subgrant under this section shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require.

''(2) CONTENTS.—Each application submitted under this subsection shall include—

''(A) a description of the activities to be carried out by the local educational agency and how such activities will support the local educational agency's efforts to provide professional development and to recruit and retain highly qualified teachers; and

''(B) a description of the needs described in subsection (b)(1)(B).

''(d) GRANTS AWARDED.—State educational agencies shall award grants under this section on the basis of the quality of the applications submitted, except that State educational agencies shall give priority to eligible local educational agencies with the greatest need.

''(e) USE OF FUNDS.—

''(1) IN GENERAL.—An eligible local educational agency that receives a subgrant under this section shall use the funds made available through the subgrant to carry out 1 or more of the following activities:

''(A) Providing high quality professional development for special education teachers.

''(B) Providing high quality professional development to personnel who serve infants, toddlers, and preschoolers with disabilities.

''(C) Providing high quality professional development for principals, including training in areas such as behavioral supports in the school and classroom, paperwork reduction, and promoting improved collaboration between special education and general education teachers.

''(D) Mentoring programs.

''(E) Team teaching.

''(F) Case load reduction.

''(G) Paperwork reduction.

''(H) Financial incentives, as long as those incentives are linked to participation in activities that have proven effective in recruiting and retaining teachers and are developed in consultation with the personnel of the eligible local educational agency.

''(I) Hiring and training high quality paraprofessionals and providing other high quality instructional support.

''(J) Partnering with institutions of higher education for the training and retraining of teachers and to carry out any other activities under this paragraph.

''(2) EFFECTIVE PROGRAMS.—Funds under this section shall be used only for those activities that are linked to participation in activities that have proven effective in retaining teachers.

''(f) MATCHING REQUIREMENT.—Each eligible local educational agency awarded a subgrant under this section shall contribute matching funds, in an amount equal to not less than 25 percent of the subgrant award, toward carrying out the activities assisted under this section.

''SEC. 658. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart $250,000,000 for fiscal year 2004 and such sums as may be necessary for each succeeding fiscal year.''.

SEC. 3. ENHANCED SUPPORT AND TRAINING FOR BEGINNING SPECIAL EDUCATORS AND GENERAL EDUCATORS.

Chapter 1 of subpart 2 of part D of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.) is amended by inserting after section 674 the following:

''SEC. 675. ENHANCED SUPPORT AND TRAINING FOR BEGINNING SPECIAL EDUCATORS.

''(a) DEFINITIONS.—In this section:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means a partnership between 1 or more institutions of higher education with a State-approved special education personnel program, and 1 or more local educational agencies.

''(2) PROFESSIONAL DEVELOPMENT PARTNERSHIP.—

''(A) IN GENERAL.—The term 'professional development partnership' means a partnership between an eligible entity and an elementary school or secondary school that is based on a mutual commitment to improve teaching and learning.

''(B) ADDITIONAL ENTITIES.—A professional development partnership may include—

''(i) a State educational agency;

''(ii) a teaching organization;

''(iii) a professional association of principals; or

''(iv) a nonprofit organization whose primary purpose is—

''(I) education research and development; or

''(II) training special education and early intervention personnel.

''(b) AUTHORIZATION OF PROGRAM.—

''(1) IN GENERAL.—From amounts appropriated under subsection (g) for a fiscal year, the Secretary shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to enable such entities to establish professional development partnerships to improve the education of children with disabilities by—

''(A) ensuring a strong and steady supply of new highly qualified teachers of children with disabilities;

''(B) helping address challenges in the local educational agency to recruiting highly qualified teachers and retaining such teachers; and

''(C) providing for an exchange of knowledge and skills among special education teachers, including furthering the development and professional growth of veteran special education teachers.

''(2) COMPETITIVE BASIS.—Each grant, contract, or cooperative agreement under this section shall be awarded or entered into on a competitive basis.

''(3) DURATION.—Each grant, contract, or cooperative agreement under this section shall be awarded or entered into for a period of not less than 3 and not more than 5 years.

''(4) PRIORITY.—In awarding grants or entering into contracts or cooperative agreements under this section, the Secretary shall give priority to eligible entities that—

''(A) serve high numbers or percentages of low-income students; and

''(B) serve schools that have failed to make adequate yearly progress toward enabling children with disabilities to meet academic achievement standards.

''(c) APPLICATIONS.—An eligible entity desiring a grant, contract, or cooperative agreement under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each such application shall—

''(1) describe—

''(A) the proposed activities of the professional development partnership and how the activities will be developed in consultation with teachers;

''(B) how the proposed activities will prepare teachers to implement research-based, demonstrably successful, and replicable instructional practices that improve outcomes for children with disabilities;

''(C) how the eligible entity will ensure the participation of elementary schools or secondary schools as partners in the professional development partnership, and how the research and knowledge generated by the professional development partnership will be disseminated and implemented in the elementary schools or secondary schools that are served by the local educational agency and are not partners in the professional development partnership;

''(D) how the process for developing a new preservice education program or restructuring an existing program will improve teacher preparation at the institution of higher education;

''(E) how the proposed activities will include the participation of schools, colleges, or other departments within the institution of higher education to ensure the integration of pedagogy and content in teacher preparation;

''(F) how the proposed activities will increase the numbers of qualified personnel, including paraprofessionals, administrators, and related services personnel, that receive certification and serve children with disabilities in elementary schools or secondary schools;

''(G) how the proposed activities will recruit diverse prospective special education teachers;

''(H) how the eligible entity will collaborate with the State educational agency to ensure that proposed activities will be coordinated with activities established by the

State to improve systems for personnel preparation and professional development pursuant to subpart 1;

''(I) how the grant funds will be divided among the members of the professional development partnership and the responsibilities each partner has agreed to undertake in the use of the grant funds and other related funds; and

''(J) how the eligible entity will gather information in order to assess the impact of the activities assisted under this section on teachers and the students served under this section; and

''(2) identify the lead fiscal agent of the professional development partnership responsible for the receipt and disbursement of funds under this section.

''(d) AUTHORIZED ACTIVITIES.—Each eligible entity receiving a grant or entering into a contract or cooperative agreement under this section shall use the grant funds to establish a professional development partnership that—

''(1) develops a preservice teacher education program, or enhances and restructures an existing program, to prepare special education teachers, at colleges or departments of education within the institution of higher education, by incorporating an additional 5th year clinical learning opportunity, field experience, or supervised practicum into a program of preparation and coursework for special education teachers, that includes—

''(A) developing new curricula and coursework for the preparation of prospective special education teachers, including preparation to teach in core academic subjects;

''(B) support for new faculty positions to provide, coordinate, and oversee instruction of the clinical learning opportunity, field experience, or supervised practicum;

''(C) new, ongoing performance-based review procedures to assist and support the learning of prospective special education teachers;

''(D) providing assistance to students for stipends and costs associated with tuition and fees for continued or enhanced enrollment in a preparation program for special education teachers; and

''(E) supporting activities that increase the placement of highly qualified teachers in elementary schools and secondary schools; or

''(2) creates or supports professional development schools that—

''(A) provide high quality induction opportunities with ongoing support for beginning special education teachers;

''(B) provide mentoring, of prospective and beginning special education teachers by veteran special education teachers, in instructional skills, classroom management skills, and strategies to effectively assess student progress and achievement;

''(C) provide high quality inservice professional development to veteran special education teachers through the ongoing exchange of information and instructional strategies among prospective special education teachers and faculty of the institution of higher education;

''(D) prepare special education teachers to—

''(i) work collaboratively with general education teachers and related services personnel; and

''(ii) involve parents in the education of such parents' children; and

''(E) provide preparation time for faculty in the professional development school, and other faculty of the institution of higher education, to design and implement curriculum, classroom experiences, and ongoing professional development opportunities for prospective and beginning special education teachers.

''(e) SUPPLEMENT, NOT SUPPLANT.—Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds available for the professional development or preservice preparation of special education teachers.

''(f) EVALUATION.—

''(1) IN GENERAL.—The Secretary shall conduct biennial, independent, national evaluations of the activities assisted under this part not later than 3 years after the date of enactment of the Personnel Excellence for Students with Disabilities Act. The evaluation shall include information on the impact of the activities assisted under this section on outcomes for children with disabilities.

''(2) REPORT.—The Secretary shall report to Congress on the results of the evaluation.

''(3) DISSEMINATION.—The Secretary shall widely disseminate effective practices identified through the evaluation.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2004, and such sums as may be necessary for each succeeding fiscal year.

''SEC. 676. TRAINING TO SUPPORT GENERAL EDUCATORS.

''(a) DEFINITIONS.—In this section:

''(1) ELIGIBLE ENTITIES.—The term 'eligible entity' means a partnership that—

''(A) shall include—

''(i) 1 or more local educational agencies; and

''(ii) 1 or more State-approved special education personnel preparation programs; and

''(B) may include a State educational agency, a teaching organization, a professional association of principals, an educational nonprofit organization, or another group or institution that has expertise in special education and is responsive to the needs of teachers.

''(2) GENERAL EDUCATOR.—The term 'general educator' includes a teacher, a principal, a school superintendent, or school faculty, such as a school counselor.

''(3) POSTSECONDARY OPPORTUNITIES.—The term 'postsecondary opportunities' includes the transition from school to postsecondary education, adult services, or work.

''(b) AUTHORIZATION OF PROGRAM.—

''(1) ASSISTANCE AUTHORIZED.—The Secretary may award grants to, or enter into contracts or cooperative agreements with, eligible entities to enable the eligible entities to provide professional development, leadership training, and collaborative opportunities to general educators to ensure that general educators have the skills and knowledge to meet the needs of, and improve results for, children with disabilities.

''(2) COMPETITIVE AWARDS.—The Secretary shall award grants, contracts, and cooperative agreements under this section on a competitive basis.

''(c) DURATION.—The Secretary shall award grants, contracts, and cooperative agreements under this section for a period of not less than 3 and not more than 5 years.

''(d) APPLICATION.—An eligible entity desiring a grant, contract, or cooperative agreement under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each such application shall—

''(1) describe—

''(A) the proposed activities to be assisted by the eligible entity;

''(B) how the eligible entity will implement research-based, demonstrably successful, and replicable instructional practices that improve outcomes for children with disabilities;

''(C) how the eligible entity will implement training and collaborative opportunities on a schoolwide basis in schools within the local educational agency;

''(D) the eligible entity's strategy to provide general educators with—

''(i) professional development focused on addressing the needs of children with disabilities in their classrooms; and

''(ii) training and opportunities to collaborate with special education teachers and related services personnel to better serve students' needs;

''(E) the eligible entity's strategy to provide principals, superintendents, and other administrators with instructional leadership skills;

''(F) how the eligible entity will provide training to general educators to enable the general educators to work with parents and involve parents in their child's education;

''(G) how the eligible entity will collaborate with the State educational agency to ensure that proposed activities will be coordinated with activities established by the State to improve systems for personnel preparation and professional development pursuant to subpart 1;

''(H) how the grant funds will be effectively coordinated with all Federal, State, and local personnel preparation and professional development funds and activities;

''(I) how the eligible entity will assess the impact of the activities conducted and how the knowledge and effective practices generated by the eligible entity will be widely disseminated;

''(J) how the grant funds will be divided among the members of the partnership and the responsibilities each partner has agreed to undertake in the use of the grant funds and other related funds; and

''(2) identify the lead fiscal agent for the eligible entity.

''(e) AUTHORIZED ACTIVITIES.—Funds provided under this section may be used for the following activities:

''(1) To provide high quality professional development to general educators that develops the knowledge and skills, and enhances the ability, of general educators to—

''(A) utilize classroom-based techniques to identify students who may be eligible for special education services, and deliver instruction in a way that meets the individualized needs of children with disabilities through appropriate supports, accommodations, and curriculum modifications;

''(B) work collaboratively with special education teachers and related services personnel;

''(C) implement strategies, such as positive behavioral interventions, to address the behavior of children with disabilities that impedes the learning of such children and others;

''(D) prepare children with disabilities to participate in statewide assessments (with and without accommodations) and alternative assessment, as appropriate, and achieve high marks;

''(E) develop effective practices for ensuring that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965;

''(F) provide transition services to improve such services and postsecondary opportunities for children with disabilities;

''(G) work with and involve parents of children with disabilities in their child's education;

''(H) understand how to effectively construct IEPs, participate in IEP meetings and implement IEPs;

''(I) use universally designed technology and assistive technology devices and services

to enhance learning by children with disabilities and to communicate with parents; and

''(J) in the case of principals and superintendents, be instructional leaders and promote improved collaboration between general educators, special education teachers, and related services personnel.

''(2) Provide release and planning time for the activities described in this section.

''(f) SUPPLEMENT, NOT SUPPLANT.—Funds provided under this section shall be used to supplement, not supplant, other Federal, State, and local funds available for training to support general educators.

''(g) EVALUATIONS.—

''(1) IN GENERAL.—The Secretary shall conduct biennial, independent, national evaluations of the activities assisted under this section not later than 3 years after the date of enactment of the Personnel Excellence for Students with Disabilities Act. The evaluations shall include information on the impact of the activities assisted under this section on outcomes for children with disabilities.

''(2) REPORT.—The Secretary shall prepare and submit to Congress a report on the evaluations.

''(3) DISSEMINATION.—The Secretary shall provide for the wide dissemination of effective models and practices identified in the evaluations.

''(h) AUTHORIZATION.—There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2004 and such sums as may be necessary for each succeeding fiscal year.''.

SEC. 4. PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

Section 673 of the Individuals with Disabilities Education Act (20 U.S.C. 1473) is amended—

(1) in subsection (a)(1), by inserting before the semicolon '', consistent with subpart 1'';

(2) in subsection (b)—

(A) in paragraph (2)—

(i) by amending subparagraph (C) to read as follows:

''(C) Preparing personnel in the innovative uses and application of technology, including implementation of universally designed technologies and assistive technology devices and assistive technology services, to enhance learning by children with disabilities through early intervention, educational, and transitional services, and to communicate with parents to improve home and school communication.'';

(ii) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively;

(iii) by inserting after subparagraph (D) the following:

''(E) Preparing personnel to work in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.''; and

(iv) by adding at the end the following:

''(H) Providing continuous personnel preparation, training, and professional development for beginning special education teachers that is designed to provide support and ensure retention of such teachers.

''(I) Preparing personnel on effective parental involvement practices to enable the personnel to work with parents and involve parents in the education of such parents' children.''; and

(B) by amending paragraph (4) to read as follows:

''(4) SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to applications that include 1 or more of the following:

''(A) A proposal to prepare personnel in more than 1 low-incidence disability, such as deafness and blindness.

''(B) A demonstration of effective partnering with local educational agencies that ensures recruitment and subsequent retention of highly qualified personnel to serve children with disabilities.

''(C) A proposal to address the personnel and professional development needs in the State, as identified in subpart 1.'';

(3) in subsection (d)(2)—

(A) in subparagraph (C)—

(i) in clause (i), by striking ''and'' after the semicolon;

(ii) in clause (ii), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(iii) to implement strategies to reduce significant disproportionality described in section 618.'';

(B) in subparagraph (E), by inserting before the period '', including model teaching practices to assist such persons to work effectively with parents and involve parents in the education of such parents' children''; and

(C) by adding at the end the following:

''(L) Developing strategies to improve personnel training, recruitment, and retention of special education teachers in special education in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers of limited English proficient children.'';

(4) in subsection (e)(1), by inserting ''emotional or behavioral disorders,'' after ''impairment,'';

(5) in subsection (h)—

(A) in paragraph (1)—

(i) by striking ''2 years'' and inserting ''1 year''; and

(ii) by striking ''OBLIGATION.—'' and all that follows through ''Each application'' and inserting ''OBLIGATION.—Each application''; and

(B) by striking paragraph (2);

(6) by striking subsection (i) and inserting the following:

''(i) SCHOLARSHIPS.—

''(1) IN GENERAL.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

''(2) DETERMINATION OF AMOUNTS.—The Secretary may permit a grant recipient to determine the amount of funds available for scholarships, necessary stipends, and allowances, that is consistent with such recipient's grant award and the purposes of such grant.'';

(7) by redesignating subsection (j) as subsection (k);

(8) by inserting after subsection (i) the following:

''(j) DEVELOPMENT OF NEW PROGRAMS OR RESTRUCTURING OF EXISTING PROGRAMS.—In making awards under subsections (b), (c), (d), and (e), the Secretary may support programs that use award funds to develop new, or enhance and restructure existing, personnel preparation programs.''; and

(9) in subsection (k) (as redesignated by paragraph (7))—

(A) by inserting ''$250,000,000 for fiscal year 2004 and'' after ''this section''; and

(B) by striking ''of the fiscal years 1998 through 2002'' and inserting ''succeeding fiscal year''.

By Mr. LEAHY (for himself, Mr. LEVIN, Mr. LIEBERMAN, Mr. JEFFORDS, and Mr. BYRD):

S. 609. A bill to amend the Homeland Security Act of 2002 (Public Law 107–296) to provide for the protection of voluntarily furnished confidential information, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, last year when I voted to support passage of the Homeland Security Act, HSA, I voiced concerns about several flaws in the legislation. I called for the Administration and my colleagues on both sides of the aisle to monitor implementation of the new law and to craft corrective legislation in the 108th Congress. One of my chief concerns with the HSA was a subtitle of the act that granted an extraordinarily broad exemption to the Freedom of Information Act, FOIA, in exchange for the cooperation of private companies in sharing information with the government regarding vulnerabilities in the nation's critical infrastructure.

Unfortunately, the law that was enacted undermines Federal and State sunshine laws permitting the American people to know what their government is doing. Rather than increasing security by encouraging private sector disclosure to the government, it guts FOIA at the expense of our national security and public health and safety.

On March 16, we mark Freedom of Information Day, which falls on the anniversary of James Madison's birthday. Madison said, ''A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or tragedy or perhaps both.'' As a long-time supporter of open government, I believe we must heed Madison's warning and revisit the potentially damaging limitations placed on access to information by the HSA.

I rise today to introduce legislation with my distinguished colleagues Senator LEVIN, Senator JEFFORDS, Senator LIEBERMAN, and Senator BYRD to restore the integrity of FOIA. I want to thank my colleagues for working with me on this important issue of public oversight. This bill protects Americans' ''right to know'' while simultaneously providing security to those in the private sector who voluntarily submit critical infrastructure records to the newly created Department of Homeland Security, DHS.

Encouraging cooperation between the private sector and the government to keep our critical infrastructure systems safe from terrorist attacks is a goal we all support. But the appropriate way to meet this goal is a source of great debate—a debate that has been all but ignored since the enactment of the HSA last year.

The HSA created a new FOIA exemption for ''critical infrastructure information.'' That broadly defined term applies to information regarding a variety of facilities—such as privately operated power plants, bridges, dams, ports, or chemical plants—that might be targeted for a terrorist attack. In HSA negotiations last fall, House Republicans and the administration promoted language that they described as

necessary to encourage owners of such facilities to identify vulnerabilities in their operations and share that information with the Department of Homeland Security, DHS. The stated goal was to ensure that steps could be taken to ensure the facilities' protection and proper functioning.

In fact, such descriptions of the legislation were disingenuous. These provisions, which were eventually enacted in the HSA, shield from FOIA almost any voluntarily submitted document stamped by the facility owner as ''critical infrastructure.'' This is true no matter how tangential the content of that document may be to the actual security of a facility. The law effectively allows companies to hide information about public health and safety from American citizens simply by submitting it to DHS. The enacted provisions were called ''deeply flawed'' by Mark Tapscott of the Heritage Foundation in a November 20, 2002 Washington Post op-ed. ''Too Many Secrets,'' Washington Post, November 20, 2002, at A25. He argued that the ''loophole'' created by the law ''could be manipulated by clever corporate and government operators to hide endless varieties of potentially embarrassing and/or criminal information from public view.''

In addition, under the HSA, disclosure by private facilities to DHS neither obligates the private company to address the vulnerability, nor requires DHS to fix the problem. For example, in the case of a chemical spill, the law bars the government from disclosing information without the written consent of the company that caused the pollution. As the Washington Post editorialized on February 10, 2003, ''A company might preempt environmental regulators by 'voluntarily' divulging incriminating material, thereby making it unavailable to anyone else.'' ''Fix This Loophole,'' Washington Post, February 10, 2003, at A20.

The new law also 1. shields the companies from lawsuits to compel disclosure, 2. criminalizes otherwise legitimate whistleblower activity by DHS employees, and 3. preempts any state or local disclosure laws.

The Restore FOIA bill I introduce today with Senators LEVIN, JEFFORDS, LIEBERMAN, and BYRD is identical to language I negotiated with Senators LEVIN and BENNETT last summer when the HSA was debated by the Governmental Affairs Committee. Senator BENNETT stated in the Committee's July 25, 2003 mark up that the administration had endorsed the compromise. He also said that industry groups had reported to him that the compromise language would make it possible for them to share information with the government without fear of the information being released to competitors or to other agencies that might accidentally reveal it. The Governmental Affairs Committee reported out the compromise language that day. Unfortunately, much more restrictive House language was eventually signed into law.

The February 10 Post editorial called the Leahy-Levin-Bennett language ''a compromise that would accomplish the reasonable purpose'' of ''encouraging companies to share information with the government about infrastructure that might be vulnerable to terrorist attack without such broad harmful effects.'' Id. The Post editorial was titled, ''Fix This Loophole,'' which is exactly what my colleagues and I hope to accomplish with the introduction of this bill. Id.

The Restore FOIA bill would correct the problems in the HSA in several ways. First, it limits the FOIA exemption to relevant ''records'' submitted by the private sector, such that only those that actually pertain to critical infrastructure safety are protected. ''Records'' is the standard category referred to in FOIA. This corrects the effective free pass given to industry by the HSA for any information it labels ''critical infrastructure.''

Second, unlike the HSA, the Restore FOIA bill allows for government oversight, including the ability to use and share the records within and between agencies. It does not limit the use of such information by the government, except to prohibit public disclosure where such information is appropriately exempted under FOIA.

Third, it protects the actions of legitimate whistleblowers, rather than criminalizing their acts.

Fourth, it does not provide civil immunity to companies that voluntarily submit information. This corrects a flaw in the current law, which would prohibit such information from being used directly in civil suits by government or private parties.

Fifth, unlike the HSA, the Restore FOIA bill allows local authorities to apply their own sunshine laws. The Restore FOIA bill does not preempt any state or local disclosure laws for information obtained outside the Department of Homeland Security. Likewise, it does not restrict the use of such information by state agencies.

Finally, the Restore FOIA bill does not restrict congressional use or disclosure of voluntarily submitted critical infrastructure information. The HSA language was unclear on this point, and even the Congressional Research Service could not say for certain that members of Congress or their staff would not be criminally liable. Homeland Security Act of 2002: Critical Infrastructure Information Act, February 29, 2003, CRS Report for Congress, Order Code RL31762, at 14–15.

These changes to the HSA would accomplish the stated goals of the critical infrastructure provisions in the HSA without tying the hands of the government in its efforts to protect Americans and without cutting the public out of the loop.

The Administration has flip-flopped on how to best approach the issue of critical infrastructure information. The Administration's original June 18, 2002, legislative proposal establishing a new department carved out an FOIA exemption, in section 204, and required non-disclosure of any ''information'' ''voluntarily'' provided to the new Department of Homeland Security by ''non-Federal entities or individuals'' pertaining to ''infrastructure vulnerabilities or other vulnerabilities to terrorism'' in the possession of, or that passed through, the new department. Critical terms, such as ''voluntarily provided,'' were undefined.

The Judiciary Committee had an opportunity to query Governor Ridge about the Administration's proposal on June 26, 2002, when the Administration reversed its long-standing position and allowed him to testify in his capacity as the Director of the Transition Planning Office.

Governor Ridge's testimony at that hearing is instructive. He seemed to appreciate the concerns expressed by Members about the President's June 18 proposal and to be willing to work with us in the legislative process to find common ground. On the FOIA issue, he described the Administration's goal to craft ''a limited statutory exemption to the Freedom of Information Act'' to help ''the Department's most important missions [which] will be to protect our Nation's critical infrastructure.'' (June 26, 2002 Hearing, Tr., p. 24). Governor Ridge explained that to accomplish this, the Department must be able to ''collect information, identifying key assets and components of that infrastructure, evaluate vulnerabilities, and match threat assessments against those vulnerabilities.'' (Id., at p. 23).

I do not understand why some have insisted that FOIA and our national security are inconsistent. Before the HSA was enacted, the FOIA already exempted from disclosure matters that are classified; trade secret, commercial and financial information, which is privileged and confidential; various law enforcement records and information, including confidential source and informant information; and FBI records pertaining to foreign intelligence or counterintelligence, or international terrorism. These already broad exemptions in the FOIA were designed to protect national security and public safety and to ensure that the private sector can provide needed information to the government.

Prior to enactment of the HSA, the FOIA exempted from disclosure any financial or commercial information provided voluntarily to the government, if it was of a kind that the provider would not customarily make available to the public. Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C. Cir. 1992) (en banc). Such information enjoyed even stronger nondisclosure protections than did material that the government requested. Applying this exception, Federal regulatory agencies safeguarded the confidentiality of all kinds of critical infrastructure information, like nuclear power plant safety reports (Critical

Mass, 975 F.2d at 874), information about product manufacturing processes and internal security measures (Bowen v. Food & Drug Admin., 925 F.2d 1225 (9th Cir. 1991), design drawings of airplane parts (United Technologies Corp. by Pratt & Whitney v. F.A.A., 102 F.3d 688 (2d Cir. 1996)), and technical data for video conferencing software (Gilmore v. Dept. of Energy, 4 F. Supp.2d 912 (N.D. Cal. 1998)).

The head of the FBI National Infrastructure Protection Center, NIPC, testified more than five years ago, in September, 1998, that the ''FOIA excuse'' used by some in the private sector for failing to share information with the government was, in essence, baseless. He explained the broad application of FOIA exemptions to protect from disclosure information received in the context of a criminal investigation or a ''national security intelligence'' investigation, including information submitted confidentially or even anonymously. [Sen. Judiciary Subcommittee on Technology, Terrorism, and Government Information, Hearing on Critical Infrastructure Protection: Toward a New Policy Directive, S. HRG. 105–763, March 17 and June 10, 1998, at p. 107]

The FBI also used the confidential business record exemption under (b)(4) ''to protect sensitive corporate information, and has, on specific occasions, entered into agreements indicating that it would do so prospectively with reference to information yet to be received.'' NIPC was developing policies ''to grant owners of information certain opportunities to assist in the protection of the information (e.g., by 'sanitizing the information themselves') and to be involved in decisions regarding further dissemination by the NIPC.'' Id. In short, the former Administration witness stated:

> Sharing between the private sector and the government occasionally is hampered by a perception in the private sector that the government cannot adequately protect private sector information from disclosure under the Freedom of Information Act, FOIA. The NIPC believes that this perception is flawed in that both investigative and infrastructure protection information submitted to NIPC are protected from FOIA disclosure under current law. (Id.)

Nevertheless, for more than five years, businesses continued to seek a broad FOIA exemption that also came with special legal protections to limit their civil and criminal liability. That business wish list was largely granted in the Homeland Security Act.

At the Senate Judiciary Committee hearing with Governor Ridge, I expressed my concern that an overly broad FOIA exemption would encourage government complicity with private firms to keep secret information about critical infrastructure vulnerabilities, reduce the incentive to fix the problems and end up hurting rather than helping our national security. In the end, more secrecy may undermine rather than foster security.

Governor Ridge seemed to appreciate these risks, and said he was ''anxious to work with the Chairman and other members of the committee to assure that the concerns that [had been] raised are properly addressed.'' Id. at p. 24. He assured us that ''[t]his Administration is ready to work together with you in partnership to get the job done. This is our priority, and I believe it is yours as well.'' Id. at p. 25. This turned out to be an empty promise.

Almost before the ink was dry on the Administration's earlier June proposal, on July 10, 2002, the Administration proposed to substitute a much broader FOIA exemption that would (1) exempt from disclosure under the FOIA critical infrastructure information voluntarily submitted to the new department that was designated as confidential by the submitter unless the submitter gave prior written consent, (2) provide limited civil immunity for use of the information in civil actions against the company, with the likely result that regulatory actions would be preceded by litigation by companies that submitted designated information to the department over whether the regulatory action was prompted by a confidential disclosure, (3) preempt state sunshine laws if the designated information is shared with state or local government agencies, (4) impose criminal penalties of up to one year imprisonment on government employees who disclosed the designated information, and (5) antitrust immunity for companies that joined together with agency components designated by the President to promote critical infrastructure security.

Despite the Administration's promulgation of two separate proposals for a new FOIA exemption in as many weeks, in July, Director Ridge's Office of Homeland Security released The National Strategy for Homeland Security, which appeared to call for more study of the issue before legislating. Specifically, this report called upon the Attorney General to ''convene a panel to propose any legal changes necessary to enable sharing of essential homeland security information between the government and the private sector.'' (P. 33)

The need for more study of the Administration's proposed new FOIA exemption was made amply clear by its possible adverse environmental, public health and safety affects. Keeping secret problems in a variety of critical infrastructures would simply remove public pressure to fix the problems. Moreover, several environmental groups pointed out that, under the Administration's proposal, companies could avoid enforcement action by ''voluntarily'' providing information about environmental violations to the EPA, which would then be unable to use the information to hold the company accountable and also would be required to keep the information confidential. It would bar the government from disclosing information about spills or other violations without the written consent of the company that caused the pollution.

I worked on a bipartisan basis with many interested stakeholders from environmental, civil liberties, human rights, business and government watchdog groups to craft a compromise FOIA exemption that did not grant the business sector's wish-list but did provide additional nondisclosure protections for certain records without jeopardizing the public health and safety. At the request of Chairman LIEBERMAN for the Judiciary Committee's views on the new department, I shared my concerns about the Administration's proposed FOIA exemption and then worked with Members of the Governmental Affairs Committee, in particular Senator LEVIN and Senator BENNETT, to craft a more narrow and responsible exemption that accomplishes the Administration's goal of encouraging private companies to share records of critical infrastructure vulnerabilities with the new Department of Homeland Security without providing incentives to ''game'' the system of enforcement of environmental and other laws designed to protect our nation's public health and safety. We refined the FOIA exemption in a manner that satisfied the Administration's stated goal, while limiting the risks of abuse by private companies or government agencies.

This compromise solution was supported by the Administration and other Members of the Committee on Governmental Affairs and was unanimously adopted by that Committee at the markup of the Homeland Security Department bill on July 25, 2002. The compromise which I now introduce as a free standing bill would exempt from the FOIA certain records pertaining to critical infrastructure threats and vulnerabilities that are furnished voluntarily to the new Department and designated by the provider as confidential and not customarily made available to the public. Notably, the compromise FOIA exemption made clear that the exemption only covered ''records'' from the private sector, not all ''information'' provided by the private sector and thereby avoided the adverse result of government agency-created and generated documents and databases being put off-limits to the FOIA simply if private sector ''information'' is incorporated. Moreover, the compromise FOIA exemption clearly defined what records may be considered ''furnished voluntarily,'' which did not cover records used ''to satisfy any legal requirement or obligation to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.'' The FOIA compromise exemption further ensured that portions of records that are not covered by the exemption would be released pursuant to FOIA requests. This compromise did not provide any civil liability or antitrust immunity that could be used to immunize bad actors or frustrate regulatory enforcement action, nor did

the compromise preempt state or local sunshine laws.

Unfortunately, the version of the HSA that we enacted last November jettisoned the bipartisan compromise on the FOIA exemption, worked out in the Senate with the Administration's support, and replaced it with a big-business wish-list gussied up in security garb. The HSA's FOIA exemption makes off-limits to the FOIA much broader categories of ''information'' and grants businesses the legal immunities and liability protections they have sought so vigorously for over five years. This law goes far beyond what is needed to achieve the laudable goal of encouraging private sector companies to help protect our critical infrastructure. Instead, it ties the hands of the federal regulators and law enforcement agencies working to protect the public from imminent threats. It gives a windfall to companies who fail to follow federal health and safety standards. Most disappointingly, it undermines the goals of openness in government that the FOIA was designed to achieve. In short, the FOIA exemption in the HSA represents the most severe weakening of the Freedom of Information Act in its 36-year history.

In the end, the broad secrecy protections provided to critical infrastructure information in this bill will promote more secrecy, which may undermine rather than foster national security. In addition, the immunity provisions in the bill will frustrate enforcement of the laws that protect the public's health and safety.

Let me explain in greater detail. The FOIA exemption enacted in the HSA allows companies to stamp or designate certain information as critical infrastructure information, or ''CII,'' and then submit this information about their operations to the government either in writing or orally, and thereby obtain a blanket shield from FOIA's disclosure mandates as well as other protections. A Federal agency may not disclose or use voluntarily-submitted and CII-marked information, except for a limited ''informational purpose,'' such as ''analysis, warning, interdependency study, recovery, reconstitution,'' without the company's consent. Even when using the information to warn the public about potential threats to critical infrastructure, the bill requires agencies to take steps to protect from disclosure the source of the CII information and other ''business sensitive'' information.

The law also contains an unprecedented provision that threatens jail time and job loss to any government employee who happens to disclose any critical infrastructure information that a company has submitted and wants to keep secret. These penalties for using the CII information in an unauthorized fashion or for failing to take steps to protect disclosure of the source of the information are severe and will chill any release of CII information—not just when a FOIA request comes in, but in all situations, no matter the circumstance. Criminalizing disclosures not of classified information or national security related information, but of information that a company decides it does not want public—is an effective way to quash discussion and debate over many aspects of the government's work. In fact, under the HSA, CII information is granted more comprehensive protection under Federal criminal laws than classified information.

This provision of the law has potentially disastrous consequences. If an agency is given information from an internet service provider, ISP, about cyberattack vulnerabilities, agency employees will have to think twice about sharing that information with other ISPs for fear that, without the consent of the ISP to use the information, even a warning might cost their jobs or risk criminal prosecution.

This provision means that if a Federal regulatory agency needs to issue a regulation to protect the public from threats of harm, it cannot rely on any voluntarily submitted information—bringing the normal regulatory process to a grinding halt. Public health and law enforcement officials need the flexibility to decide how and when to warn or prepare the public in the safest, most effective manner. They should not have to get ''sign off'' from a Fortune 500 company to do so.

While the HSA risks making it harder for the government to protect American families, it makes it much easier for companies to escape responsibility when they violate the law by giving them unprecedented immunity from civil and regulatory enforcement actions. Once a business declares that information about its practices relates to critical infrastructure and is ''voluntarily'' provided, it can then prevent the Federal Government from disclosing it not just to the public, but also to a court in a civil action. This means that an agency receiving CII-marked submissions showing invasions of employee or customer privacy, environmental pollution, or government contracting fraud will be unable to use that information in a civil action to hold that company accountable. Even if the regulatory agency obtains the information necessary to bring an enforcement action from an alternative source, the company will be able to tie the government up in protracted litigation over the source of the information.

For example, if a company submits information that its factory is leaching arsenic in ground water, that information may not be turned over to local health authorities to use in any enforcement proceeding nor turned over to neighbors who were harmed by drinking the water for use in a civil tort action. Moreover, even if EPA tries to bring an action to stop the company's wrongdoing, the ''use immunity'' provided in the HSA will tie the agency up in litigation making it prove where it got the information and whether it is tainted as ''fruit of the poisonous tree''—i.e., obtained from the company under the ''critical infrastructure program.''

Similarly, if the new Department of Homeland Security receives information from a bio-medical laboratory about its security vulnerabilities, and anthrax is released from the lab three weeks later, the Department will not be able to warn the public promptly about how to protect itself without consulting with and trying to get the consent of the laboratory in order to avoid the risk of job loss or criminal prosecution for a non-consensual disclosure. Moreover, if the laboratory is violating any state, local or federal regulation in its handling of the anthrax, the Department will not be able to turn over to another Federal agency, such as the EPA or the Department of Health and Human Services, or to any State or local health officials, information or documents relating to the laboratory's mishandling of the anthrax for use in any enforcement proceedings against the laboratory, or in any wrongful death action, should the laboratory's mishandling of the anthrax result in the death of any person. The law specifically states that such CII-marked information ''shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith.'' [H.R. 5710, section 214(a)(1)(C)]

Most businesses are good citizens and take seriously their obligations to the government and the public, but this ''disclose-and-immunize'' provision is subject to abuse by those businesses that want to exploit legal technicalities to avoid regulatory guidelines. The HSA lays out the perfect blueprint to avoid legal liability: funnel damaging information into this voluntary disclosure system and pre-empt the government or others harmed by the company's actions from being able to use it against the company. This is not the kind of two-way public-private cooperation that our country needs.

The scope of the information that is covered by the new HSA FOIA exemption is overly broad and undermines the openness in government that FOIA was intended to guarantee. Under this law, information about virtually every important sector of our economy that today the public has a right to see can be shut off from public view simply by labeling it ''critical infrastructure information.'' Prior to enactment of the HSA, under FOIA standards, courts had required federal agencies to disclose 1. pricing information in contract bids so citizens can make sure the government is wisely spending their taxpayer dollars; 2. compliance reports that allow constituents to insist that government contractors comply with federal equal

opportunity mandates; and 3. banks' financial data so the public can ensure that federal agencies properly approve bank mergers. Without access to this kind of information, it will be harder for the public to hold its government accountable. Under the HSA, all of this information may be marked CII information and kept out of public view.

The HSA FOIA exemption goes so far in exempting such a large amount of material from FOIA's disclosure requirements that it undermines government openness without making any real gains in safety for families in Vermont and across America. We do not keep America safer by chilling Federal officials from warning the public about threats to their health and safety. We do not ensure our nation's security by refusing to tell the American people whether or not their federal agencies are doing their jobs or their government is spending their hard earned tax dollars wisely. We do not encourage real two-way cooperation by giving companies protection from civil liability when they break the law. We do not respect the spirit of our democracy when we cloak in secrecy the workings of our government from the public we are elected to serve.

The argument over the scope of the FOIA and unilateral executive power to shield matters from public scrutiny goes to the heart of our fundamental right to be an educated electorate aware of what our government is doing. The Rutland Herald got it right in a November 26, 2002 editorial that explained: ''The battle was not over the right of the government to hold sensitive, classified information secret. The government has that right. Rather, the battle was over whether the government would be required to release anything it sought to withhold.''

We need to fix this troubling restriction on public accountability. Exempting the new Department from laws that ensure responsibility to the Congress and to the American people makes for a tenuous start not the sure footing we all want for the success and endurance of this new Department. I urge my colleagues to support the Restoration of Freedom of Information Act of 2003.

I ask unanimous consent to print the editorials I mentioned and several letters of support of the Restore FOIA bill in the RECORD.

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

RESTORATION OF FREEDOM OF INFORMATION ACT (''RESTORE FOIA'') SECTIONAL ANALYSIS

Sec. 1. Short title. This section gives the bill the short title, the ''Restoration of Freedom of Information Act''.

Sec. 2. Protection of Voluntarily Furnished Confidential Information. This section strikes subtitle B (secs. 211–215) of the Homeland Security Act (''HSA'') (P.L. 107–296) and inserts a new section 211.

Sections to be repealed from the HSA: These sections contain an exemption to the Freedom of Information Act (FOIA) that (1) exempt from disclosure critical infrastructure information voluntarily submitted to the new department that was designated as confidential by the submitter unless the submitter gave prior written consent; (2) provide civil immunity for use of such information in civil actions against the company; (3) preempt state sunshine laws if the designated information is shared with state or local government agencies; and (4) impose criminal penalties of up to one year imprisonment on government employees who disclosed the designated information.

Provisions that would replace the repealed sections of the HAS: The Restore FOIA bill inserts a new section 211 to the HSA that would exempt from the FOIA certain records pertaining to critical infrastructure threats and vulnerabilities that are furnished voluntarily to the new Department and designated by the provider as confidential and not customarily made available to the public. Notably, the Restore FOIA bill makes clear that the exemption covers ''records'' from the private sector, not all ''information'' provided by the private sector, as in the enacted version of the HSA. The Restore FOIA bill ensures that portions of records that are not covered by the exemption would be released pursuant to FOIA requests. It does not provide any civil liability immunity or preempt state or local sunshine laws, and it does not criminalize whistleblower activity.

Specifically, this section of the Restore FOIA bill includes the following:

A definition of ''critical infrastructure'': This term is given the meaning adopted in section 1016(e) the USA Patriot Act (42 U.S.C. 5195c(e)) which reads, ''critical infrastructure means systems and assets, whether physical or virtual, so vital to United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.'' This definition is commonly understood to mean facilities such as bridges, dams, ports, nuclear power plants, or chemical plants.

A definition of the term ''furnished voluntarily'': This term signifies documents provided to the Department of Homeland Security (DHS) that are not formally required by the department and that are provided to it to satisfy any legal requirement. The definition excludes any document that is provided to DHS with a permit or grant application or to obtain any other benefit from DHS, such as a loan, agency forbearance, or modification of a penalty.

An exemption from FOIA of records that pertain to vulnerabilities of and threats to critical infrastructure that are furnished voluntarily to DHS. This exemption is made available where the provider of the record certifies that the information is confidential and would not customarily be released to the public.

A requirement that other government agencies that have obtained such records from DHS withhold disclosure of the records and refer any FOIA requests to DHS for processing.

A requirement that reasonably segregable portions of requested documents be disclosed, as is well-established under FOIA.

An allowance to agencies that obtain critical infrastructure records from a source other than DHS to release requested records consistent with FOIA, regardless of whether DHS has an identical record in its possession.

An allowance to providers of critical infrastructure records to withdraw the confidentiality designation of records voluntarily submitted to DHS, thereby making the records subject to disclosure under FOIA.

A direction to the Secretary of Homeland Security to establish procedures to receive, designate, store, and protect the confidentiality of records voluntarily submitted and certified as critical infrastructure records.

A clarification that the bill would not preempt state or local information disclosure laws.

A requirement for the Comptroller General to report to the House and Senate Judiciary Committees, the House Governmental Reform Committee and the Senate Governmental Affairs Committee the number of private entities and government agencies that submit records to DHS under the terms of the bill. The report would also include the number of requests for access to records that were granted or denied. Finally, the Comptroller General would make recommendations to the committees for modifications or improvements to the collection and analysis of critical infrastructure information.

Sec. 3. Technical and conforming amendment. This section amends the table of contents of the Homeland Security Act.

[From the Washington Post, Feb. 10, 2003]

FIX THIS LOOPHOLE

The Homeland Security law enacted last year contains a miserable provision that weakens important federal regulation and public access to information. Congress should act soon to repair the damage.

The goal of the provision was reasonable enough: encouraging companies to share information with the government about infrastructure that might be vulnerable to terrorist attack. Fearing public disclosure, companies have been reluctant to share information on vulnerabilities at, say, power plants or chemical factories. So under the law, any such ''critical infrastructure'' information that companies voluntarily provide to the government is exempted from disclosure to the public, litigants and enforcement agencies.

But the law defines ''information'' so broadly that it will cover, and thus keep secret, virtually anything a company decides to fork over. A company might preempt environmental regulators by ''voluntarily'' divulging incriminating material, thereby making it unavailable to anyone else. Unless regulators could show they had obtained the material independently, it would be off limits to them. And the law prescribes criminal penalties for whistle-blowers who make such information public. The collective impact will be to put in the hands of a regulated party the power, simply by turning over information, to shield that information from legitimate law enforcement purposes and from public disclosure.

Sens. Patrick J. Leahy (D–Vt.) and Robert F. Bennett (R–Utah) had negotiated a compromise that would accomplish the reasonable purpose without such broad harmful effects. It should be restored before the government finds its hands tied—and the public finds itself out of the loop—on important regulatory matters.

[From the Washington Post, Nov. 20, 2002]

TOO MANY SECRETS

(By Mark Tapscott)

Why does the White House sometimes seem so determined to close the door on the people's right to know what their government is doing? Even some of us who admire the leadership of President Bush in the war on terrorism would like to know.

Admittedly, insisting that the public's business be done in public isn't a popular cause these days. Recent surveys show that many Americans are willing to trade significant chunks of their First Amendment rights for the promise of greater security in the war on terrorism. Such surveys must gladden the hearts of Bush administration

officials who—presumably unintentionally—undermine measures such as the Freedom of Information Act (FOIA).

Consider just three examples from the past year: Section 204 of the White House's original proposal to establish a Department of Homeland Security, White House Chief of Staff Andrew Card's March 2002 directive that agencies restrict access to ''sensitive but unclassified'' information, and the administration's claim of executive privilege to keep secret information regarding President Clinton's infamous midnight pardons.

The administration's Section 204 proposal exempted from FOIA disclosure any information ''provided voluntarily by non-federal entities or individuals that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism.'' One need not be a Harvard law graduate to see that, without clarification of what constitutes such vulnerabilities, this loophole could be manipulated by clever corporate and government operators to hide endless varieties of potentially embarrassing and/or criminal information from public view.

Subsequent negotiations in the Senate with the White House resulted in compromise language that takes care of some of the major problems, but in the rush to final passage, the Senate has accepted the House version of the legislation, which, being virtually identical to the administration's original version, remains deeply flawed in this regard.

The Card memo was issued when public anger over the Sept. 11, 2001, massacre was still intense. Despite the fact that the memo failed to define what constitutes ''sensitive but unclassified'' information, agencies responded by removing thousands of previously public documents from FOIA disclosure. The Pentagon, for example, estimated recently that approximately 6,000 Defense Department documents were removed from public view. Who now outside of government can verify that any of those documents contained information that could help terrorists?

Few would argue that the Section 204 proposal and the Card memo do not address legitimate national security needs in the war against terrorism. But to date, nobody has produced a single example of vital information that could not have been properly exempted from disclosure under the current FOIA, which is backed by 25 years of detailed case law. Instead, the administration offers vague language that invites abuse.

Finally, there are those pardons, which provoked a national outcry when first reported. President Clinton had pardoned 140 people, including his Whitewater partner Susan McDougal, his brother Roger (convicted on cocaine-related charges) and international fugitive Marc Rich, wanted by the Justice Department for allegedly conspiring with the Iranian government in 1980 to buy 6 million barrels of oil, contrary to a U.S. trade embargo.

It is doubtful that the full facts behind the pardons will ever be known as long as the administration refuses to disclose nearly 4,000 pages related to the former president's actions. The Bush administration has taken a similar position on documents related to former attorney general Janet Reno's controversial decision not to appoint a special counsel to investigate possible Clinton administration campaign finance illegalities.

There was a time when at least one senior Bush administration official thought the FOIA essential because ''no matter what party has held the political power of government, there have been attempts to cover up mistakes and errors.'' That same official added that ''disclosure of government information is particularly important today because government is becoming involved in more and more aspects of every citizen's personal and business life, and so access to information about how government is exercising its trust becomes increasingly important.''

So spoke a young Illinois Republican congressman named Donald Rumsfeld, in a floor speech on June 20, 1966, advocating passage of the FOIA, of which he was a co-sponsor.

The writer is director of the Heritage Foundation's Center for Media and Public Policy.

Fix the Critical Infrastructure Information Subtitle in the Homeland Security Act of 2002

The undersigned organizations are concerned about the current language for Critical Infrastructure Information in the Homeland Security Act of 2002, which contains ambiguous definitions that could unintentionally allow companies to keep broad categories of information secret and provisions that restrict the government's ability to use the information. In order to better serve the goal of improving public safety and security, we support efforts to fix the Homeland Security Act by clarifying the scope of the information protected and removing provisions that overly restrict the government's ability to use the information.

Senators Leahy (D–VT), Levin (D–MI), Jeffords (I–VT), Lieberman (D–CT), and Byrd (D–WV) will soon introduce legislation entitled the Restoration of Freedom of Information Act of 2003 (''Restore FOIA'') addressing these concerns, using bipartisan language developed last year by the Senate Governmental Affairs Committee. The Restore FOIA solution would:

Clarify the FOIA exemption to be more consistent with established law.

Remove the restrictions on the government's ability to act as it sees fit in response to the information it receives.

Preserve whistleblower protections by removing unnecessary criminal penalties.

The information provisions currently within the Homeland Security Act of 2002 do not accomplish the goal of the law—empowering the government to protect citizens using private-sector information which is ''voluntarily'' shared and identifies potential vulnerabilities to terrorist attacks. The current language could have devastating effects on the work of the government to protect public health, safety and security, as well as government accountability. It is essential that these problems in the Homeland Security Act be fixed immediately before they become too firmly entrenched in the law.

Jean AbiNader, Managing Director, Arab American Institute.

Prudence S. Adler, Associate Executive Director, Association of Research Libraries.

Steven Aftergood, Project Director, Federation of American Scientists.

Gary Bass, Executive Director, OMB Watch.

Jeremiah Baumann, Director, Toxics Right to Know Campaign, U.S. Public Interest Research Group.

Ruth Berlin, Executive Director, MD Pesticide Network.

Lynne Bradley, Director, Government Relations, American Library Association.

Danielle Brian, Executive Director, Project on Government Oversight.

Sandy Buchanan, Executive Director, Ohio Citizen Action.

Jeanne Butterfield, Executive Director, American Immigration Lawyers Association.

Alyssondra Campaigne, Legislative Director, Natural Resources Defense Council.

Kevin S. Curtis, Vice President, Government Affairs, National Environmental Trust.

Lucy Dalglish, Executive Director, Reporters Committee for Freedom of the Press.

Charles N. Davis, Executive Director, Freedom of Information Center, University of Missouri School of Journalism.

Tom Devine, Legal Director, Government Accountability Project.

Rick Engler, Director, New Jersey Work Environment Council.

Jason Erb, Director, Governmental Relations, Council on American-Islamic Relations.

Darryl Fagin, Legislative Director, Americans for Democratic Action.

Margaret Fung, Executive Director, Asian American Legal Defense and Education Fund.

Vickie Goodwin, Organizer, Powder River Basin Resource Council.

Evan Hendricks, Editor/Publisher, Privacy Times.

Rick Hind, Legislative Director, Greenpeace.

Khalil Jahshan, Director of Government Affairs, American-Arab Anti-Discrimination Committee.

Susan E. Kegley, Staff Scientist/Program Coordinator, Pesticide Action Network, North America.

Robert Leger, President, Society of Professional Journalists.

Dave LeGrande, Director, Occupational Safety & Health, CWA/AFL–CIO.

Sanford Lewis, Director, Strategic Counsel on Corporate Accountability.

Conrad Martin, Executive Director, Fund for Constitutional Government.

Alexandra McPherson, Director, Clean Production Action.

Dena Mottola, Acting Director, New Jersey Public Interest Research Group.

Laura W. Murphy, Director, Washington National Office, American Civil Liberties Union.

Ralph G. Neas, President, People for the American Way.

Robert Oakley, Washington Affairs Representative, American Association of Law Libraries.

Paul Orum, Director, Working Group on Community Right-to-Know.

Deborah Pierce, Executive Director, Privacy Activism.

Chellie Pingree, President and CEO, Common Cause.

Ari Schwartz, Associate Director, Center for Democracy and Technology.

Debbie Sease, Legislative Director, Sierra Club.

Bob Shavelson, Executive Director, Cook Inlet Keeper.

Peggy M. Shepard, Executive Director, West Harlem Environmental Action.

Ted Smith, Executive Director, Silicon Valley Toxics Coalition.

David Sobel, General Counsel, Electronic Privacy Information Center.

Ed Spar, Executive Director, Council on Professional Association of Federal Statistics.

Vivian Stockman, Communications Coordinator, Ohio Valley Environmental Coalition.

Daniel Swartz, Executive Director, Children's Environmental Health Network.

Lee Tien, Senior Staff Attorney, Electronic Frontier Foundation.

Elizabeth Thompson, Legislative Director, Environmental Defense.

Sara Zdeb, Legislative Director, Friends of the Earth.

MARCH 12, 2003.

Hon. SUSAN COLLINS,
Chair, Senate Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.
Hon. ORRIN HATCH,
Chair, Senate Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.
Hon. JOSEPH LIEBERMAN,
Ranking Member, Senate Committee on Governmental Affairs, U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Senate Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS COLLINS, HATCH, LIEBERMAN, AND LEAHY: The Homeland Security Act of 2002 was a very important legislative accomplishment that responded to new challenges facing our country.

On the path to passage of the Act, however, certain sections, particularly Section 214, dealing with Critical Infrastructure Information, left a number of journalistic organizations concerned that broad categories of information—particularly information that relates to the public's health and safety—would unnecessarily be shielded from public view.

Thus, we support efforts to clarify the language in favor of essential openness, which, in fact, will also resolve potential barriers that restrict the government's own use of information provided by companies. The ''Restoration of Freedom of Information Act of 2003'' would substitute bipartisan language developed last year by the Senate Government Affair Committee for that which was enacted into law. This bill would:

Clarify the FOIA exemption to be more consistent with established law, while still protecting records on critical infrastructure vulnerabilities submitted to the Department of Homeland Security by private firms.

Remove the restrictions on the government's ability to act as it sees fit in response to the information it receives.

Preserve whistleblower protections by removing unnecessary criminal penalties.

It is important for both citizens and the government process that these changes in law are made quickly.

Thank you for your consideration.

Sincerely,

American Society of Magazine Editors; American Society of Newspaper Editors; Associated Press Managing Editors; Freedom of Information Center, University of Missouri School of Journalism; Magazine Publishers of America; National Federation of Press Women; National Newspaper Association; National Press Club; Newsletter & Electronic Publishers Association; Newspaper Association of America; Radio-Television News Directors Association; Reporters Committee for Freedom of the Press; Society of Professional Journalists.

LET FREEDOM RING

(By Maurice J. Freedman)

What if you want to find out if toxic chemicals are buried under your child's schoolyard? How could you tell if your veterans' benefits hinged on proving you were exposed to biohazards during a top-secret mission? Or perhaps a candidate for your city council wants to better understand formerly classified plans for emergency evacuation.

These days, it's possible, with considerable patience, determination, and a few clicks of a mouse, to file a request for answers to questions like these and a broad range of government information that are critical to our lives, work, health and well being.

But like registering to vote, in some places and for some people, this precious freedom hasn't always been so easy to exercise.

The main tool for such fact-finding, the Freedom of Information Act, known as FOIA, which we honor each year on the anniversary of James Madison's birthday, was first enacted on July 4, 1966. Before that, any-one who wanted to get records from the federal government had to establish his or her legal right to examine those records. That was expensive, time-consuming and a barrier for countless legitimate requests for information on issues from whether the nuclear reactor downwind had a record of safety violations to how the Nixon administration tried to deport John Lennon as detailed in his FBI files.

With FOIA, the burden shifted to government agencies, requiring them to meet these requests unless they fell within a handful of specific national security exemptions. Indeed, since then, any decision by an agency to withhold a document could be challenged in federal court.

From John Lennon's or Rev. Dr. Martin Luther King Jr.'s FBI files to record of debates on whether to use nuclear weapons in Vietnam, FOIA requests now run the gamut of what we need to know about what our government is doing with our tax dollars in our name. Whether it's internal NASA memos about space shuttle safety or exchanges among federal officials about Japanese internment camps during World War II, our right to know about the deliberations and actions of our federal government is a cornerstone of American democracy.

In 1974, in reaction to Watergate, Congress moved to strengthen FOIA. Unwilling to let our country be run more like a closed corporation than an open, democratic society, this change allowed courts to order the release of documents, even when the President said they couldn't be made public.

Our system of representative democracy depends on the free flow of information produced, collected and published by our government and available to the public so we can participate as an informed electorate.

Since the early 19th century, libraries have served as depositories for the written record of our nation's development and gateways to the decisions of its leaders, thus assuring public access to government information. Today, 21st-century librarians are committed to ensuring the public's right to know is protected in the electronic age. As organizers, navigators and providers of government information that serves the public, we help file FOIA requests and otherwise support freedom of information @ your library.

Many Americans depend on access to information collected, organized and disseminated by the federal government—from farmers and health care professionals, to journalists and veterans, community interest groups to local and state government officials, and indeed, all voters.

Americans come to libraries to find Census and other statistics; to help plan new business and marketing strategies; to research environmental issues and hazards, laws and regulations; and to learn about job opportunities from government and other employment lists.

The ongoing transition to predominantly electronic transmission of federal information offers both promise and problems for the public in this realm. Information that is only in electronic form quickly appears on—and as quickly disappears from—Web sites. There is often no one charged with capturing, preserving or making electronic data available to future generations, as well as those, who for a variety of reasons, cannot access or work with electronic information.

True national security is built on a vibrant democracy and a well-informed citizenry, not a culture of secrecy. Said James Madison, on whose birthday we make Freedom of Information Day, ''Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives.'' Although he wrote in response to abuses by Britain's King George III, his warnings ring equally true today.

Every country has hospitals, police and schools. But only free countries allow the free flow of ideas. Free libraries are the hub of public access to government information. Challenges to an informed citizenry range from the complexity and inequality in information technology to illiteracy, limited information literacy skills and unequal access to education and information resources.

Thankful for our freedoms, we must do our best as we prepare to fight halfway around the world to ensure that we continue to guard with unrelating vigilance the right to know here at home.

Mr. LEVIN. Mr. President, today I join with Senators LEAHY, BYRD, JEFFORDS, and LIEBERMAN to introduce the Restore Freedom of Information Act, Restore FOIA, that will provide the public with access to information, while at the same time ensuring that information voluntarily submitted to the government by companies is not improperly disclosed. In order to ensure public access and limit improper disclosure, we need to reexamine some aspects of the Homeland Security Act, HSA, which was rushed through Congress last year, dropping several carefully-crafted, bipartisan measures which had been adopted by the Senate Governmental Affairs Committee, along the way. Dropping those measures left ambiguities in the law that need to be clarified, and today's bill is an attempt to make those clarifications and address certain problems that could otherwise result.

The issue this bill addresses is public access to information in the possession of the Homeland Security Department. Although some seem to want to shroud all homeland security efforts in secrecy, as Judge Damon Keith, writing for the U.S. Sixth Circuit of Appeals, recently warned ''Democracies die behind closed doors.'' The principles of open government and the public's right to know are cornerstones of our democracy. We cannot sacrifice those principles in the name of protecting them.

One of the reasons that I voted against the Homeland Security Act last year was because the final bill dropped a bipartisan provision, passed by the Senate Governmental Affairs Committee, clarifying how the new Department of Homeland Security, DHS, should comply with the Freedom of Information Act, FOIA. The final bill substituted a poorly drafted provision that could inappropriately close the door on persons seeking unclassified information from the Department related to critical infrastructure.

What is critical infrastructure? Critical infrastructure is the backbone that holds our country together and

makes it work—our roads, computer grids, telephones, pipelines, water treatment plants, utilities, and other facilities essential to a fully functioning Nation. It so happens that, in the United States, much of our critical infrastructure is controlled by private entities, often privately owned or publicly traded corporations. To strengthen existing protections for these facilities, the Federal Government asked the companies that own them to submit unclassified information about their facilities to assist the government in evaluating them, identifying possible problems, and designing stronger protections from terrorist attack, natural disasters, or other threats to homeland security.

Some companies asked to voluntarily submit this information feared that it might be improperly disclosed, and sought a new exemption from the Federal Freedom of Information Act, FOIA, to prohibit disclosure of so-called ''critical infrastructure information.'' Reporters, public interest groups, and others feared that, if this FOIA exemption were granted, companies could send important environmental and safety information to DHS under the general heading of ''critical infrastructure information'' and thereby put this information out of the public's reach. To bring these sides together, last July, Senators BENNETT, LEAHY and I worked out a bipartisan FOIA compromise that codified existing case law with regard to companies voluntarily submitting information. At the Senate Governmental Affairs Committee mark-up of the homeland security legislation, Senator Bennett said that the Administration supported our compromise, but the language was ultimately dropped from the final Homeland Security Act. As a result, the media, public interest groups, and others continue to fear that companies may be hiding important health and safety information that has long been public and should be public behind the mask of ''critical infrastructure.''

To rectify this situation, today we are introducing a bill that would change the existing HSA language in several important ways. First, our bill defines the key term, ''critical infrastructure,'' in a more focused way than the overly broad language in the HSA. To do that, our bill draws from language in existing case law, that has already been tested by the courts. The existing HSA language, it interpreted broadly, could expand the prohibition on disclosing critical infrastructure information to include virtually every aspect of a company's operations, denying public access to a great deal of health and safety information that the public has a right to know. If this expansive interpretation was not the intent of the bill's drafters, then they should be willing to accept our court-tested language.

A second important change that our bill would make in the existing HSA involves the issue of civil immunity for companies that violate the law. As currently worded, the HSA seems to suggest that companies which voluntarily submit to DHS critical infrastructure information indicating that the company is in violation of public health or safety regulations may gain protection from legal action in court to halt or penalize this wrongdoing, even if the information shows that the company is acting negligently. For example, the current HSA provisions could lead to the disturbing situation where DHS learns, through a critical infrastructure submission, that a company is leaking polluted sludge into a nearby waterway in violation of environmental restrictions, but is barred from going to court to stop the pollution because the law appears to prohibit the agency's use of the critical infrastructure information in a civil action. Our bill would eliminate the possibility that the HSA would provide companies with civil immunity under these circumstances.

A third key problem with the existing HSA language is that it includes a provision that could send a Federal whistleblower who discloses critical infrastructure information, even to an appropriate authority, to prison. The language is clear that if a DHS employee discloses unclassified critical infrastructure information, even when acting as a whistleblower who reveals the information to Congress in an act of conscience or patriotism, that whistleblower could wind up in jail. My colleague, Senator LEAHY, describes a whistleblower who works at the FAA who blew the whistle on government collusion to coverup failures by airlines to meet tests on airline preparedness. That whistleblower could have ended up in jail had he blown the whistle under today's law. A year in jail is quite a deterrent for a Federal employee who is thinking about blowing the whistle, and we have never before threatened Federal whistleblowers with jail terms. It is a bad idea, and it is counterproductive to homeland safety.

There are other troubling provisions in the current HSA law as well, equally detrimental to the public's right to know. For example, the HSA exempts all communication of critical infrastructure information from the open meeting and other sunshine requirements of the Federal Advisory Committee Act, and places critical infrastructure information outside restrictions on ex parte contacts. The HSA also pre-empts state and local sunshine laws, an undue intrusion on the power of the States. The bill we are introducing today would strike all of these unnecessary provisions, and create in their stead a narrow FOIA exemption that balances the prohibition against improper disclosures of critical infrastructure information with the public's right to know.

Finally, I would like to include in the RECORD two examples of situations that could occur under the language in the HSA but would not occur under our bill. These disturbing examples were provided by Dr. Rena Steinzor, Professor at the University of Maryland School of Law, on behalf of the center for Progressive Regulation.

Case Study Number 1 is the following:

A large Midwest utility decides to replace an old coal burning electric generation unit with a new one. The new unit, much larger than the first, will produce significantly greater air pollution emissions. The company could mitigate these increases by installing additional pollution control equipment, but decides it does not wish to incur the expense. It begins construction and simultaneously reports its plans to the DHS as ''critical infrastructure information,'' so Federal security experts will know about its increased capacity to generate electricity.

A Department of Homeland Security employee, visiting the plant to consult on government purchases of power during emergency situations, notices readings on internal gauges reflecting the dramatically increased emissions. She telephones EPA to report the situation. EPA issues a Notice of Violation to the company, and threatens to bring an action for civil penalties, but is instructed to desist by DHS officials who inform EPA that the HSA prohibits disclosing the information provided to the agency in court and that DHS wants to list the company as an emergency supplier capable of providing expanded electricity production in an upcoming report to Congress. EPA drops its enforcement action, and the DHS employee not only loses her job but also is prosecuted criminally.

Case Study Number 2 is the following:

Lobbyists representing companies that provide goods and services to the Department of Homeland Security routinely submit materials describing their companies' products in glowing terms. They arrange repeated trips for government purchasing agents to exotic locations under the guise of briefing them regarding the technical aspects of the products. All of this information is designated as critical infrastructure by the companies, and is therefore protected from disclosure and oversight by the media or possibly even individual members of Congress who could see the information but not reveal it.

The Homeland Security Act was never intended to protect polluters or special interests from public scrutiny. But as these examples demonstrate, that is exactly what could happen if the current, vague language in the law is not corrected. The bill we are introducing today would make the needed corrections.

On January 17, 2003 at his confirmation hearing before the Governmental Affairs Committee, I questioned Governor Ridge about these problems with the current wording of the Homeland

Security Act. I asked him whether the HSA could have the unintended consequences of providing protections for wrongdoing while impeding access to necessary information to protect public health and safety. Governor Ridge replied: ''[T]hat certainly wasn't the intent, I am sure, of those who advocated the Freedom of Information Act exemption, to give wrongdoers protection or to protect illegal activity, and I will certainly work with you to clarify that language.'' If that was not the intent, then let us fix the vague, and potentially dangerous provisions that are in this bill.

I would also note, for the record, that many organizations have endorsed our bill including the following:

American Association of Law Libraries, American Civil Liberties Union, American Immigration Lawyers Association, American Library Association, American-Arab Anti-Discrimination Committee, Americans for Democratic Action, American Society of Magazine Editors, American Society of Newspaper Editors, Arab American Institute, Asian American Legal Defense and Education Fund, Associated Press Managing Editors, Association of Research Libraries, Center for Democracy and Technology, Children's Environmental Health Network, Clean Production Network, Common Cause, Communications Workers of America, Cook Inlet Keeper, Council on American-Islamic Relations, Council on Professional Association of Federal Statistics, Electronic Frontier Foundation, Electronic Privacy Information Center, Environmental Defense, Federation of American Scientists, Freedom of Information Center, Friends of the Earth, Fund for Constitutional Government, Government Accountability Project, Greenpeace, Magazine Publishers of America, Maryland Pesticide Network, National Federation of Press Women, National Newspaper Association, National Press Club, Natural Resources Defense Council, New Jersey Work Environment Council, Newsletter & Electronic Publishers Association, Newspaper Association of America, Ohio Valley Environmental Coalition, OMB Watch, Pesticide Action Network, North America Powder River Basin Resource Council, Privacy Activism, Privacy Times, Project on Government Oversight, Radio-Television News Directors Association, Reporters Committee for Freedom of the Press, Sierra Club, Silicon Valley Toxics Coalition, Society of Professional Journalists, Strategic Counsel on Corporate Accountability, U.S. Public Interest Research Group, University of Missouri School of Journalism, West Harlem Environmental Action Working Group on Community Right-to-Know.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 81—EXPRESSING THE SENSE OF THE SENATE CONCERNING THE CONTINUOUS REPRESSION OF FREEDOMS WITHIN IRAN AND OF INDIVIDUAL HUMAN RIGHTS ABUSES, PARTICULARLY WITH REGARD TO WOMEN

Mr. BROWNBACK (for himself, Mr. WYDEN, Mr. COLEMAN, and Mr. CORNYN, and Mr. CAMPBELL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 81

Whereas the people of the United States respect the Iranian people and value the contributions that Iran's culture has made to world civilization for over 3 millennia;

Whereas the Iranian people aspire to democracy, civil, political, and religious rights, and the rule of law, as evidenced by increasingly frequent antigoverment and anti-Khatami demonstrations within Iran and by statements of numerous Iranian expatriates and dissidents;

Whereas Iran is an ideological dictatorship presided over by an unelected Supreme Leader with limitless veto power, an unelected Expediency Council and Council of Guardians capable of eviscerating any reforms, and a President elected only after the aforementioned disqualified 234 other candidates for being too liberal, reformist, or secular.

Whereas the Iranian government has been developing a uranium enrichment program that by 2005 is expected to be capable of producing several nuclear weapons each year, which would further threaten nations in the region and around the world.

Whereas the United States recognizes the Iranian peoples' concerns that President Muhammad Khatami's rhetoric has not been matched by his actions;

Whereas President Khatami clearly lacks the ability and inclination to change the behavior of the State of Iran either toward the vast majority of Iranians who seek freedom or toward the international community;

Whereas political repression, newspaper censorship, corruption, vigilante intimidation, arbitrary imprisonment of students, and public executions have increased since President Khatami's inauguration in 1997;

Whereas men and women are not equal under the laws of Iran and women are legally deprived of their basic rights;

Whereas the Iranian government shipped 50-tons of sophisticated weaponry to the Palestinian Authority despite Chairman Arafat's cease-fire agreement, consistently seeks to undermine the Middle East peace process, provides safe-haven to al-Qa'ida and Taliban terrorists, allows transit of arms for guerrillas seeking to undermine our ally Turkey, provides transit of terrorists seeking to destabilize the United States-protected safe-have in Iraq, and develops weapons of mass destruction;

Whereas since the terrorist attacks of September 11, 2001, and despite rhetorical protestations to the contrary, the Government of Iran has actively and repeatedly sought to undermine the United States war on terror;

Whereas there is a broad-based movement for change in Iran that represents all sectors of Iranian society, including youth, women, student bodies, military personnel, and even religious figures, that is pro-democratic, believes in secular government, and is yearning to live in freedom;

Whereas following the tragedies of September 11, 2001, tens of thousands of Iranians filled the streets spontaneously and in solidarity with the United states and the victims of the terrorist attacks; and

Whereas the people of Iran deserve the support of the American people; Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) legitimizing the regime in Iran stifles the growth of the genuine democratic forces in Iran and does not serve the national security interest of the United States;

(2) positive gestures of the United States toward Iran should be directed toward the people of Iran, and not political figures whose survival depends upon preservation of the current regime; and

(3) it should be the policy of the United States to seek a genuine democratic government in Iran that will restore freedom to the Iranian people, abandon terrorism, and live in peace and security with the international community.

SENATE RESOLUTION 82—EXPRESSING THE SENSE OF THE SENATE CONCERNING THE CONTINUOUS REPRESSION OF FREEDOMS WITHIN IRAN AND OF INDIVIDUAL HUMAN RIGHTS ABUSES, PARTICULARLY WITH REGARD TO WOMEN

Mr. BROWNBACK (for himself, Mr. WYDEN, Mr. COLEMAN, Mr. CORNYN, Mr. CAMPBELL, and Mr. KYL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 82

Whereas the people of the United States respect the Iranian people and value the contributions that Iran's culture has made to world civilization for over 3 millennia;

Whereas the Iranian people aspire to democracy, civil, political, and religious rights, and the rule of law, as evidence by increasingly frequent antigovernment and anti-Khatami demonstrations within Iran and by statements of numerous Iranian expatriates and dissidents;

Whereas Iran is an ideological dictatorship presided over by an unelected Supreme Leader with limitless veto power, an unelected Expedience Council and Council of Guardians capable of eviscerating any reforms, and a President elected only after the aforementioned disqualified 234 other candidates for being too liberal, reformist, or secular;

Whereas the Iranian government has been developing a uranium enrichment program that by 2005 is expected to be capable of producing several nuclear weapons each year, which would further threaten nations in the region and around the world;

Whereas the United States recognizes the Iranian peoples' concerns that President Muhammad Khatami's rhetoric has not been matched by his actions;

Whereas President Khatami clearly lacks the ability and inclination to change the behavior of the State of Iran either toward the vast majority of Iranians who seek freedom or toward the international community;

Whereas political repression, newspaper censorship, corruption, vigilante intimidation, arbitrary imprisonment of students, and public executions have increased since President Khatami's inauguration in 1997;

Whereas men and women are not equal under the laws of Iran and women are legally deprived of their basic rights;

Whereas the Iranian government shipped 50-tons of sophisticated weaponry to the Palestinian Authority despite Chairman Arafat's cease-fire agreement, consistently seeks to undermine the Middle East peace process, provides safe-haven to al-Qaida and Taliban terrorists, allows transit of arms for guerrillas seeking to undermine our ally Turkey, provides transit of terrorists seeking to destabilize the United States-protected safe-haven in Iraq, and develops weapons of mass destruction;

Whereas since the terrorist attacks of September 11, 2001, and despite rhetorical protestations to the contrary, the Government of Iran has actively and repeatedly sought to undermine the United States war on terror;

Whereas there is a bond-based movement for change in Iran that represents all sectors of Iranian society, including youth, women, student bodies, military personnel, and even religious figures, that is pro-democratic, believes in secular government, and is yearning to live in freedom;

Whereas following the tragedies of September 11, 2001, tens of thousands of Iranians filled the streets spontaneously and in solidarity with the United States and the victims of the terrorist attacks; and

Whereas the people of Iran deserve the support of the American people: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) legitimizing the regime in Iran stifles the growth of the genuine democratic forces in Iran and does not serve the national security interest of the United States;

(2) positive gestures of the United States toward Iran should be directed toward the people of Iran, and not political figures whose survival depends upon preservation of the current regime; and

(3) it should be the policy of the United States to seek a genuine democratic government in Iran that will restore freedom to the Iranian people, abandon terrorism, and live in peace and security with the international community.

SENATE CONCURRENT RESOLUTION 19—AFFIRMING THE IMPORTANCE OF A NATIONAL DAY OF PRAYER AND FASTING, AND EXPRESSING THE SENSE OF CONGRESS THAT MARCH 17, 2003, SHOULD BE DESIGNATED AS A NATIONAL DAY OF PRAYER AND FASTING

Mr. SANTORUM (for himself and Mr. BROWNBACK) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 19

Whereas the President has sought the support of the international community in responding to the threat of terrorism, violent extremist organizations, and states that permit or host organizations that are opposed to democratic ideals;

Whereas a united stance against terrorism and terrorist regimes will likely lead to an increased threat to the armed forces and law enforcement personnel of those states that oppose these regimes of terror, and that take an active role in rooting out these enemy forces;

Whereas Congress has aided and supported a united response to acts of terrorism and violence inflicted upon the United States, our allies, and peaceful individuals all over the world;

Whereas President Abraham Lincoln, at the outbreak of the Civil War, proclaimed that the last Thursday in September 1861 should be designated as a day of humility, prayer, and fasting for all people of the Nation;

Whereas it is appropriate and fitting to seek guidance, direction, and focus from God in times of conflict and in periods of turmoil;

Whereas it is through prayer, self-reflection, and fasting that we can better examine those elements of our lives that can benefit from God's wisdom and love;

Whereas prayer to God and the admission of human limitations and frailties begins the process of becoming both stronger and closer to God;

Whereas becoming closer to God helps provide direction, purpose, and conviction in those daily actions and decisions we must take;

Whereas our Nation, tested by civil war, military conflicts, and world wars, has always benefited from the grace and benevolence bestowed by God; and

Whereas dangers and threats to our Nation persist, and in this time of peril it is appropriate that the people of the United States, leaders and citizens alike, seek guidance, strength, and resolve through prayer and fasting: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) March 17, 2003, should be designated as a day for humility, prayer, and fasting for all people of the United States; and

(2) all people of the United States should—

(A) observe this day as a day of prayer and fasting;

(B) seek guidance from God to achieve greater understanding of our own failings;

(C) learn how we can do better in our everyday activities; and

(D) gain resolve in how to confront those challenges which we must confront.

AMENDMENTS SUBMITTED AND PROPOSED

SA 260. Mr. HARKIN (for himself, Ms. CANTWELL, Mr. EDWARDS, Mrs. BOXER, and Mr. KERRY) proposed an amendment to the bill S. 3, to prohibit the procedure commonly known as partial-birth abortion.

SA 261. Mrs. FEINSTEIN (for herself, Ms. STABENOW, and Mr. EDWARDS) proposed an amendment to the bill S. 3, supra.

TEXT OF AMENDMENTS

SA 260. Mr. HARKIN (for himself, Ms. CANTWELL, Mr. EDWARDS, Mrs. BOXER, and Mr. KERRY) proposed an amendment to the bill S. 3, to prohibit the procedure commonly known as partial-birth abortion; as follows:

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE CONCERNING ROE V. WADE.

(a) FINDINGS.—The Senate finds that—

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

(2) 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.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the decision of the Supreme Court in *Roe v. Wade* (410 U.S. 113 (1973)) was appropriate and secures an important constitutional right; and

(2) such decision should not be overturned.

SA 261. Mrs. FEINSTEIN (for herself, Ms. STABENOW, and Mr. EDWARDS) proposed an amendment to the bill S. 3, to prohibit the procedure commonly known as partial-birth abortion; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Post-Viability Abortion Restriction Act''.

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

(a) IN GENERAL.—It shall be unlawful, in or affecting interstate or foreign commerce, knowingly to perform an abortion if, in the medical judgment of the attending physician, the fetus is viable.

(b) EXCEPTION.—This section shall not apply if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life or health of the woman.

(c) CIVIL PENALTY.—A physician who violated this section shall be subject to a civil penalty of not to exceed $100,000. The civil penalty provided for by this subsection shall be the exclusive remedy for a violation of this section.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Wednesday, March 12 at 10:00 a.m. to consider pending calendar business.

Agenda Item No. 1.—To consider the nomination of Joseph T. Kelliher to be a Member of the Federal Electricity Regulatory Commission.

Agenda Item No. 2: S. 164—To authorize the Secretary of the Interior to conduct a special resource study of sites associated with the life of César Estrada Chávez and the farm labor movement.

Agenda Item No. 3: S. 212—To authorize the Secretary of the Interior to cooperate with the High Plains Aquifer States in conducting a hydrogeologic characterization, mapping, modeling, and monitoring program for the High Plains Aquifer and for other purposes.

Agenda Item No. 4: S. 278—To make certain adjustments to the boundaries of the Mount Naomi Wilderness Area, and for other purposes.

Agenda Item No. 7: S. 347—To direct the Secretary of the Interior and the Secretary of Agriculture to conduct a joint special resources study to evaluate the suitability and feasibility of establishing the Rim of the Valley Corridor as a unit of the Santa Monica

Mountains National Recreation Area, and for other purposes.

Agenda Item No. 8: S. 425—To revise the boundary of the Wind Cave National Park in the State of South Dakota.

Agenda Item No. 9: H.R. 397—To reinstate the license and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois.

Staff is working on amendments to Agenda Item No. 6: S. 328—To designate Catoctin Mountain Park in the State of Maryland as the ''Catoctin Mountain National Recreation Area'', and for other purposes. If a resolution can be achieved this item will be considered.

In addition, the Committee may turn to any other measures that are ready for consideration.

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 Wednesday, March 12, 2003, at 10:00 a.m., to hear testimony on Welfare Reform: Building on Success.

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 Wednesday, March 12, 2003 at 11:30 a.m. to hold a Committee Business Meeting.

Agenda

The Committee will consider and vote on the following agenda items:

Treaties: Treaty Doc. 107–19, Tax Convention with the United Kingdom; Treaty Doc. 107–20, Protocol Amending Tax Convention with Australia; Treaty Doc. 108–3, Protocol Amending Tax Convention with Mexico.

FSO appointment/promotion list: 1. Sebranek, Lyle J., et al, dated January 28, 2003.

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 Wednesday, March 12, 2003 at 2:30 p.m. to hold a hearing on Regional Implications of the Changing Nuclear Equation on the Korean Peninsula.

Agenda

Witnesses

Panel 1: The Honorable James A. Kelly, Assistant Secretary for East Asian and Pacific Affairs, Department of State, Washington, DC.

Panel 2: The Honorable James Lilley, American Enterprise Institute, Washington, DC; Dr. Victor D. Cha, Associate Professor, Department of Government and the Edmund Walsh School of Foreign Service, Georgetown University, Washington, DC; Dr. Bates Gill, Freeman Chair in China Studies, CSIS, Washington, DC.

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 judicial nominations hearing on Wednesday, March 12, 2003, at 2 p.m. in the Dirksen Senate Office Building, Room 226.

Tentative Agenda

Panel I: The Honorable Richard G. Lugar, United States Senator (R–IN); The Honorable Evan Bayh, United States Senator (D–IN); The Honorable John W. Warner, United States Senator (R–VA); The Honorable George F. Allen, United States Senator (R–VA); The Honorable Dianne Feinstein, United States Senator (D–CA); The Honorable Kay Bailey Hutchison, United States Senator (R–TX); The Honorable John Cornyn, United States Senator (R–TX).

Panel II: Comac J. Carney to be United States District Judge for the Central District of California; James V. Selna to be United States District Judge for the Central District of California; Philip P. Simon to be United States District Judge for the North District of Indiana; Theresa Lazar Springmann to be United States District Judge for the Northern District of Indiana. Mary Ellen Coster Williams to be Judge for the Court of Federal Claims; Victor J. Wolski to be Judge for the Court of Federal Claims.

Panel III: Ricardo H. Hinojosa to be U.S. Sentencing Commissioner; Michael E. Horowitz to be U.S. Sentencing Commissioner.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Wednesday, March 12, 2003, for a joint hearing with the House of Representatives' Committee on Veterans' Affairs, to hear the legislative presentation of the Veterans of Foreign Wars.

The hearing will take place in room 345 of the Cannon House Office Building at 10:00 a.m.

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

SUBCOMMITTEE ON AIRLAND

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Subcommittee on Airland of the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, March 12, 2003, at 3 p.m., in open session to receive testimony on Army Transformation, in review of the defense authorization request for fiscal year 2004 and the future years defense program.

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

SUBCOMMITTEE ON OCEANS, ATMOSPHERE, AND FISHERIES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, and Fisheries be authorized to meet on Wednesday, March 12, 2003, at 2:30 p.m., in SR–253, for a hearing on the Coast Guard and NOAA fiscal year 2004 budget requests.

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

SUBCOMMITTEE ON STRATEGIC FORCES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces of the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, March 12, 2003, at 9:30 a.m., in open session to receive testimony on national security space programs and management in review of the defense authorization request for fiscal year 2004.

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

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY

SUBCOMMITTEE ON BORDER SECURITY, IMMIGRATION AND CITIZENSHIP

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittees on Terrorism, Technology and Homeland Security and on Border Security, Immigration and Citizenship be authorized to meet to conduct a joint hearing on ''Border Technology: Keeping Terrorists out of the United States—2003'' on Wednesday, March 12, 2003, at 10:00 a.m. in Room 226 of the Dirksen Senate Office Building.

Tentative Witness List

Panel I: The Honorable Asa Hutchinson, Undersecretary for Border and Transportation, U.S. Department of Homeland Security, Washington, DC; Accompanied by: Robert Mocny, Director of Entry-Exit Program, Bureau of Immigration and Customs Enforcement, Washington, DC; Woody Hall, Interim Director, Office of Information & Technology, Bureau of Customs and Border Protection, Washington, DC.

Panel II: Nancy Kingsbury, Managing Director of Applied Research and Methods, U.S. General Accounting Office, Washington, DC; Stephen E. Flynn, Jeane J. Kirkpatrick Senior Fellow in National Security Studies, Council on Foreign Relations, New York, NY.

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

PRIVILEGE OF THE FLOOR

Mr. DEWINE. Madam President, I ask unanimous consent that Ryan Richardson, a law clerk in my office, be given floor privileges for the duration of the day.

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

NATIONAL CORRECTIONAL OFFICERS AND EMPLOYEES WEEK

Mr. SANTORUM. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of S. Res. 24, National Correctional Officers and Employees Week, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 24) designating the week beginning May 4, 2003, as ''National Correctional Officers and Employees Week.''

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid on the table, and any statements be printed in the RECORD, with no intervening action or debate.

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

The resolution (S. Res. 24) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 24

Whereas the operation of correctional facilities represents a crucial component of the criminal justice system of the United States;

Whereas correctional personnel play a vital role in protecting the rights of the public to be safeguarded from criminal activity;

Whereas correctional personnel are responsible for the care, custody, and dignity of the human beings charged to their care; and

Whereas correctional personnel work under demanding circumstances and face danger in their daily work lives: Now, therefore, be it

Resolved,

SECTION 1. DESIGNATION OF NATIONAL CORRECTIONAL OFFICERS AND EMPLOYEES WEEK.

That the Senate—

(1) designates the week beginning May 4, 2003, as ''National Correctional Officers and Employees Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

NATIONAL CIVILIAN CONSERVATION CORPS DAY

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 46, National Civilian Conservation Corps Day, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 46) designating March 31, 2003, as ''National Civilian Conservation Corps Day.''

There being no objection the Senate proceeded to consider the resolution.

Mr. SANTORUM. I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statement be printed in the RECORD, with no intervening action or debate.

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

The resolution (S. Res. 46) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 46

Whereas the Civilian Conservation Corps, commonly known as the CCC, was an independent Federal agency that deserves recognition for its lasting contribution to natural resources conservation and infrastructure improvements on public lands in the United States and for its outstanding success in providing employment and training to thousands of Americans;

Whereas March 31, 2003, is the 70th anniversary of the signing by President Franklin D. Roosevelt of the law historically known as the Emergency Conservation Work Act, a precursor to the 1937 law that established the Civilian Conservation Corps;

Whereas, between 1933 and 1942, the CCC provided employment and vocational training in the conservation and development of natural resources, the protection of forests, and the construction and maintenance of military reservations to more than 3,000,000 men, including unemployed youths, more than 250,000 veterans of the Spanish-American War and World War I, and more than 80,000 Native Americans;

Whereas the CCC coordinated a mobilization of men, material, and transportation on a scale never previously known in time of peace;

Whereas the CCC managed more than 4,500 camps in each of the then 48 States and Hawaii, Alaska, Puerto Rico, and the Virgin Islands;

Whereas the CCC left a legacy of natural resources and infrastructure improvements that included 3,000,000,000 new trees, 46,854 bridges, 3,980 restored historical structures, more than 800 state parks, 3,462 improved beaches, 405,037 signs, markers, and monuments, 8,045 wells and pump houses, and 63,256 other structures;

Whereas the benefits of many CCC projects are still enjoyed by Americans today in national and state parks, forests, and other lands, including the National Arboretum in the District of Columbia, Bandelier National Monument in New Mexico, Great Smoky Mountains National Park in North Carolina and Tennessee, Yosemite National Park in California, Acadia National Park in Maine, Rocky Mountain National Park in Colorado, and Vicksburg National Military Park in Mississippi;

Whereas the CCC provided a foundation of self-confidence, responsibility, discipline, cooperation, communication, and leadership for its participants through education, training, and hard work, and participants made many lasting friendships in the CCC;

Whereas the CCC demonstrated the commitment of the United States to the conservation of land, water, and natural resources on a national level and to leadership in the world on public conservation efforts; and

Whereas the conservation of the Nation's land, water, and natural resources is still an important goal of the American people: Now, therefore, be it

Resolved, That the Senate requests the President to issue a proclamation—

(1) designating March 31, 2003, as ''National Civilian Conservation Corps Day''; and

(2) calling on the people of the United States to observe the day with appropriate ceremonies and activities.

NATIONAL SAFE PLACE WEEK

Mr. SANTORUM. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of S. Res. 70, and the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 70) designating the week beginning March 16, 2003 as ''National Safe Place Week.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. SANTORUM. I ask unanimous consent the resolution and the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements be printed in the RECORD.

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

The resolution (S. Res. 70) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 70

Whereas today's youth are vital to the preservation of our country and will be the future bearers of the bright torch of democracy;

Whereas youth need a safe haven from various negative influences such as child abuse, substance abuse and crime, and they need to have resources readily available to assist them when faced with circumstances that compromise their safety;

Whereas the United States needs increased numbers of community volunteers acting as positive influences on the Nation's youth;

Whereas the Safe Place Program is committed to protecting our Nation's most valuable asset, our youth, by offering short term ''safe places'' at neighborhood locations where trained volunteers are available to counsel and advise youth seeking assistance and guidance;

Whereas Safe Place combines the efforts of the private sector and non-profit organizations uniting to reach youth in the early stages of crisis;

Whereas Safe Place provides a direct means to assist programs in meeting performance standards relative to outreach/community relations, as set forth in the Federal Runaway and Homeless Youth Act guidelines;

Whereas the Safe Place placard displayed at businesses within communities stands as a beacon of safety and refuge to at-risk youth;

Whereas over 655 communities in 41 States and more than 11,000 locations have established Safe Place Programs;

Whereas over 61,000 young people have gone to Safe Place locations to get help when faced with crisis situations;

Whereas through the efforts of Safe Place coordinators across the country each year more than one-half million students learn that Safe Place is a resource if abusive or neglectful situations exist; and

Whereas increased awareness of the program's existence will encourage communities to establish Safe Places for the Nation's youth throughout the country: Now, therefore, be it

Resolved, That the Senate—

(1) proclaims the week of March 16 through March 23, 2003, as ''National Safe Place Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States and interested groups to promote awareness of and volunteer involvement in the Safe Place Programs, and to observe the week with appropriate ceremonies and activities.

GREEK INDEPENDENCE DAY: A NATIONAL DAY OF CELEBRATION OF GREEK AND AMERICAN DEMOCRACY

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 78, and the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 78) designating March 25, 2003, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 78) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 78

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people;

Whereas the Founding Fathers of the United States drew heavily on the political experience and philosophy of ancient Greece in forming our representative democracy;

Whereas Greek Commander in Chief Petros Mavromichalis, a founder of the modern Greek state, said to the citizens of the United States in 1821, ''it is in your land that liberty has fixed her abode and . . . in imitating you, we shall imitate our ancestors and be thought worthy of them if we succeed in resembling you'';

Whereas Greece is 1 of only 3 nations in the world, beyond the former British Empire, that has been allied with the United States in every major international conflict for more than 100 years;

Whereas Greece played a major role in the World War II struggle to protect freedom and democracy through such bravery as was shown in the historic Battle of Crete and in presenting the Axis land war with its first major setback, setting off a chain of events that significantly affected the outcome of World War II;

Whereas the price for Greece in holding our common values in their region was high, as hundreds of thousands of civilians were killed in Greece during the World War II period;

Whereas President George W. Bush, in recognizing Greek Independence Day on March 25, 2002, said, ''Greece and America have been firm allies in the great struggles for liberty. Americans will always remember Greek heroism and Greek sacrifice for the sake of freedom . . . [and] as the 21st Century dawns, Greece and America once again stand united; this time in the fight against terrorism. The United States deeply appreciates the role Greece is playing in the war against terror . . . . America and Greece are strong allies, and we're strategic partners.'';

Whereas Greece is a stabilizing force by virtue of its political and economic power in the volatile Balkan region and is one of the fastest growing economies in Europe;

Whereas on January 1, 2003, Greece took over the Presidency of the European Union for the fourth time since it joined the Union in 1981 with the message of ''Our Europe: Sharing the Future in a Community of Values'';

Whereas Greece, through excellent work and cooperation with United States and international law enforcement agencies, recently arrested key members of the November 17 terrorist organization;

Whereas President Bush stated that Greece's ''successful law enforcement operations against a terrorist organization [November 17] responsible for three decades of terrorist attacks underscore the important contributions Greece is making to the global war on terrorism'';

Whereas Greece's unprecedented Olympic security effort, including a record-setting expenditure of over $600,000,000 and the utilization of a 7-member Olympic Security Advisory Group which includes the United States, will contribute to a safe and secure environment for staging the 2004 Olympic Games in Athens, Greece;

Whereas Greece, geographically located in a region where Christianity meets Islam and Judaism, maintains excellent relations with Muslim nations and Israel;

Whereas Greece has had extraordinary success in recent years in furthering cross-cultural understanding and reducing tensions between Greece and Turkey;

Whereas Greece and the United States are at the forefront of the effort for freedom, democracy, peace, stability, and human rights;

Whereas those and other ideals have forged a close bond between our 2 nations and their peoples;

Whereas March 25, 2003, marks the 182nd anniversary of the beginning of the revolution that freed the Greek people from the Ottoman Empire; and

Whereas it is proper and desirable to celebrate with the Greek people and to reaffirm the democratic principles from which our 2 great nations were born: Now, therefore, be it

Resolved, That the Senate—

(1) designates March 25, 2003, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy''; and

(2) requests that the President issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

NATIONAL GIRL SCOUT WEEK

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 79, and the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 79) designating the week of March 9 through March 15, 2003, as ''National Girl Scout Week.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 79) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 79

Whereas March 12 is the anniversary of the founding of the Girl Scouts of the United States of America;

Whereas by fostering in girls and young women the qualities on which the strength of the United States depends, the Girls Scouts has significantly contributed to the advancement of the United States;

Whereas the Girl Scouts is the preeminent organization for girls, dedicated to inspiring girls and young women to become model citizens in their communities with the highest ideals of character, conduct, and service to others;

Whereas the Girls Scouts, through its prestigious program, offers girls ages 5 through 17 a wealth of opportunities to develop strong values and skills that serve girls well into adulthood; and

Whereas on March 16, 1950, the Girl Scouts became the first national organization for girls to be granted a Federal charter by Congress: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of March 9 through March 15, 2003, as ''National Girl Scout Week''; and

(2) requests the President to issue a proclamation designating such week as ''National Girl Scout Week'' and calling on the people of the United States to observe the anniversary of the Girl Scouts of the United States of America with appropriate ceremonies and activities.

MEASURE READ THE FIRST TIME—S. 607

Mr. SANTORUM. Mr. President, I understand that S. 607 introduced earlier today by Senators ENSIGN and GREGG, and others, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill by title for the first time.

The legislative clerk read as follows:

A bill (S. 607) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

Mr. SANTORUM. Mr. President, I ask for its second reading and object to the second reading on this matter.

The PRESIDING OFFICER. Objection is heard, and the bill will remain at the desk.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 37 on the Executive Calendar. I further ask consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, any statements relating to the nomination be printed in the RECORD, and that the Senate then resume legislative session, with all of the above occurring en bloc.

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

The nomination was considered and confirmed, as follows:

THE JUDICIARY

Ralph R. Erickson, of North Dakota, to be United States District Judge for the District of North Dakota.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ORDERS FOR THURSDAY, MARCH 13, 2003

Mr. SANTORUM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Thursday, March 13; I further ask consent 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 resume consideration of Calendar No. 19, S. 3, the partial-birth abortion bill, as provided under the previous order.

I further ask unanimous consent that when the Senate resumes morning business, the first 20 minutes be equally divided between Senators HAGEL and DORGAN, with the remainder of the time until 11:30 a.m. to be equally divided between the two leaders or their designees.

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

PROGRAM

Mr. SANTORUM. For the information of all Senators, at 9:30 tomorrow morning, the Senate will proceed to a vote on final passage of the partial-birth abortion bill. Following that vote, there will be a second vote which will be on the nomination of Thomas Varlan to be a U.S. District Judge for the Eastern District of Tennessee. Following the second vote, the Senate will proceed to a period of morning business until 11:30 a.m., as stipulated by the previous order.

At 11:30 a.m., the Senate will return to executive session and resume the consideration of the nomination of Miguel Estrada to be a Circuit Judge for the DC Circuit, with the time until 12:30 p.m. equally divided between the chairman and ranking member of the Judiciary Committee or their designees. At 12:30 p.m., the Senate will vote on the motion to invoke cloture on the nomination.

Following the cloture vote, the Senate will consider additional judicial nominations. Members should expect up to three additional rollcall votes on these judicial nominations.

PARTIAL-BIRTH ABORTION BAN ACT

Mr. SANTORUM. Mr. President, I just want to make a few additional comments before we wrap up on this debate. As I said earlier, this has been 7 years in the making, to take a bill that was conceived not by me but by Charles Canady over in the House of Representatives, who is now a Federal judge, I believe, and others here in the Senate. Senator Bob Smith from New Hampshire was one of the original leaders on this issue in the Senate. I know he will feel very good about passage of this legislation. It has been a long time coming. And a lot of effort has been put behind this measure by many Members. We have accomplished something that I think is really important.

People have said this is not going to stop any abortions. That may be the case. People have said this procedure is very rare. Well, I would argue that several thousand abortions a year, several thousand children being put through this brutality—I will, first, not classify thousands as rare—and as the Senator from Minnesota so eloquently said earlier today, even one should cause this Senate to stand up and say no.

This is a procedure that has no place in medicine, has no place in the legal behavior of anybody here in the United States of America.

We had a good debate today. We were able to defeat some amendments that were very much aimed at eliminating this ban, wiping the underlying bill out and replacing it with some language that would have, frankly, done little to nothing.

I thank all of my colleagues for standing up and sticking with this underlying bill, defeating amendments which I know in some cases were very difficult votes for Members. They came through, and we were able to get decisive votes.

We have had this partial-birth abortion debate so often, and it is our fifth time, unfortunately, we have had to be here on the floor of the Senate. But we also had a good debate on the whole underlying issue of Roe v. Wade.

While I was disappointed that the sense of the Senate passed, with, I believe, 52 positive votes here in the Senate affirming Roe v. Wade, I hope those who had an opportunity to listen to the debate today—for those who did not, I encourage them to pick up the RECORD because I think both sides of the aisle laid out their case. They laid out their case as to why this judicial decision is a good thing for America, as a country, and for the people—those who are for it. And those who are against it laid out a good argument, I would argue a compelling one, since I was one of the ones making it, that Roe v. Wade is not a good thing for this country. It is damaging to our culture, to the spirit of America.

I just want to reiterate why I feel so strongly about that. Because, as you noticed in the Senate, even during that debate, as heated as it was, you did not have a whole lot of people coming down here to engage in that debate.

It is the great moral issue of the day. There is no other issue that fires passion in people like this one, and it has for decades. It has been 30 years since the Supreme Court grabbed from the people the decision to determine what the collective morality of this country is with respect to the sanctity of human life in the womb. The Supreme Court took that decision from the people, and did it through legislating in a judicial decision.

Now, I would argue that irrespective of your position on abortion, as free people, we fought a revolution about those people taking rights from us or taking decisions from us, people who are not elected, who are not subject to the will of the voter. And that is what the U.S. Supreme Court did in 1973. They took from us, the people, the right to determine our fate, the right to determine our collective judgment, our moral decision.

Some people have come up to me for years and said: You don't have the right to make this moral decision. My response is: Well, if I, as your elected representative, don't have the right, what gives the right to nine unelected judges to make this decision for you?

This is a representative democracy. You elect people to make decisions for the collective whole. That is how the system works. And what judges are there to do is to determine whether they are within the constitutional framework. They are not to use, as a flimsy excuse, the Constitution to create legislation. That is the constitutional amendment process.

If you want to create a new right, pass a constitutional amendment. You don't create new rights by someone coming on a court and saying: Hey, I found a new right. That is exactly what the U.S. Supreme Court did in Roe v. Wade. They found a new right that for centuries—roughly two centuries—had not been found by some of the smartest men we have had in this country, some of the best and brightest.

Lawyers and nonlawyers in this country have served on the U.S. Supreme Court, and for all that time they

could not find this right. But in 1973, seven Justices—seven men—I hear so often: Well, why are you men making these decisions—seven men on the U.S. Supreme Court found a right.

They found a right that was not written in this Constitution. I don't think anyone will make the comment that the right to an abortion is written in the black letters of the Constitution. It is not.

So where did this right spring from? Where did this right emerge from? It emerged from the liberty clause of the 14th amendment—individual liberty. The Senator from Iowa read a subsequent case, abortion case, the Casey decision. The Casey decision was about the Pennsylvania Abortion Control Act signed by a Democrat, Robert Casey, who I had a great amount of respect for, his willingness to stand up to his party and do what he believed was truly the legacy of his party, to look out for those who are the least fortunate among us or have the least power among us. That is what the Governor used to say over and over.

He passed a bill through the Pennsylvania legislature and signed this bill to put ''restrictions'' on abortion, horrible things like parental consent. That means when a minor wants to have an abortion, the parent has to consent because it is a minor child; or parental notification, which is what is sort of the lay of the land today, we passed parental notification statutes. But there was a whole variety of things: 24-hour waiting period, informed consent. There were a bunch of things in this act.

The Supreme Court, in making this decision, it was really remarkable. They came up with this language, really chilling language for society. It is language that says the heart of liberty is man's right to determine the meaning of life, of the universe. It is the essence of liberty, they said. It is one person's right to define for themselves life and liberty and the universe and the world.

I have to say our Founding Fathers could not have thought that. Those who passed the 14th amendment were not our Founding Fathers, but those who passed the 14th amendment, I just don't believe they thought every single person in America had a right to define their own existence. And that was part of it—what their own existence meant, what the universe meant, what liberty and life meant. If we all go around deciding what we believe is right or wrong and what is fair or not fair, if we all have our own moral code and we are not responsible for anybody else, that is chaos. That is simply my ability to impose my will on you and right makes right. The strongest prevail. That is not what they had in mind. I am sure of that.

That is where the line of cases after Roe v. Wade has taken us. It has taken us down a road where it is just positivism. It is my ability to be able to put my will on you. That is why I referred to the two killers from Columbine who said: I am the law. Where do you think they got that? Where do you think that came from? It came from the U.S. Supreme Court because that is what the Supreme Court says, that you are the law. You can define your own existence. You can define your own universe. That is the essential meaning of liberty. That wasn't in a dissenting opinion or a concurring. It was in the main body of the opinion.

So liberty, twisted and tangled beyond recognition in the abortion cases, twisted and tangled so much by the 1973 Roe case. Because what they did with liberty, a very important right, one of the fundamental rights, but our Founders knew it was not the most important right. Because when our Founders put together our original documents, they said we are endowed by our Creator, not the Supreme Court, not the Congress, but by our Creator, with certain inalienable rights. And then they listed them. They listed them deliberately in order. Life was first. Liberty was second. The pursuit of happiness was third.

Why did they order them in such fashion? Was it just because it sounded better? Life, liberty, pursuit of happiness sounds better than liberty, life, pursuit of happiness?

No, they ordered these rights because one flows from the other. You can't have happiness without freedom, without liberty, without true liberty. You cannot pursue happiness, you are not free to pursue your happiness. Happiness doesn't mean doing something that makes you feel good. It means living your life in a way that is fulfilling, purposeful. I would argue, the way God meant you to live your life—in service. That is the happiness they envisioned.

It wasn't my ability to dominate you or to impose my will on you. That is not the liberty they are talking about. That is certainly not the happiness. You have to have freedom to have happiness. And, of course, you must have life to be free. If you don't have life, having liberty means nothing. So they ordered these rights.

And what does Roe v. Wade do? Roe v. Wade takes those ordered rights and flips them. We have so contorted liberty in the line of abortion cases, we have so destroyed the essence of what the amenders of the Constitution intended that not only does the definition of liberty itself strike fear and should strike fear into the heart of every law-abiding citizen, because under this line of cases, liberty means whatever you can force on somebody else. Your opinion stands. Not only have we contorted liberty, but we have now exalted liberty over life.

How is that true? It is true because the liberty of the person carrying the child trumps the life of the child within. That is what happens in abortion. The rights of the mother are supreme to the rights of the child throughout the term of the pregnancy. That is what Roe v. Wade and Doe v. Bolton say. Abortions are legal in this country from the time of conception to the time of separation—legal every minute, every second. So the liberty rights trump the life rights.

I said before, there is only one other instance I am aware of in American history where such a stark reversal of rights has been tried. That was over 150 years ago in the Dred Scott case. The Supreme Court said the liberty rights of the slaveholder trump the life rights of the black man or woman. The liberty rights of the slaveholder trumped the rights of the black man and woman. Why?

This may sound familiar. The black man was not considered a person under the Constitution. Of course, this whole debate about Roe v. Wade is what? Is the child in the womb considered a person under the Constitution? The answer is, according to Roe v. Wade, no. It is not. It does not have rights.

So what did Dred Scott do?

Dred Scott said the human being—clearly human—as the Senator from Kansas said, William Wilberforce, when he was a Member of Parliament in England, was trying to stop the slave trade throughout the British Empire and he had, I believe, Wedgewood China make a plate that was then turned into a poster and distributed it throughout England and the world. It was of a black man, a slave, in shackles. The inscription around the plate was, ''Am I not a man and a brother?''

So since 1973, we, too, have had our own version of that plate. Instead of a black man in shackles, we have an innocent child in the womb, who is human—genetically human—and living; it is a human being. Is this child any different in the eyes of the law than the black man under Dred Scott? Can he or she not also say: Am I not a child and a son, or a daughter, a brother, or a sister?

I believe the answer to that is yes. Now, I understand the consequences of this. I truly do. I understand the hardship that recognizing someone's right to life would impose on others. I understand the burden it puts upon women who are carrying a child they don't want. I understand that. I understand this is not an easy decision. I don't make this argument cavalierly, but to the extent I can make it scholarly, I understand the real ramifications of this. I understand there is real human suffering. I understand, like the Senator from California said, these men are telling me what to do with my body. I understand that feeling. I recognize it. I cannot tell you the number of women who have said that to me.

Women have a unique gift, which is the ability to conceive. Men do not have that ability. With all gifts come burdens and responsibilities. I know people, in our society in particular, are not necessarily comfortable with all of the burdens and responsibilities that may come upon them. But we are talking about a human being, a human life. We are talking about exercising the

right of one person's liberty over another person's life, and giving that person their liberty rights, total control over someone's right to exist. That is a big deal. It is a great gift. But with that gift is this burden.

I make the argument that taking these liberties out of order doesn't just lead to this conflict that 1.3 million women will go through in this country—probably many more than that will go through this conflict. So 1.3 million women, or more, will decide the conflict in favor of their liberty rights—snuffing out the life of their unborn child. Almost half of those abortions will be the second, or more, abortion for the woman involved.

I am concerned about that, but I am also concerned about what happens down the road. What precedent have we set that we seem so unwilling to overturn, and what are the long-term consequences of that precedent? I use the example of children who are victims of infanticide. The right of infanticide since Roe v. Wade, you would think, would have gone down. That is what they said would happen. Prior to Roe v. Wade, the rate of infanticide was 4.3 percent. Since Roe v. Wade—in fact, within 10 years of Roe v. Wade, the rate more than doubled. That doesn't make sense, does it? Roe v. Wade was supposed to end unwanted pregnancies. It was supposed to stop infanticide, child abuse, spouse abuse, and domestic violence. Why? Because we weren't putting this burden on women. We were removing this burden. That is what abortion is about, removing a burden.

Then why have all of the things I have just mentioned increased since Roe v. Wade? Why is domestic violence going up? Why has spousal abuse gone up? Why has infanticide gone up? Why has divorce gone up? You can go down the list. Every social indicator that abortion was to cure, including teen pregnancy, has doubled or done more since Roe v. Wade. What happened since we have lifted this burden?

Maybe we really didn't lift the burden. Maybe we created a whole other burden. Maybe—just maybe—we made a moral statement in this country. Maybe the Supreme Court made a moral statement, which is that the life of a baby in the womb doesn't count; it has no legal standing. Now, how does something that has no legal standing, within a few seconds after birth, or the separation from the mother, all of a sudden have full standing? Well, obviously, and unfortunately, a larger number of mothers don't see that transition, don't recognize the difference and think, well, I can kill my child in the womb if I don't want it. What is the difference? It is just a few minutes, just a few seconds. And society recognizes that it is different.

Look at the sentences given out to cases of infanticide, particularly those immediately after birth, and cases of mothers killing their children who are 3, 4, 5, 6, 7 years of age. Look at the differences in sentencing. How does society view this newborn child versus the 4 and 5-year-old child? Look at the sentence. Remember just recently, in the last few years, the ''prom mom'' in I believe Delaware, and there were a couple others that got 2 years, or 18 months, for killing their children after birth. And when one looks at other cases of mothers committing murder, killing their children, they get life imprisonment because the children are 5 or 6 years old. What is the difference? That is how we value these children. We cannot even bring ourselves to consider the difference—even as a society, we look at a difference between a child who has no rights in the womb to one who has sort of quasi rights.

We have a professor at the University of Princeton, Peter Singer, whom the New Yorker magazine calls the most influential living philosopher. Imagine, most influential living philosopher, Peter Singer, Princeton University, not Podunk U but Princeton University, a distinguished chair. Here is a summary of his views:

> The views I put forward should be judged not by the extent to which they clash with accepted moral views, but on the basis of the arguments by which they are defended. Not all who are biological human beings should be counted as human beings.

That is what Roe v. Wade says. Roe v. Wade says not all biological human beings should be counted as human beings. That is not that far.

> Some human beings are more than others.

Just that phrase reminds me of the book ''Animal Farm.''

> The unborn, the newborn, the anencephalic——

Anencephalic is a child born without a brain, just a brain stem——

> and those in a vegetative state, for instance, do not count, or at least do not count fully as human beings.

It sort of reminds me of three-fifths of a person, not fully a human being. That is what the slave was counted as, three-fifths of a human.

> The other qualifying prong of this argument is that it is not rational to draw a hard and fast line between human beings and other forms of animal life. To do so is an instance of speciesism.

He has advocated a waiting period of 28 days after birth before deciding whether a baby has rights that we have to respect. Where do you think this comes from? It comes from Roe v. Wade. Why draw the line at birth? What is so significant about birth as to whether to give rights, particularly if the child, as we heard today from some of the debate, has severe abnormalities? Why give this child full rights? Who are they to insist upon rights?

He goes on to say:

> I should think it would be somewhat short of 1 year. But my point is that it is not for me or anyone else to say.

It reminds me of the clause in the Casey decision: I am not going to say what others—I just do what I want; you shouldn't tell me what to do; just let me do what I want.

> It should be up to the parents.

How many times have we heard this? Let the parents decide. Who are you, as society, to tell a parent what to do in the case of an abortion? Let the parents decide. They know what is in the best interests of their children.

He added:

> It is a decision that parents should make in consultation with their doctor.

Doesn't that sound familiar? You say, well, this is just some crazy man. New Yorker magazine, most influential living philosopher, a chair—a chair—at Princeton University. What does having this notoriety in the media and this distinguished academic position get you? Noticed. By whom? A judge. When? Maybe that is that decision of infanticide. Maybe it is the next case where a child is born to a mother, did not know the child was disabled or deformed, and was so upset about it that she committed infanticide. And a judge feeling sympathy for the mother, as society does—it is a horribly tragic situation, particularly if it is a young mother who went through a pregnancy. And so the judge does not want to do anything to ruin this girl's life. She might be from a good family. She might have a promising career. So why would we want to put her in jail and do something? I have to figure out a way not to impose a burden on her. Well, there is this distinguished chair at Princeton University; New Yorker magazine calls him a great thinker, ahead of his time; I have an idea; I will say—and Peter Singer writes extensively about this—that it is natural for a woman to kill her child. And so they will use all of his writings and come up with some mumbo-jumbo decision to give either no sentence or a light sentence. Thus, it gets into the case law.

Initially, it will be viewed as an outlier and thrown out as a ridiculous decision; it will be overturned. That happens with regularity, particularly in California in the Ninth Circuit. They are constantly throwing cases out of the Ninth Circuit in the Supreme Court.

Do not think for a minute these decisions like the Pledge of Allegiance case do not have the effect of a wave coming up on the sand. They go back, but they keep coming back. Eventually, they wear away the beach. So this will be the case here.

People are going to listen to this and maybe read this and say: Here is the Senator. It is late at night, and he is not thinking very clearly. I hope 30 years from now, God willing, I will still be on this Earth, not in the Senate Chamber, I hope. I hope I can read this statement and say: Boy, you were a fool; boy, that was really a silly argument you made. What were you thinking?

I fear I will not be able to say that because our culture is so fixated on relieving us of all of our burdens, of resting away all of our responsibilities so we can pursue what makes us happy. So do not be surprised that this poisonous line of cases will continue to

poison the water of this culture and will lead to things such as partial-birth abortion.

I remember during previous debate I got a letter from a man in England saying he was watching the debate and heard the Senators describing these children in utero, these deformed children and saying: We need to keep partial-birth abortion available for these mothers late in pregnancy who find out their children are not perfect because we have to give mothers the right to destroy this child who is not perfect, who may not live long, or may have some abnormalities that are problematic. He kept hearing these cases after cases.

The other side does not argue that partial-birth abortion should be legal for healthy mothers and healthy babies, even though that is 99 percent of the abortions that occur, are partial-birth abortion; 100 percent in Kansas.

What they argue is, it is the hard cases. He said: I sat there and listened to Member after Member get up and describe people like me, for I am in a wheelchair and I have spina bifida. I am one of those cases, and they want to get rid of me.

And you say: Oh, no, abortion does not have an impact on how we view life. Oh, no, we do not devalue people. The Senator from New York asked today: Is there an exception in the bill for children with fetal anomalies? She asked me: Does the Senator have an exception in the bill for children with fetal anomalies? In other words, maybe we will sign off on the fact that healthy babies with healthy mothers cannot be killed, but we are going to provide less legal protection for healthy mothers with babies who have anomalies.

The poison of Roe v. Wade infects us all, and the amazing thing is we do not even know it. It is so part of us. We do not even realize it. It is that corrosive, slow effect that hardens us to life, hardens us away from any burden or sacrifice or responsibility. It is truly a poison that infects us all.

Today, the Senator from California, Mrs. FEINSTEIN, offered a letter from an obstetrician from the University of California San Francisco Medical Center about cases in which a partial-birth abortion was necessary. I have a letter in response to that from Dr. Nathan Hoeldtke, who is the medical director of Maternity-Fetal Medicine at Tripler Medical Center, Honolulu, HI. Both are experts and board certified in maternal-fetal medicine, the doctor whom Senator FEINSTEIN quoted who proposed these cases and Dr. Hoeldtke.

The letter from Dr. Hoeldtke reads:

DEAR SENATOR SANTORUM, I have read the letter from Dr. Philip Darney addressed to Senator Feinstein regarding the intact D&E. often referred to as ''intact D&X'' in medical terminology, procedure, partial-birth abortion, and its use in his experience.

As a board certified practicing Obstetrician/Gynecologist and Maternal-Fetal Medicine sub-specialist I have had much opportunity to deal with patients in similar situations to the patients in the anecdotes he has supplied.

In neither of the type of cases described by Dr. Darney, nor in any other that I can imagine, would an intact D&X procedure be medically necessary, nor is there any medical evidence that I am aware of to demonstrate, or even suggest, that an intact D&X is ever a safer mode of delivery for the mother than other available options.

In the first case discussed by Dr. Darney a standard D&E could have been performed without resorting to the techniques encompassed by the intact D&X procedure.

In the second case referred to it should be made clear that there is no evidence that terminating a pregnancy with placenta previa and suspected placenta accreta at 22 weeks of gestation will necessarily result in less significant blood loss or less risk to the mother than her carrying later in the pregnancy and delivering by cesarean section. There is a significant risk of maternal need for a blood transfusion, or even a hysterectomy, with either management. The good outcome described by Dr. Darney can be accomplished at a near term delivery in this kind of patient, and I have had similar cases that ended happily with a healthy mother and baby. Further a standard D&E procedure could have been performed in the manner described if termination of the pregnancy at 22 weeks was desired.

I again reiterate, and reinforce the statement made by the American Medical Association at an earlier date, that an intact D&X procedure is never medically necessary, that there always is another procedure available, and there is no data that an intact D&X provides any safety advantage whatsoever to the mother.—Sincerely, Nathan Hoeldtke.

I thank the Chair, and those who are watching, for their indulgence. I appreciate the tremendous support of the Chair and the statement he made today.

It is very heartening to be on the verge of passing a bill that could end up in law, signed by the President in very short order.

I gave a long talk about Roe v. Wade, but this is not an assault on Roe v. Wade. The point we are making is that this is actually outside of Roe v. Wade. The Court has foreclosed us from having a public debate, in having the public and their elected representatives decide the issue of abortion. They have taken it from us and have jealously coveted it for 30 years. But this is an attempt to stop a brutal evil that even the Senator from California, Mrs. BOXER, said her constituents could not bear to watch.

Well, if one cannot bear to watch it, how can they say they believe in it? If it chills one to the bone that we do this to little children, how can we allow it to be legal, to place a baby in the hands that were trained to heal and kill the child in the hands of a doctor?

People know evil when they see it. I believe abortion is an evil. For the first time in this debate, people saw the face, people saw what was being aborted. It was not a blob of tissue. It was not a group of cells. It was a little baby with arms and legs who wanted one thing, the opportunity to live, but who was brutally denied that by the hands of a doctor. Hopefully today—actually, tomorrow with the vote—it will be the beginning of the end of this brutal procedure.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. SANTORUM. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:28 p.m., adjourned until Thursday, March 13, 2003, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 12, 2003:

THE JUDICIARY

RALPH R. ERICKSON, OF NORTH DAKOTA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NORTH DAKOTA.

WILLIAM D. QUARLES, JR., OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND.