

to reauthorize the Airport Improvement Program prior to adjournment, the FAA will be unable to fund critically needed safety, security, capacity and noise projects at airports in every state in the nation. The House of Representatives has already passed its version of the legislation, H.R. 4057.

Please bring FAA reauthorization legislation to the floor immediately, so that a final version of the measure can be adopted and signed into law prior to adjournment. Without swift congressional action, critically needed federal funding for runways, taxiways, security and hundreds of other projects will stop after September 30.

Thank you for your immediate attention on this important matter.

Sincerely,

Charles Barclay, American Association of Airport Executives; Paula Blaine, Airport Consultants Council; T. Peter Ruane, American Road & Transportation Builders Assn.; Stephen Sandherr, Associated General Contractors; Luther Graef, American Society of Civil Engineers; Peggy Hudson, American Portland Cement Alliance; Henry Ogradzinski, National Association of State Aviation Officials; David Plavin, Airports Council International-North America; Phil Boyer, Aircraft Owners and Pilots Association; Stephen Alterman, Cargo Airline Association; Carol Hallett, Air Transport Association.

PARTIAL-BIRTH ABORTION BAN ACT OF 1997—VETO

The PRESIDING OFFICER. Under the previous unanimous consent agreement, the Senate will now proceed to the consideration of the veto message on H.R. 1122.

The Presiding Officer laid before the Senate a message from the House of Representatives, which was read as follows:

The House of Representatives having proceeded to reconsider the bill veto message to accompany H.R. 1122 entitled "An Act to amend title 18, United States Code, to ban partial-birth abortions", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

The PRESIDING OFFICER. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

The time for debate will be limited to 4 hours, to be equally divided between and controlled by the majority leader and the minority leader or their designees.

Who yields time?

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, today we begin debate on the issue of partial-birth abortion, the override of the President's veto, which he vetoed last year.

I believe this is one of the most important issues, if not the most important issue, we will face in this session of Congress because it deals really at

the core with who we are as a country and to what degree we respect life in this country and recognize life, recognize an individual's inclusion into our family and our society. In many cases, just as we did in voting with respect to banking laws, we have to draw lines. Part of the legislative process is, in fact, drawing lines. Sometimes those lines are not clear. Sometimes the votes are very difficult, and it is hard to understand in the area of gray where exactly you do draw the line.

I have always felt, with respect to the issue of partial-birth abortion, that it was a very good place to at least draw the first line, in a very emotional and confrontational issue, because we are not really talking about abortion at that point, we are talking about infanticide. I think if you took a poll in this Senate and asked whether Members of the Senate were in favor of infanticide, I hope and pray that the answer would be 100 percent "no," that they are not in favor of infanticide. Well, I believe, as many Senators have said, that this is infanticide. This is a baby that is just 3 inches from being delivered and is brutally killed.

Let's do a little rundown of how we got to the point where we are today. In the last session of Congress, Congress passed a bill to ban this procedure, sent it to the President, and he vetoed it. We had a vote to override in September of 1996. We had 59 votes on the floor of the Senate. They overrode in the House. Last year, the Senate and House passed the bill. The House, in July of this year, overrode the President's veto with a vote of 296-132, I believe. So now it comes to the Senate.

Earlier this year, we had 64 votes on the floor of the U.S. Senate to ban this procedure. Unfortunately, as overwhelming a vote as that is, it is three short of the votes necessary to override a Presidential veto. So that is the state of play; three votes in the U.S. Senate separate us from what I believe is a clarion call to the world that we are a civilized country that respects life which is born in this country, or nearly born in this country, and a signal to the country that we are just not quite ready to open our arms as a society and welcome every member to it.

Let's first go through the particulars of what this procedure is, because I think it is important to define the procedure so everybody knows exactly what we are talking about. These charts that I am going to show you, while they are not particularly easy to look at, they do accurately describe, according to several doctors who perform them, what a partial-birth abortion is. It is performed on babies that are at 20 weeks of gestation, roughly halfway through the gestational process. Between 20, 24, 26, and longer, it can be performed. One of the reasons, in fact, that this procedure was developed was to perform it on solely late-term and very-late-term babies. So at 20 weeks, and thereafter, this procedure is used. The baby, as you see, in

the mother's womb is usually in a head-down position at that age. The doctor, over a 3-day period, will begin to dilate the cervix, open up the cervix, so the doctor can reach in with forceps and grab the baby's foot and turn the baby around and pull the baby out in a breach position.

I want to state that again. This is a 3-day procedure. It starts with the dilation of the cervix over a 2-day period. On the third day, when the cervix is sufficiently dilated, the doctor goes in with these forceps, grabs one of the baby's limbs—usually the foot—pulls the baby, turns the baby around into a breach position, and begins to pull the baby out of the birth canal in the breach position. As most people understand, that is a very dangerous position for a normal delivery. You try to avoid breach births because of the danger to the mother, as well as the baby. In this situation, they deliberately turn the baby around and deliver the baby in a breach position. The baby is then pulled out feet-first until all of the baby is outside of the mother, with the exception of the head. The reason for that is, the head being a hard part of the body, even at that age—certainly a harder part of the body at that age—and it is the biggest single part of the body, it is left inside of the mother.

The third thing that happens is, the physician reaches in with one hand and finds the back of the baby's skull. You can't see the back of the baby's skull because the skull and neck are still inside of the mother. So they probe and find the soft part here, right at the base of the skull. Then they take what is called a Metzenbaum scissors and thrust it into the back of the baby's skull, open up a hole in the baby's skull, introduce a suction catheter, which is a high-powered suction device, and suck the baby's brains out, which causes the collapse of the skull, and then a dead baby is delivered.

This is the brutal procedure that the President of the United States has said must remain legal. This is the brutal procedure that we have the opportunity here in the U.S. Senate to say has no place in a civilized society.

I would think that would be enough reason—that simply its brutality, its shocking, barbaric, horrific nature would be enough reason to ban this procedure. But there is much more. There are so many reasons to ban this procedure beyond its horrific and barbaric nature.

In a few minutes, I will detail exactly all of those reasons. I will detail all of the lies that have been put out by the other side to protect this rogue procedure, which is not done in any hospital, not taught in any medical school, has not been peer-reviewed and studied by others to make sure that this was a proper, safe procedure. This is a rogue procedure done only in abortion clinics, when no one else is watching.

Mr. President, I will yield the floor, as I know the Senator from Missouri is here and has other time commitments.

I will yield and turn it over to the Senator from Missouri, Senator BOND.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I very much appreciate the courtesy of my distinguished colleague from Pennsylvania. I congratulate him on his leadership on this issue. These are very, very difficult procedures to describe and I know that no one here on the floor enjoys hearing them. But the fact that they are so horrendous I think is one of the reasons we are here today.

Mr. President, the Senate will soon vote on whether to override the President's veto of the Partial Birth Abortion Ban Act. This legislation would ban a particularly hideous form of late term abortion known as "partial birth" abortion. Unfortunately, while a majority of Senators supported the ban last year, the vote count was not enough at that time to override the subsequent veto by President Clinton.

I hope that some Senators will have had a change of heart since then and will vote to override the veto.

This is a horrible procedure. The Senator from New York, Mr. MOYNIHAN, has likened it to infanticide. Remember that these are "late-term" abortions, meaning they take place during or after the 5th month of pregnancy. A fully developed fetus is brought down the birth canal, feet first, and then delivered, all but the head. Then the abortionist takes a pair of scissors, inserts them in the back of the baby's neck, and collapses the brain, and the baby is delivered: dead.

I would note the American Medical Association, representing thousands of doctors, believes the ban is justified and that there is no room in medicine for this procedure.

The overwhelming majority of the American people and Missourians are rightly revolted by this. Some states have banned the procedure, and the state of Missouri has come very close to banning it. Few other issues have generated so much mail and so many phone calls to my office. People feel very very strongly about banning this procedure. And it is easy to see why.

And, the partial birth abortion ban has passed in both the House and the Senate by large majorities. In fact, the issue would be settled if President Clinton hadn't vetoed the bill last year, against the wishes of an overwhelming number of Americans.

Rarely have I seen a President, like this one, who is willing to ignore the wishes of the overwhelming majority of the American people. The overwhelming majority is opposed to this hideous procedure.

I have been asked why we are holding this vote in the Senate, when we are likely to fall short of what is needed to override the veto? We are holding this vote today because the President made a terrible mistake in vetoing the bill. It is up to Congress—it is up to Congress on this issue to listen to the people, to try to reverse it.

Tomorrow we will have the opportunity to correct the President's mistake. We are going to work on it. I ask our constituents and the constituents of other Senators who may be undecided to let them know how important overriding this veto is. I hope—I sincerely, honestly, and devoutly hope—that we will muster the necessary votes to override the veto tomorrow.

I thank the Chair. I particularly thank my colleague from Pennsylvania.

Mr. SANTORUM. Mr. President, I thank the Senator from Missouri for his excellent comments and for his strong support for this legislation.

Mr. President, I think it is important to understand a little bit more about this procedure and what has been said about this procedure over time by those who defend its use. I think it is very instructive to understand the history of what has been said so we can better understand what really is the final thread that those who oppose this ban hold onto in order to justify their vote against banning this procedure.

The first, I guess, almost incredible thing was when this bill was first introduced in the House—and in the Senate, by BOB SMITH here in the Senate—the original response by those who were opposed to this bill was that—this is the National Abortion Federation that called the "... illustrations of partial birth abortions highly imaginative, artistically designed but with little relationship to truth or to medicine."

Myriad other reports denied that this even occurred; that there is no such thing as partial-birth abortion; or, as they like to call it, intact D&X. The truth is that Dr. Haskell, who was one of the originators of this procedure, described this procedure at a National Abortion Federation meeting in 1992—by the way, the original quote that I quoted from was in 1995—3 years later. Yet, 3 years prior, a doctor spoke before the group and described this very procedure using the very drawings that you saw earlier. Yet, 3 years later, that same federation that Dr. Haskell spoke before denied it exists and denied those pictures and depictions of the procedure had anything to do with reality. Lie No. 1.

Lie No. 2: This was used by several of the people you may hear from. Those who will defend this procedure on the floor today cite several women who have come forward to say that this procedure was necessary to preserve their health and future fertility, or life. One of the women who has been used—in fact, the President called her up to the White House and brought her before the American public in testimony that she has given. She said she was told by her anesthesiologist that the fetus would endure no pain. This is because the mother is given a narcotic, analgesia, at a dose based upon her weight. The narcotic is passed via the placenta directly into the fetal bloodstream. Due to the enormous weight difference,

a medical coma is induced in the fetus and there is a neurological fetal demise. There is never a live birth. The baby dies.

This was the testimony of a doctor who does this procedure before the House Judiciary Committee. Obviously, lots of anesthesiologists who provide anesthesia to women who are going through labor and delivery become incensed that someone would make such a statement—that by giving a woman anesthesia, enough would pass into the baby to kill the baby. In fact, they came up here to the House and Senate pleading to testify to set the record straight, because there were women who were not taking anesthesia because of what they had heard.

This is Norig Ellison, president of the American Society of Anesthesiologists, 4 years ago:

In my medical judgment it would be necessary—in order to achieve "neurological demise" of fetus in a "partial birth" abortion—to anesthetize the mother to such a degree as to place her own health in serious jeopardy.

In other words, it wouldn't happen. Another lie.

Third lie, again, about anesthesia, that:

The fetus dies from an overdose of anesthesia given to the mother intravenously.

Again, Planned Parenthood said the first one.

Dr. Haskell, who, again, is one of the abortionists who does this procedure, said to the American Medical News:

"Let's talk about whether or not the fetus is dead beforehand. . . ." Haskell: "No, it's not. No, it's really not."

Lie No. 3, being perpetrated on the American public and the Congress, in almost all cases rebuffed by their own people.

Lie No. 4—this was a doozy:
Partial-birth abortion is "rare."

Once they got past the point of accepting the fact that it happened, that they admitted that it happened, they then went out and said that this was "rare"; it only happened a few hundred times a year:

This surgical procedure is used only in "rare" cases, fewer than 500 per year. It is most often performed in the cases of wanted pregnancies gone tragically wrong, when a family learns late in pregnancy of severe fetal anomalies, or medical condition that threatens the pregnant woman's life or health.

This was signed by a slew of abortion rights organizations: The Guttmacher Institute, Planned Parenthood, National Organization of Women, Zero Population Growth, Population Action International, National Abortion Federation, and others. They all signed this. They all signed this letter to Congress. They testified in a letter to Congress that this was the fact, that it was only tragic cases and there were only a few. But according to the Bergen County Record—and I have to tip my cap to them because, unfortunately, the entire press corps in Washington, DC, read this letter and accepted it as fact

and reported consistently that that was the fact. I asked many of the press corps did they bother to check, did they bother to check to see whether, in fact, the number and the circumstances were accurate? Did anyone bother to call a local abortion clinic in their city and ask?

The answer was a resounding—that's right—nothing. The Bergen County Record was one newspaper that did. September 15, 1996, just 10 days before the vote to override the President's veto in 1996:

But interviews with physicians who use the method reveal that in New Jersey alone, at least 1500 partial-birth abortions are performed each year—three times the supposed national rate.

Several months later we find out what really was going on.

Ron Fitzsimmons has suggested that between 3,000 and 5,000 partial-birth abortions could be performed annually.

Now, how do we know that he is right? We have absolutely no way of knowing he is right. I will quote from the American Medical Association, Journal of the American Medical Association just last month with respect to how we know how many of these are done.

First of all, States do not provide abortion-related information to the CDC.

Second, data gathered varies widely from State to State with some States lacking information on as many as 40 to 50 percent of abortions performed within their jurisdiction.

Third, the category the CDC uses to report the method of abortion does not differentiate between what is called dilation and evacuation, D&E, and intact D&X, or partial birth abortion.

We have no way of knowing, and even if they accurately reported it, some States don't collect the data and those that do, don't report 40 to 50 percent of the data. So how do we know? Those of us who are here trying to argue that this procedure should be banned have to rely upon Ron Fitzsimmons for the information. And who is Ron Fitzsimmons? He is the chief lobbyist for all the abortion clinics in this country that oppose this bill. So we have to use the information given to us by those who, by the way, have consistently lied, who also don't want the procedure to be banned. We have to accept their numbers as fact because there is no other way to independently check them. So I would just allow you to use your imagination as to what the number really is in this country. If they admit to 3,000 to 5,000, what is the real number?

Lie No. 5. "Partial-birth abortion is only used to save a woman's life or health or when the fetus is deformed."

This is Ron Fitzsimmons 2 years previous. Let's rewind 2 years back to 1995.

The procedure was used rarely or only on women whose lives were in danger or whose fetuses were damaged.

And I can give you lots of other quotes, by the way, from the Senate floor and from the House floor that maintained this position, as well as all

the other organizations that you just saw on the last chart, that that was the reason this procedure was created for those who it is used on, and that is why it needs to remain legal.

The truth: New York Times February 26, 1997:

Ron Fitzsimmons admitted he "lied through my teeth" when he said the procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged.

Ron Fitzsimmons, again quoted in the American Medical News March 3, 1997:

What the abortion rights supporters failed to acknowledge, Fitzsimmons said, is that the vast majority of these abortions are performed in the 20-plus week range on healthy fetuses and healthy mothers. "The abortion rights folks know it, the antiabortion folks know it and so probably does everyone else," he said.

Well, of course, we knew it. We knew it because Dr. James T. McMahon, who is now deceased, about 6 years ago said that he performed most of the abortions, partial-birth abortions on healthy mothers with healthy babies late in pregnancy, in his case up to the eighth and ninth month of pregnancy. He classified only 9 percent of that total of the 2,000 partial-birth abortion procedures he alone did, he classified only 9 percent of that total as involving maternal health indications of which the most common maternal health indication that he gave as a reason for doing the abortion was depression; 56 percent were for "fetal flaws," and those are his words, that included many nonlethal disorders, a sizable number as minor as cleft palate.

Yes, we knew. We came to the floor and we said here are the facts. And the other side stood behind the lies. They parroted them knowing that they weren't true. They parroted them either knowing they weren't true or praying that they could hide behind others who would try to fool the American public.

The sixth untruth and the final one, at least to date the final one. This is the last untruth that those who continue to oppose banning this procedure hold on to, this last thread of deception. And that is that "partial-birth abortion protects women's health."

President Clinton, in his veto message, April 10, 1996, when he vetoed the first ban:

I understand the desire to eliminate the use of a procedure that appears inhumane. But to eliminate it without taking into consideration the rare and tragic circumstances in which its use may be necessary would be even more inhumane.

Fast forward to October 10, 1997, a year ago, when he vetoed this bill.

H.R. 1122 does not contain an exception to the measure's ban that will adequately protect the lives and health of the small group of women in tragic circumstances who need a an abortion performed at a late stage of pregnancy to avert death or serious injury.

One comment first. This bill clearly has a life-of-the-mother provision. If this procedure is in any way necessary

to prevent the death of the mother, it can be used.

The President says "to avert the death or serious injury." To try to convince the American public that we do not have a life-of-the-mother exception, again, is disingenuous at best.

"Serious Injury," let's go to the American Medical Association. Who is the American Medical Association? Most people know it is the largest association of doctors in this country. What is the American Medical Association position on abortion? They are in favor of abortion rights; very strongly in favor of abortion rights.

What is the American Medical Association's position on banning medical procedures? They abhor banning medical procedures. They believe that medical procedures should be left to physicians to determine what is good medicine and bad medicine. So, on two counts we should have a tough time getting the American Medical Association to endorse a ban on a medical procedure having to do with abortion. But the American Medical Association last year endorsed the Partial-Birth Abortion Ban Act. They stated that it was "not medically indicated."

Let me quote from a group of obstetricians, several hundred across the country, most of them board certified:

The partial-birth abortion procedure, as described by Dr. Martin Haskell, the Nation's leading practitioner of the procedure, and defined in the Partial Birth Abortion Ban Act, is never medically indicated and can itself pose serious risks to the health and future fertility of women.

Four female OB/GYNs were here today to have a press conference, here on Capitol Hill, to talk about partial-birth abortion, and all of them indicated that not only is this not medically necessary, but this procedure, this rogue procedure, is incredibly dangerous to women and to women's health.

So, I go back to the point that I made before. There is enough grounds on its sheer barbarism and the fact that it is an affront to our sensibilities and to our culture that we would allow this kind of horrific procedure to occur. When you compound that with the fact that it is not medically necessary, ever, to protect a woman's health, when you compound that with the fact that it is medically dangerous to women to have this procedure done, and it is always done at an abortion clinic, where there are inadequate facilities to deal with these circumstances promptly if something should go wrong, if you combine just those facts it appears obvious that this procedure should be banned.

So, what I ask my colleagues on both sides of the aisle to do is to do something that is very, very difficult to do here on the issue of abortion. When you mention the word "abortion" on the floor of the U.S. Senate or the U.S. House of Representatives, people dive into their trenches. They dive into their trenches that they feel comfortable with because the last thing

you want to do is, during this battle, jump from trench to trench, to try to get to both sides. That is because you end up getting shot at a lot, if you go from what would be considered the pro-life side and try to run the battlefield over to the pro-choice side, or vice versa. So what all the political consultants say is, "Stay in your trenches when you hear the word 'abortion'." That is both sides. "Do not lift your head up because you either get shot by those who you are trying to join or your folks will shoot you in the back."

So let me say, first, to the Members of the Congress, the House and the Senate, for those Members who are "traditionally on the other side of this issue," who are in the other trench, for them to climb out of that trench to face the fire and to stand with us, as they will tomorrow and vote for what they know in their heart is morally, ethically, and medically right, I salute them and I thank them. That is political courage.

You hear a lot of talk these days about political courage. Will we have the political courage to do the right thing with respect to the President? Just let me suggest that there are many Members of this Senate who tomorrow will show political courage and do the right thing. It is political courage to follow your heart, to follow what you know inside you is right, not just right for the children or for the mothers, but what is right for our society and the message we send to all the people listening and watching what goes on here.

For those who have yet to climb out of the trench, I will tell you a couple of things. No. 1, the fire is not that intense once you climb out. The American public overwhelmingly supports banning this procedure. All of the medical evidence that has been out there to support keeping this procedure legal has been debunked and discarded. There is nothing left except zealotry, except this concept that we cannot infringe on this right of abortion—even if, as I would argue, this is not even abortion, as others have argued this is not even abortion once the baby is outside the mother's womb. But we cannot even touch limiting that right.

I would say there is not a right in America that does not have a limit on it. There is not one. Certainly, when it comes to taking the life of a little baby, we in Congress should be able to muster the courage to put some limit, to draw some line that says "enough."

I would also say that for those to whom I have talked, who have run that gauntlet and come over and voted on this issue to support this ban, there has been communicated to me a great sense of relief and satisfaction that they could break those chains and stand up and do what in their heart they knew was right; what in their conscience they knew was right. So I appeal to your conscience, I appeal to your heart. And I appeal to your reason—I appeal to facts. On every score,

on every score, we must override the President's veto.

I see the Senator from New Hampshire is here—I am sorry, I turned my back and he is gone. Let me just say something about the Senator from New Hampshire. The Senator from New Hampshire, Senator SMITH, was the first person to introduce this bill in the last session of Congress. He did so when there was not a whole lot of popular support in the polls for this because the knowledge of the American public was minimal at best. He stood here when the votes were a lot closer than they were today and the public was a lot less informed, and all these lies that I showed to you were all out there being accepted by the press as truth. But the Senator from New Hampshire stood here in the well, armed with what he knew was truth. He stood here and argued and tried to focus the American public's attention for the first time on this gruesome, grisly procedure. He is one of the heroes in trying to bring the consciousness of the people to this Chamber. So I salute him for that. I suspect he will be back in a minute. It gives me the opportunity to talk about a couple of other things.

I want to get back to the moral issue at hand. What we are talking about are babies who are in the 20th week of gestation and later. Now, for most Americans, they have a hard time understanding, "Well, what's the 20th week? What does the baby look like? What are its chances of survival? What are we talking about here?"

At 20 weeks gestation, a normal baby, "healthy" baby, most normal healthy babies delivered at 20 weeks of gestation will be born alive. That doesn't necessarily mean that they will survive. In fact, very few, if any, babies born at 20 weeks will survive. But they will be born alive.

Let me give you some of the statistics we have, if we can get that chart, about survival rates of babies who are subject to partial-birth abortion.

When the Supreme Court came down with the decision on *Roe v. Wade*, back in the—actually early seventies, but in the late seventies, the information I have, the viability, the time of viability was considered to be around 28 weeks. Babies born before 28 weeks gestation were not considered to be able to be saved. They were not considered to be viable. So much has happened with medical science since that time, and the numbers have changed and changed dramatically.

Let me share with you some numbers from *The Journal of American Medical Association*. It is an article I referred to earlier, and I will give the citation. It is called "Rationale for Banning Abortions Late in Pregnancy," by Leroy Sprang, M.D., and Mark Neerhof, D.O., Northwestern University Medical School, Evanston Northwestern Healthcare.

Here are some of the numbers that we have used in past debates.

According to a 1987–1988 NIH study of seven hospitals, you can see at 23 weeks, about a quarter of the babies survive; 24 weeks, 34 percent; 25 weeks, 54 percent.

From 1986 to 1994 at Minneapolis Children's Medical Center, 45 percent at 23 weeks; 53 percent at 24 weeks; 77 percent at 25 weeks; and 83 percent at 26 weeks. Remember, these weeks gestation during *Roe v. Wade* when the decision was decided, all of these were considered zero.

In a Michigan study from 1994 to 1996, you see the numbers—27, 57, 77 and 82 percent.

Let me give you some updated numbers from this report that was published last month:

Recent data from our institution [at Northwest]. . . indicate a survival rate at 24 weeks—

The second line. A survival rate of 24 weeks of 83 percent—83 percent and at 25 weeks at 89 percent.

Remember, these are all children born at that hospital, some of whom had abnormalities, some of whom had severe problems. They are not all healthy babies being born, and even at that, the survival rate is in the eighties. If you filtered out those who had fetal anomalies who would have died irrespective of when they were born, I suspect this number is substantially higher. So we are performing partial-birth abortions most commonly on babies who would be almost certain to be able to live.

Some people suggest I shouldn't draw that distinction. A baby at 20 weeks, whether the baby can survive or not, is still a baby. I happen to subscribe to that. We draw lines that don't exist in our society about what is life and what isn't. There is no doubt in my mind that when my wife became pregnant with a child, I knew that was going to be a little boy or little girl and there wasn't much doubt that it was going to be a dog or a cat. But we draw lines here as to what is life and what isn't.

Some people feel comfortable drawing lines here. It comes to viability, whether they can live outside the womb. The Supreme Court was one of those entities that did decide that was the place they had to draw the lines, where the rights of the child would increase and the rights of a woman to kill her child would diminish. By not banning this procedure, we allow little children—imagine, most of them, the vast majority, according to the people who perform it, healthy babies, healthy mothers, with very high probability of surviving, who for just one small period of time in the life of that child it is unwanted. For but a moment in the life of a child, that baby is temporarily unwanted by the one person who has absolute control over its destiny.

We read in the paper so much about parents who are seeking to adopt children. There probably isn't a person here in the room who doesn't know someone who has gone to extraordinary lengths, who has waited an extraordinary long period of time to

adopt a baby, to love a baby, to accept it, that little gift from God as their own. And yet because for just a moment in time of what could be a long and beautiful life, that baby is unwanted, and because it is not wanted at that very moment in time, its life is taken away.

We are talking about if the mother didn't want to carry the pregnancy to term, if the feeling was, "Well, I just don't want to be burdened with this pregnancy anymore," deliver the baby, give the baby a chance. There is no medical need to kill the baby. There may be medical needs to terminate pregnancy. The doctors today talked about that at their press conference. There may be the need for the health or life of the mother to terminate a pregnancy, but there is never a need to kill a baby in the process of terminating the pregnancy. There is never a need to drag this baby out—a baby that feels pain. In fact, in Great Britain right now the Parliament is considering requiring doctors who perform abortions after 19 weeks to anesthetize the baby because of conclusive research that shows that these babies feel pain. In fact, there are articles that have been written by physicians who say they feel pain more intensely than we do.

I quote again from this Northwestern study that says:

When infants of similar gestational ages are delivered, pain management is an important part of the care rendered to them in the intensive care nursery. However, with intact D&X—

Partial-birth abortion—

pain management is not provided for the fetus who is literally within inches of being delivered. Forcibly incising the cranium with scissors and then suctioning out the intracranial contents is certainly excruciatingly painful. It is beyond ironic that the pain management practice for an intact D&X on a human fetus would not meet Federal standards for the humane care of animals used in medical research.

We have laws in this country—imagine—we have laws in this country that require us to treat animals—animals—better than we treat these little gifts from God. What is to become of us when we simply cannot see what we do?

I see the Senator from Illinois is here. I have used a lot of time on our side. I would be happy to yield the floor to Senator DURBIN.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, thank you for the recognition.

I thank my colleague from Pennsylvania. Let me say at the outset that my colleague from Pennsylvania comes to this floor to discuss this issue with heartfelt emotion. I am convinced of his commitment to this cause. I have served with him in both the House and the Senate. I would never question his motives. And I know a little bit about his family situation. I am sure that they are sincere.

I also say to you that this may be the most difficult issue for any politician to deal with in America today. I have been in and around public life for 32 years. It has not gotten any easier in 32 years, at least not since the *Roe v. Wade* decision, because the American people are basically conflicted internally about this issue of abortion.

There are some who would argue no abortions under virtually any circumstances and others who would argue that the State—Government—should not restrict abortions under any circumstances. But the vast majority of Americans, I think personally, fall into some middle ground where they understand that a woman's right to make this decision, in concert with her doctor, her family and her conscience, is something that should be protected under law—it is currently protected under law—but they want to see us do everything we can as a Government and as a people to reduce the likelihood of abortion in this country. The number of abortions have diminished some over the past few years, but it is still a very widespread practice and medical procedure in America.

My own personal views on it—I personally oppose abortion but I believe that we should take care where we draw the line about the Government's involvement in that decision. You would think after serving on Capitol Hill for 16 years, and facing literally hundreds of votes on the issue, that this would become rote, that it would be an easy, automatic, reflexive vote. It has never been that for me. It never will be. I pause and think and worry over every vote on this subject because I know what is at stake is very serious.

Today, the Senator from Pennsylvania comes to the floor and asks us to vote to override President Clinton's veto of his bill banning what is known as the partial-birth abortion procedure. I will be voting to sustain the President's veto. I will be voting in opposition to the Senator from Pennsylvania, but I want to make it clear why I am doing so.

It is my belief that this bill, as far as it goes, addresses one challenge before us. This bill addresses one abortion procedure. But there are many different kinds of procedures. As terrifying and troubling as this procedure is, there are others. And the Senator from Pennsylvania would ban this one procedure, if I am not mistaken, at any stage in the pregnancy. Many of us believe that this issue should be addressed in a different manner.

When it comes to the issue of late-term abortions, allow me to try to explain what I mean when I use that term. In the *Roe v. Wade* decision—I believe in 1972, if I am not mistaken—the Court, the Supreme Court across the street, divided a pregnancy into three sections, three different trimesters, three different periods of 3 months and basically said in the first two trimesters, the first 6 months of the pregnancy, that they would give

the paramount right to the woman to make the decision whether she continued the pregnancy. They made it clear that in the third trimester, the end of the pregnancy, that the State would be able to impose restrictions.

They drew a distinction between that time when the fetus could survive outside the mother's womb and that time when it could not. And if it could not—the previability phase—then they felt that this was more a decision for the woman to make. After viability, that is, the ability of the fetus to survive outside the womb, then the State—the Government—could step in and say, "We will limit the circumstances under which a woman can seek an abortion."

Unfortunately, the bill before us today does not make that distinction. It does not draw that line. I fear it is fatally flawed from a constitutional viewpoint, from the viewpoint of the case of *Roe v. Wade* which guides us in this debate. As a result, I am not certain that this bill, even if it were enacted over the President's veto, would survive a Court test. I believe the Court has said repeatedly, "We are serious about drawing that line." This particular bill does not draw that line.

Having said that, though, let me tell you that I am not going to engage this debate just on pure legalisms and interpretations of *Roe v. Wade*. Let me go to the real question before us. Let me try to address some of the points which the Senator from Pennsylvania has made.

I am not a medical doctor. Some Members of Congress are; I am not. When I hear medical doctors say that this procedure, this partial-birth abortion procedure, is never medically necessary, I take that very seriously.

Recently, in the Chicago Tribune, in my home State of Illinois, a professor from, I believe, Notre Dame University, Douglas Kmiec—I hope I am pronouncing it correctly—wrote an article on July 27 in which he quoted a man whom I respect very much, C. Everett Koop, a medical doctor who served as our Surgeon General and who I have worked with closely on the tobacco issue. He quoted Dr. Koop as saying that this medical procedure, this "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility."

As I said, such a statement from a medical doctor, and someone of Dr. Koop's reputation, I take very seriously. As a result, I came back to my office and wrote a letter the following day, on July 28, 1998, to a group which I respect, the American College of Obstetricians and Gynecologists here in Washington, DC. I did not try to color this letter or to influence their reply in any way. I wrote to them and said, "Tell me, is Dr. Koop right? Is this abortion procedure never medically necessary?"

A few days later I received a reply from Dr. Ralph Hale, executive vice president of the American College of Obstetricians and Gynecologists. I ask

unanimous consent that the letter be printed in the RECORD.

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

AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, August 13, 1998.

Hon. RICHARD J. DURBIN,
364 Senate Russell Building,
Washington, DC.

DEAR SENATOR DURBIN: I am writing in response to your July 28th letter in which you asked for the College's response to Dr. Koop's statement that "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility."

The College's position on this is contained in the statement of policy entitled Statement on Intact Dilation and Extraction. In that statement we say, "Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother." It continues, "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." Our statement goes on to say, "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." For this reason, we have consistently opposed "partial-birth abortion" legislation.

Please find enclosed ACOG's statement on intact D & X. Thank you for seeking the views of the College. As always, we are pleased to work with you.

Sincerely,

RALPH W. HALE, MD,
Executive Vice President.

Enclosure.

ACOG STATEMENT OF POLICY ON INTACT
DILATION AND EXTRACTION

The debate regarding legislation to prohibit as method of abortion, such as the legislation banning "partial birth abortion," and "brain sucking abortions," has promoted 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 that the intent of such legislative proposals is to prohibit a procedure referred to as "Intact Dilation and Extraction" (Intact D & X). This procedure has been described as containing all of the following four elements:

1. deliberate dilation 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 con-

sultation 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 specified 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.

Mr. DURBIN. Let me speak to the contents of this letter, because I think it is an important letter when we consider the medical debate here—not the legal or political debate but the medical debate.

Dr. Hale wrote to me:

DEAR SENATOR DURBIN: I am writing in response to your July 28th letter in which you asked for the College's response to Dr. Koop's statement that "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility."

Dr. Hale goes on to say:

The College's position on this is contained in a statement of policy entitled "Statement on Intact Dilation and Extraction."

That term, "intact dilation and extraction," is the technical medical term for what we term "partial-birth abortion."

Dr. Hale goes on to say:

In that statement we say, "Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother." It continues, "A select panel convened by [the American College of Obstetricians and Gynecologists] 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."

The statement goes on to say,

An intact D&X, [partial-birth abortion] 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 listen closely,

. . . and only the doctor, in consultation with the patient based upon the woman's particular circumstances can make this decision.

For this reason, we have consistently opposed the partial-birth abortion ban legislation.

He encloses the statement in full.

So what are we to do? Members of the Senate have conflicting medical opinions here. Some medical associations in my home State, some doctors whom I respect, like Dr. Koop, feel that it is never necessary; and the American College of Obstetricians and Gynecologists says it may be the best or most appropriate procedure and only the doctor can decide.

It puts us in a dilemma. Some think it is an easy call—never will we need it; never should we use it. Then you read from the doctors who work with these women who have come upon complications in their pregnancy that they never expected.

When this matter was first debated, I met a woman from a suburb of Chicago, from the Naperville area, who has been kind enough or brave enough to come forward and explain what happened to her. Her situation opened my eyes to the fact that this debate is not as easy as it sounds. She was the mother of a child, pregnant with another child, and had determined through ultrasound that she was about to have a little baby boy. She and her husband had picked out a name. She had painted the nursery. They had bought the furniture. They were ready and expecting parents, only to learn late in the pregnancy that the child suffered from a serious deformity which precluded the possibility that it would survive after birth, and that the continued pregnancy could jeopardize her health or her ability to ever have another child.

I spoke to her about what happened after the doctor made that diagnosis. She spoke of sitting up all night crying with her husband over what they were to do. They did not believe in abortion. Yet what a terrible dilemma they faced. Continue the pregnancy at the risk to her health, at the risk of never having another baby, or terminate the pregnancy of a fetus, a baby—whatever term you use—that could not survive. They made the decision to go ahead with the procedure that would be banned by this legislation.

She told me that story. Then she introduced me to her new baby in the stroller she was pushing. They made the decision to go forward and look to the future with another baby.

I won't presume that everyone listening to this debate would have made that same decision. Others might have seen it quite differently. In her case, she thought she and her husband, with their doctor, did the right thing, and their decision resulted in another baby boy that they are very proud of and happy to have brought on this Earth.

So the belief that many people engage in this procedure for casual reasons—at least in this case—did not apply. We have to take care in this debate that when we ban certain procedures and say doctors can never use them, we apply them to all situations,

including the one that I have just described.

Here is what I think we should do. I will vote to sustain the President's veto. I don't know if I will prevail or whether the Senator from Pennsylvania will prevail. But I hope that we can leave this debate without saying that they have had another wild debate in Washington, the issue went unresolved, and they will probably return to that same debate next year—we have done that year after year after year.

A number of us, today, came forward and said that we hoped that we could take this debate to another position, another level, a more constructive level, I hope, after we consider this legislation. I joined Senators in the press gallery today who have agreed to be original cosponsors of legislation which I have introduced. This is legislation that is supported by Democrats and Republicans: Senators OLYMPIA SNOWE and SUSAN COLLINS, Republicans of Maine; Democrats TORRICELLI, MIKULSKI, ROBERT GRAHAM, LANDRIEU, and LIEBERMAN are my cosponsors on this legislation. I hope that in introducing this bill we can move this debate to another level, a different level, and one that is not inconsistent with the philosophy of my friend from Pennsylvania.

What we attempt to do in this bill is say the following: Let us restrict all late-term abortions, regardless of the procedure—whether it uses this procedure or some other procedure—to two specific examples: Situations where the life of the mother is at stake—in other words, if she learned in the seventh, eighth, or ninth month of pregnancy that if she continued the pregnancy she would die; or situations where that same mother learns late in the pregnancy that if she continues the pregnancy she runs the risk of grievous injury to her physical health, like the case that I just described. Those are the only exceptions. No other reasons.

It is not a question of being depressed or changing your mind—as if anybody would make a decision on an abortion for that matter. I don't know that they ever would, but it is specifically prohibited under this law.

And we say that not only the doctor who performs the abortion must certify these medical circumstances, but in addition, a second nontreating doctor must be brought in. He or she must certify in writing that these medical conditions exist. Then and only then could there be any abortion procedure, including this one, in a late-term pregnancy.

We believe this is a constructive and, I hope, promising approach. It builds on an amendment offered last year by Senator TOM DASCHLE, the Democratic minority leader, one that I supported. We have added the second doctor's opinion because criticisms were raised—I didn't agree with them—that the doctor who performed the abortion might make a certification that was

dishonest. We think the second doctor's opinion will argue against that.

The penalties involved in this are very serious. A doctor who would ignore the law which we seek to have enacted in the bill which we will introduce today faces a fine of \$100,000 for the first instance, and a possible loss of his medical license. In the second case, a fine of \$250,000 and the loss of his medical license.

I don't know how you can be more serious than the approach we have taken, to say we want to make certain that late-term abortions are limited to these situations.

Some people have asked, Why don't you just vote for the bill that is before the Senate as well as your own? I cannot do that. The reason I cannot do it is because there is no provision made in the bill offered before the Senate for cases where a woman discovers late in her pregnancy that to continue the pregnancy would present the risk of grievous injury to her physical health. There is a life-of-the-mother exception, but no exception for grievous injury to physical health. That is the reason I will vote to sustain the President's veto. Later today, at the appropriate time, I will introduce the legislation which I have coauthored and described.

Let me say in closing that I respect the Senator from Pennsylvania and his views and I respect those who disagree with him. I believe this debate is a debate over an issue of conscience and one that many of us struggle with on a regular basis. I hope that what we have tried to do today on a bipartisan basis, to suggest an alternative approach, could lead us away from this long-term debate, to a resolution in a fair and humane manner.

I yield the floor.

Mr. SANTORUM addressed the Chair. The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, if I can take a moment to specifically respond to a couple of things from the Senator from Illinois. I commend him for coming forward and expressing his views. We don't agree, but as is appropriate here in the U.S. Senate, we can disagree without being disagreeable. I respect his right to articulate his viewpoints.

With respect to the letter from the American College of Obstetricians and Gynecologists that the Senator from Illinois read, they did say they:

... could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of a woman.

And they do go on to say:

... however, [it] may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of the woman.

However, no specific examples or circumstances under which an intact D&X would be the most appropriate procedure are given. In fact, they have never been given. They have never put forward any procedure, any circumstance

in which they say it may be, but they have never given any hypothetical where it says it would be. That is somewhat troubling, to sort of hang your hat on a possibility when the very organization you are hanging your hat on refuses to give a possibility of whether it meets their definition.

With respect to the constituent in the Senator's State, I can't tell you how sorry I feel for her and for what she had to go through. But, unfortunately, many people in this country do not get the best medical information. One of the things I hope we can accomplish with this discussion—and I think to some degree we have—is to improve the quality of information women get in this country with respect to decisions about pregnancy, particularly late-term, and particularly when it comes to disabled children or children who maybe just aren't perfect.

I just know from all of the information we have been provided from the AMA, from the physicians—and Senator FRIST is going to talk about it from the point of view of a physician—in every case the President cited, including the case the Senator referred to in Illinois, there were other, better alternatives available to her that would have been safer for her to have as opposed to this. It doesn't mean her doctor didn't want to perform this. The doctor may well have. But the fact is, we don't always get the best doctors who give us the best advice. We went to the experts, and what the experts have told us is that this procedure is not the safest.

With that, I yield to the Senator from Tennessee, the only physician in the U.S. Senate, to talk about that very subject.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise to really cut through a lot of the emotion and a lot of the rhetoric and really bring together how I view this particular issue. And really I will take very few minutes because, to me, it becomes very clear once the facts are put on the table.

I speak as a U.S. Senator, as someone who understands an obligation to his fellow man, as being a trustee in the U.S. Senate to the American people; but I also want to speak as a physician, one who has spent his entire adult life in the practice of medicine, reaching out to people, being trained at hospitals across this country, exposed to accepted therapeutic procedures, understanding what peer review is about, and to let you know how I assess where we are today.

It really comes down to a single statement, which is as follows: Partial-birth abortion should never—should never—be performed, because it is needlessly risky to the woman, because it is an unnecessary procedure, because it is inhumane to the fetus, and because it is medically unacceptable and offends the very basic civil sensibilities of people all across this country.

Several points. No. 1, there has been this whole myth of how common this procedure is. Let me just say that the procedure is being done today as we speak. Initially, it was billed as being a very rare procedure, that really just a handful are being done, and therefore we don't need Federal legislation. Well, one of the byproducts of this ongoing debate over the last 2½ to 3 years has been that we know this procedure is being performed every day. In fact, we looked at information that has come out and we know that one facility has reported almost 1,500 of these in 1 year. One physician reported doing more than 700 of these procedures, and another, over 2,000 of these procedures. Remember, these are brutal procedures.

A second point. This procedure has been defined on the floor, and it will be defined again, because it is important for people to understand what a brutal procedure this is. But an equally important point is that this procedure poses substantial risk for the mother, for the woman. It is a dangerous procedure being performed every day on the fringe, outside of mainstream medicine.

It is important for people to understand that this procedure is not taught in any medical school in the United States of America. It is important for the American people to understand that generally accepted textbooks do not even mention this procedure. It is not defined. It is important for America to understand that there are no peer-reviewed, credible studies on partial-birth abortion that evaluate in any way its safety. It is important for the American people to know that our OB/GYN, obstetrics/gynecologic, residencies who train residents to deliver babies in the future do not have this procedure as a part of their curriculum. Why? Because it is dangerous, it is fringe, outside of the mainstream. It has not been evaluated. Yet, it goes on every day, hurting women all across this country.

What are the complications? Well, there are a number of standard complications that occur during a third-trimester abortion. That includes perforation of that organ, the uterus, which contains the fetus. There is a second risk of infection when an abortion is performed in that third trimester. There is a third, and that is of bleeding. But, in addition, because the way this procedure—this fringe, brutal procedure—is performed—and remember, it is performed in a blind way, with the hand inserted into the uterus with scissors thrust up underneath that head and into the base of the skull. That is all done blindly, in a uterus which is large, containing the fetus, which is engorged, has huge blood vessels within a centimeter of where these scissors are blindly being thrust into the base of the skull.

I describe it that way because that is the reality, and the risk is there for this procedure, and it is not for other

types of procedures, of laceration, of hemorrhage, of bleeding, of having those scissors nick one of those blood vessels and have the patient suffer. One of the problems is because these procedures are not performed at the Massachusetts General Hospital where I practiced, or Vanderbilt Medical Center where I practiced, or Stanford Medical Center where I practiced, where there is peer review, where people are looking in. And because these procedures are performed in clinics not subjected to peer review, we never hear about those complications. But the complications are there, and hospitals see these patients admitted after this procedure. It is a dangerous procedure. The risks are there to women. Yet, we as an American people have allowed that to occur all across this country.

A third point. This really applies, I think, and enters the field of ethical considerations, which is what we do to the fetus. Remember, the fetus is very far along. This is just prior to delivery of that infant. I want to make this point, and I don't want to dwell on the point, but that taking of scissors and thrusting it into the base of the skull, the expansion of those scissors and the ultimate evacuation of the brain, those contents, is painful to that infant. That infant feels that pain. Thus, it is an inhumane procedure in which no specific pain management is given, and that forcible incising of the cranium, or head, is painful.

Fourth point. This procedure is unnecessary. It is never—never—the only option. According to the Society of Obstetricians and Gynecologists, who will be referred to again and again, "We could identify no circumstance under which this procedure would be the only option to save the life or preserve the health of the woman." That statement is a very important one because it basically says this is an unnecessary procedure.

There will be colleagues to follow—and there will be comments by many of my colleagues—saying, "Yes, that is right. We can't identify any particular circumstance where there is not a safer accepted mainstream procedure that could be used." But I don't like the Federal Government doing anything and saying it is against the law to do any particular procedure, even if you could find it in detail like you have. I don't want them coming in just in the event something will come up.

Again, let me go back. This is a fringe procedure. It is out of the mainstream, not subjected to peer review. We know it is dangerous. There are always alternative procedures available.

It is a common procedure performed frequently. It is a dangerous procedure—dangerous to the woman. It is an inhumane procedure thrusting those scissors into that fetus' head. It is an unnecessary procedure. Never is it the only option. Alternative procedures are always available.

Over the last couple of years as I have studied this issue, a lot of things

have been made apparent to me. We need data collection. We need peer review of these sort of fringe procedures that are performed outside of the mainstream.

There has been, I believe, extraordinary medical consensus that has come forward. It was difficult 2½ or 3 years ago, because physicians who are trained in our 125 academic and medical centers and medical schools have never been exposed to this procedure. It is only the fringe physicians in clinics outside of the major hospitals doing the procedure. Most people didn't know what a partial-birth abortion was. We have educated physicians. We have educated people in the health care arena. And, as a product of that, there has been this extraordinary medical consensus that has emerged.

Yes, on the floor you can always hear people who stand up and say, "We are against the Federal legislation because it infringes on our right to make decisions about our patients." They don't come out and defend the procedure.

We need to come back again and again and recognize that this is not a debate about pro-life, or pro-choice, or abortion to me in any way. Because of the way the bill is written, it focuses very narrowly on a specific procedure that is unnecessary.

Mr. President, I look forward to coming back and continuing our discussion. I know we have a number of people on the floor who want to speak on this particular issue.

But let me just close with one final comment before turning back to the Senator from Pennsylvania and the Senator from New Hampshire, who have done an outstanding job in terms of leadership, and say once again that partial-birth abortion should never be performed because it is needless risk, it is inhumane, it is ethically unacceptable, and it is totally unnecessary.

Mr. SANTORUM. Mr. President, I thank the Senator from Tennessee for his expert witness testimony here on the floor of the U.S. Senate. We are fortunate to have an expert in the area of medicine to provide us with this kind of information. I, very much, appreciate his willingness to come forward and speak so intelligently and forcefully on this issue.

I also thank the Senator from New Hampshire, who has been very patient letting the Senator from Tennessee and now the Senator from North Carolina, Senator FAIRCLOTH, be recognized for 5 minutes.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Thank you, Mr. President.

Mr. President, it saddens me that we are here again debating partial-birth abortion. I feel inadequate at this point after hearing Dr. FRIST give a thorough, methodical, and definitive reason why it is such a cruel and brutal procedure that it never even should be considered. How anybody could vote to sustain a veto after hearing Dr. FRIST,

Senator FRIST, explain the brutality and the fringe element that is doing this procedure is more than I can imagine.

There are 125 medical centers and schools in this Nation, and not one of them teaches the procedure as a method of medicine. It is totally a fringe element, as he well says.

I feel so inadequate here following him, who is an authority, and spent his life in medicine, and understands the medical reasons why we should not be doing it.

But the very idea of just taking a pair of scissors and driving them into the skull of a child that is practically ready to be born, to me is horrible beyond anything we can think of—the pain to the child, and the danger to the mother. It is absolutely incomprehensible to me how anyone could vote to continue this procedure.

It was said by Dr. FRIST that it is done by a fringe element, but they are doing a lot of them. They are not even taught by medical doctors in medical schools. Yet, we are here authorizing it.

Again, how many times will President Clinton stand in the way of the Congress and to overwhelming feelings of the people of America and veto our attempt at outlawing this horrible procedure?

For me, this is about values, our values. It is one of the great moral questions of our time. It is a moral question. We know that late-term abortions are wrong. We know it from everything we are taught—from our religious beliefs, to our medical authorities, which we just heard. We need to summon the moral courage to draw a clear line of conscience by saying simply flat and straight out, “no more partial-birth abortions,” not just from the facts that we heard from Senator FRIST, but just the overall facts. The American Medical Association says that partial-birth abortions are medically unnecessary. That one statement is true is enough to outlaw this procedure. But it actually is not even done in the medical profession. It is a fringe procedure that goes far outside the normal circles of medicine.

Former Surgeon General Everett Koop said partial-birth abortions may harm a mother's fertility. We hear from other segments of the American medical society that it probably will harm a mother's fertility. Spiritual leaders from every segment of religion in the country—religious leaders such as Billy Graham, Pope John Paul—have spoken out on the horrible procedure that this is and how it should be eliminated from our society forever and outlawed forever.

We are talking about taking the life of a child who can survive outside the mother's womb. We just heard Senator FRIST describe it can survive, and how that life is taken by the cruel process of pushing a pair of scissors into it and expanding it and removing the brain.

It is a horrible procedure. Both pro-life and pro-choice should be able to

agree that those children deserve our law and protection.

I am asking my colleagues—and, most importantly, President Clinton—to put values ahead of votes and end the tragedy of partial-birth abortion.

Thank you, Mr. President. Mr. President, I yield any time I may have.

Mr. SANTORUM. Mr. President, the Senator from California is here, and she said she is not quite ready so we will proceed with another speaker. The Senator from New Hampshire has been very patient. I yield to him such time as he needs.

The PRESIDING OFFICER (Mr. GORTON). The Senator from New Hampshire.

Mr. SMITH of New Hampshire. I thank the Chair. I thank the Senator for his leadership.

I wish to start my remarks by saying what an honor and privilege it is for me to stand here on the Senate floor with such distinguished colleagues as Senator FRIST, Senator FAIRCLOTH, Senator SANTORUM and others who have spoken out so eloquently against this terrible practice that takes place, unfortunately, too many times in the United States of America.

I was particularly impressed with the remarks from our distinguished colleague, Senator FRIST, who today I think is more important as a doctor than as a Senator perhaps, listening to his very impressive and technical remarks about just exactly what this procedure is and how it is not necessary for the health or the life of the mother, to save the life or to enhance the health of the mother, and he noted, as has been said, the fringe element who perform these horrible procedures.

In addition to that, I would just mention that here in this notebook—Senator FRIST you heard from. He had a press conference this morning with four distinguished physicians, obstetricians and gynecologists, who spoke out saying the exact same thing that Senator FRIST said. Here in this book are 180 letters. These are just the ones I have received in my office. These are from all the doctors who say that it is unnecessary to save the life of the mother or to enhance the health of the mother—180. I am sure there are many other Senators who have received similar correspondence saying exactly the same thing.

But having been involved for almost 4 years now in this debate, coming to the floor, fighting your heart out, losing, it is pretty tough, and it is very emotional. And I know it has been the same for my dear friend and colleague, Senator SANTORUM of Pennsylvania, who has poured his heart and soul into this issue.

I remember very clearly, and I am sure the Senator does as well, in 1995, when I was pretty much alone on the floor of the Senate—and I want to get into that a little bit in a moment as to why I was here—there was a newly elected Senator, fairly newly elected Senator from Pennsylvania named

SANTORUM who was not saying anything but listening to the debate. There was a very emotional exchange privately between the Senator and myself. He just indicated to me that he had to get involved in this because of the horror of it, and he has. He has been a great leader, and I certainly appreciate another horse in the harness, so to speak.

This is beyond, I should say, the in-your-face politics that we have endured on the floor in the past. I know I have gotten beyond it. I don't want to get into anybody's face on abortion or partial-birth abortion. I want to get in your heart. I want to get in your hearts because that is what this is about. I know that as we debate on the floor you don't see a huge crowd here. Hopefully, somebody is watching on the monitor. Of that 36 out there who have yet to see our way, maybe somehow, some way, some will see that it is wrong to continue to tolerate this in America and their votes will change, at least enough votes will change to end this horror.

This is America, supposedly the moral leader of the world. What does it say to our children when we kill children, their colleagues, with a pair of scissors and a suction hose as they exit the birth canal? What does that tell them? How do you say to your children, “Be good today; do your homework; mind your parents; do what's right; live a good life; be a good Christian; do unto others; be good”—how can you say that and support this? What message are you giving them?

No one should be surprised about the immorality that we see in our country today because we are not setting the example. We have an awesome responsibility as leaders in this country, whether we are in the Senate or whether we are just ordinary parents every day setting an example for our children. It is an awesome responsibility.

I remember when I spoke in the Chamber 3 years ago, I was chastised by a colleague for showing those same medical charts that Senator SANTORUM has shown in front of young pages sitting in the well. Well, I think they had to see that. I think they needed to know what we as adults are doing to their younger colleagues, the unborn children who have done nothing against anybody. This is the execution of a child as it enters the world. You cannot color it up. You cannot make it any nicer.

You can talk about all the legalities. I heard my colleague, Senator DURBIN from Illinois, a few minutes ago say we had to follow the guidance of *Roe v. Wade*. I might change that slightly and say the misguidance of *Roe v. Wade*. This is not about technicalities. It is not about legal definitions. It is not about falsely creating definitions of what threats to health or threats to life are. This is about real children really dying every day as we speak. As this debate occurs, more will die, and we are letting it happen. And three

votes in this Chamber tomorrow morning, three more than we had the last time, will end it all, will stop it. So when you think about whether your vote counts, whether it matters, my colleagues, it matters. It matters.

I stood in the Chamber 3 years ago. Initially, I didn't know what this was. I could not believe that anything that would even resemble a so-called partial-birth abortion would occur in this country. I didn't believe it. So I checked it out. I talked to people who actually assisted and performed them. I took the charts. I came down in the Chamber. I held up the same medical doll that four doctors held up in a press conference today. I showed exactly what happened with a medical doll—not a plastic fetus, as the critics in the press like to call it, but a medical doll. I simply showed the same size as a real child, the same size as that child who is being held by the abortionist, to simply show what happens.

I said then and I will say now, in any community in America—you pick it, you name it, your hometown, wherever it is—if you picked up your hometown paper tomorrow and in that hometown paper it said all the puppies and cats in your local humane society were going to be killed with no anesthetic, with a scissors to the back of the skull, open the skull and insert a tube to suck the brains out, I think you would probably be pretty upset. And you know what? It would probably be stopped. It probably wouldn't happen. But it is happening to children and we are letting it happen right here, tomorrow, on the floor of the U.S. Senate unless three Senators have the courage to put the politics aside and change their vote.

When I came down here in 1995, I had one cosponsor because, frankly, people didn't know what this was. Senator PHIL GRAMM of Texas was an original. We have come a long way since then, and we are not there yet. When the partial-birth abortion ban first passed the Senate on December 7, 1995, it did so with the support of 54 Senators. When the Senate voted whether to override President Clinton's veto on September 26, 1996, 57 Senators voted, and when the Senate passed H.R. 1122, on May 20, 1997, 64 Senators voted in favor.

You see, in here it is a numbers game. It is a game of numbers. But out there every day in those abortion clinics, it is a life game. It is a little child that is being killed for no other reason, other than it is not wanted. That is the reason.

I, as I total up those thousands, and I think about it, I ask myself how many times have I said this, night after night, as I thought about the horrors of this—how many of these children may have grown up to be a physician? Maybe a chaplain? Maybe a President? Maybe a scientist, to cure cancer?

Jefferson wrote so eloquently the Declaration of Independence that we have “the right to life, liberty, and the

pursuit of happiness.” You cannot have liberty, you cannot pursue your dreams, if you are killed before you are born. I do not often quote from the Bible, but you reap what you sow, and we will reap what we sow if we do not end this practice in America.

When the historians write about this age and this era—and I am standing right now at the desk of Daniel Webster. I think about it every time I speak. It is the only original desk in the Senate. There was a resolution passed in the 1960s that said for now and ever more, this desk belongs to the senior Senator from New Hampshire. Nobody else will ever get it. That is one of the highest honors that anybody could ever have.

But the point I am making is we are here for only a short time. Webster occupied this desk. It did not belong to Webster, and it does not belong to me. It belongs to the people of New Hampshire and the people of America. The years will go by and the historians will look back, just like they look back on Lincoln and the Civil War, and they are going to write about this era. I know one thing, Senator SANTORUM, we are on the right side. History is going to judge us as being on the right side, I promise you that. Don't worry about it. It is a done deal. We are on the right side, for the same reason that Abraham Lincoln was on the right side.

Can you imagine Abraham Lincoln taking a poll on whether or not we should end slavery? Putting his finger to the wind and trying to decide what the politically expedient thing to do is, to end slavery? Could you imagine Patrick Henry taking the floor of the Virginia Assembly and saying I wonder if these folks want liberty or whether they want death? Maybe I ought to poll them before I make this speech.

Those were men of principle. Those were men of principle. They were not afraid of the political ramifications. When Patrick Henry said “Give me liberty or give me death,” he meant it. He was prepared for death if he could not have liberty. He meant every word of it. And Lincoln meant every word of it when he said slavery was wrong and it was immoral. And I mean every word of it when I say that this is wrong and this is immoral, and we will be judged on the basis of this vote. We have the chance to override the veto and send a powerful message.

Today, 3 votes short, 67 votes. There have been a lot of facts presented here today and there will be more, probably, before the day is over. Take a fresh look, I ask my colleagues. I beg you. Examine your consciences. This is a huge conscience issue.

I believe the reason we have made so much progress towards our goal of outlawing partial-birth abortion is that more and more Senators are realizing that the opposition to this bill was built on a foundation of lies—lies. I do not use that word lightly. I am using the very word that one of the Nation's leading abortion industry lobbyists

used, Ron Fitzsimmons. He has been quoted here earlier, but he publicly admitted last year that he “lied through [his] teeth” when he helped orchestrate the campaign against partial-birth abortion.

When I stood on the floor here, I was told that there were just a few dozen a year, that I was some kind of an extremist, a radical. President Clinton, Vice President GORE, Mrs. Clinton, came to New Hampshire in 1996 and campaigned against me in the last week of the election on this issue.

In an interview published in the New York Times on February 27, 1997, and in an article published in the American Medical News on March 3, 1997, Fitzsimmons made the surprisingly candid admission that he had “lied” when he claimed that partial-birth abortions are rare.

In those same interviews Fitzsimmons also conceded that he “lied” when he claimed that partial-birth abortions are performed only on women whose lives are in danger or whose unborn children are severely disabled. “It made be physically ill,” he told his interviewer. “I told my wife the next day, ‘I can't do this again.’” A man of conscience. In seeking to justify his veto of the Partial-Birth Abortion Ban Act last year, the New York Times points out, “President Clinton echoed the argument of Mr. Fitzsimmons.” In other words, in justifying his veto, Mr. Clinton relied on the same statements of “fact”—or wrong facts—that have now been conceded by a key leader of the abortion industry to be “lies.”

In summary, the President used Fitzsimmons' argument; Fitzsimmons was lying, and the President should change his position. If the President of the United States, tonight, would say to his colleagues in the Senate, “I was wrong, override me,” imagine the impact that would have on this Nation.

Regarding the President, I called upon the President a couple of years ago with a personal, handwritten note, to meet with me, to meet with my colleagues privately, publicly, any way he wanted to; on the record, off the record, with doctors, with his doctors, with my doctors—any way he wanted, any location, any way, any how, any shape or form, to discuss this issue so I could present, in 5 or 10 minutes—that's all I asked for—what I believe to be the truth and to show where he was being told things that were wrong. He never answered my letter. Never answered my letter.

Let me repeat it tonight, Mr. President, and I think I speak for Senator SANTORUM. We would love to come over and talk to you tonight about this. We will bring our doctors. You can have all of yours. I appeal to you to take me up on this. What have you got to lose? Maybe you will agree with us. If you do, you can ask your colleagues in the Senate to change their votes.

The truth, Mr. Fitzsimmons told the New York Times, is that “[i]n the vast

majority of cases, the [partial-birth abortion] procedure is performed on a healthy mother with a healthy fetus that is 20 or more weeks along." Five months. And, as Mr. Fitzsimmons told the American Medical News, "[t]he abortion rights folks know it, the anti-abortion folks know it, and so, probably, does everybody else." Except, Mr. Fitzsimmons might have added, for President Clinton, who vetoed this bill, even though the reasons he gave to justify his previous veto had turned out to be lies.

Mr. President, following Mr. Fitzsimmons' startling revelations, on March 4 the Washington Post ran an unusually blunt editorial entitled, "Lies and Late-Term Abortions." After recounting Mr. Fitzsimmons' lies and his candid admissions that he lied, the Post editorial drew the final conclusion:

Mr. Fitzsimmons' revelation is a sharp blow to the credibility of his allies. These late-term abortions are extremely difficult to justify, if they can be justified at all. Usually pro-choice legislators such as Senator Daniel Patrick Moynihan and Representatives Richard Gephardt and Susan Molinari voted for the ban. . . . Opponents of the ban fought hard, even demanding a rollcall vote on their motion to ban charts describing the procedure from the House floor. They lost. And they lost by wide margins when the House and Senate voted for the ban. They probably will lose again this year when the ban is reconsidered. And this time, Mr. Clinton will be hard-pressed to justify a veto on the basis of misinformation on which he rested his case last time.

Please listen, Mr. President. Please listen to those words.

When the President vetoed H.R. 1122, he did so on the same discredited basis that he used before. Partial-birth abortions, he said, are "sometimes necessary to preserve the woman's health."

That is a false statement. We have had doctor after doctor say it. We had Dr. FRIST say it on the floor, and we have had other testimony, and, as I said, 180 letters from other physicians saying it as well.

Mr. President, President Clinton's assertion that partial-birth abortions are sometimes needed to protect a woman's health, again, is not true. Even the AMA, who has been quoted today, has said that. The American Medical Association said in the New York Times, May 26, 1997:

The partial delivery of a living fetus for the purpose of killing it outside the womb is ethically offensive to most Americans and physicians. Our panel could not find any identified circumstances in which the procedure was the only safe and effective abortive method.

In other words, as Senator FRIST has said on the floor, it is a fringe element that performs that.

There you have it, Mr. President. My colleagues can take a look at these choices: On the one hand, the claim by the President that partial-birth abortions should remain legal because it is needed to protect a woman's health; on the other hand, the American Medical

Association, which is, by the way, pro-choice, saying that partial-birth abortions should be banned because it never was needed to protect a woman's health. I will take the American Medical Association on this one.

Aside from the Fitzsimmons revelations and the AMA's dramatic decision to support H.R. 1122, I believe another reason why the partial-birth abortion ban continues to attract greater and greater support in the Senate is that Senators are coming to realize that this issue really does transcend abortion. I never made any secret about my position on abortion. All abortions are wrong. I am speaking for myself. They all are a taking of a human life, and they are all wrong, which is why I have introduced a human life amendment to the constitution of the amendment. I am proud of it. I don't care if I only get five cosponsors. I am proud of it. I stand on that record, and I think I will be judged correctly for having introduced it, whether I get any cosponsors or not.

Indeed, as one Senator, Senator MOYNIHAN, who supported us on the veto override in the last Congress, put it, partial-birth abortion is "too close to infanticide." Let me go one step further, and it has been said here, it is infanticide. All abortion is wrong, but this is not abortion. This is infanticide. This is taking a child in your hands and executing it.

We need to move away from the partisan rhetoric—not partisan, but the rhetoric on the pros and cons whether the pro-life community or the pro-choice community supports this; get away from that and look into your hearts. It is never too late to change your position on something. I have done it, and others have in here, I am sure. This was a pretty stark, truthful way to put it by Senator MOYNIHAN, Mr. President. It took courage for him to say it, and I commend him for it. It takes a real person with a lot of courage and a lot of guts to say he was wrong and change his vote.

Another Senator who didn't support the bill the first time around also joined us on that override, Senator ARLEN SPECTER, who believes, he says, that partial-birth abortion is more like infanticide than it is abortion. Senator SPECTER said it on the Senate floor September 26, 1996:

In my legal judgment, the medical act or acts of commission or omission interfering with, or not facilitating the completion of a live birth after a child is partially out of a mother's womb constitute infanticide.

I stood on that Senate floor in 1995 with Senator SPECTER arguing with me heatedly and differing with me. To Senator SPECTER's credit, he studied it, he looked at it, and he had a change of heart. Again, that takes courage. The line of the law is drawn, Senator SPECTER said:

When the child is partially out of the womb of a mother, it is not an abortion, it is infanticide.

When you hear about this being an abortion to protect the health of the

mother or the life of the mother, how does it help the health or life of the mother to restrain a child from being born, holding it in the birth canal, head only, until it is killed? No doctor has told me yet how that enhances the health or the life of the mother.

Those are strong words from Senator SPECTER, a pro-choice Senator. It took a lot of guts for him to say it, but he said it.

We are picking up support in the Senate. As I have argued today, more and more Senators are realizing that the case against this bill is on a foundation of what have now conceded to have been "lies."

We are also picking up greater and greater support because more and more Senators are realizing that this issue transcends abortion—that the tiny little human being whom we are talking about is a partially born baby who is just inches from drawing her first breath.

To those Senators who are still considering joining the ever-increasing majority of Senators who support the Partial-Birth Abortion Ban Act, let me address a few more comments to you. Perhaps the Nation's most respected and revered doctor—"America's Doctor"—is the former Surgeon General of the United States, C. Everett Koop. I am particularly proud of Dr. Koop because he is a part-time resident of my home state of New Hampshire.

This is what Dr. Koop has to say: "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility. On the contrary, this procedure can pose a significant threat to both her immediate health and future fertility."

We all know that Dr. Koop is not a man who uses words lightly. On the contrary, Dr. Koop is a doctor who chooses his words with care and precision. Listen to those words again: "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility."

Now, of course, Mr. President, as I mentioned earlier, even the American Medical Association, which is "pro-choice" on abortion, has endorsed the Partial-Birth Abortion Ban Act. So, my colleagues, if you are worried about protecting women, listen to the words of Dr. Koop and listen to the American Medical Association. They are for the Partial-Birth Abortion Ban Act because partial-birth abortion is never necessary to protect a woman's health.

In addition, Mr. President, I urge my colleagues who are still undecided about this bill to look at it in light of our beloved Nation's history. We all know those beautiful and majestic words that Thomas Jefferson wrote for our Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Mr. President, one does not have to agree with my view that human life begins at conception to see that a living baby who is in the process of being born has, in Jefferson's words, been endowed by her Creator with the unalienable right to life. Can anyone seriously doubt where that great American, Thomas Jefferson, would stand on that question?

Another of America's greatest leaders, Abraham Lincoln, made one of the most dramatic and prophetic statements of his life in a speech that he delivered on June 16, 1858. In that speech, Abraham Lincoln said "I believe this government cannot endure permanently, half slave and half free." Today, Mr. President, as we debate this Partial-Birth Abortion Ban Act in this great Capitol of the Union that Lincoln saved, I would say this: The moral foundation of this government cannot endure permanently when even the half born are not free to live. Can anyone really doubt where that moral giant, Abraham Lincoln, would have stood on the question before us here today?

Let us rise to the moral level to which our Nation's history calls us. Let us recognize the unalienable, God-given right to life of the partially-born. Let us protect the partially-born from a brutal death. Let us be worthy of the Nation that Jefferson helped create and that Lincoln surely saved. Let us pass the Partial-Birth Abortion Ban Act with a two-thirds' majority and thus override President Clinton's unconscionable, immoral, and dishonest veto of this bill.

I was honored when, in 1996, the National Right to Life Committee recognized my work in the Senate on behalf of the Partial-Birth Abortion Ban Act by presenting me with its "Proudly Pro-Life Award" at a banquet at the historic Waldorf-Astoria Hotel in New York City. The most memorable moment of the evening, however, was not when I received the award. Rather, it was when I heard Gianna Jessen sing.

Gianna Jessen is a beautiful young woman whose life was nearly ended before she was born. Gianna's teenage biological mother had her aborted in the final three months of pregnancy by the so-called saline solution abortion procedure, but Gianna miraculously survived.

Though she survived the abortion attempt, Gianna weighed just two pounds at birth and was afflicted with cerebral palsy. She spent the first few months of her life in a Southern California hospital. Though her doctors doubted that she would ever be able to sit up, to crawl, or to walk, after years of physical therapy and surgeries, Gianna, now 21 years old, today enjoys an active, productive, and happy life.

As Gianna Jessen stood before the crowd at the Waldorf-Astoria that night and sang "Amazing Grace," there was not a dry eye in the house—including mine.

In July of this year, a media report reached my office about the first

known survivor of an attempted partial-birth abortion. According to the Associated Press and other media accounts, personnel at the A-Z Women's Center in Phoenix, Arizona, told a 17-year old mother that her unborn baby was between 23 and 24 weeks' gestational age (in other words, between 5 and 5½ months).

Reportedly, after beginning the partial-birth abortion procedure, abortionist John Biskind found himself dealing with a 6-pound, 2-ounce baby girl of about 37 weeks (near full term), and he delivered her alive. She was kept in the hospital with a fractured skull and "two deep lacerations" on her face, but no brain damage.

When I learned about this baby, who pro-life activists call "Baby Phoenix," I immediately thought of Gianna Jessen. How wonderful it is that Baby Phoenix will now be able to grow up in this great country of ours. She may some day stand in front of a pro-life dinner and sing "Amazing Grace." She may become a scientist and help find a cure for cancer. She may become a United States Senator. She may become the first woman President of the United States. She may become a Supreme Court Justice and vote to overturn *Roe v. Wade*. With life, anything is possible. I praise God that Baby Phoenix lives.

The case of Baby Phoenix, the first known survivor of an attempted partial-birth abortion, illustrates that we are dealing with real human beings here. For Baby Phoenix, once that partial-birth abortion procedure was started, all that stood between her and a full life was an abortionist. In his hands, he held the power of life and death.

Thankfully, Mr. President, the abortionist in Baby Phoenix's case, John Biskind, had a conscience. He saw that he was dealing with a little human being—all 6 pounds and 2 ounces of her. And he didn't brutally punch a hole in her skull. He didn't take a suction device and remove her brain. He didn't kill her. He let her live.

Unfortunately, Baby Phoenix is the only known survivor of an attempted partial-birth abortion. All the other abortionists who perform the partial-birth abortion procedure don't have the conscience of John Biskind. They, too, know that they are dealing with little human beings. They manipulate their little living bodies. They feel those tiny babies move. Then, with unspeakable brutality, they forcibly restrain those little babies from being born, brutally poke scissors into their little skulls, and then literally suck the lives out of them.

Today, we can put a stop to the unspeakable brutality of partial-birth abortion. Two-thirds of the United States House of Representatives has said "Yes, stop partial-birth abortion." The American Medical Association has said "Yes, stop partial-birth abortion." President Clinton has said, "No, I want partial-birth abortion on demand to be

legal." Today, the United States Senate can say to President Clinton, "You are wrong."

I plead with my colleagues. Listen to two-thirds of the House of Representatives. Think about Baby Phoenix. Listen to the American Medical Association. Don't listen to the cravenly political deceptions of President Clinton.

Vote your conscience. Vote your heart. Vote to stop partial-birth abortion. Vote to override the President's veto and let the Partial-Birth Abortion Ban Act become the law of this land. We will be a better country for it.

I can go on, Mr. President. I know there are lots of other things that I can say, but I will close at this point in the debate by again reminding my colleagues to separate yourself from the heated exchanges that we have all had. I see the Senator from Nebraska on the floor. We have had a couple of exchanges in the past on this issue. But try to look into your hearts and see if we can't get out of each other's faces and into each other's hearts and see if we can't get three more votes to change this horrible procedure.

I yield the floor, Mr. President.

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

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KERREY. Mr. President, I yield such time—

The PRESIDING OFFICER. The Senator from California controls time. Does the Senator yield to the Senator from Nebraska?

Mrs. BOXER. I do, as much time as he may consume.

Mr. KERREY. Mr. President, first of all, in the spirit of the suggestion made by the distinguished Senator from New Hampshire and earlier, as well, by the Senator from Pennsylvania, I reached my conclusion as to what our law ought to be. This is unquestionably a decision that required not just a considerable amount of research about what our laws and our Constitution permit us to do, but also a considerable amount of soul-searching.

In Nebraska, there are many people—friends, family and people whom I do not know—who have offered their prayers for me during this deliberation. Before I offer my own words as to why I believe the law as proposed is both unconstitutional and incorrect, let me say that I very much appreciate those prayers. I have offered them myself on this particular issue. I have had a career now of some 14 years serving the people of Nebraska and have told them almost from day one that though I may sound from time to time as if I am absolutely convinced on an issue, I have never, if the evidence proves otherwise, been unwilling to change my position.

I say to my colleagues, I nearly did so in this case, on account of very good friends who were urging me otherwise, on account of the prayers and concerns and the good wishes that were extended to me by people in Nebraska.

Mr. President, abortion is a choice a woman makes and, at least in my limited conversations with women who have had to make that choice, is a decision that produces a considerable amount of grief, a feeling that something has been ended no matter at what stage, whether it is done in the first week or whether it is done in the 15th week. No matter when it occurs, it produces a considerable amount of grief. Even when the termination is spontaneous, when it is a spontaneous abortion, a miscarriage, there is a sense of loss. Something has happened that was unanticipated. The idea of something good happening has been interrupted by something that is, to the woman's mind anyway, bad.

It is very important, it seems to me, to begin with that understanding. I was very moved, I must say—in fact, I told the distinguished Senator from Pennsylvania—by an article not long ago about the struggles he and his wife endured. It was a very moving piece. It does, I think, something that very often is missed by the public—this comment is unrelated to this particular debate—it shows the human side of our Members. It is unfortunately true that people often see us through our positions, through the positions we have taken, our identity as a Democrat, a Republican and they form an impression. Sometimes we love you, sometimes we hate you, just based upon that position. I appreciate very much the willingness of the Senator from Pennsylvania to allow that story to be told because it shows the human dimension of this issue, and the grieving and the terror and the soul-searching that does occur.

I say that, Mr. President, because one of the things that needs to be understood is, the law does not direct women to make this choice. It merely gives them the choice, the opportunity to make this decision. It does not make the decision any easier, it does not make the decision free of soul-searching and prayer, and, again, from my experience in talking with women who have made this decision, it does not produce a feeling that they have just done something wonderful. Indeed, some of the most powerful people in opposition to a woman's right to choose, to the current law, are people who have gone through this procedure. So people need to understand that we begin by extending our prayers, not just to us lawmakers, but to people who are going through this decisionmaking process.

What we have attempted to do over the course of this debate is to balance the rights of the woman who is carrying the fetus and the fetus itself—not an easy debate. The Senator from New Hampshire again makes a case, I believe, that abortion in all circumstances should be illegal. It is very moving, and I am impressed by his passion and the commitment to this issue.

But in the process of trying to settle this debate, Mr. President, we have

been given guidance by the U.S. Supreme Court, and the guidance of the Supreme Court in both the decision known as *Roe v. Wade* and the decision known as the *Casey* decision in Pennsylvania. The language of these decisions needs to guide this Congress and needs to guide the American people in drafting legislation, drafting laws that determine how we are going to balance those rights. Otherwise, you should come as, again, the distinguished Senator from New Hampshire has said he would like to come, and change our Constitution. He wants to change the Constitution so the Supreme Court can reach a different decision than they did in either the *Roe v. Wade* decision or the *Casey* decision.

Again, Mr. President, I am coming to the floor very mindful of the wishes and prayers of many people in Nebraska who have listened and heard this procedure described. And they say, "It's awful. How can you allow it to go on under the law?" And I am going to describe how I reached the conclusion that this piece of legislation would be, I believe, both unwise and, I believe, unconstitutional.

First of all, listen to the language—first the language of the decision in 1973:

For the period of pregnancy prior to this compelling point [that is the moment of viability; approximately 24 weeks into pregnancy], the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient's pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

That is us. That is what we do with our laws; we determine whether additional laws need to regulate this decision.

Again, going on:

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability . . .

I emphasize that. Very often I will hear people who are pro-choice advocates say, "Well, why are you doing this at all?" The Court did say there is a legitimate interest. The Court did provide us guidance as to how we can pass laws and restrict this type of health service. There are instructions that enable us to, if we wanted to. We could write legislation that followed this guidance. I will get to that point later:

This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe [prevent] abortion during that period, except where it is necessary to preserve the life or health of the mother.

Those are the instructions. And I am willing to vote, and have in the past, to place restrictions, to proscribe, and say that abortions cannot be done if the life or the health of the mother is not at stake. That is what the Court has

said. And in many instances there have been challenges brought by people who have different views and say the Constitution does not provide that right.

Again, most recently, in *Planned Parenthood v. Casey*, the Court confirms:

Roe's essential holding, the holding we reaffirm, has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortion after fetal viability, if the law contains exceptions for pregnancies which endanger a woman's health.

So again, Mr. President, the Court has held—they have heard the arguments, and they have come back and said yes, to those who say that Government should not be engaged at all in writing laws, the State does have a legitimate right to proscribe abortions after viability. Again, I emphasize, I have voted for such restrictions.

But the Court has held that there must be a protection for the woman's right to choose if either life or health are at stake. That is the language of the Court. That is what the Court has said under challenge from those who believe that the Court erred in its judgment in 1973.

Thus, when the AMA comes and argues that this procedure should be banned, I give them heavy weight, substantial weight. But I have as well to give substantial weight to the Constitution and those who are interpreting that Constitution on our behalf, the U.S. Supreme Court.

We should attempt, when we write laws governing abortion—for those of us who believe that a woman should have the right to make a largely unburdened decision, burdened only by her own conscience, which is substantial; I say it again for emphasis, I am troubled very often in this debate that an insufficient amount of attention is paid to the grieving, to the suffering, to the difficulty that a woman faces at this particular moment and afterwards—to balance the rights of the woman against the right of the fetus. That is what we should do. We should write a piece of legislation that keeps a constitutional balance in place.

Mr. President, I believe this particular piece of legislation fails that test. It might, indeed, be a useful exercise, but it is going to be thrown out. It is going to be thrown out, Mr. President, because it does two things that the Court has said repeatedly are unconstitutional.

First of all, let me just read the language, Mr. President. It is a fairly short and clear description of what the proponents would like the law to be. It says that:

Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby

kills a human fetus shall be fined under this title or imprisoned not more than two years, or both.

That brings the State into it, obviously. The doctor could be fined or placed in prison as a consequence of doing this procedure in all States. It gives a right of legal action to the father. It gives a right of legal action to, I believe, the woman's parents as well. It gives the State the right to come in and bring a case against that doctor—but not, Mr. President, only post-viability.

The language of this law does not reference either Roe or Casey. It does not say that this would apply only post-viability; it applies in all cases. And though it is quite true that many, as I understand it, of these procedures are done post-viability—and, by the way, there are many other procedures that are done, most of which, as they have been described to me, are equally grizzly and therefore difficult, on a personal basis, to sustain the argument that this is a good thing to do—many are done before viability. But the Constitution says that we are to provide that woman with an uninhibited choice in that previability stage. And this law makes no distinction between pre- and post-viability.

Indeed, one of the reasons I supported Senator DASCHLE's proposal last year, which was sharply criticized as a way to provide political cover, is because it did address the legitimate interests of the State in the post-viability period.

I have no idea whether or not there will be additional bills, or whether or not the President's veto will be overridden, but my guess is, even if the veto is overridden—assume for the moment that it will be—this will not be the last time that we address the question of the State role to regulate abortion, particularly post-viability.

I say to my colleagues here, and to the people of Nebraska who have offered their prayers, that I am willing to enter into earnest negotiations with the goal of placing additional restrictions around abortions late in pregnancy. And this will probably involve some careful definitions around the issue of a health exception, and therefore the circumstances under which a woman can legally choose abortion.

This bill would create an unspecified prohibition on a particular procedure—a prohibition that would result in the State putting restrictions on pre-viability choices and decisions that a woman and her doctor make. Thus, I believe strongly that the Court would find this legislation, this law, unconstitutional and that it would strike it down.

Even more compelling—and I know we have had this debate before, and I don't want to drag it out because I want to merely offer my thoughts not so much to my colleagues, who I suspect have mostly made up their minds on this particular piece of legislation, but to the people in Nebraska—the Court over and over has used the words "life or health."

I heard the distinguished Senator from New Hampshire say he did not find any doctor who could justify this procedure. I don't remember his exact language. However, our reference in this case can't be only physicians. Our reference has to be the Constitution. The Court has given us instructions. They told us what we can do and what we can't do. Unless we change the Constitution, we are not going to be able to simply ignore the Court's repeated opinion that post-viability restrictions must include both life and health exceptions.

Again, I come to the floor, having heard the prayers of thousands of Nebraska friends and people who I don't know quite so well, who have hoped that I would cast a vote to override this veto. I cannot. Not because I do not believe that the government has a legitimate interest to restrict abortions after viability. In fact, I believe it is in all of our interests to do so.

This legislation does not do that. This legislation deals with a single procedure across the span of pregnancy. As a consequence of that, I cannot in either good conscience, or in faith to this Constitution, cast my vote to override the President's veto.

I yield the floor.

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

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I thank the Senator from Pennsylvania. I begin by thanking the Senator for the work he has done on this legislation. This is, obviously, an issue of great importance, one of the most important issues we have dealt with in this Congress. His leadership on this issue has, I think, been a great motivation to many people here. He has had a great deal of influence in the national debate on this issue. I compliment him for what he has done and what I know he will continue to do between now and the vote on this tomorrow morning.

I am here to urge my colleagues to override the President's veto of the ban on partial-birth abortion. The abortion issue has been a difficult and a divisive one for this country. The unfortunate procedure of partial-birth abortion need not be. The vast majority of Americans—even those who call themselves pro-choice—oppose partial-birth abortion.

This overwhelming opposition helped produce legislation to ban that procedure. Unfortunately, the legislation was vetoed by President Clinton. Now is the time for the Members of this body to stand up and to say no to the unnecessary, dangerous and morally troubling procedure of partial-birth abortion.

We now know that this practice is not rare and that it is not undertaken only in cases of severe fetal deformity. Literally thousands of partial-birth abortions are performed in this country every year. Abortion lobbyist Ron

Fitzsimmons has said at least 3,000 to 5,000 partial-birth abortions are performed nationwide each year. According to the prominent abortion doctor, W. Martin Haskell, over 80 percent of the partial-birth abortions he performs are purely elective. Ron Fitzsimmons reports that in the vast majority of cases the procedure is performed on a healthy mother with a healthy fetus.

I know that not everyone shares the pro-life position. But in my view, it is clear that any reservations about restricting abortion need not, and should not, apply to partial-birth abortion. Regardless of where one stands on the broader abortion debate, all of us should be able to see partial-birth abortion for what it is—an unjustifiable and wholly unnecessary tragedy.

People on the other side of the pro-life debate often say that the decision of whether or not to undergo an abortion should be left to a woman and to her doctor. Shouldn't we then listen to the official position of the American Medical Association, the official professional association of doctors in America? The AMA has come out unequivocally against partial-birth abortion in endorsing this legislation. Dr. John Seward, executive vice president of the AMA, referred to partial-birth abortion as a procedure "we all agree is not good medicine." The AMA has made a professional judgment based on the medical expertise of its members that partial-birth abortion is simply not good medicine.

Further, our former Surgeon General, C. Everett Koop, has observed that:

... partial-birth abortion is never [and that is his emphasis] never medically indicated to protect a woman's health or her fertility. In fact, the opposite is true. The procedure can pose a significant and immediate threat to both the pregnant woman's health and fertility.

Those are quotes from Dr. Koop.

Earlier today, we heard from the Senate's only physician Member, Dr. FRIST, who spoke, I thought, both eloquently and with great insight based on his own scientific knowledge and his background as a physician, essentially reaching the same conclusions as the American Medical Association and Surgeon General Koop:

There is simply no valid reason for this procedure to exist. It saves no lives. It puts mothers at increased risk for sterility and other complications, and it is in and of itself, in my judgment, morally unacceptable.

I reference a recent story from the Associated Press that shows just how dangerous this procedure can be. According to the AP, on June 30 of this year, Dr. John Biskind delivered a full-term baby girl. Unfortunately, this little girl was almost killed. She suffered cuts to her face and a skull fracture. Luckily, this little girl survived and was adopted by a loving couple. But she literally came within a hair's breadth of being killed on the threshold of life. This little girl has survived, but we should not lose track of the cause of her injuries.

Dr. Biskind attempted to perform a partial-birth abortion. The 17-year-old mother had come to Dr. Biskind's A to Z Women's Center seeking an abortion. The clinic performed an ultrasound, determining what they had was a 23½-week fetus, and decided to perform a partial-birth abortion. Dr. Biskind thought he was performing this procedure on a fetus two-thirds of the way to term; that would be bad enough. But, in fact, the clinic had made a mistake in the ultrasound. The girl actually was approaching full term and Dr. Biskind did not realize this fact until he had already begun aborting her.

This is astounding. According to Dr. Gerster, a Phoenix physician, a 24-week-old fetus weighs an average of 2 pounds, whereas a 36-week-old fetus weighs, on the average, about 6½ pounds. As Dr. Gerster commented:

I don't know how such a grave error could be made in estimating the size. There shouldn't be that kind of discrepancy in an ultrasound. It is horrendous.

Horrendous, indeed, Mr. President. Yet, this is the kind of situation we are attempting to address with this legislation. I think cases like this are why it is time for us to override the President's veto and pass this bill.

As I have said throughout my discussion here today, there are reasonable differences—we understand that—in this Chamber and across this country over the substantive issue of abortion rights. Even those who advocate abortion rights are frequently saying—including the President of the United States—that abortion should be safe and legal and rare. It is hard for me to believe that these types of abortions, partial-birth abortions, don't fit outside that definition.

Mr. President, we all have to come to these decisions in our own way, and I am not here today to tell people who have reached different conclusions that they are in any way going about it in the wrong fashion. But I think that this issue is one that is so important, an issue that I think the country is so united behind, that it is time for us to take ourselves out of the context of the debate on abortion rights and look at this from the perspective of what is morally right. In my judgment, Mr. President—and I know not what decisions others are going to make tomorrow—it is just not morally right to allow this kind of procedure to continue.

Each of us here has our own stories, and I respect the stories of my colleagues on both sides. In our own family, we have had several instances of children born very early. In my own case, we have twins who were born several weeks early. We were fortunate; they did not have serious complications, but they were in a neonatal unit of a hospital for about 3 weeks. While we were there, we saw less fortunate situations around us. We saw children that were much smaller, born much earlier than our babies, clinging to life, children that were born weighing less

than 2 pounds, children that were born 10 and sometimes 12 weeks early. The fight those children all made to survive left me with an indelible impression about life that I really hadn't had before that experience.

Yes, I was pro-life, but I had never touched or felt or seen in that fashion exactly what is at stake. The notion that some of those babies we saw fighting for life, who had been born in the very timeframe that partial-birth abortions are occurring, the knowledge that these tiny infants were real people, the realization of that, left me with a memory that I will never forget and left me committed to support the efforts Senator SANTORUM has led here today, which I hope will finally result in the end of this practice.

Mr. President, I intend to vote to override tomorrow. I hope that enough of my colleagues will join in that effort so we are successful. I recognize that this is an issue that people have different views on. I hope that finally, at the end of this debate, we can come together and move forward with something that I think is in the best interest of our country, and more importantly, in the best interest of our children.

I thank the Senator from Pennsylvania, and I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I yield myself such time as I may consume.

Mr. President, I was touched by the remarks of the Senator from Michigan about having premature babies of his own. I stand here today as a mother, a grandmother, and a Senator. When my babies were born, one was born 2 months early and one was 6 weeks early. There wasn't one prayer that I didn't say, there wasn't one emotion I didn't feel. And I feel that same emotion toward any child born in that circumstance. My babies grew up healthy and they are now in their thirties, and one has made me a grandmother.

But that is not what this debate is about. This debate is about whether we are going to protect the lives of women and whether we are going to protect the health of women. I say here today that, as long as I am here, I will work to do that. These are women who find themselves in tragic situations, traumatic situations, with a pregnancy that has gone terribly wrong. With a pregnancy which could endanger their health, their life, their fertility, and their ability to have a family in the future.

This bill is extreme. It is dangerous for women. Why do I say that? It has no exception to protect women's health. The exception for a woman's life is very narrowly drawn. It is not the true life exception that we have used in other bills. So this bill is extreme, the bill is dangerous, and the bill turns its back on the health of women. As Senator KERREY from Nebraska has said, clearly, it is unconsti-

tutional. I am not just standing here because the bill is unconstitutional. Very clearly, the constitutional law that governs is *Roe v. Wade*, which says you must always consider the life or the health of a mother.

I am standing here because I care about the health of women and their lives. I don't want to see this bill become the law of the land. I hope my colleagues will stand for the health and the life of women and support the President's veto.

Roe v. Wade guarantees American women the right to choose. In the early stages of a woman's pregnancy, a State may not interfere with her right to end the pregnancy. In the midterm of a pregnancy, a State may regulate abortion procedures, but only to protect the woman's health. That is what *Roe* says. After viability of the fetus, when the fetus could live outside the woman either with or without life support, a State can regulate and, yes, even prohibit abortions under *Roe*. States can prohibit abortions after viability, except—except—for the life of the woman or the health of the woman.

The life and the health of women must always be protected. That is the law. If we chip away at those exceptions, we endanger women because, make no mistake, this isn't the first attempt to stop a procedure and walk away from the life or health exception. There will be many attempts. There will be other procedures. There will be other ways to stop them. My colleagues on the other side are very honest about it, they want to criminalize abortion. They are honest about it and I appreciate that. I know this is just one way they are going to try to get to their ultimate goal. If we don't hold the line here on life or health, we will lose this right.

Mr. President, the bill we are debating directly contradicts *Roe*. As I said, and as the Senator from Nebraska before me said, it is unconstitutional because it doesn't protect the health of the woman. It is silent. It doesn't use the words "health of the woman." Again, it doesn't contain a true life exception. It is a very narrow life exception. So even her life would be threatened if we allow this bill to become law.

My colleagues have quoted the fine Senator from Tennessee, Senator FRIST, who is a doctor. They have quoted Surgeon General Koop. They are not OB/GYNs. They are not obstetrician-gynecologists. The American College of Obstetricians and Gynecologists—those are the doctors who bring babies into the world. Those are the doctors who deal with these emergency abortions—39,000 strong. They are specialists in women's reproductive health. What do they say about this legislation? They oppose it. The organization says that this bill is—and I am quoting—"dangerous." Who is it a danger to? It is dangerous to women. It is dangerous to the women.

The American Medical Women's Association also firmly opposes this legislation.

This bill, if it becomes law, will force doctors to make medical decisions that jeopardize women's health. Doctors will be afraid. They will be fearful because, if they can't meet the very narrowly drawn exception for life, but they use the procedure because they are afraid the woman would die, the doctor can go to jail for 2 years and be fined. If the woman made this decision, let's say after she learned that the baby's brain is developing outside the head, and she didn't want to carry the pregnancy to term—maybe because she was afraid that her husband might disapprove, or maybe he was an alcoholic, or maybe he was a drug addict, maybe he was estranged—the husband can also sue the doctor. He can sue, very interestingly, for psychological distress.

When we talk to our colleagues on the other side, they don't want to include any psychological reason whatsoever when a woman has to choose. But, yes, if the man is suffering psychological distress, he can sue.

No woman, in my opinion, wants to visit her doctor about her pregnancy—and I have done it in my own life—and see her Senator lurking over the doctor's shoulder. People often don't like us lurking over any parts of their life, let alone, let alone, when they have a medical procedure.

I find it interesting that some Senators who come here and say there is too much government—"get government off our backs, there is too much government"—believe that they know more than physicians, OB/GYNs, who deal with real life in the real world. These Senators believe that they know better than a family about what to do in such a situation.

No woman wants to walk into her doctor's office and see a sign that says, "Warning, Senate interference in your doctor's decisions may be hazardous to your health." Or, "Warning, your doctor's hands are tied, he or she may not choose the best procedure for you because your Senator has decided what procedure is allowed and what procedure is not allowed." Forget what you learned in medical school; forget about what you think is best for women; the Senator is telling you what procedure to use.

My colleagues in the Senate say it is dangerous. Whether you have cancer, Alzheimer's, AIDS, diabetes, Parkinson's, heart disease, or any condition—all the diseases we fear—Senators should not be making decisions about what procedures should be used. Senators should not prevent a doctor from using a procedure that he or she determined was needed to protect the patient's health, to protect her from infertility, to protect her from paralysis, or worse. Government should not be in the business of eliminating safe, medical options for patients.

We all want to know, I say to my colleagues who are loving parents, what

would you do if your physician called you and said, "I just examined your daughter, and I believe her life is threatened," or "I believe she might never have a child again, and I believe the only procedure to use is the one that Senators here want to ban." I believe in your heart of hearts you would get down on your knees, pray to God, and say, "Save my daughter's life. Help her be able to have a child again." I believe that.

If you didn't, if you chose another way, that is fine for you. But don't force everyone into that situation where they don't have the option that they need. If it is all right for you to narrow your options for your daughter, for your granddaughter, I bless you for it. No one is forcing you to do that. But I think it is important that women have the option to save their lives, to save their health. And, yet, there is not one word in this about an exception for health, and it is a very narrowly drawn exception for life.

Doctors should make medical decisions in consultation with their patients. Doctors should be free to make decisions that are best for their patients' health. When doctors take their Hippocratic oath, they say, "Do no harm." "Do no harm." But if in their heart they believe they are going to do harm, and it is because Senators tied their hands, they find themselves in an unacceptable situation. They can't look at the woman or her husband; they can't look in the eyes of the parents of that woman and say, "I am doing everything I can," when they know they are afraid to use a procedure because they cannot understand the vague language that Senators put into a bill.

If enacted, this bill could threaten the health of women across the country—our sisters, our daughters, our mothers, our nieces, our coworkers, our friends, our granddaughters.

I want to talk about the life exception. It is very narrow.

A woman's life would be protected only if her life is in danger by a "physical disorder, illness, or injury." That is a quote from the bill. But if her life is in danger for any other reason, the life exception does not apply. In other words, if the pregnancy itself endangers a woman's life, the exception does not apply. Even the new Hyde language, which narrows the exception for life of a woman, acknowledges that the pregnancy itself may endanger a woman's life. But, yet, the language in this bill includes an exception only if she has a physical disorder, illness, or injury, and not any condition that arises from the pregnancy itself.

So today I think we need to face the fact that this bill has crafted a unacceptable life exception. And for those who are voting for it who think that they are protecting the life of the woman, read it again. Read again the Henry Hyde language which we have used for many years. Even the narrow version is different than this. This is dangerous.

Let me say again: this bill, as it is currently written, is dangerous.

We have some people in the galleries today who have had procedures that would be banned by this bill. They are loving mothers. They are loving, loving mothers. Tiffany Benjamin is from California—this is her picture. This is her beautiful 3-year-old baby. He is now 3. He is a little younger here. She had this child after undergoing a procedure which her doctors recommended and which this bill would ban. And now she has this beautiful child.

Also up in the gallery is Maureen Britell from the District of Columbia area, who had also had a procedure which would be banned by this bill. Maureen is a devoted mother.

The PRESIDING OFFICER. The Senator will withhold.

The Senator is reminded of rule 19, section 7, which reads: "No Senator shall introduce or bring to the attention of the Senate during the session any occupant of the Gallery of the Senate. No motion to suspend this rule shall be in order, nor may the Presiding Officer entertain any request to suspend it by unanimous consent."

Mrs. BOXER. Thank you, very much, Mr. President. I was unaware of the rule.

I will say, then, that there are women who are here today in Congress walking the Halls. And they are looking into the eyes of Senators. They are asking them, please don't do anything. Don't do anything to jeopardize the health and the life of any woman.

These are women who have had procedures that would be banned by this bill. These are women who are loving mothers. These are women who are begging us, begging us, to protect the lives and the health of women.

I am going to tell you some stories.

As I understand it, it is all right to show photographs of women. Is that correct, Mr. President? Am I permitted to show photographs of people from the State?

The PRESIDING OFFICER. The Senator is so permitted.

Mrs. BOXER. I thank the Chair.

This is Coreen Costello. She is a registered Republican. She describes herself as very conservative. The reason I mention that is because what we are debating here today is not a partisan issue. Coreen is clear that she and her family are strongly opposed to abortion, and yet she wants us to stand with the President on this veto.

In March of 1995, when she was 7 months pregnant with her third child, Coreen had premature contractions and was rushed to the emergency room. She discovered through an ultrasound that there was something seriously wrong with her baby. The baby, named Katherine Grace, had a deadly neurological disorder and had been unable to move inside Coreen's womb for almost 2 months. The movements Coreen had been feeling were not the healthy kicking of a baby, they were actually nothing more than bubbles and amniotic

fluid which had puddled in Coreen's uterus.

The baby had not been able to move for months. The chest cavity was unable to rise and fall. Her lungs and chest were left severely underdeveloped, almost to the point of non-existence. Her vital organs were atrophying. The doctors told Coreen and her husband the baby was not going to survive, and they recommended terminating the pregnancy. Coreen said, "This is not an option. I will not have an abortion. I want to go into labor naturally." She wanted the baby born on God's time. She did not want to interfere.

The Costellos spent 2 weeks going from expert to expert. They considered many options, but they all brought severe risks. They considered inducing labor. They were told it would be impossible due to the baby's position. Also, the baby's head was so swollen with fluid, it was already larger than that of a full-term baby, so labor—let me repeat, labor—was not an option.

They considered a cesarean section, but the doctors were adamant that the risks to her health were too great. In the end, they followed their doctor's recommendation and Coreen had an abortion procedure that my colleagues want to outlaw today.

You just heard a story, a real story. Coreen and her husband faced a tragedy that most people never have to face. But because Coreen had access to the medical procedure her doctor felt was the safest and most appropriate, she and her husband were able to keep their dream of having a large family, and you see them here in this picture. They now have three happy, healthy children, and Coreen is due to deliver another child any day now.

Coreen writes to us, to every Member of the Senate, I could not have had this family without this procedure. "Please, please, give other women and their families this chance," she says. "Let us deal with our tragedies without any unnecessary interference from our Government. Leave us with our God," she writes to us, "our families, and our trusted medical experts."

Now, I want to say to my colleagues this story is what happens to real people. This is real. This is a woman who says she is very conservative and she is very against abortion. But she is asking us to not do away with the procedure she had, so that other women will have the opportunity she had to bear children in the future.

In the spring of 1994, Viki Wilson, a registered nurse, and her husband Bill, a physician, were expecting their third child. Viki was in 36th week of her pregnancy, and the nursery was ready. Her family was anticipating the arrival of their new "little one."

Her doctor ordered an ultrasound which detected something that all her prenatal testing had failed to detect. Approximately two-thirds of her daughter's brain had formed on the outside of her skull.

This deformity was causing Viki's daughter to have seizures. Over time, these seizures became more and more severe. They threatened to puncture Viki's uterus. Even if Viki could carry her daughter to term, the doctors feared that her uterus would rupture in the birthing process.

Viki could not give birth to her child without seriously jeopardizing her own health—or even her life.

After consulting with other doctors and their clergy, Viki and her husband made the painful choice to have an abortion in order to protect Viki's health.

In December 1996, Viki and Bill were thrilled to welcome a baby boy named Christopher into their family.

Viki Stella was in the third trimester of her pregnancy when her son was diagnosed with nine major anomalies, including a fluid-filled cranium with no brain tissue at all, compacted flattened vertebrae, and skeletal dysplasia. Her doctors told her that the baby would never live outside of her womb.

Viki writes "My options were extremely limited because I am diabetic and don't heal as well as other people. Waiting for normal labor to occur, inducing labor early, or having a C-section would have put my health at risk." She continues "My only option . . . was a highly specialized, surgical abortion procedure developed for women with similar difficult conditions."

Though she was distraught over losing her son, Viki knew the procedure was the right option. As promised, the surgery preserved her fertility. In December 1995, she gave birth to a darling son, Nicholas.

Viki's situation was heart wrenching. She was told her son was dying inside her. Her diabetes severely limited her medical options. Congress has no business interfering with these difficult and personal medical decisions.

The point is, we must not go back to the days before *Roe v. Wade* when women died or women were maimed. We can not go back to the days when women's health was not considered important, when women's lives were not considered important. Any restrictions on women's access to abortion must always make an exception for the life and health of the woman. If we do not, as sure as I am standing here, women will die, because we know what happened before *Roe*. They did die.

In response to arguments that proponents of this bill make that it bans one specific abortion procedure, I respond that we are not asking anyone to undergo any abortion procedure who has a moral problem with it. For those who think abortion is wrong, who would rather their daughters have a cesarean and believe that God would take care of it, that is what they should do. That is what is important about being pro-choice; we give people the choice. No one has to undergo any abortion procedure if they do not want to. All we are saying is, do not outlaw a proce-

cedure for every woman, because there will be women like this who will choose that procedure because they want to make sure that they can have children again.

Now, I want to point something out. In the last debate we had on this, Senator FEINSTEIN and I offered an amendment. It was a substitute for the bill we are debating today. And do you know what it said? It said that we oppose all late-term abortions except for life and health of the woman. We went to our Republican colleagues, and we said, "Why don't you join hands with us on this? Roe says you can restrict in the late term. We are willing to do that. Of course, we are in favor of *Roe*. And we will walk down this middle aisle here, hold hands across party lines here, and say no more abortion late term except for life and health."

They did not want to do it. And when I asked them why, they were honest. They said, "We don't believe women will tell the truth about the health exception. We believe they will say it is about health but in their heart it is not about that."

I want to challenge that today. I know that a woman in this circumstance, who has carried a child into the late term, desperately wants that baby. I have been there myself. When my babies were born prematurely, I can't even tell you the feeling that I had, that I might lose them, because in those years it was very difficult. But they made it. They hung on.

So I know that a woman who gets to the late term is not going to lie about her health and say, "Oh, give me this abortion; it's the seventh, eighth month. I have decided against this." That is not what a woman will do.

The health exception is only for circumstances when there is something seriously wrong.

So I think suggesting that a woman in the late term will not tell the truth about her health and why she is seeking an abortion is more than insulting to women. It is dispiriting. I know my colleagues could never think that of their children, their daughters, their nieces. I know they could not. Then why would they leap to that conclusion of other women?

I strongly support passing legislation that says no late-term abortion whatsoever except to protect the life and the health of a woman.

But I say to you that I will not support this legislation, with absolutely no health exception, and with a life exception that is very narrowly drawn. If this legislation becomes law, women like Coreen, who are pro-life and anti-abortion, but who want to protect their ability to have children in the future, may not have the chance to become pregnant again. Women who are pro-life, who are anti-abortion, may not have the chance to have a family just like Coreen Costello pictured here, yet again pregnant with her fourth child. Coreen, very conservative, writes to us: Please, please support the President's veto.

So, I say to my friends, I know what a difficult debate this is. I know the heartfelt emotions on both sides, and I respect the heartfelt emotions on both sides. I am going to close here with a letter that each member of the Senate received from 729 rabbis. I think this is appropriate since we are going into the most holy time of the Jewish people. This is what the rabbis conclude:

Abortion is a deeply personal issue. Women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion. We believe that religious matters are best left to religious communities, not politicians. . . . We urge you to vote to sustain President Clinton's veto.

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

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

SEPTEMBER 10, 1998.

DEAR SENATOR: We are writing to urge you to vote to sustain President Clinton's veto of H.R. 1122, the so-called "Partial-Birth Abortion" Act of 1997.

As rabbis, we are often called upon to counsel families facing difficult decisions concerning reproductive health choices, including abortion. Like other members of the clergy, we turn to religious law and teachings for guidance in providing such counsel. Judaism has laws governing the issue of abortion, but each case is considered individually.

As in other religions, in Judaism, there are different interpretations of these laws and teachings, and we respect and welcome debate on these issues. However, this debate should remain among those who practice our faith, not on the floor of Congress.

The debate surrounding reproductive choice speaks to one of the basic foundations upon which our country was established—the freedom of religion. It speaks to the right of individuals to be respected as moral decision makers, making choices based on their religious beliefs and traditions as well their consciences.

In addition, we are concerned about the language of the bill itself. Given the fact that the "Partial Birth Abortion" Act uses vague and non-medical language to describe the prohibited procedures, it would be very difficult for anyone, whether clergy or physician, to be certain about which medical procedures would be banned. Given the bill's nebulous language and the importance of the issue, we find it difficult to engage in a theological debate on this matter.

Abortion is a deeply personal issue. Women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion. We believe that religious matters are best left to religious communities, not politicians.

Once again, we urge you to vote to sustain President Clinton's veto.

Sincerely,

Signed by 729 rabbis.

Mrs. BOXER. Mr. President, this letter is signed by rabbis from Arkansas, California, Colorado, Connecticut, Delaware, D.C., Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island,

South Carolina, Tennessee, Texas, Vermont, Virginia, Washington State, West Virginia and Wisconsin.

I thank my colleagues who have participated in this debate. I see Senator ROBB is here. I know this is a tough one. I know this is hard. I just appreciate his being here.

Mr. President, I yield the floor.

Mr. SANTORUM. Mr. President, I ask if the Senator will yield for a question about some of the things that she stated in her testimony?

Mrs. BOXER. I will come back onto the floor shortly. At the moment I have a meeting, and people waiting for me.

Mr. SANTORUM. I yield 5 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 5 minutes.

Mr. ASHCROFT. Mr. President, I rise to speak in favor of overriding President Clinton's veto of the partial birth abortion ban. I would like to begin by thanking the manager of the bill, the Senator from Pennsylvania, for his continuing and outstanding work on this important issue.

No issue cuts to the core of our values like the issue of abortion. It challenges us to define our notion of liberty and calls into question our most fundamental assumptions about life. Today, we do not debate whether enactment of a measure will positively or negatively affect the welfare of some Americans. Today, we debate life and death.

Last Congress and again last year, we voted to end the barbaric method of infanticide known as partial birth abortion. Both times, the President vetoed the ban. In so doing, he ignored the testimony of medical experts who assured us that this procedure is never necessary to preserve the life or health of the mother. He also dismissed evidence showing that thousands of partially-born children are routinely and electively killed across the country each year.

The President not only accepted, but helped disseminate the lies and false testimony of pro-abortion advocates. Though the lies were finally exposed, the President demonstrated that his support for this procedure did not depend on the truth. The distortion reached a point where even his allies in the media could no longer defend the President's veto. Richard Cohen, an avowed liberal and pro-choice columnist with the Washington Post, concluded,

President Clinton, apparently as misinformed as I was about late-term abortions, now ought to look at the new data. So should the Senate. . . . Late-term abortions once seemed to be the choice of women who, really, had no other choice. The facts are now different. If that's the case, then so should be the law. (Wash. Post, 9/17/96.)

And yet, once again, the President's apologists have taken to the floor to defend the indefensible.

This procedure is never necessary to save the life and preserve the health of

the unborn child's mother. Four specialists in OB/GYN and fetal medicine representing the Physicians' Ad Hoc Coalition for Truth have written:

Contrary to what abortion activists would have us believe, partial-birth abortion is never medically indicated to protect a woman's health or her fertility. In fact, the opposite is true: The procedure can pose a significant and immediate threat to both the pregnant woman's health and fertility. (Wall St. Journal, 9/19/96).

Indeed, former Surgeon General C. Everett Koop stated,

I believe that Mr. Clinton was misled by his medical advisors on what is fact and what is fiction in reference to late-term abortions. Because in no way can I twist my mind to see that the late-term abortion as described—you know, partial birth, and then the destruction of the unborn child before the head is born—is a medical necessity for the mother.

Nor should we accept the myth that this procedure is rarely utilized. According to interviews conducted by the Record of Bergen County, New Jersey, physicians in New Jersey alone claim to perform at least 1,500 partial birth abortions each year—three times the number which the National Abortion Federation has claimed occur in the entire country.

Mr. President, a legislative ban on partial birth abortions is constitutional. Indeed, allowing this life-taking procedure to continue would be inconsistent with our obligation under section 5 of the 14th Amendment to protect life.

Although opponents will point to decisions in which activist federal judges invalidated state-passed bans, language nearly identical to that which is in this bill has been upheld in a number of courts. The ban's requirement that the abortionist deliberately and intentionally deliver a living fetus that is then killed implicate the partial birth procedure and no other. Judges who deemed the ban unconstitutionally vague ignored the text, and instead, saw fit to substitute their views in place of the views clearly expressed by the various state legislatures.

Mr. President, I want to share a word of caution with those claiming that a ban on partial birth abortions is unconstitutional. If they truly believe that outlawing this procedure is impermissibly vague, the inevitable conclusion people will draw is that infanticide and abortion are indistinguishable. I do not see how this argument provides any solace to the defenders of this gruesome procedure.

Finally, before this debate is through, I expect those defending the President's veto will say that opponents of partial birth abortion are really against all abortions. Well, Mr. President, I cannot speak for other Senators, but on that charge, I plead guilty. I believe abortion is the taking of innocent human life and has no place in a culture that values human life. I believe that precious human life

should be nurtured in love and protected in law. For this reason, I support a constitutional amendment to protect human life.

On January 20th of this year, I chaired a hearing in the Constitution Subcommittee on the 25th anniversary of *Roe v. Wade*. We looked at how the Supreme Court's decision failed to provide a framework for sound constitutional interpretation or to reflect the reality of modern medical practice. This latter failure is not surprising since the Court had neither the capacity to evaluate the accuracy of the medical data, nor a way to foresee the remarkable advances that would make the then-current data obsolete.

From Dr. Jean Wright of the Egleston Children's Hospital at Emory University, we learned that the age of viability has been pushed back five weeks, from 28 to 23 weeks, since *Roe* was decided. We learned that surgical advances now allow surgeons to partially remove an unborn child through an incision in the womb, fix a congenital defect, and slip the "pre-viable" infant back into the womb. However, I think the most interesting thing we learned at the hearing is that unborn babies can sense pain in just the 7th week of gestation.

Mr. President, these facts should help inform this debate. For instance: If we know the unborn can feel pain at seven weeks, why is it such a struggle to convince Senators that stabbing a six month, fully-developed and partially-delivered baby with forceps and extracting its brain is wrong?

I realize, however, that not everyone agrees with my view on abortion. Indeed, I recognize that the American people remain deeply divided on this issue. But where there is common ground, we need to move forward and protect life.

One issue on which there is consensus is parental consent. Most Americans agree that parents should be involved in helping their young daughters to make the critically important decision of whether or not to have an abortion. A recent CNN/USA Today survey found that 74 percent of Americans support parental consent before an abortion is performed on a girl under age 18.

Last month, I introduced the Putting Parents First Act, which would require parental consent before a minor could obtain an abortion. Enactment of this legislation would allow Congress to protect the guiding role of parents as it protects human life.

Today's vote—to end the cruel practice of partial birth abortion—presents another opportunity for Americans on both sides of the underlying abortion issue to find common ground. The American people agree that a procedure which takes an unborn child, one able to be sustained outside the womb, removes it partially and then kills it is so cruel, so inhumane, so barbaric as to be intolerable. Indeed, after the procedure was described for them, fully 84 percent of the American people said Congress should outlaw it.

Mr. President, legislatures in more than 20 states have followed Congress's lead and passed laws outlawing this procedure. Two-thirds of the House of Representatives already has voted to overturn the President's veto. And when this chamber voted, more than a dozen Democrat Senators joined us in attempting to override the veto.

Mr. President, a consensus has formed. The American people and a substantial majority of their elected representatives in Congress want to eliminate this gruesome procedure from our nation's hospitals and clinics. The will of the American people should not be thwarted by the twisted science and moral confusion that has engulfed this Administration.

Mr. President, let me close by saying that if we are not successful today in overriding the President's veto, this will not be the end of the debate. We will come back next year and we will vote again. We will continue to vote on this issue of life and death until the voice of the American people is heard.

Mr. HELMS. Mr. President, one of the most tragic and saddest days in our nation's history was the day the Supreme Court ruled in *Roe v. Wade* that unborn babies can legally be killed by their mothers. Each of us who has fought, heart and soul, to undo that damaging decision, understood so well on January 22, 1973, that we had yet to see what devastation would come of such a horrendous rule.

Indeed, when a nation condones instead of condemns the inhumane procedure known as partial birth abortion, it is clear our worst fears have come true.

I am grateful to the distinguished Senator from Pennsylvania (Mr. SANTORUM) for his strength and conviction in standing up in defense of countless unborn babies. RICK SANTORUM's willingness to lead the fight on behalf of passage of the Partial Birth Abortion Ban Act is a demonstration of courage.

Our hearts and prayers go out to him and Karen, for their loss of their precious baby son, Michael Gabriel.

Mr. President, since May 20, 1997, when the Senate voted 64-36 to outlaw the partial birth abortion procedure, a six-pound baby girl was born in the state of Arizona. Of course, there have been countless other precious little lives who have graced this world with their presence since that time.

What is exceptional about this baby girl, is that she is the first known survivor of the partial birth abortion procedure. Amazingly enough, while the abortionist was in the process of performing the partial birth abortion, this little one's life was spared when it was realized that she was further along in her gestational development than thought.

Incidentally, it is due to this type of unawareness regarding the developing stages of a baby growing inside a mother's womb, that has led to the senseless murder of millions of the most innocent human beings.

Thankfully, this baby girl is no longer faceless. Although, her head has been marred by the instruments of the abortionist, and she may carry this scar as a reminder of her close encounter with death, she has been given a name and a home. Not surprisingly, one of the millions of couples who are anxiously waiting to adopt, has taken her into their loving family. Proving once more, there is no such thing as an unwanted baby, just unwanted by some.

I sincerely pray, Mr. President, that this country has not grown completely stone-cold in its response to the sanctity of human life. But, that Americans would be moved to reevaluate their views on the troublesome issue of abortion when they hear of the baby girl in Arizona, who was just minutes away from having her life cruelly and painfully ended. More specifically, I pray one individual in particular will not for a third time, turn a deaf ear to the countless cries of the other unborn babies who may not be as fortunate to have their lives miraculously spared. I am of course referring to the President of the United States, who has signed the death sentence of the most innocent and helpless human beings imaginable by twice vetoing the underlying legislation.

President Clinton, and his cadre of extreme pro-abortion allies, have sought to explain the necessity of a procedure that allows a doctor to deliver a baby partially, feet-first from the womb, only to have his or her brains brutally removed.

However, well-known medical doctors, obstetricians and gynecologist have repeatedly rejected the assertion that a partial birth abortion is needed to protect the health of a woman in a late-term complicated pregnancy. Even the American Medical Association wrote a letter endorsing the Partial Birth Abortion Ban Act.

Mr. President, there is much to be said about the facts surrounding the number of partial-birth abortions performed annually and the reason they are performed—or at least the given, stated reason. It is hard to overlook the confession of Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, who admitted that he, himself, had deceived the American people on national television about the number and the nature of partial-birth abortions.

Mr. Fitzsimmons now estimates that up to 5,000 partial-birth abortions are conducted annually on healthy women carrying healthy babies. This is a far cry from the rhetoric espoused by Washington's pro-abortion groups who maintain that only 500 partial-birth abortion are performed every year, and only in extreme medical circumstances.

Mr. President, it is time for the Senate to once and for all settle this matter and pass the Partial-Birth Abortion Ban Act with a veto-proof vote and affirm the need to rid America of this

senseless, brutal form of killing. It is also important to note that the American people recognize the moral significance of this legislation. The majority of Americans agree that the government must out-law the partial birth abortion. A poll conducted by CNN/Time in January of this year, shows that 74 percent of Americans want the partial birth procedure banned. In fact, more than two dozen states have passed legislation similar to the Partial-Birth Abortion Ban Act.

Mr. President, regardless of the outcome, when the Senate votes on the question of whether to override President Clinton's veto of the Partial-Birth Abortion Ban Act, the impact will have grave consequences. For those who care deeply about the most innocent and helpless human life imaginable, failure to override the Clinton veto will border on calamitous.

The President of the United States should have to explain to the American people why he will not sign this ban over and over again. The spotlight will no longer shine on the much-proclaimed right to choose. Senators have been required to consider whether innocent, tiny baby-partially-born, just 3 inches from the protection of the law-deserves the right to live, and to love and to be loved. The baby is the center of debate in this matter.

I remember so vividly the day in January 1973, when the Supreme Court handed down the decision to legalize abortion. It was hard to find many people to speak up, certainly on the floor of the Senate, on behalf of unborn babies.

But it is time, once again, for Members of the Senate to stand up and be counted for or against the most helpless human beings imaginable, for or against the destruction of innocent human life in such a repugnant way. The Senate simply must pass the Partial Birth Abortion Ban Act, and I pray that it will do it by a margin of at least 67 votes in favor of the ban.

Mr. BURNS. Mr. President, this is the eve of the second Senate vote to override the President's veto of the Partial Abortion Ban Act. I am proud to be a co-sponsor of this bill, and I urge my colleagues to listen to their consciences and vote to override the veto and enact the ban.

Contrary to the assertions of some, this bill is not about a woman's right to choose to have an abortion. It's not about *Roe v. Wade*. Regardless of one's views on abortion in general, the partial birth abortion procedures should be abhorrent in a civilized society. It is a gruesome procedure, performed late in the term, which most physicians believe is never medically necessary. Most Americans agree it should be banned.

The Partial-Birth Abortion Ban has passed the Congress twice now with my support, first in 1996 and again last year. However, the President has twice vetoed this legislation against the will of the American people. I hope the Sen-

ate does the right thing by overriding the veto.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

Mr. ROBB. Mr. President, I yield myself such time as I may consume, chargeable to the Democratic manager.

The PRESIDING OFFICER (Mr. COATS). The Senator is recognized.

Mr. ROBB. Mr. President, I rise to urge colleagues who had the courage to oppose this legislation when it was considered by the Senate last year to demonstrate again that same courage by voting to sustain the President's veto of the so-called partial-birth abortion bill.

There is no question that this is a gut-wrenching issue. I know how passionately most of those feel who gather at the Capitol today and tomorrow to support a ban on this medical procedure and want us to override the President's veto. Those who have been telephoning, writing, and e-mailing us in such overwhelming numbers are equally emotional in expressing the depth of their feeling in opposition to abortion generally and to this procedure in particular.

This will be a very tough vote. But, as a matter of sound public policy, it is the right vote, and it is consistent with our Constitution as interpreted by the Supreme Court. If this legislation were to become law, the Congress would be telling physicians how to practice medicine, and Senators, with one exception, are not trained or certified to do that. In fact, the only Member of this body who is a physician made a comment during an interview on HMO reform recently about who should, and, more important, who should not be practicing medicine. He said that "[Congress] should not be practicing medicine. . . . Doctors should be practicing medicine. That's very clear."

Mr. President, it is important that everyone understand what is really at issue here. This debate is not about whether or when to terminate a pregnancy, because this bill will prevent not a single abortion; it is only about how to terminate a pregnancy. If it is otherwise lawful for a woman to terminate a pregnancy, this bill will only require that she and her doctor choose another medical procedure, even though her doctor may believe that procedure is less protective of her health.

In some States, it is legal for a woman to terminate a pregnancy in the third trimester, even when the life or health of the mother are not at issue. This bill does not address that situation at all.

It is appropriate to note, however, that some of us supported a tough ban on third-trimester abortions when this bill was considered last year, but our efforts were defeated by proponents of this bill in an effort to keep a very politically potent issue alive. But I ask those who want to keep abortions safe,

legal, and rare, as I do, and who are disturbed by this procedure, as I am, to stop for a moment and think: What specific abortion procedure would you prefer? Because this legislation will necessarily encourage the use of some other procedure that I believe, if we focus on the specific details of the alternative procedure, we would find equally disturbing.

In truth, this debate is really about how an abortion is performed and, more essentially, about who chooses. It is about whether Congress chooses or whether American women and their doctors choose. I believe American women and their doctors should choose. I am troubled that at the heart of this legislation is an incredible presumption, the presumption that this Congress is more concerned or better qualified to judge than expectant parents about what is best for their families.

In matters this personal, what is best for American families should be decided by American families based on their individual beliefs and faith. Most opponents of this ban have very strong convictions about when life begins. But ultimately, Mr. President, the very question of when life begins is also a matter of belief, a matter of faith, a matter between individuals and their God. Some denominations believe life begins at conception. Others believe life begins at birth. Still another believes life begins 120 days after conception, at the time the soul enters the fetus.

My point here is that we must be very careful when legislating matters of faith, ours or someone else's. And in the absence of knowing, rather than believing, when life begins, we are forced to draw some very difficult lines. That is what the Supreme Court did in *Roe v. Wade*. The Court said that in the first trimester, the decision to continue a pregnancy is solely within the discretion of the mother; in the second trimester, the Government may impose reasonable regulations designed to protect the health of the mother; and in the third trimester, the rights of the unborn child are recognized, with the rights of the child weighed against the rights of the mother to escape harm or death.

The Court has been clear in protecting a woman's life and health, both before and after viability, even striking down a method-of-choice case because it failed to require that maternal health be the physician's paramount consideration.

Proponents of this bill frequently cite the American Medical Association's support for this legislation, but not the College of Obstetricians and Gynecologists' opposition to it. In fact, the ACOG has told us "the intervention of legislative bodies into medical decisionmaking is inappropriate, ill-advised and dangerous."

Again, Mr. President, we are a Congress of legislators, not a Congress of physicians. There are places we should

not go and decisions we should not make. A respect for the judgment of physicians, a respect for the rights and needs of families in often excruciatingly difficult circumstances, and a respect for our Constitution ought to lead us to conclude that this bill should not pass.

Let me conclude by saying that I am pro-choice, I am not pro-abortion. I respect those who believe that abortions should never be performed, for religious or moral or personal reasons, and I believe that those individuals should follow their faith and choose not to have one. I particularly admire the convictions of those who choose life, even in the most difficult circumstances. But in choosing life, they choose. They choose life, just as families that make different and sometimes agonizing choices should also be allowed to choose.

I believe that, as legislators, we have an obligation to protect the rights of all those who live in our States. We all believe in freedom. We all understand that with freedom comes responsibility. Yet, at its heart, this legislation says to the women of America: We don't trust you with the freedom to choose; we don't trust you to do what we think is right; so we will take away your freedom to search your hearts, to follow your conscience, to rely on your faith and the judgment of your physicians and to make a very personal decision that affects your lives and your families.

That is why I will vote to sustain the President's veto, and I hope at least those who opposed the bill last year will do so again.

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

The PRESIDING OFFICER. Who yields time?

The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I will respond in one quick way to the comments of the Senator from Virginia. What has been sort of taken as a matter of record is that 80 to 90 percent of the partial-birth abortions performed in this country are on healthy women with healthy babies and that these are done for truly elective reasons. The idea that somehow we are holding on to this myth that we are doing this to save unhealthy women or because a baby is so severely deformed that they cannot live just isn't what the facts dictate. And that is from admissions from folks who perform the procedures, not our side coming up with these numbers.

I hope we can stick with the facts as to what we are really talking about.

I have no speakers on my side, so I will be happy to yield.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I want to talk about the facts and share with listeners a letter from Kate Hlava, from Oak Park, IL. These are her words:

My pregnancy had been complicated from the beginning, but doctors kept assuring us that everything was fine. We went in for a routine ultrasound at 20 weeks, and our world came crashing down. The results of that ultrasound were an expecting parent's worst nightmare. The baby had a serious heart condition known as tetralogy of fallot with absent pulmonary valve and overriding aorta.

We saw numerous experts across the Midwest, resulting in just as many prognoses. At that time, we were given the option of terminating the pregnancy. We chose not to because we so desperately wanted the baby. We hoped and prayed every day that the baby would make it to term. If he was born prematurely, he would not have been able to have the operation he needed to survive, a surgery he would have needed every few years as he grew.

Unfortunately, he was not strong enough to make it to term. He began showing signs of heart failure during the 27th week of my pregnancy. His liver was huge, his heart was enlarging, and I was retaining too much amniotic fluid. I had started to dilate and was going to go into labor soon. There was nothing the doctors in Illinois would do.

I couldn't leave my house. I was contemplating suicide. As my baby was dying, so were pieces of myself, and no one here would help me stop it. In Illinois, had my baby been born, even prematurely and with no real chance of survival, the doctors would have been legally obligated to try to keep him alive. They would have performed fruitless and painful procedures on him, making his few moments on this earth a living hell. I didn't want that for my son. No parent would.

It was then that my obstetrician suggested that we go to Kansas for a therapeutic abortion because of fetal anomaly. I have lived my entire life believing that abortion may be right for other people but that I never wanted to make the decision. I absolutely do not believe that a woman should be able to choose to terminate her pregnancy at 27 weeks because she is tired of being pregnant or because she was told the baby had brown eyes instead of blue.

I have met other women who have undergone a similar procedure. Not one did so because she didn't want the baby. These women, like myself, wanted their babies and still miss them, but the prospect of bringing an extremely sick baby into the world, who would suffer a short life full of painful medical procedures, felt inhumane. Medical science is sophisticated enough to diagnose such anomalies at the fifth month of pregnancy.

I am not sure where Bryne [The Editorial writer to whom Ms. Hlava is Responding] got his description of the procedure, but it is not the procedure I had. He described it as "all but the head of a living fetus is pulled from the mother, its brains sucked out, causing death and making it easier to remove the baby." This description is enraging. In my case, the baby was given an injection to stop his heart and then, through the insertion of laminaria, labor was induced.

I saw my son after delivery. He was beautiful, and his body and head were intact. The process was very humane and the baby was saved from any undue suffering.

I wish that I did not have to go to Kansas in January. I would give anything if my baby could have been born healthy. I think about him every day and miss him terribly. The one thing I am thankful for is that my son was able to die peaceful and painlessly.

KATE HLAVA, Oak Park.

That is a letter, from a real woman who had this procedure performed on

her this year, that just appeared in our local papers in Illinois.

Mr. President, President Clinton was right to veto this legislation. He was right because Congress, as a body, is not licensed to practice medicine. If the imposition of our judgment serves to condemn women to death or premature disability or cause the kind of harm that Kate Hlava talked about, then we will have clearly failed to live up to our responsibility to act in the best interests of the people who sent us here.

This debate is about whether or not women are going to have the ability to make decisions regarding their own reproductive health, whether they will retain their constitutional rights, and whether they will be able to make decisions regarding their own pregnancies. In the final analysis, it is ultimately about whether or not women are going to retain their current status as full citizens of these United States.

If the issue were creating sound public policy, then the Senate could vote to enact a bill that I cosponsored with Senators FEINSTEIN and BOXER which sought to ban late-term abortions except in situations in which the life or health of the mother is at risk—a requirement that has been set by the Supreme Court. The legislation we are debating today, however, contains no exception to protect the health of the mother, and an inadequate one with regard to protecting her life. I believe that even the sponsors of this legislation are fully aware that under the Supreme Court's decision in *Roe v. Wade* this bill, as presently written, is unconstitutional.

I believe the sponsors of the legislation would like to pretend that *Roe v. Wade* does not exist as the law of the country. That is the only way they can argue that this bill is a constitutional measure.

But let's look at the facts. In 1973, the Supreme Court of the United States recognized a woman's constitutional right to have an abortion prior to fetal viability. *Roe* also established this right is limited after viability at which point States may ban abortions as long as an exemption is provided for cases in which her life or health is at risk. These holdings were reaffirmed by the Court in its 1992 decision in *Planned Parenthood v. Casey*.

That is the constitutional standard that this legislation has to meet—and it clearly does not. The ban in this bill would apply throughout pregnancy. It ignores the Court's distinction between pre- and postviability. Moreover, this legislation fails to provide an exception in cases in which the banned procedure is necessary to preserve a woman's health. The Supreme Court has clearly stated that such a thing, such a measure is unconstitutional.

You do not have to be a constitutional scholar to figure that out, although, as professor Laurence Tribe has stated for the record, this legislation is plagued by "fatal constitutional

infirmities." That is also why, Mr. President, courts in 17 out of 18 cases—Federal and State courts; including a court in my home State of Illinois—have ruled that laws similar to this legislation are unconstitutional.

Mr. President, allow me a moment to look at some of the specifics of the bill. First, I would like to examine the ban's exception to save the life of the mother. Under this legislation, the banned procedure may be performed if a mother's life is endangered by a physical disorder, illness, or injury.

Something is missing here. What if the mother's life itself is endangered by the pregnancy? The legislation is silent with regard to whether an exception exists under those circumstances. If this bill were to become law, the result of a problematic pregnancy could very well be that protecting the life of the fetus—even one capable of living outside the womb on its own for only a few moments—protecting the life of that fetus could result in the death of its mother.

This element of the bill would be particularly devastating to those women who are poor and/or who live in rural areas and therefore might not have access to the top-quality tertiary kind of health care that can make a difference in a life-or-death situation. There is a difference between women who have access to that kind of quality health care and those many women who do not.

The simple fact is if the President's veto is overridden, women's lives will not be fully protected in our country. Women fought for generations for the full protections and guarantees contained in our Constitution. It has only been 78 years that we have been granted the right to even vote. With this legislation, we would turn back the clock—for it does nothing less than abridge women's hard-earned status as full citizens of this country.

Most of the people—and I hate to say this, Mr. President, but it is fact and it must be said—most of the people making the decision to vote on this issue cannot themselves ever experience the trauma of pregnancy or, for that matter, abortion. It is being made by people who themselves are not at risk with regard to this decision.

Moving beyond the issues surrounding the legislation's unsatisfactory lifesaving exception, I would like to address the bill's total lack of an exception for the health of the mother. In *Roe v. Wade*, the Court held that even after a fetus was viable, States could not place the interests and welfare of that fetus above those of the mother in preserving not just her life, but her health as well.

Under this bill, women's health would be a complete nonissue. Certain procedures developed in the years since *Roe v. Wade* to protect pregnant women's health would be unavailable to our physicians, our doctors. So this legislation would simply turn us back to the status of the law as it existed before

Roe v. Wade, a time when more than twice as many women died in childbirth as do today.

I want to give you some numbers here, Mr. President. I think it is important to put this in historical perspective as well. At the turn of the century, the death rate in childbirth for women—childbirth was much more dangerous than it is today—but the rate of mothers dying was 600 women per 100,000 live births. By 1970, medical advances had brought that rate down to 21.5 women for every 100,000 live births. That is the point at which *Roe v. Wade* was decided by the Supreme Court. Today, that number is less than 10 per 100,000 live births.

We expect that women are going to survive a pregnancy, complicated or not. That was not the expectation 100 years ago. It was not even the expectation 20 years ago. The fact of the matter is, that in addition to the medical advances, the ability of physicians to make these kinds of judgments, and women being able to choose, in consultation with their doctors, has served to protect the health as well as the lives of women.

Again, under this bill, women's health will be a complete nonissue. Procedures that have been developed since *Roe v. Wade* would be made unavailable. Thus, we would be turning back the clock. The Supreme Court said in abortion rulings that a woman has a constitutionally protected right to protect her own health at every stage of her pregnancy. Therefore, I submit that the bill's lack of an exception to preserve the health of the mother, like its incomplete lifesaving provision, would strip women of fundamental rights that are guaranteed to them under the Constitution.

Now, while the term partial-birth abortion is not a medical term—and I think that has been debated and everybody knows that—a procedure that certainly would be banned under this bill is a procedure known as intact dilation and extraction, or intact D&E. The American College of Obstetricians and Gynecologists, which represents over 90 percent of this Nation's OB/GYNs, opposes this bill. They said:

The potential exists that legislation prohibiting specific medical procedures, such as intact D&E, may outlaw techniques that are critical to the lives and health of American women.

They are absolutely correct. If this legislation were to become law, women's health would be jeopardized because doctors would be forced to use abortion procedures that may not be the best or the most appropriate for a particular woman.

As was eloquently stated by the speaker before me, Congress presumes to substitute its judgment for the judgment of physicians or doctors in regard to medical practice with this legislation. There can be no denying the fact that if the President's veto is overridden, we will be sending a message that women should be allowed to suffer

irreparable harm due to pregnancy even though their doctors have the ability to have prevented that harm.

In opposing this legislation, the American College of Obstetricians and Gynecologists also stated:

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

That is precisely right. Politicians should have nothing to do with this issue. We have no place in the examining room, operating room, or the delivery room. The question of how to deal with the pregnancy should rest squarely with the pregnant woman, her doctor, her family, her God, and not with Members of the U.S. Congress.

Some have argued that we have a responsibility to get involved and ban the procedure because it is not safe. In my view, it is physicians, not Senators, who should be the ones to make that decision. It is their job to do so, not ours.

Some have argued that the procedure to be banned is unnecessary, and yet the legislation contains an exception to save the life of the mother. That exception is there because of the undeniable fact that in some circumstances the procedure addressed by this legislation is necessary—sometimes to protect a woman's health, sometimes to protect her life. But we don't have to look at the bill to know that. Physicians have repeatedly stated this is the case.

What all of this tells me is that this is essentially a medical matter. Doctors must have the freedom to be able to decide which procedures to use in cases of a troubled pregnancy. To the extent that this Congress limits their freedom of action, their freedom of decision, we put the lives and health of women at risk. Consider what the effect of risking women's health in this way could mean for family life in the United States. The inability to address one's own reproductive health as a woman and her doctor believe is necessary, increases the possibility that a woman's reproductive system could be irreversibly damaged and she would be unable to bear children for the rest of her life. Other effects of such a pregnancy on her health may leave a woman unable to care for the children she is already raising.

All of this should make clear that this legislation poses a mortal threat to the ability of women to make choices about their own bodies and their own futures that all Americans ought to be able to make as essential and fundamental freedoms. Choosing to terminate a pregnancy is the most personal, private, and fundamental decision that a woman can make about her own health and her own life. Essentially, choice equates to freedom. The right to choose goes straight to the heart of the relationship of a female citizen and her doctor. Choice is a barometer of equality and a measure of fairness. I believe it is central to our liberty as women.

Now, having said that, I do not personally favor abortion as a method of birth control. My own religious beliefs hold life dear. I would prefer that every potential child have a chance to be born. But whether or not a child will be born must be its mother's decision—not Congress', not ours.

I fully support the choice of those women who carry their pregnancy to term regardless of the circumstances. Some women have died having made a decision that turned out to have been ill-advised under the circumstances. But I also respect the choice of those women who, under very difficult circumstances in which their life and health may be endangered by a pregnancy, choose not to go forward with it. So, while I would like to live in a society where abortions never happen, I also want to live in a society in which they are safe and they are legal.

I am going to put aside for a moment the abstract arguments in favor of sustaining this veto, and bring us back to the real-life situations. I read one letter. The last time I spoke on this issue I related the story of Vikki Stella who lives in Naperville, IL. Vikki has a story as heart-wrenching as the one I started with when I began my remarks on this issue.

I won't go through the details of Vikki's case right now because, frankly, I don't believe aggravating the emotions on this issue serves any good purpose at this point. We have people who have clear disagreement in regard to these situations. I am sure there are stories that can be told for the rest of this day. I, frankly, believe that while the stories illustrate, they should not be used to aggravate or to inflame passions on this issue.

I think it is important for us to remember that for every story of a woman who made the choice and it came out all right, there is another story of a woman who made the choice and it didn't come out all right. I think it is inappropriate for those of us in this room to force those women to die, or alternatively, to lose their reproductive health because of our intervention in their personal and private decisions.

I urge my colleagues to respect the decisions of these women, to respect their freedom as citizens, to respect their fundamental rights as citizens of this great country and give them the respect that goes with the notion that ultimately people want to do the right thing, ultimately people want to choose life, ultimately people want to do the right thing by their children, and that we in this Congress should allow those decisions to be made by women and their physicians in consultation with their family and their God.

I yield the floor.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from Pennsylvania. Mr. SANTORUM. Mr. President, would the Senator from Illinois yield for a couple of questions?

Ms. MOSELEY-BRAUN. Yes.

Mr. SANTORUM. First, I say to the Senator from Illinois that I appreciate her comments.

With respect to the first letter that the Senator read, I have a question. Did you say that the baby's heart, when the abortion was done, was injected with digoxin?

Ms. MOSELEY-BRAUN. The letter did not say what procedure was used.

Mr. SANTORUM. I thought that is what you said.

Ms. MOSELEY-BRAUN. I will share the letter with the Senator:

... was given an injection.

Mr. SANTORUM. Into the heart?

Ms. MOSELEY-BRAUN. "In my case, the baby was given an injection to stop his heart and then, through the insertion of laminaria, labor was induced."

Mr. SANTORUM. I suggest to the Senator from Illinois, if you read the definition of partial-birth abortion in the bill, partial-birth abortion is partially vaginally delivering a living fetus.

So if the baby in this case had an injection in the heart to stop the heart, the baby would have died at that point, and then the baby would be removed from the uterus, the baby would be dead, and therefore would not fall under the definition.

So in the case that you mentioned, she did not have a partial-birth abortion by definition. She couldn't, because the baby was dead at that point.

Ms. MOSELEY-BRAUN. I appreciate my colleague allowing for that exception in interpreting her situation in that way.

But I think, if anything, my colleague's argument goes exactly to the heart of my position in this matter, which is that we are forcing physicians to consult the language of this bill in making that kind of a judgment about what kind of procedure is appropriate for which woman in what circumstance.

If a physician has concerns, as you just said, by making an injection, killing the fetus in utero, and then delivering it, falling outside of the exception, well, if that is the case, then I appreciate my colleague making legislative history.

I think, if anything, it points to the fallacy of the nonphysicians in this Chamber making these kinds of medical judgments.

Mr. SANTORUM. I respond to that by saying I think it points out the cruelty, unnecessary cruelty, of doing the procedure that we are attempting to ban here.

What was done by the woman and the doctor in this case, I think, first off, the baby was not delivered, was not outside the mother, and then painfully and brutally killed. The baby was killed in utero by an injection. While I don't like abortion, period, I think that less shocks the conscience of our country than delivering a baby, as in the case of partial birth, most of them being healthy with healthy mothers. In this case, that is not the case. But

there is a real distinction here, and what I think your case points out is that there are viable, less-invasive, less-dangerous-to-the-mother alternatives available, even for cases where you have pregnancies that have gone awry, and that are less cruel and barbaric to the baby and less dangerous to the woman.

You talked about preserving maternal health. There is nothing more that I want to accomplish with this bill than preserving maternal health. But we have ample evidence, including from the AMA who testified, that this procedure is not healthy for women, and there are other procedures, such as the one the Senator outlined, that are safer for women who may elect to have an abortion—a legal abortion, which we don't outlaw with this bill. We just say that there are alternatives. The letter you read says, in fact, a viable and often-used alternative to a partial-birth abortion that would continue to be available, which is less risky to the mother, and that is less gruesome, barbaric, and horrific to the child.

Ms. MOSELEY-BRAUN. Again, I know we have irreconcilable differences of opinion about this, but I think it is important to remember that, as we legislate, we are legislating in broad strokes, not in specifics. The problem with this bill, as I have said in my debate, is that one size does not necessarily fit all. Frankly, talking about when her baby's heart stopped, that is not an exact definition of death, either. Those are my words, colloquial terms. We are not physicians. That is the problem. To hamstring and say to a physician that you can make decisions about this, except here, here, here and here will, by definition, cause them to, frankly, shy away from exercising their best medical judgment. We are not physicians and one size does not fit all. That is why I believe the President's veto of this bill was appropriate and correct.

I thank the Chair, and I yield the floor.

Mr. SANTORUM. Mr. President, I yield 3 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, once again, we are on the floor debating this very difficult issue. I commend the Senator from Pennsylvania for his perseverance in the realities of protecting the rights of women to control their own bodies and our obligation to protect the rights of those unborn. That is something that we will be discussing an extended period of time—probably without any degree of finality.

Nevertheless, Mr. President, we must vote yes or no on this. As a consequence, it is my fervent hope that enough votes will be cast to put an end to this tragic procedure. It is a tragic procedure in its very nature—partial-birth abortion.

The President defended his veto by stating that a partial-birth abortion is

a procedure that is medically necessary in certain "compelling cases" to protect the mother from "serious injury to her health."

Unfortunately, the President, in my opinion, was badly misinformed. According to reputable medical testimony and evidence given before this Congress by partial-birth abortion practitioners, partial-birth abortions are, one, more widespread than its defenders admit; two, used predominantly for elective purposes; and three, are never medically necessary to safeguard the mother's health. That is a pretty broad statement, but that is what we are told.

The former Surgeon General, C. Everett Koop, whom we all admired when he functioned in that position, stated he "believed that Mr. Clinton was misled by his medical advisers on what is fact and what is fiction in reference to late-term abortions."

Dr. Koop went on to say, "In no way can I twist my mind to see that the late-term abortion as described as . . . partial birth . . . is a medical necessity for the mother."

In a New York Times editorial, C. Everett Koop added, "Recent reports have concluded that a majority of partial-birth abortions are elective, involving a healthy woman and a normal fetus."

Other physicians agree: In a September 1996 Wall Street Journal editorial, three physicians who treat pregnant women declared that "Contrary to what abortion activists would have us believe, partial-birth abortion is never medically indicated to protect a woman's health or her fertility."

Mr. President, a partial-birth abortion is not only tragic, it is violent. The procedure is one in which four-fifths of the child is delivered before the process of killing the child begins. Sadly, throughout this procedure, the majority of babies are alive and able to move and may actually feel pain during this ordeal.

Dr. Pamela Smith, in a House hearing on the issue, succinctly stated why Congress must act:

The baby is literally inches from being declared a legal person by every State in the Union. The urgency and seriousness of these matters therefore require appropriate legislative action.

Mr. President, it's not easy for any here to discuss this topic, but unfortunately, there are stark and brutal realities of a partial-birth abortion.

I, and others who support this Act, sympathize with a woman who is in a difficult and extreme circumstance, but no circumstance can justify the killing of an infant who is four-fifths born. My good friend and colleague Senator MOYNIHAN, has said the practice of partial-birth abortions is "just too close to infanticide."

Mr. President, this procedure cannot be defended medically and cannot be defended morally. That is why I hope that this is the one issue that can unite pro-life and pro-choice individuals. I

strenuously urge my colleagues to vote in favor of overriding President Clinton's veto of the Partial-Birth Abortion Ban.

Mr. SANTORUM addressed the Chair. The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Senator from Alaska for his leadership and support. He has always come to the floor and spoken in strong support of this, and he has been a great and committed warrior in this cause. I thank him for that.

Mr. President, the Senator from California gave her remarks and she talked about women here in town who had horrible things happen to them during pregnancy, and that they were faced with very difficult decisions to make. I understand that those are difficult decisions. She said, in one case, that a baby was well along and was, unfortunately, hydrocephalic, which means water on the brain. They could not do a vaginal, natural delivery. For some reason, she did not want to do a C-section. There were no other options available to save this mother's health. Let me just read to you what a doctor said, a board-certified OB/GYN:

Sometimes in the case of hydrocephalus, in order to drain some of the fluid from the baby's head, a special long needle is used to allow a safe vaginal cephalic head-first delivery. In some cases, when the vaginal delivery is not possible, a doctor performs the Cesarean Section. But in no case is it necessary, or medically advisable, to partially deliver an infant through the vagina and then cruelly kill the infant.

Another piece of information that the Senator from California and the Senator from Illinois were talking about is that women would have their health and life at risk with having an abortion, going through with the pregnancy later in term. The facts are just the opposite. The Senator from Illinois said, "Let's not deal with anecdotes, let's deal with facts."

Here is the statistical evidence: At 21 weeks or more—that is the time in which partial-birth abortions are done because they begin to be done at 20 weeks gestation—the risk of death from abortion is 1 in 6,000 and exceeds the risk of maternal death from childbirth, which is 1 in 13,000. You are twice as likely to die if you have an abortion than if you deliver the baby after 21 weeks.

So this whole concept that these procedures are necessary—a procedure that is much more risky than others, much more dangerous than other procedures to the mother—aside from the fact that they are brutal procedures, this is a procedure that is much more risky to the mother; that just the medical evidence shows, the statistics show, that having an abortion—and there are other complications—termination of a pregnancy at more advanced—again, this is from an article, from the Journal of the American Medical Association, August 26, 1998, current edition, which talks about two obstetricians from Northwestern University. It says:

Termination of pregnancy at more advanced gestational ages may predispose to infertility from endometrial scarring or adhesion formation.

It is documented in one study that 23.1 percent of patients had induced midtrimester abortions. Nearly a quarter of those. Again, that is all midtrimester abortions. You hear the argument in this paper and by hundreds of physicians that partial-birth abortion is even more damaging to the cervix and to the future ability for a mother to carry a baby to term.

It continues on:

. . . and from pelvic infections, which occur in 2.8% to 25% of patients following midtrimester terminations. Dilation and evacuation procedures commonly used in induced midtrimester abortion may lead to cervical incompetence, which predisposes to an increased risk of subsequent spontaneous abortion, especially in the midtrimester. Cervical incompetence is more prevalent after midtrimester termination of pregnancy than first trimester termination because the cervix is dilated to a much greater degree.

And other physicians have gone on to say that because this is a procedure that takes 3 days to dilate—you hear so much about this may be necessary to save the life or health of the mother because of some emergency. This is a 3-day procedure. The cervix is dilated over a 3-day procedure, which makes the probability of an incompetent cervix, which means the ability to carry a baby in future pregnancies—it inhibits the ability to carry a baby in future pregnancies. It increases the risk of infection, because now for 3 days the cervix is open. And they are not in a hospital setting. They are out, either back at their home, or in a hotel, waiting for the procedure to be done. This is an unhealthy procedure for women.

If we are concerned about women's health, let's look at the fact about what this does to women's health. Frankly, it sounds to me, if you look at the evidence, there seems to be a sort of pushing aside of all of the non-anecdotal evidence about women's health and putting forth legal arguments about what the Supreme Court says. They are one of three branches of Government, folks.

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

Mr. SANTORUM. Mr. President, I ask unanimous consent to proceed for as long as I may consume under the remaining time left on the other side with the understanding that if anybody comes I will be happy to yield the floor at that point.

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

Mr. SANTORUM. Mr. President, they are focusing on legal arguments. The fact of the matter is we are one of three branches of Government. We can put forward things that we believe are constitutional. We can test what they are. I have seen a lot of decisions at the Supreme Court that have moved all over the place on this issue.

It seems very clear to me that we are not providing an undue burden. We are

here. We are eliminating one procedure that is not taught in any medical school, that has not been peer-reviewed, that has not been done in a hospital. It is done in clinics, and, in fact, was invented—created—not by an obstetrician.

Someone referred to earlier that Senator FRIST and C. Everett Koop are two people who testified against this procedure. They are not obstetricians. That is true. But the person who invented this procedure is not an obstetrician, either. He was a family practitioner who did abortions.

So the fact of the matter is that C. Everett Koop was a pediatric surgeon—someone who dealt with these little babies, who understands very well what damage is done to these little babies, and, in fact, what is available to save their lives. He knows very well about what he talks about, as does the Senator from Tennessee who has studied this issue thoroughly, and who has reviewed the literature thoroughly.

Let's walk away from the facts for a moment. Let's deal in the realm of what the other side seems to point to—the pictures.

The Senator from California suggested that there will be women here who have had this procedure who will be in the Halls looking at Members as they come in to vote tomorrow to insist that they keep this procedure legal. I only wish, I only wish, that the children who have fallen victim to this would have the opportunity to stand in that Hall and look at the Senators and plead with them to ban this procedure.

We may have one such person which I will talk about in a moment.

But I am going to talk to you first about a little boy—a little boy who was the first child of Whitney Goin. Whitney was 5 months pregnant with her first child. She went in for her first sonogram, and a large abdominal wall defect was detected. She described her condition after learning that there was a problem with the pregnancy:

My husband was unreachable so I sat alone, until my mother arrived, as the doctor described my baby as being severely deformed with a gigantic defect and most likely many other defects that he could not detect with their equipment. He went on to explain that babies with this large of a defect are often stillborn, live very shortly or could survive with extensive surgeries and treatments, depending on the presence of additional anomalies and complications after birth. The complications and associated problems that a surgical baby in this condition could suffer include but are not limited to: bladder exstrophy, imperforate anus, collapsed lungs, diseased liver, fatal infections, cardiovascular malformations, ect.

A perinatologist suggested she strongly consider having a partial-birth abortion. The doctor told her it may be something she "needs" to do. He described the procedure as one where the baby would be partially delivered except for the head, and the pregnancy would be terminated.

The Goins made a different choice.

If there is one thing that those who are listening to this debate—if there is

one thing that I hope for that results from this debate today, it is that people who will be watching this debate understand one thing: Whether we pass this override of the President's veto or not, please understand that there are other choices. There are other options—and to follow your heart, to follow your love for your child, and pursue those options, as Whitney Goin did.

The Goins chose to carry the baby to term. But complications related to a drop in the amniotic fluid created some concerns. Doctors voiced to the Goins that the baby's chances for survival would be greater outside the womb. So on October 26, 1995, Andrew Hewitt Goin was delivered by C-section. He was born with a condition in which the abdominal organs—stomach, liver, spleen, and small and large intestines—were outside the baby's body.

Here is the picture. In the incubator there is little Andrew Hewitt Goin.

Andrew had his first of several major operations 2 hours after he was born. Andrew's first months were not easy. He suffered from excruciating pain. He was on a respirator for 6 weeks. He needed tubes in his nose and throat. They continually suctioned his stomach and lungs. He needed eight blood transfusions. His mother recalled, "The enormous pressure of the organs being slowly placed into his body caused chronic lung disease for which he received extensive oxygen and steroid treatments." It broke his parents' hearts to see him suffering so badly.

Remember how we heard about someone who said that it would just break your heart to see your child suffer so badly. And I understand what she feels. But it breaks the hearts of thousands of parents every day to see their children suffer. But that is no reason, that is no reason, to kill your child. It is all the more reason to love that child, to draw that child near to you, and to accept that child as part of your family.

Andrew fought hard to live. And he did. This is Andrew Hewitt Goin at 3 years of age.

I would also note that Andrew will not be the only child for much longer. Next March, the Goins will welcome their second child into the family. Contrary to the misinformation about partial-birth abortion that has been so recklessly repeated, carrying Andrew to term did not affect Whitney's ability to have future children.

I think if you asked Andrew a few years from now whether he would prefer to have suffered that pain or be listening to music, or not be listening to that music, or not be alive today, the answer would be pretty clear.

Not all the stories turn out as happily as Andrew's. Not all of them do. But what does turn out happily in so many more instances is for parents to have the recognition that they have the capacity to love their children even when it is so hard to do that. Whether we override the President's veto is less important than that simple fact that I hope the people listening here will understand.

The next case I want to talk about is Christian Matthew McNaughton. For 4 years, Christian Matthew McNaughton fought the odds. An ultrasound revealed that he had hydrocephalus 30 weeks into pregnancy—again, the condition that has been described as one that is necessary to kill the child and perform a partial-birth abortion, the very case just cited in this Chamber as the reason for keeping this procedure legal.

After Dianne McNaughton learned of their son's dim prospects because of hydrocephaly, which can cause a variety of problems including, because of the water on the brain, the lack of brain development, Dianne asked for information on hydrocephaly. The counselor called doctors on staff and explained the request, and imagine Mrs. McNaughton's surprise when the counselor told her the hospital felt "it was better if she didn't know anything."

Still, Dianne and her husband, Mark, determined to educate themselves on what to expect from now and how to care for a child who had hydrocephaly. They continued to persevere. Life was very stressful for the McNaughtons after the diagnosis. Dianne suffered from nightmares. She never considered aborting the baby, but she worried about how her other two children would be affected by having a disabled child in the home. With the help of Dianne's brother, who happened to be a doctor, the McNaughtons found a specialist in Philadelphia to deliver their baby.

As we learned last year with the case of Donna Joy Watts, another child with hydrocephaly, the Watts family had to go to three hospitals in Maryland before they could find a physician team and a hospital that would deliver their child, because children with hydrocephaly are thought not to have the ability to live and are simply seen as abortion clients; they are seen as disposable.

They were advised again to end their pregnancy. They were warned that hydrocephaly is associated with spina bifida, Down's syndrome, and cerebral palsy. The baby might never achieve bowel or bladder control; he might not be able to move his arms or legs; he might be born blind; he might not even be able to swallow.

The McNaughtons were offered a partial-birth abortion. As a doctor explained it, the baby would be partially delivered, a sharp surgical instrument would be inserted into the base of the skull, and the brains would be extracted—of course, the doctor noted, "what there was of the brain." The rest of the body would then be delivered. This option was rejected.

As if the shock of being advised to undergo a gruesome partial-birth abortion was not enough, one doctor said the shunt surgery to relieve the pressure and the fluid in the baby's brain would not be performed if the child's "quality of life" prospects did not warrant it.

I again go back to the case of Donna Joy Watts just so you don't think this is one isolated case. For 3 days, Lori Watts had to plead with the doctors at the hospital to do a shunt operation to relieve the fluid pressure on the brain, and the doctors refused to because the doctors didn't think she had any chance of a quality life. Donna Joy Watts is here in Washington today. She is 5, almost 6, years of age.

Christian was born June 20, 1993. He was a beautiful, 8-pound baby boy. He did require a lot of medical care. A CAT scan revealed that he suffered a stroke in utero which caused excess fluid to build up in his brain. It also showed that the lower left quadrant of his brain was missing. Within a week of delivery, Christian had his first shunt surgery to drain the fluid. He had a follow-up procedure in 3 months.

As he grew, Christian exceeded everyone's expectations. A baby that doctors initially believed would be blind or could do virtually nothing was a little boy who walked, ran, talked, and sang. He played baseball and basketball. He attended preschool. His heroes were Cal Ripken, Jr., Batman, Spiderman, and the Backstreet Boys. He loved whales and dolphins. His favorite movie was "Angels in the Outfield." And he especially loved his baby sister who was 2 years younger than he. Christian McNaughton brought joy to all who were fortunate enough to know him.

In August of 1997, Christian began experiencing severe head pains. His shunt was malfunctioning. It had to be replaced. He went into surgery and experienced cardiac and respiratory distress in surgery, and he slipped into a coma. Christian fought hard to live but he never recovered. He died on August 8, 1997, at the age of 4.

But if you talked to his parents and you talked to those who knew him and you asked them whether they would have traded those 4 years for denying Christian's humanity by aborting him in such a brutal and inhumane way, they would have said no.

On the anniversary of his death, they entered these memorials to Christian in the Harrisburg Patriot News:

Christian, we love you. We miss you. We wish we could kiss you just one more time. Until we meet again. Your loving sisters, Meghan and Kelly.

The McNaughtons were worried about whether their children would accept a disabled child in the home. I think it is pretty clear that they accepted him very well, and he added to their lives, and he affirmed their lives.

A letter from the brother:

Dear Christian, I have a poem for you.
Blue jays are blue and I love you.
Robins are red and I miss you in bed.
Sparrows are black and I wish you were back.

I am sorry for the bad things I did to you. You are the best and only brother I ever had. Please watch over us and take care of us.

We wonder whether those children accepted this child. This is a sad story, but it is a joyous story. It is a story of acceptance and love.

One of the things that often confounds me about how people deal with this issue is that people who are in the tradition of the Democratic Party, who have sought for the past 100 years to be inclusive in our society, to welcome those who are on the outside of society, to fight for civil rights, to fight for rights for the disabled, are always fighting to include those who are most vulnerable, now turn their backs to the most vulnerable of all. How does that speak to a country where Hubert Humphrey once said: "We are judged by how we treat the least of us." Can you think of anything less in our human family than a little baby outside of the mother's womb, 3 inches from life, asking only to be given a chance; prone, with its back to the abortionist, helpless from what might happen next? Just like baby Phoenix, helpless. But, thank God, a moment, finally a moment of conscience hit him and he decided, no, I can't thrust those scissors into this child. And now this temporarily unwanted baby is so loved and wanted somewhere in Texas, by parents who cherish that little girl every day.

The question is, in this debate—you can talk about legal axioms, you can talk about medical theories, you can talk about ethics, you can talk about all sorts of things. The question here is how inclusive are we going to be in our family? As I see the empty seats on this side of the aisle, and I look for the men and women who have given great talks on the floor of the U.S. Senate about the need for rights for the downtrodden: Find me a more helpless creature in our human family, a more downtrodden, helpless, beautiful creation of God than a little baby, his back to the doctor who is going to kill him or her, waiting for the pain to stop.

Mr. President, do we have any time?

The PRESIDING OFFICER. The time of the Senator has expired. All time on debate has expired.

Mr. SANTORUM. Mr. President, I ask unanimous consent the Senator from Kansas be recognized for 4 minutes.

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

Mr. BROWNBACK. Mr. President, I thank the Senator from Pennsylvania for his work and his effort in this area. I want to talk in the brief period of time that I have about the soul of a nation, the soul of our Nation and what happens to it when, once pierced with consciousness that this procedure goes on, allows it to continue to go on.

Government-sanctioned brutality presently exists in America in the form of partial-birth abortion. We know that now. The cold mechanics of partial-birth abortion involve the near delivery of a late-term infant to facilitate the extraction of the child's brains. This procedure will be performed several times this month throughout our Nation, and we know that, and we know that we sanction that as a State-sanctioned form of death.

I speak today of deep concern for the soul of our Nation which is permitting these defiling acts to continue with our consent. Why do otherwise decent nations permit their young to be ripped apart? Why do they permit the shameless repeated acts of cruelty against their weakest and most vulnerable? People of conscience must intervene now.

I draw attention of the people here in this body to the words that adorn the doorways as we walk in. As you preside, you stare up at the words, "In God we trust." As you look across the walkway, "He, God, has smiled on our undertakings." Above this doorway we have "A new order for the ages." All thoughts of our founders; all thoughts, I think, they had towards the newborn child, towards any nature of life in this Nation, that, "In God we trust."

With a nation of such a conscience and such a soul, would it tolerate such a procedure once it knows that this procedure exists? I think not. I urge my colleagues, as we look at this, as we consider the soul of our Nation, would we, should we, can we continue to tolerate this outrageous form of death? History teaches us that tolerated acts of cruelty both brand a nation for infamy and sear its conscience. Tolerance is complicity, and nations will eventually be judged for their failure to stop the course of unbridled cruelty.

America is distinguished around the world basically because of one phrase: America is distinguished for her goodness. I don't think we can excuse this act. No adequate excuse exists for the death of an innocent child by this horrific surgical procedure. This is a human rights abuse of the basest form, which, if condoned, will singe the soul of our Nation now that we know it exists.

We must force ourselves to look squarely into the face of this brutality, regardless of the many sophisticated arguments. I close with a quote from Edward R. Murrow on this point. He would say: "There are not two sides to every story." There are not two sides to this story. Partial-birth abortion must be banned.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MAKING CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 1999, AND FOR OTHER PURPOSES

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of House Joint Resolution 128, the continuing resolution.