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Senate

The Senate met at 8:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, our source of spiritual, intellectual, and physical strength, You have replenished our wells of energy and given us a fresh new day in which we have the privilege of serving You.

Lord, grant the Senators more than the courage of their convictions. Rather, give them convictions that arise from Your gift of courage. May this indomitable courage be rooted in profound times of listening to You that result in a relentless commitment to truth that is expressed in convictions that cannot be compromised.

We trust You to guide them so that all they say and decide is in keeping with Your will. We ask for Your wisdom in the crucial matter to be voted on today. Lord, take command of their minds and their thinking, speak Your truth through their speaking and then give them clarity for hard choices. In the name of our Lord and Savior. Amen

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator MCCAIN, is recognized.

SCHEDULE

Mr. MCCAIN. Mr. President, for the information of all Members, this morning the Senate will begin 1 hour of debate on the veto message to accompany the partial-birth abortion ban legislation. Upon the conclusion of debate time, at approximately 9:30 a.m., the Senate will vote on the question of passing the bill, the objections of the President to the contrary notwithstanding. Following that vote, the Senate may turn to the consideration of any legislative or executive items cleared for action. The leader would like to remind all Members that there will be no rollcall votes on Monday in observance of the Jewish holiday, Rosh Hashanah. Also, Members should be aware that a rollcall vote has been scheduled for Tuesday, September 22, at 2:20 p.m., on the Kennedy minimum wage amendment.

PARTIAL-BIRTH ABORTION BAN ACT OF 1997—VETO

The PRESIDING OFFICER (Mr. GREGG). Under the previous order, the Senate will now resume consideration of the veto message on H.R. 1122, which the clerk will report.

The legislative clerk read as follows:

Veto message on H.R. 1122, to amend title 18, to ban partial-birth abortions.

The Senate resumed reconsideration of the bill.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I come to the Senate floor today to speak on behalf of millions of defenseless unborn children who cannot speak for themselves. If they could speak, I know that they would ask for a chance to live. Tragically, too many unborn children are not given a choice and they lose their chance at life to abortion.

We are not here today to debate the legality of abortion. We are here to discuss ending partial-birth abortion—a particularly gruesome procedure that would be outlawed today but for the President's veto last year of a national ban.

Banning partial-birth abortions goes far beyond traditional pro-life or pro-choice views. No matter what your personal opinion regarding the legalization of abortion, we should all be appalled and outraged by the practice of partial-birth abortions. This procedure is inhumane and extremely brutal, entailing the partial delivery of a healthy baby who is then killed by having its vibrant brain stabbed and suctioned out of the skull.

This is simply barbaric.

I have heard from thousands of people in my home State of Arizona who are outraged that this brutal procedure is permitted. Many of them have differing views regarding the legalization of abortion, but they all concur that partial-birth abortions are particularly cruel and must be stopped.

Arizonans were recently reminded about the devastating effects for unborn children of partial-birth abortions. On June 30 of this year, a physician in Phoenix attempted to perform a partial-birth abortion. Dr. John Biskind of the A–Z Women's Center was aborting what he believed was a 23-week-old baby.

After beginning the procedure, Dr. Biskind realized that the child was actually a 37-week, 6-pound baby girl. He immediately stopped the abortion procedure and delivered the baby girl. She suffered a fractured skull and facial lacerations, but thankfully is now recovering with a loving family who adopted her.

This deplorable incident should never have occurred. It could have been prevented, sparing this little girl, now known as Baby Phoenix, the physical and emotional trauma of nearly being killed at birth.

If a national ban on partial-birth abortion had been the law, this Arizona doctor would not have been performing such a horrific procedure on a viable 23-week-old baby—let alone 37-week-old Baby Phoenix.

Clearly, this near-tragedy illustrates the urgent need for a ban on partial-birth abortions in our Nation. We simply cannot allow this heinous procedure to continue taking the lives of viable, healthy babies.

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

Some would argue that abortion, including partial-birth abortion, is a matter of choice—a woman's choice. Respectfully, I must disagree.

What about the choice of the unborn baby? Why does a defenseless, innocent child not have a choice in their own destiny?

Some may answer that the unborn baby is merely a fetus and is not a baby until he or she leaves the mother's womb. Again, I disagree, particularly, in the case of infants who are killed by partial-birth abortions.

Most partial-birth abortions occur on babies who are between 20 and 24 weeks old. Viability, ''the capacity for meaningful life outside the womb, albeit with artificial aid'' as defined by the United States Supreme Court, is considered by the medical community to begin at 20 weeks for an unborn baby. Most, if not all, of the babies who are aborted by the partial-birth procedure could be delivered and live. Instead, they are partially delivered and then murdered. These children are never given a choice or a chance to live.

Today, we have to make a choice. We can choose to protect our Nation's most valuable resource—our children. We can choose to give a tomorrow full of endless possibilities to unborn children throughout our Nation. We can choose to save thousands from being murdered at the hands of abortionists.

Or we can choose to allow this barbaric procedure to continue, permitting doctors to kill more innocent, unborn children.

We each have a choice, a choice which unborn children are denied. We must make the right choice when we vote today, the choice to save thousands of unborn children by banning partial-birth abortions in this country.

Mr. President, I yield the floor.

Mr. SANTORUM. Mr. President, I thank the Senator from Arizona for his terrific statement.

I suggest the absence of a quorum and ask unanimous consent that the time be taken off the other side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. INHOFE. Mr. President, I ask unanimous consent that I be given 2 minutes off the time of the other side.

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

Mr. INHOFE. Mr. President, I have been listening, as I have in years past, to the debate, to the eloquence of those dedicated individuals who feel so strongly about this issue, particularly the leadership of the Senator from Pennsylvania and the things he has said, the things he has stood for, and the Senator from New Hampshire, Senator SMITH, and then Dr. FRIST.

I hope people heard what Dr. FRIST said because he really is the only one who truly is a professional, who truly understands what this is all about, who can articulate the pain that a small baby during the birth process feels when he is put to death in the very cruel way that this takes place.

As he described that procedure—the procedure of going under the cranium with scissors and opening it up with no anesthesia and the baby feeling that pain—something occurred to me: that those individuals who want to keep that procedure alive and keep it legal are the same ones who, if you did that to a dog, would be picketing your office.

I think somehow we have developed, in a perverted way, into a society, many of whom put a greater value on the lives of critters than on human life. I hope we change that today. I yield the floor.

Mr. SANTORUM. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time run off the time of the opposition.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DEWINE. Mr. President, I ask unanimous consent to speak and have my time allocated to the opposition.

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

Mr. DEWINE. Mr. President, in approximately 40 minutes, this Senate is going to cast a historic vote. We are going to have the opportunity to, again, define who we are as a people.

I urge my colleagues, as I have in the past, to vote to override the President's veto. I ask unanimous consent that a letter which I have be printed into the RECORD. This is a letter dated May 8, 1997. This is a letter that is signed by a number of law professors.

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

DEAR SENATOR: We write to you as law professors in support of the Partial-Birth Abortion Ban Act, S.6. We do not write as partisans. We are both Democrats and Republicans, and we are of different minds on various aspects of the abortion issue. We are concerned, however, that baseless legal arguments are being offered to oppose a ban on partial-birth abortions, and we are unanimous in concluding that such a ban is constitutional.

We have learned that some Senators are concerned about claims that a ban on second trimester partial-birth abortions, or a ban on third trimester procedures without a ''health'' exception, would be unconstitutional under *Roe* v. *Wade* and later abortion decisions.

The destruction of human beings who are partially born is, in our judgment, entirely outside the legal framework established in *Roe* v. *Wade* and *Planned Parenthood* v. *Casey*. No Supreme Court decision, including these, ever addressed the constitutionality of forbidding the killing of partially born children. In fact, *Roe* noted explicitly that it did not decide the constitutionality of that part of the Texas law which forbade—and still forbids—killing a child in the process of delivery.[1]

Even should a court in the future decide that a law banning the partial-birth procedures is to be evaluated within the *Roe/Casey* ''abortion'' framework, we believe such a ban would survive legal scrutiny thereunder. The partial-birth procedure entails mechanical cervical dilation, forcing a breech delivery, and exposing a mother to severe bleeding from exposure to shards of her child's crushed skull. Before viability, an abortion restriction is unconstitutional only if it creates an ''undue burden'' on the judicially established right to have an abortion. A targeted ban of a single, maternal-health-endangering procedure cannot constitute such a burden.

To the extent of its constitutionally delegated authority, Congress may also ban all forms of abortion after viability, subject to the health and life interests of the mother. Under the most recent Supreme Court decision concerning abortion, *Planned Parenthood* v. *Casey*, there is no reason to assume that the Supreme Court would interpret a post-viability health exception to require the government to tolerate a procedure which gives zero weight to the life of a partially-born child and which itself poses severe maternal health risks. Furthermore, according to published medical testimony, including that of former Surgeon General C. Everett Koop: ''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.'' Even the American College of Obstetricians and Gynecologists—which opposes the bill—acknowledges that partial-birth abortion is never the ''only option to save the life or preserve the health of the woman.'' Banning this procedure does not compromise a mother's health interests. It protects those interests.

In short, while individuals may have ideological or political reasons to oppose banning the partial-birth procedure, those objections should not, in good conscience, be disguised as legal or constitutional in nature.

Respectfully submitted,

Rev. Robert J. Araujo, S.J., Gonzaga Law School; Thomas F. Bergin, University of Virginia School of Law; G. Robert Blakey, University of Notre Dame Law School; Gerard V. Bradley, University of Notre Dame Law School; Jay Bybee, Louisiana State University Law Center; Steven Calabresi, Northwestern University School of Law; Paolo G. Carozza, University of Notre Dame Law School; Carol Chase, Pepperdine University School of Law; Robert Cochran, Pepperdine University School of Law; Teresa Collett, South Texas College of Law; John E. Coons, University of California, Berkeley; Byron Cooper, Associate Dean, University of Detroit Mercy School of Law; Richard Cupp,

[1] 410 U.S. 113, fn. 1 (1973), citing Art. 1195, of Title 15, Chapter 9. (Presently, this law is codified at Vernon's Ann. Texas Civ. St. Art. 4512.5.) A similar ban remains in effect in Louisiana (L.A. Revised Statutes 14.87.1). The Texas and Louisiana statutes are also consistent with existing case law in California. See *People* v. *Chavez*, 77 Cal. App. 2d 621 (1947) (''It should equally be held that a viable child in the process of being born is a human being within the meaning of the homicide statutes, whether or not the process has been fully completed.''); accord *Keeler* v. *Superior Court*, 2 Cal. 3d 619 (1970).

Pepperdine University School of Law; Joseph Daoust, S.J., University of Detroit Mercy School of Law; Paul R. Dean, Georgetown University Law Center; Robert A. Destro, The Catholic University of America; and David K. DeWolf, Gonzaga Law School.

Bernard Dobranski, Dean, The Catholic University of America; Joseph Falvey, Jr., Assistant Dean, University of Detroit Mercy School of Law; Lois Fielding, University of Detroit Mercy School of Law; David Forte, Cleveland-Marshall College of Law, Cleveland State University; Steven P. Frankino, Dean, Villanova University School of Law; Edward McGlynn Gaffney, Jr., Dean, Valparaiso University School of Law; George E. Garvey, Associate Dean, The Catholic University of America; John H. Garvey, University of Notre Dame Law School; Mary Ann Glendon, Harvard University Law School; James Gordley, University of California, Berkeley; Richard Alan Gordon, Georgetown University Law Center; Alan Gunn, University of Notre Dame Law School; Jimmy Gurule, University of Notre Dame Law School; Jacqueline Nolan-Haley, Fordham University School of Law; Laura Hirschfeld, University of Detroit Mercy School of Law; and Harry Hutchison, University of Detroit Mercy School of Law.

Phillip E. Johnson, University of California, Berkeley; Patrick Keenan, University of Detroit Mercy School of Law; William K. Kelley, University of Notre Dame Law School; Douglas W. Kmiec, University of Notre Dame Law School; David Thomas Link, Dean, University of Notre Dame Law School; Leon Lysaght, University of Detroit Mercy School of Law; Raymond B. Marcin, The Catholic University of America; Michael W. McConnell, University of Utah College of Law; Mollie Murphy, University of Detroit Mercy School of Law; Richard Myers, University of Detroit Mercy School of Law; Charles Nelson, Pepperdine University School of Law; Leonard J. Nelson, Associate Dean, Cumberland School of Law, Samford University; Michael F. Noone, The Catholic University of America; Gregory Ogden, Pepperdine University School of Law; John J. Potts, Valparaiso University School of Law; Stephen Presser, Northwestern University School of Law; and Charles E. Rice, University of Notre Dame Law School.

Robert E. Rodes, Jr., University of Notre Dame Law School; Victor Rosenblum, Northwestern University School of Law; Stephen Safranek, University of Detroit Mercy School of Law; Mark Scarberry, Pepperdine University School of Law; Elizabeth R. Schiltz, University of Notre Dame Law School; Patrick J. Schiltz, University of Notre Dame Law School; Thomas L. Shaffer, University of Notre Dame Law School; Michael E. Smith, University of California, Berkeley; David Smolin, Cumberland School of Law, Samford University; Richard Stith, Valparaiso University School of Law; William J. Wagner, The Catholic University of America; Lynn D. Wardle, Brigham Young University; and Fr. Reginald Whitt, O.P., University of Notre Dame School of Law.

Mr. DEWINE. Mr. President, this letter addresses a lot of the concerns that were expressed on the floor yesterday about the constitutionality of this piece of legislation. I call Members' attention to portions of this letter. They will have an opportunity to, of course, read the entire letter. This is what, in part, the letter says:

We write to you as law professors in support of the Partial-Birth Abortion Ban. . . . We do not write as partisans. We are both Democrats and Republicans, and we are of different minds on various aspects of the abortion issue. We are concerned, however, that baseless legal arguments are being offered to oppose a ban on partial-birth abortions, and we are unanimous in concluding that such a ban is constitutional.

The destruction of human beings who are partially born is, in our judgment, entirely outside the legal framework established in Roe v. Wade and Planned Parenthood v. Casey. No Supreme Court decision, including these, ever addressed the constitutionality of forbidding the killing of partially born children. In fact, Roe noted explicitly that it did not decide the constitutionality of that part of the Texas law which forbade —and still forbids—killing a child in the process of delivery.

Even should a court in the future decide a law banning the partial-birth procedure is to be evaluated within the Roe/Casey ''abortion'' framework, we believe such a ban would survive legal scrutiny thereunder. The partial-birth procedure entails mechanical cervical dilation, forcing a breech delivery, and exposing a mother to severe bleeding from exposure to shards of her child's crushed skull. Before viability, an abortion restriction is unconstitutional only if it creates an ''undue burden'' on the judicially established right to have an abortion. A targeted ban of single, maternal-health-endangering procedure cannot constitute such a burden.

The letter goes on to quote C. Everett Koop, who has been quoted on this floor before on this issue.

Partial-birth abortion is never medically necessary to protect the mother's health or future fertility. On the contrary, this procedure could impose a significant threat to both her immediate health and future fertility.

It is abundantly clear that this law is constitutional. I again ask my colleagues to vote in favor of the override.

I first had the opportunity to listen to this debate several years ago when a nurse from my home State of Ohio, nurse Brenda Shafer, testified before the Senate Judiciary Committee. She is the first person, really, to draw public attention to this procedure. She was pro-choice. She was called in on a temporary basis to go to Dr. Haskell's abortion clinic in Dayton, OH. What she saw and what she described, I think, has shocked the Nation. This pro-choice nurse became a person adamantly opposed to partial-birth abortion. She described it in detail, as has been described on this floor many, many times. It is something that no civilized society should tolerate.

This vote that we are going to cast in a moment is about who we are as a people, what we tolerate, and what we do not tolerate. It is time for this country, for the Senate, and this Congress, to say this barbaric procedure we simply will no longer tolerate.

I yield the floor.

Mr. SANTORUM. Mr. President, I yield 3 minutes from our time to the champion and initial author of this bill in the Senate, Senator BOB SMITH of New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I thank my colleague, Senator SANTORUM, for his leadership on this issue.

I pick up on what Senator DEWINE just said about Nurse Shafer. Thirteen years she worked in an abortion clinic. She testified before the Judiciary Committee, and I think it might be interesting to read her statement about what she saw, word for word. I don't think anybody has done that. Listen to Nurse Shafer, who witnessed this partial-birth abortion.

I stood at the doctor's side and I watched him perform a partial-birth abortion on a woman who was 6 months pregnant. The baby's heart beat was clearly visible on the ultrasound screen. The doctor delivered the baby's legs and arms. Everything but his little head. The baby's body was moving. His little fingers were clasped together. He was kicking his feet. The doctor took a pair of scissors and inserted them into the back of the baby's head and the baby's arms jerked out in a flinch, a startled reaction like a baby does when he thinks that he might fall. Then the doctor opened the scissors up. Then he stuck a high-powered suction tube into the hole and sucked the baby's brains out. Now the baby was completely limp. I never went back to the clinic, but I'm still haunted by the face of that little boy. It was the most perfect angelic face I have ever seen.

My colleagues, if we continue to tolerate this, somehow, some way, some day, we are going to be judged. This is wrong. This is immoral. When we see and hear the things that are going on in our country today and read and hear the polls, maybe we shouldn't be surprised. This is the standard that we set for our children? What a disgraceful thing to do, not to override this veto.

The President's own Southern Baptist religion, past and current president of the Southern Baptist Convention, wrote a letter to the President of the United States pleading with him to change his position, telling him why they believe he was wrong, that there is no medical reason to improve the health or to save the life of the mother. There is no medical reason to perform this—180 doctors in a letter I referred to yesterday on the floor said so; 4 doctor at a press conference yesterday said so; so did Dr. Koop, one of the most respected people ever to serve in government, former Surgeon General.

Yet here we are. This is a terrible thing. I just hope and pray that my colleagues in the next hour or the next half hour will see the light, if you will, and change their position so we can win this vote.

Mr. SANTORUM. I thank the Senator from New Hampshire and thank him for his tremendous leadership on this issue.

I yield 10 minutes to the Senator from Indiana, who is leaving this Chamber after many years of distinguished service. He has been the champion here for life, Senator COATS from Indiana.

Mr. COATS. Mr. President, let me first say thanks to my colleagues from Pennsylvania, New Hampshire and Ohio, and others who have so persuasively and so relentlessly pursued the truth of this issue and brought us to this point where we have to have an honest, open debate and a vote about

where we stand on what I believe is the most important issue facing America.

We do have fundamental disagreement over the subject of abortion. Strong convictions have often led to strident rhetoric. Sometimes labels and name-calling are too easily substituted for persuasion. Education is a means of winning the hearts and minds of our fellow citizens. ''Extremism'' and ''fanaticism'' have been labels that have been used and attached to those with deeply held beliefs.

Yet as civil as our discourse needs to be, sometimes there are issues that are of such weight and such gravity that strong rhetoric is necessary, when the truth—raw and exposed—merits passion and rhetoric. This is such a case. There really is only one issue at stake here. That issue is that what we are confronting is an affront to humanity. It is an affront to justice to end the life of a kicking infant as it emerges from its mother's womb. That is at issue here. The legislation that the President has vetoed is not the expression of extremism. The expression of extremism is the procedure we are debating—extreme in its violence and disregard for human life and dignity. We have heard a description of that. I was going to give that, but I will defer on the description because it has been given by my colleague from New Hampshire. The opposition has used arguments to defend this procedure that I believe are evasive and misrepresent the truth.

It is said that the procedure is rare and, therefore, we ought not to be discussing it. Despite the fact that the procedure is not rare and affects thousands of individuals—children—would we be passing on the debate, the fundamental issue of life itself, if we were talking about the Holocaust because somebody was saying we are not talking about very many people? It is just a few hundred or a few thousand. Does that make the debate or issue any different?

The issue is not whether it is rare; the issue is, as a matter of undeniable, unalienable human rights, it should not only be rare, this procedure should be nonexistent.

It is said that the child feels nothing. We now know that the child feels pain, that a mother's anesthesia does not eliminate her child's pain. We know that a child killed in this procedure feels exactly what a preemie would feel if a doctor performed a similar procedure in the nursery.

It is said that the procedure is done to save the life of the mother. We know that is not true. We also know that this procedure has significant risks for the mother. In fact, the primary purpose of this procedure is for the convenience of the abortionist.

It is said that the partial-birth abortion is part of the mainstream of medicine. But we know that the AMA Council on Legislation stated that this practice is not a ''recognized medical technique,'' and that this ''procedure is basically repulsive.'' Those are not the words of this Senator. Those are not the words of those of us in the political arena. Those are the words of the AMA Council.

So when we strip away all the arguments, we are left with an uncomfortable truth: This procedure is not the practice of medicine; it is an act of violence, an almost unspeakable act of violence—the taking of an innocent life, a life fully capable of being self-sustaining.

Mr. President, it is hard to clearly confront the reality of this matter because clarity requires such anguish. But that reality is simple and terrible. The reality is that the death of a child should haunt us and shame us as a society. It should cause us to grieve. But more than that, it should cause us to turn our backs on this practice, as my colleague from New York has said, which borders on infanticide, and which I believe is infanticide.

It is hard for me to believe that such a statement, such a debate, should be necessary. It is hard for me to understand how a moral commitment so basic could ever be debated on the floor of the U.S. Senate. Has our compassion grown so selective? Has our moral sense grown so dull? Have our hearts grown so hard?

This is not just another skirmish in the running debate between left and right. It raises the most basic of questions asked in any democracy: Who is my neighbor? Who is my brother? Who do I define as inferior and cast beyond sympathy and protection? Who do I embrace and value, in both law and love?

This is not a matter of ideology; it is a matter of humanity. This is not just a matter of our Nation's politics; it is a matter of our Nation's soul. It is a matter of how we will be judged as a nation, not only by history, but by Almighty God.

We have disagreed in this body in matters of social policy. Yet, surely, we can come together and agree on this one thing—that an unborn child should not be subjected to violence and death. I believe personally that that protection should be applied and extended to all of the unborn. That is a debate that we must have, but that is not the debate today. The debate today is over this particular procedure. At the very least, regardless of our view and position of how far this ought to extend, to all of humanity and all of creation, can we not at least today reject the extinction of a child's life just seconds before it is born and fully leaves the womb? Can we not at least refuse to cross this line?

Mr. President, the vote today is an opportunity for us to take a different path. It is an opportunity for Republicans and Democrats, liberals and conservatives, and it is an opportunity even for those who support abortion and take the pro-choice position, to override the President's veto. We can begin today to define some common ground. We can begin today by saying every child in America will be embraced by our community, that no one is expendable, no one will be turned away. We can begin today to define a basic value, a basic common ground, because if we pass this legislation over the President's objection, it will mean that we will, once again, in this great experiment in democracy, extend the circle of protection and expand it one more time. This is the test of a just civilization, and this is the standard by which we, individually and as a nation, will be tested as well.

If we defeat this measure, we will say something about this great American experiment and the limits that we place on its promise. Our founders raised the standard for the ages that all men are created equal and endowed by their Creator with certain unalienable rights. It is true that the laws they lived by, even the Constitution they wrote, stood in tension with that transcendent ideal. But the standard remained and has sustained the hopes of the weak throughout the history of this country.

The history of our Nation is a story of how the hopes of the weak have been advanced, our progress toward the ideals of the declaration has been bought with blood, demanded with eloquence, and written into our law in some historic debates in this Chamber and elsewhere.

Mr. President, one by one, the powerless have been embraced and the American family has been extended—to African Americans, women, the disabled. Each have redeemed a promissory note, given at our founding. Each victory of compassion and justice has been a landmark of liberty. Over time, justice has prevailed.

Abraham Lincoln wrote of our founders:

> This was their majestic interpretation of the economy of the universe. This was their lofty, and wise, and noble understanding of the justice of the Creator to his creatures. . . . In their enlightened belief, nothing stamped with the divine image and likeness was sent into the world to be trodden on. . . . They grasped not only the whole race of man then living, but they reached forward and seized upon the farthest posterity. They erected a beacon to guide their children, and their children, and the countless myriads who would inhabit the Earth in other ages.

Does that beacon still shine throughout the world? Does the light of that path of nations, where freedom is new, shine? And what is the example that we set?

It is my deepest concern, my nightmare fear that we will extinguish that light, that we will halt the progress of America's promise, and we will cast one class of the powerless into the darkness beyond our protection.

Lincoln talked of America as a nation dedicated to a proposition embodied in the declaration, but can the weakest member of the human family find a humble share in the promise of our founding? Will we say, after centuries of struggle, that the gate of

mercy is now slammed shut, locked and the key thrown away?

These are the questions that put the American experiment to the test. Let us affirm the words of the Great Emancipator that nothing, nothing stamped with a divine image and likeness is denied the right to participate in this noble experiment called democracy. Let us not fail in this test that is now put before us.

Mr. President, it appears my time has expired. I thank, again, the Senator from Pennsylvania for his outstanding leadership on this issue.

Mr. SANTORUM. I thank the Senator from Indiana.

Mr. LEVIN. Mr. President, I will vote to sustain the President's veto.

The American College of Obstetricians and Gynecologists has continually expressed deep concern about legislation prohibiting the intact D&X procedure, which is the technical name for the late term birth abortion procedure. They have urged congress not to pass legislation criminalizing this procedure and not to supersede the medical judgment of trained physicians. They have stated, ''The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.''

The Supreme Court has ruled that a ban on all abortions after viability is permitted under the Constitution providing the ban contains an exception to protect the life and health of the woman.

The bill vetoed by the President does not meet that test because the exception it provides for does not include language relative to a woman's health.

Principally for both those reasons, I voted against this legislation and I continue to oppose it. Instead, I support an alternative which would ban all post-viability abortions, regardless of the procedure used, except in cases where it is necessary to protect a woman's life or health.

Mr. HATCH. Mr. President, we have all heard the shocking accounts of teenaged girls giving birth and then dumping their newborns into trash cans. One young woman from Delaware gave birth in a bathroom stall during her prom, and then proceeded to strangle and suffocate her child, leaving his body in the garbage. Cases in Maryland and Arkansas tell similar stories.

Criminal charges were recently brought against a young woman in my home state of Utah for secretly giving birth in her parent's Salt Lake City home and then leaving the baby to die in a drawer.

As I read these accounts, I find myself wondering about the blurry line which exists between late-term abortions and infanticide. William Raspberry argued in a July 13, 1998, column in the Washington Post: a ''short distance [exists] between what [these teenagers] have been sentenced for doing and what doctors get paid to do.''

Few people would dispute that such incidents constitute murder. Any cruelty or intentional harm inflicted on a defenseless child causes anger to rise in all of us, particularly when a variety of services exist to assist the parents with their responsibilities—or even, through foster care or adoption, to relieve them entirely.

I have sympathy for any young woman who contemplates an abortion. Surely this is a difficult decision to make. The circumstances that drive a woman to it must certainly be complex and appear to her to be insoluble.

But, the late-term partial birth abortion is not an ordinary abortion. It is not contemplated in the Roe v. Wade decision.

That is why even pro-choice members of Congress were compelled to support this legislation. It is incomprehensible that any reasonable person could examine the evidence and continue to defend it.

This procedure involves the partial delivery, in the late second or third trimester of pregnancy, of an intact fetus into the birth canal. The fetus is delivered from its feet through its shoulders, so that only its head remains in the uterus. Then, either scissors or another instrument is used to poke a hole in the base of the skull where a suction catheter is inserted to extract the baby's brain.

If you are sickened and pained by that description as you listen to it—just as I am each time I read it—imagine what it must be like for the child who must experience it. This procedure is not done on a mass of tissue. It is performed on a living baby capable of feeling pain and, at the time this procedure is typically performed, capable of living outside of the womb with appropriate medical attention.

So, then, I agree with William Raspberry and our colleague Senator MOYNIHAN. The line between infanticide and partial birth abortion is very blurry indeed.

Let me set out for the Senate one more time exactly what this bill does and does not do. This bill does not ban all abortions after a certain week of pregnancy. It does not dictate the circumstances under which late-term abortions would be permitted. H.R. 1122 bans this one, specific, abhorrent procedure.

Opponents of this bill argue that partial-birth abortions are performed to preserve the health and life of the mother. This point of view, however, is based on false claims by advocacy groups and not on the facts. Such claims are a futile attempt at making this procedure appear less barbaric and thus more palatable to the American people.

I think Americans deserve to hear the facts. They need to know the truth about a procedure which our esteemed colleague from New York, Senator MOYNIHAN, has accurately described as ''close to infanticide.''

The former U.S. Surgeon General, C. Everett Koop, described his opposition to the partial-birth abortion procedure in an interview with the American Medical News, which was published in its August 19, 1996 issue. Dr. Koop stated:

> . . . in no way can I twist my mind to see that the late-term abortion as described—you know, partial birth, and then destruction of the unborn child before the head is born—is a medical necessity for the mother. It certainly can't be a necessity for the baby. So I am opposed to . . . partial-birth abortion.

Dr. Daniel H. Johnson, President of the American Medical Association, asserted the AMA's position on the issue in the May 26, 1997, edition of the New York Times. Dr. Johnson stated:

> [T]he 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 abortion method.

Often the health of the woman is not even under consideration. Dr. Martin Haskell, one of a hand full of doctors who perform this procedure, admitted in testimony given under oath in Federal district court in Ohio that he performs the procedure on second trimester patients for ''some medical'' and ''some not so medical'' reasons.

The record in support of this legislation is long. In November 1995, I presided over a 6½-hour Senate Judiciary Committee hearing on the issue. At the March 1997 Senate-House joint hearing, we heard from 10 witnesses, including representatives of the major organizations on both sides of this issue and a medical doctor who specializes in maternal-fetal medicine. As testimony from the hearings demonstrated, this procedure is not performed primarily to save the life of the mother or to protect her from serious health consequences. Instead, the evidence shows that this procedure is often performed in the late second and early trimesters for purely elective reasons.

I acknowledge that there may have been rare cases where this awful procedure was performed and where there was a possibility of serious, adverse health consequences for the mother.

However, even in those cases, a number of other procedures could have been performed. In fact, other procedures would have been performed had the mothers gone to any doctor other than one of the handful of doctors who perform these awful partial-birth abortions.

I understand that many people on both sides of the abortion issue have very strongly held beliefs. I respect those whose views differ from my own. And I condemn, as I know every other Member of this body does, the use of violence or any other illegal method to express any point of view on this issue.

It is critical to remember, however, that this bill is not about the right of a woman to choose an abortion. That is a debate for another day. The only bill we are voting on today is H.R. 1122, a bill that seeks to make a particularly gruesome, and I believe inhumane, abortion procedure illegal.

I would like to express my appreciation to Senator SANTORUM for his leadership on this issue and join him in urging our colleagues to support this bill and override the President's veto.

Ms. SNOWE. Mr. President, I rise in opposition to this attempt to override the President's veto of H.R. 1122, the so-called ''Partial Birth'' Abortion Ban Act of 1997.

Mr. President, let it be clear that this legislation puts women's lives and health on the line. If we vote today to override the President's veto we will bear the burden of putting women's lives and health at risk by substituting the judgement of politicians for the judgement of medical doctors. And that just isn't right.

Twenty-two years ago, the Supreme Court issued a landmark decision in Roe versus Wade that held that women have a constitutional right to an abortion, but after viability, states could ban abortions—as long as they allowed exceptions for cases in which a woman's life or health is endangered.

H.R. 1122 is in direct violation of the Court's ruling. It contains no exception for the health of the mother, and therefore represents a direct, frontal assault not only on Roe, but on the health and reproductive rights of women everywhere.

It should be no surprise, then, that similar efforts around the country to ban the so-called ''partial birth'' abortion procedure have not stood up to constitutional muster.

In fact, legal challenges have been mounted in 20 of the 28 states that have passed these laws. Nineteen out of twenty states have had their laws enjoined or severely limited. Seventeen courts have issued temporary or permanent injunctions stopping laws from taking effect. And one attorney general has limited enforcement of the law.

And I want to be just as clear that innocent women will suffer if we vote to override the President's veto. It is not simply the Constitution which demands a health exception be included in any such legislation—it is compassion for the lives of our nation's women.

There is no question that any abortion is an emotional, wrenching decision for a woman. No one would debate this. And when a woman must confront this decision during the later stages of a pregnancy because she knows that the pregnancy presents a direct threat to her own life or health, the ramifications of such a decision multiply dramatically.

So, too, is it beyond debate that all of us want to see the instances of abortions reduced in America. Unfortunately, contrary to what proponents of this legislation believe, H.R. 1122 will not bring us closer to this goal. In contrast, it will force women and physicians to choose another, less safe and potentially life threatening procedure. Is that what we really want? To put women's lives and health at risk?

Because that is exactly what H.R. 1122 will do. It will put women at unacceptable risk, while in turn doing absolutely nothing to lower the number of abortions in this country.

I suggest that there is a better way. I suggest we are not stuck with an all-or-nothing approach, even on this most contentious of issues.

That is why last year, I supported an amendment which would have decreased the number of abortions in this country without putting the lives and health of women on the line.

This substitute would have ensured that no abortion will take place after viability unless it is absolutely necessary to avoid grieve physical injury to a woman, while protecting women's lives and health. And most of all, unlike the underlying bill, it would have reduced the number of abortions in this country.

Critics of this proposal, unfortunately, believed that this language contains a loophole because it leaves it to the doctor to determine when the fetus is viable.

I find this viewpoint curious on two fronts. First, it begs the question, why did H.R. 1122 proponents trust doctors to determine when an abortion is necessary to protect a woman's life, when they do not trust doctors to determine when a woman faces a grievous health risk or when the fetus is viable?

And second, who is in a better position than doctors to determine when the fetus is viable? Are opponents honestly suggesting the federal government has the answer to that question?

The Supreme Court has said in Planned Parenthood versus Danforth, and I quote ''the time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable, is, and must be, a matter for the judgment of the responsible attending physician.''

It comes down to who should be making these decision. Will it be politicians, whose extent of medical knowledge may be little more than what they see on ''E.R.''? Or will it be physicians, who live ''E.R.''?

The substitute language we championed would have required that a doctor certify that a post-viability abortion is necessary to protect a woman from grievous injury. Any doctor who violated this requirement would not only have faced still civil penalties, but will risk having his or her medical license revoked.

Curiously, H.R. 1122 does not require a doctor to certify that this procedure is necessary to protect a woman's life. For this reason, it appears far easier for a doctor to falsify information under the underlying bill, because there is no certification requirement.

Mr. President, what the vast majority of American people really want from their leaders on this issue is an answer to the problem of late term abortions, not a ban one procedure which will only force women to and doctors to choose other less safe procedures.

Because, despite the terrible conflict over H.R. 1122, there is one area where almost all Americans agree: That no viable fetus should be aborted—by any methods—unless it is absolutely necessary to protect the life or health of the mother.

By coming together on this issue, we can bridge the chasm that has developed in this debate. And despite the fact that the substitute amendment failed in this body last year, I still strongly believe this is the right course to take.

Forty-one States, including my home State of Maine, already ban post-viability abortions. We need to ensure that healthy pregnancies are never terminated after a fetus is viable, regardless of the procedure used. We also need to ensure that any such measure is in keeping with the Constitution and the best interests of the life and health of women.

These are not mutually exclusive goals. This is not a gulf that can never be crossed. And this is an issue that is not going to go away.

That is why we are coming back this year, and renewing our effort to ban all abortions after viability. On Wednesday, Senator DURBIN and I, along with Senators COLLINS, MIKULSKI, LANDRIEU, LIEBERMAN, GRAHAM, and TORRICELLI introduced a bipartisan measure, the Late-Term Abortion Limitation Act, because we believe this can and will solve the problem of late term abortions.

While the Durbin-Snowe legislation is similar to last year's substitute, it states that, prior to an abortion, both the performing physician and an independent physician certify in writing that, in their medical judgment, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health. With the opinion required from another doctor, this will ensure that the abortion was absolutely medically necessary.

And finally, let me be clear that the health exception for ''grievous physical injury'' could only be invoked under two circumstances.

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

Second, the language also applies when a woman has a life-threatening condition which requires life-saving treatment. It applies to those tragic cases, for example, when a woman

needs chemotherapy when pregnancy, so the families face the terrible choice of continuing the pregnancy or providing life-saving treatment. These conditions include: Breast cancer; lymphoma, which has a 50 percent mortality rate if untreated; and primary pulmonary hypertension, which has a 50 percent maternal mortality rate.

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

In closing, Mr. President, let me restate that this is not a problem without a solution. The Durbin-Snowe language very clearly provides this body with an alternative that will not only ensure that healthy pregnancies will never be terminated after a fetus is viable; not only reduce the number of abortions in this Nation; not only put medical decisions in the hands of medical doctors; but will be in keeping with the requirements of the United States Constitution and our responsibility to America's women.

That is why I urge my colleagues to vote to sustain the President's veto, and I hope we can coalesce around support for the Durbin-Snowe bill.

Mr. KENNEDY. Mr. President, I oppose this legislation, and I urge the Senate to sustain the President's veto.

In my view, this legislation is unconstitutional under the Supreme Court's decisions in Roe v. Wade and Planned Parenthood v. Casey, and President Clinton was right to veto it. The Roe and Casey decisions prohibit the government from imposing an ''undue burden'' on a woman's constitutional right to choose to have an abortion at any time up to the point where the developing fetus reaches the stage of viability. The government can constitutionally limit abortions after the stage of viability, as long as the limitations contain exceptions to protect the life and the health of the woman.

This bill fails that constitutional test. In cases before viability, it clearly imposes an undue burden on a woman's constitutional right to an abortion. In cases after viability, it clearly does not contain the constitutionally required exception to protect the mother's health.

Supporters of this legislation are flagrantly defying these constitutional requirements. In the vast majority of states that have passed so-called partial-birth abortion bans, the law is on appeal, enjoined, or the subject of a restraining order. With only one exception, where the laws have been challenged, the courts have concluded that these bans are unconstitutional.

The conclusion is obvious. The supporters of this unconstitutional legislation would rather have an issue than a bill. President Clinton vetoed this legislation on October 10, 1997. Almost an entire year has passed since that veto. If the Senate Republican leadership genuinely cared about preventing these abortions, they would have brought this veto before the Senate long ago. Instead, they delayed and delayed and delayed. And now, surprise! The Senate is finally being asked to vote on this veto a few weeks before election day. They want an issue, not a bill.

In her testimony before the Senate Judiciary Committee, Coreen Costello put this issue clearly. After consulting numerous medical experts and doing everything possible to save her child, Coreen Costello had the procedure that would be banned by this legislation. Based on that experience, she said this to our committee:

> I hope you can put aside your political differences, your positions on abortion, and your party affiliations and just try to remember us. We are the ones who know. We are the families that ache to hold our babies, to love them, to nurture them. We are the families who will forever have a hole in our hearts. We are the families that had to choose how our babies would die . . . please put a stop to this terrible bill. Families like mine are counting on you.

I want the Senate to sustain the President's veto.

Mrs. MURRAY. Mr. President, I rise today to in support of the President's veto of the so-called Partial Birth Abortion Ban Act and urge my Colleagues to join me in defeating this real threat to women's health.

Most of what has been said here today in support of this ban is troubling, because some have implied that women make health care decisions in haste without much thought or understanding. Let me assure my Colleagues that women have the ability to make informed health care decisions. We are more than capable of understanding the difference between pre and post viability. We are more than capable of making wise health care decisions in consultation with our physicians and family. We do not need Members of Congress making our health care decisions. I believe that most women would argue that health care decisions are best left to physicians and patients.

We argue that patients and doctors should make health care decisions. Not insurance bureaucrats. Yet today many of my Colleagues are trying to make a major health care decision for many women in this country. Not just a health decision but for some women a life or death decision. This is why the American College of Obstetricians and Gynecologists oppose this ban. They understand the threat to women. They know first hand the complications that can develop throughout a pregnancy. They have experienced first hand the risk that many women face throughout a pregnancy. They are the one's we should be listening to in this debate.

That is the issue. Protecting the life and health of the woman. This is not about choice or even about the Constitution. This is about protecting the life and health of women.

Let me point out to my Colleagues, post viability abortions are prohibited except when necessary to save the life and health of the woman. This is the law of the land and I support it. But the legislation that the Administration wisely vetoed would undermine this standard established by the Supreme Court and includes no exception to save the woman's health and the life exception is so narrow that few could meet the test. There is no exception to protect a women's ability to have additional healthy children. There is no exception to give the doctor the ability to do what is right for his or her patient. This is a dangerous precedent that we cannot allow to go forward.

I have come to this floor many time to advocate on behalf of women's health. I have had many successes in increasing funding for research and in working to eliminate gender bias in research. I have worked to increase funding for breast cancer research. I have fought to improve and expand mammography coverage for Medicare beneficiaries. I have worked to increase focus on cardiovascular disease, the number one killer of American women. As a member of the Appropriations Committee, I have always considered women's health one of my top priorities.

I am here today for the same reason, to continue my fight for the lives and health of women. I urge my Colleagues to talk to women who have had to make this decision to have this procedure. Listen to what their doctors told them and why they made the decision forced upon them. I know that if you could hear what they have endured and the heartache they have faced you would understand why today's vote is a women's health vote and why this ban is such a danger to women.

Let women and their doctors make these difficult decisions. This ban is a serious threat to women and their families. Please do not jeopardize a women's health and threaten her life based on gruesome diagrams that simply do not tell the real story.

I would urge all of those who believe that this legislation is necessary to take the time to listen to phyisicans and women who have had this procdure. I can guarantee that this procedure is only done in the final weeks of a pregnancy when it becomes medically necessary to save the women's life or health.

Ms. MIKULSKI. Mr. President, today the Senate will vote on whether or not to override the President's veto of H.R. 1122, the so-called ''Partial Birth Abortion Ban''. I will cast my vote to uphold the President's veto.

I do so for several reasons. First and foremost, this bill denies a woman, in consultation with her physician, the right to make necessary or appropriate medical decisions. Second, it does not provide any protection for a woman whose health is grievously threatened by her pregnancy. Third, this bill will not stop a single abortion from occurring. Finally, it is unconstitutional.

I believe that women, in consultation with their physicians, must make decisions on what is medically necessary or appropriate in reproductive matters. These must be medical decisions not political decisions.

Mr. President, we need to let doctors be doctors. This is my principle whether we are talking about reproductive choice or any health care matter. Physicians have the training and expertise to make medical decisions. They are in the best position to determine what is necessary or appropriate for their patients. Not bureaucrats. Not managed care accountants. And certainly not legislators.

Who is best equipped to decide whether a difficult pregnancy threatens a woman's life? Who decides whether a woman would suffer grievous injury to her physical health if a pregnancy is continued? Who decides what is medically necessary for a particular woman in her unique circumstances?

The answer must be that doctors decide. The women themselves must decide. Legislators should not take the decision away from them. This bill is unacceptable because it shackles physicians. It prevents them from exercising their best medical judgement on behalf of their patients.

I also will vote to uphold the President's veto because this bill does not offer any protections for women's health. I know that there are many who view efforts to provide for the health of the woman as some sort of loophole. But I believe we must acknowledge the realities of women's health and women's lives.

Even the most ardent opponent of reproductive rights would have to acknowledge that there are medical crises that arise during pregnancy that could cause profound harm to women's health. Yet the authors of the bill before us refused to make any concession to health concerns

I will vote today to sustain the President's veto because this bill would not prevent one abortion—not one. By banning a particular procedure, it does nothing to stop abortions from occurring. A doctor can still opt to use any other abortion procedure—even ones that might be less suitable for the woman's particular health circumstances. So let's be clear—this bill would not prevent abortions.

Finally, this bill fails the test of constitutionality. The Supreme Court in Roe versus Wade and in its subsequent decisions has been quite clear. Prior to the point of fetal viability, a woman's right to an abortion is constitutionally protected.

The Court has also insisted that any legislation restricting abortion must ensure that the woman's life and her health are protected. The woman's physician must place her health as the paramount concern. On both of these points, this bill fails to meet the constitutional standard the Court has established.

This is not mere speculation. In 19 out of 20 states that have passed ''partial-birth'' abortion bills, either a court or state attorney general has prevented those laws from taking effect. Six of those states used language that is identical to the bill now before the Senate. Seventeen courts have ruled that these state laws are unconstitutional. So it should be clear that this bill cannot pass constitutional muster.

For all of these reasons this bill is seriously flawed. The President's veto of this legislation was the right thing to do. It was the constitutional thing to do. I expect that the Senate will vote today to uphold that veto.

When the Senate passed this legislation last May, I said that its passage was a hollow victory. It was hollow because the bill could never be enacted into law and could never be upheld as Constitutional. I believe that subsequent events are proving that prediction to be correct.

There is a better way to address this issue. I believe the vast majority of my colleagues would agree that—absent a threat to life or a grievous threat to a woman's health—abortion in the last months of pregnancy is not defensible. Why can't we enact legislation that would provide a ban on those post viability abortions?

When the Senate considered this issue last May, I worked with my Democratic Leader TOM DASCHLE and a bipartisan group of Senators to craft such an approach. The Daschle alternative would have meant fewer abortions. It banned all abortions once a fetus had achieved viability.

It provided only two exceptions—first, when the woman's life was threatened by continuing the pregnancy. Second, when she was at risk of grievous injury to her physical health. And it allowed the woman and her physician to make that medical determination.

I still believe that is the correct approach, the common sense approach. The Daschle alternative was respectful of the Constitution. It safeguarded women's health. I was disappointed that we were unable to pass this alternative. I believe the President would have signed a bill along the lines of the Daschle alternative.

Because I believe so strongly that this is the correct approach to take, I have joined with my colleague, Senator DURBIN, and others, in introducing a bill modeled after the Daschle alternative.

I urge my colleagues—whether you support the bill we are considering today or not and whatever your views on reproductive choice—to take another look at this proposal.

It is our best chance to forge a consensus on this issue. We can stop inappropriate post-viability abortions while still protecting the lives and health of women. The Durbin bill shows us the way. I believe it reflects the values and views of the American people.

So, Mr. President, I will vote to sustain the President's veto today. But I would urge my colleagues to bring fresh thinking to this matter. We can have a real legislative solution, rather than a political wedge issue. We should certainly try.

Mr. FEINGOLD. Mr. President, I will vote to sustain the President's veto of HR 1122, the so-called partial birth abortion bill, that seeks to outlaw a particular abortion procedure, which is most closely analogous to the intact dilation and extraction procedure, sometimes called Intact D&E. I do support a ban on post-viability abortions, if the ban is subject to important exceptions to protect a woman's life and prevent grievous injury to her physical health. I am disappointed that the proponents of HR 1122 have steadfastly refused to accept any amendment, no matter how tightly crafted, which would include provisions to protect a woman's physical health in extreme circumstances.

I have said repeatedly here on the floor of the Senate, during hearings in the Judiciary Committee, and at listening sessions held across the state of Wisconsin that I believe post-viability abortions should be banned, with two exceptions. The first is an exception to save the life of the woman, which is an important and necessary provision. I hope we can agree on that point. The second is to protect a woman from grievous injury to her physical health. I hope we can also agree on that point. I am sensitive to the fears of the bill's proponents that any health exception might serve as a major loophole, and I agree that the definition of a threat to physical health should be narrow. But it should be there.

Let me remind my colleagues that the Supreme Court has clearly ruled that, although states have the right to restrict post-viability abortions, exceptions must always be made to protect the life and health of the mother. Twenty-eight states, including my own home state of Wisconsin, have passed so-called partial birth abortion bans, and the statutes in ten states are substantially identical to HR 1122. Wisconsin's experience in the wake of the passage of its partial birth abortion ban should give all of us, as we consider whether to override the President's veto of HR 1122, some additional pause. For nearly two weeks following the passage of the state bill, physicians struggled to determine which procedures, if any, were allowed under the bill; prosecutors proclaimed that they couldn't enforce the new law in their communities until it was clarified by a court.

Last year, I voted for the bipartisan alternative amendment to HR 1122 introduced by Senator DASCHLE and others. I voted for that amendment because it took a comprehensive approach to banning abortions on viable fetuses, rather than merely banning a single procedure. I did so, Mr. President, because I was concerned that the language contained in HR 1122 was imprecise. I looked closely at the bill to see how it addressed the significant concerns raised by my constituents based upon accounts and descriptions of the ''procedure'' they had heard. The text of HR 1122 does not specify a gestational age, such as ''late term;'' it

does not mention any specific part of the fetus, such as the head; and it does not mention any specific medical instruments, medical situations or circumstances.

I believe that the Daschle amendment provides that needed clarity while being sufficiently narrow to satisfy most reasonable people's concerns about healthy women with normal pregnancies who might seek to terminate those pregnancies in the third trimester. It would have required a physician to certify that continuation of the pregnancy would threaten the woman's life or risk grievous injury to her physicial health. Grievous injury was define in the amendment as ''a severely debilitating disease or impairment specifically caused by the pregnancy, or any inability to provide necessary treatment for a life threatening condition.''

The other side claims that abortion is never necessary to protect a woman's health. But Mr. President, I have met women whose doctors believed differently. The American College of Obstetricians and Gynecologists (ACOG) and the Society of Physicians for Reproductive Health supports them. ACOG has stated that although Intact D & E may not be the only option to save a woman's life or preserve her health, it sometimes may be the best or most appropriate procedure, depending on the woman's particular circumstances. Precisely because I am not a doctor. I think it is important for us to uphold the President's veto. The point is, Mr. President, that there is a dispute within the medical community about the necessity for and the risk associated with Intact D & E. And that is where it should be resolved. It should be women and their doctors, not politicians, who decide which medical procedure is appropriate within the confines of the Daschle amendment.

The Daschle alternative amendment struck the right balance between protecting women's constitutional right to choose abortion and the right of the state to protect future life. It would have protected a woman's physical health throughout her pregnancy, while ensuring that only grievous, medically diagnosable physicial conditions could justify ending a viable pregnancy. Within the terms of that amendment, both fetal viability and women's health would have been determined by the physician's best medical judgement, as they should be.

I hope, as we vote today, we do so in full knowledge of the strong feelings about this issue on all sides. We should respect these differences, avoid efforts to confuse or distort each others views before the public, and maintain a level of debate that reflects the importance of relying on the facts about this issue and finding a response that is sensitive and constitutionally sound.

Mrs. FEINSTEIN. Mr. President, I opposed the override of the veto of H.R. 1122, a bill banning emergency late-term abortions. There are several reasons why this is a flawed bill. This bill attempts to ban a specific medical procedure, called by opponents, partial-birth abortion, but there is no medical definition of partial-birth abortion. The language in this bill is so vague that it could affect far more than the one particular procedure it seeks to ban, procedures used during the second and possibly the first trimester of a pregnancy. There is no exception to protect the health of the woman. This bill would ban a type of medical procedure regardless of whether it is the medically safest procedure under a particular set of circumstances. States are legislating prohibitions on abortions.

H.R. 1122 would criminalize the use of a medical procedure called, by the bill, partial-birth abortion. This term does not appear in medical textbooks or training. Doctors do not know what it means. The doctors who testified before the Senate Judiciary Committee could not identify, with any degree of certainty or consistency, what medical procedure this legislation refers to. For example, when asked to describe in medical terms what a partial-birth abortion is Dr. Pamela Smith, Director of OB/GYN Medical Education at Mount Sinai Hospital in Chicago called it ''a perversion of a breech extraction.'' (page 127) Dr. Nancy Romer, a practicing OB/GYN and Assistant Professor at Wright State University School of Medicine, who said the doctors at her hospital had never performed the procedure, had to quote another doctor in describing it as ''a dilation and extraction, distinguished from dismemberment D and Es.'' (page 182)

When the same question was posed to legal experts in Judiciary Committee hearings—to define exactly what medical procedure would be outlawed by this legislation—the responses were equally vague. This vagueness means that every doctor that performs even a second trimester abortion could be vulnerable and could face possible prosecution under this law.

The language in this bill is so vague that, far from outlawing just one abortion procedure, the way this bill is written virtually any legal procedure could fall within its scope. I asked the legal and medical experts who testified at the Judiciary Committee hearing if this legislation could affect abortion-not just late-term abortion-but earlier abortions as well. Dr. Lewis Seidman, Professor of Law at Georgetown University, gave the following answer. ''As I read the language in a second trimester pre-viability abortion where the fetus in any event will die, if any portion of the fetus enters the birth canal prior to the technical death of the fetus, then the physician is guilty of a crime and goes to prison for two years.'' Dr. Seidman continued his testimony, concluding that ''if I were a lawyer advising a physician who performed abortions, I would tell him to stop because there is just no way to tell whether the procedure would eventuate in some portion of the fetus entering the birth canal before the fetus is technically dead, much less being able to demonstrate that after the fact.'' (223)

Dr. Cortland Richardson, Associate Professor of Gynecology and Obstetrics at John Hopkins University School of Medicine, in testimony before a House committee, said that the language ''partially vaginally delivers'' is vague, not medically oriented, and just not correct. ''In any normal second trimester abortion procedure by any method, you may have a point at which a part, a one inch of umbilical cord, for example, of the fetus passes out of the cervical opening before fetal demise has occurred.'' (H.R. Rep No. 267, September 27, 1995 testimony) So this bill could affect far more than just the few abortions performed in the third trimester, and far more than just the one procedure being described.

This bill has no exemption to protect the health of the mother and as such, would directly eliminate that protection provided by the Supreme Court in Roe v. Wade and Planned Parenthood V. Casey.

If this bill were law, a pregnant woman seriously ill with diabetes, cardiovascular problems, cancer, stroke, or other health-threatening illnesses would be forced to carry the pregnancy to term or run the risk that the physician could be challenged and have to prove in court what procedure he or she used, and whether or not the doctor ''partially vaginally-delivered'' a living fetus before death of that fetus.

Here are some examples, provided to me by gynecologists, of rare maternal medical conditions that could necessitate a post-viability procedure to protect a woman's health. The health of these women would be endangered in these situations.

A fetus has a huge hydrocephalic head (or other greatly enlarged organ) three times the normal size and a cranium is filled with fluid. The head is so large the woman physically cannot deliver it. Labor is impossible, because the fetus cannot get down the birth canal and out. A caesarian is impossible because it would require a huge, up-and-down incision, which would rupture in future pregnancies or labor. Thus, a woman could not have future children and this procedure affects her ability to have future pregnancies.

A condition called arthrogryposis, or a rigid fetus, the fetus cannot move down and out in labor, and labor risks rupturing the woman's cervix. With prolonged intense pushing the mother's heart is put at risk. If this stiff fetus cannot be delivered by a caesarian, a large vertical incision would be required, thus risking future pregnancies.

Women with certain health conditions cannot tolerate the stress of labor or surgery. They include cardiac problems like congestive heart failure; severe kidney disease (e.g. renal shutdown); severe hypertension, diathesphesis, and Von Willibrand's Disease (bleeding, clotting disorder).

Pre-eclampsia (toxemia) is a serious complication of pregnancy and a leading cause of maternal and fetal death that affects the placenta. The placenta does not attach to the wall of the uterus and thus limits the amount of blood and nutrients reaching the fetus, causing it to be underweight and prone to complications. This condition can progress to eclampsia, which can lead to convulsions, kidney failure, and death. The only treatment is to deliver the fetus. The woman cannot withstand labor or surgery.

A woman with diabetes might have a decline in renal function. She might not be able to tolerate the physical stress of labor or surgery.

Why is this legislation even necessary? Roe v. Wade unequivocally allows States to ban all post-viability abortions unless they are necessary to protect a woman's life or health. Forty-one States have done so. Surely, anyone who believes in States' rights must question the logic of imposing new, Federal regulations on States in a case such as this in area where States have legislated.

Medical decisionmaking should be made by medically trained people, not Congress. Congress cannot anticipate every medical situation and explicitly delineate them in law. During pregnancy, labor, and delivery, complicated conditions can develop that are often last minute, life-threatening, and complex for the mother and fetus. No legislator can ever anticipate, craft into law, every conceivable medical emergency that a physician caring for a pregnant woman will face.

We have entrusted and trained physicians to make safe and ethical medical decisions based on scientific and medical data on the benefits and risks to the patient. They do so based on their extensive training, their best medical judgment, proven medical techniques, and therapeutic assessment of the patient.

Physicians are sworn to protect the health of their patients. Congress should not pass legislation that would deny a physician the ability to provide care that in their professional judgment is medically necessary.

Medical decisionmaking or choosing the most appropriate therapy is based on the risk benefit for the mother and fetus, medical training, multiple decisional building blocks by medical experts, often a team. It is highly individualized. Every case is different. The medical history of patients varies tremendously. There are no absolutes. It is based on medical knowledge and training on a wide array of choices.

Only the attending physicians in consultation with the woman, with all the facts of the medical case and the medical history assembled, can make the decision. Physicians are bound by ethics, licensing, practice guidelines, and liability. Decisions are often team decisions, not made by one isolated physician and always in consultation with the patient or family. We hire trained professionals because we want their expertise.

In the words of the California Medical Association, ''We believe that this bill would create an unwarranted intrusion into the physician-patient relationship by preventing physicians from providing necessary medical care to their patients . . . political concerns and religious beliefs should not be permitted to take precedence over the health and safety of patients.'' The American Women's Medical Association wrote, ''We do not believe that the federal government should dictate the decisions of physicians . . .''

Let me make this clear: I oppose post-viability abortions. They are wrong, except to save the mother's life and health. Late-term abortions are rare and they should be rare. When the Senate considered this bill last year, on May 14, 1997, I offered a substitute to the bill before us. My substitute had 3 provisions. it would have prohibited all abortion procedures after a fetus is viable, not prohibited abortions if in the medical judgment of the physician, an abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman, and imposed civil penalties. I continue to believe that my substitute would accomplish the goals of the bill before us while protecting women's health and constitutional rights.

Mr. President, these are tragic situations, situations that most of us could never imagine. We had couples come to us and tell us heartbreaking stories about babies they dearly wanted, but babies they could not have because to go through labor and delivery the mother would have died, been seriously injured or prevented from having future pregnancies. These were people who explored every available option, who consulted experts, to save the baby that they very much wanted. These are rare and difficult circumstances.

The Federal Government has no place interfering, making this tragic situation any more difficult or complicated for these families. This is a vague, poorly constructed bill. It attempts to ban a medical procedure without properly identifying that procedure in medical terms. It is so vague that it could affect far more than the procedure it seeks to ban. It fails to protect women's health at a time when they face tragic complications in their pregnancies. I urge my colleagues to vote to sustain the President's veto.

Mr. NICKLES. Mr. President, the Senate again is considering the Partial-Birth Abortion Ban Act. This bill, which prohibits a procedure used to kill unborn children late in pregnancy in a particularly gruesome and painful manner, passed both the House and Senate before being vetoed by President Clinton on April 10, 1996. Last Congress, the House voted to override the President's veto by a vote of 285–137. Unfortunately, we failed in the Senate to override the Presidents' veto. The House voted again last year to prohibit partial-birth abortions by a veto proof margin of 295–136 and again the Senate passed the legislation by a vote of 64–36. However, President Clinton vetoed the ban for the second time. Today, the Senate again has the opportunity to over-ride the Presidents veto and put a stop to this horrific procedure. I rise to state my strong support for this just and very necessary legislation and hope that my Senate Colleagues will join with the House members and override the Presidents' veto.

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

Mr. Presdient, this is a truly shocking procedure. It is absolutely indefensible. In fact, Dr. Pamela Smith, an obstetrician at Mt. Sinai Hospital in Chicago, and Director of Medical Education in the Department of Obstetrics and Gynecology at that hospital, testified last Congress before the House Judiciary Subcommittee on the Constitution that even when describing the procedure to groups of pro-choice physicians she found that ''many of them were horrified to learn that such a procedure was even legal.'' [H. Rept. 104–267, p. 5]

As Dr. Smith further points out, ''partial birth abortion is a surgical technique devised by abortionists in the unregulated abortion industry to save them the trouble of 'counting the body parts' that are produced in dismemberment procedures.'' [Letter to U.S. Senators, 11/4/95] She says, in the same letter: ''Opponents [have] insinuated that aborting a living human fetus is sometimes necessary to preserve the reproductive potential and/or life of the mother. Such an assertion is deceptively and patently untrue.''

And what about the baby, is the baby exempt from the pain of this procedure? No. As stated in a August 26, 1998, report in the Journal of the American Medical Association: ''When infants of similar gestational ages are delivered, pain management is an important part of the care rendered to them. However, with [this procedure] pain management is not provided for the fetus, who is literally within inches of being delivered. It is beyond ironic that the pain management practiced for [this procedure] on a human fetus would not meet the federal standards for the humane care of animals used in medical research.''

In a July 9, 1995, letter to Congressman TONY HALL, a registered nurse who had observed as Dr. Haskell (who has performed over 1,000 partial-birth abortions) performed several partial-birth abortions described one such procedure:

The baby's body was moving. His little fingers were clasping together. He was kicking his feet. All the while his little head was stuck inside. Dr. Haskell took a pair of scissors and inserted them into the back of the

baby's head. Then he opened the scissors up. Then he stuck the high-powered suction tube into the hole and sucked the baby's brains out.

President Clinton has claimed that for some women whose unborn babies are diagnosed with grave disorders, this procedure is the only way to prevent serious health damage. But according to the Physicians' Ad Hoc Coalition for Truth (PHACT), a coalition of about 500 medical specialists including former Surgeon General C. Everett Koop, even in cases involving such severe fetal disorders, ''partial-birth abortion is never medically necessary to protect a mother's health or her future fertility.'' (See The Wall Street Journal, Thursday, September 19, 1996, and PHACT press release dated May 7, 1997.)

Not only is this procedure not medically necessary, but it actually is medically dangerous to the health of the mother! According to a recent article in American Medical News (March 3, 1997), Diana Grossheim, on her doctor's advice, opted for the partial-birth abortion technique to remove her 21 week old child who had died in utero. As a result, she now has an incompetent cervix which endangered a subsequent pregnancy and required bed rest from week 23 through the duration of her pregnancy.

Furthermore, according to Dr. Pamela Smith, ''there are absolutely no obstetrical situations encountered in this country which require a partially-delivered human fetus to be destroyed to preserve the health of the mother.'' For example, performing a Caesarean section could produce a healthy mother and living child. (American Medical News, November 20, 1995)

Even Dr. Warren Hern, an abortionist who specializes in late-term abortions, says that even he would not perform a partial-birth abortion because it is unsafe for the mother. He notes that turning the fetus to a breech position is ''potentially dangerous'' and that ''you have to be concerned about causing amniotic fluid embolism or placental abruption if you do that.'' (American Medical News, November 20, 1995)

Dr. Martin Haskell, one of the major proponents and practitioners of this technique, states that some 80 percent of these procedures which he has performed were for ''purely elective'' reasons. [Interview with AMA's American Medical News, July 5, 1993] His late colleague and fellow proponent of the partial-birth method claimed in material submitted to the House subcommittee that ''non-elective'' reasons to perform the procedure include ''psychiatric indications,'' such as depression and ''pediatric indications'' (i.e., the mother is young).

On January 12, 1997, the American College of Obstetricians and Gynecologists (ACOG) issued a policy statement regarding this procedure stating they ''could identify no circumstances under which this procedure . . . would be the only option to save the life or preserve the health of the woman.'' In July, 1997, the ACOG Executive Board supplemented its policy on abortion toward stating, ''ACOG is opposed to abortion of the healthy fetus that has attained viability in a healthy woman.''

The American Medical Association, on May 19, 1997 wrote to support H.R. 1122, the Partial Birth Abortion Ban. And, on May 26, 1997, AMA President Daniel H. Johnson. Jr. M.D., stated ''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 abortion method.''

The stark fact is that unless this bill becomes law, more innocent unborn children will have their lives brutally ended by the inhumane partial-birth procedure. During last year's debate the New York Times quoted the pro-choice National Abortion Federation, as saying that only about 450 partial-birth abortions are performed each year.

Well, everyone now knows that was a lie! In February this year, Ron Fitzsimmons, the executive director of the National Coalition for Abortion Providers, said he lied about the frequency and necessity of partial-birth procedures. He now admits that this procedure is performed 3,000 to 5,000 times a year with the vast majority being performed during the fifth and sixth months of pregnancy, on healthy babies of healthy mothers. (New York Times, 2–26–97; March 3, 1997, American Medical News.)

In addition, two lengthy investigative reports published last year in the Washington Post and the Record of Hackensack, New Jersey, reporters for both newspapers found that the procedure is far more common than pro-abortion groups have claimed, and is typically performed for non-medical reasons.

The Record found, for example, that a single abortion clinic in Englewood, N.J., performs ''at least 1,500'' partial-birth abortions a year—three times the number that the National Abortion Federation had claimed occur annually in the entire country. Doctors at the Englewood clinic said that only a ''minuscule amount'' are for medical reasons. One of the abortion doctors at that clinic told the Record, ''Most are Medicaid patients, black and white, and most are for elective, not medical reasons: People who didn't realize, or didn't care, how far along they were. Most are teenagers.''

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

As Former Surgeon General C. Everett Koop stated:

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

Even a Chicago Tribune March 3, 1997 editorial stated:

> The American people have learned enough about partial-birth abortions to know that they should be stopped.

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

Mr. MCCONNELL. Mr. President, this debate offers each Senator an opportunity to set forth, in a very real way, his or her vision for America. from time to time, we are given a stage, a national audience, and a defining moment—a moment in which we must extol that which is good and noble and just, and reject that which is not. I believe that today provides one such moment in this effort to override President Clinton's veto of the Partial Birth Abortion Ban Act.

I rise today in strong support of the Partial-Birth Abortion Ban Act of 1997. with this vote, the Senate will protect unborn children from the barbaric procedure known as ''partial-birth abortion,'' or it will not. The Senate will side with truth, or it will not.

The president has vetoed this bill on two occasions now, telling the country that partial-birth abortions are necessary in ''a small number of compelling cases,'' to protect the mother from ''serious injury to her health,'' and to avoid the mother's ''losing the ability to ever bear further children.''

Mr. President, that is not the truth. The evidence is quite to the contrary. The procedure is not limited to a small number of cases, but rather is far more widespread, numbering in the thousands. As one newspaper has explained, ''[i]nterviews with physicians who use the method reveal that in New Jersey alone, at least 1,500 partial-birth abortions are performed each year.''

The procedure is never necessary to protect the mother's health or fertility. The Physicians' Ad Hoc Coalition for Truth, which includes former Surgeon General C. Everett Koop, has flatly rejected the President's assertion on this point:

> 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.

The opponents of this legislation have gone to great lengths to hide the truth from the American people. One has famously admitted to deliberate falsehoods. Others have tried to obscure the facts by using medical terms like ''intact dilation and evacuation'' or ''intrauterine cranial decompression.'' But, no matter what words the other side uses, nothing can change the fact that this procedure is a partial-birth abortion, it is heinous, and it is wrong.

I want to close my remarks this morning, Mr. President, by thanking some very special people for their support on this critical issue. I want to thank Margie Montgomery of Kentucky Right to Life. She has worked tirelessly and faithfully on behalf of unborn children. Her years of service have been truly heroic.

I also want to thank the Respect Life Committee, and particularly Mel Meiners and Dan Bowling. To illustrate the broad support in my state for ending this inhumane act, they have crafted an amazing Prayer Chain, containing over 3,700 signatures from dedicated people who are praying that we will override President Clinton's veto. I would say, Mr. President, that we could probably take their Prayer Chain and stretch it all the way around the Senate floor. We would then be enveloped by this symbol of commitment to protecting unborn children. This Chain is a moving display of faith and commitment—I am very grateful for having receive it.

Let me list a few of the Catholic churches who are responsible for the Prayer Chain: Guardian Angels, Holy Family, Our Mother of sorrows, Resurrection, St. Martin of Tours, and St. Stephen Martyr. The chain is also a product of the efforts of the Little Sisters of the Poor Home for the Elderly, Holy Angels Academy, and, as I've already mentioned, Kentucky Right to Life. I also want the RECORD to reflect that I have received over 10,000 letters and cards from concerned Kentuckians urging us to end this barbaric practice.

I truly appreciate their support and hope that my colleagues will join me in taking a stand for what is right and just. We must send a clear and principled message to the President and to the nation.

Mr. JEFFORDS. Mr. President, today we will vote once again on legislation offered by the Senator from Pennsylvania to ban the dilation and extraction, or D&X, procedure used by doctors, H.R. 1122. I will be voting against this ban for the fourth time in as many years.

My reasons for opposing this legislation are well-known. First, I believe that this bill undermines the Supreme Court's decision in Roe v. Wade to leave these critical matters to the states. Those states who have chosen not to pass legislation banning late-term procedures leave the decision to the woman, her family and their doctor.

Second, I believe that a woman's right to control her own reproductive destiny is protected as part of the Constitutional right to privacy. The Supreme Court under Roe has decided that the decision of whether to undergo an abortion is a matter of individual conscience and should be made by a woman in thoughtful consultation with her doctor.

Third, preventing doctors from using the D&X procedure only when it is necessary to save the life of the mother clearly goes against the Supreme Court's decision in Roe. Roe requires the states to safeguard the life and health of the mother when they regulate late-term abortions. Because of the unconstitutionality of this legislation, I feel I cannot support its passage.

Finally, I believe that women who choose to undergo a D&X procedure do so for grave reasons and I trust that those states that have chosen to regulate late-term abortions do so in a manner that both protects the mother and prevents unnecessary abortions. The Supreme Court has established a delicate legal framework in which to address late-term abortions and we should not shift the decision making to the federal government.

Mr. SANTORUM, Mr. President, I believe I am the last speaker. I suggest the absence of a quorum and ask unanimous consent the time run off the opposition's side.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BURNS. Mr. President, I also ask unanimous consent that I might use 2 minutes from the opposition's side of this issue.

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

The Senator from Montana.

Mr. BURNS. Mr. President, there are some of us who do not have the eloquent speech of those who have spoken on this issue, but I think that I have a pretty good advisor in this issue.

I am wondering if I am listening to the same America in which I grew up. In rural America, life was simple but life was precious. We were fortunate enough in our family to have a couple of outstanding young folks blessed to our family, one of whom is now a medical doctor in family medicine.

A couple of years ago when this issue came up, she was the first one to call me, she being a new graduate of the University of Washington at the Seattle medical school and now doing her residency in Tennessee. She is blessed with a deeply faithful heart and motivated to doing the good things for humanity, taking her oath that she took upon graduation from medical school very, very seriously. If you have not heard that oath, maybe one should read it one time and see what the medical doctors take upon themselves, those who really do dedicate themselves to humanity. She, plain and simply, told her father that there is no reason for this procedure at all, none.

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

Mr. BURNS. I ask unanimous consent for 1 more minute.

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

Mr. BURNS. Those of us who have been granted life and been able to work in it and enjoy the full fruits of it sometimes lose sight of just exactly where we come from. So this is a matter of conscience, the deep American conscience, especially when those who know and are motivated to do the right thing, those who work with it every day, tell us there is no reason for this procedure. I hope my colleagues will support the override of the President's veto.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, may I ask how much time is left on our side?

The PRESIDING OFFICER. The Senator has 1 minute 15 seconds.

Mrs. BOXER. I ask unanimous consent I be allowed to speak for 3 minutes.

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

Mrs. BOXER. I thank my colleagues very much.

I thought we had a good debate on this yesterday, and I think the issue is pretty clear. I say to my colleagues, there is no health exception in this bill at all, which not only makes it unconstitutional, but which puts women in harm's way. And the life exception in the bill is very narrowly drawn. It is not the usual Henry Hyde language, the first version of his language or even the second. So it becomes very difficult for a physician to act to save the mother's life.

If the President would have signed this bill, he would have been putting a woman's health and her life at risk. So I think he did the right thing to listen to the 39,000 OB/GYNs whose job it is to bring babies into the world. They oppose this bill very strongly. They call it, and I am quoting, ''dangerous.''

Proponents of this bill argue that it would prohibit a specific procedure. Many of the women who have had this procedure have been here these last few days. They have been visiting us. They were looking in our eyes. They were telling us that they believe very strongly, and their families believe, that without this procedure they could have died. They could have been made infertile. Those women look in our eyes and tell us how desperately they wanted their babies.

One of them I introduced on the floor in a photo calls herself a conservative

Republican, an antichoice, pro-life individual. She wanted her baby more than anything else and when tragedy struck, she had to have this procedure. She went to several doctors to try to find a way out, to have her baby. She had to have this procedure. She asks us, don't outlaw this without a health exception and a clear life exception.

So why would we turn our back to hurt women who want children? Why should we presume to know more than 39,000 obstetricians and gynecologists who tell us not to tie their hands in the hospital room?

So I know this is a very difficult issue on both sides. I know there are strong emotions on both sides. But I think the important thing to remember is, if we sustain this President's veto, which I hope we will do, there is not one woman in America who has to have any specific procedure. It is a personal decision. It is a decision based on health. If we go the route of those who are speaking to us today on the other side of the aisle, government would say to doctors, not only in this circumstance, but if they had their way—they are very honest about it, and I respect them for it—no way would abortion be legal in this country. If they had their way, government would step in where religion should be; government would step in where families should be.

I yield the floor.

Mr. SANTORUM. Mr. President, I yield myself the remainder of the time.

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

Mr. SANTORUM. Let me respond directly to the Senator from California. Let me quote from the 39,000 OB/GYNs letter that was sent up here. It says that the policy committee of this select panel—''could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of the mother.''

They went on to say that, ''However, it may [I underline may] be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of the mother.''

However, after more than a year, ACOG has given no specific example of any circumstance under which a partial-birth abortion would be the most appropriate procedure in any circumstance. The silence from that organization is deafening. And the reason they cannot give a circumstance is because there is no circumstance. There is no circumstance where this is the best procedure. There is no circumstance where this is needed to be performed for the health of the mother.

This is the last, which I thought was the last, of a series of misinformation that has been spewed out here on the Senate floor and across the country on the issue of partial-birth abortion. I will chronologically go through the lies that have been told by all of the abortion rights organizations, to stop the passage of this bill.

The first lie, when BOB SMITH and CHARLES CANADY introduced the bill they maintained in a letter, the National Abortion Federation did, that illustrations of this procedure are ''highly imaginative and artistically designed, but with little relationship to the truth or to medicine.''

They denied it existed, denied it was ever done. What was the truth? Three years prior to this statement, Dr. Haskell, who performs this procedure, appeared before the National Abortion Federation meeting and described the procedure shown in the drawings that BOB SMITH used here on the floor of the Senate, and talked about partial-birth abortion to this very group. Lie No. 1.

Lie No. 2, they said that this was a procedure where the fetus would feel no pain because of the anesthesia. I will combine No. 2 and No. 3. Lie No. 3, they went on to say the ''anesthesia ensures fetal death.''

Planned Parenthood, in a factsheet of October 1995 says, ''The fetus dies after overdose of anesthesia given to the mother intravenously.''

That is just absurd. Dr. Martin Haskell, again, who is one of the great users of this procedure, in the American Medical News:

> Let's talk about whether or not the fetus is dead beforehand. . . .
>
> Dr. HASKELL. No, it's not. It really is not.

In fact, a group of anesthesiologists came up to the Senate and pleaded to testify to debunk this myth that somehow anesthesia kills, or somehow could anesthetize the baby in the womb, because women were refusing to get anesthesia for fear that they would harm their baby.

Lie No. 4, this was a great one: Partial-birth abortion is ''rare.''

Testimony after testimony, a letter signed by the Guttmacher Institute, Planned Parenthood, National Organization of Women, Zero Population Growth, Population Action, National Abortion Federation and a myriad of organizations said there are fewer than 500 cases in America. None of the reporters here or across America challenged them on it, except one little reporter in Bergen County, New Jersey, who called an abortion clinic and they found out at that clinic 1,500 were done, in that clinical alone. Another lie debunked.

Lie No. 5, another doozy of a lie. This lie said that partial-birth abortion is used only to save the woman's life or health or when the fetus is deformed.

Ron Fitzsimmons on ABC Nightline: ''The procedure was used only on women whose lives were in danger or whose fetuses were damaged.'' Ron Fitzsimmons, fast forward, 2 years later, ''What the abortion rights supporters failed to acknowledge 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 anti-abortion folks know it, and so, probably, does everyone else.''

Another great lie but, by the way, that lie continues to be perpetrated here on the Senate floor, that this procedure is necessary for the health of the mother.

Let's move on to the last great lie, No. 6, partial-birth abortion protects the health of women. Let me tell you what the American Medical Association said when they endorsed this legislation. They say: ''Thank you for the opportunity to work with you towards restricting a procedure that we all agree is not good medicine.''

There is no reason—there is no reason, this goes on to say in another publication, ''There is no health reason for this procedure. In fact, there is ample testimony to show that all of the health consequences are more severe for this procedure than any other procedure used.''

If you are really concerned about the health of the mother, then look at all of the information that has been put out there by a variety of different organizations that says that this procedure is dangerous. It would never be used to protect the life of the mother. It is a 3-day procedure. If a mother presents herself in an emergency situation, you don't wait 3 days to evacuate the uterus. You do the procedure immediately. This is not.

Just think, common sense, we are delivering a baby. It is almost born. It is this far away from being born. Why is it healthier for the mother to insert a pair of scissors into the baby's skull, fracturing and shattering that skull inside the mother, causing potential harm to that mother by doing so? It is a blind procedure. Why don't you just let the baby live? The baby is almost outside the mother. Let the baby live. There can be no rationale, can be no rationale for destroying this little baby by executing this little baby at that point in time, when it is almost born.

Let me show you a couple of pictures, because the Senator from California has shown many pictures here on the floor of the Senate of women who have had partial-birth abortions as the reason this procedure needs to be kept legal. Let me show you the picture of a young man who is here in Washington today, Tony Melendez, who is a Thalidomide baby. People like Tony Melendez, came here to the House and the Senate to testify. It was said we need to keep partial-birth abortion legal because of people like Tony Melendez, who don't have arms or don't have legs or may be blind, those people should be aborted—those people who are not worthy to live. That is why we need to keep this, because of those poor deformed babies.

Yes, Tony Melendez was disabled in the sense that he had no arms, but Tony Melendez has been an inspiration to millions across the world in his ability to sing and play the guitar, yes, with his feet, as he did for us this morning downstairs in the Capitol.

The Senator from California will have women standing out there in the

hall. Tony will also be there as a stark reminder that this bill is aimed at people like him, people who just are not perfect enough for us to deserve to be born.

I find it absolutely incredible that last year when we debated this bill, right before this bill came up, we had a vote on the Individuals with Disabilities Education Act. Passionate people on the other side of the aisle, whom I respect greatly for their defense of the disabled, got up and talked about how it was so important to give these people meaningful lives. They gave impassioned speeches, and yet, in the very next vote, they said that while they want to give them the right to education, they don't want to give them the right to live in the first place.

The Bible says, ''A house divided against itself cannot stand.'' You cannot in any way conceivably fit in that you are willing to fight for the disabled, but only after they survive birth; you won't fight for them—in fact, you point the finger at them and say that those, in particular, should not be born.

The Democratic Party, over the last 100 years, has had a wonderful, wonderful reputation for fighting for those who are the least among us, for civil rights, for rights for women, rights for minorities, rights for the disabled. They have continued to try to open the American family, and I salute them for that. But they do a great disservice to that legacy when they turn their backs on people like Tony Melendez and Donna Joy Watts.

One of the cases that is cited often by the President is cases of children with hydrocephaly. Donna Joy Watts had hydrocephaly with no chance to live. Her mother had to go to three hospitals just to get Donna Joy delivered. They wouldn't deliver her. They would abort her, everyone would abort her, but they wouldn't deliver her. And Donna Joy is here today at 6 years of age. She just earned her white belt in karate.

Mr. President, I have been asked many times what pulled me to the Senate floor to debate this issue, because I had never spoken a word in the House or Senate about the issue of abortion, and I have given a lot of answers as to why I joined BOB SMITH in this fight.

I finally realized after the birth of my son and the death of my son, Gabriel; it finally came to me what pulled me to the Senate floor. What pulled me here was something that my son revealed to me in his short life—that we draw lines that don't exist in our society with respect to life. He revealed to me, in the love that I had for him, that what pulled me to the Senate floor was the love that I have for little children like Donna Joy and Tony and so many others.

I ask my colleagues today if they will open their hearts and love them, too.

Mr. President, I yield the floor.

The PRESIDING OFFICER. All time has expired. The question is, Shall the bill (H.R. 1122) pass, the objections of the President of the United States to the contrary notwithstanding? The yeas and nays are required. The clerk will call the roll.

The assistant legislative clerk called the roll.

The yeas and nays resulted—yeas 64, nays 36, as follows:

[Rollcall Vote No. 277 Leg.]

YEAS—64

Abraham	Faircloth	Mack
Allard	Ford	McCain
Ashcroft	Frist	McConnell
Bennett	Gorton	Moynihan
Biden	Gramm	Murkowski
Bond	Grams	Nickles
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Burns	Hagel	Roth
Byrd	Hatch	Santorum
Campbell	Helms	Sessions
Coats	Hollings	Shelby
Cochran	Hutchinson	Smith (NH)
Conrad	Hutchison	Smith (OR)
Coverdell	Inhofe	Specter
Craig	Johnson	Stevens
D'Amato	Kempthorne	Thomas
Daschle	Kyl	Thompson
DeWine	Landrieu	Thurmond
Domenici	Leahy	Warner
Dorgan	Lott	
Enzi	Lugar	

NAYS—36

Akaka	Feinstein	Lieberman
Baucus	Glenn	Mikulski
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Murray
Bryan	Inouye	Reed
Bumpers	Jeffords	Robb
Chafee	Kennedy	Rockefeller
Cleland	Kerrey	Sarbanes
Collins	Kerry	Snowe
Dodd	Kohl	Torricelli
Durbin	Lautenberg	Wellstone
Feingold	Levin	Wyden

The PRESIDING OFFICER (Mr. KYL). On this vote, the yeas are 64, the nays are 36. Two-thirds of the Senators voting, not having voted in the affirmative, the bill on reconsideration fails to pass over the President's veto.

CHILD CUSTODY PROTECTION ACT

The PRESIDING OFFICER. Under the previous order, the clerk will report S. 1645.

The legislative clerk read as follows:

A bill (S. 1645) to amend title 18, United States Code, to prohibit taking minors across State lines to avoid laws requiring the involvement of parents in abortive decisions.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu therof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Custody Protection Act''.

SEC. 2. TRANSPORTATION OF MINORS TO AVOID CERTAIN LAWS RELATING TO ABORTION.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 117 the following:

''CHAPTER 117A—TRANSPORTATION OF MINORS TO AVOID CERTAIN LAWS RELATING TO ABORTION

''Sec.
''2401. Transportation of minors to avoid certain laws relating to abortion.

''§ 2401. Transportation of minors to avoid certain laws relating to abortion

''(a) OFFENSE.—

''(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports an individual who has not attained the age of 18 years across a State line, with the intent that such individual obtain an abortion, and thereby in fact abridges the right of a parent under a law, requiring parental involvement in a minor's abortion decision, of the State where the individual resides, shall be fined under this title or imprisoned not more than one year, or both.

''(2) DEFINITION.—For the purposes of this subsection, an abridgement of the right of a parent occurs if an abortion is performed on the individual, in a State other than the State where the individual resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the individual resides.

''(b) EXCEPTIONS.—

''(1) The prohibition of subsection (a) does not apply if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

''(2) An individual transported in violation of this section, and any parent of that individual, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense under section 2 or 3 based on a violation of this section.

''(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant reasonably believed, based on information the defendant obtained directly from a parent of the individual or other compelling facts, that before the individual obtained the abortion, the parental consent or notification, or judicial authorization took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the individual resides.

''(d) CIVIL ACTION.—Any parent who suffers legal harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

''(e) DEFINITIONS.—For the purposes of this section—

''(1) a law requiring parental involvement in a minor's abortion decision is a law—

''(A) requiring, before an abortion is performed on a minor, either—

''(i) the notification to, or consent of, a parent of that minor; or

''(ii) proceedings in a State court; and

''(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

''(2) the term 'parent' means—

''(A) a parent or guardian;

''(B) a legal custodian; or

''(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regulatory resides;

who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required;

''(3) the term 'minor' means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the law requiring parental involvement in a minor's abortion decision; and

''(4) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new item:

''117A. Transportation of minors to avoid certain laws relating to abortion ..... 2401.''.