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

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

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

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

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

Mr. President, this bill contains no health exception. I am very pleased Senator Feinstein later, and there may be others. But the bottom line is the bill itself, as it stands, contains no health exception. It makes it unconstitutional.

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

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

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

takes a broader category of procedures. Therefore, it is putting an undue burden on the woman, Mr. President. With the Supreme Court’s decision, we should at least have a bill before us that will pass constitutional muster. If I may see the other chart that summarizes the two.

Here you see the summary of the problems we have.

1. The Court ruled Nebraska’s so-called partial-birth abortion law unconstitutional. No health exception. How can we say this S. 3—because it is identical to S. 3—because it is identical to the Nebraska bill—because it is by the Supreme Court is that it imposes an undue burden on women.

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

I believe we have a responsibility to make sure this bill is constitutional, not only I would like to see the chart here.

I placed those letters in the Stenberg case. We could once again hear from the scholars, hear from the religious, very pro-life. Yet they chose to have a procedure that their doctors told them was necessary to preserve their fertility, to make sure they would not wind up being paralysed. We could hear from the scholars, hear from the religious, very pro-life. Yet they chose to have a procedure that their doctors told them was necessary to preserve their fertility, to make sure they would not wind up being paralysed.

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

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

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

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

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

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

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

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

Mrs. BOXER. I would be happy to yield.

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

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

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

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

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

Mrs. BOXER. Absolutely.

Mr. REID. The Senator and I came to Washington to serve in Congress at the same time. We were elected the same year, 1992. Is it true that during the Speaker's service of Representatives, she sat through hundreds of hearings on a multitude of issues? Is that a fair statement?

Mrs. BOXER. That is correct.

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

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

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

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

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

Mr. REID. Will the Senator yield?

Mrs. BOXER. I am happy to yield.

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

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

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

If we bring these important issues to the Senate floor without having gone through the committee. The bills we were referring to included a comprehensive energy bill, a bill about that thick, and the agriculture reauthorization, which was another rather thick and complicated piece of legislation, all brand-new material, prescription drug plan, roughly $300 to $400 million in new Government spending, and a brand-new entitlement, never went through committee. And a whole host of other pieces of legislation. We are talking about major, complex, lengthy, pieces of legislation.

The corporate responsibility bill was dramatically changed and a whole list of others that came to this floor. Members were justifiably concerned that these rather extensive and expensive entitlements, the legislation, the Senator from California brings up as a reason to commit this legislation back to committee.

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

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

An abortion in which the person performing the abortion deliberately and intentionally vaginally delivers some portion of
an intact living fetus until the fetus is partially outside the body of the mother.

Let me repeat that...

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

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

We have addressed that issue. They clearly point to that particular example. We have changed the language by saying the person performing the abortion deliberately and intentionally vaginally delivers “a living fetus until” in the first presentation of the entire fetal head is outside the body of the mother or, in the case of a breech presentation, any part of the fetal trunk—not an arm, not a hand, not a foot, not a leg—any part of the fetal trunk outside of the mother, all but the head. That is the procedure we are talking about here.

I want to juxtapose this statement to the Senator from Tennessee who said the people in her State could not even look at the pictures. I suggest to you, what if every single American were forced to sit in front of a television set, or, worse yet, were required to come into an abortion clinic—these are not performed at hospitals; they are just performed at abortion clinics. What if every single American were forced to sit in front of a television set, or, worse yet, were required to come into an abortion clinic—these are not performed at hospitals; they are just performed at abortion clinics. What if every single American were forced to sit in front of a television set, or, worse yet, were required to come into an abortion clinic—these are not performed at hospitals; they are just performed at abortion clinics. What if every single American were forced to sit in front of a television set, or, worse yet, were required to come into an abortion clinic—these are not performed at hospitals; they are just performed at abortion clinics. What if every single American were forced to sit in front of a television set, or, worse yet, were required to come into an abortion clinic—these are not performed at hospitals; they are just performed at abortion clinics.

This is the part I just find chilling. Imagine yourself, close your eyes and imagine yourself in this abortion clinic watching this little child. I have witnessed the birth of our seven little children. I was there to care for my babies. I was trained to save lives, who is trained to save lives, who is trained to save lives, who is trained to save lives, who is trained to save lives.

In the medical literature has a baby in the mother’s womb, all but the head, the arms, legs, and trunk outside of the body of the mother. As our majority leader said yesterday, it is a dangerous procedure for mothers. It is a blind procedure. It is done in an area of the body that is very susceptible to injury. It is a very lush area of the body. There is no protection for the mother. As the Senator from Tennessee yesterday said, those scissors could slip because it a blind procedure. They could perforate a uterus, or they could lead to incompetent cervix. They could lead to a variety of harm that other late-term abortion procedures do not do.

Not only is this lethal for the baby but it is dangerous for the mother. According to the doctor who designed this procedure, he said—again, this his testimony—that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome. His words: Never medically necessary. He personally designed the procedure and said often that the reason he designed this procedure was it was safer for women.

There is no other late-term abortion procedure that is legal, not barred by the legislation before us today, that could occur.

We have cases the Senator from Ohio talked about where mothers who had partial birth abortions are being required to come in and testify that they did not have partial-birth abortions—remember how this procedure works. You can go into this room. You are in this room. Close your eyes. You are in this room, and you are watching this little baby whose arms and legs are moving, who is alive, who...
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Mr. SANTORUM. Now, remember, any of you who have gone through the birth of a child—whether as a mother or a father or a relative—who have experienced the birth of a child, one of the things you always worry about is, is the child in the right position before delivery? Is the child in the right position? What is the right position? Well, head down.

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

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

I show you a chart with Dr. Hern's testimony, saying: Well, you know, we don't just do them, he is ‘the’ expert in America. As they say, he wrote the book. This man wrote the book. He is the author of standard obstetrics textbook, “there are very few, if any, indications for [the breech position] other than for delivery of a second twin;”

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

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

RICK SANTORUM, but according to the leader of the Senate coming here to argue to maintain the legality of a procedure which is a rogue procedure—not according to RICK SANTORUM, but according to the AMA, according to a variety of different organizations that are out there that are physician-oriented organizations designated by abortionists for the convenience of the abortionist, that is a greater risk.

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

I have very serious reservations about this procedure—... you really can't defend it. I would dispute any statement—listen—any statement that is the safest procedure to use. But this is not someone who supports my side of the argument, by the way. But what he is suggesting is, this is the least safe. In fact, we have umpteen medical organizations and physicians' testimony, saying: Well, you know, we want to keep it as an option. Many of them say: And others say: We want doctors to have any restrictions on their right to practice. But, no, there are safer procedures, certainly.
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But the evidence is overwhelming. This is the least safe procedure. This is the most dangerous procedure to the health of a mother. So it is the most dangerous. And it is never medically indicated, never medically necessary. So, why do you want to do this? Of all the alternatives, it is the most dangerous to the health of the mother. So it is dangerous to the health of the mother, and it is never medically indicated. Well, then, why would you support it? What legally is this? Of all the alternatives, it is the most dangerous to the health of the mother. So it is dangerous to the health of the mother, and it is never medically indicated. Well, then, why would you support it? What legally is this?

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

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

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

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

Is stress a reason for this? Is this a justification in the eyes of the American public? Seventy percent—I dare say if we had every American in the room when one of these procedures was performed, God, I hope at least 95 percent would agree it was not justified. This is an evil in our midst. One of the greatest wrongs that America and about my colleagues is when they see evil, they have the courage to stand up and fight it. This is the face of evil. Those hands, those healing hands are a corruption of medicine that we cannot allow to continue.

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

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

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

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

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

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

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

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

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

... fails to protect women's health by omitting an exception for women's health; it monetizes medical practice with the threat of criminal prosecution; it encompasses a range of abortion procedures; it puts women in jeopardy.

She names the various abortion procedures which could be outlawed. Again, I say to my colleague that he would go to the Judiciary Committee because I would like to know why one procedure wasn't mentioned in the bill ever. It is on purpose because it is meant to cover more than one procedure. That is another unconstitutional provision.

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

Dr. Stewart says:

If the safest medical procedures are not available to terminate a pregnancy, severe adverse health consequences are possible... And she lists them. They are even more than what is behind me.

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

So, yes, I could have had a drawing that showed a woman in severe crisis and constituents would have turned away from that as well. That is why Roe v. Wade is such an important decision because it knows that this issue is so difficult. It weighed the competing interests and it said in the first 3 months of pregnancy government stay out. A woman and her doctor can decide. Senator SANTORUM should not decide, although in his opinion, I know
he wants Roe v. Wade overturned. He thinks government should decide. I take issue with that. But there is no difference on the rest because I do believe later in a pregnancy, the State has a right to set the rules, always making an exception for the life and health of the mother. I don't know what all the yelling is about because I could tell my colleague that we could probably get, if the leaders on his side of the anti-choice would agree, we could get a bill that could ban all late-term abortions—all except for life and health of the mother. Wouldn't that be something we could do? We will have the chance because, as I understand it, Senator Feinstein will be offering that very bill. Let's see how our colleagues feel. They will have a chance to ban all late-term abortions with the life and health exception.

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

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

Mr. DURBIN. Will the Senator yield further?

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

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

I have behind me on a chart the two reasons the Court found that Stenberg was not constitutional. The first was the identical wording to the Nebraska statute. In the year 2000, the Supreme Court ruled this language unconstitutional. Yet we come back today with exactly the same language that was rejected by the Supreme Court, and we are supposed to vote on this without any intervening committee hearing, without having people come before us and suggest that if you are going to approach this again, you certainly don't want to go down that same path as the Nebraska statute. So the Senator's motion to commit is basically to take the language rejected by the Supreme Court—the language before us now—back to committee so that when you vote for or against this amendment, you can at least concede the obvious—that this language has already been rejected.

What are we going through here is, frankly, not a very productive undertaking. Is that the Senator's suggestion on the equivalent of the Nebraska statute?

Mrs. BOXER. Yes, I thank my friend. As an attorney, as he is, and as a member of the Judiciary Committee, he understands that this is in fact a wasted amount of time because there are so many other issues we could be dealing with here regarding the people of our country, who are struggling now under terrible economic times and are worried about foreign policy problems; and we are spending time on an extremely complex piece of legislation. It is very difficult for this Senator to be here talking about it, because it deals with a situation where I believe the health of women could be jeopardized and doctors could be put in jail for trying to do the best for their patients. The other side gets very emotional as well. In the end, we have a piece of legislation that does not pass constitutional muster and this will be brought back again.

So it seems to me the intelligent thing to do is to bring it to the committee and make sure that this bill, as Senator Santorum says, meets the constitutional issues that were raised.

Experts tell me it does not. The record is replete with references that colleagues on the other side thought the Nebraska case would pass constitutional muster and it did not either. I also would like my friend to see a comment made by the late Senator Nunn regarding the importance of going to committee because I think it stands out here as a way to make the point that, whether you are a Democrat or Republican, you should respect the fact that we will have committees for a reason. When a bill bypassed the committee, he said he was very disappointed in this process, and this process should not be repeated, so that we can have bipartisan input, have the legislative process work, have hearings so people know what they are voting on, etc.

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

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

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

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

I would like to ask the Senator from California. Couldn't the same thing be said of the woman who are finding late in their pregnancies that there has been a terrible complication which has occurred, which threatens their lives, threatens their health? Couldn't we also say, if you could sit down in a waiting room with a mother-to-be and her husband who have just been given tragic news at the end of what they thought was a normal pregnancy, and that in fact it is not normal, there are terrible complications, and that constitutes the question of whether this mother's life or threatens her ability to ever have children again? I wonder if you invited all of America into that waiting room to anguish with
This is a painful and emotional issue on both sides. But in fairness, it has to be said that this side is arguing they don't want to take into consideration the health of the mother, they don't want to create an exception for a mother in desperate circumstances, facing a medical crisis that is threatening her health and ability to ever bear children.

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

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

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

I have told stories and want to quickly go through one—how much time do I have remaining on my side? The PRESIDING OFFICER. Fourteen minutes, 40 seconds.

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

The PRESIDING OFFICER. The Chair will advise the Senator.

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

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

We are Christians and conservative. We believe strongly in the rights, values, and sanctity of life. And this is simply not an option we would ever consider.

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

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

Eventually she was told if she did that, she could die. We asked our pastor to baptize her in utero. We named her Catherine Grace, Catherine meaning "pure" and Grace representing God's mercy.

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

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

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

Mrs. BOXER. Yes.

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

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

Her husband was a practicing physician who was then in private business. She was the only testimony. She almost had to be carried out of the waiting room after she was told this devastating information. They went home.

I talked with her. She said they had sleepless nights about what is the right thing to do. She called me and asked for advice. They made the decision and sought the counsel of a local, a local, and they had a family doctor? We are going to make the medical decision on the floor of the Senate, a decision which should be made in a hospital, in a clinic, in a doctor's waiting room; isn't that what this comes down to?

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

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

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

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

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

Mr. DURBIN. If I may ask the Senator, too, after most of the debate yes- terday, Senator Santorum came to the floor and told a very compelling story about a little girl who was born with some serious health defects and who survived and prospered. He showed us a
beautiful photograph—which I am sure he is going to refer to again—of this little girl who had survived and conquered all of these challenges.

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

The Senator from California said that she called it legally identical, and she said she did not call it identical.

It is an identical bill, it is far broader than just one procedure—identical bill.

The Senator from Illinois just repeatedly said this is the exact same bill, exactly the same language—"identical bill." She did not say it is an identical bill, and then she suggested we need to send it back to committee because we need hearings because it is a changed bill. Which is it? Is it a changed bill or an identical bill? If this is identical, I concede that point to her. It is different. The language is substantially different. The Senator from California said: We meant to cover more than one procedure with this language.

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

Maybe my colleagues think we are not serious about banning this procedure. Let me assure them, I am serious as a heart attack about banning this procedure. Let me assure them, I am serious as a heart attack about banning this procedure. Let me assure them, I am serious as a heart attack about banning this procedure.

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

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

The new language says:

deliberately and intentionally vaginally delivers a living fetus until, in the case of a breech presentation, any part of the fetal trunk—

That means the arms, legs, trunk—past the navel is outside the body of the mother.

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

I will address Senator DURBIN’s and Senator BOXER’s point on some of the special cases, but the Senator from Minnesota is in the Chamber and I yield 30 minutes to him.

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

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

Ten years ago, our fourth child, our last daughter, Grace, was born. In between we have had a son, Jacob, who is going to be 17 tomorrow, Thursday, and a daughter, Sarah, who is 13, but our daughter Grace was born with the same condition. We knew about a week before that she was going to have this genetic condition which is why—this issue is one in which Minnesotans certainly, I believe, and Americans at large, can find common ground. This should be an issue which, in spite of one’s position on the life issue, in spite of their views on abortion generally—this issue is one in which we should come together and agree to ban partial-birth abortion. As divisive as the issue of abortion is, there are a few things in which we can find common ground.

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

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

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

Some say that the procedure is rarely performed; we do not need to deal
with it. If it was performed even one time, most Americans would say is wrong and must be stopped.

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

A recent survey by the Alan Guttmacher Institute, an affiliate of Planned Parenthood, released in January of 2003, reported that 2,200 partial-birth abortions were performed in 1999. In 1997, the executive director of the National Coalition of Abortion Providers estimated that approximately 3,000 to 5,000 abortions were performed by that method annually. This means that every week in the United States, approximately between 6 and 14 children die every day as a result of partial-birth abortion. This bill is a significant piece of child protection legislation and, again, one in which we should find common ground in spite of and regardless of one’s position on abortion.

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

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

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

The Senator’s amendment seeks to make it unlawful to abort a viable fetus unless a physician, prior to performing an abortion, certifies the continuation of the pregnancy would threaten the mother’s life or risk grievous injury to her physical health. In this case, the exception swallows the rule. The word “viable” makes the ban on partial-birth abortion virtually meaningless, as a large majority of the procedures are believed to be performed in the second trimester, and the term “viable” will likely be read by the courts to include only third-trimester abortions.

Further, there is no requirement to certify whether the unborn child is, in fact, the baby of a mother who is pregnant. The baby of a mother to survive independently of the mother with technological assistance is currently reached in the late weeks of the second trimester. Without certification of viability, there is little or no new protection against the loopholes in the amendment so large. It is time to stop this inhumane, gruesome procedure. It is the right thing to do, and this is what the American people want. The people in Minnesota are asking it. I have received scores of messages and letters from folks saying move forward on this effort. It is the right thing to do.

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

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

I yield the floor.

Mr. SANTORUM. How much time remains?

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

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

Mr. FITZGERALD. I thank my colleague from Pennsylvania for the excellent work he has been doing on this effort. It is straightforward, very unequivocal, very heartfelt, and a very strong consensus-building effort to move together on this divisive issue of abortion. We want to say that common ground is to put an end to partial-birth abortion.

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

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

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

I yield the floor.

Mr. SANTORUM. How much time remains?

THE PRESIDING OFFICER. The Senator has 9 minutes and 3 seconds.

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

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

When you reflect that it has taken this long for this body to get to this date where we are close to having a vote and we hope the bill will pass and be signed by the President, you have to wonder what kind of a society have we become that it has taken us so long to get to the point where we are close to banning what to me seems to be a very cruel and inhumane procedure. It has been made significantly clear both in this debate and in many Senate committee hearings on prior occasions, that banning partial-birth abortion is a simple step those of us on both sides of the issue should be able to coalesce and find common ground over. We are talking about banning what to me seems to be a very cruel and inhumane procedure in which a baby is partially delivered, scissors are stuck in the back of the baby’s skull, a vacuum suction tube is inserted into the skull, and the baby’s brains are sucked out. We are banning this type of abortion only. Can we not agree this is too cruel and inhumane a procedure to allow in the United States? As Senator SANTORUM has said, we are not banning other types of abortion.

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

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

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

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

I remember a couple years back the Senate acted to do more to fight the inhumane treatment of dolphins. I remember supporting an amendment offered by my friend and colleague, Senator BOXER, to the fiscal year 2000 Commerce, Justice, State appropria-

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

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

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

How much time is remaining on both sides?

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from California.

Mrs. Boxer. Mr. President, I want to start by answering Senator Fitzgerald, who complimented me on my work. We have worked together on saying, since he couched it in the form of an attack, I think I would like to respond in this way.

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

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

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

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

He says:

Senators deserve the benefit of full consideration and vigorous debate before they are asked to cast a vote on such a significant and complicated issue. In fact, the Judiciary Committee has not had an opportunity to fully debate the pros and cons of this issue in nearly 19 years. Since that time, we have welcomed many individuals to the Senate, and to the Judiciary Committee, who were not members of this body when the bill was last debated. In addition, since our last Committee hearing, there has been judicial review of similar legislation, including a Supreme Court decision, that should be fully vetted by the Judiciary Committee.

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

For example, the distinguished senior Senator from Oklahoma complained in relation to the prescription drug bill last year: “What happened to the committee process? Shouldn’t every member of the Finance Committee have a chance to say, ‘I think we can do a better job?’ Maybe we can do it more efficiently or better. No, we bypass the committee and take it directly to the floor.” Other senior Republican Senators likewise said they believed the need to involve Senate Committees and their expertise in development of prescription drug legislation, energy legislation, and many other matters. How
quickly they have changed their position. I have some respect for the Senate’s established procedures and processes. I urge all Senators to support the motion to commit this matter initially to the Judiciary Committee for a hearing and committee consideration. With Senator HATCH as the committee chair and with a majority Republican membership, I do not understand what the Republican majority fears by having fair proceedings before the committee before the Senate is asked to take final action.

AMENDMENT NO. 259

The PRESIDING OFFICER. All time under the previous order has expired. Under the previous order, the Senate will now resume consideration of the Durbin amendment, No. 259. Under the previous order, there will now be 1 hour of debate equally divided on the amendment.
The Senator from Illinois.

AMENDMENT NO. 259, AS MODIFIED

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

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

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

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE. This Act may be cited as the “Late Term Abortion Litigation Act of 2003”.

SEC. 2. BAN ON CERTAIN ABORTIONS.

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

"CHAPTER 74—BAN ON CERTAIN ABORTIONS

"Sec. 1531. Prohibition of post-viability abortions.

"Sec. 1532. Penalties.

"Sec. 1533. Regulations.

"Sec. 1534. State law.

"Sec. 1535. Definitions.

§ 1531. Prohibition of Post-Viability Abortions.

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

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

(2) an independent physician who will not participate in the present at the abortion and who was not previously involved in the treatment of the mother certifies in writing that, in his or her medical judgment based on the particular facts of the case, the continuation of the pregnancy would threaten the mother’s life or risk grievous injury to her physical health.

(b) CONSPIRACY.—No woman who has had an abortion after fetal viability may be prosecuted under this chapter for conspiring to violate this chapter or for an offense under section 32-14 or 312 of title 18.

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

§ 1532. Penalties.

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

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

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

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

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

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

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

§ 1533. Regulations.

(a) FEDERAL REGULATIONS.—

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

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

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

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

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

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

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

§ 1534. State Law.

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

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

§ 1535. Definitions.

"In this chapter:

"(1) GRAVE INJURY.—The term ‘grave injury’ means—

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

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

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

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

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

"74. Ban on certain abortions \:@\textspace 1531.?\n
Mr. DURBIN. Mr. President, with no objection, let me explain what I have
I have spoken to women who have been through this. Believe me, this was not a casual, easy decision. These women, late in pregnancy, were counting the days when finally their back stopped hurting them and finally they could go home and put the baby in their arms. They were waiting expectantly for that, only to learn at the last minute in the pregnancy something had happened that no one had anticipated.

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

The Durbin amendment says you can only terminate the pregnancy late in the pregnancy, after viability, in the second trimester. Governor Ridge said, you could only terminate it if the mother's life is at stake. I hope there is no argument about that.

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

If some mother in that circumstance takes the heroic position that she may never be able to have another child, but she wants to go forward with this pregnancy, we not create an opportunity for that decision to be made. We want to push ourselves into medical circumstances involving a threat to the mother or a threat to the mother's health. We have taken this conversation and debate into context. We are talking about the termination of a pregnancy through an abortion procedure where we have reached such a medical crisis that a doctor says to a woman, I have something which you didn't think would ever happen: The possibility of a hemorrhage that could endanger your life, a uterine rupture that could endanger your health permanently. You may never bear this child because of the complications of this pregnancy, because you may die or I can tell you this: You may go through this pregnancy and not be able to bear another child.

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

Mr. FITZGERALD. Mr. President, will the Senator yield for a question? Mr. DURBIN. As soon as I am completed, I would be happy to, and I will yield to the Senator's time and on his side time.

But I will just say if we are going to err in judgment here, let us at least err...
on the side of understanding that there are medical complications and there are medical problems which we cannot as simple lawyers and legislators even envision. Let us defer to the professionals, the obstetricians and gynecologists. That is why we said, please don’t pass S. 3, the Santorum amendment. There are moments in time when we have to make critical medical decisions, and in those moments we have to do what is best for the woman involved here. Don’t foreclose our ability to determine the condition of the mother, that doctor has to certify, yes, if that pregnancy goes forward, that independent doctor has to certify, yes, that some pro-choice groups disagree with us because this amendment is very strict and very specific. It says when it comes to postviability abortions and late-term abortions, we are laying down very strict limitations and guidelines as to when you can be eligible for this.

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

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

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

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to make four quick points. I had three and a half points as reasons to oppose what we have done here, but we have not addressed fourfolded reasons because of the modification that was just submitted.

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

No. 2, it talks about this is a postviability ban. The problem with that—there was amendment No. 4, which not only defined viability, it defined viability. So we have not defined viability, and it is solely up to the discretion of the abortionist performing the procedure. I ask unanimous consent to have printed in the Record the chart that I have on survival rates.

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

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

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

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

The Senator from Illinois says there could be a losing of your license. Well, that is not what his substitute says. It says the State has to develop procedures and requirements for what would happen if these things are violated. It does not say license revocation. It does not say that at all. It says they have to develop standards. And it could be susceptibility for a day for the first offense, and for the second offense, half a day—it could be whatever the State would require it to be. And for the second offense, it is not that it must be revoked, it is not a must. It is an either/or. They could assess a fine. And the fine could be a dollar. It says up to $2500,000, but it could be a dollar.

So now, having removed any criminal sanction, you are left with it being completely open-ended, with potentially no prosecutions if telling the truth in this circumstance. There are a whole host of other reasons this amendment does not work. But this amendment is fatally flawed. It was poor, in my opinion, as a substitute. But now it could have the criminal sanctions as even one potential hope for getting maybe some very late, third-trimester abortions banned. So I just suggest, while I understand why the Senator from Illinois modified his amendment—to try to get more folks to be supportive of his amendment—in so doing, he guts whatever is left of this amendment to actually ban any abortions in this country.

As a result of that, I strongly oppose the amendment.

The PRESIDING OFFICER. The Senator from Ohio.

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

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

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

Why? Why do I say that?

First, the amendment ties the availability of late-term abortions to the risk of grievous injury to the mother. That sounds reasonable. But let’s be clear about this. Grievous injury is, of course, by definition, necessarily subject to the so-called medical judgment of the abortion provider. The effect of this amendment is ambiguous on its
own terms because the term "medical judgment" has, of course, a great deal of built-in flexibility. Specifically, under the precedent set by the U.S. Supreme Court, in 1973, in the Doe v. Bolton case:

Medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well being of the patient. All these factors may relate to health.

That is from Doe v. Bolton.

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

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

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

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

Why do I talk about Dr. Haskell? I talk about him because I am familiar with him because he lives in my home State, but much more importantly, because he is typical of the people who provide these abortions. They are not your "Dr. Welbys." They are not your family practice physician. He is not "Dr. Welby." He kills babies. That is what he does for a living. This is the person who, under this amendment, tragically, would be charged with making the medical judgments. When Dr. Haskell needs to seek a second opinion, which is provided under this amendment to a so-called independent physician as required under the amendment to determine if the procedure is necessary, who do you think he is going to ask? Do you think he is going to really ask the local family doctor nearby? We know he is not going to. He is going to ask one of his other abortion provider friends. We know that is what the truth is.

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

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

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

So even a so-called grievous injury exception potentially would allow an abortionist to perform a partial-birth abortion on any woman who is pregnant. The second problem with the Durbin amendment is that its ban on partial-birth aboritions is practically meaningless because the amendment on its own terms only applies to a fetus that is already viable. It does not apply to a fetus that is not viable. We know the overwhelming majority of partial-birth aboritions—it has been estimated over 90 percent—occur between 20 and 26 weeks of pregnancy, not during the third trimester. Clearly, this amendment would not even apply to very many partial-birth aboritions at all.

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

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

A woman was 18, unmarried, and a little over 6 months pregnant. She cried the entire 3 days she was at the abortion clinic. The doctor told us, "I'm afraid she's going to walk out and sue the baby's body and the abortionist." She cried as she gave her names to the abortionist to perform this procedure. The doctor said, "Well, I'm going to keep her with me."

He delivered the baby's body and arms, everything but his little head. The baby's body was moving. His little fingers were claspng together.

He was kicking his feet. The baby was hanging there, and the doctor was holding his head up to keep him from falling out. The doctor took a pair of scissors and inserted them into the back of the baby's head, and the baby's arms jerked out in a flinch, a reaction, like he thinks he might fall. Then the doctor opened up the scissors, stuck the high-powered suction tube into the hole and sucked the baby's brains out. The baby went completely limp. Then, the doctor pulled the head out, and threw the baby into a pan.

The baby's heartbeat was clearly visible on the ultrasound screen. I stood 3 feet from the doctor as he took the forces and brought the baby's legs down through the birth canal. He delivered the baby's body and arms, everything but his little head. The baby's body was moving. His little fingers were claspng together.

He was kicking his feet. The baby was hanging there, and the doctor was holding his head up to keep him from falling out. The doctor took a pair of scissors and inserted them into the back of the baby's head, and the baby's arms jerked out in a flinch, a reaction, like he thinks he might fall. Then the doctor opened up the scissors, stuck the high-powered suction tube into the hole and sucked the baby's brains out. The baby went completely limp. Then, the doctor pulled the head out, and threw the baby into a pan.

When the mother started coming around, she was crying, "I want to see my baby." So we cleaned him up and put him into a blanket. We put her in a private room and handed her the baby. She held that baby in her arms and when she looked at it, she started screaming, "Oh my God, what have I done? This is my baby." At that point, I couldn't take it. In my 14 years of nursing, I had been pretty strong. But this was different. I started choking. I excused myself and ran to the bathroom. It was horrible, and I didn't fully understand it. Then, I had to go back, and take that baby away from his mother. She was so hysterical, and all she kept saying was, "It was a baby; he was so beautiful."

Other babies and babies are dying the same tragic deaths. Quite simply, we as a country, as a people, should not tolerate it. We should not tolerate it anymore. We must not allow
it to continue. We must not pass amendments that would allow it to continue even under a legal ban of the partial-birth abortion procedure.

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

I yield the floor.

The PRESIDING OFFICER (Mr. Bunning). The Senator from Illinois?

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

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

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

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

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

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

Some argue that a women's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reasons she alone chooses, and that the Constitution and the laws and views of the American people.

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

The American people do not agree with the extremes on both sides. The fact is, with all due respect to the Senators from Pennsylvania and Ohio, this is not an amendment that anybody could put on the floor, that they would agree to, because they are opposed to abortion in every case, under every circumstance. They believe it should be outlawed. They are entitled to that position, to represent it, and they are entitled to run on it, which they have, and they have gotten elected. But I say that the majority of people in the country believe that in some situations abortion should be legal and safe, and we are attempting to make it more safe.

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

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

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

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

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

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

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

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

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

I yield back the remainder of my time.

Ms. MILULSKI. Mr. President, I express my strong support for the Durbin amendment.
I support the Durbin amendment because it is consistent with my four principles. These are my principles: It respects the constitutional underpinnings of Roe v. Wade. It prohibits all post-viability abortions, regardless of the reasons used. It provides an exception for the life and health of the woman, which is both intellectually rigorous and compassionate. And it leaves medical decisions in the hands of physicians—not politicians.

The Santorum alternative, used to this difficult issue with the intellectual rigor and seriousness of purpose it deserves. We are not being casual. We are not angling for political advantage. We are not looking for cover.

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

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

In fact, the Supreme Court ruled in Stenberg v. Carhart just 3 years ago that a Nebraska state law that bans certain abortion procedures is unconstitutional. The Supreme Court ruled it was unconstitutional for two reasons. First, it did not include an exception for the health of the woman. Second, it does not clearly define the procedure it aims to prohibit and would ban other procedures, sometimes used early in pregnancy.

The bill before us, the Santorum bill, is nearly identical to the Nebraska law the Supreme Court struck down. The proponents of this legislation say they have made changes to the bill to address the Supreme Court’s ruling. They have not. It still does not include an exception for the health of the woman. It still does not clearly define the procedure it claims to prohibit. Let me be clear about this. The Santorum bill is unconstitutional.

The Santorum bill violates the key principles of Roe v. Wade and other Court decisions. When the Court decided Roe, it was faced with the task of defining. “When does life begin?” theologians and scientists differ on this. What is the will and good conscience differ on this. So the Supreme Court used viability as its standard. Once a fetus is viable it is presumed to have not only a body, but a mind and spirit. Therefore it has standing under the law as a person. The Roe decision is quite clear. States can prohibit abortion after viability so long as they permit exceptions in cases involving the woman’s life or health. Under Roe, states can prohibit most late term abortions. And 41 states have done so.

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

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

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

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

I believe the Santorum bill is flawed precisely because it leaves medical decisions up to doctors, not legislators. It relies on medical judgement, not political judgement about what is best for a patient. Not only does the Santorum bill not let doctors be doctors, it criminalizes them for making the best choice for their patients.

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

In fact, those who oppose the Durbin amendment say it is flawed precisely because it leaves medical judgements to doctors not legislators. Not managed care accountants. Not bureaucrats. Not managed care accountants. Not bureaucrats.

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

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

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

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

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

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

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

Indeed, S. 3 undermines basic tenets of Roe v. Wade, which maintained that women have a constitutional right to an abortion in the first trimester of pregnancy, at a time at which it first becomes realistically possible for fetal life to be maintained outside the woman's body—States could ban abortions only if they could show that the law imposing an undue burden on a woman's ability to have an abortion. This case was representative of 21 cases throughout the Nation. Regrettably, however, Senator SANTORUM's legislation disregards both Supreme Court decisions by not providing an exception for the health of the mother and that in fact it poses significant health risks to a woman. This is simply not true. Let me explain why there must be a health exception for "grievous physical injury" in two circumstances.

First, the language applies in those heart-wrenching cases where a wanted pregnancy seriously threatens the health of the mother. The language would allow a doctor in these tragic cases to perform an abortion because the threat to the health of the mother is "grievous." It is tragic to preserve 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; pre-eclampsia, or high blood pressure which is caused by a pregnancy, which can result in kidney failure, stroke or death; and uterine ruptures which could result in infertility.

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

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

Mr. President, I believe this is a common-sense approach to a serious problem. It recognizes that a woman's right to make her own reproductive decisions has limits in cases of rare or life-threatening conditions. It is a smart approach, balanced and responsible. The findings in S. 3 would have you believe that this procedure is never necessary to preserve the life or health of the mother and that in fact it poses significant health risks to a woman. This is simply not true. Let me explain why there must be a health exception for "grievous physical injury" in two circumstances.

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Now, I ask my colleagues, who could seriously object under these circumstances?
Mr. DURBIN. I yield 30 seconds to the Senator from California.

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

The PRESIDING OFFICER. The Senator from Illinois.

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

The PRESIDING OFFICER. Six minutes and 22 seconds.

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

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

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

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

Then we will see another group with their arms folded and we will know what they are thinking: I do not think...
Mr. SANTORUM. I move to table the Durbbin amendment and ask for the yeas and nays. The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.
The question is on agreeing to the motion. The clerk will call the roll.

The bill clerk called the roll.

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

Further announcement that, by present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "no."
The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?
The result was announced—yeas 60, nays 38, as follows:

[Rollcall Vote No. 46 Leg.]

YEAS—60

Alexander  zn
Allard  zn
Allen  zn
Benning  zn
Bond  zn
Bouch  zn
Brownback  zn
Burris  zn
Campbell  zn
Cantwell  zn
Chambliss  zn
Clint  zn
Cooper  zn
Coleman  zn
Conrad  zn
Corbin  zn
Corzine  zn
Craig  zn
Crapo  zn

NAYS—38

Akaka  zn
Baucus  zn
Bayh  zn
Bingaman  zn
Boxer  zn
Byrd  zn
Carper  zn
Chafee  zn
Collins  zn
Durbin  zn
Edwards  zn

NOT VOTING—2

Biden  zn
Kerry  zn

The motion to lay on the table was agreed to.

MOTION TO COMMIT

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

Who yields time?
The Senator from California.

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

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

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

The Senator from California.

Mr. BOXER. Mr. President, since we last debated this bill, the Supreme Court has ruled an identical bill unconstitutional based on two principles: No. 1, there was a health exception; and, No. 2, because of an undue burden on women because the procedure ban is so vaguely defined that it banned more than one procedure.

There is a sufficient second.

Mr. BOXER. I will take another 30 seconds.

Let's have full consideration and vigorous debate before they are asked to cast a vote on such a significant and complex issue.

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

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

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

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

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

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

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

The motion was rejected. The PRESIDING OFFICER. The Senator from Kentucky is recognized.

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

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

The only way anyone can justify it is to say, hey, it doesn't matter because not that many partial-birth abortions are actually performed or they can try to close this by saying it is not a matter of respect for human life that some of our colleagues still have. It is not just a few hundred a year—it is in the thousands.

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

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

Personally, I don't think this makes much sense, but it just goes to show that those of us who support the bill are doing what we can to try to find a middle ground and to answer concerns that some of our colleagues still have. No one can deny that partial-birth abortion is cruel. No one can deny that it is patently inhumane. No one can deny that it is gruesome and grotesque. In fact, in the 8 years we have been debating this bill, no one has really come up with any partial-birth abortions that holds any water.

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

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Nevada is recognized.

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

ORDER OF BUSINESS

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

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

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

I further ask unanimous consent that following that vote, the Senate proceed to executive session and vote on the confirmation of Calendar No. 53, Thomas Varlan, to be U.S. District Judge for the Eastern District, with no intervening action or debate; provided further that any second-degree amendments to the aforementioned amendments be relevant to the first degree.

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

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator from Nevada.

Mr. HARKIN. Mr. President, I have an amendment at the desk, and I ask for immediate consideration. The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Iowa [Mr. Harkin] proposes an amendment numbered 260. At the appropriate place, insert the following:

SEC. 4SENSE OF THE SENATE CONCERNING ROE V. WADE.

(a) FINDINGS.—The Senate finds that—

(1) abortion has been a legal and constitutional right of a woman to choose to terminate a pregnancy in the United States since the Supreme Court decision in Roe v. Wade (410 U.S. 113 (1973)); and

(2) the 1973 Supreme Court decision in Roe v. Wade established constitutionally based limits on the power of States to restrict the right of a woman to choose to terminate a pregnancy.

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

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

(2) such decision should not be overturned. The PRESIDING OFFICER. The Senator from Iowa.

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

I let the clerk read the full text of the amendment because it is very short and to the point. I offered this amendment 4 years ago on similar legislation that came before this body. I believe a position of that amendment at that time, if I am not mistaken, was 51 to 47 in passage. There were some who were
Concerned about a couple of the findings. The difference between this amendment and the one I offered 4 years ago is basically two findings have been removed and the only findings left are just the findings that pertain only to Roe.

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

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

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

As we all know, the U.S. Supreme Court announced its decision in Roe v. Wade, a Texas statute that made it a crime to perform an abortion unless the woman’s life was at stake. The case had been filed by Jane Roe, an unmarried woman, who wanted to safely and legally end her pregnancy.

Siding with Roe, the Court struck down the Texas law. In its ruling, the Court recognized for the first time that the constitutional right to privacy “is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” But the decision also set some rules.

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

A State may, but is not required, to prohibit abortion after viability, except when it is necessary to protect a woman’s life or her health. I add that for emphasis, “or her health.”

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

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

Before the 1973 landmark ruling of Roe v. Wade, it is estimated that each year 12 million women resorted to illegal abortion, despite the known hazards of frightening trips to dangerous locations in strange parts of town; of whiskey as an anesthetic; of “doctors” who are unlicensed practitioners, sometimes alcoholic, sometimes sexually abusive; unsanitary conditions; incompetent treatment; hemorrhage; disfiguration and death.

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

Only 10 pieces of legislation were introduced in either the House or Senate before the Roe decision. But in the 30 years since the ruling, more than 1,000 separate legislative proposals have been introduced. The majority of these bills sought to restrict a woman’s right to choose.

Unfortunately, what is often lost in the rhetoric and in some of those proposals—is the real significance of the Roe decision.

The Roe decision recognized the right of women to make their own decisions about their health. The decision whether to bear a child is profoundly private and life-altering. As the Roe Court understood, without the right to make autonomous decisions about pregnancy, a woman could not participate freely and equally in society.

Roe not only established a woman’s reproductive freedom, it was also central to women’s continued progress toward full and equal participation in American life. In the 26 years since Roe, the variety and level of women’s achievements have reached a higher level. As the Supreme Court observed in 1992:

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

As I have said on many occasions in the past, going back almost 20 years, I do not believe that any abortion is desirable. As a father, I have struggled with this issue many times in the past. However, I do not believe that it is appropriate to insist that my personal views be the law of the land, just as I do not think the personal views of the Senator from Pennsylvania, however strong he may hold them, ought to be the law of the land.

So what should Congress do?

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

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

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

Further, I quote from Justice O’Connor, Kennedy, and Souter in Casey:

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

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

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

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

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

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

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

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

There are those who want to come along and change it and make it more complex, indecipherable, benefiting no one person one way, adding to the detriment of another person another way, so that we are right back where we were before Roe v. Wade was decided.
I believe very strongly that we need to express ourselves on this sense of the Senate resolution. I appreciate the agreement from the manager of the bill and our majority whip to have an up-or-down rollcall vote. I believe it is that important, and I appreciate their willingness to have that up-or-down vote.

I am sure I will have more to say later on. I believe there are 2 1/2 hours of time divided equally, if I am not mistaken.

The PRESIDING OFFICER. Two hours and 20 minutes.

Mr. HARKIN. How much time have I consumed?

The PRESIDING OFFICER. The Senator has 62 minutes and 3 seconds.

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

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

Mr. SANTORUM. Mr. President, I rise in opposition to this amendment.

Before I make a statement, I encourage Members who have statements on this amendment or on the bill—we have many in the country believe there is a woman's right to express herself, that they would idly sit by and not petition the government to change that.

Senator HARKIN is in the Chamber, Senator HARKIN and myself. So there is ample opportunity and time. There is not much of a wait.

Does the Senator from Massachusetts wish to proceed?

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

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

Mr. KENNEDY. I appreciate that.

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

The PRESIDING OFFICER. The Senator from South Carolina.

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

In a country where people are free to express themselves, that they would outlaw abortion—find it amazing people who believe it is a woman's right to choose would idly sit by and not petition the government to change that. The converse is true. This is why we are here. This is part of democracy, defining what the law of the land is in terms of the beginning of life, the taking of life, and the terminating of a life. I don't find it odd at all we have these debates. This is exactly what a democracy is built upon—the rule of law. There are no understandings about the basics of life—when it begins, who can terminate it, under what conditions it can be terminated. If it is left to everyone's whim and personal desire, that is exactly what the right to not terminate it, and under what circumstances. To me, that is the essence of the rule of law. I look forward to hearing my colleagues express themselves. I do disagree with the concept that the Constitution is what determines when life begins, how it should be ended, and who can end it, in a democracy.

I yield the floor.

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

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

That is not the country that our Founding Father. That is not the Constitution they drafted. That, by the way, is why the right to abortion is not written in the Constitution. This is a slippery slope we are heading down. In deference to the Senator from Massachusetts who is in the Chamber, I will define that slope momentarily.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

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

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, the Republican leadership is wrong to ask the Senate to support legislation that has been ruled unconstitutional by numerous courts. Since the last debate in the Senate in 1998, the Supreme Court found another similar law enacted by the State of Nebraska to be unconstitutional. This bill is unconstitutional as well.

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

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

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

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

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

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

Because of the sound and fury and high emotion that surrounds this issue, I make my own personal views clear. I am pro-choice. But I believe that abortion should be rare. I believe we have an obligation to create an economy and a welfare system that makes it easier for women to choose to bring children into the world. If the proponents of this legislation were serious...
about limiting the number of abortions in this country, then we would be debating access to health care, quality education, the minimum wage, and other issues of economic security that are so important to parents bringing up children. I am not on the Republican leadership's agenda.

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

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

The role of the Senate is to protect and defend the Constitution of the United States. Each of us in this body has taken that oath of office, and that oath of office and the Constitution require me to oppose this legislation. I view it as impermissibly attempts to interfere with the doctor-patient relationship. For all these reasons, I oppose this bill.

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

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

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

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

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

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

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

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

While the woman is on that drug, they use an ultrasound to look at the woman's abdomen; to look inside the uterus. Looking at the ultrasound picture, the doctor can insert a clamp—basically some forceps—to grab one of the legs of the baby. The baby is in the uterus, but the doctor can still form through the cervix. If she has some clips put on that will help her dilate. That is why the health of the mother is what is in jeopardy with this procedure.

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

That is the point where the physician puts his fingers around this little—I will call it what it is. They call it a fetus, but it is a little human being, whether you call it a fetus or baby or whatever you call it. It is a little human being. This little human being is alive. You can feel it. You can feel the heart beating. You can feel movement in the legs.

There is no question that the person who is performing this procedure can feel life in their hands.

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

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

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

This procedure is infanticide. A civilized society should never allow this kind of thing to go on. That is why we need to ban it.

A study published in the New England Journal of Medicine reports that we have heard the exception for the health of the mother. For the health of the mother, we all agree. If it is the life of the mother, you have to do it. There has to be a balance. So we must allow this to go on.

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

In the terrible case of what is called an anencephalic baby, which one is born with not enough neural tissue to develop, we know that has to die very, very short period of time after they are born; it is safer for the mother to have that child. I would even argue that it is safer for them from a mental health of the mother to be allowed, for it is safer for them from a mental and emotional standpoint.
health standpoint. It is part of the grieving process we need to go through when we lose a child, just holding that child.

To just dismember it, or suck out its little neuro tissue, and deliver it that way is, in my opinion, not in the best interest of the mother than actually allowing it to go full term, and then to go through the normal grieving process. All the mental health professionals tell us that denying mental grieving processes can actually be worse for people.

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

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

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

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

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

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

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

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

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

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

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from New York.

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

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

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

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

Today, we know with all of these global uncertainties that we have a choice. We cannot make another choice worse because of the potential for war. Last month, we lost 312,000 private sector jobs—the steepest decline since the days following the attack of September 11. Consumer confidence has dropped to its lowest level since October 1993. The unemployment of Americans has been out of work for 6 months or longer has climbed to nearly 2 million. February marked the 20th consecutive month the private sector experienced negative job growth—the longest stretch of negative job growth since World War II.

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

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

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

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

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

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

As I travel around, talking with people in my State, that is what they talk to me about: Why isn’t the doing what the Senator from New York—Mr. HARKIN? What is going to happen after a war, if it happens? What about homeland and security? Are we as safe as we need to be here at home? Senator,
what can we do about the jobs that are disappearing, the stagnant economy? How on Earth can we deal with this overwhelming budget deficit? What about not funding No Child Left Behind and the burdens that are being put on public schools? When are we going to get around to a prescription drug benefit for our seniors who are suffering and having to face these large bills? What are we doing to protect our environment? We are, after all, stewards of our natural environment and future generations.

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

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

But let us not engage in this emotional issue, then we must do our great care—care about the words we use and the laws we write. Every time we use inflammatory language in this Chamber, it limits our ability to talk about this very private, personal decision between a woman, her loved ones, and her doctor.

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

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

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

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

The wanton and willful written, the choice of language eliminates the distinction of trimesters. The vagueness makes this bill applicable to many other procedures in addition to the ones explicitly named. This bill is extreme, deceptive, and unconstitutional. As my colleague from Pennsylvania stated: This is the beginning of the end. And that is absolutely what he means. If this bill passes, it is the beginning of the end of Roe v. Wade, it is the beginning of the end for the right of women in this country to make the most personal and intimate decisions that any of us would ever be called upon to make. Yesterday, I had the opportunity to sit down with several women who have gone through this terribly difficult decision. What was so sad about each of these women's stories was how much each of them wanted the child they were carrying—only to learn that a fatal abnormality had afflicted each one, creating an unshakable sorrow.

Each woman knew that her baby would not live long in utero or for no more than seconds or minutes outside her womb.

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

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

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

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

"Along with my sadness came a realization that if such legislation passed the right to safe second trimester termination of pregnancies might not remain available to those women who come after me. In this event, I don't know how these women will endure; I don't know how I would have endured." I also met with Maureen Britell yesterday. Her daughter had developed a disorder where the brain stem develops. It is a disorder instead of a brain. After consulting with the experts at New England Medical Center, her family, and friends, she terminated her pregnancy. And listen to what she says: "Now I'm sharing my story not only as a loss, but as a military wife. I find the purpose of Women's History Month is to literally bring us back to a time in history when women had no choices. Is this the message that we want to send to this great Chamber, nor to the world?"

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

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

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

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

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

The Honorable Audrey Eisen, In Opposition to S. 3
a genetic counselor. I cried with my whole body, from the depths of my soul.

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

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

Upon arriving home from the hospital following my D&E, a news story appeared on the television describing new legislation in the state senate aimed at banning “partial birth abortion.” I don’t think that I really understood this issue, emotionally or intellectually, until I was in the position of having to terminate my much-desired pregnancy. The sadness came as a realization that if such legislation passed the right to safe second trimester termination of pregnancies might not remain available to those who find themselves in my situation. I don’t know how I would have endured.

Two weeks following the procedure, we received a letter from the genetic counselor with the full results of the amnio and a summary of the genetic findings. We had a complete duplication of the 13th chromosome and exhibited holoprosencephaly, a failure of the forebrain to properly develop and separate from the rest of the brain, a ventricular septal defect in the heart, omphalocele, a herniation of a portion of the umbilical cord to complete the delivery, and avoid serious health consequences for me. Dahlia died while still in my birth canal—the same description used in the so-called “partial birth abortion.”

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

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

In a perfect world, I would never have to write you this letter. Every pregnancy would be wanted, healthy and happy—and no loved ones would be going off to war. Until that time, there will be other families besides mine as a cloak in their effort to ban reproductive healthcare in this country.

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

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

Part of the reason I feel so strongly about this is because as First Lady, I had the great privilege of traveling around the world, representing our country. I have been to many places I never thought I would have gone in the past. I have seen what happens in other countries. I listened to women throughout the world. And I have to respectfully disagree with my colleagues about mental health. If we have learned anything in the last several decades, it is that there is no artificial divide between mental and physical health. The mind and the body are a totally integrated system. One affects the other. I believe that mental health is health. And I believe that forcing a woman to carry a child she knows will not only be harmful to her mental health but on our values as a nation and a free people.

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

I first heard this, I was dumb-founded. I said: “Please, that cannot be true.”

That is what happened. If a woman failed to conceive, her family was fined a celibacy tax of up to 30 percent of the monthly salary. The terrible result was many children were born who were abandoned, who were left to be raised in government-run orphanages. We all know what happened when unfortunately HIV-tainted blood was used to help some of those children for medical reasons, and there was a huge outbreak of HIV/AIDS among these Romanian orphans.

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

Today women in Romania and China are working to ensure their countries’ family planning practices are voluntary and respectful of individual rights. I don’t think we could dismiss these examples. I have seen where government gets this kind of power, it can be quickly misused. The old standard now by Lord Acton: “Absolute power corrupts absolutely.”

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

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

Look at the progress we have made. The U.S. abortion rate is now at the lowest level it has been since 1974. When I was First Lady, I helped to launch the National Campaign to Prevent Teen Pregnancy. We increased education and public awareness. And since 1991, teen pregnancy has also declined. We learned that prevention and education, teaching people to make good decisions, really did work. But that is not what we are talking about here. We are talking about those few rare cases when a doctor had to look across a desk at a woman and say, I hate to tell you this, but the baby you wanted, the baby you care so much about, that is not what you are carrying, has a terrible abnormality.

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

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

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

When I was the Minister of Health, I didn't know what they were doing to do about this. I had to tell him: This is a classic case where it is the poor, the middle class that suffer. The rich can get whatever health care they need. We can make it illegal, retroactively, but it doesn't make it illegal for the rich. It just makes it illegal to the poor. There has always been a double standard. If you are rich, you get what you need. If you are poor, you are left to the back alleys.

That is one of the other reasons we had to do Roe v. Wade, because is it fair that we have that kind of distinction made on the basis of class or income instead of the basis of law? We are facing a moment of historic importance, but we just insist that we should be debating at this time in our history. I only wish this legislation were not before us. But now that it is, we have to educate the American public.

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

I said: We can't have to think about that. That was something that, thankfully, we took off the national agenda. But there are those who, from very deeply held beliefs, which I respect, would wish to substitute the Government's decision, just like they did in Romania and China, or substitute the roll of the economic dice, such as happens in Brazil and elsewhere for what should be a difficult, painful, intimate, personal decision. This bill is ill-advised. It is also unconstitutional. I understand what the other side wants to do. They are hoping to get somebody new on the Supreme Court and to turn the clock back completely, to overrule Roe v. Wade. Which is why the Senator from Iowa has such a timely amendment.

Is this bill really about what the sponsors say, or is it, as they candidly admit, the beginning of the end—to go back in this country to back-alley abortions—where women are dying from botched, illegal procedures? I think you can draw your own conclusions. It is up to the American public to determine whether they want medical decisions being criminalized by this Senate. Thank you.

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

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

Mrs. CLINTON. Yes, I do.

Mr. SANTORUM. OK. I suggest that the Senator from New York examine the legislative language that you have carefully and cleverly crafted in this bill.

Mrs. CLINTON. That is what I believe based on what I consider to be the clear argument that this is one particular kind of abortion we have addressed, and we have addressed the vagueness, as put forth by the U.S. Supreme Court. And there are other techniques available for abortion that are late term in nature, and this bill would in no way stop other abortions. In fact, the previous speaker on the Democrat side, Senator Kennedy, made that very point. He made the point that this will not stop abortions.

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

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

Mr. SANTORUM. Yes.

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

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

As we know right now, a trial is going on in Buffalo, NY, for the murder of a doctor who provided such services. Mr. SANTORUM. I thank the Senator. I gave her an opportunity to answer, and I have a couple more questions. No. 1, you suggested that this procedure was extreme. Does the Senator know the most recent Gallup polls—the polls consistently have shown that the banning of this procedure is supported by anywhere from 65 to 75 percent of the American public?

What is your definition of "extreme"?

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

Mr. SANTORUM. So you would suggest that something that is supported by—by you—are going to maintain your
Mrs. CLINTON. Well, I think the Senator from Pennsylvania is posing a false syllogism. Clearly, if people are told that the kinds of procedures that might be medically necessary out of context, I can certainly understand why the reaction might be that is not something that we want to talk about, not something we want to think about. But what I do think is extremely important is, if you don't agree, that is your position, and I respect that.

So if it is true that that is your position, and I respect that.

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

Mr. SANTORUM. So you don't think the American public understands this issue well enough to be able to form a judgment— I think that is what you are saying—even though we have debated this issue and it has been very much in the literature across America now for 7 years. There have been referendums in States and wide debate. You just don't think the public understands it.

I beg to differ with you on that. I think I could stipulate that something that has the support of 70 percent of the public is, by definition, not extreme.

Mr. SANTORUM. No, if—

Mrs. CLINTON. Does the Senator's legislation make exceptions for serious life-threatening abnormalities or babies who are in such serious physical condition that they will not live outside the womb?

Mr. SANTORUM. No, if—

Mrs. CLINTON. The Senator from Iowa got in first. Mr. SANTORUM. Mr. HARKIN. Go ahead. The Senator is engaged in debate. I have a question. Mr. SANTORUM. Fine.

Mrs. CLINTON. Will the Senator yield for a question?

Mr. SANTORUM. I will be happy to.

Mrs. CLINTON. The Senator from Iowa was the case. He said it is a dirty little secret, and we all know—that is his term—of late-term abortions and that is what we are doing. I will be happy to yield for a question.

Mrs. CLINTON. The Senator from Iowa got in first. Mr. HARKIN. Mr. SANTORUM. I understand the Senator's point. I guess my point in rebuttal is that if you want to create a separation in the law between those children who are perfect and those children who are not—

Mrs. CLINTON. Mrs. CLINTON. No—

Mr. SANTORUM. Please, let me finish. If a child is not perfect, then that child can be aborted under any circumstances. But if a child is perfect, we are going to protect that child more. I do not think the Americans with Disabilities Act would fit very well into that definition. The Americans with Disabilities Act—of which I know the Senator from Iowa has been a great advocate, and I respect him greatly for it—says we treat all of God's children the same. We look at all—perfect and imperfect—as creatures of God created in his image. If the Senator from Iowa was asking me to do is separate those who are somehow not the way our society sees people as they should be today and put them somewhat a peg below legal protection than the perfect child. I hope the Senator is not recommending that because I think that would set a horrible precedent that could be extrapolated, I know probably to the disgust of the Senator from Iowa, certainly to me.

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Mrs. CLINTON. To respond, if I could, to the Senator from Pennsylvania, my great hope is that abortion becomes rarer and rarer. I would only add that during the 1990s, it did, and we were making great progress. These decisions are my view, have no place in the law, so they should not be drawing distinctions in the law. This ought to be left to the family involved.

The very fact the Senator from Pennsylvania does not have such a distinction in any circumstances, I think, demonstrates the fallacy in this approach to have a government making such tremendously painful and personal and intimate decisions.

Mr. SANTORUM. I certainly respect the difference of opinion the Senator and I have on the underlying issue of abortion. Again, I think people can disagree on that. I, frankly, do not agree there should be a difference between children who are normal, in society’s eyes, and those who happen to have birth defects, severe or not. I do not believe we should draw distinctions.

Mr. HARKIN. The Senator if the Senator will yield for one final point, I want the Record to be very clear that I value every single life and every single person, but if the Senator can explain to me how the U.S. Government, through the criminal law process, will be making these decisions without infringing upon fundamental rights, without imposing onerous burdens on women and their families, I would be more than happy to listen. But based on my experience and my understanding of how this has worked in other countries, from Romania to China, you are about to set up——

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SANTORUM. To liken a ban on a brutal procedure such as partial-birth abortion to the forced abortion policies of China is a fairly substantial stretch, and I do not accept that as an analogy. I do not think it holds up under any scrutiny.

With respect to the other issue, let the record speak for itself.

Mrs. CLINTON. Madam President, if I can ask the Senator for one final point?

Mr. SANTORUM. On the Senator’s time. I have been more than generous on my time.

Mr. HARKIN. I ask the Senator to yield.

Mr. SANTORUM. On the Senator’s time.

Mr. HARKIN. The Senator from Iowa has been very good about yielding for questions. If the Senator needs more time, I will join him in that. If the Senator does not give the Senator more time, if he needs it, because he has been very good about getting into a discussion. Do not worry about time. We will give you whatever time you want.

Mr. SANTORUM. I thank the Senator from Iowa.

Mrs. CLINTON. Is the Senator aware that in the very poll he cited, there is another finding? When Americans were asked if a law should be passed with no health exemption, 59 percent said no, it should not pass.

Mr. SANTORUM. I appreciate that. Again, that is a good open item for debate. I am not aware of instances that American—and that is why this debate the Senator from Iowa has brought up is so important—do not understand what the breadth of health exception means. I suspect most Americans understand when they hear health exception, they believe there is some imminent danger to the health of the mother. Of course, that is not what Doe v. Bolton says.

Doe v. Bolton talks very broadly of health. I will be happy to give the actual language. Doe v. Bolton is very broad on health to include everything from emotional and mental health to familial health, age of the mother. It is as broad a term—in fact, the courts have interpreted it to mean anything. It is an exception that, frankly, swallows up any limitation, restriction on abortion.

Does the Senator from Iowa have a question?

Mr. HARKIN. I would like the Senator to yield, on my time or his.

Mr. SANTORUM. Yield on mine. If I need time, I will let the Senator know.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. SANTORUM. Madam President, I wish to ask the Senator a question. There are two issues about the Senator’s bill that bothers me. One is how tightly it is drawn and it affords no leeway whatsoever for certain special cases. We talked about the health of the mother. A woman who came to see me some time ago—I do not know if this case is atypical, but I know it happened to one person. I know it is happening to others.

She and her husband had been trying to have children. She became pregnant. She found in the 18th week, the child’s brain was outside the head.

Mr. SANTORUM. Anencephaly is no brain, just a brain stem.

Mr. HARKIN. I do not know exactly what that all means. Anyway, I do know she was told by her doctor that there was a possibility—he did not know how remote—but there was a distinct possibility that she carried this child to term, which was going to die right away, that because of other complications the child might not be able to have other children. I am telling you this is what was told——

Mr. SANTORUM. If I can respond to the Senator from Iowa, the Senator from Iowa brings up a very valid point. We reviewed this over and over in previous years, and I would address it again. No.

1. There are cases where late in pregnancy there are health considerations that may cause the child to have to be separated from the mother.

There is another finding. The question is, is there a need for this procedure? First off, is there a need for abortion? I think most obstetricians would tell you, no, there is no need for an abortion, but there is a need for separation.

Separation can be through a normal delivery. It can be through a cesarean section. So separation is necessary; abortion is not necessary.

I point out that this procedure is never medically necessary. I have repeated that over and over, and I have asked the Senator from California and the Senator from Washington, and many others, if they can come forward and say if there is a medical indication, medically necessary. They have not come up with a case because there are none.

There may be cases that the Senator from Iowa has discussed where there may be a need for separation, but I would argue not necessarily for abortion. If there is such a case—and I am not that much of an expert to know that because I am focused on this procedure solely, but if there is such a case for abortion, then the answer would be there are none. This is what I underscore—procedures done in hospitals, by obstetricians, who are trained in medical schools.

This procedure is done not by obstetricians, not in hospitals, not by doctors trained in medicine.

I ask the Senator, if it was his daughter, would he want to send her to someone who is not an obstetrician, not in a hospital, someone who is not trained in medical schools, to someone who would rather have her go to a board-certified obstetrician in a hospital and have a procedure that is taught in medical schools and has been peer-reviewed?

What would the Senator prefer?

Mr. HARKIN. I would prefer we stick with Roe v. Wade which would allow my daughter to go to a hospital and to have a doctor perform a procedure on her that in the doctor’s best judgment was the safest for her.

I am just restating, further, if the doctor decided this type of procedure was safer than a cesarean section, for example, which I would submit to my friend from Pennsylvania is every bit as gruesome if you would like to describe it, but it is up to the doctor to decide what is the safest procedure.

That is what I would want my daughter to have, so that is why I have my amendment on Roe v. Wade.

Mr. SANTORUM. I understand the Senator from Iowa, the Senator from Iowa and the Senator from Washington, and many others, if they can come forward and say if the Senator wants his daughter to go to the hospital and have an obstetrician give her the best procedure she wants, let me assure the Senator she will never have this procedure, because this procedure is not done by obstetricians and hospitals. It is not done by someone who is not trained in medical schools.

I suggest to the Senator what we are doing is getting rid of a rogue procedure that has been demonstrably testified to that this is contraindicated. That is ——

Mr. HARKIN. Bad medicine. Their term, not mine.

I am saying this is a rogue procedure that is outside the medical arena. This is outside the standard of care.
The Senator knows about the issue of standard of care. He is involved greatly in health issues as the ranking member of the Health Subcommittee on Appropriations. I know he cares deeply about that and he knows the issue of standard of care.

Nowhere in the literature is this considered to be standard of care. As a result of that, I make the argument—in fact, I have made the argument—that this procedure is not healthy to women and as a result should be banned because the procedure is not safe, and it is not appropriate.

I will answer one more question and then I would like to speak.

Mr. HARKIN. I say to my friend from Pennsylvania, I am not a doctor. I do not know. That is why these are the kinds of things that are not really up to us to decide to tell a doctor what is the safest and what is not the safest, or how to go about it.

Now, maybe we are getting somewhere. I heard my friend ask me about what I would want my own daughter to do if she was ever confronted with this, and I said I would want her to have the best care. I would want her to have a board-certified obstetrician/gynecologist care of her in a safe, healthy legal setting. That is why I have offered my amendment. That is why my amendment is pending right now because I want us to say once and for all that Roe v. Wade is the law of the land, that it is the law of the Constitution. It is not appropriate.

So maybe we are getting somewhere. Maybe my friend is now going to support my amendment.

Mr. SANTORUM. No, I am not going to support the amendment of the Senator, but I would like an opportunity to speak.

Madam President, how much time is remaining on each side?

The PRESIDING OFFICER. The Senator from Pennsylvania has 30 minutes and 15 seconds. The Senator from Iowa has 23 minutes and 27 seconds.

Mr. SANTORUM. Madam President, first I say again that in many of these difficult cases, if not all of them, to my knowledge—and I would be curious to hear if there is a case I am not aware of that—there is no separation of the mother from the child. I am not aware of any case, and I would certainly be anxious to hear any testimony to the contrary where separation necessarily means abortion. Separation does not necessarily mean abortion, and there are other ways to protect both the health of the mother and the health of the child. As a society, I think if that is possible, then that should be our preference.

Let me go back to this great problem: Roe v. Wade was decided in 1973. Maybe the biggest problem I have with Roe v. Wade was that abortion was a matter that was decided by the people and by its elected representatives. It was, as was every other issue in America, decided in the public square, decided by this kind of debate.

I think it was wonderful. I think the people need to hear this. We do not get enough debate on the issue of abortion. It has sort of been put away in a corner. Why? I would argue this is the great moral issue of our time. It парticularity is the issue of dels where there was a great moral issue back in the early 1980s, and the reason is it is really the same issue.

The slavery issue was: Here is the African American, here is the black man and woman, and what we said in this country was we could look at this person, we could see this person, but under the Constitution it was not a person.

What is the difference between this issue and the slavery issue? The only difference is that slavery was a part of our history, and the freedom of man—"Am I not a man?"—and under the picture could we not see this is a human being; it is nothing but. But according to what I understand, that person was property. What all of us knew to be a human being became property, and we had to fight a war to eventually overturn that.

Where are we now? Where are we now? The Senator from New York talked about the slippery slope. Oh, what a slope we are on now. The Senator from New York talked about, you did not see any deformed children, but there is a guy in Princeton, N.J., by the name of Peter Singer who talks just about that issue. He talks about the deformed child. And what does he say? He says Roe v. Wade has it right. They put liberty in front of life, and that is right because some people are not worth having around. Yes, is what he says. Is this guy a kook? Is this guy some sort of slop of who is out there in the other? No. He is a professor. Is he a professor? Yes. He is a professor at XYZ. State University at Blackwater, PA? No. He is at Princeton University—a "distinguished" chair at one of our great universities.

What does he say? He writes: I should think it should be somewhat short of one year.

What does he mean, somewhat short of one year? Somewhat short of 1 year after birth that we should be able to—what? Kill these little deformed children who happen to be born. Why? Well, because they are not really useful. Their life doesn’t mean much. Our liberty means more than their life. Here again, moving life in front of liberty. Oh, what a tangled web we weave.

This is the product of Roe v. Wade. This is the product of the Court taking from us who understand ordered rights—that rights are put in order for a reason. Our Founders had it right.

Those who proclaim the virtue of abortion as a right said this would be a blessing to our society. They said: This would be a great blessing. So many positive things will happen. Divorces will come down. Spouse abuse will come down. Infant abuse will come down. Child abuse will come down. Abortions, of course, will go up, but the benefit is domestic violence will go down, teen pregnancy will go down, infanticide will go down, and children will grow up. And of course, none of them did. None of them did. Quite the contrary. All of them have at least doubled since 1970 as a percentage.

In Roe v. Wade, the Court put liberty ahead of life, and said the rights of a woman, liberty—this is the liberty clause, this is the grounds from which Roe v. Wade was derived. Of course, the right to abortion is not in the Constitution. But where does it come from? It comes from the what clause? The liberty clause.

So we took liberty and moved it ahead of life. What are the consequences of that? Obviously, we know what the consequences of that are for the father. What? What are the consequences of the liberty clause for all of us? The consequences of that for all of us are that now one’s freedom to do what one wants trumps someone else’s right to exist.

In this case, it is just this little child in the womb. But if we set this precedent, which we have, that my right to my liberty trumps another’s right to life—the Senator from New York talks about the slippery slope. Oh, what a slope we are on now. The Senator from New York talked about, you did not see any deformed children, but there is a guy in Princeton, N.J., by the name of Peter Singer who talks just about that issue. He talks about the deformed child. And what does he say? He says Roe v. Wade has it right. They put liberty in front of life, and that is right because some people are not worth having around. Yes, is what he says. Is this guy a kook? Is this guy some sort of slop of who is out there in the other? No. He is a professor. Is he a professor? Yes. He is a professor at XYZ. State University at Blackwater, PA? No. He is at Princeton University—a "distinguished" chair at one of our great universities.

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So this nirvana that getting rid of these—because, see, they argue that since we are going to get rid of 1.3 million children—25 percent of all pregnancies end in abortion—since we are going to get rid of all these unwanted stressors, people living the way people in people’s lives, then people will be better off, people will be happier, people will be more free; people won’t do bad things because they won’t have this stress that complicates their life.

But what lesson do people learn? No. Sadly, people are much smarter than that. They learned from the leaders of our great country that the value of life was diminished. And they learned from our great country that their personal liberty was more important than your life. Their liberty, their rights, trump you. That is what they learned.

As I mentioned earlier, that is why the two guys ran into Columbine, toting their guns and shooting people, screaming the law, "This is what Roe v. Wade taught us. They taught us we can put down our neighbor, just like in the early years of this country we could put down the black man and woman.

We agonized over our options. Both Bill and I were given all of our medical options. There is no law that says that you need to get pregnant, that you need to give birth. That is not the most important thing to come to talk about. These halls are not filled with people who want to speak on this issue. I understand, this is a tough one. You make a lot of people mad when you get up and talk about abortion because it is personal. I know. It is personal. But we have to step back.

I thank the Senator from Iowa for giving us an opportunity to step back and look at what we are doing, what we stand for, and look at what may come of us if we do not turn away and give back to the people.

I was at a briefing the other day, and someone talked about the Iraqis and said: We agonized over our options. I said: Well, at the other side they are agonizing over their options to have the right to give someone else your rights and let them make decisions for you. It makes your life a lot simpler.

I argue it is not making your life much better. No, what Roe v. Wade has done is separate the person, the human being—and there is no doubt, from the moment of conception, this is a genetically human organism. It is human, fully human. Nothing is added. It is fully human. And it is, by definition, alive. How do we know? Because the definition of life is something that metabolizes, and this clearly is metabolizing. It is human life.

What did Roe v. Wade do? It took away the instantaneous bonding of human life and human person under the Constitution. They separated them. I repeat this for emphasis. It separated the human person from the human being. That precedent is now the law of the land. And you know what happens with precedent in this country; it is very hard to give back to the people.

I remember in one of the early debates on this bill, I got an e-mail from a man from London who said he was sitting there watching the debate, hearing people talk about all these people with disabilities who needed to be destroyed through partial-birth abortion. Not because the mother’s health was in danger—because they just were not perfect. He said: I am sitting there high that, in this day and age, a disabled man with spina bifida, knowing that they are talking about me. They are talking about me.

Today the child in the womb. Tomorrow for—watch out. Watch out.

I urge you to oppose S. 3. I understand that this bill is very broad and would ban a wide range of abortion procedures. Mine is one example of the many, many groups that could be harmed by legislation like this.

In the spring of 1994, I was pregnant and expecting Abigail, my third child, on Mother’s Day. The nursery was ready and our family was ecstatic. My husband, Bill, an emergency room physician, had delivered our other children, and would do it again this time. Jon, our older son, was so upset he did not cut the cord. Katie, our younger, would be the first to hold the baby. Abigail had already become an important part of our family. At 36 weeks of pregnancy, however, if my dreams and happy expectations came crashing down around us. My doctor ordered an ultrasound that detected what all of my pre-natal testing had failed to detect, anencephalocele. Approximately two-thirds of my daughter’s brain had formed outside her skull. What I had thought were healthy, strong baby movements were in fact seizures.

My doctor sent me to several specialists, including a perinatologist, a pediatric radiologist and a geneticist, in a desperate attempt to find a way to save her. But every one agreed, she would not survive outside my body. They also feared that as the pregnancy progressed, before I went into labor, she would probably die from the increased compression in her brain.

Our doctors explained our options, which included labor and delivery, c-section, or termination of the pregnancy. Because of the size of her anomaly, the doctors feared that any surgery might ruin the birthing process, possibly rendering me sterile. The doctors also recommended against a c-section, because they could not justify the risks to my health when there was no hope of saving Abigail.

We agonized over our options. Both Bill and I are medical professionals (I am a registered nurse and Bill is a physician), so we understood the medical risks inherent in each of our options. After discussing our situation extensively and reflecting on our options, we made the difficult decision to undergo an Intact D and E.

It was important to us to have Abigail come into this world after all we could do to hold her. Jon and Katie could say goodbye to their sister. I know in my heart that we have healed in a healthy way because we were able to see Abigail, cuddle her, kiss her. We took photos of her. Swaddled, she looks perfect, like my father, and Jon when he was born. Those pictures are some of my most cherished possessions.

The second reason for the difficult decision was medical: Having the baby alive allowed a better autopsy to be performed, to give us genetic information on the odds of this happening again.

Losing Abigail was the hardest thing that has ever happened to us in our lives, but I am grateful that Bill and I were able to make this difficult decision ourselves and that we were given all of our medical options. There
will be families in the future faced with this tragedy. Please allow us to have access to the medical procedures we need. Do not complicate the tragedies we already face.

**Testimony of Coreen Costello—1996**

My name is Coreen Costello and I am writing to you on behalf of my family. I have testified before both the Senate and the House concerning the "partial birth abortion" ban and my family was with the President when he vetoed this legislation. I have personal experience with this issue for at 30 weeks pregnant I had a procedure that would be banned by this legislation.

On March 24, 1995, when I was seven months pregnant an ultrasound revealed that our baby was in severe distress. Her head was stuck in the back of my cervix. Due to swelling, her head was almost touching the back of her feet almost touching the back of her head. We con-
ducive to delivery. Her spine was so con-
strained that the baby was unable to be delivered intact. She was unable to swallow amniotic fluid and as a result, the excess fluid was puddling in my uterus (a condition known as polyhydramnios). When we learned about this, we spoke to many specialists and educated ourselves to see what we could do to save our child. My husband and I took a proactive approach to our health care. We are gen-
erally skeptical about the medical profession and would never rely on the advice or diag-
oses of just one doctor. However, our doc-
tors (five in all) agreed that our little girl would come prematurely and there was no doubt that she would not survive. It was not a matter of whether she would live or die but a matter of whether she was able to live—a serious condition that would make her condition fatal was.

Our physicians discussed our options with us. When they mentioned terminating the pregnancy, we rejected it out of hand. We are Christians and conservative. We believe strongly in the rights, value and sanctity of the unborn. Abortion was simply not an option for us. Due to swelling, her head was stuck and rigid. She was unable to swallow amniotic fluid and as a result, the excess fluid would be removed, which would allow her head to be delivered without damage to my cervix.

It took almost three hours to deliver our daughter. I was given intravenous anes-
thesia. Due to Katherine's weakened condi-
tion, her heart rate dropped during the pro-
cedure. She was able to pass away peace-
fully in my womb.

Some who support this bill have stated that I do not fit into the category of some-
one who had a so-called "partial birth abort-
tion" because I contend my baby died while still in my womb. Is this relevant? When the procedure began, her heart rate was still beating—who could predict for certain when she would actually pass away? If this legislation was passed, an intact D&E would not have been an option. I had the procedure outlined in this legislation. Since I present the procedure as humane, dignified, and necessary, somehow this means I must have had a different procedure and am not relevant to this bill. This is simply not true. I come to you with no political motivation, rather I come with the truth. I have experi-
cence of an intact D&E. Some want you to be-
lieve their horrific version of this procedure. They have never experienced an intact D&E. The only person I may have is that I deliver my daughter intact. My husband and I were able to see and hold our daughter. I will never forget the time I had with her, nor will I forget the time I had with her allowed us to start the grieving process. I don't know how we would have coped if we had not been able to hold her. Moreover, because I delivered her intact, ex-
erts in fetal anomalies and genetics could study her condition. This enabled them to determine that her condition was not ge-
cetically determined. This was in deciding whether or not to have another child.

No one can predict how a baby's anomalies will affect a woman's pregnancy. Every situa-
tion is different and is different for the hands of physicians in these life and health saving matters. It is simply not right.

With my baby my cervix intact and my uterus whole, we were able to have another child. On June 4, we were blessed with a beautiful healthy baby boy. He is our delight! He is not a replacement for his sister. There will always be a hole in our hearts where Katherine Grace should be. He is, to us, a sign that life goes on. We cherish him very much and we love him very much. I am grateful that he is a part of our family and that he is with our other two children, Chad and Carolyn. What precious gifts God has given to us.

With a loving heart we have lived the last three years. Losing our daughter was the hardest thing we have experienced. It's been difficult to come to Washington and relive our loss. And it's ironic that I, with my profound pro-life views, would be defending an abortion proce-
dure. God knows I pray for the day when no other woman will need this procedure. But there is a cure for the cruel disorders that can affect babies, women must have access to this important medical option.

**Testimony of Claudia Crown Ades—1999**

My name is Claudia Crown Ades. I live in San
ta Monica, California. I have been mar-
rried to Richard Ades for five joyous years.

Three years ago, when I was 26 weeks into my pregnancy, I was faced with the decision along with my doctor not to have an amniocentesis. At 33, there seemed no need. Then one day, feeling anxious and worried about the clinical diagnosis her doctor had provided. There was no basis for my anxiety; it was just an instinct. However, to set my mind at ease, I was sent to a radiologist, an ultrasound expert. "Don't worry," my doctor told me. "He can see a vein out of place." I was never expecting what came next.

The radiologist spent far too long con-
ducting what was supposed to be a routine examination of a healthy baby. He told us that he wanted to review the images and that he would call us. The next day, when we received a call from Richard Ades, there was a message on the answering machine. "I'd like you to come back in so that my partner can take a look at your ultrasound." Richard Ades is a radiologist. Do not console some-
thing—I, with my profound pro-life views, did not want to lose hope that everything could be ok. You don't console some-
thing if nothing is wrong.

Because of his suspicions, which we were unaware of at the time, the perinatologist rearranged her schedule to see me the next morning—a Sunday afternoon, an agonizing night of emo-
tional torture. The next day we went into the perinatologist's office, apprehensive about what might discover. There was an ultrasound, and within thirty seconds, the perinatologist said, "I concur with your doc-
tor." Concur with what? At this point we had no idea.

This was when our worst fears were real-
ed. At that moment we learned that our son's Dandy Walker Syndrome was more se-
vere than we had known. In addition to a fluid filled nonfunctional brain, he had a malformed heart with a large hole between the chambers that was preventing normal function. He had a significant ex-
tremely large cyst filled with intestinal mat-
er, and hypertelorism eyes which was another indication of severe brain damage. We later learned that there was a message on the answering machine. "I'd like you to come back in so that my partner can take a look at your ultrasound." Richard Ades is a radiologist. Do not console some-
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Along with the tears, the questions flowed. Could a cardiologist fix our son’s heart? Could a neurosurgeon repair his brain? Could an eye surgeon help him to see? Could this baby survive? Was it possible to do anything at all, that could be done? The answers were emphatically no. It was our worst nightmare and it was real. Even if my son survived the pregnancy, he wouldn’t survive his birth. Even if he did make it into the room we wanted, would it be a boy or girl? We told everyone we knew... and I was only three weeks pregnant!

It wasn’t a Gerber baby. That it was not viable, that we should end this pregnancy as soon as possible, was not a decision I made. Oh no, I had the diagnosis. The doctor and I stood there, and I too some time over work to get through this situation. As my pregnancy progressed, I had some spotting which is common, but my doctor said to take disability leave from work and take things a month at a time. I didn’t want to spend a lot of time with my newborn nephew and his mom, my sister-in-law. I watched him grow day by day, sharing all the news with my husband. We made our plans, excited by watching Tanner grow, thinking “this is what our baby’s going to be like.”

Then, I had more trouble in January. My husband and I had gone out to dinner, came back & were watching TV, when I started having contractions. They lasted for about four hours, and I knew they weren’t just Braxton Hicks. But then the doctor told me I should stay out of work for the rest of my pregnancy. I was very disappointed that I couldn’t share my pregnancy with work, but they wanted me to watch me grow. But our excitement just kept growing, and we made our normal plans, everything that prospective parents do.

I had had a couple of earlier ultrasounds which turned out fine, and I took the alpha-fetoprotein test, which is supposed to show us if there’s something wrong with what we later found out we had. It came back clean. In March I went in for a routine 200 ultrasound. This looks good, this looks good, then suddenly they got really quiet. The doctor said “This is something I didn’t expect to see.” My heart just dropped.

He said he wasn’t sure what it was, and after about an hour solid ultrasound, he and another doctor decided to send me to a perinatologist. That was also when they told us it was a girl. They said, “Don’t worry, it’s probably nothing, it could even be the machine.”

We got home and were a little bit frightened, so we called some family members. My husband’s parents were away and wanted to come home, but we told them to wait. The next day I had a ultrasound for about two hours, and he said he thought the ultrasound showed a condition in which the intestines grow outside the body, something that’s easily corrected with surgery after the birth. But just to make sure, he made an appointment for me in San Francisco with a specialist.

After another ultrasound with the specialist, the doctors met with us, along with genetic counselor. They absolutely did not bear very well when they told me, “She has no eyes, six fingers and six toes and enlarged kidneys which are already failing. The mass on the outside of her stomach isn’t done yet, and the intestines grow outside the body, the something that’s easily corrected with surgery after the birth. But just to make sure, he made an appointment for me in San Francisco with a specialist.

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I had a choice. I could have carried this pregnancy, knowing that it was wrong. I could have gone on for two more months, doing everything that an expectant mother does, before I finally chose to die and suffer a great deal before dying. My husband and I would have had to endure that knowledge, and watch that suffering. We could never have imagined that it would be the choice together, my husband and I, to terminate this pregnancy.

We came home, packed, and called the rest of our families. At this point there wasn’t a person in the world who didn’t know how excited we were about the baby. My sister-in-law was probably nothing, it could even be the machine.”

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We made another painful decision shortly after the abortion. Dr. McMahon called and
TERESA M. TAUCHI—OCTOBER 11, 2000

I consider Júlia Kiyono to be our first child. She was born on Thursday, April 20, 2000. It wasn't until that moment that we learned we had a little girl—Sam had insisted, through everything, that we wait until the birth to find out the sex of the baby. With the assistance of the hospital chaplain and my sister as our witnesses, we learned that we had a daughter.

The induction of labor took two and a half days. Our baby was delivered at 12:35 p.m. on Thursday, April 20, 2000. Our baby was born at 12:35 p.m. on Thursday, April 20, 2000. It wasn't until that moment, when I held our baby in my arms, that I finally understood the meaning of a baby in my arms, that I finally understood the meaning of a baby in my arms. She felt so alive to me and I cherished every moment.

The pregnancy with Júlia had been a joy. I have never seen her like that. I have never seen her like that. She had developed a growth inside of me that the doctors called cystic fibrosis. The doctors had said that this was a very serious condition and that our baby would not survive. But we knew that this was not the case. We knew that our baby would survive. We had faith that our baby would survive. We had faith that our baby would survive.

But we also knew that our baby would face many challenges. We knew that she would face many challenges. She was born with a condition that would make her life have some meaning. So that she would make her life have some meaning. She was born with a condition that would make her life have some meaning. So that she would make her life have some meaning.

The physical exercise seemed to encourage an already-active baby to turn even more somersaults and thrash more quickly. She felt so alive to me and I cherished every moment.

The story of my pregnancy with Júlia is a social security number. I have never seen her like that. I have never seen her like that. She had developed a growth inside of me that the doctors called cystic fibrosis. The doctors had said that this was a very serious condition and that our baby would not survive. But we knew that this was not the case. We knew that our baby would survive. We had faith that our baby would survive. We had faith that our baby would survive.

We were showered with gifts and hand-me-downs, new toys, books and love. Barry's family gave us a 13th century cradle, which had rocked his family to sleep since before his grandmother Sophie was born more than 100 years ago. Our first ultrasound was scheduled a little more than four months into the pregnancy. On Thursday, February 20, we saw our baby for the first time. Our first ultrasound was scheduled a little more than four months into the pregnancy. On Thursday, February 20, we saw our baby for the first time.

The diagnosis was the fatal neural tube defect known as anencephaly, or the lack of a brain. After four months of excitement and joy, our world came crashing down around us.

Once the diagnosis was made, there was no further medical treatment available for us in our hometown, and we were referred to the University of Iowa Hospitals and Clinics in Iowa City. Our first OB appointment there was set for Monday morning. My husband and I spent that long weekend, the longest of our lives, doing research, talking with family and friends, and hearing personal stories about the fate of anencephalic babies.

In Iowa City, a genetics OB specialist examined a new ultrasound and immediately confirmed the diagnosis. An alpha-feto-protein blood test and amniotic fluid sample confirmed the truth harder home. Our fetus had only a rudimentary brain. There were blood vessels, which enabled the heart to beat, and ganglion, which enabled basic motor function. There was no cerebellum and no cerebral cortex. There was no skull above the eyes.

I had been preparing for pregnancy for more than a year with diet, exercise and prenatal vitamins, including the dose of folic acid recommended to prevent neural tube defects. Yet we still lost our child to one of the most severe and lethal birth defects known. In Iowa City, a genetics OB specialist examined a new ultrasound and immediately confirmed the diagnosis. An alpha-feto-protein blood test and amniotic fluid sample confirmed the truth harder home. Our fetus had only a rudimentary brain. There were blood vessels, which enabled the heart to beat, and ganglion, which enabled basic motor function. There was no cerebellum and no cerebral cortex. There was no skull above the eyes.

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Our baby had no brain—would never hear the Mozart and Bach I played for it every day on our great-grandmother's piano, would never truly sense the world around us, to our hearts, would never even have an awareness of its own life.
On Tuesday, February 25, 1997, my husband and I chose to end my pregnancy with a common abortion procedure known as "D&E." As difficult as it was, I literally thank God that I had the chance to do so. As long as there are families who face the devastating diagnosis we received, abortion must remain a safe and legal alternative.

In July 1996, my husband and I discovered that I was pregnant again. Although we were overjoyed, our happiness was tempered by the knowledge that I had a 1 in 25 chance of having an anencephalic pregnancy. This time, we asked our loved ones to hold off on the baby gifts, we played no Bach, and every sign of excitement or inner turmoil was left unacknowledged. What a hideous worry. And on July 17, 1996, an ultrasound revealed the worst. We had a second anencephalic pregnancy—a second daughter lost to this lethal birth defect.

Fortunately for my medical care, the so-called "partial birth abortion" bans have been vetoed by President Clinton, and my doctors were able to provide me with a safe, compassionate procedure that brought this second tragic pregnancy to an end. And thanks to those doctors and their ability to give me such recovery, Barry and I were able to carry the baby more than two more months until delivery at full term unless the baby died in utero before that. We directly asked him about the possibility of termination. Our doctor glared at us and responded succinctly: "We call that murder."

We grasped for second, third, and fourth options as we went from hospital to hospital. The radiologist who visited repeatedly the grim prognosis: The baby would die in utero or within days of birth. My husband turned to him and asked: "If this was your wife, what would you do?" He responded: "I would find any way possible to terminate the pregnancy."

If we did nothing, we would be on a death watch, merely waiting for our baby to die. This was totally unacceptable to me or my husband. We were prepared to go anywhere, at any expense to end our anguish and let us move on with our lives. We loved this baby boy too much and were too attached to him to allow him to die another day. We were waking up every morning awaiting his impending death.

We made the dreaded phone calls to inform our parents that their long-awaited grandchild would not survive. Because Jason's father and sister are physicians with a network of colleagues, we learned that we had actually received incorrect information.

There was, in fact, an option. For the record, my abortion was performed in August 2000. It was not a so-called "partial-birth procedure." After the delivery, my husband and I, along with our mothers, held our intact baby, said a blessing, and bid him goodbye. He is buried at a cemetery in Northern Virginia.

We feel a strong obligation to tell our story to inform others of why it is necessary to preserve the right to choose. In doing so, we also feel we are remembering the baby we lost, but still hold dearly in our hearts. It is our hope and prayer that if another endeavor force another doctor to carry a child through all nine months. That idea is far more horrifying than all the unreal anti-choice rhetoric that can be manufactured, for the reality of this is a terrible law, a grievous interference between doctor and patient, and would only compound the tragedy and heartache faced by families like us.

Please protect the health of women and families like mine, and reject S. 1692.

TESTIMONY OF MIRIAM A. KLEIMAN, VOTERS FOR CHOICE—MARCH 10, 2003

My name is Miriam Kleiman. I am 36 years old. I have been happily married to my husband Jason Steinbaum for almost six years. We have a child named Zachary who is 19 months old. I am now pregnant again and am unfortunately unable to be with you today.

I was diagnosed with this pregnancy currently in the first week. In July 2000, I was pregnant with another much-wanted child. My husband and I had been married three years and were excited and prepared to go anywhere, at any expense to end our anguish.

We had selected furniture, car seats, and other items to help us keep our baby comfortable, warm, protected, and loved. As with many expectant mothers, I was scheduled for a regular obstetrical appointment.

At that time, I assumed that this sonogram would be just another joyous look at the baby. My husband and I were prepared to go anywhere, at any expense to end our anguish.

We feel a strong obligation to tell our story to inform others of why it is necessary to preserve the right to choose. In doing so, we also feel we are remembering the baby we lost, but still hold dearly in our hearts. It is our hope and prayer that if another endeavor force another doctor to carry a child through all nine months. That idea is far more horrifying than all the unreal anti-choice rhetoric that can be manufactured, for the reality of this is a terrible law, a grievous interference between doctor and patient, and would only compound the tragedy and heartache faced by families like us.

Please protect the health of women and families like mine, and reject S. 1692.
Kim Koster wrote to us. She said:

The reality is that this is a terrible law [this S. 3], a grievous interference between doctor and patient, and would only compound the tragedy and the heartache faced by families like us. Please protect [our] . . . .

Miriam Kleinman; this is the last one I have.

It is my hope that someday in the future when my doctor and his staff face the harsh reality of the so-called ‘right to life’ movement that they will not see the anger and suffering of the anti-choice activists, but will envision instead the face of our healthy son whose picture hangs on our wall, and will remember that what they did for my family—and so many others—was right and they helped us reach this day.

The reason Senator Harkin’s amendment is so important is that under Roe v. Wade, the right to choose is guaranteed to a woman in the beginning of a pregnancy, the first few months. And after that we can restrict, but always with an exception for the life and health of the mother.

Let me tell you why it was important that that decision be made. Because before Roe, 5,000 women a year died from back-alley illegal abortions. I don’t hear anything about these women. It chokes me up.

Women had to go and have back-alley abortions in other places—not a clean hospital, not a State-licensed facility, no practitioners who knew what they were doing. Money was slipped across the table, and 500 women a year died. That is why this vote is so important. We must not go back. We cannot go back to those dark days because of Roe.

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

Mrs. BOXER. Yes, I yield.

Mr. HARKIN. I thank the Senator for her stalwart support for all the years I have known her, for the principles and the law of Roe v. Wade, to ensure that the woman’s health exception is absolutely right. Because there is no precedent to Roe v. Wade, it is a complete reversal from Roe.

What is shocking is my colleague on the other side who would not even make a health exception that was narrowly drawn by Senator Duren. They couldn’t even go that far. We all know what could happen to a woman if she does not have this safe procedure. Doctors are telling us. We put those statements in writing. They could have a hemorrhage, their uterus could rupture, they could have blood clots, embolism, stroke, damage to nearby organs, and paralysis. Yet S. 3 comes to us without a health exception.

I say to my friend, the rest of the time is his. I have concluded my remarks. I am very proud to stand with what the State can do, but with exceptions for life and health of the mother, as the Senator so rightfully pointed out, the overwhelming majority of the American people say yes, that ought to inure to the individual and not to the Government.

Mrs. BOXER. Absolutely. I think people are aware now that a Senator would make such a personal, private decision. Our colleague from Pennsylvania wants to see Roe v. Wade overturned, and that is exactly what would happen. Government would be put in the middle of the lives, the private lives of the people of this country. The people would no longer be trusted to make these decisions.

Mr. HARKIN. I further ask the Senator, would she concur in this view, that perhaps what this is all about is really not about a procedure but it really is about fundamentally getting at Roe v. Wade? I say that to my friend from California because 4 years ago when this came up, this Senator along with the Senator from California offered a health exception. It is that Roe v. Wade—Roe v. Wade—we recognize it as the law of the land and it should not be overturned.

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mr. HARKIN. I yield another 5 minutes to the Senator from California.

Is the Senator familiar with the outcome of that vote? That vote at that time—I remember it precisely—was 51 to 47. Two people who were not here had announced they were opposed to it, so it was 51 to 49. By 2 votes, the Senate—49 Senators said Roe v. Wade should be overturned. That is how close we are here. That is why the people of this country ought to recognize that is what this debate is about—getting at Roe v. Wade; nothing more, nothing less.

I thank the Senator.

Mrs. BOXER. I say to my friend, he is absolutely right. Because there is no precedent to Roe v. Wade, it is a complete reversal from Roe.

What is shocking is my colleagues on the other side who won’t even make a health exception that was narrowly drawn by Senator Duren. They couldn’t even go that far. We all know what could happen to a woman if she does not have this safe procedure. Doctors are telling us. We put those statements in writing. They could have a hemorrhage, their uterus could rupture, they could have blood clots, embolism, stroke, damage to nearby organs, and paralysis. Yet S. 3 comes to us without a health exception.

I say to my friend, the rest of the time is his. I have concluded my remarks. I am very proud to stand with what the Senator can do, but with exceptions for life and health of the loved ones—that should stand. Certainly later in the pregnancy there can, in fact, be restrictions, and always exceptions for the life and health of the woman.

I thank my colleague for again offering this amendment. I think it is very important. I hope people of the country will watch the vote and will think about the ramifications.

I yield the floor. Senator Harkin retains the balance of his time.

Mr. SANTORUM. Madam President, I yield 10 minutes to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I thank my colleague from Pennsylvania and my colleague on the other side of the aisle for this most spirited debate.

We are finally here debating the most difficult and contentious social issue of our day. This is one of those elephants in the living room that we in the country across America have been going around saying is not there; not wanting to confront it; not wanting to talk about it; not wanting to confront it. But it is there. This is it, the issue of Roe v. Wade.

I was listening to colleagues, thinking of Mose’s admonition: “Choose ye this day life or death.” Which will it be? We are finally having the debate, Roe v. Wade.

I would like to remind colleagues, I read it again about 3 months ago. It is about federalizing State laws so we are saying yes to this. It is the decision where they said we are going to take all of these State laws in a patchwork regarding allowing abortions, or not allowing it, and we are going to federalize it. We are going to discover a right to privacy and say this is built within the overall thinking of the Constitution, the original Framers. We are going to say there is a right to privacy that applies to reproductive health. We are going to take the State laws of Kansas, California, Iowa, the Pennsylvania and North Carolina law, we are going to take all of those laws, throw them all out, and say this is the law of the land. We are going to say we found it to be constitutional. There are a lot of constitutional scholars who have grave questions about the nature of the basic fundamentals in Roe v. Wade, regardless of the issue of abortion, but finding this constitutional right. Lots of people have questions about this decision. I hope funders will recognize that if you repeal Roe v. Wade, you go back to allowing the States to decide this issue, which is the way it was prior to Roe v. Wade. The States decided this issue. Kansas had a set of laws. Other States had sets of laws. This is how it was resolved and dealt with across the land. That is what we are talking about.

People are saying if you repeal Roe v. Wade, everything goes back into a back door. This set of laws would be allowed in the United States.

To be factually correct, what happens? This goes back to the States to
decide how they will handle this particular issue if you do not have Roe v. Wade. When people paint such a cataclysmic change, we recognize what we are truly legally talking about on Roe v. Wade. What has happened since Roe v. Wade? We have not been willing to confront this issue. What is the legal status of the child in utero? What is it? Is it a person or is it a piece of property? It is one of the two.

When the child is out of the mother's womb, we have clearly decided. Five seconds ahead of that time when it is in the womb, what is this child? Five months in the womb, what is this child? Is it a person or is it a piece of property? You can say that it is an odd way of putting the debate.

One of the people who inspired me in this legislative arena was a gentleman named William Wilberforce, a parliamentarian in England. He led the battle for ending the slave trade by Great Britain. They had this debate on the fundamental issue of what is a slave. Is it a person or a piece of property? They even did a Wedgwood plate on this. They had a person in chains as a slave. They put a question around it. “Am I not a man and a brother?” They asked society that question. “Am I not a man and a brother?”

What is the child in the womb? Is it not a person and a brother? When will we decide? We just simply haven’t been willing to have been willing to duck around different avenues on it. Now we are talking about research on the young human. We decided to treat it as property when talking about patenting young human life. You can’t patent a person. Therefore, it must be property. But we are uncomfortable stating that in law because somehow it doesn’t seem quite right.

When we let the child live, it becomes a person under everybody’s definition. It happened in the slave debate. At one point in time in our Constitution we said a slave is three-fifths of a person because we weren’t willing to say it was a person. It is property, so it is three-fifths. We all look back, that was horrible, and that was wrong. We know it was wrong.

Now you are finding that courts are hearing cases about frozen embryos and contesting between the mother and the father in a divorce case on whether to implant the embryo. The legal issue is this: What is the frozen embryo, a person or piece of property? Now the courts are having to use the same sort of terms that were used in the slave debate. They are asking, Is it a quasi-human with the potential for life? They are still trying to get around the question of person or property. Which is it? It is one or the other. It is one or the other. The courts are trying to find a contorted way. It is not quite either because we don’t want to face it now.

That is the fundamental question of Roe v. Wade. Is it a person or is it property? Am I not a man and a brother? What is it? Perhaps States may ban abortions as long as they allow exceptions when a woman’s life or health is in danger. Yet the legislation before us, which lacks an important health exception, fails to do just that: provide for a woman when her health or her life is in danger.

In June 2000, the U.S. Supreme Court reinforced the importance of a health exception with its decision in Stenberg v. Carhart, which determined that a Nebraska law banning the performance of a controversial “partial-birth abortion” must contain a health exception. The Court emphasized that, by failing to provide a health exception, the Nebraska law was structured so as to place a woman’s life in danger. That’s exactly what the legislation before us today does as well: it places a woman’s life in danger.

Despite the Supreme Court’s very clear mandate, the legislation before us does not provide a health exception for the health of the mother. For this reason, this legislation, like the one struck down in Stenberg, is unconstitutional.

While I assume the author of this legislation is referring to a specific procedure, the legislation is not clear on that fact. In fact the U.S. Supreme Court held in the Nebraska case that even if the statute’s basic aim is to ban one specific procedure, its language was so broad that it also banned other medical abortion procedures.

Moreover, this legislation imposes an undue burden on a woman’s ability to choose by banning abortion procedures at any stage in a woman’s pregnancy. This bill does not ban post-viability abortions, a limit I would support, but unconstitutionally restricts women’s rights regardless of where the woman is in her pregnancy.

This legislation does not have a clear exception for women’s health. I fundamentally believe that private medical decisions should be made by women in consultation with their doctors—not politicians. And this includes the methods by which a physician chooses to treat his or her patients. Why should we decide that here on the Senate floor?

And I do not believe that Congress should make women in consultation with their doctors—politicians. And this includes that they be balanced and responsible while holding the rights of women in America paramount in reproductive decisions.

And Senator HARKIN’s amendment is very simple: it asks the U.S. Senate to reaffirm that Roe v. Wade was rightly decided and should not be overturned. This amendment asks the U.S. Senate to reaffirm a woman’s right to privacy in making personal medical and reproductive decisions.

Roe v. Wade held that women have a constitutional right to choose, but after the point of viability, the point at which a baby can live outside its mother, states may ban abortions. States may ban abortions as long as they allow exceptions when a woman’s life or health is in danger.
Physicians must be free to make clinical determinations, in accordance with medical standards of care, that best safeguard a woman's life and health. Women and their families, along with their doctors, are simply better able to make those decisions than a majority of Senators. When decisions involve women and their health, we must continue to uphold the absolute consideration. This legislation flouts the Supreme Court's decision recognizing a woman's constitutional right to choose, has consistently required the informed consent of the woman, and should not be overturned.

Let us send a signal to the women of this country that we are not going to turn the clock back, we are not going to turn the clock back to what Senator BOXER from California said: the dark days when they went to back alleys to have abortions. If my daughter, or any woman, ever found herself in a position like that, as I said earlier, yes, I would want her to go to the best hospital, have a doctor, have a good obstetrician, and not be forced into a back alley. I want it legal. I want it legal. That is what Roe v. Wade is about, and that is what this amendment is about: to keep it safe, legal, and, yes, rare in the United States. I yield back my time.

Madam President, I ask unanimous consent that Senator CANTWELL be added as a cosponsor, and Senator KERRY. The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I want to address a couple issues and then make a closing argument. One issue I want to address is the point Senator BOXER made, that there were 5,000 deaths of women because of abortions prior to Roe v. Wade. I urge my colleagues to support Senator HARKIN's Sense of the Senate that Roe v. Wade, the landmark 1973 decision recognizing a woman's constitutional right to choose, was rightly decided and should not be overturned.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Iowa.

Mr. HARKIN. Madam President, I yield myself a couple minutes, and then I will close up. I know we have some people who need to vote here shortly.

Madam President, let us be clear about one thing. The amendment I have offered is, I think, as straightforward in its approach as Roe v. Wade is in its decision; that is, it simply just states Roe v. Wade is the law of the land and should not be overturned. That is what we are saying on this amendment.

I have not gotten much into the debate on the underlying bill itself. I may later on. I have left that to others. I just feel very strongly that in all the smoke and fog and haze and debate about this procedure and that procedure, and all of the kinds of philosophical debates that are being made—and some of them are very good. I don't mean to detract from the Pennsylvania amendment. He has been very good about engaging in discussions on the floor. Maybe later on I will get into a little more philosophical debate with him on some of these things.

But this amendment simply is about Roe v. Wade. That is all this amendment is. It is for us to express ourselves, to express ourselves clearly and unequivocally that the Senate believes Roe v. Wade is the law of the land and should not be overturned.

Let us send a signal to the women of this country that we are not going to turn the clock back, we are not going to turn the clock back to what Senator BOXER from California said: the dark days when they went to back alleys to have abortions.

I yield myself a couple minutes, and then I will make a closing argument.

The Senate is adjourned.

Mr. BOXER. Mr. President, I ask for the yeas and nays.
The PRESIDING OFFICER. Is there a sufficient second? There appears to be. The clerk will call the roll. The bill clerk proceeded to call the roll.

Mr. FRIST, I announce that the Senator from Kentucky (Mr. McCONNELL) is necessarily absent.

Mr. REID, I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote? The result was announced—yeas 52, nays 46, as follows:

[Roll call Vote No. 48 Leg.]

YEAS—52

Akaka
Baucus
Bingaman
Boxer
Byrd
Campbell
Cantwell
Cornyn
Chafee
Collins
Conrad
Collins
Clinton
Chafee
Byrd
Baucus
Akaka

NAYS—46

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Chambliss
Cooper
Cooper
Cornyn
Craig
Crapo
DeWine

Miller
Nelson (NE)
Nickles
Pryor
Reid
Roberts
Snowe
Sessions
Shelby
Smith
Talent
Thomas
Voinovich

The amendment (No. 260) was agreed to.

Mr. HARKIN. Madam President, I move to reconsider the vote.

Mr. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized.

The amendment (No. 261) was agreed to.

Mrs. FEINSTEIN. Mr. President, I call up amendment No. 261 and ask for its immediate consideration. It is short, and I would appreciate it being read by the clerk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from California [MRS. FEINSTEIN] proposes an amendment numbered 261.

The amendment is as follows:

Strike all after the enacting clause and in-laid.

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS. (a) IN GENERAL.—It shall be unlawful, in or affecting interstate or foreign commerce, knowingly to perform an abortion if, in the medical judgment of the attending physician, the fetus is viable.

(b) EXCEPTION.—This section shall not apply if, in the medical judgment of the attending physician, abortion is necessary to preserve the life or health of the woman.

(c) CIVIL PENALTY.—A physician who violated this section shall be subject to a civil penalty of not less than $100,000. The civil penalty provided for by this subsection shall be the exclusive remedy for a violation of this section.

Ms. FEINSTEIN. Mr. President, this amendment is simple and straightforward. It bans any abortion after viability, except when a doctor has determined that it is necessary to save the life or protect the health of the woman. I have been a part of the Judiciary Committee now for 10 years and I have seen this bill come up in three Congresses and listened to or read testimony on this bill for three Congresses.

The first time it came up, it became very apparent to me that the definition of partial-birth abortion was too vague. I wondered why it was so vague. It looked like it covered different medical procedures. And now, about 8 years later, I believe I know why it is so vague. I believe it is so vague because it could actually cover all abortions and therefore be a major strike against a woman's right to choose. Eighty percent of the people of this country believe that abortion must be safe and allowable. People strongly believe that this is a decision between a woman, her doctor, and her family. I deeply believe politicians should not be in the business of making decisions about women's reproductive rights. In my view, the Santorum legislation, S. 3, is a Trojan horse. It is not what it purports to be. It supposedly bans one procedure, D&X, but actually confines this procedure with another, D&E, the most commonly used abortion procedure. Its wording is so vague that it could be construed to criminalize all abortions.

Yesterday's CONGRESSIONAL RECORD shows that Senator SANTORUM—and I have great respect for my distinguished colleague—stated:

"I have not been asking about medical necessity. . . . I have not asked for someone's opinion on what ought to be or what could be. What I have asked for is an example. I have wanted to be able to provide as an example of where this would be the best, this would be appropriate, this would be medically indicated.

"I would like to answer Senator SANTORUM's question at this time, through a letter. After we heard this question, we called the University of California San Francisco Medical Center, the Department of Obstetrics, Gynecology, and Reproductive Sciences, and talked with the clinical head of the Department at San Francisco General Hospital, who is also a full professor. His name is Philip D. Darney. Dr. Darney just sent me this letter, and I would like to read that letter into the RECORD:

Dear Senator Feinstein: I write to provide examples of cases in which the technique was critical to save our patient's life.

A 38 year old with three previous caesarean deliveries and evidence of placenta accreta was referred for termination of pregnancy at 22 weeks because her risk of massive hemorrhage and hysterectomy at the time of delivery was correctly estimated at about 75 percent. After SFGH sonographic studies confirmed placenta previa and likely accreta we undertook cervical dilation with laminaria and blood available in case transfusion was required. To reduce the 75 percent probability of emergency hysterectomy in the situation of disseminated intravascular coagulation (DIC is quite likely with accreta) we decided to empty the uterus as quickly as possible with the intact D&E procedure and treat hemorrhage. If it occurred, with uterine embolization our patient lost too much blood and hysterectomy was our only option. This approach succeeded and she was discharged in good health two days later.

These two patients provide examples from my memory of situations in which the "intact D&E" technique was critical to providing optimal care. I am certain that a review of our hospital records would identify cases of severe pre-eclampsia, for example, in which "intact D&E" was the safest technique of pregnancy termination. I hope the law will not deny our patients the best treatment which we can provide them under life-threat-ening circumstances. Sincerely, Philip D. Darney.

This letter is from the chief of obstetrics, gynecology and reproductive sciences at one of the best hospitals in the country. It answers Senator SANTORUM's question. I've highlighted two examples of where D&E, or what some also call intact D&E, may well have been necessary to protect the health of the woman.
Heart disease, cancer, and grave fetal abnormalities are among the many conditions that can make pregnancy especially dangerous to a woman's physical health. Under S. 3, these patients would be forced to continue a dangerous pregnancy. That is why I am offering a health exception amendment today.

Indeed, there are many tragic situations that face women today, situations that most could never imagine. There is no doubt that this has been characterized these debates. That is that everyone looks at them from their own vantage point without taking into consideration the situations of others. If you have not encountered a difficult situation, such as a possibly dangerous pregnancy, it is hard to know what you would do. But women and their families face these situations daily.

That is as good a reason as any why the Senate should not intrude into this area, and why the reproductive choices of women that are critical to their health, their morality, their families, their doctors, and not to the Senate.

Having said that, the amendment I am offering strikes a balance between protecting a woman's health and ensuring the D&X procedure is not abused. This amendment would ban all post-viability abortions unless a doctor determines that these abortions are necessary to protect the life and health of the woman. If a doctor performs such a health exception, a doctor who performs a post-viability abortion is not allowed to perform such a procedure to save the life of the woman and not the health of the woman. The American College of Obstetricians and Gynecologists, whose more than 44,000 members represent approximately 95 percent of all board-certified OB/GYNs practicing in the United States, has developed a medical definition of what is a D&X procedure. The American College of OB/GYNs definition of the procedure is very different from Senator Santorum's.

I have to ask, why? Why wouldn't the proponents of this bill put in a medically acceptable definition so that those physicians who were practicing medicine and may encounter this kind of case would know precisely what is prohibited? I believe I know the answer. The answer is that the bill is calculated to cover more than just one method. I know that calculated to ban all abortions. I believe if the bill becomes law, it would be struck down unconstitutional.

I ask unanimous consent to have printed in the RECORD the letter from the American College of OB/GYNs.

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

ACOG STATEMENT OF POLICY
STATEMENT ON INTACT DILATATION AND EVACUATION PROCEDURES

The debate regarding legislative proposals to prohibit a method of abortion, such as the legislation banning "partial birth abortion," and "brain sucking abortions," has prompted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

The American College of Obstetricians and Gynecologists (ACOG) believes the intent of such legislative proposals is to prohibit a procedure referred to as "Intact Dilatation and Evacuation (D & X)". This procedure has been described as containing all of the following four elements:

1. deliberate dilatation of the cervix, usually over a several week period; and
2. instrumental conversion of the fetus to a footling breech;
3. breech extraction of the body excepting the head; and
4. partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus.

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

Abortion intends to terminate a pregnancy while preserving the life and health of the mother. When abortion is performed after 16 days pregnancy, intact D & X is calculated to save the life of the mother whose life is in danger due to a physical disorder, physical illness, or physical injury. This lack of a health exception necessarily renders the statute unconstitutional.

Let me repeat her words. This lack of a health exception necessarily renders the statute unconstitutional.

Now, that is not my colleague, Senator Boxer, speaking. That is not the distinguished Senator from New Jersey speaking. That is not the distinguished Senator from Pennsylvania speaking. That is not the distinguished physician, speaking. That is the Supreme Court of the United States. That is the law of the land.
This language could not be more clear. However, supporters of the Santorum bill argue that they can ignore this language by throwing into their bill some questionable facts that a health exception is unnecessary. They also claim that the specific conduct charged falls within the reach of the statute and so make irrelevant the Supreme Court’s constitutional determination in Carhart that a health exception is necessary.

Now, it is not only Carhart. There are a series of other cases. One is Hope Clinic v. Ryan, in 1999, which was affirmed by the Fourth Circuit Court in 2000. I quote:
The record contains significant evidence that the D&C procedure is often far safer than other D&E procedures.

Another is Rhode Island Medical Society v. Whithouse, in 1999, affirmed by the First Circuit in 2001:
Defendants claim that a D&C could never be necessary to save a woman’s health, but the evidence at trial failed to support that contention. This court finds that the D&C could be used to preserve a woman’s health and must be available to physicians and women who want to rely upon it.

If this is not enough, let me mention Hope Clinic v. Ryan, a 1998 decision.

Intact D&E reduces the risk of retained tissue and reduces the risk of uterine perforation and cervical laceration because the procedure requires less instrumentation in the uterus. An intact D&E may also result in less blood loss and less trauma for some patients and may take less operating time.

Another example is Women’s Medical Professional Corp. v. Voinovich, 1995, affirmed in 1997:
After viewing all of the evidence and hearing all of the testimony, this court finds that use of the D&C procedure in the late second trimester appears to pose less of a risk to maternal health than does the D&E procedure. This court also finds that the D&C procedure appears to pose less of a risk to maternal health than the use of induction procedures.

These are all clear district court and appellate court decisions, plus a number of clear Supreme Court decisions, and yet S. 3 flies in the face of all of them. All it offers is 15 pages of weak factual findings.

The Framers of the Constitution did not intend that Congress be able to evade Supreme Court precedent and effectively amend the Constitution by holding a hearing and generating some questionable testimony from hand-picked witnesses. Let me quote former Chief Justice Warren Burger on this point:
A legislature appropriately inquires into and may declare the reasons impelling legislative action, but the judicial function commanded by the Constitution is to interpret the specific conduct charged falls within the reach of the statute and, if so, whether the legislation is consonant with the Constitution.

The supporters of this bill are effectively attempting to overturn Supreme Court precedent and to rewrite the Constitution by enacting a bill that openly violates Stenberg v. Carhart and other Supreme Court opinions. This, in my view, clearly oversteps legislative authority.

The Santorum bill also assumes guilt on the part of doctors and forces them to prove that they did not violate the law. This is putting a burden on women and on those people who are charged with protecting pregnant women from harm. The legislation provides that an accused physician could escape liability only by proving that he or she reasonably believed that the banned procedure—whatever that procedure is—never occurred. But it is not defined in the legislation—was necessary to save the woman’s life and no other procedure would have sufficed.

It also opens the door to the prosecution of doctors for performing almost any abortion method by forcing them to prove they did not violate a law that can be interpreted in many different ways. Indeed, this bill is a major step toward making all abortions illegal in the United States.

Why does the Federal Government need to be involved in this issue? Why is this legislation even necessary? Roe v. Wade clearly and unequivocally allows States to ban all postviability abortions unless necessary to protect the life of the woman. Forty-one States already have bans on the books. So the States have accepted the premise of Roe v. Wade. If they have been concerned about postviability abortions, as most are, they have taken action, as Roe so provides.

The fact is, abortions late in a pregnancy are rare and usually performed under very tragic circumstances. Some States have not seen the need to legislate in this area. Surely anyone who believes in States’ rights must question the logic of imposing a new Federal regulation on States in a case such as this, where States have already legislated.

Finally, I say to my colleagues, the Santorum bill is a bad bill. It is clearly unconstitutional. I have cited district court cases. I have cited appellate court cases. I have cited Supreme Court cases. S. 3 fails to provide a straight health exception for the woman, which is necessary to stand the constitutional test. It is not the role of the Federal Government to make medical decisions. It should be up to the doctor and his or her medical judgment.

This bill is bad because it attempts to ban a medical procedure without properly identifying that procedure in medical terms; ergo, it muddies the water and it throws all procedures into risk. It could affect far more than the procedure it seeks to ban. And it presumes guilt on the part of the doctor, something that, in the case of physicians, may be unprecedented in American law.

In our criminal justice system, somebody has to prove you guilty. You are presumed innocent. This bill puts the burden on doctors, and it ignores the vital health interests of women who are often facing tragic complications in their pregnancies.

That is why I am offering this complete substitute to S. 3. This substitute amendment puts medical decisions back in the hands of doctors. If the doctor believes such a procedure is necessary to protect a woman’s life or health, then he or she should be able to perform the procedure. I believe it is that simple.

I strongly believe that Congress should be supporting legislation that protects a woman’s health. For the sake of all Americans, 80 percent of whom believe they should have the right to choose to protect the woman’s health, from all walks of life, present and future, I urge my colleagues to join me in supporting this amendment.

Madam President, I yield 15 minutes of my time to the Senator from New Jersey.

Mr. SANTORUM. Can we go back and forth?

Mrs. FEINSTEIN. I have no problem with that.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Pennsylvania, Mr. SANTORUM. I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I yield 15 minutes to the distinguished Senator from Pennsylvania. I will not speak very long this evening.

Madam President, I would like to open my remarks by just talking a minute about what one of our very distinguished Senators, Mr. Patrick Moynihan, had to say about this procedure. We are not here arguing right to life or those who favor abortion. What we are here talking about is a procedure that has been described by Senator Patrick Moynihan as follows:

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

That is what the distinguished Senator from New York said.

We can spend all the time we would like in the Chamber talking about Roe v. Wade, about right to life and pro-abortion and where the American people are, where the American women are. But that is not the issue. The issue is, where do we stand on infanticide, that is to say, where do we stand on banning a procedure that reduces—that diminishes the life of a child that has been born and has exited the uterus? And, as Senator Moynihan said, what on Earth is this procedure?

I have been listening attentively. I understand the issue is a very personal one, a very serious one. It is one that is very difficult for many people to even come to the floor and debate, much less do the vote.

I don’t choose to describe the procedure. I think my friend, the former Senator from New York, does it well enough in a few words when he says in this case what we are talking about is a child that has been born and has exited the uterus.

The question before us is what should we in the United States say about
whether or not a doctor should accommodate the killing of a child as so described?

To me, where people stand in this country on abortion or who wants Roe v. Wade and who doesn’t is the issue. The President talks about whether or not you are for the actual taking of a life that has already been born and has exited the uterus?

Roe v. Wade—where our Supreme Court chose to enter this fray—does not make the case because they are talking about a much earlier period in the development of a fetus in the mother’s womb. Partial birth abortion takes place way past the Roe v. Wade time schedule and, in fact, a child is born and then a choice is made regarding the life of that child.

There are arguments made that this ban is not constitutional. This is not true. I believe, having read the case of Roe v. Wade itself and then the Nebraska case that followed, that it is perfectly clear from the Supreme Court that Roe v. Wade and Planned Parenthood v. Casey is taking place past the Roe v. Wade case, not in the Roe v. Wade case, that you cannot legislate with regard to this issue. I don’t believe one has to spend a great deal of time on the issue. It seems to me you are either against partial birth abortion or you are for it. If you are against it, you vote for the bill of the Senator from Pennsylvania. In that event, the legislation will work its way through the Congress, as it already has twice before. It will go to the President, as it has twice before. And again, we will ask the President. Will you sign it or not?

I believe it is patently clear that Congress will speak again just as it has spoken heretofore twice—not just the House and the Senate. Then it will go to the President, but this time it will be this President. It is my understanding he will sign it. Therefore, the overwhelming will of the U.S. Congress about an issue of grave significance and of great importance will have been decided by the policymakers and presented to the executive branch, and it will be signed.

I believe we minimize this issue by saying only a few of these procedures are done. I submit that I have read literally thousands of these between 3,000 and 5,000 of these abortions are done. I don’t believe anybody can prove that there are only a few done, but I submit if there are only a few, that is a few too many.

From my standpoint, I compliment the distinguished Senator from Pennsylvania. He has carried this bill. He has argued it not only valiantly but with professionalism. I commend him and suggest to him that his many years of effort in this regard will soon see daylight.

I yield the floor. I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 3½ minutes remaining.

Mrs. FEINSTEIN. Thank you, Madam President. I ask that 15 minutes go to the distinguished Senator from New Jersey.

Mr. LAUTENBERG. I thank the Senator from California. I thank her for permitting me to speak.

I have listened very carefully to the arguments being made. I think a fundamental question preempts much of the discussion that is taking place. I think the essentiality to be considered is who determines the decision about a woman’s health? As far as I am concerned, it is a relatively simple proposal. Is it the Senate which determines what we do about a woman’s health when her health could be in jeopardy and she makes the decision, in consultation with her doctor? Should it be the President of the United States? Should it be ideologues who want to control the behavior of legitimate actions of other persons? Or should it simply be a patient in consultation with her doctor and her family, legitimately covered even in reviews by the Supreme Court?

The bill offered by the junior Senator from Pennsylvania says politicians know best. And I say that is wrong. Keep the politicians out of the doctor’s office.

We should not interfere with the medical judgment of a licensed doctor. Only a woman’s personal physician can determine and act, when they can act, and what they should be able to do. I continue to hear a great deal of concern from the other side of the aisle about fetuses which they call unborn children. What about the born children?

I am reminded of what Congressman Barney Frank said. He is from Massachusetts. He said for some people, their zeal for life begins at conception and then ends at birth.

Next week we are going to likely work on the budget resolution. I expect that the Republican budget will track the President’s fiscal year 2004 plan. What happens to born children under the President’s budget?

What happens to pre- and postnatal health programs? What happens to care and delivery programs? What happens to education and after-school programs? What happens to job training programs? I will give you just a few examples.

Under the President’s budget, the Head Start Program is weakened by turning it into a block grant. We all know the purpose of turning it into a block grant. It is to make it easier to cut the funding for it. In effect, the President is saying to the States: Here, you take it. You figure it out. And by the way, we are going to cut it. The result is that thousands and thousands of children who currently participate in Head Start will be thrown out of the program. It is a very valuable program.

Under the President’s education budget, millions of children are left behind. Even though the President named his education proposal No Child Left Behind, the President’s budget falls $9.4 billion short of fully funding the new education law that he signed into law last year. The President would leave more than 6 million born children behind by refusing to provide $6.2 billion in title I funding he promised for 2004.

The President wants to cut funding for Wounded Warrior Projects for military children, of all things. The President’s budget would eliminate Impact Aid education funding for 110,000 born children whose parents are being mobilized to fight the war on terrorism and against Iraq.

He wants to make it harder for poor children to get school breakfasts and school lunches that, in many cases, are the only nutritional meals they will get in a day.

The President cuts Pell grants and eliminates new funding for Perkins loans. The President wants to reduce the maximum amount for a grant. And the President would eliminate $106 million in funding for new Federal contributions to Perkins loans, which provide low-interest loans for under-graduate and graduate students with exceptional financial need.

What about the children of working-class families? The President is willing to eliminate child care services for 200,000 children because they are born children. What about them?

If we want to help protect children, why hasn’t there been a cry in this Chamber for sensible gun legislation to make our schools and communities safer? In the year 2000, my gun show amendment passed the Senate. It was designed to take away unlicensed dealers’ privileges to sell guns to anybody they wanted to. But it was killed in the House by the Republican leadership.

There are many other sensible gun laws we could pass, including a requirement that guns have child safety locks. Each and every year, approximately
borne children are killed by gunfire. What about them? Are we going to pass laws to help protect children from gun violence? Why isn't that on the agenda of the junior Senator from Pennsylvania?

I called the President for his commitment to fight the global HIV/AIDS epidemic we see in front of us. But I ask, what is the President doing about the growing AIDS epidemic right here in the United States, where one-half of all new HIV infections are among people under 25? What about these born children?

Right now, the Senate is trying to limit the choices women and their doctors have in making the most personal and painful decision.

In 1995, Congress repealed the motorcycle helmet law—I was the author of that law—because it was seen as an intrusion by the Federal Government into people's lives. Close to 3,000 people—most of them under the age of 30—die each year from motorcycle accidents. But if we tried to bring back the helmet law, I am sure we would hear about how intrusive it would be in people's lives.

The disregard for the health of a woman in this legislation is unconstitutional and it is offensive. I believe the Government should not intrude on these complicated decisions, or tell a woman with serious health or fertility problems how to make this difficult decision.

I am going to oppose this intrusion into the doctor-patient relationship. Let us continue to give women and their families—not politicians—the right to make these difficult choices. Let them determine what is right for their well-being and the well-being of their families.

Madam President, I urge my colleagues to oppose this intrusion. It is not a choice that should be made for a woman by politicians who do not feel the pain of this decision.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mrs. FEINSTEIN. Madam President, I ask unanimous consent to add Senator STABENOW and Senator EDWARDS as cosponsors of my amendment.

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

The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I yield 7 minutes to the Senator from Ohio.

Mr. DEWINE. Madam President, I rise in strong opposition to the amendment that has been offered by my friend and colleague from California.

A few hours ago, the Senate decisively rejected, in a vote of 86 to 38, a substitute amendment by my colleague from Illinois. The Feinstein substitute amendment we are now considering, frankly, is even worse than the failed Durbin substitute amendment. I would like to spend a few minutes to discuss this amendment and explain exactly why I believe the Feinstein amendment simply is not good public policy.

The Feinstein substitute says that it would be "unlawful" to perform an abortion if "the fetus is viable" in the judgment of the "attending physician." First, as I have stated earlier, most partial-birth abortions are conducted after 20 weeks. Second, as with the Durbin amendment, the Feinstein amendment does not even cover most partial-birth abortions.

Furthermore, the terms of the substitute are so ambiguous that when you look at the language, it makes it practically useless in stopping these abortions.

What does the language in the Feinstein amendment mean? Very simply, it means the abortion provider—the person who will perform the abortion, the person who makes a living doing abortions—is the person who will make the decision of whether or not the abortion is legal.

What do I mean by that? Let me explain.

Specifically, the Feinstein substitute does not define when a fetus is viable. It further imposes no restrictions on the abortionist. Instead the substitute would permit the abortionist to decide what viability means. The abortionist is the one under this substitute who makes that decision. As long as the abortionist says the fetus is not viable, then the Feinstein amendment would not apply. He could go ahead and perform the abortion. This is obviously not acceptable.

We don't have to search very far for an example of how abortionists would apply this standard. At least one abortionist who performs third-trimester abortions has publicly taken the position that viability occurs only when a baby can survive independently of the mother without any artificial assistance. Of course, that is not what most doctors mean when they refer to viability. It is not the standard under the Durbin amendment. But under the Feinstein substitute, this standard, as defined by this doctor, would be fine.

Even just this much discussion should be enough to convince everyone of the dangers of accepting this substitute. But there is more. Under the terms of the Feinstein substitute, even if an abortionist should, completely against his self-interest, declare the baby he has been hired to kill is, in fact, viable under the Feinstein substitute, this standard, acceptable, viable under the Feinstein substitute, would be for the abortionist to determine, in the medical judgment of the abortionist, that the abortion was necessary to preserve the life or health of the mother.

As I discussed earlier today, the term "health of the mother" is almost impossible to clearly define, based on prior Supreme Court decisions. In fact, the Supreme Court has declared, in an abortion context, that this term is extremely broad. I quote again for my colleagues from the Supreme Court case of Doe v. Bolton. Here is what the Court said:

"The deferential nature of this term is striking. The Court has repeatedly used the term in contexts that would not be understood as implying a value judgment about the worth or desirability of childbirth."
That is the Supreme Court, Roe v. Bolton. Under this definition, almost any excuse would be enough to justify a late-term partial-birth abortion. Yet the abortionist would be within the law because he determined the health of the mother was at risk.

In fact, we have a real-life example of just that. Under this provision to define a mother’s health would be used. Kansas is currently the only State in the Union that requires partial-birth abortions to be reported distinct and separate from other abortions. In 1999, Kansas abortionists reported they performed 182 partial-birth abortions. They also reported all 182 of these partial-birth abortions were performed on babies who the abortionists themselves found to be viable.

Further, they reported that all 182 of these postviability partial-birth abortions were performed for mental as opposed to physical health reasons. Those are very interesting statistics. They tell us a lot. Every single one of these partial-birth abortions, 182 out of 182, were reported by the abortionist as being performed on viable children for mental as opposed to physical health reasons.

Mr. SANTORUM. I yield the Senator 1 additional minute.

The PRESIDING OFFICER. Without objection, the Senator is recognized.

Mr. DeWINE. After all this, if somehow, somewhere, somebody were able to prove the abortionist had in some way violated this law—and I don’t know how that would ever happen—the only penalty would be a fine, a civil penalty.

If you add it all up, the effects of this substitute amendment are clear. It would leave someone like Dr. Haskell, who I mentioned earlier, a professional abortionist who only does partial-birth abortions, to perform partial-birth abortions practically at will. Accordingly, this amendment would allow thousands of these gruesome procedures to continue to be performed.

A vote for the Feinstein substitute is simply a vote to kill the Partial-Birth Abortion Ban Act. It is a vote simply to allow partial-birth abortions to continue.

Therefore, I ask my colleagues to defeat this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I am a cosponsor of the amendment, and on behalf of Senator FEINSTEIN, I yield myself 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized for 5 minutes.

Ms. STABENOW. I appreciate the deeply held views on all sides of this issue. But first I will indicate there is not a more fundamental issue for the women of this country that relates to our privacy, respect for our own decisionmaking, as well as our own religious beliefs, than this fundamental issue we are debating. I also remind my colleagues that the term partial-birth abortion, there is not a procedure called that. But the late-term abortion procedure is in fact one-tenth of 1 percent of all of those procedures, all abortions that are done every year. We are talking about a very small group of procedures done when there are real tragedies.

These are wanted pregnancies, women who have been excited about having babies and find out very late in the term of the pregnancy that there is a serious or fatal problem. And their families grieve. They grieve over the decisions they have to make about how to proceed, given the information.

I believe we need, as a governmental body under the Constitution, to respect their privacy, their religious freedom, for them to be able to struggle with their own decision, their family’s and their faith, to be able to do what is best to protect their own life and their own health.

I rise to support the Feinstein amendment strongly and would be sure that Roe v. Wade, given on the Harkin amendment, if this amendment did not pass. We just had a vote where 52 Members of this great body voted to uphold Roe v. Wade, voted to uphold the constitutionality, the decision made by the Supreme Court in that case. The Feinstein amendment does nothing more than repeat the language as it relates to the life and health of the mother. It repeats what is current law in terms of Roe v. Wade. So those who support Roe v. Wade, who supported the Harkin amendment, should be supporting this amendment as well.

I would like to share a couple of letters that talk about what we are really doing.

I yield the floor.

This is a statement by Maureen Britell, given on March 10 of this year. She writes:

In February of 1994, my family was happily awaiting the birth of Dahlia, our second daughter. My pregnancy was progressing smoothly and we were getting more excited as the days and the weeks passed. At the time, my husband, Andrew, was on active duty in the Air Force and had been unable to come to any of my routine prenatal check-ups. He wanted to share in the excitement, so when I was 5 months pregnant, we scheduled one.

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

Madam President, can you imagine how that couple must have felt at that moment? As a mother of two children, I certainly can say:

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

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

Madam President, I ask the Senator for 2 additional minutes.

Ms. STABENOW. I yield the floor.

Mrs. FEINSTEIN. I yield 2 more minutes to the Senator.

Ms. STABENOW. She said:

With the support of our families and our priest, Andrew and I made the decision to end the pregnancy.

I was scheduled for a routine induction abortion in which medications are used to induce labor. My doctors anticipated that it would be a standard delivery and that because Dahlia had no brain, she would die as soon as the umbilical cord was cut.

Madam President, again, can you imagine writing this letter and the pain of this woman and her family?

After 13 long hours of labor, I started to deliver Dahlia. Unexpectedly complications arose and Dahlia lodged in my birth canal. The placenta would not drop. Our doctors had to cut the umbilical cord to complete the delivery, and avoid serious health consequences for me. Dahlia was stillborn in my birth canal—the same description used in the so-called “partial-birth abortion.”

I asked and I was denied the loss of Dahlia. However, because of the excellent medical care I received, I was able to become pregnant again and in June 1996, we welcomed Nathaniel into our family.

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

In a perfect world, I would never have to write you this letter. Every pregnancy would be wanted, healthy and happy—and no lost ones would be going off to war. Until that time, however, there will be families like mine. And until that time, abortion must be preserved for us to say no to this extreme legislation.

Madam President, we have thousands of women who have shared similar stories. We have thousands who are asking for us to say no to this extreme legislation, to support the Feinstein amendment, and to join with us—all of us—in efforts to come forward to prevent unwanted pregnancies.

I was so disappointed that Senator MURRAY’s amendment did not pass—a positive effort to focus on prevention, on coming together to focus on stopping the unwanted pregnancies on the front line. I was very disturbed to see even a more restrictive effort to show how extreme this effort is—even Senator DURBIN’s amendment did not pass this body.

This is an extreme measure, which will take away the ability for women to respond when their life or their health is in jeopardy as a result of a pregnancy. This is not what we should be doing in the Senate. I urge my colleagues to reaffirm their vote on the Harkin amendment to support Roe v. Wade by supporting the language in the Feinstein amendment.

I yield the floor.
The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Madam President, to address the letter the Senator from Michigan read, I want to assure the young lady who wrote that letter to the Senator from Michigan—read that letter—will address the very compelling story, one that has my sympathy, certainly—my heart goes out to her and her family for what she had to go through. Let me, please, assure her it is crystal clear from the language in the bill that what happened to her is not covered under this legislation. I will read it:

The term partial-birth abortion means an abortion in which the person performing the abortion deliberately and intentionally vaginally delivered the living fetus.

Here is the key operative language:
delivered the living fetus for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus.

The doctor in that case, first off, did not perform an abortion, did not deliver the child for the purpose of killing the child. So it is clear beyond a shadow of a doubt—and we have discussed this at hearings and on the floor multiple times—there are obviously times when a birth is either induced, or a natural delivery where complications arise, and for the life of the mother the pregnancy is terminated. That is obviously a horrible and tragic situation. That is clearly outside of the bounds of the definition.

I just assure this young woman who wrote the Senator, and maybe even met with the Senator from Michigan, her case would not under any circumstances—if you are going through a procedure for the intention of delivering the child—is for a person performing an abortion. This doctor was performing a delivery of a child who had complications, which resulted in having to terminate the pregnancy to save the life of the mother. That is clear in two cases. No. 1, they weren't performing an abortion. They didn't deliver for the purpose of performing an act that the person knows will kill the partially delivered fetus. No. 2, there is a life-of-the-mother exception in the bill. So in either case—predominantly the first case—the case the Senator from Michigan read—

Ms. STABENOW. Will the Senator yield to an amendment?

Mr. SANTORUM. Yes.

Ms. STABENOW. I wanted to clarify that, in fact, given the situation, they were performing an abortion to do that. That was the intent of the procedure. It was an abortion. Additionally, I say the mother's life was not in jeopardy, but her health and future fertility were in question. There were a number of issues relating to her health as well.

If you indicate, with all due respect, I think the issue here, when we are debating medical procedures on the floor, really gets to the point about whether or not we or the Senate should be debating medical procedures. Earlier, there was a debate about whether a child which was born with a brain outside of its head was in fact to be categorized as a disabled child. All of these issues we are debating here as a matter of whether we know the facts or what happened in any individual case. So that would be my concern.

Mr. SANTORUM. Maybe I wasn't listening as attentively as I should have been. Maybe I heard it incorrectly. I have to go back to the Senator read. I apologize if I got that wrong.

In either case, I wanted to clarify we are not talking about cases where there are not abortions being performed.

With respect to the statement that we should not be making these decisions, with all due respect, we make decisions here about everything under the sun—things that 50 years ago who would have thought we would be debating? I suggest we don't give the technical expertise to determine what is a brutal, gory, horrendous procedure and ban it—we make illegal in this country lots of things we find to be morally objectionable and offensive. I think we have every right—in fact, we have a duty to speak on this. To suggest we in the Congress don't have the right to make those decisions, that we have to give it up to the courts—unelected people, just give it up to them; I don't need to read any bunch of judges.

People elected me and the Senator from Michigan and everybody else in this Chamber to go forward and to make decisions about issues of importance to the people of our States. That is what we are going to do.

Ms. STABENOW. Will my colleague yield one more moment?

Mr. SANTORUM. I will be happy to yield.

Ms. STABENOW. I interject, we are not asking that this right be given up to the courts; we are asking that these decisions be left up to a woman, her family, and her faith.

Mr. SANTORUM. I appreciate the Senator's comments, but in all due respect, she is leaving it up to the courts because the courts have made this decision and the courts have dictated the law of the land. They have proscribed in elected representatives the right to have any impact on that. We had that debate just a few minutes ago with Senator HARKIN and his amendment.

The courts have completely trumped the legislature. They have decided to take an entire body of law away from us and the State legislatures. I believe the Senator was in the State legislature at one point. That is my recollection. They have taken it away from the State legislatures, taken it away from the Congress, taken it away from people in our democracy, in our Republic, and decided to hold it up across the street, where nine, at the time men, decided to take the law into their own hands by creating a right that did not exist. It just did not exist. I do not know how you say this. All throughout time, all through the history of this country, this right was there and we did not find it. All of a sudden, we found this right in the middle of the Constitution in this liberty clause.

As I said before, the liberty clause of the Constitution, and within that clause they found this new right, this new right that took liberty and put it ahead of life, even though the Founders put liberty behind life because that is what our Creator did. We are endowed by our Creator with life, liberty, and the pursuit of happiness. Not liberty, life. You have to have life to enjoy liberty. What the Supreme Court did was make this person's liberty ahead of another person's life. That is fundamentally wrong, I do not care what your feelings is on abortion. It is wrong, and I suggest the Senator from Michigan and both Senators from California would agree with me that when the Supreme Court did that in the Dred Scott case, they took the liberty of the slaveholder ahead of the life of the slave, the Senator from Michigan. I am sure he would stand up and say: That is wrong; you cannot put someone's liberty rights ahead of someone's life rights.

What argument do you make in the case of abortion? Because that it is excusing. Remember, the liberty clause of the Constitution is the genesis of a right to an abortion. The liberty clause is the genesis of the right to an abortion, and it trumps the life of this other human being. That is the right.

You can argue that it is a different case—people have—that somehow this child inside the womb is not a human being. But it is. It is genetically human. It is alive. It is a living human being. You can say in this case it is a special case. That is what they said in the 1850s, right here on this floor. They said it was a special case—a special case because, you know, these black people, they are not like us. These little children, they are not like us. But that is what they did in the 1840s and 1850s.

They put in the Dred Scott case that the liberty rights of the slaveholder trump the life rights of the slave. The slave was property. The child in the womb, under the Supreme Court Roe v. Wade decision, is property. Look at this case with open eyes. Look at this case and what it does, the history that is being repeated in the world today, and you wonder why we still march in the streets. It is the same reason—the same reason. It is the same case. It is Dred Scott, and for some reason we just choose not to see it.

What amendment do it affirms Dred Scott? If you like Roe v. Wade, vote for this amendment because this is the law right now. Basically, the Harkin amendment makes no change. It takes the partial-birth statute, wipes it out, and just puts the law of the land is the law of the land. OK. We have accomplished nothing here. We have accomplished nothing over the last 4 days.
If you eliminate the underlying statute, which is the partial-birth abortion bill which we believe is constitutional, you wipe it out, all you do is restate the law, and that is what the Feinstein amendment does. So if you do for the partial-birth abortion bill and vote this, do not go home and say before are for the partial-birth abortion bill because you are not because this amendment excuses the underlying bill and replaces it with a restatement of Roe v. Wade. That is what this amendment does.

I suspect the Senator from California would agree with that. I do not think I am mischaracterizing her amendment whatsoever. It restates Roe v. Wade that says you cannot have abortions postviability except to protect the life or health of the mother. That is what Roe v. Wade said; that is what this amendment says.

In practice, of course, health means anything, so there is no restriction at all. In amendment will mean the same thing: there is no restriction at all.

With respect to the Durbin amendment—again, I said in all candor to him and I will repeat it on this occasion—I believe the Senator from Illinois was trying to find some restriction, was trying in a rather painful and I would argue ultimately failed way to find some movement, some attempt to reduce or put some restriction on postviability abortions. I think he failed in doing so, but I think he made an honest attempt to try. This does not even attempt to try. This basically restates Roe v. Wade.

Again, as far as I am concerned, this is the vote on the bill. If you vote for this, you basically vote to kill the bill and replace it with nothing. What you replace it with, again I would make the argument, is the Dred Scott case. That is what you replace it with. You replace putting people’s liberty rights above people’s life rights.

I repeat over and over, there is a reason the Founders put the ordered rights in the place they did. I will quote again:

... they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

I think everyone in this Chamber would agree, you cannot pursue happiness unless you can enjoy freedom if you are not alive. So, of course, you cannot put freedom ahead of life. You cannot put someone’s freedom ahead of someone’s life. That is not right. That is out of order.

As I said before, we did it once before in this country and we paid a horrible price, and we have left a horrible legacy that has stained this country. I would argue we are doing the same thing. We are repeating the failures of history. As I restated—our people did in the 1840s and 1850s, good upstanding—in the movie “Gods and Generals,” people have objected to the fact all these people were God-fearing, southern generals and others; they were portrayed in almost a good, positive frame that these are good people; how can they believe that someone’s liberty rights trump someone’s life rights? How could they believe, these God-fearing people—these were Catholic, Protestant, Catholics, and Jews—how could they believe that? You just scratch your head and say they must have been bad people.

I do not think they were bad people, and I do not think the people on the other side of this issue are bad people. I think they just got it wrong. I think they do not understand the lessons, the wisdom of the people who wrote our founding documents, the wisdom of understanding basic rights and the ordering of those rights to give meaning to those rights because if you misorder the rights, they have no meaning. If you put happiness before liberty so that your right to happiness trumps my right to freedom, well, then, I am not going to sell my daughter, I have your happiness for your own benefit. That is not fair. If you put my happiness in front of your life, well, obviously no one is going to say that is fair. And the same thing, if you put my freedom to do whatever I want to do to you, right to life, most people would say that is not fair. But that is the law of the land. That does not say this is not a difficult issue. That does not say there are not cases that could pull at your heart strings, and that the decisions people have to make are tough decisions. They are. But that is why—Mrs. BOXER. Will the Senator yield for a question?

MR. SANTORUM. In a moment. But that is why happiness is at the end. Because you know what, life and liberty are all about tough choices sometimes, all about making decisions which are not necessarily easy, and happiness results at the end, hopefully. We have to make tough decisions to get to that point. It is of lower priority. There are higher, more noble things than the pursuit of happiness. That is what our Founders understood. These basic rights, as painful, as troubling, and as difficult as they are to preserve, are important because without them there is no hope of freedom, there is no hope of happiness, there is no hope of prosperity. And so it is the case with the unborn. There is no hope of liberty, there is no hope of happiness, because we have misordered our priorities and rights in this country.

I know that is a tough message, and I know it is not a popular thing to hear, but I believe in my soul this is corrupting the body of this country, as slavery corrupted the body of this country for 200 years, and then some. We have an obligation to face history and face the reality of what we are doing, and all we are doing is—good, brutal procedure—one little insult to the unborn. Three inches away from that legal status that would deem this person back in order, back in order where their life counts more than somebody else’s liberty; 3 inches from coming under those founding documents that give them rights. But they might as well be 3 miles, for their life is ticketed for extermination in such a brutal fashion, in the hands of a doctor who was taught to be ruthless.

We have an obligation to end and stop evil, even if it is just a little thing, even if it is only a few thousand times a year in this country. It almost boggles my mind to think that 3, 4, 5, 6, whatever thousands of these that happen a year is considered rare and infrequent. I say to my colleagues, if they are for the underlying bill, they cannot vote for the Feinstein amendment because it simply terminates this bill and replaces it with nothing, replaces it with current law.

No one who votes for this can say they are for the partial-birth abortion ban, because they are not. They are for eliminating that ban and replacing it with current law, a reinstatement of Roe v. Wade, which states as far as doing anything about this brutal procedure.

I am happy to yield. Can I yield on the Senator’s time if that is okay?

MR. FEINSTEIN. May I ask, first, how much time we have remaining?

The PRESIDING OFFICER. The Senator from California has 10 minutes 36 seconds. The Senator from Pennsylvania has 25 minutes 23 seconds.

MR. SANTORUM. I will yield on my time.

Mrs. BOXER. I appreciate that. I have two questions for the Senator. Is the Senator aware that 78,000 women a year around the world die of illegal abortions? And since he stated that the other figure I put out is false, I went back and got the World Health Organization number. Is the Senator aware of this?

The second question I have is: The Senator knows, I have been one of the strongest advocates for increase in funding for the disabled. I was one of the people who worked on this side of the aisle to try to get a dramatic increase. When I came to the Senate, IDEA was funded at 5 percent. It was promised at 40. One of the things I said on this floor and said repeatedly across my State, it was my objective to get it to where it was promised in 1975, which was 40 percent.

One of the concerns I had with the actual reauthorization of the legislation was that we would be putting more money in to help people with disabilities through the educational process. I disagreed with some of the substantive changes within the law,
The case. 'Health' was broadly defined. 'Health' includes those factors which may relate to health. This also means that comparing my amendment with the Dred Scott decision is ridiculous. Having said that, the distinguished Senator from Pennsylvania is right about one thing. In a sense, this codification of Roe v. Wade. I have sat on the Judicial Committee. I ask my colleagues the question: What do you think of Roe v. Wade? Overwhelmingly, most would say it is well-settled law. The States have adapted to it, and Roe v. Wade allows for the viability standard to be set. If the fetus is viable, that is, can be sustained outside of the uterus. And over 40 States have banned or severely restricted postviability abortions.

S. 3 is duplicitous because it says it does one thing but does another. It says that it bans partial-birth abortion, but it does not adequately define it, and so bans much more than this method. Moreover, the bill does not define D&X in a medical context.

Respectfully, Senator Santorum is not a physician, and, respectfully, he is not going to be carrying out a surgical procedure. But there are hundreds of thousands of physicians out there who are carrying out this medical procedure. And Senator Santorum wants to leave them with an unclear definition in this bill. And the precise, medically accurate definition I read into the record, the definition proposed by the American College of Obstetricians and Gynecologists, is not the definition in the bill.

What I have done is to write a simple, straightforward bill that essentially sustains Roe v. Wade. So those who believe in Roe v. Wade should vote for my amendment. It says that any abortion is illegal once the fetus is viable, once the doctor determines that the fetus can sustain itself outside of the womb, unless the life and the health of the woman are in jeopardy. That is Roe v. Wade. The amendment is also consistent with a whole host of federal court decisions which I read in the Supreme Court's decision in Stenberg v. Carhart, where Justice Breyer and Justice O'Connor, and three other justices very clearly said that a Nebraska statute very similar to S. 3 falls because there is no exception for the health of the woman.

The Senate has talked about the liberty clause. And Roe v. Wade, yes, did come from the liberty clause of the due process clause of the 14th amendment and other parts of the Constitution. Roe helped establish a basic right of privacy for women. I get so annoyed when men constantly strive to take away hard-won rights from women. Respectfully, I don't want Senator Santorum taking away my reproductive rights. I respect his views. I respect his rights. I respect his moral code, his religion, his conversations with his physician. Why can't those who happen to be pro-choice receive the same respect, particularly when a fetus is not viable, when a fetus cannot sustain life outside the womb? That is what this is all about.

Make no mistake, if you believe in choice, you will support my amendment. If you do not, you will support S. 3. That is the clear division of the house on this. If there were a clear medically accurate definition in S. 3, I would not be saying what I am saying. I would say: Members, you are voting on a particular medical procedure; you are prohibiting a particular medical procedure. But if you vote for S. 3, you are voting to prohibit much more than just the medical procedure that has been put on this floor. You are also prohibiting D&E abortions as well. That has been the finding not of me but of obstetricians and gynecologists, of those from the finest medical schools in our country, and numerous federal courts, including the Supreme Court.

S. 3's infringement on women's right to choose reminds me of another woman's right. It was not until 1920 that we got the vote. And when this Nation was founded and we went back to our days of—for some—glory, women could not