veto of the reconciliation bill, which surely there should be if these are representative of the kind of provisions that are in that bill. If the Congress passes a new bill, I do not believe there is going to be time to get the regs out to borrow the money, to make the preparations in order to get the crop out this year.

So, Mr. President, what I am saying is the Congress needs to act as in an emergency and to extend the present law. We need to extend that present law so we can get the crop in the ground this year. If we do not do that, and if we have the reconciliation bill as passed, then we are going to wipe out the cotton and rice industry in the State of Louisiana and elsewhere in this country.

CHANGE OF VOTE

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, on the rollcall vote on the conference report accompanying H.R. 1058, I was recorded as voting in the affirmative. I ask unanimous consent to change my vote, which was recorded as ''yes'', to ''no.'' It will not change the outcome of the vote.

I ask unanimous consent I be recorded as a ''no'' vote.

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

[The foregoing tally has been changed to reflect the above order.]

PARTIAL-BIRTH ABORTION BAN ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 1833

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from New Hampshire.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. BOXER. Mr. President, I ask unanimous consent the Senator from California, Senator FEINSTEIN, be allowed to speak until such time as the majority leader comes to the floor and has a chance to discuss with the manager of the bill how we are going to proceed.

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

The Senator from California.

Mrs. FEINSTEIN. Mr. President, as everyone knows, about a week ago the Judiciary Committee held hearings on this so-called partial-birth abortion legislation. I wanted to speak today on what I learned from the hearings and my reasons for opposing this bill. Let me summarize those reasons up front, and then go into each one specifically.

First, I believe that this bill attempts to ban a specific medical procedure which is called, in this bill, a ''partial-birth abortion,'' but there is no medical definition for what a ''partial-birth abortion'' is.

Second, the language in the bill is so vague that I believe it will affect more than any one single medical procedure.

Third, the bill presumes guilt on the part of the doctor, so that every physician may have to prove that in fact he did not perform this procedure, or justify his reasons for so doing if he did.

This bill could be an unnecessary, I think an unconscionable complication to families who face many tragic circumstances involving severely deformed fetuses. I also believe it is an unnecessary Federal regulation, since 41 States have already outlawed post-viability abortions, except to save a woman's life or health.

Finally, I hope to make a case that this bill is very carefully crafted to provide a direct challenge to Roe versus Wade.

First and foremost, this legislation claims to outlaw a medical procedure called a partial-birth abortion. As I said, this medical term does not, in fact, exist. It does not appear in medical textbooks. It does not appear in medical records. The medical doctors who testified before the Senate Judiciary Committee 2 weeks ago could not identify, with any degree of certainty or consistency, what medical procedure this legislation refers to.

I would like to read some of the responses to my question in the committee, when I asked these doctors what a partial birth abortion is.

Dr. Pamela Smith, director of ob/gyn medical education at Mt. Sinai Hospital in Chicago, said it was ''* * * a perversion of a breech extraction.''

Dr. Nancy Romer, a practicing ob/gyn and assistant professor at Wright State University School of Medicine, said it is ''a dilation and extraction, distinguished from dismemberment-type D&Es.''

Dr. Norig Ellison, President of the American Society of Anesthesiologists, who was at the hearing to represent anesthesiologists who supposedly participate in these procedures, said, ''I pass on that one. I am as confused as you are.''

And, Dr. Mary Campbell, medical director of planned parenthood of Washington, defined it as ''* * * a procedure in which any part of the fetus emerges from the cervix before the fetus has been documented to be dead.''

Others have said it is an ''intact dilation and evacuation,'' or a ''total breech extraction.''

I asked Dr. David Grimes of the University of California at San Francisco this same question, and he put it in writing.

First, the term being used by abortion opponents, ''partial-birth abortion,'' is not a medical term. It is not found in any medical dictionary or gynecology text. It was coined to inflame, rather than to illuminate. It lacks a definition.

As I understand the term, opponents of abortion are using this phrase to describe one variant of the dilation and evacuation procedure, known as a D&E, which is the dominant method of second trimester abortion in the United States.

Second trimester abortion.

If one does not use the D&E, the alternative methods of abortion after 12 weeks gestation are total birth abortion—labor induction is more costly and painful—or hysterotomy, which is the more costly, painful, and hazardous.

Given the enviable record of safety of all D&E methods as documented by the Centers for Disease Control and Prevention, there is no public health justification for any regulation or intervention in a physician's decisionmaking with the patient.

Then I asked one of the professors who testified at the hearing about this. I will get to what he said in a moment. But for just 1 minute let me read the exact language of the bill. We have heard testimony from the authors that this refers to a breech extraction by stopping the head from leaving the birth canal and injecting scissors into the base of the skull and draining fluid. But the definition of the bill is entirely different. The bill says, ''The term 'partial-birth abortion' means an abortion in which the person performing the abortion partially delivers a living fetus before killing the fetus and completing the delivery.'' There is no reference to scissors in the bill. There is no reference to drawing fluid from the brain in this bill. In fact, many people believe that the purpose of this bill is really to get at second trimester abortions.

I believe that the language in this bill, Mr. President, is vague for very deliberate reasons, because by making it vague every doctor that performs even a second trimester abortion could face the possibility of prosecution in that he or she could be hauled before a court and have to defend their abortion. So this bill in effect could affect all abortions.

I asked the legal and medical experts who testified at the Judiciary Committee hearing last week if this legislation could affect abortion—not just late-term abortions but earlier abortions of nonviable fetuses as well. Dr. Louis Seidman, professor of law from Georgetown, gave the following answer, and I quote:

. . . as I read the language, in a second trimester pre-viability abortion where the fetus will in any event die, if any portion of the fetus enters the birth canal prior to the technical death of the fetus, then the physician is guilty of a crime and goes to prison for 2 years.

That is a law professor's reading of the bill. He then continued his testimony, and I quote:

If I were a lawyer advising a physician who performed abortions, I would tell him to stop because there is just no way to tell whether the procedure will eventuate in some portion of the fetus entering the birth canal before the fetus is technically dead, much less being able to demonstrate that after the fact.

Dr. Richardson, associate professor of gynecology and obstetrics at Johns Hopkins, in testimony before a House Committee said, ''[the language] . . . is vague, not medically oriented, and just not correct. In any normal second trimester abortion procedure by any method, you may have a point at which a part, a one-inch piece of [umbilical] cord, for example, of the fetus passes out of the cervical [opening] before fetal demise has occurred.

So contrary to proponents' claims, this bill could affect far more than just the few abortions performed in the third trimester and far more than just one procedure being described.

Another part of this bill which is very troubling to me is that an affirmative defense automatically presumes guilt. The legislation provides what is known as the ''affirmative defense,'' whereby an accused physician could escape liability only by proving that he or she ''reasonably believed'' that the so-called banned procedure—whatever that procedure is proved to be—was necessary to save the woman's life and that no other procedure would have sufficed. I think it also opens the door to the prosecution of any doctor who performs a second or third trimester abortion for any purpose whatsoever.

As has been said, there is no health exception in this bill at this point. With that, it offers a direct challenge to both Roe versus Wade and Planned Parenthood versus Casey, both of which provide a health exception.

So, if this legislation were law, a pregnant woman seriously ill with diabetes, cardiovascular problems, cancer, stroke, or any other health-threatening illness would be forced to carry the pregnancy to term or run the risk that her physician could be challenged and have to prove in court, A, what procedure he actually used, and B, whether or not the abortion partially, vaginally delivered a living fetus before the death of that fetus.

One of the things that also came forward very clearly in this and is important to point out is that any third trimester abortion is virtually always used in the case of severe fetal abnormality, and the fact is that not always is this fetal abnormality able to be detected early in the pregnancy. Many women undergo sonograms and other routine medical procedures in the early weeks of pregnancy to monitor fetal development. If a woman is over 35 years of age, she may also undergo amniocentesis. These tests are not routine in women under 35. Ultrasound could also provide early detection of fetal anomalies. But these tests also add considerable expense and are not routinely used until late in pregnancy.

As a result, some women carry fetuses with severe birth defects late into pregnancy without knowing it. For example, fetal deformities that are not easy to spot early on in the pregnancy include: cases where the brain forms outside the skull, or the stomach and intestines form outside the body, or do not form at all; or fetuses with no eyes, ears, mouths, legs, or kidneys—sometimes tragically unrecognizable as human at all.

But even with advanced technology, many serious birth defects can only be identified later, often in the third trimester when the fetus reaches a certain size. Among those is hydrocephaly. Another abnormality is polyhydramnios—too much amniotic fluid.

So families that face these unexpected tragedies are often only diagnosed late in their pregnancy. In fact, both Senator SMITH, I believe, and Senator HATCH said none of the women who came before the committee and talked about their third trimester abortion—all of which were the product of major fetal deformities—would be affected by that legislation, but every one of them testified after reading the bill and believing that they would have been affected by this legislation.

I think that only points out the vagueness and the flaws in the drafting of this legislation. In fact, no one knows who would really be affected by this legislation.

The next point I would like to make is that Roe already allows States to ban late-term abortions. It clearly allows States to ban all post-viability abortions unless necessary to protect a woman's life or health. And 41 States have already done that. So all I can believe is that the purpose of this bill is to invade a guarantee provided by Roe versus Wade, and that is to protect the health of the mother or the life of the mother.

As a matter of fact, my colleagues have made much of a statement made by an obstetrician/gynecologist, Dr. Martin Haskell, of Dayton, OH, who indicated that 80 percent of the late-term abortions he performed were so-called elective. I would like to point out that just this year Ohio became the 41st State to ban all post-viability abortions. So, clearly that State has taken care of whatever it was that Dr. Haskell was doing by banning all third-trimester abortions. As I said, 40 other States have done this. So this legislation is effectively unnecessary.

The whole focus of this Congress has been to remove the Federal Government where it is within the rights of the State to legislate. Yet this is the first time I can remember in this Congress, when the State has a clear right and ability to legislate and, in fact, has done so in 41 States, that the Federal Government is now saying, no, that is not enough. We want to legislate federally.

Let me touch for a moment on the commerce clause. I believe, and others do as well, that this legislation is meaningless under the commerce clause because it would only apply to patients or doctors who cross State lines in order to perform an abortion under these specific circumstances, whatever they may eventually be adjudicated to be. So what is the point?

The point is, that this legislation, I believe, has little or nothing to do with stopping the use of some horrific and unnecessary medical procedure performed by evil or inhumane doctors. If that were simply the case, we would all be opposed. I believe this legislation's major purpose is the camel's nose under the tent to get at second-trimester abortions and to put a fear over all legitimate physicians, obstetricians who do perform an abortion when an abortion is necessary—a fear that they could be hauled into court and have to defend themselves and prove that they did not perform whatever a partial-birth abortion is eventually adjudicated to be.

So the legislation is vague, it is flawed, and it presumes guilt on the part of the doctor. It ignores the vital health interest of women. I believe these are strong reasons to vote against this bill.

I thank the Chair. I yield the floor.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is H.R. 1833.

AMENDMENT NO. 3080

(Purpose: To provide a life-of-the-mother exception)

Mr. SMITH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH] proposes an amendment numbered 3080.

Mr. DOLE. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 2, at the end of line 9, insert the following:

''This paragraph does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.''

AMENDMENT NO. 3081 TO AMENDMENT NO. 3080

Mr. DOLE. I send a second-degree amendment to the Smith amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 3081 to amendment No. 3080.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

In the pending amendment, strike all after the word ''This'' and insert in lieu thereof

the following: ''paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.

This paragraph shall become effective one day after enactment.''

Mr. DOLE. Mr. President, we now return to important legislation to ban a reprehensible procedure that has no place in a civilized society. The ban on the so-called partial-birth abortions passed the House by a vote of 288 to 139 on November 1. The Senate called for a hearing on the legislation before the Committee on the Judiciary which was held on November 17.

The testimony before the Judiciary Committee reinforced what we already knew—this is a straightforward and narrowly crafted bill that bears no similarity to the caricature offered by those who oppose the bill.

Thus, for example, the hearing highlighted what medical authorities have already made clear—there is no situation where the life of a mother is at risk that calls for a partial-birth abortion. After all, this is a procedure that takes place over several days. In short, arguments about protecting the life of the mother are merely an attempt to scare people and avoid defending the indefensible.

Nonetheless, since there is no situation where the life of the mother calls for a partial-birth abortion, there is no reason not to make clear with explicit language that this legislation would not apply in any situation where the life of the mother is endangered. I therefore support the Senator from New Hampshire, Senator SMITH, in taking this issue off the table.

Mr. President, this is a bill that deserves overwhelming bipartisan support. This is our opportunity to show the American people that we can rise above the argument that says that compassion must give way to a rigid ideology that refuses to recognize any constraints of decency.

I therefore urge my colleagues to support Senator SMITH's amendment and to support the bill on final passage.

I now understand the Senator from Arkansas is going to set these amendments aside and offer a different amendment.

Mr. PRYOR. Mr. President, with that understanding, I ask unanimous consent that the amendment offered by the distinguished Senator from New Hampshire, second-degreed by the majority leader from Kansas, be set aside.

The PRESIDING OFFICER. Is there objection?

Mr. SMITH. Reserving the right to object. Just to clarify, that is amendment No. 3080 and amendment No. 3081 to amendment No. 3080, is that correct?

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. SMITH. No objection.

Mr. PRYOR. Mr. President, I thank the Senator from New Hampshire.

AMENDMENT NO. 3082

(Purpose: To clarify certain provisions of law with respect to the approval and marketing of certain prescription drugs)

Mr. PRYOR. Mr. President, I have an amendment that I send to the desk at this time and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. PRYOR], for himself, Mr. CHAFEE, and Mr. BROWN, proposes an amendment numbered 3082.

Mr. PRYOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . APPROVAL AND MARKETING OF PRESCRIPTION DRUGS.

(a) APPROVAL OF APPLICATIONS OF GENERIC DRUGS.—For purposes of acceptance and consideration by the Secretary of an application under subsections (b), (c), and (j) of section 505, and subsections (b), (c), and (n) of section 512, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (b), (c), and (j), and 360b (b), (c), and (n)), the expiration date of a patent that is the subject of a certification under section 505(b)(2)(A) (ii), (iii), or (iv), section 505(j)(2)(A)(vii) (II), (III), or (IV), or section 512(n)(1)(H) (ii), (iii), or (iv) of such Act, respectively, made in an application submitted prior to June 8, 1995, or in an application submitted on or after that date in which the applicant certifies that substantial investment was made prior to June 8, 1995, shall be deemed to be the date on which such patent would have expired under the law in effect on the day preceding December 8, 1994.

(b) MARKETING GENERIC DRUGS.—The remedies of section 271(e)(4) of title 35, United States Code, shall not apply to acts—

(1) that were commenced, or for which a substantial investment was made, prior to June 8, 1995; and

(2) that became infringing by reason of section 154(c)(1) of such title, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4983).

(c) EQUITABLE REMUNERATION.—For acts described in subsection (b), equitable remuneration of the type described in section 154(c)(3) of title 35, United States Code, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4983) shall be awarded to a patentee only if there has been—

(1) the commercial manufacture, use, offer to sell, or sale, within the United States of an approved drug that is the subject of an application described in subsection (a); or

(2) the importation by the applicant into the United States of an approved drug or of active ingredient used in an approved drug that is the subject of an application described in subsection (a).

(c) APPLICABILITY.—The provisions of this section shall govern—

(1) the approval or the effective date of approval of applications under section 505(b)(2), 505(j), 507, or 512(n), or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (b)(2) and (j), 357, and 360b(n)) submitted on or after the date of enactment of this Act; and

(2) the approval or effective date of approval of all pending applications that have not received final approval as of the date of enactment of this Act.

AMENDMENT NO. 3083 TO AMENDMENT NO. 3082

(Purpose: To clarify the application of certain provisions with respect to abortions where necessary to preserve the life or health of the woman)

Mrs. BOXER. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 3083 to amendment No. 3082.

At the end of the amendment, add the following new sentence: ''The prohibition in section 1531 (a) of Title 18, United States Code, shall not apply to any abortion performed prior to the viability of the fetus, or after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.''.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. First, I would like to just take a very, very few moments of the Senate's time this evening to explain basically what my amendment does. I know there will be no vote on this amendment this evening, Mr. President. I realize that. I know that to accommodate some schedules tomorrow, it is likely that we will come back to this legislation late in the afternoon.

But having said that, Mr. President, I would like to state that this amendment relates to the issue of GATT and prescription drugs. I have spoken on this issue on several occasions on the floor of the Senate. And I would like, if I might, to just take a very few moments to explain basically what we have done and what I plan to speak about tomorrow.

When Congress voted on the GATT treaty, Mr. President, we did two things. First, we extended all patents from 17 to 20 years in duration. Second, we said in the GATT treaty that a generic drug company could market their product on a 17-year expiration date if they had already made a substantial investment and were willing to pay a royalty to the particular drug company that they were going in competition with.

We all considered and all agreed that this was a fair balance of interests. The treaty, Mr. President, applies in our country to every person, to every product, to every company and every industry in our country. We thought it was fair. We thought it was universal. But we were wrong. We simply made a mistake.

We accidentally left the prescription drug industry out of the picture. Today there are certain prescription drug companies that get the patent extension, but the GATT loophole shields them from any generic competition. Why is this, Mr. President?

First, because we by our own mistake—and we should admit that mistake; and, by the way, we have the opportunity to correct that mistake—we failed to have the food, drug and cosmetic law of our country comply to the GATT treaty language.

Second, the Food and Drug Administration tried in vain to correct this mistake. The U.S. Patent Office tried in vain to correct this mistake, but to no avail because the law was written and we failed to conform the food, drug, and cosmetic law to the specific GATT treaty language.

The drug industry is the only industry which enjoys this special protection under GATT. The American consumers are going to be paying, therefore, much more for their drugs as a result, as much, as a matter of fact, $2 to $6 billion a year more.

If we take Zantac, for example, Mr. President, the world's best selling drug for uclers, we will have to pay a price twice as much as we would be paying for a generic competitor. As a matter of fact, Mr. President, tomorrow, on Wednesday, we will see the drug company that manufactures Zantac—we will see that particular company taking in profits that they did not expect of $2 to $6 billion a year, unless we correct this outrageous loophole.

There is no conceivable reason why we should allow this loophole to remain uncorrected. Mickey Kantor, our own U.S. Trade Representative, the Patent Office, and the FDA all agree that it should be fixed. Even the drug companies admit that it was all a mistake.

Mr. President, we think that our cause is correct, and on behalf of Senator CHAFEE of Rhode Island and Senator BROWN of Colorado, I submit this amendment this evening. We will be talking about this amendment and what it does tomorrow. But I urge my colleagues to remember: Congress made a mistake. It led to consumers being forced to subsidize an unjustified multibillion-dollar windfall to a few undeserving companies. And tomorrow, we will have our sole opportunity to do the right thing and correct this mistake.

I yield the floor.

Mrs. BOXER addressed the Chair.

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

Mrs. BOXER. Mr. President, yesterday I spoke, I thought, at great length about this bill. For the first time, it would criminalize a medical procedure that saves lives. The important part, I thought, of the Judiciary hearing was that we had testimony from physicians who said clearly it is sometimes extremely risky to use other procedures. Cesarean sections or induced labor could cause the woman to bleed to death, to have serious health consequences even if she pulled through, and sometimes those consequences impact on her ability to have children at a later date.

What I did last night, and what I intend to do throughout the course of this debate—I will not go on at length tonight—is to try and put the woman's face on this issue. We see many times my colleague from New Hampshire bring out the diagram, and it shows the lower part of a woman's body. It is almost as if a woman's body is a vessel. It does not show the woman's face. It does not show her anguish when she learns that her baby is in serious trouble and could even die if she went forward with birth. So it is my intention to put that face on.

The women who came forward at that hearing were magnificent in their courage. I received many other letters from other women who said, ''Please, Senator BOXER, don't let them talk about this as if it doesn't affect real, living moms and dads and families who desperately want these children but who come upon these horrible outcomes of pregnancies.''

We deal here with situations in life that we hope never happen to any of us or our loved ones or anyone at all. We do not wish these things on anyone: When a woman, who is so excited about this pending birth of a child, goes to the physician in the late stages of her pregnancy and suddenly is told the most horrible news that the baby's brain is growing outside the skull, that there are no eyes. My colleague, Senator FEINSTEIN, talked about that. These anomalies go along with a great threat to the woman's life if the fetus is carried to term.

My colleagues say nobody ever talks about baby. Yes, I want to talk about baby. This is a baby. This is a late-term abortion. This is an emergency medical procedure, and I hope that the Senate will not go down the slippery slope of outlawing a procedure.

Where do we stop? Senator SIMON said yesterday he has heard about some procedures that are used for brain tumors and he has questions about them. We are not a medical school here. As Senator KENNEDY said, we should not be Senators practicing medicine without a license. We should leave that to physicians. And physicians are split. The physicians that came before the Judiciary Committee, some said this is a necessary procedure, we need it to save the life of a mother, protect her health and her fertility. Others said it is not.

I say, let us be conservative. Even if several physicians—and their qualifications were never questioned by the committee—say it could mean a woman's life, let us not take away her option to have a safe conclusion to a very tragic event because of some political agenda. We have a lot of work to do around here. We have a lot of debate to do around here with the budget, where we are seeing looming ahead on December 15 another shutdown, another crisis, while we are taking up a bill to tell physicians what they cannot do.

It seems to me a very dangerous course for Government, particularly a Republican Congress that says we should not interfere in local decisions, we should not interfere with States. States already control these abortions in the late term.

I have to say, the amendment that my friend has offered, I think, is quite interesting, because all through this debate the Senator from California was saying there is no exception, there is no exception if there is really a problem. And now here we have it. Here we have it, an exception now for life of the mother.

I think that is progress. I think that is progress, because when we started, there was no exception. It was an affirmative defense. My friend kept saying, ''Oh, no, you don't need an exception, you don't need an exception.'' We went on television and debated this, and I said, ''You do not even have an exception here.''

He said, ''It is already in the bill.''

It was not in the bill. We knew it; that is why we slowed this train down, that is why we had hearings.

I have offered a second-degree amendment to the amendment of my friend, Senator PRYOR. He is trying to protect the consumers of this country, and I offered an amendment that essentially says that, yes, if we are going to outlaw this procedure—and by the way, I do not think we should get into that slippery slope—but if we are going to do that, it should apply only to the late-term abortion, which is what it is supposed to do, and it clears it up and says, in the medical judgment of the attending physician, the abortion is necessary for the life of the woman or to prevent serious adverse health consequences to the woman.

I feel these amendments are moving in the right direction, but the whole issue of telling doctors what to do, of interfering in an emergency medical procedure has no place in the U.S. Senate. To quote a woman whose testimony I read yesterday, Coreen Costello, she said so beautifully the last thing she wants to see happen when a family is in crisis like this is for the Government to be involved.

It is such a tragedy, and these women who have gone through this were so eloquent. No matter what your view on a woman's right to choose, if you will simply read the testimony—and I handed it out today to my colleagues for them to read her words—it seems to me outrageous that politicians would insert themselves into matters that impact a family, matters like this.

As we get back to this bill, and I understand we will be back to it tomorrow evening about 5, I am going to bring out those photos of those women who have shared their stories with the Senate and want to share it with the American people and let us get this issue out there.

Let us not outlaw a medical procedure that doctors have testified is necessary to save the life of a mother and, in fact, if it is outlawed, could lead to her family losing her. A lot of these women have other healthy children. Let us think about those babies as well.

So, Mr. President, I shall not go on much longer at all tonight because, again, it looks like we are delaying this debate, and that is fine with me, because, as far as I am concerned, we do not need this law. This is an intrusion into the hospital room. This is a criminalization of a procedure, and, as far as I am concerned, it has no place here at all. We are not doctors, and we are not God. We are U.S. Senators. We should leave medical decisions up to medical doctors, and we should leave these tragic matters to the families and let them face it with their God and with each other.

I yield the floor.

PRIVILEGE OF THE FLOOR

Mr. SMITH. Mr. President, I ask unanimous consent that four members of my staff, Steven R. Valentine, Tom Hodson, Ed Corrigan, and Noah Silverman, be granted the privilege of the floor simultaneously during the consideration of H.R. 1333, the Partial-Birth Abortion Ban Act.

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

Mr. BURNS. Mr. President, I rise today to urge my colleagues to pass the partial-birth abortion ban. I have looked at the testimony presented before the Judiciary Committee, I have gotten letters and phone calls, and I have come to the conclusion that this is not about being pro-life or pro-abortion. It is not even about a woman's choice. Laws have already established that they have that choice.

This is about a procedure—a procedure that I do not know how anyone can perform or even condone, once you know what it is. We are talking about the practice of late-term abortion, but a specific procedure in which the fetus is turned around so that it is delivered feet first. And before the head is delivered, while it is still in the birth canal, the physician makes a hole with scissors in the base of the skull and suctions out the brains. And the majority of the time, the baby is alive when this procedure is performed. The heart is beating, the limbs are functioning, they feel, they react, they may even have a good chance of living if they had been allowed to be fully born.

To me this just sounds repulsive, absolutely inhumane. And it makes me wonder, if they were doing this to dogs or horses, whether we would have more support to ban this procedure. My daughter, who is a third year medical student, assures me that I would probably find most surgeries pretty hard to stomach. But even she agrees that this procedure is intolerable.

And I find it interesting that the American Medical Association's Council on Legislation has unanimously supported this bill. The argument is made that these procedures are done to save the life of the mother. Yet, even some physicians who specialize in this procedure claim otherwise. Dr. Martin Haskell conceded that 80 percent of his late-term abortions were elective.

Dr. Pamela Smith, up at Mt. Sinai Hospital in Chicago, recently wrote that ''There are absolutely no obstetrical situations encountered in this country which require a partially delivered human fetus to be destroyed to preserve the life of the mother.'' And that is what I would think. If you are going to put the mother through delivery of a 24- or 26-week-old or even a full-term fetus, and the fetus is almost completely delivered, except for the head, why not just finish the birth?

I will tell you why. Because once the head is out, it is a child, a human being by legal standards, with all the constitutional rights that come with being alive and then it cannot be killed. But by common sense, not just conservative sense, that fetus is not any less human just because the head is still in the birth canal. And I found it ironic that, if the head does slip out and a live baby is born, the physician calls this a complication.

I realize that, for parents who have been told their long-anticipated child will be deformed or has little chance of living, this is a horrendous decision. And some may decide to abort. This bill does not restrict late-term abortions—only this method of doing it.

I have read some of the personal experiences of families who have chosen this option, and in the cases where the fetus developed organs outside the body, the recurring sentiment is that that baby would never have survived outside the mother's womb. If that is the case, why then should the fetus be killed while the head is still in the uterus?

Some say this is the safest procedure for the mother. But even the doctor who wrote ''Abortion Practices,'' the Nation's most widely used textbook on abortion standards and procedures, disputes this. Dr. Hern states that he could not imagine a circumstance in which the partial-birth abortion procedure would be the safest. And after all, I think that is what we should be aiming for.

I am not doubting for an instant that carrying to term or delivering a baby that has little to no chance of survival would be difficult. And that's an understatement. You would need the mental fortitude of Jeannie French, whose testimony before the Senate Judiciary Committee was inspiring. She delivered by C-section twins, one of which she knew would not live. Against her doctor's recommendation to abort, she opted to go ahead with delivery and here little Mary's vital organs were used to save the lives of two children. Some may not think that is heroic, but I would bet you those two children are glad that Jeannie chose to deliver Mary.

Mr. President, our debate here today is not a debate on choice. It is not even a debate on abortion. Let no one convince you of that. The debate is whether or not this procedure, a procedure that most physicians do not approve of, and that most agree is not safe for the mother—certainly not safe for the fetus—should be legal. I believe it should be banned. For the health of the mothers and the health or our Nation, we should pass the partial-birth abortion ban bill.

Mr. SMITH. Mr. President, some of the debate and comments made on the floor on this issue never cease to amaze me. The distinguished Senator from California, Senator FEINSTEIN, a few moments ago on the floor of the Senate, made the statement that the doctors, in the medical testimony that she had seen or heard, said that partial-birth abortion procedures do not exist. If they do not exist, then why is there a problem in banning it? Maybe the Senator from California, Senator FEINSTEIN, could come back and explain that to me. If the procedure does not exist, as she says, then there ought not to be any problem banning something that does not exist.

Again, these things never cease to amaze me. Also, Senator BOXER of California, a few moments ago again referred to the case of Coreen Costello, who spoke very passionately—and it was a very compelling story—before the committee of her terrible tragedy of losing a child. And, again, Mr. President, let me repeat that Miss Costello's abortion was not a partial-birth abortion. So that is not what we are talking about here today.

We are talking about partial-birth abortions, when a child is allowed to come through the birth canal, with the exception of the head, and then is killed with the use of scissors and a catheter. That is what we are talking about—no other type of abortion.

I have made it very clear, and I think most of my colleagues know, that I oppose abortion. I believe abortion takes an innocent human life, no matter what stage of life it is in, whether the day after conception or the day of birth. But that is not the issue today. The issue here is partial-birth abortion.

Yesterday, we learned on the floor of the Senate, even though information was presented to the contrary, that when the witnesses came to testify before Senator HATCH's Judiciary Committee on this matter, there were no doctors called to testify, or no doctors who testified that had ever performed a partial-birth abortion, and there were no women who ever had one who testified. And we asked Dr. Haskell, who performed a thousand of them, partial-birth abortions, to come, and he refused. No women who had partial-birth abortions came. So it is interesting that Senator FEINSTEIN says that partial-birth abortion procedures do not exist when Dr. Haskell has performed 1,000 of them. Maybe somebody can explain that to me with some logic. But it beats me, Mr. President. You have a doctor who is an abortion doctor, who has performed 1,000 partial-birth abortions, and then the Senator from California comes to the floor and says it does not exist. I will leave that to my colleagues to decide what the facts are.

Mr. President, the amendment that I submitted a short time ago, which was

second-degreed by the majority leader, Senator DOLE, would make a very explicit exception to the ban on partial-birth abortions for cases in which the life of the mother is in danger. It is very specific. The language could not be clearer.

To be perfectly candid about it, Mr. President, I do not believe that this amendment is really necessary. In the first place, there was no medical evidence—no medical evidence—presented at the November 17 Judiciary Committee hearing that the partial-birth abortion procedure, that brutal procedure that has been described a number of times here on the floor, which is banned by this bill, is ever necessary to save the life of the mother. There was no testimony to that effect.

In the second place, Mr. President, the bill already includes an affirmative defense for cases in which the doctor reasonably believes the mother's life is in danger. For all intents and purposes, this affirmative defense provision, found in subsection (e) of the bill, is a life-of-the-mother exception.

But that did not satisfy a number of my colleagues because they expressed to me their discomfort with the affirmative defense approach and asked me to consider placing a more explicit, more clear, if you will, life-of-the-mother exception in the bill, because I support a life-of-the-mother exception. Even though we cannot find any testimony anywhere in the record that I know of—no one has produced it yet—that it is necessary to do it to save the life of the mother, I am still willing to put that exception there. That is what I have done with the amendment that I have offered.

I do not believe it is necessary because the affirmative defense provision provides for that exception, and the amendment now before the Senate would place an explicit life-of-the-mother exception into subsection (a) of the bill. I am more than happy to do that. I am more than happy to clarify for my colleagues. The issue is the life-of-the-mother exception here, even though there was no evidence presented at the hearing that a mother's life was threatened. No one testified to that effect. But I am willing to do that because I think it is fair, and colleagues of mine have expressed the concern that we clarify the language, and that is what I have done.

So the language of this life-of-the-mother exception amendment is clear, Mr. President. It states, ''The ban on partial-birth abortions shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is in danger by a physical disorder, illness, or injury, provided that no other procedure would suffice for that purpose.''

That is very clear and explicit. Even though Senator FEINSTEIN says there are no such procedures as partial-birth abortions, it is interesting that they also want an exception to a procedure that does not exist, and they ignore the testimony of a doctor who has performed 1,000 of them.

So the first part of the amendment is designed to make it very clear and certain that the exception only applies to cases where the mother's life is genuinely physically threatened by some physical disorder, illness, or injury.

Let me also state that, yesterday, when we discussed this process, this brutal procedure, we discussed the fact that this baby—this is a late-term baby, Mr. President, as you know, anywhere from the fifth month of gestation to the ninth—is prevented, physically restrained, from completely exiting the birth canal. The baby is turned in the uterus with forceps so that it comes out feet first, and the baby is then restrained and not allowed to be completely born, if you will, where it is then killed by using an incision with scissors and a catheter which sucks the brains from the child.

We heard very compelling testimony at the hearing. We recited it here on the floor. There was testimony of a nurse who had witnessed this and had become so upset by it that she left the clinic because, as she stated it, after looking into the ''angelic face'' of this child that was aborted in this fashion, it was more than she could bear. She was horrified. We have heard a lot about the life of the mother and the eyes of the mother. We looked into this young woman's eyes, too, this mother of two daughters, and she was horrified by what she saw, that this child, contrary to what has been stated again on the floor of the Senate over and over again, this child's life was terminated for one reason—one reason, Mr. President. This child had Down's syndrome, so somebody made a decision to take the life of this child who had Down's syndrome.

I remind my colleagues, not that they need reminding, there are a lot of very productive people in our society today who happen to have Down's syndrome. There is a television show involving people with Down's syndrome.

The point I made yesterday, I guess we really did not need the Americans with Disabilities Act if we are going to terminate all the people who are going to be born disabled. I guess we could have it for those people who might be injured during the course of their lifetime. If anybody is going to be born disabled or in any way not normal, if you will, we would not need to have any coverage for them because we could just elect to terminate the pregnancy.

I was accused—because I was horrified by that—I was accused of playing God. I do not know where that comes from. It would seem to me someone who chooses to terminate a pregnancy simply because a child has Down's syndrome, perhaps they may be playing God.

Again, the issue here is 80 percent of the cases—not 20, not 10, not 5, not 1, in 80 percent of the cases—this is an elective procedure for no other reason other than that particular woman decides to have that abortion because—for whatever. ''I do not want a child, I do not want a child with Down's syndrome,'' or whatever. Mr. President, 80 percent of the cases are elective, not some horrible threat to the life or the health of the mother at all.

The second part of this amendment is intended to ensure that in such dire emergencies, a partial-birth abortion could only be performed if it were the medical procedure, the only medical procedure available to save the life of the mother. I support that. I have no problem supporting it because I have no problem in understanding the fact that there is not any need, absolutely no medical need that anyone has ever testified to, that says that this is necessary to protect the life of the mother.

Let me say why. How would restraining a child from coming through the birth canal, that could come through the birth canal, enhance the life or the health of the mother? I do not understand that. I do not think any reasonable person could understand it. We have had testimony that in the case of the hydrocephalic children, where the head is enlarged with fluids, that that can be drained so that the head can be a normal size and can be allowed to come through the birth canal.

So we are talking about a brutal practice here, in 80 percent of the cases elective, and nothing to do with the life of the mother.

Be that as it may, I agree with my colleagues. I agree with the Senator from California that a life-of-the-mother exception should be there, even though I disagree with her that there is a threat to the life of the mother. At least I have not seen any evidence to that in terms of testimony, but even that does not mean it cannot happen in the future. I am willing, certainly willing to protect the life of the mother.

Mrs. BOXER. Would my friend yield about timeframe? I would be appreciative, if my friend would yield 5 minutes, I will finish my remarks for the evening and leave him the rest of the evening if we could agree not to take any other action or lay down any other amendments.

Mr. SMITH. I know of no other amendments on my side. I certainly will not be offering any, and I do not intend to go very long.

I am happy to yield to the Senator.

Mrs. BOXER. I know my friend and I have different things pulling on us.

Mr. SMITH. I am happy to yield to the Senator.

Mrs. BOXER. I just want to say that we are going to have a very interesting debate about the competing amendments that will come before the Senate on this issue. One is Senator SMITH's and Senator DOLE's amendment, which they call a life-of-the-mother exception. The other is the Boxer amendment, which makes a life-of-the-mother exception and a serious adverse health consequences exception to the woman.

I have to just say to my colleagues if they may be watching, and I will discuss this with them at great length, that the Smith-Dole amendment which is stated as if it is, in fact, an exception, I have now had an opportunity to read it. I want everyone to know that it is really not an exception for the life of the mother because what it says is, essentially, that this procedure will be banned, except it will not apply to partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury.

I say to my friend, that is not a life-of-the-mother exception. That is a preexisting situation. So, yes, if a woman had diabetes or some other disease, there would be an exception, but if, in fact, the birth endangered her life there would be no exception.

So this so-called exception, life-of-the-mother exception that has been offered by my friend from New Hampshire with Senator DOLE, is not—let me repeat, is not—in any way a life-of-the-mother exception.

We have life-of-the-mother exceptions in many other bills that deal with Medicaid funding, and they never use this language. It just simply says ''except if the life of the mother is threatened.'' No such thing as ''if she is endangered by a physical disorder, illness, or injury.''

Let me repeat, most of the women would not fall in this category.

The first fight we had, or argument or debate, was over the issue of the life-of-the-mother exception in the bill as it was referred here to the Senate. My colleague from New Hampshire said there is a life-of-the-mother exception, and he insisted on it. We debated it over and over again. I said there was not; he said there was.

Now, today, he and the majority leader say, oh, you were right, there was not a life-of-the-mother exception. Here it is. And this one is not a life-of-the-mother exception; it is only an exception for a woman who comes to the birth with a preexisting condition or injury.

So we will make that debate clear, I hope tomorrow, or we can get more into this issue.

My goodness, let us not endanger a woman who has no preexisting condition such as diabetes. Let us not take away an option for her to have a safe outcome of a tragic situation.

I hope that Members will, in fact, vote for the Boxer amendment and not for the Smith-Dole. I yield the floor.

Mr. SMITH. Mr. President, I might just respond briefly. It is amazing what you can do with semantics. This language is as clear as it can possibly be. This paragraph is exactly the line—referring back to the paragraph in terms of the issue of whether or not you can have a partial-birth abortion—this paragraph does not apply to a partial-birth abortion.

Here is the language: ''That is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice.''

The focus of the remarks of Senator BOXER is physical disorder, a complication resulting from a pregnancy; if it is not a physical disorder, what is it? What is it? Of course it covers that. The Senator knows it. You cannot make it any clearer. We could play word games, but it is very, very clear.

Again, the argument is so unbelievable here because, A, they use the line that the partial-birth abortion procedure does not exist, yet they still say we should not have to ban it.

If it does not exist, what are they worried about the life-of-the-mother exception for? The truth of the matter is, of course, it exists. There are 1,000 that have been performed by Dr. Haskell alone. There are at least one or two that we know of, roughly, per day, that are still being performed in this country. Some people say that is not very many. Well, that is somewhere between 365 and 700 or 750. How many physicians who might cure cancer are in that group? How many future Presidents are in that group? Future Senators—perhaps from California or New Hampshire? Who knows, maybe even from Minnesota? Who knows who is in that group?

It is interesting. We have heard on the floor here that President Clinton will veto this horrible bill as soon as he gets to it, this bill to ban partial-birth abortions that execute innocent children, three-quarters of the way out of the womb, but we heard it proudly stated on the floor that the President is going to veto this bill.

I might say to the President of the United States—I know he is not listening tonight, probably—but, if he is, I would like to have the opportunity to have 15 minutes in the Oval Office to discuss this bill with him, because I do not believe, if he looked at the facts, that he would veto it because this process is so horrible that I think we have more important things to do in America than do that.

Let me just conclude on this point this evening, again, on the amendment. This amendment is designed to assure that no baby will be subjected to this brutal procedure unless this partial-birth abortion procedure is the only way to save the mother, in other words, in a true case of self-defense. Everyone has the right to self-defense.

In sum, I believe this is very carefully crafted language. It is fully adequate to provide the explicit life-of-the-mother exception to the bill's ban on partial-birth abortions. And those people who are now taking the words and fiddling with the words a little bit, trying to make things out of the words that are not there—do you know what the real issue is here, Mr. President? It is not that they object to this life-of-the-mother exception. No, it is not that. Their real problem is they do not want any exceptions. They do not want any exceptions. They want abortion on demand for whatever reason, mongoloid child, Down's syndrome child, a child with a cleft palate, a female child, a child with blue eyes, whatever.

I call on any one of my colleagues who is opposed to me on this issue to come down to the floor and say to me, ''I will not support an abortion, partial-birth or otherwise, because it was a female child.'' Come down to the floor and state that right now. I think you will find the silence is quite deafening, because it is abortion on demand. But, and this is the key, it is abortion on demand in the most horrible way that any abortion could ever be performed.

In spite of the fact that all of us have different opinions about when life begins—and everyone knows my position on that—that is not the issue here, my position on when life begins. That is not relevant today. What is relevant today in this discussion is whether or not we have the right, morally or otherwise, to kill an unborn child who is held in the hands of this doctor with the exception of the head. Three or four more inches and that doctor could place that tiny little head into his hand and cradle it. But, instead, he turns that baby over and executes him, with no novocaine, no anesthetic, nothing— with a pair of scissors and a catheter, a child.

That is what this is about. That is why, when this bill came to the floor for a vote, even without the language that I have now crafted for the life-of-the-mother exception—but with language that perhaps was not as clear but did have the life-of-the-mother exception—even with the old language, it passed overwhelmingly in the House. Why? Why did a pro-choice Republican woman like SUSAN MOLINARI vote for it? Why did a liberal Democrat like PATRICK KENNEDY, son of Senator TED KENNEDY, vote for it? Because it is reasonable. Because it is sickening to think of the fact that we would do this to our children here in America. That is the reason. This is not a radical, extremist position. The radicals and the extremists are the people who do this.

So, I urge my colleagues to oppose Senator BOXER's amendment whenever we vote on it, tomorrow or whenever. Because basically it provides the opportunity to drive a truck through this whole process. It is a killer amendment. It might as well be called the partial-birth abortion-on-demand amendment, because it is designed to gut the bill.

When you say ''health,'' you say anything. What is health? A sore toenail? A sore knee? I mean, it is a totally gutting amendment. If you want to gut the bill, then you would vote for Boxer. If you want abortion on demand, if you want to abort a perfectly normal, healthy child at 9 months because that child has blue eyes, or is a female, or a male, or whatever, then vote for Boxer. That decision is quite easy.

But, again, the health-of-the-mother issue is a phony issue. It is not the

issue at all. Everyone knows it. We have had this debate here before. We have had the votes before. It has always been voted down. So the issue is, if you want to truly protect the life of the mother, then you would vote for the Smith-Dole amendment because that is exactly what it does, it protects the life of the mother.

Mr. President, Douglas Johnson, legislative director of the National Right to Life Committee, has prepared an outstanding, comprehensive analysis of H.R. 1833. It is entitled ''The Facts On Partial-Birth Abortions.'' For the benefit of my colleagues, I ask unanimous consent that this document be printed in the RECORD.

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

THE FACTS ON PARTIAL-BIRTH ABORTIONS

(By Douglas Johnson)

The Partial-Birth Abortion Ban Act (HR 1833) was introduced in Congress on June 15, 1995. From that day on, many opponents of the bill—including the National Abortion and Reproductive Rights Action League (NARAL), Planned Parenthood, and the National Abortion Federation—have manufactured and disseminated blatant misinformation regarding partial-birth abortions and about the bill. Some of this misinformation has been adopted and widely disseminated by some journalists, columnists, editorialists, and lawmakers. This feature summarizes key facts on partial-birth abortions and on HR 1833. For additional documentation, contact the NRLC Federal Legislative Office at (202) 626–8820.

What is the Partial-Birth Abortion Ban Act (HR 1833)?

The Partial-Birth Abortion Ban Act (HR 1833) is a proposal currently under consideration in Congress, which would place a national ban on use of the partial-birth abortion procedure (except when a doctor could show that he ''reasonably believed'' that the procedure would prevent the death of a pregnant woman, and that no other medical procedure would suffice).

The bill would ban abortions that are performed by an abortionist (1) delivering a *living* fetus/baby into the vagina, and then (2) killing him or her. The bill specifically defines a ''partial-birth abortion'' as ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.'' Abortionists who violate the law would be subject to both criminal and civil penalties, but no penalty could be applied to the woman who obtained such abortion.

What is the Status of the Bill?

The Partial-Birth Abortion Ban Act (HR 1833) was passed by the House of Representatives on November 1 by a vote of 288 to 139. As of November 28, the bill is awaiting action by the full U.S. Senate, which could occur as early as December 4.

The bill strongly opposed by pro-abortion advocacy groups and by their Senate allies, who will attempt to amend it to death—for example, by a proposed amendment to allow partial-birth abortions to be performed for ''health'' reasons. Legally, with reference to abortion, ''health'' is a term that covers emotional ''well-being.'' Thus, addition of a ''health exception'' would in practice allow unrestricted use of the partial-birth abortion procedure.

President Clinton opposes the bill.

How is a Partial-Birth Abortion Performed?

The bill is aimed at the basic method practiced by Dr. Martin Haskell of Dayton, Ohio, and by the late Dr. James McMahon of Los Angeles, among others. The *Los Angeles Times* accurately described this abortion method in a June 16 news story:

''The procedure requires a physician to extract a fetus, feet first, from the womb and through the birth canal until all but its head is exposed. Then the tips of surgical scissors are thrust into the base of the fetus' skull, and a suction catheter is inserted through the openings and the brain is removed.''

In 1992, Dr. Haskell wrote a paper on this abortion method. The paper (''Dilation and Extraction for Late Second Trimester Abortion'') describes in detail, step-by-step, how to perform the procedure.

Dr. Haskell wrote that he ''routinely performs this procedure on all patients 20 through 24 weeks LMP [i.e., from last menstrual period] with certain exceptions'' [4½ to 5½ months]. He also wrote that he used the procedure through 26 weeks [six months] ''on selected patients.'' Dr. McMahon used essentially the same procedure to a much later point—even into the ninth month. (Dr. McMahon died of cancer on Oct. 28).

How many partial-birth abortions are performed?

Nobody knows. Pro-abortion groups claim that ''only'' 450 such procedures are performed every year. But the practices of Dr. Martin Haskell and the late Dr. James McMahon alone would approximate that figure, and press reports indicate that other abortionists also utilize the procedure.

Both Haskell and McMahon have spent years trying to convince other abortionists of the merits of the procedure. That is why Haskell wrote his 1992 instructional paper. For years, McMahon was director of abortion instruction at the Cedar Sinai Medical Center in Los Angeles. It is impossible to know how many other abortionists have adopted the procedure, without choosing to write articles or grant interviews on the subject. The New York Times reported in a Nov. 6, 1995 news story about the bill:

'''Of course I use it, and I've taught it for the last 10 years,' said a gynecologist at a New York teaching hospital, who spoke on the condition of anonymity. 'So do doctors in other cities.'''

There are 164,000 abortions a year performed after the first three months of pregnancy, and 13,000 abortions annually after 4½ months, according to the Alan Guttmacher Institute (New York Times, July 5 and November 6, 1995), which should be regarded as conservative estimates.

For what reasons are partial-birth abortions performed?

The Planned Parenthood Federation of America recently issued a press release that asserted that the procedure is ''done only in cases when the woman's life is in danger or in cases of extreme fetal abnormality.'' Many reporters, commentators, and members of Congress have accepted such assertions uncritically and publicly disseminated them as ''facts.''

Yet, the claim that partial-birth abortion procedures are done only (or mostly) in life-endangerment or grave-fetal-disorder cases cannot be reconciled with many documents and reliable reports that are readily available.

In Dr. Haskell's 1992 instructional paper, he wrote that he ''routinely performs this procedure on all patients 20 through 24 weeks'' (4½ to 5½ months). In 1993, after NRLC's publicizing of Dr. Haskell's paper engendered considerable controversy, the American Medical News—the official newspaper of the AMA—conducted a tape-recorded interview with Dr. Haskell concerning this specific abortion method, in which he said:

''And I'll be quite frank: most of my abortions are elective in that 20–24 week range. . . . In my particular case, probably 20% [of this procedure] are for genetic reasons. And the other 80% are purely elective.''

Recently, during testimony in a lawsuit in Ohio, Dr. Haskell was asked to list some of the medical problems of women on which he'd performed second-trimester abortions. Among the conditions he listed was ''agoraphobia'' (fear of open places).

Moreover, in testimony presented to the Senate Judiciary Committee on November 17, ob/gyn Dr. Nancy Romer of Dayton (the city in which Dr. Haskell operates one of his abortion clinics) testified that three of her own patients had gone to Haskell's clinics for abortions ''well beyond'' 4½ months into pregnancy, and that ''none of these women had any medical illness, and all three had normal fetuses.''

Dr. James McMahon voluntarily submitted to the House Judiciary Constitution Subcommittee a breakdown of a self-selected sample of 175 partial-birth abortions that he performed for what he called ''maternal indications.'' Of these, the largest single category of ''maternal indications''—39 cases, or 22% of the total sample—were for ''depression.''

Dr. McMahon's self-selected sample of ''fetal indications'' cases showed he had performed nine of these procedures for ''cleft palate.''

Even though this data is cited in the official report of the committee, when NARAL President Kate Michelman was asked at a November 7 press conference about ''arguments . . . that these procedures . . . are given for depression or cleft palate,'' Ms. Michelman responded, ''That is . . . not only a myth, it's a lie.''

Reporter Karen Tumulty wrote an article about late-term abortions, based in large part on extensive interviews with Dr. McMahon and on direct observation of his practice, which appeared in the Los Angeles Times Magazine (January 7, 1990). She concluded:

''If there is any other single factor that inflates the number of late abortions, it is youth. Often, teen-agers do not recognize the first signs of pregnancy. Just as frequently, they put off telling anyone as long as they can.''

(Dr. McMahon used the term ''pediatric indications'' to refer to abortions performed on these young mothers.)

In 1993, the then-executive director of the National Abortion Federation (NAF) distributed an internal memorandum to the members of that organization which acknowledged that such abortions are performed for ''many reasons'';

''There are many reasons why women have late abortions: life endangerment, fetal indications, lack of money or health insurance, social-psychological crisis, lack of knowledge about human reproduction, etc.'' [emphasis added]

Likewise, a June 12, 1995, letter from NAF to members of the House of Representatives noted that late abortions are sought by, among other, ''very young teenagers . . . who have not recognized the signs of their pregnancies until too late,'' and by ''women in poverty, who have tried desperately to act responsibly and to end an unplanned pregnancy in the early stages, only to face insurmountable financial barriers.''

True, some partial-birth abortions involve babies who have grave disorders that will result in death soon after birth. But these unfortunate members of the human family deserve compassion and the best comfort-care that medical science can offer—not a scissors in the back of the head. In some such situations there are good medical reasons to deliver such a child early, after which natural death will follow quickly.

Is the baby already dead before she is pulled feet-first into the vagina?

In his 1992 paper explaining step-by-step how to perform this type of abortion, Dr. Martin Haskell wrote that he performs the procedure ''under local anesthesia'' [emphasis added], which would have no effect on the baby/fetus. Nevertheless, since HR 1833 was introduced in June, many critics of the bill have insisted that the unborn babies are killed by anesthesia given to the mother, prior to being ''extracted'' from the womb.

For example, syndicated columnist Ellen Goodman wrote in November that, based on her review of statements by supporters of the bill, ''You wouldn't even know that anesthesia ends the life of such a fetus before it comes down the birth canal.''

Likewise, Kate Michelman, president of the National Abortion and Reproductive Rights Action League (NARAL), said at a Nov. 7 press conference, ''These experts have made it very clear that the fetus undergoes demise before the procedure begins. And because of the anesthesia, which is, you know, something like 50 to 100 times what a fetus can withstand, because it's given according to the weight of the woman.''

However, according to testimony presented to the Senate Judiciary Committee (Nov. 17) by the American Society of Anesthesiologists, such claims have ''absolutely no basis in scientific fact.'' The ASA says that regional anesthesia (used in many partial-birth abortions and most normal deliveries) has no effect on the fetus. General anesthesia has some sedating effect on the fetus, but much less than on the mother; even pain relief for the fetus is doubtful, and certainly anesthesia would not kill the baby, the ASA testified.

Dissemination of the false claim that anesthesia kills the baby is endangering the health and lives of pregnant women and their unborn children, because such erroneous information may frighten pregnant women away from obtaining medically necessary surgical procedures while they are pregnant, for fear of harming their unborn children, the ASA said.

Moreover, American Medical News reported in 1993, after conducting interviews with Drs. Haskell and McMahon, that the doctors ''told AM News that the majority of fetuses aborted this way are alive until the end of the procedure.'' On July 11, 1995, American Medical News submitted the transcript of the tape-recorded interview with Haskell to the House Judiciary Committee. The transcript contains the following exchange:

''American Medical News. Let's talk first about whether or not the fetus is dead beforehand.

''Dr. Haskell. No, it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress—intrauterine stress during, you know, the two days that the cervix is being dilated [to permit extraction of the fetus]. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. And so in my case, I would think probably about a third of those are definitely are [sic] dead before I actually start to remove the fetus. And probably the other two-thirds are not.''

In another interview, quoted in the Dec. 10, 1989 Dayton News, Dr. Haskell again conveyed that the scissors thrust is usually the lethal act: ''When I do the instrumentation on the skull...it destroys the brain tissue sufficiently so that even if it (the fetus) falls out at that point, it's definitely not alive,'' Dr. Haskell said.

Brenda Pratt Shafer, a registered nurse from Dayton, Ohio, stood at Haskell's side while he performed three partial-birth abortions in 1993. In testimony before the Senate Judiciary Committee (Nov. 17), Mrs. Shafer described in detail the first of the three procedures—which involved, she said, a baby boy at 26½ weeks (over 6 months). According to Mrs. Shafer, the abortionist.

''...delivered the baby's body and the arms—everything but the head. The doctor kept the baby's head just inside the uterus. The baby's little fingers were clasping and unclasping, and his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks that he might fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp.''

Since the baby is usually not dead before being removed from the womb, does the baby experience pain? Yes, according to experts such as Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, who testified before the House Judiciary Constitution Subcommittee: ''The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain.'' After analyzing the partial-birth procedure step-by-step for the subcommittee, Prof. White concluded: ''Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure.''

Dr. Harlan R. Giles, a professor of ''high-risk'' obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures up until ''viability,'' but he does not perform partial-birth abortions. In sworn testimony in the U.S. Federal District Court for the Southern District of Ohio (Nov. 13, 1995), Prof. Giles said:

''In my own personal opinion, particularly when there are other techniques available, that the introduction of a sharp instrument into the brain and sucking out the brain constitutes cruel and unusual fetal punishment.''

IS THE TERM ''PARTIAL-BIRTH ABORTION'' MISLEADING, OR IS IT ACCURATE?

In his 1992 paper, Dr. Haskell referred to the method as ''dilation and extraction'' or ''D&X''—noting that he ''coined the term.'' However, that nomenclature was rejected by Dr. McMahon, who refers to the method as ''intact dilation and evacuation'' and (in an interview in the Los Angeles Times Magazine in 1990) as ''intrauterine cranial decompression.'' There are also some variations in the procedure as performed by the two doctors.

None of the terms that the abortion practitioners prefer would be workable as a legal definition. The bill creates a legal definition of ''partial-birth abortion,'' and would ban any variation of that method—no matter what new idiosyncratic name any abortionist may invent to refer to it—so long as it is ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.''

Beyond the legal point, the term ''partial-birth abortion'' is accurate and in no way misleading. In explaining how to perform the procedure in his 1992 instruction paper, Dr. Martin Haskell wrote:

''With a lower [fetal] extremity in the vagina, the surgeon uses his fingers *to deliver* the opposite lower extremity, then the torso, the shoulders and the upper extremities.'' [Haskell paper, page 30, emphasis added]

In sworn testimony in a lawsuit pending in U.S. District Court for the Southern District of Ohio (Nov. 8, 1995), Dr. Haskell said that he first learned of the method when a colleague

. . . described very briefly over the phone to me a technique that I later learned came from Dr. McMahon where they internally grab the fetus and rotate if and accomplish—be somewhat equivalent to a breach type of delivery.''

Are the drawings of the procedure circulated by NRLC accurate, or are they misleading?

At a June 15, 1995, public hearing before the House Judiciary Subcommittee on the Constitution, Dr. J. Courtland Robinson, a self-described ''abortionist'' who testified on behalf of the National Abortion Federation, was questioned about the drawings by Congressman Charles Canady (R–Fl.). Mr. Canady directed Dr. Robinson's attention to the drawings, which were displayed in poster size next to the witness table. Dr. Robinson agreed with Mr. Canady's statement that they were ''technically accurate,'' and added:

''That is exactly probably what is occurring at the hands of the two physicians involved.'' [Transcript, page 80.]

Moreover, American Medical News (July 5, 1993) reported: ''Dr. [Martin] Haskell said the drawings were accurate 'from a technical point of view.' But he took issue with the implication that the fetuses were 'aware and resisting.' ''

Professor Watson Bowes of the University of North Carolina at Chapel Hill, co-editor of the Obstetrical and Gynecological Survey, wrote in a letter to Congressman Canady: ''Having read Dr. Haskell's paper, I can assure you that these drawings accurately represent the procedure described therein. . . . Firsthand renditions by a professional medical illustrator, or photographs or a video recording of the procedure would no doubt be more vivid, but not necessarily more instructive for a non-medical person who is trying to understand how the procedure is performed.''

On Nov. 1, 1995, Congresswoman Patricia Schroeder and her allies actually tried to prevent Congressman Canady from displaying the line drawings during the debate on HR 1833 on the floor of the House of Representatives. But the House voted by nearly a 4-to-1 margin (332 to 86) to permit the drawings to be used.

DOES THE BILL PERMIT THE PARTIAL-BIRTH ABORTION PROCEDURE TO BE UTILIZED TO SAVE THE LIFE OF THE MOTHER? ARE PARTIAL-BIRTH ABORTIONS RELATIVELY SAFE FOR THE PREGNANT WOMAN?

Under the bill, a doctor is not subject to penalty if he shows that he ''reasonably believed'' that the mother's life was in jeopardy and that no other medical procedure will save her life. However, many medical authorities, both pro-life and pro-abortion, say that this procedure would never be necessary to save a woman's life.

Moreover, some medical experts—on both sides of the abortion issue—say that the procedure itself carries special risks for the pregnant woman. American Medical News, the official newspaper of the American Medical Association, reported in its November 20, 1996 edition: '''I have very serious reservations about this procedure'' said Colorado physician Warren Hern, MD. The author of *Abortion Practice*, the nation's most widely used textbook on abortion standards and procedures, Dr. Hern specializes in late-term procedures. . . . [O]f the procedure in question he says, ''You really can't defend it. I'm not going to tell somebody else that they should not do this procedure. But I'm not going to do it.' ''

''Dr. Hern's concerns center on claims that the procedure in late-term pregnancy can be safest for the pregnant woman, and that

without this procedure women would have died. 'I would dispute any statement that this is the safest procedure to use,' he said. Turning the fetus to a breech position is 'potentially dangerous,' he added. 'You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that.'

''Dr. Hern said he could not imagine a circumstance in which this procedure would be safest. He did acknowledge that some doctors use skull-decompression techniques, but he added that is those cases fetal death has been induced and the fetus would not purposely be rotated into a breech position.''

Dr. Harlan R. Giles, a professor of ''high-risk'' obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures up until ''viability.'' In sworn testimony in the U.S. Federal District Court for the Southern District of Ohio (Nov. 13, 1995), Prof. Giles said:

''[After 23 weeks] I do not think there are any maternal conditions that I'm aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated. In my experience for 20 years, one can deliver these fetuses either vaginally, or by Cesarean section for that matter, depending on the choice of the parents with informed consent. * * * But there's no reason these fetuses cannot be delivered intact vaginally after a miniature labor, if you will, and be at least assessed at birth and given the benefit of the doubt. [transcript, page 240]

''I cannot think of a fetal condition or malformation, no matter how severe, that actually causes harm or risk to the mother of continuing the pregnancy. I guess one extremely rare example might be a partial hydatidiform mole. But that's a one-in-a-million situation. In most cases, mothers carrying an abnormal fetus, such as with Down's syndrome, anencephaly, the absence of a brain itself, dwarfism, other severe, even lethal chromosome abnormalities—those mothers, if you follow their pregnancy, have no higher risk of pregnancy complications than for any other mother who's progressing to term for a delivery. [court transcript, pp. 241–42]

''There is no need to perform a D and X ['dilation and extraction,' i.e., partial-birth] procedure. That is not part of the required teaching of the D and E ['dilation and evacuation,' the technique of dismembering the baby inside the uterus]. [court transcript, p. 260.]''

Dr. Pamela Smith, Director of Medical Education in the Department of Obstetrics and Gynecology, Mt. Sinai Hospital, Chicago, told the Senate Judiciary Committee that the partial-birth abortion procedure is an adaptation of the ''internal podalic version'' procedure that obstetricians occasionally use to purposely deliver a baby breech (feet first)—but that this procedure is risky to the mother, and its use is recommended only to deliver a second twin. ''Why, if it's dangerous to the mother's health to do this when your intent is to deliver the baby alive, that this should suddenly become . . . the safe method when your intention is to kill the baby?'' Dr. Smith said.

Dr. Smith also gave the Judiciary Committee her analysis of a sample of 175 cases, selected by Dr. McMahon himself, in which he claimed that he had used the procedure because of maternal health indications. Of this sample, the largest group, 39 cases (22%) were for maternal ''depression,'' while another 16% were ''for conditions consistent with the birth of a normal child (e.g., sickle cell trait, prolapsed uterus, small pelvis),'' Dr. Smith noted. She added that in one-third of the cases, the conditions listed as ''maternal indications'' by Dr. McMahon really indicated that the procedure itself would be seriously dangerous to the mother.

What would be the effect of adding to the bill an exception to allow partial-birth abortions for ''health'' reasons, as proposed by pro-abortion Senator Barbara Boxer (D-Ca.) and others?

In the context of abortion-related law, ''health'' is a legal term of art. In Doe v. Bolton (the companion case to Roe v. Wade), the Supreme Court defined ''health'' to include ''all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient.'' Thus, the bill with a ''health'' exception would permit abortionists to perform partial-birth abortions at will—even for ''depression,'' as Dr. James McMahon did (see page 4). Adding the word ''serious'' before ''health'' changes nothing, because it is the abortionist who would determine whether the ''depression'' or other distress was ''serious.''

Does the bill contradict U.S. Supreme Court decisions?

In its official report on HR 1833, the House Judiciary Committee makes the very plausible argument that HR 1833 is not an ''assault'' on Roe v. Wade, but rather, could be upheld by the Supreme Court without disturbing Roe. In Roe, the Supreme Court said that ''the unborn fetus is not a person'' under the Constitution (even during the final months of pregnancy). So, in the Supreme Court's doctrine, a human being becomes a legal ''person'' upon emerging from the uterus. But a partial-birth abortion kills a human being who is four-fifths across the 'line-of-personhood' established by the Supreme Court. Thus, the Supreme Court could very well decide that the killing of a mostly born baby, even if done by a physician, is not protected by *Roe v. Wade*.

What position has the American Medical Association taken on H.R. 1833?

On September 23, the national Council on Legislation of the American Medical Association (AMA) voted unanimously to recommend AMA endorsement of H.R. 1833. (*Congress Daily*, Oct. 10.) The Council on Legislation is made up of about 12 physicians of different specialities, who are charged with studying proposed federal legislation with respect to its impact on the practice of medicine. A member of the Council told *Congress Daily* that ''this was not a recognized medical technique'' and that ''this procedure is basically repulsive.''

However, meeting in October, the AMA Board of Trustees was divided on this recommendation, and therefore took no position either for or against the bill. According to an October 23 letter from AMA headquarters in Chicago, ''The AMA Board of Trustees has determined that it will not take a position on H.R. 1833 at this time.''

From the perspective of those who believe that unborn children should be protected from all methods of abortion, what is the point of supporting a bill that would ban only one method?

Each human being is a unique individual with immeasurable worth. Pro-abortion advocates often try to dismiss the significance of partial-birth abortions by observing that they appear to account for ''only'' less than one percent of all abortions. But for each and every human individual who ends up at the pointed end of the surgical scissors, the procedure is a 100 percent proposition.

Should Congress be in the business of banning specific surgical procedures?

Some prominent congressional opponents of the bill to ban partial-birth abortions, including Rep. Schroeder (D-Co.), argue that Congress should not attempt to ban a specific surgical procedure. But Rep. Schroeder is the prime sponsor of HR 941, the ''Federal Prohibition of Female Genital Mutilation Act.'' (The Senate companion bill is S. 1030.)

This bill generally would ban anyone (including a licensed physician from performing the procedure known medically as ''infibulation,'' or ''female circumcision,'' which is practiced by some immigrants from certain countries. The bill provides a penalty of up to five years in federal prison. Supporters of this bill argue, persuasively, that subjecting a little girl to infibulation is a form of child abuse. But then, so too is subjecting a baby to the partial-birth abortion procedure.

WHY DID THE BILL PASS THE HOUSE OF REPRESENTATIVES BY A MORE THAN 2-TO-1 MARGIN?

In the House, the bill won support from more than a few lawmakers who generally favor legal abortion. Once they had the facts, a significant number of those self-described ''pro-choice'' lawmakers experienced an authentic moral revulsion regarding the procedure. In certain other cases, the revulsion was probably more political than moral. For whatever combination of these reasons, HR 1833 won support from a broad spectrum of House members, including: 73 Democrats and 215 Republicans (37% of voting Democrats, 93% of Republicans); nearly one-third of the women in the House (15 of 47), Democratic Leader Richard Gephardt (Mo.); Democratic Whip David Bonior (Mi.); Rep. John Dingell (Mi.), ranking Democrat on the Commerce Committee; Rep. Lee Hamilton (D-In.), ranking on the International Relations Committee; Rep. Dave Obey (D-Wi.), and Congressman Patrick Kennedy (D-RI), the son of Sen. Edward Kennedy (D-Mass.)

THE ARCTIC WILDLIFE REFUGE

Mr. STEVENS. Mr. President, I come to the floor once again to talk about the appearance that I had on ''Nightline'' with the Secretary of the Interior, Mr. Babbitt. In that program, which I call a debate, on ''Nightline,'' the Secretary claimed that the development of the coastal plain of our arctic for its oil potential would mean the end of that wildlife refuge.

He referred to the Arctic National Wildlife Refuge, which is some 19 million acres of our northern part of Alaska. It is above the Arctic Circle, as indicated. As a matter of fact, there are 21.2 million acres of wilderness in this whole area, and that area is larger than Vermont, New Hampshire, Connecticut, and Rhode Island put together.

Of this area, in 1980, 1.5 million acres of the arctic plain was set aside for development for oil and gas exploration, subject only to an environmental review to determine whether that type of development would result in irreparable harm to our arctic plain. That is what we call section 1002 of ANILCA, the Alaska National Interest Lands Conservation Act. That 1.5 million acres was the only area in the 1980 bill, that dealt with over 100 million acres, that provided for any development in our State. The Secretary says that proceeding as was intended in 1980 would be the end of that wildlife refuge. That is what I am here to talk about today.

If we proceed with oil and gas exploration, as is intended by the Balanced Budget Act of 1995, this area will be