

[Rollcall Vote No. 44 Ex.]

YEAS—91

Akaka	Dodd	Lincoln
Alexander	Dole	Lott
Allard	Domenici	Lugar
Allen	Dorgan	McCain
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murray
Bingaman	Enzi	Nelson (FL)
Bond	Feingold	Nelson (NE)
Boxer	Feinstein	Nickles
Breaux	Fitzgerald	Pryor
Brownback	Frist	Reed
Bunning	Graham (SC)	Reid
Burns	Grassley	Roberts
Byrd	Gregg	Rockefeller
Campbell	Hagel	Santorum
Cantwell	Harkin	Sarbanes
Carper	Hatch	Sessions
Chafee	Hollings	Shelby
Chambliss	Hutchison	Snowe
Clinton	Inhofe	Specter
Cochran	Inouye	Stabenow
Coleman	Jeffords	Stevens
Collins	Johnson	Sununu
Conrad	Kennedy	Talent
Cornyn	Kohl	Thomas
Craig	Kyl	Thomas
Crapo	Landrieu	Voinovich
Daschle	Lautenberg	Warner
Dayton	Leahy	Wyden
DeWine	Levin	

NOT VOTING—9

Biden	Kerry	Murkowski
Corzine	Lieberman	Schumer
Graham (FL)	McConnell	Smith

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President shall be immediately notified of the Senate's action.

The Senator from Nevada.

Mr. REID. Mr. President, I know the Senator from Ohio is here to make a statement. The Senator from Illinois wishes to make a unanimous consent request prior to the Senator from Ohio speaking.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, returning to Illinois this weekend, as I am sure my colleagues did in their home States, it is clear that we are in dire economic straits in America. It should be our highest priority, next to national defense and security, to put this economy back on track. I believe this is the moment to start the debate for an economic stimulus package that would create jobs and give businesses a chance.

Mr. REID. Mr. President, will the Senator withhold?

Mr. President, what is the parliamentary status of the Senate at this time?

The PRESIDING OFFICER. The Senate is in executive session.

Mr. REID. I am wondering if the Chair is about to announce that we are going to go back to the legislative matter that was before the Senate before the vote.

The PRESIDING OFFICER. There is no order to return to legislative session.

LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, I want to ask my friend how long he intends to speak tonight? I will not object.

Mr. DEWINE. I had not intended to speak very long. I have about 15 minutes, approximately.

Mrs. BOXER. That is fine. I just wanted to know if we were going to be here for an hour or two. Thank you.

Mr. DEWINE. It might depend on how long my colleague speaks.

Mrs. BOXER. I will speak just as long as my friend speaks.

The PRESIDING OFFICER. Is there objection to the Senator's unanimous consent request?

Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST— S. 414

Mr. DURBIN. Mr. President, this last exchange shows that the Senate is alive and that a good samaritan never goes unpunished.

Having yielded for this exchange, I believe we are at a moment where I can make my unanimous consent request relevant to the economic stimulus.

I ask unanimous consent that the Senate begin consideration of Calendar No. 21, S. 414, a bill to provide for an economic stimulus package.

Mr. DEWINE. Objection.

The PRESIDING OFFICER. Is there objection? Objection is heard.

Mr. DURBIN. I thank the Chair.

PARTIAL-BIRTH ABORTION ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, let me return now to the debate in regard to the partial-birth abortion ban.

Let me thank my colleague from Pennsylvania, Senator SANTORUM, for his unending and unwavering and tireless efforts to put a permanent end to this horrific partial-birth abortion procedure. In the time we have served together in this body, he has never given up hope that Congress and this country would put an end to this barbaric procedure.

This Senate, this Congress, and this country must ban a procedure that is inhumane, that has absolutely no medical purpose, and that is, quite simply, morally reprehensible.

During the course of the debate on S. 3, the bill to ban partial-birth abortion, we will hear repeated descriptions of the barbaric nature of this procedure. I ask my colleagues, as difficult as it is, to listen to the description. There may be many arguments during this debate, but the description of what this procedure is will not be argued. There is no debate what it is. There is no debate about what takes place during a partial-birth abortion. I submit to my colleagues that the more you know about this procedure, the worse it is. The more you know about it, the easier it will be to vote to ban it.

We will hear repeated descriptions of this barbaric procedure. It is a procedure in which the abortionist pulls a living baby feet first out of the womb and into the birth canal except for the head which the abortionist purposely keeps lodged just inside the cervix. As Senator SANTORUM explained, the abortionist then punctures the base of the baby's skull with a long scissors-like surgical instrument and then inserts a tube into the wound removing the baby's brain with a powerful suction machine. This causes the skull to collapse, after which the abortionist completes the delivery of the now dead baby.

Mr. President and Members of the Senate, those are the essential facts. I can think of nothing more inhumane and indifferent to the human condition. Yet every year the tragic effect of this extreme indifference to human life becomes more and more apparent. It troubles me deeply that this is happening across this country and that it is happening in my home State of Ohio. In fact, it happens within 20 miles of my home.

I would like to take a few minutes now to talk about two particular partial-birth abortions that occurred in Ohio. They were two typical abortions—typical except for the way they turned out. These two tragedies that I am going to describe illustrate the gruesome facts and the evils of this procedure and show what can happen when it does not go according to the way the abortionist plans. Let me explain.

On April 6, 1999, in Dayton, OH, a woman entered the Dayton Medical Center to undergo a partial-birth abortion. This facility was and is operated by one Dr. Martin Haskell, one of the main providers of partial-birth abortion in the Nation. Usually the partial-birth abortion procedure takes place behind closed doors where it can be ignored—its morality left outside. In this particular case, the procedure was different. There was light shed upon it. This is what happened. This is why light was shown upon it.

This Dayton abortionist inserted a surgical instrument into the woman to dilate her cervix so the child could eventually be removed and then killed. This whole procedure usually takes 3 days.

The woman went home to Cincinnati expecting to return to Dayton for the completion of the procedure in 2 or 3 days. In this case, her cervix dilated too quickly, and as a result shortly after midnight she was admitted to Bethesda North Hospital in Cincinnati.

The child was born. A medical technician pointed out that the child was alive. But apparently the chances of survival were slim, and after 3 hours and 8 minutes the child died. The baby was named Hope.

Mr. President and Members of the Senate, on the death certificate, of course, is a space for cause of death—"Method of Death." There it was written in the case of Baby Hope, "Method

of Death: Natural." That, of course, is simply not true. There is nothing natural about the events that led to the death of this tiny little child because Baby Hope did not die of natural causes.

Baby Hope was the victim of a barbaric procedure that is opposed by the vast majority of the American people. In fact, the Gallup poll conducted in January of this year shows that 70 percent of the American people want to see this procedure permanently banned because the American people know it is wrong. They feel strongly about it. And we, as a Senate, and as Members of Congress, I believe, should be listening to the American people.

The death of Baby Hope did not take place behind the closed doors of an abortion clinic. That death took place in public—in a hospital dedicated to saving lives, not taking them.

This episode reminds us of the brutal reality and tragedy of what partial-birth abortion really is. Because what it really is is the killing—the killing—of a baby, plain and simple. And almost to underscore the inhumanity of this procedure, 4 months later it happened again, again in Ohio, with the same abortionist. This time, though, something quite different occurred.

Once again, in Dayton, OH, this time on August 18, 1999, a woman who was 25 weeks pregnant went in to the same Dr. Haskell's office for a partial-birth abortion. As usual, the abortionist performed the preparatory steps for the barbaric procedure by dilating the mother's cervix. The next day, she went into labor, and was rushed to Good Samaritan Hospital—again, not what was expected. Again, the procedure normally takes 3 whole days. But she was rushed into labor.

But this time, however, despite the massive trauma to this baby's environment, a miracle occurred. And by the grace of God, this little baby survived. So she now is called "Baby Grace."

I am appalled by the fact that both of these heinous partial-birth abortion attempts occurred in this great country of ours, and occurred in my home State of Ohio.

When I think about the brutal death of Baby Hope and then ponder the miracle of Baby Grace, I am confronted with the question, Why can't we just allow these babies to live?

Opponents of the ban on this procedure argue that this procedure is necessary to protect the health of women. And yet, the American Medical Association has said this procedure is never medically necessary. In fact, many physicians have found the procedure itself can pose immediate and significant risk to a woman's health and future fertility. Clearly, the babies did not have to be killed in the Ohio cases I cited, no. The two babies I cited were both born alive. One was able to live and one tragically died.

Why, Mr. President, why, Members of the Senate, does the baby have to be killed? Why?

Opponents of this legislation say this procedure is only used in emergency situations—you will hear those words used time and time again: emergency situations—when women's lives are in danger. And yet it seems very strange that in an emergency, a 3-day procedure would be used and the mother would be sent home. If it was truly an emergency, why would the doctor pick a procedure that would take 3 days? Why would the woman consent to a 3-day procedure if it was truly an emergency? It is not an emergency. And the testimony we have heard, the testimony that has been taken in our committee in the past, has clearly indicated this procedure is never medically indicated—never medically indicated.

Nevertheless, even abortionists say the vast majority of partial-birth abortions are elective. Dr. Haskell, the Ohio abortionist, said this:

And I'll be quite frank; most of my abortions are elective in that 20–24 week range.

This is Dr. Haskell. Let me quote him again:

And I'll be quite frank; most of my abortions are elective in that 20–24 week range.

"Elective."

Opponents of this bill say this procedure is necessary when a fetus is abnormal. I do not believe the condition of a fetus ever warrants killing it. I do not believe that. But even abortionists and some opponents of this ban agree that most partial-birth abortions involve healthy fetuses. And that is what the statistics clearly show.

The inventor of this procedure himself, the late Dr. James McMahan, said:

Gee, it's too bad that this child couldn't be adopted.

Opponents of this bill contend that the partial birth procedure is rare, yet a report released just this past January suggests the number of partial-birth abortions has, in fact, tripled, accounting for an estimated 2,200 abortions in the year 2000.

I have heard it stated on the floor that is just a small fraction of the number of abortions that are performed in this country every year. That may very well be true. Still, statistics would indicate, if we believe the previous statistics, that is a significant increase in the number of partial-birth abortions. And still, whatever the total number of abortions is in this country, that is still 2,200 abortions that occurred in this very barbaric manner in 1 year.

I would again call my colleagues' attention to the description of this procedure. And again, I remind my colleagues that no one—no one—will come to this floor and deny what a partial-birth abortion is. No one will come here and say what Senator SANTORUM has said, what I have said, what Senator BROWBACK will say, what any of us are saying about what this procedure is really like, is a lie or is not true. It is what it is, and no one can deny it.

And so 2,200 of these children had to suffer that agony of a partial-birth

abortion. That is what the facts are. And there are many people who believe it is underreported. But we know of at least that many.

Opponents say a ban on partial-birth abortion violates *Roe v. Wade*, and they conclude it must be unconstitutional. But, as anyone who has read that case knows, *Roe* declined to consider the constitutionality of the part of the Texas statute banning the killing of a child in the process of delivery. Moreover, the Supreme Court again declined to decide this issue in *Planned Parenthood v. Casey*.

Again, I ask, why does the baby have to be killed? Why?

Opponents say this bill is unconstitutional because it does not have a health exception. But the American Medical Association itself has stated:

There is no health reason for this procedure.

"There is no health reason for this procedure."

In fact, there is ample testimony to show that all of the health consequences are more severe for this procedure than any other procedure used.

The AMA has also said:

The partial delivery of a living fetus for the purpose of killing it outside the womb is ethically offensive to most Americans and physicians.

I ask my colleagues who wish to continue to allow this heinous act, again, why does the baby have to be killed? Why?

Mr. President and Members of the Senate, why do babies, 3 inches away from their first breath, have to die?

Something is terribly wrong. With the advent of modern technology, we can sustain young life in ways we could not just a few short years ago. We sustain children much younger than the children who are being killed in partial-birth abortions, and they are in hospitals throughout this country. Most of us on the Senate floor have seen these children. And we have seen people, very gallantly, in hospitals fighting to save their lives every day.

Unfortunately, we have created more and more savage methods of killing our young at the same time we are creating wonderful ways to try to continue to keep children alive and save lives.

I think we are really destroying ourselves by not admitting as a society that partial-birth abortion is an evil against humanity. I believe there will be more and more horrible consequences for our Nation if we do not ban this cruel procedure.

As Frederick Douglass stated more than 100 years ago:

Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted. . . .

Mr. President, we must stop and ask: To what depths has the American conscience sunk? When it comes to abortion, is there nothing to which we will say: Enough, enough, no, stop; we will

not tolerate this. At this point, we will draw the line. At this point, we will go no further.

Partial-birth abortion is a very clear matter of right and wrong, good versus evil. It is my prayer that there will come a day when my colleagues, such as Senator SANTORUM and the rest of us who have fought this battle, won't have to come to the floor and talk about partial-birth abortion. Nobody wants to talk about this. But until that day comes, when this procedure has been outlawed in our country once and for all, we will have to continue to come to the floor and talk about it. Now is the time to ban this very evil procedure. It is the right thing to do.

I thank the Chair and yield the floor. The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, the question asked very eloquently by my friend is: How low have we sunk? I say pretty low, when we have a bill before us that doesn't even have an exception for the health of a woman. I get caught up in my throat when I think about it. Women like Viki Wilson, women who are religious, women who desperately want children, women who were told, as she was—and I will read her story—that if she didn't have a procedure outlawed in this bill, she could never have a child again, and worse. So I think we sink pretty low when we write a bill that doesn't even have an exception that has been the law of this land since 1973 in a Supreme Court case that is still upheld, which says, yes, we can act to limit abortion, but we always have to make an exception for the life and the health of a woman. That is my position.

I have said on this floor, along with many of my pro-choice colleagues who are Democrats and Republicans, we would ban all late-term abortions, except for the life and health of the woman. My view is anyone who comes to this floor to ban a medical procedure that could save the life and health of a woman and doesn't have that exception, is sinking very low. It shows a lack of respect for women, a lack of respect for their lives, their future ability to have children, to love children, and for their future as healthy women.

I will show you a list of problems that could develop in women if they don't have the procedures that are banned in this bill. Show me that list of what could happen. This comes from various physician letters, which I will ask to print in the RECORD later in the debate. This is what can happen to women if there is no health exception in the bill, which there is not. There are 15 pages of findings, but no health exceptions.

The Supreme Court already ruled on this very same bill—the Nebraska law—and sent it back and said you cannot come to us with a bill that doesn't make an exception for the health of a woman. Why? Because they see that a woman could hemorrhage and die; a woman's uterus could rupture and she

could die; a woman could get a blood clot and she could die; she could have an embolism and she could die; she could have a stroke and she could die; she could have damage to nearby organs and, in some cases, she would have to live paralyzed.

How low have we sunk that we cannot make an exception for the health of a woman? Pretty low. Pretty low. When I started this debate, I made the point that there is no such thing as partial-birth abortion. It is a phrase that is used by the proponents of this bill in order to essentially make abortion illegal one procedure at a time. Every one of my friends who is on the floor time and time again, if you ask them, they will be honest and they will say they don't like *Roe v. Wade*; they don't think abortion should be legal; it ought to be criminalized. This is the way they are going—one procedure at a time.

By the way, if you read the Supreme Court case—put up the chart that shows what the Court said. We are talking about more than one procedure banned, although our friends will tell you it is one procedure. Look at what the case says.

First of all, there is no health exception. I will go to this chart. The Supreme Court said in the Nebraska case, a legally identical bill:

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

So let there be no mistake, those voting for this bill are not just outlawing one procedure, but many procedures, which fits right into the agenda of my friends who are here tonight and who will be here in the next several days debating with us, because they want no abortion—even though, if you ask the American people, should a woman have a right to choose, should Government stay out of that private decision, a vast majority will say yes, because it is out of respect for women to make a decision with their physician and with their God. It is a decision that has a lot of components to it, one they discuss with their families. It is a tough decision. But I don't personally think any Senator ought to be put in the bedroom of any of our people making these decisions, or in a doctor's office.

If my daughter had a problem pregnancy and her health was threatened, just as Viki Wilson's was, I don't think that I would go to a U.S. Senator—not even the one who is a doctor, because he is a heart surgeon. If she had a heart problem, absolutely. I think it is important to see what the American Medical Association says about this. I say to my friends on the other side of the aisle that they are very holier than thou about this and they have every right to their opinions. They do not know more than doctors. It is not their job to protect the life and health of women. They don't even know what they are talking about. Listen to the AMA. The AMA, American Medical Association, has previously stated their opposition to this bill:

We oppose legislation that would criminalize a medical practice or procedure. Since S. 3 includes a provision that would impose a criminal penalty on physicians performing intact dilation extraction, the AMA does not support this bill.

Even though they don't like the procedure, they would not support this bill. The letters I have had printed in the RECORD from practicing OB/GYNs—those are the doctors women go to. They don't go to "Dr. Santorum," they don't go to "Dr. DeWine," they don't go to "Dr. Boxer," they don't go to "Dr. Murray;" they go to their OB/GYN.

What do they say?

We urge you to stand in defense of women's reproductive health and vote against S. 3, legislation regarding so-called partial-birth abortion.

There is no mention of the term "partial-birth abortion" in any medical literature. There is no such term, I say to my friends. Physicians are never taught a technique called "partial-birth abortion" so, therefore, they are unable to medically define it. What is described in the legislation, they say, could ban all abortions.

Why don't my colleagues just come out and say, "Let's ban all abortions"? Let's have that debate. You lose it, at least with the American people. I do not know how the votes line up here. We are going to have a chance to vote on whether to overturn *Roe v. Wade*. We are going to offer that up. We will have a debate about that. Let's see where people stand on that one. But to do it in this way, making up a term and doing it in a way that is so vague that the Supreme Court basically says it covers a much broader category of procedures, is absolutely a fraud on the people. I do not know what else to call it. The Supreme Court said in an identical bill it is far broader than just one procedure.

What did it say about the health of a woman? It also said:

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

In other words, there is no health exception in this bill. Senator SANTORUM added 15 pages of language, but the operative part of the bill makes no exception for health.

Let's be clear on what we are talking about. First of all, a partial-birth abortion, which there is none, is a vague term which could ban all abortions and many abortions. There is no health exception whatsoever in the bill. Without a health exception, if a doctor fears a hemorrhage or a uterine rupture, or a blood clot or an embolism or a stroke or damage to nearby organs or even paralysis, it is not enough for my friends on the other side. How low have we sunk—I want to talk about that. If your daughter is told if she does not get this particular procedure, she may be paralyzed for life and you will not make an exception, how far have we sunk? I think that is a fair question.

The debate we are having is not the real debate. The real debate is outlawing abortion completely and doing it one procedure at a time and making people think this particular procedure, A, is real, which there is no such thing as a partial-birth abortion—it is not in any dictionary; it is made up—and B, making them think you really are banning one procedure when the Supreme Court said, no, there are many procedures and maybe all abortions are banned.

So why not come here like a man—and I say “a man” because it is the men on the other side who brought this to us. Maybe we will have some women debating it tomorrow, but so far we have seen the same men come down here, and they are saying they are after this partial-birth abortion when we know every one of them wants to ban all abortions, does not believe in a woman’s right to choose, wants to criminalize women who would have an abortion, criminalize doctors, and have a constitutional amendment to make it illegal.

I remember those days. Women died during those days. How low have we sunk? Women were made infertile in those days. All the points we see here—serious health consequences of banning safe procedures—all of that I remember in those days. Finally, the Supreme Court got enlightened in 1973 and said: Government, keep your nose out of this; it is a health issue; and if you legislate to clamp down on abortions in the late term—which, by the way, I agree with, but always have a life and health exception so we do not force women into a situation where they can lose their ability to function for their families.

Let’s put Viki’s picture up again. I will tell you her story. She says:

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

In the spring of 1994, I was pregnant and expecting Abigail, my third child, on Mother’s Day. The nursery was ready and our family was ecstatic. My husband, Bill, an emergency room physician, had delivered our other children and he would do it again this time. John, our older, would cut the cord. Katie, our younger, would be the first to hold the baby. Abigail had already become an important part of our family.

At 36 weeks of pregnancy, however, all of our dreams and happy expectations came crashing down around us.

This is Viki. She says:

My doctor ordered an ultrasound and detected what all of my previous prenatal testing had failed to detect. Two-thirds of my daughter’s brain had formed outside her skull. What I thought were big healthy, strong movements were, in fact, seizures. My doctor sent me to several specialists. We were in a desperate attempt to find a way to save her.

“A desperate attempt to find a way to save her,” and yet my colleagues come down here and make everyone believe that these women who have had this procedure were callous about it. “A desperate attempt to save her.”

Everyone agreed she would not survive outside my body. They also feared that as the pregnancy progressed before I went into labor, she would die from the increased compression in her brain. The doctors feared that my uterus might rupture in the birthing process, rendering me sterile. The doctor recommended against C section because they could not justify the risks to my health.

What were the risks to her health? Let’s look at it again and again and again. What could have happened to Viki if she had to live under this cruel law that has no health exception? She could have hemorrhaged. Her uterus could have ruptured. She could have had blood clots, an embolism, or a stroke. She could have become paralyzed. Her organs nearby could have been damaged.

When people come down here and say “how low have we sunk,” I agree: How low have we sunk to have a bill come before this body with a name that is not even a real procedure, that could outlaw a broad range of procedures, and that makes no exception for a woman’s health and could consign her to live the rest of her life, if she survives it, in a horrific situation which could be so detrimental to her other children.

I see my colleague has come to the floor. I am not going to go on much longer because I have a lot more to say on this and a lot more cases to share with my colleagues tomorrow. We have pictures and pictures and pictures of women and their children, women who are deeply religious, women who tried every way to save their pregnancy, women who wanted to live to try to have another child.

Is that a crime? Is that being made a crime? Yes, it is being made a crime. I feel heavy in my heart that with all of the issues that face us, 250,000 troops—talk about killing. I have 5,000 National Guard on the border of Iraq, with another couple of thousand having been notified. I have young people over there, people who have left their families, who are going to face God knows what, and we are debating a procedure that would be banned, which does not even make an exception for the health of a woman such as Viki, and the many others I will bring to light.

It is so callous. We have children who are uninsured who cannot even get medicine. We are not talking about that. We have the most unemployed people we have seen in decades, the worst economy we have seen in 50 years. The stock market plunged again today, and people have to work another 5 or 10 years because their dreams are gone. And we are talking about banning a procedure without making a health exception. I am amazed.

Debate it we will, and we will offer amendments to try to bring health to women, to children, and to women who are pregnant. We hope our friends will be as eloquent in supporting those as they are eloquent tonight.

We will have the chance to speak out on *Roe v. Wade* and see how many of

our colleagues really support a woman’s right to choose, as the Supreme Court laid it out, in the early stages of a pregnancy. And, yes, in the later stages one may not have an abortion unless it is to save the life and health of a woman. That is the law.

This will set a dangerous precedent. It will send a message that the health of the mother does not matter. Every time I put up a picture, my friends will say, because they did it last time, oh, these women, they could have had it, there is no problem with them. Wrong. These women have come to us and told us they had the procedure that my colleagues want to ban, and had they not had it, they might not have lived to tell the tale or they would have had serious adverse health consequences.

So how low have we come? That is for the people of America to decide. As far as I am concerned, anyone who comes to this floor and puts forward a bill that is so callous as to say that if a woman’s health is threatened and she could suffer one of these terrible consequences, she cannot even have a procedure that her OB/GYN says she needs to have—it is callous, and I am going to speak out against it. I hope we will finish this in due course, have a good debate and move on, but we will be heard on our side. We did not bring this up, but we will be heard.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I see my colleague from Ohio is in the Chamber so I will not speak very long. I do want to very briefly respond to my friend and colleague from California, if I may. I know we will have ample time the remainder of the week to debate this issue. She is an excellent debater, and I look forward to the chance of continuing this dialogue and this debate as we go forward. I do want to respond very briefly to a couple of her comments.

Quite candidly, listening to my colleague from California, I almost get the impression that partial-birth abortion does not exist in this country or that no one could really define it or even know it when it exists. That is not true. The fact is that people know what it is. They know it takes place. It is counted, at least in one State. There are providers who say: I provide partial-birth abortion. So it is defined, and it is defined very specifically in this bill.

Senator SANTORUM has worked very hard to have a definition that is a precise definition, and I might say that it is a more precise definition, a better definition, a definition that conforms to what the Supreme Court has said, a better definition than the previous bill taken up on the Senate floor. It is taking into consideration what the Supreme Court has said. I will read a portion of that definition to my colleagues.

As used in this section, 1, the term “partial-birth abortion” means an abortion in

which, A, the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and, B, performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

Then it continues on and defines physician, et cetera. But that is the key part. That is a very precise definition. So I would reject the argument that this is vague. It is not vague. It is very well understood.

Turning to another point my colleague from California made, that has to do with the health of the mother, we had the opportunity to listen to a great deal of testimony in the past, and we have also had a lot of people who have talked about this issue. We will have the opportunity to debate this tomorrow and the days after. I am not going to quote a lot of people tonight because of the time, but the testimony has been very clear that this is not ever medically indicated. It is not something that is done in an emergency. One does not perform a procedure that takes 3 days in an emergency; something else is done. An emergency is not a 3-day procedure. Make no mistake about it, all the testimony has been that the partial-birth abortion takes 3 days. That is not an emergency procedure. It simply is not.

Let me quote former Surgeon General Dr. C. Everett Koop:

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

Dr. Warren Hern, OB/GYN:

I have very serious reservations about this procedure. You really cannot defend it. I would dispute any statement that this is the safest procedure to use.

The physicians Ad Hoc Coalition For Truth said the following:

Given the many potential risks the procedure entails the mother, far from being medically indicated, partial-birth abortion is actually contra-indicated.

Dr. Pamela Smith, OB/GYN, said the following:

Partial birth is, in fact, a public health hazard in regards to women. Medically, I would contend, of all the abortion techniques available to a woman, this is the worst one which could be recommended in the situation of a mother's health.

Dr. Dominic Casanova, OB/GYN:

This procedure is totally unnecessary and dangerous. If it becomes necessary to evacuate a uterus beyond 20 weeks gestation, there is a recognized standard method taught in all OB/GYN training programs which involves another procedure.

It goes on and on. I will not take the Senate's time tonight. We will have an opportunity tomorrow to debate this. This is not medically indicated. The testimony has been abundantly clear. This is not a procedure that is ever used for the health of the mother.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I take a minute to rebut my friend before I listen to my colleague from Ohio. I find it very interesting that because a procedure could take 3 days, it is not an emergency. If my daughter is undergoing a procedure and on the third day she dies, because perhaps something went wrong, she was in an emergency, even though it took 3 days. If someone has cancer and rushes into the hospital and it may take some intensive work over a period of days to save their life, the procedures used there are used because this is an emergency. To say it is not an emergency because it took 3 days to try to save a woman's life is, on its face, counterintuitive.

I say again, my friend, with all due respect, absolutely knows this procedure he wants to ban without exception for health, he knows it is not the safest procedure.

Well, I don't know what medical school he went to. Listen to the physicians. They are writing to us. They are stating over and over again, don't tie our hands; we may be forced to use this procedure. Don't tie our hands; a woman can suffer irreparable harm.

I would love to believe in everything my friend—

Mr. DEWINE. Will the Senator yield?

Mrs. BOXER. I'm sorry?

Mr. DEWINE. Will the Senator yield?

Mrs. BOXER. I will.

Mr. DEWINE. Does the Senator from California dispute Dr. Haskell's statement that the vast majority of these abortions are elective?

Mrs. BOXER. I have not read what my friend is reading from. I wonder whether he has read what the obstetricians and gynecologists—

Mr. DEWINE. Can my colleague answer that question?

Mrs. BOXER. Send it over to me. I will be glad to. You are asking, do I agree with this doctor. I don't know who he is. I am telling you what I am agreeing with. I agree with the OB/GYN, the women physicians, the physicians who were dealing with these difficult pregnancies all the time.

But I am happy—the time is mine, if I might, I say to my friend.

Mr. DEWINE. You will not yield for another question. I understand.

Mrs. BOXER. I didn't say I would not yield for another question.

I asked you to send over the letter to which you are referring so I can answer the question with intelligence. I have not seen the letter. I am not asking my friend to comment on the OB/GYN because I don't know that he has seen it. I don't think that is right to do in an intelligent debate. I am happy to look at it and at that time I will be happy to answer the question.

We have a situation where we are being told by doctors over and over again, thousands of doctors, 45,000 doctors, that they may well have to use this procedure. All they want is a

health exception. My friends are not interested in giving us a health exception. They will have a chance to vote it down because we will offer up an exception that talks about the terrible things that can happen to a woman. If they want to vote it down and say no, that is fine. They have to live with that. That is fine.

I don't want to have to face a Viki Wilson. I don't want to have to face the women who have told me this procedure that they want to ban saved them. I don't want to face them when they are sitting in a wheelchair and paralyzed or suffering from a stroke because my friends decided we were sinking so low that we would fight for an exception for health. Imagine. Just imagine.

I rise tonight, and I will do so at every turn, because the facts simply are not on the side of those who want to get this through the Senate and outlaw a set of procedures the court said—by the way, my friend argues that the bill took care of the problem; it is very specific.

I ask unanimous consent to have printed in the RECORD a legal analysis by the Center for Reproductive Rights which says very clearly that this bill is legally identical to the one that the court found unconstitutional.

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

CENTER FOR REPRODUCTIVE RIGHTS,
Washington, DC, March 6, 2003.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: On June 29, 2000, in *Stenberg v. Carhart*, 530 U.S. 914 (2000), the U.S. Supreme Court held that Nebraska's sweeping ban on abortion—misleadingly labeled a ban on so-called "partial-birth abortion"—was unconstitutional. I was one of the attorneys who represented LeRoy Carhart, M.D., the Nebraska physician who challenged the ban in that case.

In *Carhart*, the Court held that Nebraska's abortion ban was unconstitutional for two reasons. First, the Court held that the ban did not prohibit only one type of abortion procedure, but instead outlawed several methods, including the safest and "most commonly used method for performing pre-viability second trimester abortions," *Carhart*, 530 U.S. at 945, and therefore constituted an undue burden on women's right to choose. Second, the Court held that the Nebraska ban was unconstitutional because it failed to include an exception for women's health. The Court noted that "a State may promote but not endanger a woman's health when it regulates the methods of abortion" and that "the absence of a health exception will place women at an unnecessary risk of tragic health consequences." *Carhart*, 530 U.S. at 931, 937.

The new federal bill (H.R. 760, S. 3) contains the same two flaws. Like the Nebraska law, the federal bill fails to limit the stage of pregnancy to which the bill's provisions apply, so the ban could criminalize abortions throughout pregnancy (not just post-viability or "late term" abortions, as the bill's sponsors often claim), and the definition of "partial birth abortion" in the bill is broad enough to criminalize numerous safe abortion procedures, including the safest and most commonly used method for performing

abortions early in the second trimester, the D&E method (not just one abortion procedure, as the bill's sponsors misleadingly imply). Moreover, the federal bill fails to limit its prohibitions to abortions involving an "intact" fetus, fails to explicitly exclude the D & E technique or the suction curettage abortion method from the law's prohibitions, and fails to include definitions of key terms such as "living" or "completion of delivery." Like the Nebraska law, the federal bill also fails to include the constitutionally mandated health exception. Therefore, the federal bill is unconstitutional for the same reasons as the Nebraska law struck down in *Carhart*.

Because the U.S. Supreme Court has already struck down legislation containing the same constitutional flaws contained in the new federal bills, these bills can only be seen as a direct attack on the Supreme Court's decision, on the safest and most common abortion procedures in the second trimester, and on the protection for women's health that have been consistently reaffirmed throughout three decades of abortion jurisprudence.

Please feel free to contact me with any further inquiries.

Sincerely,

PRISCILLA SMITH,
Director.

Mrs. BOXER. My friend did say, and I appreciate that, that he heard a lot of witnesses come forward to talk about this. That was a couple of years ago. For some reason, they have the time to do this but they did not have the time to send this bill to the Judiciary Committee where they could have looked at this issue.

This is an amazing situation. We had a Supreme Court that argues that the Stenberg case, the legally identical bill to this, is unconstitutional on its face on two grounds—no health exception and a very vague definition. Here it is. Unconstitutional. This is what the Supreme Court said in a legally identical bill, and I have just placed in the RECORD a letter from the attorney who argued that case. She read the Santorum bill and says it is legally identical to the case that was declared unconstitutional. This is what the Court said. Unconstitutional because it put an undue burden on women because the definition is vague. Undue burden—very important words. You cannot put an undue burden on a woman because abortion under Roe is legal and in the late stages it is not legal if the State says it isn't, except for life and health. But it puts an undue burden because we don't know at what stage the woman is going to get this abortion and whether this procedure applies to it or not.

No exception to protect a woman's health, that is the one that breaks my heart. After all of this, the Court sending it back, please make an exception for women's health, my friends do not even have it in their heart to make an exception for a woman's health. I find it difficult. So S. 3, the bill before us, and Stenberg are legally identical according to the lawyers who won the case.

I argue the life exception is very narrow. It does not just say you can use it if a woman's life is threatened. It says

the woman has to have this preexisting condition. I argue that.

But clearly my purpose tonight is to say to my friends on the other side, as we offer these amendments on women's health, be with us; as we offer these amendments on children's health, be with us; as we offer these amendments on prenatal care, be with us. Because you care about children, that is why you are here. So be with us. Be with us on these.

I say be with us on *Roe v. Wade*. *Roe v. Wade* is a modest decision that said to government, take your nose outside of privacy. You cannot make a decision in an early stage of a pregnancy. Be with us on that. Be with us if we suggest that the Judiciary Committee ought to take a look at this in light of the Stenberg case. We offer our hand to you. Be with us when Senator DURBIN offers a health exception. If you care about women and their families, be with us when we say make an exception if a woman is told she could be paralyzed if she does not have this or be prepared to face the consequences if this does become the law of the land and the Supreme Court does change. It is bringing pain and suffering to a lot of our families in America.

We will give you the chance to offer up these amendments. We look forward to joining with you. We hope we will win a couple here. We have a few people already on your side of the aisle who are pro-choice who are going to be with us on some of these amendments. We hope we can expand that. We hope we can have a good vote on the health exception. I think we are getting close to winning that one. That would be a good day for women.

Just remember the most important thing of all: This is about real people, real women like Viki. She is just one. These are religious women, caring women, loving women, who wanted these babies more than anyone could say but who knew if they didn't have the procedure that you want to ban, they could well die, be made infertile, have a blood clot, be paralyzed. We can't do this to women. We should not do this. We should respect women.

We should act as Senators, not OB/GYNs. I think it is important.

In closing, I want to say my friend, Senator SANTORUM, when I was out of the Chamber, said: Well, Senator BOXER said we should not ban procedures, but she voted to ban a medical procedure that would have allowed women's genitals to be mutilated.

I just want to set the record straight. You are darned right I did. That is not a medical procedure; that is torture. That is torture. We are talking here about a medical procedure which doctors say is necessary to save the life and health of a woman in certain abortions. That's quite different. So I wanted to set the record straight.

This debate is emotional. This debate is difficult. There is no doubt about it. But I am so proud to stand tonight, to call on my friends to be honest about

what their true goal is. If it is to ban one procedure, then name it in the bill. They do not do that. It is vague. Therefore, according to the Court, it could ban all abortion. That is what the Supreme Court said.

If that is what they are about, then be man enough to come over here and say they believe abortion should be banned, and then let's have at it and talk about the right of families, of women, to make a decision like this—with their doctor, with their God, with their conscience, with their family. But I say: Not with their Senator. I don't think I have that right. I have more humility than that.

I try hard to be a good Senator. I try hard. I come here, I try to fight for the American dream for people. I fight for children, fight for families, fight for jobs. God knows we have trouble in this land. We have troubles in this land. Retirements are up in smoke. People are being forced to work longer and harder. I mean, there are a lot of issues that adversely impact on children and their families. But we will stand here and we will have a point/counterpoint as long as they want to do that.

I thank you and yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Ohio.

Mr. DEWINE. Mr. President, let me just briefly respond on my own time now and maybe lay a little foundation.

The PRESIDING OFFICER. There is no time. The Senator from Ohio has the floor.

Mr. DEWINE. Let me lay a little foundation for my previous question that I asked my colleague from California. I will send over to her the quote from Dr. Haskell. But to explain to her who Dr. Haskell is, Dr. Haskell is probably the foremost—I would say notorious—partial-birth abortion provider in this country. He operates in my home State, near my hometown. He operates in Dayton, OH. He performs many partial-birth abortions.

The quote I have is as follows. I will read the quote that I have. Dr. Martin Haskell indicates he:

... routinely does this procedure on all patients, 20 to 24 weeks pregnant, except on women—

He gives some exceptions.

He further states:

And I'll be quite frank. Most of my abortions are elective in that 20 to 24-week range.

My only point to my colleague was that most partial-birth abortions are elective. I think that has been, frankly, the testimony of most of the witnesses we had. I don't think it is really a disputed issue. That was the only point of my question.

I want to return briefly to the issue of medical necessity. I would like to maybe quote a couple more experts who have testified in front of Congress in the past.

Dr. Pamela Smith, Medical Education Director of Mount Sinai Medical Center in Chicago, has testified in front of Congress. Here is what she has said.

So, for someone to choose a procedure that takes 3 days, if they are really interested in the life of the mother, that puts the mother's life in further jeopardy.

Members of the Senate, those are not my words. Those are the words of Dr. Pamela Smith.

Dr. Nancy Romer, Chairman of OB/GYN and professor at Wright State University Medical School in Ohio, had this to say:

There is simply no data anywhere in medical literature in regard to the safety of this procedure.

Again she was talking about the partial-birth abortion. I continue to quote Dr. Romer.

There is no peer review or accountability of this procedure. There is no medical evidence that a partial-birth abortion procedure is safer, or necessary to provide comprehensive health care to women.

Finally, Dr. Donna Harrison, a Fellow of the American College of Obstetricians and Gynecologists, put it most simply:

This is medical nonsense. It is a hideous travesty of medical care and should be rightly banned in this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise in support of the Partial-Birth Abortion Ban Act. I am grateful to the Senator from Pennsylvania, and my colleague from Ohio, the senior Senator from Ohio, for their courageous fight to stop this barbaric procedure. Any of us who have listened to them cannot help but be moved by their eloquence in regard to the importance of banning this procedure.

This tie that I have on is one that was given to me last week. It says, "Stop Violence Against Women."

I wish those of us who are opposed to this procedure would have had ties made saying, "Stop Violence Against Babies."

It is even difficult to talk about because it is a gruesome procedure, but we need to remind Members of the Senate that this is a procedure that is not done on an emergency basis. It is a little bit difficult for me to talk about it because last week my daughter delivered our fifth grandchild, a little baby girl, Emily Elizabeth.

The way the procedure goes is that a woman goes through 2 days of doctor visits to get dilated; 2 days to get dilated. On the third day, the baby is positioned for delivery in the birth canal. The doctor then pulls the living baby feet first out of the womb and into the birth canal, except for the head which the abortionist purposely keeps lodged just inside of the womb. The doctor punctures the base of the baby's skull with a surgical instrument such as long surgical scissors or a pointed hollow metal tube called a trochar.

He then inserts a catheter into the wound and removes the baby's brain with a powerful suction machine. This causes the skull to collapse, after which the doctor completes the delivery of the now dead baby.

I can't understand how anyone can support this ghastly procedure or cannot support it being illegal.

There are some who say it is hard to believe we are even talking about the question on the floor of the Senate. In an editorial today, the Washington Post called our debate in the Senate on this subject "pointless." I have also heard my colleagues take the floor and state, Have we no other priorities that take precedence over this? What priority is more important than human life? It is hard for me to believe anyone would say we should not even discuss this procedure that kills a human being. It should have been banned years ago. I am glad we are moving early in the 108th Congress to go forward with something that should have been done many years ago.

The subject of partial-birth abortion is not a new one for me. Eight years ago in 1995, Ohio was the first State to pass a partial-birth abortion ban. The bill prohibited doctors from performing abortions after the 24th week of pregnancy and banned completely the dilation and extraction procedure we call the partial-birth procedure in this bill, the one I just described.

The bill allows late-term abortions to save the life of the mother. The women seeking abortions after the 21st week of pregnancy were required to undergo tests to determine the viability of the fetus, and if the fetus was deemed to be viable, the abortion would be illegal.

I am glad the Senator from Ohio pointed out the language in this bill has been carefully drafted. It is not ambiguous. I have heard the Senator from California say this should have gone to the Judiciary Committee. The fact is this has been discussed on the floor of the Senate since 1994.

While I was Governor, I watched the partial-birth abortion ban make its way through the 104th and 105th Congresses, only to be vetoed by President Clinton. It has been around a long time.

After I arrived in the Senate in the 106th Congress, I gave a speech in support of banning partial-birth abortion and, quite frankly, lobbied some of my colleagues to support it. The bill passed both Chambers of the Senate and the House. It made it to conference but never came out of conference.

I have listened to my colleagues quote statistics and spout off facts about medical necessity and the health of the mother. We can all quote different statistics, but the bottom line is there is no need for this procedure. My colleague from Ohio has spoken to that very clearly. Most of these partial-birth abortions are elective. They take 3 days to complete. If a mother really needs an abortion, she has alternatives available to her that are not as tortuous as partial-birth abortion.

It is interesting to note that in January 2003 the Alan Guttmacher Institute, which is affiliated with Planned Parenthood, published a survey of abortion providers, showing that the

number of partial-birth abortions more than tripled between 1996 and 2000. Why is the occurrence of such a procedure that is never medically necessary increasing? One of the main reasons we do not need these late-term abortions is thanks to the technology available today. It is better than it has ever been before. We can identify problems very early in the pregnancy so abortions can take place earlier. Women today are being encouraged to come in early in the first trimester for the various tests they need so that if an abortion is acceptable to them, they can have an early abortion while the baby is still not viable outside the womb. In fact, to date, the technology is so sophisticated that if they find there is something wrong with a baby, they can go in through surgery and correct it in the womb.

I want to make it clear to those who believe in abortion and who face that tremendous decision in terms of whether they are going to deliver the baby, that there are other procedures available. The victims of the partial-birth abortions are human beings. I find it interesting that they are sometimes called "living fetuses." They are living human beings. Whether they are called "babies" or "fetuses," no one seems to dispute the fact that they are living. In fact, they are human babies and they can feel pain. When partial-birth abortions are performed, these babies are just 3 inches away from life and, for that matter, seconds away from life.

I urge all of my colleagues in the Senate to stand up against what I refer to as "human infanticide." This is not *Roe v. Wade*. I suspect that when the vote is taken on the floor of the Senate, there are going to be many people who will support partial-birth abortion who label themselves as pro-choice and pro-abortion. When this legislation passed in Ohio back in 1995, it passed overwhelmingly in both houses, and there were pro-life and pro-choice and pro-abortion people who supported this legislation. This is not an issue of *Roe v. Wade*. This is an issue of banning a procedure that is gruesome and is not medically necessary.

In the State of the Union address this year, President Bush again pledged to support the legislation and said, "We must not overlook the weakest among us. I ask you to protect infants at the very hour of their birth and end the practice of partial-birth abortion."

I urge my colleagues to vote to ban partial-birth abortions in the United States of America and end this national tragedy.

The PRESIDING OFFICER. Does the Senator from Ohio yield the floor?

Mr. VOINOVICH. Yes. I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, my friend talked about the joy of childbirth. He is so right. I have a magnificent grandchild. I have two beautiful children, a boy and girl. They were

both premature. It was very scary, and they made it. It was wonderful. I absolutely can say there is no greater joy in my life. As I stand here today, it is because I am pro-children. I am pro-family. I am for healthy families. I am for women not having to face a situation where they could be paralyzed for life if a certain procedure is banned.

My friend says it is not about *Roe v. Wade*. Nothing could be further from the truth. None other than the Supreme Court said on an identical bill in Nebraska that, in fact, it was against *Roe v. Wade*—that because there was no exception for the health of the mother in which you have the same situation here. You have salutary language in findings. But the operative language makes no exception for health. That is against *Roe v. Wade*. *Roe v. Wade* was a very carefully crafted bill that has withstood time since 1973. Even this Supreme Court, which is new, as we well know, and to the right, has supported *Roe* very recently.

It says to me, if you look at the case that just came down, you have two problems with this bill that goes against *Roe*: No health exception. Everyone agrees there is no health exception. The fact is that the terminology used is very vague. Therefore, it puts an undue burden on a woman because it could ban all abortion procedures.

Having said that, it seems to me puzzling why this bill didn't go back to the Judiciary Committee. I will tell you why. It is not as if nothing has changed since we looked at this the last time. Everything changed. The Supreme Court said the partial-birth abortion ban, as the Senator calls it, was unconstitutional in Nebraska because they had no health exception and it put an undue burden on women because the definition is vague. That has not been cured here.

This is going to go right back to the Supreme Court. I am sure the President will sign this bill because he definitely said he is looking forward to doing that. And it will go to the Court, and I believe it will be struck down because it hasn't met the problems the Court found.

It is puzzling to me why we wouldn't send it back to the Judiciary Committee to discuss the problems the Court found with a legally identical bill. I have had printed in the *RECORD* a letter from attorneys who say, in fact, this is a legally identical bill.

I want to close tonight for my part and talk about another case because my friend was very eloquent, and I appreciate his eloquence about children and families.

Mr. VOINOVICH. Will the Senator from California yield for a question?

Mrs. BOXER. I certainly will.

Mr. VOINOVICH. Do you agree this issue has been debated on the floor of the Senate for a long period of time?

Mrs. BOXER. Absolutely, it has been, but not since the Supreme Court case which struck down a legally identical bill. That is why I believe it should go back to Judiciary.

Mr. VOINOVICH. Is my colleague from California aware of the fact that those of us who want to ban this procedure believe the language in this bill is not vague and that it will sustain a test in the Supreme Court of the United States?

Mrs. BOXER. With all due respect to my friend, we have a Judiciary Committee that is supposed to make those judgments. So I am sure you think it is fine. You thought the other one was fine, the Stenberg case. You thought the Nebraska case met the *Roe v. Wade* requirements as well. You were wrong and you were faulty.

So I believe if there is sincerity here—this isn't about politics or whatever—it is really about meeting the constitutional requirements of *Roe*, it should have gone back.

But I agree with my friend, sure, it has been debated quite a bit, but not since this latest case.

Mr. VOINOVICH addressed the Chair.

The PRESIDING OFFICER. Does the Senator from California yield for a question?

Mr. VOINOVICH. Will the Senator yield the floor back so I can make a—

Mrs. BOXER. I am not going to yield the floor back to you, but I am happy to yield for a question.

Mr. VOINOVICH. The question I would ask, again, is that those of us who have had a concern about this for many, many years have studied the language quite carefully. I particularly have because of the fact that we had two partial-birth abortion statutes that passed in Ohio, and we were looking at what the Supreme Court was going to do with the Nebraska case.

I must say to you we have looked at it as carefully as we can. We believe the language that is in the bill is not vague. We believe it will stand up to a test in the Supreme Court, and that to go back to the Judiciary Committee, quite frankly, would just delay the real issue; that is, whether we have enough votes on the floor of the Senate to ban partial-birth abortions.

Mrs. BOXER. Was that a question?

Mr. VOINOVICH. I think that was a statement.

Mrs. BOXER. Let me say to my friend, I appreciate his sincerity. I do not question it for one minute. But I also have studied this. I also have cared about this, because I care about women who I am going to be talking about here tonight, and many of whom have come to see me in California and here. They are begging me to fight this because it does not have a health exception. Even though my friend thinks you have written it in a way to have a health exception, it isn't in the bill.

Here is another story about Claudia Crown Ades, who, in 1992, was in the 26th week of a desperately wanted pregnancy. Claudia and her husband, Richard, were told, after an ultrasound, that their son had a genetic condition called trisomy 13. His anomalies included extensive brain damage due to a fluid-filled nonfunc-

tional brain and a malformed heart with a large hole between the chambers. He also had developed liver, kidney, and intestinal malformations. He did not have normal blood flow.

They were told his condition was incompatible with life. She was told if she did not have this procedure she could suffer a number of problems, which I have talked about before, that we have been told by doctors can occur if the procedure is not available.

Her loving family got together, and they decided to have this procedure. It saved her. She did not have to suffer the potential of having a hemorrhage, a blood clot, an embolism, stroke, or paralysis.

So I know my friend worked hard on this bill. I am just saying, it would not take that much effort to get the Judiciary Committee to take a look at it since the stakes are so high for the women of this country to outlaw a procedure, to not have a health exception, and to have such a vaguely drawn phrase about a procedure that is a non-existent medical procedure. It was given to a procedure that I have already put in the *RECORD*.

Maybe my friend did not hear me, but several physicians, representing 45,000 OB/GYNs, say there is no such thing as this, and that these procedures could be far more than one.

So I am going to close my statement here tonight.

Does my friend have a question?

Mr. VOINOVICH. I do have a question.

Mrs. BOXER. I am glad to yield for a question.

Mr. VOINOVICH. What is puzzling to me—the question is, you have pointed out some unusual cases that—

The PRESIDING OFFICER. Senators are reminded that they will address questions through the Chair and not address each other in the first person.

Mr. VOINOVICH. Would the Senator from California agree that the technology today, in terms of the delivery of babies, in the ascertaining of a problem that a baby or a delivering mother would have, has improved substantially over what it was in 1994 when we first started the debate on this legislation?

Mrs. BOXER. Thank God, we have had so many advances. In my own family we had a circumstance where we were very fearful we were going to lose a pregnancy of one of my children. And because of these incredible advances, she held on, and long enough to have a healthy baby.

What a miracle that is. That is the reason why I support banning all late-term abortions across the board. I think that is consistent with *Roe*. But for the life and health of a woman, which always must be, it seems to me, considered in a civilized country, we need to make sure women are not facing these kinds of serious problems.

So yes, I say to my friend, I could not be more excited about the incredible progress we have made.

Does my friend have another question?

Mr. VOINOVICH. I do.

Mrs. BOXER. I am happy to yield.

Mr. VOINOVICH. If you agree that the medical technology today is better than it was in 1994, can you explain to me why the Alan Guttmacher Institute, which is an affiliate of Planned Parenthood, published a survey of abortion providers, showing that the number of partial-birth abortions more than tripled between 1996 and 2000? Wouldn't you think there would be less partial-birth abortions because of the technology that we have, less cases like the ones you have presented here before my colleagues in the Senate?

Mrs. BOXER. Let me say to my friend, he keeps referring to partial-birth abortions: "There would be less partial-birth abortions." I would defy my friend to show me where there is a list of so-called partial-birth abortions. Because there are none. This is a made-up term. I will read to you again—because having a debate about partial-birth abortion, I do not know that you take care of these women on a daily basis, as do physicians, but I want to answer my friend.

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

Mrs. BOXER. I would like to answer my friend's question. He is asking me a question, whether I disagree with the premise. The premise is, there is a procedure called partial-birth abortion. Physicians are telling me—and I believe them, I hate to tell you, over you, because this is their life's work. These are OB/GYNs. They are saying, there is no such technique as partial-birth abortion.

Reclaiming my time, I am going to conclude in this way: I have shown you a couple of cases. My friends say: Oh, they are a couple of anomalies. There are many more I am going to share—many, many more—many more photographs, many more stories, compelling stories of loving, religious, caring families that made a decision based on the facts as they were laid out, so that a woman could live and be a mother to her other children, so she could go on with her life, where she could have been in a circumstance where she could have absolutely been in peril for her whole family for the rest of her life.

I think we have a lot of power here in the Senate. That is why I am so proud the people of California sent me here. And my friend feels so proud the people of Ohio sent him here, as my friend, who is sitting in the Chair, feels so proud the people of Nevada sent him here.

We work hard to get here. And I do not shrink from responsibility. I am very happy to take on whatever responsibility that I have.

I do not see it in the Constitution that I should outlaw a medical procedure that doctors are saying to me is necessary to save the life and health of a woman.

I think that harms families. If my friends would like to offer a health exception, we would have a lot of sup-

port. DICK DURBIN will do that. I hope a lot of you will join us.

I will conclude my remarks because this is what I really think about this. I don't think this about my friends who are on the floor, but I think if you look around for the past 2 years, you see what has happened to women who want to exercise their right to choose, their right to family planning, and you see what has happened to women in this country. So I am going to conclude with the chart that will go through what has happened to women's rights in this country in terms of a right to choose, which is so important, it seems to me.

First, we have a situation where the administration says pregnant women won't be eligible for health benefits; their fetus will—not them. Keep in mind what we have here. This is a circumstance where we have a bill that will outlaw a procedure that doctors tell us they need to save the life and health of a woman. Put that into perspective with what has been happening lately to women's rights. So a woman is ignored by this administration. They are going to give the prenatal care to the fetus, not to the woman. What does that say about women, by the way? We are not entities; we are just here to exist. People can look right by us. That is not right. That in and of itself is an insult, a lack of respect, it seems to me, for women.

Pushing legislation recognizing an embryo as a person with rights separate and apart from the woman's; Again, what does that say about women?

Moving legislation forcing some young women to make reproductive health choices alone, and criminalizing caring adults who help them: That will hit us soon in this debate.

Attempts to block women's access to RU486, a drug proven safe and effective by the FDA, which will avoid abortion procedures: We have trouble with that. By the way, women all over the world have this, and we have fought hard to get our women to have nonsurgical abortion, which is safer. It has been a fight. So far we have won it. It is under attack.

Attempts to block access to emergency contraception: We are going to have a chance to vote on that during the course of this debate.

Denial of *Roe v. Wade's* protections to Federal employees; low-income women who rely on the Federal Government for their health care; poor women who live in the District of Columbia—in other words, women, including U.S. servicewomen, who pay out of their own pocket for a procedure cannot even use a Federal facility, with our women abroad, in difficult places all over the world—again, a lack of respect.

Why am I bringing this up now? Because I see what we are doing here as a continuation of what I would call a basic assault on a woman's right to choose, which I consider to be a funda-

mental right that has been articulated in *Roe v. Wade* and stands for respect of a woman.

We have seen starving funding for family planning programs, and international family planning is basically impounded by this administration, \$34 million. That money can save, by the way, tens of thousands in abortions. If a woman has family planning, she will hopefully plan her family and not be in a circumstance where she might seek an abortion. Tell me how that makes any sense. I don't really see it.

Attempts to channel taxpayer funds to deceptive crisis pregnancy centers that intimidate and withhold information from women; pushing legislation to gag doctors from providing abortion referrals; placing a gag rule on international family planning providers; push for youth programs that censor discussion of contraception benefits; censorship, then revision of medical information on Government Web sites about condoms, and the unproven "link" between abortion and breast cancer; attempt to fund Federal research on the unproven link between abortion and breast cancer; key Cabinet appointments who oppose the constitutionally protected right to choose; campaign to pack courts with judges hostile to women's rights; refusal to hold perpetrators of violence, intimidation, and harassment at reproductive health clinics responsible for their illegal acts; refusal to act on international women's rights treaty. I am involved in that, the convention to eliminate all forms of discrimination against women. We are standing with countries such as Angola because somebody says that may mean we support a woman's right to choose. Heaven forbid. So we cannot even sign onto a treaty. It is stunning to me; enactment of 335 antichoice State measures into law since 1995.

So what I am suggesting to you is there is an agenda here—and this is part of it—to ill-define a procedure so it could, in fact, relate to more than one. The court says it could effectively ban all abortion, without really saying they are doing that and not having a health exception, so that women could face all kinds of horrible problems. It is just part of this campaign, if you will, this assault that I see happening, that I feel is very sad for the women in this country.

This is the 21st century. We should allow women to make very private, very difficult choices, as long as these decisions are in accord with the guidelines sent down in 1973.

I will close by saying that *Roe v. Wade* is a very logical, moderate position. It says in the very beginning of a pregnancy that a woman has a right to choose to have an abortion, without the interference in that decision by government. Then it says after that time, government cannot come in and put in restrictions—but always an exception for the life and health of the mother. I think that is a balance.

The problem with this bill, it bans procedures—and maybe all procedures—many procedures, except some that are very dangerous to a woman, and procedures that could be used at any stage of abortion. That is what the court said, and it makes no exception for her health. I argue the life exception is very narrowly drawn, but we don't have time to go into that tonight.

Thank you very much. I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. VOINOVICH. Mr. President, I reiterate the fact that this is not an issue that gets to the basis of the Supreme Court decision in *Roe v. Wade*. I predict that just as in the past on the floor of the Senate, there are going to be people supporting the outlaw of this gruesome procedure, which is not necessary, who are very much pro-choice, pro-abortion, and who will probably have amendments on the floor of the Senate, a sense of the Senate, in terms of *Roe v. Wade* and many of the people who will vote to sustain *Roe v. Wade* will be some of the same people who will vote against this procedure because they understand how gruesome it is.

I point out one other fact. You just cannot give the back of the hand statistics from the Alan Guttmacher Institute, which is a very respected institute, which is an affiliate of Planned Parenthood, that published a survey of abortion providers showing—these are abortion providers, OK—showing that the number of partial-birth abortions more than tripled between 1996 and 2000.

So this procedure is not one that is being practiced in some of the examples that my colleague from California has presented on the floor of the Senate but, rather, has become a regular procedure in the offices of many OB/GYN doctors in this country—a procedure that is not necessary.

Mr. KYL. Mr. President, I am proud to be a cosponsor of this much-needed and long-overdue measure. There is no place in a decent Nation for the barbaric practice known as partial-birth abortion. Senator SANTORUM's measure is the only one the Senate is considering that will put an end to it once and for all.

Every abortion ends the life of a tiny boy or girl, but only partial-birth abortion involves the destruction of life at the moment when a child is being brought out of the womb—and he or she is just inches from under the full protection of our laws. Partial-birth abortion blurs the line and does so in such a way as to further erode the sanctity of life.

The legislation Senator SANTORUM has proposed should avoid the constitutional problems that five Supreme Court Justices found in Nebraska's statute in the *Stenberg v. Carhart* case. Specifically, it addresses the concern that the partial-birth abortion

procedure might be necessary to protect the health of the mother by incorporating as findings the view of the American Medical Association and the overwhelming majority of physicians that there is no circumstance where the health of the mother demands this procedure. It also contains a more specific definition of the partial-birth abortion procedure, in response to the Stenberg decision.

This revised definition ensures that, once we pass this bill, it will no longer be permissible in America to—and here I quote the language of the bill itself—“deliberately and intentionally vaginally deliver a living fetus until, the entire fetal head is outside the body of the mother and then kill the baby as happens in a typical partial-birth abortion.”

There is no doubt, in contrast, that the substitute measures that the Senate is considering will permit the continued use of this unconscionable procedure. To secure the approval of the radical, pro-abortion lobby, the authors of such measures inevitably draft their so-called “bans” in such a way as to permit “health of the mother” exceptions that effectively negate the restrictions. Again, the testimony of the mainstream medical community makes it clear that “health of the mother” is a red herring in the partial-birth abortion context, and I trust that any measure containing such an “exception” will be soundly defeated.

It is simply not possible to seek cover politically while substantively protecting the most unscrupulous abortionists. The American people overwhelmingly favor enactment of a real partial-birth abortion ban. Despite the predictable efforts to obscure what is really a very clear issue—how we wish to treat the most vulnerable members of our human family—they will soon have it.

MORNING BUSINESS

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business.

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

THE PROSPECT OF WAR AGAINST IRAQ AND SUPPORTING OUR ARMED FORCES

Ms. MIKULSKI. Mr. President, I come to the Senate floor today to speak about some of the most crucial issues facing our Nation: No. 1, the prospect of war against Iraq, and, No. 2—though it will never be in second place—support for our U.S. military.

It has been my longstanding position to support a multinational response to the Iraqi threat. That means building international support to defang Saddam Hussein. We all know he is a duplicitous character, but I believe if the goals of America and the world are to be successful, we need to work in a

multilateral way, working through the United Nations, to build international legitimacy, and also to get the world to support us, to share the burden of war, if war is necessary, during the war in terms of the danger, and to share the burden of what would come after the war in terms of the economic cost of rebuilding Iraq.

The risks and consequences of acting alone are much greater than they would be for multinational action. The risks to our troops are greater. If allied forces do not join the mission, our troops will be bearing that burden all by themselves. The challenge in post-conflict Iraq will be greater if other nations do not share this responsibility or this burden. Also, I believe the consequences for the war on terrorism will be greater if we lose the essential cooperation of other nations.

There is a lot of disagreement about going to war: whether we should go to war now; whether we should go to war at all; whether we should go to war alone or whether we should continue to work through the United Nations. I have stated my own positions. But I believe there is something all Americans agree on; that is, we must support our troops. We must stand up for those who are standing up for us. We must protect our defenders, the brave men and women of our military, and we must support them not only with words but with deeds. That means ensuring that our troops have the best and smartest weapons, that they have the training and the equipment they need.

But while we are standing up for our military, we must also stand up for their families. Our troops will face grave danger. They should not have to face fear for their families, and particularly they should not have to worry about their families' finances.

Although America is on the brink of war, American military families must never be on the brink of bankruptcy. That is why we, in the Senate, must take immediate steps to support military families.

There is legislation pending. Let's provide tax relief to military families. Let's pass legislation to help the families of the National Guard and the Reserves who have been called up for longer periods than at any time in the past 40 years.

Each and every member of our military is part of the American family. Their service is a tremendous sacrifice and great risk. These are ordinary men and women called upon to act in an extraordinary way. Whatever their Nation asks them to do, I know they will do it with bravery, fortitude, and gallantry. All Americans owe them a debt of gratitude.

Members of the military, though, do not just need our gratitude through words; they need our gratitude through deeds. That is why I support two immediate steps and call upon the Senate to join with me and other like-minded colleagues to advance these steps.

I believe the Senate must quickly pass legislation to ease the tax burden