

Domenici, Mitch McConnell, Jim Bunning.

Mr. FRIST. I ask unanimous consent that the live quorum provided for under rule XXII be waived.

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

#### LEGISLATIVE SESSION

Mr. FRIST. I ask unanimous consent that we resume legislative session.

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

#### PARTIAL-BIRTH ABORTION BAN ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If I could ask a question of the manager of the bill, the distinguished Senator from Pennsylvania, has the Senator had an opportunity to look over the unanimous consent request that we submitted to staff earlier today regarding the late-term abortion matter that is now before the Senate?

Mr. SANTORUM. We have been reviewing the one amendment. Has the Senator submitted all the other amendments? Only one amendment has been submitted, to my knowledge.

Mr. REID. I apologize for that. I thought staff had all the amendments, but the Senator does have our amendment, of course. It has been filed.

Mr. SANTORUM. We have one amendment. That is the only one I am aware that we have.

Mr. REID. We will make sure the Senator gets all the amendments. Can we agree on a time on this amendment before us without any second-degree amendments?

Mr. SANTORUM. Yes. In fact, I just spoke to the Senator from Washington about this.

Mr. REID. I am sorry.

Mr. SANTORUM. I suggested we would be willing to accept the amendment. She has requested that we have a rollcall vote of some sort. I am happy to agree on a reasonable time agreement.

Mr. REID. That would be fine. We would be happy to.

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.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SANTORUM. Mr. President, we are working in good faith. I thank the Democratic whip for his willingness to try to work through these amendments. We are reviewing, on our side, the Murray amendment. There may be some concerns about it. We are hopeful to get a resolution and enter into a unanimous consent agreement on the disposition of that amendment.

We have just been handed another amendment. That is a positive step, a

step in the right direction. We are hopeful we can proceed with a vote on the Murray amendment sometime today, and maybe another vote later this evening; if not, tomorrow morning. So there are fewer than a half dozen amendments we are aware of on this legislation. It looks as though we are making some progress.

Again, I thank the other side of the aisle for their cooperation.

I want to go back and go over some of the issues that have been discussed today about the underlying bill, which is the Partial-Birth Abortion Ban Act, and provide the context in which this legislation comes to the floor of the Senate.

Back three Congresses ago, in 1995 and 1996, this procedure had been unearthed, if you will. There was some medical literature that some Members of Congress found so abhorrent, for obvious reasons, that there was a strong belief that this procedure should be banned. So for three consecutive Congresses, the House of Representatives and, for two of those Congresses, the Senate debated this issue—always being blocked by the President of the United States and then, on the third attempt, by the U.S. Supreme Court.

We are now here with a version of the bill that is different from the previous versions. The version that was considered by the U.S. Supreme Court.

The reason we are back is not just to say the Court was wrong or that we disagree with the Court's judgment on constitutionality, although I do. I have to say the Court's view of the constitutionality of abortion statutes is really quite remarkable. It is not, as has been depicted by many on the other side with whom we have debated this issue in the past, that Roe v. Wade allows absolute freedom of choice in the first trimester, provides some limitations in the second, greater limitations in the third trimester. Lots of statements have been made on the floor that that is the case. Statements have been reported in the press. The press themselves have adopted this analysis of Roe v. Wade.

That is not what Roe v. Wade says—or Doe v. Bolton, its companion case—and not what subsequent cases from the U.S. Supreme Court have held. If that were the case, then the U.S. Supreme Court would have upheld the partial-birth abortion case.

Why? Because if there are legitimate restrictions on the right to abortion in the second and third trimester, I can't imagine a more legitimate restriction. But that is not what the Court has said. The Court has basically said there are no restrictions on abortion. It really is quite amazing that a right that was created, as I understand, by judicial fiat, not by the legislative process and not by the constitutional amendment process—I dare anyone to look at the U.S. Constitution and find the right to abortion. It does not exist in the U.S. Constitution. But by judicial fiat, by an act of judicial activism, this right was created.

Interestingly enough, this right, since it was created by nine people, they have no limitation on how they define it because there is nothing in the written Constitution that limits their own interpretation. It is what they say it is. It is a pure case of positive law created by an unelected group of men at the time.

What they are saying is absolutely right. There are no restrictions—none. I would challenge any of you to go through the Constitution, go through the Bill of Rights, and look at the rights within our Constitution and find another right in the Constitution that has no limit, that has no restriction. Every other right written in the Constitution has a limit, has curbs. The courts have permitted it, except this right that doesn't exist in the Constitution.

When we approach this issue of partial-birth in trying to find, in a sense, a way to put this procedure outside of Roe, I would argue that was the argument all along. And I believe back in 1996 when I argued this, it did not belong under Roe v. Wade. There are no health concerns of the mother. That is what makes all of the abortion basically unlimited up until the moment that the child is separated from the mother; that there is always a reason for the health of the mother and health defined under Roe v. Bolton means anything—stress, anxiety, fear. Anything associated with mental or physical health counts for allowing abortion up to the time of the separation of the child from the mother.

That is why I said there are simply no restrictions. We looked and questioned whether the partial-birth abortion procedure affects the health of women. The answer is clearly no. It does not.

There is a huge amount of congressional testimony both here in the Senate, with debates on the floor, debates on the floor of the House, testimony, overwhelming evidence, dispositive evidence that this procedure is never—I underscore the word “never”—medically necessary to preserve the health of the mother. That is a strong word, “never.” That is an absolute term—“never.” I use it with complete comfort—and have for 7 years here on the floor of the U.S. Senate. I did earlier today when I said, as I have repeated over and over again to those who believe that a health exception is necessary, give me a medical case in which a partial-birth abortion is medically necessary to preserve the health of the woman. Give me a case where it is preferable—not just necessary, where it is preferable. I can give you quote after quote, from the AMA to C. Everett Koop to the experts in late-term abortions, all of whom have said not only isn't it medically necessary but it is bad medicine. It is unhealthy. It is contraindicated.

The overwhelming body of medical evidence is that it is outside the scope of medicine. It is not taught in medical

schools anywhere. It is not done in hospitals. It is done in abortion clinics. Why? Ask the doctor who designed the procedure. The doctor who designed the procedure said he did it for one reason. He could do more abortions in a day because this procedure took 15 minutes, and the other late-term abortion procedures took 40 minutes. He could do more abortions. He could make more money.

When we hear this debate from those on the other side who talk about how we have to be compassionate for the health of mothers, let me assure you, as a father of seven children, I am very compassionate to the health of mothers during pregnancy. This is not a procedure that was contemplated to be helpful to the health of mothers or is necessary or is even preferable to preserve the health of mothers. This is a rogue procedure. This is a gruesome, brutal procedure where the doctor delivers a child in a breech position.

I just try to imagine myself in that position, having been at the birth of seven children, seeing that delivery, being there and seeing how the doctor carefully handles the child being delivered. As you will see in the chart, the doctor is holding this child alive. This baby is alive in the abortionist's hand. He has his hand wrapped around this child, which is alive, moving, feeling, heart beating, and nerves feeling.

As you can see on the chart, a doctor is holding the child in his hand.

The Senator from Tennessee is here, and I will yield to let him speak.

But I know what doctors are instructed to do when faced with a living human being in their care. I know the instinct has to be, How can I help this patient? But in the case of a partial-birth abortion, this child doesn't count as a patient. Nevertheless, it is a human being.

If you look at this chart, this is clearly a human being. This is a child with 10 toes, 10 fingers, arms, and legs. This is a human being, and nothing but a human being.

Look at the hands of that doctor grasping this child, grasping this living human being, holding it—a doctor who took a Hippocratic oath holding this human being in his or her hand.

I just try to imagine what goes through the doctor's mind when he takes a pair of scissors and probes this living being whose nerves work, whose brain functions, whose heart is beating, and finds the place to thrust a pair of scissors into the baby's skull; holding this child, feeling the child's pain, feeling its reaction to being executed, and then proceeding to suction the child's brains.

I am just troubled that we allow this to continue in America; that we allow this procedure to be used by people who are there to heal. What we say to so many in our society is how we value life, and yet we let the most vulnerable among us be treated in such a fashion.

Our leader is here. I will be happy to stop with my remarks and yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The majority leader is recognized.

Mr. FRIST. Mr. President, I rise in support of the Partial-Birth Abortion Ban Act of 2003. I want to spend a few minutes discussing the underlying bill, and then later have an opportunity to come back and talk specifically about some amendments that will be coming to the floor.

I will in part be talking about the procedure as a medical procedure, and also discuss some of the myths that surround the very specific procedure that is defined in this particular bill.

I rise to speak on this particular issue with a deep passion not only for the protection of life but also for the ethical practice of medicine.

Before coming to the Senate, I had the opportunity to study and practice medicine for 20 years. Although I am not an obstetrician, I have delivered many babies in the past. I have had the privilege, as a cardiovascular surgeon, to operate on a number of premature infants born probably about 3 or 4 weeks later than the infant—or the fetus, in this case—that is depicted in this picture, about 3 weeks after that.

I do speak as a surgeon and a board-certified surgeon. This is a surgical procedure. I have had the opportunity to do thousands of surgical procedures as well as mend the hearts and vascular systems on babies this size.

As a surgeon, let me say that there are certain ethical bounds to the application of surgical procedures, and these are bounds that in a moral sense should never be crossed by a surgeon. It is interesting that the people who developed this procedure, and its loudest proponents, are not surgeons but practitioners, and they are not board certified in a field that would be consistent with performing procedures such as this. That is important because people have this image that once recognizing there are hundreds and indeed thousands of these procedures, in all likelihood, performed every year, that you would have certified surgeons performing them, but that is not the case. For the most part, general practitioners are performing these procedures.

From a medical standpoint, I took an oath to treat every human life with respect, with dignity, and with compassion. Abortion takes life away, and partial-birth abortion, this particular procedure, does so in a manner that is brutal, barbaric, and morally offensive to the medical community.

I will not concentrate on the politics of partial-birth abortion, but talk a little bit about the disturbing facts of partial-birth abortion as a surgical procedure, a procedure that clearly should and must be banned.

The fact is that partial-birth abortion is a repulsive procedure. The procedure is straightforward in description; people have seen the various charts. This depicts a late stage in that particular procedure. It begins, as de-

scribed by its greatest advocate, by, inside the uterus, manipulating the fetus and turning the fetus around so it can be delivered feet first, delivering the feet through the uterus and through the cervical canal to the position that is depicted in this particular diagram, and then taking scissors which are about 8 inches long, called Metzenbaum scissors, and thrusting them into the back of the base of the skull. Then, because that opening is not sufficient to drain the brains from the fetus itself, it requires a forcible opening of the scissors. If you were to take a regular pair of scissors—although the Metzenbaum scissors are longer—forcibly opening those scissors so the end of the scissors will split the skull wider so the brain can be evacuated and other contents within the skull.

Once the skull is allowed to collapse because of the evacuation of the brain and the intracranial contents, the skull itself collapses. And you can see how large the skull is to actually come through the cervical canal and through the birthing canal. It is necessary at this late stage because, as you can see, this, if born now, would be a premature infant. I will come to what the survival is if at this stage this fetus was actually delivered alive instead of dead.

The thrusting of the scissors into the base of the skull and the cranium itself takes this living fetus and kills the fetus itself. One of the problems is at this late stage in development, the neurological system is fully developed, fully developed to the point that with cervical blocks, which is the type of anesthesia typically used, or as is described by the father to this procedure, the fetus itself will feel that pain of thrusting the scissors in the back of the head.

This particular procedure is most commonly performed between 20 and 27 weeks. That is in the second trimester of pregnancy. People ask how far developed the fetus is. Pictorially, that gives you a pretty good idea of how well developed the fetus is. But to put that in perspective, 20 to 27 weeks, that is when most of these are performed. If you look at the early side of that, between 20 and 23 weeks, if that fetus was not killed but was just delivered at that point in time, overall survival today is about 30 to 50 percent. If you go to the period of 24 to 25 weeks—remember, this procedure is performed between 20 and 27 weeks—overall survival if the fetus had not been killed by using the scissors, the survival rate would be around 60 to 90 percent.

So these are premature infants. That is why people such as Senator Moynihan, who used to be in this body, call it the equivalent of infanticide, because these are performed at a time where if the infant were not killed, the infant would be delivered and although, yes, premature, would have better than a 50/50 percent chance of survival.

So when you hear about the procedure itself and you listen to the description, it is hard to imagine a more

grotesque treatment or tortuous treatment of what, if delivered without being first killed, would face a fighting chance of being a healthy human being.

Partial-birth abortion exists today. The procedure is performed in America every day. That is the reason this body, I believe strongly, must act and act with a ban to put a stop to this morally offensive procedure that is a fringe procedure, that is a rogue procedure that is being applied each and every day. We must stop it.

The reason I describe—it is worth looking at these pictures—this procedure in detail is not to shock. That is not the purpose. It really is to inform. The description I gave you is a typical medical way of describing the procedure itself. I will say, being a physician and being board certified, it is my responsibility not to shock but to depict the procedure as spelled out in the bill, a very specific procedure as it really is, the reality of the procedure itself.

It is critical that we debate this in terms of that framework of reality, no matter how disturbing the reality is.

There are a number of arguments by people who say, no, we should allow this procedure, as morally offensive and repulsive as it is, to continue.

I would like to take some of those myths. I will present them as myths because that is what they are. First, some say that partial-birth abortion may be necessary to preserve the health of the mother. That is not true. Never has partial-birth abortion, the specific procedure that is described in the bill itself, never has it been the only procedure or the best procedure available in the case of a medical emergency. You have to remember that this procedure takes 3 days. In fact, the alternative procedure—I am not an advocate of the alternative procedure that is accepted within the medical community—does not take 3 days. So when you are talking about medical emergencies and people say, it is the best alternative out there, that is not true. It is a dangerous procedure.

The only advantage I can see of partial-birth abortion—which is a disturbing advantage; therefore, I wouldn't call it an advantage or a benefit—is the guarantee, by the thrusting of the scissors into the brain and evacuation of the brain, of a dead infant.

Still, in the remote chance—and I argue hypothetical, because I have not been able to talk to anybody today who has said partial-birth abortion would be required to save the life of a mother because, remember, it takes 3 days. When you have procedures that are within ethical bounds, accepted by the medical profession and taught in medical schools, you have alternative procedures. But in the remote chance—again I argue hypothetical—the ban would not apply if it were to save the life of the mother.

Second, some would say that partial-birth abortion is the best option to preserve the health of the mother. I argue, no, it is a dangerous option. Let me

paraphrase an article in the Journal of the American Medical Association, published on August 26, 1998. There are “no credible studies” on partial-birth abortion that “evaluate or attest to its safety” for the mother. Partial-birth abortion, as described in the bill, is more dangerous to the health of the mother than the alternative procedures. There is a much greater danger.

The cervix itself is right here on the chart. This is the uterine cavity. You see the size of the head and the instrumentation of the hand and the instruments, which expand the cervix, which is the smallest part of the bottom of the uterus. When you overextend and expand that, you come to what is called cervical incompetence. This comes to the health of the mother long term, because cervical incompetence can have longstanding side effects to the mother.

Right here, those are the Metzenbaum scissors. It looks like a suction device. You can see those are about 8 inches long. Metzenbaum was the person who first described these scissors. The blunt instrumentation is done blindly. You cannot see. What you are doing is putting two fingers down, pulling down on the shoulders, putting the scissors on the top, and feeling this little indentation and thrusting inside. It is all done blindly—the manipulation of the two fingers and the manipulation of turning the fetus itself, as well as putting in the blunt instrument of the scissors. Once you insert the scissors that deeply into the uterus blindly, forcibly into the skull, if it doesn't go into the skull, it perforates the uterus.

The alternative procedures today—again, I am not supporting third trimester abortions and, to me, they are all repulsive. But it is important for people to know the alternative procedures don't involve the Metzenbaum scissors. It is done with an injection into the heart itself directly, or guided by ultrasound, very carefully controlled. It is not this blind procedure.

Comparing the various procedures is important because we keep hearing from certain people that this is the safest, or will be the safest or best alternative. It is simply not true. It is more dangerous. There is the danger of infection because of the increased manipulation that is required in this procedure itself, secondary to the performance of this procedure.

The third myth is the medical community—I was jotting notes when people were saying it infringes on the doctor-patient relationship. It says specific medical procedures that should not be banned by Congress. You know, first of all, that is not true. As a physician, you don't like big government coming in and telling you what you can and cannot do. Most people in life don't like Government intruding into their lives. And that doctor-patient relationship being as special as it is, you don't want Government coming in and saying yes, no, come in with that pro-

cedure. I feel the same way, generally. But as I opened up, I said there are certain ethical bounds and, yes, as a profession, we take certain oaths. One of them is the Hippocratic oath of doing no harm. But there is a certain ethical boundary and framework that, no matter who or what you are, you never go outside. But we have people going outside those ethical bounds. I argue that they are hurting women, when alternative procedures that are much safer are available. Thus, we must put a stop to that. And because it is performed every day, and it is outside of the ethical bounds, we are obligated to redefine those bounds in this particular case.

The bill says this is a rogue procedure that is never medically necessary and is condemned by the medical community. It has absolutely no place in the doctor-patient relationship. This is where the myth comes in, because that relationship is built on trust. That is the whole essence of the relationship between a woman and her physician, or a patient and a doctor. That trust has got to be built on moral behavior. What makes medicine a profession is this body of professional ethics, coupled with the specialized knowledge; and this goes outside the bounds of that framework of ethics, of morality.

Thus, I argue that this procedure, performed as it is across this country today, is offensive, is repulsive to this whole concept of the doctor-patient relationship, which is built on trust and moral behavior. This procedure is not moral.

People have made comments, “Where is the AMA?” There have been statements that the AMA does not oppose partial-birth abortion, or does. Let me just say the American Medical Association has supported this ban in the past. They oppose this specific procedure in this bill better, I would say, because it is more specifically defined than in the past bills; they oppose this specific procedure.

People say, well, the AMA is not out there saying this is the greatest bill on earth today. That is because it goes back to what I said, that they don't like the idea of anybody coming in and telling a professional what to do and what not to do. Let me leap back to what I said, and then I will go back.

The people who invented the procedure are not surgeons. They are not board certified. They operate outside the peer-reviewed literature. You cannot really go and find—because it is not accepted—this particular procedure in the peer-reviewed literature, which shows a certain amount of acceptance and respect in the mainstream community. It is simply not there.

The fourth myth I want to comment on is that some say making these specific techniques of partial-birth abortion a crime would make performing all late-term abortions almost impossible, and it would discourage doctors from performing legal abortions in all circumstances. I put this second to last

in terms of the myths. I oppose abortions, but for those people who believe in abortions, it is important for them to know this is a myth. I can say that because in the bill, the partial-birth abortion is very specifically and tightly worded and described, so that the ban, or the prohibition, would be just on the techniques that were described earlier and that have been pictorially described on the floor of the Senate—that is, the partial-birth abortion procedure.

There are alternative procedures, and I also find those offensive; but some people do not find them offensive. Those would still be legal. So this idea that a very tightly worded ban on a specific procedure, which is a subset of other types of procedures that are done, would stop, would make all abortions illegal, is simply not true. Again, I come back to those alternative methods are safer.

The fifth and last myth is that some say partial-birth abortion is accepted as mainstream medicine. That is not true. This is a fringe procedure. It is not found in the common medical gynecological textbooks, obstetrics textbooks that our medical students are taught with today. It is not taught in medical schools or surgical residency programs. It is outside the mainstream. If one looks at all the obstetrics and gynecologic residency programs, only 7 percent provide routine training for even mainstream third-trimester or late abortions. That is only 7 percent. To the best of my knowledge, none—none—in the residency programs teaches or would teach this specifically described partial-birth abortion procedure.

Today's doctors are simply not trained with this procedure—yet we have people performing it—because it is dangerous, because it is a rogue procedure, and because it is outside the mainstream of generally accepted medical and surgical practice.

I will mention one last time, the most prominent practitioners of partial-birth abortions are not trained obstetricians, but are general practitioners. Partial-birth abortion is an affront to the safe and reputable practice of medicine.

The question often arises as to how often these abortions, using this technique, are performed. It is hard to get good data, but if we look at the data that is provided and that we can collect, it is not as uncommon a practice as one might think.

In 1996, the research arm of Planned Parenthood asked doctors for the first time a question on partial-birth abortion. The question produced an estimate at that point in time, 1996, that 650 such abortions were performed using this technique annually in the United States. The same survey found that in the year 2000, over 2,200 partial-birth abortions were performed in the United States—2,200 deaths purposely caused by this technique, by this rogue procedure. That is why we have this

call to action which we have debated on this floor now in this Congress and, indeed, in the last Congress and in the Congress before that.

An interesting side piece of data is that Kansas, the only State that requires separate reporting for partial-birth abortions, in 1999 said 182 procedures of partial-birth abortion were performed on viable fetuses. Of interest to all, 182 of those procedures were performed for mental health reasons, but not for physical health reasons—not for physical health reasons. It is important to understand because we have an exclusion for life of the mother, but none of those was performed for life of the mother. Why? Because there are alternative procedures that are safer and quicker and less invasive for the mother.

A vast majority of Americans support a ban on partial-birth abortion. Their will was reflected in the 104th Congress and in the 105th Congress, and in both of those Congresses the House of Representatives passed this ban and the Senate passed this ban. Sadly, both of those efforts were vetoed by President Clinton.

Today, partial-birth abortion remains the law of the land, and we are going to change that. It is going to be changed in this body, and hopefully we can complete this bill tomorrow night and then move to the House of Representatives and then a bill will be sent to the President which I expect will be signed.

Partial-birth abortion is a morally offensive procedure. It is time to ban it. We as a society respect human life far too much to let it be ravaged in such an inhumane way: a living infant partially delivered, stabbed with 8-inch scissors, emptied of the contents of its skull, and then pulled from its mother dead. Never has this procedure been the only or the best one available to protect the health of the mother. In fact, as I pointed out, partial-birth abortion carries a greater risk of doing harm. That is why this procedure is morally offensive to doctors, not only as individuals but as professionals.

In closing, I ask my colleagues, as we debate this bill, that we do so with the barbaric reality, with the brutal reality of this heinous procedure in mind, and not be sidetracked by the myths of partial-birth abortion, especially that would in any way imply that this is an accepted mainstream medical procedure. It simply is not.

Instead, we need to ask one simple question: Does partial-birth abortion carry the danger of doing unnecessary harm to a mother, to an infant, and to our conscience as a nation that values the sanctity of human life? The answer is yes. That is how I will vote, and I urge my colleagues to vote the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, will the distinguished leader yield?

Mr. FRIST. Mr. President, I will yield.

Mr. BYRD. Mr. President, I ask unanimous consent that I may ask a question without losing my right to the floor.

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

Mr. BYRD. How did I vote on this question the last time we voted?

Mr. FRIST. Mr. President, I will find out shortly how the distinguished Senator from West Virginia did vote.

Mr. BYRD. I thank the distinguished leader.

Mr. FRIST. Mr. President, I am informed that in the 106th Congress, the Senator from West Virginia voted yes to ban this procedure.

Mr. BYRD. I thank the distinguished leader.

Mr. President, I see two other Senators here who have been waiting. I have the floor, do I not?

The PRESIDING OFFICER. The Senator does have the floor.

Mr. BYRD. I thank the Chair. I hope I can yield to the distinguished Senator from California, Mrs. BOXER—for how long?

Mrs. BOXER. Ten minutes.

Mr. BYRD. Ten minutes, without losing my right to the floor, and then I may yield to the distinguished Senator from Ohio, my next-door neighbor, for 15 minutes, without losing my right to the floor, and that I will then be recognized as I am now recognized.

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

Mr. BYRD. I thank the Chair. I thank all Senators.

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

Mrs. BOXER. Will the Chair please inform me when I have a minute left?

The PRESIDING OFFICER. The Senator will be informed.

Mrs. BOXER. Mr. President, when a bill that deals with a medical procedure comes before the Senate, that in itself is very rare. When a bill comes before the Senate that bans a medical procedure that many women have stated saved their lives, preserved their fertility, stopped them from having a severe health impact, I think it is important to turn to the people who know the most about this, and that is the OB/GYNs who choose, as their way of life, delivering children, who get their satisfaction in their work by staying close to a pregnant woman and seeing her through a pregnancy.

Hearing Senator FRIST's comments is very interesting to me, but I have to say I have read his bio, and there is nothing in here about delivering babies. Maybe he did when he was in school or as a resident. But what we are talking about here is OB/GYNs. What do they think? Why is that important? Because that is their life.

Let me tell my colleagues what the OB/GYNs say:

Partial-birth abortion does not exist.

They are not the only ones who say that. The fact is the Supreme Court said that. They said the bill is so

vague; it made up a term, "partial-birth abortion."

There is no such thing as partial-birth abortion, a very emotional term. But what we are talking about is a procedure that is used in a situation where any other procedure might cause grave harm to the woman.

Now, the AMA does not support S. 3. I hope Senator FRIST is aware of this. He is busy talking, which is fine, but I ask unanimous consent that the AMA statement that says they do not support S. 3 because it includes a provision that would impose a criminal penalty on physicians be printed in the RECORD.

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

AMERICAN MEDICAL ASSOCIATION,  
March 10, 2003.

The Senate is considering a bill that would ban the procedure known as intact dilation and extraction, more commonly referred to as partial birth abortion. The American Medical Association (AMA) has previously stated our opposition to this procedure. We have not changed our position regarding the use of this procedure.

The AMA also has long-standing policy opposing legislation that would criminalize medical practice or procedure. Since S. 3 includes a provision that would impose a criminal penalty on physicians performing intact dilation and extraction, the AMA does not support this bill.

Mrs. BOXER. Then I want to tell a story. My colleagues have an artist's rendering, but I want to show a photograph of a woman named Coreen Costello. I want my colleagues to listen to this because it is not a made-up picture. It is a real picture of a real family and a real woman. Why don't my colleagues listen to it because I think this is what we are supposed to be about, real people facing real problems and what we are about to do by passing radical legislation, which is unconstitutional on its face. It did not even go to the committee. I say to my friends, it did not even go to the Judiciary Committee, although the Supreme Court said it was unconstitutional. The least they could have done was bring it back to the committee and look at what the Court said, that the definition was broad, it was vague, it could ban more than one procedure and that it had no exception for the health of a woman.

Listen to the story of Coreen Costello. She says:

I am writing to you on behalf of my family. I have testified before both the Senate and the House concerning the so-called partial-birth abortion ban. I have personal experience with this issue for at 30 weeks pregnant I had a procedure that would be banned by this legislation. When I was 7 months pregnant, an ultrasound revealed that our third child, a darling baby girl, was dying. She had a lethal neurological disorder and had been unable to move any part of her tiny body for almost 2 months. Her muscles had stopped growing and her vital organs were failing. Her lungs were so undeveloped, they barely existed. Her head was swollen with fluid and her little body was stiff and rigid. She was unable to swallow amniotic fluid and as a result, the excess fluid was puddling

in my uterus. When we learned about our baby's condition, we sought out many specialists and educated ourselves. Our doctors, five in all, agreed that our little girl would come prematurely and there was no doubt that she would not survive. It was not a matter of our daughter being affected by a severe disability—her condition was fatal. Our physicians discussed our options with us. When they mentioned terminating the pregnancy, we rejected it out of hand.

I want my colleagues to hear this, and I ask that there be order in the Chamber.

The PRESIDING OFFICER. The Senate will come to order.

Mrs. BOXER. I have listened to my colleagues, and I would appreciate it if they would hear a story of a woman named Coreen Costello, because if this procedure were to be banned—and I see that Dr. FRIST has left the floor—this woman could have died. But they leave the floor, and that is their prerogative.

This is what Coreen Costello writes:

We are Christians and we are conservative. We believe strongly in the rights, value and sanctity of the unborn. Abortion was simply not an option we would ever consider. This was our daughter. Instead, we wanted our baby to come in God's time and we did not want to interfere. We chose to go into labor naturally. It was difficult to face life knowing we were going to lose our baby but it became our mission to make the last days of her life as special as possible. We asked our pastor to baptize her in utero. We named her Katherine Grace. Another ultrasound determined Katherine's position in my womb. It was not conducive for delivery. Her spine was so contorted it was as if she was doing a swan dive, the back of her feet almost touching the back of her head. Her head and feet were at the top of my uterus. Her stomach was over my cervix. Due to swelling, her head was already larger than that of a full-term baby.

I say to my friends, this is real life. This is a situation of a woman who never, ever wanted an abortion. She said:

As my condition worsened, we again considered our options. Natural birth or induced labor were not possible. We considered a cesarean but the experts felt the risk to my health and my life were too great.

We have a bill before us that makes no exception for the health of the woman. I was in the Chamber yesterday. We had a very tough debate, and the question was asked, How low can we sink? I have to say, when we hear stories such as this, that happen to real people—and if this were our daughter or our wife or our aunt, would we not say, save her life and her health?

The bottom line is this: This woman had the procedure that would have been banned with this bill. I ask unanimous consent that the entire letter be printed in the RECORD.

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

TESTIMONY OF COREEN COSTELLO

My name is Coreen Costello and I am writing to you on behalf of my family. I have testified before both the Senate and the House concerning the so-called "partial birth abortion" ban and my family was with the President when he vetoed his legislation. I have

personal experience with this issue for at 30 weeks pregnant I had a procedure that would be banned by this legislation.

On March 24, 1995, when I was seven months pregnant an ultrasound revealed that our third child, a darling baby girl, was dying. She had a lethal neurological disorder and had been unable to move any part of her tiny body for almost two months. Her muscles had stopped growing and her vital organs were failing. Her lungs were so undeveloped, they barely existed. Her head was swollen with fluid and her little body was stiff and rigid. She was unable to swallow amniotic fluid and as a result, the excess fluid was puddling in my uterus (a condition known as polyhydramnios). When we learned about our baby's condition, we sought out many specialists and educated ourselves to see what we could do to save our child. My husband is a chiropractor and we are very proactive about our health care. We are generally skeptical about the medical profession and would never rely on the advice or diagnosis of just one doctor. However, our doctors (five in all) agreed that our little girl would come prematurely and there was no doubt that she would not survive. It was not a matter of our daughter being affected by a severe disability—her condition was fatal.

Our physicians discussed our options with us. When they mentioned terminating the pregnancy, we rejected it out of hand. We are Christians and conservative. We believe strongly in the rights, value and sanctity of the unborn. Abortion was simply not an option we would ever consider. This was our daughter.

Instead, we wanted our baby to come on God's time and we did not want to interfere. We chose to go into labor naturally. It was difficult to face life knowing we were losing our baby. But it became our mission to make the last days of her life as special as possible. We wanted her to know she was loved and wanted. We asked our pastor to baptize her in utero. We named her Katherine Grace—Katherine meaning pure, and Grace representing God's mercy.

Another ultrasound determined Katherine's position in my womb. It was not conducive for delivery. Her spine was so contorted it was as if she was doing a swan dive, the back of her feet almost touching the back of her head. Her head and feet were at the top of my uterus. Her stomach was over my cervix. Due to swelling, her head was already larger than that of a full term baby. For two weeks I tried exercises in an attempt to change her position, but to no avail. Amniotic fluid continued to puddle into my uterus at a rate of great concern to my doctors. I was carrying an extra nine pounds of fluid. It became increasingly difficult to breathe, to sit or walk. I could not sleep. My health was rapidly deteriorating. My family and friends were much more aware of my health decline than I was. My complete focus was on Katherine.

As my condition worsened, we again considered our options. Natural birth or an induced labor were not possible due to her position and the swelling of her head. We considered a Cesarean section, but experts at Cedars-Sinai Hospital felt that the risks to my health and possibly to my life were too great. A Cesarean section is done to save babies. It can be a life saving procedure for a child in stress or one who cannot be delivered vaginally. It is not the safest for a woman. There is an increased mortality rate with Cesarean section. In my case, even if a Cesarean could be done, Katherine would have died the moment the umbilical cord was cut. There was no reason to risk my health or life, if there was no hope of saving Katherine. She would never be able to take a breath.

Our doctors all agreed that an intact D&E procedure performed by Dr. James McMahon was the best option. I was devastated. I could not imagine delivering my daughter in an abortion clinic. But Dr. McMahon was an expert in cases similar to mine. My situation and Katherine's condition were not new to him. He explained the procedure to us. My cervix would be gently dilated to maintain its integrity. Once I was dilated enough, Dr. McMahon could begin the procedure. In order for Katherine to be delivered intact, cerebral fluid would be removed, which would allow her head to be delivered without damage to my cervix.

It took almost three hours to deliver our daughter. I was given intravenous anesthesia. Due to Katherine's weakened condition, her heart stopped beating during the procedure. She was able to pass away peacefully in my womb.

Some who support his bill have stated that I do not fit into the category of someone who had a so-called "partial birth abortion" because I contend my baby died while still in my womb. Is this relevant? When the procedure began, her heart was still beating—who could predict for certain when she would actually pass away? If this legislation were passed, an intact D&E would not have been an option for me. The fact is, I had the procedure outlined in this legislation. Since I present the procedure as humane, dignified, and necessary, somehow this means I must have had a different procedure and am not relevant to this bill. This is simply not true.

I come to you with no political motivation, rather I come with the truth. I have experience of an intact D&E. Some want you to believe their horrific version of this procedure. They have never experienced an intact D&E. I have. This procedure allowed me to deliver my daughter intact. My husband and I were able to see and hold our daughter. I will never forget the time I had with her, nor will I forget her precious face. Having this time with her allowed us to start the grieving process. I don't know how we would have coped if we had not been able to hold her. Moreover, because I delivered her intact, experts in fetal anomalies and genetics could study her condition. This enabled them to determine that her condition was not genetic. This was crucial for us in deciding whether or not to have another child.

No one predict how a baby's anomalies will affect a woman's pregnancy. Every situation is different. We cannot tie the hands of physicians in these life and health saving matters. It is simply not right.

With my health maintained, my cervix intact and my uterus whole, we were able to have another child. On June 4, we were blessed with a beautiful healthy baby boy. He is our delight! He is not a replacement for his sister. There will always be a hole in our hearts where Katherine Grace should be. He is, to us, a sign that life goes on. We cherish every moment we have with Tucker, and with our two other children, Chad and Carlyn. What precious gifts God has given to us.

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

Mrs. BOXER. She concludes:

Losing our daughter was the hardest thing we have ever experienced. It has been difficult to come to Washington and relive our loss. And it's ironic that I, with my pro-

foundly pro-life views, would be defending an abortion procedure. God knows I pray for the day when no other woman will need this procedure, but until there is a cure for the cruel disorders that can affect babies, women must have access to this important medical option.

The PRESIDING OFFICER. The Senator from California has 1 minute remaining.

Mrs. BOXER. In conclusion, in my last minute, I have told this story because what we are about to do, unless we adopt several of the amendments we will be offering, would mean that another woman such as this, another beautiful family such as this, might find that the woman has life-threatening illnesses if, in fact, she cannot have the procedure: hemorrhaging, uterine rupture, blood clots, embolism, stroke, damage to nearby organs, paralysis. This is what physicians tell us happens to women.

So my colleagues have a picture, and that is fine, although I have to say I hope the pages who feel a little queasy on this will not be forced to stay in the Chamber, but we are dealing with a circumstance that affects real people and these are the things that can happen to these women. I believe we have to have a voice, and the Murray amendment should pass because the Murray amendment would mean that women can have access to contraception and that abortion would become safe, legal, and rare. I yield the floor back to Senator BYRD, who I believe has the time.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio now has 15 minutes.

The Senator from Ohio. Mr. VOINOVICH. Mr. President, I will continue the debate in regard to the partial-birth abortion ban. This afternoon, I will talk about the constitutionality of this statute, S. 3. The argument has been made that this statute is unconstitutional, but I differ with my colleagues who make this argument.

Reference has been made to the Stenberg case that overturned the Nebraska partial-birth abortion law. I argue that the law in front of us, or the statute in front of us, is fundamentally different.

First, the language is different. The Partial-Birth Abortion Ban Act of 2003 provides a very precise definition of partial-birth abortion so that it is clear on the face of the legislation exactly what procedure is to be banned, unlike the Nebraska statute that was declared unconstitutional.

The bill would outlaw one, and only one, abortion procedure, and that is the D&X procedure, the partial-birth procedure we have been describing in very vivid detail on the Senate floor, the procedure that no one really can argue is anything less than barbaric and inhumane.

There is absolutely nothing vague, unclear, or ambiguous about how this bill defines the partial-birth abortion procedure.

To make this even more clear, it is useful to examine the law struck down

by the Supreme Court in the Stenberg case. The procedure was defined in that case by the Nebraska Legislature as follows, and I will read from that Nebraska law that was found to be unconstitutional, to show its difference from this law:

An abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery.

That is what the Nebraska law said. The phrase "partially delivers vaginally a living unborn child before killing the unborn child" was further defined in the Nebraska statute as follows:

Deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure; that the person performing such procedure knows will kill the unborn child and does kill the unborn child.

The Supreme Court held this language of the Nebraska statute covered more than just one abortion procedure. The definition used in the Nebraska statute implicated not only partial-birth abortion procedures, but it also implicated the more common dilation and evacuation or D&E methods, which is different from a D&X method we are dealing with in this statute.

For the record, a D&E, according to the nonpartisan Congressional Research Service, is described as follows:

D&E involves the dilation of the cervix and the dismemberment of the fetus inside the uterus. The fetal parts are later removed from the uterus either with forceps or by suction.

In other words, in a D&E procedure, an unborn child is essentially dismembered, limb by limb, piece by piece. During a D&E, an arm or leg is sometimes pulled into the birth canal before being twisted off, while the baby is still alive. The Justices thought this might be considered a partial-birth abortion under the Nebraska law definition because that definition, as I have just stated, includes any procedure in which a baby is delivered vaginally, even if that vaginal delivery is just a partial delivery.

At this point, it is worth repeating exactly how a partial-birth abortion procedure, again also known as a D&X procedure, is distinguished from a D&E procedure. The D&X or partial-birth abortion procedure was very well described by U.S. Supreme Court Justice Clarence Thomas in his dissent in the Stenberg case.

This is what Justice Thomas wrote:

After dilating the cervix, the physician will grab the fetus by its feet and pull the fetal body out of the uterus into the vaginal cavity . . . While the fetus is stuck in this position, dangling partly out of the woman's body, and just a few inches from a completed birth, the physician uses an instrument such as a pair of scissors to tear or perforate the skull. The physician will then either crush the skull or will use a vacuum to remove the brain and other intracranial contents from the fetal skull, collapse the fetus' head and pull the fetus from the uterus.

That is depicted in a later phase of this procedure in this picture.

In order to avoid any possibility of confusion, the bill before the Senate, S. 3, defines the phrase "partial-birth abortion" so narrowly that only the D&X abortion procedure is covered. No other abortion procedures—including the D&E procedure in which an unborn baby's arm or leg is pulled into the birth canal before being twisted off—could possibly be implicated by S. 3.

While we have already heard it read on the Senate floor during the debate, while I read it last night in this debate, I think it is important to again repeat the bill's definition of the partial-birth abortion procedure. According to the definition in this bill, S. 3:

(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 the 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;

My colleague from California and others have argued that the S. 3 definition of a partial-birth abortion still covers more than one abortion procedure. But she has never explained how this is possible. The description of partial-birth abortion in S. 3 is so precise and is based, frankly, on the description of a leading abortionist, Dr. Mark Haskell, a man about whom I spoke last night on the Senate floor, a man who regularly conducts these heinous procedures in my home State of Ohio. This is a very precise definition of a partial-birth abortion that leads absolutely nothing to the imagination.

Clearly, without question, S. 3 very precisely and very specifically addresses the first constitutional issue that was raised in the Stenberg case and is fundamentally different than the Nebraska statute that was declared unconstitutional by the U.S. Supreme Court. S. 3 would ban one and only one very specific abortion procedure. It simply imposes absolutely no undue burden on a woman's ability to obtain an abortion.

Let me turn now to the second issue, the second constitutional issue, and that is the health of the mother, which was the other issue raised in the Stenberg case. The so-called requirement that the statute must contain "the health of the mother" also springs from the notion of undue burden on the woman's ability to get an abortion.

The argument, as I understand, goes something like this: If a procedure is medically important to protect the health of the mother, banning that procedure would pose an undue burden on her ability to have an abortion. Yet in the case of the partial-birth abortion, medical experts have repeatedly con-

firmed that this callous act is never medically indicated. And because it is never medically indicated, banning it cannot possibly be an undue burden.

There is substantial evidence from past congressional hearings on this issue to support a finding obtained in the bill itself, and the bill makes these findings. It says in part, the following: Rather than being an abortion procedure that is embraced by the medical community, partial-birth abortion remains a disfavored procedure that is not only unnecessary to protect the health of the mother but, in fact, poses serious risk to the long-term health of women and, in some circumstances, their lives.

I remind my colleagues of a 1996 interview in which the former U.S. Surgeon General, C. Everett Koop, explicitly discussed partial-birth abortion. In that interview, a reporter for American Medical News posed the following question. This is what the interviewer asked.

President Clinton just vetoed a bill to ban partial-birth abortions, a late-term abortion technique that practitioners refer to as intact dilation and evacuation or dilation and extraction. In so doing, he cited several cases in which women were told these procedures were necessary to preserve their health and their ability to have future pregnancies. How would you characterize the claims being made in favor of the medical need for this procedure?

Dr. Koop responded as follows:

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

Similarly, in 1997 a House committee report on the subject cited over 400 OB/GYN and maternal/fetal specialists who have unequivocally stated:

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

The majority leader of the Senate, a medical doctor, gave us, a few moments ago, the benefit of his wisdom, of his experience on this issue. The point I believe is worth repeating because it is notable that so many doctors are willing to come right out and say: No, this is absolutely not necessary; we can never find one instance in which it is medically indicated.

Doctors usually don't say things like this. They just don't like being that definite because medicine, by definition, is usually a case-by-case situation, a case-by-case profession. But this issue is different. On this issue, it is crystal clear, partial-birth abortions serve no legitimate medical purpose that cannot be served by other means. As my colleague from Pennsylvania stated earlier today:

Over the past several years the Senate advocates of partial-birth abortion have never

produced even one case in which a partial-birth abortion is shown to be medically necessary.

Opponents of this bill go beyond just arguing about the merits of partial-birth abortion. They go further, probably because it is so gruesome that some of my colleagues are uncomfortable supporting it. Some of my colleagues would prefer to debate the issue of abortion more generally. They try to cast this debate as a debate about a broader issue, and that issue is reproductive freedom. But the issue before us today is not reproductive freedom; it is a much more narrow issue. The issue is very narrowly defined. It is simply the issue of partial-birth abortion. The issue before us is the very specific method of partial-birth abortion, a method that is particularly brutal and gruesome and wrong.

Brenda Pratt Shafer, a registered nurse who observed Dr. Haskell use the procedure to abort three babies in 1993, testified before our Senate Judiciary Committee in 1995. I would like to share with my colleagues what she said because she gave very gripping, very telling testimony.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DEWINE. I ask unanimous consent for 3 additional minutes.

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

Mr. DEWINE. Nurse Shafer described a partial-birth abortion she witnessed on a child of 26.5 weeks, and this is what she said:

Dr. Haskell brought the ultrasound in and hooked it up so that he could see the baby. On their ultrasound screen I could see the heart beat. As Dr. Haskell watched the baby on the ultrasound screen, the baby's heart-beat was clearly visible on the ultrasound screen.

Dr. Haskell went in with forceps and grabbed the baby's legs and pulled them down into the birth canal. Then he delivered the baby's body and arms. Everything but the head. The doctor kept the head right inside the uterus. The baby's little fingers were clasp and unclasp and his little feet were kicking. Then the doctor stuck the scissors in the back of his head and the baby's arms jerked out like a startle reaction, like a flinch, like a baby does when he thinks he is going to fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening, sucked the baby's brains out. Now the baby went completely limp. He cut the umbilical cord and delivered the placenta. He threw the baby in a pan along with the placenta and the instruments he had just used. I saw the baby move in the pan. I asked another nurse and she said it was just reflexes. That baby boy had the most perfect angelic face I think I have ever seen in my life.

As stated in a House committee report containing the transcript of this nurse's testimony:

The only difference between the partial-birth abortion procedure and infanticide is a mere 3 inches.

Three inches between life and death, between murder and lawful action, is clearly not enough. The time to ban this procedure once and for all is now. We cannot in good conscience let this

barbaric procedure continue to be legal.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, parliamentary inquiry: Has the Pastore rule run its course today?

The PRESIDING OFFICER. It has expired.

Mr. BYRD. It has. I thank the Chair.

Mr. President, I shall speak out of order, not long. My guess is that I will speak for 20 minutes or less.

The PRESIDING OFFICER (Mr. CHAFFEE). The Senator from West Virginia is recognized.

#### IRAQ

Mr. BYRD. Mr. President, the United Nations is in diplomatic disarray today as the foreign ministers from the world's most powerful nations scramble to find some scrap of common ground on the question of war with Iraq.

What a difference a few months makes. Last November, under the leadership of the United States, the 15-member U.N. Security Council unanimously approved Resolution 1441, strengthening the weapons inspection regime and giving Iraq a final opportunity to comply with its disarmament obligations.

The rapidity with which that unity has unraveled is astounding. What began as a constructive process to gain international support for war against Iraq has disintegrated into insults, accusations, and finger-pointing among the key members of the Security Council. Instead of forging an international coalition to deal with Iraq, as it set out to do, the Administration has managed to turn much world opinion against United States. With his insistence that the United Nations declare the inspection regime a failure and immediately authorize war against Iraq, the President has opened a chasm between the U.S. and Great Britain on one side and the remaining permanent members of the Security Council on the other.

Today, the White House is declaring the United Nations irrelevant—one of the most over used words in the English language as of today, I would say, and as of the last several days.

Today, the White House is declaring the United Nations irrelevant if it does not authorize immediate war against Iraq, and U.N. Secretary General Kofi Annan is countering that a U.S.-led invasion of Iraq without the sanction of the United Nations will violate the U.N. charter.

The knock-down, drag-out in the Security Council has tarnished the images of both the United Nations and the United States, and it has imperiled the political career of at least one world leader, one foremost leader, President Bush's staunchest ally, British Prime Minister Tony Blair.

What a high price to pay for the President's insistence on blindly following a war-first, war-now policy on Iraq. What a high price to pay.

Despite feverish activity this week on the part of the U.S. and Great Britain to persuade a majority of members of the Security Council to support a second resolution authorizing war with Iraq, the President and his chief advisers have made it clear that the activity is merely window dressing and that the United States is prepared to act with or without U.N. support. For the Bush Administration, war with Iraq seems to be no longer a question of if, but when and the window on "when" is rapidly closing.

Dr. Condoleezza Rice, the President's National Security Advisor, declared over the weekend, "There is plenty of authority to act. We are trying very hard to have the Security Council one more time affirm that authority. But it's important to know that we believe the authority is there."

In other words, the die has been cast. As Caesar said when he crossed the Rubicon, "the die is cast." The rhetoric has hardened. U.S. forces are in place and poised to attack. The U.N. Security Council has been relegated to a classic Greek chorus of tragic protest while the United States takes center stage. The President has stopped listening.

The administration's strategy for war with Iraq is so far advanced that not only does the President have war plans on his desk, he also has a blueprint for the post-war reconstruction of Iraq.

On Monday, The Wall Street Journal reported that the U.S. Agency for International Development is soliciting bids from a handful of U.S. firms for a contract worth as much as \$900 million to begin the reconstruction of Iraq. According to the Journal, the contract would be the largest reconstruction effort undertaken by the United States since the reconstruction of Germany and Japan after World War II.

With post-war contracts already in hand, can the onset of war be far behind?

My views, by now, are well known. I believe this coming war is not a necessity. I believe it is a grave mistake, not because Saddam Hussein does not deserve to be disarmed or driven from power, not because some of our allies object to war, but because Iraq does not pose an imminent direct threat to the security of the United States. There is no question that the United States has the military might to defeat Saddam Hussein. There is no question about that. But we are on much shakier ground when it comes to the question of why this Nation, the United States, under the current circumstances, is rushing to unleash the horrors of war on the people of Iraq.

In many corners of the world, the United States is seen as manufacturing a crisis in Iraq, not responding to one. Key members of the U.N. Security Council, including France and Russia, have vowed to veto any move to secure the imprimatur of the U.N. on war with

Iraq. The U.N. weapons inspectors have pleaded for more time to do their work. Citizens by the thousands—nay, by the hundreds of thousands—have taken to the streets in countries around the globe, including the United States, Europe, and the Middle East, to protest the war.

The day after the September 11 terrorist attacks on America, the French newspaper *Le Monde* proclaimed, "We are all Americans!" Eighteen months later, the United States and France are hurling insults at each other, and the French are leading the opposition to the war against Iraq. In country after country, the United States has seen the outpouring of compassion and support that followed September 11 dissolve into anger and resentment at this Administration's heavy-handed attempts to railroad the world into supporting a questionable war with Iraq.

The latest report of the U.N. weapons inspectors only heightened the tensions in the Security Council and helped to precipitate the current scramble for a new resolution. On Friday—March 7—chief U.N. weapons inspector Hans Blix reported progress in the disarmament of Iraq and predicted that the inspection process could be completed in months—"not years, nor weeks, but months."

At the same meeting, Mohamed ElBaradei, the Director General of the International Atomic Energy Agency, threw cold water on a key assertion of the Bush administration, that Iraq is actively pursuing a nuclear capability on two fronts—by importing high-strength aluminum tubes which could be used as part of a centrifuge to produce enriched uranium and by attempting to buy uranium from Niger. Dr. ElBaradei said the inspectors have found no evidence—none—that Iraq is attempting to revive its nuclear weapons program, concluding that the aluminum tubes were for a rocket engine program, as Iraq claimed, and that the documents used to establish the Niger connection were faked.

Not even reports of a chilling discovery by U.N. weapons inspectors of a new type of rocket in Iraq that appears to be designed to carry chemical or biological agents has swayed the hardening opposition in the United Nations to authorizing an immediate war against Iraq.

The world is awash in anti-Americanism. The doctrine of preemption enshrined in the Bush administration's national security strategy the policy on which the war with Iraq is predicated has turned the global image of the United States from that of a world class peacemaker into what many believe is dangerous warmonger.

The President is on the wrong track in insisting on rushing into war without the support of the international community, and specifically the United Nations. Not only is America's reputation on the line, but so is our war on terror. The recent arrest of Khalid Shaikh Mohammed and two of

his cohorts in Pakistan is evidence that the United States is making slow but steady progress in dismantling the al-Qaida organization, and that we are reaping huge dividends from the anti-terrorism efforts we have undertaken in cooperation with other nations in the Middle East.

Pakistan's cooperation is particularly important in the war on terror, and yet the majority of the Pakistani people are opposed to war with Iraq. How or whether Pakistani opposition to the war against Iraq will affect the war against terror is one of many unknowns.

The United States cannot bring down al-Qaida alone. We need support and cooperation from friendly nations in the region. We risk losing their friendship, and possibly causing major upheavals in the Middle East, if the President defies world opinion and launches a U.S. led invasion of Iraq.

Mr. SARBANES. Will the Senator yield for a question on that point?

Mr. BYRD. Yes, I am happy to yield, without losing my right to the floor.

Mr. SARBANES. On the al-Qaida front, we have just captured supposedly the third ranking person in al-Qaida.

Mr. BYRD. Yes.

Mr. SARBANES. We were able to do that because of cooperation from Pakistan.

Mr. BYRD. Yes.

Mr. SARBANES. Just to underscore the Senator's point about the necessity of having the cooperation of other countries to deal with the terrorism threat.

Mr. BYRD. Undoubtedly.

Mr. SARBANES. Yet Pakistan, which has been trying to work with us, has already announced that at best they will abstain at the Security Council with respect to the coming vote because it is applying such tremendous internal pressure in Pakistan that there is some danger that this Government that has been working with us may not survive and may collapse.

Mr. BYRD. Unquestionably.

Mr. SARBANES. Isn't that a dramatic example of the kind of problem the Senator is talking about that is being created for us around the world?

Mr. BYRD. It is a dramatic example and a most somber and chilling one. I thank the distinguished Senator for his observation.

The President may be lucky. We may be lucky. If we launch this war on Iraq, we may be lucky. I hope we will be. But we may not be.

The cost of war and the potential casualties—not only to American military personnel but also to innocent civilians in and around Iraq—are unknowns. The impact of war on the fragile fabric of the Middle East is also unknown. The administration seems to think that war with Iraq will pave the way to peace and democracy in the Middle East, but I believe that is merely wishful thinking. Saddam Hussein is not the cause of the strife between the Israelis and the Palestinians, and Sad-

dam Hussein's downfall will not erase the deeply rooted conflict between the two sides.

War against Iraq may prove to be a fatal distraction from the war on terror. It could be. The danger to Americans today is from al-Qaida. Intelligence officials predict that war with Iraq will precipitate a new wave of terrorism against the United States and its allies and will serve as a powerful recruiting tool for anti-American extremists.

We need to keep the pressure on al-Qaida. We need to strengthen our defenses against a terrorist attack here at home. We need to focus the resources of our Nation on the war on terror and dismantle the al-Qaida network before it can mount another catastrophic attack on the United States.

The hour is late; the clock is ticking. But if the President would only listen to voices outside his war cabinet of superhawks, he might discover that it is not too late to stop the rush to war. There is still a chance that Saddam Hussein can be disarmed and neutralized short of war. As long as that possibility exists, the United States should drop its resistance to any slowdown in the march to war and should begin to talk with, and listen to, the other members of the Security Council.

The prospect of regaining unanimity within the United Nations on the question of Iraq is dim at best, but as long as there remains even a glimmer of hope, it is in the best interests of both the United States and the other members of the Security Council to regroup and strive to achieve that goal. The world community deserves nothing less.

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

Mr. BYRD. Yes, I yield without losing my right to the floor. I am about finished.

Mr. DURBIN. I would like to say, before asking my question to the Senator from West Virginia, if the American people are looking for a debate on the war in Iraq, the looming possibility of war in Iraq—

Mr. BYRD. They have been looking for one. They have been entitled to one. And now they have received one.

Mr. DURBIN. The only place they can find it is in the House of Commons in London—

Mr. BYRD. Thank God.

Mr. DURBIN. And from the desk of the Senator from West Virginia and two or three other souls who come to this floor to raise the issue.

Mr. BYRD. Thank Providence again.

Mr. DURBIN. I say a commendation to the Senator from West Virginia. Thank you for your leadership in bringing us to this debate. I ask you, to make certain this point is clear on the record, is it the position of the Senator from West Virginia that we all believe the world would be a safer place without weapons of mass destruction in Iraq, even without the leadership of Saddam Hussein, but that in order to

be strong in our war on terrorism, we need the cooperation of countries all around the world which now are questioning our wisdom in pursuing this war in Iraq?

Mr. BYRD. Indubitably, that is the way I see it. That is my opinion. I believe there is ample evidence of that fact. The world itself at large wishes to see that, wants to see that and hopes for that.

Mr. DURBIN. I might also ask the Senator from West Virginia, is the point he is making that if we stay working with the United Nations on a common plan to disarm Iraq and if it fails and we ultimately join with the other nations around the world to take whatever action is necessary against Iraq, we will have a better outcome, not only in terms of the military outcome but the responsibility of reconstruction of Iraq? Is that the Senator's point as well?

Mr. BYRD. Precisely so and importantly, emphatically on the second observation the Senator has made.

In other words, the morning after, what happens in Iraq? What does that cost? If we destroy much of Iraq, we have a responsibility to help to rebuild it. That is going to be a tremendous cost. I am afraid this administration has not thought that element through.

Moreover, the administration has not told the Congress very much about that, what the cost of that may be, what the administration's plans are in that case. I think that is a very soft underbelly of this whole matter.

Mr. DURBIN. I will ask one final question. I don't want to mischaracterize the Senator's position, but I think what I am about to say he and I share. There is no question in our minds about not only the goodness of the men and women serving in the American military today and their ability and skill to win any military challenge thrown their way. I hope the Senator agrees that it is far better for our military forces and our Nation, in the long run, for us to show wisdom in the decision of how to bring Iraq under control rather than just demonstrate that military strength.

Mr. BYRD. The Senator is pre-eminently correct. Let me add, as ranking member of the Senate Appropriations Committee, I will never yield to anyone when it comes to supporting America's fighting men and women who have been sent abroad, and those at home, once the war begins.

I do not believe this war is necessary. But I will support to the last degree the men and women who have to go. They didn't ask to go, but they have to go; they are answering the call. I will support them on the Appropriations Committee to the furthestmost of my ability.

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

Mr. BYRD. Yes.

Mr. SARBANES. The Senator spoke earlier about the preemption doctrine the administration has put forward.

Would the Senator agree that one of the dangers with the enunciation of that doctrine and the path the administration has now been pursuing—which is to assert that they may take unilateral action instead of trying to work in a cooperative way through international bodies—is that it will set a precedent for other countries around the world to pursue the same course? After all, here is the predominant superpower asserting a doctrine of preemption, apparently prepared to go the unilateral path. What is then in the future to prevent some other regional power that asserts that it is confronted with some danger, from some neighbor, from pursuing the same path? Are we not in the process of setting a very dangerous precedent on the international scene in terms of maintaining international peace?

Mr. BYRD. The Senator is right on point. This doctrine is exceedingly dangerous. It not only will set a precedent, it has set a precedent, as we have seen it begun to be put into play in Iraq. It will be a precedent. There will be a blotch on the escutcheon of the United States from now and until kingdom come. It is a dangerous precedent. Can't the Senator see that already it is beginning to have an impact on other nations, as we watch North Korea, as we watch Iran—why, those countries and others are going to say, well, if this bully on the block is going to do this, we had better get ready and get our things in order. Maybe we had better get ready to hit him or others within our reach. This is a genie that we will regret ever having let out of the bottle.

Mr. SARBANES. Let me ask the Senator one final question and be very clear. I take it the Senator would agree with me that none of us questions that if we were in imminent danger of being struck, we would be warranted in taking measures to protect ourselves against such dangers.

Mr. BYRD. No question about it. The President—whether it is a Republican or a Democrat—has an inherent power under the Constitution. If there is an imminent threat about to be carried out against the United States, of course, the President has a responsibility and a duty to act first.

Mr. SARBANES. Actually, the U.N. Charter grants the right of self-defense, which would in fact entitle us to act on our own accord if confronted with an imminent danger.

Mr. BYRD. No question. But even without the U.N. Charter, we have the inherent right. It is under the Constitution. I will be the last person to give up on that right.

Mr. SARBANES. I wanted to make that point because some are arguing that somehow we are giving over to someone else the decisionmaking authority, in case we are confronted with an imminent danger, to respond. That is not the case at all. So as we see this situation, that is not present. The question becomes how smart and how

wise are we in exercising this unquestioned power, which we hold now on the international scene; is that not correct?

Mr. BYRD. Absolutely. We are taking a reckless course in advocating this doctrine. It is a nefarious doctrine, and it is scaring the world to death today. No wonder we are looked upon as being warmongers. When our friends begin to fear us, may I say to the distinguished Senator from Maryland—who is one of the foremost thinkers in this body. I have been in this Congress for 50 years now, and I have seen some thinkers. I remember John Pastore, for example, who was a thinker. The Senator from Maryland is a thinker. The Senator is right on point in what he is saying. This is a dangerous doctrine, a reckless doctrine. When our friends begin to fear us, we are in trouble.

Mr. SARBANES. I thank the distinguished Senator from West Virginia for the enormous contribution he has been making. He has been willing to speak the truth and raise these very important and serious questions, which I am frank to say I don't think have been given adequate attention downtown by the President or by, as the Senator characterizes it, his war cabinet. This course we are on has tremendous implications in all of the United States.

Mr. BYRD. It has vast implications. I will say to the Senator that some of us have trouble going to sleep at night as we ponder this question. I thank the Senator for his observations today and for the service he has rendered not only to the State of Maryland but to this country. I think the Framers of the Constitution would be proud of PAUL SARBANES. I think PAUL SARBANES could very well have been one of the 39 signers of the Constitution.

Mr. SARBANES. I thank the Senator. I would hope the circumstance would be that the Senator from West Virginia would have been presiding in the chair, if I may say so.

Mr. BYRD. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. REID. Mr. President, I have no problem with the Senator from Utah getting the floor. We have a unanimous consent request we wish to propound if the Senator will withhold.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have listened to my distinguished friend and colleague from West Virginia. Everybody in this body knows the deep affection I have for him and for his feelings, and for his earnest and very important analysis of many of the issues we have had to live with over the years. I have deep respect for the distinguished Senator from Maryland, as well. We came to the Senate together. They are both great Senators, in my eyes.

Mr. BYRD. Mr. President, will the distinguished Senator yield? I thank the distinguished Senator. When he speaks of respect for the Senator from

Maryland and for this Senator, may I say it is mutual. I have great respect for the Senator from Utah. There have been few occasions—not many—when we have differed on the floor. I have tremendous respect for him, for his leadership, for his dedication to his country, and for his State.

Mr. HATCH. Mr. President, I appreciate that. I listened carefully to much of what the distinguished Senator from West Virginia said, and he raised a number of very important issues, no question about it. I have great assurance as a member of the Select Committee on Intelligence in our President as we are considering one of those issues. It just points out how difficult it is to be President of the United States, especially during times of strife and difficulty; how difficult it is to make these decisions; how difficult it is to determine what imminence really is. Hugo Grotius, the father of international law, basically said imminency is a very hard thing to define.

I think the Senator raised a lot of interesting points, but I also believe the President and his advisers have gone over every one of those points. I wish to mention one problem, and that is, some people try to blame Israel for our positions—not the distinguished Senator from West Virginia. But some have tried to raise that point and blame Israel. The fact is Israel is important here, but so are all the Arab states. Keep in mind, this man, Saddam Hussein, has weapons of mass destruction. He came within a few weeks of having a nuclear device. We all know that. It was a matter of time. They had the ability. They had the capacity. They had the scientists. Who knows how close they are to having a nuclear device now, because there is no possible way that 100 inspectors, or even 1,000 inspectors, whose every action, every word, everything they do is monitored by more than 1,000 security people, intelligence people.

Everybody knows Iraq, being the size of California, it is virtually impossible to be absolutely sure that these inspections are even working. If, in fact, they continue to have—which we know they have—biological and chemical weapons, we know they have certain stores of them. We know pretty much how much they have. But if, in fact, they have a nuclear device, I am going to tell my colleagues, Israel is acting very restrained and has throughout these difficulties in the Middle East. I hope they will be able to continue to act restrained. They have one of the best intelligence forces in the world, if not the best, in the Mossad. They are not going to wait if we are not going to take the responsibility of stopping this type of madman with weapons of mass destruction.

There have been 17 U.N. resolutions that have been ignored—17 of them. We have had over 9, 10, 11 years now of watching him flagrantly violate the U.N. resolutions. I respect my colleagues for their thoughtful analysis of

this situation, but I also think there is a thoughtful analysis going on in the White House, the State Department, at the CIA, and in so many other ways.

With regard to the war on al-Qaida, anybody who thinks that war is not going on and we are not doing everything we possibly can ought to look at Khalid Shaikh Mohammed. Khalid Shaikh Mohammed is the director of operations for al-Qaida. We were not just sitting there worrying about Iraq. We were out there actively trying to find Khalid Shaikh Mohammed. I might add, we found him. We have him in custody now. We are learning a lot from what we found around Khalid Shaikh Mohammed.

That battle is ongoing. There is no letup in what we are doing against terrorism from that perspective. I can personally testify to that.

We may be very close to ascertaining the whereabouts of Osama bin Laden. So let no one misconstrue, the fact is, this administration is doing a very good job with regard to al-Qaida, with regard to terrorism. I happen to believe the administration listens carefully to my distinguished friend from West Virginia, and analyzing and realizing they have thought very carefully about the issues he raises, which are important issues, issues about which we all have to stop and think.

Keep in mind, imminence does not mean we have to wait until a nuclear device is blowing up New York or Washington, DC, or Los Angeles or Miami or Chicago. Imminence means the threat—it can happen tomorrow—and that threat is all around us. We know because we have been rounding up the people in America who are terrorist threats to us, who would not hesitate for a minute to take the lives of every American citizen they could possibly take.

I believe right now what we need is to rally together as much as we can. We do need wise men to raise these issues, as my distinguished friend from West Virginia has done, and he has done it continuously throughout his career. Many times he has been right. But I also believe there comes a time when we have to act, too, in the direct care and nurturing of our own country.

I believe the administration is listening to everything that has been said by my dear colleagues on the other side, and I think they are doing everything they can to protect this Nation and to protect the world from a third world war.

One of the worst happenings would be to leave Israel to have to defend itself over there and to leave the moderate Arab nations to have to defend themselves over there. There are a significant number of moderate Arab nations. If they have to go in, then we are really in very dire straits.

I mention these points hopefully in a way of helping all of us understand these are important issues. It is important we discuss them. It is also important we support the administration,

which has the ultimate responsibility, and we do, too, here, no question about it.

We have passed a resolution that says we have to do what is in the best interest of our country. I believe this President and his advisers are doing that. They have, across the board, people who have philosophical differences in the administration. I think it is a good balance between those in the Defense Department and those in the State Department. I say with particularity, no one can say Colin Powell goes to war willingly, that he goes to war without having thought through every possible problem. No one believes he would risk our young men and women or our country in any way without thoughtful reflection and consideration.

I believe that is true of Donald Rumsfeld, who would be perhaps on the other side of the equation because he has the obligation of making sure our military is the best in the world, and that when we have to deploy our military, we do so in a manner that will let anybody know the United States is no pushover, and that you better think twice before you start taking on our people.

I respect my colleagues and I respect their viewpoints. I happen to differ with them on some of them, but the fact is my main difference is I believe these viewpoints have been considered and reflected upon by people of good will who, I believe, are trying to do the very best they can. In that regard, I compliment the distinguished Prime Minister of England who, against some very bad odds and some very difficult times, has stood as a very strong leader in this world. I think he will go down in history as a very strong leader, recognizing the threat of terrorism throughout the world, at least in part emanating from Iraq and the leadership of Saddam Hussein.

I also pay respect to our colleagues and friends in Pakistan who, under very stringent and difficult circumstances, have been willing to assist us in the capture of Khalid Shaikh Mohammed.

At this point, I would like to change the subject.

Mr. REID. Mr. President, could we do our UC? I am sorry to interrupt.

Mr. HATCH. Without losing my right to the floor.

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

The Senator from Pennsylvania.

AMENDMENT NO. 258

Mr. SANTORUM. Mr. President, on behalf of Senator NICKLES, I state that the pending amendment offered by the Senator from Washington, Mrs. MURRAY, increases mandatory spending and, if adopted, would cause an increase in the deficit. Therefore, I raise a point of order against the amendment pursuant to section 207 of H. Con. Res. 68, the concurrent budget resolution on the budget for fiscal year 2000, as amended by S. Res. 304 from the 107th Congress.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I move to waive the Budget Act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the vote on the motion to waive the Budget Act with respect to the pending Murray amendment 258 occur at 6 p.m. today; that the time prior to the vote be equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Who yields time?

Mr. REID. We have another unanimous consent.

Mr. HATCH. I will be happy to yield to my colleague, without losing my right to the floor.

Mr. SANTORUM. Mr. President, I further ask unanimous consent that following the disposition of the Murray amendment, Senator DURBIN be recognized in order to offer an amendment regarding health exceptions. I further ask unanimous consent that following the debate this evening, the amendment be temporarily set aside; provided further that when the Senate resumes consideration of S. 3 beginning at 9:30 tomorrow morning, Senator BOXER be recognized in order to offer a motion to commit; further, there be 2 hours equally divided in the usual form, and that following that debate the motion be temporarily set aside and the Senate resume consideration of the Durbin amendment for 1 additional hour of debate, equally divided. Finally, I ask unanimous consent that following the use or yielding back of the time, the Senate proceed to a vote in relation to the Durbin amendment, to be followed by a vote in relation to the Boxer motion to commit; provided further that no amendments be in order to either the motion or the amendment prior to the votes, with 4 minutes equally divided prior to the second vote.

Mr. REID. Reserving the right to object, Mr. President, we made progress on this most difficult issue today. If this unanimous consent agreement is entered, we will have gone at least halfway.

There are a couple of other amendments that have been submitted to the majority. We hope they would review those and maybe before the night is out enter into an agreement to have some end game for this legislation.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Senator from Nevada for his cooperation, and I appreciate the good work. We are making good progress. I encourage Members who have statements they would like to make on the bill, there will be time in the debate of the Durbin

amendment tonight to make those statements, and we encourage Members to do that.

I ask unanimous consent that Senator MURKOWSKI be added as a cosponsor to this bill, S. 3.

The PRESIDING OFFICER. Without objection, both requests are agreed to.

Mr. HATCH. Mr. President, I rise today in strong support of S. 3, the Partial-Birth Abortion Ban Act of 2003. To begin, I would like to thank my colleague from the State of Pennsylvania, Senator SANTORUM, and applaud his leadership on this bill particularly, and on this issue generally, over the years. He is clearly very passionate about it, and is also one of the most extremely knowledgeable people anywhere on this issue. I respect him and am very proud of the work he has done on this issue.

I have spoken on the need to ban partial birth abortions many times since we began this effort many years ago. I have done so out of my personal conviction, and also because I am here to represent the people of Utah. By a huge margin, Utahns find the practice of partial-birth abortion offensive, immoral and impossible to justify as legal in America, or anywhere else in the world.

As chairman of the Senate Judiciary Committee, I have chaired several hearings about partial-birth abortions in past sessions, and I remain as convinced as ever that this important legislation is essential and will go a long way toward helping us restore our sense of human dignity in this country.

This bill does only one thing: it prohibits one particularly gruesome abortion procedure—so gruesome that only a handful of doctors are willing to perform it. This procedure is never medically necessary. It is simply morally reprehensible, indefensible, and should be banned. I honestly do not know how anyone, after learning of this procedure, could continue to defend it.

Those Members of this body who disagree with me, I think they should have to actually watch this procedure being done. Once they have seen the baby's legs kicking while it is being killed—I challenge them to defend it then, because as one can see, the legs and hands are outside, and anybody watching will know this is a fully living human being.

The procedure, known as dilation and extraction—or “D&X”—involves the partial delivery of an intact baby into the birth canal. In the case of a breech presentation, the baby is delivered from the feet through the shoulders so only the head remains in the birth canal. And in the case of a head-first presentation, the body's full head is delivered outside the birth mother. Then, either scissors or another instrument are used to stab a hole in the base of the skull. There is no doubt that this is a living baby at this point—a baby that feels pain, make no mistake about it. After the scissors are stabbed into the head a suction catheter is inserted to suck out the baby's brains and collapse

the skull. That is about as barbaric as anything I have seen or heard.

Each time I read the description of this procedure I am sickened. It is not done as a mass of tissue but to a living baby capable of feeling pain and, at the time this procedure is typically performed, capable of living outside of the womb with appropriate medical attention.

All this bill would do is ban this grotesque, barbaric procedure. We are not talking about the entire framework of abortion rights here but just one procedure. And S. 3 also provides an exception for cases where the life of the mother is endangered by a physical disorder, illness or injury.

At least 31 States—including my home State of Utah—have enacted their own partial-birth abortion bans but, sadly, many have not taken effect due to temporary or permanent injunctions. S. 3 would create a Federal ban on just the D&X procedure I have described, and it carefully conforms to the constitutional jurisprudence in this area.

Now, let me explain how this bill differs slightly from previous versions. A couple of years ago, the Supreme Court handed down an opinion in *Stenberg v. Carhart*, which addressed a partial-birth ban in Nebraska. The *Stenberg* court, relying in part on a dubious trial court finding that it was forced to accept, struck down the statute.

In fact, the trial court's finding that partial-birth abortions could be necessary to protect the health of the mother was just wrong, and the findings outlined in S. 3 clarify this point.

The record in support of the fact that D&X is never medically necessary is long. In November, 1995, I presided over a 6½ hour Senate Judiciary Committee hearing on partial-birth abortions, and we also had a 1997 joint hearing with the Constitution Subcommittee in which we heard that D&X is not done for medical reasons.

The former U.S. Surgeon General, C. Everett Koop has said:

... in no way can I twist my mind to see that [partial-birth abortion] ... is a medical necessity for the mother. And it certainly can't be a necessity for the baby.

And Dr. Daniel Johnson, the former president of the American Medical Association said in 1997 that he and others investigating the issue:

could not find any identified circumstances in which the procedure was the only safe and effective abortion method.

The fact is that there is no medical need to allow this type of barbaric procedure.

The 5-4 *Stenberg* court also had concerns that the procedure, as defined in the Nebraska statute, could have been construed to ban more than one type of abortion procedure, including one which could theoretically be used to protect the health of the mother. Based on this, the court found that the lack of a “health of the mother” exception created an “undue burden” because it could prevent a procedure that could be necessary for the health of the mother.

S. 3, the Partial-Birth Abortion Ban Act of 2003, addresses that problem as well by very specifically defining the procedure so that it only prohibits the D&X procedure, which, as our hearings have shown, and the findings in S. 3 confirm, is never necessary to protect the health of the mother.

Let me repeat, the carefully-drafted definition used in S. 3 for partial-birth abortion cannot be construed to include any abortion procedure other than the D&X procedure.

In other words, other alternative procedures, all of which will remain legal under S. 3, will be available in the event that the health of the mother needs to be preserved. For this reason, this bill does not require an exception for the health of the mother.

Now, let me address a misrepresentation that has been floated over the years—that is, that this barbaric procedure is rare. The record indicates that this is clearly not the case. In fact, one clinic in New Jersey alone admitted to 1500 of these procedures in just one year! And that is just one state. How can anyone claim that is “rare”?

And in the State of Kansas, which requires that doctors report partial-birth abortions and also cite the reasons given for having the abortion, we found out that doctors there performed 182 partial-birth abortions in just one year on babies they deemed viable. And every one of these reports, by the way, cited “mental health” as the reason for having this barbaric procedure.

It is likely that there are at least 3,000 to 5,000 of these procedures performed every year, despite what some try to claim.

To further expose the lack of credibility of those who claim this procedure is rare, we need only listen to Ron Fitzsimmons of the National Coalition of Abortion Providers. He admitted in 1997 that when he told us the procedure was rare, he “lied through my teeth.” He added that he only represented it as being rare because, “I just went out there and spouted the party line.” That shows how far these people will go. Abortion is so sacred to them they see no reason to ban any aspect of it, not even this barbaric procedure.

The truth always eventually prevails over the party line, and the truth is that this procedure is not rare, and it should be banned.

I think former Sen. Daniel Moynihan had it about right when speaking in favor of this ban in previous debates he called the procedure “close to infanticide.” It is infanticide.

In recent years, we have heard about teenaged girls giving birth and then dumping their newborns into trash cans. One young woman was criminally charged after giving birth to a child in a bathroom stall during her prom, and then strangling and suffocating her child before leaving the body in the trash. Tragically, there have been several similar incidents around the country in the past few years.

This is what happens when we devalue human life.

William Raspberry argued in a column in the Washington Post several years ago that “only a short distance [exists] between what [these teenagers] have been sentenced for doing and what doctors get paid to do.” How right he is.

When you think about it, it is incredible that there is a mere three inches separating a partial-birth abortion from murder.

Now, I have sympathy for any young woman who contemplates an abortion. The circumstances that drive a woman to it must certainly be complex and appear to her to be overwhelming and insoluble.

But the D&X procedure is not an ordinary abortion. It is not contemplated by the Roe v. Wade decision. Even the Stenberg court confirmed, and I quote, “By no means must physicians [be granted] ‘unfettered discretion’ in their selection of abortion methods.” So this is not about overturning Roe v. Wade—that is a red herring.

The D&X procedure is one method which we ought not give doctors the discretion to perform. It is never medically necessary, it is never the safest procedure available, and it is morally reprehensible and unconscionable.

Partial-birth abortion simply has no place in our society and rightly should be banned.

President Bush has described partial-birth abortion as “an abhorrent procedure that offends human dignity.” I wholeheartedly agree. I strongly urge my colleagues to join me in voting in favor of S. 3, the Partial Birth Abortion Ban Act of 2003, and help restore human dignity.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, this would be an easier debate if we were speaking to an issue that only dealt with healthy mothers and healthy fetuses. The fact is, we are not. The Senator from California outlined a number of very difficult, troubling cases of women who have had to make very difficult choices that no one on this floor can comprehend without having gone through.

If we can reduce unintended pregnancies we can go a long way to reducing abortions in this country and not have these kinds of debates in the Senate. That is precisely what the current pending amendment is about that we are discussing at this time. It is an amendment that provides contraceptive equity for women. It provides emergency contraception education. It provides emergency contraceptives in the emergency room and it expands SCHIP and Medicaid to include low-income pregnant women so the mother and the fetus are both covered—unlike the current administrative rule.

My colleagues on the other side have offered a point of order against this amendment. I say to them, no one can

hide behind a point of order. If we truly believe we want to reduce the number of abortions in this country, if we reduce the number of unintended pregnancies and allow help for women, as this amendment will do, we will all have made a step in the right direction.

I will have more to say but my colleague from Illinois is here. I yield 15 minutes to the Senator.

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

Mr. DURBIN. I thank the Senator from Washington.

I come to the floor to discuss an issue which is highly charged and emotional. In the 20 years I have served in both the House and the Senate, I can say the debates on this issue have been some of the most painful. No matter who you are, in the Senate or the House, whatever your political party, whatever your background, if you take this issue as seriously as you must, you have to reflect every time as to whether or not your vote makes sense, is fair, is a policy that America should follow.

Now, of course, we are debating the so-called partial-birth abortion procedure. I came to Congress many years ago personally opposed to abortion. It was part of my faith tradition, part of my personal value system. I came here to find that many of the people I assumed would be my allies opposed abortion but had other elements in their belief which started to trouble me.

I believe that a woman pregnant, facing extraordinary medical circumstances, a woman who is pregnant, having been impregnated by a rape or incest, should be given special concern and consideration. But I found many times that those who opposed abortions would make no exception no matter what the circumstances leading up to a pregnancy. And that troubled me.

I also found that in those extraordinary situations where a woman found in her pregnancy, one that she anticipated to be normal, uneventful, that something awful had occurred, that, in fact, many of the people who opposed abortion would not even allow that procedure in those extraordinary medical situations. I was surprised by that. I didn't expect to find it.

Then I met with some of the women and talked to them about their personal experiences. One of them is a woman I met from my home State of Illinois, Vikki Stella. This is a picture of Vikki, her husband, her family. Vikki's is an extraordinary story.

When Vikki was pregnant several years ago, she learned late in her pregnancy that her much wanted son was suffering from some extraordinary, serious abnormalities. Vikki, who is diabetic, was told that if she continued her pregnancy through to its natural conclusion, she could endanger her own health.

She told me personally—I had a chance to meet with her—that she couldn't believe it. This was supposed to be a very normal pregnancy. As you

can see, she has other children. She learned, much to her surprise and amazement, that she faced an extraordinarily complicated pregnancy, and her doctor sat down with her and her husband, who is also a doctor, and said to them: You need to do something; you need to do it now to protect Vikki's survival and her own health.

She was faced with a terrible decision. She had already created the nursery in her home for the new baby. They had the walls painted, the furniture picked out; they expected in just a few weeks to have this new baby—to be told, instead, that she was facing a medical crisis in her own life. As she said, she could barely walk, it hit her so hard. Her husband had to help her walk away from the doctor's office.

She went home, she told me, in tears, saying to her husband: What are we going to do? I don't believe in abortion. He explained to her, as her doctor explained to her, that unless she did something right then and there to terminate that pregnancy, she would endanger her own life and her ability to have other children.

She prayed over it, thought about it long and hard with her husband and family, and decided to go through with the termination of the pregnancy.

Would you want to face that decision? I am sure glad I never had to as a father and husband. But she faced it. She terminated that pregnancy.

One of the last times I saw Vikki was here, right in front of the Capitol Building. She was pushing a stroller with her new baby in it—Nicholas. Nicholas came into this world as healthy and normal as you could ever ask.

So people who are arguing that those who go in for these extraordinary abortion procedures somehow hate babies, or look at these things lightly—please. If you listen to the women who have been through it, if you talk to them and their families, you will understand the tragedy that comes into their life, the crisis that comes into their life.

What we are saying on the floor of the Senate with S. 3, a bill sponsored by Senator SANTORUM, is that we do not want the doctor to make the decision. No. And we don't want the mother or her husband to make the decision. We want to make the decision. The Government should make the decision. The Government should overrule the doctor. The Government should say to her: Finish your pregnancy regardless of the outcome. You can't use the procedure.

Is that the right thing to do, for us to inject ourselves into those medical crisis situations? I don't think it is.

Whatever your view on abortion personally, for goodness' sake, I think you should have the heart to understand that you don't know everything; that, frankly, there are doctors in disagreement as to whether these abortion procedures are needed. If there is true medical disagreement, are we going to choose one side and say this will be the

official Government medical position? That is what we are hearing today. We are hearing, when it comes to abortion, don't let your doctor decide; let your Senator decide for you.

I may have some expertise in some areas, but it certainly is not in medicine. I rely on professionals for my family, for myself, and when it comes to making these important decisions.

If you listen to these doctors, they are telling us: For goodness' sake, Senator, stop and think. Do you want to say that you can imagine every possible complication a mother would find late in her pregnancy and you want to rule that certain surgical procedures cannot be used to save a mother's health or her life? That is how far this goes. And it goes too far.

The other thing I learned when I came here was that many of the people who oppose abortion very strongly, with the deepest of convictions, feel just as strongly in opposition to contraception. I couldn't believe that part because—think about it—if you don't offer to a woman, a wife, for example, in a family situation, an option to plan her pregnancies, then you are just inviting an unplanned or unwanted pregnancy, inviting the possibility of abortion.

So to oppose contraception is to say to the woman: We are not going to stand by you even making your own decision and your family decision on when a child should come to your household. Of course, you know what happens. The likelihood of abortion increases when there are unwanted, unplanned pregnancies.

I always thought if you opposed abortion, it was common sense to say we would make contraception, family planning, birth control information available to women in America. That seems to me just common sense, so that you wouldn't have the unwanted, unplanned pregnancies leading to abortions.

I was stunned when I came to Congress many years ago to find that the people most vehemently opposed to abortion were equally opposed to contraception. How can that make any sense? Thank goodness Senator PATTY MURRAY of Washington, along with Senator REID of Nevada, came to the floor today on this abortion debate and said we really need to be on the record as to whether or not we are going to provide contraception in health insurance plans so that women can get birth control pills to decide when they are going to have children, when it is the right thing for them and their family.

Isn't it ironic that these health insurance plans will provide Viagra to men but will not provide birth control pills to women? That is a fact. Senator MURRAY's amendment comes to the floor and says we are going to put an end to that. We are going to provide that these women and families will have the contraception that they need to make their decisions on planning their families so there are wanted and

planned children as often as possible, and the likelihood of abortion is diminished. That seems so patently obvious.

I commend Senator MURRAY again. She goes on to say if your feelings and emotions are strong when it comes to mothers and babies, for goodness' sake, prove it—not just by voting against abortion but voting for the mother, the pregnant mother, making certain that she has access to health care during her pregnancy.

Senator MURRAY offers a provision in her amendment which says we are going to allow pregnant women across America to come into what we call the SCHIP plan, a basic health insurance program offered by the States so that more and more working mothers have a chance to get prenatal care and have healthy babies. Why in the world would anybody even debate this: Contraception, birth control, family planning available for mothers, women and their families, and health insurance coverage for the pregnant mother so she can be certain to come out of this pregnancy healthy herself with a healthy baby?

This is a good amendment. This is a pro-life amendment.

What do we hear? We hear that the Senators on the other side of the aisle who say they are opposed to abortion—and I believe they are—are now going to try to kill the Murray amendment. They don't want the Senate to go on record in favor of family planning and birth control in the health insurance plans for women across America. They don't want the Senate to go on record so rape and incest victims brought into emergency rooms can have the contraceptive care they need immediately so they do not end up pregnant because of the crime that was committed against them. They don't want to vote for the Murray amendment that says pregnant mothers will have health insurance so that the babies will be healthy and the mothers will be healthy. And they call themselves pro-life.

I am sorry, it doesn't work. It is not consistent. If they are consistently pro-life, they should stand by the woman, stand by the mother, do everything in their power to make certain that that baby is born into a loving family and is as healthy as it possibly can be. That is what this amendment comes down to.

It is hard to imagine there is any opposition, and yet there is. In fact, a Senator will come to the floor here, he will make a procedural motion, and it will take more than a majority for Senator MURRAY to prevail. Do I understand right, we will need 60 votes? Is that correct? Sixty votes out of a hundred. So they have just raised the bar, and they said to Senator MURRAY: If you want to protect women in terms of family planning and birth control, you need more than a majority, Senator MURRAY; you need 60 votes.

Mr. REID. Will the Senator yield?

Mr. DURBIN. I will just finish, and I will be happy to yield.

If you want to protect women who have been raped who are going into the emergency rooms—can you imagine the emotional problem they are facing right then and there? If you want to protect them so they can have emergency contraception and not be pregnant, you need 60 votes. Fifty-one will not do. If you want to give women basic health insurance so they can have a successful pregnancy, you need 60 votes. That is what is coming from the Republican side of the aisle. I don't believe it is consistent with the ethic that says we care not just about babies but about the mothers as well.

I yield to the Senator from Nevada for a question.

Mr. REID. Madam President, in the debate which took place from 11 until about quarter to 1 today, there was a lot of talk about 60 votes. I am wondering if this is a constitutional vote. They are asking for 60 votes. Does the Senator have anything to say about that?

Mr. DURBIN. The Senator from Nevada is right. When it comes to judicial nominations, the floor was filled earlier this morning with Republican Senators objecting to 60 votes. They set an outrageous standard to live by. Now they have turned around here. When it comes to Senator MURRAY's amendment to stand by women, to stand by pregnant mothers, to stand by victims of crimes, they have said to her that she is going to need 60 votes. In other words, they have been trying their best to stop her from protecting women in this circumstance.

I have to say to the Senator from Nevada, whether you are pro-choice, pro-life, or anti-abortion, it really is a woman's right to choose. Wouldn't you stand by a woman's right to plan for her own family and to be able to have at her disposal health insurance, birth control pills, and family planning information? We certainly say if a husband decides he needs Viagra in order to have a family, health insurance will cover that. Why wouldn't we cover birth control pills? That is what this says. Senator REID of Nevada has a bill. Senator MURRAY has added it to her amendment. It is eminently sensible.

We come down in this debate to pretty basic values and issues. As far as I am concerned, whatever you call yourself on the abortion issue, I think most people across America will agree we want to reduce the number of unplanned and unwanted pregnancies. We want to reduce those tragic circumstances in the case of crimes of rape or incest, and we want to make sure mothers have health insurance protection so they and their babies will be helped and taken care of in the best medical profession. Sadly, the opposition on the other side makes that very difficult, if not impossible.

This will be a good test vote when it comes to families and the rights of women and children. It really gets down to some fundamentals. It is not enough to stand up, as did my colleague from Wisconsin, DAVID OBEY,

and pose for holy pictures and say, I am opposed to abortion, and then turn around and vote against family planning that can avoid abortion; turn around and vote against those contraception techniques of an emergency nature and avoid unwanted pregnancies; to vote against health insurance for these mothers.

The Senator from Washington has put this debate in the right perspective. If we are going to be honest about this issue, we need to support Senator MURRAY. I will be one who votes for her amendment.

I yield the floor.

Mr. REID. Madam President, was the time evenly divided?

The PRESIDING OFFICER. Yes.

Mr. REID. How much time remains on each side?

The PRESIDING OFFICER. The Senator from Washington controls 21 minutes 11 seconds. The Senator from Pennsylvania controls 25 minutes 38 seconds.

Mr. REID. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SANTORUM. Madam President, I want to make a couple of points, and then I will yield to my colleague.

No. 1, the Senator from Oklahoma asked me to make a budget point of order on his behalf. I want to make it clear he has an SCHIP provision that is in the budget which they are marking up later this week. We will be on that subject. We will have plenty of opportunity to deal with this issue next week.

I agree with the Senator from Illinois. We should have a provision covering women going through pregnancy, and be supportive of that. I will not be supportive of covering medications that would lead to a fertilized egg not implanted in the uterus. I believe life begins at conception. I will not support drugs that would prevent a conceived embryo to be implanted.

I have mixed emotions about this amendment. But, nevertheless, it is roughly a \$1 billion addition to the budget, and that should be done in the context of the budget, not on a partial-birth abortion bill.

Finally, I would like to add to the record by unanimous consent a letter from Dr. Pamela Smith, who was the director in 1996 of the Department of Obstetrics and Gynecology at Mt. Sinai Medical Center in Chicago. She is a member of the Association of Professors of Obstetrics and Gynecology. In response to the case Senator DURBIN has laid out, she has a response that is rather lengthy. But I will just quote one comment she said.

... medically I would contend of all the abortion techniques currently available to her this was the worst one that could have been recommended for her.

Again, that just proves the point.

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

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

PHYSICIANS' AD HOC COALITION

FOR TRUTH,

Chicago, IL, September 23, 1996.

DEAR MEMBER OF CONGRESS: My name is Dr. Pamela E. Smith. I am a founding member of PHACT (Physicians' Ad Hoc Coalition for Truth). This coalition of over three hundred medical providers nationwide (which is open to everyone, irrespective of their political stance on abortion) was specifically formed to educate the public, as well as those involved in government, in regards to disseminating medical facts as they relate to the Partial-Birth Abortion procedure.

In this regard, it has come to my attention that an individual (Ms. Vicki Stella, a diabetic) who underwent this procedure, who is not medically trained, has appeared on television and in Roll Call proclaiming that it was necessary for her to have this particular form of abortion to enable her to bear children in the future. In response to these claims I would invite you to note the following:

1. Although Ms. Stella proclaims this procedure was the only thing that could be done to preserve her fertility, the fact of the matter is that the standard of care that is used by medical personnel to terminate a pregnancy in its later stages does not include partial-birth abortion. Cesarean section, inducing labor with pitocin or protoglandins, or (if the baby has excess fluid in the head as I believe was the case with Ms. Stella) draining the fluid from the baby's head to allow a normal delivery are all techniques taught and used by obstetrical providers throughout this country. These are techniques for which we have safety statistics in regards to their impact on the health of both the woman and the child. In contrast, there are no safety statistics on partial-birth abortion, no reference of this technique in the national library of medicine database, and no long term studies published that prove it does not negatively affect a woman's capability of successfully carrying a pregnancy to term in the future. Ms. Stella may have been told this procedure was necessary and safe, but she was sorely misinformed.

2. Diabetes is a chronic medical condition that tends to get worse over time and that predisposes individuals to infections that can be harder to treat. If Ms. Stella was advised to have an abortion most likely this was secondary to the fact that her child was diagnosed with conditions that were incompatible with life. The fact that Ms. Stella is a diabetic, coupled with the fact that diabetics are prone to infection and the partial-birth abortion procedure requires manipulating a normally contaminated vagina over a course of three days (a technique that invites infection) medically I would contend of all the abortion techniques currently available to her this was the worse one that could have been recommended for her. The others are quicker, cheaper and do not place a diabetic at such extreme risks for life-threatening infections.

3. Partial-birth abortion is, in fact, a public health hazard in regards to women's health in that one employs techniques that have been demonstrated in the scientific literature to place women at increased risks for uterine rupture, infection, hemorrhage, inability to carry pregnancies to term in the future and maternal death. Such risks have even been acknowledged by abortion providers such as Dr. Warren Hern.

4. Dr. C. Everett Koop, the former Surgeon General, recently stated in the AMA News that he believes that people, including the President, have been misled as to "fact and fiction" in regards to third trimester pregnancy terminations. He said, and I quote, "in no way can I twist my mind to see that the late term abortion described . . . is a medical

necessity for the mother . . . I am opposed to partial-birth abortions." He later went on to describe a baby that he operated on who had some of the anomalies that babies of women who had partial-birth abortions had. His particular patient, however, went on to become the head nurse in his intensive care unit years later!

I realize that abortion continues to be an extremely divisive issue in our society. However, when considering public policy on such a matter that indeed has medical dimensions, it is of the utmost importance that decisions are based on facts as well as emotions and feelings. Banning this dangerous technique will not infringe on a woman's ability to obtain an abortion in the early stage of pregnancy or if a pregnancy truly to be ended to preserve the life of health of the mother. What a ban will do is insure that women will not have their lives jeopardized when they seek an abortion procedure.

Thank you for your time and consideration.

Sincerely,

PAMELA SMITH,

Director of Medical Education, Department of Obstetrics and Gynecology, Mt. Sinai Medical Center.

Mr. SANTORUM. Second, I have another letter with an analysis done by Dr. Curtis Cook, Maternal Fetal Medicine, Michigan State College of Human Medicine, on the case of Coreen Costello. I will discuss both of these in detail later. But I ask unanimous consent that this letter be printed in the RECORD.

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

[Physicians' Ad Hoc Coalition for Truth]

THE CASE OF COREEN COSTELLO

Partial-birth abortion was not a medical necessity for the most visible "personal case" proponent of procedure.

Coreen Costello is one of five women who appeared with President Clinton when he vetoed the Partial-Birth Abortion Ban Act (4/10/96). She has probably been the most active and the most visible of those women who have chosen to share with the public the very tragic circumstances of their pregnancies which, they say, made the partial-birth abortion procedure their only medical option to protect their health and future fertility.

But based on what Ms. Costello has publicly said so far, her abortion was not, in fact, medically necessary.

In addition to appearing with the President at the veto ceremony, Ms. Costello has twice recounted her story in testimony before both the House and Senate; the New York Times published an op-ed by Ms. Costello based on this testimony; she was featured in a full page ad in the Washington Post sponsored by several abortion advocacy groups; and, most recently (7/29/96) she has recounted her story for a "Dear Colleague" letter being circulated to House members by Rep. Peter Deutsch (FL).

Unless she were to decide otherwise, Ms. Costello's full medical records remain, of course, unavailable to the public, being a matter between her and her doctors. However, Ms. Costello has voluntarily chosen to share significant parts of her very tragic story with the general public and in very highly visible venues. Based on what Ms. Costello has revealed of her medical history—of her own accord and for the stated purpose of defeating the Partial-Birth Abortion Ban Act—doctors with PHACT can only conclude that Ms. Costello and others who

have publicly acknowledged undergoing this procedure "are honest women who were sadly misinformed and whose decision to have a partial-birth abortion was based on a great deal of misinformation" (Dr. Joseph DeCook, Ob/Gyn, PHACT Congressional Briefing, 7/24/96). Ms. Costello's experience does not change the reality that a partial birth abortion is never medically indicated—in fact, there are available several alternative, standard medical procedures to treat women confronting unfortunate situations like Ms. Costello had to face.

The following analysis is based on Ms. Costello's public statements regarding events leading up to her abortion performed by the late Dr. James McMahon. This analysis was done by Dr. Curtis Cook, a perinatologist with the Michigan State College of Human Medicine and member of PHACT.

"Ms. Costello's child suffered from at least two conditions: 'polyhydramnios secondary to abnormal fetal swallowing,' and 'hydrocephalus'. In the first, the child could not swallow the amniotic fluid, and an excess of the fluid therefore collected in the mother's uterus. The second condition, hydrocephalus, is one that causes an excessive amount of fluid to accumulate in the fetal head. Because of the swallowing defect, the child's lungs were not properly stimulated, and an underdevelopment of the lungs would likely be the cause of death if abortion had not intervened. The child had no significant chance of survival, but also would not likely die as soon as the umbilical cord was cut.

The usual treatment for removing the large amount of fluid in the uterus is a procedure called amniocentesis. The usual treatment for draining excess fluid from the fetal head is a procedure called cephalocentesis. In both cases the excess fluid is drained by using a thin needle that can be placed inside the womb through the abdomen ("transabdominally"—the preferred route) or through the vagina ("transvaginally"). The transvaginal approach however, as performed by Dr. McMahon on Ms. Costello, puts the woman at an increased risk of infection because of the non-sterile environment of the vagina. Dr. McMahon used this approach most likely because he had no significant expertise in obstetrics and gynecology. In other words, he may not have been able to do it well transabdominally—the standard method used by ob/gyns—because that takes a degree of expertise he did not possess. After the fluid has been drained, and the head decreased in size, labor would be induced and attempts made to deliver the child vaginally.

Ms. Costello's statement that she was unable to have a vaginal delivery, or, as she called it, 'natural birth or an induced labor,' is contradicted by the fact that she did indeed have a vaginal delivery, conducted by Dr. McMahon. What Ms. Costello had was a breech vaginal delivery for purposes of aborting the child, however, as opposed to a vaginal delivery intended to result in a live birth. A caesarean section in this case would not be medically indicated—not because of any inherent danger—but because the baby could be safely delivered vaginally."

Given these medical realities, the partial-birth abortion procedure can in no way be considered the standard, medically necessary or appropriate procedure appropriate to address the medical complications described by Ms. Costello or any of the other women who were tragically misled into believing they had no other options."

Mr. SANTORUM. Madam President, I want to yield 10 minutes to the Senator from Kansas, and thank him.

Mr. DURBIN. Madam President, will the Senator from Pennsylvania be kind enough to yield for 2 minutes so I might respond? And I would be happy to yield.

Mr. SANTORUM. On the Senator's time. That is fine.

Mrs. MURRAY. I yield 2 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I hope you listen carefully to what the Senator from Pennsylvania just entered into the RECORD. He entered into the RECORD an opinion of another doctor which said the woman who faced that crisis pregnancy should have done it differently. I don't know if the Senator from Pennsylvania is aware of the fact that she not only had the counsel of her own obstetrician/gynecologist, but she had the counsel of her husband who was a practicing physician. She was relying on her husband's medical knowledge and the advice of her obstetrician/gynecologist. The Senator from Pennsylvania has found another doctor who disagrees. And he says that is why we should overrule her personal doctor and her personal obstetrician in this case; that we should make the decision here; that Senators and politicians should be making the decisions about what was the right information for her in that circumstance.

Is there something wrong with that picture? I think there is. We should leave the decisions in a crisis pregnancy, in a case where literally disaster occurs to the family, to the woman and her doctor, to her family, and to her God. For us to step in and say we are going to make medical decisions goes way too far.

The American College of Obstetricians and Gynecologists, representing 45,000 OB/GYNs, agrees:

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

I yield the floor.

Mr. SANTORUM. Madam President, if I may respond very briefly, there is no evidence in any record, nor did she give any testimony, that this was a crisis pregnancy. Second, there is ample testimony and overwhelming evidence that this procedure is never necessary for the life or health of the mother. It is never used in a 3-day procedure.

I won't go into great detail. That is the reason we have malpractice laws in this country. Doctors make very bad decisions and give bad advice to patients. It happens all the time. In this case, it happens with frequency. But there is dispositive, overwhelming evidence that the advice she was given was wrong. Because someone gives advice doesn't mean it is correct advice. She got bad advice and, unfortunately, it resulted in a heinous act being perpetrated in this case.

I yield 10 minutes to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I thank my colleague from Pennsylvania for yielding the time. This debate is about a very difficult and very important topic of our era and our day.

I believe a true mark of a civilized society is not the level of human dignity it confers upon the strong or wealthy, but a true mark is on how much it confers upon the vulnerable and the oppressed. Clearly an abortion procedure that dismembers and kills partially-born human beings has no place in a civilized society.

I think it is becoming increasingly clear that the impact of abortions on society is profound. I want to spend some time talking about the impact on society, particularly when you take such a risky procedure as this which is not necessary and allow it to continue within the context of this society today.

I ask unanimous consent to have printed in the RECORD some statistics of the Kansas Department of Health and Environment on partial-birth abortions, when they were being conducted in the State, and the reasons they were being done.

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

KANSAS DEPARTMENT OF HEALTH & ENVIRONMENT, CENTER FOR HEALTH AND ENVIRONMENTAL STATISTICS,

Topeka, KS, March 24, 2000.

DEAR INTERESTED PARTY: State statutes require physicians, ambulatory surgical centers, and hospitals to report abortions to the Kansas Department of Health and Environment. The law also requires physicians, who perform abortions, to report to KDHE the number of certifications received under the Women's Right-to-Know Act. These data are compiled by the Center for Health and Environmental Statistics, Office of Health Care Information.

The collection of these vital statistics reports for 1999 is now complete. This report is a summary of the preliminary analysis of that data. Additional analysis of the 1999 abortion data will be included in the Kansas Annual Summary of Vital Statistics.

This report also contains information the Legislature requires physicians to report regarding (a) abortions performed at 22 weeks or more and (b) "partial birth" procedures. Responses to each of the numbered questions in these two categories are included and tabulated.

Please feel free to contact me regarding any questions you have.

Sincerely,

LORNE A. PHILLIPS, Ph.D.,  
State Registrar & Director,  
Center for Health and Environmental Statistics.

SELECTED INCLUDED ABORTION STATISTICS, KANSAS, 1999

| Selected statistics  | Number | Percent |
|--|--------|---------|
| Total <sup>1</sup> induced abortions reported .....        | 12,421 | 100.0   |
| Total <sup>2</sup> physician certifications reported ..... | 12,708 | 100.0   |
| Residence of patient:                                      |        |         |
| Number of in-state residents .....                         | 6,392  | 51.5    |
| Number of out-of-state residents .....                     | 6,029  | 48.5    |
| Not Stated .....   |        | n.a.    |
| Total Reported .....                                       | 12,421 | 100.0   |
| Age group of patient:                                      |        |         |
| Under 15 years .....                                       | 114    | 1.0     |
| 15-19 years .....  | 2,622  | 21.1    |
| 20-24 years .....  | 4,149  | 33.4    |

SELECTED INCLUDED ABORTION STATISTICS, KANSAS, 1999—Continued

| Selected statistics                       | Number | Percent |
|---|--------|---------|
| 25–29 years                               | 2,728  | 22.0    |
| 30–34 years                               | 1,499  | 12.0    |
| 35–39 years                               | 960    | 7.7     |
| 40–44 years                               | 328    | 2.6     |
| 45 years and over                         | 21     | 0.2     |
| Not Stated <sup>3</sup>                   | n.a.   | n.a.    |
| Total Reported                            | 12,421 | 100.0   |
| Race of patient:                          |        |         |
| White                                     | 9,044  | 73.0    |
| Black                                     | 2,668  | 21.5    |
| Native American                           | 133    | 1.1     |
| Chinese                                   | 100    | 1.0     |
| Japanese                                  | 15     | 0.1     |
| Hawaiian                                  | 3      | 0.0     |
| Filipino                                  | 16     | 0.1     |
| Other Asian or Pacific Islander           | 387    | 3.1     |
| Other Nonwhite                            | 17     | 0.1     |
| Not Stated <sup>3</sup>                   | 38     | n.a.    |
| Total Reported                            | 12,421 | 100.0   |
| Marital Status of Patient:                |        |         |
| Yes                                       | 2,472  | 19.9    |
| No  | 9,921  | 80.1    |
| Not Stated <sup>3</sup>                   | 28     | n.a.    |
| Total Reported                            | 12,421 | 100.0   |
| Weeks Gestation:                          |        |         |
| Less than 9 weeks                         | 7,444  | 60.0    |
| 9–12 weeks                                | 2,998  | 24.1    |
| 13–16 weeks                               | 841    | 6.8     |
| 17–21 weeks                               | 564    | 4.5     |
| 22 weeks & over                           | 574    | 4.6     |
| Not Stated                                | n.a.   | n.a.    |
| Total Reported                            | 12,421 | 100.0   |
| Method of Abortion:                       |        |         |
| Suction curettage                         | 10,650 | 85.7    |
| Sharp curettage                           | 2      | 0.0     |
| Dilation & Evacuation                     | 929    | 7.5     |
| Medical Procedure I                       |        |         |
| Medical Procedure II                      | 289    | 2.3     |
| Intra-uterine prosta-glandin instillation | 3      | 0.0     |
| Hysterotomy                               |        |         |
| Hysterectomy                              |        |         |
| Digoxin-Induction                         | 366    | 3.0     |
| “Partial Birth” Procedure                 | 182    | 1.5     |
| Other                                     |        |         |
| Not Stated                                | n.a.   | n.a.    |
| Total Reported                            | 12,421 | 100.0   |

<sup>1</sup> All reported, includes 26 Kansas resident abortions that occurred out-of-state.  
<sup>2</sup> Occurrence data.  
<sup>3</sup> Patient(s) refused to provide information.

Source: KDHE, Center for Health and Environmental Statistics, Office of Health Care Information.

“PARTIAL BIRTH” PROCEDURE STATISTICS

Physicians reporting “partial birth” abortions were required to fill out three numbered questions on the back of the VS-213 form. Those questions and the answers are provided below for Kansas and out-of-state residents. The questions would be in addition to those filled out if gestation was 22 weeks or more. All data are occurrence. The data represent a full year of reporting. A sample VS-213 form is in the appendices.

Number of “partial birth” procedures:

| Time period           | KS residents | Out-of-state residents | Total |
|-----------------------|--------------|------------------------|-------|
| January 1–March 31    | 2            | 65                     | 67    |
| April 1–June 30       | 2            | 60                     | 62    |
| July 1–September 30   | 3            | 50                     | 53    |
| October 1–December 31 | —            | —                      | —     |
| Total                 | 7            | 175                    | 182   |

17a) For terminations where “partial birth” procedure was performed, was fetus viable?

| Answers | KS residents | Out-of-state residents | Total |
|---------|--------------|------------------------|-------|
| Yes     | 7            | 175                    | 182   |
| Total   | 7            | 175                    | 182   |

17b) Reasons for determination of fetus viability:

| Answers   | KS residents | Out-of-state residents | Total |
|---|--------------|------------------------|-------|
| It is the professional judgement of the attending physician that there is a reasonable probability that this pregnancy is not viable. | —            | —                      | —     |
| It is the professional judgement of the attending physician that there is a reasonable probability that this pregnancy may be viable. | 7            | 175                    | 182   |

| Answers | KS residents | Out-of-state residents | Total |
|---------|--------------|------------------------|-------|
| Total   | 7            | 175                    | 182   |

18a) Was this abortion necessary to:

| Answers  | KS residents | Out-of-state residents | Total |
|--|--------------|------------------------|-------|
| Prevent patient’s death.   | —            | —                      | —     |
| Prevent substantial and irreversible impairment of a major bodily function | 7            | 175                    | 182   |
| Total  | 7            | 175                    | 182   |

18a) If the abortion was necessary to prevent substantial and irreversible impairment of a major bodily function, was the impairment:

| Answers  | KS residents | Out-of-state residents | Total |
|----------|--------------|------------------------|-------|
| Physical | —            | —                      | —     |
| Mental   | 7            | 175                    | 182   |
| Total    | 7            | 175                    | 182   |

18b) Reasons for Determination of 18a:

| Answers   | KS residents | Out-of-state residents | Total |
|---|--------------|------------------------|-------|
| Based on the patient’s history and physical examination by the attending physician and referral and consultation by an unassociated physician, the attending physician believes that continuing the pregnancy will constitute a substantial and irreversible impairment of the patient’s mental function. | 7            | 175                    | 182   |
| Total   | 7            | 175                    | 182   |

Mr. BROWNBACK. I would just note, in citing this statistic, it has been cited previously, the statistical year we have available to us, 182 partial-birth abortions were done and reported within the State of Kansas. Of those, when they asked if the abortion was necessary to prevent substantial and irreversible impairment of a major bodily function, they were asking, are you asking for this abortion, this partial-birth abortion to be done for physical reasons or for mental reasons, all 182 partial-birth abortions done in Kansas this year were for mental reasons. Zero were for physical reasons. The doctors conducting these, the patients doing it, said this is all for a mental reason.

The notion that some have put forward that there is not another physical option, that you are jeopardizing the physical health of the mother, the life of the mother by banning a partial-birth abortion procedure is certainly not borne out by the statistics in my State. You would think there should be at least one, maybe five that were for physical reasons of the mother. In our instance, in Kansas, where we require by law that partial-birth abortion be reported, and the reasoning, zero were for physical reasons. These were all for mental reasons that were put forward. I would hope we could put to rest the debate point about we have to maintain this procedure for the life of the mother, the health of the mother. Our experience in the State is that is simply not the reason. I am delighted to be able to provide that to my colleagues for the RECORD.

Regardless of your view overall on abortion, to have this grisly practice of partial birth continuing is something we should not have taking place. It is something we don’t need to take place, and it does lead to a more callous society. That is the point I want to discuss, its overall impact on society. I hope we can step back a moment and philosophize a bit about what it does.

Aside from partial-birth abortion, it has become increasingly clear that the impact abortion has had on society is in itself profound. I am quite convinced the widespread acceptance of this brutal practice has already significantly coarsened public attitudes toward human life in general, particularly toward the most vulnerable in society, whether they are unborn or old or infirm. This coarsening of public attitude over the past several years has made other assaults against the dignity of humans and human life more acceptable and more accessible.

It is one of those slopes that you start down. If you say as a society, partial-birth abortion, we really don’t like it that much but we will go ahead and let it take place, when you say it from a large legislative body such as this one, the Senate, the House of Representatives, to say we really don’t care for it but we will let it take place, and we know what this procedure is and we know most of it, if not all of it, is on a choice basis of a mental concept, it is not on physical consequence for the mother, we know most of this is about a mental choice on the mother’s part, and yet we are going to let this continue, what message does that send overall to society? What does it say to the country? What does it say to the world?

Does it make other assaults on human dignity possible? Euthanasia; assisted suicide; let’s do embryo research; now let’s clone human beings. We continue to move upon that path of saying the human being is not sacred; it is not precious; it is another entity; and we can countenance that such coarseness takes place, and it continues to move us on down that road.

Mother Teresa was quoted as once saying that “if we can accept that a mother can kill her own child, how can we tell other people not to kill one another?”

That is a really good question she was asking. If we accept that a mother would do this, particularly a partial-birth abortion procedure, how can we tell other people not to kill one another?

We all have a duty, an obligation, as citizens of the United States to stand up against such a moral outrage as partial-birth abortion. Human life is sacred. It is a precious gift. Human life is not something to be disposed of by those with more power. One of the most extreme assaults against human dignity is made against some of the most innocent among us, whether from the first moments of life to the moments just before birth, a child continues in that point to be a precious

and unique gift, a gift never to be given or to be created again. It is given once. That is it. It seems therefore that in some measure this debate is about whether or not that child prior to birth is a child at all. Is this young human a person? Is it a child or is it a mere piece of property?

Some who support partial-birth abortion will argue this young human is not a person and can therefore be disposed of as property, as need sees. To me, this would be a ghastly concept. Elizabeth Cady Stanton, a lady whose statue is in this building, one of the women depicted in the portrait monument, foresaw this awful view of humanity, of human life. She wrote a letter to Julia Ward Howe in October of 1873 and said:

When we consider that women are treated as property, it is degrading to women that we should treat our children as property to be disposed of as we see fit.

That is a quote from 1873. The Congress must speak out against this atrocity. We must speak out against this degradation of human life. These are life issues of enormous consequence, and they are issues by which history will rightly judge us.

I thank those who have brought the debate forward. I know everybody who has entered into it does so with deep convictions, deep desires to do what is right. I hope we would back up as a society and ask ourselves, what coarsening does this do to us; what message is this sending, and what are we really saying about that young human life? Is it a person or is it a piece of property? It is one or the other in our jurisprudence, it has to be. Everything in this building right now, everything in this country is either a person or a piece of property. I am a person; my clothes are property. The building is property. The people in here are personages. What is the young human? We have had this debate before. We really need to consider that that is a child. It is a gift.

I want to quote one more time Mother Teresa and her concern on this particular issue and this particular issue of abortion itself. I don't think anybody could question her bona fides for being willing to take care of the weakest and the poorest in society and in the culture overall and her willingness to work and her work being carried on of taking care of the most vulnerable in society. She said this one time about the whole issue of abortion. She spoke very passionately, clearly about this topic. She said:

Many are concerned with the children of India, with the children of Africa where quite a few die of hunger and so on. Many people are also concerned about the violence in this great country of the United States. These concerns are very good. But often these same people are not concerned with the millions being killed by the deliberate decision of their own mothers. And this is the greatest destroyer of peace today—abortion which brings people to such blindness.

We are confronted with an issue that is difficult and has been in front of us before. We have a chance for the first

time in a number of years to limit a particular ghastly abortion procedure. It has been adequately described over and over. This is the time. This is the place. This is the moment for the Senate to pass this bill, to pass it without amendment, to get it on through to the House and to the President, who will sign it into law. We can do something that really will send a right signal to society, a right signal overall to the culture, away from the coarsening and towards a life that does support a culture of life and not one of death.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY. How much time do we have remaining?

The PRESIDING OFFICER. The Senator from Washington has 19 minutes and 43 seconds remaining.

Mr. KYL. I would like to take 20 seconds.

Mrs. MURRAY. Off of your time, I would be happy.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. I wanted to compliment the Senator from Kansas for his leadership on this issue, as well as the Senator from Pennsylvania for his leadership. While they have done the bulk of the discussion on this issue, they represent a lot of us who feel just as strongly about the issue. I want them to know how much those of us who haven't spoken appreciate their leadership in proposing this legislation.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Madam President, I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, I want to take 5 minutes to thank my friend from Washington, Senator MURRAY, for her extraordinary leadership on women's health. The fact that this amendment is being debated is very encouraging to me, because when people stand up and say we want to prohibit a procedure that doctors tell us, OB/GYNs tell us is absolutely necessary in some cases in order for a woman to have her life saved or her health preserved, that is not something we should be doing here. We are not physicians; we are Senators.

What we would be doing is making sure that every woman in this country, when faced with a very difficult life-threatening or a health-threatening pregnancy can make decisions based on the best advice that she can get, the best science, because if we look at these families—and I have been showing these portraits of real women. This is a woman who, in her own words, said, "I am a conservative pro-life Christian." Those are her words. She said, "Abortion, to me, is something unthinkable." Yet she said in her own words, far more eloquent than mine, that had she not been able to have the procedure that my colleagues on the

other side of the aisle want to ban, she might not have been able to bear another child. In fact, the possible health impacts of her not being able to have the procedure have been spelled out by physicians.

I am so happy to see my friend from Illinois in the Chamber because he is going to be offering an amendment to make sure that if this bad law moves forward, there is an exception, so that women won't hemorrhage, won't have uteruses rupture, won't suffer blood clots, won't have embolism or strokes, or won't suffer damage to nearby organs or have paralysis. Can you imagine us doing something that could lead to a woman—like this beautiful woman and the others I have talked about having to suffer one of those consequences—being ripped away from her family?

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

Mrs. BOXER. I am happy to yield.

Mr. DURBIN. We had a conversation on the floor about another woman whose photograph is here, whom I met, Vikki Stella, from my home State of Illinois. We talked about the complications she faced. It was interesting to me that as I told her tragic story—I wonder if the Senator from California is aware of the fact—the Senator from Pennsylvania took the floor and said that, in his opinion, she did not face a medical crisis in her pregnancy. I wonder if the Senator from Pennsylvania or the Senator from California are aware of the fact that at 32 weeks in her pregnancy an ultrasound disclosed that her son had nine major anomalies, including a fluid-filled cranium with no brain tissue at all; compacted, flattened congenital hip dysplasia; and skeletal dysplasia; and hypertelorism eyes, and he would never have survived outside the womb.

I wonder if the Senator believes it is within our purview, within our authority and knowledge, to judge that that terrible outcome in a pregnancy was not a medical crisis.

Mrs. BOXER. My friend has put it in a very stark way—that what is happening in this Chamber, and as my friend, Senator MURRAY, has eloquently pointed out, as we are amassed to go to war in Iraq, as we have a building crisis in North Korea, as we have the worst economy I have seen in decades, what is on this floor is banning a procedure that your constituent—is she yours?

Mr. DURBIN. Yes.

Mrs. BOXER. That your constituent needed in order to spare her son horrific health consequences. And the fact that somebody would say that is not a crisis, when you have described the status of this pregnancy, is stunning to me. I know people around here have big egos. I don't doubt that. We all have—

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mrs. BOXER. I ask for an additional 3 minutes.

Mrs. MURRAY. I yield an additional 3 minutes to the Senator from California.

Mrs. BOXER. I know that most politicians—and we are all included—think we really know a lot, and we are really pretty smart, and we have to work hard at our jobs, and we feel confident and comfortable in our work, but when we start doing things such as this—outlawing a medical procedure that OB/GYNs tell us is necessary to preserve the health of a woman, and when we start telling women such as this woman here, and others I have shown, that they don't know what they are talking about, they were not in crisis, this isn't an emergency—I actually heard someone on the floor today say this isn't an emergency situation if it takes 3 days.

Well, let me tell you, it may take 3 days because of these complications that we are talking about. These are very complicated, difficult situations that are delicate. If it takes 3 days, it is because it is delicate.

I have to say, if we wind up banning this procedure—which, by the way, the way the bill as written is unconstitutional because the lawyers who have fought the previous case said it is legally identical to the case that the Supreme Court said was unconstitutional—and it is upheld because of a change in the Court, or whatever, we are going to find some tragedies that we are going to bring to the floor.

I don't want to see that day come. Doctors take an oath to do no harm. I wish we can take that same oath to do no harm. *Roe v. Wade* was a very important decision. It said in the first few months of a pregnancy, before viability, a woman has a right to choose what she wants to do with the pregnancy. That is *Roe*. After viability, we all support restrictions—but always with an exception for the life or the health of the mother.

This bill is so radical, it has no exception for health. The women I have brought to you have told me they could have suffered any one of these on this list of problems. How we can stand here on the floor, when physicians are telling us these are the problems—the hemorrhages, blood clots, strokes, paralysis—that could result. If this particular method is banned, it seems to me we are doing harm. We are doing harm to the women of this country.

I would like to see us finish this bill. I would like to see these amendments pass. Senator MURRAY's amendment is so important. They are so important because what they will do if they pass and are signed into law is make abortion rare because it is talked about in every aspect of contraception being available to women. That is what we ought to be doing so we don't have to have this debate on abortion.

The PRESIDING OFFICER. The Senator has used her time.

Mrs. BOXER. I yield the floor at this time.

Mr. SANTORUM. Madam President, I ask the Senator from California this.

She keeps making the statement and I want to make sure I give her an opportunity to substantiate this statement. The statement is made repeatedly that obstetricians and gynecologists around the country are saying that this is medically necessary to preserve the health of the mother.

Has one of those obstetricians or gynecologists submitted a circumstance by which this would be the case? And where have they said this is the case? I am asking. If the Senator from California is going to make a statement that obstetricians believe this is medically necessary to preserve the health of a mother, substantiate the statement.

For 7 years I have asked this question. Seven years. It has been asked at hearings and in a variety of different forums. I understand why the OB/GYN association opposes this ban because they do not like anything that criminalizes their behavior. I understand that. I am sure anybody who does behavior outside the bounds of morality and, therefore, potentially criminal, would like laws that do not stop them from doing what they want to do. I understand why people do not want constraints on their actions, but we have laws because we believe there are certain actions that are so morally reprehensible that we want to prohibit them and at which we want consequences directed.

Mrs. BOXER. Will the Senator yield for an answer to the question?

Mr. SANTORUM. I ask the question, as I have repeatedly: Provide for me an instance, a circumstance, a medical situation in which this procedure would be necessary to preserve the health of the mother. That is what I am asking. Give me a circumstance where this would be necessary and there would be no other procedures available. Give me a circumstance where this would be the best procedure.

Mrs. BOXER. I assume I am answering on my friend's time.

Mr. SANTORUM. If you can answer the question.

Mrs. BOXER. Yes, I would like to submit for the record a letter from the University of California, San Francisco, Dr. Felicia Stewart, in which she says very clearly that this bill:

... fails to protect women's health by omitting an exception for women's health; it menaces medical practice with the threat of criminal prosecution; it encompasses a range of abortion procedures; and it leaves women in need of second trimester abortions with far less safe medical options: hysterotomy and hysterectomy.

The proposed ban would potentially encompass several abortion methods.

She goes on:

If the safest medical procedures are not available to terminate a pregnancy, severe adverse health consequences are possible for some women who have underlying medical conditions.

And she says here is what happened to them: Death, infertility, paralysis—

Mr. SANTORUM. Reclaiming my time.

Mrs. BOXER. Coma, stroke, hemorrhage, brain damage, infection, liver damage, and kidney damage.

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

Mr. SANTORUM. Madam President, with all due respect to the Senator from California, she has not answered my question. That letter does not answer my question. I have asked not what could happen if abortions are not available. What I have asked is for a specific medical circumstance that someone can provide me where this procedure would be necessary to save the health of the mother.

In 7 years of asking that question, I have not gotten an answer. I think that is significant, that if this is so important, if Members of the Senate are going to come here and say this is medically necessary to protect the health of the mother, then they have to have evidence to support that statement. Saying that this limits options and saying potentially it could have adverse—give me a circumstance, give me a case.

The reason that no cases have been brought forward is because we have overwhelming testimony, dispositive testimony from physicians all across this country who say that it is never medically necessary, including the American Medical Association, which says this is a bad practice.

Take the cases that are being presented today. Vikki Stella. Did I say the pregnancy was not a crisis in the sense the child had multiple birth defects? Is that a crisis pregnancy? Of course it is in the sense that the child does not have a chance or very much of a chance to survive long after birth. But that is not what I said. What I said was it was not a medical crisis for the mother, and there is no evidence the mother was in any physical danger. I have gone through this personally as—

Mr. DURBIN. Will the Senator yield?

Mr. SANTORUM. Let me finish, and I will be happy to yield as I have continually. The fact that a child in utero is going through a crisis does not equate that the mother is going through a health crisis. There are lots of mothers of babies with multiple defects who carry that child to term or do things to try to help that child in utero survive. One does not equate to the other.

The case of Vikki Stella—and I am just reporting—I understand the fact she was carrying a child with multiple disabilities. My heart grieves for her and for all women who have to go through such difficult pregnancies. It is horrible to find out that a child you want may not live long after birth. It is as compelling a story as you can present to me. The point is, the answer does not have to be the death of the child.

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

Mr. SANTORUM. I will be happy to yield for a question.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SANTORUM. Without losing my right to the floor.

Mr. DURBIN. The Senator is an accomplished lawyer with good background and understanding, but he is not a medical doctor. In this case, her medical doctor said because of her diabetic condition and complications that the fetus she was carrying could not survive outside the womb, if she had a C-section to deliver this child, it would have put her life and health at risk. The Senator from Pennsylvania comes to the floor and says: No, I understand it better. I can make a better diagnosis. She was not at risk.

Mr. SANTORUM. I reclaim my time.

Mr. DURBIN. How can the Senator stand here and make a medical judgment on a person he has never seen?

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

Mr. SANTORUM. One, you make it sound like the doctor who diagnosed the fetal abnormality was the one who performed the abortion. In fact—I am reading her story—the diagnosis was made by a perinatologist and the abortion was performed by an abortionist in a clinic, not the same person.

Mr. DURBIN. What is the point?

Mr. SANTORUM. The point is that this is not done in hospitals. This is done in abortion clinics. This is not a procedure that was developed to protect the health of the mother. This was a procedure that was developed so the abortionist could do multiple abortions and do more of them at the same time.

The case we are laying out here—and by the way, we are arguing a case of where you have a fetal abnormality which, by the way, is less than 1 percent of the abortions that are performed.

Mr. DURBIN. Does the Senator make that exception in his bill?

Mr. SANTORUM. Excuse me, there need not be an exception, but you are arguing these compelling cases and they are compelling because they are talking about women going through very difficult decisions, but there is no medical reason to do this procedure. There are other procedures available and safer. There are better procedures for abortion available. I am not talking about C-sections, but other abortion procedures that are better.

Mr. DURBIN. Will the Senator please tell me what procedure would have been better for Vikki Stella?

Mr. SANTORUM. Look, this procedure is not done in hospitals. So all I suggest is there are other safer, peer-reviewed procedures that can and are used on a routine basis by a physician—

Mr. DURBIN. Will the Senator please tell me, since he said it was not a medical crisis, and she did not need this procedure—

Mr. SANTORUM.—which is a standard D&E, which is the most common late-term abortion performed at hospitals, taught in medical school, and peer reviewed. This is not RICK

SANTORUM talking. This is not the Senator from Tennessee talking. This is a variety of obstetricians.

The point is, they are giving a reason for keeping this procedure legal that is a red herring. This procedure is not taught in hospitals. It is not performed in hospitals. It is not done by advanced perinatologists who run into difficult pregnancies. Why? Because it is not safe. Why? Because there are better methods.

What we are trying to do here is protect women's health. We hear so much passion here about protecting women's health. We have a procedure that has been demonstrably proven is dangerous to women's health; that there are other procedures that are safer.

Why are we not concerned about women's health when we want to keep a procedure legal that is unsafe? Are we really concerned about women's health, or are we really concerned about eroding, chipping ever so slightly at this oracle of abortion in America? This is trying to stop something that is unsafe for women, that is obviously brutal for children, and is simply not necessary to protect the health of a woman.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Washington.

Mrs. MURRAY. Madam President, I think this discussion shows exactly why this Senate should agree on the women's health amendment that is now before this body and that we will vote on in a few minutes.

Senator REID and I have said that the goal of all of us should be to reduce the number of unintended pregnancies so that this issue that is being debated does not have to be debated on the floor of the Senate; that this issue should be decided between a woman and her doctor, her family and her faith.

I commend Senator REID for working with me on this very important amendment, and I yield 8 minutes of my remaining time to Senator REID.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, this amendment is to end insurance discrimination against women and improve awareness and understanding of emergency contraception, ensure that rape victims have information about and access to emergency contraception, and promote healthy pregnancies of babies by allowing States to expand coverage for prenatal and postpartum care. That is what this amendment is.

The debate that has been going on in the last few minutes has nothing to do with the amendment offered by the Senators from Washington and Nevada.

As I mentioned earlier today, the abortion debate has been a divisive one for our Nation for many years. We recognize the issue is not going to go away soon, but there is a need—and I thought we had an opportunity, and I hope we still do—to find common

ground and to take steps toward a goal I hope we all share: Reducing the number of unintended pregnancies in America and reducing the number of abortions.

We put forth a good-faith effort to find common ground by offering commonsense solutions in our amendment. Instead of giving serious consideration to our amendment that would improve access to contraception and improve access to care for pregnant women, the other side has instead chosen to hide behind a technicality. That is what it is. If my friends on the other side of the aisle were serious about improving women's health, serious about improving access to contraception, and serious about reducing unintended pregnancies, they would not dismiss this amendment on a technicality.

When the Bush administration decided it would allow a fetus to be covered through the SCHIP program but it was all right to exclude the mother from coverage, we did not have the opportunity to dismiss this shameful and absurd regulation on a technicality. As a result, we are missing the opportunity to provide critical health care coverage for low-income women and their babies.

The sad irony of tonight's vote is that the measures contained in our amendment would actually save the country money. In fact, as the Washington Business Group on Health has found in its report "Business, Babies and the Bottom Line," more than \$6 of neonatal intensive care costs could be saved for every \$1 spent on prenatal care, and low-birth-weight babies are 64 percent more likely to attend special education classes than normal-birth-weight babies. That is why the neonatologists came to see me, as I reported earlier today. They want women who have not had the opportunity to have prenatal care to have prenatal care. It saves the Government money.

Furthermore, an Agency for Health Care Research and Quality report has found 4 of the top 10 most expensive conditions in the hospital are related to care of infants with complications, respiratory diseases, prematurity, health defects, and lack of oxygen. All of these conditions can be improved and, in most cases, eliminated through quality prenatal care.

The same holds true for EPICC legislation that would improve access to contraception by requiring insurance plans which provide coverage for prescription drugs to provide the same coverage for prescription contraceptives.

The Washington Business Group on Health estimates that not covering contraceptives in employee health plans would cost 17 percent more than providing the coverage. It is a loser to vote against this amendment. If my colleagues are concerned about money—and that is what this technicality is all about—then vote with us because we are going to save the State, local, and Federal Governments money.

The Federal Employee Health Benefits Program, which has provided contraceptive coverage for several years now as the result of an amendment made on this floor, shows that adding such coverage does not make the plan more expensive.

This vote is not about money. If the other side were serious about improving women's health, serious about improving access to contraception, and serious about reducing unintended pregnancies, they would not dismiss this amendment on a technicality.

I hope people will vote their conscience, the conscience to help women have healthy babies.

Mrs. LINCOLN. Madam President, I support the prevention package amendment offered today by Senators MURRAY and REID to reduce the high rates of unintended pregnancy in our country as well as improve access to prenatal and postpartum care for pregnant women.

I urge my colleagues to support this commonsense approach to the health of women and their babies. If Senators really want to make our country a better place for babies, women, and their families, they should support this amendment.

Half of the 4 million pregnancies that occur in the United States every year are unintended. This amendment seeks to curb that trend by helping women better plan their pregnancies, improving knowledge of and access to contraception, and expanding insurance coverage for prenatal and postpartum care. If the provisions in this amendment were already law, I sincerely believe we wouldn't be here debating the underlying bill.

A recent report showed that abortion rates are at their lowest level since 1974. Most of this decline is attributed to women becoming better educated about how to care for their bodies. We are gaining greater access to safe contraceptive measures. That is the good news.

However, while there was an overall decline in abortion rates, the abortion rate among women of lower economic status actually rose. These women face greater barriers to contraception. To really reduce abortions in our country, we need to ensure that all women—poor and wealthy—have access to affordable and timely contraceptives.

This prevention amendment makes significant progress towards that goal. First, the amendment makes contraception more affordable for privately insured women, an important provision based on bipartisan legislation introduced by Senators SNOWE and REID. This provision establishes parity for prescription contraception by requiring private health plans to cover FDA-approved prescription contraceptives and related medical services to the same extent that they cover prescription drugs and other outpatient medical services. By making contraception affordable for working women and families, this provision takes a positive

step forward in the effort to reduce abortions in our country.

Second, this amendment seeks to make women and health care providers more aware of emergency contraception, which is really just a specified dose of standard birth control pills that can be taken up to 72 hours after unprotected sex. Despite the potential for emergency contraception to drastically reduce unintended pregnancies and the need for abortion, it is underutilized and misunderstood. This amendment seeks to correct that. Emergency contraception is FDA-approved to be a safe and effective form of contraception, and it is often the only contraception option for women who have been raped.

Of the 300,000 women in our country who report rapes every year, 25,000 of them become pregnant. Women who have been raped deserve to be given information about emergency contraception when they seek medical help following their sexual assault. Rapes can happen at any time, day or night. Oftentimes, women are treated in hospital emergency rooms. This amendment also ensures that hospitals counsel raped women about their risk of pregnancy and offer them emergency contraception as an option. This policy is in line with emergency care standards established by the American Medical Association and could significantly reduce future abortions.

Lastly, I am glad that this amendment gives States the option of covering pregnant women in their Children's Health Insurance Programs. Based on bipartisan legislation we passed unanimously in the Finance Committee last summer, this bill allows coverage for prenatal care, delivery, and postpartum care. This provision could drastically improve the lives and health of thousands of women and children throughout our Nation.

The infant and maternal mortality statistics in this great country of ours are shocking. According to the Centers for Disease Control and Prevention, the United States ranks 28th in the world in infant mortality. We rank behind countries like Cuba and the Czech Republic. It is amazing to me that the United States lags far behind these nations in this area. Another shocking statistic from the CDC is that the United States ranks 21st in the world in maternal mortality. The World Health Organization estimates that the U.S. maternal mortality rate is double that of Canada.

When we are ahead of every other nation in almost every other arena, I am deeply saddened that we have not taken a course of action that would prove to the rest of the world that we truly do value life in this country, and that we want to do all we possibly can to ensure the healthy delivery of children, as well as the health of their mothers.

The fact is, we know how to address this problem. The solution lies in prenatal and postpartum care. Studies

have shown that this care significantly reduces infant mortality, maternal mortality, and the number of low-birthweight babies. Prenatal care is also cost-effective. For every dollar we spend on prenatal care, we save more than 6 dollars in neonatal intensive care costs. Pre-term births are one of the most expensive reasons for a hospital stay in the United States.

I cannot emphasize enough the great opportunity we have here in the Senate to drastically improve the lives and health of women and babies in our country. We must allow States to cover pregnant women under SCHIP—the States want to do it, and the Federal government should give them the option.

I do not understand why anyone would stand in the way of common sense, practical solutions like the ones offered in this amendment. If my colleagues are serious in their quest to reduce abortions, they will support this amendment. Instead of debating the same bill we did 5 years ago—a bill that will ultimately be decided by the courts—let's do something proactive for our Nation's most vulnerable women and families. I urge all my colleagues to support this amendment today.

Mr. GRASSLEY. Madam President, I am aware that an amendment has been offered to the Partial-Birth Abortion Ban Act of 2003 that would provide coverage through the State Children's Health Insurance Program (S-CHIP) to pregnant women.

The amendment is similar to a bill that passed out of the Finance Committee last July. The bill providing health care to low-income pregnant women was never enacted in the 107th Congress. I support caring for low-income mothers and their unborn children. It is sound health policy.

It is a new Congress, and unfortunately, I can't support this amendment. This policy has not been properly debated in the 108th Congress.

Policies that alter our Nation's safety net programs deserve the Senate's proper attention. We must address policy changes to the safety net through regular order. By accepting this amendment, we are not allowing for this process to work.

Earlier this year, I worked with Senator NICKLES, Senator SNOWE and others to setup a process to address the need to redistribute unspent S-CHIP funds. Together we have set up a solid process to address S-CHIP redistribution through regular order.

I assure my colleagues that, as Chairman of the Finance Committee, I am willing to address pertinent S-CHIP issues in the near future and discuss the possibility of extending S-CHIP coverage to pregnant women.

Ms. MIKULSKI. Madam President, I rise in strong support of the Murray-Reid amendment. This amendment protects women's health. It makes abortions more rare—not more dangerous. It tries to find common ground.

I acknowledge the seriousness of this debate. My colleagues have raised troubling ethical issues about these grim and ghoulish procedures. But there are other equally troubling ethical issues at stake about who should decide how best to protect a woman's health.

Proponents of the Santorum bill that we are debating deny that their legislation will have any consequences for women's health. They are wrong.

Denying women access to the abortion that could save their life and physical health is unconscionable—and unconstitutional.

A pregnant woman facing the most dire circumstances must be able to count on her doctor to do what is medically necessary to protect her from serious physical harm.

I want every woman who hears this debate to know: I am on your side. I will fight to protect your health.

That is why I am proud to support this amendment. It builds on my two decades of advocacy—to protect women's health, to give women access to appropriate medical treatments, and to make sure women are treated fairly and equally under the law.

When I was still a Congresswoman on the House side, there was study after study on how women were not included in the clinical trials at the National Institutes of Health (NIH).

Studies were being done with men only. One study examined whether aspirin decreases cardiovascular deaths on 22,000 men. A study on heart disease risk factors was conducted on 13,000 men—and not one woman. But the results of these studies were applied to both men and women.

What did this mean for women? Millions of men benefited from a study that found taking aspirin reduced their incidence of heart attacks. But since women weren't included in the clinical trial, we didn't know whether it would hurt us, help us, or have no effect.

This policy was unfair. It was harming women.

So one day, I called up Pat Schroeder, Connie Morella, and OLYMPIA SNOWE. We decided to go to NIH—to light a fire so they would take action.

It was a hot day in August. We pulled up in our cars, up to the curb at the front door of NIH. They knew we were there, they knew we were serious. They knew we were going to have a Seneca Falls on NIH if necessary. True story and the rest is history.

Within 1 month after that, working with TED KENNEDY, TOM HARKIN and the women of the House, there was an Office of Women's Health at NIH. NIH finally moved and I moved Congress.

We now know that men and women often have different symptoms before a heart attack. We know that men and women have biological differences that must be studied and understood so women's symptoms can be recognized and treatments can be developed that are effective for both women and men.

Including women in clinical trials and making sure investments in bio-

medical research benefit men and women equally is about basic fairness.

This amendment is also about fairness. It includes the Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC). EPICC requires health plans that cover prescription drugs to provide the same coverage for prescription contraceptives. 98 percent of workers with health insurance have prescription drug benefits, but only 64 percent of workers have plans that cover birth control pills. Only 40 percent of workers have plans that cover all forms of contraceptives.

When health plans cover other prescription drugs but exclude the drugs that only women take, it is gender discrimination. It is wrong.

The Equal Employment Opportunity Commission (EEOC) agreed. I chaired a hearing of the Health, Education, Labor, and Pensions Committee on this legislation. The Committee heard testimony from Jennifer Erickson, a 28-year-old pharmacist from Seattle. Jennifer used this EEOC decision to take her employer to court. She won.

This was a landmark victory for women. But women should not have to sue their employers to get their health plans to treat them fairly.

That is why I am such a strong supporter of this legislation. EPICC protects every woman from illegal gender discrimination. It reaffirms our commitment to basic fairness for women under the law. It leaves medical decisions in the hands of women and their doctors—not legislators, and not insurance company bureaucrats. It expands access to contraceptives that help prevent unwanted pregnancies.

EPICC also builds on past successes. In 1998, I worked with Senators SNOWE and REID to require Federal Employee Health Benefit Plans that covered other prescription drugs to also cover prescription contraceptives. I have stood sentry in the Appropriations Committee to keep this promise to Federal employees.

Contraceptive equity for Federal employees was a downpayment. It created a model for employers—and other States—to follow, like my own state of Maryland. Maryland was the first state to pass a contraceptive equity law.

This legislation will make the final payment—so every woman can count on her health plan to treat her fairly and to cover her basic medical care.

This amendment also expands access to medical treatment for women by giving women who have been raped access to emergency contraceptives, and giving low-income pregnant women health insurance through the Children's Health Insurance Program.

The Murray-Reid amendment builds on past efforts to make sure every woman has access to the medical care she deserves. In 1990, I fought to make sure low-income women could get screened for breast and cervical cancer. Since this screening program started, over 1.5 million women have been screened, more than 9,000 breast cancers have

been diagnosed, and over 48,000 precancerous cervical lesions have been detected.

This screening program was a good start—but it left a serious gap. The program paid for women to get screened, but it did not pay the costs of treatment for women who were diagnosed with breast and cervical cancer through the program. Women were left to fend for themselves or rely on volunteers to provide free or reduced-cost treatment. I fought to change that.

In 2000—after years of effort—Senator John Chafee and I passed a law to give women who were diagnosed with breast and cervical cancer through this program access to the medical treatment they needed.

Let's continue to build on these efforts to make sure every woman has access to quality health care. Millions of Americans do not have access to health care, because they cannot afford health insurance. There are 267,000 women in Maryland without health insurance, 11 percent of Maryland women under age 65.

The Murray-Reid amendment will expand health insurance coverage. It includes legislation that I strongly support that allows states to expand their children's health insurance program to give pregnant women earning less than \$17,000 a year access to the health care they need.

This amendment sends a message to women. I am on your side. I will fight to protect your health. I will fight to make sure you get treated fairly. I urge you to support it.

I am also here in support of the Murray-Reid amendment because it sends a message about the importance of prevention. This amendment will help prevent unwanted pregnancies—by expanding access to contraceptives through fair, equitable insurance coverage, guaranteeing that women who have been raped can get emergency contraceptives (ECs), and getting information to women and their doctors about ECs. It will prevent abortions.

Unlike this amendment, the Santorum bill that we are debating does not prevent a single abortion. It prohibits certain abortion procedures, but allows doctors to use other procedures in its place. The Santorum bill directs doctors to use other procedures that may be more dangerous to women. It is a hollow and ineffective approach.

Improving access to contraceptives makes sense. This amendment makes abortions more rare, not more dangerous.

Preventing unwanted pregnancies in the first place is something we can all agree on. People of good conscience and good will disagree on some of these difficult issues. I support commonsense ways to find middle ground. The Durbin amendment I will support is a commonsense approach to prohibit late-term abortions and protect women's life and health from serious harm.

There is too much at stake to angle for partisan advantage or to be driven

by narrow ideology. Let's work together to prevent abortions and protect the health and lives of American women. I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. How much time is remaining on both sides?

The PRESIDING OFFICER. The Senator from Washington has 5 minutes 48 seconds. The Senator from Pennsylvania has 38 seconds.

Mrs. MURRAY. Madam President, I state for all of our colleagues that we are going to vote in a few minutes on a very important amendment. We have heard a lot of rhetoric in the last few days saying that people care about women, care about women's health, care about the health of a child. I think what we all can agree on is that if we can help prevent unintended pregnancies and ensure access to health care coverage for low-income women, we have taken a major step forward in this country.

The Murray-Reid amendment we are going to vote on in a few minutes does several really important things. Today, in this country, in too many States, women do not have access to contraceptives simply because they are discriminated against by their insurance company.

What this amendment merely says is that it would prohibit those insurance plans from discriminating against contraception, so that women would not be denied the ability to make their own choices for their own family in their own homes with contraception that they can afford. I think this is something many Members agree on, many Members have supported, and it is a step in the right direction in this country for women's health.

Secondly, it provides emergency contraceptive education. It simply authorizes a \$10 million education program to help people know and get information to women and health care providers on the availability and effectiveness of emergency contraceptives—again, preventing unintended pregnancies. It provides emergency contraceptives in the emergency room.

Senator REID spoke very eloquently this morning about a young woman who was raped, who had no knowledge of what she could do to make sure she would not have an unintended pregnancy as a result of the rape. This simply makes sure that emergency contraceptives are available in our emergency rooms so that victims of sexual assault can get the care they need and be taken care of without having to have an unintended pregnancy that would be devastating. This is something of which everyone in this Chamber can be supportive.

Finally, it expands the SCHIP and Medicaid Program to include low-income pregnant women. As we all know, the administration moved to make the fetus eligible under SCHIP but left out the woman. I find that reprehensible. I

do not know how a woman's health can be separated from her fetus and one can say this procedure and this medical condition only applies to the fetus. For all of us who have been pregnant, we know that oftentimes when you are not feeling well, you are not sure why you are not feeling well. You cannot separate a woman from her womb when she is pregnant, and you cannot make that kind of coverage just for the fetus. You have to make sure the woman is healthy. That is what this amendment will do. I think it is something all of us can support.

What we have found this evening is that our colleagues on the other side, who have not spoken against this amendment because they do not want to speak against it, are hiding behind a budget waiver. To me, that is a technicality to hide behind. How can they go home and tell women that they are for women's health; that they are for making sure women have the opportunity to prevent unintended pregnancies so that we do not have these difficult choices on the floor of the Senate, and hide behind a budget waiver?

I tell all of my colleagues, a vote to waive the Budget Act is a vote to help prevent unintended pregnancies. It is a vote for women's health, a vote to make sure that women have access and the ability to make these choices for themselves.

I hope all of my colleagues will vote to waive the Budget Act so that we can put in place a bill that will allow women to make good choices for themselves that will allow them to be healthy and for their children to be healthy. Certainly, that is something on which we can all agree.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SANTORUM. Madam President, a couple of points on the Murray amendment: No. 1, this amendment puts conditions on the receipt of enhanced SCHIP dollars. In order to get the enhanced match, a State must first expand eligibility up to 185 percent of the Federal poverty level with the regular Medicaid match rate. In other words, we will force States which are already facing tough budgetary times—and they are pounding on our door because of the cost of Medicaid already—to expand Medicaid before they are able to receive the benefits of this enhanced match.

I do not think this is going to accomplish what they want to accomplish anyway. We are going through the process right now in the budget to deal with this issue. Senator NICKLES has already said this is going to be dealt with in the budget. We will have a full discussion about this next week. That is the proper place for this discussion, not on this amendment.

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

The Senator from Washington.

Mrs. MURRAY. The Senate is about to vote on the Murray-Reid amend-

ment. This is a prevention amendment. It is an amendment that supports women's health. If our colleagues choose to hide behind the technicality, that is their choice, but the American people want us to stand behind women's health. I urge my colleagues to support the motion to waive.

The PRESIDING OFFICER. The time has expired.

The question is on waiving section 207(b) of H. Con. Res. 68 of the 106th Congress as extended by S. Res. 304 of the 107th Congress. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

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

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

I further announce that, if present and voting the Senator from Massachusetts (Mr. KERRY) would vote "aye".

The PRESIDING OFFICER (Mr. ALEXANDER). Are there any other Senators in the Chambers desiring to vote?

The result was announced—yeas 49, nays 47, as follows:

[Rollcall Vote No. 45 Leg.]

YEAS—49

|          |            |             |
|----------|------------|-------------|
| Akaka    | Dorgan     | Lincoln     |
| Baucus   | Durbin     | Mikulski    |
| Bayh     | Edwards    | Murray      |
| Bingaman | Feingold   | Nelson (FL) |
| Boxer    | Feinstein  | Pryor       |
| Byrd     | Harkin     | Reed        |
| Campbell | Hollings   | Reid        |
| Cantwell | Inouye     | Rockefeller |
| Carper   | Jeffords   | Sarbanes    |
| Chafee   | Johnson    | Schumer     |
| Clinton  | Kennedy    | Smith       |
| Collins  | Kohl       | Snowe       |
| Conrad   | Landrieu   | Stabenow    |
| Corzine  | Lautenberg | Warner      |
| Daschle  | Leahy      | Wyden       |
| Dayton   | Levin      |             |
| Dodd     | Lieberman  |             |

NAYS—47

|           |             |             |
|-----------|-------------|-------------|
| Alexander | Dole        | McCain      |
| Allard    | Domenici    | Miller      |
| Allen     | Ensign      | Murkowski   |
| Bennett   | Enzi        | Nelson (NE) |
| Bond      | Fitzgerald  | Nickles     |
| Breaux    | Frist       | Roberts     |
| Brownback | Graham (SC) | Santorum    |
| Bunning   | Grassley    | Sessions    |
| Burns     | Gregg       | Shelby      |
| Chambliss | Hagel       | Specter     |
| Cochran   | Hatch       | Stevens     |
| Coleman   | Hutchison   | Sununu      |
| Cornyn    | Inhofe      | Talent      |
| Craig     | Kyl         | Thomas      |
| Crapo     | Lott        | Thomas      |
| DeWine    | Lugar       | Voinovich   |

NOT VOTING—4

|             |           |
|-------------|-----------|
| Biden       | Kerry     |
| Graham (FL) | McConnell |

CHANGE OF VOTE

Mr. WARNER. Mr. President, on rollcall vote No. 45, I voted nay, and it was my intention to vote aye. Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.

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

(The foregoing tally has been changed to reflect the above order.)

The PRESIDING OFFICER. On this vote, the yeas are 49, the nays are 47.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

The Senator from Illinois.

AMENDMENT NO. 259

Mr. DURBIN. Mr. President, I have an amendment which I will be offering. At this point, I am prepared to commence debate on the amendment. I see the majority leader in the Chamber. If there is no other business to come before the Senate this evening, I will just continue the debate on the issue before us.

I would like to bring the attention of my colleagues to an amendment which I will bring to a vote tomorrow afternoon. This is an amendment which I have prepared and offered with a number of cosponsors. I would like to acknowledge their support in offering this amendment with me. They include a bipartisan group of Senators who, frankly, are on different places on the political spectrum when it comes to the issue of abortion. This may be one of the only amendments to be offered which brings together people who don't see eye to eye, usually, on this issue. It is a good-faith effort on the part of myself and the cosponsors to bring this amendment forward in an effort to find a reasonable way to resolve an extremely difficult issue.

I have said in previous debates, and I repeat that those who are on both sides of the issue come to it in good faith. Anyone who is in political life knows this is not an issue on which you are ever going to win. When it comes to the issue of abortion, there are a substantial portion of Americans who believe very strongly against a woman's right to choose, and a substantial portion who strongly favor a woman's right to choose. No matter which position you take, you are bound to make some enemies.

What I have found is that between these two positions on the issue, you will find most Americans. And most Americans when pressed come to the following conclusion: They believe that we should keep abortion procedures safe and legal but make them as rare as possible, do not encourage them, have them available in extraordinary situations, but do not encourage them.

That is the nature of the amendment which I am offering tomorrow, an amendment which I hope goes to the heart of the issue before us.

We are debating what is known as the partial-birth abortion procedure. It has been graphically described during the course of this debate, and I am sure will be described again. It is one of the procedures that is used to terminate a pregnancy.

There are those, including medical doctors, who argue that there is no such thing as a so-called partial-birth abortion. This was a term created for political purposes and that, in fact,

when you look at all of the various abortion procedures available, you won't find this one listed. Some have called this the D&X procedure, dilation and extraction. Others say, no, it is somewhat different.

The reason the definition of that procedure is important is that across the street from the Senate in the Supreme Court, they have thrown out State statutes that just refer to partial-birth abortion by saying that it is so vague, they can't reach a conclusion as to what the State legislature in that case intended.

We come in this general debate on partial-birth abortion to the same impasse. The procedure is not well defined. But the amendment I offer is not an amendment that focuses on this procedure. What I focus on with the amendment is all abortion procedures postviability.

That is an important distinction. What we are saying is that regardless of the abortion procedure you are talking about, I am looking at that period of time after it is medically determined that the fetus that the mother or woman is carrying is viable, could survive outside the womb. That was a critical distinction made in *Roe v. Wade* over 25 years ago. They said, when it comes to a case where that fetus could survive and is viable, only under the most extraordinary circumstances could you end a pregnancy, could you terminate with an abortion.

That is reasonable. My amendment says that all abortion procedures postviability, after the fetus is viable, are prohibited except in two specific instances. You can only terminate a pregnancy legally through an abortion procedure after the fetus is viable if the life of the mother is at stake—same thing as said by my colleagues offering S. 3—or a woman, if she continued the pregnancy, has a risk of grievous physical injury. I will explain these terms a little later.

We also go on to say that in order to determine whether that late in the pregnancy, after the fetus could nominally survive outside the womb, in order to determine whether a woman's life is at risk to continue the pregnancy, or if she faces a grievous physical injury if she continues that pregnancy, you need not one but two doctors to certify that. But a reason that the two-doctor certification is important is that arguments were made that the same doctor performing the abortion would happily certify that the woman is eligible for the abortion. I don't believe that, but the critics have raised that point.

To overcome that point, we have added the requirement for a second medical certification of a doctor who is not performing the abortion procedure—a doctor who will certify that continuing the pregnancy threatens the life of the mother, or would expose this mother to grievous physical injury.

Then we add a very tough section in the bill that says that doctors who cer-

tify need to tell the truth. If they falsify information to justify a termination of a pregnancy, they face not only substantial fines of \$100,000 in the first instance, \$250,000 in the second instance, but in either case, if they falsify information about whether a woman's medical condition qualifies her for a late-term abortion, they can lose their licenses to practice medicine. That is about as serious a penalty as you can impose on a doctor.

So when you look at the span of what this amendment will do, it, in fact, limits all late-term abortions, regardless of the procedure—limits all late-term abortions, only allowing them in two cases: where the life of the mother is at stake if she continues the pregnancy, or whether she faces grievous physical injury—which we define—if she continues the pregnancy. She needs two doctors to stand by her.

We create an exception for an emergency. A woman late in her pregnancy, whose life is at risk, may not be able to find a second doctor; and if she can have a certification that it is an emergency situation, the second doctor's opinion will not be necessary. But that is the only exception. I think this is a very strict approach. I think it is one that is reasonable.

There has been a lot said on the floor as to whether the partial-birth abortion procedure is ever medically necessary. I have said repeatedly in debate that I am not a doctor; I cannot reach that conclusion on my own. I have to turn to others for advice. The American College of Obstetricians and Gynecologists says it is never the only thing you can do, but in some cases it may be the most appropriate thing for you to do.

I have a statement of policy from the American College of Obstetricians and Gynecologists which restates their earlier position of 1997. I ask unanimous consent that this be printed in the RECORD at this point.

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

AMERICAN COLLEGE OF  
OBSTETRICIANS AND GYNECOLOGISTS,  
Washington, DC, March 6, 2003.

Hon. BARBARA BOXER,  
Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR BOXER: The American College of Obstetricians and Gynecologists (ACOG) reaffirms its Statement of Policy on Intact Dilation and Extraction, initially approved by the ACOG Executive Board in 1997.

Sincerely,

RALPH HALE, MD,  
Executive Vice President.

Attachment.

ACOG STATEMENT OF POLICY  
(As issued by the ACOG Executive Board)  
STATEMENT ON INTACT DILATATION AND  
EXTRACTION

The debate regarding legislation to prohibit a method of abortion, such as the legislation banning "partial birth abortion," and "brain sucking abortions," has prompted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not

delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

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

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

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

Abortion intends to terminate a pregnancy while preserving the life and health of the mother. When abortion is performed after 16 weeks, intact D&X is one method of terminating a pregnancy. The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

According to the Centers for Disease Control and Prevention (CDC), only 5.3 percent of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. A preliminary figure published by the CDC for 1994 is 5.6 percent. The CDC does not collect data on the specific method of abortion, so it is unknown how many of these were performed using intact D&X. Other data show that second trimester transvaginal instrumental abortion is a safe procedure.

Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother. Intact D&X is one of the methods available in some of these situations. A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. An intact D&X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The potential exists that legislation prohibiting specific medical practices, such as intact D&X, may outlaw techniques that are critical to the lives and health of American women. The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.

Approved by the Executive Board, January 12, 1997.

Mr. DURBIN. Mr. President, we have a difference of opinion. Senator SANTORUM and others have said, wait a minute, we have doctor statements that say just the opposite. Some doctors and some doctor associations say this procedure is never needed, never necessary. Yet other doctors, such as the ones to whom I have referred, who do this for a living, say it may be the best thing to do. So when you have a difference of medical opinion, the obvious question is, Why would we, as a matter of law, come down on one side of this medical debate?

It is not unusual for a patient who is facing a serious medical decision to get a second opinion because sometimes doctors disagree. You have to decide as a patient, or as a parent of a patient, what is the right thing to do. To say we are only going to take one approach, one opinion, and that will be the law of the land is to foreclose medical options. To foreclose options in a case where there may be a medical crisis, a serious complication in the pregnancy, I don't think is a wise course of action. As visceral and emotional as this issue is, our responsibility is to step back and say let's deal with this honestly and deal with it in a way that we can defend in medical terms.

The bill before us bans only certain procedures and allows others to take place. Earlier, I had a conversation on the Senate floor with the Senator from Pennsylvania, Mr. SANTORUM, who is the lead sponsor. We talked about a particular case of a woman whom I have met from my State. She was the mother of two children. She was in her third pregnancy. Her husband, a businessman, had also been a practicing physician. She believed she was in a very normal pregnancy—until late, late, late in the pregnancy, the 32nd week, or 8 months into the pregnancy. She went in for an ultrasound because she had personal medical conditions they were worried about, and they determined by the ultrasound that the baby she was carrying had horrible birth anomalies and would not survive outside the womb, at which point her doctor said to her: If you go ahead with this pregnancy, normal labor in this pregnancy, or if you submit yourself to a C-section, it could be extremely dangerous. We recommend that you use the very procedure that is being banned by S. 3.

She tells the story of almost collapsing in the doctor's office when she learned this. She told me personally that she wasn't a person who supported abortion. She told many people she was opposed to it. Here she was facing a medical emergency with few choices. So she prayed over it, talked to her husband, and made the decision to go for this procedure.

The Senator on the floor, the Senator from Pennsylvania, Mr. SANTORUM, said she did the wrong thing. He has interposed his medical judgment, for what it is worth, and said she should have had a different form of abortion. I would not be so bold as to stand here on the floor and suggest that I can make that call or that decision. But it is interesting to me that, even being pro-life, he was saying she should have had an abortion procedure other than the one she chose.

The reason I raise that is that this amendment deals with all abortion procedures, not just one, not just the D&X, or the partial-birth abortion procedure, but all abortion procedures postviability. I think that is important to remember in what we are trying to achieve.

If your goal is to reduce the number of late-term abortions in America, this amendment I am offering today has a greater likelihood of reducing that number than the underlying bill, S. 3. There is no question about it because only a very small percentage of cases use the so-called partial-birth abortion procedure. In fact, this amendment deals with all late-term abortions, all postviability abortion procedures. It would actually reduce the number of abortions performed.

My amendment bans all postviability abortions regardless of procedure, unless "the continuation of pregnancy would threaten the mother's life or risk grievous injury to her physical health." This exception is very important.

The Santorum bill violates a woman's constitutional right to have her health protected. If you will read S. 3—and I have read it—the biggest problem they have is that the language of the bill before us is virtually identical to a Nebraska statute that has already been rejected by the Supreme Court. The Senators who offer this believe that by passing this bill and putting in the findings of the earlier Supreme Court decision, that is good enough.

I don't think any student of constitutional law would agree with that. If the Supreme Court has reached the conclusion that this language fails to meet the test of *Roe v. Wade*, why in the world are we going through this exercise again?

I think it is better for us to consider my alternative because the substitute I am going to offer takes a different approach—I hope a better approach. The Santorum approach, S. 3, violates a woman's constitutional right to choose under *Roe v. Wade*. Don't take my word, take the word of the Supreme Court. That was their decision in the case involving the Nebraska statute with the identical language.

My amendment specifically protects a woman's constitutional right to choose before viability, before the fetus can survive outside the woman. That is an important distinction. Viability is, of course, a moving target. When *Roe v. Wade* was decided—I think the year was 1973—the last 3 months was considered the time that a fetus would be viable. Medical technology has made great leaps forward, and now there are fetuses that are viable even before the third trimester. So we say to use as a standard, as in *Roe v. Wade* viability in general, the trimester system. They said in *Roe v. Wade* that until the time the fetus is viable there are certain legal rights in this country. We protect them. Once viability is reached, those rights change and we start acknowledging the fact that the fetus has now become a potential human being at birth.

*Roe v. Wade* said we will define the laws of America based on viability. The amendment I offered does the same thing. The problem with S. 3—the reason this bill and versions have been

found unconstitutional repeatedly if they refuse to accept the basic premise of *Roe v. Wade*, the premise of existing law in this country.

They just will not acknowledge that you should have a law banning a certain procedure only after viability, which is why the Supreme Court rejected the Nebraska statute. Each time it is stricken because it would, in fact, restrict the right to abortion before viability, before the fetus could survive. Court after court has stricken down State laws that have followed S. 3, the Santorum model. Yet here we are again: same language, same outcome.

My amendment represents a good-faith effort to deal with this issue. It draws the line with two specific cases: where the continuation of the pregnancy would threaten the mother's life, or risk grievous injury to her physical health. That is it, grievous physical injury.

Here is why I believe this is reasonable. At this late stage in the pregnancy, seventh, eighth, or ninth month, I believe *Roe v. Wade* tells us we have to look at the pregnancy in different terms. We are now postviability. We are now in a circumstance where the fetus can survive.

In those circumstances, I say the only way legally you can terminate the pregnancy is if continuing it could threaten the mother's life or continuing it could subject her to grievous physical injury, which is defined in my amendment.

What does grievous physical injury include? What if you diagnosed a mother in the course of her pregnancy with serious cancer? And what if you found that continuing the pregnancy somehow compromised your ability to treat her for that cancer? My alternative retains the abortion option for mothers facing extraordinary heartbreaking medical conditions, such as breast cancer, discovered during the course of pregnancy.

It also allows for postviability abortions in cases of uterine rupture, which could leave a woman sterile, future infertility, or non-Hodgkin's lymphoma.

The two-doctor requirement is an important element, too. Some have said one of the objections is if you allow a doctor to certify a mother's life is at stake or she runs the risk of grievous physical injury if the pregnancy continues, you are playing right into the hands of the people who perform the abortions. I have heard this argument so many times. We have addressed it directly in the amendment.

I require a second doctor to certify. You have two doctors who come forward and say exactly what the conditions are to terminate a pregnancy. I also have a requirement that this can be waived in case of a medical emergency.

What risks do doctors take if they are falsifying this information? If they do not tell the truth that a mother's life is at risk, they face substantial fines and the suspension or revocation

of their license to practice medicine. It could not be more serious.

There are two reasons to support my substitute amendment. One, it would actually reduce the number of abortions performed in this Nation and, two, because it has a health exception not contained in S. 3, the Santorum bill now under consideration, it is more likely to withstand the constitutional challenge and scrutiny across the street at the Supreme Court.

I am honored a number of my colleagues on both sides of the aisle have joined me as cosponsor of the amendment. I particularly note the presence of my friend and cosponsor, Senator COLLINS of Maine. Her colleague, Senator SNOWE of Maine, is also a cosponsor, as is Senator AKAKA, Senator BINGAMAN, Senator LANDRIEU, and Senator MIKULSKI.

As I said at the outset, it is the only amendment I know that will be considered in this debate which has the support of Senators across the spectrum on the issue of abortion:

those who consider themselves closer to a pro-life position, those who consider themselves closer to a pro-choice position. I think that speaks to the wisdom of the amendment. I hope my colleagues will consider that when the issue comes before us for a vote.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I thank the Chair. I am going to address most of my remarks to the bill. I do not think the amendment has been offered yet.

Mr. DURBIN. I ask the Senator's indulgence for a moment. That is correct, I have not offered the amendment. If I might at this time offer the amendment and then yield to the Senator to continue his speech.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself, Ms. COLLINS, Ms. SNOWE, Mr. AKAKA, Mr. BINGAMAN, Ms. LANDRIEU, and Ms. MIKULSKI proposes an amendment numbered 259.

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

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

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Late Term Abortion Limitation Act of 2003".

**SEC. 2. BAN ON CERTAIN ABORTIONS.**

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

**"CHAPTER 74—BAN ON CERTAIN ABORTIONS**

"Sec.

"1531. Prohibition of post-viability abortions.

"1532. Penalties.

"1533. Regulations.

"1534. State law.

"1535. Definitions.

**"§ 1531. Prohibition of Post-Viability Abortions.**

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

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

"(2) an independent physician who will not perform nor be present at the abortion and who was not previously involved in the treatment of the mother certifies in writing that, in his or her medical judgment based on the particular facts of the case, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

"(b) NO CONSPIRACY.—No woman who has had an abortion after fetal viability may be prosecuted under this chapter for conspiring to violate this chapter or for an offense under section 2, 3, 4, or 1512 of title 18.

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

**"§ 1532. Penalties.**

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

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

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

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

"(e) CERTIFICATION REQUIREMENTS.—At the time of the commencement of an action under subsection (a), the Attorney General, the Deputy Attorney General, the Associate

Attorney General, or any Assistant Attorney General or United States Attorney who has been specifically designated by the Attorney General to commence a civil action under this chapter, shall certify to the court involved that, at least 30 calendar days prior to the filing of such action, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney involved—

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

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

#### “§ 1533. Regulations.

“(a) FEDERAL REGULATIONS.—

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

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

“(A) a certification by the physician performing the abortion, under threat of criminal prosecution under section 1746 of title 28 that, in his or her best medical judgment, the abortion performed was medically necessary pursuant to this chapter;

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

“(C) a certification by an independent physician pursuant to section 1531(a)(2), under threat of criminal prosecution under section 1746 of title 28, that, in his or her best medical judgment, the abortion performed was medically necessary pursuant to this chapter; and

“(D) a certification by the physician performing an abortion under a medical emergency pursuant to section 1531(c), under threat of criminal prosecution under section 1746 of title 28, that, in his or her best medical judgment, a medical emergency existed, and the specific medical condition upon which the physician based his or her decision.

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

“(b) STATE REGULATIONS.—A State, and the medical licensing authority of the State, shall develop regulations and procedures for the revocation or suspension of the medical license of a physician upon a finding under section 1532 that the physician has violated a provision of this chapter. A State that fails to implement such procedures shall be subject to loss of funding under title XIX of the Social Security Act.

#### “§ 1534. State Law.

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

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

#### “§ 1535. Definitions.

“In this chapter:

“(1) GRIEVOUS INJURY.—

“(A) IN GENERAL.—The term ‘grievous injury’ means—

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

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

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

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

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

“74. Ban on certain abortions ..... 1531.”.

Mr. DURBIN. I thank the Senator.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I am proud today to join Senator SANTORUM from Pennsylvania and a large majority of my colleagues in support of S. 3, the Partial-Birth Abortion Ban Act of 2003. I urge my colleagues to join me in passing this bill.

Since the amendment has been laid down, I will ask my colleagues to join me in opposing the amendment that has been put forth. My colleague said the procedure is not well defined. Read the bill. Partial-birth abortion is the best description of what we are talking about: allowing a baby to come within a heartbeat of being born and then killing it.

I am also fascinated by this term “viable fetus.” I think that means a real baby. It is nice to phrase it in some other terms, but if it is viable, that is what we are talking about.

The argument is this is about health. No, it is not. This is about life and death, and that is why the bill speaks specifically to life. What we tried to do in framing this argument was to come up with the most definite situation where those who are in favor of abortion are separated from those opposed to abortion. It is pretty much that simple. There will be some efforts to try to bring it back a little more to the middle so people can put a little bit of a spin on their decision, but that is what this is about. That is why a procedure was picked that is not taught any longer; a procedure was picked that the American Medical Association said is not needed anymore. That makes it pretty clear.

You can add all the qualifications you want to it, but if you cannot oppose partial-birth abortion, then you must be in favor of abortion.

We are debating an issue that has an important bearing on the future of this

Nation. Partial-birth abortion is a pivotal issue because it demands we decide whether we as a civilized people are willing to protect the most fundamental of rights: the right to life itself.

If we rise to this challenge and safeguard the future of our Nation's unborn, if we make this statement, we will be protecting those whose voices cannot yet be heard by the polls and the surveys and those whose votes cannot be weighed in the political process. If we fail in our duty, we will justly earn the scorn of future generations when they ask why we stood idly by and did nothing in the face of national infanticide.

Opponents have argued this procedure is necessary in some circumstances: to save the life of the mother or to protect her health or future fertility. These arguments do not have foundation in fact.

First, this bill provides an exception if the procedure is necessary to save the life of the mother and no alternative procedure could be used for that purpose. Moreover, leaders in the medical profession, including former Surgeon General C. Everett Koop, have stated unequivocally that partial-birth abortion is never medically necessary to protect a mother's health or her future fertility; on the contrary, this procedure can pose a significant threat to both.

A coalition of over 600 obstetricians, perinatologists, and other medical specialists have similarly concluded there is no sound medical evidence to support the claim that this procedure is ever necessary to protect a woman's future fertility.

These arguments are offered as a smokescreen to obscure the fact that this procedure results in taking an innocent life at the moment of birth.

The practice of partial-birth abortion has shocked the conscience of our Nation and it must be stopped. Even the American Medical Association has endorsed this legislation. In a letter to the chief sponsor of this bill, Senator SANTORUM, the American Medical Association explained:

Although our general policy is to oppose legislation criminalizing medical practice or procedure, the AMA has supported such legislation where the procedure was narrowly defined and not medically indicated. The Partial-Birth Abortion Ban Act now meets both of these tests. . . . Thank you for the opportunity to work with you towards restricting a procedure that we all agree is not good medicine.

I have based my decision on every bill that has come before this body on what effect it will have on those generations still to come. We in the Senate have deliberated about what steps we can take to make the society a better place for our families and the future of our children. We, as Senators, will cast no vote that will more directly affect the future of our families and our children than the vote we cast on this bill.

When I ran for office, I promised my constituents I would protect and defend the right to life of unborn babies.

The sanctity of human life is a fundamental issue on which we as a nation should find consensus. It is a right that is counted among our unalienable rights in our Nation's Declaration of Independence.

We must rise today to challenge what has been laid before us to protect innocent human life. I urge my colleagues to join me in casting a vote for life by supporting the Partial-Birth Abortion Ban Act.

All of us in this body have had significant life experiences that have helped to shape our political philosophies. Eight years ago I had a torn heart valve and I was rushed to the hospital for emergency surgery. I had never been in a hospital except to visit sick folks. It was a tragic surprise to me. I am impressed with what they are able to do, but I have also been impressed with what doctors do not know, and that is not a new revelation for me.

Thirty-one years ago, my wife and I were expecting our first child. One day early in the sixth month of pregnancy my wife started having some pains and contractions. We were so new to the game we did not even know what that was, but fortunately she had a visit to the doctor scheduled that same day. I took her there and I went back to work. Then I received a call from the doctor who said: You need to come down here, too.

That is never good news when the doctor tells you to come to the doctor's office.

I went down there and the doctor said: You may have a baby right now. We know it is early, 3 months early, and that does not bode well. We will try to stop it and we can probably stop it.

Well, they could not. The baby came that night and weighed just a little over 2 pounds. I wanted to know what the doctor was going to do. The doctor said: Well, we will just have to wait until morning and see if she lives—not exactly the kind of medical technology and knowledge that one wants somebody to have about a baby.

He admitted that he did not have any control over it. It was in our hands at that point in time. We sweated through that night. I could not believe that the doctors could not stop a premature birth. Then I could not believe that they could not do something to help the newborn baby. Until someone sees one of these babies, they will not believe what a 6-month-old baby looks like. At the same time my wife gave birth to this 2-pound baby, a friend of ours gave birth to a 10-pound baby. This was a small hospital in Wyoming. They put them side by side. It was a tremendous contrast. Some of the people viewing the babies said: Oh, look at that one. Looks like a piece of rope with some knots in it; too bad.

We were watching her gasp and struggle with every breath. We watched the whole night to see if she would live, and we prayed.

The next day we were able to take this baby to a hospital that provided excellent care. She was supposed to be flown to Denver where they have the best care in the world for premature babies, but it was a Wyoming blizzard and we could not fly. So we took a car from Gillette, WY, to the center of the State to Wyoming's biggest hospital to get the best kind of care we could find. We were supposed to be going down in a four-wheel drive ambulance but we wound up going in an Edsel. They thought there might be a bigger medical emergency in the county so they could not get the four-wheel drive. I can say I thought the biggest emergency in the county was my daughter.

On the way down, we ran out of oxygen. We noticed a whole bunch of highway patrolmen going the other way. When we got to the hospital, we asked if there had been an accident, and they said, no, that they were looking for a premature baby who should have gotten to the hospital quite awhile ago. I said: Well, that was us.

We did receive exceptional care, but the doctor's words when we first talked to him at that hospital were: Well, another 24 hours and we will know something. Another 24 hours before we could do anything.

After those 24 hours, there were still several times when we went to the hospital and there would be a shroud around her isolette. We would knock on the window. The nurses would come over and say: It is not looking good. We had to make her breathe again. One time when they said, have you had the baby baptized, that is kind of the ultimate of dropping your heart in your shoes.

We had had the baby baptized in the first few minutes after birth using some water in a coffee cup from the kitchen of the hospital. A minister had come over and done that. We did learn from the nurse that they had no records of ever having lost a baby who had been baptized. But that child worked and struggled to live. Feeding was a major procedure. Losing the ability to get blood through the navel was a major procedure. She was 3 months premature, did not have any gristle in her ears. They flopped over. That had to be a part of the procedure yet that would come with growth.

We went through 3 months of waiting to get her out of the hospital. Every step of the way the doctor said: Her ability to live is not our duty. It gave me a whole new outlook on life, and now I want to tell everyone the good news. The good news is that the little girl who struggled so hard to live, who would be considered barely viable by most people who perform abortions, is now an outstanding public school principal in Chugwater, WY; population, 256; enrollment, 126 kids, kindergarten through 12th grade. She is doing a marvelous job. She has taught school for several years.

That does not mean she came out of this problem free. She was very lucky.

There was a hum in that isolette that was sometimes covered up, and that hum wiped out a wide range of tones to her. So she cannot hear the same way that you and I do, but, oh, can she read lips, which in a classroom is really a very good thing for a teacher to be able to do. Even after they know she can read lips, they usually test her with it.

This experience has given me an appreciation for all life, and it continues to influence my vote now and on all issues protecting human life.

I have come to know what an incredible thing that is as I watch some of life's situations. For instance, death row, how come those people do not want to die? It is not common to life.

I watch these young babies. They want to live. They struggle with every fiber of their being to live. It is an incredible struggle—one we do not see in kids who come to term or kids as they grow up—when they have no meat on their bones and lungs that are underdeveloped and fingernails that have not come on yet. It is an incredible struggle that gives a new appreciation of life. It is such a miracle that we have to respect it. We have to work for it every single day in every way that we can.

I think this bill will help that effort. I think this bill will bring a little conscience, a little consideration, and a whole lot of thought to this country. It is something we have needed and we do need and we will need for the future of our kids.

I yield the floor.

Ms. COLLINS. Mr. President, I rise in support of the amendment offered by my friend and colleague from Illinois, Senator DURBIN, to ban all late-term abortions, including partial-birth abortions that are not necessary to save the woman's life or to protect her physical health from grievous harm.

This debate should not be about one particular method of abortion but, rather, about the larger question of under what circumstances should late-term or post-viability abortions be legally available. Let me be clear from the outset that I am strongly opposed not just to partial birth abortions, but to all late-term abortions. I agree they should be banned.

Such a ban, however, must have an exception for those rare cases when it is necessary to save the life of the woman or to protect her physical health from grievous harm. Fortunately, late-term abortions are extremely rare. In my state, according to the Maine Department of Human Services, just five late term abortions have been performed in the last 20 years.

Our amendment goes far beyond, in many ways, what the Senator from Pennsylvania is attempting to accomplish. His legislation would only prohibit one specific form of abortion. In fact, the bill he supports would not prevent a single late-term abortion. Let me emphasize that point. The partial-birth legislation before us would not prevent a single late-term abortion. A

physician could simply use another, perhaps more dangerous, method to end the pregnancy.

By contrast, Senator DURBIN's proposal would prohibit the abortion of any viable fetus by any method unless the abortion is necessary to preserve the life of the woman or to prevent grievous injury to her physical health.

Those of us who have worked with Senator DURBIN on this amendment have taken great care to tightly limit the health exception. Grievous injury is limited to physical health. It is defined as a severely debilitating disease or impairment specifically caused or exacerbated by the pregnancy or an inability to provide necessary treatment for a life-threatening condition.

The Maine Medical Association has said that when "a pregnant woman develops a life or health-threatening medical condition that makes continuation of the pregnancy dangerous, abortion may be medically necessary. In these cases, intact dilation and evacuation procedures may provide substantial medical benefits or, in fact, may be the only option. This procedure may be safer than the alternatives, maintain uterine integrity, reduce blood loss, and reduce the potential for other complications." That is what the experts the doctors are telling us.

Senator DURBIN's amendment also includes a very important second safeguard. If the treating physician determines that continuation of the pregnancy would threaten the woman's life or risk grievous injury to her physical health, before the abortion could be performed, a second opinion, in writing, must be obtained from an independent physician. This second opinion must come from a physician who would not be involved in the abortion procedure and who has not been involved in the treatment of the woman.

Unlike the pending bill, which I believe is unconstitutional, the Durbin amendment is consistent with the U.S. Supreme Court's 2000 decision in *Stenberg v. Carhart*. In *Stenberg*, the Court struck down Nebraska's partial-birth abortion ban statute because it lacked any exception for the preservation of the health of the woman. The Court reaffirmed its earlier decisions in *Roe v. Wade* and *Planned Parenthood v. Casey* that abortion regulation must include an exception where it is "necessary, in appropriate medical judgment, for the preservation of the life or health of the woman."

The Durbin amendment is a fair and compassionate compromise on this extremely difficult issue. It would ensure that all late-term abortions—including partial-birth abortions—are strictly limited to those rare and tragic cases where the life or the physical health of the woman is in serious jeopardy. This amendment presents an unusual opportunity for both "pro-choice" and "pro-life" advocates to work together on a reasonable approach, and I urge our colleagues to join us in supporting it.

I yield the floor.

Mr. SANTORUM. Mr. President, I rise in opposition to the Durbin amendment. The Durbin amendment is virtually identical to the amendment we voted on 3 years ago, I believe it was. It adds simply nine words at the beginning of the amendment. It says:

It shall be unlawful for a physician to intentionally abort a viable fetus unless the physician prior to performing the abortion—

And then adds these words— including the procedure characterized as a partial birth abortion.

And then it goes on. The only difference between that amendment and this amendment are the words "including the procedure characterized as partial-birth abortion." So all of the operative language that seeks ostensibly to ban certain abortions is the same.

What are the problems I have, and hopefully the majority of Senators have with this ban? No. 1, it only limits—the partial-birth abortion amendment is limited to postviability abortions. As we have discussed here over and over, the fact that babies who are delivered in a partial-birth abortion, partially delivered, are of gestational age that is in excess of 20 weeks and would otherwise be born alive, that doesn't necessarily mean that they would necessarily survive long-term or "be viable." Viability means not that they wouldn't be born alive, but they would have a reasonable chance of survival. That is a very subjective thing. There is no definition of viability, no standard set in this legislation, and it is purely the abortionist's determination as to whether the child being aborted is viable or not.

We have survival rates of infants born at different gestational ages. Senator FRIST, earlier today, went through some of those. I will review them.

Prior to 23 weeks, a child being delivered at that time has a small chance. There are probably single digits or less at 21 weeks; 22 weeks maybe high single digits. I don't have those numbers but that is my recollection from years past debating this.

When we get to 23 weeks, you have a survival rate of about a third; 24 weeks, two-thirds; 25 weeks, almost three-quarters; 26 weeks, 90 percent. But in each one of these cases, even though there are increasing survival rates, you have a great deal of subjectivity of an abortionist being presented with a baby to determine whether this baby in utero is viable. It is purely subjective. All the physician has to say is: Well, I don't think it is viable. So this just doesn't apply. There is no ban at all.

Since most partial-birth abortions are in the 20-to-26 week range, there is ample opportunity, ample opportunity for the doctor to say in every instance: Well, I just didn't think it was viable.

There is no penalty. There is no criminal sanction. There is no peer review. There is nothing. So this is a ban without a ban because it leaves it completely to the subjectivity of the physician to determine viability.

But that is only half the problem. The other half of the problem is these words. It says:

It shall be unlawful for a physician to intentionally abort a viable fetus unless the physician prior to performing the abortion, including partial-birth abortion, certifies in writing in the physician's medical judgment, based on the particular facts of the case before the physician, the continuation of the pregnancy would threaten the mother's life—

Hear the operative words—

or risk grievous injury to her physical health.

Substantial risk? A little risk? One percent risk? Half of 1 percent risk? Is it .00001 percent risk? Risk is not defined and risk can mean any risk. It can mean the slightest risk.

As Dr. Warren Hern, who is the author of the standard textbook on abortion procedures back in May of 1997, said in response to a question on this amendment: "I say every pregnancy carries a risk—" not just of grievous physical injury—"of death."

Every pregnancy carries a risk of death.

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

He was talking about life and death. We are talking about her physical health, grievous injury to her physical health. That is the second part.

The fact is, risk not being defined is the open door. The analogy was made by someone that if you have a law that says no dog may be shot except where there is a risk that the dog in question may bite, then any dog can be shot because there is always a risk a dog is going to bite.

Any abortion can be performed because there is always a risk. Since we don't quantify the risk, since we don't define the risk, risk is whatever a doctor wants it to be. I bet you will not find one obstetrician, and certainly not one abortionist, who will make the claim that there is no risk associated with the continuation of a pregnancy. It is by definition a risk to the mother.

The most healthy pregnancy involves some element of risk. So this amendment—I am not questioning the intent of the Senator from Illinois. I know he went at this and worked, together with the Senator from Maine and others, to try to come up with a good-faith attempt to put a bill together that would be effective. But this doesn't do it. This simply leaves open both the issue of viability and who determines it. There is no peer review, no second-guessing to the abortionist, and then risk as an open question meaning any amount of risk.

I believe you will not find any doctor who will say there is not a risk. Of course, there is a risk.

The point is not risk, the point is, Is this procedure medically necessary? I keep coming back to this issue over and over again. Please present me with a case, with a case, a factual circumstance where this procedure would

be medically necessary and where other abortion procedures could not do, not just as good a job, but a better job. Every health organization out there that I am aware of has said this is bad medicine, this is not practiced, this is not used to protect the health of the mother.

We keep trying to grab for a health-of-the-mother exception when the health of the mother is not at issue here. If we were concerned about the health of the mother, then we would not be doing the procedure. We would not be allowing a procedure that is unhealthy; that takes a mother who obviously is under some duress or she wouldn't be at an abortion clinic. She is under some either mental or physical or some sort of angst that she wants to terminate her pregnancy. This is not a decision that people come by easily.

What the doctor in the case of a partial-birth abortion does is give her a pill and send her home for 2 days. Come back to me in 2 days. And we have cases that we are aware of, the Senator from Ohio spoke about this yesterday, where children have been delivered in the interim because the cervix dilated too quickly, too much, and the baby was delivered. In one case that we are aware of the baby lived. But they send these mothers home for 2 days.

The doctor who designed this procedure said the reason he designed this procedure is because it only takes 15 minutes out of his day to do and the other abortions that are peer reviewed, that are taught in medical schools, that obstetricians and gynecologists do—not that physician who is not an obstetrician who came up with this procedure or most of the practitioners, if not all of them that I am aware of who do this procedure, to my knowledge, I am not aware that any are obstetricians. I could be wrong on that but the ones who have come before the Congress, the ones I have seen cited in articles and testimony who have done these, none of them have been obstetricians. They are abortionists who make money doing abortions. And they came up with a great way to make more money, to get patients in and out quicker.

That is great for them, but it certainly does not take into much account the health consequences to women. If you look at the AMA, and every physician group that has come forward, none of them are seeing this is superior medicine. None of them say this is to the benefit of women's health.

I hear so many of my colleagues talk about women's health, women's health, women's health. Where are they when we are trying to ban a procedure that is contraindicated for the health of women? Where there are other, safer, better procedures that are available for the health of women, and yet they stand foursquare against women's health, foursquare for the option that is the most dangerous. And it is never medically necessary. So you have to

ask yourself a question. If you have a procedure that is the most dangerous procedure and that is the most unhealthy for women, why would you continue to support it if it is not medically necessary? Not one case has ever been voiced at any hearing or in any debate on the floor of the Senate or on the floor of the House. One has come forward and said: This is why. Here is the case. This is why this is the best procedure. No one—no doctor, no Senator, no Congressman, no layperson—has come forward and said, this is it, this is the reason. So we have no medical need.

But we do have overwhelming definitive evidence that this procedure is the most dangerous to the health of women. Yet there are those who will come to the floor and proclaim their allegiance to improving women's health who want this procedure made legal for the people who designed it so they can make more money doing abortions in 15 minutes as opposed to 45 minutes—and do it in a way that is just brutal.

This is another quote from Dr. Hern:

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

This is an abortionist who wrote the textbooks on abortions. He authored the textbooks on abortion procedures. He does late-term abortions regularly. He is the expert. He continues to do them. What professional in the field says you can defend it? Why would people come to the floor of the Senate to defend the procedure that is indefensible, that is never going to be necessary, and that is harmful to women? Why? Why would you do that? Because you want to create options. Why would you want to create an option that is harmful to women?

I understand people come in all the time saying we can't restrict the doctors. Of course you can restrict the doctors if what they are prescribing is harmful and if there are safer procedures to use. We darned well better proscribe it. We have to. We have an obligation to.

You have folks who are abortionists saying you can't defend it. Yet here we are defending it. Why? Why are some Members so dug in to protect a rogue procedure that brutalizes and executes a child 3 inches away from constitutional protection?

I had a debate several years ago on this issue. If a child was somehow delivered—3 inches from the crown of the baby's head, from the nape of the neck to the crown of its head—had actually gone through the cervix and the child was separated from the mother, they wouldn't argue that you then could kill the child. What is it that would allow this procedure?

You heard the Senator from Tennessee, Mr. FRIST, talk about all of the complications and all that could go wrong with the blind procedure in an area of the woman's body that is very

susceptible to injury, and where these other abortions are performed under controlled conditions with sonograms and you can see everything that is going on. In this case, it is a blind procedure with a sharp instrument in an area that is very vulnerable to injury. Why? Why would people continue to defend a harmful procedure, the least safe procedure done only by abortionists, only in abortion clinics, not taught by schools and not done by obstetricians? Why? To protect women's health? No. For medical necessity? No. Why? That is a question I think needs to be answered.

What is so sacred here? What is so valued? What is it that is very deep inside this opposition, that is so important that we are willing to risk the health of women who are told by their doctors this is safe and who listen? The doctor-patient relationship is important. There is a sanctity to it. But you know what. Not every doctor lives up to that.

Many of the people who come here and argue for partial-birth abortion will be here in a few weeks arguing that doctors aren't worthy in many cases of our support and are against medical malpractice. These doctors who do bad things to patients should be hammered. What about these doctors who perform indefensible procedures that risk the health of women? Why aren't we going after them? Why are we protecting them? What is it? What is it that is so important that we are going to risk women's health when there is no medical necessity to do this? Where? It is contraindicated.

We know the answer to that question, don't we? We can't even come close. We can't even approach abortion as a right in this country because it is the supreme right. Anything that even approaches mentioning the word "abortion" irrespective of the consequences to women, God knows irrespective of the consequences to the children, we simply preserve this right above all rights.

OK. Maybe we have to argue for a procedure that is dangerous. Maybe we have to argue for a procedure that is going to hurt women. Maybe we have to argue for a procedure that is never medically necessary. Maybe we have to argue for a procedure that is not done by obstetricians even though we are talking about obstetrics here. We have to bite the bullet on this. Yes.

But do you know what. We are going to keep the barbarians away from the gates. We are going to keep these people away from this absolute right of abortion. Whether it costs a few women their lives, or it costs the health or reproductive future of women, you know, it is worth it. We can't erode this right.

That is what it is all about. That is what it is all about. It is not about women's health. There is not one physician in this country who has come and testified that this is about women's health because it is not. The AMA says it is not. The obstetrician organizations say it is not. No one argues

that this is the best procedure. The expert on third-term abortion said it. He is on this side of their issue, by the way. But at least he will make the claim that he is for women's health, and he will do so honestly, which is something that has not been done by many of the outside "experts" who have argued to keep this procedure legal.

I have chart after chart. I will bring them out later. I have six charts going through the history of partial-birth abortions and showing the absolute fabrication put forth by those against this ban.

Oh, the anesthesia would dull the pain. Then another person testified that the anesthesia and the cervical block would kill the baby and there wouldn't be a live delivery. The anesthesiologists around the country went into panic. Women were hearing about it and they would be afraid with their delivery if they took anesthesia—that there would be a cervical block and their child would die. They had to backtrack from that.

The list is long. The facts stand. The reason this bill has gotten over 60 percent of the Senate, when probably 40 to 45 percent of the Senate is pro-life, is because this is, as the doctor from Colorado said, an indefensible procedure.

So why? Why are we here? We are here because the Supreme Court defended the indefensible. They defended the indefensible. We have responded to the Supreme Court.

I hope the Justices read this RECORD because I am talking to you. I want you to read every time over the last few days where I asked somebody to come forward with a health exception, where there is a medical necessity for the health of the mother to use this procedure. Read it. Observe the silence. I understand the Justices' feelings on the issue of abortion. It is evident from your decisions. It is obvious from your position. But you can't ignore the facts. Don't ignore the facts, because they are clear. They are as clear as the sound of the people coming forward with their examples. It is crystal clear. There is no sound and there is no reason for a health exception. Take the obligation you have seriously because I can tell you, the Members of this body do. We take our constitutional obligations dead seriously. The weight of evidence is not just overwhelming, it is dispositive. Listen. Learn. Decide justly.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent that Senator EDWARDS be added as a cosponsor of my amendment.

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

Mr. DURBIN. Mr. President, I listened carefully to the arguments made by the Senator from Pennsylvania. I would say the vast majority of the arguments he made had nothing to do

with my amendment. He has made arguments on behalf of the underlying bill, and that is his right. I defend his right to do it. But I come back to a discussion of my amendment.

The Senator from Pennsylvania has argued that because we use the term "risk" in this amendment that it is so hard to understand or define, it really does not present any kind of protection. Let me read it for the record. We say in this amendment we will prohibit all late-term abortions—that is, abortions after a fetus is viable—unless two medical doctors certify—and one has to be a nonattending physician, in other words, an expert brought in for consultation—that continuing the pregnancy would threaten the mother's life—that is fairly straightforward—or risk grievous injury to her physical health.

The Senator from Pennsylvania says: I just don't understand what you could mean by "risk grievous injury to her physical health." The fact of a pregnancy is a risk.

That certainly is true. But to argue that each pregnancy is a risk of grievous physical injury is to overstate it and to ignore section 1535 where grievous injury is defined.

Keep in mind, the doctors who have to certify in writing that you are dealing with a viable fetus and there is a risk of grievous physical injury have their medical licenses on the line. Their right to practice medicine is on the line. If it is found they have misstated the facts concerning this pregnancy, they could lose their medical license. Do you think a doctor is likely to take that lightly? I don't. A doctor is likely to take that seriously.

Then read what we say about grievous physical injury. We define it as follows: It means a severely debilitating disease or impairment, specifically caused or exacerbated by the pregnancy or an inability to provide necessary treatment for a life-threatening condition.

There is a limitation which the Senator from Pennsylvania has not added into his argument. Listen to this limitation. The term grievous injury does not include any condition that is not medically diagnosable or—this is the important part—any condition for which termination of the pregnancy is not medically indicated.

You have to link up the continued pregnancy and the grievous physical injury in order to justify this late-term abortion. That is a fact. That is clearly written.

For the Senator to dismiss this and say, risk of grievous physical injury, that doesn't mean anything, any doctor would sign that, the doctor has his medical license on the line as to whether or not that fetus is viable, as to whether or not there really is a threat to the woman's life, as to whether or not there is a risk of grievous physical injury. His medical license is on the line, and it spells it out specifically in the amendment.

To think some doctor is going to just say: I will just sign that for my buddy, the abortionist, I don't believe so. Both doctors have too much at stake.

Let me go on to his underlying bill where he spent most of his time in argument. I understand it. The Senator from Pennsylvania feels very passionately about this issue. I know it. I have listened to him. I believe it, and I respect it. We see it differently, but I respect him for it.

I have grown weary, and I think the people who prepare the CONGRESSIONAL RECORD have grown weary of our submitting into the RECORD a direct rebuttal of the statement he repeats on the floor over and over and over again. Show me one doctor, not an abortionist, but one doctor who tells you this is medically necessary.

Well, I have already submitted them for the RECORD: The American College of Obstetricians and Gynecologists. They have said it. They have said this may not be the only procedure to save the life or preserve the health of a woman, but it may be the best, the most appropriate procedure in a particular circumstance. That is not good enough for the Senator from Pennsylvania.

First, he is mistaken if he does not believe obstetricians and gynecologists are medical physicians. They are. You have to be a medical doctor, board certified, in order to be part of this American College, and they have said it. They have made it clear. They are not so-called abortionists, which is a term developed here as part of the debate. These are people who do many other things with their lives, working with women for their health as well as for the delivery of their children. They have said the Senator from Pennsylvania is just wrong.

They are not alone. This has already been entered into the RECORD. I will not belabor the point. But Dr. Stewart from the University of California at San Francisco says the same thing. She says, after considering this procedure, this could turn out to be the best approach for some women facing very serious medical problems related to their pregnancy.

The Senator from Pennsylvania went on to say, not one person testified this procedure was medically necessary. I hasten to remind him, we put it in the RECORD early this morning, not one person testified because this bill was not brought before a committee. This bill came directly to the floor without any hearings, without any testimony from anybody.

I could stand here and say: Not one person testified on behalf of your amendment, not one doctor. You couldn't find one single doctor who testified on behalf of this bill, S. 3. That is technically correct because there was never a committee hearing.

So let's make it clear: Not one doctor testified for or against S. 3. This amendment came directly to us without any committee testimony.

Then the Senator from Pennsylvania spends a great deal of time arguing this procedure is harmful to women and those who are defending it—this is the procedure of his bill, nothing to do with my amendment—this procedure is harmful to women. I want to tell the Senator from Pennsylvania I have very limited expertise in anything. But before I came to the Senate, or to Congress, I was a practicing trial lawyer and spent many years defending doctors in medical malpractice cases, and suing them. I have been on both sides, representing plaintiffs and doctors who were defendants. So I know a little bit about medical malpractice.

I will tell you this. Can you imagine in this day and age any doctor is going to take part in a procedure that the Senator from Pennsylvania sees as so clearly harmful to women? How crazy could you be to subject yourself to the liability of a woman suing you because you chose a procedure that was harmful to her, as opposed to one that was safer for her. That just doesn't pass the smirk test. Doctors think twice. We hear about defensive medicine. They think about procedures and what is the safest procedure, the procedure least likely to expose them to liability in a court of law.

For the Senator from Pennsylvania to suggest these doctors ignore that and walk in and practice medicine that is harmful to women, without a concern, is to ignore the obvious. Medical malpractice cases are found in every State in the Union and substantial verdicts result from them. So I argue that common sense suggests if this were the most harmful procedure, the so-called partial-birth abortion, very few doctors would ever consider using the procedure and running the risk of exposing themselves to a medical malpractice case.

I would like to, if I can for a few minutes, go back to my amendment because most of what the Senator from Pennsylvania had to say didn't relate to my amendment at all. Here is where I think we come down. The Senator from Pennsylvania has had laser-like intensity focusing on one abortion procedure. He is troubled by it; he is pained by it. It is clear from his voice that it affects him very much, and I respect him for that. Thank goodness people fight for their convictions, even if I disagree with him on this. Please, I say to the Senator, step back and look at my amendment in a larger context. I am not just prohibiting the procedure you find objectionable. I am prohibiting that procedure and all other abortion procedures, postviability. So if, instead of using the dilation and extraction—partial-birth abortion—there is an effort to use some other procedure to terminate abortion after a fetus is viable, it is prohibited by my amendment, except in two specific cases: where the life of the mother is at stake and where there is a risk of grievous physical injury.

I suggest to the Senator if your goal in service on this issue is to limit the

number of abortion procedures in America, reduce the likelihood of abortions being performed, you will achieve that goal more with my amendment than with your bill. Your bill is strictly focused on one extraordinary and rare procedure. Mine is focused on all procedures, postviability. You would have to say in fairness, just by the simple numbers of abortion procedures, my amendment is going to affect more abortion procedures and limit more abortion procedures than yours.

Why am I willing to do this? Because despite the fact I am pro-choice, I do believe, when it comes to postviability abortions, we really should draw a straight line.

My wife and I have been blessed with three wonderful kids. It has been a long time since we had a new baby in the house, and a long time since I watched my wife grow large in pregnancy. But I can remember the seventh, eighth, and ninth months. Most fathers and husbands can. At that point in time, there is no doubt about it, your wife is about to have a baby and it is very visible and, in many cases, she is very great with child, as they say. I really believe in those cases you should not terminate a pregnancy, except under the most extraordinary of situations. That is why we spell it out. That is why we require two doctors to certify it in writing. That is why we say to these doctors: Your medical license is on the line if you misrepresent the facts of this pregnancy. That is pretty serious, and that is why people across the abortion spectrum, pro-choice, pro-life, have come to this amendment and said this is a reasonable approach.

I am never going to convince my colleague and friend from Pennsylvania. He is passionately focused, laser-like focused on this procedure, and I will concede to him that, pre-viability, that procedure could be used under the Durbin amendment. I think those cases are rare. But I hope he will step back for a second and be honest about what this amendment could achieve. I think it is a positive thing. I think it is something many of us would feel makes real progress in dealing with this issue.

Make no mistake, I have spoken to people on the phone today, some of the strongest pro-choice organizations. They don't want the Durbin amendment to pass because they feel, as you have described, that if you did that, it is just the beginning of an exception to *Roe v. Wade*. I don't think it is an exception that is inconsistent with *Roe v. Wade*. I think it says we are going to consider the health of the mother, but only in the most exceptional circumstances, where grievous physical injury is at issue.

I might also add we did not include the phrase "mental health." As Senator COLLINS, my cosponsor, said earlier, to say that a woman late in her pregnancy—the seventh, eighth, or ninth month—argues she is suddenly in depression and therefore a viable fetus that could survive should be termi-

nated is something I cannot personally accept. I am sorry, I cannot accept that. I will concede the point that if a woman suffering from a serious mental illness is suicidal and her life may be at risk. That would be the most extreme case, but that would be the only linkage I can think of that would justify the termination of a pregnancy that late in the pregnancy. That is the only one that comes to my mind.

So we have made this exception for physical health, grievous physical injury, or the life of the mother. I will not submit these statements again for the RECORD, but I believe ample evidence has been given as part of this debate that the obstetricians and gynecologists say do not pass the underlying bill, that medical doctors, such as Dr. Stewart, have written letters that suggest the same.

I yield the floor.

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

Mr. DURBIN. Yes.

Mr. SANTORUM. I want to make sure the Senator understands the question. I have not been asking about medical necessity. The quotes you have given me have said that it "ought to be the best." Another quote was "may be the best." I have not asked for someone's opinion on what ought to be or what could be. What I have asked for is an example. I wanted a fact circumstance to be provided as to where this would be the best, this would be appropriate, this would be medically indicated.

Not in any of the letters I have seen entered into the RECORD, or in any testimony, has anybody come forward with a factual circumstance that would support the general statements that it "may be." Well, it may be a lot of things, but the point is, there are no examples that support the "may be."

All I have asked for—and I have not received a response—is an example for us to look at, to have peer-reviewed, and to determine whether there is in fact a situation that has heretofore not been put in the RECORD, which is an example of a medical condition that would indicate a partial-birth abortion would be indicated to deal with as the best alternative.

Mr. DURBIN. If I may respond to the Senator, this is a statement from Viki Wilson of California in opposition to the bill. She tells of her pregnancy in 1994. She was expecting Abigail, her third child. Naturally, she was excited about this. It was 36 weeks into her pregnancy, when an ultrasound detected what all of the previous prenatal testing failed to detect—an encephalocele. Approximately two-thirds of her daughter's brain had formed outside her skull. She says in this statement—and I will make it part of the RECORD:

What I had thought were big, healthy, strong baby movements were in fact seizures.

My doctor sent me to several specialists, including a perinatologist, a pediatric radiologist, and a geneticist in a desperate attempt to find a way to save her. But everyone agreed, she would not survive outside of

my body. They also feared that as the pregnancy progressed, before I went into labor, she would probably die from the increased compression in her brain.

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

We agonized over our options. Both Bill—

Her husband—

and I are medical professionals.

She a registered nurse, he a physician, so they understood the medical risk.

After discussing our situation extensively and reflecting on our options, we made the difficult decision to undergo an Intact D and E.

Also known as partial-birth abortion. What I am saying to my friend and colleague from Pennsylvania is this is an example, a case, where she had three options. Partial-birth abortion was the third and chosen for medical reasons, reasons for which she said in the statement.

I ask unanimous consent that the statement be printed in the RECORD.

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

STATEMENT OF VIKI WILSON, CALIFORNIA, IN OPPOSITION TO S. 3

I urge you to oppose S. 3. I understand that this bill is very broad and would ban a wide range of abortion procedures. Mine is one example of the many 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 would do it again this time. Jon, our oldest child would cut the chord. 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. My doctor ordered an ultrasound that detected what all of my previous prenatal testing had failed to detect, an encephalocele. Approximately two-thirds of my daughter's brain had formed outside her skull. What I had thought were big, healthy, strong baby movements were in fact seizures.

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

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

We agonized over our options. Both Bill and I are medical professionals (I am a reg-

istered nurse and Bill is a physician), so we understood the medical risks inherent in each of our options. After discussing our situation extensively and reflecting on our options, we made the difficult decision to undergo an Intact D and E.

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

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

Losing Abigail was the hardest thing that has ever happened to us in our lives, but I am grateful that Bill and I were able to make this difficult decision ourselves and that we were given all of our medical options. There will be families in the future faced with this tragedy. Please allow us to have access to the medical procedures we need. Do not complicate the tragedies we already face. Oppose S. 3.

Mr. SANTORUM. Mr. President, the fact is, Viki Wilson testified at a Senate Judiciary Committee hearing in November of 1995. Viki Wilson, as the Senator from Illinois said, was in her ninth month of pregnancy when she received an abortion. According to Mrs. WILSON's testimony, the death of her daughter Abigail was induced inside the womb:

My daughter died with dignity inside my womb, after which the baby's body was delivered head first.

At this Judiciary Committee hearing, Senator HATCH suggested to Mrs. WILSON that her abortion was not a partial-birth abortion as defined by the bill. Mrs. WILSON responded:

It is true, if you take it verbatim. You know, my daughter did die in the womb.

That is not an example, No. 1, of partial-birth abortion because she did not have one and, No. 2, that she is not a medical professional. She is a registered nurse, and as my wife is a nurse, my mom is a nurse, please do not get me wrong, nurses are wonderful health professionals, and I have a tremendous amount of respect for them. I love them personally. To suggest that in her testimony, which you just heard—and it was not a partial-birth abortion, but even if it was, to suggest that her testimony was somehow a decision by the medical community or a physician putting forward a case by which the physician said this was the best option, this was medically necessary, and that other options were less desirable, this just does not make the case, which I keep coming back to the point that the case has not been made.

Some of my colleagues say: Why do you keep asking this question? Someone is going to come forward with something. After 7 years, you figure out no one is going to come forward because there are no cases, and no medical professional worth their salt would come forward and say something they

know is not true because they are going to be reviewed by umpteen obstetricians and gynecologists who will come forward with the medical peer-reviewed research that indicates this procedure is not medically indicated, that it is not necessary, and it is not in the best health interest of the mother.

It is brutal, and as the Senator from Tennessee, our leader, said today, the only advantage he can think of to a partial-birth abortion is the certainty of a dead baby. That is the advantage. It is that you know by thrusting those scissors into the base of the skull and feeling—because the doctor has the baby in his or her hand. I just find it to be remarkable, from the standpoint of a physician who can hold a live baby who would otherwise be born alive, a baby who could survive outside the womb, in many cases, and while holding that child, take the sharp, long Metzenbaum scissors and thrust it into the base of the baby's skull.

I know many people have felt living beings die in their presence, whether it is a pet or a variety of different living animals, and the feeling when life rushes out, you know it. You feel it. The baby is moving. All of a sudden, as Brenda Shafer, the nurse who testified, said, the baby's arms and legs spring out, tensing up because of the shock to the system and then falling limp. Life evaporated, leaving this little child. And then to take those scissors and open them up—open them up—to stretch out the base of the skull, as the Senator from Tennessee described, to rupture the cranial cavity, to create a hole big enough to insert a suction catheter.

Why? Why is this procedure needed? I keep coming back to the question. It has not been answered because there is no answer. That is why the health exception is not needed, because it is outside the scope of Roe v. Wade, and we have clarified the other problem the Supreme Court noted, which is the vagueness of definition. We have a much more detailed definition. It cannot be confused.

The Senator from California keeps coming to the floor and suggesting other medical procedures would be covered by this current definition. Again, I ask the Senator from California to come to the floor and tell me what procedure would be covered by this definition. So far, the answer to that has been silence.

On the two points the Court had trouble with the Nebraska statute, there has been no response. I suggest there is no response because we have solved these problems, and that is why this legislation is constitutional.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, this is the third time I have taken the opportunity to talk about partial-birth abortion, and each time I have addressed the Members of the Senate, I have tried to cite some of the medical experts in this field.

It has been pointed out that, with the exception of one Member of the Senate, we are not doctors. I certainly am not a doctor, but I have tried to cite the experts and have tried to help build a record for anyone who looks at the proceedings to help them understand what the basis for the Senate's ultimate decision will be. I want to continue that practice tonight.

It is certainly true, as has been pointed out on the Senate floor, that we did not hold hearings on this bill, but over the last few years, we have had a series of hearings in both the Senate and the House of Representatives on this very issue. We have heard many witnesses. We not only have had the opportunity to hear the witnesses in the Senate and the House in the Judiciary Committees, but we also, of course, have had the opportunity to read journals, read news articles, and other sources of information.

Very briefly, what I would like to do tonight is add to some of the citations I have already made and talk about the question that my colleagues have been talking about, and that is whether or not partial-birth abortion is ever medically indicated. I submit to my colleagues the evidence is very clear that partial-birth abortion is not medically indicated. It is never medically indicated. Therefore, a medical exception is simply not needed.

It is important to cite what several OB/GYN doctors have said about this horrific procedure. These medical doctors, these experts, will tell us this abortion procedure is brutal, it threatens the life of the mother, and it is just plain unnecessary and inhumane.

I will take a few minutes tonight to read to my colleagues some of the testimony from doctors who, for years, have been saying this procedure is, in fact, wrong. In a House of Representatives hearing on September 27, 1995, these doctors testified that partial-birth abortion is not sound science. I ask my colleagues to listen to what several of them had to say.

First, Dr. Donna Harrison, then the chair of the Department of Obstetrics and Gynecology at the Lakeland Medical Center in Michigan, stated:

There is no data or any proposed reliable data to show that this has a lesser incidence of maternal morbidity or mortality than the standard prostaglandin termination. Indeed, any surgeon can tell you that when you put a sharp instrument into a body cavity, there is a always the risk of perforating that organ. As an obstetrician, I can testify that this procedure has no medical indication over standard, recognized and tested procedures for terminating a pregnancy.

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

Dr. Pamela Smith, former Director of Medical Education, Department of OB/GYN, at Mt. Siani Medical Center in Chicago and a member of the Association of Professors of Obstetrics, had this to say:

Partial-birth abortion is not a standard for care for anything. In fact, partial-birth abortion is a perversion of a well-known tech-

nique . . . used by obstetricians to deliver that is considered to impose a significant risk to maternal health when it is used to deliver a baby alive, suddenly become the "safe method of choice" when the goal is to kill the baby? In short, there are absolutely no obstetrical situations encountered in this country, which require a partially delivered human fetus to be destroyed to preserve the life or health of the mother.

When I described the procedure of partial-birth abortion to physicians who I know to be pro-choice, many of them were horrified to learn that such procedure was even legal.

Dr. Nancy Romer, then a Clinical Associate Professor at Wright State University and Chair of the Department of Obstetrics at Miami Valley Hospital in Ohio, said this:

There is simply no data anywhere in the medical literature in regard to the safety of this procedure. There is no peer review or accountability of this procedure. There is no medical evidence that the partial-birth abortion procedure is safer or necessary to provide comprehensive health care for women.

To add to this, Dr. Lewis Marola, then Chair of the Department of Obstetrics at St. Clare's Hospital in Schenectady, NY, said the following:

The conversion of a fetus presenting a vertex to a breech position, as in the partial-birth abortion, is capable of causing an abruption of the placenta and amniotic fluid embolism. This is a dangerous and life-threatening situation. Never, ever, in our 30 years of practice, have my colleagues or I seen a situation which warrants the implementation of partial-birth abortion. Personally, I cannot imagine why a practitioner would want to resort to such barbaric techniques when other, recognized methods are available.

Dr. Joseph DeCook, once a Fellow at the American College of Obstetricians and Gynecologists, said the following at a press briefing in 1996:

Reaching into the uterus to pull the baby feet first through the cervix—the second step [of the procedure]—"is a very dangerous procedure," "frightening" because of the chance that it might "tear the uterus." This is the "reason it was abandoned 30 or more years ago." There is also the danger of "perforating the uterus" with the instrument used to grab the baby's leg. Such a tear or perforation could result in severe hemorrhage, necessitating immediate hysterectomy to save the life of the mother.

Dr. Cutis Cook, from the Michigan State College of Human Medicine, said this:

To my knowledge, and in my experience, this particular procedure described as partial-birth abortion is never medically necessary to preserve the life or future fertility of the mother and may, in fact, threaten her health or well-being or future fertility. In my opinion—and, I think, in the opinion of the medical literature and other specialists in my field—the fact remains that there are choices and there are alternatives to the partial-birth abortion procedure that do not require the use of what has now been demonstrated as a potentially dangerous and completely unstudied and unnecessary procedure.

I can go on, but the testimony from medical doctors is very clear. They know in their heart and in their minds that this procedure is not appropriate. It is never necessary. I would like to conclude tonight with what Dr. Joseph

DeCook once said. He said that the partial-birth abortion procedure "sounds like science fiction. It ought to be science fiction."

I think that says it all. The testimony from these medical doctors is very clear. I have cited other doctors the other two times I have been in the Chamber, and when I come back later, I will cite other doctors. But the evidence is abundantly clear that partial-birth abortion, as my colleague from Pennsylvania has pointed out, is never medically indicated. At no time have the proponents of this procedure been able to come to the floor and cite any specific example where anyone has been able to say that it was truly medically indicated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I pay tribute to the Senator from Ohio who was in the Chamber until about this hour last night laying out very clearly, very succinctly, the legal, moral, ethical, and medical evidence as to why this procedure should be banned and why this Senate should feel comfortable, from all of those perspectives, in passing this legislation.

He has done an outstanding job, a thorough job. He has been an invaluable ally in the Senate in making the case, hopefully convincing case, to hopefully a clear majority of our colleagues, that we should proceed, maybe as early as tomorrow, in passing this legislation.

I thank the Senator from Ohio for his outstanding work and his obvious commitment to this cause.

I wanted to respond to the Senator but I got sidetracked. The Senator from Illinois mentioned something at the end of his talk, and I focused on that and I forgot to respond to a couple of other points he made with respect to his amendment.

I focus on the two problems, again, and respond to his defense of his amendment. He defended his amendment and spent the entire time talking about the grievous physical injury, grievous injury that could result, that would be the exception for his ban on late-term abortions.

I have concerns because of the issue of risk, and I don't want to repeat that. But what he did not talk about, as big or if not a bigger hole in this legislation, is the whole issue of viability. I believe the Senator—and I will check the record on this, and if I am wrong, I apologize. I believe the Senator from Illinois suggested that the physician certify that a child is not viable, and if there was a determination that the child was viable, he could lose his license. I don't see that in the legislation. I don't see a second doctor overseeing the issue of viability. It is clear from the reading of the language that the second doctor can review the risk of serious injury but is not responsible under the legislation for reviewing the issue of viability.

So we have, again, before we even get to the issue of injury or health risk, we have the issue of the abortionist determining whether the baby about to be aborted is viable. Since most partial-birth abortions and most abortions, generally, occur prior to viability, and most abortions, even late-term abortions, occur in the 20th, 26th, 27th week, very few occur 30-plus weeks where viability rates are very high. We are talking here about giving the abortionist, certainly in the case of partial-birth abortions, an unreviewable decision that even in the cases of 35 weeks there may be—I have not looked at the literature because it is, I agree, a rare circumstance—I suggest there are probably some instances where you can conclude the child is not viable for some reason, even at that stage.

What the Senator from Illinois has done is create a standard of viability that is not reviewable, and certainly with the case of partial-birth abortions, and I know his amendment purports to cover more than that, it covers even a very small subset of those abortions that we are talking about.

Mr. DURBIN. Will the Senator yield?

Mr. SANTORUM. I am happy to yield.

Mr. DURBIN. At the risk of reading what has been read many times:

It shall be unlawful for a physician to intentionally abort a viable fetus unless the physician prior to performing the abortion—  
(1) certifies in writing . . .

The premise of this amendment is viability.

Now, I will concede the point, there are fetuses in the 35th week and later that are not viable, will never survive outside the womb. But the premise here is the fact that you must be dealing with a viable fetus in order for this prohibition to apply and for the exceptions to be applied, as well.

For the Senator to continue to ignore this clear language, I have to say I am prepared to defend what is written here. I am not prepared to defend what the Senator refuses to read.

Mr. SANTORUM. Reclaiming my time, is the Senator from Illinois stating that legislation requires a second opinion on the issue of viability?

Mr. DURBIN. It says:

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

This is not your so-called abortionist. This is an independent physician.

Mr. SANTORUM. I did not hear the word "viable" in that second definition. There was no term—

Mr. DURBIN. May I ask the Senator a question? The Senator is understood to be a practicing attorney; is that true?

Mr. SANTORUM. That is correct.

Mr. DURBIN. I ask the Senator to pause and think about that for a mo-

ment. If a doctor called you and said: Attorney Santorum, there has to be a second opinion here on whether this mother's pregnancy should be terminated postviability, late term, what do you suggest?

I think the first thing you would ask is: What is the penalty if you are mistaken?

Oh, I could lose my license, face a penalty of \$100,000 or \$250,000.

I think Attorney Santorum and Attorney Durbin would say to this doctor: Wait a minute. Let me sit down and talk to you. Are you prepared to stand behind the fact that this is a viable fetus? Are you prepared to stand behind the fact that there is a threat to life here? Because if you are not, stay away from us.

Mr. SANTORUM. Reclaiming my time, you ask: Are you prepared to stand behind the fact this is a viable fetus? Yet your amendment does not say that. Your amendment does not say the second physician has to certify to viability.

What your amendment says is they have to certify that there is a risk—that word that I have trouble with, a "risk," a risk, not a substantial risk, not a verifiable risk, but a risk of grievous injury.

So your amendment does not deal with the independent physician second-guessing the determination by the doctor that this is a viable fetus. So we do not even get to the issue of risk if the doctor says it is not viable. If the doctor says it is not viable, no one is looking over his shoulder because your ban does not apply. So nobody is coming in and saying: Well, I understand you can say you are heavy handed with this doctor. We have a doctor, Dr. Hern, who will certify under oath that every pregnancy is a risk, that he can look at any pregnancy and find a substantial risk, and the nexus you spoke about under the legislation. This is the person who read the entire text of your amendment and said he is willing to do so in every circumstance.

Setting that aside, we do not even get to that if the doctor determines no viability, correct? Is that correct?

Mr. DURBIN. I say that it is a condition to even—

Mr. SANTORUM. The condition is not a reviewable condition.

Mr. DURBIN. It is certainly reviewable.

I say to the Senator from Pennsylvania, having sat across the desk from many physicians whom I represented, and sued, believe me, trust me, they are not going to stick their neck out, put their medical license on the line, unless there is certainty in their mind that they comply with the statute.

The suggestion by the Senator—

Mr. SANTORUM. The Senator from Illinois just said the statute does not apply if the physician certifies it is not viable. So the statute does not apply if the license is not on the line. But your statute does not say that. You may want to say that, but it does not say that.

Mr. DURBIN. I say to the Senator, I hope you understand that you and I come to this from a different perspective. Your perspective is one abortion procedure. You are prepared to not accept, but to tolerate other destructions of the fetus in abortion, but not this one, which troubles you greatly.

I don't deal with that aspect. I deal with postviability, that is, late-term abortions, of all types. And there is the distinction.

If the Senator is saying to me: "You do not cover fetuses that are not viable," guilty as charged. This amendment does not address the fetus that is not viable.

Mr. SANTORUM. I appreciate that. Let me reiterate for the record, I do not question—and I mean this with all sincerity—I do not question the sincerity of the Senator from Illinois. I know because many on his side have voted against his amendment who agree with him on the position of abortion. So I truly do recognize the Senator is attempting to find some middle ground.

With all due respect, I just don't believe you have gotten there, but I do not question you have attempted to do so.

The point I am trying to make is the whole operation of your statute does not apply unless the physician claims viability. If the physician doesn't claim viability, then your statute doesn't apply. I am a physician. I say—and under the Supreme Court a physician can abort a child under any circumstances for any reason up until the time of separation. So I have no legal liability out there. Outside of your amendment, I have no concern about my license, a lawyer, anything.

So all I have to say is this child is not viable. If I make the claim this child is not viable—I don't care if it is 39 weeks and 5 days. If I say it is not viable, your statute does not apply. If your statute does not apply, I am in the clear. So that is the concern I have, that you leave the determination of viability to the physician.

Mr. DURBIN. Can I ask—at least make a point here for the Senator from Pennsylvania? If he would be kind enough to read section 1532 of the penalties, under offenses: First offense, section (b), second offense, section (c). Note that it says:

Upon a finding by the court the respondent in an action commenced under subsection (a) has knowingly violated a provision of this chapter, the court shall notify . . .

And it goes on to say medical license at stake, fine at stake.

Now, if you will turn back to read section (a) you will find 1531, section (a) includes viability of fetus.

So if a doctor has misrepresented—for example, if there is medical evidence the fetus was viable and the doctor went ahead and performed an abortion, arguing, "Well, it wasn't viable," and in so doing has misrepresented the medical facts, he can have his license revoked and face the penalty. That is

what it says, section (a). It doesn't go down to subsection (1) and (2); it says subsection (a), which includes viability of the fetus.

What we are driving at is this, I would say to the Senator from Pennsylvania. Under this language I don't think I am going to get endorsed by any medical group that is going to stand up and say what a great amendment, Senator DURBIN, because it puts an extraordinary burden on doctors who want to be involved in these abortions. But I think that burden is merited when we are dealing with these particular circumstances.

Mr. SANTORUM. I would just suggest to the Senator from Illinois, having read this, having read the reference—not criminal but civil penalties could apply—it still leaves viability, No. 1, undefined; and, No. 2, solely at the discretion of the abortionist. You can say there is other evidence. But particularly when most of these abortions are performed, most late-term abortions are performed—the question of viability is a percentage. You can talk to most obstetricians and they will tell you the determination of viability is very difficult. Frankly, you leave it unreviewable from the standpoint of the act.

You say someone could bring a suit or someone could bring charges. The question is, Who would bring the charges? That is another story. But nevertheless, someone could. But to be able to prove a child is viable when you have up through early 30 weeks a percentage that are not, I think is a very steep task, and one that would not, I believe, dissuade. Certainly in the area where most late-term abortions are performed, the percentage is high enough that any abortionist could come forward and say this child, I just didn't believe it could live, and that as long as they did so with a reasonable judgment, you have no opportunity. You have no standard. You really do leave this very much wide open. I would just argue it does not accomplish what you want.

Again, there may be a handful of abortions that would fall under this in terms of a court or somebody saying because of the advanced—38, 39, 37 weeks we would have—there is a presumption of viability. But there is no presumption of viability in this statute. There is no presumption of viability, I believe, in any statute I am aware of. So if there is no presumption, then you have a very difficult task proving viability when you are not the physician at the time, there, doing the procedure.

Even if we get past the viability issue, which I believe we have not gotten past, you have this whole issue of risk of grievous injury to her physical health. I would again argue that the word "risk" leaves open a wide area, a wide berth for opportunity for physicians to get around this problem.

I just refer you to not just Warren Hern, but we have other physicians,

other abortionists who have come forward and said they would come forward certifying that, under your statute, they read your language and said they would feel comfortable under that language. I suggest there are still problems here.

Again, I respect the Senator for his desire to deal with this issue, but I just don't believe his amendment hits the mark.

Mr. President, I am going to depart from conversation on the Durbin amendment and I will not talk anymore about it this evening. If the Senator wants to stay some more and talk about it, I am just going to talk generally on the bill.

I do not want to tell the Senator it is 8:30, if he wants to go home, he can go home, but I am going to make just some general comments on the bill. Then I intend to wrap up.

If the Senator would like to make another comment for a few minutes? OK. Then I will just proceed.

I will be brief because I know the Presiding Officer has been in the chair a long time and we have students here who want to get out before 9 o'clock so they can be in class tomorrow morning, so I want to make sure they are not deprived of their educational opportunities. I will do my best to finish before 9 o'clock.

When I came to the floor years ago to debate this issue, we talked a lot about the impact of abortion in this country; as Senator BROWNBACK said earlier, the cheapening of the value of human life that has occurred as a result of legalized abortion. That was amplified greatly by this particular procedure, this brutal procedure in which the child, a living child is all but born, 3 inches from legal protection under the Constitution, and then treated so brutally, so harshly.

I talked about the culture and how the culture is implicated in this, and how the medical profession is implicated in this. We hear so much talk about obstetricians wanting to keep these legal, but you would be hard-pressed in many communities to find obstetricians because of legal liability and all the problems associated with that.

In fact, the indication I talked about a few years ago was a classic case in point of obstetricians' insensitivity to life, compounded with their fear of legal liability. It is a pretty potent combination for any child with a disability in utero. It leads a lot of doctors to head out of town and not want to deliver children with any kind of fetal abnormality. Mothers who have children with fetal abnormality really do have trouble finding doctors who will treat because of the fear of litigation and because of this sense that, well, you know, let's just have an abortion. You don't want to be hassled with this child who may have multiple difficulties or problems. Certainly I don't want to have to deliver a child who has multiple problems because you can

blame me for some of this, or I can be dragged into lawsuits.

So we have a real coarsening, from both the litigation end and, I would argue, from the abortion end of this issue dealing with the very children the other side uses to legitimize or attempt to legitimize the procedure of partial birth.

For these hard cases—these hard cases are not cases where the woman's life or health is in danger, but where the child's prognosis is poor because of multiple abnormalities—trisomy 13 was one example, aencephaly was, I think, another example, or hydrocephaly. There are all sorts of examples out there where children who have very severe birth defects are sort of shoved aside by our health care system, because of insensitivity to life compounded with the fear of legal liability, the one such case which I talked about in great detail was the case of Donna Joy Watts. Donna Joy came here to the Senate. In fact, her mother sat up in the galleries. Donna Joy was not allowed to sit in the galleries because she wasn't old enough. Under the rule, we were not permitted to bring her into the gallery.

She is a little girl who is a true miracle.

Very briefly, 7 months into her pregnancy, Lori Watts and her husband, Donny, learned through a sonogram that their child would not be normal. She went to see a genetic counselor. Unfortunately, there are far too many genetic counselors in this country. The genetic counselor quickly referred her for an abortion saying that their child had hydrocephalus, which is water on the brain; and that as a result of the water buildup, brain development was not normal because of pressure on the brain. As a result, their child would either die shortly after birth or would be living a "horrible life."

One of these genetic counselors suggested what would be a partial-birth abortion.

They didn't know that they were being referred for an abortion when they were referred to the doctor. But they were. They rejected that option. Through their faith and through their love of their child in the womb, they made the decision that if their child, Donna Joy, was hurting and was sick, they would act like parents who have a child that is hurting and sick. You do everything you can to help your child. It is a natural parental reaction. It is a very difficult reaction. It is very difficult to deal with these circumstances. But it is the instinct to first want to see what you can do to help your child, even if things look hopeless.

I have given the example many times. When parents find out their 7-year-old is stricken with leukemia which may be fatal, or diagnosed as fatal, I don't think the immediate reaction of most parents is, well, let us execute him to put him out of his misery. The immediate reaction is, What can we do to fight? What can we do to

help this child survive? How can we rally around him or her to fight this problem that has confronted our family? Thankfully, many parents respond like Donny and Lori Watts. They were advised to see a specialist in high-risk obstetrics. I will not go through all of the details, but I can tell you that they went to hospitals and practice after practice. Practices simply wouldn't see them. They wouldn't see Lori because of her high-risk pregnancy and because of high risk in the sense that their daughter had severe abnormalities.

Eventually, they were able to find a doctor at the University of Maryland who agreed to monitor the pregnancy. And through a C-section, Donna Joy was born on November 26, 1991. She had very serious health consequences.

This is a picture of her. You can see the size of her head. It was large as a result of the hydrocephalus.

The Watts family lives in Greencastle, Pennsylvania.

Seven months into her third pregnancy, Lori Watts learned that her child would not be "normal." Through a sonogram, Lori and her husband Donny learned that their child had a condition known as hydrocephalus—an excessive amount of cerebrospinal fluid in the skull, also known as "water on the brain."

Lori's Ob-Gyn made an appointment for her to see a doctor billed as a "genetics counselor" at a clinic. When Lori Watts phoned the clinic to get directions and ask what they planned to do, the staff member told her that most hydrocephalic "fetuses" do not carry to term so they would terminate the pregnancy. When she asked how they could do an abortion so later in the pregnancy, she was told that the doctor could use a "skull-collapsing" technique—what we refer to as a partial-birth abortion. Appalled, Lori promptly canceled the appointment. When Donny Watts demanded to know why they had been referred to a facility that performs abortions, their Ob-Gyn explained that he thought he had referred them to a different doctor at that same clinic—a doctor who would have suggested ways to keep the child alive. The Wattses were stunned to realize that the clinic offered both life and death—depending on which staff doctor you happened to speak with.

Their Ob-Gyn then advised the Wattses to see a specialist in high-risk obstetrics. They never expected the cavalier treatment they received from the medical community. Doctors at Johns Hopkins University, Union Memorial Hospital, and the University of Maryland Hospital in Baltimore were quick to dismiss their baby's chances for survival and even suggested that if the child lived, she would be "a burden, a heartache, a sorrow." According to Donny Watts, "They wouldn't even give her a chance." Instead, they urged Lori to abort the baby to protect her own health and future fertility. Medical staff at Johns Hopkins would not even see Mrs. Watts. When she ex-

plained her situation over the telephone, she was urged to have an abortion. The Watts family received similar treatment from a perinatologist and a specialist in high-risk and severe abnormalities at Union Memorial Hospital. This perinatologist advised Mrs. Watts to have an abortion and claimed that without a neo-natal intensive care unit NICU, Union Memorial could not care for this sort of child. After making her own inquiries, however, Mrs. Watts learned that Union Memorial did in fact have a NICU. The Wattses next appealed to the University of Maryland high-risk obstetrics clinic, where the attending physician told Mrs. Watts she needed an abortion because the "fetus" had occipital meningoencephalocele—part of the brain was developing outside the skull.

Still determined to save their child, Lori and Donny Watts continued educating themselves about their baby's abnormalities and searching for a doctor who would perform the delivery. Finally, another doctor at the University of Maryland agreed to monitor the pregnancy. Through a Caesarean delivery, the Watts' third daughter, Donna Joy, was born on November 26, 1991.

Yes, Donna Joy was born with serious health problems. And like any loving parents, the Wattses expected the medical community to work tirelessly to help their new baby survive. They were greatly disappointed to discover that many members of the hospital staff treated Donna Joy with the same apathy, pessimism, and callousness after her birth. For instance, the Wattses were alarmed that doctors waited three days to implant a shunt to drain excess fluid from the baby's head. In prenatal consultations with a perinatologist, they had learned that the shunt should have been implanted as soon after the delivery as possible.

To add insult to injury, hospital staff made no attempt to feed Donna Joy in the traditional sense. Doctors at the University of Maryland believed that Donna Joy's deformities would prevent her from sucking, eating or swallowing. Because of a neural tube defect that made feeding her difficult, Donna Joy received only IV fluids for the first days of her life. Lori refused to give up. Initially, she literally fed breast milk to Donna Joy with a sterilized eye dropper, to provide sustenance. Then, at two weeks of age, the shunt failed, and Donna Joy was readmitted to the hospital for corrective surgery. When a tray of food was delivered to her hospital room by mistake, Lori had a brainstorm. She mashed the contents together and created her own food for the newborn with rice, bananas, and baby formula. She fed this mixture to the baby one drop at a time with a feeding syringe.

Unfortunately, Donna Joy's fight for life became even more complicated. At two months of age, she underwent an operation to correct the occipital meningoencephalocele. At four months, a CT scan revealed that she

also suffered from lobar-holoprosencephaly—a condition which results from incomplete cleavage of the brain. She was also suffering from epilepsy, sleep disorders, and continued digestive complications. In fact, the baby's neurologist conveyed to a colleague, "We may have to consider placement of a gastrostomy tube in order to maintain her nutrition and physical growth." The baby was still hydrocephalic and could not hold her head up. Furthermore, the baby was suffering from apnea—a condition in which spontaneous breathing stops.

Then, at eighteen months of age, Donna Joy had another brush with death. She had suffered from encephalitis—inflammation of the brain—throughout the summer. Donna Joy developed amnesia, tore at her face and eyes, and could not talk or walk. Her recovery was—miraculously, I would suggest—facilitated when Lori Watts popped a tape into her VCR at random. The tape happened to contain an episode of the television show *Quantum Leap* in which the show's star, Scott Bakula, sings a song. Upon hearing Bakula's rendition of "Somewhere in the Night," Donna Joy showed the first signs of responsiveness in months.

At two years of age, Donna Joy had already undergone eight brain operations. Although most of these occurred at the University of Maryland Hospital, in one case doctors had to perform surgery at the child's bedside with local anesthesia. Finally, the family received good news about Donna Joy's prospects. Donna's neurologist, who re-examined the child after a seizure in September, 1996, noted that at four and one half years, Donna Joy could speak, walk, and handle objects fairly well. He also thanked a colleague ". . . for the kind approval for follow-up and allowing me to re-assess this beautiful young child, who is remarkably doing very well in spite of such a significant malformation of the brain."

Before Donna Joy moved to Pennsylvania, Maryland Governor Parris Glendening honored her with a Certificate of Courage commemorating her fifth birthday. Mayor Steve Sager, of Hagerstown, Maryland, proclaimed her birthday Donna Joy Watts Day. Members of the Scott Bakula fan club have sent donations and Christmas presents for the Watts children. People from around the world who have learned about Donna Joy on the Internet have also been moved to write and send gifts. But perhaps most important, the Watts' determination has inspired a Denver couple to fight for their little boy under similar circumstances.

There is a lot of talk on the other side about partial birth abortions being necessary to preserve future fertility—indeed, one doctor cautioned Lori Watts that her fertility could be compromised if she chose not to have a partial birth abortion. Well, in June 1995 Lori and Donny Watts experienced the joy of welcoming another child—Shaylah—into the family. Like many

children, Shaylah has asthma, but is otherwise healthy. Furthermore, Lori Watts experienced no similar complications with this pregnancy.

The story of Donna Joy Watts continues to inspire the public. The child that nobody gave a chance to live is now 11 years old. She has outlived her original prognosis by a decade. She continues to battle holoprosencephaly, hydrocephalus, cerebral palsy, epilepsy, tunnel vision, and Arnold-Chiari Type II Malformation—which prevented development for her medulla oblongata.

Donna Joy visited my office just a few weeks ago with her mother, father, and two of her sisters. She is now being home schooled with her sisters. She is very active outside of school too. She has taken a gym class where her favorite activities are running track and playing soccer. While she may tire a little bit faster than the other kids, there is no question that she keeps up with them and follows the rules of the games. Her teacher has said how very proud she is of how Donna has excelled in class. She has also taken art classes, where she particularly likes painting and beadwork. She loves music, and her church wanted me to know how much they love having Donna in their choir. She is active in not only her church choir, but also actively participates in her Sunday school class. The picture we have here is from a few years ago when Donna Joy was flower girl in her aunt's wedding, one of 2 weddings Donna Joy was in that summer. And she continues to add to her collection of movie star memorabilia. Oh, and she recently made an appearance on the Donahue Show with her mom Lori.

So far, Donna Joy sounds like a pretty normal kid. But let me tell you a little bit more about her. Donna Joy is also very thoughtful about the needs of others. In her Sunday school class, she will stop and help the younger children who might be struggling with doing their crafts. She helps out around the house—without complaining! Donna Joy regularly helps a local shop pack up their extra cloths for shelters for abused women, shelters for the homeless, and for orphanages in Romania. Not only that, but with her sisters and mother, she regularly visits the elderly in nursing homes. She finds out which of them hasn't had a visitor in a while and then plays games and sings with them. This little girl once described as "a burden, a heartache, a sorrow" is in fact a beautiful, lively child who is now caring for the needs of others.

Donna Joy's pastor recently sent me a letter expressing his appreciation of Donna Joy's life. Pastor David Rawley noted that "had Donna Joy's parents followed the advice of several physicians and aborted this child, our community and church would have been bereft of an absolute treasure." He referred to himself as "a member of the community which benefits from her life." I think he raises an important

point. We never know ahead of time the impact that one life—in this case, Donna Joy's—will have on a family, on a community, or for that matter, the world. Lori wrote me the other day to say, "Donna Joy never put my life at risk. She's only made it better!"

Let me say again that Donna Joy went through an enormous amount of medical procedures—shunts. She suffered from epilepsy, sleep disorders, digestive complications, a variety of different complications that came with the condition that she had in utero. She suffered from encephalitis, an inflammation of the brain. She was 18 months of age and had all sorts of problems—amnesia, tore at her face and eyes, couldn't walk or talk. She was not given much chance of recovery. And then a miracle happened. Donna Joy liked the television show, "Quantum Leap" and the show's star, Scott Bakula. She would perk up when he sang a song. She would light up. She was responsive. By putting the tape in and continuing to stimulate her, she was able to come through this and survive.

She underwent eight brain operations by the age of 2. She incurred a lot. She was a great inspiration to me in pursuing this cause because she was proof that these children who are unwanted, who are wanted up to a point and then unwanted, unfortunately—because of their abnormality, they become unwanted and a subject for an abortion.

This is a hard case, a crisis pregnancy, as someone described, that turned out for the best.

In previous discussions I talked about cases that didn't turn out so well. Subsequent to this debate and the publishing of my wife's book about our son, Gabriel Michael, whose case did not turn out as well as Donna Joy Watts, many people have talked to Karen and to me about their own personal stories, and their own crises that they had to go through and deal with. They talked about the difficulties that were presented and how happy they were looking back that they saw it through; supporting and loving their child up until natural death; and the healing experience that they endured as a result of the pain that was brought upon them.

Donna Joy is a good story. Donna Joy is someone who survived. All these obstacles were placed in front of her. But she lived despite what everyone said was an impossible situation. We have a recent picture of her.

This is Donna Joy in a recent picture. She served as a flower girl in a wedding. I understand she was in two weddings that summer. She has had health problems and continues to have some. She has difficulties. Having six little children at home, I know all about those difficulties and challenges that each individual child brings. But she is a fighter. She is an inspiration to all the moms and dads who are going to confront a difficult pregnancy—a pregnancy as some would suggest which

will go awry. Maybe 1 percent, 10 percent, 5 percent, some small percentage of the people who had Donna Joy's condition will survive as well as she is. But she did because her parents believed in her. They didn't accept the culture that said: You don't need this birth. It is too much for you.

I am sure Lori and Donny would say this is too much at times, as any parent would. But here is a real-life situation with hopelessness. But occasionally there comes hope.

As bad as it can be, if you have trust in your instincts and you follow those instincts to love and support and nurture the child whom God has given you, as a gift—it may not be as you open the package what you expected it to be, but it is nonetheless a gift; and you have to search, many times, for meaning from the gift, as Karen and I have—but search and you will find the gift.

In Lori and Donny's case, the gift is obvious. She is a beautiful girl, who wrote me a letter. I would like to read that letter into the RECORD. She wrote it on March 6. She said:

Dear Senator SANTORUM,

I think abortion is very mean. I am very glad that my Mom and Dad did not let me die. I like to sing Karen Carpenter songs. I like to play with my best friend Mariam. I love my family and my church. My favorite actor is Scott Bakula. I love pizza! I love my puppy. Please tell the President and the other Senators that I want to be a T.V. star, and a pilot, and a U.S. Senator. Please tell them I want to live!

She is an example of the triumph of the human spirit that is far too often snuffed out by this brutal procedure. This brutal procedure not only snuffs out so much human potential, but its very presence in our society affects our spirit. It dulls our senses. It makes us less aware of the world around us because it is another thing we just have to block off, because we certainly cannot think, as we go through the day, of the dozen or so—maybe a few less, maybe a few more—of these procedures being performed on little babies, as the Kansas report says, with healthy mothers, healthy children.

If we thought every day about what partial-birth abortion is and the horror it brings to these little children, we would have trouble going home. So we just put it aside. We bury it someplace, as we bury so much else, and it hardens us. It takes a little breath of spirit out of us and makes us a less caring and loving culture, less sensitive to the needs and wants of our neighbors, and particularly the little children.

We have already seen it. Not only the 1.3 million abortions in this country, but we see it in people such as Peter Singer, who talks about children being killed after they are born, up to a year now, he says, because they really don't know who they are, and so it really doesn't matter. We kill them at that age. They have no sense of self. In some cases they may be in pain, so we need to alleviate pain.

See, that is absurd. Well, 40 years ago, this procedure that I described

was considered too absurd to be legal in America, and it is.

So much that coarsens society is done just a little bit at a time, just on the fringes, just on the edges. And partial-birth abortion is just on the fringe, just on the edge, but yet coarsening our society, robbing us of the spirit, telling the world that we are not the country that we proclaim to be. And it is not even medically necessary.

I would ask my colleagues, tomorrow, if we get to a final vote, to support this language as is, not to pass any amendments to this bill. I encourage a very strong and robust vote, to send a message to America that this does offend us, and that this does coarsen our society, and we need to stop it, at least here.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I will be brief, no more than 5 minutes.

I will just say, I listened to the Senator's remarks. I know the Senator has gone through some personal trials and tragedies in his family. I am aware of that. And I respect the Senator for not only his strength, but for that of his wife and all his family in enduring these trials. Many of our families have been through similar trials.

I will tell you—and I am sure you will not be surprised; and I bet you will identify with this—some of the most heartening things I do are my visits to children's hospitals and seeing these parents, many of whom have children with serious health problems, who show such courage and such determination. It is a miracle to watch them and to see a child finally survive and prosper, as this beautiful little girl whose portrait the Senator brought to the floor.

It is a testament to God and a testament to the strength of the people who just do not give up when their children are at stake. I think that is the right thing to do. God has blessed me and my wife with three great kids, and a grandson to boot.

I will tell you, though, it troubles me that we end this debate on a day when we had a chance to offer across America health insurance to pregnant mothers who have no health insurance, so that they could have the best chance to give birth to a healthy baby, that we had that chance earlier in Senator PATTY MURRAY's and Senator HARRY REID's amendment—a chance to offer them health insurance. That amendment was defeated. It was defeated on a 49 to 47 vote. Three Republicans joined us in voting for the amendment.

I do not understand this: To have such depth of feeling and emotion for children, to have the medical resources to turn out like this beautiful little girl, and then to vote against that amendment; to vote against an amendment which offered health insurance. How can you possibly rationalize that we would have such determination to provide these medical resources, and

when Members were given a chance today, they voted no. They voted no.

I believe this admiration, this strength of families, particularly of the ones I visit in hospitals, has to be put in context. These families have hope because they have access to the great hospitals, the great minds, the great doctors, medicine, and technology. Think of the despondency of the family with a sick child and no health insurance, nowhere to turn, begging—begging—in an emergency room for just any attention whatsoever.

So I would say my belief is that a commitment to family, a commitment to children, goes beyond the abortion issue. It goes to the basic issues of health care and health insurance. We had a chance today with the Murray amendment to do something about it. Sadly, we failed.

I hope another day will come. I hope those who opposed it today saying, oh, it wasn't in the budget, and we are going to save that for the budget resolution debate, will say the same thing next week when the budget resolution comes to the floor. I hope they will join me and others and show that this commitment to kids, this commitment to parents, this commitment to hope goes beyond the debate on abortion.

I yield the floor.

#### MORNING BUSINESS

Mr. SANTORUM. 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.

#### TRIBUTE TO RAUL ELIZONDO DAY

Mr. REID. Mr. President, our attention if focused right now on Iraq and on our troops—the men and women on the front lines who are protecting us.

But we have always had men and women on the front lines protecting us—right here at home. They are our police officers, and they fight a war against crime every day.

I'd like to talk about one of those officers today—Raul Elizondo, of the North Las Vegas Police Department.

Raul Elizondo went to the same high school I did—Basic High School in Henderson, NV. He was a member of the championship wrestling team there.

He went to the University of Nevada, Las Vegas, and then joined the North Las Vegas Police Department.

We have some outstanding officers in North Las Vegas, but Raul Elizondo quickly distinguished himself as one of the best.

He was known for going above and beyond the call of duty, and for getting personally involved in his community. He even helped get Christmas and birthday presents for children on his patrol beat.

In 1994, Raul Elizondo was named "Police Officer of the Year" by his colleagues in the North Las Vegas Police Officer Association.

That same year, he got a special commendation from the Chief of Police at the Annual Policeman's Ball.

Two months later he was killed in the line of duty.

This Thursday, March 13, will be Raul Elizondo Day in North Las Vegas. Officers from the North Las Vegas Police Department will go to the elementary school that's now named after Raul Elizondo. They will read to students there, and help with classes, and eat lunch with kids.

Then in the afternoon they will have an assembly and a parade.

I wish I could be there with them. But on Thursday, while I'm here on the Senate floor, I'll be thinking about everyone involved.

I will be thinking about the police officers, who will be carrying on Raul Elizondo's tradition of being a role model for the community—as well as a law officer.

I will be thinking about Raul Elizondo's family—his mother Ann, his sister and his two brothers.

I will be thinking about the officers of the North Las Vegas Police Department, who still live with the pain of losing a colleague and a friend.

And I will be thinking of the police officers all over the country, and the sheriff's deputies, and the FBI agents, and my old department—the Capitol Police. I'll remember how they put themselves on the front lines every day to keep me and my family safe. I'll offer my thanks for their sacrifice and my prayers for their safety. I hope you will join me.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I will describe a terrible crime that occurred April 8, 2002 in Northern Virginia. Two men beat a tow truck driver on the Beltway near Washington, D.C. The tow truck driver, who is Iranian, stopped on the highway to assist two men who appeared to be in need of help. After the driver stopped, the two men punched and choked him while calling him racist names.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### COST OF WAR WITH IRAQ

Mr. DODD. Mr. President, earlier today the Committee on Foreign Relations held a hearing about U.S. plans