

Because the wisdom of using a given medical procedure is best left with medical professionals. We are legislators, not doctors.

Second, the partial-birth ban contained in this legislation will not protect a woman's health. The few women who might require this procedure to protect their health from severe injury will be completely barred from receiving it. A pregnancy gone awry is a tragedy. The partial-birth abortion ban will only compound that tragedy by forcing a woman to forego a safer procedure.

The partial-birth abortion ban, as its supporters readily admit, is intended not to find common ground and reduce unnecessary abortions, but to lead to a ban of any and all abortions in America—regardless of whether they are needed to protect a woman's life and health. I find this argument simply unacceptable and blatantly unconstitutional in light of *Roe vs. Wade*. Therefore, it is for this reason and the reasons stated above that I voted against final passage of the Partial Birth Abortion Ban Act of 2003.

While the Durbin amendment would not have ended the national debate over abortion, it respected the deeply held views of people on both sides of this issue. It offered the Senate and our country an opportunity—not to debate our differences, but to affirm our similarities. It would have allowed us to come together in a bipartisan fashion, pro-life and pro-choice—and offer something that would have reduced the number of abortions while preserving a woman's life, health and constitutional freedom.

Mr. ROCKEFELLER. Mr. President, I want to talk about the debate in the Senate this week regarding late-term abortion. I am a strong opponent of late-term abortions, and I know many Americans find them as deeply troubling as I do.

As I have done in the past, I voted this week to support a comprehensive ban on late-term abortions. The comprehensive ban I supported—offered as an amendment by Senator DURBIN would have put an end to all late-term post-viability abortions, unlike Senator SANTORUM's proposal, including but not limited to those performed using the procedure known as "partial birth." The Durbin ban also would have included a very narrow exception for the rare case when a woman's life or health is threatened by a troubled pregnancy, as required by the United States Supreme Court and the Constitution.

I want to end unnecessary late-term abortions, and I also agree with the Supreme Court that it is not right for a woman who faces grievous injury, or even death, to have no protection under the law. In those rare cases of a serious threat to a woman's life or health, the Durbin amendment would have allowed the woman, her family and no less than two physicians to pursue the best medical options. Except in

an emergency, the two physicians—to include her attending physician and an independent non-treating physician—would have been required to certify in writing that in their medical judgment continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health. Grievous injury was carefully 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.

I want to emphasize that if we are serious about ending the practice of late-term abortions then we must pass a law that will be upheld by our courts. The U.S. Supreme Court has been quite clear that to be deemed constitutional, any law banning late-term abortions must be narrowly focused and must include an exception for the health of the mother. Several previous bans ignored these tests and were struck down, and consequently there has been no end to this troubling practice. Senator SANTORUM's bill does not adequately meet the Court's requirements for constitutionality and will almost surely meet the same fate.

The Durbin amendment, on the other hand, was a clear and comprehensive ban that does comply with the constitutionality tests set forth by the U.S. Supreme Court. It would have ended the practice of late-term abortions, with a narrow exception for protecting a woman from grievous injury to her life or health. In those rare and extraordinarily difficult situations, the Durbin amendment would have ensured that a woman—not by the dictates of the Congress, but with the private counsel of her family, her doctors, and her clergy—makes the final decision.

I deeply regret that a majority of my Senate colleagues did not recognize the Durbin amendment was a more effective ban than Senator SANTORUM's proposal. I continue to hope that in the end we will find a way to enact a comprehensive ban on late-term abortions that meets the demands of the U.S. Supreme Court and Constitution by protecting the life and physical health of the mother in extreme situations.

#### EXECUTIVE SESSION

#### NOMINATION OF THOMAS A. VARLAN, OF TENNESSEE, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to vote on Executive Calendar No. 53, which the clerk will report.

The legislative clerk read the nomination of Thomas A. Varlan, of Tennessee, to be United States District Judge for the Eastern District of Tennessee.

Mr. HATCH. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Thomas A. Varlan, of Tennessee, to be United States District Judge for the Eastern District of Tennessee?

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 52 Ex.]

YEAS—97

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

NOT VOTING—3

Biden Edwards Kerry

The nomination was confirmed.

Mr. HATCH. Madam President, I am pleased the Senate has confirmed Thomas Varlan for the United States District Court for the Eastern District of Tennessee. Mr. Varlan's distinguished record of service in both the private and public sectors makes him a great addition to the Federal bench.

Mr. Varlan graduated Order of the Coif from Vanderbilt University School of Law, where he served as managing editor for the Vanderbilt Law Review. In his 11 years in private practice, Mr. Varlan has focused on governmental relations, civil litigation, labor and employment law, and representation of quasi-governmental corporations and schools.

Mr. Varlan's impressive accomplishments include serving as law director for the city of Knoxville for a decade. In that capacity, he headed a department of 25 employees who represented the city in a variety of cases and provided legal advice to city officials.

Mr. Varlan's wealth of experience has made him an excellent nominee who is well prepared to handle the rigors of the Federal bench. Clearly, Mr. Varlan is the right choice to be a judge in the Eastern District of Tennessee. I am pleased my colleagues joined me in voting to confirm him.

Mr. FRIST. Mr. President, I am in strong support for the confirmation of Thomas Varlan to be a United States District Judge for the Eastern District of Tennessee.

Tom grew up in Knoxville, TN as a second-generation Greek-American. His parents, Alexander and Constance Varlan, instilled in their son the time-honored ideals of commitment to hard work, involvement in the community, and love for country.

He put those ideals to work in his studies of Political Science and Economics at the University of Tennessee in Knoxville, and at Vanderbilt University's School of Law, where he was the managing editor of the Vanderbilt Law Review. From there, Tom practiced law in Atlanta from 1981 to 1987. In 1988, Tom began ten years of service as Law Director for the City of Knoxville where he was responsible for a wide range of legal issues. In this role, Tom demonstrated his keen legal mind and temperament suited to judicial office.

Tom's current position as a partner at Bass, Berry and Sims has enhanced his solid background in the law. Tom Varlan is a skilled attorney who is known for his fairness, integrity and dedication to the law.

Tom has worn many hats in his professional life, but he has never wavered from the ideals that he grew up with. In fact, his nomination fulfills not only the dreams of his first-generation American parents, I believe it epitomizes the American dream as well.

I am convinced that Mr. Varlan will make an ideal judge, and he has my highest recommendation and unqualified support. I urge my colleagues to vote for his confirmation.

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

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#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

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#### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to a period for the transaction of morning business.

The Senator from Illinois.

#### CASTING OF 10,000TH VOTE

Mr. FRIST. Madam President, I wish to announce to my colleagues that a truly impressive milestone was just reached with this last vote. Senator LUGAR, on this vote just announced a few moments ago, cast his 10,000th vote as a U.S. Senator. That is a feat accomplished by just 21 other Senators in the history of this institution, the Senate.

Senator LUGAR's vote places him in the company of a distinguished list of Members which includes eight current Senators: Senators BIDEN, BYRD, DOMENICI, HOLLINGS, INOUE, KENNEDY, LEAHY, and STEVENS.

Most importantly, Senator LUGAR's achievement is a testament of his tremendous service, not only to his home State of Indiana but to the United States of America.

I ask all of my colleagues to join me in congratulating Senator LUGAR for his important milestone.

(Applause.)

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Madam President, I join the distinguished Republican leader in expressing my heartfelt congratulations to the senior Senator from Indiana, our colleague, DICK LUGAR.

He was sworn in on January 3, 1977. Over the course of these 10,000 votes cast, he has served as the chairman of the Senate Agriculture Committee and now serves as the chairman, as we all know, of the Foreign Relations Committee.

With those 10,000 votes, he has made a major impact on American history. I would be willing to bet that for every vote he has cast, he has made at least one more friend over all of these years. He may be a Republican and I may be a Democrat, but I have never been so appreciative of a relationship as a Senator as I have with Senator LUGAR. He has many more than 10,000 friends since he came to the Senate in 1977. So we congratulate him. We tell him of his great service to this country and our appreciation for that service. We hope that there will be many thousands more.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Madam President, I congratulate our dear colleague, Senator DICK LUGAR from Indiana, for his remarkable service to our country in many ways, not just through his leadership and years and votes in the Senate; prior to his time in the Senate, his service to our country in the U.S. Navy and all the other contributions he has made. It is a remarkable morning for our country to recognize this remarkable individual.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Madam President, I am overwhelmed by the thoughtfulness and graciousness of both leaders, my friends BILL FRIST and TOM DASCHLE. I thank both of them for those very wonderful comments.

I will take a moment, if I may, to thank some other people, people of Indiana, who made it possible for me to be in the Senate to cast the 10,000 votes, those who gave me their confidence, their support, and their prayers throughout the years.

I especially thank the Lord above for giving me good health throughout that period of time and who made it possible to do this.

I must pay tribute, as we all are doing today, to Lloyd Ogilvie whose personal counsel and support to me and my family during the past 8 years has meant so much.

Of course, behind all of this is the confidence and love of my wife Charlene, our boys, and their wives, who have really sustained me, who said this is something we ought to be doing, a commitment of our time and our lives in a way that has been exciting for me and I hope for them.

My staff has made it possible for me to get to the Chamber for all of these votes. Wherever we are in the country, in Washington or at the airport, each one of us is indebted to staff who tell us when the votes are going to occur and give us some reasonable idea about what is being voted on. I pay tribute to each one of those persons.

I pay tribute to colleagues who have sustained me each day with their loyal friendship, likewise the sheer vigor of the experience. I feel each day it is an adventure, and I am sure that is shared by each of the colleagues who are present today.

I want to mention specifically Senator ROBERT BYRD, who was the majority leader when I first came. One of the reasons my vote total escalated so rapidly was that in 1977 I think Senator BYRD created an all-time record of roll-call votes. I am certain he will remember exactly how many, but I recall there were at least 650, which was a substantial amount for a freshman Senator to start out with. So we have had some money in the bank ever since, thanks to Senator BYRD.

Finally, I want to thank the pages. They have played a very special role in these votes because, as some of my colleagues know, occasionally I go running out on The Mall. On several occasions I have been caught as far away as 14th Street or the Washington Monument when the beeper went off. I had to run swiftly. Fortunately, my pace is sufficient to get the mile and a half back to the Capitol during the time of the vote to scramble up the back stairs, but in a disheveled condition I have prevailed upon the pages to crack open the door, and the reading clerk has been kind enough to read my name so that I can peak through and keep this voting record alive.

So I thank all of you. I appreciate very much this moment today.

The PRESIDING OFFICER. The assistant minority leader.

Mr. REID. Madam President, while the two leaders are in the Chamber, it is my understanding that the leaders