

conference with the Senate on the disagreeing votes of the two Houses thereon.

*Ordered.* That the following Members be the managers of the conference on the part of the House.

From the Committee on the Judiciary for consideration of the Senate bill and the House amendment, and modifications committed to conference: Mr. Sensenbrenner, Mr. Hyde, and Mr. Nadler.

Mr. McCONNELL. Mr. President, it is my understanding that 2 hours of debate on this proposal are to commence. I ask unanimous consent that those 2 hours begin to run upon the arrival and speaking of the Senator from California, Mrs. BOXER, who I understand is on the way to the floor at this time.

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

Mr. McCONNELL. In the meantime, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. BOXER. Mr. President, I ask what the pending business is.

The PRESIDING OFFICER. The pending business is the message from the House on S. 3.

Mrs. BOXER. Mr. President, as I understand it, I will have up to 60 minutes to discuss this tonight; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mrs. BOXER. I ask my friend from South Carolina what issue he is here to discuss tonight and what his time parameters are.

Mr. HOLLINGS. I would like to discuss an issue to be voted on in the morning, a resolution of disapproval of the FCC, increasing 35 to 45 percent ownership, and, more than that, the cross-ownership at the local level.

Also, I would like to start paying for the war. I take it the Senator wants to pay for the war.

We have the poor GI down in Baghdad. We hope each day he does not get killed, and the reason is we want him to hurry back so we can give him the bill. We ain't going to pay for it, but we need a tax cut so we can get re-elected next year. That is what is going on in this town.

Every time I go home, I am again embarrassed. I want to talk to that point.

Mrs. BOXER. If I could ask my friend, is the Senator able to wait 30 minutes?

Mr. HOLLINGS. Yes, ma'am.

#### THE RIGHT TO CHOOSE

Mrs. BOXER. Senator HOLLINGS raises several issues that are so important to the Nation. This issue of media ownership getting out of control and the need to reverse what the FCC did

and also the issue of the war, how badly it is going, how much it is costing, the danger our troops are in, the fact it is not internationalized and there is virtually no burden sharing going on—these are all issues that I hear about at home when I go to the grocery store or take a walk. People are anxious and concerned. These are the issues of the day.

Therefore, it is rather stunning to me that given all this and the fact that the deficit has gone off the charts—we have seen the picture of what has happened to the deficit since Bill Clinton left office; it is a straight line up. I never saw anything like it in my life. We are getting to the point where we are bankrupting this country and laying all that bankruptcy on the backs of our kids, as Senator HOLLINGS has said.

With all of these issues pending, why am I here tonight speaking about an issue that was resolved in 1973, the right of a woman to choose—the fact that this Senate went on record supporting that right quite recently as part of S. 3, that very simple language that simply said *Roe v. Wade* has saved lives, stating it is the sense of the Senate that the decision of the Supreme Court in *Roe v. Wade* was appropriate and secures an important right and such decisions should not be overturned.

That was language in S. 3 which also for the first time banned a medically recognized procedure. Senator HARKIN and I and a majority of the Senate added this language.

What happens with all of the problems we are facing and with our brave men and women in such jeopardy abroad, our taxpayers just getting squeezed, our education bill underfunded, the country going broke, the environment getting worse because every other day, and usually on Fridays, we see more rollbacks of environmental laws, the media getting bigger. We have to overturn that.

With all of those issues, one would think the House of Representatives and the Republican leadership would have said: We want to get this bill to the President's desk. We want to ban this procedure. So let's just take this language. The decision of the Supreme Court in *Roe* was appropriate and secures an important right, and such decisions should not be overturned.

Friends, that was not to be the case. Instead of sending this bill off to the President for his signature, which my colleagues have been wanting to do for a very long time, they say we need to strip out this very simple *Roe* language. In fact, that is what the House did.

So before this bill can go to conference—and it is a technical matter, but in order for a bill to become law, when the bills are different, you have to have a conference to resolve the differences. When the bills are the same, the bill can go straight over to the President's desk.

No, the House leaders, Republican leaders, I believe quite radically on

this point of a woman's right to choose that was resolved in 1973, they strip this out. Now in order to go to conference, we will have a vote to disagree with what the House did. I hope we will disagree with what they did and take another stand for *Roe*. That is why we are here tonight.

The reason the House will not go along with this, and many in our own Senate will not, the real agenda in all of these bills that attack a woman's right to choose—and there have been many, and I will go through them, including bills that hurt family planning—the real agenda is to overturn *Roe*. I believe that is what we are talking about. It may show up in a different form, such as banning one medical procedure, which is a horrible precedent, as we are going to do.

It may show up by saying to a woman in the military: You will have to fly back to the United States on an "as available" basis and spend your own money—nothing to do with your own military pay—to get an abortion. We have said to Federal employees: You cannot use the health insurance that you pay a good part of to get a legal abortion, legal, not illegal, a legal abortion. Abortion is legal.

My friends, some of them here do not like that. So there has been this huge attempt to narrow this right. So every time we get a chance, when we see these bills come forward that would narrow this right, that would potentially harm women, we offer the Harkin-Boxer amendment in favor of *Roe*. Even though we did not get as many votes as we would like, we got a majority, and that is what we are continuing to discuss.

Now, what does *Roe* guarantee to women?

In the decision of the Supreme Court, the Court found that a woman's reproductive decisions are a privacy right guaranteed by the Constitution. But I have to say that even though this right was granted to women, it was not an unbalanced decision. It was a very moderate decision. That is why, in my opinion, the majority of Americans support it.

In the early stages of a pregnancy, the Government cannot intervene with a woman's right to choose. That is it, plain and simple. Guess what. We are not going to be big brother or sister, as the case may be. We are going to allow a woman, her doctor, and her God to make that decision.

But in the later stages of pregnancy, *Roe* found that the Government can intervene, that it can regulate, that it can restrict abortion. We all support that. All of us support that. But there is one caveat—always, always, always. Any law that a State may pass to restrict abortion rights has to have an exception to protect the life of the woman or to protect her health.

This is important because, I have to tell you, before *Roe*, before 1973—and I remember those years—life for women was very different. Before *Roe*, up to

1.2 million women each year resorted to dangerous illegal abortions. According to one estimate, at least 5,000 women a year died as a result of botched illegal abortions. Thousands of others nearly died, became infertile, or suffered other health complications.

I have a few stories—I want to tell a couple of them—of life before Roe.

Polly Bergen—we know her—an actress, went public with her story. She became pregnant when she was in her late teens and it was a disaster for her. As a result of an unsafe abortion, she had several miscarriages. At the age of 33, her doctor said, because of that botched abortion, she had to have a hysterectomy. She desperately wanted children. She had a hysterectomy.

Lynn Kahn was 24. She was divorced with two young children when, in 1964, she was raped by a stranger on her way home from work. Because she was so ashamed, she did not report the rape. But she soon found out she was pregnant. She scraped together \$300 for an illegal abortion. She nearly died. She was hospitalized with a serious infection caused by a botched abortion.

During her multiday hospital stay, she was absolutely terrified that the police would come and arrest her because the treating physician had told her he was going to inform them about the abortion. The police did not arrive, but the whole experience was so traumatic that Lynn was unable to talk about it for over 20 years.

Mary Roper, a 19-year-old sophomore in college, was in an abusive relationship. She got pregnant, and the man she was dating encouraged her to get an abortion. She had been raised a Catholic and felt she could not be single mother in her community. She endured three attempts to end her pregnancy—one person used a coat hanger, and one a hose. During the time she was seeking an abortion, she was questioned by the police about her intention. She finally found a doctor in Chicago, 3 hours away, to perform an abortion. She continued to have problems and a couple of months later needed her parents' written permission to receive a medically necessary abortion. She continues to have nightmares today.

Elizabeth Furse, a former Representative from Oregon, was 25 in 1961, married and pregnant with her third child. During the first trimester of her pregnancy, she developed the measles. She was subsequently tested, and the tests confirmed what she and her husband, and obstetrician, had feared: if she carried her pregnancy to term, the baby would likely be blind, deaf, and severely brain damaged. They were anxious to have more children but did not want their child to suffer and be in pain, and so they sought an abortion. Her physician was sympathetic but would not perform an illegal abortion. At that time both the doctor and Elizabeth could be prosecuted and jailed for terminating the pregnancy. She did not want an illegal abortion and could only

have one legally if her life was threatened. Since she had one kidney, her doctor thought that they might be able to persuade a panel of doctors that her life would be in danger if she carried the baby to term. They agreed, but required her to have a total hysterectomy at the same time.

Rollyn Carlson of Austin, TX, was 20 years old in the summer of 1971 and pregnant. She decided to have an abortion and found an office in Mexico on the other side of the Texas border. After the abortion, she bled heavily and ran a high fever for 3 days. She was one of the lucky ones. She married and had two children. She now has a teenage daughter and is concerned about her. What if she got pregnant? What if she needed an abortion? Rollyn worries that if abortion is illegal, her daughter would have to have an illegal abortion and could die.

Sherry of Peoria, IL, was married with two children when in the mid-1950s, she was brutally raped and left for dead. She did not die, but as a result of the rape, she became pregnant. She went to her doctor—he would not perform an abortion. She went to another—he would not perform an abortion either. She then resorted to “home remedies” such as pounding on her abdomen with a meat mallet and throwing herself down the stairs. It did not work, so she went to the local abortionist. He was drinking during the procedure and offered to give her back some money if she would perform oral sex on him. She subsequently started to hemorrhage and was hospitalized. Decades later, she still has nightmares about the procedure.

Romanita of Pittsburgh, PA, married and had three children, one—her daughter, Norma—with spina bifida. Her husband was a heroin addict and had left the home. One day he showed up and raped her. He then disappeared, and she found out she was pregnant. She did not want to take the chance of having another baby with deformities. She sought out an illegal abortion and experienced bleeding for 2 weeks.

So the point is that when the Court made this historic decision called *Roe v. Wade*, women were dying, maybe 5,000 a year. And you ask me, why would people, lawmakers, want to see us go back to those days? I will tell you right now, I don't understand it. It isn't right. It isn't right for the women of this country. It isn't right for the families of this country. *Roe v. Wade* was a balanced decision.

Then you have a situation where we wish we had more family planning funds because then we would be in a situation where we would not have these unwanted pregnancies. The same people who want to outlaw abortion are not interested in family planning funds. And interestingly, the same people who want to go back to the days when abortion was illegal, who will fight for the right of the fetus over the right of a woman, where are they, sometimes, on preschool programs,

afterschool programs, caring for our children, helping our children? A lot of times they do not vote for it. As a friend of mine once said, he sometimes thinks that some of our colleagues who take this position, and then don't help the kids, are all for the kids between conception and birth; and then where are they?

So the reason we are here tonight is because the House is so radical on the point that they will not accept our language, that simply says: The decision of the Supreme Court in *Roe* was appropriate and secures an important right, and such decision should not be overturned.

Imagine, they say they want S. 3 so badly, they want to outlaw this medical procedure, which is the first time an accepted medical procedure is outlawed by politicians, but yet they cannot accept this language, which has no force of law. That is the incredible thing. It is a sense of the Senate. It does not even have the force of law, but it shows you that the goal here is not simply outlawing this one procedure; it is overturning *Roe*. I cannot say that enough because that is absolutely true, even when 80 percent of the people said that whether to have an abortion is a decision to be made between a woman and her doctor.

This debate is very serious. It is very serious because the underlying bill, S. 3, which bans this procedure, makes no exception for the health of the woman, and we tried every which way to do that. We said: *Roe* is the law of the land. Under *Roe*, the life and the health of a woman must always be protected. So in order to be constitutional, we are willing to walk hand in hand with you, and we will ban this procedure, even though some of us believe we should not get into playing doctor—that is not our role. There is no OB/GYN in this body. People don't come to us when they are sick. They come to us when they are sick and tired of politics, but they don't come to us when they are physically ill.

We were willing—those of us who are very pro-choice—to say: We will accept this if you will have an exception for the life and the health of a woman. Oh, no. They would not do it. That is why our language on *Roe*, that we attached to this bill, is so important. Because, folks, this bill, when it becomes law—and it will become law—is going straight to the Court.

We want the Court to understand we stood firmly for *Roe*. When they take a look at the outlawing of this procedure, and when they see there is no exception for the health of a woman, they will realize maybe some people voted for it who would have preferred a health exception. By showing them we have the votes to sustain a sense of the Senate in favor of *Roe*, we will be sending a strong signal on behalf of the women of this Nation to the courts.

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

Mrs. BOXER. Yes.

Mr. DURBIN. I thank the Senator for coming to the floor and talking about this controversial issue because the Senate will have to face it. I am trying to recall, was there not a State statute in Kansas or—

Mrs. BOXER. Nebraska.

Mr. DURBIN. Nebraska relative to this so-called partial-birth abortion procedure? Is it not true that the same Supreme Court that is going to consider our bill ruled that you had to include, in the protection for the woman involved, if her health was at risk, she could go forward with the procedure? Is my memory correct that this Court, within the last year or two, made that decision?

Mrs. BOXER. It was in 2000. It was a case of a Nebraska law. And, yes, the Court found it unconstitutional.

What the authors of S. 3 will tell you is they have met the test. But what constitutional lawyers tell us is that the test isn't met at all. There is no exception for health. My colleague actually carried the health exception.

Now, this is what the Supreme Court said—and I am glad my colleague asked this question—in *Stenberg v. Carhart*. They basically said: If you are outlawing a medical procedure, you have to have a health exception.

The governing standard requires an exception "where it is necessary, in appropriate medical judgment for the preservation of the life or health of the mother."

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

My friend is right on target. This is the Supreme Court.

Mr. DURBIN. I ask my friend from California, who has followed this issue more closely than any other Member, for those who are trying to follow this debate, when the Supreme Court says if you are going to write a law banning an abortion procedure, you have to acknowledge that if the mother is about to die, that procedure will be allowed. Then the Court went on to say in this case, if there is a significant health risk involved as far as the woman is concerned, you have to allow the procedure. Would the Senator from California give us indications of what that means when we talk about health risk and significant health risk? What are we saying? A complication late in pregnancy that is so significant as to give to that mother the right to terminate the pregnancy, could the Senator give us some illustrations of what kind of health risk we are talking about?

Mrs. BOXER. Working with physicians across the country, I want to tell you what they have told us in writing. I ask unanimous consent to print those letters in the RECORD.

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

AMERICAN MEDICAL  
WOMEN'S ASSOCIATION, INC.,  
*Alexandria, VA, March 25, 2003.*

Hon. JERROLD NADLER,  
*House of Representatives,*  
*Washington, DC.*

DEAR CONGRESSMAN NADLER: The American Medical Women's Association (AMWA) strongly opposes HR 760, the "Partial-Birth Abortion Ban Act of 2003." While the Association has high respect for each member and their right to hold whatever moral, religious and philosophical beliefs his or her conscience dictates, as an organization of 10,000 women physicians and medical students dedicated to promoting women's health and advancing women in medicine, we believe HR 760 is unconscionable.

AMWA has long been an advocate for women's access to reproductive health care. As such, we recognize this legislation as an attempt to ban a procedure that in some circumstances is the safest and most appropriate alternative available to save the life and health of the woman. Furthermore, this bill violates the privilege of a patient in consultation with her physician to make the most appropriate decisions regarding her specific health circumstances.

AMWA opposes legislation such as HR 760 as inappropriate intervention in the decision-making relationship between physician and patient. The definition of the bill is too imprecise and it includes non-medical terminology for a procedure that may ultimately undermine the legality of other techniques in obstetrics and gynecology used in both abortion and non-abortion situations. At times, the use of these techniques is essential to the lives and health of women. The potential of this ban to criminalize certain obstetrics and gynecology techniques ultimately interferes with the quality of health and lives of women. Furthermore, the current ban fails to meet the provisions set forth by the Supreme Court in *Stenberg v. Carhart*, a ruling that overturned a Nebraska statute banning abortion because it contained no life and health exception for the mother.

AMWA's position on this bill corresponds to the position statement of the organization on abortion and reproductive health services to women and their families.

AMWA believes that the prevention of unintended pregnancies through access to contraception and education is the best option available for reducing the abortion rate in the United States. Legislative bans for procedures that use recognized obstetrics and gynecological techniques fails to protect the health and safety of women and their children, nor will it improve the lives of women and their families. If you have any questions please contact Meghan Kissell, at 703-838-0500.

Sincerely,

LYNN EPSTEIN, MD,  
*President.*

AMERICAN PUBLIC  
HEALTH ASSOCIATION,  
*Washington, DC, March 31, 2003.*  
U.S. HOUSE OF REPRESENTATIVES,  
*Washington, DC.*

DEAR REPRESENTATIVE: On behalf of the American Public Health Association (APHA) the largest and oldest organization of public health professionals in the nation, representing more than 50,000 members from over 50 public health occupations, I write to urge your opposition to H.R. 760, the Partial-Birth Abortion Ban Act of 2003.

APHA has long-standing policy regarding the sanctity of the provider-patient relationship and has long advocated for a woman's right to choose from a full range of reproductive health options. We believe that a physi-

cian in consultation with the patient should make the decision regarding what method should be used to terminate a pregnancy.

We are opposed to H.R. 760 because we believe this and other legislative and judicial restrictions to safe, medically accepted abortion procedures severely jeopardize women's health and well-being. APHA also opposes the bill because it fails to include adequate health exception language in instances where certain procedures may be determined by a physician to be the best or most appropriate to preserve the health of the woman. We urge members of the House of Representatives to oppose this legislation.

Thank you for your attention to our concerns regarding the negative effect this legislation would have to a woman's right to a safe, legal abortion.

Sincerely,

GEORGE C. BENJAMIN, MD, FACP,  
*Executive Director.*

MARCH 5, 2003.

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

DEAR SENATOR BOXER: I understand that you will be considering Senate S. 3, the ban on abortion procedures, soon and would like to offer some medical information that may assist you in your efforts. Important stakes for women's health are involved: if Congress enacts such a sweeping ban, the result could effectively ban safe and common, pre-viability abortion procedures.

By way of background, I am an adjunct professor in the Department of Obstetrics, Gynecology and Reproductive Sciences at the University of California, San Francisco, where I co-directed the Center for Reproductive Health Research and Policy. Formerly, I directed the Reproductive Health program for the Henry J. Kaiser Family Foundation and served as Deputy Assistant Secretary for Population Affairs for the United States Department of Health and Human Services. I represented the United States at the International Conference on Population and Development (ICPD) in Cairo, Egypt, and currently serve on a number of Boards for organizations that promote emergency contraception and new contraceptive technologies, and support reducing teen pregnancy. My medical and policy areas of expertise are in the family planning and reproductive health, prevention of sexually transmitted infections including HIV/AIDS, and enhancing international and family planning.

The proposed ban on abortion procedures criminalizes abortions in which the provider "deliberately and intentionally vaginally delivers a living fetus . . . for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus . . ." The criminal ban being considered is flawed in a number of respects: it 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 (similar to a cesarean section) and hysterectomy.

The proposed ban would potentially encompass several abortion methods, including dilation and extraction (d&x, sometimes referred to as "intact d&e), dilation and evacuation (d&e), the most common second-trimester procedure. In addition, such a ban could also apply to induction methods. Even if a physician is using induction as the primary method for abortion, he or she may not be able to assure that the procedure could be effected without running afoul of the proposed ban. A likely outcome if this legislation is enacted and enforced is that physicians will fear criminal prosecution for any

second trimester abortion—and women will have no choice but to carry pregnancies to term despite the risks to their health. It would be a sad day for medicine if Congress decides that hysterotomy, hysterectomy, or unsafe continuation of pregnancy are women's only available options. Williams Obstetrics, one of the leading medical texts in Obstetrics and Gynecology, has this to say about the hysterotomy "option" that the bill leaves open: "Nottage and Liston (1975), based on a review of 700 hysterotomies, rightfully concluded that the operation is outdated as a routine method for terminating pregnancy." Cunningham and McDonald, et al, Williams Obstetrics, 19th ed., (1993), p. 683.

Obviously, allowing women to have a hysterectomy means that Congress is authorizing women to have an abortion at the price of their future fertility, and with the added risks and costs of major surgery. In sum, the options left open are less safe for women who need an abortion after the first trimester of pregnancy.

I'd like to focus my attention on that subset of the women affected by this bill who face grievous underlying medical conditions. To be sure, these are not the majority of women who will be affected by this legislation, but the grave health conditions that could be worsened by this bill illustrate how sweeping the legislation is.

Take for instance women who face hypertensive disorders such as eclampsia—convulsions precipitated by pregnancy-induced or aggravated hypertension (high blood pressure). This, along with infection and hemorrhage, is one of the most common causes of maternal death. With eclampsia, the kidneys and liver may be affected, and in some cases, if the woman is not provided an abortion, her liver could rupture, she could suffer a stroke, brain damage, or coma. Hypertensive disorders are conditions that can develop over time or spiral out of control in short order, and doctors must be given the latitude to terminate a pregnancy if necessary in the safest possible manner.

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 necessitating a termination of their pregnancies, including: death (risk of death higher with less safe abortion methods); infertility; paralysis; coma; stroke; hemorrhage; brain damage; infection; liver damage; and kidney damage.

Legislation forcing doctors to forego medically indicated abortions or to use less safe but politically-palatable procedures is simply unacceptable for women's health.

Thank you very much, Senator, for your efforts to educate your colleagues about the implications of the proposed ban on abortion procedures.

Sincerely,

FELICIA H. STEWART, M.D.

PHYSICIANS FOR  
REPRODUCTIVE CHOICE AND HEALTH,  
New York, NY, March 10, 2003.

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

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

We are practicing obstetrician-gynecologists, and academics in obstetrics, gynecology and women's health. We believe it is imperative that those who perform terminations and manage the pre- and post-operative care of women receiving abortions are given a voice in a debate that has largely ig-

nored the two groups whose lives would be most affected by this legislation: physicians and patients.

It is misguided and unprincipled for lawmakers to legislate medicine. We all want safe and effective medical procedures for women; on that there is no dispute. However, the business of medicine is not always palatable to those who do not practice it on a regular basis. The description of a number of procedures—from liposuction to cardiac surgery—may seem distasteful to some, and even repugnant to others. When physicians analyze and debate surgical techniques among themselves, it is always for the best interest of the patient. Abortion is proven to be one of the safest procedures in medicine, significantly safer than childbirth, and in fact has saved numerous women's lives.

While we can argue as to why this legislation is dangerous, deceptive and unconstitutional—and it is—the fact of the matter is that the text of the bill is so vague and misleading that there is a great need to correct the misconceptions around abortion safety and technique. It is wrong to assume that a specific procedure is never needed; what is required is the safest option for the patient, and that varies from case to case.

#### THE FACTS

(1) So-called "partial birth" abortion does not exist.

There is no mention of the term "partial birth" abortion in any medical literature. Physicians are never taught a technique called "partial birth" abortion and therefore are unable to medically define the procedure.

What is described in this legislation, however, could ban all abortions. "What this bill describes, albeit in non-medical terms, can be interpreted as any abortion," sated one of our physician members. "Medicine is an art as much as it is a science; although there is a standard of care, each procedure—and indeed each woman—is different. The wording here could apply to any patient." The bill's language is too vague to be useful; in fact, it is so vague as to be harmful. It is intentionally unclear and deceptive.

(2) Physicians need to have all medical options available in order to provide the best medical care possible. Tying the hands of physicians endangers the health of patients. It is unethical and dangerous for legislators to dictate specific surgical procedures. Until a surgeon examines the patient, she does not necessarily know which technique or procedure would be in the patient's best interest. Banning procedures puts women's health at risk.

(3) Politicians should not legislate medicine. To do so would violate the sanctity and legality of the physician-patient relationship. The right to have an abortion is constitutionally-protected. To falsify scientific evidence in an attempt to deny women that right is unconscionable and dangerous.

The American College of Obstetricians and Gynecology, representing 45,000 ob-gyns, agrees: "The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous."

The American Medical Women's Association, representing 10,000 female physicians, is opposed to an abortion ban because it "represents a serious impingement on the rights of physicians to determine appropriate medical management for individual patients."

#### THE SCIENCE

We know that there is no such technique as "partial birth" abortion, and we believe this legislation is a thinly-veiled attempt to outlaw all abortions. Those supporting this legislation seem to want to confuse both legislators and the public about which abortion procedures are actually used. Since the greatest confusion seems to center around

techniques that are used in the second and third trimesters, we will address those: dilation and evacuation (D&E), dilation and extraction (D&X), instillation, hysterectomy and hysterotomy (commonly known as a c-section).

Dilation and evacuation (D&E) is the standard approach for second-trimester abortions. The only difference between a D&E and a more common, first-trimester vacuum aspiration is the cervix must be further dilated. Morbidity and mortality studies indicate that this surgical method is preferable to labor induction methods (instillation), hysterotomy and hysterectomy.

From the years 1972-76, labor induction procedures carried a maternal mortality rate of 16.5 (note: all numbers listed are out of 100,000); the corresponding rate for D&E was 10.4. From 1977-82, labor induction fell to 6.8, but D&E dropped to 3.3. From 1983-87, induction methods had a 3.5 mortality rate, while D&E fell to 2.9. Although the difference between the methods shrank by the mid-1980s, the use of D&E had already quickly outpaced induction, thus altering the size of the sample.

Morbidity trends indicate that dilation and evacuation is much safer than labor induction procedures, and for women with certain medical conditions, e.g., coronary artery disease or asthma, labor induction can pose serious risks. Rates of major complications from labor induction were more than twice as high as those from D&E. There are instances of women who, after having failed inductions, acquired infections necessitating emergency D&Es, which ultimately saved her fertility and, in some instances, her life. Hysterotomy and hysterectomy, moreover, carry a mortality rate seven times that of induction techniques and ten times that of D&E.

There is a psychological component which makes D&E preferable to labor induction; undergoing difficult, expensive and painful labor for up to two days is extremely emotionally and psychologically draining, much more so than a surgical procedure that can be done in a few hours under general or local anesthesia. Furthermore, labor induction does not always work: Between 15 and 30 percent of cases require surgery to complete the procedure. There is no question that D&E is the safest method of second-trimester abortion.

There is also a technique known as dilation and extraction (D&X). D&X is merely a variant of D&E. There is a dearth of data on D&X as it is an uncommon procedure. However, it is sometimes a physician's preferred method of termination for a number of reasons: it offers a woman the chance to see the intact outcome of a desired pregnancy, thus speeding up the grieving process; it provides a greater chance of acquiring valuable information regarding hereditary illness or fetal anomaly; and there is a decreased risk of injury to the woman, as the procedure is quicker than induction and involves less use of sharp instruments in the uterus, providing a lesser chance of uterine perforations or tears and cervical lacerations.

It is important to note that these procedures are used at varying gestational ages. Neither a D&E nor a D&X is equivalent to a late-term abortion. D&E and D&X are used solely based on the size of the fetus, the health of the woman, and the physician's judgment, and the decision regarding which procedure to use is done on a case-by-case basis.

#### THE LEGISLATION

Because this legislation is so vague, it would outlaw D&E and D&X (and arguably techniques used in the first-trimester). Indeed, the Congressional findings—which go

into detail, albeit in non-medical terms—do not remotely correlate with the language of the bill. This legislation is reckless. The outcome of its passage would undoubtedly be countless deaths and irreversible damage to thousands of women and families. We can safely assert that without D&E and D&X, that is, an enactment of S. 3, we will be returning to the days when an unwanted pregnancy led women to death through illegal and unsafe procedures, self-inflicted abortions, uncontrollable infections and suicide.

The cadre of physicians who provide abortions should be honored, not vilified. They are heroes to millions of women, offering the opportunity of choice and freedom. We urge you to consider scientific data rather than partisan rhetoric when voting on such far-reaching public health legislation. We strongly oppose legislation intended to ban so-called “partial birth” abortion.

Sincerely,

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Mrs. BOXER. What the physicians have told us is there are serious health consequences of banning safe procedures such as the one that will be banned in this bill. One is hemorrhage. People can die, they can lose blood, or be ill for a very long time. They can rupture their uterus and therefore never be able to carry a baby. They could get blood clots and have serious brain damage, an embolism, a stroke. There could be damage to nearby organs. There could even be paralysis. These are the terrible incidents that could happen to a woman if a doctor is in a situation of an emergency late-term procedure and is not able to use everything he has been able to use up until S. 3.

Mr. DURBIN. So for clarity, I ask the Senator, the bill we are going to be asked to vote on has an exception. This procedure is allowed if the life of the mother is at stake. But all of the significant health risks which you have just read, does this bill allow a doctor, in the midst of a medical emergency, to terminate a pregnancy if there is a significant health risk to the mother?

Mrs. BOXER. The answer is absolutely not. That is why it is so shocking to me. My friend knows because he worked hard on this. He tried to get a health exception. As a matter of fact, it was very strong language. Will my friend remind me what he said in making that health exception?

Mr. DURBIN. I offered an alternative to the bill that will be before us. I said, if late in a pregnancy a woman who is carrying a fetus is in danger of a grievous physical health risk, verified by two doctors—not just a doctor performing the procedure but another doctor, for a second opinion, has to verify it—then it would be allowed. That was defeated on the floor. What I tried to do was to narrow the exception, even

probably more narrow than the Supreme Court said so my colleagues would give a doctor, in an extraordinary emergency situation, not life or death but one equally serious, at least in terms of the woman's future health. As the Senator from California probably will recall, that was defeated on the floor.

I ask the Senator from California this: If the Supreme Court has already said, don't send us a statute, don't send us a proposal that doesn't protect the health of the mother when there is a significant health risk late in the pregnancy because that violates what we found to be the right of privacy under *Roe v. Wade*, why are we now considering S. 3, this bill, which defies the Supreme Court and says to them, we know better, we are going to change your mind, we are going to send you something that doesn't meet the test in light of the Nebraska statute? Can the Senator from California explain why we are going through this?

Mrs. BOXER. Well, I would say politics is part of it, but I would also say there is an agenda in this Senate and in the House. That agenda is to overturn *Roe*, to keep on pushing through bills that challenge *Roe* directly. And *Roe*, as I said, is very clear on the health exception.

Let's go back to the first chart. The bottom line is, *Roe* is very clear:

In 1973, for the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe—

which is a fancy word for ban—abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

This is the heart of *Roe*.

Mr. DURBIN. The Senator is saying this proposal we are receiving, banning a specific abortion procedure, does not allow an exception for the health of the mother.

Mrs. BOXER. That is right.

Mr. DURBIN. Even though the Supreme Court ruled 2 or 3 years ago on a State statute that tried to do the same thing that it clearly was unconstitutional or at least violative of *Roe v. Wade*, they have already thrown that out. Yet the Senate is going to be asked to vote again to eliminate an abortion procedure which a doctor may decide is in the best interest of a woman who, late in her pregnancy, facing an emergency, has a significant health risk; that is what we are being asked to vote on?

Mrs. BOXER. That is right. But it is even worse because the language TOM HARKIN had written into the bill, the sense-of-the-Senate language, is now being stripped out of the bill by the House. The reason we are here talking about this is, I want the Senate to disagree with what the House did. It is bad enough to do what we have done here without my vote—and I believe without yours, although I am not sure in the end how you voted.

The bottom line is, it is bad enough to ban a procedure and make no excep-

tion for the health of a woman. It is so violative of her rights and her dignity and of the respect that is due her. But in addition, they stripped out the language we added that said, maybe people, for whatever reason, are going to vote for this, but we also want to go on record in support of *Roe*. The reason we are here now is that the House, rather than take that language and send it off to the President, would have gotten their ban with a little sense-of-the-Senate language that supported *Roe*. No, the House had to prolong this, strip this out. And now to get to conference, we have to have a motion to disagree with what the House did, which I hope we will disagree with what they did.

So what I was trying to do and what Harkin was trying to do—and we all were trying to do—is say: S. 3 has problems, but you should know we still support *Roe*.

Mr. DURBIN. I ask the Senator, is it your impression the House conferees and those who agreed in the Senate are really going after the heart of the issue in *Roe v. Wade*? It is their intention to overturn *Roe v. Wade* by reason of the fact they have stripped the language Senator HARKIN offered affirming *Roe v. Wade*?

Mrs. BOXER. That is right.

Mr. DURBIN. And if we eliminated *Roe v. Wade*—and there are some in your State and in my State, too, who would say, do that, because of our personal, religious and philosophical beliefs—what protection would there be that an abortion procedure under any circumstances would be safe and legal in the United States?

Mrs. BOXER. It would be a disaster for women. I have noted that before *Roe*, 5,000 women a year died because there were very harsh laws. If *Roe v. Wade* was eliminated, women would not have the right to privacy in this matter. Early-stage abortion would not be between her and her doctor and her God and family, but it would be a matter for Senators to determine—and State Senators and assembly members and Governors all over this country. And a woman would risk her freedom if she had an abortion, just like we had before 1973.

So affirming *Roe v. Wade* is the right thing to do. It has made a difference in women's lives. More than anything, I think as our country matures, we recognize that women deserve to be treated with respect and dignity. It has been a long, hard road for women in this country, I say to my friend who is such a supporter of equality across the board. Women didn't even get to vote until 1920. We had to struggle. In 1973, I remember it very well. I remember women risking their lives to get an illegal abortion. I had read a case of a woman who was raped and she was so fearful and embarrassed and ashamed, she got an illegal, botched abortion. She was sick and the doctor even threatened to call the police on her.

Mr. DURBIN. I ask the Senator this question. I can recall in the time I have

been in public service that the vocal supporters of *Roe v. Wade* and keeping abortion safe and legal used to contain in their ranks many women who remembered vividly from a personal experience or a family experience what it was like before *Roe v. Wade*, when women in desperate circumstances sought an abortion in an unhealthy, unsanitary, unclean surrounding, endangering their lives. I ask the Senator, does she believe the national debate is different today because we have had 25 or 30 years of legal opportunities to terminate a pregnancy and, thank goodness, there are fewer of those women whose lives were lost or damaged because of these illegal and unsafe abortions that preceded them?

Mrs. BOXER. I think the Senator is right. The further we get away from those years, there is less memory. I think there is something else. I think most people—young people and middle-aged people—who don't have that many memories of it think *Roe v. Wade* will not be overturned; it is just a slogan.

Let me say what my friend knows so well. *Roe v. Wade* is hanging by a 5-to-4 vote in the Supreme Court. That is why I think my colleagues keep coming back with this approach of banning this medical procedure, which many doctors have used because it was the safest one to save the life and health of a woman. They keep coming and they keep thinking someday the Court will reverse it and go 5-to-4 the other way. I think at that point women will rise up. But it is our job. That is why I am so grateful to the Senator for coming over here. It is our job because we are lawmakers to look ahead and not wait for that crisis, and to make the point and to discuss what could happen to a woman. She could have a stroke if this procedure is outlawed. She could have a hemorrhage or a blood clot. She could become paralyzed. She could be infertile. These are horrible things that can happen to our daughters, our granddaughters, and it could even be worse. We can have some States, if *Roe* were overturned, that could put a woman in jail, could put a doctor in jail for trying to assert a privacy right.

Mr. DURBIN. I will ask one last question of the Senator from California. First, let me say, though I personally oppose abortion, and I would counsel a woman in my family to look for an alternative, or adoption, and help in any way I could, I believe we have to really make a special effort to protect the legality of the decision that a woman ultimately makes in this situation, when her life and her health are at stake—a decision that should be made by her, her doctor, her conscience, and her family, as the Senator said.

What I found 21 years ago, when I came to Congress with that belief, was the startling discovery that so many people who opposed abortion also opposed family planning. That, to me, seems totally inconsistent—that you would not give to a woman options so that she could avoid an unplanned pregnancy.

I want to ask the Senator from California this: Based on what she has seen, and what I have seen in almost 21 years on Capitol Hill, if those people are successful in the Senate and House and eventually overturn *Roe v. Wade*, can the Senator give me some indication of what she thinks is next when it comes to issues of family planning—issues that women value as much as their *Roe v. Wade* rights, but those issues as well? Have we not seen repeatedly in the Congress the same voices who are calling for the overturning of *Roe v. Wade* also limiting options for women to plan the size of their family—the frequency of children in their family?

Mrs. BOXER. There is no question about it. With this administration, the very first thing the President did was put in place the international gag rule, which stopped nonprofits all over the world from getting Federal funds to use to help these women to plan their families.

Let me tell you what has happened. We have seen already an assault on a woman's right to choose. I think my colleague is absolutely right to point out that *Roe* is just one of their goals; it is their major goal, however. I will tell you what is happening. Federal regulations were issued by this administration that make embryos and fetuses, but not pregnant women, eligible for health benefits. What you will see is this is all leading up to the place where a woman eventually will not have a right to choose, or any rights at all when she is pregnant. In other words, pregnant women now cannot get the prenatal care; it is the fetus. We have never done that before. We have always recognized that it is the woman who is nurturing that child; that the woman gets the help and the child gets the nourishment.

There is legislation being pushed here to recognize an embryo as a person with rights separate and apart from the woman. That is another move to set up a situation where abortion, even in the first minute, would be seen as murder. So this is what is happening today. There is moving legislation forcing some young women to make reproductive health choices alone and criminalizing caring adults who help them. There are attempts to block women's access to RU486, a drug that is proven safe and effective and would be an alternative to surgical abortion. There are attempts to block access to emergency contraception. There is a denial of *Roe v. Wade* protections to Federal employees and low-income women who rely on the Federal Government, who live in the District of Columbia, and to U.S. servicewomen living overseas, and women in Federal prison. These women cannot get the health care if they want to exercise their right to choose, whereas a wealthy woman can do that.

Here is your point: They are starving funding for family planning programs, both here and abroad. And there is also the cancellation of international fam-

ily planning funding. We voted in Congress for \$34 million for international family planning money. The Bush administration will not spend a penny. When you ask them why, they say these agencies are using it for abortion. That is plain untrue. It is untrue. They don't because they are audited and monitored, and they cannot.

In winding down this debate—and we have several hours left—I want to say why I think it is so important that we stand in favor of *Roe v. Wade*. We are going to go back to what the debate is really about. It is about standing up for the Senate language that was brought to us by the Senator from Iowa, Tom Harkin, with over 50 of us signing on and voting for it, that simply says it is the sense of the Senate that the decision of the Supreme Court in *Roe v. Wade* was appropriate and secures an important right, and such decision should not be overturned. It is a very straightforward and simple statement—elegant, if I may say so; it is an elegant amendment by the Senator from Iowa that says to the women of this country that we respect you and, as my friend said, he is personally opposed to abortion. You know what. That is so much that is right in this country of ours. That is what being pro-choice is—that each of us in our own hearts, with our own family, with our God, can decide this issue for ourselves, without Senators peering into our private decisions. What a horrible thought is that. Really, life is complicated enough without having a bunch of Senators deciding what we should do in the privacy of our own homes in the early stage of a pregnancy.

That is what *Roe* was—a very balanced decision. It says: If you want to go through with this pregnancy, absolutely that is your right, but if you do not, in the early stages it says to women: We respect you enough, we give you that dignity; we trust you enough to make that decision.

Senator HARKIN said it right. This Senate stood up with him and we voted in favor and appended that language to the banning of this medical procedure. Our colleagues in the House looked at this—and they are so radical, I say to my friend—and rather than moving that bill right through to the President's desk with sense-of-the-Senate language that has no force of law, they chose to strip out this language from the bill, and now we have to take this bill to conference.

The reason I am here and the reason the Senator from Illinois is here tonight is to say we are going to take another stand in favor of *Roe*. We are going to vote to disagree with what the House did. We hope that vote will be large, and we hope that the conferees will, therefore, go into that conference and push hard to have this language added.

If this language is not added, this Senate is going on record with S. 3,

minus this language, of saying: Women's health is just not important. I hope every woman in this country, whether they agree with Roe or they disagree with Roe, whether they themselves would make one decision or another, will come together and say: Pro-choice means that the Government respects the individual, and isn't that really what our country is all about?

I thank the Chair. I yield back my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I admire my distinguished colleague from California. She is a fighter. She has a conscience, and she is dedicated. I am delighted to listen to her. I agree with her absolutely.

#### TAXES

Mr. HOLLINGS. Mr. President, I wish to speak about a no-no subject—taxes. I get really worn out when I go home and hear the local folks are against taxes. I came to public service over 50 years ago when there was a conscience of paying the bill for the Government we provided. I will never forget, one of the first measures we had come before us was a veterans' bonus for the World War II veterans. I can see Julian Dusenberry, a Member from Florence, whose legs had been shot out from under him. He was a Distinguished Service Cross recipient. He raised himself up on those brass bars we had at the back of the Chamber for him, and he said: Mr. Speaker, we all are veterans, but we are all South Carolinians. South Carolina doesn't have the money, and I move to table the bill. And we killed the veterans' bonus.

It was shortly thereafter that I could see we were not providing public education in a general sense for all of our constituency. More particularly, there were just absolutely no schools for African Americans. I went to one shortly after I was elected. It was a one-square building, one floor. It was a cold November day. They had a potbellied stove in the middle, a class in one corner, a class in another corner, a class in the third corner, and a class in the fourth corner. This African American school had one teacher for the four classes. So I introduced the sales tax to pay for education. It was a 3 percent sales tax, and we finally enacted it in 1951. It was quite a struggle, but nobody has really contested that measure, nor has anyone put in a bill to repeal it.

We have to pay for the public schools. Under Governor Riley—he was Secretary of Education—we increased that from 3 to 5 percent.

When I came in as Governor of South Carolina, some 40 years ago, we had to attract industry. Everybody was looking for jobs. I am sort of an expert at looking for jobs. I traveled the highways and byways, but before I did that, I prepared myself to sell the point. I knew they were not going to invest in

South Carolina, unless we had a pay-as-you-go operation. So I moved to increase taxes and got the AAA credit rating for the State of South Carolina back in 1959, before any Southern State, including the State of Virginia, had a AAA credit rating.

I address the distinguished Chair because he gave real leadership to his State of Virginia when he was Governor. He knows exactly what we are talking about. In fact, the gentleman we had in South Carolina went back up to Richmond, VA, to help in industrial expansion. So we worked together trying to develop public education, strong communities, and fiscal responsibility at the State level. But you can come up here to Washington and you can forget about it.

I saw one article the other day that was put in the RECORD relative to President Lyndon Baines Johnson. It said he didn't care. Oh, no, he did. He didn't give us guns and butter. He paid in 1968 and 1969 for the Vietnam War. The last time your U.S. Government balanced the budget was under President Lyndon Baines Johnson in 1968–1969. We ended up in the black with a surplus. Thereafter, as chairman of the Budget Committee under President Carter I can tell you, we still had a conscience.

I will never forget that 1980 election. They cleaned out Democrats. I went to the ones who were cleaned out and said: Look, you have to give me a vote. We can't leave this year with a deficit bigger than the one we inherited from President Ford. I went to Senator Magnuson, I went to Senator Church, I went to Senator Culver, I went to Senator McGovern, I went to Senator Bayh, I went to Senator Gaylord Nelson—all defeated in 1980. I said: You have to give me one vote. They did, and we reduced that deficit.

Then, of course, when President Reagan came in with voodoo, which Vice President Bush called it, the idea is to cut your taxes and that will increase your revenue. That is absolute nonsense. We know now from voodoo 1, 2, 3, and 4 that we are in the worst trouble we have ever been. That is why I take the floor today to speak generally with respect to taxes.

All politicians are against taxes. In fact, some are so adamant against them, they run against the Government, they run against the job they are running for. But taxes are what we pay for a civilized society, said Oliver Wendell Holmes.

Let's try, Mr. President, a nation without taxes, just momentarily. Let's agree, for example, to not touch Social Security and Medicare—they are both in surplus. In fact, everybody wants to save Social Security. If you just left it alone and quit spending the Social Security revenues on any and everything but Social Security, you would have a \$1.5 trillion surplus in the Social Security trust fund, which the Greenspan Commission called for and which we passed in law, section 13-301 of the

Budget Act, that we totally ignore now. So let's leave Social Security, Medicare, and Defense alone.

But let's take all the other things government does with taxpayer dollars and get rid of them so we can get rid of taxes. The Departments of State, Justice, Commerce, and Education would immediately be abolished. We would eliminate the FBI.

We would stop building roads or fixing the ones we have. We would do away with the hospitals receiving Federal support, eliminate the National Institutes of Health, and close all the Veterans Hospitals.

We would close the monuments and the parks, decertify the food certified by the Food and Drug Administration, decertify the drugs for the same reason, eliminate all the farm programs. When one mentions farm programs, they can get some attention in this body. That is the crowd that does not want to pay for anything, but they wiggle their way in and walk away with billions every time, every session. They always get billions, but let's do away with the farm programs, eliminate the development programs, forget about clean air, clean water, just close the Environmental Protection Administration; cancel NOAA, cancel NASA, cancel the housing programs, close the airports because they are supported by Federal taxes.

In fact, just close the prisons. Tell all the prisoners, soeey, pig, just get out. Just shoo, get out. Get rid of the President, get rid of the Congress, the Cabinet, the courts. Just get rid of the government.

I talked to a group in South Carolina and finally got their attention that we are lucky to be born in America where there is a government supported by the taxes that helps provide our opportunities. For example, someone born in Zambia can expect to live to only 37 years of age; born in Swaziland, 38 years; born in Rwanda, 39 years; Mozambique, 40 years; Niger, where someone found yellow cake, he lives to be 41 years of age. If I had been born in Niger, I would have been dead already for 40 years. I do not want to give that idea out to a lot of people listening to what I am talking about.

Eighty percent of those born today in rural India have worms. Eighty-five percent will go hungry and 95 percent in rural India will drink dirty water all of their lives. One born today in Botswana has a one in three chance of getting AIDS, and someone born in Mali instead of the United States has only a 10-percent chance of completing the first grade. One born in Brazil has a 40-percent chance of dropping out of school by the sixth grade. A girl born in Pakistan has less than a 10-percent chance of attending high school. In Senegal one has only a 50-percent chance of finding a job.

In Sri Lanka, one can expect to earn only 40 cents an hour; Haiti, 30 cents an hour; Bangladesh, 20 cents an hour. So one born in many countries instead of