H.R. 760 also purports to rely on the Supreme Court's holding in Katzenbach v. Morgan for the proposition that the Court will employ a "highly deferential review of Congress's factual conclusions." However, Katzenbach involved Congress's power under section 5 of the 14th Amendment to craft a remedy to a 14th amendment violation Congress had identified. Congress went beyond what the Supreme Court had deemed required as a remedy by the 14th Amendment. In that case, the Court held that provisions of the Voting Rights Act prohibiting the enforcement of a New York law requiring the ability to read and write English as a condition of voting was an appropriate exercise of Congress's section 5 powers. Specifically, the Court said that while Congress could use its enforcement power to provide additional protections for a right guaranteed by the 14th Amendment, it could not narrow that right. H.R. 760 would do exactly the opposite of what the Court approved in Katzenbach in that it narrows, rather than enforces a right protected under the 14th Amendment; in this case, the right to choose as delineated in Roe.

Moreover, in the intervening years, the Court has become far less deferential to Congress's enforcement powers under sec. 5, and to Congress as a finder of fact.

It is unclear what types of procedures are covered by the legislation. Although some believe the legislation would apply to an abortion technique known as "Dilation and Extraction" (D & X), or "Intact Dilation and Evacuation," it is not clear the term would be limited to a particular and identifiable practice. For example, the American College of Obstetrics and Gynecologists has noted that the definitions in the bill "are vague and do not delineate a specified procedure recognized in the medical literature. Moreover the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques." As a result, the bill could well apply to additional abortion procedures known as D & E (Dilation and Evacuation), and induction.

In the wake of the controversies over partial birth abortions, a number of states have taken up similar legislation. Like the federal bill, most of the state measures are so vague and so broad that they cover a wide range of abortion methods.

The overwhelming majority of courts to have ruled on challenges to state so-called "partial-birth abortion" bans have declared the bans unconstitutional and enjoined their enforcement. In the last three years, medical providers have challenged the state statutes that ban "partial-birth abortion" in twenty states. In eighteen of those states—Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, Rhode Island, West Virginia, and Wisconsin—the bans are currently enjoined, in whole or in part. In a nineteenth, Alabama, the state attorney general has limited the ban's enforcement to post-viability abortions. In only one state, Virginia, has a court considered the constitutional challenges but nevertheless permitted enforcement of the statute pending further proceedings. Six federal district courts have entered permanent injunctions against statutes that are virtually identical, word for word, with H.R. 760.

The reality concerning quantitative data is that there is no national figures on the absolute number of D & X procedures performed. The two authorities which have the most comprehensive information on abortion—the Centers for Disease Control and Prevention (CDC) and the Alan Guttmacher Institute (AGI) do not compile data on the number of D & X procedures before or after viability.

According to AGI, in the most recent year for which data is available—1996—the total number of abortions nationally fell to 1.35 million from a high of 1.61 million in 1990. Of these, "an estimated total of 31 providers performed the [D&X] procedure 2,200 times in 2000, and 0.17% of all abortions performed in that year used this method."

Proponents of H.R. 760 also ignore the fact that most women do not simply elect to delay the time of their abortion or gratuitously choose the D & X procedure. The causes for delay are varied, including a dearth of abortion providers in many poor or rural areas, lack of availability of Medicaid funding, fear of violence at local clinics, teenagers fearful of notifying their parents or subject to delays caused by notice and informational requirements, and women who only learn of severe fetal abnormalities as a result of late term ultrasound or amniocentesis tests (which is subject to a mandatory wait for results). Physicians will not recommend a particular type of abortion procedure—D & X or otherwise—unless they believe it to be the safest for their patients.

Mr. STARK. Mr. Speaker, I rise today to strongly oppose H.R. 760, the so-called Partial-Birth Act.

I'd like to ask my colleagues, in what medical book can the procedure partial-birth abortion be found? Nowhere. This is a conjured up term used by opponents of abortions. "Partial birth" is a political term, not a medical one. At this very moment, Congress is legislating medical protocols that should be the determination of doctors and their patients. Most members have no medical training and are unequipped to make medical determinations of this nature.

The medically accepted, rarely-used procedure that is being targeted today, which is so graphically described by the supporters of this ban, is nearly always used in the third trimester when the life or health of the mother is in danger. But this bill put forward by proclaimed anti-choice proponents goes far further than that. Their ban would not just apply to procedures performed in the third trimester. It criminalizes numerous abortion procedures—including the safest and most commonly used methods of abortion that are performed in the second trimester.

If this legislation passes, it opens a Pandora's box of restrictions on the rights of women and on the ability of doctors to practice medicine. Just imagine the country we will live in. In communities across the nation, law enforcement officers will be conducting sting operations in doctors' offices to arrest pregnant women and their physicians. Is that what we want for America? I certainly don't.

This bill isn't about banning one procedure. Let's be honest. It is an attempt to re-ignite an anti-abortion campaign to eviscerate Roe v. Wade.

Just 3 years ago, the Supreme Court in Stenberg v. Carhart, struck down as unconstitutional a Nebraska law virtually identical to legislation before us today. Moreover, countless medical organizations disagree with this legislation—the American Medical Association, the American College of Obstetricians, the American Nurses Association, and the California Medical Association to name a few.

H.R. 760 could ban what may be the safest choice to protect a woman's life and health. Once again, this difficult decision is one I believe wholeheartedly is best left in the hands of those who have the skills to make these medical determinations, and those patients and families the decision is affecting—not Congress.

Vote no on H.R. 760.

Mr. PAUL. Mr. Speaker, like many Americans, I am greatly concerned about abortion. Abortion on demand is no doubt the most serious sociopolitical problem of our age. The lack of respect for life that permits abortion significantly contributes to our violent culture and our careless attitude toward liberty. As an obstetrician, I know that partial birth abortion is never a necessary medical procedure. It is a gruesome, uncivilized solution to a social problem.

Whether a civilized society treats human life with dignity or contempt determines the outcome of that civilization. Reaffirming the importance of the sanctity of life is crucial for the continuation of a civilized society. There is already strong evidence that we are indeed on the slippery slope toward euthanasia and human experimentation. Although the real problem lies within the hearts and minds of the people, the legal problems of protecting life stem from the ill-advised Roe v. Wade ruling, a ruling that constitutionally should never have occurred.

The best solution, of course, is not now available to us. That would be a Supreme Court that recognizes that for all criminal laws, the several states retain jurisdiction. Something that Congress can do is remove the issue from the jurisdiction of the lower federal courts, so that states can deal with the problems surrounding abortion, thus helping to reverse some of the impact of Roe v. Wade.

Unfortunately, H.R. 760 takes a different approach, one that is not only constitutionally flawed, but flawed in principle, as well. Though I will vote to ban the horrible partial-birth abortion procedure, I fear that the language used in this bill does not further the pro-life cause, but rather cements fallacious principles into both our culture and legal system.

For example, 14G in the "Findings" section of this bill states, ". . . such a prohibition [upon the partial-birth abortion procedure] will draw a bright line that clearly distinguishes abortion and infanticide . . ." The question I pose in response is this: Is not the fact that life begins at conception the main tenet advanced by the pro-life community? By stating that we draw a "bright line" between abortion and infanticide, I fear that we simply reinforce the dangerous idea underlying Roe v. Wade, which is the belief that we as human beings can determine which members of the human family are "expendable," and which are not.

Another problem with this bill is its citation of the interstate commerce clause as a justification for a federal law banning partial-birth abortion. This greatly stretches the definition of interstate commerce. The abuse of both the interstate commerce clause and the general welfare clause is precisely the reason our Federal Government no longer conforms to constitutional dictates but, instead, balloons out of control in its growth and scope. H.R. 760 inadvertently justifies federal government

intervention into every medical procedure through the gross distortion of the interstate commerce clause.

H.R. 760 also depends heavily upon a "distinction" made by the Court in both Roe v. Wade and Planned Parenthood v. Casey, which establishes that a child within the womb is not protected under law, but one outside of the womb is. By depending upon this illogical "distinction," I fear that H.R. 760, as I stated before, ingrains the principles of Roe v. Wade into our justice system, rather than refutes them as it should.

Despite its severe flaws, this bill nonetheless has the possibility of saving innocent human life, and I will vote in favor of it. I fear, though, that when the pro-life community uses the arguments of the opposing side to advance its agenda, it does more harm than good.

Mr. STEARNS. Mr. Speaker, today opponents of the proposed ban on partial birth abortion will levy a great deal of unfair derision against those of us who will stand today to speak on behalf of the unborn. These same opponents repeatedly deny the terrible facts regarding partial birth abortion despite overwhelming evidence. They fight against common sense efforts such as parental notification and demonstrate, through their actions, that the unborn are not worthy of protection in their eyes. I emphatically disagree.

The phrase "partial-birth abortion" describes the process employed in this late-term abortion procedure. It refers to any abortion in which the baby is delivered "past the navel . . . outside the mother's body" and then is killed by any means effective. This method is usually employed after 24 weeks gestation at which point these babies have eyebrows and eyelashes and have shown to be sensitive to pain.

It is difficult and painful for all of us to hear of the violence against these unborn children. It is mournful that any child has ever known such brutality and in this case with the permission of the law.

Opponents of the ban have a difficult task before them because the truth of the matter is so painfully clear. They attempt to rationalize that if the baby's head and shoulders are still inside of the mother that it is worthless tissue to be discarded without regret. Is the line between murder and medical procedure really only five inches!? Such an argument is baseless and preposterous.

I am hopeful that this year's debate will be our last and we will finally ban this abhorrent procedure.

Mr. PORTMAN. Mr. Speaker, as an original co-sponsor of the Partial-Birth Abortion Ban Act, I want to express my strong support for outlawing the troublesome practice of partial-birth abortions.

Opponents of the ban suggest that partial-birth abortions are needed to protect mothers with pregnancy-related complications, but this argument simply does not hold up to the testimony of abortion providers and medical experts. Former Surgeon General of the United States C. Everett Koop has said that there is "no way" he can see a medical necessity for this barbaric procedure. The American Medical Association's legislative council has unanimously supported the partial-birth abortion ban.

Mr. Speaker, I ask you: What will future generations think of a society that allows this practice? For the moral health of our country, and for future generations, we should take action today to ban partial-birth abortions.

Congress has the opportunity today to do the right thing by banning partial-birth abortions. We have a duty to protect the unborn from this horrific procedure. I hope my colleagues will listen to their consciences and vote to make partial-birth abortions illegal once and for all.

Mrs. MALONEY. Mr. Speaker, I rise in opposition to this bill. Again, we are facing a bill that deprives women of safe, high quality medical care at a time when they need it most. And yet again, this bill places undue burden on a woman's right to seek an abortion.

Let's put this bill in perspective. Since the majority party took power in 1994, I've kept a scorecard. This is their 202nd strike against reproductive rights, and you can check the list at any website *www.house.gov/Maloney.*

Language similar to this bill has already been struck down in Stenberg v. Carhart on the grounds that it fails to take the health of the woman into account.

What this bill is about is the right to choose. The bill is extreme, it's vicious, and it's unconstitutional. The Supreme Court, The New York Times and the Washington Post agree, and I ask permission to place a copy of the Times and Post editorials in the RECORD.

The fact is that this bill says it's banning intact dilation and extraction, a procedure acknowledged by the experts, the American College of Obstetrics and Gynecology, as safe to end late-term pregnancy—when it's necessary. The opposition shows horrible pictures and yells about how grotesque this procedure is. It is, but so are lots of medical procedures. But they're still good care. This bill flatly disrespects medical opinion.

My constituents ask my opinion on important things—like low income women asking where their child tax credit went; like the Federal Communications Commission's ruling to consolidate access to news in the hands of a few. That's important, that's dangerous. But, I gotta tell you, not one of my constituents has asked me to be their doctor!

The Supreme Court has said that neither the Court nor Congress may ban a medical procedure appropriate to save the woman's life and health. Period

The blatant disregard for this fact and for the rights of women to choose is astonishing. I urge you all to vote "no" on this measure.

[From the New York Times, June 4, 2003]

"PARTIAL BIRTH" MENDACITY, AGAIN

If the so-called partial-birth abortion ban now careering toward almost certain approval by the full House this week has a decidedly familiar ring, it is not your imagination playing tricks. The trickery here belongs to the measure's sponsors.

Although promoted as narrowly focused on a single late-term abortion procedure, the measure's wording adds up to a sweeping prohibition that would, in effect, overturn Roe v. Wade by criminalizing the most common procedures used after the first trimester, but well before fetal viability. Indeed, the measure replicates the key defects that led the Supreme Court to reject a strikingly9 similar state law a mere three years ago. In addition to its deceptively broad sweep, the bill unconstitutionally omits an exception to protect the health of the woman.

Plainly, the measure's backers are counting on the public not to read the fine print. Their strategy is to curtail access to abortion further as the inevitable legal challenge wends its way back to the Supreme Court for another showdown. They obviously hope that by that time, there will have been a personnel change that will shift the outcome their way.

House members who vote for this bill will be participating in a cynical exercise that disrespects the rule of law and women's health while threatening the fundamental right of women to make their own childbearing decisions. Representatives who care about such things will not go along.

[From the Washington Post, June 4, 2003]

"PARTIAL BIRTH," PARTIAL TRUTHS

(By Ruth Marcus)

The poisonous national debate over what's known as partial-birth abortion resumes this week, and this time for real: The House is expected to handily approve a prohibition on the procedure, and the Senate has already passed its version. While his predecessor twice vetoed bills outlawing partial-birth abortion, President Bush is eager to sign legislation that he says will "protect infants at the very hour of their birth."

For those who support abortion rights, partial-birth abortion is not the battleground of choice, which is precisely why those who oppose abortion have seized on the issue. The procedure is gruesome, as indeed are all abortions performed at that stage of pregnancy. Although partial-birth abortion is routinely described as a late-term procedure, this label is misleading. The procedure isn't performed until after the 16th week of pregnancy, but it's already legal for states to prohibit abortions once a fetus is viable, at about 24 weeks. More than 40 states have such bans, and properly so. The Supreme Court has said that abortions must be available even after fetuses are viable if necessary to protect the life or health of the mother, and it may be that the health exception ought to be stricter. But this has nothing to do with a partial-birth abortion ban. The law would not prevent any abortion, before viability or after. Instead, it would make one particular procedure—one that may be the safest method for some women—a criminal act.

Indeed, even as they dwell on the gory details of the partial-birth procedure, the groups pushing for a ban on it don't seem to be doing anything to make it easier for women to obtain abortions earlier. Rather, the rest of their antiabortion agenda has been devoted to putting practical and legal roadblocks in the way of women seeking abortions at any stage of pregnancy. Thus, a pregnant teenager faced with multiple hurdles—no abortion provider nearby, no money, a parental consent law—may end up letting her pregnancy progress to the point where she is seeking a second-trimester abortion.

Then there are situations arising from the availability of medical technology that permits a previously impossible glimpse inside the womb. Amniocentesis, which doctors urge for women over 35 because of the heightened risk of birth defects, is not performed until the 15th or 16th week of pregnancy. Other fetal defects may be detected on sonograms only at that stage or later. This puts women squarely in the zone where partial-birth abortion becomes an awful possibility.

When it struck down Nebraska's partial-birth abortion law three years ago, the Supreme Court cited two distinct problems. First, the law was supposed to prohibit only partial-birth abortion, in which the fetus is partially delivered and then dismembered. But, intentionally or not, it was written so