

LEGISLATIVE JOURNAL

TUESDAY, NOVEMBER 14, 1989

SESSION OF 1989

173RD OF THE GENERAL ASSEMBLY

No. 63

SENATE

TUESDAY, November 14, 1989.

The Senate met at 1:00 p.m., Eastern Standard Time.

The PRESIDENT (Lieutenant Governor Mark S. Singel) in the Chair.

PRAYER

The following prayer was offered by the Secretary of the Senate, Hon. MARK R. CORRIGAN:

Heavenly Father, we come before You this afternoon in humility, recognizing our shortcomings and seeking Your forgiveness. Our special petition this day is that we may enjoy a share of Your divine wisdom and compassion, that we may be granted understanding and truly open our minds and hearts to Your love. Amen.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of November 13, 1989.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator LOEPER, further reading was dispensed with, and the Journal was approved.

COMMUNICATIONS FROM THE GOVERNOR

RECALL COMMUNICATIONS REFERRED TO COMMITTEE

The PRESIDENT laid before the Senate the following communications in writing from His Excellency, the Governor of the Commonwealth, which were read as follows, and referred to the Committee on Rules and Executive Nominations:

TREASURER, CUMBERLAND COUNTY

November 14, 1989.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated July 3, 1989 for the appointment of Dennis G. Hursh, 1105 West Powderhorn Road, Mechanicsburg 17055, Cumberland County, Thirty-first Senatorial District, as Treasurer, in and for the County of Cumberland, to serve until the first Monday of January, 1990, vice Jerry L. Nailor, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

ROBERT P. CASEY.

TREASURER, LEBANON COUNTY

November 14, 1989.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated October 12, 1989 for the appointment of Ernest P. Zserai, Box 987, R. D. 1, Jonestown 17038, Lebanon County, Forty-eighth Senatorial District, as Treasurer, in and for the County of Lebanon, to serve until the first Monday of January, 1990, vice Lois J. Bomberger, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

ROBERT P. CASEY.

MEMBER OF THE JEFFERSON COUNTY BOARD OF ASSISTANCE

November 14, 1989.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated June 14, 1989 for the appointment of Anthony Test (Democrat), 510 North Main Street Rear, Punxsutawney 15767, Jefferson County, Forty-first Senatorial District, as a member of the Jefferson County Board of Assistance, to serve until December 31, 1990, and until his successor is appointed and qualified, vice Perry F. Dinger, Brookville, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

ROBERT P. CASEY.

HOUSE MESSAGE

HOUSE CONCURS IN SENATE CONCURRENT RESOLUTION

The Clerk of the House of Representatives informed the Senate that the House has concurred in resolution from the Senate, entitled:

Recess Adjournment.

BILLS INTRODUCED AND REFERRED

The PRESIDENT laid before the Senate the following Senate Bills numbered, entitled and referred as follows, which were read by the Clerk:

November 14, 1989

Senator HOLL presented to the Chair **SB 1341**, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for a driver's duty when meeting or overtaking a school bus.

Which was committed to the Committee on TRANSPORTATION, November 14, 1989.

Senators PUNT and HELFRICK presented to the Chair **SB 1342**, entitled:

An Act amending the act of March 4, 1971 (P. L. 6, No. 2), entitled "Tax Reform Code of 1971," changing the rate of the corporate net income tax.

Which was committed to the Committee on FINANCE, November 14, 1989.

Senator SALVATORE presented to the Chair **SB 1343**, entitled:

An Act amending the act of May 22, 1933 (P. L. 853, No. 155), entitled "The General County Assessment Law," clarifying certain provisions relating to exemptions from taxation.

Which was committed to the Committee on LOCAL GOVERNMENT, November 14, 1989.

Senator SALVATORE presented to the Chair **SB 1344**, entitled:

An Act amending the act of May 21, 1943 (P. L. 571, No. 254), entitled, as amended, "The Fourth to Eighth Class County Assessment Law," clarifying certain provisions relating to exemptions from taxation.

Which was committed to the Committee on LOCAL GOVERNMENT, November 14, 1989.

Senator SALVATORE presented to the Chair **SB 1345**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," regulating the appointment of school directors in first class and first class A districts.

Which was committed to the Committee on EDUCATION, November 14, 1989.

Senators SALVATORE, SHUMAKER, BELAN, HELFRICK and LYNCH presented to the Chair **SB 1346**, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for a special license plate for Pearl Harbor survivors.

Which was committed to the Committee on TRANSPORTATION, November 14, 1989.

REPORTS FROM COMMITTEES

Senator BELL, from the Committee on Consumer Protection and Professional Licensure, reported the following bill:

SB 709 (Pr. No. 1700) (Amended)

An Act amending the act of May 23, 1945 (P. L. 913, No. 367), entitled, as amended, "Professional Engineers Registration Law," further providing for the regulation of the professions of engineering and land surveying.

Senator HOPPER, from the Committee on Aging and Youth, reported the following bill:

SB 848 (Pr. No. 944)

An Act amending the act of December 15, 1988 (P. L. 1235, No. 151), entitled "Children's Trust Fund Act," providing for a surcharge on divorce complaints rather than divorce decrees.

Senator ARMSTRONG, from the Committee on Finance, reported the following bills:

SB 266 (Pr. No. 1701) (Amended)

An Act amending Title 24 (Education) of the Pennsylvania Consolidated Statutes, authorizing retirement credit for members of the Cadet Nurse Corps.

SB 889 (Pr. No. 1702) (Amended)

An Act amending the act of May 20, 1949 (P. L. 1584, No. 478), entitled "Unfair Cigarette Sales Act," further defining certain terms; regulating sales; providing remedies; conferring powers upon the Attorney General; and providing penalties.

SB 1307 (Pr. No. 1637)

An Act amending the act of December 18, 1984 (P. L. 1005, No. 205), entitled "Municipal Pension Plan Funding Standard and Recovery Act," further providing for the financial requirements of the pension plan, the minimum obligation of the municipality and the allocation of general municipal pension system State aid.

SB 1324 (Pr. No. 1672)

An Act amending the act of April 9, 1929 (P. L. 343, No. 176), entitled, as amended, "The Fiscal Code," authorizing the State Treasurer and the Secretary of Revenue to promulgate regulations concerning the method of payment of obligations due the Commonwealth.

HB 709 (Pr. No. 2157)

An Act authorizing the filing of notices of Federal tax liens, certificates and other notices affecting Federal liens; making uniform the law relating thereto; and making a repeal.

Senator RHOADES, from the Committee on State Government, reported the following bills:

SB 895 (Pr. No. 1703) (Amended)

An Act authorizing and directing the Department of Transportation, with the approval of the Governor, to convey to Bernard C. Banks, Jr., a tract of land situate in Kingston Township, Luzerne County, Pennsylvania.

SB 1332 (Pr. No. 1681)

An Act providing for the alteration of election districts; and conferring powers and duties upon county boards of elections and the Bureau of Commissions, Elections and Legislation.

DISCHARGE PETITION

The PRESIDENT laid before the Senate the following communication, which was read by the Clerk as follows:

In the Senate, November 14, 1989.

A PETITION

To place before the Senate the nomination of Anthony Test as a member of the Jefferson County Board of Assistance.

TO: The Presiding Officer of the Senate

WE, The undersigned members of the Senate, pursuant to section 8 (b) of Article IV of the Constitution of Pennsylvania, do hereby request that you place the nomination of Anthony Test, Punxsutawney, Pennsylvania, as a member of the Jefferson County Board of Assistance, before the entire Senate body for a vote, the nomination not having been voted upon within 15 legislative days:

- Roy W. Wilt
- F. Joseph Loeper
- Robert C. Jubelirer
- Noah W. Wenger
- David J. Brightbill

The PRESIDENT. The communication will be laid on the table.

LEGISLATIVE LEAVE

Senator MELLOW. Mr. President, I request legislative leave for Senator Williams for today's Session.

The PRESIDENT. Senator Mellow requests legislative leave for Senator Williams. The Chair hears no objection. The leave will be granted.

CALENDAR

SB 896 CALLED UP OUT OF ORDER

SB 896 (Pr. No. 1655) — Without objection, the bill was called up out of order, from page 2 of the Third Consideration Calendar, by Senator LOEPER, as a Special Order of Business.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 896 (Pr. No. 1655) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of January 25, 1966 (1965 P. L. 1546, No. 541), entitled "An act providing scholarships and providing funds to secure Federal funds for qualified students of the Commonwealth of Pennsylvania who need financial assistance to attend postsecondary institutions of higher learning, making an appropriation, and providing for the administration of this act," further providing for scholarships.

Considered the third time and agreed to, And the amendments made thereto having been printed as required by the Constitution,

On the question, Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

- | | | | |
|------------|-----------|---------|-----------|
| Afflerbach | Greenleaf | Madigan | Ross |
| Andrezski | Greenwood | Mellow | Salvatore |
| Armstrong | Helfrick | Musto | Scanlon |
| Baker | Hess | O'Pake | Shaffer |
| Belan | Holl | Pecora | Shumaker |

- | | | | |
|------------|-----------|-------------|-----------|
| Bell | Hopper | Peterson | Stapleton |
| Bodack | Jones | Porterfield | Stewart |
| Brightbill | Jubelirer | Punt | Stout |
| Corman | Lemmond | Regoli | Tilghman |
| Dawida | Lewis | Reibman | Wenger |
| Fattah | Lincoln | Rhoades | Williams |
| Fisher | Loeper | Rocks | Wilt |
| Fumo | Lynch | | |

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

SPECIAL ORDER OF BUSINESS

COLONEL JAMES IRWIN PRESENTED TO SENATE

Senator ARMSTRONG. Mr. President, it is my honor to introduce to the Senate a native son of Pennsylvania, a gentleman from Brookline, Pennsylvania, who is the eighth man to step on the surface of the moon. We have with us today Colonel James Irwin who was with Apollo XV, and he will come today to say a few words before the Senate. Because of brevity, I cannot make it any longer.

The PRESIDENT. Would the Senate please join me in welcoming the eighth human to set foot on the moon—who is probably in equally alien territory today—the gentleman Colonel James Irwin. Please favor us with a few comments.

(Applause.)

Colonel IRWIN. Mr. President, I thank you for the opportunity to stand before you here in the Senate of Pennsylvania, my home state. I am glad I had the opportunity to speak at the prayer breakfast this morning. In preparation for that I was thinking about my life and how many significant events have taken place in my life here in Pennsylvania, not only my introduction, my birth in the Magee Hospital in Pittsburgh on St. Patrick's Day. My father was Irish and so you can imagine how much he rejoiced when I was born on St. Patrick's Day—his first son. Then, my first ride in an airplane was at Allegheny County Airport, and that is when I decided I wanted to be a pilot. I wanted to fly high and fast. Just yesterday I was invited to speak at the Johnsville Naval Air Development Center in Warminster, and that is where I began my early astronaut training and riding in the centrifuge and being exposed to high G-forces. So many significant things have happened in my life in Pennsylvania. I thank you for the good start that you gave me, the beginning of my education, really the beginning of my life. So, I am very grateful to you for that.

We did have the opportunity to take the flag of the Commonwealth of Pennsylvania to the moon, and it was my privilege to bring it to Harrisburg and to bring it to the state House. In just a few minutes I hope I will have the opportunity to present it to Governor Casey. I am sorry that it took so long to make the presentation because it has been over eighteen years now since we carried it to the moon, but I was

looking for the right occasion. It seemed like the prayer breakfast this morning and the visit to the Senate provided that opportunity, so I do thank you.

In addition to the flag and the patch of Apollo XV is the famous photograph from the moon, regarded now as the best picture ever taken on the moon, and I would never disagree with that because that is me. I am glad I took such a good photographer up there. Dave Scott was the Commander of the flight and he took this magnificent photograph. But looking at the photograph, I am reminded that my life started in the Allegheny Mountains of Pennsylvania and then ended up almost in the Apennine Mountains of the moon. It was a proud day in my life to place our flag on the moon and salute it. You see our little home here on the moon. Then you see our little automobile, the first automobile carried to the moon. We just barely broke it in—just put about twenty miles on it. We left it up there on a used car lot, the highest used car lot in the world. It is still sitting there and I recommend it for your use, and if you do not get a chance to use it, maybe your children or your grandchildren will be able to use it. So it was a proud day in my life to be on the moon, but it is a proud day in my life also to be before the Senate of Pennsylvania, my home state.

I did bring a photograph that I wish to present to the Senate, that same photograph. This is a mountain 13,000 feet high. On the slope of that mountain is where we found a white rock that the press labeled the Genesis Rock. Just after we found the white rock, I looked over my shoulder and there was a beautiful green rock. We brought that back, too. It turns out that the green rock is much older than the white rock, so the green rock should have been properly called the Genesis Rock. I think it is significant that an Irishman born on St. Patrick's Day in Pittsburgh would have the opportunity to find a green rock on the moon, and so I present this. Should I present it to the President pro tempore or will you receive it? Would you receive, Senator Jubelirer, my gift to the Senate of Pennsylvania?

I wish that I could have brought a moon rock for each one of you, but, unfortunately, that is not my liberty. All the rocks that we have, you know, are in safekeeping down in Houston or in San Antonio, but I am grateful that I had a chance to at least bring the photograph to present to all of you. I thank you for the honor that you bestowed upon me, allowing me to say these few words. If I can ever be of help to you or your families or your community or the great Commonwealth of Pennsylvania, please let me know. I am your servant.

The PRESIDENT. Thank you.

(Applause.)

The PRESIDENT. On behalf of the Senate I would thank Colonel Jim Irwin, and I would just like to say that I had the opportunity to be at the prayer breakfast this morning and heard a very inspiring discussion from the good Colonel. He truly is an outstanding American. He is a hero in every sense of the word, but he is also a dedicated man of God. I want to welcome him to the Senate and thank him for the singular honor which he has bestowed upon us.

The PRESIDENT pro tempore. Mr. President, I too would like to join in and express my appreciation on behalf of the Senate of Pennsylvania for this outstanding photograph which you have brought to us personally. Even though we had to wait eighteen years, Colonel, I think it was worth waiting for. You truly represent the very finest, not only in America but also in Pennsylvania. We are very proud to have had very, very many famous sons, and you stand high, along with many of our sons and daughters who have distinguished themselves. We are very honored to have you here today, and we thank you very much.

GUESTS OF SENATOR PATRICK J. STAPLETON PRESENTED TO SENATE

Senator STAPLETON. Mr. President, I have three constituents of mine in the gallery today from Indiana. They are Mr. Tom Harris, Rita Sitek and Josie Cunningham. They are social studies teachers at Indiana Junior High School, and they are here today observing both the House and the Senate and they have had a full day. Mr. President, I would appreciate a warm welcome for our visitors from Indiana.

The PRESIDENT. Would the guests from Indiana and the guests of Senator Stapleton please rise so we could welcome you to the Chamber of this Pennsylvania Senate.

(Applause.)

GUESTS OF SENATOR MICHAEL A. O'PAKE PRESENTED TO SENATE

Senator O'PAKE. Mr. President, also in the gallery on this very important day is a group of high school students from the Muhlenberg Area High School in Berks County with their teacher, Mr. Nate DeLuca. I would ask the Senate to extend its usual warm welcome to Mr. DeLuca and the students from Muhlenberg High School in Berks County.

The PRESIDENT. Would the guests of Senator O'Pake please rise so we can welcome you to the Senate of Pennsylvania.

(Applause.)

GUESTS OF SENATOR ANTHONY B. ANDREZESKI PRESENTED TO SENATE

Senator ANDREZESKI. Mr. President, present in the gallery today is a delegation of people from Erie who are down here to observe our deliberations and votes. I do not have all their names, but I know Chuck and Mary Drumm are up there and also some children who go to St. Peter's School, the same school as one of my children. Also present in the gallery is a former Erie resident, Christen Petula, who works with the National Association of Social Workers, and also my cousin Charles Walczak who is assistant to the president at Hamot Health Systems, Incorporated. In introducing Charles Walczak, he brings a long political history and heritage with

him. It was his father who, when I turned twenty-one, told me in my first election to make sure I voted for Ben Dombrowski who is now the caucus administrator in the House. So I was part of that winning campaign. I would also point out that Charles Walczak's father was also my godfather. If we could extend our usual warm welcome to my guests, I would appreciate it, Mr. President.

The PRESIDENT. Would the guests of Senator Andrezeski please rise so we could welcome you to this lovely Chamber.

(Applause.)

GUESTS OF SENATOR TIM SHAFFER PRESENTED TO SENATE

Senator SHAFFER. Mr. President, just as it was a delight and honor for this Chamber to hear from the individual who was the eighth person to land on the surface of the moon, we are also delighted today to have in the Chamber a number of individuals who live near Mars, Pennsylvania, students from Seneca Valley Senior High School—I believe they are all seniors—the fastest growing township in western Pennsylvania, and their teacher Pat Carone and chaperones.

The PRESIDENT. Would the students and the guests of Senator Shaffer please rise so we could welcome you to the Chamber.

(Applause.)

CONDOLENCE RESOLUTION

OFFERING CONDOLENCES TO THE FAMILY OF SENATOR HERBERT ARLENE

Senators JONES, FUMO, MELLOW, BELL, LINCOLN, JUBELIRER, ROSS, DAWIDA, STAPLETON, PORTERFIELD, O'PAKE, BODACK, RHOADES, LEMMOND, LOEPER, LEWIS, FATTAH, REGOLI, BELAN, BRIGHTBILL, SALVATORE, ROCKS, HELFRICK, HESS, WENGER and MADIGAN offered the following resolution (Senate Resolution No. 116), which was read as follows:

In the Senate, November 14, 1989.

A RESOLUTION

Offering condolences to the family of Senator Herbert Arlene.

WHEREAS, Senator Herbert Arlene, Sr., was born September 5, 1914, in Harrison, Georgia, the son of Elbert and Mattie King Arlene; and

WHEREAS, Senator Arlene was the youngest of 11 children. He attended the Harrison Public Schools and then traveled with his family to Philadelphia to attend and graduate from high school; and

WHEREAS, The Senator worked at a Naval yard, attended Philadelphia Business School, shortly thereafter opened Wigfall and Arlene's Tailor Shop in North Philadelphia, and was later honored with an honorary Doctor of Law degree from Miller College; and

WHEREAS, He met and married Emma Davis in 1934, and from this union were born two children, Herbert Arlene, Jr., and Clara Irene Banks; and

WHEREAS, He began his political career as a committeeman and then moved on to become ward leader. He was elected in

1956 to the House of Representatives during a time when it was difficult for blacks to be elected to a State office; and

WHEREAS, On November 8, 1966, he became the first black in the history of this Commonwealth to be elected to the State Senate; and

WHEREAS, During 14 years of serving in the State Senate in a quiet, but strong and influential manner, he consistently supported programs that benefited the black community and the poor; and

WHEREAS, He worked and cosponsored legislation that increased black enrollment in local medical schools, created low-income housing, investigated migrant farm workers' working conditions, extended unemployment benefits and improved other major problem areas for the poor; and

WHEREAS, His business affiliations included the North Philadelphia Businessmen's Association and Local No. 10 Laundry and Dry Cleaning International Union, AFL/CIO; and

WHEREAS, A community and education minded politician, Herb, as he was called by his close friends and associates, served as a board member of the Wharton Neighborhood Community Center, the Model Cities Neighborhood Council No. 15, the Y.M.C.A., the North Central Branch of the N.A.A.C.P., Philadelphia Chapter of the Urban League, Temple University Mental Health Retardation Center, North Central Community Organization, Greater Philadelphia Development Corporation, Beaver Institute and the Philadelphia Athletic Club; and

WHEREAS, Senator Arlene was also a member of the Odd Fellows, Elks, Prince Hall Masonic Order, Pyramid Temple No. 1, and A.E.O. Nobles of the Mystic Shrine. He was a 33rd Degree Mason; and

WHEREAS, A true soldier who labored untiringly, he passed on with his boots on when God called him home on November 9, 1989; and

WHEREAS, He leaves, to keep alive his loving memory, one son, Herbert, Jr., one daughter, Clara Irene Banks, four grandchildren, three great grandchildren, one daughter-in-law, one son-in-law, one goddaughter, three sisters-in-law, many nieces, nephews, cousins and a host of relatives and friends; therefore be it

RESOLVED, That the Senate of the Commonwealth of Pennsylvania offer condolences to the family of Senator Herbert Arlene.

Senator JONES asked and obtained unanimous consent for the immediate consideration of this resolution.

On the question,

Will the Senate adopt the resolution?

SENATE RESOLUTION NO. 116, ADOPTED

Senator JONES. Mr. President, I move that the Senate do adopt Senate Resolution No. 116.

On the question,

Will the Senate agree to the motion?

Senator JONES. Mr. President, I consider it a privilege to be able to stand here today and say a couple of words about a colleague who was a very personal friend of mine. Senator Arlene will be very, very much missed in Philadelphia. Last Saturday morning was a very sad day when we all began to hear the word when it circulated around the city. African-Americans were equally proud of Senator Arlene because; as you know, he was the very first black Senator to sit in this Chamber and he did such a wonderful job as a Senator. He was my Senator at one point. At Philadelphia Citizens in

Action we were in his district. Senator Arlene was a person who I could go to at any time. He was always helpful and always understanding. Although he was quiet in his manner of performing, he was a very humble and very firm person in his belief. I am just happy that God has blessed me to represent his district. I was his Senator, and being the third African-American Senator to represent the Third Senatorial District, I just want him to know—he cannot hear me—that in my space and in my time, with God's grace, I will continue to do the things that I know he was about, and one legacy he left behind is love. I just thank you, Mr. President, for this opportunity.

Senator BELL. Mr. President, when Herb came to the House I was a Member of the House of Representatives and we became close personal friends. When Herb became Senator, he came over here and our friendship continued. When I received the bad news last week that Herb had passed away, I thought, I have lost a friend. Herb was a gentleman who was immaculate in appearance. I never saw him as humble because he fought for his people at all times. During his tour of service in the Senate of Pennsylvania, he made friends with everyone. I was with Herb on a trip. We used to have Operation Understanding. We would go to the various posts and stations of the armed forces throughout the United States on a National Guard plane, and he was returning from one of these trips when he was hit by another car in Philadelphia. He suffered a very serious injury which stayed with him the rest of his life. I can recall the then President pro tempore asked me to go to the hospital in Philadelphia where Herb was in bed, and together with Ben Donolow and another Senator—I forget who it was but it does not matter—but three of us actually went in and swore him in as a Member of the Senate because he could not come up here for his swearing-in day so that he could be paid as a Senator during that first month or so he was absent.

With the passing of Herb, Pennsylvania has lost a great man.

Senator MELLOW. Mr. President, I would also like to rise and say a few kind words of memory that I have of Senator Arlene. I can recall when I first came to this Chamber back in 1970 serving with Senator Arlene for the next eleven years. His quiet style and his friendly manner were something that I think each and every one of us who had the opportunity of serving with Herb will remember him for, forever. But I think, Mr. President, the one thing that we have to remember in talking about Senator Arlene is the fact that he had the opportunity of serving for nine years as a Member of the House of Representatives, and he served in the Pennsylvania Senate sixteen years for a total of a twenty-five year commitment, or a quarter of a century, to the people of Pennsylvania. On the surface, Mr. President, that may not seem to be quite unusual the way things happen in government today, but I think if you look at the background of Herb Arlene and where Herb Arlene had to come from, the obstacles that confronted Herb during his entire legislative stay, and the fact that he served for years prior to the days of civil rights gives us

some idea of the type of individual that Herb Arlene was as a Member of the General Assembly. I think the one thing that we have to try to remember Herb for is not the fact that he was the first black man to serve in the Pennsylvania State Senate, and I think that is something that obviously Herb will go down in history for, but it is much more than that. I can recall the years when we had a problem with migrant farm workers. I can recall the times when Herb would take the committee assignments and talk to each one of us individually about trying to break the bonds that are gripping those individuals in Pennsylvania who are poor and those people who could not make it on their own. I can also remember, Mr. President, before I came to this Senate back in 1968, when there was a problem in Pennsylvania medical schools when it was perceived, and not only was it a perception but it was absolutely accurate, that the medical schools in Pennsylvania were discriminating against minority people. Herb took that as his own mission to make sure that he could do everything in his power to change that around, and he was able to do that. In the 1970s, Mr. President, Herb served as the Majority Chairman of the Committee on Labor and Industry. During those years that he served as the Majority Chairman, he worked to make the workplace a much more comfortable place in which we should go and a place where we could spend much of our time away from home. Herb also served as a Member of the Committee on Banking and Insurance and of the Committee on Appropriations. In serving as a Member of the Committee on Appropriations also during the 1970s, he did everything that he possibly could to make sure that the people of the Third Senatorial District would be well represented and well taken care of.

Mr. President, it is of little consequence for us, the fact that Herb was reelected on three different occasions after having been elected to the Senate, but on a number of those occasions his reelection was so unanimous that, basically, there was no contest. Although Herb retired from active life in the Senate in 1981, he still remained a very strong, viable individual in Philadelphia as both an influential political and civil leader.

The Commonwealth of Pennsylvania and indeed the Senate of Pennsylvania have lost a good friend in the passing of Herb Arlene, and we send our sincere condolences to Herb's family and wish them all well.

Senator LOEPER. Mr. President, we on this side of the aisle would also add our condolences to Senator Arlene's family. Many of our Members who had the opportunity to serve in this Body with Senator Arlene during his tenure here recognized the real special efforts that Senator Arlene had put forth to serve the residents of his district in North Philadelphia. Upon his retirement he did work back in the community, and with those community groups he had worked hard and long and was dedicated. Again, Mr. President, we extend our condolences to Senator Arlene's family.

Senator FUMO. Mr. President, I, too, rise to offer condolences to Senator Arlene's family. I, too, served with him for a brief period of time when I was first elected, but I served with him prior to that in the Democratic City Committee and

then served with him here. Senator Arlene was always a quiet, gentle, strong and loyal man, one who had deep concerns for his constituency as well as this Chamber. I always considered him my friend and I was proud that he called me his friend.

I can often remember his smile, his quiet candor. I remember, too, his loyal support of Senator Jones when she was running for election. Herb was the senior statesman in that contest, and I know he does hear us today and I think he is smiling at his handiwork because of all the barriers that he pushed through for minorities and for the work that continues in that path. I think with the loss of him and Senator Hankins, truly an era has passed. They were two of my closest friends in this Chamber, and I am deeply saddened, as is everyone, at the passing of both of them.

(Whereupon, the Senate en banc stood in a moment of silence in solemn respect to the memory of Senator HERBERT ARLENE.)

The PRESIDENT. The Clerk will note that the resolution has been adopted unanimously.

MS. SENIOR PENNSYLVANIA PRESENTED TO SENATE

Senator DAWIDA. Mr. President, I would like the Senate to join me in welcoming a personal friend, a lady from West Homestead, which is just outside of Pittsburgh. This lady is Ms. Senior Pennsylvania and she will be representing us in Atlantic City in the national contest for Ms. Senior America. I would like you all to join with me in welcoming Dorothy Hileman, Ms. Senior Pennsylvania.

The PRESIDENT. Would Ms. Senior Pennsylvania please rise. Welcome to the Senate of Pennsylvania.

(Applause.)

CONSIDERATION OF CALENDAR RESUMED

SB 369 CALLED UP OUT OF ORDER

SB 369 (Pr. No. 1667) — Without objection, the bill was called up out of order, from page 1 of the Calendar, under Bill on Concurrence in House Amendments, by Senator LOEPER, as a Special Order of Business.

SENATE CONCURS IN HOUSE AMENDMENTS

SB 369 (Pr. No. 1667) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, regulating matters relating to the performance of abortions, the protection of women who undergo abortion, and the protection of children subject to abortion; providing for notice to spouses prior to an abortion; prohibiting abortions based solely on the sex of the child; prohibiting certain abortions after 24 weeks gestation; and changing the penalty for incest.

Senator LOEPER. Mr. President, I move the Senate do concur in the amendments made by the House to Senate Bill No. 369.

On the question,

Will the Senate agree to the motion?

Senator GREENWOOD. Mr. President, we all know the Senate will concur in Representative Freind's amendment to Senate Bill No. 369, and nothing we do today will change that. Pennsylvania will make history today by becoming the first state in the nation to restrict access to abortion pursuant to the United States Supreme Court decision in the Webster case. Because we are about to cross an historic threshold, the voters of Pennsylvania are paying closer attention to our deliberations today than, perhaps, they have ever done before. In fact, today all of America is watching the forty-eight men and the two women of the Pennsylvania Senate to see how we treat this new and awesome responsibility. Mr. President, the right of women in this country to make their reproductive decisions with privacy has been protected by the Roe v. Wade decision for sixteen years. Certainly we have a duty to permit an hour of debate before we begin to dismantle that right. While it is painfully clear that abortion divides us as a people and as a Legislature, I still hold hope that we can develop a consensus today and agree on some reasonable modifications of the measure before us. None of the amendments to be offered today would gut this bill. None would even eliminate a section of the legislation. We do not have the votes for that. We have been moderate in our approach in the expectation that in being so we will be extended the courtesy of an opportunity to offer our amendments. The gentleman from Allegheny, Senator Dawida, who is pro-life, and I, who am pro-choice, would ask you for that respect.

Senator DAWIDA. Mr. President, this morning when you and I attended the prayer breakfast we heard some inspiring words. In fact, you delivered some of them, and Colonel Irwin spoke to us of our commitment and need to help our fellowmen. Indeed, I think that is the reason most of us have gotten into the positions we are in. My thoughts rambled a lot this morning. I thought of the line from F. Scott Fitzgerald, that the most difficult thing for an intelligent person to do, and what really proves his or her intelligence, is to be able to balance two opposing ideas. Indeed, that is what is at issue in the abortion debate, to balance the rights of the woman with the rights of the forming fetus, with the rights of that child to be born, and there is no easy answer to that. Unfortunately, there is at least one technical flaw in the legislation before us. You may have gotten a letter from the National Juvenile Diabetes Foundation which is concerned because of a drafting error. What the House put in by an overwhelming margin concerning the use of fetal tissue may be misinterpreted and may wind up doing the exact opposite that we had hoped in governing how fetal tissue is used. Additionally, we lawyers have a process called due process. We call it that because we believe everybody has the right to due process. I am, quite frankly, astounded that the Senate, which I am newly joined to, would consider voting on such a serious issue without due deliberation of amendments. We have a rich history in Pennsylvania of being heard and letting everyone have their say. I intend to vote for this legislation. I am a supporter of it. I do

not believe that it is anywhere near as radical or as far-reaching as many of the news media seem to believe in their discussion of it. However, the process is important. There is at least one technical flaw, and there are other issues that ought to be considered. While I believe in 90 percent of what is in there, I think it would be a shame if we did not consider those amendments in an expeditious manner, as the Senate is wont to do.

So, what I would ask, Mr. President, is now the appropriate time for me to ask for a motion to suspend the Rules so that amendments to the House amendments to this bill could be considered?

The PRESIDENT. If the gentleman would choose to make a motion to that effect, it would be in order at this time.

MOTION TO SUSPEND RULES

Senator DAWIDA. Mr. President, I move that because of the irregular process used in the development of this bill by amending a Senate bill, that the Senate suspend Rule No. XV and give itself the opportunity to use its deliberative powers and consider amendments to the amendments inserted in this bill by the House.

The PRESIDENT. Senator Dawida moves that we suspend Rule No. XV for the purpose of offering amendments to House amendments in Senate Bill No. 369. The Chair would indicate to all Members of the Senate that the motion is not debatable. The Chair would repeat that. The motion is not a debatable one.

On the question,

Will the Senate agree to the motion?

Senator FUMO. Mr. President, I recognize that the motion is not debatable. However, I do not think that you can preclude someone from making a second to the motion, and I would hope that we would not do that. Mr. President, I rise to second the motion.

PARLIAMENTARY INQUIRY

Senator LINCOLN. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Fayette, Senator Lincoln, will state it.

Senator LINCOLN. Mr. President, I would appreciate a ruling as to where the gentleman can find any reason and any precedent for seconding a motion. It is unnecessary and not, to my knowledge, in seventeen years in the General Assembly have I seen that done whenever it is not necessary. I would like to have a ruling on that.

The PRESIDENT. The gentleman's point is well taken. The Chair would rule that the motion to suspend the Rule does not require a second, and being nondebatable, it would not be appropriate to make remarks under the guise of a seconding speech.

PARLIAMENTARY INQUIRY

Senator FUMO. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Philadelphia, Senator Fumo, will state it.

Senator FUMO. Mr. President, will the Chair direct me to the specific section of the Rules that prohibits seconding?

The PRESIDENT. The Chair would respond to the gentleman that there is no specific Rule that prohibits it, except for the fact that it is not a debatable motion and there is no Rule at all that requires a seconding.

Senator FUMO. Mr. President, I question why my Minority Whip would want to prohibit a colleague in leadership from making a seconding remark. I do not see how the Chair can rule me out of order while making a seconding remark on a motion when it is, in fact, not prohibitive. I recognize that it is the objective of some in here to gag some of us, but I would hope that we would do it with some degree of decorum.

PERSONAL PRIVILEGE

Senator LINCOLN. Mr. President, I rise to a point of personal privilege.

The PRESIDENT. The gentleman from Fayette, Senator Lincoln, will state it.

Senator LINCOLN. There are also Rules, Mr. President, that say you cannot impugn the integrity or the motives of another Member, and I resent that gagging statement.

The PRESIDENT. The Chair thanks the gentleman and would remind all gentlemen and gentle ladies in the Chamber that we may have a long evening in front of us. It is the intention of the Chair to focus the debate on the issues of substance, and the motion to suspend the Rules is not debatable. It is not the intention of the Chair to allow any Member to use any guise as a forum to debate issues that are not before the Senate. What is before the Senate is the motion to suspend the Rules.

PERSONAL PRIVILEGE

Senator FUMO. Mr. President, I rise to a point of personal privilege.

The PRESIDENT. The gentleman from Philadelphia, Senator Fumo, will state it.

Senator FUMO. Mr. President, I would like to make a motion that we suspend the Rule prohibiting me from making a seconding motion.

The PRESIDENT. Can the gentleman state the Rule to which he refers?

Senator FUMO. Mr. President, you are the one who told me I could not do it. I asked you to cite that Rule.

The PRESIDENT. The gentleman is out of order. The question is, will the Senate agree to the motion? On the motion, the Clerk will call the roll.

Senator FUMO. On whose motion?

The PRESIDENT. For the information of the Members of the Senate, we are voting on Senator Dawida's motion to suspend the Rules.

Senator FUMO. Mr. President, I move to suspend the Rules—

The PRESIDENT. The gentleman is out of order.

POINT OF ORDER

Senator MELLOW. Mr. President, I rise to a point of order.

The PRESIDENT. The gentleman from Lackawanna, Senator Mellow, will state it.

Senator MELLOW. Mr. President, I believe the Clerk started with the roll call, and the only thing that is in order at this point in time is calling of the roll.

The PRESIDENT. The point of the Senator from Lackawanna is well taken. The roll call is proceeding. The Clerk will proceed with the roll on Senator Dawida's motion.

PARLIAMENTARY INQUIRY

Senator AFFLERBACH. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Lehigh, Senator Afflerbach, will state it.

Senator AFFLERBACH. Mr. President, I just wondered if, since he called the roll call and I did not respond to the roll call, the roll call has not been officially enjoined. Is that not correct?

The PRESIDENT. The gentleman is correct.

Senator AFFLERBACH. Mr. President, I have a further point of parliamentary inquiry. Could the Chair cite for me, please, where it is stated that the motion to suspend is not debatable?

The PRESIDENT. There are three precedents listed at hand. I would refer you to the Pennsylvania Manual, Section 43, SUSPENSION OF THE RULES, Motion to Suspend not Debatable, 43(b), a colloquy involving Senator Frame.

Secondly, Motion to Suspend Rules Not Debatable, 43(f), that had to do with a parliamentary inquiry involving Senator Lloyd in 1983; and a third precedent, 43(h), Senator Kelley's inquiry, and the motion was held not debatable. I might also mention to you that Mason's Manual, Section 282(6)(b) indicates that a motion to suspend the Rules may not be debated.

The yeas and nays were required by Senator DAWIDA and were as follows, viz:

YEAS—26

Afflerbach	Fisher	Jubelirer	Shumaker
Baker	Fumo	Lemmond	Stewart
Bell	Greenleaf	Lewis	Stout
Brightbill	Greenwood	Punt	Tilghman
Corman	Hess	Reibman	Williams
Dawida	Hopper	Shaffer	Wilt
Fattah	Jones		

NAYS—24

Andrezeski	Lincoln	O'Pake	Rocks
Armstrong	Loeper	Pecora	Ross
Belan	Lynch	Peterson	Salvatore
Bodack	Madigan	Porterfield	Scanlon
Helfrick	Mellow	Regoli	Stapleton
Holl	Musto	Rhoades	Wenger

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

The PRESIDENT. Senate Rule XV is suspended.

RECESS

Senator MELLOW. Mr. President, I ask for a recess of the Senate for the purpose of a Democrat caucus which will begin immediately.

Senator LOEPER. Mr. President, I would ask for a Republican caucus to begin immediately in the first floor caucus room.

The PRESIDENT. For purposes of Republican and Democratic caucuses to begin immediately, the Senate will stand in recess.

AFTER RECESS

The PRESIDENT. The time of recess having elapsed, the Senate will be in order.

We are considering Senate Bill No. 369, a bill on concurrence in House amendments.

On the question,

Will the Senate concur in House amendments?

LEGISLATIVE LEAVES

Senator BRIGHTBILL. Mr. President, I would ask for a legislative leave for Senator Wilt.

Senator MELLOW. Mr. President, I request legislative leaves for Senator Ross and Senator Jones.

The PRESIDENT. Senator Brightbill asks legislative leave for Senator Wilt. Senator Mellow asks legislative leaves for Senator Ross and Senator Jones. The Chair hears no objection. These leaves will be granted.

And the question recurring,

Will the Senate concur in House amendments?

GREENWOOD AMENDMENT I

Senator GREENWOOD offered the following amendment No. A3603 to House amendments:

Amend Sec. 4 (Sec. 3216), page 19, line 8, by inserting a period after "ABORTION"

Amend Sec. 4 (Sec. 3216), page 19, lines 8 through 11, by striking out "EXCEPT" in line 8 and all of lines 9 through 11

Amend Sec. 4 (Sec. 3216), page 19, line 14, by removing the period after "ORGANS" and inserting: except that payment for reasonable expenses occasioned by the actual retrieval, storage, preparation and transportation of the tissues is permitted.

On the question,

Will the Senate agree to the amendment to House amendments?

Senator GREENWOOD. Mr. President, this is a technical amendment. This is an amendment that I believe all readers of this bill, regardless of their position on abortion or their position on the bill, will agree represents a typographical or a construction error that occurred in the House. This amendment amends page 19, the section having to do with the use of fetal tissue. There are three lines in the bill that begin with the word "except" on line 8 and continue to the end of line 11. This amendment would move those four lines down where they should be, which is following line 14.

Senator AFFLERBACH. Mr. President, the importance of this amendment offered by the gentleman from Bucks is very simply this: Where the language is presently inserted in the bill, it could well be interpreted to have exactly the opposite effect of that which was intended by the House of Representatives and, I believe, is intended by virtually every Member of this Chamber. The language presently in the bill, in the position it is in, would imply that an inducement could be offered to a woman for abortion for the use of fetal tissue because the payment of reasonable expenses occasioned by the actual retrieval, storage, preparation and transportation would be permitted. That clearly was not intended to read that way by the House of Representatives, nor do I believe it was intended to read that way by this Chamber. The language in the gentleman's amendment would place this particular provision for expenses in the paragraph in which it belongs and clearly remove it from any kind of misconstruction as an inducement. I would urge support of the amendment.

Senator ROCKS. Mr. President, I do not believe there is any need for this amendment. There is an admission that there was a phrase that was put in the wrong paragraph, but it does not change the intent of either of the sections of this bill. In fact, the legislative history in the House clearly shows that this was intended to permit certain payments to the clinic and not to a pregnant woman or for any purpose of inducement, which are the two sections that are dealt with here. The language in this bill is not to the contrary, and I am willing to stipulate now and for the record that that is the case and there is really no need to amend.

Senator FUMO. Mr. President, I might appreciate a stipulation from the gentleman from Philadelphia, Senator Rocks, if we were in a court of law and he was a lawyer representing a client. But that is not how it works when you develop laws. Laws are what you vote on. Laws are what they say, especially in this Commonwealth where legislative history has never, in my opinion, been persuasive to the Supreme Court as to what, in fact, the law is. There are cases in which the Supreme Court has ruled that legislative debate is irrelevant. It is what the Legislature votes on. I am not happy with Senator Rocks' offer to stipulate to something. First of all, he does not have the power to stipulate to anything. I do not know who he represents besides himself. I do not know who any Senator represents besides himself, and that might be persuasive for his edification, but it does not change the law. If you do not vote for this amendment, you are, in fact, causing the problem that the gentleman from Bucks, Senator Greenwood, and the gentleman from Lehigh, Senator Afflerbach, talked about. You just cannot do anything else. If you do not address this amendment and if you do vote for the bill without it, you are going to then be voting a bill that is defective, at least in that regard.

Senator MELLOW. Mr. President, I rise, also, to oppose the amendment. It is our feeling, Mr. President, or my feeling, at least, after having legal counsel go through it and after having discussed this particular proposal, that perhaps it might be construed to be a technical amendment. If the

amendment is needed, we can go ahead at a later date and amend any Title 18 bill that is on the floor. There seems to be some interpretation with regard to the fact that although the phraseology that is used here was not inserted in the right spot in the bill, that it will have little or no effect on the bill itself, and I would ask for a negative vote on the amendment.

Senator GREENWOOD. Mr. President, very briefly, I think that if we agree on nothing else tonight, we ought to agree that it is not in the interest of good government or the interest of either side of this issue to pass broad legislation that will be misinterpreted and would allow women to be paid for abortions to buy their fetal tissue. I do not think anyone wants to do that. This is a purely technical amendment. Let us correct it. The House will immediately accept this. They have no problems with this. The bill will go to the Governor. We have conceded that from day one. But let us do the right thing when it comes to a technical amendment, at least.

And the question recurring,

Will the Senate agree to the amendment to House amendments?

The yeas and nays were required by Senator GREENWOOD and were as follows, viz:

YEAS—21

Afflerbach	Fumo	Jones	Reibman
Baker	Greenleaf	Jubelirer	Shumaker
Brightbill	Greenwood	Lemmond	Tilghman
Corman	Hess	Lewis	Williams
Dawida	Hopper	Porterfield	Wilt
Fattah			

NAYS—29

Andrezski	Lincoln	Pecora	Salvatore
Armstrong	Loeper	Peterson	Scanlon
Belan	Lynch	Punt	Shaffer
Bell	Madigan	Regoli	Stapleton
Bodack	Mellow	Rhoades	Stewart
Fisher	Musto	Rocks	Stout
Helfrick	O'Pake	Ross	Wenger
Holl			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate concur in House amendments?

SPECIAL ORDER OF BUSINESS

GUESTS OF SENATOR F. JOSEPH LOEPER PRESENTED TO SENATE

Senator LOEPER. Mr. President, as earlier in the Session today when we began, there were a number of introductions. As fate would have it work out, today also is a day that I have a group of approximately thirty-five people from the Collingdale Business and Professional Association, which is part of the Small Business Association of Delaware County. They came to visit our state capital today, and I think it is very appropriate that they are having the opportunity to see the Senate in action tonight debating its most critical issue. I would ask the Members of the Senate if they would please extend their usual warm welcome to the Collingdale Business and Professional Association.

The PRESIDENT. Would the guests of Senator Loeper please rise so that we can acknowledge you and welcome you to the Senate of Pennsylvania.

(Applause.)

And the question recurring,
Will the Senate concur in House amendments?

GREENWOOD AMENDMENT II

Senator GREENWOOD offered the following amendment No. A3606 to House amendments:

Amend Sec. 4 (Sec. 3211), page 14, line 5, by removing the period after "WOMAN" and inserting: , or because the fetus has anencephaly, or any birth defect or condition which, in the good faith judgment of the physician to a reasonable degree of medical certainty, will cause the fetus to die in utero or within 28 days of birth.

Amend Sec. 4 (Sec. 3211), page 14, line 27, by removing the period after "WOMAN" and inserting: , or because the fetus has anencephaly, or any birth defect or condition which, in the good faith judgment of the physician to a reasonable degree of medical certainty, will cause the fetus to die in utero or within 28 days of birth.

Amend Sec. 4 (Sec. 3211), page 15, line 5, by removing the period after "WOMAN" and inserting: , or because the fetus has anencephaly, or any birth defect or condition which, in the good faith judgment of the physician to a reasonable degree of medical certainty, will cause the fetus to die in utero or within 28 days of birth.

Amend Sec. 4 (Sec. 3211), page 15, line 9, by inserting after "UNLESS": the fetus has anencephaly, or any birth defect or condition which, in the good faith judgment of the physician to a reasonable degree of medical certainty, will cause the fetus to die in utero or within 28 days of birth, or

Amend Sec. 4 (Sec. 3211), page 15, line 15, by striking out "THE" where it appears the first time and inserting: Except where the fetus has anencephaly, or any birth defect or condition which, in the good faith judgment of the physician to a reasonable degree of medical certainty, will cause the fetus to die in utero or within 28 days of birth, the

Amend Sec. 4 (Sec. 3214), page 17, line 14, by inserting after "WOMAN": or because the fetus has anencephaly, or any birth defect or condition which, in the good faith judgment of the physician to a reasonable degree of medical certainty, will cause the fetus to die in utero or within 28 days of birth

On the question,

Will the Senate agree to the amendment to House amendments?

Senator GREENWOOD. Mr. President, I hope the Senate will listen carefully, as I know it will, on this amendment. This is a very important amendment. Senate Bill No. 369 as amended breaks new ground in prohibiting abortions after the twenty-fourth week of gestation, except in circumstances where the woman's life is at risk, cases of rape and incest and cases where the pregnancy would harm her health to such extent that she would lose certain bodily functions.

For the record, Mr. President, I think all of us recognize that in the latter stages of pregnancy, there need to be restrictions on abortion and no one is in favor of abortion without restrictions late in the pregnancy. But what this amendment goes to is those tragic occasions when a woman is carrying a fetus and her doctor diagnoses, through the use of a sonogram

and other diagnostic tools, that the fetus has either a case of an "...anencephaly, or any birth defect or condition which, in the good faith judgment of the physician to a reasonable degree of medical certainty, will cause the fetus to die in utero or within 28 days of birth." For the information of the Members of the Senate, a similar amendment to this was offered in the House, and the reason that amendment failed is because there was no time period during which we were talking about the child dying immediately after birth. So, we have corrected that and we are talking about a child that would die within twenty-eight days of birth. Let me explain for the benefit of the Members what an anencephalic child is. An anencephalic child is one that women carry in this state about 200 times a year—200 women this occurs to. There is a Member of the House, by the way, whose wife had two anencephalic pregnancies, and these are fetuses in which there is no development at all of the brain. The fetus will die in utero and if it does not die in utero, it will certainly die immediately thereafter. There is no brain. All of us have seen the photographs sent to us by pro-life constituents that show fetuses that have been aborted. I have in my hand, under cover, a photograph of an anencephalic child. There is no brain. The child looks rather normal up until the bridge of the nose. As a physician described it to me, it looks like a frog from that point up. There is no brain and the child will die. I invite anyone who would like to see this photograph to come to my desk and look at it.

I do not think that any of us, regardless of where we stand on this issue, would ever want to pass a law that requires our daughters or our wives or any other woman in this Commonwealth to carry to term and deliver a child that she knows, because her doctor assures her, cannot survive after birth. I do not think we want to require women to carry children—fetuses who have no brain, who will die as soon as the umbilical cord is cut—through the sixth, the seventh, the eighth and the ninth month of their pregnancy. That is a punishment no one deserves. Now, obviously, we are not requiring a woman to make that choice with this amendment, but we are giving her the option to make that choice.

Senator ARMSTRONG. Mr. President, I think we all have compassion in a situation such as the gentleman referred to, but I do not think this amendment is necessary. Currently, under an anencephalic pregnancy you can terminate the pregnancy by inducing labor. In fact, if the baby or the fetus dies in utero, it would be stillborn or it would be a condition called disseminated intravascular coagulopathy. What this is, is a condition in which the mother has internal bleeding. Her kidneys start bleeding, even her gums start bleeding. They have no choice, they have to terminate the pregnancy, so they induce labor. I do not see any reason why we need this amendment, and I urge a negative vote.

Senator FATTAH. Mr. President, I was wondering whether the gentleman from Lancaster, Senator Armstrong, would stand for a brief interrogation?

The PRESIDENT. Will the gentleman from Lancaster, Senator Armstrong, permit himself to be interrogated?

Senator ARMSTRONG. I will, Mr. President.

Senator FATTAH. Mr. President, I am not a medical doctor, but the gentleman suggests that there is no need for this amendment. Could he tell me what he bases that on?

Senator ARMSTRONG. Mr. President, by talking to a Ob-Gyn doctor.

Senator FATTAH. Mr. President, the gentleman indicates, then, that no woman in the State of Pennsylvania would be medically endangered in any way by going forward with an induced delivery versus an abortion sometime after twenty-four weeks, which the amendment of the gentleman from Bucks, Senator Greenwood, would allow?

Senator ARMSTRONG. Mr. President, like the gentleman said, he is not a doctor and neither am I. I cannot make that medical determination.

Senator FATTAH. Mr. President, so the gentleman is not sure whether this amendment is necessary, then?

Senator ARMSTRONG. Mr. President, I think the amendment is not necessary under current law. I think they can handle this situation without having an abortion.

Senator FATTAH. Mr. President, I have concluded my interrogation. I would like to make a comment.

I think that even though, obviously, there are many Members of this Senate who will not be voting for this amendment, we should all be mindful that we are delving into areas that we, perhaps, do not bring a great deal of expertise to, where we may, in our haste to be pro-life Legislators, if you will, be getting involved in medical areas that could, indeed, jeopardize our constituents in a variety of ways. For the most part, we should allow medical practitioners to be in a position to determine what is the best way possible to secure the health of a woman in this state who will be in a situation of carrying a baby that would be situated as has been described in this amendment. I would ask that those of us in the Senate consider that and vote in favor of the Greenwood amendment.

Senator FUMO. Mr. President, I think you have to take a look at the definition of abortion before you can say this is not necessary. I know in our caucus everybody thought they knew what it meant. Everybody has a fixed idea of what it means, and, quite frankly, it means something to some people and different things to others. But as we look at Purdon's, Title XVIII, Section 3203—and I think we ought to have the definition of abortion up front, let us be mindful of it because it is going to be continuous through this debate—"Abortion. The use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child"—and then it goes on—"except that, for the purposes of this chapter, abortion shall not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus." That is the law, basically, any termination of a pregnancy by any means necessary with the reasonable likelihood that it will cause the death of the fetus. I, too, am not a physician, and I think that is one of the problems with us even considering this legislation to the degree

that it is written. Obviously, somebody in the House, probably Stephen Freind, thinks he is an obstetrician, gynecologist, doctor and God maybe, I do not know, but he knows everything. Maybe some people are willing to trust him, but I am not. As I understand the situation this amendment addresses, that if you terminate that pregnancy—that is what we are talking about—by any means, there is obviously a reasonable likelihood that the fetus will die. Even though the fetus is going to die upon birth—if you want to call it that—so this is necessary. Now it is necessary because I view it to be a cruel and inhuman punishment to force a woman to continue to carry that fetus in her when she has made the decision that she cannot deal with it any longer. Of all the Members in this Senate, I know I am the only person who is currently married to a woman who is pregnant in her third trimester. In addition to a lot of sleepless nights, I have learned how close any woman becomes to that fetus living inside of her. For any woman to make the decision to ask for an abortion in any stage has to be a terrible, traumatic decision to make. But for a woman in the third trimester to make that decision is an unbelievably terrible decision to make. In many cases, these women are in the trouble they are in because they want a child, and they are willing to endanger themselves to get to this point. Third trimester abortions, by the way, statistically account for 1/100 of the abortions which were performed in America last year, and one abortion in Pennsylvania. One. Those types of people do not make that decision lightly, and to force now, with ultrasound and things of that nature, that woman to continue the agony of carrying something inside of her that she loves, that she knows will be dead when it comes, to now say to that woman that we the men of the Commonwealth of Pennsylvania say you cannot rid yourself of this agony. We the men of the Commonwealth of Pennsylvania—I think that is important.

None of us in this room, with the exception of Senator Reibman and Senator Jones, has ever been pregnant. We do not know what it is like. Some of us experience our wives' pregnancies, and I will be very candid, I have two children by a first marriage and I was not that in tune with what was going on. When you become a father later in life in a second marriage, your eyes—at least mine—light up. I have lived this pregnancy with my wife. I never was aware of half of these things. So, for us to say to a woman who has tried her best to bring a child into the world that she loves, who now knows that child is going to be born dead, that I now sentence you to three months of unbelievable, horrendous emotional agony, simply because Stephen Freind thought it was a good idea, is really a sin and a shame. You have to be able to consider the emotional well-being of a woman who—as I said before, 1/100 or one percent—has made the decision to come forth and ask for this procedure to be done. If anyone thinks that a woman all of a sudden in the third trimester says, gee, I forgot to get an abortion six months ago, I better hurry up and get it, that is absurd. We, in my opinion, do not have the power to sentence those unfortunate women to that type of punishment. It is necessary, Mr. President. When you read the

current law and when you read the bill before us that amends that law, you cannot say what you thought was the law. You have to read this thing. On the surface this bill looks like mom and pop and apple pie. When you start to read it and start to talk to people who understand it, you start to see how some sections of it are extremely dangerous. I believe this amendment is necessary unless we want to sentence those women to that type of torture.

Senator AFFLERBACH. Mr. President, the gentleman from Lancaster, Senator Armstrong, has indicated that under present law this amendment is not necessary. I would be inclined to agree with that, that under present law the amendment may not be necessary, that the procedures he described, the medical procedures of inducement, et cetera, could be performed under present law with or without this amendment. This amendment does not address itself to present law. It addresses itself to brand new language which the House of Representatives has inserted in place of present law. If one reads the bill on pages 12 and 13, one will see that present law was deleted by the House of Representatives and replaced with new language. Language which begins on line 24, page 13, flatly makes the Greenwood amendment necessary. Now, let us discuss for just a moment, because some may ask, why would a woman who has found herself in the situation of carrying a fetus which is degenerating and which death is a certainty wait until the third trimester to make that decision? The answer is, basically, because in these rare circumstances the diagnosis cannot be conclusively made until at least into the second trimester and generally requires several weeks of testing and analysis to confirm, which takes the woman into the third trimester. That is why the decision has to be made at that time, because we are not dealing with it lightly, but we are dealing with trying to determine with certainty. There is probably no amendment that is going to be offered on the floor today that I feel more strongly about than this amendment because medical science has done wonders for us in providing us with diagnostic techniques. We can go in as a husband and a wife and have an ultrasound performed on a weekly basis, a daily basis or an hourly basis, and we can observe the development of that embryo or that fetus within the woman. Conversely, we could also observe on a weekly basis, a daily basis or an hourly basis the degeneration of that embryo or that fetus through the ultrasound procedure. I would suggest to all of my colleagues in this room, if you have not gone through that, you should, if you want to see what it feels like for a woman to have to go back to the doctor every twenty-four hours or every forty-eight hours or every seventy-two hours and have an ultrasound performed where she can visibly see that fetus deteriorating, but it has not yet died, but she can see it deteriorating on that routine basis. If you think it is humane to make that woman continue to do that for a period of several weeks or two months, then I question your definition of humanity because it is an irreversible situation and it is a situation that is not easy for an individual to deal with. There are not many cases in this Commonwealth or anywhere in the nation that fit this very tight definition of the Greenwood

amendment, but in virtually all of these cases the woman has chosen to wait until the last moment, hope against hope despite the ultrasound visible projections, on a daily basis until she finally decides that the process is irreversible and that fetus, in fact, will die either before birth, at birth or shortly thereafter. We are talking about a humane amendment of an irreversible situation with the fetus or the embryo. We are talking about very few cases, and under the language inserted in this bill by the House of Representatives, this amendment is necessary to deal with those cases.

Senator ROCKS. Mr. President, in listening especially to the last two speakers, I just wanted to reinforce a point that was made by the gentleman from Lancaster, Senator Armstrong, specifically in the context of the gentleman from Philadelphia, Senator Fumo, properly putting before the Chamber the definition currently and in this act in front of us of abortion itself. If you listen and understand the concerns as they were properly expressed subsequently by the gentleman from Lehigh, Senator Afflerbach, if a doctor induces premature delivery, which would be the procedure in the instance of the amendment as proposed by the gentleman from Bucks, Senator Greenwood, the instance of the fatal fetal deformity, an anencephalic child, a doctor does that in the procedure in inducing delivery without any intention of taking the life of the child. It would not—and this reinforces Senator Armstrong's initial premise—be an abortion under the Abortion Control Act, and it certainly would not be prohibited. Based on that, I agree with Senator Armstrong in that while the instance described here is one to be aware of, it is protected in what would be the normal medical procedure and that of the induced labor, particularly we are talking about a child who is past six months.

Senator FUMO. Mr. President, I would urge the gentleman from Philadelphia, Senator Rocks, to read the language in the law and in the amendment and in the bill before us. The definition of "Abortion" does not include intention. It is very clear and very strict, and it was drafted that way by people who have an extreme aversion towards abortion. It says, and I will read it again, and maybe I should make copies so we can distribute it to people, "The use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge"—not intent, just with knowledge—"that the termination by those means will, with reasonable likelihood"—not intention—"cause the death of the unborn child..." The problem is that in current law you do not face this problem because this Legislature in its judgment back then did not decide to get into these kinds of hair-splitting instances. But now, in the bill before us, we change that current law and we begin for the first time, in my opinion, to seriously involve ourselves in the practice of obstetric medicine because we say that it will be a felony to abort—I just read to you the definitions that we are using here—that fetus unless four conditions are met, and if any one of them is not met, then you are guilty of a felony. One condition that sticks right out in the beginning is, unless the woman is going to die or suffer substantial and irreversible impairment of a major bodily function. So do

not tell me the amendment is not necessary. At least have the courage to stand up here and say, I do not care about that woman's emotional well-being. I do not care if she has to do that. If we want to be male chauvinists and say it is her problem, let us have the courage to say that. But, let us not hide behind some frivolous excuse which has no basis in law that this amendment is not necessary. This amendment is not necessary if you do not care about the woman. This amendment is not necessary if you have a callous attitude. This amendment is not necessary if you want to inflict your judgment upon women in that situation. But, if you are humane, if you care about other human beings who are alive, then this amendment is very necessary. It is very clear that if a physician were to remove that child under this law as this bill would amend it, that physician would be guilty of a felony and be put in jail, probably by some zealous prosecutors. You cannot do that, in my opinion. We have a constitutional right and a constitutional obligation to be humane people. Our Constitution is very clear on cruel and inhumane punishment. This is inhumane punishment to the woman that is in that position who now decides she has to do it. As it was said earlier, these are not women who are making a light decision. These are women who are not pro-choice, if we are going to use labels. These are women who want to have a child. These are women who are trying their best to have a child. If they did not care, they would get an abortion in the first two or three months, first week, second trimester. These are women who sincerely, with all of the power in their bodies want to have a child and are willing to risk their health for it. When one finally decides she cannot take it anymore, who are we, the men in this Senate, to say to that woman, no, no, you go back and suffer, lady, because it is not necessary and you are really not going through anything. That is cruel and inhumane punishment. This amendment is necessary if you want to take the time to read the law. If you want to bury your head in the sand like an ostrich and say I do not want to amend anything because it is liable to go back to the House, that is the underlying tone here. If you want to be irresponsible and allow the House to dictate to you as Senators, then say it. But do not get up here and try to kid me. If you care, it is necessary. If you do not care, nothing is necessary.

Senator REGOLI. Mr. President, I am a little confused in the scenario that we have talked about here thus far. I tend to agree with my colleague that this amendment is not necessary. I listened twice to the definition read by the gentleman from Philadelphia, Senator Fumo, and it leads me to believe that this is not necessary. In the scenario we talked about, regarding the woman carrying an anencephalic child, it is necessary to induce labor to relieve her of that baby. This is not an abortion. The means by which the doctor chose to terminate that pregnancy, in itself, is not with reasonable assurance going to result in the death of that child. If the child dies, it is because of the disease or illness and not because labor was induced. As the definition says, that with reasonable likelihood the cause of death of the unborn child is likely to occur. I do not think inducing labor to get that child prematurely is going to be the

cause of death, and I am sure if there was a cause of death certified at that time, it would not be considered an abortion. That scenario has no place under this bill that we are discussing today.

Senator GREENWOOD. Mr. President, listen to what has been said. My good friend, the gentleman from Lancaster, Senator Armstrong and my good friend, the gentleman from Philadelphia, Senator Rocks, have acknowledged in their debate that under these horrific conditions when the fetus is so deformed and so certain to die, the woman should not carry the child for the full term, but, rather, they should induce labor. The way you induce labor is you put a woman on a Pitocin drip. I am not a physician, but my understanding is—my wife and I went through this a couple of times—that begins contractions of the uterus which results in the delivery of a six-month old fetus in these cases. When a fetus has no lungs, it can live in the uterus because the mother's lungs oxygenate the brain and the blood. When you induce labor and the fetus emerges from the birth canal and the physician cuts the umbilical cord, the fetus dies. That would be absolutely, without any question, a violation of Senate Bill No. 369. We are going to have prosecutors in this state put doctors in jail for that. You do not have to take Dr. Greenwood's word for this, and you do not have to take Dr. Fumo's word or Dr. Armstrong's word or Dr. Rocks' word, but you might want to take the word of a hundred physicians who wrote to me to say that this bill criminalizes the humane option of abortion to women whose fetuses will die of abnormalities. This is signed by Dr. Stuart Barr from the Department of Medicine at the Hospital of the University of Pennsylvania; Dr. Paula Braverman from St. Christopher's Hospital; Dr. Joseph H. Carter from the Department of Ob-Gyn at York Hospital and ninety-seven other physicians who do not want to go to jail. It is not that they do not want to go to jail, it is that we know how difficult it is to get anyone to practice obstetrics anymore because of the liability issue. If we have not driven the last one out of Pennsylvania, this will do it. They are not going to take this risk. They are not going to take the civil risk and they are not going to take the criminal risk. I think we all want to get to the same point. None of us has said these women should carry these babies to term. None of us is for that. No one has said that the amendment would in any way harm the law or endanger the woman. Senator Fumo is exactly right. There is only one reason not to vote for this amendment and that is because you do not want the House to have to agree to it before it goes to the Governor. Well, I do not think that the women of Pennsylvania who are carrying children with no brains and no lungs and who are going to go through this torment want to hear that we did not want this bill to spend fifteen minutes in the House before it became law.

Senator ARMSTRONG. Mr. President, let me just follow up on that with two scenarios. Let us say that there is a mother seven months pregnant who did not have the best health care in the world, and she is going to the doctor for maybe the second time. They find out at seven months that in

this case it has no lungs. And so they say, let us have an abortion. That is the best way to terminate this because the baby is going to die. So they have an abortion, but somehow they made a mistake. The baby did have lungs. They killed the baby. Life is done, life is over. On the other hand, at seven months, if you think the baby does not have any lungs, you induce labor and, behold, it does have lungs, you made a mistake and at seven months it is viable and the baby can live. So, I do not see why we would support this type of amendment under that type of situation.

Senator AFFLERBACH. Mr. President, I am going to try once again to draw the critical distinction, and the critical distinction is not what can be done under present law. The gentleman from Lancaster, Senator Armstrong, I believe is correct in his position. Under present law labor could be induced, and if, in fact, there was a mistake made and the fetus survives and we have a child born, that is an altogether different issue from what the thrust of this issue is at the moment. The thrust of this issue is that we are not dealing with present law because the House repealed the present law in Senate Bill No. 369 and put in its place something totally different, something which absolutely prohibits that physician from inducing labor even if he mistakenly believes there is a reasonable chance the fetus will die. That is the thrust of the problem. We are dealing with Senate Bill No. 369 as the House has put language into it, not with what present law is, and that is why this amendment is necessary.

Senator LEWIS. Mr. President, one of the major difficulties with the debate on this subject, as I have listened to it, not only in this Chamber but in the House, has been the continued propagation of misinformation and misinterpretation. I do not believe that anybody does it intentionally, but when it occurs it has the potential for tremendously misleading and especially emotionalizing a subject that we are trying to deal with in a very professional fashion. I think that is the case with the comments just made by the gentleman from Lancaster, Senator Armstrong, because what he tried to suggest by way of the creation of a picture, at least as I listened to his words, was that somehow or another in his scenario there was going to be an abortion performed on this seven months pregnant woman which was going to tear apart this fetus that was in her body and kind of bring it out in some mutilated, dead form from which it could never be resuscitated if one discovered there was a medical mistake. Well, that is just absolute silliness. That is not the method in which any procedure would occur in any hospital by any professionally licensed practitioner in the Commonwealth of Pennsylvania. Let us keep a couple of things in mind here. First of all, before any abortion procedure can occur under the terms of this bill, that woman would have needed a second opinion, so we are not just trusting a judgment and a diagnosis to the whim of a pregnant person or one doctor. The very provisions require a second opinion.

Secondly, by the language of the existing law with respect to the definition of abortion, inducing labor if the child was born dead would constitute an abortion under the existing law

and the new provisions that are being recommended under this House bill, and I think that is something we had better think about very, very carefully. There is no doubt in my mind that under the old law, which Senator Armstrong referred to, and I had hoped that the gentleman from Lehigh, Senator Afflerbach, had made clearer in the minds of all of those who would have been listening, there would not, in all likelihood, be any problem with the medical procedures that the gentleman from Philadelphia, Senator Rocks, and Senator Armstrong are suggesting. The difficulty arises with the proposals in the new law, and the gentleman from Philadelphia, Senator Fumo, went through them one by one. We need to appreciate that the medical difficulties here arise because of the proposed changes as recommended by the House, and particularly by Representative Freind, so that notwithstanding the suggestions made by Senator Armstrong, the inducement to bring about a delivery in the seventh month of this pregnancy, if it resulted in a dead fetus, would constitute a criminal act by the obstetrician who was involved in it. I do not have any doubt that the use of proper medical judgment for which they are licensed and sworn to promote and for which a physician can be held responsible for the failure to promote would lead them to make every best effort to make sure that if the fetus had a potential for viability that that would be maintained at the time of delivery. The situation which we cannot allow to occur is one in which, after the exercise of all of that legitimate medical judgment and discretion, we develop an occasion where there is the delivery of a still-born fetus, a dead fetus, which would then expose that obstetrician to the felony prosecution for conducting an abortion under the terms of the proposed amendments in this bill. That is why the Greenwood amendment is necessary. Again, it seems to me that if there is any doubt in anybody's mind about whether you want to believe the amendment is necessary or not necessary, then your conclusion ought to be to support it, because I have heard no one argue with the contention that this woman deserves, and under these circumstances humanity requires, the opportunity to terminate the pregnancy, whether it is through inducing a labor which will provide the opportunity for life if a mistake has been made is the process through which this is concluded. Nobody has argued that that woman should not be allowed to have that opportunity. The difference of opinion seems to be with those who suggest that it is currently permissible under existing law, notwithstanding the proposed amendments, and those of us who say that it is clearly impermissible under the amended language in this bill if it becomes the new law of Pennsylvania. If you have a concern, if you have a difference of opinion, then why not resolve it in a fashion which is going to guarantee that this relief and this treatment is available under these kinds of circumstances unless you disagree with the opportunity even being available in the first place. But when you look at the language of the bill in its form in front of us, I have not met any medical professional in this Commonwealth who believes that the propositions made by the gentleman from Philadelphia, Senator Rocks, or by the gentleman from

Lancaster, Senator Armstrong, are accurate. It is for that reason that I would urge a vote in support of the Greenwood amendment.

Senator ROCKS. Mr. President, I welcome the opportunity to, at least in the gentleman's mind, make it more accurate, and I thank him for what he may have properly framed as the differing opinions here.

First of all, in this amendment we have dealt with a singular example of a fatal fetal deformity as described by the gentleman from Bucks, Senator Greenwood. That is not the only condition the amendment would allow. Many would argue, myself amongst them, that there are any number of other conditions that may well be treatable. I have listened carefully, as I always do to my colleague and friend from Bucks, in his learned way explain that there is a difference presented here in what is proposed law as from existing law. There is no difference in what we have accurately described as the permissible inducing of labor which would give that child, unborn in its status of six months, a chance to live. The alternative, and this is quite contrary to what the gentleman describes and I will give him from some testimony, would be a D and E abortion, which involves dismemberment of the fetus and always results in the child's death. The fact that live birth is considered a complication by the abortion providers was very vividly described by Dr. Robert Crist when he testified before the U.S. Circuit Court of Appeals. The case for my colleague was Planned Parenthood v. Ashcroft. Dr. Crist testified that he had performed dismemberment procedures five times within the two months prior to his testimony on the unborn children of twenty-four weeks or more of gestation. He said that he felt that the best method of abortion on a fetus of twenty-eight weeks, seven months, was by dismemberment because the woman has a right, from the doctor's testimony, "not only to be rid of the growth called a fetus in her body but also has the right to a dead fetus."

Mr. President, there is a difference of opinion on this amendment, and I believe it is very properly framed in front of us. For the examples that are given for those tragic conditions that might occur that the amendment would allow for, current law and this law would permit quite lawfully the inducement of labor. It is not an abortion. The child may or may not survive. There is no legal implication except for the child's ability to survive. The alternative to that I have described to you, and it comes from testimony that was given in the United States courts.

Senator FATTAH. Mr. President, I rise again to ask that we favorably consider the Greenwood amendment. The gentleman from Lancaster, Senator Armstrong, my colleague, indicated that he talked to one doctor. The gentleman from Philadelphia, Senator Rocks, has indicated that Dr. Robert Crist has another opinion, also. That is two doctors. The gentleman from Bucks, Senator Greenwood, has a letter that is available from a hundred physicians throughout this Commonwealth, but the bottom line is that the reality is coming home again and that is we are not doctors, we are lawmakers. We are stepping, obviously, into an area in which we are not

very comfortable and we have to rely on other people's opinions. In doing so, it would seem to me that we would like to err on the side of caution, and that is to suggest that we should provide for women in this state the opportunity within the care of their physicians to do what is best for their health. Those who seem so concerned about the life of an unborn child should have at least as much concern about the mother or the woman who is carrying that unborn child and allow those decisions to be made among and around people who have some knowledge to bring to bear on it. We might know a little bit about how to get votes, but it seems that probably none of us here has had the opportunity to deliver a baby. I know at least forty-eight of us have never been pregnant, and we should, I think, just kind of pull back on the reins for a minute. Senator Greenwood has indicated, and I do not think anyone even heard him, that his wife has, unfortunately, had to carry two pregnancies that have had this kind of fatally deformed deficiency, and he has offered this amendment. It would seem to me that kind of personal knowledge of this would have some meaning to those of us who sit in this Chamber every day to maybe reconsider our haste and to try to do the right thing.

And the question recurring,

Will the Senate agree to the amendment to House amendments?

The yeas and nays were required by Senator GREENWOOD and were as follows, viz:

YEAS—20

Afferbach	Fattah	Hopper	Reibman
Baker	Fumo	Jones	Shumaker
Brightbill	Greenleaf	Jubelirer	Tilghman
Corman	Greenwood	Lemmond	Williams
Dawida	Hess	Lewis	Wilt

NAYS—30

Andrezeski	Lincoln	Peterson	Salvatore
Armstrong	Loeper	Porterfield	Scanlon
Belan	Lynch	Punt	Shaffer
Bell	Madigan	Regoli	Stapleton
Bodack	Mellow	Rhoades	Stewart
Fisher	Musto	Rocks	Stout
Helfrick	O'Pake	Ross	Wenger
Holl	Pecora		

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate concur in House amendments?

GREENWOOD AMENDMENT III

Senator GREENWOOD offered the following amendment No. A3659 to House amendments:

Amend Title, page 1, line 7, by inserting after "GESTATION;": providing for a referendum on the effectiveness of the amendments relating to abortion;

Amend Bill, page 22, lines 24 through 30, by striking out all of said lines and inserting:

Section 9. (1) The question of whether the amendments to Chapter 32 (relating to abortion) enacted in this act shall become effective shall be submitted to the electors of this

Commonwealth at the municipal primary election of 1991. The question shall be in the following form:

"Shall the 1989 amendments to the Abortion Control Act take effect?"

(2) The provisions of Section 201.1 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, shall not apply to the question authorized by this section.

(3) If a majority of the electors voting on the question authorized by this section vote in the affirmative, the Secretary of the Commonwealth shall, immediately after tabulating and computing the returns of the ratification election, certify the result to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

Section 10. This act shall take effect as follows:

(1) The provisions of sections 3209(d) and 3214(a) requiring the Department of Health to create forms and of section 3208(a) requiring the department to publish certain information shall take effect immediately upon the publication of the certification of the returns of the ratification election as provided in section 9.

(2) Except as provided in paragraphs (3) and (4) the remainder of this act shall take effect 60 days following the publication of the certification of the returns of the ratification election as provided in section 9.

(3) Section 5 (section 4302) shall take effect in 60 days.

(4) Section 9 shall take effect immediately.

On the question,

Will the Senate agree to the amendment to House amendments?

Senator GREENWOOD. Just so everyone is clear, in case there was an error made, this is amendment No. A3659.

The PRESIDENT. The Pages will distribute the amendment.

Senator GREENWOOD. Mr. President, it is entirely likely that you do not have this amendment, but amendment No. A3659 is the one I am offering.

The PRESIDENT. With the indulgence of the Senate, we can continue with the sponsor's explanation and the Chair will assure you we will have this amendment on your desks within the next three and a half minutes.

Senator GREENWOOD. If I may, Mr. President, I think the explanation will put everyone at rest.

The PRESIDENT. The gentleman may proceed.

Senator GREENWOOD. Mr. President, this amendment is identical to another amendment which provided for a referendum. The difference is that this replaced the referendum in the Primary Election of 1991 rather than the General Election of 1990 as states the amendment in your packet.

The PRESIDENT. The Senate will be at ease while the amendment is distributed to all Members.

(The Senate was at ease.)

Senator GREENWOOD. Mr. President, let me say to those Members who would like to get beyond this process and get to dinner that if you adopt this amendment, you will have no more amendments from me and we can move the bill. There are fifty Members of this Senate, as we know, and forty-eight of us are men, and the two gentle ladies who serve with us have borne their children and so it is safe to say—and I have the permission of Senator Reibman and Senator Jones to say

this—that none of us is going to have to face the issue of pregnancy in this Senate. There are hundreds of thousands and millions and there will continue to be millions of Pennsylvanians for whom the issue of pregnancy and abortion is very real and very serious. This amendment is very simple. It makes the provisions of this act contingent upon the approval of the voters of Pennsylvania, the people we represent, during the election to be held in the spring of 1991. I do not know how many of you have done polling. I have done a lot of it and one thing is abundantly clear, the people of Pennsylvania are ready, willing and able to decide this issue if we cannot. Apparently, the process of amendments today has indicated that the Senate is not particularly willing to be persuaded on this issue. The voters of Pennsylvania can settle this issue once and for all, and I would move adoption of the amendment.

Senator BRIGHTBILL. Mr. President, I rise to support this amendment. This particular issue that we have before us is, in my judgment, an issue that is much more unique to women than to men. As we look around this Chamber, we see that this is a Chamber which presently and historically is far more balanced in favor of men than women. Do men have an interest in this issue? I believe they do, but I do not think it is anywhere near the interest that women have. I am not generally someone who supports referendums. I feel that we have a representative democracy and I think that is appropriate. I think we see many times that issues that are placed before the public, because of their technical nature, do not get a fair hearing. But, Mr. President, I think this issue is, in fact, different. I think this is an issue that cuts into the depths of the family, of the individual, of the person and of the woman who has to bear the child.

Mr. President, my background is that of a country lawyer. I have represented a lot of people in a lot of different kinds of situations. Sometimes they come to a lawyer because they want to stay out of trouble, but more often than not they come to a lawyer because they are in some kind of trouble. I have seen many, many women in a situation where they have just obtained an abortion. In virtually none of the cases that I have seen have I felt comfortable to tell that woman that I would concur in her choice. I have a person that I am representing now. Lawyers say it is pro bono. I do not get paid for representing her. She is trying to collect support as a result of a child that she has borne out of wedlock. The young man who is the father is difficult to find and difficult to locate when it comes to paying support. Frankly, his parents are far more responsible. This young lady is working for around \$6.00 an hour. She is trying to make a go of it and she gets little support. I have tried to give her a little bit in the sense of representing her for free as she goes to court.

Mr. President, I think of someone else who recently thought of having an abortion. This young lady chose not to, by the way, obviously. She had the child and I admire that. I think of someone else who had an abortion and my admiration does not run the same way. But you know, Mr. President, it is not my choice. It is their choice.

Let us put this issue before the voters, and let us allow the women of this state to go out and make their case. If they support this bill, let it become law.

What are we afraid of, Mr. President? Are we afraid they are going to say no? Are we afraid they are going to use their considerable influence to convince enough people to vote no? What are we concerned about, Mr. President?

The time has come for the people to speak on this issue. The time has come for the male-dominated government to step aside and let the women voice their opinion loud and strong. The time has come, Mr. President, to present this issue in open, public, healthy debate to all the citizens of this Commonwealth. I am intrigued, Mr. President, because I do not understand what the so-called pro-life forces are afraid of in offering this as a vote to the people. Let the people have their say. Let the people think about it. We just went through a referendum. Some of us were happy with what the people decided and some of us were not. But you know, Mr. President, there were some loud messages there. They were loud and clear, and it is important that we get those messages. What of those people in the House, those men in the House who support this? What are they concerned about? Why not let people decide for themselves?

Senator ARMSTRONG. Mr. President, I rise to speak against the Greenwood amendment. This is our job. We are elected to come up here and make tough decisions. Every time they come to a tough decision, the easy way out is, let us have a referendum. That is the easy way out. Next time we have a vote on a pay raise, let us put it on a referendum and see what the people of Pennsylvania think about a pay raise. That is a tough vote. The people will decide at the next primary and the next election whether you are casting a good vote on this or a bad vote. That is a referendum. They can elect women or men to come to the General Assembly. We have a primary election coming up in which half of the Senate and all the House Members are up, plus the Governor and the Lieutenant Governor will be coming up in a general election following that. So they are going to get two bites of the apple next year whether to return us here or replace us with someone who thinks the way they do. How will the question be phrased? Well, according to the amendment, it will be phrased a certain way. But I know the last time we had the tax reform referendum, it was phrased entirely different than some of us thought it would be. We are going to end up, if we have a referendum, spending millions upon millions of dollars. For what? We should spend this money maybe on education or helping those women. Eleven words, according to the Greenwood amendment, the people would be voting on whether or not they want to have abortion in Pennsylvania or support this bill. If you talk to the people in the street right now on Senate Bill No. 369, they feel it outlaws abortion. I have had numerous calls, and when I talk to those people about what this bill does, it does not outlaw abortion, it is only after six months. They say, well, I did not know that. It also makes it so the parents of a minor are notified that their daughter is going to have an abortion. When I tell them that, they say, well, that is the way it should be.

On the way up here today on the car radio I heard a news bite. The news bite said simply, the Senate today will consider the most far-reaching anti-abortion legislation in the United States. That is what everybody thinks this is. It is anti-abortion. It will outlaw abortion. That is not the case. I do not want to have the press decide which way abortion goes in Pennsylvania.

Senator BELL. Mr. President, I was not going to speak during this entire evening of gifted oratory, because I am not a gifted orator. I am a country boy, and I am not a country lawyer. A country boy does not get a country lawyer, he gets a good lawyer. Let us come back down to being serious. Apparently, people in this room—and I heard the same chatter as I listened to the House—think voting for a referendum is cowardly. I am going to vote for this referendum, and I am pro-life. The reason is I am here like the rest of you representing 240,000 to 250,000 people and, very frankly, I have been running a referendum for the last three weeks. Today in my office in my home district there were a hundred telephone calls, forty, one side and sixty, the other side. I am supposed to know up here how 242,000 people feel. I am not God. I am only a representative of 242,000 people, and I do not know, although I have been having a referendum for three weeks, how the overwhelming majority of my district feels. I am not here to tell them how they should feel. I think there is too much of that in this debate on both sides. The people in this matter have a very serious problem that concerns them being discussed here tonight. I have heard one Senator say the pro-lifers are male chauvinists. I have not heard it over here tonight, but one speaker who is a prime architect, in his debate in the House, every third sentence said baby killers, baby killers, baby killers. All right, I know all the rest of you in here know exactly how all your quarter of a million people feel. Well, that is why I want a referendum because I am different. I want the people in my district to be able to tell me how I should vote on this issue.

Senator FATTAH. Mr. President, I would like to join my pro-life colleague, the gentleman from Delaware, Senator Bell, in asking that we favorably consider this amendment. The gentleman from Lancaster, Senator Armstrong, indicated that we are elected to serve and to make these tough choices and that we know how our people would feel about this and that. Anyway, they would get a chance to decide whether we did the right thing at a given election. That sounds pretty good, but it is not really the case. If it was the case, if it were that people would decide on our futures based on this one issue, I am not sure how many of us would want to stand for election. The reality is this issue is as different and distinct as any other issue that the American public has had to deal with. It has divided us in a number of different ways and united people who had been disjointed on many other issues, so it is a very special kind of concern. The people of this state, I believe, have the wisdom to decide in a referendum. We voted on tax reform plans and other issues, and if those issues were important enough for us to give the people of this state an opportunity to choose, then how could we decide that this

issue is one in which we are so godlike that we can make the choice for them, and that they are so unwise that they cannot be given the opportunity to vote their own conscience on this issue. I would ask my colleagues that if they can find it within their conscience to allow the people who have elected them, who were wise enough to choose them to be here in this room tonight, that they would give them an opportunity to vote on the number one social issue of the day.

Senator SHUMAKER. Mr. President, I am going to vote "no" on this for two reasons. First, I think everyone here stands for reelection on their record in this Body. I think people want to see each one of us put up our vote where we stand.

The second problem I have is that according to the way this is drafted, we are going to have to wait one and a half years to get to a Primary Election in 1991 to decide this issue. I think we should vote this down and get on with voting to decide this issue tonight and get it back to the House and to the Governor. If people do not like our vote here, they can show their displeasure at the ballot box. I do not think we should wait for one and a half years to find out how the public thinks. That will be two primaries and one General Election in the meantime. I think we should get this done tonight and vote this down and continue with the amendments and send it back to the House.

Senator BAKER. Mr. President, I desire to interrogate the gentleman from Lebanon, Senator Brightbill.

The PRESIDENT. Will the gentleman from Lebanon, Senator Brightbill, permit himself to be interrogated?

Senator BRIGHTBILL. I will, Mr. President.

Senator BAKER. Mr. President, I was struck with the eloquence of Senator Brightbill's discussion of the manner in which this particular question affects women in a most profound way, in a way it does not affect us as men. I would be curious as to his reaction to a thought that has crossed my mind, and that is, perhaps if we have a referendum, it should be limited to those of the female sex.

Senator BRIGHTBILL. I would not support that proposition, Mr. President. I think, even though it is an issue that impacts uniquely to women, nevertheless, all Pennsylvania citizens should have a voice in deciding.

LEGISLATIVE LEAVE

Senator LINCOLN. Mr. President, I request temporary Capitol leave for Senator Scanlon.

The PRESIDENT. Senator Lincoln requests temporary Capitol leave for Senator Scanlon. The Chair hears no objection. That leave will be granted.

And the question recurring,

Will the Senate agree to the amendment to House amendments?

Senator GREENLEAF. Mr. President, I will be brief. We have had an extensive debate on this issue, but I rise in support of the amendment. I have been a longtime advocate of a referendum procedure in Pennsylvania. We do not have that in Pennsylvania. I think this issue, whether you be in

favor of that general proposition or not, is such an issue that covers every constituent in this state. It touches on a very deep and emotional response. I think Pennsylvania has been a state that has dealt with this issue again and again, year in and year out. I think it would be important for us to have it on the ballot so that we can decide once and for all. I think that placing it on a referendum ballot would go a long way to having this issue decided both by the electorate and also in the Legislature. I think it is important for us to do that and to, hopefully, put this issue in the perspective of where the people of this Commonwealth stand.

Senator FUMO. Mr. President, I am somewhat persuaded by the arguments set forth by some of the people who oppose this amendment in that it is our responsibility to vote on the tough issues, and I share that belief. However, Mr. President, this particular issue is unique in that this General Assembly did not stand for election after Webster. Abortion was an issue in this Commonwealth that many people took pretty easily. We would go through this exercise once every two years, depending on Steve Freind's whim, and we would get up and we would have interesting debates. The bills would pass overwhelmingly—you know, we do not want abortions—and that was a safe vote at that point in time. Quite frankly, the anti-choice minority, or whatever, anti-choice people—I do not want to characterize them as a minority, but I think the polls indicate that—are very aggressive. Pro-choice people are kind of laid back. They figured the U.S. Supreme Court would protect them no matter what we did here. Federal courts were always available to them. So, these issues were never really that important, although when I ran last time I was labeled a baby killer and with the pictures of the fetus and all that stuff. I won overwhelmingly. But, this General Assembly has not stood for an election after Webster. There is a new wave out there among the general public. There are people now who have been awakened, and they are not just women seeking protection of their civil rights, there are men out there, too, who recognize that this issue affects them as well. Hopefully the public will give this bill more consideration than we have tonight. Mr. President, although, as a rule I do not advocate this, I do not mind sitting here and putting up tough votes as I have done a lot in my career. As the only Catholic pro-choice Senator, believe me, I put up some hard votes.

Mr. President, I think it is only fair to the citizens in this Commonwealth, now in light of Webster, to lead us, to tell us what is going on, to tell us what is in their minds when we want to enact a bill like this. If we fear the people who sent us here, then we do not belong here. If anyone thinks that these walls are going to protect them against that public, they are wrong. The only problem is that it will not be until 1990 until people who have now been awakened will be able to express themselves.

Mr. President, I have never in my life seen people as concerned about an issue. People ask me when I talk about candidates, are they pro-choice? They want to know. That was not even asked before Webster. There is a new awakening and I

fear that if we do not do this there is going to be a distinct change in this General Assembly in 1990. Even though we are in the Minority, and I advocate some change, there are a lot of people on both sides of the aisle I would still like to see here. But I think if we continue with the posture that we are in, to pass this bill without true consideration, to bury our heads in the sand and just run it, a lot of my colleagues are not going to be here. I do not think we should put ourselves to this abuse because of Steve Freind's whim. I think we ought to let the public decide on this issue. Now if we had had an election intervening after Webster and this was our new General Assembly, I would be the first to say that probably this General Assembly after that might be more indicative of what the general populace believes. But we have not done that. The anti-choice people are trying to jump the gun, trying to run out here to the national media and say they won a big victory. But what about the women who are going to suffer as a result of this nonsense? So let us put it up for a vote. Let us find out what everybody thinks, male and female, about the fiasco that we are going through tonight. I suspect there are going to be a lot of surprised people. On the one hand, this bill has been sold by anti-choice people as something meaningless, very minor change in the law, no big deal. They were very cute about the way they did it, until you start to read what is in this thing. This is not an innocuous piece of legislation. Now you have to give the public a chance to understand that. A referendum is an ideal place to do it. I would not like people in America to look at Pennsylvania in shock and ask, how could those people do this? If the whole general populace wants to do that, that is different. Let us let the public decide. Let us not be afraid of the people who sent us here. Let us vote "yes" on this.

Senator FISHER. Mr. President, this job which we hold in the Senate, all fifty of us, is not an easy job. We tell our people, as we go out and face them every four years, of the difficulties of the job, and we echo those remarks every once in awhile during those four years about the difficulties we face. This is not an easy bill. It is not an easy issue for us to face or an easy issue for us to decide. It does not matter where you are from, whether you are from the City of Philadelphia or whether you are from Erie, whether you are from southwestern Pennsylvania or whether you are from the northeast. All of us face the same pressures, all of us face the same split in our constituency, all of us face the same questions. I think, as has been exhibited here today and this evening, and as was exhibited in the House of Representatives a few weeks ago when they considered this bill, we face this question and we face it seriously. We have had an opportunity here today to debate the various issues. There are those of us who have indicated that we will be supporting this bill on final passage. Some of us voted to support, allowing the amendment process to go forward because there are important issues, all of which have been debated and which will continue to be debated tonight. But this bill is a complex bill. It is a bill that contains a lot of different features in it, but it is a bill that does not contain, perhaps, the basic question that many people out

there argue about, whether they are for abortion or against abortion. It does not contain the issue that perhaps the media, in their news bites, might try to say and try to simplify as, basically, this bill before us. We have a lot of complex questions that we are facing, and what we are asked here with this amendment is to delay the implementation of the issues that are contained within this legislation, not for six months, not for a year, but for almost two years, until 1991. Until 1991, when over a two-year period it is hard to tell how many more abortions will result in the state. Regardless of whether this question is on the ballot in 1991 or whether the question is on the ballot this year or next year, it is not the process for which we have been sent here and which we have been elected to follow. The basic question on the ballot is whether or not—and I read it—"Shall the 1989 amendments to the Abortion Control Act take effect?" There is a provision in this amendment that says that the simple English language explanation would not even be provided. I do not know why that is in there, but to ask the people who elect us to do our job by going out and deciding whether this bill tonight should become law, I think is the wrong process. We have a tough decision to face. We have a tough decision when we vote on this issue tonight, just as the Members of the House had a tough decision before them. But we were sent here to do that job. Our law does not provide for that help and guidance from our constituents. We get it every four years, however, when we go back. Our law provides that when there is a question on amending the Constitution, you can put that before the voters. Our law provides that when there is a question on incurring general indebtedness, you can put that before the voters. Our law provides that when there is a question of local option, you can put that before the voters. Yes, last year, about a year ago today, we crafted a piece of legislation called tax reform that we had a trigger date in that it only took effect if the voters said yes. I think as we look at that example and as we look at what happened last May, there was so much confusion. When you ask the majority of the people of this Commonwealth why they rejected that bill, they tell you they did not understand it. It was too complex. I say to you that if we adopt this amendment, we will not be doing the people of this Commonwealth a favor but, rather, we will be shirking our duty by saying to them, here is a bill that we passed, but it was too complex for us to make a final decision, and we are asking you to tell us which way to go. I think that is the wrong way to go, and I would ask that we defeat this amendment.

Senator BAKER. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Fisher.

The PRESIDENT. Will the gentleman from Allegheny, Senator Fisher, permit himself to be interrogated?

Senator FISHER. I will, Mr. President.

Senator BAKER. Mr. President, is it your position that the basic question underlying these amendments would not be dealt with by a referendum on the amendments of 1988?

Senator FISHER. Mr. President, I am not sure I understood the gentleman's question.

The PRESIDENT. Will the gentleman restate his question.

Senator BAKER. Mr. President, if we consider that the aim of a referendum would be to submit this very intensely emotional question to the voters of the Commonwealth of Pennsylvania, then would this particular suggestion for a referendum accomplish that?

Senator FISHER. Mr. President, if the gentleman's question is do I think the question that would be contained in this amendment would allow the people to say whether they were for or against abortion, whether that would really be decided by their vote, my answer to that question is no.

Senator LINCOLN. Mr. President, I have refrained from speaking on any of the issues so far this evening. I think the debates have been adequately handled. There have been a number of references that I personally have to answer and put on record and one of them has been a repeated reference to Representative Freind's folly and this is his idea, and whatever, and this is his fault, I think, in the words of one of the Senators who used Representative Freind as a reference. Many of us who are making decisions this evening on this very difficult issue have been in this position many times, many times over when we knew that it really did not make a whole lot of difference, that the courts were going to do something. At no time in the seventeen years that I have been involved in this issue since *Roe v. Wade*, has Steve Freind ever had any impact or influence on my thinking. It is my own personal philosophy. It is how I feel, and it is how I want to vote. I do not always agree with Representative Freind, and there are times when I do. I think that in regard to Representative Freind, I stood at this microphone and was very, very critical of him a year or so ago when he made some extremely stupid remarks about a woman's body. I wanted to make sure then that people did not identify my pro-life position with his. I am doing that this evening, but I also have to say that I think that Representative Freind has shown a great deal of restraint in the type of bill that he is getting credit or blame for. We are at this point for the first time in my seventeen years in this debate, following a guideline of constitutional decisions. The *Roe v. Wade* decision is not being affected one bit. There is no way this particular act can be challenged as something that would be a threat to overturning *Roe v. Wade*. We are staying within the confines of what the Webster decision has said to the states that we can do.

I am never going to vote for a referendum. If it meant that I were going to be defeated in my next election because of that position, then so be it, because we are just taking the first step in what is going to be a long and torturous battle over an issue that is very emotional and one on which, generally, we see people not willing to change their position.

There is every indication that the Supreme Court of this wonderful land of ours is going to make determinations sometime in the future that might further erode the *Roe v. Wade* decision or even do away with it. It is very clear from the Webster decision that what they are going to do is say to the legislatures of all fifty states, it is your responsibility and you deal with that. I think there are probably good arguments for

and against the courts doing that. One of the good arguments is that we are different than a lot of the other forty-nine states. I do not believe that I would want California determining how we live in Pennsylvania. Even beyond that, I think that whenever we run for election we have to tell people what we have done in the past and what we plan on doing in the future, and then they go into the voting booth and make that determination.

I believe that anyone who will make this vote this evening thinking it will lessen their responsibilities as elected Members of the Pennsylvania State Senate, they are being very, very unfair with themselves, more so than they are with their constituents. I have no fear of what would happen with the vote if it went to the referendum. I do have a fear of what might happen to the general practice of government here in Pennsylvania in that on every difficult issue we had to deal with the referendum would be the easy way to go. Some of us might even be able to survive twenty-five or thirty or thirty-five years, like the gentleman from Delaware, Senator Bell. I think the vote on this issue should be made in its context. I think the gentleman from Allegheny, Senator Fisher, put it much better than I could. It is our responsibility and we should be voting this evening yes or no on the issue before us, and that is Senate Bill No. 369. I have no quarrels with that. It is not easy. Many of us probably did not sleep too well last night, and I would think there are some of us who are not going to sleep too well tonight, but that is part of the business we have chosen to be in. If you cannot take the heat in the kitchen, then you cannot be a cook. I ask you to vote "no" on this amendment, and let us go about the business of passing this bill in some shape or form.

Senator RHOADES. Mr. President, you know I am amazed at this Chamber and this process. A few months back I put out the flyer for initiative and referendum. I received about two or three cosponsors and everybody else ran for cover. Now we have a referendum which really under the Constitution has no authority, because the only time we have a referendum is to change the Constitution or for bond authorization. Now because it has come down into a tough spot, we want to circumvent the system and put it out there. I say that is fine and dandy. If we are going to do that, then let us do that the right way and the proper way and not when it comes down and not when it gets tough because—I am going to say this—every time we do this, then I think any bill and every bill that we pass in this Chamber should be open to scrutiny by the public, be that the living will, euthanasia, the death penalty or the determination of what we want to do with people who do not fulfill any wish within this Commonwealth. I think that is going a little too far. I think the thing is we stand up and be counted because the issue here is how far we want to go in terms of what we say is the living standard and the importance and significance of life. As far as the referendum goes, I will vote "no." If we are going to do it, let us do it right.

Senator REIBMAN. Mr. President, I really was not sure how I was going to vote on a referendum, but as I sat and lis-

tened to the debate on the various amendments that were offered to this bill, I think I am compelled to vote for the referendum for the following reasons: We live in a population that is very diverse. We live in a pluralistic society with different beliefs, different moral considerations, different religious traditions, some of which absolutely prohibit abortions, some which under certain circumstances, indeed, say that abortion is the thing to do. While I believe this whole issue raises very profound moral and religious questions which the government cannot and should not attempt to answer for every individual, not knowing what the circumstances might be surrounding that individual or his or her family or what their religious practices and traditions might be, I believe that all of you who are sitting here believe you are exercising your conscience in how you vote. Some of your convictions are deeply held. What they are rooted in, I cannot say, but I know there are many people who are not sitting in this Chamber whose consciences are very valid, as much as each one of us, and I cannot assume that those people do not have the moral consistency or the moral courage or the intellectual capacity to make a decision so private, so intimate, so far-reaching with their health, with their family and, indeed, their traditions. I believe that our state Legislature should not pass legislation that either restricts or prohibits abortion because personal decisions in this sensitive area—and I am repeating myself—should be made according to individual conscience, moral beliefs and religious beliefs which are certainly not appropriate subjects for secular state control.

Senator FUMO. Mr. President, just to correct the record with regard to Mr. Freind and his objective, the gentleman from Fayette, Senator Lincoln may have misled some people, not intentionally, obviously, that this does not go against *Roe v. Wade*. This bill was specifically crafted to challenge *Roe v. Wade*, and Representative Freind has said that publicly. So, let us not be confused about that.

As one of those who slept well last night and who will sleep well again tonight, Mr. President, I again urge you to let the public decide this issue because this is not like a pay raise. This is taking away the civil rights of one-half, or maybe more, of our population. It is not a light issue. It is a heck of a lot more important than a pay raise or any other tough vote that we have ever voted upon. Let us treat it a lot more seriously than we are now.

Senator STOUT. Mr. President, I rise to oppose this amendment offered to put this question on a referendum. We discussed this matter yesterday in my caucus, and I have thought a great deal about this issue over the last several weeks as it moved from the House to this Body and at first I thought that maybe we should have a referendum to finally decide that. In the nearly nineteen years I have been privileged to serve in this General Assembly, this ongoing question of abortion kept coming up every year from the House and into the Senate, and the subsequent actions were taken in the courts over these years. That is what is before us right now since the recent Supreme Court decision. Early this afternoon, having a history of voting pro-life in this General Assembly, I

know I disappointed some people when I voted to suspend the Rules. I voted to suspend the Rules for the very purpose that we in this Chamber, fifty Members of the Senate, are elected to make these decisions. While it might be convenient to kind of slide off this issue and put it on a referendum, I feel that is wrong. We as a Body are elected to make those decisions, and ultimately, next year, when half of us run for reelection and shortly thereafter, two years after that, when the other half will run, our constituents will have an opportunity to really have a referendum on whether we should be returned to this office based on the type of decisions we made. Unfortunately, sometimes a single issue really distorts this whole process. We as fifty Members are about many different things here, and it is unfortunate that it comes down to some people may not be returned because of how they vote, either yes or no, on this bill. I feel that this is why we are here and I, therefore, urge you to vote "no" on this amendment.

Senator HESS. Mr. President, this question of referendum, I think, bothers all of us because, number one, we want to be responsible. Number two, we all have a political ego that says we can stand and make the tough votes, and I think all of us have over the years. I think if we use history as a guide, we are an old state, and there are very few referendums provided for as have been spelled out in previous debate. As our country grew and developed west, the new states in the western part of this country developed the referendum and some even went so far as to adopt the initiative.

I heard the statement made that the people were somewhat confused. Maybe they did not understand the tax vote. I am not so sure we should be standing in judgment of the people's knowledge, especially on this particular issue. I doubt if any of us really understand, if we examine down deep inside, where this particular piece of legislation may lead us.

We represent as individuals, members, because we are members of various religious beliefs. We come to this Body as former teachers, salesmen, lawyers, farmers, coal miners. Because we are given a title, it does not give us immediate and perfect knowledge or understanding, because those same occupations from which we came to this Body are the same people we represent and who someday will replace us in this Body. We have all made the tough votes. Maybe it might be wise because I believe that the gentleman from Philadelphia, Senator Fumo was correct. I am not sure what this bill will do in the end, but I do believe in my heart that it is a direct challenge to *Roe v. Wade*, and it is merely a tactic to get the issue before the Supreme Court. Would it not be something if we had one state-wide referendum to tell those nine people, eight men and one woman in robes, how one state, the Keystone State, feels.

Senator GREENWOOD. Mr. President, I will try to be brief. A statement has been made and an argument has been made that one of the problems at least some Members of the Senate have with this amendment is that it delays the process until the primary of 1991. As most of you know, I had originally prepared this amendment so that the referendum could occur in the General Election of 1990, and, quite frankly, I

offered this alternative amendment because many of my colleagues expressed to me that they did not want to share the ballot with this referendum. I have on my desk a blank pad and a pen, and any Member of the Senate who would like to come over here and sign up to tell me that they would prefer to vote for the 1990 referendum amendment may do so. If there are enough of you, I will offer that. That is the issue. Certainly the issue cannot be that the people of Pennsylvania are not able to handle this issue, or that somehow this is an inappropriate issue for them. This is the issue that most fundamentally rocks this nation's foundations and its Constitution. One of the few times Pennsylvanians are permitted by us to go to the polls to express their view, to make a decision, a direct democratic procedure, is on a constitutional issue, and this is the constitutional issue of their time. It has also been repeated that we are paid to make tough decisions, and, indeed, we are. Well, here is a tough decision for you to make, and the question is whether or not you are going to allow the people of Pennsylvania to have a vote on this issue. It has also been set forth that the voters will judge us in next year's election on how we vote tonight on this issue, and that is certainly true and it is true as it has never been before. I submit to you that your constituents, when they go to the polls to vote on your reelection next year and in two years following that, may understand that you feel you are entitled to have your opinion on this issue. They may understand that your opinion differs from their opinion, but they will not understand that you have told them tonight they are not entitled to have an opinion. If you cannot vote for this amendment tonight, then that is the message you are going to deliver to your constituents.

And the question recurring,

Will the Senate agree to the amendment to House amendments?

The yeas and nays were required by Senator GREENWOOD and were as follows, viz:

YEAS—18

Afflerbach	Fumo	Jones	Reibman
Bell	Greenleaf	Jubelirer	Tilghman
Brightbill	Greenwood	Lemmond	Williams
Corman	Hess	Lewis	Wilt
Fattah	Hopper		

NAYS—32

Andrezski	Holl	Pecora	Salvatore
Armstrong	Lincoln	Peterson	Scanlon
Baker	Loeper	Porterfield	Shaffer
Belan	Lynch	Punt	Shumaker
Bodack	Madigan	Regoli	Stapleton
Dawida	Mellow	Rhoades	Stewart
Fisher	Musto	Rocks	Stout
Helfrick	O'Pake	Ross	Wenger

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate concur in House amendments?

AMENDMENT OFFERED

Senator Fumo offered the following amendment No. A3604 to House amendments:

Amend Title, page 1, line 7, by striking out "AND"

Amend Title, page 1, line 8, by removing the period after "incest" and inserting: ; and making an appropriation.

Amend Bill, page 22, by inserting between lines 23 and 24:

Section 9. The sum of \$4,500,000 is hereby appropriated to the Department of Health for the Special Supplemental Food Service Program for Women, Infants and Children to provide iron and protein-rich food to low-income pregnant women, lactating mothers, and infants and children. This amount shall be in addition and supplemental to amounts previously appropriated for these purposes by the act of July 1, 1989 (P.L. , No.3A), known as the General Appropriation Act of 1989.

Amend Sec. 9, page 22, line 24, by striking out "9" and inserting: 10

Amend Sec. 9, page 22, line 28, by inserting after "INFORMATION": and section 9 of this amendatory act

On the question,

Will the Senate agree to the amendment to House amendments?

POINT OF ORDER

Senator DAWIDA. Mr. President, I rise to a point of order.

The PRESIDENT. The gentleman from Allegheny, Senator Dawida, will state it.

Senator DAWIDA. Mr. President, Rule XV, which we earlier suspended part of, says very clearly that "No amendments shall be...considered by the Senate which destroys the general sense of the original bill, or is not appropriate and closely allied to the original purpose of the bill." Clearly this amendment is of such a character. You can always make a tenuous jump from one thing to another. As an example, I like to use the fact that my father lost his job and because of that I could not go to Penn State where I was accepted. I went to Pitt and I met my wife. So because my father lost his job, I met my wife. Sure, there is a connection between the kind of spending that the gentleman from Philadelphia, Senator Fumo, suggests we ought to do in this amendment and the Abortion Control Act, but it is tenuous at best and I would question the germaneness under Rule XV of this particular amendment.

The PRESIDENT. Is it the Chair's understanding that the gentleman is raising a point of order that the amendment is not germane by virtue of Rule XV?

Senator DAWIDA. Yes, Mr. President, that is accurate.

The PRESIDENT. The gentleman has raised such a point of order. The Chair would rule that the gentleman's point is well taken. Rule XV clearly states that "No amendments shall be received by the presiding officer or considered by the Senate which destroys the general sense of the original bill, or is not appropriate and closely allied to the original purpose of the bill." This is an appropriation contained in this amendment and the attempt is being made to add this to a Crimes Code legislative item. It is the ruling of the Chair that the amendment is not germane and, therefore, out of order.

RULING OF CHAIR APPEALED

Senator FUMO. Mr. President, I appeal the ruling of the Chair as to the germaneness of amendment No. A3604 and would like to state my reasons why in debate.

The PRESIDENT. Senator Fumo appeals the ruling of the Chair. Those voting in the affirmative would vote to sustain the ruling of the Chair, that is, those voting in the affirmative would be voting that the amendment is not germane and, therefore, out of order. Those voting "no" would vote to overrule the ruling of the Chair, therefore allowing the amendment to be considered. On that, the Chair would point out that the matter is debatable.

On the question,

Shall the ruling of the Chair be sustained?

Senator FUMO. Mr. President, this particular amendment—so that the general public will know what is going on rather than think it is something way out in left field that has been ruled not germane by the Chair—is very simple in concept. It adds \$4.5 million to the current appropriation of WIC, which is aid for women, infants and children. Currently, the Commonwealth of Pennsylvania is able to fund only fifty percent of the eligible population with this type of aid. This aid, Mr. President, is very specific aid. It goes to pregnant women, infants and children of very young age. It is money that is restricted. It is special kind of food that we give to these people so these children will no longer have the inherent problems that poverty brings to pregnancies.

Mr. President, I think it is very germane to this particular bill because in one voice this General Assembly is telling women we are going to restrict your right to abortion, but in another voice, if you would vote to sustain the Chair, you would be saying not only do we want you to have these children but when they are born—

POINT OF ORDER

Senator LOEPER. Mr. President, I rise to a point of order.

The PRESIDENT. The gentleman from Delaware, Senator Loeper, will state it.

Senator LOEPER. Mr. President, I understand from the previous ruling of the Chair that the question is debatable. Is it debatable as to the germaneness of the issue or the issue itself?

The PRESIDENT. The Chair thanks the gentleman for the inquiry and would point out to all of the Members of the Senate that the debate shall be limited only to the germaneness. It is the opinion, frankly, of the Chair that the gentleman is discussing the issue, the merits of the amendment per se and perhaps some extraneous matter, as well. He would be well advised to contain his remarks to the appeal of the ruling of the Chair.

Senator FUMO. Mr. President, then may I ask the Chair—because God forbid that I should want to break any rules in this Chamber, especially during debate—how one—

The PRESIDENT. The Chair thanks the gentleman for his cooperation.

Senator FUMO. Thank you, Mr. President. May I ask the Chair, Mr. President, how one discusses the germaneness of the amendment without discussing what the amendment does and showing the link between it and the bill at hand?

The PRESIDENT. Very carefully, Senator, is what I like.

Senator FUMO. I intend to do that, Mr. President, and I think I am proceeding in that direction, although this might be one of those tough votes all of us macho guys were just talking about before. That is not ducking on procedure. Let us stand up here and be tough. That is what I just heard from the last debate.

The PRESIDENT. It may be instructive and the Chair would advise the gentleman that the issue before the Senate is the appeal of the ruling of the Chair. That is a very narrow item before the Senate, and I think that the gentleman is skilled and competent enough to understand that we should limit his remarks to that narrow issue.

Senator FUMO. I shall, Mr. President, and that is what I was attempting to do, to show how aid to pregnant women and infants is germane when we tell women that we are going to restrict their right to abortion. What could be more germane, Mr. President, than something like that? I recognize full well from the conversations I have had today with people that this is the issue that scares the front office more than any other, but it still does not mean that we should escape it by a procedural vote. I have heard this characterized as a budget buster. I can speak as the Minority Chairman of this Committee on Appropriations in the Senate that this will not break the budget. I have heard that we should protect our Governor so he does not have to blue line this and get involved deeper in the controversy. Well, that is one of the tough things you have to do if you want to be in office. You have gotten a lecture today about toughness. If we are going to be tough, then let us do it. Let us try and do it with a kind heart. Let us not limit debate on this issue, Mr. President. Let us go forth and debate whether or not we are going to provide starving, pregnant women and infants with nourishment so that those children can live healthy lives. If you are concerned about "aborting" them, why not be concerned about their life after they come out of the woman's womb? You cannot escape this. You cannot say to the woman, it is your problem. You cannot say, I am only going to worry about that individual fetus as long as it is in your womb, and then after it is born, let it be damned. You cannot do that and not be logical and consistent, although there are some in here who would not let that argument affect them.

Mr. President, I appeal your ruling. I would hope this Chamber would back me up so we can have an honest and fair debate on this entire issue rather than attempt to hide behind a procedural vote to sustain the Chair.

Senator LINCOLN. Mr. President, I rise to support the decision of the Chair. I am somewhat amazed and baffled that the young flash from Philadelphia, who has been our Chairman of our Committee on Appropriations for five or six years, three months into a new fiscal year could have been so misled by the budget process that he underestimated what we

needed for WIC. I just do not understand that, that it would have to become a part of one of the best debates I have ever heard. In fact, the effort to do this, this amendment, in my estimation, lowers this debate down to where I have seen it get before. I think the Chair has made a legitimate and a reasonable decision within the guidelines of the Rules of this Senate, and I would urge the Members to uphold the decision of the Chair.

Senator DAWIDA. Mr. President, I think I know that everyone in here recognizes how seriously I take this issue. I appreciated your consideration on my motion to suspend the Rules. You may well have noted that I have voted for three of the amendments which have been offered. However, this is not an appropriate amendment. It does not have a clear nexus between the issue of the Abortion Control Act and what it is that Senator Fumo would like us to do. Not that I am against what he wants to do. I have in my eleven years in the Legislature always voted for WIC, always voted for day care. In fact, it is one of the issues I take the most time to spend on. It is clearly not an issue, though, that belongs in this debate. Let us keep this debate at a serious level dealing with the Abortion Control Act and not get spun in a web around it of the social service issues, which I have a great passion for but which do not belong here. I would urge that we uphold the Chair's ruling.

Senator SALVATORE. Mr. President, I just want to say to my colleague from Philadelphia, Senator Fumo, that Senator Rocks and I are going to draft a piece of legislation and we invite him to join in with us so we will appropriate this kind of money for WIC.

Senator FATTAH. Mr. President, I heard my colleague, the gentleman from Fayette, Senator Lincoln, and I was wondering what he meant by a young flash from Philadelphia. I thought that was me, but he was talking about Senator Fumo.

Nonetheless, I am trying to follow this. We do not want the public to get a chance to vote on this issue. We want to move this thing forward. We realize that even the people who spoke in opposition to this amendment—the gentleman from Allegheny, Senator Dawida, and others—have indicated they see the need for an additional appropriation to WIC, but now we want to discuss whether it is germane.

PARLIAMENTARY INQUIRY

Senator FATTAH. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Philadelphia, Senator Fattah, will state it.

Senator FATTAH. Mr. President, I am new to the Senate. I am trying to follow this, Mr. President. If I vote "no" to the question at hand, does that mean, therefore, it is germane?

The PRESIDENT. That is correct.

Senator FATTAH. Mr. President, so that means if we all vote "no," then the issue of whether we are prepared to put our money where our mouth is on the issue of providing real, substantive, nutritious food for children and prenatal care for women, then it is and it will be, therefore, germane?

The PRESIDENT. It is an interesting characterization, but generally true.

Senator FATTAH. Mr. President, I would therefore urge all of my colleagues to vote "no," and then since the gentleman from Allegheny, Senator Dawida, agrees with this issue, as he indicated he does, and all the rest of us who agree, we can vote "no" and then we can move on.

Senator AFFLERBACH. Mr. President, while I reluctantly will vote against the ruling of the Chair, I must say that I find the amendment before us to be germane to the issue at hand. Whether those of us who are more affluent, those of us who happen to serve in this Chamber recognize it or not, there are poor women in this Commonwealth who seek abortions, whether it be in the first trimester or at some other point simply because they honestly believe, and their husbands honestly believe, they cannot feed one more mouth in that family. This amendment strikes to that problem and, in my opinion, is therefore germane to this bill.

Senator MELLOW. Mr. President, I rise to support the position of the Chair on the germaneness of the amendment. I think that in talking about the amendment in dealing with the WIC program, the Women, Infants and Children program, in providing social benefit to them in the amount of, in this particular case, \$4.5 million, I think it is a type of amendment that we should discuss on the floor of the Senate. But I do not think it rightfully should be discussed when we are dealing with a Title 18 bill which deals with abortion because the truth of the matter is it is a budgetary item and more appropriately should involve itself in budgetary considerations. For that reason, Mr. President, I think the decision of the Chair is accurate, and I would support and request an affirmative vote upholding the decision of the Chair.

Senator GREENWOOD. Mr. President, despite Senator Shaffer's wishes, I will speak on this motion. I ask for a "no" vote with regard to the appeal of the Chair. The question is germaneness. I take it that we are all aware of the fact that the major question before us is whether or not the Senate will concur in the germane amendments that Representative Freind offered to the bill from the gentleman from Montgomery, Senator Greenleaf, on incest. So I assume that those who will vote "yes" now, because they would not dare have the Senate deal with an issue that is not germane, will vote "no" on final passage, because, certainly, nothing is less germane than amending a bill to protect the victims of incest with a bill to restrict the right to abortion. What is very germane is whether or not the right to life continues for the children of Pennsylvania after they are born. Those of you who would throw yourself in front of a truck to spare the life of a fertilized egg are now being asked to cast a simple vote to feed those children when they are born. It is pretty germane. It is pretty straightforward. It is pretty simple. I think what is really germane is that Governor Casey does not want to have to be put in the terribly awkward political position of voting to take away the rights of women and bring into this Commonwealth thousands of more unwanted children, and then cross out the money to feed them and to feed the mothers, the

madonnas with the children, prior to birth. The question is, does the right to life continue for children after they are born?

LEGISLATIVE LEAVE

Senator MELLOW. Mr. President, I would request temporary Capitol leave for Senator Fumo who has been called from the floor.

The PRESIDENT. Senator Mellow requests temporary Capitol leave for Senator Fumo. The Chair hears no objection. The leave will be granted.

And the question recurring,
Shall the ruling of the Chair be sustained?

The yeas and nays were required by Senator FUMO and were as follows, viz:

YEAS—33

Andrezski	Holl	Pecora	Salvatore
Armstrong	Lincoln	Peterson	Scanlon
Baker	Loeper	Porterfield	Shaffer
Belan	Lynch	Punt	Shumaker
Bell	Madigan	Regoli	Stapleton
Bodack	Mellow	Rhoades	Stewart
Dawida	Musto	Rocks	Stout
Fisher	O'Pake	Ross	Wenger
Helfrick			

NAYS—17

Afflerbach	Greenleaf	Jones	Reibman
Brightbill	Greenwood	Jubelirer	Tilghman
Corman	Hess	Lemmond	Williams
Fattah	Hopper	Lewis	Wilt
Fumo			

A majority of the Senators having voted "aye," the question was determined in the affirmative.

The PRESIDENT. The ruling of the Chair is sustained.

And the question recurring,
Will the Senate concur in House amendments?

DAWIDA AMENDMENT I

Senator DAWIDA offered the following amendment No. A3629 to House amendments:

Amend Title, page 1, line 5, by striking out all of said line

Amend Sec. 3, page 8, line 19, by striking out "SECTIONS" and inserting: a section

Amend Sec. 3 (Sec. 3209), page 8, lines 25 through 30; page 9, lines 1 through 30; page 10, lines 1 through 15, by striking out all of said lines on said pages

Amend Sec. 4 (Sec. 3214), page 17, lines 26 through 29, by striking out all of said lines

Amend Sec. 7, page 22, line 12, by striking out "SECTIONS 3209(D) AND" and inserting: section

Amend Sec. 9, page 22, line 25, by striking out "SECTIONS 3209(D) AND" and inserting: section

On the question,

Will the Senate agree to the amendment to House amendments?

Senator DAWIDA. Mr. President, on the last amendment, I think the level of debate dropped a bit. Perhaps that is because of the lateness of the evening and the tiredness of the Members. I hope that this one last serious amendment will

invite your attention. I just suggested to all of you that the spending amendments were inappropriate. They do not belong in this kind of bill. I have also voted against and for some amendments so that I have thoroughly confused, I am sure, the media and, perhaps, some of you. But what it is that I am trying to do is get us to look at the actual language in the bill to determine which restrictions are appropriate and which ones are not. I have made the statement in my district consistently for eleven years that I do not believe there is a right to an abortion, but I have also said that I do not believe this General Assembly wants to get into the business of putting women in jail for making that choice. That puts us in a pretty wide vacuum in the middle. I chose those, I think, as carefully as I can, and this particular issue is the one that I think most women in Pennsylvania, and many men also, find offensive. That is simply the notification of spouse part of the bill. I am a very strong supporter of parental notification, and I am against spousal notification. I hope you will find some reason to vote for this because there is a difference. What I am trying to get us to start thinking of is which restrictions are appropriate and which ones are not. But what is appropriate in my mind is for a parent to be notified. A dependent child should have to notify the parent because in our law we have time and time again said the parent is responsible for the child. We say this often in law and if that parent abdicates his responsibility to the child, we are quite right in our legal duty to put that parent in jail. However, we are dealing with two adults in the marriage situation, the most sacred kind of relationship sanctified by our secular legal system. It is our general policy not to tell people in a marriage what they ought to talk to their spouse about. It is not that I believe women should not tell their spouse they want to get an abortion. That is not the issue here. The issue is simply, should the state come in? Should big brother come in and say you must talk to your spouse? That is a completely different issue than whether or not someone, in reality, ought to do it. It is whether the legal coercion of the state should step into the marriage situation, and it has ramifications way beyond the abortion question. It has ramifications into our entry into the private lives of people in this state in a way that we have traditionally not done before. So what I am asking you to do is very specifically support this amendment which says we should not, as the bill would do, allow this kind of intrusion into people's private lives. I am not going to tell you about fertilized eggs, and I am not going to get into the kind of innuendos that the debate sometimes has strayed into about whether someone is pro-life, pro-choice, anti-life, anti-choice. I do not give a damn about the labels. I am, in fact, tired of people getting labeled because they feel one way or another about an issue. This is a very precise point. The point is, let us not intrude in the marriage. Let us not intrude in that husband and wife relationship. Let us hope they do speak to each other. The notification section is an intrusion without very many social benefits. There are some, and, admittedly, it is not a totally bankrupt idea in that certainly a father should have some knowledge, some rights. In this case the notification, the legal coercion of the state is

inappropriate, unjust and something that I do not think many of us want to think far into the consequences. I would urge a "yes" vote on this amendment.

Senator HELFRICK. Mr. President, I rise in opposition to this amendment. Probably the family and marriage are the most sacred things that we have in this country. That is the backbone of this entire country, and I think our job as representatives of the people is to do everything we can to keep the family together. Surely, if we condone the right for a wife to secretly abort a child that was conceived by her and her husband, we certainly do not do anything to keep the family together. I think we do everything we can to destroy family life. Can you imagine what position you would be in yourself if your wife secretly aborted a child, and at some future date she admitted it or you found out? Do you think you could ever forgive her for that? Do you think the family could stick together? However, on the other side of the coin, if the wife did notify the husband, told him she was pregnant and she wanted an abortion, at least the dialogue would continue and at least I think the marriage would continue. They may not agree and there might be a lot of fighting and arguing about it, but I think in the end the marriage would continue. I think this is one thing that is sacred—marriage and family life. I think this is one amendment we should oppose for those reasons alone.

Senator ROCKS. Mr. President, it seemed important for the record of this Chamber, particularly in the context that has been mentioned several times here tonight, that the entirety of this bill has far-reaching, new implications. This particular amendment, spousal notice, as the maker of the amendment described, would delete that notice requirement. I would like a few things to get clarified for all of us.

This provision prohibits a doctor from performing an abortion upon a married woman without first obtaining her signed statement certifying one of two things: First, that she has notified her husband that she is about to undergo an abortion. Second, that one of the exceptions to the notification that is contained quite explicitly in the bill exempts her from the notification. It may interest the maker of the amendment that notice is not required if any of the following would exist: a medical emergency, the spouse is not the father of the child, the woman could not locate her husband after diligent effort, the pregnancy resulted from spousal sexual assault, the woman has reason to believe that she is likely to have bodily injury inflicted upon her if she notifies her spouse. I think it is very important to remember that this provision requires notice and not consent. The Supreme Court struck down the spousal consent statute in Danforth, as we would know it, those of us with this issue for a long time, but it did not strike down a notice statute, and the Supreme Court has never stricken down a notice law. The only Federal Court of Appeals, and it is the second highest court in the country to fully evaluate spousal notice, upheld that law in its concept. This amendment, limited as it is to spousal notice, is an intricate part of this legislation and one that I believe has been so finely and properly crafted in its legal concept that it is

imperative that it be a part of the final passage of the legislation that is in front of us. It would be eliminated by the amendment that is in front of us, and I would hope that we would defeat it.

Senator LEWIS. Mr. President, throughout the course of the debate tonight, we have heard repeated references about how many of us believe that the provisions contained in this bill are inappropriate intrusions into the private lives of individuals, how there are attempts made to legislate standards which we should not be attempting to determine but which are more appropriately determined by professionals who are involved, given the circumstances that exist at the time of a particular situation. There is no part of this bill which I think is simpler to understand for an average person, which constitutes a more outrageous intrusion into the private lives of people in Pennsylvania than this spousal notice. It is impossible for me to be able to appreciate—to say nothing about attempting to comprehend—how anyone in a legislative position believes that he or she can now appropriately involve himself in the communications between a husband and wife in the course of their marriage. How absolutely outrageous. How demeaning to women. How thoughtless about all of the considerations and factors which have to go into a caring and loving and workable marriage relationship. For anybody in this Senate or in this General Assembly to try to suggest that they have the right, to say nothing of the opportunity, to begin to dictate what kinds of things spouses should be discussing between themselves is just absolutely outrageous. I cannot help but wonder where and when and how the proponents of this proposal will next believe that this Legislature ought to be involving itself in the marriage relationship. What kinds of things do we need to make certain that husbands and wives tell themselves and tell each other before the process of conception may begin? Or in what other factors in that marriage relationship do we think there is some legislative or social purpose that needs to be imposed upon these people? Many of the provisions of this bill are the subject of differences of opinions among professionals and among medical people. We have tried to debate them here, and I think we have had some sense of how reasonable and responsible people can have differences of opinion about these issues. But there is nothing about this spousal notice provision which, in my opinion, can be in any way confusing or the subject of a difference of opinion. It is simple, it is easy to understand. It is an absolutely outrageous interference by the General Assembly in the lives of men and women in this Commonwealth, and to think that people are going to vote in support of this proposal is something that extends beyond any concept of legislative responsibility that I can possibly imagine.

Senator ROCKS. Mr. President, if I may, by way of briefest rebuttal, knowing my colleague is both a skilled and practicing attorney, we do it. We do it throughout the Domestic Relations Law, and let me give a very specific example of it: Notices that are required in connection with terminations of parental rights in any preadoption situation. This is an area of law which has traditionally been viewed within the province

that this Legislature regulates. The father of a child certainly has a legitimate interest in knowing whether the life which he has contributed to creating is about to be terminated. That is simply the provision that is required by spousal notice in this bill.

Senator BELL. Just briefly, Mr. President, I am going to vote against the amendment. But I will tell you, when I was young enough and my wife was having children, I would have been mad as hell if she had an abortion and did not tell me about it. What I have observed, as this debate has proceeded, is a polarization even within this Senate, which I do not like to see. We are setting brother against brother, and if we had more women on this side, sister against sister, because some architect—and I do not know who it is but I know who the spokesman was in the House—said here is what you have to take, and I do not like that. I think you are going to find in the next year or so in the Commonwealth of Pennsylvania a polarization, and it is not good for this country. The only reason I am going to vote against this amendment is because I would then be polarized as one who wants to kill babies, and I do not like that type of expression. I have heard it too much from the other House. It is out there, and let us not further the polarization right here in this Chamber.

Senator DAWIDA. Mr. President, I agree with the gentleman from Delaware, Senator Bell, except for his outcome. I do not condone any wife not telling any husband that she is pregnant, and I do not condone her failing to tell her husband that she is pregnant, but that is not the issue here. I thought by giving you the illustration of the difference between parental consent and spousal consent that point might have been made more clear. It is the issue of two adults and the state coercing the behavior of one to another in a traditionally sacred sacrosanct relationship. It is not relationships that have broken up and failed that I am even concerned about. I cannot envision my wife not telling me that she was pregnant. But that is not the issue, either. The issue is whether we are going to condone the state coercion, the state entry, into my marriage. That is the issue, and it has far-reaching ramifications way beyond this particular abortion question which, perhaps, in a decade or so will be something we look back upon and wonder how it is that we became so polarized. What I am asking you to do is look at the precise question of whether you think the state ought to enter into this particular situation, not whether or not people ought not to talk to each other. They certainly should. I would urge a “yes” vote on the basis of the future damage which this kind of legislation could do if not checked at this moment.

Senator FATTAH. Mr. President, I understand this is the last amendment that we are probably going to consider tonight, or the next to the last. It is probably appropriate, then, that we recognize that for many of us on the other side of this issue, this should not be one of our proudest moments of being in the Pennsylvania Senate when we finally pass this bill. But one of the things we can be proud of is that we did have an opportunity to debate it, to consider some amendments, and the gentleman from Allegheny, Senator Dawida,

the maker of this amendment, was in large measure responsible for the opportunity that came about for us to consider these amendments. He is someone who has voted for some of the amendments, and against others as he has mentioned—against the referendum and against the WIC, but for the first two amendments—and I think he has sincerely attempted to come down on this issue where he finds his conscience. I think in this amendment, again as someone who is pro-life, he has offered forth another opportunity for us not to be zealots on either side of this issue, but to try to fathom what is the best public policy for us to have as a Commonwealth. Indeed for many, the issue of government intervening in the affairs of a marriage, in the discussions between spouses is something that I think many of us, if it was not for the issue of abortion, would be against totally. I remember the debate that we had on this floor where we were talking about removing some of the privileges given to a spouse so as not to testify when it is in a criminal matter against a husband. I remember many Members on this floor standing up saying that the state should not intervene in that way and not encourage or provide incentives or to take away the opportunity for spouses not to be put in that situation. I just think that to intervene in any way in this matter is probably wrong. I think that Senator Dawida offers to us not just the amendment, but offers his own record of voting pro and con on a number of amendments today that I think suggests to us that this is someone who has a reasoned position. He is pro-life. However, he is not a zealot on the issue and he is attempting, really, to do what he believes is the right thing. So I think that on that note I will give him a vote on this amendment.

Senator FUMO. Mr. President, I intend to vote for the amendment more so from the standpoint that it is bad public policy to do this than for another reason. Because, if you really read it, and if you really read the bill that is Senate Bill No. 369, it is very interesting in regard to the persons who put this together in the House that in their zeal they left out unmarried women. So, if you are unmarried, you do not have to notify anybody about anything. You can have your abortion. But if you are married, you are in a different category. You now belong to a husband. I understand the logic of that. I understand the logic of the maker because, as I said before, I think people who supported this in the House, obviously, view women as less than equal, married women, anyway, probably as chattel under the old common law system.

Mr. President, to further go through with that, let us assume that there is a married woman who got pregnant to someone who is not the father of her child. She committed adultery. Well, she is allowed to get an abortion. She does not have to tell her spouse, but she has to file a statement with the doctor admitting that she committed adultery. Now granted, it does not have to be notarized, but if you read the bill, she is still subject to a misdemeanor—under the bill, not the amendment. We have to keep referring back to that. I wonder how many male Members of this General Assembly would vote that they, too, should have to go home and tell their wives that they may have committed adultery. I suspect not many. I

really suspect not many after having been up here ten or eleven years.

Mr. President, in addition to that, I want to put the women of Pennsylvania at ease because the maker of the bill left a big, gaping loophole. As a practicing trial lawyer, although I spend too much time up here to get to practice, the bill does not say that the woman cannot lie to the doctor and say she is not married. He missed one. That is not covered anywhere in here. The only time she gets nailed for lying is if she is dumb enough to admit that she is married and she is chattel, then she has to go through with the rest of the charade. So the women out there who want to get an abortion without notifying their spouse—I personally think the amendment is necessary because it really violates public policy for us to be in there—but, they do not have to anyway, so I guess you are safe in voting “no” on the amendment because it is a nullity. Whoever wrote this bill, and I assume Mr. Freind, forgot, goofed up, whatever. There is a big loophole. I still have to wonder how many men in this Chamber would vote to have to go home and tell their wives that they may have committed adultery. I do not think we would see that, I do not think we would see that at all. Just in closing, Mr. President, brother may be fighting against brother in this Chamber, but the two sisters are right on line. There is no dispute between them.

Senator AFFLERBACH. Mr. President, the gentleman from Philadelphia, Senator Fumo, hit the issue squarely on the head. That is that the provision as presently contained in the bill genuinely coerces individuals to be liars. That is not new for this Commonwealth. You may all recall when we had a system known as fault divorce. It encouraged people to be liars. When a couple found that they just simply could not continue a happy marriage and sought a divorce, generally one of them had to lie. It was only a select list of faults under which a divorce could be granted. Finally, after enough years and enough horrendous cases coming to the attention of the General Assembly, we realized the error of encouraging people to lie and established the no-fault divorce system so that those individuals who could mutually come to agreement through discussions between themselves would not have to lie to achieve a divorce in this Commonwealth. I suggest to you that the language in this bill does nothing more than reinstate a system that coerces people into lying. The example which Senator Fumo gave is right on the mark. There are a number of other examples. You could, for example, have a wife and husband who have separated and she learns that, in fact, she is pregnant after they have separated. She knows that he is the father. She knows where he lives. She does not fear that he is going to commit violence upon her. In short, all of the exceptions listed in here she cannot utilize. What does she do? Why should she be compelled to tell this individual that she may decide to seek an abortion? She lies, because that is the easiest way out. That is the only way out given to her under the legislation in this bill. I suggest that the amendment is, indeed, necessary for all of the reasons that the other speakers supporting it have stated, but also because it is poor public policy to put law into place that coerces people into lying in order to solve a most tragic situation in their lives.

Senator SALVATORE. Mr. President, I have heard the debate on both sides on this issue, and I just had to add, this no more encourages women to lie about that than people who cheat on their tax returns, and they lie on their tax returns. It is the same thing. Maybe the women who commit adultery—do they have to tell? It should not be assumed that women will lie, rather, it should be assumed that they will comply with the law and notify their spouses. Unless they fall within one of the exceptions, and then need only—and I want to say need only—to inform their physician of this in confidence. That is all they have to do.

Senator HELFRICK. Mr. President, previously when I got up I spoke about family values. I would like to speak a little bit more about this. When we are talking about this, we are not just talking about a mother and a father or a husband and a wife, there is a child involved here. I think somebody has to stick up for that child, at least attempt to stick up for that child. Unless the father is notified, I do not see where that child has any protection whatsoever. I think if we have any sense of values, certainly this is not too much to ask that a wife should notify her husband. I think a child is very important. I think we are missing the whole boat here. A child is what we are talking about with this whole thing. I think if we continue to consider that we are going to defeat this amendment.

Senator GREENWOOD. Mr. President, the spousal notice section we are debating right now contains the following language, that the purpose of this is “...to protect a spouse’s interests in having children within marriage....” Some of us worry about whether or not government is in the bedroom. Well, we are in the bed now. If this Senate thinks that our job is to protect a spouse’s interests in having children within marriage, there are a lot of things we could do. We want to treat men and women equally. We certainly ought to require that a man cannot get a vasectomy without notifying his wife, or we could decide that a man cannot turn the vasectomy back off without notifying his wife. A comment has been made that—I think by the gentleman from Philadelphia, Senator Rocks—it is not a constitutional issue here. Well, six states have passed spousal notification statutes, four of the five statutes that were challenged were found unconstitutional and in the fifth, involving Nevada, the parties entered into a consent decree permanently enjoining implementation of the statute. Spousal notification has been ruled unconstitutional by the Supreme Court of the United States repeatedly, and it will be in this case. There is an exception that the generous authors of this legislation have provided for the woman who has reason to believe that the furnishing of notice to her spouse is likely to result in the infliction of bodily injury upon her by her spouse or by another individual. Well, is that not nice. If a woman is tired of being beaten by her husband, she does not have to go tell him before she has an abortion. Those of you who work with your domestic abuse centers know how many women are killed by their husbands in this state and how many are beaten. What about the woman who is not quite sure whether her husband is going to beat her to death when she tells him

that she is pregnant and she wants to have an abortion? She has only one way to find out. She has to go tell him, and if he does not beat her to death, then she can go get her abortion, I guess.

It has been said that this is a pro-family amendment, and I am pro-family. I am a family man. But those who think that the way to promote the family in Pennsylvania is to pass an ungodly amendment like this have a different view than I do of what our role is. There are a million things we could do to promote family harmony and to protect the rights of individuals to bear children. We could require people to have sex more often. It is certainly good for family harmony, and it certainly promotes everyone's interest in having children within marriage. We could require everyone to remember their wives' and husbands' anniversaries. We could require them to say I love you every morning before they leave for work. Those would be some wonderful pro-family amendments. But those kinds of amendments, just like this amendment, differ radically from my notion of what the purpose of government is and what our function is here tonight.

And the question recurring,

Will the Senate agree to the amendment to House amendments?

The yeas and nays were required by Senator DAWIDA and were as follows, viz:

YEAS—21

Afflerbach	Fumo	Jones	Shumaker
Baker	Greenleaf	Jubelirer	Stout
Brightbill	Greenwood	Lemmond	Tilghman
Corman	Hess	Lewis	Williams
Dawida	Hopper	Reibman	Wilt
Fattah			

NAYS—29

Andrezski	Lincoln	Pecora	Ross
Armstrong	Loeper	Peterson	Salvatore
Belan	Lynch	Porterfield	Scanlon
Bell	Madigan	Punt	Shaffer
Bodack	Mellow	Regoli	Stapleton
Fisher	Musto	Rhoades	Stewart
Helfrick	O'Pake	Rocks	Wenger
Holl			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate concur in House amendments?

FUMO AMENDMENT I

Senator FUMO offered the following amendment No. A3605 to House amendments:

Amend Sec. 2, page 2, line 25, by inserting after "AMENDED": and section 3205 is amended by adding a subsection

Amend Sec. 2 (Sec. 3205), page 3, line 19, by inserting after "EMERGENCY": and except as provided in subsection (a.1)

Amend Sec. 2 (Sec. 3205), page 5, by inserting between lines 8 and 9:

(a.1) Waiting period not required.—The 24-hour waiting period mandated by subsection (a)(1) and (2) shall not be required

where the place the abortion is to be performed is 50 or more miles from the woman's place of residence.

On the question,

Will the Senate agree to the amendment to House amendments?

Senator FUMO. Mr. President, this amendment is necessary mainly for rural women in Pennsylvania who seek abortions. Currently 21 percent of women in Pennsylvania receiving abortions go outside of their county to receive them. They have to go outside of their county, not that they would like to, they have to because of a lack of facilities. What this attacks is the harassment section of the bill which requires women to have a twenty-four hour waiting period. Mr. President, we have to understand that this, again, is an amendment to the bill before us, not necessarily an amendment to the current Abortion Control Act, because in the bill before us, in order for a woman to get an abortion, she has to go and be advised by a physician before she could call in and say, I have decided to have an abortion, I want to make an appointment. Twenty-four hours later or forty-eight hours later, whatever it is, she has to go in and be "counseled" by a physician and then go home, come back again and be "counseled" by a physician again, and then she can have the abortion. Mr. President, I view that as harassment no matter where it happens, and, again, I think it is because this Chamber is filled with men, not women, that many of the people who sponsor and support this kind of legislation think that this is a frivolous decision women make. Mr. President, the decision to seek an abortion for anyone at any point in time is a terribly trying decision that no women go through lightly. It is not a morning after pill, as those anti-choice advocates would have the public believe. It is a very serious decision, one fraught with issues back and forth, and one which a woman who has within her the natural maternal instincts has to decide to cut off. I personally think that no woman goes to an abortion clinic lightly or needs another twenty-four hours to make up her mind. But even if you believe that, Mr. President, it is absolute harassment to require a woman who is more than fifty miles away from her residence to the place where she decides to get an abortion to have to go back again. We are dealing now with rural women predominantly. Those women in Philadelphia have these facilities available to them, also in Pittsburgh, Allegheny County. But if a woman has to travel fifty miles to go and be counseled by the physician, then go home or have to stay over in a motel or some other place and pay that additional expense, then come back again, that is nothing more than harassment, Mr. President. I think it is discriminatory against those women who do not live in counties where there are abortion facilities. I recognize the motivation behind the maker of this bill, and I recognize his attitudes. I do not expect many more than the number of votes we have received tonight on any of the amendments. But I think it is important that we know these provisions which are being sold as innocuous are, in fact, not innocuous, that they are, in fact, serious issues. Those of us in urban areas who do not think about this, because we do not live in rural areas, have to be

reminded of the additional ordeal that women who live that great distance have to be put through to make this decision. Mr. President, I urge an affirmative vote.

Senator HELFRICK. Mr. President, I hate to disagree with my colleague on the other side of the aisle, but this bill does not require two trips to the abortion clinic which may be at a distance from her home because the referring physician in the hometown may satisfy the requirements by providing her with the required information. It is really only one trip she needs. The twenty-four hour wait is there, but it is only one trip she needs to make to the abortion clinic.

Senator BRIGHTBILL. Mr. President, I rise to support this amendment but that is not to say that I do not support a twenty-four hour waiting period. I personally have no problem with the twenty-four hour waiting period. I primarily got up to make that portion of the record clear and also to hope the gentleman from Philadelphia, in his concern for those of us in the rural areas, will open up his mind and heart as much when it comes to educational funding and some other kinds of things as he has on this particular issue.

Senator ARMSTRONG. Mr. President, on the amendment, in response to what has been said, there is really not a need for this amendment because if you are fifty miles away from a clinic, you can go to your consulting physician and talk to that physician and then twenty-four hours later go to a clinic and have the abortion. You do not have to drive back and forth. Your physician in your hometown, a small hometown, can be the consulting physician and that is all that is required, and then twenty-four hours later you can go to the clinic and have an abortion.

Senator FUMO. Mr. President, I think the arguments set forth by both the gentleman from Northumberland, Senator Helfrick, and the gentleman from Lancaster, Senator Armstrong, fail to recognize one important issue, and that is a woman's right to privacy. According to their scenario, they have to then expose themselves to a physician in their small community if they do not want to make the trip twice or pay to stay overnight. That violates their right to privacy. Maybe they are so ashamed to do this that they do not want to do that. Abortion is not a light decision. I keep trying to tell you that. Talk to some people who have had them, who agonized over them. Maybe they do not want to go in that small town to the one or two physicians and tell them, I need an abortion, I cannot afford to stay overnight, I do not want to go back and forth, please refer me to a clinic. Now, we are forcing them to reveal and violate their privacy to that local town physician. I think paramount to all this is another civil right, a woman's right to privacy. Let us not trample on that right too easily. The gentleman from Lebanon, Senator Brightbill, I regret I did not hear him completely on the debate, but I think what he is talking about, as the gentleman from Washington, Senator Stout, would say, is "whole hog sausage," and I am in favor of that. Just remember Philadelphia when we talk about it.

Senator AFFLERBACH. Mr. President, the gentleman from Northumberland, Senator Helfrick, and others presume

that there will be a referring physician when, in fact, the data discloses just the opposite.

There are forty counties of this Commonwealth in which no abortions are performed. They are not performed because there are no women there who seek them. They are performed or not performed in these cases presumably because there are no obstetricians there who will perform them. Many of those same doctors simply will not refer for an abortion. To presume that there is a referring doctor in every case is simply a false presumption. There are twenty additional counties which have three obstetricians or less in that entire county. Out of our sixty-seven counties, we have sixty counties that either perform no abortions or have three or less obstetricians in the county. To presume that there is a referring physician in each case, as this bill would do, simply has no basis in fact. Indeed, that is the thrust of the amendment because under present law as opposed to Senate Bill No. 369, the practice of a waiting period has been established. When a woman calls a facility, a clinic, to make an appointment, that appointment is not immediately granted. There is a waiting period from the time of that call until that appointment. If a woman just does happen to show up and walk in the door, in virtually every case—and I will say in every case with which I am familiar at the Allentown Women's Center—that client is counseled. It is strongly suggested to her that if she is not certain about what she wants to do, that she should, in fact, think about it further. In fact, she should go home, if necessary, and think about it for not only twenty-four hours but forty-eight or seventy-two, or however long it takes. Under present law that is happening. Again, under the language in Senate Bill No. 369, we would establish a new set of criteria, a new standard, a standard which makes presumptions that just are not factually evidenced in data collected by the departments of this Commonwealth, and that is why I would support this amendment.

And the question recurring,

Will the Senate agree to the amendment to House amendments?

The yeas and nays were required by Senator FUMO and were as follows, viz:

YEAS—17

Afflerbach	Greenleaf	Jones	Reibman
Brightbill	Greenwood	Jubelirer	Tilghman
Corman	Hess	Lemmond	Williams
Fattah	Hopper	Lewis	Wilt
Fumo			

NAYS—33

Andrezski	Holl	Pecora	Salvatore
Armstrong	Lincoln	Peterson	Scanlon
Baker	Loeper	Porterfield	Shaffer
Belan	Lynch	Punt	Shumaker
Bell	Madigan	Regoli	Stapleton
Bodack	Mellow	Rhoades	Stewart
Dawida	Musto	Rocks	Stout
Fisher	O'Pake	Ross	Wenger
Helfrick			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate concur in House amendments?

LEWIS AMENDMENT I

Senator LEWIS offered the following amendment No. A3608 to House amendments:

Amend Title, page 1, line 7, by striking out "CERTAIN ABORTIONS AFTER 24 WEEKS GESTATION" and inserting: abortion of a viable fetus unless necessary to preserve the life or health of the pregnant woman

Amend Sec. 1, page 1, lines 15 and 16, by striking out "AND THE SECTION IS AMENDED BY ADDING A DEFINITION"

Amend Sec. 1 (Sec. 3203), page 2, lines 10 through 13, by striking out all of said lines

Amend Sec. 2 (Sec. 3205), page 4, lines 9 through 11, by striking out all of lines 9 and 10 and "(III)" in line 11 and inserting: (ii)

Amend Sec. 4 (Sec. 3210), page 11, line 30, by striking out "GESTATIONAL AGE" and inserting: viability

Amend Sec. 4 (Sec. 3210), page 12, lines 5 and 6, by striking out "OF THE PROBABLE GESTATIONAL AGE OF THE UNBORN CHILD." and inserting: whether in his good faith judgment, the fetus is viable.

Amend Sec. 4 (Sec. 3210), page 12, line 10, by striking out "AN ACCURATE" and inserting: a

Amend Sec. 4 (Sec. 3210), page 12, line 10, by striking out "GESTATIONAL AGE" and inserting: viability

Amend Sec. 4 (Sec. 3210), page 12, line 13, by striking out "GESTATIONAL AGE OF THE UNBORN CHILD" and inserting: viability of the fetus

Amend Sec. 4 (Sec. 3210), page 12, line 14, by striking out "GESTATIONAL AGE" and inserting: viability

Amend Sec. 4 (Sec. 3211), page 13, line 24, by striking out "ON UNBORN CHILD OF 24 OR MORE WEEKS GESTATIONAL AGE" and inserting: of viable fetus

Amend Sec. 4 (Sec. 3211), page 13, line 26, by inserting after "SHALL": intentionally, knowingly or recklessly

Amend Sec. 4 (Sec. 3211), page 13, lines 27 and 28, by striking out "GESTATIONAL AGE OF THE UNBORN CHILD IS 24 OR MORE WEEKS." and inserting: fetus is viable.

Amend Sec. 4 (Sec. 3211), page 14, lines 2 through 9, by striking out "PREVENT EITHER" in line 2, all of lines 3 through 9 and inserting: preserve the life or health of the pregnant woman.

Amend Sec. 4 (Sec. 3211), page 14, line 13, by striking out "GESTATIONAL AGE OF THE UNBORN CHILD" and inserting: viability of the fetus

Amend Sec. 4 (Sec. 3211), page 14, line 14, by striking out "GESTATIONAL AGE" and inserting: viability

Amend Sec. 4 (Sec. 3211), page 14, line 15, by striking out "UNBORN CHILD IS LESS THAN 24 WEEKS GESTATIONAL AGE." and inserting: fetus is not viable.

Amend Sec. 4 (Sec. 3211), page 14, lines 25 through 27, by striking out "PREVENT EITHER THE DEATH OF THE PREGNANT WOMAN" in line 25, all of lines 26 and 27 and inserting: preserve the life or health of the pregnant woman.

Amend Sec. 4 (Sec. 3211), page 15, lines 3 through 5, by striking out "PREVENT EITHER THE DEATH OF THE PREGNANT" in line 3, all of lines 4 and 5 and inserting: preserve the life or health of the pregnant woman.

Amend Sec. 4 (Sec. 3211), page 15, lines 7 through 15, by striking out all of lines 7 through 14 and "(5)" in line 15 and inserting: (4)

Amend Sec. 4 (Sec. 3214), page 16, lines 20 and 21, by striking out "ON UNBORN CHILD OF 24 OR MORE WEEKS GESTATIONAL AGE" and inserting: of viable fetus

Amend Sec. 4 (Sec. 3214), page 17, lines 12 through 14, by striking out "PREVENT EITHER THE DEATH" in line 12, all of line 13 and "IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE WOMAN," in line 14 and inserting: preserve the life or health of the pregnant woman

Amend Sec. 4 (Sec. 3214), page 17, line 25, by striking out "GESTATIONAL AGE" and inserting: viability

On the question,

Will the Senate agree to the amendment to House amendments?

Senator LEWIS. Mr. President, it seems apparent that neither reason nor common sense are going to prevail this evening, but notwithstanding that, I think there are issues that are important enough that we must continue to discuss them in the hopes that some from among those who are listening will begin to appreciate the fact that there are provisions within the proposed legislation that just do not make any sense. One of those provisions, in my opinion, is the elimination of existing Section 3210 and the language that is substituted in its place. The current law in Pennsylvania to which we have referred on a few prior occasions, which is found in Section 3210 which is the subject of the proposed repeal, prohibits abortions after viability, except where necessary to preserve the life or the health of the mother. This current, existing law comports with the ruling in Roe v. Wade, which has been left standing by the most recent review by the Supreme Court. That standard which has existed now for many years is that 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 prescribe abortion except where it is necessary, in appropriate medical judgment, for the preservation of life and the health of the mother.

The current provisions of Senate Bill No. 369 attempt to change that existing law in two ways. The first is to prescribe that abortions cannot take place after the twenty-fourth week of gestation. The second is to completely abrogate the language set forth in Roe that identifies the objective of the preservation of the life or health of the mother, and instead, to substitute an entirely new standard which now requires that a physician provide the best opportunity for an unborn child to survive, except in those circumstances where the termination of the pregnancy poses a significantly greater risk of either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function. Those are very significant changes not only in the standard that Pennsylvania currently has but in that which is permissible under current constitutional law in Pennsylvania.

But, Mr. President, before we talk about why both of these changes are inappropriate, and I believe unconstitutional, I think it is important to again restate a point that has been made frequently this evening. In this kind of a situation we are not talking about abortions. In most instances what we are talking about is a method for attempted delivery. We are not talking about a situation in which a woman is choosing simply as a matter of course to request an abortion. We are talking instead about unanticipated medical problems that have developed and which are now causing serious potential conse-

quences. In these cases we are dealing with women who would prefer to have a viable fetus delivered at full term, an alive and healthy baby as opposed to having to choose some alternative medical procedure which may be necessary in order to preserve and protect their health or to give the mother the best opportunity for good health, and at the same time provide the best opportunity for that fetus to survive.

What I want to do, briefly, is to talk about both the medical circumstances and the constitutional circumstances, but I am not going to belabor the point because I think the attitude of this Body has been clearly demonstrated in the votes on the prior issues. Fundamentally, what we are talking about, again, is whether this General Assembly believes that it is omniscient enough to be able to substitute its judgment by prescribing legislation which then is going to prevail in every medical circumstance and completely eliminate the best medical judgment of the attending physician who knows the circumstances at the time when the medical crisis arises. Again, as we have in the past, we are talking about the question of whose judgment is going to be at place in the issue of a delivery opportunity, not an intentional abortion. All too often when we are talking about pregnancies that are terminated subsequent to the twenty-fourth week or a period of viability, we are talking about pregnancies that are terminated because of the necessity from the mother suffering serious health problems and the possibility that the pregnancy itself will jeopardize her life. The problem with the language as substituted now in Section 3211 is that it establishes a standard which does not recognize the fact that there are many serious health circumstances that can be faced by the mother which may not be certifiable by a physician as one in which death is likely to ensue for that mother or in which there is the additional standard that will be met for an irreversible impairment of a major bodily function. We can describe a variety of those circumstances again. We have heard some of them in the debate that was conducted here earlier this evening. For example, we can talk about a fatty liver of pregnancy, a situation in which the condition develops where the liver will most likely stop functioning, but where one cannot say definitively that is going to happen and, therefore, results in the death of the mother, but the possibility exists such that it can be a very risky and very serious illness for the mother to have to contend with. If, in fact, she manages to survive, fortunately, there will be no irreversible permanent damage to bodily functions that will result, but, in fact, after the delivery has occurred, the mother, in due course with proper medication, will, in all likelihood, experience a complete recovery. Neither of the standards which are required here can be met. The same is true with thalassemia. This is like a sickle cell anemia situation where there is a red blood cell deficiency that could lead to congestive heart failure. Again, no physician is likely to be in a position to give the certifications required under this bill. But if, in fact, they are going to take the medically prudent steps to best protect the life and the health of that mother and to provide the best opportunity for that fetus, they are running the risk of facing criminal prosecution on felony

charges. The same goes on with a variety of other medical circumstances that include cystic fibrosis mothers dealing with ruptured uterine membranes, dealing with preeclampsia, a toxemia situation which can develop and which can only be cured through the delivery of that fetus, at whatever stage it may be in its current point of gestation. Speaking about the gestation issue, I think it is also important to note that the change which is contained in this bill to designate twenty-four weeks as the time after which abortions cannot occur may, in fact, create an interesting contradiction and actually result in exactly the opposite effect of what those who claim to be interested in protecting the life of this unborn child and the mother really want to have happen, for two reasons. First of all, medical technology has progressed now to the point where fetuses may well be viable earlier than the twenty-fourth week of gestation. I think that it is also understandable to appreciate that based upon differentiations in the development, the health of the fetus, the health of the woman, the medical care which has been available and which will be available, there are also circumstances where a fetus which, in the twenty-fourth week of gestation, may not be viable.

One of the other changes that is recommended by this amendment will be to eliminate the artificial use of a twenty-four week determination for viability and instead substitute those very words and to make the point at which abortions are no longer permissible except under enumerated circumstances, that point of viability for the fetus which seems to me to be eminently sensible and to really capture with the medical certainty that we ought to be trying to utilize the point at which we make the differentiation, not to simply use some artificial standard of twenty-four weeks.

The interesting contradiction that we may discover with respect to the constitutional issue here arises in this fashion. Senate Bill No. 369 eliminates the existing standards contained in Section 3210. If the proponents of this legislation prevail, and that section is repealed, the new language which is currently to be found, if not altered by my amendment, will establish standards which fly squarely and directly in conflict with existing constitutional law. I know, and it has been stated frequently on this floor tonight, one of the objectives of the proponents of this legislation is to again create a situation in which they develop a constitutional challenge to be waged before the United States Supreme Court. Well, what one had better never forget is that the courts of lesser jurisdiction, the District Court and the Federal Appeals Court, are required to apply the constitutional law as it currently exists as promulgated by the United States Supreme Court. Under that standard, these courts will be obligated to hold these new proposals unconstitutional, and the interesting situation which will then occur between the period when that declaration of unconstitutionality arises in a Federal District Court. The years before the issue will be determined in the Supreme Court, and the provisions of this bill having been declared unconstitutional, and the provisions of the current law having been repealed by this bill, mean that we will find ourselves in a situation in Pennsylvania where there is no restriction promul-

gated by this state where there are no regulations and no prohibitions with regard to the point in the gestation at which pregnancies may occur. All of the objectives which have been espoused here tonight by those who say that they support this legislation will, in fact, be cast aside for the years during which this constitutional challenge is going to take place. I point out that interesting circumstance because I think that it ought to cause some point for reflection, in addition to the lack of well-thought-out pursuit of the proposals contained in this bill. What we are looking at in terms of the abolition of Section 3210 and in the new language in Section 3211 is a circumstance under which the state is really trying to do a couple of things. The first is to dictate when viability is going to occur. The Supreme Court, going all the way back to 1979 in the *Colautti v. Franklin* case, has clearly declared unconstitutional the post-viability provisions of the 1974 Pennsylvania Abortion Control Act. That court held that viability is reached when, in the judgment of the attending physician on the particular facts of the case before him, there is a reasonable likelihood of the fetus sustaining survival outside of the womb with or without artificial support. Because this point may differ with each pregnancy, neither the Legislature nor the courts may proclaim one of the elements entering into gestation into the ascertainment of viability, be it weeks of gestation or fetal weight or any other single factor as the determinant of when the state has a compelling interest in the life or the health of the fetus. Viability, the court said, is the critical point. We have recognized no attempt to stretch the point of viability one way or the other.

Mr. President, that pronouncement by the court in that 1979 provision remains the law of the land in Pennsylvania and ought to make it as clear as anything can that the provisions now contained in the substitute Section 3211 are clearly and patently unconstitutional. I should point out that the conclusion in this *Colautti* case is the same that the Supreme Court had reached earlier in the case of *Planned Parenthood of Central Missouri and Danforth*. That was a 1975 case. So it is not one simple pronouncement standing alone or on its own.

With regard to the proposed Section 3211 requiring that the physician terminate the pregnancy in the manner which provides the best opportunity for the unborn child to survive let me point out this also runs directly in the face of both the *Thornburgh* and the *Colautti* decisions. As the Third Circuit said in its decision in *Thornburgh*, which the Supreme Court has affirmed, this is the language of the Third Circuit in that *Thornburgh* case: "In *Colautti v. Franklin* the Court held that the earlier Pennsylvania statute impermissibly required the doctor to 'make a trade-off between the woman's health and...fetal survival.' The new Pennsylvania statute, like the old, fails to require that maternal health be the paramount consideration." That is not only the law of the land, it is the most practical way to approach this entire difficult situation in which judgments that we can never anticipate here in this Body must be made by the woman, by her husband, by her attending medical practitioners. Mr. President, the law of the

land as it stands in Pennsylvania now with regard to viability and maternal health has been tested in the courts, it has been reaffirmed in the courts. If we have to have a legislatively prescribed standard, they make sense and the efforts now to not only restrict but to contract these maternal health rights are clearly unconstitutional. They clearly fly in the face of the discretion and decision which a woman and her physician need to have available to them in order to promote not only the best health interests of the woman but that of the fetus as well. For all of those reasons I would urge an affirmative vote on this amendment. Let me again point out that by adopting this amendment all we are doing is reaffirming the law of the Commonwealth as it now stands. We are not making any dramatic changes. We are saying that the new proposed language goes too far. It is inappropriate, and, rather, we would prefer to have stand the law as it exists now in this Commonwealth. I urge an affirmative vote.

Senator ROCKS. Mr. President, I will attempt to be brief, although I do believe in listening to my colleague from Bucks we have reached the point where we agree to disagree and that is, in this debate, an important point to finally reach. What the gentleman describes is the problem with the standard. I believe I heard him better clarify, at least by my hearing, toward the end of his lengthy description of his amendment, that the bill in front of us does away with judgmental viability as a concept and in its place we do have a twenty-four week standard. That is accurate.

What the gentleman describes from his perspective is the problem with the standard. Allow me, ever briefly, to describe the problem without the standard. Without the standard of this bill, we would reestablish what is commonly known as *Doe v. Bolton*, a standard for late-term abortions, and that would be any abortion which some doctor is willing to say is health-related. *Doe* defines health to include emotional well being as well as practical matter authorized abortion on demand. That would be throughout the entire nine months of pregnancy, right up to the moment prior to birth. This is a very major amendment. It would gut the post-twenty-four week prohibition at the heart of this bill. I would ask for its defeat. I listened carefully, as carefully as is possible at this hour, given the length of this debate, which I think we all have appreciated.

What the gentleman describes that he does not allow for is that it is clear there are five members of the present court who do not subscribe to the viability concept of *Roe* nor any other that he would describe, and would uphold the approach that is taken in this bill. Justice Rehnquist, speaking for himself, and Justice White and Justice Kennedy stated in *Webster*, the decision of 1989, Mr. President, that, "There is no doubt that our holding today will allow some governmental regulation of abortion that would have been prohibited under the language of cases such as *Colautti v. Franklin*..." both of which you cited.

Justice Scalia stated in *Webster* that he would expressly overrule *Roe v. Wade*. Justice O'Connor has stated on several occasions that the concept of viability as the determining

factor regarding the state's interest in protecting fetal life is purely arbitrary, and that there is no justification in law or logic for the trimester framework adopted in Roe. We would return to a standard with the adoption of this amendment that this state has long moved from, and given the heart and thrust of this bill that has been ever so carefully considered, and I believe debated, would remove from the bill the basic standard that is at the very heart of the legislation and the discussion that has taken place for many long months now in Pennsylvania. I would ask for the defeat of the amendment.

Senator LEWIS. Mr. President, I desire to interrogate the gentleman from Philadelphia, Senator Rocks.

The PRESIDENT. Will the gentleman from Philadelphia, Senator Rocks, permit himself to be interrogated?

Senator ROCKS. I will, Mr. President.

Senator LEWIS. Mr. President, I was trying to carefully listen to his comments and, if I heard him correctly, he indicated that there were five members of the court who did not believe in the viability standard. I heard him identify three. I do not know of the other two, and I would appreciate it if he could identify them for me.

Senator ROCKS. Mr. President, I identified Justice Rehnquist, Justice White, Justice Kennedy, Justice Scalia and Justice O'Connor as the five.

Senator LEWIS. I did not hear that previous identification of all five, Mr. President. I thank the gentleman.

We again find ourselves in a situation where the miscategorization of an amendment is intended, at least as I perceive it, to appeal to nothing more than the most basic emotional reactions imaginable. The gentleman suggested that if this amendment were adopted, we would return to a situation in this Commonwealth in which late term pregnancies were going to be available for abortion, and there would be no standards whatsoever with which to deal with late term abortion or pregnancies. That is just absolutely wrong. Nothing could be further from being accurate. All that this amendment does with respect to the twenty-four week standard is to eliminate that and substitute in its place the terminology of the viability of the fetus. It makes no other changes with regard to the permissibility of abortions at that late state of pregnancy and, in fact, maintains most of the remaining language to be found in this bill with regard to the prohibition of abortions after that stage of pregnancy. Nothing could be further from an accurate categorization than the suggestion that somehow or another this was going to make more abortions available at a later term in a pregnancy. In fact, I tried to make it clear that using the viability language would be in many instances a more restrictive standard than the twenty-four week artificial judgmental viability standard which is being proposed because there are situations in which fetuses are viable earlier than twenty-four weeks. We are not suggesting for a moment that we are going to open up an abortion factory opportunity in Pennsylvania. We are suggesting, instead, that we use a medically determinable period for viability rather than an artificial arbitrary legislative judgmental viability date of twenty-four weeks. I hope that is clearly understood.

Senator ROCKS. Mr. President, what I specifically do not understand is that while the description of the amendment continues to be given, I believe I have already stated a position that I believe very much to be accurate, and that is to take once again just the viability concept as the standard really does allow for the full nine-month period of a pregnancy to be considered as that when an abortion could be demanded. But I never hear what the amendment, at least in black and white in front of me, speaks to, and that is to preserve the life or health. That standard is dramatically different from what is proposed in the bill that is in front of us.

Senator AFFLERBACH. Mr. President, I think we are finally getting down to the nitty gritty of why this issue has remained with us as a critical issue for the better part of twenty years. I have been a student of abortion for twenty years. I certainly did not begin with the idea that I would become an advocate on the abortion issue on either side of that issue when I began a study of the issue because I found it to be one that was intriguingly lacking of scientific evidence. In fact, if one would read the Amici Curiae Brief that was filed by 167 distinguished scientists and physicians, including eleven Nobel laureates in the Webster case, one would find that, first of all, that brief was filed by these renowned scientists in their own words to preserve the integrity of science. Indeed, that is the issue we are discussing at this point, as the gentleman from Philadelphia, Senator Rocks, and the gentleman from Bucks, Senator Lewis, discuss the issue of viability. Perhaps I could quote just one or two short sentences from this brief, and one of those has to deal with consensus. I quote as follows: "The only 'consensus' that may be said to exist among scientists on the question of when a human life begins is that science alone cannot answer that question." Indeed, it is because science alone has been unable to answer that question, that the question remains muddled in the thoughts of our most renowned philosophers, religious leaders, moralists and ethicists. There is no consensus among these individuals either, because of the lack of sufficient scientific evidence. As a result, we in this Assembly are asked to choose one of these beliefs. Again, I will quote from Dr. Leon Rosenberg, former Chairman of the Department of Human Genetics of Yale University Medical School and a signatory to the Amici Curiae Brief. He states, "I have no quarrel with anyone's ideas on this matter so long as it is clearly understood that they are personal beliefs based on personal judgments and not scientific truths." That is the nut of this issue. There is a lack of consensus because there was a lack of scientific evidence. As this brief further discusses the issue of viability, which Senator Lewis and Senator Rocks have been debating, it points out very clearly—and I could quote at length, but I will simply summarize for you—these scientists have stated that there is no reason to believe that viability will exist before twenty-four weeks, not now and not in the foreseeable future. They point that out because of all the marvelous medical advances we have made that allow us to diagnose and to detect things, we still have not been able to make advances that permit more rapid development of critical human organs, such as lungs,

such as brains, such as kidneys, such as a pancreas, and that, in fact, these organs simply are not sufficiently developed prior to twenty-four weeks to be able to consider that fetus viable. Now whether one agrees with the twenty-four weeks or twenty-two weeks, or twenty-six weeks, is not the relevant point. The relevant point is that there is no scientific evidence to produce a scientific truth that viability can exist before approximately that period of time simply because we have not been able to learn how to accelerate the growth of critical organs.

The scientists go on to state that you can pump as much air with a respirator through the lungs as you wish, but the capillary system of the lungs simply is not sufficiently developed to take that air and transfuse it into oxygen in the blood, medical miracles to the contrary.

We have heard earlier that a number of our colleagues chose not to supply funding for certain critical social programs, critical to women and children, because they thought it was not germane to the issue. Yet, the very point that Senator Lewis addresses is a point that will clearly force this legislation, this bill, as it now stands, into court. These same colleagues who were not willing to discuss funding of the social services for women and children are quite content to spend the Commonwealth taxpayers' money to take a patently unconstitutional bill into court one more time for one more expenditure of funds. I find that somewhat contradictory and particularly because the money might as well be flushed down the drain.

The issue turns on personal belief. Believe what you will, but do not tell the women of this Commonwealth that you are going to select one of those conflicting beliefs and under pain of criminal law, force everyone to accept it. That is the issue we are looking at here, an issue of the separation of church and state, if you will, because these beliefs turn more on religion and philosophy than they do on science. I find it regrettable that at the very time we see the barbed wire and the concrete blocks of the Berlin Wall disappearing so that people can exercise freedom of thought and freedom of conscience, we in this Assembly are constructing figurative barbed wire and concrete blocks among the women of this Commonwealth to prevent them from exercising freedom of thought and freedom of conscience. I would strongly urge support of Senator Lewis' amendment which at least will meet the current constitutional guidelines and at least will provide for everyone to believe as they will on the issue of viability rather than enforcing a standard that is in conflict with many other beliefs on that issue.

Senator FUMO. Mr. President, I, too, rise to support the amendment. As I know this Chamber, as I think I do, and the Members of it, I know there are no doctors here. I know that there are very few, if any of us, trained in biology. I have a degree in biology, but I do not purport to be an expert. I even spent a year in medical school, and I do not think that I am anywhere near an expert.

Mr. President, who are we to determine arbitrarily with a number what is viable and what is not as viable in a fetus? We

do not know how to do that. Those judgments, in my opinion, are best left to physicians who have been trained to do that. Physicians, I might add, who we, as a Commonwealth, license. These are not just people who come on the scene and say, hey, I got the answer. I went to school. These are people who this Commonwealth goes through the trouble of licensing so that we protect the public from physicians or those people who purport to be physicians who do not know what they are doing. We have already given these people certain powers and they know far better than we what is a viable fetus, what is toxemia and all the diseases we have talked about tonight that I will venture to say that two weeks ago nobody in this Chamber ever heard of before, except maybe our two women Senators who have to live with some of those problems.

Mr. President, it is wrong for us to arbitrarily say that at the twenty-fourth week of gestation it is now a viable fetus. That is dead wrong. Also, in answer to the gentleman from Philadelphia, Senator Rocks, who told us of his intimate knowledge of the U.S. Supreme Court, I am advised that in the Webster case Justice Brennan, Justice Marshall, Justice Blackmun, Justice Stevens and Justice O'Connor voted to adhere to Roe. Only Justice Scalia, regrettably he was an Italo-American, voted to overturn Roe.

Mr. President, also, as I went through the roll call that Senator Rocks gave us, I noted an interesting pattern again, although it is flawed: Justice Rehnquist, appointed by President Nixon; Justice Scalia, appointed by President Reagan; Justice O'Connor, appointed by President Reagan; Justice Kennedy, appointed by President Reagan; and Justice White, regrettably appointed by President Kennedy. I think it is important that we place the blame where it is, and I think that those people who want to take credit should take credit. This is a Republican agenda, and to those people who stayed home and allowed us to elect the last President based on the Pledge of Allegiance and Willie Horton alone, this is what happens when you take your responsibility lightly.

And the question recurring,

Will the Senate agree to the amendment to House amendments?

The yeas and nays were required by Senator LEWIS and were as follows, viz:

YEAS—17

Afflerbach	Greenleaf	Jones	Reibman
Brightbill	Greenwood	Jubelirer	Tilghman
Corman	Hess	Lemmond	Williams
Fattah	Hopper	Lewis	Wilt
Fumo			

NAYS—33

Andrezeski	Holl	Pecora	Salvatore
Armstrong	Lincoln	Peterson	Scanlon
Baker	Loeper	Porterfield	Shaffer
Belan	Lynch	Punt	Shumaker
Bell	Madigan	Regoli	Stapleton
Bodack	Mellow	Rhoades	Stewart
Dawida	Musto	Rocks	Stout
Fisher	O'Pake	Ross	Wenger
Helfrick			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate concur in House amendments?

FUMO AMENDMENT II

Senator FUMO offered the following amendment No. A3640 to House amendments:

Amend Bill, page 1, by inserting between lines 12 and 13:

Section 1. Section 3202 of Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:

§ 3202. Legislative intent.

(e) Generally accepted medical practice.—Nothing in this chapter shall construe an early delivery as an abortion if generally accepted obstetrical practices are followed with regard to a viable fetus.

Amend Sec. 1, page 1, line 13, by striking out "1" and inserting: 2

Amend Sec. 1, page 1, lines 14 and 15, by striking out "OF THE PENNSYLVANIA CONSOLIDATES STATUTES"

Amend Sec. 2, page 2, line 24, by striking out "2" and inserting: 3

Amend Sec. 3, page 8, line 19, by striking out "3" and inserting: 4

Amend Sec. 4, page 10, line 16, by striking out "4" and inserting: 5

Amend Sec. 5, page 21, line 24, by striking out "5" and inserting: 6

Amend Sec. 6, page 22, line 5, by striking out "6" and inserting: 7

Amend Sec. 7, page 22, line 11, by striking out "7" and inserting: 8

Amend Sec. 8, page 22, line 16, by striking out "8" and inserting: 9

Amend Sec. 9, page 22, line 24, by striking out "9" and inserting: 10

On the question,

Will the Senate agree to the amendment to House amendments?

Senator FUMO. Mr. President, in our caucus we had a lengthy debate on many of the amendments, and during that process and during, quite frankly, my own preparation with my staff, I asked a lot of questions, as well. Some people in our caucus and others have said, well, that is not necessary because the bill says this. You do not need that amendment of the gentleman from Bucks, Senator Lewis, because that does not fit into the definition of abortion. You can have an early delivery and take the fetus out and that solves that problem. Mr. President, as we now look at this bill, in addition to the current Abortion Control Act, we find that we have tread upon very dangerous areas of obstetrical practice. This amendment goes to the general legislative intent section of the law and it is very clear. It says "Generally accepted medical practice." That is the title, and the wording is "Nothing in this chapter shall construe an early delivery as an abortion if generally accepted obstetrical practices are followed with regard to a viable fetus." In order to save time, I will anticipate the argument. We do not need that. We do not need that

at all. We are covered. I go back to the original definition of abortion which deals with any means—C-section, induced pregnancy—any means to terminate a pregnancy with knowledge that there may be a reasonable likelihood to cause the death of the unborn child. Now I look at this particular bill where it deals with abortion of an unborn child—and I kind of take issue with that terminology but I am not going to split hairs—of twenty-four or more weeks gestational age. It says that you cannot perform an abortion, which means you cannot interfere with the pregnancy, that is what an abortion is, you cannot do a C-section on that woman if you believe that the child may die—and we will call it a child—unless the mother is going to die or suffer substantially irreversible impairment of a major bodily function. Specifically, if the woman is going to commit suicide, we do not care about that. That is not death to the makers of this act. That is something that nobody understands. That is something that crazy woman did.

Mr. President, there are medical conditions and we have talked about them earlier today wherein an honest obstetrician cannot, under pain of felony in this particular bill, say that the woman is going to die, cannot say that the woman is going to suffer an irreversible serious damage to a major bodily function, and where the child, in normal medical terminology, may, in fact, die. So now that obstetrician has to put aside all of the things he learned in medical school, all of the things we license him for, has to put aside medical practices that are recognized throughout the world and say, I have to sit here and watch this woman suffer, maybe with toxemia, maybe with congestive heart failure, maybe with pneumonia, and why am I going to risk time in jail to make a decision to make an early delivery when some overly aggressive yahoo DA is going to say, that baby died, that is why you did it, you knew that baby was going to die. That is why you did the C-section. Somebody told me that C-sections were allowed in this stage. No, no, no more, gentlemen. That is why you did it. Now the doctors are in court trying to defend themselves against felony charges when all they did, and all I say I want them to do, is follow generally accepted obstetrical practices. We are saying, do not do that. Do what Stephen Freind, the obstetrician, tells you to do. Sit around and suffer. I submit to you, hopefully, some obstetricians will commit the felony and try to save both the life of the woman and the fetus, but I submit to you that there are people in this world more courageous than others, and some will not do that. I also submit to you that some of those obstetricians, rather than have to be torn to watch that suffering occur, would probably get out of the practice. Then I say to all the anti-choice people, where are you going to find a doctor to deliver your child that you want? You are not going to find him. Maybe then you will go to Virginia. They just said where they stand on this issue. Maybe you will go up to New York. Maybe you will go down to Washington, D.C., where all the Congressmen do what they have to do. You are not going to find an obstetrician in Pennsylvania. If you were worried about a woman having to travel fifty miles on the twenty-four hour issue, you are going

to travel a lot farther to find someone to take care of your wife and the baby.

Mr. President, this has nothing to do with abortion. All this does is reestablish generally accepted obstetrical practice so that those obstetricians out there who want to do nothing more than to bring children into this world, will not feel constrained to practice those things which we have licensed them to do.

And the question recurring,

Will the Senate agree to the amendment to House amendments?

The yeas and nays were required by Senator FUMO and were as follows, viz:

YEAS—18

Afflerbach	Fumo	Jones	Rejman
Baker	Greenleaf	Jubelirer	Tilghman
Brightbill	Greenwood	Lemmond	Williams
Corman	Hess	Lewis	Wilt
Fattah	Hopper		

NAYS—32

Andrezski	Holl	Pecora	Salvatore
Armstrong	Lincoln	Peterson	Scanlon
Belan	Loeper	Porterfield	Shaffer
Bell	Lynch	Punt	Shumaker
Bodack	Madigan	Regoli	Stapleton
Dawida	Mellow	Rhoades	Stewart
Fisher	Musto	Rocks	Stout
Helfrick	O'Pake	Ross	Wenger

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate concur in House amendments?

AMENDMENT OFFERED

Senator GREENWOOD offered the following amendment No. A3601 to House amendments:

Amend Title, page 1, line 7, by striking out "AND"

Amend Title, page 1, line 8, by removing the period after "incest" and inserting: ; and making an appropriation.

Amend Bill, page 22, by inserting between lines 23 and 24:

Section 9. The sum of \$2,000,000 is hereby appropriated to the Department of Public Welfare for family planning agencies to provide family planning services. No funds from this appropriation shall be used for the administrative purposes of the agencies administering family planning funding.

Amend Sec. 9, page 22, line 24, by striking out "9" and inserting: 10

Amend Sec. 9, page 22, line 28, by inserting after "INFORMATION": and section 9 of this amendatory act

On the question,

Will the Senate agree to the amendment to House amendments?

POINT OF ORDER

Senator DAWIDA. Mr. President, I rise to a point of order.

The PRESIDENT. The gentleman from Allegheny, Senator Dawida, will state it.

Senator DAWIDA. Mr. President, like a similar worthy amendment in its social content, the nexus of this particular amendment and the bill is very cloudy. I would suggest that this also is not germane, and I would ask the Chair to make a ruling on that.

The PRESIDENT. Senator Dawida raises a point of order that the amendment before us is not germane. The Chair finds that the point of order is well taken, that the amendment violates Rule XV of the Rules of the Senate and, therefore, would rule that the amendment is out of order.

RULING OF CHAIR APPEALED

Senator GREENWOOD. Mr. President, I would appeal the ruling of the Chair, and I would ask to speak on the amendment.

The PRESIDENT. Senator Greenwood appeals the ruling of the Chair. Let me again indicate to the Members of the Senate that an "aye" vote would sustain the ruling of the Chair. A "no" vote would overrule the ruling of the Chair, thereby allowing consideration of this amendment.

On the question,

Shall the ruling of the Chair be sustained?

Senator GREENWOOD. Mr. President, let me begin by saying this is, I believe, the last amendment of the evening. I was going to try to slip this in by saying it was agreed to, but apparently that would not work.

This amendment, for the benefit of the Members of the Senate, would appropriate the sum of \$2 million to the Department of Public Welfare for family planning agencies to provide family planning services. "No funds from this appropriation shall be used for the administrative purposes of the agencies administering family planning funding." I will argue, Mr. President, that this amendment certainly is germane and could not be more germane to the issue tonight. The Abortion Control Act before us is, I believe, the eighth Abortion Control Act that has come before the Senate in the last fifteen years. Despite the fact that this Abortion Control Act is going to pass tonight, abortions will still be legal in Pennsylvania. Women will still get pregnant. Teenagers will still get pregnant in Pennsylvania, and abortions will go on because unwanted pregnancies will go on because no vote in this Chamber is going to change human nature. In the United States of America there are 1.5 million abortions per year under Roe, and in Mexico, where abortion is illegal, there are 1.5 million abortions per year. If the purpose of this legislation is to prohibit abortions and to reduce the number of abortions and to stop abortions in Pennsylvania, then here is the one amendment that gives you the opportunity to really do that. The greatest cause of abortions is obviously unwanted pregnancy. The greatest cause of unwanted pregnancy is obviously the failure to provide the people of Pennsylvania, the children of Pennsylvania, the teenagers of Pennsylvania with the proper education and in many cases the proper counsel and the proper contraceptive information and devices that they need to prevent those unwanted pregnancies. This is the amendment that gives us the opportunity to do that. Nothing

could be more germane in a country that has the highest rate of abortion and the highest rate of teenage pregnancy in the industrialized world. If we really are sincere about wanting to stop abortions, then you ought to vote for this amendment, because this is the amendment that will really do it.

LEGISLATIVE LEAVES

Senator MELLOW. Mr. President, I request temporary Capitol leaves for Senator Lincoln and Senator Porterfield.

The PRESIDENT. Senator Mellow requests temporary Capitol leaves for Senator Lincoln and Senator Porterfield. The Chair hears no objection. Those leaves will be granted.

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT. The Chair recognizes the presence on the floor of Senator Ross and his legislative leave will be cancelled, also Senator Fumo whose temporary Capitol leave, for some inexplicable reason, was not cancelled. He has obviously been here.

And the question recurring,
Shall the ruling of the Chair be sustained?

Senator FUMO. Mr. President, I was not rising to tell you I was here, but I was rising to state that during the last time when we challenged your ruling on an appropriation bill on germaneness, the gentleman from Philadelphia, Senator Salvatore, was kind enough to put my mind at ease and tell me that he and the gentleman from Philadelphia, Senator Rocks, were going to offer that amendment in the form of a bill. I wonder if he could tell me if he and Senator Rocks intend to offer this amendment in the form of a bill as well, so that my mind may be put a little more at ease?

The PRESIDENT. Is that in the nature of an interrogation to Senator Salvatore?

Senator FUMO. Yes, Mr. President, I desire to interrogate the gentleman from Philadelphia, Senator Salvatore.

The PRESIDENT. Will the gentleman from Philadelphia, Senator Salvatore, permit himself to be interrogated?

Senator SALVATORE. I will, Mr. President. First of all, I think it is a very immoral thing, family planning. It breaks down the family life, and if you are going to teach kids to use contraceptives, that is a great thing. I could never sponsor a bill of that nature.

Senator FUMO. I guess he answered my question, Mr. President. I guess I am not surprised, either. Nothing could be more germane to this bill. You do not want to stop people from putting things in the oven, but yet you do not want to take them out, either. I do not know how you do this. This is really kind of inconsistent. Yes, maybe we do want to teach children how to use contraceptives. Maybe we do want to teach other people how to use contraceptive methods. I do not think that disrupts the family, Mr. President. I think if we would take our heads out of the sand and into the twentieth century, we may find a lot less need for abortions if we taught people, especially children in the beginning, how not to cause unwanted pregnancies in the first place.

Mr. President, I think that to sustain your ruling would continue the attitude this Chamber has set forth tonight and that is that pregnancy is a woman's problem. I wonder how many votes would change if men were able to become pregnant and if men had to do some of the things that this bill says women cannot do? Mr. President, I just am amazed at this, and I would hope that people would vote to overrule your ruling on this issue and let us get into the issue of family planning. You cannot have it both ways. Again, I say to people, if you think you are hiding behind a procedural vote, people out there understand this vote. I would ask you to overrule the Chair so we could have an in-depth discussion on the issue of family planning, something which I assume many people in this Chamber do not even want to get near.

Senator FATTAH. Mr. President, I would like to stand and support the comment from the gentleman from Philadelphia, Senator Fumo. It seems to me that as much as I try to keep up with this, we do not want the public to decide this issue. We do not want to provide nutritious support for children who are born, and now we do not want to support the issue of supporting contraception in terms of preventing unwanted pregnancies. I am not sure whether we are going down this road in a logical way, and so I would just ask that we vote. It is within our power to make this issue germane if we would just vote to change the ruling of the Chair so that we can do something to prevent unwanted pregnancy and then, hopefully, stop all of those abortions that will happen in the first twenty-four weeks. As for those who are pro-life, it would seem to me this would be a perfect vote for them to cast.

The PRESIDENT. The Chair would take the opportunity to point out that it has made no statement about the merit of the amendment, per se. The Chair feels that the ruling of the Chair is being largely misconstrued. The Chair is simply saying that it is an appropriation in a bill that changes the Crimes Code, and in that respect it is not appropriate and it is out of order.

Senator AFFLERBACH. Mr. President, when the roll is called on the appeal of the Chair's ruling and is determined, I am certain it will be with thirty-some of our Members voting to sustain the Chair. I will have mixed emotions about that outcome because, very clearly, I would like to see the amendment approved inasmuch as I believe there is a significant need for family planning funding. But, on the other hand, I will be gratified to see thirty and more of our Members finally say that family planning has no direct tie to abortion.

Senator DAWIDA. Mr. President, just in brief defense, I have in my eleven years always supported family planning money. I think it is a good idea and a good cause, and I even toyed with a similar amendment like this myself to point out the need for better birth control methods, but realized it was inappropriate to this particular piece of legislation, this appropriation. That is why I am against this and why I would like all of us to uphold your ruling.

The PRESIDENT. On the appeal of the ruling of the Chair, an "aye" vote sustains the ruling of the Chair, a "no" vote overrules the ruling of the Chair.

And the question recurring,
Shall the ruling of the Chair be sustained?

The yeas and nays were required by Senator GREENWOOD and were as follows, viz:

YEAS—31

Andrezeski	Lincoln	Peterson	Scanlon
Armstrong	Loeper	Porterfield	Shaffer
Belan	Lynch	Punt	Shumaker
Bell	Madigan	Regoli	Stapleton
Bodack	Mellow	Rhoades	Stewart
Dawida	Musto	Rocks	Stout
Fisher	O'Pake	Ross	Wenger
Helfrick	Pecora	Salvatore	

NAYS—19

Afflerbach	Fumo	Hopper	Reibman
Baker	Greenleaf	Jones	Tilghman
Brightbill	Greenwood	Jubelirer	Williams
Corman	Hess	Lemmond	Wilt
Fattah	Holl	Lewis	

A majority of the Senators having voted "aye," the question was determined in the affirmative.

The PRESIDENT. The ruling of the Chair is sustained.

And the question recurring,
Will the Senate concur in House amendments?

PARLIAMENTARY INQUIRY

Senator FUMO. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Philadelphia, Senator Fumo, will state it.

Senator FUMO. Mr. President, as the Chair has been so astute this evening in ruling on germaneness as it deals with appropriations in Criminal Codes bills, and as I received an education from the Chair on the Rules or lack thereof, I would like to refer the Chair to Senate Rule XIV, Section 16.(b) and would like to know how the Chair intends to rule on this. It says that "No bill which may require an expenditure of Commonwealth funds or funds of any political subdivision shall be given third consideration reading on the calendar until it has been referred to the Appropriations Committee, and a fiscal note has been attached thereto."

Mr. President, my staff has advised me that on the first go around, without having a chance—

The PRESIDENT. If the gentleman would let the Chair respond to his question, I would respond by telling him that this bill is well beyond third consideration in the parliamentary process. This Rule does not apply in this case because of the extraordinary circumstances.

Senator FUMO. Mr. President, could the Chair tell me what extraordinary circumstances we have that allow—

The PRESIDENT. This is a bill on concurrence in House amendments that have been placed in the Senate bill. This has come back to the Senate, and the Rules were suspended in order to offer amendments. We are well beyond third consideration. I think the gentleman knows that.

Senator FUMO. Mr. President, okay, so that what you are telling me for the future, then, is that when bills come back

from the House, and we move to suspend those Rules to amend, Section 16.(b) is no longer required even though it would require the expenditure of funds?

The PRESIDENT. That is correct.

Senator FUMO. Mr. President, so we have learned a new way to subvert the Rules, depending on who is in the Chair.

The PRESIDENT. I suspect that most of the Senators knew that already.

Senator FUMO. Thank you, Mr. President, for the enlightenment.

And the question recurring,
Will the Senate concur in House amendments?

Senator AFFLERBACH. Mr. President, I certainly am not going to restate any of the arguments that have already been made. I think they have been made on the subject. I will touch only upon one issue that has not been spoken to up until this time. That is the issue of the mentally ill. Language placed in this bill by the House of Representatives states very clearly on page 14, "No abortion shall be deemed authorized under this paragraph if performed on the basis of a claim or a diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible impairment of major bodily function." That one sentence clearly excludes from the ability to seek an abortion under extreme circumstances anyone suffering from mental illness. Forget that that individual is suffering from mental illness and may also have to be ingesting drugs to control that illness, drugs which can and have been known to affect fetal development because no one cared about that when this amendment was placed in the bill. I simply bring that to the attention of the Members so that they understand when these kinds of things begin happening in our society and that a mentally ill person will be forced to carry a fetus to term regardless of what drugs or other medication that individual may be ingesting, it is because we have passed this legislation requiring it.

Senator FUMO. Mr. President, briefly, on the motion made by the Majority Leader, tonight we said to the women of Pennsylvania a number of things. In fact, we said to the citizens of Pennsylvania a number of things. We said, for example, that those women who live farther than fifty miles away from an abortion clinic will have to go back. We said women must be forced to carry fetuses with fatal anomalies through to term, despite the anguish that creates. We said we are now going to act as God and say at the twenty-fourth week of gestation a fetus is a viable person, a human being. We said we no longer want obstetricians to practice those things which they have learned and which we have licensed them to do. We said we do not want to concern ourselves in this bill with such issues as family planning, which might allow people to get the knowledge and education to not create unwanted pregnancies in the first place. We said we do not want to address the issue of pregnant women, infants and young children and give them the nourishment they need, even though we do not want them to abort their fetuses. We have even said that government now has a place in the bedroom with regard to married women, that they have to tell their spouses what they have done, and

we have also said that the public is not bright enough to know what this issue is about.

Mr. President, I cannot vote for a bill that does that. I cannot vote for a bill that changes the current Abortion Control Act in such a fashion. I stand here as a—I guess if we are going to label people—pro-choice Senator, but I also stand here as a reasonable individual.

The amendments that were offered this evening were not unreasonable amendments. They were not issues created by the far left on this issue. They were common, decent amendments. But in our zeal to put this behind us, or at least in the zeal of some who think this will now be put behind them, we have batted down every amendment, reasonable or unreasonable, to get on with the business of the Commonwealth as we see fit. Mr. President, there is no issue that presses this Commonwealth more than this one. It has been said earlier, at a time when eastern bloc nations are expanding the civil rights of their citizens, we, in Pennsylvania, are restricting the rights of women.

Mr. President, I was asked by a reporter just the other day how I, as a Catholic, could have a pro-choice stand in light of what the Bishops have recently said. I will repeat here for the record what I told that reporter. I said that I, as a Catholic, may have certain religious beliefs and my church may also have those beliefs. I may be bound by my religion to listen to Bishops in what I do in my religion, but, Mr. President, I, as an elected official, was never empowered with the right to impose those religious beliefs upon those people who live in my district who do not share them.

Mr. President, this is an issue that is religious in many aspects. It is an issue that is philosophical and, yes, we have now crossed the bounds and made it an issue dealing with competent, adequate, healthy obstetrical care. I cannot vote to do what this General Assembly is now proposing to do and what the Majority Leader is asking me to do by concurring in these amendments. I think it is a shame and I think it is a national disgrace. I am going to ask again, only for formal natures, that we not do what the Majority Leader has asked us to do, but that we reject this abortion amendment that came to us from the House. If we are really concerned about the issues we say we are, then let us develop a reasonable Abortion Control Act of our own in this Senate and go forth and put something together not dictated by Mr. Freind in the House.

Senator BELL. Fellow Senators, the hour is late, none of you have had any dinner and it is 9:00 o'clock. I am going to be very brief. I do not know any pro-choice people who believe in killing babies. I do not know any pro-life people who believe that women should be pushed back to using coat hangers. We have been polarized, and I am now warning the Senate that this bill, which I am going to vote for because it is pro-life and I believe in it and I have voted pro-life for twenty years, I think this is the camel's nose in the tent. I think this is a forerunner, and I, again, listened to the House debates and I heard certain statements said there that were not said here tonight, that this is to provide a test case to knock the present

Supreme Court decision completely out. At that time there will be other legislation introduced. I am now going to say, on the basis of many more than eleven years in the Legislature—I think it is thirty-five years, or something like that—please get a message to the people of Pennsylvania that they should get involved in these questions. This involves every woman and a good many men, too, in Pennsylvania. This is not just an ordinary bill. This is something that is so basic. Every one of you feels toward your constituency the way I do. None of us is God. We are sent up here as representatives of a quarter of a million people apiece. But when you have maybe 200 or 300 or 400 or 500 communications, that does not represent a quarter of a million people. I tried to get around this by asking for a referendum. The Senate of Pennsylvania, by a majority vote, said no referendums. We do not have the right to go back to the people. The only alternate of that is that the folks back home watch this and do not be afraid to get involved. I do not know how my district is going to take my vote, but thank God I do not run next year. I can sweat this one out. I have sweated a few others out in my time, too. Again, is not the biggest failure here the fact that we have not heard from the overwhelming majority of the people in our respective districts? This is a very vital subject. I have taken too much of your time. Let us vote.

Senator LEWIS. Mr. President, on the passage of this bill, which is all but inevitable at this point, I think it will be claimed that Pennsylvania will have the most restrictive anti-women's legislation in America. In the fifteen years in which I have been a Member of this Body, never before have I been embarrassed to be associated with one of its actions, but I certainly will be this evening. Some people will leave here tonight cheering, but I think that a majority of the people across this state and across this nation are going to be shaking their heads in disbelief and raising their voices in scorn toward the action taken by this Legislature. Most importantly, I think the final chapters are yet to be written in this whole scenario. The widely-held opinion by the majority of people in this state, in this country, that the Legislature ought not to be involving itself in their most private and personal matters is ultimately going to be reflected in the power of the ballot. I think that the action taken here tonight is simply going to be a trigger for a reaction from people across this Commonwealth, the likes of which we have probably never seen before.

The PRESIDENT pro tempore. Mr. President, I have not spoken during this entire process, but I do have some things I would like to say. Although my vote has, with the exception of the first one, been on the losing side of all votes, I would like to say that—and even though I may not agree with what might be the final result—I believe the process has worked extraordinarily well. Even though there are some bruised feelings of Members who, perhaps, have not been on the prevailing side, as the gentleman from Bucks, Senator Lewis, the previous speaker, has perhaps best espoused, I think, nevertheless, Mr. President, that as America watches Pennsylvania, and as our constituents judge each and every one of us, I would like to make certain observations. I think this Senate

acquitted itself rather well. I am very proud of the way the Senate acted as a deliberative Body. It does not always act that way and sometimes debate can be stifled. Tonight it was not. I think the level of the debate was nothing short of excellent. I think those who had positions to set forth, set them forth very well. Very well in the future, as the previous speaker said, those positions may indeed be the majority positions in Pennsylvania, as they have been in other states. Tonight is not to be that night, and I as well as everybody else in this Body knew that before we came in. I do think the votes that have been cast here today have been very difficult. Certainly, as I cast votes, they are not easy votes to cast in many instances, and I cast my votes in the best interest, I thought, of my constituents as everybody did here as well. I think, Mr. President, that, again, as the previous speaker said, the issue is not going to leave us, I think the issue will be with us. But I think, nevertheless, as we have pretty much matched the time of the debate that the House has given to this issue, no one can say that the Senate of Pennsylvania shirked its duty. No one can say that this Body did not deliberate, did not debate, did not get involved, but rather, Mr. President, as I believe the result will be before us soon and as I believe that the issue will continue to be with us, I frankly believe that this Senate did its very best tonight. I am very proud of the manner in which this Senate performed.

Senator FATTAH. Mr. President, I will be brief. I think that the gentleman from Blair, Senator Jubelirer, is quite correct in indicating that the process worked well, but the end product is the issue at hand. The end product in this bill as we consider it now, and as we cast our final votes, and as many of us suspect it will pass this House, I believe we have come down on the wrong side of this issue, on the wrong side of history and on the wrong side of representing a legitimate interest of the people who have elected us and pay our salaries. I would hope as we would deliberate in this Body that not only would the process be good, but that we would try to arrive at a more perfect product, and to suspect that in this Legislature the House could develop a bill and not even disclose it until almost the last minute, pass it, send it over here and we could not find one word, one change, one bit of improvement on this issue. As we have indicated and the gentleman from Philadelphia, Senator Fumo, has gone through the litany and I will not, we ran the gamut of trying to point out what we think are some of the imperfections. We are going to suggest tonight by a majority vote there was no way this bill could have been improved upon. I think although the process might have been a correct one, the end product is an imperfect one, but we will be back on other days, I assume.

Senator GREENWOOD. Mr. President, I would like to begin with a thank you. I think all of you know the gentleman from Allegheny, Senator Dawida, and I started out with seventeen votes to begin this process. Senator Dawida and I asked you to give us the opportunity to air our views, to debate, to deliberate. We did not have to do that. We could have been out of here eight hours ago. We could have made the PHEAA dinner. We could have gone home, but instead

we had about five hours of, I think, very dignified, I think very civilized, I think very intelligent and very productive, in the long run, debate on this issue. I want to thank the nine Members of the Democratic caucus and the seventeen Members of the Republican caucus who supported giving us who wanted to debate this issue that opportunity. That is probably the last nice thing I have to say for the next minute because we have seen here the defeat of each and every amendment.

What we have seen is that, flying in the face of reason and in the law and in the Constitution and in the minimum standard of compassion and sensitivity, to the Majority it has been more important tonight to maintain the political lock-step of the pro-life party line. Although we had a lot to say tonight, we did not put our mark on this bill. We did not touch this bill. We voted tonight not to correct a technical amendment that everyone agrees needs to be corrected. We voted tonight to force a woman to carry a baby to term even if it is going to die. We voted tonight to deny the people of Pennsylvania the right to cast their votes on this difficult issue. We voted to intrude into the area of communication in marriage. We also refused to recognize a responsibility to children to provide them with basic nutrition. We voted against the opportunity to really stop abortions by providing family planning funds.

It is tempting for me to express my anger about the inevitable passage of this legislation, and I am tempted to speak to the Senate in loud and scolding tones, but I will not because, in truth, I am more saddened than I am angered. It is particularly American for our people to hold different beliefs about such a controversial issue. It is, in my opinion, particularly unAmerican to use the power of the state to enforce one belief system upon those who do not freely choose it. When government intrudes itself into a woman's womb, it is in a private place where it does not belong. Justice Blackmun said, "...few decisions are more basic to individual dignity and autonomy or more appropriate to that certain private sphere of individual liberty that the Constitution reserves from the intrusive reach of government than the right to make the uniquely personal, intimate and self-defining decision whether to end a pregnancy. It is that general principle, the moral fact that a person belongs to [herself] and not to others nor to society as whole...that is found in the Constitution."

Those who will vote for this bill do not occupy higher moral ground than those of us who will, with at least equal conviction vote "no." You are not more interested in protecting babies than we. I have spent most of my adult life protecting children. I have lived with retarded children. I have rescued children from abuse and neglect and devoted the largest part of my legislative work to the service of children. I was present at the birth of my own little girls. I know what a baby is and I know what a baby is not, and a fertilized egg is not a baby, and to say otherwise is to deny the incredibly complex magnificence of human life.

Eight years ago I served in the House Health and Welfare Committee, and we considered an earlier Abortion Control

Act. At that time an Episcopal Bishop testified before the House committee as we considered yet another one of Representative Freind's efforts to place his religious dogma into the Pennsylvania Crimes Code. He said, "The miracle of God's creation is inscrutable and will not be determined by a majority vote in the Pennsylvania House of Representatives." Nor will it be determined tonight by a majority vote in the Pennsylvania Senate. What will happen is one more time this Legislature and this Governor will step insensitively upon the rights of Pennsylvania's women. The debate may be over for tonight, but this will not be our last abortion vote. The gentleman from Delaware, Senator Bell, has reminded us that the anti-choice leadership will not be content until abortion is illegal for all women in all instances. Nor will we have the last word. The voters of Pennsylvania do not support this agenda. The voters of Pennsylvania oppose this invasion of their personal lives, and it is the voters of Pennsylvania who will have the last word.

Senator MELLOW. Mr. President, for the past five hours plus, we have heard a lot of good, meaningful debate, and for the months prior to the discussion that is taking place here on the floor, we have heard to a great extent the members of the news media portraying Pennsylvania as potentially the most restrictive state in the nation with regard to abortion and women's rights in dealing with abortion. Mr. President, the bill we are about to consider on final passage, I guess to a certain point could be considered restrictive with regard to abortion if, in fact, we view twenty-four weeks of pregnancy or six months of pregnancy, which would allow an individual who would like to have an abortion the opportunity to have the abortion. If that could be said to be restrictive, then I guess we are guilty this evening of considering a bill that is, in that regard, restrictive if we think that an individual who did not make up her mind to have the abortion in the first twenty-four weeks should, in fact, have it in the last trimester of that pregnancy.

Mr. President, there has been a lot said on the floor and I have, for the most part, refrained from involving myself in any of the debate. There has been a lot said on the floor about the things we are not doing and what we have not done here today for the people of Pennsylvania, including the previous speaker who just talked about nutrition for women and children. But not once during the entire debate, Mr. President, did I hear of any mention whatsoever of the 50,786 children who in 1988 were aborted. Not once did I hear on the floor of this Senate that life is very sacred and that we should protect the sanctity of life as public officials. Not once, Mr. President, did I hear on the floor of this Senate that perhaps there is another way and there is an alternative to abortion, and that is that very simple thing called adoption. I have heard people talk today about personal experiences and about the great deal of consideration that they have for children, social work and family life. Mr. President, I must confess to you today that I have two daughters myself. I have never had the opportunity of being able to say what most of you can say in this Chamber, both men and women, that I have been able to per-

sonally experience a natural childbirth. I can tell you one thing, Mr. President, that sleeping at home tonight on 920 Main Street, Peckville, is a 16-year-old by the name of Melissa and a 10-year-old by the name of Tressa. Both of those little girls have been in this Chamber, and I am sure that although the Members do not know them, they have seen them here during the summertime or during a swearing-in ceremony. But it is conceivably possible, Mr. President, that if Roe v. Wade had been enacted prior to the birth of Melissa, maybe Melissa would not be here today. Of course, Tressa, being 10 years old, very easily could not have been here if her biological mother decided to abort her. I do not know who the biological parents are of our two adopted children, but if I did know I would thank them from the bottom of my heart every day in the week because those people who gave birth to these two beautiful children have given both me and my wife the greatest gift that anyone could possibly have given to us. But not once in the discussion tonight that started at 3:45 p.m. this afternoon has one word been mentioned that, perhaps, as an alternative to abortion, people could consider adoption. Mr. President, I believe that the bill we are passing today is not a perfect piece of legislation. There really is not any legislation that we pass that is perfect, but I think this is about as perfect a piece of legislation that we could deal with this evening in addressing the very important, the very dividing and the very serious issue of abortion because I think, Mr. President, the work that has been done on the floor of the Senate today and the work that was done on the floor of the House of Representatives just several weeks ago truly represents what mid-stream and middle-class and middle Pennsylvania think should happen in this state with regard to abortion. I strongly support the proposal and ask for an affirmative vote.

And the question recurring,
Will the Senate concur in House amendments?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—33

Andrezeski	Holl	Pecora	Salvatore
Armstrong	Lincoln	Peterson	Scanlon
Baker	Loeper	Porterfield	Shaffer
Belan	Lynch	Punt	Shumaker
Bell	Madigan	Regoli	Stapleton
Bodack	Mellow	Rhoades	Stewart
Dawida	Musto	Rocks	Stout
Fisher	O'Pake	Ross	Wenger
Helfrick			

NAYS—17

Afflerbach	Greenleaf	Jones	Reibman
Brightbill	Greenwood	Jubelirer	Tilghman
Corman	Hess	Lemmond	Williams
Fattah	Hopper	Lewis	Wilt
Fumo			

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

REPORT OF COMMITTEE OF CONFERENCE

BILL LAID ON THE TABLE

SB 253 (Pr. No. 1566) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 12, 1973 (P. L. 397, No. 141), entitled "Teacher Certification Law," further providing for the commission; and providing for the reestablishment of the commission.

Upon motion of Senator LOEPER, and agreed to, the bill was laid on the table.

THIRD CONSIDERATION CALENDAR

BILLS OVER IN ORDER

SB 1067, 1164 and 1165 — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL ON THIRD CONSIDERATION AMENDED

SB 1166 (Pr. No. 1438) — The Senate proceeded to consideration of the bill, entitled:

An Act providing for the recording and reporting of certain laboratory tests; and imposing additional powers and duties on the Secretary of Health.

Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator PETERSON, by unanimous consent, offered the following amendment No. A3377:

Amend Sec. 5, page 2, line 8, by striking out "correlate" and inserting: collate

On the question,

Will the Senate agree to the amendment?-

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator PETERSON.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 1216 (Pr. No. 1500) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for the offense of possessing instruments of crime.

Considered the third time and agreed to,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Madigan	Ross
Andrezeski	Greenwood	Mellow	Salvatore
Armstrong	Helfrick	Musto	Scanlon
Baker	Hess	O'Pake	Shaffer
Belan	Holl	Pecora	Shumaker
Bell	Hopper	Peterson	Stapleton
Bodack	Jones	Porterfield	Stewart

Brightbill	Jubelirer	Punt	Stout
Corman	Lemmond	Regoli	Tilghman
Dawida	Lewis	Reibman	Wenger
Fattah	Lincoln	Rhoades	Williams
Fisher	Loeper	Rocks	Wilt
Fumo	Lynch		

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILL REREFERRED

SB 1262 (Pr. No. 1653) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of March 4, 1970 (P. L. 128, No. 49), entitled "An act granting to the Governor of the Commonwealth the sole authority for regulating the display of the flag of the United States from any public ground or building and from any ground or building of certain other institutions," further providing for display of the official POW/MIA flag.

Upon motion of Senator LOEPER, and agreed to, the bill was rereferred to the Committee on Appropriations.

SECOND CONSIDERATION CALENDAR

BILL REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER

SB 482 — Without objection, the bill was passed over in its order at the request of Senator LOEPER.

BILLS OVER IN ORDER

SB 183, 184, 185 and HB 202 — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL ON SECOND CONSIDERATION

HB 268 (Pr. No. 2659) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 30, 1967 (P. L. 658, No. 305), known as the "Business Improvement District Act of 1967," authorizing cities of the second class to finance services within business improvement districts.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILLS OVER IN ORDER

HB 455 and SB 594 — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL ON SECOND CONSIDERATION

HB 650 (Pr. No. 2686) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for the powers and duties of the commission; changing the penalties for certain violations; further providing for the powers and duties of waterway patrolmen and deputies; providing for additional violations; providing new fees for lakes; providing for reports by emergency room personnel;

providing for tagged fish contests on state boundary lakes; further providing for Class A lakes; and further providing penalties for the registration of powered watercraft.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILLS OVER IN ORDER

SB 731, 733, 741, 743, 744, 745, 746, 749, 750, 751, 752 and 753 — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL ON SECOND CONSIDERATION

SB 818 (Pr. No. 1629) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 3, 1959 (P. L. 1688, No. 621), entitled, as amended, "Housing Finance Agency Law," further providing for expiration.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILLS OVER IN ORDER

HB 837, 838, 839, SB 857, 858, 894, 932, 957 and HB 1038 — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILLS ON SECOND CONSIDERATION

SB 1046 (Pr. No. 1665) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for automatic retirement of judges and district justices.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

SB 1048 (Pr. No. 1220) — The Senate proceeded to consideration of the bill, entitled:

An Act repealing section 2.2 of the act of May 29, 1935 (P. L. 244, No. 102), entitled "Local Government Commission Law," relating to responsibility for printing.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILL OVER IN ORDER

SB 1063 — Without objection, the bill was passed over in its order at the request of Senator LOEPER.

BILL ON SECOND CONSIDERATION

SB 1070 (Pr. No. 1663) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of August 6, 1941 (P. L. 861, No. 323), entitled, as amended, "Pennsylvania Board of Probation and Parole Law," providing for the award of certain credits.

Considered the second time and agreed to,
Ordered, To be printed on the Calendar for third consideration.

BILLS OVER IN ORDER

SB 1133, 1273, 1291 and HB 1335 — Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL ON SECOND CONSIDERATION AMENDED

HB 1774 (Pr. No. 2501) — The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 21, 1943 (P. L. 571, No. 254), known as "The Fourth to Eighth Class County Assessment Law," further providing for appeals from assessments when there has been a countywide revision of assessments.

The bill was considered.

On the question,

Will the Senate agree to the bill on second consideration?

Senator PORTERFIELD offered the following amendment No. A3645 and, if agreed to, asked that the bill be considered for the second time:

Amend Title, page 1, line 22, by inserting after "assessment,"": prohibiting the use of a common level ratio multiplier in determining property value; and

Amend Bill, page 1, lines 26 and 27; page 2, line 1, by striking out all of said lines on said pages and inserting:

Section 1. The act of May 21, 1943 (P.L.571, No.254), known as The Fourth to Eighth Class County Assessment Law, is amended by adding a section to read:

Section 617.2. Use of Common Level Ratio Multiplier Prohibited.—(a) Notwithstanding any provision of this act or any other act, a county shall not use a common level ratio multiplier in determining the value of property.

(b) As used in this section, the term "common level ratio multiplier" shall mean a statistical multiplier developed by use of the common level ratio as determined by the State Tax Equalization Board in any given year and the base year assessments that exist.

Section 2. Sections 702 and 704 of the act

Amend Sec. 1 (Sec. 702), page 2, lines 6 through 13, by striking out "THE" in line 6, all of lines 7 through 12 and "(2) IF" in line 13 and inserting: and

Amend Sec. 1 (Sec. 704), page 2, lines 26 through 30; page 3, lines 1 through 3, by striking out "the" in line 26, all of lines 27 through 30, page 2, all of lines 1 and 2 and "(2) IF" in line 3, page 3 and inserting: and

Amend Sec. 2, page 3, line 12, by striking out "2" and inserting: 3

Amend Sec. 3, page 3, line 15, by striking out "3" and inserting: 4

On the question,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

Will the Senate agree to the bill on second consideration, as amended?

It was agreed to.

Ordered, To be printed on the Calendar for third consideration.

BILL ON SECOND CONSIDERATION

HB 1886 (Pr. No. 2419) — The Senate proceeded to consideration of the bill, entitled:

An Act authorizing the release of Project 70 restrictions imposed on certain lands owned by the Township of Lower Paxton, Dauphin County, being conveyed by the township, in return for the imposition of Project 70 restrictions on certain lands being conveyed to the township.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

UNFINISHED BUSINESS REPORTS FROM COMMITTEE

Senator GREENLEAF, from the Committee on Judiciary, reported the following bills:

SB 718 (Pr. No. 1706) (Amended)

An Act providing for community corrections programs as sentencing alternatives; conferring powers and duties on the Pennsylvania Commission on Crime and Delinquency; and making an appropriation.

SB 1068 (Pr. No. 1259)

An Act establishing a program of financial assistance to counties for the incarceration of certain offenders; providing for administration by the Pennsylvania Commission on Crime and Delinquency; providing for an audit of funds disbursed pursuant to such program; and making an appropriation.

SB 1072 (Pr. No. 1707) (Amended)

An Act amending the act of July 16, 1968 (P. L. 351, No. 173), entitled, as amended, "Prisoner Pre-release Plan Law," providing for an electronic surveillance program; and making editorial changes.

SB 1252 (Pr. No. 1548)

An Act amending the act of April 25, 1929 (P. L. 694, No. 297), entitled "An act providing for the payment monthly by the counties to the Department of Revenue of the expenses of keeping convicts in State penitentiaries," requiring Commonwealth per diem payments to counties for State prisoners housed in county correctional facilities.

SB 1333 (Pr. No. 1708) (Amended)

An Act directing the Department of Corrections to study the feasibility of using underutilized or nonutilized State-owned buildings to house nonviolent offenders; and making an appropriation.

SB 1340 (Pr. No. 1692)

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for consecutive sentences in certain aggravated assault cases and in cases involving assaults by prisoners.

HB 491 (Pr. No. 2735) (Amended)

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the commencement of certain prosecutions.

CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered and adopted:

Congratulations of the Senate were extended to George Rapp by Senator Regoli.

Congratulations of the Senate were extended to Mr. and Mrs. Floyd T. Boarts and to Mr. and Mrs. John K. Buffington by Senator Stapleton.

Congratulations of the Senate were extended to Stephen Snodgrass by Senator Wilt.

BILLS ON FIRST CONSIDERATION

Senator LINCOLN. Mr. President, I move the Senate do now proceed to consideration of all bills reported from committees for the first time at today's Session.

The motion was agreed to.

The bills were as follows:

SB 266, 709, 718, 848, 889, 895, 1068, 1072, 1252, 1307, 1324, 1332, 1333, 1340, HB 491 and 709.

And said bills having been considered for the first time,

Ordered, To be printed on the Calendar for second consideration.

COMMUNICATIONS FROM THE GOVERNOR

NOMINATION BY THE GOVERNOR REFERRED TO COMMITTEE

The PRESIDENT laid before the Senate the following communication in writing from His Excellency, the Governor of the Commonwealth, which was read as follows, and referred to the Committee on Rules and Executive Nominations:

MEMBER OF THE STATE BOARD OF OPTOMETRY

November 14, 1989.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Alan L. Butkovitz, Esquire, 1118 Unruh Avenue, Philadelphia 19111, Philadelphia County, Fourth Senatorial District, for appointment as a member of the State Board of Optometry, to serve until June 24, 1991, and until his successor is appointed and qualified, but not longer than six months beyond that period, vice L. Ansel Cooley, Centre Hall, resigned.

ROBERT P. CASEY.

RECALL COMMUNICATION REFERRED TO COMMITTEE

The PRESIDENT laid before the Senate the following communication in writing from His Excellency, the Governor of

the Commonwealth, which was read as follows, and referred to the Committee on Rules and Executive Nominations:

**RECORDER OF DEEDS, REGISTER OF WILLS
AND CLERK OF THE ORPHANS' COURT,
ARMSTRONG COUNTY**

November 14, 1989.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 7, 1989 for the appointment of Donna L. Livengood, 1239 Fourth Avenue, Ford City 16226, Armstrong County, Forty-first Senatorial District, as Recorder of Deeds, Register of Wills and Clerk of the Orphans' Court, in and for the County of Armstrong, to serve until the first Monday of January, 1990, vice The Honorable Henry Livengood, deceased.

I respectfully request the return to me of the official message of nomination on the premises.

ROBERT P. CASEY.

BILL SIGNED

The PRESIDENT (Lieutenant Governor Mark S. Singel) in the presence of the Senate signed the following bill:

SB 369.

ANNOUNCEMENTS BY THE SECRETARY

The following announcements were read by the Secretary of the Senate:

SENATE OF PENNSYLVANIA

COMMITTEE MEETINGS

WEDNESDAY, NOVEMBER 15, 1989

Off the	RULES AND EXECUTIVE	Rules Committee
Floor	NOMINATIONS (to consider	Conference Room
	Senate Bill No. 122)	

MONDAY, NOVEMBER 20, 1989

10:30 A.M.	ENVIRONMENTAL	Room 8E-A
	RESOURCES AND ENERGY	Hearing Room
	(to consider Senate Bill	East Wing
	No. 1219)	

1:00 P.M.	CONSUMER PROTECTION	Room 8E-B
	AND PROFESSIONAL	Hearing Room
	LICENSURE (Public	East Wing
	Hearing on House Bill	
	No. 243 Regulating the	
	practice of Opticianry and	
	Contact Lens Fitting)	

ADJOURNMENT

Senator LOEPER. Mr. President, I move the Senate do now adjourn until Wednesday, November 15, 1989, at 11:00 a.m., Eastern Standard Time.

The motion was agreed to.

The Senate adjourned at 9:35 p.m., Eastern Standard Time.