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## **In a failed attempt to erase the Partial-Birth Abortion Ban Act, Senators Daschle and Johnson voted to allow third-trimester abortions based on claims of emotional “health”**

WASHINGTON (March 14, 2003) – It has been widely reported that Senator Tom Daschle (D) and Senator Tim Johnson (D) voted on March 13 to pass the Partial-Birth Abortion Ban Act (S. 3), and that is true. But what has not been widely reported is this: Both senators first voted to erase the entire bill, and to replace it with a measure to allow abortions (including partial-birth abortions) *even in the final three months of pregnancy* based on abortionists’ claims that such abortions would preserve emotional “health.”

Both Daschle and Johnson voted in favor of a “substitute amendment” offered by Senator Dianne Feinstein, Democrat of California, who is a vehement opponent of the Partial-Birth Abortion Ban Act. A “substitute amendment” is really an alternative bill. If the Feinstein Substitute Amendment had been adopted, the entire bill to ban partial-birth abortions would have been erased and replaced with Feinstein’s bill.

The Feinstein Substitute was, as Feinstein herself said, “simple and straightforward.” (The text of the Feinstein Substitute appears at the end of this release.) The amendment allowed abortion, including partial-birth abortion, *without any restriction whatever* until the abortionist himself declares that a baby is “viable” – which means capable of surviving independently of the mother. Currently babies have a one-third chance of survival at 23 weeks gestational age, but many abortionists do not consider babies to be “viable” until much later, and the Feinstein Substitute permitted each abortionist to set his or her own standards for what constitutes “viability.”

That is bad enough, but there is more. Under the Feinstein Substitute, even after an abortionist declares a baby to be “viable,” he may perform an abortion (including a partial-birth abortion) if he asserts that the abortion would preserve the “health” of the mother. The Supreme Court has declared that in the abortion context, “health” includes “all factors – physical, emotional, psychological, familial and the woman’s age – relevant to the well-being of the patient.” (*Doe v. Bolton*, 1973)

During this week's debate, Senator Feinstein and Senator Hillary Clinton, Democrat of New York, openly defended the notion that third-trimester abortions should be available for "health" without limitation. As Clinton put it, "I believe that mental health is health."

**Because of its extreme nature, the Feinstein Substitute was rejected overwhelmingly, 60 to 35 (vote no. 49) – but Daschle and Johnson both voted for it. Both Daschle and Johnson also voted for an amendment offered by Senator Tom Harkin, Democrat of Iowa, that endorsed *Roe v. Wade*, the 1973 ruling that legalized abortion on demand; this amendment passed, 52-46.** It is anticipated that the Harkin Amendment will be removed from the bill in the House of Representatives.

Following those votes, the Senate passed the Partial-Birth Abortion Ban Act, 64-33, with both Senator Daschle and Senator Johnson voting with the majority.

Douglas Johnson, legislative director for the National Right to Life Committee (NRLC), said, **"Daschle and Johnson don't deserve much credit for voting to pass the ban on partial-birth abortions, because they first supported an unsuccessful effort to erase the bill and replace it with a measure to allow abortions in the seventh month and later for emotional 'health.'"**

Johnson said, "What Daschle and Johnson did was the legislative equivalent of the following scenario: You are walking down the street one night. You are attacked by two assailants wielding tire irons, who clearly intend your demise. You barely escape their clutches, reach your home one step ahead of your pursuers, and lock the door behind you. Later, you hear that those same two guys are boasting that they escorted you safely to your front door that night. Similarly, Daschle and Johnson tried to kill the bill to ban partial-birth abortions – but now they want credit for supporting it. They don't deserve it."

The Partial-Birth Abortion Ban Act (S. 3) legally defines a partial-birth abortion as any abortion in which the baby is delivered "past the navel . . . outside the body of the mother" before being killed. It is well documented that partial-birth abortions are performed by the thousands, mostly on healthy babies of healthy mothers in the fifth and sixth months of pregnancy, and sometimes even later. (See <http://www.nrlc.org/abortion/pba/index.html>)

**FEINSTEIN SUBSTITUTE AMENDMENT:** (a) **IN GENERAL.**--It shall be unlawful, in or affecting interstate or foreign commerce, knowingly to perform an abortion if, in the medical judgment of the attending physician, the fetus is viable. (b) **EXCEPTION.**--This section shall not apply if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life or health of the woman. (c) **CIVIL PENALTY.**--A physician who violated this section shall be subject to a civil penalty of not to exceed \$100,000. The civil penalty provided for by this subsection shall be the exclusive remedy for a violation of this section.