

Riley	Simpson	Tiabrt
Rivers	Sisisky	Tierney
Rodriguez	Skeen	Toomey
Roemer	Skelton	Towns
Rogan	Slaughter	Traficant
Rogers	Smith (MI)	Turner
Rohrabacher	Smith (NJ)	Udall (CO)
Ros-Lehtinen	Smith (TX)	Udall (NM)
Rothman	Smith (WA)	Upton
Roukema	Snyder	Velazquez
Roybal-Allard	Souder	Vento
Royce	Spence	Visclosky
Rush	Spratt	Vitter
Ryan (WI)	Stabenow	Walden
Ryun (KS)	Stark	Walsh
Sabo	Stearns	Wamp
Salmon	Stenholm	Waters
Sanchez	Strickland	Watkins
Sanders	Stump	Watt (NC)
Sandlin	Stupak	Watts (OK)
Sawyer	Sununu	Waxman
Saxton	Sweeney	Weiner
Schaffer	Talent	Weldon (FL)
Schakowsky	Tancredo	Weldon (PA)
Scott	Tanner	Weller
Sensenbrenner	Tauscher	Wexler
Serrano	Tauzin	Weygand
Sessions	Taylor (MS)	Whitfield
Shadegg	Taylor (NC)	Wicker
Shaw	Terry	Wilson
Shays	Thomas	Wolf
Sherman	Thompson (CA)	Woolsey
Sherwood	Thompson (MS)	Wynn
Shimkus	Thornberry	Young (AK)
Shows	Thune	Young (FL)
Shuster	Thurman	

NAYS—4

Chenoweth	Paul	
Coburn	Sanford	
NOT VOTING—9		
Becerra	Hooley	Scarborough
Boyd	Jefferson	Wise
Burton	Meeks (NY)	Wu

□ 1223

Mr. GREEN of Texas and Mr. STEARNS changed their vote from "nay" to "yea".

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

 UNBORN VICTIMS OF VIOLENCE
 ACT OF 1999

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 313 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 313

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2436) to amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with clause 3(b) of the rule XIII are waived. General debate shall be confined to the bill and shall not exceed two hours equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the

Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. No amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. LAHOOD). The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER); pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Yesterday, the Committee on Rules met and granted a structured rule for H.R. 2436, the Unborn Victims of Violence Act. The rule waives points of order against consideration of the bill for failure to comply with 3(b) of rule XIII, requiring the inclusion in the report of any record votes on a motion to report, or on any amendment to a bill reported from committee.

The rule provides 2 hours of general debate equally divided among the chairman and ranking minority Member of the Committee on Judiciary.

The rule makes in order the Committee on Judiciary amendment in the nature of a substitute now printed in the bill as an original bill for purposes of amendment, which shall be considered as read. The rule makes in order only those amendments printed in the Committee on Rules report accompanying this resolution.

The rule provides that amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in the report and shall be considered as read, shall be debatable for the time

specified in the report equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment, shall not be subject to the demand for a division of the question in the House or in the Committee of the Whole.

The rule permits the Chairman of the Committee of the Whole to postpone votes during consideration of the bill and to reduce voting time to 5 minutes on a postponed question if the vote follows a 15-minute vote.

Finally, the rule provides one motion to recommit with or without instructions.

This is a fair rule which will permit thorough discussion of all of the relevant issues. Indeed, after 2 hours of debate and consideration of the Democrat substitute amendment, we will be more than ready to vote on H.R. 2436. This is not a complex issue.

Mr. Speaker, on September 12, 1996 Gregory Robbins, an Air Force enlisted man wrapped his fist in a T-shirt and brutally beat his pregnant 18-year-old wife. Soon after, his young wife gave birth to a stillborn 8-month-old fetus.

To their surprise and disappointment, the Air Force prosecutors concluded that, although they could charge Gregory Robbins with simple assault, they could not charge him in the death of the couple's child. Why? Because Federal murder laws do not recognize the unborn.

□ 1230

A criminal can beat a pregnant woman in her stomach to kill the baby and the law ignores her pregnancy. This is wrong and it has to be stopped.

Fortunately, 24 States have adopted laws that protect pregnant women from assaults by abusive boyfriends and husbands, and now it is time for the Federal Government to do the same.

The Unborn Victims of Violence Act would make it a Federal crime to attack a pregnant woman in order to kill or injure her fetus. The bill would apply only in cases where the underlying assault is, in and of itself, a Federal crime, such as attacks by military personnel or attacks on Federal property.

This bill, introduced by my good friend, the gentleman from South Carolina (Mr. GRAHAM), should have the support of everyone in Congress, whether they are pro-life, such as myself, or pro-choice. We should all agree to protect young women from forced, cruel, and painful abortions.

All we have to do is ask the woman who just lost her child after a violent attack. It is not the same thing as a simple assault. Clearly, it is more serious and more emotionally jarring, and it should be treated accordingly.

Just a few months ago, in Charlotte, North Carolina, we had a man murder his pregnant wife in a child custody dispute. The incident would not have been covered by H.R. 2436, it would be covered by the State law, but it is a reminder that we are talking about a

real problem here that is increasingly happening more and more.

Mr. Speaker, I strongly urge my colleagues to support this rule and to support the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I thank my distinguished colleague, the gentlewoman from North Carolina (Mrs. MYRICK), for yielding me this time, and I yield myself such time as I may consume.

I strongly oppose the modified closed rule on H.R. 2436. On an issue as important as this, we should hear the voice of every Member of the House without the limitations imposed by the majority on the committee. During consideration of the rule yesterday, a motion was made for an open rule, but it was defeated.

Mr. Speaker, I rise in strong opposition to the underlying bill, the so-called Unborn Victims of Violence Act. This dangerous legislation would establish penalties for those who harm or terminate a pregnancy at any stage of development, either knowingly or unknowingly, while committing a Federal crime. This bill would create the first Federal law that recognizes a fertilized egg an independent victim of a crime and gives it the same legal right as people who are born.

The bill marks a major departure from existing Federal law and threatens to erode the foundations of the right to choose as recognized in the 1973 Roe versus Wade decision. Indeed, Mr. Speaker, should the Senate take up this bill, which is most unlikely, it will be vetoed.

Under H.R. 2436, the fetus has the same or more legal status as the pregnant woman. Recognizing the fetus as having the same legal rights independent of the pregnant woman makes it possible to use those rights against her. This bill would put the woman and the fetus in conflict and could place the health, worth, and dignity of women on a lower level.

The supporters suggest that they are advancing this bill in an effort to combat domestic violence. If that is true, it is at best an awkward and at worst a dangerous effort. If the supporters of this legislation are so interested in stopping violence against women, I stand ready to join them in a vigorous effort to bring to the floor the Violence Against Women Act and Violence Against Women Act II. Yesterday, at the Committee on Rules, I made such a motion, but it was defeated.

The supporters of the bill insist that H.R. 2436 has nothing to do with the abortion debate and was crafted to protect women against violence. Why then, one is left to wonder, was this bill referred not to the Subcommittee on Crime but, instead, to the Subcommittee on the Constitution of the Committee on the Judiciary?

It is the Constitution which provides the foundation for a woman's protection of her right to choose. And despite

what we hear to the contrary, this bill is the hammer striking a chisel against that foundation.

Are we sickened and outraged by attacks on pregnant women that cause harm or miscarriage? To the depths of our souls. Situations such as the one in Arkansas, where a husband hired three youths to beat his wife so she would miscarry, deserve the contempt of our society and the full measure of justice our legal system can muster. But this can be done by prosecuting a defendant for an assault on the woman, provisions that might be addressed in the Violence Against Women Act.

Members of the Committee on the Judiciary are working courageously to thwart this attack. My friends and colleagues, the gentlewoman from California (Ms. LOFGREN) and the gentleman from Michigan (Mr. CONYERS) will offer a substitute which makes it a Federal crime to assault a pregnant woman. If it is violence against women, including pregnant women, which we are trying to stop, then the Lofgren substitute is the only reasonable alternative before us today.

Otherwise, the underlying bill is nothing more than another scheme to advance the Christian Coalition and National Right to Life's agenda to destroy Roe versus Wade and, in fact, they boast as much on their net as to how they drafted the bill.

This measure aims to chip away at a woman's reproductive freedom under the guise of fighting crime. I will continue to fight the leadership's efforts to turn back the clock on women's rights and reproductive health.

Mr. Speaker, as I said before, the Department of Justice opposes this bill, and it will be vetoed.

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield 5 minutes to the gentleman from Tennessee (Mr. BRYANT).

Mr. BRYANT. Mr. Speaker, I thank the gentlewoman from North Carolina (Mrs. MYRICK) for yielding me this time.

Not to be repetitious, but I do want to emphasize what she said in her opening statement; that this is certainly a bill that, I believe regardless of whether we might be pro-choice or pro-life, we can support. Because what we are talking about here in the underlying bill, and certainly I support this rule that we are talking about right now, is a law that would protect not only the mother of the child but also that unborn child.

Just imagine, my colleagues, the horrible scene where a woman, who might be 4 or 5 months pregnant, is attacked by her husband, and who shot her five times as she sat in the car, killing both the mother and the unborn child in this particular instance. That gruesome scene actually happened to a woman in Charlotte, North Carolina. I think there has already been reference to her, but there are countless other stories with the same ending.

It is a sad commentary on our society when someone takes the life of a pregnant woman as well as her unborn child and does not face any type of retribution or punishment or even deterrent for taking the life of that unborn child. That is because under current laws this type of crime does not protect the life of the unborn child, even if the mother survives.

This bill is especially important for those women who suffer from domestic abuse and the amount of violence they endure despite carrying a child. This bill addresses those issues and protects the unborn child. The legislation holds these violent criminals liable for any injuries and harm forced upon the child during the incident involving a Federal crime committed against the mother.

Members of this Congress, this is a common-sense bill. This is a way to create a separate law to protect an unborn child from any physical harm or some act of violence which causes permanent damage or death. The bill would also follow the lead of so many States already who have adopted laws which give legal protection to those children. Criminal convictions in these States have been upheld, and none of these statutes have been found to be unconstitutional.

While looking at this particular bill, keep in mind that there are Federal statutes concerning the killing or injuring of endangered plants and animals. If this argument against this legislation is centered around the issue of viability of the fetus and whether a child would have the capability to live outside the womb, then we should look at this issue of endangered species. Do we consider the viability, in that case of a plant or animal? Or even in the case of an American eagle, do we consider the viability of that egg, or whatever it might be, under the endangered species, which itself, the endangered species law, provides a punishment of up to \$50,000. We have a criminal fine for the destruction of plants and animals, and we do not talk about viability there. Yet that will be a distinction that is made today when we are talking about an unborn child.

If I might say, the other unfortunate part of this issue that will be raised in opposition to the bill is that some might argue that it will be unconstitutional. As I said earlier, there have been a number of States who have passed similar bills where the constitutionality has not been overruled.

I even think about other issues in this Congress where, even as recently as 2 weeks ago, when we talked about campaign finance reform, the argument was made by some who opposed that, that it might be unconstitutional. I think we heard some of those same people say that that does not matter that we need to pass this bill and get campaign reform. I think we will hear today some of those same people say that this is not constitutional. So it is certainly an inconsistent argument on their part.

I would simply close by again urging my colleagues to put aside what might become the rhetoric of a pro-life, pro-choice vote, what might try to be cast as an abortion vote, and look at the realities of this and the absolute need at the Federal level to establish legislation, which, in addition to protecting a person from these types of violent crimes, also protects the unborn child in that person's womb. We need to add additional punishment for that, to have a separate offense for that; and, in that way, we might deter. And all criminal laws are designed to do just that, in addition to punishment. They are designed to deter that type of conduct which everybody in this House disagrees with and does not support.

So I urge all my colleagues to set aside the rhetoric of abortion and pro-life and pro-choice and do what is right in this instance.

Ms. SLAUGHTER. Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentlewoman from New York (Ms. SLAUGHTER) for yielding me this time, and I rise to say that I recognize the dilemma my colleagues on the other side of the aisle face. The dilemma is that Roe versus Wade is the law of the land.

No doubt, having listened to testimony yesterday in the reauthorization of the Violence Against Women Act, there is no lack of sympathy and understanding and empathy for the outrageous violence that occurs against women almost daily and, in fact, by the minute: violence against women in the workplace, sexual violence, and domestic violence. I am outraged, and I think all women have a great deal of empathy for the unchecked or unfettered violence that occurs even with the very unanimously supported legislation like the Violence Against Women Act.

But this particular legislation, Mr. Speaker, finds many of us at odds with the intent of the proponents. And it is not because we are not empathetic and sympathetic to the crisis and the tragedy that occurs when a pregnant woman is attacked, and not because we do not want to find relief, but because this bill, unfortunately, wants to be a side bar or a back-door response to some of our colleagues' opposition to Roe versus Wade.

This bill undermines a woman's right to choose by recognizing for the first time under Federal law that an embryo or fetus is a person, with rights separate and equal to that of a woman and worthy of legal protection. And the bill does not establish the time frame. The Supreme Court has held that fetuses are not persons within the meaning of the 14th Amendment. If enacted, H.R. 2436 will improperly inject debates about abortion into Federal and military criminal prosecutions across the country.

Now, the sponsors claim that this is a moderate crime bill that has nothing to do with abortion because it exempts from prosecution legal abortion, medical treatment, and the conduct of women. However, when pressed during the Committee on the Judiciary debate, the bill's proponents candidly admitted that their purpose is to recognize the existence of a separate legal person where none currently exists.

Their argument also goes against most of the forward thinking prosecutors in our Nation who have been able to find and substantiate claims of those who have assaulted women who happen to be pregnant and who have done the heinous and ugly attack of specifically attacking the pregnant woman in order to eliminate the life of the fetus.

□ 1245

So I would say to the Speaker, we are dithering around on this bill and I would hope that we did not even have to have this bill on the floor of the House. Because I, too, want to stop the violence against women and, by necessity, the violence against a pregnant woman. I, too, promote life and the sanctity of life in terms of the view of the importance of that pregnancy that that woman is carrying. But this is on dangerous ground.

Constituents of mine have written me to urge in opposition because this bill, which is quickly working its will through the House, said one constituent from Houston, will create a new separate criminal offense. It is an unprecedented attempt to grant the same legal status to all stages of the prenatal development as that of a woman. This is anything but a moderate bill.

By setting up the fetus as a separate legal entity, the sponsors of the bill are setting up the foundation to dismantle and undermine Roe versus Wade. This bill fails to address the very real need for strong Federal legislation to prevent and punish violent crimes against women, such as the hate crimes legislation, on which my colleagues will not even move, Mr. Speaker, because that has added gender to the provisions of hate crime.

I had one member of the Committee on the Judiciary say, why do we not want to do that? Would that not be something against the drunken husband who comes home and beats up the wife, he would be considered a hate crime proponent? All excuses not to pass the hate crimes. That letter, by the way, is by Ken Roberts of Houston, Texas.

The National Coalition Against Domestic Violence argues vigorously against this legislation. The Professional Association of Business Women, likewise, I think reasonable constituencies, who themselves understand when we are truly supporting legislation that is in opposition to the violence against women.

In conclusion, Mr. Speaker, let me simply say this is a bad bill. I wish it

was not here. Procedurally it is bad. But more importantly, it is attempting, through a back-door way, of undermining Roe versus Wade.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I would like to express my opposition to the rule of this bill, the "Unborn Victims of Crime Act." This rule closes all needed debate amongst the concerned members of this House and is a veiled attempt to move forward with the creation of a legal status for the unborn. While we would all like to protect pregnant women and the fetus from intentional harm by others, this bill seeks to create a legal status that will give anti-abortion advocates a back door to overturning current law. If the proponents are serious about protecting the fetus and the mother, they will support the Democratic substitute, which is not a blatant attack against Roe versus Wade.

Although I believe that the cosponsors of this bill may have had good intentions when it was introduced, the practical effect of this legislation would effectively overturn 25 years of law concerning the right of a woman to choose. I, too, abhor the results of a brutalized woman suffering the loss of her pregnancy—but let's fight this by fighting violence against women.

I sympathize with the mothers who have lost fetuses due to the intentional violent acts of others. Clearly in these situations, a person should receive enhanced penalties for endangering the life of a pregnant woman. In those cases where the woman is killed, the effect of this crime is a devastating loss that should also be punished as a crime against the pregnant woman.

However, any attempt to punish someone for the crime of harming or killing a fetus should not receive a penalty greater than the punishment or crime for harming or killing the mother. By enhancing the penalty for the loss of the pregnant woman, we acknowledge that within her was the potential for life. This can be done without creating a new category for unborn fetuses.

A new status of "human-ness" extended to the unborn fetus of a pregnant woman creates a situation of constitutional uneasiness. While the proponents of this bill claim that the bill would not punish women who choose to terminate their pregnancies, this bill will give anti-abortion advocates a powerful tool against women's choice.

The state courts that have expressed an opinion on this issue have done so with the caveat that while Roe protects a woman's constitutional right to choose, it does not protect a third party's destruction of a fetus.

This will create a slippery slope that will result in doctors being sued for performing abortions, especially if the procedure is controversial, such as partial birth abortion. Although this bill exempts abortion procedures as a crime against the fetus, the potential for increased civil liability is present.

Supporters of this bill should address the larger issue of domestic violence. For women who are the victims of violence by a husband or boyfriend, this bill does not address the abuse, but merely the result of that abuse.

If we are concerned about protecting a fetus from intentional harm such as bombs and other forms of violence, then we also need to be just as diligent in our support for women who are victimized by violence.

In the unfortunate cases of random violence, we need to strengthen some of our

other laws, such as real gun control and controlling the sale of explosives. These reforms are more effective in protecting life than this bill.

I urge my Colleagues to vote against the rule. We need an informed debate on this bill that would provide special status to unborn fetuses. A better alternative is to create a sentence enhancement for any intentional harm done to a pregnant woman. This bill is simply a clever way of creating a legal status to erode abortion rights.

TEXAS FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.,

Corpus Christi, TX, September 29, 1999.

Re H.R. 2436, the Unborn Victims of Violence Act.

Representative SHEILA JACKSON-LEE,
*Cannon House Office Building,
Washington, DC.*

DEAR REPRESENTATIVE LEE: As the legislation chair for the approximately 3000 members of BPW/Texas (The Texas Federation of Business and Professional Women's Clubs, Inc.), I am writing to you to urge you to oppose H.R. 2436, the "Unborn Victims of Violence Act." This bill which is quickly working its way through the House, would create a new separate criminal offense to punish anyone that injures or causes the death of a fetus during the commission of a federal crime.

H.R. 2436 is an unprecedented attempt to grant the same legal status to all stages of prenatal development as that of the woman. The bill is designed to chip away at the foundation of a woman's right to choose as set forth in *Roe v. Wade*.

Under this bill, someone could be prosecuted for harming a fetus, regardless of whether or not the same person is prosecuted for harming the mother. While we fully support efforts to punish acts of violence against women that injure or terminate a pregnancy, we believe that the sponsors of this legislation are not trying to protect women. Instead, we believe that the sponsors are seeking to advance their anti-choice agenda by altering federal law to elevate the fetus to an unprecedented status.

This is anything but a moderate bill. By setting up the fetus as a separate legal entity, the sponsors of this bill are setting up the foundation to dismantle *Roe v. Wade*. Our members support reproductive choice and this bill establishes the foundation to limit woman's reproductive choices. Furthermore, this bill fails to address the very real need for strong federal legislation to prevent and punish violent crimes against women.

We urge you to vote against H.R. 2436, the "Unborn Victims of Violence Act."

Sincerely,

ANNETTE DUVALL,
BPW/Texas Legislation Chair.

HOUSTON, TX.

Representative SHEILA JACKSON-LEE,
*Cannon House Office Building,
Washington, DC.*

DEAR REPRESENTATIVE JACKSON-LEE: I am writing to urge you to oppose H.R. 2436, the "Unborn Victims of Violence Act." This bill, which is quickly working its way through the House, would create a new, separate criminal offense to punish anyone that injures or causes the death of a fetus during the commission of a federal crime.

H.R. 2436 is an unprecedented attempt to grant the same legal status to all stages of prenatal development as that of the woman. Under this bill, someone could be prosecuted for harming a fetus, regardless of whether or not the same person is prosecuted for harm-

ing the mother. While I fully support efforts to punish acts of violence against women that injure or terminate a pregnancy, I believe that the sponsors of this legislation are not trying to protect women. Instead, I believe the sponsors are seeking to advance their anti-choice agenda by altering federal law to elevate the fetus to an unprecedented status.

This is anything but a moderate bill. By setting up the fetus as a separate legal entity, the sponsors of this bill are setting up the foundation to dismantle *Roe v. Wade*. Furthermore, this bill fails to address the very real need for strong federal legislation to prevent and punish violent crimes against women.

Sincerely,

KEN ROBERTS.

Mrs. MYRICK. Mr. Speaker, I yield 3 minutes to the gentleman from North Carolina (Mr. HAYES).

Mr. HAYES. Mr. Speaker, I thank my friend, colleague and neighbor from the Ninth District of North Carolina (Mrs. MYRICK), for yielding me the time.

Mr. Speaker, in all due respect to my friend and colleague from Texas, there is no dilemma here. There is no dilemma at all. We either care about children or we do not care about children. This bill is about additional protection for children.

Now, we are not talking about carrying pregnancies. We are not talking about fetuses. We are talking about a good rule that protects children. Born and unborn children merit and deserve protection.

The consensus is clear, life begins at conception. This rule and this bill are not about in any way *Roe v. Wade*. These are simply protections for mothers and children.

I support the rule. I support the bill. I want to help educate the Members of the House today about this piece of legislation. Confusion is being created about the issue at stake. What is at stake is prosecution for a criminal injuring a pregnant woman. The Unborn Victims of Violence Act will create stringent Federal penalties to protect mothers and children.

The law states that an unborn child who during the commission of a violent Federal crime suffers bodily injury or death is considered a victim apart and in addition to harm being done to the mother. It grants the same Federal protection to unborn children against violence that already exists for all Americans.

I am having a hard time believing the argument from the other side. They do not want to pass this bill because it designates the unborn child as a person. I want to ask them what do they want to happen to these criminals who knowingly abuse a pregnant woman and who know that by causing harm to the mother they will ultimately cause harm to the child? We cannot treat the child as a nonentity.

I would ask the mothers here in Congress on both sides of the aisle, can they accept that? This legislation supports many of our States who are passing similar legislation in their State legislatures.

In my home State of North Carolina it is a felony to injure a pregnant woman and cause her to undergo a miscarriage or stillbirth. Let us send a message to our State legislatures that we support prosecution of violent criminals. This legislation is common sense. Let us protect mothers. But most of all, let us protect our children, born and unborn, from harm.

Support the rule. Support the bill.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, I thank the gentlewoman from New York for yielding me the time.

Mr. Speaker, I have to say that I agree with the ostensible purpose of the bill that we will be considering today. If the idea is to have additional penalties when a woman is harmed who is carrying a child because that person is more vulnerable, because the harm to them is greater, I agree. That is why I am supporting the Lofgren substitute.

But let us be very honest here. There is a true purpose and, frankly, the sponsors of the legislation stated that true purpose in committee and that is to undermine *Roe versus Wade*.

The previous speaker articulately pointed out that we should be protecting children. Well, I am not sure he has actually had an opportunity to read who it is that we are protecting in this bill. We are protecting "a member in any stage of development who is carried in the womb."

But frankly, I would like to address my remarks to not those who have already a position on whether they believe *Roe versus Wade* should or should not be undermined. If they believe that there should be increased penalties for people who commit this type of crime to a woman, then they can vote for the Lofgren substitute. The Lofgren substitute, frankly, has the exact same penalty in total years as the base bill. If they want someone to go away for life, the Lofgren substitute will do that.

And the sponsors, frankly, agreed in questioning during markup that their objective was not that. I pointedly asked the sponsor, I said, listen, if they have the same exact crime and the penalty meted out by the courts is life in prison without the opportunity for parole in both cases, would they be satisfied with the Lofgren substitute? And the answer was no. Because the true intention is to establish this new subterfuge to undermine *Roe versus Wade*.

But for those of us in this House who want to ease prosecution, I would tell them definitely do not support the base bill, support the Lofgren substitute. Can my colleagues imagine any prosecutor in this Nation who is going to want the choice-of-life debate getting in the way of deliberations on a murder in an assault case, having that float over these debates? Well, that is what will happen if the base bill becomes law and not the Lofgren substitute.

For all of my colleagues who want to protect women, let us do it, let us really protect women. Let us try to strike a blow for the nearly one in three women in this country who are victims of domestic violence. We should pass laws that focus on that crime. The Lofgren substitute is one. Violence against women is one. The hate crimes bill is one. These are things that seek to strike a blow to protect women.

Let us do that. Let us reject this base bill. Support the common sense Lofgren substitute and support this rule which allows that to happen.

Mrs. MYRICK. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. SOUDER).

(Mr. SOUDER asked and was given permission to revise and extend his remarks.)

Mr. SOUDER. Mr. Speaker, I thank the gentlewoman from North Carolina for yielding me the time.

It is hard for me to understand the preciseness of this debate between the majority bill and the minority offering because we really do not have a disagreement about domestic violence and abuse of women. We should definitely be focusing on that in this Congress, and in fact we do on a number of bills.

In fact, there is no question we should be focusing on hate crimes, as we do frequently not only against kind of the traditional categories where we have had hate crimes in America and homosexuals and members of racial minorities, but also the religious persecution that we see occurring in a number of cases in this country; and legislation has been introduced in the other body relating to this.

I think we all need to speak out against all sorts of different types of crimes. But this is a very particular type of crime. It is not an appendix or a liver we are talking about here. We can argue whether we believe it is a human being, as I do, from the moment of conception or whether it is a developing human being. But it is, at the very minimum, a developing human being inside another person, which puts the mother more at risk; and this bill addresses that, but it also puts the developing human being, or the baby, as I believe, at tremendous risk.

In this body, we have not been consistent nor have we been in laws around the country consistent with how to handle this big dilemma. We talk about fetal alcohol syndrome and how babies are destroyed by mothers who become alcoholics and who are alcoholics or abuse alcohol during the time they are pregnant. We have multi-million-dollar media campaigns about fetal alcohol syndrome. We have portions of the population, subgroups who are devastated in many cases by this problem.

When we say that the mother when she drinks a bottle of alcohol has that compounded because of the weight of the baby and then turn around and say, oh, but that is not really anything to do with life afterwards, it is silly.

When we talk about crack babies and the problems when a parent abuses drugs while they have a baby, or developing baby, at the very minimum, inside their womb, we are acknowledging that there is a difference here that needs protection.

Part of this legislation arose because a courageous attorney general in South Carolina pursued this subject there regarding crack babies and whether there was an accountability for a second, at the very least, developing baby, but baby as I believe. It is not an appendix. Otherwise, if it was an appendix, we would not have to have its life thereafter outside the body affected by the behavior of the mother or the behavior, in this case, of others who would do damage outside to the mother.

Because it is not the question. It is part of the question of additional risks of the mother, but it is also the long-term either termination of life or damages to the developing baby or, as I believe, the human being inside the womb who can be affected because of the callousness, carelessness, meanness, aggressiveness of other people.

We are really, in fact, worrying about two different problems here simultaneously. One, the higher risk to the mother, and also to the developing and the little human being inside who will be forever impacted by the behavior of others.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. Mr. Speaker, I rise in strong opposition to the rule and to the underlying bill and in support of the Democratic Lofgren substitute. It sounds reasonable to punish someone for harming a pregnant woman. There are many things that we could do to protect women from violence, but it is quite clear that that is not the intent of this bill at all. This bill is not about protecting women. It is about granting legal status to a fetus and undermining Roe v. Wade.

I would like to put this vote in perspective. This is the 129th vote against choice since the beginning of the 104th Congress. I have documented each of these votes in a choice report, which is available on my Web site or by contacting my office.

Congress has acted again and again to eliminate a woman's right to choose procedure by procedure, restriction by restriction. And, unfortunately, in some cases they are succeeding. This time they found a brand new way of chipping away at a woman's right to choose.

Violence against women is a very real problem, a problem that needs action. But this bill is not about protecting women from violence. This bill is about advancing the political agenda of the anti-choice movement.

It is a tragedy when a pregnant woman is victimized and her pregnancy ends. No one could disagree with that. But why cannot my colleagues in this

Congress focus on preventing women from being victimized in the first place?

This bill, however, does not focus on the women victimized by violence. Instead, the legislation draws our attention away from the woman and focuses only on her pregnancy.

I intend to vote for the Lofgren substitute, which will establish additional punishments for assaulting a pregnant woman while committing a crime. Granting legal status to a fetus is not necessary to accomplish this goal. So I urge a "no" vote on the rule and on the bill and urge my colleagues on the other side of the aisle to do something that would actually help pregnant women. If we want to help pregnant women, let us ensure direct access to OB-GYNs, let us fund the WIC program, let us support and strengthen the Pregnancy Discrimination Act or enact a folic acid campaign.

If we want to help pregnant women, let us ensure comprehensive prenatal care for all pregnant women. If we want to help pregnant women, let us make sure every pregnancy is a wanted pregnancy by supplying a full range of contraceptive options for women. We could also strengthen the day-care system. This does not help. And we can pass the Violence Against Women Act. Please vote no.

□ 1300

Mrs. MYRICK. Mr. Speaker, I yield myself such time as I may consume.

Roe versus Wade does give a woman the right to have an abortion. This bill does not change that right at all. But this bill does protect women from forced abortions. That is all we are trying to do here.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mrs. MYRICK). Pursuant to House Resolution 313 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2436.

□ 1302

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2436) to amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Florida (Mr. CANADY) and the gentlewoman from California (Ms. LOFGREN) each will control 60 minutes.

The Chair recognizes the gentleman from Florida (Mr. CANADY).

Mr. CANADY of Florida. Mr. Chairman, I yield 8 minutes to the gentleman from South Carolina (Mr. GRAHAM), the sponsor of this legislation.

Mr. GRAHAM. Mr. Chairman, I thank the gentleman for yielding me this time.

This is an important debate. It is going to be an emotional debate. All I ask is that the Members look long and hard at what the statute does, not what people are trying to claim it does but actually read it. Take some time to read it, to think about it. If Members have any questions, I will be glad to try and answer them the best I can.

Let us start with an example of what the intent and purpose of this bill is trying to do. We will start with an Arkansas case that happened about a month or two ago. The case involved a man who had a girlfriend, a former girlfriend, and he tried to persuade her to have an abortion and she said no, I do not want to have an abortion, and she decided to carry the child to term. This person, this man, did not want to be responsible for this child, so when she was in her ninth month in Arkansas, he allegedly hired three people to go and beat her and kill her baby, with the express purpose of beating her to the point that she would lose her child.

Well, they did that. Allegedly they grabbed this woman, took her away and beat her. She was on the floor begging for her baby's life. She was not saying, "Don't terminate my pregnancy, please don't kill my baby." And the allegation goes that one of the assailants said, "You don't get it, bitch. Your baby dies tonight."

There was a CNN program yesterday where the woman was interviewed and she was talking about how she could hear the heartbeat fade away and how that affected her. This was a seven-pound baby girl. This cries out not just for some action, it cries out for severe punishment. What they are allowed to do in Arkansas, they can now charge these three people and the man involved who hired them with the crime of murder, because 6 weeks before this event, Arkansas passed a law making it a separate offense for a criminal to cause the death or injury of an unborn child. And because of that law, these three thugs and the man that hired them are facing capital murder charges, not just an additional penalty for assaulting the woman.

This is not just a loss to the woman. She was not begging, "Don't lose something for me," she was begging, "Don't take my baby away," something she understood to be separate and apart from her. Without that law, the three

people that were hired to beat her and cause her to lose her child would never have been prosecuted for what they intended to do, which was to kill the baby.

Now, what are we trying to do in this statute? We are trying to do what 24 States have already done in some fashion. Federal law is silent on this question. This bill only applies to Federal statutes that already exist. In this bill, if a woman is covered by a Federal statute and happens to be pregnant and she is assaulted and her baby is injured or killed, under this statute the Federal prosecutor can bring an additional charge, that being the loss or the injury to the child in addition to the assault to the mother. It does not change any State law, it only applies where Federal law already is in existence by adding an additional charge like States do, recognizing the entity, the child, the unborn child, being a separate victim. That is the scope. That is the purpose.

California has had a similar statute since 1970. There are a lot of statutes throughout our States that deal with this issue in varying ways. One thing this bill does, it allows the prosecution to occur at the moment the embryo is attached to the womb like 11 States. There is no requirement for viability to be had before the criminal can be prosecuted. Many States take that tack. Missouri is one of them. Their statute has been upheld by the Supreme Court as being constitutional because it did not infringe on Roe versus Wade rights, it only applied to third-party criminals who assault pregnant women and destroy the unborn child, recognizing that they could be prosecuted.

This statute is legally sound, and I think it brings Americans together in this fashion: When the term "abortion" is brought up, we divide as a country. That is not going to change any time soon. There is a genuine debate and heartfelt views about that. But I believe most Americans in the Arkansas case would want the criminals prosecuted for killing that baby. I think most Americans would want the person who shot the woman five times with a baby inside of her, her child, to be prosecuted for the two events, assaulting the woman and killing the child. I think, regardless of pro-life or pro-choice feelings, that most Americans want to protect the unborn from violence against criminals, and when a woman chooses to have her child, a criminal should not take that away from her. It is not just a loss from sentencing enhancement, it is the taking away of a life.

If Members have got any doubt about Federal law and the unborn, I am going to read something to them. I hope every Member of Congress will sit down and think for a moment. The implementation of the death penalty at the Federal level is covered by section 3596. It talks about how the death penalty is imposed at the Federal level and under what manner it can be imposed, but it

has a section. Listen to this. Section 3596, Federal law, section B, Pregnant Women. "A sentence of death shall not be carried out upon a woman while she is pregnant." Why? Why do we not execute women while they are pregnant if it is just a mere loss to the woman? She is going to lose her life, why not just go ahead and do it? Federal law understands that we are not going to kill an unborn child because of the crimes of her mother.

I would suggest to Members that 99.9 percent of Americans agree with that concept, and if you tried to execute a woman who was pregnant, there would be a hue and cry throughout this Nation like you have not seen or heard ever before. What I am trying to do in this bill is fill a gap in the Federal law and say this: If the State cannot kill the unborn child for the crimes of the mother, a criminal who destroys or injures an unborn child should be prosecuted to the fullest extent of the law because it is more than a loss to the woman. That is all I am saying.

Roe versus Wade clearly says that when it comes to the woman choosing about her pregnancy, that is her decision in the first trimester. This bill expressly exempts consensual abortions because it is the law of the land, that that is the right of the woman to choose as to her own body. This bill does not allow a prosecution of the woman if she takes drugs or does damage to her own baby. I did not go down that road. The woman under no circumstances can be prosecuted, nor can medical personnel. All I am saying is if a pregnant woman is assaulted where Federal jurisdiction exists already and her baby is destroyed or injured, the criminal is going to pay a separate debt to society.

So if one of your constituents comes to Capitol Hill and visits you and while up here, unimaginable things happen, terrible things happen, they are assaulted and they happen to be pregnant and lose their child, because this is an exclusive Federal jurisdiction area, this statute would kick in to allow a prosecution of that criminal who took their baby away from them when they chose to have it.

I hope that rationality will prevail and that Members will actually read the statute. We are going to divide the pro-choice and pro-abortion people today, because abortion has taken a fervor among some Members that they have lost the view of what is right, fair and common sense. Let us bring ourselves together and do some good.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume. I oppose this bill, and I would urge my colleagues in the House, who believe that Roe versus Wade should be upheld and honored because it protects the reproductive choice of women in America, to vote against this bill.

I will offer later today a substitute to the underlying bill that will accomplish what the author of this bill says he wants to do. Obviously, I believe

that it is wrong to assault women. If the assault causes a miscarriage, that is a grievous harm and deserves to be punished. What the underlying bill does, however, is to create an unprecedented right for the fetus that is not permissible under *Roe versus Wade*. Indeed, it flies in the face of Roe's holding. More than that, as one speaker during the discussion of the rule pointed out, should this bill ever become law, it will be almost impossible for a prosecutor to actually use this bill in any effort to go after someone who might engage in the unbelievably odious behavior contemplated by the bill, namely, assaulting a woman and causing her to miscarry.

I want my colleagues to understand the obvious, that those of us who oppose the underlying bill do not condone violence against women. To the contrary, the ranking member the gentleman from Michigan (Mr. CONYERS) asked permission of the Committee on Rules to offer a reauthorization of the Violence Against Women Act and was denied that request.

I regret in so many ways that we are once again here divided on the issue of reproductive choice in America. I believe very strongly that it is the woman who should make this decision about whether or not to have a family, and not the U.S. Congress.

I recognize that there are people on the other side of this issue who have enormously strong religious beliefs that Congress should make that decision and outlaw reproductive choice.

What bothers me, and what I think is really very sad, is that we would bring this dispute about reproductive choice that is so heartfelt into this issue of violence against women. It is unnecessary to do so, and I am hopeful that as Members listen to the debate today, they can take a look at the substitute that the Ranking Member and I will offer so that we can come together for once—instead of continuing to divide over this very emotional issue. I look forward to outlining in some detail at a later time in this debate the substitute that I will offer.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT), a member of the Committee on the Judiciary.

Mr. CHABOT. Mr. Chairman, I thank the gentleman for yielding me this time.

What we are talking about here should not be controversial. This legislation is long overdue, a Federal law that simply holds violent criminals liable for conduct that injures or kills an unborn child.

I would like to cite one particularly disturbing example of a homicide of an unborn child that occurred in my hometown of Cincinnati back in 1997. On the day before Thanksgiving, 1997, in a classic case of road rage, a woman forced the car of Rene Andrews that

she was driving off the road and into a parked truck. Mrs. Andrews was seriously injured, and tragically the baby she was carrying died as a result of that accident. Mrs. Andrews has never recovered fully from the crash. The simple explanation offered by the perpetrator of this heinous act was that Mrs. Andrews had allegedly cut off the woman in traffic.

□ 1315

Just 2 months earlier, at Wright-Patterson Air Force Base an airman assaulted his wife who was 8 months pregnant with her daughter, Jasmine. He covered his fist with a tee shirt and beat her in the face and abdomen. As a result of this beating, the woman's uterus ruptured and expelled Jasmine into her abdominal cavity. Baby Jasmine died before taking her first breath outside the womb.

Both of these cases are tragic, Mr. Chairman, but they have another important factor in common. Both deaths were successfully prosecuted under Ohio's unborn victims law. The Cincinnati woman was convicted of aggravated vehicular homicide, and the man was convicted of involuntary manslaughter for the death of his child. I am proud that my home State of Ohio recognizes the aggravated death of an unborn child as a crime separate and apart from the one committed against the mother.

Mr. Chairman, it is time for Congress to do the same, and I want to thank very much personally all those who have brought this to the attention of Congress, and I would urge passage of this very important legislation.

Ms. LOFGREN. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS), the ranking member.

Mr. CONYERS. Mr. Chairman, I am delighted to be here today, and I compliment the authors of the bill and the leadership on the Committee on the Judiciary on the Republican side for their calm and deliberate temperaments, their civil attitudes, but we have here a problem that the New York Times has pointed out is a very important part of the abortion bill debate. We are now going to make a criminal act out of nonconsensual termination of a pregnancy even if the person that terminates the pregnancy did not even know that the woman was pregnant. This will be the first criminal law in which intent will be irrelevant. It will be murder, Mr. Chairman, but they did not know they were committing murder.

So I, as a crime fighter myself, am reluctant to oppose the Unborn Victims of Violence Act, but it is another abortion bill that is being sold to us as an important criminal law in the making. On its face, the bill appears to be a tool for protecting pregnant women from assault and the nonconsensual termination of pregnancy, but on closer examination, we are chipping away at *Roe versus Wade*, another stage is

being set for an assault on Roe versus Wade. How? By treating the fetus and all other stages of gestational development, Mr. Chairman, as a person with rights and interests distinct from the mother.

That is why I recommend to my colleagues the Lofgren-Conyers substitute that will come shortly afterward, and I thank the Committee on Rules for granting it.

So this bill raises profound constitutional issues in that it implicates a foundational premise of *Roe v. Wade*. This bill identifies a fetus as a separate and distinct victim of crime which is unprecedented as a matter of Federal statute and plunges the Federal Government into the most difficult and complex issues of religious matters, of scientific consideration, and into the midst of how a variety of State approaches already exist in handling the matter. So there simply can be no argument by anyone that a pregnant woman and her fetus should be protected from criminal attack through aggressive use of our criminal laws, and that is what we propose.

So let us admit it, Republican members and supporters of the bill. Let us confess that we are taking another little few baby steps forward to eat away at the fundamental premises of *Roe versus Wade*; and if that is the case, then this bill does not deserve to be called an exercise of our criminal jurisdiction in the Committee on the Judiciary.

I rise in opposition to H.R. 2436, the Unborn Victims of Violence Act. This bill attempts to cloak yet another abortion bill as a legitimate exercise of our Federal criminal jurisdiction.

On its face, this bill appears to be a tool for protecting pregnant women from assault and the non-consensual termination of a pregnancy. On closer examination, however, the bill sets the stage for an assault on *Roe versus Wade* through the legislative process by treating the fetus, and all other stages of gestational development, as a person, with rights and interests distinct from the mother.

This bill raises profound constitutional issues in that it implicates a foundational premise of *Roe versus Wade*. H.R. 2436's identification of a fetus as a separate and distinct victim of crime is unprecedented as a matter of federal statute and plunges the federal government into one of the most—if not the most—difficult and complex issues of religious and scientific consideration and into the midst of a variety of State approaches to handling these issues.

There simply can be no argument by anyone that a pregnant women and her fetus should be protected from criminal attack through the aggressive use of our criminal laws. For that reason, a majority of states have statutes or court decisions that allow criminal prosecution and sentencing enhancement for causing death or injury to a developing pregnancy.

However, despite the fact that a fetus cannot be injured without inflicting harm to the mother, this bill ignores the interests of the pregnant women. H.R. 2436 switches our attention from an overt attack on a women to

the impact of the crime on the pregnancy—diverting attention from the issue of domestic violence. The vast majority of attacks on women that harm pregnancies arise in the context of domestic violence, as the majority has supplied in amply reference.

If the majority were truly concerned about protecting pregnant women and preventing harm to developing pregnancies, they would reauthorize the Violence Against Women Act of 1994 ("VAWA"), or mark up the "Violence Against Women Act of 1999" (H.R. 357) which expands protections for women against callous acts of violence regardless of their pregnancy status.

Recognizing the fetus as an entity with legal rights independent of the pregnant woman makes it possible to create future fetal rights that could be used against the pregnant woman.

This is not some idle fear. We already seen some of these measures introduced at the state level. If this trend continues, pregnant women would live in constant fear that any accident or "error" in judgment could be deemed "unacceptable" and become the basis for a criminal prosecution by the state or a civil suit by a disenchanted husband or relative.

Perhaps the most foreboding aspect of allowing increased state involvement in pregnant women's lives in the name of the fetus is that the state may impose direct injunctive regulation of women's actions. Absent an increased awareness of the costs to women's autonomy, these intrusive fetal rights provisions will almost certainly continue to expand.

This bill stands as yet another transparent attempt to score points in the perennial abortion debate. If you care about protecting a fetus, you must care about protecting the mother. This bill does not enhance the welfare of mothers; it creates a climate of intrusive government intervention on their bodies and their reproductive choice.

We should vote no and stop wasting time on regressive, rhetorical measures like H.R. 2436. Rather than seeking to score points, we invite the majority to join us in crafting legislation that protects woman and mothers from violence that threatens all those under their care.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana (Mr. VITTER), a member of the Committee on the Judiciary.

Mr. VITTER. Mr. Chairman, today I rise in strong support for the Unborn Victims of Violence Act of 1999 and to commend my friend and colleague from South Carolina for introducing this important legislation. This legislation, Mr. Chairman, is simply designed to narrow the gap in the law by providing that an individual who injures or kills an unborn child during the commission of federal crimes of violence will be guilty of a separate offense.

Now my friends on the other side of the aisle raise a couple of arguments; number one, that there are constitutional problems with this. Clearly this is not the case. This is virtually proven by the fact that there are numerous State laws in this regard, none of which have been seriously challenged or struck down, and they also suggest that this somehow impacts abortion

rights. Clearly that is not the case. This does not, in fact, impact any current abortion rights.

So these opponents do not make valid points on either of these two issues. I think in trying to, they only underscore, in my view, their own extremist position on the issue because the bottom line in this legislation is about combating violence against pregnant women, violence against the unborn, and it is about holding violent criminals accountable for the crimes they commit.

Mr. Chairman, in my view, to oppose this is wrong and is extremist, so I urge my colleagues to vote in favor of the Unborn Victims of Violence Act.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

I would like to apprise my colleagues of the communication just received from the Office of the President, a statement of administration policy. "The Administration," and I quote "strongly opposes enactment of H.R. 2436 which would make it a separate Federal offense to cause 'death or bodily injury' to a 'child in utero,'" and those phrases are in quotes, "in the course of committing certain specified federal crimes. If H.R. 2436 were presented to the President, his senior advisers would recommend that he veto the bill."

The statement continues as follows:

"The administration has made the fight against domestic violence and other violence against women a top priority. The Violence Against Women Act, which passed with the bipartisan support of Congress in 1994, marked a critical turning point in our national effort to address domestic violence and sexual assault. The Violence Against Women Act for the first time created Federal domestic violence offenses with strong penalties to hold violent offenders accountable. To date, the Department of Justice has brought 179 Violence Against Women Act and Violence Against Women Act related federal indictments and awarded over \$700 million in grants to communities to assist in combating violence against women.

"Unfortunately, H.R. 2436 is not designed to respond to violence against women. The Administration has significant public policy concerns with the legislation, as was described by the Department of Justice's letter to the House Committee on the Judiciary on September 9, 1999. For example, H.R. 2436 would: (1) trigger an excessive increase in the length of sentence as compared with the sentence that would otherwise be imposed for injury to a woman who is not pregnant; (2) depart from the traditional rule that criminal punishment should correspond to the knowledge and intent of the defendants; and, this is the more serious problem, (3) identify a fetus as a separate and distinct victim of a crime, which is unprecedented as a matter of Federal statute, and unnecessary to achieve the goal of increasing the pun-

ishment for violence against pregnant women.

"H.R. 2436 is, in fact, careful to recognize that abortion-related conduct is constitutionally protected; however, this does not remove all doubt about the bill's constitutionality, as explained by the Department of Justice letter to the House Committee on the Judiciary on September 9, 1999."

The Administration strongly opposes this bill, H.R. 2436. They recognize, and so state, that I will "offer an alternative that," in the Administrations opinion, "appropriately focuses on increasing the punishment for violence against pregnant women without identifying the fetus as a separate and distinct victim of a crime."

I am hopeful that my colleagues in the House will listen carefully to this Statement of the Administration's policy and come together to support the substitute that the gentleman from Michigan (Mr. CONYERS) and I will offer that will allow for tough sentences, that will deter violence against women, that will allow up to a life sentence to punish those who would commit the odious crime of assaulting a woman and causing her to miscarry, and that we do this together instead of continuing to divide this Congress and this Nation over the very emotional issue of reproductive choice.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. HALL).

(Mr. HALL of Texas asked and was given permission to revise and extend his remarks.)

Mr. HALL of Texas. Mr. Chairman, I rise today in support of H.R. 2436. I appreciate the author that introduced the legislation that would make it a federal law to protect unborn children. Mr. Speaker, the bill to me simply states that, and I quote, an individual who commits a Federal crime of violence against a pregnant woman and thereby causes death or injury to her unborn child will be held accountable for the harm caused to both victims, mother and child. H.R. 2436 does not attempt to overturn *Roe vs. Wade*. It would not offend me if it did, but it does not, nor infringe on the rights of a woman to have an abortion. The bill applies after conception and before delivery.

Opponents of the bill have said that this bill is a back door to eliminating a woman's right to choose, but this bill is about choice, Mr. Chairman, but it is about choice after the choice favoring life has been made. It is about protecting women's right to make certain choices. If a woman chooses to bring a new life into the world, H.R. 2436 will allow under federal law for the prosecutions of those who callously disregard that choice.

I urge my colleagues to vote for H.R. 2436 and make criminals accountable for their malicious acts against a pregnant woman and her unborn child.

Ms. LOFGREN. Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois (Mr. HYDE), the chairman of the House Committee on the Judiciary.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I want to compliment the gentleman from South Carolina (Mr. GRAHAM) for bringing this bill forward. It is much needed and fills a gap in our criminal law, and to those who lament the fact that Roe versus Wade might be somehow or other impacted or questioned, I can only say because an issue is difficult and creates heartburn on all sides is no reason we should not address it because Roe versus Wade, which in my opinion ranks right up there with Dred Scott as an outrageous decision in our Supreme Court's history deserves to be discussed and not surrendered to.

There are two aspects to this debate. The first one is the concept of punishing somebody for damaging or killing a fetus. That is about as clinical a term as we can get, fetus.

□ 1330

There are others, embryo, blastocyst, zygote. My favorite is "products of conception." Anything to dehumanize that little baby. That little child, needing time and nourishment to be a little boy, a little girl, time and nourishment to be an old man or an old woman, that little child with immense potential, that little child in the woman growing, is rendered a nullity, a cipher, a zero.

The gentlewoman from California repeatedly repeats how she does not agree with violence against women. I do not know anybody who does. But what about the unborn? Why is that forgotten in your calculus?

What about when the obstetrician treats a pregnant woman, the fact that he treats two patients? What about the fact that the little unborn can have a different gender than the mother, can have a different blood type than the mother? The little unborn is a separate and distinct patient, and the obstetrician treats both of them.

So the dehumanizing, the desensitizing, the depersonalizing of this little entity known as the unborn is an essential aspect of the other side's argument, because otherwise they have to confront the fact that abortion kills a tiny member of the human family.

Now, nobody, no decent person would kill another person, except in self-defense or for some other legitimate reason. So then when you support abortion you have to have recourse to some semantic gymnastics. You have to define the little victim as less than human, subhuman, expendable.

You cannot throw away a human being, but you can throw away a fetus, if you define it as utterly without value or possessing secondary value to the woman.

So this dilemma the pro-choicers are in is well known. They cannot admit

any humanity to the unborn. But that is clinically primitive. The unborn is there. It has a little heartbeat, it has brain waves, it is a member of the human family, and to deny that, in my opinion, is self-deception, terribly serious self-deception.

So this bill recognizes that when a pregnant woman is assaulted, it is a more serious condition than when a woman who is not pregnant is assaulted, considering the same force used in the assault. That second little victim deserves recognition. You obliterate the second little victim. You will not give credit for the membership in the human family, and that is sad.

I know why you do it, because otherwise you are confronted with the fact that you are aborting a human being, and that just cannot be. So define them out of existence, that is what you do.

So I am pleased and proud that this bill has been offered by the gentleman from South Carolina (Mr. GRAHAM). Logically to reject this bill or accept the gentlewoman's substitute is to deny the truth and the facts, the reality, that that little child in the womb is a member of the human family and ought to be loved and nourished and cherished and recognized, not obliterated and rendered a zero.

Why is it the party of compassion, why is it Members who pride themselves on caring for the little guy, the one that is left out, have no room in their moral imagination for the unborn?

Ms. LOFGREN. Mr. Chairman, I yield 4 minutes to the gentleman from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Chairman, I had not intended to speak, but I must make an observation that concerns me.

It seems to me that there comes now a pattern among our pro-life colleagues here in the House. They begin by defining a legitimate concern. The last 4 years the concern was about late-term abortions. But then they come up with a solution, a law, almost written for the purpose of being defeated, knowing that the bill is going to be vetoed, with no intention of working with the administration to pass a solvable law that can deal with the problem that they claim concerns them so greatly.

Just as we could have had a partial-birth late-term abortion bill signed into law prohibiting frivolous late-term abortions 4 years ago if our pro-life colleagues had been willing to sit down in good faith and deal with their concerns, now today we find ourselves with another legitimate concern, the concern that no one, no one in this House, man or woman, wants to condone anyone harming a woman or her fetus at any stage in her pregnancy.

Yet, once again, like they did for the last 4 years, they wrote a law without consulting with the administration, without considering how can we actually solve this problem together, how can we protect pregnant women by working together. Instead, it seems to me the greater goal in developing this

legislation was to make a point, that a fertilized egg a second after conception is a human being. We could have solved this problem they talk about today; but it seems to me, once again, as with the other legislation, that was not the ultimate goal.

Finally, I must raise the question if in this bill you define a child as a fertilized egg, then how can you philosophically be consistent in saying it is okay to allow abortion in cases of rape and incest? How can you say in this bill itself that it is okay for a woman to take drugs, it is okay for a woman to do something that might end up terminating her pregnancy.

It seems to me if you accept the definition of a child as being conception, then you are saying okay, it is okay to have murder in some cases, but not in other cases.

My primary point is, is it not time we stop this political posturing and sit down on a bipartisan basis with the administration? Whether it is the issue of late-term abortions or harming pregnant women, let us work together to find a solution that can be passed into law and actually do some good.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I just want to agree with the gentleman. There is no logic or consistency for tolerating abortion as a result of rape or incest. The little victim has committed no wrong or no crime. The gentleman is absolutely right, and it saddens me that that is in our law. Unfortunately, it recognizes the political reality, and we are saving some children, if not all that we should save.

Mr. EDWARDS. Mr. Chairman, I appreciate the gentleman's philosophical consistency. I respect that. Unfortunately, many of the others supporting the bill saying life begins at conception are not being consistent, are not being straightforward. I respect the gentleman greatly for being consistent. Even though I might disagree with the conclusion of his beliefs, the gentleman is consistent.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Oklahoma (Mr. COBURN).

(Mr. COBURN asked and was given permission to revise and extend his remarks.)

Mr. COBURN. Mr. Chairman, first of all I want to thank the authors for this bill. My home State has a bill that protects unborn children in the case of the death of the mother.

I have been involved in delivering five babies to dead women, five. Three of them died, one of them is essentially going to be totally dependent all the rest of her life, and one is a bright, alive, awake child.

Four of those deliveries happened before Oklahoma had a law. There was nothing that happened to the person that killed the mother, ultimately, or the child. So what we are attempting

to do here is a right thing; it is not a wrong thing.

We ought to talk about half-truths. The gentleman from Texas said that all we had to do was agree with the President on partial-birth abortion, that the health of the woman as an exception, and he would have signed it, which totally renders that bill useless. What it says is if you want to abort a late-term baby, you can; and you can just rationalize and say it is for the health of the mother, because she does not want the baby.

So I understand the gentleman's quest for consistency, but before we ask for a quest for consistency, we ought to ask for a quest for the fullness of all the facts before we make the statements.

The life, there is no question about it. There is no question about it genetically that life begins at conception. Based with the knowledge we have now in our country, we define death as the absence of brain waves and the absence of heartbeat. Before most women ever recognize the signs and symptoms of their pregnancy, their baby has those two things, a heartbeat and brain waves, and when our technology catches up with our hearts, then we will be able to prove scientifically that in fact a baby at conception is a human being.

I will grant, we cannot prove that now, but we certainly can at 41 days post-last menstrual period. We can prove that scientifically, just by using our definition of death.

So, again, I want to thank the gentleman for bringing this bill to the floor. It is way too late, it is way too late for all those children whose opportunity for life is going to be taken away in this next year, but maybe incrementally, and maybe when we have somebody of conscience that will sign the bills of conscience, we will have saved the lives we should be saving.

Ms. LOFGREN. Mr. Chairman, I yield 2½ minutes to the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Chairman, I rise in strong opposition to this bill, and I thank my colleagues for their hard work on this issue.

We can all agree on one thing: that crimes against women that cause the loss of a pregnancy are tragic and deplorable acts. These crimes ought to be punished severely. However, this bill is not the way to achieve this goal.

This bill misses the point because it completely ignores the injury to the woman and instead it attempts to give new legal protections to the fetus as a way of undermining a woman's right to choose.

We are here debating a bill that will not provide any significant enhancement of our ability to prosecute criminals who harm pregnant women, because it only applies to cases prosecuted in the Federal court. Criminal acts of this type are almost never prosecuted in a Federal criminal court.

Before the Subcommittee on the Constitution of the Committee on the Ju-

diciary a former special counsel to the U.S. Sentencing Commission testified that "this bill is unnecessary and current Federal law already provides sufficient authority for the punishment of criminals who hurt fetuses."

If we are serious about protecting women and their pregnancies from harm, we should be passing legislation that addresses the real world, common sense of these crimes.

What we need to be talking about today is the all-too-frequent occurrence of domestic violence. Sadly, in this country nearly one in three adult women experiences at least one physical assault by a partner during adulthood. Why are we not here debating the Violence against Women Act reauthorization to provide grants for law enforcement to crack down on sexual assault, domestic violence, and child abuse? We could be providing training for law enforcement to help them address domestic violence, counseling for women who have been attacked or abused, and funding for battered women's shelters.

I would be pleased to work with my colleagues on the other side of the aisle to pass a bill that addresses these deplorable acts against women and provides a strong and decisive tool for punishing those criminals who commit these horrific acts.

I am happy to support the substitute offered by the gentlewoman from California (Ms. LOFGREN), which establishes a sentencing enhancement of up to life in prison for an offense against a woman which results in the loss of her pregnancy. Rather than debating a back door attempt at undermining a woman's constitutional right to choose, we should be working together hand in hand to pass legislation that addresses the real nature of violence against women in this country.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. ARMEY), the majority leader.

Mr. ARMEY. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I must say I am a little confused about this debate. I do not understand why it is so difficult to understand. Now, admittedly, Mr. Chairman, I stand before you a man. Pretty obviously, I have never been pregnant, and I never will be. It will be said, therefore, I cannot understand.

□ 1345

I must say, Mr. Chairman, I have been in close association with women who have been pregnant: My wife with our own babies, my beautiful daughter-in-law when pregnant with my grandson, friends who were pregnant with their babies.

What I have seen in my association with these lovely ladies in their pregnancy is one consistent pattern. Almost immediately upon learning they are pregnant, they begin and do put the baby first. They change their own patterns of behavior. They change their

eating habits. They change many other patterns of behavior. They do so to protect that baby during that pregnancy. They have prenatal medical experiences that are elaborate, thorough and consistent.

I have heard it said by many people in the health profession and by many women in their pregnancies, there is no time, no time in that child's life, where their medical experience is more critical than when that child is receiving prenatal care.

We quite rightly observe that need, honor that need, and attend to that need while always putting the baby first.

We protect that child from illness during that time when the child is so fragile, and now we have brought before this body a piece of legislation that says that same child, in that same time, should be protected from violence. That baby should be protected from acts of violence.

How can somebody argue against that? It is perfectly possible for a pregnant woman to be assaulted and while being assaulted viciously suffer harm while her baby loses its life. Certainly we want that person that would assault that woman, whether pregnant or not, to be subject to the most stiff of punishments, and we have attended to that in this body and we do attend to it; but now we are saying that the baby must be attended to, too.

The baby is a life. That baby has a right.

I see people down here arguing against that protection for that baby who I have seen myself and heard with my own ears, in other times, in other venues, stand in this same room and argue most vociferously for the need for prenatal care, most eloquently.

I am confused, Mr. Chairman. How can the baby's need for prenatal care be recognized and then reject the baby's right to protection from violence?

I have heard arguments here that might be construed that this bill was written about or is written about or is perhaps wrong because it fails to be about the mother. The legislation was written for the baby.

Do we now have a situation where in this body we fail to honor the mother's sacrifice for the baby? Do we now fail in all the bills that come through this body to say that it is right, proper, necessary, indeed urgent, that in this bill, at this time, we do what every mother I have ever known does during this pregnancy, we put the rights of the baby first and foremost out there?

Mr. Chairman, I am proud of telling people that the first time I saw a picture of my baby grandson, Chris, he was only 5 months old, and when I saw that sonogram I knew he had his grandpa's eyes. Chris was entitled, at the time that picture was taken, to every bit of care he could get through the advances of modern medicine, and he was entitled to every bit of protection under the law that this Congress can afford him.

I will be absolutely heartbroken to believe that there can be anybody in this body that is given the high privilege of serving in this body that could find it in their heart to vote against that baby's right for protection. I just cannot believe anyone could be that cruel, heartless, and selfish.

Ms. LOFGREN. Mr. Chairman, I yield 6 minutes to the gentlewoman from New York (Mrs. LOWEY).

Mrs. LOWEY. Mr. Chairman, I rise in opposition to this misguided bill, as a mother of three, as a grandmother of five, because once again we are faced with a decent idea but, in my judgment, it has gone horribly awry.

The proponents of this bill have taken an important principle, the constitutional right of a woman to have control over her own pregnancy, and hijacked it, unfortunately, into the divisive world of abortion politics.

I want to make something absolutely clear from the outset. The loss or harm to a woman and her fetus is absolutely devastating to the woman and her family. As a mother and a grandmother, I cannot imagine a greater pain, frankly. Those who injure or kill a pregnant woman and her fetus should be severely punished and families should have appropriate redress for their loss.

Because we believe strongly that families should have the legal tools to have their loss recognized, we will offer a substitute that does just that, and I believe that the Lofgren substitute will demonstrate very clearly that there is a lot of common ground on this issue if we would only look for that instead of looking for ways to disagree.

Having said that, let me explain why the approach this bill takes is just another thinly veiled attempt to chip away at a woman's right to choose.

This bill would give a fetus the same legal recognition as you or I, for the first time in Federal law, the first time. Instead of addressing the real issue at hand, the horrible pain for a woman who loses a pregnancy to a cowardly, violent act, this bill is an ideological marker for the anti-choice special interests.

Frankly, this bill is just another way of writing a human life amendment. In fact, the National Right to Life Committee admits that it participated in drafting the bill and, according to the committee web site, the bill challenges that pro-choice ideology by recognizing the unborn child as a human victim, distinct from the mother.

If anti-choice Members of this House want to recognize the fetus as a person, I respect that. Do that. Bring a human life amendment to the floor and let us debate it and let us vote on it. But let us not tell pregnant women in this country that my colleagues are trying to protect them with this bill when there are existing Federal laws to do just that, and when we are willing to join my colleagues in addressing the tragic but rare cases where pregnant women are attacked.

The American people are smarter than they are being given credit for.

They know my colleagues are proposing a political statement today, not a real solution. Let us not insult their intelligence this way. If my colleagues really want to crack down on cowardly criminals who would attack a pregnant woman, support the Lofgren substitute. It gets us to the same ends without the overtly political means.

If my colleagues are serious about protecting women in this country from violence, why do we not bring up the Violence Against Women Act for floor consideration? It has 174 cosponsors, almost double the number of cosponsors of the Unborn Victims of Violence Act. Where is it?

Reauthorizing VAWA is critical to effectively combatting violence against women. Every year, over 2 million American women are physically abused by their husbands or boyfriends. A woman is physically abused every 15 seconds in this country, and one of every three abused children becomes an adult abuser or victim. The Unborn Victims of Violence Act, unfortunately, Mr. Chairman, will not do anything for these women, but the Violence Against Women Act will make all the difference in the world.

Mr. Chairman, the Unborn Victims of Violence Act is not about protecting pregnant women from violent acts. It is yet another anti-choice attempt to undermine a woman's right to choose.

Time and time again I have stood on the House Floor and asked my colleagues to work with me, to help women improve their health, plan their pregnancies, have healthier children. It is tragic that every day over 400 babies are born to mothers who receive little or no prenatal care. Every minute a baby is born to a teen mother and three babies die every hour. It is tragic that one of three women will experience domestic violence in her adulthood.

Instead of finding ways to visit the divisive abortion battle, Americans want us to focus our efforts on providing women with access to prenatal care, affordable contraception, health education, violence prevention. If we truly want to protect women and their pregnancies from harm, then let us work together to enact legislation to help women have healthy babies.

I see my good friend, the gentleman from Illinois (Mr. HYDE). We have worked together on legislation to try and help women have healthy babies. I would love to continue to work with my good friend to do just that. Let us focus on that, but I would hope we would vote no on H.R. 2436.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentlewoman from New Mexico (Mrs. WILSON).

Mrs. WILSON. Mr. Chairman, as my colleagues know, I have never participated in a pro-life or pro-choice debate on the floor of this House. I am usually the one sitting in the back of the room carefully reading the text, trying to decide what the right thing to do is, but

I came here today because I think this one is so clear.

I do not understand why we spend so much time arguing about how many angels dance on the head of a pin instead of trying to look at what is right and what is wrong. One can be the most pro-choice person in this body and vote in favor of this bill with enthusiasm because it is not about the unwanted pregnancies; it is about the wanted ones.

Most of the women in this House have been blessed with being moms. Those are the children that we prayed for, we waited for, we read books to, we sang to. If someone deprives us of our choice to bring that child into the world, it is wrong; and it should be a crime to do so.

We talk about taking attention away from the problem of domestic violence and my colleague, the gentlewoman from New York (Mrs. LOWEY), knows that I am cosponsoring many of those pieces of legislation that she is so strongly in favor of, but it does not make any sense to me to say that caring about the lost child somehow means that child's mother.

If there are children in this room and something goes wrong, all of us do what is natural and what is also good. We protect the children. We protect the children. It is both natural and admirable and I commend the gentleman for bringing forward this bill.

Ms. LOFGREN. Mr. Chairman, I yield 4½ minutes to the gentleman from New York (Mr. NADLER), a member of the Committee on the Judiciary.

MR. NADLER. Mr. Chairman, I thank the gentlewoman from New York (Ms. LOFGREN) for yielding time.

Mr. Chairman, we have a large problem in this country with violence against women, and it is obviously a great tragedy if a physical assault against a woman results in damage to the fetus she carries and damage to the baby when it is born or, God forbid, in a miscarriage.

□ 1400

Such an assault should clearly be punished more severely than an assault on her that does not harm the fetus. Both the bill before us and the Lofgren substitute would accomplish this end.

Both provide for penalties up to life in prison. Both suffer from the fact that they amend only Federal law. Of course, most cases of violence against women are prosecuted in State courts, and so it would be unaffected by either the bill or the substitute.

If we really want to protect women and their unborn children, we should pass the Violence Against Women Act, too. But that is not, that is not, I repeat, the real purpose of this bill. If it were the real purpose, the sponsors would agree to the Lofgren substitute, which provides for enhanced sentences up to life imprisonment for people who, while assaulting the woman, injure or kill the fetus.

But they will not accept the substitute. Why not? Because the real purpose of the bill is, as the distinguished

chairman the gentleman from Illinois (Mr. HYDE) and the gentleman from South Carolina (Mr. GRAHAM), the sponsor of the bill, have admitted is not to protect the mother or the fetus, but to establish the status of the fetus or the embryo or even the zygote as a legally separate person, and thus to undermine the *Roe v. Wade* decision, legalizing a woman's right to choose an abortion.

Neither the Congress nor the Federal courts have ever recognized the fetus as a separate person. The gentleman from Illinois (Mr. HYDE) was eloquent in his description of the separate personhood of the fetus. That of course is the central question in the abortion debate. If an embryo or fetus is, in fact, a separate person, then abortion is murder.

Now, some people may think that. A majority of the Americans may not agree. But the gentleman from Illinois (Mr. HYDE), the gentleman from South Carolina (Mr. GRAHAM), and others are entitled to their opinion. They are entitled to introduce a constitutional amendment to try to overturn *Roe v. Wade* and to send desperate women back to the back alley coat hanger abortionists. We would fight that, but at least we would have an honest debate on the real issue.

But do not ask us to vote for a bill to undermine a woman's right to choose an abortion disguised as a bill to protect victims of violence. Be honest with us and with the American people. Be direct.

If my colleagues' interest is to protect the mother and the fetus, then they should support the Lofgren substitute, because it does exactly that up to life imprisonment.

But if my colleagues' intent is to establish the legal status of a fetus as a separate person, then they support this bill. That is a totally new concept in Federal law. Congress and the courts have never agreed with that. It undermines *Roe v. Wade*. It undermines a woman's right to choose. That is the real purpose of this bill.

It also establishes another novel legal concept that we should punish somebody specifically when there is no intent. That is undermining the general intent of the criminal law.

So the real question is not protecting women. We can protect women. Support the Lofgren substitute. Bring up for a vote the Violence Against Women Act. Bring that to the floor.

Do not pretend that this is what this is. This is simply an assault on abortion. As the gentlewoman from New York (Mrs. LOWEY) said, it is a disguised human-life amendment. That is its purpose. I do not believe we should act on this floor with subterfuge.

If that is my colleagues' purpose, say so. The gentleman from Illinois (Mr. HYDE) was honest about it. But we should have a direct bill to do that and not try to disguise it under assaults against women, which this is.

I would hope that we would adopt the Lofgren substitute so that we can pro-

TECT women so that we do express our horror and give additional heavier penalties to someone who assaults a woman and harms and kills the fetus and causes a miscarriage, but not get involved in the other debate, which we should debate in a different time, rather, on the issue of whether we want to ban abortions and send women back to the back alley coat hanger abortions.

A vote for this bill and against the Lofgren substitute is exactly a vote to do that, to say to desperate women they have no right to choose and we want to undermine abortion. Those who say it is not because we exempt it in the bill are not recognizing the real intent and the purpose and effect of the bill.

So I urge a vote for the Lofgren substitute.

Mr. CANADY of Florida. Mr. Chairman, I would inquire of the Chair concerning the amount of time remaining on both sides.

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) has 34 minutes remaining. The gentlewoman from California (Ms. LOFGREN) has 33½ minutes remaining.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Montana (Mr. HILL).

Mr. HILL of Montana. Mr. Chairman, I thank the gentleman from Florida for yielding me this time.

Mr. Chairman, the recent cover of a Newsweek Magazine featured the image of a preborn child. The article went on to discuss the latest scientific findings that what happens to the preborn in the gestation period will affect the health and the life of that person for the rest of their life.

Now, Newsweek is not a publication that has probably been sympathetic to the cause of the preborn. But this article reinforces something that we have all known intuitively; and that is, what happens to the preborn is important, and it will have lasting impact on their life.

Now, Congress has noted this in the past, because Congress has supported nutrition programs and prenatal programs. But, ironically, under current Federal law, a person who assaults a woman and who kills or injures that unborn child faces no criminal, none whatsoever, no consequence, no criminal action for the death or injury to that child.

This bill seeks to change that. It simply says that violent criminals are going to be held responsible and accountable for the violence that they incur.

There is some irony, Mr. Chairman, that one of the great achievements I think of this century, when history looks back on it, has been the fight for the civil rights of minorities. I believe that one of the greatest tragedies of this generation has been its failure to extend those basic civil rights to the preborn, civil rights that we take for granted: the rights of due process and equal protection and the basic right to life.

The great irony is that, in this great deliberative body, that there are so many who have benefited so much by the civil rights movement stand so firmly against extending those basic human rights, the right to be protected against violence to the most innocent and the most fragile in our society, the preborn.

I urge support of this bill.

Ms. LOFGREN. Mr. Chairman, I yield 4½ minutes to the gentlewoman from Ohio (Mrs. JONES).

(Mrs. JONES of Ohio asked and was given permission to revise and extend her remarks.)

Mrs. JONES of Ohio. Mr. Chairman, I rise in opposition to H.R. 2436, the Unborn Victims of Violence Act. According to its sponsors, the legislative intent is to protect pregnant women from violence. Instead of protecting pregnant women, this legislation focuses on giving legal protection to any "member of the species *Homo sapiens*," and I quote, "at all stages of development." This includes the zygote, a blastocyst, and an embryo or fetus.

Instead of protecting pregnant women from violence, this legislation would impose the same sentence for attacking an unborn fetus which the Supreme Court has ruled is not a person as is imposed for attacking the victim, the pregnant woman, a recognized person under law.

The true legislative intent of this piece of legislation is to bestow upon the fetus the legal standing of a person.

The United States Supreme Court has already ruled an unborn is not a person and does not receive legal rights. Even Justice Antonin Scalia, a staunch opponent of *Roe v. Wade* agrees with this position.

I rise to speak for a moment about some of the legal aspects of this bill, since it seems, so far, we have only been caught up in a discussion of things that pull on the heart strings of the American public.

Not a person who stands on the floor today would say that it is unfortunate, it is a terrible incidence that a pregnant woman would be caused to lose her baby or even lose her own life.

I quote the Justice Department, as follows: "The Justice Department strongly objects to H.R. 2436 as a matter of public policy and also believes that in specific circumstances, illustrated below, the bill may raise a constitutional concern. The administration has made the fight against domestic violence and other violence against women a top priority. The Violence Against Women Act (VAWA), which passed with the bipartisan support of Congress in 1994, has been a critical turning point in our national effort to address" the issue. "VAWA, for the first time, created Federal domestic violence offenses with strong penalties to hold violent offenders accountable."

H.R. 2436 expressly provides that the defendant need not know or have reason to know that the victim is pregnant. The bill thus makes a potentially

dramatic increase in penalty turn on an element for which liability is strict.

As a consequence, for example, if a police officer uses a slight amount of excessive force to subdue a female suspect, without knowing or having any reason to believe that she was pregnant, and she later miscarries, the officer could be subject to mandatory life imprisonment without possibility of parole, even though the maximum sentence for such use of force on a non-pregnant woman would be 10 years. This approach is an unwarranted departure from the ordinary rule that punishment should correspond to culpability.

As a former prosecutor, I was always alarmed when I saw Congress moving to legislate a new crime solely for the purpose of political leverage and attention, instead of looking to the real impact such legislation could have. I believe this is the case here.

If this Congress was truly interested in protecting pregnant women, we would have passed gun control and gun safety legislation, because, as a result of domestic violence, guns are in our homes, and they are used against women who are pregnant or not pregnant. In light of the fact that it is a major target, domestic violence is a major target of Violence Against Women's Act, we need to address the many ways women are attacked at home.

I would think that, if we were talking about doing something to assist pregnant women and protect unborn children, we would be talking about other issues on this floor instead of wasting our time talking about a piece of legislation that has, in fact, nothing but a political remedy to it.

The gentleman from Illinois (Mr. HYDE) says "moral imagination." The women in this House do not have to have moral imagination. Many of them have had children. Many of them may have, in fact, suffered from miscarriages or other incidents where they have lost their children. But it does not rise to the level where we want to change or put into effect a law that is unconstitutional.

Mr. CANADY of Florida. Mr. Chairman, I yield 4 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Chairman, I thank the gentleman from Florida for yielding time to me.

Mr. Chairman, it is amazing to me what length people will go to sustain a myth, believe the unbelievable, and aggressively market a collective sense of denial concerning a profound truth.

Mr. Chairman, at a time when we know more and understand more about the magnificent life of an unborn child than ever before in history, at a time when doctors can diagnose and treat serious anomalies that afflict these smallest of patients, at a time when ultrasound imaging has become a window to the womb, revealing the child in utero, sucking his or her thumb or doing somersaults or even little karate

kicks, along comes the pro-choice lobby, outraged, angry, fuming, that anyone dare challenge their big lie and suggest that unborn children have innate value, worth, and dignity.

At all costs, abortion advocates must cling to the self-serving fiction that unborn babies are something other than human and alive. By systematically debasing the value of these children, it has become easier for adults to procure the violent deaths of these little ones if they happen to be unwanted, unplanned, or imperfect.

But the inherent violence of abortion is not what is addressed by this bill. As a matter of fact, abortion is expressly outside the scope of this legislation. I say to my colleagues, read the bill.

So for now at least, I say to the advocates of abortion, go ahead, pat yourselves on the back. You have won for now. As a result of *Roe versus Wade* and its prodigy and 26 years of congressional acquiescence, 40 million unborn babies in America have been dismembered or chemically poisoned or have had their brains sucked out by what some euphemistically call choice.

But that should not mean that murderers, muggers, and rapists should also have that same unfettered ability to maim or kill an unborn child without consequence.

The Unborn Victims of Violence Act is designed to deter and, if that fails, to punish the perpetrators of violence against unborn children in the commission of a Federal offense.

The bill, as we know, would apply to some 65 laws that establish Federal crimes, including violence. H.R. 2436 does not diminish existing law concerning violence against women in any way, shape, or form, but adds new penalties and seeks justice for the harm or death suffered by the child.

Thus, if this legislation is enacted into law, our laws against violence will be stronger, tougher, and more comprehensive. H.R. 2436 merely adds new penalties to existing ones and tracks existing statutes currently in force in approximately 24 States.

□ 1415

This initiative adds layers of deterrence and punishment so that violent offenders can be held to account for all of the damage and injury or death and heartbreak they have inflicted on innocent victims.

The Unborn Victims of Violence Act, Mr. Chairman, recognizes in law the self-evident truth that an assault on a pregnant woman is an attack on two victims. Both lives are precious; both lives deserve protection.

This is truly a humane and necessary legislative initiative, and I congratulate the gentleman from South Carolina (Mr. GRAHAM) for his wisdom and courage in authoring this bill and the skill and tenacity of the gentleman from Florida (Mr. CANADY), the chairman of the Subcommittee on the Constitution; and the gentleman from Illinois (Mr. HYDE), the chairman of the

Committee on the Judiciary, in shepherding this legislation to the floor.

I urge all my colleagues to vote "yes" and against the substitute.

Ms. LOFGREN. Mr. Chairman, I yield 3½ minutes to the gentleman from California (Mr. CAMPBELL).

Mr. CAMPBELL. Mr. Chairman, I wish we could come together in this country on the very difficult question of abortion. I think there are people of good will on both sides of this issue.

I know that in my own life I have tried my best to reach out. I have had a long dialogue with a pastor in my district to see if there is not some middle ground, something we can take as a position that all reasonable people would agree with. There is some hope in that regard. For example, to emphasize adoption rather than abortion; to emphasize personal responsibility and try to teach family planning.

Today's bill, I am afraid, is a step in the opposite way, and that is why I am opposed to it. The bill states something that many people of very sincere faith hold dear: namely that a person begins at the earliest possible moment of conception. That is what the bill says. It does not use the word conception, but it says, "a member of the species *Homo sapiens* from the earliest possible point of development."

I know people of good will believe that. But the truth is that there are other people of good will who do not. And there are people of good will who do not know exactly when life begins and who recognize that it is a process that certainly has a start at conception and certainly has a very significant point at birth and somewhere in between we might say miracle life, human life.

But are we prepared today to say that we know for certain, for everybody in a Federal Congress, through the criminal law, that life begins at conception? I do not think so, not in a government that is explicitly respectful of differences of religious belief. Because it is fundamentally a religious question. When does life begin is a religious question.

If our purpose today is to punish people who harm a pregnant woman, we can do that. What we should have is an enhanced penalty for causing a miscarriage. I would vote for that in a second.

And if the purpose were to deter the attacks on a woman who is pregnant, then the statute should be written so that if the pregnancy of the woman would be evident. Instead, the statute is written so that even if the defendant does not know, and does not have any way to know that the woman is pregnant, the law applies. So that, quite literally, a murder statute would be applicable against an individual who pushes a woman in an altercation leading to a miscarriage, even in the very first, earliest part of her pregnancy.

I wonder if that is really what we intend to do today. If we intend to protect a pregnant woman against attacks, then we ought to say where the

individual should have known or did know that the woman was pregnant. Obviously, that is how we would deter wrongful conduct.

These points are simple, but they are from my heart. I would love to bring this country together. What we are doing today, instead, is that people of very good will, driven by faith, for which I have the greatest respect, are, despite that good faith, imposing their religious opinion on those who do not share it. And I do not believe that is right, and I do not believe it is consistent with our constitution and with our obligation as Members of this House.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentleman from Illinois (Mr. HYDE).

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I just want to remind my good friend, the gentleman from California (Mr. CAMPBELL), of the doctrine of transferred intent, which I am sure, as a law professor, he is very familiar with. For example, if an individual is driving the get-away car in a bank robbery and, meanwhile, unbeknownst to that driver, a murder occurs and the guard is killed, the driver of the get-away car is guilty, even though he did not know.

Now, if someone assaults a woman and injures her and she is pregnant, that person intended the crime and they must intend the consequences.

I feel very awkward lecturing a professor.

I have one more thing to say. If an individual does not know when life begins, but they want to kill it, where do we give the benefit of the doubt?

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from California.

Mr. CAMPBELL. The benefit of the doubt should be to respect the individual conscientious judgment of people who have faiths that may not be identical to our own.

Mr. HYDE. Mr. Chairman, reclaiming my time, I am sorry, but I do not agree. I think we have to protect the little innocent life.

Mr. CAMPBELL. Mr. Chairman, if the gentleman will continue to yield, I would like to respond to the doctrine of transferred intent.

The difference here is that there is a punishment for hurting the woman. Every act that this statute would reach could be punished because the woman is hurt, and that is not the case in the gentleman's bank robbery example.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Chairman, I rise today in support of the Unborn Victims of Violence Act. Surprisingly enough, when a pregnant woman is the victim of a Federal crime, any resulting injury to her unborn child

goes unpunished. This measure is long overdue.

H.R. 2436 establishes that if an unborn child is injured or killed during the commission of a Federal crime of violence, then the assailant could be charged with a second offense on behalf of the second victim, the unborn child.

Twenty-four States already have laws that explicitly recognize unborn children as victims of criminal acts, 11 of these throughout the period of their in utero development. It is high time that we have the same protection provided for unborn children at the Federal level.

Now, extremist defenders of the abortion industry will try to make this bill look like it is taking away the right of a woman to abort her child. This is not true. H.R. 2436 does not permit the prosecution of any woman who has consented to have an abortion, nor does it permit the prosecution of the woman for any action in regard to her unborn child.

What this bill does, however, is protect unborn children whose mothers are physically assaulted, beaten, maimed, or murdered. What we are saying in this bill is that if someone's wife or sister or daughter or friend loses her unborn baby because the child died in the uterus when the mother was being beaten or killed, the perpetrator of the crime should be held responsible.

Our country desperately needs this Federal law. Last month in Little Rock, a woman who was 9 months pregnant was severely beaten by thugs allegedly hired by her boyfriend. Sadly, they accomplished their goal and the baby was killed. Under Federal law, the crime would be against the woman only. There is no accountability for the killing of the child who was 3 days away from being born.

Yet another example. Ruth Croston was 5 months pregnant when, on April 21, 1999, she was killed by her husband. She and her unborn daughter died after being shot at least five times. The husband was prosecuted in Federal Court for domestic violence and using a firearm in the commission of a violent crime, but no charges, no charges were brought for the killing of the unborn baby girl, and this brutal act goes unpunished.

The absence of Federal protection of these unborn children is nothing short of a tragedy. The list of tragic stories goes on and on and on. This is exactly why we need this bill to be passed in the House today and signed into law by the President.

H.R. 2436 enables the Federal Government to recognize that when a pregnant woman is assaulted or killed within its jurisdiction, and her unborn child is harmed or killed as a result of the crime, there are two victims, the woman and the child.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume to note that neither the bill nor the substitute would apply to the instances of violence just referenced, because those

are State offenses and there is no Federal predicate.

Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY).

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Chairman, there is no mistake about this, the loss of a pregnancy through violence to a woman is a major, major tragedy for the woman and her family. It is absolutely necessary that we punish any violent crime committed against a pregnant woman who miscarries due to a crime against her. But, Mr. Chairman, we have to hear the words from the other side of the aisle. This bill is not about punishing criminals, it is about taking reproductive rights away from women. It is about abortion.

The Lofgren substitute, however, recognizes that when harm comes to a pregnancy, it happens to the pregnant woman; and, yes, the violator must be punished. The underlying bill, however, is a sneak attack on Roe v. Wade and would threaten a woman's reproductive rights.

Support for the Lofgren-Conyers substitute shows true concern about violence for women, and it must be passed. But let us not stop there. Let us take real steps to make our government work for women, for their families, and for their children in many other ways. Let us protect them against violence in the first place. Let us give them paid family leave, let us prepare them for the 21st century work force, and provide safe, affordable child care.

But we can start, Mr. Chairman, by voting for the Lofgren substitute, which shows that we care what happens to women when they have been violated in any crime that would hurt them and their unborn child.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentleman from Oklahoma (Mr. LARGENT).

Mr. LARGENT. Mr. Chairman, on this floor we debate and deal with many issues that are very complex. This is not one of them. I truly believe in my heart that my colleagues can be the most pro-choice Members of this body and vote for this legislation. In fact, I find it unconscionable that anybody could not support this issue.

Medical technology today is amazing. I remember when my wife and I were having four children of our own. We could go into the doctor, and we looked forward to the day when we could go in and listen to the child's heartbeat. Today couples can see the child through the sonograms and all the technology that we have today.

The real issue that this bill deals with is loss. The question is, and I think it is the fundamental question that this bill addresses: is there a loss? If we were to go to that young soon-to-be-father or mother and ask them, when they have been victims of violence and they have lost that child that they have seen and possibly even

named, that they know the sex of, that they can see sucking its thumb, kicking, so on and so forth, if we ask them, has there been a loss, the answer is yes.

Support H.R. 2436.

Ms. LOFGREN. Mr. Chairman, I yield 3 minutes to the gentleman from Rhode Island (Mr. KENNEDY).

(Mr. KENNEDY of Rhode Island asked and was given permission to revise and extend his remarks.)

Mr. KENNEDY of Rhode Island. My colleagues, the hypocrisy is incredible to me, just to hear the gentleman from Oklahoma (Mr. LARGENT) talk about the sanctity of the human life and how any pro-choice person in this body ought to be able to vote for this bill. How in the world can they honestly say that they are for the sanctity of life and then gladly and proudly come out and say that this bill would not affect a woman's right to choose and have an abortion?

I am just astounded by those who are so pure on this side of the aisle; that they get up, like the gentleman from Florida (Mr. WELDON), who got up and was so pure about relieving our consciences of the fact that this would not, please, no one mistake the fact that this is going to undermine Roe v. Wade. It is not going to undermine Roe v. Wade. Women are still going to be able to have an abortion. That is what the gentleman from Florida (Mr. WELDON) was saying; that is what the gentleman from Oklahoma was saying. They are saying to pro-choice people like myself that we can vote for this because our constituents will still have the right to a safe, legal abortion.

I mean, it is just so incongruous that the very people who are saying that they believe so much in the sanctity of life are now proposing a bill that they willingly admit does not protect the very people they think need to be protected.

Now, in addition to being intellectually dishonest, this bill is a farce. It talks about the unborn victims of violence. What about the born victims of violence? What about the 13 and 14 kids that are killed every day in this country by guns that this leadership fails to bring up on the floor because they are in bed with the gun lobby? What about the fact that we have members who want to get up on the floor and talk all about the sanctity of human life and spreading those civil rights that they say that we stand so much for and then saying we ought to be for the unborn child?

□ 1430

What about for the born child? What about for the child that is already here? Have my colleagues ever looked at the indices for spending that this Republican budget spends on inner-city kids from minority families who are on the WIC program, who are trying to get Headstart? And those people pretend that they are for the human life?

Do they not value the human life of one in four kids in this country who

are in poverty? And they want to cut the earned income tax credit?

This is a farce. I do not need to say any more. This is a farce.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I want to respond to the gentleman from Rhode Island (Mr. KENNEDY). Of course we should be concerned about our children. I think that we are in this body. But this issue that we are addressing today is to protect a woman who wants to carry a child all the way to term and to have that child, and that is what we speak of in the right to choose.

If someone decides to have an abortion, that is protected under the Constitution. It is not inconsistent because we might be pro-life and we cannot change that, and so we look at this law as an opportunity to protect the mother's right to have a child when she makes that decision. Surely someone that believes in the right to abort a child would concede that if a woman makes a decision to carry a child to term that that decision should be respected.

Then the gentleman from New York previously said, well, why pass this law because it does not cover State law and that is where most of the assaults against women occur? Well, obviously, that is true. And many of the States are addressing that. But it is important that we do what we can in this body to protect women. Our responsibility is to look at the Federal law, and that is what this bill does.

Then there are those that argue, well, present law is sufficient. Well, under the present law, under the Federal system, a perpetrator of violence against a woman can only be charged for assault and battery. This brings it to another level so that, if the unborn child is killed, then it can be actually a homicide case. The present law is not adequate. There are those that argue that sentence enhancements is sufficient. Well, it is not.

Let me tell my colleagues about the case from Arkansas that has already been referenced. In Arkansas, we did not have a fetal protection law until the last session of the legislature, where the legislature wisely adopted a law that would protect that unborn child in the event of assault upon a woman. This year it came into play when Shiwana Pace was assaulted brutally by three assailants who were hired by the father of the child.

The father of the child says, I do not want this child to live. So he hired three hit men to go and to beat that child. And while they were beating the woman in the stomach, they said, today your child dies. And the nine-month-old pregnancy was ended and the unborn child died.

Under the old law, they could only be prosecuted for assault and battery

upon the woman. But because Arkansas adopted the fetal protection law, an actual murder case was able to be lodged by the prosecutor to protect the woman and to really reflect the loss that she suffered because she wanted to have that child.

The old law was not sufficient. Sentence enhancement was not sufficient. It was Arkansas' new law that really brought the criminal justice system to bear on the true loss to that woman who decided that she wanted to carry that child in her womb all the way to birth. And so, a Federal law is needed, as well, to accomplish the same thing, to protect the woman fully.

Ms. LOFGREN. Mr. Chairman, I would like to quote some of the editorial that ran in the New York Times on September 14. The editorial is entitled "On a Dangerous Path to Fetal Rights."

The New York Times points out: "Congressional opponents of abortion rights have come up with yet another scheme to advance their agenda. Called the 'Unborn Victims of Violence Act,' . . . the measure aims to chip away at women's reproductive freedom by granting new legal status to 'unborn children'—under the deceptively benign guise of fighting crime. . . .

"No one would quarrel that an attack on a pregnant woman that results in a miscarriage or prevents normal fetal development is a tragedy. Extra severe penalties in such cases may be appropriate. But that can be done by prosecuting a defendant for assaulting the pregnant woman. The pending bill, however, treats the woman as a different entity from the fetus—in essence raising the status of a fetus to that of a person for law enforcement purposes—a longtime goal of the right-to-life movement.

"The bill contains exceptions for medical treatment and legal abortions. That has allowed the bill's sponsors to assert that the measure has nothing to do with the abortion issue. But that view is disingenuous. By creating a separate legal status for fetuses, the bill's supporters are plainly hoping to build a foundation for a fresh legal assault on the constitutional underpinnings of the Supreme Court's ruling in Roe v. Wade. Sending the nation down a legal path that could undermine the privacy rights of women is not a reasonable way to protect women or to deter crime."

I could not agree with that more.

Mr. Chairman, I yield 3 minutes to my colleague, the gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Chairman, I thank the gentlewoman for yielding me the time.

Mr. Chairman, I rise in opposition to the Unborn Victims of Violence Act. For the past 12 years, 13 years really, as a Member of this House, I have worked to secure health care for women and children, to fight against domestic violence, and to protect a woman's right to choose. I believe that

this legislation would reverse our triumphs and our progress over the decades.

I believe that the true intention of this legislation is to ultimately redefine when life begins and reverse the Supreme Court ruling of *Roe v. Wade*. No one here should think that this is not a debate on abortion.

H.R. 2436 is said to be protection for pregnant women against a violent crime. But the words "mother," "women," or "pregnant women" are just not mentioned in the language of the bill.

I would proudly support a bill to prevent and punish the violent crimes against pregnant women within our society, but this bill ignores where and when these crimes most often occur.

The Unborn Victims of Violence Act lists Federal crimes, such as "damage to religious property" and "transaction involving nuclear materials" and situations where a "Homo sapien in any stage of development within the womb" would receive protection.

How is this bill helping the 37 percent of women who need to receive emergency help because of their husband or boyfriend? Where is the legislation in maintaining a restraining order when a woman flees to another State?

If we want to protect women and their children from violence, let us debate funding for shelters and hotlines that are overrun by women in danger to broadly address where violence occurs.

Fundamentally, the Unborn Victims of Violence Act is legislation that seeks to redefine when life begins. I support the landmark decision of *Roe v. Wade* in 1973 that established a woman's right to choose to terminate a pregnancy while also allowing individual States to determine the legality of such decisions as a pregnancy proceeds.

Thirty-nine States have strengthened laws to protect either a pregnant woman or her pregnancy with specific determinations of personhood and in cases of violent crime. Any new Federal law should protect a pregnant woman without threatening a woman's right to choose.

I strongly urge my colleagues not to jeopardize the decisions women can make about their own bodies and to vote no on H.R. 2436.

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) has 20 minutes remaining, and the gentlewoman from California (Ms. LOFGREN) has 15½ minutes remaining.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Mr. Chairman, I rise in support of the Unborn Victims of Violence Act, a bill that brings justice against a criminal for harm done to two victims, not just one. Both lives are precious. Both lives deserve protection.

Many States do already recognize unborn children as victims of such

crimes. For instance, my home State of Pennsylvania, like more than 20 others, does have such a law. It is called the Fetal Homicide law. This law, I might add, receives support from both pro-choice and pro-life legislators. Why, then, can we not take what are protections in many of our States to protections in Federal crimes?

The Unborn Victims of Violence Act was designed to address a flaw in our law which says right now that there is no punishment for the injury or harm to an unborn child during a Federal crime. Should we ignore the violence that women and their unborn children undergo from violent criminals, characterizing the injury or even death of the child as "an interruption in the normal course of pregnancy"?

I submit that it is much more than that. If such a Federal law were in place, we could punish some of these criminals for their terrible actions and incidents ranging from the tragic story of the woman in Arkansas whose near-term infant was beaten to death inside her body to incidents with which we are all familiar where pregnant women and their unborn children are killed, like the bombing of the World Trade Center or even the Oklahoma City bombing.

Do not let such criminals go unpunished for the lives they have devastated and ruined. Let us make those criminals pay for the lives they seek to destroy and, in many cases, successfully do so.

This bill is not about abortion or abortion politics, as the opponents have alleged. It is about providing justice for both victims in the crime. Vote for the Unborn Victims Violence Act.

Ms. LOFGREN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Chairman, the arguments made by the supporters tug at the heart strings of the Nation. Yet we, as legislators, know better. We know that the American people want us to do justice, not just pontificate, or what makes a great sound byte, or as a shelter for the lack of work we have done in other areas.

I have to compliment my colleague, the gentlewoman from New Mexico (Mrs. WILSON), for such an elegant and heartwrenching speech and presentation. Yet she missed the point. It is possible to address the issues of H.R. 2436 without trespassing on the reproductive rights of women in this country.

None of the opponents of this bill have argued that abortion can be prosecuted under this bill. They keep saying that we are saying that we do not want abortion dealt with so we are opponents of the bill. We have not argued that, because we see clearly in the bill it deals with setting aside abortion as a possible offense.

But what we are arguing is that the bill is an effort to erode a woman's right to choose. And it is. They said it. They know it. The paper knows it. Ev-

erybody knows it. They are trying to erode *Roe v. Wade*.

Now, the other thing that must be made clear is, in the Arkansas situation that was argued, in the North Carolina situation that was argued, those were State offenses and there were no underlying predicate acts. In fact, in this legislation that is being presented today on the floor, there is no underlying predicate act in this bill.

State law can be prosecuted without any further Federal legislation. What we are saying is, if this is a State law and this is a State issue, let it be dealt with in the State court. We do not need to pass any more legislation that is dealt with in State legislature.

In fact, let us think about it like this. I think that is the argument that the gun proponents made when we were talking about passing the Brady bill, State law already handles it so why pass Federal legislation.

In fact, I think that is the argument we made just the other day when we wanted more gun control, we do not prosecute enough gun control laws right now. Why pass any more?

Same thing here, let us not pass any more laws that we do not need. State law deals with this.

□ 1445

Mr. CANADY of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to thank the gentleman from South Carolina (Mr. GRAHAM) for his very thoughtful and diligent work on this important and carefully constructed legislation that will help close an unfortunate gap in Federal law. Since the gentleman from South Carolina has so ably and thoughtfully explained the legislation earlier in the debate, I would just like to take a few minutes to address several of the legal issues that have been raised regarding H.R. 2436.

First, questions have been raised about the constitutional authority to enact this legislation. That is something that we heard quite a bit about when the bill was debated in the Committee on the Judiciary. I submit to the House that the challenge to the bill on this ground is totally without merit. It is clear that Congress has such constitutional authority because the bill will only affect conduct that is already prohibited by Federal law.

H.R. 2436 merely provides an additional offense and punishment for those who injure or kill an unborn child during the course of the commission of one of the existing predicate offenses set forth in the bill. If there is any question regarding the constitutionality of the act's reach, that question is more properly directed to the constitutionality of the predicate offenses that are already established in the Federal law and not to H.R. 2436 itself.

Opponents of the legislation have also argued that it somehow violates the decision of the Supreme Court in

Roe v. Wade which was decided in 1973. There are variations on this argument, this argument is framed in different ways, but that is what it boils down to. They are saying there is an inconsistency between this statute and the decision of the Supreme Court in Roe v. Wade. Once again, I submit to the House that this argument simply makes no sense.

To begin with, H.R. 2436 does not apply to abortion. It is very important to understand that. It was acknowledged just a minute ago, but I think there are some people who have made arguments against this bill who do not really understand that. I would direct the Members' attention to pages 4 and 6 of the Union Calendar version of this bill where prosecution is explicitly precluded for abortion-related conduct. It is right there in the bill, an exemption for abortion-related conduct. The act also does not permit prosecution of any person for any medical treatment of the pregnant woman or her unborn child or of any woman with respect to her unborn child. So it is very clear in the bill. There should be no doubt about these provisions of the bill.

Let me go on to say that there is nothing in Roe v. Wade that prevents Congress from giving legal recognition to the lives of unborn children outside the parameters of the right to abortion marked off in that case. In establishing a woman's right to terminate her pregnancy, the Roe Court explicitly stated that it was not resolving the difficult question of when life begins, and that is the terminology that the Court specifically used. They said they were not resolving that. They said they were not resolving the difficult question of when life begins, because the judiciary at this point in the development of man's knowledge is not in a position to speculate as to the answer. That is what the Supreme Court said. What the Court did hold was that the government could not override the rights of the pregnant woman to choose to terminate her pregnancy by adopting one theory of when life begins. The focus there was on the right of the pregnant woman. I think anyone who understands Roe and the cases that follow that understand that that is what the focus was. That is undoubtedly. That is unquestioned. Anyone that is not aware of that should read the case.

Courts addressing the constitutionality of State laws that punish killing or injuring unborn children have recognized the lack of merit in the argument that such laws violate Roe v. Wade and as a result have consistently upheld those laws. This is important to understand. This is not a question of first impression here in this House. This is not a matter of doubt or uncertainty. Laws similar to the law under consideration here today have been adopted in a range of States across the country. Those laws were challenged in court and the courts consistently upheld them.

Let me give my colleagues some examples. In Smith v. Newsome, which

was decided in 1987, the 11th Circuit Court of Appeals held that Roe v. Wade was, and I quote, "immaterial to whether a State can prohibit the destruction of a fetus by a third party." That is what the 11th Circuit said.

The Minnesota Supreme Court echoed that sentiment in 1990 in the case of State v. Merrill holding that, and once again I quote, "Roe v. Wade protects the woman's right of choice; it does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus."

In 1994, the California Supreme Court held in People v. Davis that "Roe v. Wade principles are inapplicable to a statute that criminalizes the killing of a fetus without the mother's consent." That is what the California Supreme Court had to say. I do not think anyone would accuse them of being soft on the issue of abortion rights.

In State v. Coleman which was decided in 1997, the Ohio Court of Appeals stated that "Roe protects a woman's constitutional right. It does not protect a third party's unilateral destruction of a fetus."

Opponents of this legislation have also argued that the use of the term "unborn child" is "designed to inflame." They contend that the use of this term may, in the words of those dissenting from the Committee on the Judiciary report, and I quote them, "result in a major collision between the rights of the mother and the rights of the unborn. That is what the real objection to this bill is about. It is about the use of the term "unborn child" in this bill. I think the opponents of this bill, if they are candid, will acknowledge that. That is the focus of their objection. They do not like the use of that terminology. Let me say that this objection, in fact, reflects nothing more than the semantical preferences of radical abortion advocates, and is based on an apparent lack of knowledge of the widespread use of the term "unborn child" in the decisions of the United States Supreme Court and the United States Courts of Appeals, as well as in State statutes and court decisions, and even in the legal writings of abortion advocates.

The use of the term "unborn child" by the Supreme Court can be illustrated by reference to Roe v. Wade itself, in which Justice Blackmun used the term "unborn children" as synonymous with "fetuses." Justice Blackmun also used the term "unborn child" in Doe v. Bolton, the companion case to Roe in which the Court struck down the Georgia abortion statute.

Let me also bring the attention of the Members to a 1975 case, a case decided not long after the Roe decision. This is the case of Burns v. Alcala, where the Court held that unborn children were not dependent children for purposes of obtaining aid under the Aid to Families With Dependent Children program, commonly known as the AFDC welfare program. Not only did Justice Powell use the term "unborn

child" in the majority opinion in Burns, but Justice Thurgood Marshall dissented in the case and argued that unborn children, and I quote, "unborn children," those were his words in his dissent, should be covered as dependent children under AFDC.

Now, would the opponents of H.R. 2436 seriously contend that Justice Marshall was undermining the legal structure of abortion rights by arguing that unborn children should be recognized under a Federal statute? Do they seriously contend that that was the impact of what Justice Marshall said in his opinion? As we all know, Justice Marshall was a vigorous proponent of abortion rights. I would encourage the Members to read his opinion.

He starts off in his dissent saying, "When it passed the Social Security Act in 1935, Congress gave no indication that it meant to include or exclude unborn children from the definition of 'dependent child.' Nor has it shed any further light on the question other than to consider, and fail to pass, legislation that would indisputably have excluded unborn children from coverage." That is right there in Justice Marshall's dissent in 1975. He goes on and talks about unborn children time after time. He ends up his opinion dissenting from the judgment of the Court in this case by saying, "I cannot agree that the act, in its present form, should be read to exclude the unborn from eligibility." That was Justice Thurgood Marshall.

Subsequent Supreme Court decisions have also used the term "unborn child" as synonymous with "fetus." These cases include City of Akron v. Akron Center for Reproductive Health, decided in 1983; Webster v. Reproductive Health Services, decided in 1989; and International Union v. Johnson Controls, decided in 1991. There are so many decisions of the U.S. Courts of Appeals using the term "unborn child" that it would be too time consuming to go through them all. I would use up the rest of the time in the debate simply going through those decisions of the Courts of Appeals where the term "unborn child" was used. There are also at least 19 State criminal statutes similar to H.R. 2436 that currently use the term "unborn child" to refer to a fetus. These statutes have been consistently upheld by the courts as I have already explained.

We have these cases of the Supreme Court. We have these State laws. We have the other Court opinions that use this term "unborn child." That is part of the fabric of the law in this country. The structure of abortion rights has not come tumbling down because the Court has used that term. I think the argument that is being made here simply does not make sense.

Even feminist abortion rights advocates such as Catherine MacKinnon have used the term "unborn child" as synonymous with "fetus." In an article that was published in the Yale Law Journal entitled "Reflections on Sex

Equality Under the Law," Professor MacKinnon conceded that, and I quote, "a fetus is a human form of life that is alive." That is what Professor MacKinnon said, and I do not think she would take second place to anyone in her support for abortion rights. In her defense of abortion rights, Professor MacKinnon expressed her view that, and again I quote, "Many women have abortions as a desperate act of love for their unborn children." I think the argument of the opponents of this bill that focuses on their view about the harm that will be caused by the use of the term "unborn child" is simply not supported by the facts and is more a fantasy than anything else.

Finally, opponents of H.R. 2436 have argued that the bill lacks the necessary mens rea requirement for a valid criminal law and is therefore unconstitutional. I just want to point out briefly that this argument ignores the well-established doctrine of "transferred intent" in the criminal law. Anyone who knows anything about the criminal law has to know something about transferred intent. This is not some secret, dark mystery of the criminal law. This is a well-established doctrine.

Under H.R. 2436, an individual may be guilty of an offense against an unborn child only if he has committed an act of violence, with criminal intent, upon a pregnant woman, thereby injuring or killing her unborn child. Under the doctrine of transferred intent, the law considers the criminal intent directed toward the pregnant woman to have also been directed toward the unborn child who is the victim of the violence as well.

This transferred intent doctrine was recognized in England as early as 1576 and was adopted by American courts during the early days of the Republic. A well-known criminal law commentator describes the application of the doctrine to the crime of murder in language that is remarkably similar to the language and operation of this legislation:

"Under the common law doctrine of transferred intent, a defendant who intends to kill one person but instead kills a bystander is deemed the author of whatever kind of homicide would have been committed had he killed the intended victim." H.R. 2436 operates on these basic and well-settled principles of the criminal law.

In summary, let me say that none of the legal challenges to this bill can withstand serious scrutiny. All the opposition to the bill in fact stems from an objection to the very concept of "unborn children." That is what it boils down to, as I said earlier. The opponents insist that a concept that is well-recognized in the law is somehow dangerous and subversive, a concept that has been recognized by judges such as Thurgood Marshall in his opinions on the Court. The opponents have a great deal, I would suggest, invested in the illusion that the unborn are en-

tirely alien to the human family. Indeed, I have come reluctantly to the conclusion that for the opponents of this bill, it is a chief article of faith with them that the unborn are not human.

□ 1500

It is their credo that the unborn are nothings, nonentities; as the gentleman from Illinois (Mr. HYDE) said, ciphers. They dogmatically adhere to the doctrine that the recognition for any purposes of the value of life in the womb is forbidden by the Constitution of the United States. Thus, they mount their opposition to this very reasonable effort to protect the innocent unborn from brutal acts of criminal violence.

Now I would humbly suggest that those who would embrace principles that would drive them to oppose eminently reasonable legislation such as this legislation proposed by the gentleman from South Carolina should re-examine the principles they have embraced. And, regardless of what we may think of the wisdom and justice of the Supreme Court's decision on abortion rights, we should be able to understand that the views expressed in opposition to this bill are views that have never been embraced by the Supreme Court of the United States. These views go far beyond anything the Supreme Court has ever said.

We must recognize this:

These views do violence to the reality of the pain and suffering that is experienced when a criminal attacks a pregnant woman and injures or kills the child in her womb. We have heard the tragic stories of these cases, and I humbly submit that the arguments made against this bill show an inadequate sensitivity to the reality of that pain and suffering.

Mr. Chairman, the opponents of this bill have once again set off on a flight from reality. I would appeal to the Members of this House to reject their fallacious arguments. The only people who have anything to fear from this bill are the criminals who engage in violent acts against women and their unborn children. I urge the Members to vote in favor of H.R. 2436.

Mr. Chairman, I reserve the balance of my time.

Ms. LOFGREN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Hawaii (Mrs. MINK).

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentlewoman for yielding this time to me.

Mr. Chairman, I rise to express my opposition to H.R. 2436, the Unborn Victims of Violence Act. This bill claims to protect fetuses from assault and harm, but its goal is clearly to undercut the legal foundations of a woman's right to choose. H.R. 2436 gives a fetus at any stage of development from the time of fertilization the status of a person under the law with interests and rights distinct from those of the pregnant woman. This is in direct conflict with *Roe v. Wade* which held that at no

stage of development are fetuses persons under the law.

Mr. Chairman, we are deeply concerned about violence against women and agree that harm to a woman which results in injury or harm to her pregnancy deserves enhanced punishment. But H.R. 2436 is not the way to accomplish this goal, and I regret that the previous speaker, the gentleman from Florida (Mr. CANADY) seemed to suggest that those of us who oppose this legislation have no sense of feeling or compassion or hurt or tragic feelings about women who find themselves in such a situation.

That is far from the truth. We understand the pain and suffering that occur to these women when they are attacked and criminal violence is done to them, but the criminal violence done to them should be treated in ways that do not do violence to the fundamental constitutional rights of all women.

I, therefore, strongly support the Lofgren substitute, the Motherhood Protection Act of 1999 which recognizes that when harm comes to a pregnancy, it happens to the woman who is pregnant. The Motherhood Protection Act would establish a new Federal crime for any violent or assaultive conduct against a pregnant woman that interrupts or terminates her pregnancy with punishments ranging from 20 years to life imprisonment. The Lofgren substitute accomplishes the stated goal of H.R. 2436 and should be adopted by this House if we have the intent of protecting women who are pregnant.

Ms. LOFGREN. Mr. Chairman, I yield 3½ minutes to the gentleman from North Carolina (Mr. WATT), my colleague on the Committee on the Judiciary.

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentlewoman for yielding this time to me, and I wanted to just bring to the attention of my colleagues a concern that I have about this bill that is a little bit different than the concern that has been expressed during the primary debate on the bill, and I bring this to the attention of my colleagues not to diminish the value of the debate that has occurred.

It is very important that this bill not undercut the right to choose either directly or indirectly or by implication. But there is another concern about this bill that I think we have lost sight of and that my colleagues who came riding into Congress on the States rights horse have lost sight of. Unfortunately, when they start to talk about abortion issues and issues of this kind, they lose sight of the fact that we operate in a Federal form of government under which certain rights are reserved to the States, and for the Federal Government to exercise jurisdiction in a particular area, there has to be some particular Federal nexus involved.

Under this bill my colleagues would have us believe that because the Federal law and the Federal Government has an interest in protecting, for example, Federal law enforcement officials,

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that that same interest would expand to protecting a fetus or an unborn child in the womb of that Federal law enforcement official. The nexus for protecting Federal law enforcement officials is the fact that they are Federal law enforcement officials, and we as a Federal Government, therefore, have a vested interest and a constitutional right to protect them. We cannot take that same constitutional right that the Federal Government has and take it to the next level.

So in this case that has been talked about over and over and over in North Carolina, they would have us believe that because the mother was protected under Federal law when she was driving down the street in North Carolina, the child of the mother should have the same Federal protection. In fact, it is the State law that we have to look to to protect the interests of the unborn child or the child in that case just as we could not extend Federal law to protect a born child or a passenger in that car with the mother. We do not have the right in our Federal system to extend Federal law willy nilly, and there is simply no basis in a lot of the instances that this bill covers under Federal law for exercising jurisdiction.

Mr. Chairman, I would encourage my colleagues to oppose the bill for that reason.

Ms. LOFGREN. Mr. Chairman, I yield 3 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Chairman, I thank the gentlewoman for yielding this time to me.

I rise in strong opposition to H.R. 2436 and in strong support of the substitute bill. H.R. 2436 would make it a Federal crime to knowingly damage a fertilized egg during an assault against a pregnant mother.

Now I absolutely agree that it is a tragedy for a woman to lose a pregnancy during a crime, and I strongly support the approach that many States have taken to toughen penalties for an assault against a pregnant woman, and that is, in fact, the approach that my colleague is taking in her substitute. However, Mr. Chairman, H.R. 2436 would do nothing to protect the woman further, but instead would create for the first time a legal definition that a fertilized egg is entitled to protection under the law as a person.

This bill is indeed breathtaking in its scope. While the examples used are drawn from criminal assaults of women in advanced stages of pregnancy, its real concern reaches to the impact of the violence on the embryo. *Roe v. Wade* makes a distinction between the embryo in the first trimester and the post viability embryo, and that is the distinction that State laws honor.

This bill makes no such distinction because it deals with the fertilized eggs at all stages of development; and, therefore, it opens the opportunity that if a woman is assaulted in sort of a routine assault and battery case and 3 weeks later has a miscarriage, that

miscarriage can up the assault and battery charges to murder though she did not know she was pregnant at the time and neither did the assailtant.

So this bill goes way beyond what it appears to do, and while I certainly think that a woman in an advanced stage of pregnancy who is assaulted and the fetus killed, that assailtant deserves a punishment that is far more severe than if he had not been attacking a pregnant woman. I think this bill goes way beyond that by dealing with a fertilized egg and opening up the kinds of possibilities I cite, and the next step, which is not contained in this bill, but it is the only logical next step, is to disregard the intent of the assailtant. Why, if it is a criminal assault, should it be seen as a crime? When it is simply the destruction of the fetus, it should not be seen as a crime?

Mr. Chairman, that is why those of us who support a woman's right to abortion are deeply concerned about this legislation. It does clearly in its language exclude abortion, but the only difference between an abortion and a criminal attack is the criminality of the attacker and the criminal intent. But the effect on the fetus is the same, and all my colleagues focus on in this bill is the fetal effect, and they define "fetus" as fertilized egg even before the woman knows she is pregnant.

So I urge opposition to the bill and support for the substitute.

Ms. LOFGREN. Mr. Chairman, I yield 2 minutes to the gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Chairman, I thank the gentlewoman for yielding this time to me.

As my colleagues know, why do we think this bill is fundamentally an attack on choice? Because if the real effort is to protect women, we can do that in other ways, and we must do that in other ways, but if we really want to do that, we should pass the Violence Against Women's Act. This bill has not come up before on the floor of this House, but if we really want to protect women, pass the Violence Against Women Act. If we really want to protect or if we really want to provide more sincere and serious punishment should an assault on a woman result in the loss or damage to a pregnancy, we can do that by passing the Lofgren amendment.

We can do those things, and we should do those things, but here is where I believe this bill is fundamentally disingenuous: As my colleagues know, a couple years ago I visited a women's shelter where they took women in after being victims of domestic or other violence. That women's shelter turned away 1,200 women a year because they did not have adequate funding, 1,200 women who had been the victims or believe they were about to be the victims of violence were turned away because that shelter did not have adequate funding.

If we really care about women, if we really care about the well-being of children, we will pass the Violence Against Women Act, we will fully fund programs like women's shelters, we will fund programs to help children, to promote safe and secure births for children.

But this act fundamentally is an assault on the constitutional right to choose. That is what it is about, make no mistake about it. If you support the right to a safe, legal abortion, you should reject this act, and you should support the Lofgren substitute, which is what I will surely do, and I encourage my colleagues to do as well.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, neither Congress nor the United States Supreme Court has ever afforded legal status to an unborn child, and it is undisputed, I think, that H.R. 436 would be the first such congressional recognition. Similarly, there is no precedent in the history of the Supreme Court for such a rule.

In the 26 years since *Roe v. Wade*, the United States Supreme Court has never recognized an unborn child as having legal status. Outside of the abortion context, the Court has been asked only twice to uphold a State's determination that an unborn child should be afforded the protection of the law, and those two cases, *Burns v. Alcala* and *Webster v. Reproductive Health Services*, are the only two cases in the 26 years since *Roe*, in which the Supreme Court has been asked to recognize the "unborn child" as having legal status. In both cases, the Supreme Court refused to do so.

Those of us who are here today standing up for the personal right of a woman to determine her own reproductive future are very concerned and very opposed to this bill.

I have heard the chairman of the Subcommittee on the Constitution go on at some length about how this really would not disturb *Roe v. Wade*, and I do not agree. But I would also like to point out that the chairman and the gentleman from Illinois (Mr. HYDE), the chairman of the committee, opposed *Roe v. Wade*. That is their right to do so. The gentleman from Illinois (Chairman HYDE) said today earlier that he opposed abortion in all cases, including cases of rape and incest. I do not agree with him, but I respect that that is his position. In fact, if it were up to the chairman, he would repeal *Roe v. Wade*, and I think this is part of the strategy to go down that road.

We do not see it the same way, and I wish that we could have that debate in a different context, not in the context of violence against women, because, in fact, after we have finished debate on this bill, I will be offering a substitute with the gentleman from Michigan (Mr. CONYERS) that would achieve the goal that is allegedly being sought here today, which is protection of women who are pregnant against assault that

might impair or damage their pregnancy. We can do that together, if that is in fact our goal. I think that goal is a worthy one.

I would urge that we do so and that we reserve the debate over reproductive choice for another time, another day, a different vehicle, and that we be very open about what the dispute is about. If opponents of reproductive choice for American women want to bring this issue to a conclusion, they ought to bring a pro-life constitutional amendment to this floor.

Mr. CANADY of Florida. Mr. Chairman, I yield the balance of my time to the gentleman from South Carolina (Mr. GRAHAM).

The CHAIRMAN. The gentleman from South Carolina is recognized for 1 minute.

Mr. GRAHAM. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I spent days, hours, a lot of time with a lot of people to draft in bill for an express purpose, not to have an abortion debate, but we will have it. This is a free and open House. You can talk about what you want to.

My goal is to have a statute that will put people in jail when they do harm. When they do bad things, they suffer bad consequences.

California has a statute very similar to this that has been in existence for 29 years. Go open up a phone book and see if you can have an abortion in California. You can. There are 24 states that have made it a crime to destroy an unborn child by a third party, and a woman can still get a legal abortion.

This bill exempts consensual abortions because it is about criminals, not abortions. Sometime, somewhere, unfortunately, given human nature, there will be a woman assaulted where Federal jurisdiction exists and she will lose her baby, and I want to make sure that person goes to jail for taking her baby away from her when she chooses to have it. I hope you will help me do it.

Ms. LEE. Mr. Chairman, today in this chamber we rise yet another time to protect a woman's right to choose. As one of 37 pro-choice women in the Congress, this is an issue for which we must stand and speak time and time again. Anti-choice Republicans continue to take every possible opportunity to raise legislation aimed at undermining a woman's right to choose. Since the beginning of the 104th Congress, the House has taken over 100 votes on family planning and choice—a phenomenal number. From the move to override President Clinton's veto of the partial birth abortion ban, to the so-called "Child Custody Protection Act," to requiring parental consent to access Title X services, the "Unborn Victims of Violence Act" that we address today is yet another example.

I deplore acts of violence against women, and stand as the strongest of advocates against domestic violence and domestic abuse; however while this legislation purports to protect pregnant women, the reality is that it undermines a woman's right to choose. The bill would criminalize death or injury that occurs at any stage of development, from conception to birth. H.R. 2436 would recognize the fetus as a person, with the same legal standing as the woman's—a status long sought by the conservative movement to attack the Supreme Courts' ruling in *Roe v. Wade*.

In order to protect women from violence, this Congress should be passing H.R. 357, the Violence Against Women Act of 1999. In order to ensure healthy pregnancies for both mothers and babies, this Congress should be passing legislation to increase access to prenatal care. In order to support healthy children, this Congress should be passing legislation to support and strengthen WIC nutrition and food stamp programs. But instead we are debating yet another piece of anti-choice legislation.

I urge my colleagues to recognize this bill for what it is: a misguided initiative, dangerous and harmful to women's rights. I urge a "no" vote on H.R. 2436.

Mrs. TAUSCHER. Mr. Chairman, I rise today in opposition to H.R. 2436, the so-called "Unborn Victims of Violence Act." While I whole-heartedly agree that acts of violence against a pregnant woman deserve severe punishment, this bill does absolutely nothing to further that goal. Ironically, these pregnant women are not mentioned in the actual legislative text. Instead, this bill goes so far as to redefine the fetus as a fully-independent person separate from the mother. This is a definition that even Supreme Court Justice Antonin Scalia, a staunch opponent of *Roe v. Wade*, opposed.

Instead, I believe we must do more to protect pregnant mothers, and am therefore supporting the "Motherhood Protection Act," introduced by Representative LOFGREN. This measure provides increased penalties for crimes against pregnant women. This common-sense legislation would provide true protections for pregnant women without undermining the Constitutionally-protected right to choose or attempting to change the definitions of "personhood" under the 14th Amendment to the Constitution. This measure makes sense, and achieves the stated goals of the underlying bill. I urge my colleagues to vote for the Lofgren substitute and vote against H.R. 2436.

Mr. WU. Mr. Chairman, I rise today to express my opposition to H.R. 2436, the Unborn Victims of Violence Act. This legislation is clearly another attempt to take away a woman's right to choose.

Under this bill, a person can be prosecuted for harming a fetus, regardless of whether the person is prosecuted for harming the mother. No knowledge of the pregnancy or intent to cause harm is necessary for prosecution. That means that even without determining intent, one could receive the full punishment normally associated with intentional murder. As the father of two beautiful children, my daughter Sarah less than a week old, I feel strongly that any crime that intentionally causes harm to a mother and her unborn child is despicable and must be punished. This legislation, however, is not the way to achieve that. Granting independent legal status to a fetus does not help to stop violence against women.

Let's work together to protect all women and their children from violence rather than using this veiled legislation to restrict a woman's right to choose.

Ms. DEGETTE. Mr. Chairman, I remain baffled at this body's ability to undermine a woman's fundamental right to choose. What's more, I am disturbed at the latest trend of crafting vague, amorphous legislative language that flies in the face of the proper intent of legislation by those who seek to limit or abolish this right.

The majority of Americans are pro-choice and know that we must protect a woman's right to choose to have an abortion while at the same time working to make abortion rare. The other side chooses to ignore this majority. They have determined that the best way to do this is to craft vague, and purportedly narrow, legislative language that undercuts this fundamental right by creating vast legal loopholes and ambiguously worded statutes that result in the near elimination of abortions.

Last Friday, the Eighth Circuit Court of Appeals struck down three such vaguely worded statutes from Iowa, Nebraska and Arkansas that posed as legislation to prohibit one form of late-term abortion. The Court recognized the backdoor attempt to ban abortions completely and the stifling affect such broad language would have on the health and safety of women in these states.

There is not a single member of the House of Representatives who does not think that criminals who brutally attack a pregnant woman should not be held accountable for their actions and punished to the full extent of the law. But if you expect us to naively believe that protecting pregnant women is the only intent of this legislation, you are sadly mistaken. This legislation fails to address many of the very real needs to protect women from violence in its backdoor attempt to undermine the essence of *Roe v. Wade*.

If we are addressing violence to a fetus in utero, the one very large, glaring omission from the legislation we are debating today is the woman carrying that pregnancy. As worded, this legislation turns the woman in to a mere vessel and ignores the simple truth that the abhorrent violent acts we have heard so much about on the floor today are happening to a woman.

We should punish people who harm a pregnant woman—but unfortunately we are not debating that fact today because the woman is missing from this legislation. I welcome the opportunity to discuss legislation that would enhance penalties for criminals who commit violent, deplorable crimes against a pregnant woman, particularly if that crime results in the loss of the pregnancy. But the fact that the violent act against the woman is ignored by this legislation, reveals its true intent. This legislation seeks to do one thing—create a separate legal status for a fetus, embryo, blastocyst or zygote to lay the groundwork for a fresh assault on *Roe v. Wade*.

If this Congress wants to protect women, and promote healthy pregnancies, then it should reauthorize the Violence Against Women Act. But, both the Department of Justice and the National Coalition Against Domestic Violence have said that this bill fails to help women victims of violence and yet again, diverts attention away from the true victim of the crime, the woman.

You cannot toss aside the health and safety of millions of women with legislation that masquerades as an effort to protect them.

Mr. ABERCROMBIE. Mr. Chairman, today I rise in strong support of the Lofgren-Conyers amendment to H.R. 2436, the Unborn Victims of Violence Act. The bill is unfortunately

flawed and needs to be modified because it fails to address the underlying issue—violence against women—pregnant or not. The majority of crimes against women occur during domestic violence and drunk driving incidents. I supported the Violence Against Women Act [VAWA] when it first became law in 1994. VAWA set up a national domestic violence hotline, grants for law enforcement, prosecution, and battered women shelters to combat violence and sexual assault. This Congress, I am a proud cosponsor of VAWA II which reauthorizes the original VAWA 1994 Act and has other provisions to further help protect women from violence. For example, the bill addresses sexual assault prevention and combating violence in the workplace.

When we create laws that affect women, we cannot take the woman out of the equation which is what H.R. 2436 does. The woman is the victim of the crime and one of the best ways to protect a woman is to have VAWA II passed. I think everyone agrees that crimes against women are horrible. It's especially tragic when the woman is pregnant and that needs to be appropriately addressed which is why I am supporting the Lofgren-Conyers substitute, the Motherhood Protection Act of 1999.

The Lofgren-Conyers substitute creates a federal criminal offense for harm to a pregnant woman and recognizes that the pregnant woman is the victim of a crime causing termination or harm during a pregnancy. The substitute provides for a maximum 20-year sentence for injury to a pregnant woman and a maximum life sentence for the termination of a pregnancy due to the assault. By focusing on the harm to the pregnant woman, it provides a deterrent against violence against women. I encourage my colleagues to support the Lofgren-Conyers substitute.

Mr. HANSEN. Mr. Chairman, I rise today in support of H.R. 2436, and commend my friend from South Carolina for bringing it to the floor.

Mr. Chairman, this bill has evoked the usual complaints from liberals in this country who refuse to accept any restrictions on when, how, or why an unborn child is killed. Until today, they had only defended the "right" of any woman to "choose" to kill her unborn child. How, however, it seems that they are willing to extend that protection to criminals who kill an unborn child while committing a crime for which they will be punished under federal law.

Now, before abortion rights activists paint this debate as one about a woman's 'right to choose,' let's examine a scenario that would be covered by this bill. First of all, if a woman is pregnant, and has not taken steps to end the pregnancy, it is probably safe to assume that she has chosen to bring her child into the world. When an individual, while committing a crime, harms that woman, and kills her unborn child, her choice to have her baby has been taken away, and it is that action which this bill and its sponsor seek to punish. If anything, this bill is the epitome of protecting the right to choose.

Free societies such as ours are based on giving up certain freedoms in exchange for security. Congress has, in the past, passed obscenity laws, which reasonably restrict the First Amendment. We have also made it illegal for known felons to purchase firearms, a restriction on the Second Amendment. All freedoms have reasonable limitations, yet abortion rights advocates in this nation, and specifically

in this body, refuse to accept any limitations on the right to kill an unborn child. We have seen many of those individuals come before this body, listing the names of children killed by gun violence. Is it any less tragic when an unborn child is killed, simply because it has not been given a name yet? The opposition to this bill shines the spotlight of truth on abortion rights activists' belief that the death of an unborn child, under any circumstances, is all right with them. Quite frankly, Mr. Chairman, that attitude sickens me, and I would hope that it sickens the rest of our society.

I urge all of my colleagues to support decency, support human life, and support the choice of pregnant women to give birth to their children, by supporting this bill.

Mr. PAUL. Mr. Chairman, pro-life Members of Congress are ecstatic over the Unborn Victims of Violence Act, touting it as a good step toward restoring respect for life, and once again criminalizing abortion. This optimism and current effort must be seriously challenged.

As a pro-life obstetrician-gynecologist, I strongly condemn the events of the last third of the 20th century in which we have seen the casual acceptance of abortion on demand.

The law's failure to protect the weakest, smallest and most innocent of all the whole human race has undermined our respect for all life, and therefore for all liberty. As we have seen, once life is no longer unequivocally protected, the loss of personal liberty quickly follows.

The *Roe v. Wade* ruling will in time prove to be the most significantly flawed Supreme Court ruling of the 20th century. Not only for its codification, through an unconstitutional court action, of a social consensus that glorified promiscuity and abortion of convenience and for birth control, but for flaunting as well the constitutional system that requires laws of this sort be left to the prerogative of the states alone. A single "*Roe v. Wade*" ruling by one state would be far less harmful than a Supreme Court ruling that nullifies all state laws protecting the unborn.

Achieving the goal of dehumanizing all human life, by permitting the casting aside all pre-born life, any time prior to birth, including partially born human beings, *Roe v. Wade* represents a huge change in attitudes toward all life and liberty. Now pro-life Members are engaged in a similar process of writing more national laws in hopes of balancing the court's error. This current legislative effort is just as flawed.

Traditionally, throughout our history, except for the three constitutional provisions, all crimes of violence have been—and should remain—state matters. Yet this legislation only further undermines the principle of state jurisdiction, and our system of law enforcement, which has served us well for most of our history.

Getting rid of *Roe v. Wade* through a new court ruling or by limiting federal jurisdiction would return this complex issue to the states.

Making the killing of an unborn infant a federal crime, as this bill does, further institutionalizes the process of allowing federal courts to destroy the constitutional jurisdiction of the states. But more importantly, the measure continues the practice of only protecting some life, by allowing unborn children to be killed by anyone with an "M.D." after his name.

By protecting the abortionist, this legislation carves out a niche in the law that further ingrains in the system the notion that the willful killing of an innocent human being is not deserving of our attention. With more than a million children a year dying at the hands of abortionists, it is unwise that we ignore these acts for the sake of political expediency.

Pro-abortion opponents of this legislation are needlessly concerned regarding its long-term meaning, and supporters are naively hoping that unintended consequences will not occur.

State laws have already established clearly that a fetus is a human being deserving protection; for example, inheritance laws acknowledge that the unborn child does enjoy the estate of his father. Numerous states already have laws that correctly punishes those committing acts of murder against a fetus.

Although this legislation is motivated by the best of intentions of those who strongly defend the inalienable rights of the unborn, it is seriously flawed, and will not achieve its intended purpose. For that reason I shall vote against the bill and for the sanctity of life and the rights of the states, and against the selected protection of abortionists.

Mr. Chairman, today Congress will vote to further instill and codify the ill-advised *Roe versus Wade* decision. While it is the independent duty of each branch of the federal government to act Constitutionally, Congress will likely ignore not only its Constitutional limits but earlier criticisms from Chief Justice William H. Rehnquist, as well.

The Unborn Victims of Violence Act of 1999, H.R. 2436, would amend title 18, United States Code, for the laudable goal of protecting unborn children from assault and murder. However, by expanding the class of victims to which unconstitutional (but already-existing) federal murder and assault statutes apply, the federal government moves yet another step closer to a national police state.

Of course, it is much easier to ride the current wave of federalizing every human misdeed in the name of saving the world from some evil than to uphold a Constitutional oath which prescribes a procedural structure by which the nation is protected from what is perhaps the worst evil, totalitarianism. Who, after all, wants to be amongst those members of Congress who are portrayed as soft on violent crimes initiated against the unborn?

Nevertheless, our federal government is, constitutionally, a government of limited powers. Article one, section eight, enumerates the legislative areas for which the U.S. Congress is allowed to act or enact legislation. For every other issue, the federal government lacks any authority or consent of the governed and only the state governments, their designees, or the people in their private market actions enjoy such rights to governance. The tenth amendment is brutally clear in stating "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Our nation's history makes clear that the U.S. Constitution is a document intended to limit the power of central government. No serious reading of historical events surrounding the creation of the Constitution could reasonably portray it differently.

However, Congress does more damage than just expanding the class to whom federal murder and assault statutes apply—it further

entrenches and seemingly concurs with the Roe versus Wade decision (the Court's intrusion into rights of states and their previous attempts to protect by criminal statute the unborn's right not to be aggressed against). By specifically exempting from prosecution both abortionists and the mothers of the unborn (as is the case with this legislation), Congress appears to say that protection of the unborn child is not a federal matter but conditioned upon motive. In fact, the Judiciary Committee in marking up the bill, took an odd legal turn by making the assault on the unborn a strict liability offense insofar as the bill does not even require knowledge on the part of the aggressor that the unborn child exists. Murder statutes and common law murder require intent to kill (which implies knowledge) on the part of the aggressor. Here, however, we have the odd legal philosophy that an abortionist with full knowledge of his terminal act is not subject to prosecution while an aggressor acting without knowledge of the child's existence is subject to nearly the full penalty of the law. (The bill exempts the murderer from the death sentence—yet another diminution of the unborn's personhood status.) It is becoming more and more difficult for Congress and the courts to pass the smell test as government simultaneously treats the unborn as a person in some instances and as a non-person in others.

In this first formal complaint to Congress on behalf of the federal Judiciary, Chief Justice William H. Rehnquist said "the trend to federalize crimes that have traditionally been handled in state courts . . . threatens to change entirely the nature of our federal system." Rehnquist further criticized Congress for yielding to the political pressure to "appear responsive to every highly publicized societal ill or sensational crime."

Perhaps, equally dangerous is the loss of another Constitutional protection which comes with the passage of more and more federal criminal legislation. Constitutionally, there are only three federal crimes. These are treason against the United States, piracy on the high seas, and counterfeiting (and, because the constitution was amended to allow it, for a short period of history, the manufacture, sale, or transport of alcohol was concurrently a federal and state crime). "Concurrent" jurisdiction crimes, such as alcohol prohibition in the past and federalization of murder today, erode the right of citizens to be free of double jeopardy. The fifth amendment to the U.S. Constitution specifies that no "person be subject for the same offense to be twice put in jeopardy of life or limb . . ." In other words, no person shall be tried twice for the same offense. However, in *United States v. Lanza*, the high court in 1922 sustained a ruling that being tried by both the federal government and a state government for the same offense did not offend the doctrine of double jeopardy. One danger of unconstitutionally expanding the federal criminal justice code is that it seriously increases the danger that one will be subject to being tried twice for the same offense. Despite the various pleas for federal correction of societal wrongs, a national police force is neither prudent nor constitutional.

Occasionally the argument is put forth that states may be less effective than a centralized federal government in dealing with those who leave one state jurisdiction for another. Fortunately, the Constitution provides for the proce-

dural means for preserving the integrity of state sovereignty over those issues delegated to it via the tenth amendment. The privilege and immunities clause as well as full faith and credit clause allow states to exact judgments from those who violate their state laws. The Constitution even allows the federal government to legislatively preserve the procedural mechanisms which allow states to enforce their substantive laws without the federal government imposing its substantive edicts on the states. Article IV, Section 2, Clause 2 makes provision for the rendition of fugitives from one state to another. While not self-enacting, in 1783 Congress passed an act which did exactly this. There is, of course, a cost imposed upon states in working with one another rather than relying on a national, unified police force. At the same time, there is a greater cost to centralization of a police power.

It is important to be reminded of the benefits of federalism as well as the costs. There are sound reasons to maintain a system of smaller, independent jurisdictions—it is called competition and, yes, governments must, for the sake of the citizenry, be allowed to compete. We have obsessed so much over the notion of "competition" in this country we harangue someone like Bill Gates when, by offering superior products to every other similarly-situated entity, he becomes the dominant provider of certain computer products. Rather than allow someone who serves to provide value as made obvious by their voluntary exchanges in the free market, we lambaste efficiency and economies of scale in the private marketplace. Curiously, at the same time, we further centralize government, the ultimate monopoly and one empowered by force rather than voluntary exchange.

When small governments become too oppressive with their criminal laws, citizens can vote with their feet to a "competing" jurisdiction. If, for example, one does not want to be forced to pay taxes to prevent a cancer patient from using medicinal marijuana to provide relief from pain and nausea, that person can move to Arizona. If one wants to bet on a football game without the threat of government intervention, that person can live in Nevada. As government becomes more and more centralized, it becomes much more difficult to vote with one's feet to escape the relatively more oppressive governments. Governmental units must remain small with ample opportunity for citizen mobility both to efficient governments and away from those which tend to be oppressive. Centralization of criminal law makes such mobility less and less practical.

Protection of life (born or unborn) against initiations of violence is of vital importance. So vitally important, in fact, it must be left to the states' criminal justice systems. We have seen what a legal, constitutional, and philosophical mess results from attempts to federalize such an issue. Numerous states have adequately protected the unborn against assault and murder and done so prior to the federal government's unconstitutional sanctioning of violence in the Roe v. Wade decision. Unfortunately, H.R. 2436 ignores the danger of further federalizing that which is properly reserved to state governments and, in so doing, throws legal philosophy, the Constitution, the bill of rights, and the insights of Chief Justice Rehnquist out with the baby and the bathwater. For these reasons, I must oppose H.R. 2436, The Unborn Victims of Violence Act of 1999.

Mr. HALL of Ohio. Mr. Chairman, I rise in support of H.R. 2436, the Unborn Victims of Violence Act. Under current federal law, an individual who commits a federal crime of violence against a pregnant women receives no additional punishment for killing or injuring the fetus. I think this is wrong and should be changed.

An incident that occurred in my district illustrates why this law is so desperately needed. In 1996, a man enlisted in the Air Force and stationed at Wright-Patterson Air Force Base—a jurisdiction which is governed by federal military law—severely beat his wife who was 34 weeks pregnant at the time. Although the women survived the attack, her uterus split open, expelling the baby into her mother's abdominal cavity, where the baby died.

The man was arrested and charged with several criminal offenses for the attack. However, Air Force prosecutors concluded that they could not charge him with a separate offense for killing the baby because, although Ohio law recognizes an unborn child as a victim, federal law does not.

In 1998, that judgment was concurred in the U.S. Air Force Court of Criminal Appeals ruling on that case. The court said, "Federal homicide statutes reach only the killing of a born human being . . . (Congress) has not spoken with regard to the protection of an unborn person."

Mr. Chairman, I believe it is time that Congress speaks on this issue by passing H.R. 2436. Many states, like Ohio, have passed laws to recognize unborn children as human victims of violent crimes. However, these laws do not apply on federal property. I think they should and therefore would urge my colleagues to pass the Unborn Victims of Violence Act.

Mr. STARK. Mr. Chairman, I rise in opposition to H.R. 2436, the Unborn Victims of Violence Act. This bill would give pregnancy from beginning to birth the same legal standing under federal law that we currently give a person. This legislation would establish a separate offense and punishment for federal crimes committed when death or bodily injury to the fetus occurs. Likewise, the bill establishes the same penalty for a violation under federal law if the injury or death occurred to the unborn fetus' mother.

This bill is designed for one purpose: to undermine the decision in *Roe v. Wade*. This legislation is an effort to endow legal rights to fetuses—in fact a backdoor way of elevating the legal status of a fetus—which has been the cornerstone of the conservative anti-choice agenda. This is just another way of writing a Human Life Amendment, a decades-long effort to expand the meaning of the word "person" under the constitution to include unborn offspring at every state of their biological development. Anti-choice Members of Congress know that they are trying to fool the American people.

They would also have us believe in their crusade to protect unborn victims of violence—but what about the born victims of violence?

Every day in America, 13 children and youth under age 20 die from firearms. If this Congress is so concerned with the safety of children, why has it not passed the gun control provisions approved by the Senate that would eliminate gun show loopholes and require mandatory safety locks with firearms sales?

The conference committee on H.R. 1501 and the Senate gun legislation has met only once publicly—and that was before we adjourned for the August recess—to read their opening statements.

Every day in America, 1,353 babies are born without health insurance and 2,162 babies are born into poverty as a result of welfare reform legislation passed by many who remain in the majority of this Congress today. We know now that children are losing critical benefits like Medicaid and food stamps. The Urban Institute cites falling welfare rolls as the "primary reason" that an estimated 500,000 fewer adults and children nationwide participated in Medicaid in 1996 than in 1995. Loss of Medicaid and the absence of employer-sponsored health insurance coverage make it extremely difficult for former recipients to obtain health care for themselves and their children.

In addition, the Children's Defense Fund's study entitled "Welfare to What?" cites troubling findings by NETWORK, a coalition of Catholic organizations, on 455 children in California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania and Texas during late 1997. The study found that 36% of children in families who had recently lost cash assistance were "eating less or skipping meals due to cost." The bottom line is that families who lose welfare often lose food stamps, making it impossible to buy sufficient food.

The same disregard for our children is evident in Congress' refusal to hold states accountable for maintaining high levels of quality in our child care centers. Today in America, more than 80% of child care services in the U.S. is thought to be of poor or average quality. Still, Congress turns its head and allocate billions of child care dollars a year with very little assurance of quality, allowing our children to be placed in substandard conditions.

The crimes of domestic violence is a horrendous one, and should be punished, but this blatant attempt to placate the radical right belittles the severity of domestic violence by using women and their pregnancies as tools to elevate the legal status of a fetus. It is cowardly, and it dishonors the lives of women who have survived, and those who have succumbed to the terrible tragedy of domestic violence.

Mr. RYUN of Kansas. Mr. Chairman, as the Declaration of Independence declares, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

I believe that one thing that makes America great is our defense of those incapable of defending themselves. Proverbs admonishes us to "Speak up for those who cannot speak for themselves" (31:8). It still is our duty to stand up for the weaker members of our society.

Tragically, under current federal law there are no consequences for injury or death to an unborn child. Where is the justice for the smallest and most helpless members of our society?

The intentional attack on a mother and her baby requires that justice be served. Our justice system is based on the protection of the innocent and the punishment of the guilty. The attacker must take responsibility for his actions and make restitution to his victims.

The Unborn Victims of Violence Act would make the offense to the baby a separate crime because it's a separate person. In this situation there are two victims and both of their lives should receive equal recompense under federal law.

Twenty-four states already have laws that recognize the unborn child as a victim. It is time that we agree with nearly half the states and provide grieving parents recognition of their loss.

Mr. Chairman, with the passage of the Unborn Victims of Violence Act we will be able to proudly say we are "one nation, under God, with liberty and justice for all".

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and is considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2436

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Unborn Victims of Violence Act of 1999".

SEC. 2. PROTECTION OF UNBORN CHILDREN.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 90 the following:

"CHAPTER 90A—PROTECTION OF UNBORN CHILDREN

"Sec.

"1841. Protection of unborn children.

"§ 1841. Protection of unborn children

"(a)(1) Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

"(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under Federal law for that conduct had that injury or death occurred to the unborn child's mother.

"(B) An offense under this section does not require proof that—

"(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

"(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

"(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall be punished as provided under sections 1111, 1112, and 1113 of this title for intentionally killing or attempting to kill a human being.

"(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

"(b) The provisions referred to in subsection (a) are the following:

"(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247, 248, 351, 831, 844(d), (f), (h)(1), and (i), 924(j), 930, 1111, 1112, 1113, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203, 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952 (a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of this title.

"(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C. 848(e)).

"(3) Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283).

"(c) Nothing in this section shall be construed to permit the prosecution—

"(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency;

"(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

"(3) of any woman with respect to her unborn child.

"(d) As used in this section, the term 'unborn child' means a child in utero, and the term 'child in utero' or 'child, who is in utero' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.'

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 90 the following new item.

"90A. Protection of unborn children ... 1841".

SEC. 3. MILITARY JUSTICE SYSTEM.

(a) PROTECTION OF UNBORN CHILDREN.—Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 919 (article 119) the following new section:

"§ 919a. Art. 119a. Protection of unborn children

"(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

"(2) The punishment for that separate offense is the same as the punishment provided for that conduct under this chapter had the injury or death occurred to the unborn child's mother, except that the death penalty shall not be imposed.

"(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

"(c) Subsection (a) does not permit prosecution—

"(1) for conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency;

"(2) for conduct relating to any medical treatment of the pregnant woman or her unborn child; or

"(3) of any woman with respect to her unborn child.

"(d) In this section, the term 'unborn child' means a child in utero.'

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 919 the following new item:

"919a. 119a. Protection of unborn children."

The CHAIRMAN. No amendment to that amendment shall be in order except those printed in House Report 106-348. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered read, debatable for a time specified in the report, equally divided and controlled by the proponent and an opponent, shall be not subject to amendment, and shall not be subject to a demand for division of the question.

The chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes

the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

It is now in order to consider Amendment No. 1 printed in House Report 106-348.

AMENDMENT NO. 1 OFFERED BY MR. CANADY OF FLORIDA

Mr. CANADY of Florida. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. CANADY of Florida:

In section 1841 of title 18, United States Code, as proposed to be added by section 2(a)—

(1) in subsection (a)(2)(C), insert “, instead of being punished under subparagraph (A),” after “shall”; and

(2) in subsection (c)(1)—

(A) insert “, or a person authorized by law to act on her behalf,” after “woman”; and

(B) strike “in a medical emergency”.

Strike section 3 and insert the following:

SEC. 3. MILITARY JUSTICE SYSTEM.

(a) PROTECTION OF UNBORN CHILDREN.—Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 919 (article 119) the following new section:

“§919a. Art. 119a. Protection of unborn children

“(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

“(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under this chapter for that conduct had that injury or death occurred to the unborn child’s mother.

“(B) An offense under this section does not require proof that—

“(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

“(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

“(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under subparagraph (A), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

“(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

“(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

“(c) Nothing in this section shall be construed to permit the prosecution—

“(i) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

“(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

“(3) of any woman with respect to her unborn child.

“(d) In this section, the term ‘unborn child’ means a child in utero, and the term ‘child in utero’ or ‘child, who is in utero’ means a member of the species homo sapiens, at any stage of development, who is carried in the womb.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 919 the following new item:

“919a. 119a. Protection of unborn children.”.

The CHAIRMAN. Pursuant to House Resolution 313, the gentleman from Florida, Mr. CANADY and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida, Mr. CANADY.

Mr. CANADY of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a simple, straightforward amendment that will accomplish two important things. First, the amendment will bring the Uniform Code of Military Justice provisions of the bill which are found in section 3 into conformity with the portion of the bill that was reported by the Committee on the Judiciary with an amendment.

Section 3 of the bill was referred to the Committee on Armed Services, but the Committee on Armed Services has waived jurisdiction over the bill. This amendment, which the chairman of the Committee on Armed Services has approved, will simply make the two sections of the bill operate in the same manner.

Second, the amendment will make two minor changes to clarify points raised by opponents of the legislation. The amendment will clarify that the punishment authorized under the bill for intentionally killing or attempting to kill an unborn child is in lieu of, not in addition to, the punishment otherwise provided under the bill. The amendment will also clarify that the exemption for abortion-related conduct includes situations in which a surrogate decision maker acts on behalf of the pregnant woman.

These technical changes reflect the intent of the drafters and do not effect substantive changes in the bill. I urge my colleagues to support this conforming and technical amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Chair of our subcommittee, the gentleman from Florida (Mr. CANADY), would have us believe that this is a technical amendment. It is not. It is a very substantive amendment, and we should be aware of that.

The chairman of our subcommittee, the gentleman from Florida (Mr. CAN-

ADY), would have us believe that the Committee on Armed Services waived jurisdiction over this bill because it thought it was an uncontroversial bill. The truth of the matter is that there is a whole section of this bill which has never, ever, been debated in any committee of this House.

The bill came to the Committee on the Judiciary. We had a debate on a part of the bill that was under the Committee on the Judiciary’s jurisdiction. We exercised our rights to debate that part.

We tried to offer amendments to the part of the bill that was under the jurisdiction of the Committee on Armed Services. We were denied that right in the Committee on the Judiciary on the parliamentary ruling that we did not have jurisdiction over that part of the bill.

Now, on the floor of the House, after the Committee on Armed Services has decided not to take jurisdiction over the bill and consider amendments in the committee, we are here on the floor of the House making major substantive changes to this bill.

Now, what does this amendment do? It says an offense under this section does not require proof that, one, the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant. That means if you kill an unborn fetus, you do not even have to know there was a fetus in the womb. You do not have to have any kind of intent. There is no criminal law in this country that ought to be passed that gives that right.

If we are going to pass it in this House, at least we ought to have jurisdiction in a committee; and a committee ought to take up the bill and debate it in the committee. We ought not use the processes of the House to our advantage and say, well, this is a parliamentary ruling, we cannot deal with it in the Committee on the Judiciary, and then tell the Committee on Armed Services, well, we do not want you to deal with it over there, and then try to accomplish the same thing that should have been done in committee on the floor of the House.

Mr. Chairman, this is just patently wrong. The proper thing to do would be to send this bill back to one of these two committees, and if we are going to make substantive changes to the bill, major policy changes, I might add, to make those changes in the committee.

Now, there are some people from the Committee on Armed Services I am sure that are getting ready to jump up and say, yes, we support this. But what about the other people on the Committee on Armed Services?

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, the gentleman is absolutely correct. I did come to the floor.

I chair the Subcommittee on Military Personnel with jurisdiction over the Uniform Code of Military Justice and the military legal system. We watched the Committee on the Judiciary in its debate and the bill was reported out. I recommended to the chairman that we waive sequential referral and the bill came to the floor. I support the manager's amendment.

Once this bill was reported, it is fitting that the Uniform Code of Justice be compatible with the Federal statute, and that is why we procedurally waived jurisdiction.

The need for the manager's amendment and the request for support by this body is illustrated by the case of *United States versus Robbins*. In that case, Gregory Robbins, an airman, and his wife, who was over 8 months pregnant with a daughter that they had named Jasmine, resided at Wright-Patterson Air Force Base, Ohio, an area of exclusive Federal jurisdiction.

On September 12, 1996, Mr. Robbins wrapped his fist in a T-shirt to reduce the chance that it would inflict visible bruises, and he badly beat his wife by striking her repeatedly in the face and abdomen with his fist. Mrs. Robbins survived the attack with a severely battered eye, a broken nose and a ruptured uterus. She was taken to the emergency room, but medical personnel could not detect the baby's heartbeat.

Now, some may refer to that baby as a fetal mass, but that was a viable fetus. They could not detect a heartbeat, and the doctors performed emergency surgery on Mrs. Robbins and found Jasmine laying sideways, dead, in Mrs. Robbins' abdominal cavity.

As a result of Mrs. Robbins' repeated blows, it ruptured her uterus, the placenta was torn from the inner uterine wall, which expelled Jasmine into the abdominal cavity.

Air Force prosecutors recognized that the Federal homicide statutes reach only the killing of a born human being, and that Congress has not spoken with regard to the protection of the unborn person. As a result, the prosecutors attempted to prosecute Mr. Robbins for Jasmine's death under Ohio's fetal homicide law, using Article 134 of the Uniform Code of Military Justice.

□ 1530

Article 134 incorporates by reference all Federal crimes, criminal statutes and those State laws made Federal law via, quote, the Assimilated Crimes Act.

Mr. Robbins pled guilty to involuntary manslaughter for Jasmine's death, but the legality of assimilating Ohio's Federal homicide law through article 134 is now the subject of Mr. Robbins' appeal to the Court of Appeals for the Armed Services.

If the Court of Appeals agrees with Mr. Robbins that the assimilation of Ohio's law was improper, he will receive no additional punishment for the killing of the baby, Jasmine. Moreover,

had Mr. Robbins battered his wife in a State that had no fetal homicide law, he could have been charged with only battery for the beating of his eight-month pregnant wife and there would be no legal consequence for the killing of their unborn child. That is the purpose of the manager's amendment, to make it compatible.

The CHAIRMAN. The gentleman from North Carolina (Mr. WATT) has the right to close debate, and each gentleman has 1 minute remaining.

Mr. CANADY of Florida. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, my good friend, the gentleman from North Carolina (Mr. WATT), made a reference to my comments with respect to the Committee on Armed Services. I think he misunderstood what I said. I know he did not intend to misrepresent what I said.

I said nothing about the purpose of the committee and waiving jurisdiction. I simply reported what they had done. I did not say that they viewed it as noncontroversial. The gentleman may have misunderstood that, but I wanted to make that clear. The Members of the Committee on Armed Services can speak for themselves.

The truth of the matter is that in this amendment we are simply conforming the provisions of the bill that were within the jurisdiction of the Committee on Armed Services with the changes in the structure of the bill that were made in the Committee on the Judiciary on the parts that we had jurisdiction over.

This is a conforming amendment. I can understand that the gentleman is opposed to the bill but this simply makes the bill internally consistent, and I say that it should not be controversial. It is truly a conforming and technical amendment.

Mr. WATT of North Carolina. Mr. Chairman, as masterful as the chairman who spoke on behalf of the Committee on Armed Services is, he cannot speak for the Committee on Armed Services.

We bring a major substantive change to this bill to the floor, give it 10 minutes of debate, 5 minutes per side; never has been in the Committee on Armed Services. The chairman of the committee comes out and says I am here to speak for the committee. What about all the other people on the Committee on Armed Services? When are they going to have an opportunity to weigh in on this major substantive provision to this bill?

That is what I am talking about when I say we have subverted the processes of this House using parliamentary procedures.

Basically, what we have done is deprive the minority of the Committee on Armed Services of the right to weigh in on this important issue. The chairman waived jurisdiction. They did not bring it into the committee, and they did not do anything. There are 60 Members. Fifty-nine of them have not spoken.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. CANADY).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 313, further proceedings on the amendment offered by the gentleman from Florida (Mr. CANADY) will be postponed.

The point of no quorum is considered withdrawn.

It is now in order to consider amendment No. 2 printed in House Report 106-348.

AMENDMENT NO. 2 IN THE NATURE OF A SUBSTITUTE OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment No. 2 in the nature of a substitute offered by Ms. LOFGREN:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Motherhood Protection Act of 1999".

SEC. 2. CRIMES AGAINST A WOMAN—TERMINATING HER PREGNANCY.

(a) Whoever engages in any violent or assaultive conduct against a pregnant woman resulting in the conviction of the person so engaging for a violation of any of the provisions of law set forth in subsection (c), and thereby causes an interruption to the normal course of the pregnancy resulting in prenatal injury (including termination of the pregnancy), shall, in addition to any penalty imposed for the violation, be punished as provided in subsection (b).

(b) The punishment for a violation of subsection (a) is—

(1) if the relevant provision of law set forth in subsection (c) is set forth in paragraph (1), (2), or (3) of that subsection, a fine under title 18, United States Code, or imprisonment not more than 20 years, or both, but if the interruption terminates the pregnancy, a fine under title 18, United States Code, or imprisonment for any term of years or for life, or both; and

(2) if the relevant provision of law is set forth in subsection (c)(4), the punishment shall be the such punishment (other than the death penalty) as the court martial may direct.

(c) The provisions of law referred to in subsection (a) are the following:

(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247, 248, 351, 831, 844 (d), (f), (h)(1), and (i), 924(j), 930, 1111, 1112, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203(a), 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952 (a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of title 18, United States Code.

(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C. 848).

(3) Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283).

(4) Sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of title 10, United States

Code (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

The CHAIRMAN. Pursuant to House Resolution 313, the gentlewoman from California (Ms. LOFGREN) and the gentleman from Florida (Mr. CANADY) each will control 30 minutes.

The Chair recognizes the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

(Ms. LOFGREN asked and was given permission to revise and extend her remarks.)

Ms. LOFGREN. Mr. Chairman, H.R. 2436 creates a separate Federal criminal offense for harm to, quote, an unborn child, with the legal status separate from that of the woman. The Lofgren-Conyers substitute creates a separate Federal criminal offense for harm to a pregnant woman.

The underlying bill recognizes, quote, a member of the species Homo sapiens at all stages of development as a victim of crime, from conception to birth. This affords even an embryo legal rights equal to and separate from those of the woman.

The Lofgren-Conyers substitute recognizes the pregnant woman as the primary victim of a crime. The substitute creates an offense that protects women and punishes violence resulting in injury or termination of a pregnancy. It provides for a maximum 20-year sentence for injury to a woman's pregnancy and up to a life sentence for termination of a woman's pregnancy.

It requires a conviction for the underlying criminal offense and focuses on the harm to the pregnant woman, providing a deterrent against violence against women.

This amendment is simple. Offered by the ranking member and myself, it recognizes that there are existing crimes in Federal law that protect women from violence such as violent assault. This amendment recognizes that when such crimes not only hurt the woman but also cause her to miscarry, there is additional harm to that woman. This amendment enhances the sentence one can receive for causing this additional harm to up to a life sentence.

Why is it important for us to pass this amendment for this crime and to impose this penalty? What can compare to giving birth to a child long awaited and then raising that child through all the challenges humankind face?

Those of us who are mothers know that it is the most important thing in our lives, and those of us who have suffered a miscarriage know the incredible trauma and the overwhelming sense of loss that is involved. An assailant who hurts a woman in this way deserves to be severely punished, but the bill before us, let us be clear, was not really about that. It was simply another attempt to cut away at the rights of women to determine their own reproductive choices.

The men who have promoted the underlying bill are, I believe, sincere in

their zealotry on behalf of their cause, namely that the government makes the choice of whether or not a woman gives birth, not the woman.

Now I do not agree with that position, but I do recognize that that is what their bill is about. That is why anti-choice activists are calling Members of the House to urge a yes vote on the underlying bill and a no vote on this substitute. That is why, although dressed up as a crime bill, the underlying bill was never reviewed by the Subcommittee on Crime. No, it was a product of the Subcommittee on the Constitution.

The underlying bill advances the political cause while overlooking what really matters to the mothers of America. Indeed, if someone violently assaults a pregnant woman and that woman miscarries and loses the child she so much desires, that is indeed a great offense. That is why I offer this substitute to the bill of the gentleman from Florida (Mr. CANADY).

Assaults that cause a woman to miscarry, that cause the suffering that other women and I personally have felt, that destroy the hope that that pregnant woman has, are offenses of such dire consequence that they must be considered extraordinary. A wanted and hoped-for child lost to miscarriage, whether through violence or fate, is an injury to the woman who would be a mother that is monumental and everlasting.

If the goal in criminal law is ever properly vengeance, then this loss calls out for vengeance. If the goal is justice, then contrast the proposed penalty for this grievous injury to a woman with other offenses deemed worthy of up to a maximum sentence of life. The accused may be sentenced up to life for exploiting children, for drug trafficking, for aggravated sexual assault of an under age child and for many other crimes.

I offer this substitute that would recognize the crime and impose this penalty for anyone who would assault a pregnant woman if that assault interrupts her pregnancy or causes her to miscarry. Assault is already a crime but the loss to someone who is carrying and expecting a child is a significant difference and should be acknowledged at law.

The substitute focuses on what is real for American women. Oppose violence against women. Do not use that violence as an excuse to eliminate personal choice about reproduction for American women. Women in America need protection against violence. They may also need protection against those in the majority of this Congress who want to tell them what to do with their lives and who think it is acceptable to use the tragedy of miscarriage to advance the political goal of repealing reproductive rights.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 5 minutes to the gen-

tleman from South Carolina (Mr. GRAHAM), who is the sponsor of this legislation.

Mr. GRAHAM. Mr. Chairman, I thank the gentleman from Florida (Mr. CANADY) for yielding me this time.

Mr. Chairman, I just ask the Members who have been following the debate, just keep their eye on the ball.

Before I became a Member of Congress, like many of my colleagues, I lived my life in the law. I was a prosecutor. I was a defense attorney. I practiced law in the military. I was a member of the Judge Advocate General Corps for 6½ years and served as a prosecutor and a defense attorney in that capacity. I enjoyed my profession. I enjoyed the law. I particularly enjoyed the criminal law because I think it has a simplicity and a common sense to it that really is unique in the world in the sense of the way we have designed it here in America.

I have never been around a debate that distorted so many simple and long-held legal concepts as this debate.

I urge Members to vote against this substitute because it destroys the bill. It is fatally defective. When I designed this bill, it came about as a result of some information being passed to me from military colleagues who talked about the Robbins case and without the Ohio statute the person would have gotten away with the crime of murder, of destroying that 8-month-old baby. So there is a need out there at the Federal level to do something about problems like this.

What I did is I looked at State law and I found a definition of unborn that we adopted from a State whose statute has been constitutionally challenged and upheld. I just did not make it up. I thought like a lawyer. I went to what was true and tested, and the language in this bill has been true and tested in court. It withstands legal scrutiny.

These are not words we make up for political reasons. These are words we use to make sure people go to jail who deserve to stay in jail. The substitute is sentence enhancement and it uses the term, termination, interruption of pregnancy but it has no definition of what that means.

If one is concerned about zygotes being subject to the criminal law, then they have a real concern about the substitute. My bill defines "unborn" as when it attaches to the womb. Zygotes are not covered, but there is no definitional section in the substitute and it would not withstand scrutiny.

The loss, who is the loss here? Is it just merely the loss to the woman when an unborn child is killed by a third party or injured by a third party criminal? No. It is not just a loss to the woman. It is a loss to society.

In 1994, the Democratic Congress passed legislation that prevented a pregnant woman from being sentenced to death while she is pregnant. If it is just a loss to the woman, they would go ahead and execute her, but my colleagues understood in 1994 they are not

going to execute a pregnant woman because they do not want to kill an unborn child because of the crimes of the mother.

This statute focuses on criminal behavior like 24 other States. This statute will allow a separate prosecution for people who attack pregnant women, and injure or kill their unborn child, in a constitutional manner.

The substitute claims to bring an additional charge to bear. Mr. Chairman, that cannot be done. Sentence enhancement is one theory. That means the sentence is elevated against the charge that would be levied against the assault against the mother.

In the Arkansas case, where 3 people were hired to beat the woman up with the express purpose of killing the baby, if sentence enhancement was the law in Arkansas all that could be done was enhance the charge that would be brought against attacking the mother and the murder of the child would go unpunished.

There is a huge legal difference between the charge of murder and sentence enhancement for a simple assault or an aggravated assault.

This substitute destroys the legal effect of the bill. It would not withstand scrutiny. They have just literally thrown this thing together. There is no definition or guidance in it. It is internally inconsistent.

I would challenge anybody to be able to bring two separate accounts: One, a crime against the mother, Mrs. Jones; two a separate charge for terminating her pregnancy. One cannot find somebody guilty of that charge. One has to have a victim. Her sentence could be enhanced but that allows people to get away with what I believe to be murder, like in Arkansas.

Please reject this substitute and understand we spent a lot of time and effort looking at tested law and this is something I hope Members of this body can agree on. Third party criminals who attack women and destroy or injure children ought to go to jail for what they have done.

Ms. LOFGREN. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

□ 1545

Mr. CONYERS. Mr. Chairman, I thank the gentlewoman from California for her leadership in this very sensitive discussion.

Mr. Chairman, I would just like to point out to the gentleman from South Carolina (Mr. GRAHAM), the previous speaker, a good friend of mine on the Committee on the Judiciary, that we all want to punish people who attack women who are pregnant. That is not the question. There is no one in the House that does not want to add punishment.

The only difference is that our substitute applies to acts which cause the interruption in the normal course of

the pregnancy, thereby avoiding the entire controversy concerning independent fetal rights. Now, that is really what the substitute and the whole bill is about.

I thank the gentleman from Illinois (Mr. HYDE), the chairman of the committee, for making it clear that that is what it is about. I mean, he makes it clear. That is what he talks about. He gave his usual speech about abortion, against it, and what the people mean and think and how bad choice is. The gentleman from Illinois has made it clear.

The gentleman from Florida (Mr. CANADY), the leader and manager of this bill, my good friend, has done everything in his power to conceal the fact that that is what we are doing. We are making incursions on Roe versus Wade.

The New York Times has figured it out in a very good way. The bill sponsors assert the measure has nothing to do with the abortion issue. Can my colleagues imagine that? That is all we have talked about is the abortion issue. But that view is disingenuous.

By creating a separate legal status for fetuses, the bill supporters are plainly hoping to build a foundation for a fresh legal assault on the constitutional underpinning of Roe. We all know that. That is why we offer a substitute for those who want to punish people who attack women who are pregnant.

Mr. TANCREDO. Mr. Chairman, I yield 2 minutes to the gentleman from Colorado (Mr. TANCREDO).

Mr. TANCREDO. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I am not an attorney, and I am not a constitutional scholar. I do not know of the implications that have been referred to up to this point in time with regard to this bill's impact on Roe versus Wade, and I do not care. It is not the reason why I support the bill.

It has been mentioned by the previous speaker that everybody in the body wanted to protect the rights of women when they were carrying a child. It is certainly true that that is a desire on my part. But I certainly go beyond that. I not only wish to protect her rights, I wish to protect the rights of the child she is carrying.

Justice is what we seek, of course. Who is worthy of receiving justice when a violent crime is carried out against the will of people? This legislation, the underlying legislation, not the substitute, will bring unborn children under the protection of Federal law and finally acknowledge the separate crime that takes place when an unborn child is either harmed or killed during a criminal act.

It actually amazes me that current Federal law treats an assault on a pregnant woman in which the unborn child is killed the same way as if it were an assault on a woman who was not pregnant. There is a difference.

Amazing it is for some people to believe and understand, there is a difference. It is far time that the Congress of the United States recognize that fact.

This is a life that has been cut short by a criminal event and by a criminal act before that life can even begin. We cannot not stand by when an unlawful killing of a fetus takes place and do nothing. We must follow suit, as 11 States has already done, in criminalizing such activities to include any stage of prenatal development.

Ms. LOFGREN. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Chairman, I thank the gentlewoman for yielding me this time, and I rise strongly in support of her substitute.

Mr. Chairman, violence against women and, even more horribly, violence against pregnant women deserves the attention of both Federal and State law enforcement authorities. Perpetrators should be dealt with swiftly and harshly. But I do not really believe, unless my colleagues support this amendment, that that is the issue before the House of Representatives today.

There are a number of highly respected organizations nationally in my own State, and locally in some of my communities, who are concerned with violence against women and violence against women who are pregnant, violence against women and their children, violence within the families, yet, they are notably absent in their support or even having been consulted by the authors of this legislation.

There are other groups in this country who are principally concerned, obsessively concerned with overturning the decision Roe versus Wade, a woman's right to choice. They are prominently involved in the drafting of the underlying legislation and in the endorsement of that and in the opposition to this amendment.

This amendment, if my colleagues are concerned about violence against women, violence against pregnant women, violence against pregnant women that harms the fetus, then there is no reason to oppose this amendment.

It would say we are going to have harsh Federal penalties for the few cases that are brought in Federal court. Remember, few of these are brought in Federal court. But if they are, if they rise to that level, harsh penalties just for the violence against women. If it causes any harm to the fetus, 20 years in Federal prison. No parole. If it causes the death of the fetus, it could lead to a life sentence without parole in Federal prison.

Now, those are pretty darn harsh penalties. How can you oppose that? Unless the reason my colleagues are really here is a back-door attempt to repeal Roe versus Wade.

Let us just be honest about it. Bring a constitutional amendment to the floor to repeal Roe versus Wade. The

only problem with them doing that that honestly is that they know a majority of the American people do not support that.

So, instead, under the guise of something that it is very difficult for anybody to oppose on the floor of the House, they are bringing forward this high-sounding argument that, well, there are these technical legal concerns about whether or not these people who could cause the death of a fetus will be adequately punished. Under this amendment, they will be dealt with harshly. Support the Lofgren amendment.

Mr. GRAHAM. Mr. Chairman, I yield 3 minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, I rise in support of the Unborn Victims of Violence Act and opposed to the amendment.

We have heard some very interesting statements out here on the floor today. One of the opponents of this act said we ought to vote against this act because, and let me quote, "because the criminal attack on a woman causing her to lose a child, and an abortion, it is too easy to confuse the two."

In other words, a criminal attack on a woman which causes her to lose her unborn child, she said the only difference in that and an abortion is, she says, the result is the same except for the criminal intent, and we cannot always determine the difference.

Now, do my colleagues buy that? Do my colleagues buy that this Congress or the American people cannot distinguish between a criminal attack on a woman which causes her to lose her unborn child and an abortion? I do not think so. I think that is ludicrous.

Another reason we were told to vote against this act, we were told that the Federal court or the Federal jurisdiction may have jurisdiction over the mother, but they might not have jurisdiction over the unborn child.

In other words, an FBI agent who is pregnant, we can try someone for assaulting her or murdering her, but not her unborn child, because that would not be a Federal act.

Well, what do we do in those cases? Do we always try those? Would we try them, as that person who opposes it said, we ought to try that case in the State court? Of course not. That is ludicrous.

The final thing, which is probably the worst, is this statement, and I say this with respect to all Members: that this is the first occasion that this Congress or this Supreme Court has ever recognized the legal status of an unborn child. If we pass this act, we will be recognizing the legal status of an unborn child.

Well I ask you, is it an illegal status? Are unborn children illegal?

How about an unborn child whose mother has made a decision to keep that child? She wants to keep that child. She wants to have that child. She wants to raise that child. Is there

anything wrong with recognizing the legal status of that child? Should that child have no status, no rights? Of course not.

Ms. LOFGREN. Mr. Chairman, may I inquire how much time remains.

The CHAIRMAN. The gentlewoman from California (Ms. LOFGREN) has 19½ minutes remaining. The gentleman from Florida (Mr. CANADY) has 20½ minutes remaining.

Ms. LOFGREN. Mr. Chairman, I yield 3 minutes to the gentleman from Washington (Mr. McDERMOTT).

Mr. McDERMOTT. Mr. Chairman, I object to this whole process, first of all on the basis of the public process by which we arrive at it. This is a parliament. This is no longer a Congress. It is a parliament where one party rams things through without having hearings on the implications of what they are passing. If they have got the votes, they get it.

The only thing missing from this being a parliament is that we do not have a vote of confidence or they would be gone. Because they cannot bring a budget out here and pass it and get out of here, so they bring out these wedge issues.

Now, I am a physician, and it is very clear to me from reading this that they did not think about what the implications of this are. What about a spontaneous abortion? All the time, women get pregnant; and then for reasons we do not understand, their body rejects this child. Oh, now, if somebody has pushed them on that day when that happens, this puts them in jail for the rest of their life. How is one going to prove that it was caused by the action?

The second issue is the whole question of intent. For my colleagues to just brush over this business of intent, acts of violence against women are not very well thought through in about 99.9 percent of the cases. They occur when people are angry. They occur when people are drunk. They occur in all kinds of circumstances. For my colleagues not to deal with that issue simply means they want to establish a basis to overturn Roe v. Wade.

Now, I worked in New York before we had Roe v. Wade in the Buffalo General Hospital, and I stood by the bedside of people who died getting illegal abortions.

What my colleagues want is a wedge to go back in the Federal court. They will not leave the State legislatures to decide this issue. They want to put it up in the Federal courts where the Senate, the other body, does not even provide enough judges so they can deal with these cases. My colleagues want to make it up here because they want to be able to go to the Supreme Court for an overturning of Roe v. Wade.

My view is that it is nothing, as the New York Times says, but a direct assault on Roe v. Wade. My colleagues can clothe it and act like anybody who is against it is against any protection for women who have had violence committed against them. That is totally

untrue. If my colleagues are serious, put the money for the Violence Against Women Act in and pass it.

□ 1600

Mr. CANADY of Florida. Mr. Chairman, I yield myself such time as I may consume to respond to a couple of the points the gentleman made on the issue that he raised about how we would prove these things, and how we would prove that the harm occurs because of the misconduct of the defendant.

Well, there is a very simple answer to that. The burden of proof is on the government, and the government must prove beyond a reasonable doubt that the misconduct, in fact, caused the injury and caused the harm. That is the answer to that question. In the kind of case the gentleman is raising, they could not prove it. If there is a spontaneous abortion that occurred, they would be unable to establish that the defendant was responsible for that taking place. The answer to the gentleman's question is obvious.

Now, the gentleman asserts the same argument we have heard over and over again, that this is somehow a basis for overturning Roe v. Wade. But the gentleman seems to be unaware that laws similar to this have been enacted in a number of States, more than 20 States. The courts have upheld those laws time after time. And the courts have specifically said that the challenge to those laws was not well-founded and that the principles in Roe are not relevant to cases that deal with conduct of a third-party assailant on a pregnant woman.

Now, I do not know what could be clearer in the law. I think there is a fantasy here that somehow the whole structure of abortion rights is going to come crumbling down because of this bill. That is just not so. That is not the case. If that were going to happen, it would already be trembling and shaking because of the laws that have been enacted in the States and upheld, but I do not think that is the case.

Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. HOSTETTLER).

(Mr. HOSTETTLER asked and was given permission to revise and extend his remarks.)

Mr. HOSTETTLER. Mr. Chairman, I thank the chairman of the Subcommittee on the Constitution for yielding me this time, and I rise in support of H.R. 2436, the Unborn Victims of Violence Act, that preserves the rights of all women, both born and unborn.

In the famous book Animal Farm, the elitist pigs state, "All animals are equal, some are just more equal than others." Unfortunately, this doctrine has been applied in our laws for too long, especially in regards to the unborn and their legal status before the law.

H.R. 2436, the Unborn Victims of Violence Act, gives unborn victims of violent Federal crimes equal legal status

and protection just like any other victim. The bill says a person, no matter the stage of development, should receive equal protection of the law. It is that simple: Equal protection under the law. This echoes the principles that lay at the very foundation of our constitutional government: That is that all of us are equal.

Those opposed to this bill say, "No, not in this case. We cannot provide equal protection to an unborn person in the womb, because they may not be a person." Well, we have already heard the tragic story of Jasmine Robbins. The law can punish the criminal for beating of the woman but not for the death of the unborn child in her womb. This is not fair. This is not right.

Some have concluded that since the Supreme Court has determined that, "fetuses are not persons within the meaning of the 14th Amendment," that the case is closed. However, we are a government of laws, not the arbitrary decisions of men.

Twenty years ago, the Supreme Court made that fateful statement. Then, 10 years ago, the Supreme Court refused to invalidate a Missouri statute that declares, "The life of each human being begins at conception." Furthermore, we are a government where even the smallest in our society is allowed to rise and say the majority is wrong. The smallest in this case are the pre-born children in their mother's womb.

Let us not turn our backs on these principles. Let us do our jobs by stating that the laws apply to all people, all women, born and unborn.

Ms. LOFGREN. Mr. Chairman, I yield 4 minutes to the gentlewoman from California (Ms. MILLENDER-MCDONALD).

Ms. MILLENDER-MCDONALD. Mr. Chairman, as a mother of five children, I know the joys associated with motherhood. Also, as an advocate for women's issues, I am well aware of the dangers that women face as it relates to domestic violence. Acts of violence against women, especially pregnant women, are tragic and should be punished appropriately. However, H.R. 2436 is not the best way to achieve this goal.

H.R. 2436 is not designed to persecute these crimes and prevent violence against women but to undermine a woman's right to choose by criminalizing death or injury that occurs at any stage of development from conception to birth. H.R. 2436 does not recognize the harm to the woman. In fact, it does not even mention the woman.

We should not be fooled by rhetoric of the supporters of H.R. 2436. This bill fails to address the very real need for strong Federal legislation to prevent and punish violent crimes against women. Nearly one in every three adult women experiences at least one physical assault by a partner during adulthood. To deter crimes against women, and to punish those who assault or murder pregnant women, Congress should pursue other avenues that focus on the harm to the woman and the promotion of healthy pregnancies.

Elevating the status of a fetus to a person flies in the face of the *Roe v. Wade* decision on the definition of a person and also erodes a woman's right to choose. This is the beginning of a very slippery slope, and I am not about to slide on that slope.

The Lofgren substitute creates a separate Federal criminal offense for harm to a pregnant woman. We are against the bill because it does nothing, that is H.R. 2436, to protect the pregnant mother. I urge my colleagues to vote "no" on H.R. 2436, this Unborn Victims of Violence Act, and support the Lofgren-Conyers substitute, the Motherhood Protection Act, because H.R. 2436 is a direct assault on *Roe v. Wade*. I ask for a "yes" vote for the Lofgren-Conyers substitute.

Mr. CANADY of Florida. Mr. Chairman, may I inquire of the Chair concerning the amount of time remaining on each side?

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) has 16 minutes remaining, and the gentlewoman from California (Ms. LOFGREN) has 14 minutes remaining. The gentleman from Florida (Mr. CANADY) has the right to close.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I thank the chairman for yielding me this time, I commend the gentleman from South Carolina for his authorship of this very important legislation, and I rise in support of the gentleman's legislation and in opposition to the substitute.

I am proud to cosponsor the Unborn Victims of Violence Act, which promotes justice by holding violent criminals accountable for their conduct. It is unthinkable that under current Federal law an individual who commits a Federal crime of violence against a pregnant woman receives no additional punishment for killing or injuring the woman's unborn child during the commission of the crime. Where is the justice when a criminal can inflict harm upon a woman, even with the express purpose of harming her unborn child, and not be held accountable for those actions?

Approximately half of the States, including my home State of Virginia, have seen the wisdom in holding criminals accountable for their actions by making violent criminals liable for conduct that harms or kills an unborn baby. Unfortunately, our Federal statutes provide a gap in the law that usually allows the criminal to walk away with little more than a slap on the wrist. Criminals are held more liable for damage done to property than for the intentional harm done to an unborn child. This discrepancy in the law is appalling and must be corrected.

Regardless of whether we are pro-choice or pro-life, those of us who are parents can identify with the hope that accompanies the impending birth of a child. No law passed by Congress could

ever heal the devastation created by the loss of a child or replace a child lost to violence. However, we can ensure that justice is done by making the criminals who take the life of an unborn child pay for their actions. When a mother is bringing a life into this world and that life is cut short by a violent criminal, that criminal should be held accountable under the law. Justice demands it and so should we.

I urge my colleagues to join me in voting for the Unborn Victims of Violence Act, and I commend my colleagues for their efforts in this matter.

Ms. LOFGREN. Mr. Chairman, I yield 3 minutes to the gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Chairman, I thank the gentlewoman for yielding me this time and also for sponsoring this amendment, and I rise in support of the Lofgren amendment.

What it would do is establish a Federal crime for any violent conduct against a pregnant woman that interrupts or terminates her pregnancy. That makes sense. In its current form, the Unborn Victims of Violence Act obscures women's rights while claiming to champion them. We are forced to ignore that in order to harm a "Homo sapien in any stage of development," as it reads, there is a woman who has been victimized by violence. This legislation switches our attention to the crime on a pregnancy at any stage while ignoring the woman who is pregnant.

The Lofgren substitute would create a Federal criminal offense for harm to a pregnant woman, recognizing that the pregnant woman is the primary victim of a crime causing termination of a pregnancy. The substitute provides for a maximum of a 20-year sentence for injury to a woman's pregnancy and a maximum life sentence for termination of a woman's pregnancy.

For each of the past several years, domestic violence has victimized an estimated 1 million women over age 12, and the number increases each year. There are approximately 200 Federal cases of women who were harmed last year, and we cannot say how many were pregnant at the time. If supporters of the Unborn Victims of Violence Act truly intend on increasing the penalties for Federal crimes that harm a pregnancy, they will focus on increased penalties where they would be best served in these circumstances: On the devastating loss or injury to the woman when her pregnancy is compromised.

Many States recognize this and have strengthened laws to punish such crimes against pregnant women, and I urge my colleagues to do the same by voting against the bill and by supporting strongly the Lofgren substitute.

Mr. CANADY of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would submit to the Members of the House who are considering this substitute amendment that

the substitute amendment is so poorly drafted and ambiguous that it will place any prosecution for violence against the unborn in great jeopardy. The substitute amendment also diminishes the injuries inflicted by violent criminals on the unborn, transforming those injuries into mere abstractions.

Let me also note that it is somewhat ironic that the substitute amendment is subject to some of the very same criticisms that have been made so vociferously against the bill.

We have heard that the underlying bill is fundamentally flawed and unconstitutional because it does not have a requirement that there be a specific intent to kill or injure the unborn child. The opponents of the bill claim that the doctrine of transferred intent is not sufficient and that it must be the specific intent to kill or injure the unborn child.

As I read this amendment in the nature of a substitute, I do not see any specific intent requirement. I do not see that there must be a specific intent to cause the interruption or termination of the pregnancy. I would be happy to yield to anyone who can point to the provision in here that has such a specific intent provision. I do not think it is there. As a matter of fact, I know it is not there. I have read it, and it is absent.

So it is quite ironic that after hearing that sort of criticism of the underlying bill, the opponents of the bill come forward with a substitute amendment that is subject to the same criticism.

And that is not the only thing. They have complained that the underlying bill provides protection for the unborn in the early stages of pregnancy. They say that that goes too far, to provide that protection in the early stages of pregnancy. Well, once again I believe that this amendment, this substitute, is subject to the very same criticism. So I am puzzled by the arguments that are made against the underlying bill.

□ 1615

Ordinarily, when an argument is made against an underlying bill by the proponents of a substitute, their substitute will not be subject to the same criticism. I just find it is very strange that the proponents of the substitute have crafted this, if that is the right word, to have it subject to the same criticisms.

I would suggest that any Member contemplating voting for this amendment should take pause and consider the flaws that are in the amendment that I am going to discuss.

First, the terminology in the substitute amendment is virtually incomprehensible and, if adopted, it will almost certainly jeopardize any prosecution from injuring or killing an unborn child during the commission of a violent crime.

The substitute amendment provides for enhanced penalty for the "interruption to the normal course of the preg-

nancy resulting in prenatal injury, including termination of the pregnancy." The amendment then authorizes greater punishment for an interruption that terminates the pregnancy than it does for a mere interruption of the pregnancy.

But what exactly is the difference between an interruption of a pregnancy and an interruption that terminates a pregnancy? I would like some explanation of that. Does not any interruption of a pregnancy necessarily result in a termination of a pregnancy? The plain meaning of "interruption" requires that interpretation. If "interruption" does not mean that, what does it mean?

I have looked at this. I have tried to make sense of it. But I will suggest to the Members of the House that is a task that is extraordinarily difficult.

What does the phrase "termination of pregnancy" mean? Does it mean only that the unborn child died, or could it also mean that the child was merely born prematurely, even without suffering any injuries?

Interpreting the term according to its plain meaning requires that we understand that a pregnancy may be terminated in different ways and with different results.

I would suggest to the Members of the House that these ambiguities make this substitute amendment impossible to comprehend in any coherent way with any certainty.

Now, second, subsection 2(a) of the substitute amendment appears to operate as a mere sentence enhancement authorizing punishment in addition to any penalty imposed for the predicate offense. Yet the language of subsection 2(b) describes the additional punishment provided in subsection 2(a) as punishment for a violation of subsection A, suggesting that subsection 2(a) creates a separate offense for killing or injuring an unborn child.

This ambiguity is magnified by the fact that subsection 2(a) requires that the conduct injuring or killing of an unborn child result in the conviction of the person so engaging. Now, does this mean that a conviction must first be obtained before a defendant may be charged with a violation of subsection 2(a), or does it mean that the additional punishment may be imposed at the trial for a predicate offense so long as it is imposed after the jury convicts the predicate offense?

Is a separate charge necessary for the enhanced penalty to be imposed? The substitute amendment simply does not answer these critical questions. Prosecuting violent criminals under it will, therefore, be virtually impossible.

Unlike the current language of the bill, the Lofgren-Conyers substitute also contains no exemptions for abortion-related conduct, for conduct of the mother, or for medical treatment of the pregnant woman or her unborn child. This omission leaves a substitute amendment open to the charge that it would permit the prosecution of moth-

ers who inflict harm upon themselves and their unborn children or doctors who kill or injure unborn children during the provision of medical treatment.

For that reason, the substitute amendment would certainly be subjected to a constitutional challenge. I would guarantee my colleagues if the underlying bill had not had such an exemption in it, we would have heard no end of that flaw in the underlying bill. But that provision is omitted from the substitute. Perhaps the supporters of the substitute see that not as a flaw in the amendment but as a desirable feature.

I am quite frankly puzzled by the omission of such a provision from the substitute, and I would leave it to the supporters of the substitute to explain the reason for the omission.

The substitute amendment also appears to mischaracterize the nature of the injury that is inflicted when an unborn child is killed or injured during the commission of a violent crime. Under the current language of the bill, a separate offense is committed whenever an individual causes the death of or bodily injury to a child who is in utero at the time the conduct takes place.

Although the actual language of the substitute amendment is hopelessly unclear, it appears that the supporters of the substitute intend to transform the death of the unborn child into the abstraction "terminating a pregnancy." Bodily injury inflicted upon the unborn child appears to become prenatal injury. Both injuries are apparently intended to be described as resulting from an "interruption in the normal course of the pregnancy."

Again, I submit to the Members of this House that these abstractions ignore the reality of what is truly at issue when a criminal violently snuffs out the life of an unborn child or injures a child in the womb. These abstractions that are embodied in the substitute amendment obscure the real nature of the harm that is done and the loss that is suffered when an unborn child is killed or injured.

Consider this: if an assault is committed upon a Member of Congress and her unborn child subsequently suffers from a disability because of the assault, that injury cannot accurately be described as an abstract injury to a pregnancy. That is not an injury to the pregnancy. That is an injury to an unborn child. There is no other way to understand it and make sense of the reality of what is taking place. It is an injury to a human being.

The Graham bill recognizes that reality. The Lofgren-Conyers substitute simply chooses to ignore it and attempts to hide it. The Lofgren-Conyers substitute is radically flawed and should be rejected for the reasons I have explained. The substitute is so poorly drafted and ambiguous that obtaining a conviction of a violent criminal under it will almost be impossible. It attempts to deal with the crimes in

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question in a way that is divorced from the reality of the harm and loss that is actually suffered. It deals with these crimes in a way that is simply not consistent with the real human experience of the mothers and fathers of those unborn children who are the victims.

It is for all these reasons I urge my colleagues to reject the Lofgren-Conyers substitute and to support the Graham bill.

Mr. Chairman, I reserve the balance of my time.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am happy to discuss our substitute amendment and I appreciate the questions of the gentleman. In some cases he has misread the amendment, and in other cases he is exactly right.

Let me first deal with the issue of exempting abortion from our bill. We do not need to exempt abortion from the substitute. Because in order to fall within the penumbra number of the amendment, one must have been convicted of one of the enumerated crimes that are listed within the bill. And abortion, thank goodness, is not a crime in America, although some in this body would wish it were so. So there is no need to do that.

Secondarily, really the amendment and the discussion is about choice. Let me discuss it in this way: if she is a pregnant woman and she wants desperately to have a child and she is assaulted and, as a consequence, she miscarries, she has been denied her choice to have a child. And that is an injury and it is a separate offense in the substitute amendment. The gentleman is correct. It is a separate and severable offense that is punishable by up to life imprisonment, as it should be.

There is another potential harm that could be done to a woman who is hoping to have a child, and that is assault that would result in a prenatal injury to that wanted child. I do thank the parliamentarian for his assistance yesterday in helping to craft the language on lines 10 and 11 of page 1 of the substitute.

The interruption of a normal pregnancy through the imposition of a prenatal injury because of an assault or one of the other crimes listed on page 2 of the amendment is also a punishable offense, as it should be.

So, yes, we do not need a separate intent provision in the substitute. The gentleman is correct in that regard. But we do need a conviction for the predicate offense, which in almost every case would also require a finding of intent beyond a reasonable doubt.

Now, I have just a little bit of time left under the rule, and I do know that my colleague and cosponsor of the amendment, the gentleman from Michigan (Mr. CONYERS), the ranking member, did also want to make a few comments on this entire issue.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I reserve the balance of my time for the purpose of closing.

Ms. LOFGREN. Mr. Chairman, how much time remains?

The CHAIRMAN. The gentlewoman from California (Ms. LOFGREN) has 8 minutes remaining.

Ms. LOFGREN. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I thank the gentlewoman for yielding me the time.

I would begin the close of our comments by observing that my friend, the gentleman from Florida (Mr. CANADY), at least recently, has not denied as I have listened to the remarks of the gentleman from Illinois (Mr. HYDE) in particular, the chairman of the Committee on the Judiciary, that the problem that we have with the bill is not whether we can understand the language or whether it is incomprehensible or not, but whether or not it is a back-door attack on Roe.

I mean, that is the question. Is the major bill that has caused us to create a substitute a back-door attack on Roe v. Wade?

We think that it is, for the following reasons: until recently, the law did not recognize the existence of the fetus except for a very few specific purposes. As stated by the Supreme Court in Roe: "The unborn have never been recognized in the law as persons in the whole sense." That is a quote. And the law that has been reluctant to afford any legal rights to fetuses quote "except in narrowly defined situations and except when the rights are contingent upon live birth."

So Roe specifically rejected the suggestion that a theory of life that grants personhood to the fetus and that the law may override the rights of the pregnant woman that are at stake.

So what I am suggesting is that the issue is not really the language of the substitute, but it is really the deeper problem of whether an unborn child should be entitled to legal status that is unprecedented in the Federal system. I hope to gain the attention of the learned attorney from South Carolina, and that is that in the 26 years following Roe v. Wade, the Supreme Court has never recognized an unborn child as having legal status.

In State courts and State law, yes, and many times it has not been challenged. But on the two occasions that this came before the United States Supreme Court, they have never recognized an unborn child as having legal status. The two cases that I would suggest are the Burns case in 1975 and the Webster v. Reproductive Health Services in 1989. These are the only two cases since Roe in which the Supreme Court has been asked to recognize the unborn child as having legal status, and in both cases the Supreme Court refused to do so.

Now, what does the substitute do? The substitute accomplishes the same thing that the major bill does without reaching a conclusion contrary to Roe v. Wade that has never recognized the unborn child as having legal status. That is precisely the difference. Punishment, the same. Objective, the same. Abhorrence of pregnant women having their pregnancy terminated involuntarily, the same. But the difference in the substitute is that our substitute keeps Roe v. Wade intact in that it maintains that the recognition of an unborn child as being entitled to legal status has never yet occurred in the law, and the Congress this evening is about to attempt to change that.

That is why we say, gentlemen of the Republican persuasion, this is a back-door attack on Roe v. Wade. And what we are trying to do is accomplish the same objective as the major bill without interrupting the status of Roe v. Wade.

Ms. LOFGREN. Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Chairman, we have spent this afternoon talking about H.R. 2436, the pros and the cons. I have listened to my colleagues support H.R. 2436. If they can support H.R. 2436, they can support the Lofgren substitute, because it protects pregnant women. If they can support H.R. 2436, they can support the Lofgren substitute because it recognizes pregnant women as the primary victim of a crime causing the termination of a pregnancy without impacting Roe v. Wade or a woman's right to choose. If they can support H.R. 2436, they can support the substitute, because it creates a defense that protects women and punishes violence resulting in injury or termination of a pregnancy. If they can support H.R. 2436, they can support the Lofgren substitute because it provides for a significant penalty for a violation wherein a pregnant woman is harmed.

Fifthly, if they can support H.R. 2436, they can support the Lofgren substitute because it requires a conviction for the underlying criminal offense.

Ms. LOFGREN. Mr. Chairman, I yield myself the balance of my time.

In conclusion of this debate, I am hopeful that this Lofgren-Conyers substitute is in fact adopted by this body.

Now, there are some who argue that up to a life sentence is too harsh for the perpetrator of violence on a woman who would then miscarry, but I know that that is not the case.

When one miscarries and loses a wanted opportunity to become a mother, that is something you remember your whole life. That is something that is a grievous harm and a terrible blow. It seems to me that someone who would perpetrate that violence and that harm on a woman ought to face that kind of harsh penalty. So I urge those who have qualms about the severity of the penalty included in the substitute, to look at it from the woman's point of view and to understand

that while we believe that a woman's right to reproductive freedom includes her right not to have a child, choice also means the right to have a child, and if you are pregnant and you want that child, those who would assault you and who would either engage in a prenatal injury or cause you to miscarry have interfered with your choice, your right to become a parent and to enjoy all the things that those of us who are mothers do enjoy, which is to watch our children grow and to help them become ever more responsible citizens.

I urge a "yes" vote on the substitute and a "no" vote on the CANADY bill.

Mr. CANADY of Florida. Mr. Chairman, I yield the balance of my time to the gentleman from South Carolina (Mr. GRAHAM) who is the sponsor of the bill.

The CHAIRMAN. The gentleman from South Carolina (Mr. GRAHAM) is recognized for 4 minutes.

Mr. GRAHAM. Mr. Chairman, very quickly, I will hit this head-on the best that I know how. That if you are saying here today that Roe v. Wade is a "get out of jail free" card for criminals who assault pregnant women and destroy their unborn children, you are not reading the same ruling that I am reading. Roe v. Wade never said that third-party criminals have open season on unborn children. Roe v. Wade said that women can terminate their own pregnancy in certain conditions in the first trimester. The Supreme Court has not said you cannot pass a statute holding criminals liable for attacking pregnant women.

For 29 years, California, the gentlewoman's home State, has had a statute that makes it a crime for a third-party criminal to kill a nonviable, in medical terms, fetus and there are people sitting in California in jail right now, and all over this country in States that have these statutes, and they are not going to get out of jail because of Roe v. Wade. They are serving their time because the statute that sent them to jail is constitutional. That is why they are in jail and they are not going to get out.

Mr. Chairman, we have the authority if we so choose to make it a Federal offense to attack a pregnant woman and destroy her unborn child and to charge her separately. This is an opportunity to do what a lot of Americans wish we would do, regardless of how you feel about abortion.

The substitute, Mr. Chairman, that destroys the purpose of this bill is inartfully written and the gentleman from Michigan (Mr. CONYERS) said, "We are not really worried about the words, we are worried about Roe v. Wade." I am worried about the words because when I prosecuted people in the past as a prosecutor, the words mattered. It has to be written right. The words in the substitute will allow criminals to get away with killing unborn children, what most Americans, I believe, would not want to happen.

Mr. Chairman, it comes down to this. When a criminal becomes the judge, the jury and the executioner of an unborn child that was wanted by the woman, let us act. Let us stand up and give Federal prosecutors the right to hold them fully accountable for what they have done, taking a life that was wanted, that was being nurtured. This is a chance to do something that is necessary in the law and unfortunately is going to happen somewhere, sometime, some thug is going to attack a pregnant woman where Federal jurisdiction exists and they are going to take her baby away and they are going to kill that baby. We have got a chance to put them in jail if they can prove the case. Let us give them the tools, a good statute to do what justice demands.

You cannot under Federal law execute a woman who is pregnant. A Democratic Congress made that illegal. The reason they did that is because they know that most Americans would not want to execute a pregnant woman because they would not want the unborn child to die for the crimes of the mother. Let us make sure that criminals are also barred from taking that unborn child, and if they do, they go to jail.

I thank my colleagues very much for paying attention to an important debate. Vote "no" to the substitute. Give prosecutors the tool they need to prosecute criminals who want to take babies away from women who have chosen to have them. Pass this bill.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentlewoman from California (Ms. LOFGREN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Ms. LOFGREN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 313, further proceedings on the amendment in the nature of a substitute offered by the gentlewoman from California (Ms. LOFGREN) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to House Resolution 313, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: amendment No. 1 offered by the gentleman from Florida (Mr. CANADY); and amendment No. 2 in the nature of a substitute offered by the gentlewoman from California (Ms. LOFGREN).

The Chair will reduce to 5 minutes the time for the second electronic vote.

AMENDMENT NO. 1 OFFERED BY MR. CANADY OF FLORIDA

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Florida (Mr. CANADY) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 269, noes 158, not voting 6, as follows:

[Roll No. 463] AYES—269	
Aderholt	Gilchrest
Archer	Gillmor
Arney	Goode
Bachus	Goodlatte
Baker	Goodling
Ballenger	Gordon
Barcia	Goss
Barr	Graham
Barrett (NE)	Granger
Bartlett	Green (WI)
Barton	Gutknecht
Bass	Hall (OH)
Bateman	Hall (TX)
Bereuter	Hansen
Berry	Hastings (WA)
Bilbray	Hayes
Bilirakis	Hayworth
Bishop	Hefley
Bliley	Herger
Blunt	Hill (IN)
Boehner	Hill (MT)
Bonilla	Hilleary
Bonior	Hobson
Borski	Hoekstra
Brady (TX)	Holden
Bryant	Hostettler
Burr	Houghton
Burton	Hulshof
Buyer	Hunter
Callahan	Hutchinson
Calvert	Hyde
Camp	Isakson
Campbell	Istook
Canady	Jenkins
Cannon	John
Castle	Johnson (CT)
Chabot	Johnson, Sam
Chambliss	Jones (NC)
Clement	Kanjorski
Coble	Kaptur
Coburn	Kasich
Collins	Kildee
Combest	Kind (WI)
Cook	King (NY)
Cooksey	Kingston
Costello	Kleczka
Cox	Klink
Cramer	Knollenberg
Crane	Kolbe
Crowley	Kucinich
Cubin	LaFalce
Cunningham	LaHood
Danner	Largent
Davis (FL)	Latham
Davis (VA)	LaTourette
Deal	Lazio
DeLay	Leach
DeMint	Lewis (CA)
Diaz-Balart	Lewis (KY)
Dickey	Linder
Dingell	Lipinski
Doolittle	LoBiondo
Doyle	Lucas (KY)
Dreier	Lucas (OK)
Duncan	Maloney (CT)
Dunn	Manzullo
Ehlers	Mascara
Ehrlich	McCollum
Emerson	McCrery
English	McHugh
Everett	McInnis
Ewing	McIntosh
Fletcher	McIntyre
Foley	McKeon
Forbes	McNulty
Fossella	Metcalf
Fowler	Mica
Franks (NJ)	Miller (FL)
Gallegly	Miller, Gary
Ganske	Minge
Gekas	Moakley
Gibbons	Mollohan
	Moran (KS)
	Moran (VA)
	Murtha
	Myrick
	Neal
	Nethercutt
	Ney
	Northup
	Norwood
	Nussle
	Oberstar
	Obey
	Ortiz
	Ose
	Oxley
	Packard
	Pease
	Peterson (MN)
	Peterson (PA)
	Petri
	Phelps
	Pickering
	Pitts
	Pombo
	Pomeroy
	Portman
	Pryce (OH)
	Quinn
	Radanovich
	Rahall
	Ramstad
	Regula
	Ros-Lehtinen
	Roukema
	Royce
	Ryan (WI)
	Ryun (KS)
	Salmon
	Sandlin
	Sanford
	Saxton
	Schaffer
	Sensenbrenner
	Sessions
	Shadegg
	Shaw
	Sherwood
	Shimkus
	Shows
	Shuster
	Simpson
	Skeen
	Skelton
	Smith (MI)
	Smith (NJ)
	Smith (TX)
	Smith (WA)
	Snyder
	Souder
	Spence
	Spratt
	Stearns
	Stenholm
	Strickland
	Stump
	Stupak
	Sununu
	Sweeney
	Talent
	Tancredo
	Tanner
	Tauzin
	Taylor (MS)
	Taylor (NC)
	Terry
	Thomas

Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2346) to amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes, pursuant to House Resolution 313, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. LOFGREN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 254, nays 172, not voting 7, as follows:

[Roll No. 465]

YEAS—254

Aderholt	Cox	Green (WI)	Abercrombie	Filner	Millender-McDonald	GENERAL LEAVE
Archer	Cramer	Gutknecht	Ackerman	Foley	Miller, George	
Armey	Crane	Hall (OH)	Andrews	Frank (MA)	Mink	
Bachus	Crowley	Hall (TX)	Baird	Frelinghuysen		
Baker	Cubin	Hansen	Baldacci	Frost	Moore	
Ballenger	Cunningham	Hastings (WA)	Baldwin	Gejdenson	Moran (VA)	
Barcia	Danner	Hayes	Barrett (WI)	Gephardt	Morella	
Barr	Davis (VA)	Hayworth	Bass	Gilman	Nadler	
Barrett (NE)	Deal	Heffley	Becerra	Gonzalez	Napolitano	
Bartlett	DeLay	Herger	Bentsen	Green (TX)	Olver	
Barton	DeMint	Hill (IN)	Berkley	Greenwood	Ose	
Bateman	Diaz-Balart	Hill (MT)	Berman	Gutierrez	Owens	
Bereuter	Dickey	Hilleary	Biggert	Hastings (FL)	Pallone	
Berry	Dingell	Hobson	Bishop	Hilliard	Pascrill	
Bilbray	Doolittle	Hoekstra	Blagojevich	Hinchey	Pastor	
Bilirakis	Doyle	Holden	Blumenauer	Hoeffel	Paul	
Bliley	Dreier	Hostettler	Bono	Holt	Payne	
Blunt	Duncan	Hulshof	Boswell	Houghston	Pickett	
Boehner	Dunn	Hunter	Boucher	Hoyer	Porter	
Bonilla	Ehlers	Hutchinson	Boyd	Inslee	Price (NC)	
Bonior	Ehrlich	Hyde	Brady (PA)	Jackson (IL)	Rangel	
Borski	Emerson	Isakson	Brown (FL)	Jackson-Lee (TX)	Reyes	
Brady (TX)	English	Istook	Brown (OH)	Jackson (CT)	Rivers	
Bryant	Everett	Jenkins	Cardin	Johnson (CT)	Rodriguez	
Burr	Ewing	John	Campbell	Johnson, E. B.	Rothman	
Burton	Fletcher	Johnson, Sam	Capps	Jones (OH)	Roukema	
Buyer	Forbes	Jones (NC)	Capuano	Jones (OH)	Royal-Allard	
Callahan	Fossella	Kanjorski	Condit	Kelly	Rush	
Calvert	Fowler	Kaptur	Coryers	Kennedy	Sanchez	
Camp	Franks (NJ)	Kasich	DeGette	Clay	Sanders	
Canady	Gallegly	Kildee	Delahunt	Clayton	Sandlin	
Cannon	Ganske	King (WI)	DeLauro	Kolbe	Sawyer	
Castle	Gekas	King (NY)	DeFazio	Kuykendall	Schakowsky	
Chabot	Gibbons	Kingston	DeGette	Lampson	Scott	
Chambliss	Gilchrest	Kleczka	Doggett	Lantos	Serrano	
Clement	Gillmor	Klink	Dooley	Larson	Shays	
Coble	Goode	Knollenberg	Edwards	Davis (FL)	Sherman	
Coburn	Goodlatte	Kucinich	Deutsch	Davis (IL)	Sisisky	
Collins	Goodling	Engel	DeFazio	Levin	Slaughter	
Combest	Gordon	LaHood	DeGette	Lewis (GA)	Smith (WA)	
Cook	Goss	Etheridge	Doggett	Lofgren	Snyder	
Cooksey	Graham	Largent	Dooley	Lowey	Stabenow	
Costello	Granger	Farr	Edwards	Maloney (CT)	Thurman	
		LaTourette	DeLauro	Maloney (NY)	Tierney	
			DeFazio	McCarthy (NY)	Stark	
			DeGette	McCarthy (MO)	Strickland	
			Doggett	McCarthy (NY)	Tauscher	
			Dooley	McDermott	Towns	
			Edwards	McGovern	Udall (CO)	
			Deutsch	McKinney	Udall (NM)	
			DeGette	Meahan	Velazquez	
			Doggett	Evans		
			Dooley	Farr		
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