

UNBORN VICTIMS OF VIOLENCE ACT OF 2003 OR LACI AND CONNER'S LAW

HEARING BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 1997

JULY 8, 2003

Serial No. 39

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://www.house.gov/judiciary>

U.S. GOVERNMENT PRINTING OFFICE

88-204 PDF

WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
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UNBORN VICTIMS OF VIOLENCE ACT OF 2003 OR LACI AND CONNER'S LAW

TUESDAY, JULY 8, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:05 p.m., in Room 2141, Rayburn House Office Building, Hon. Steve Chabot (Chair of the Subcommittee) presiding.

Mr. CHABOT. The Committee will come to order.

This is the Subcommittee on the Constitution. This afternoon the Subcommittee convenes to consider H.R. 1997, the "Unborn Victims of Violence Act of 2003" or "Laci and Conner's Law."

I want to first thank Congresswoman Hart for her leadership on this issue. When Congresswoman Hart and I reintroduced this bill in May, it received increased attention because of the welcome support from Laci Peterson's family. It is important to remember, however, that there are many other similarly disturbing cases across the country which have occurred over time.

Unfortunately, violence against women and their unborn children is a far too common occurrence in our society. In fact, recent studies in Maryland, North Carolina, New York City, and Illinois indicate that homicide is the leading cause of death of pregnant women in those areas of the country. Yet there remains a gaping hole in Federal law which would allow an unborn child to be killed or injured during the commission of a violent Federal crime without any legal consequences whatsoever. A remedy to this deficiency is desperately needed now more than ever.

The Unborn Victims of Violence Act was designed to address this current inadequacy in Federal law by providing that an individual who injures or kills an unborn child during the commission of certain predefined violent Federal crimes may be punished for a separate offense. This legislation is vitally important to expectant mothers and their families, serving as a deterrent to anyone who thinks that they can injure or kill an unborn child with minimal consequences.

This legislation is also important to a broad majority of Americans. A recent poll conducted by Newsweek and Princeton Survey Research Associates notes that 84 percent of Americans believe that prosecutors should be able to bring a homicide charge on behalf of an unborn child killed in the womb. Mothers and fathers, brothers and sisters, sons and daughters all across our Nation are asking an important question: Why does the Federal Government

refuse to recognize the loss of a valuable life when a criminal takes a woman's unborn child away from her?

Contrary to allegations made by opponents of the bill, the Unborn Victims of Violence Act has nothing to do with abortion. In fact, 28 States have had fetal homicide laws on the books, some for over 30 years now, and all of those challenged have been upheld as constitutional, coexisting with current abortion laws.

The Unborn Victims of Violence Act will help ensure just punishment for criminals like Gregory Robbins, an airman at Wright-Patterson Air Force Base in Ohio, just up the road from my district in Dayton, Ohio, who wrapped his fist in a T-shirt to reduce the chance that he would inflict visible bruises and beat his 8-months pregnant wife in the face and abdomen, killing their unborn child. Military prosecutors were able to charge Robbins for the death of the unborn child by assimilating Ohio's fetal homicide law through the Uniform Code of Military Justice. Had Mr. Robbins beaten his wife just across the Ohio River in Kentucky, for example, a State which has no fetal homicide law, he would have received no additional punishment for killing this child.

In the 107th Congress, this Subcommittee heard the testimony of William Croston regarding the tragic loss of his sister, Ruth. On April 28, 1998, Ruth Croston and her unborn child were shot and killed by her husband, Reginald Anthony Falice, as she sat at a red light in Charlotte, North Carolina. Falice was convicted by a Federal jury for interstate domestic violence and using a firearm in the commission of a violent crime, but because Federal law does not currently recognize the unborn as victims, he received no additional punishment for killing the near-term infant.

Mr. Croston's words best speak to the pain experienced by his family. Let me read from his testimony: "Our family will forever be mourning the loss of Ruth Croston and our unborn niece. Our grief will last a lifetime. The emotional effects of the death of our niece resurface each time we hear about another unnecessary act of violence against a pregnant women."

By enacting the Unborn Victims of Violence Act, Congress will ensure that criminals who commit violent acts against pregnant women are justly punished for injuring or killing unborn children, as well as they are punished if they harm or inflict harm on a pregnant woman, while affirmatively acknowledging to grieving family members that their deceased loved ones are recognized under the law.

Let me make one final observation. I hope everyone here will be able to put politics aside and recognize that this is an important women's rights issue. We should all be able to agree that—regardless of our positions on abortion—that women should have the right to see a criminal who injures or kills their unborn child brought to justice.

I know that Laci and Conner's family feel that way, and I know that most Americans agree. But without the Unborn Victims of Violence Act, Federal crimes against these innocent victims will continue to go unpunished and the rights of women and their unborn children will continue to be violated.

Mr. CHABOT. I now yield to the gentleman from New York, Mr. Nadler, the Ranking Member, for his opening statement.

Mr. NADLER. Thank you, Mr. Chairman.

We are here again to consider the Unborn Victims of Violence Act, which has for several years unnecessarily mired what should be a laudable and uncontroversial effort to punish truly heinous crimes in the emotionally charged and legally suspect back allies of the abortion debate. This is regrettable, Mr. Chairman, because real people are suffering real harm, and this Committee has played abortion politics instead of acting to punish truly barbaric crimes.

For those of us who are pro-choice, the right to choose extends not just to a woman's right to have an abortion but to a woman's right to carry her pregnancy to term and deliver a healthy baby in safety. That is why we supported the Violence Against Women Act, that is why we support programs to provide proper prenatal care and nutrition to all women, that is why we support proper health and nutritional services after a live birth, and that is why we support other initiatives like the Family and Medical Leave Act.

Life does not begin at conception and end at birth. We have an obligation to these children and their parents. Let there be no mistake: Using physical violence against a woman to prevent her from having a child she wants is just as much an assault on the right to choose as is the use of violence against women who exercised their constitutional right to choose to end their pregnancies.

A woman, and only a woman, has the right to decide when and whether to bring a child into the world, not an abusive partner, not a fanatic, certainly not her Congressman. My colleagues should understand that we are talking not just about viable healthy fetuses who are ready to be born in this bill, as was the case in the grotesque crime committed against today's witness. That is not what the bill says. The bill says, "in any stage of development." Page 4, line 24. I think that means any stage, including violence to embryos, violence to zygotes, violence to blastocysts. And I do not apologize to my colleagues on this Committee who have in the past taken offense at the use of the correct medical terms for the subject matter we are discussing.

The defendant need not be aware that the woman is pregnant or have any intent to harm a fetus. That is on page 3, lines 3 to 9. We should have no illusions about the purpose of this bill, that it is, despite the Chairman's denial, yet another battle in a war of symbols in the abortion debate in which opponents of a woman's constitutional right to choose attempt to establish that fetuses from the earliest moments of conception are persons with the same rights as the adult women who are carrying them.

The implication is that anyone who does not share the metaphysical slant of the radical anti-choice movement, that a one-celled zygote is a person on exactly the same basis and with the same rights as a child or an adult, must secretly favor infanticide. This bill, by making the destruction of a fetus or even of a zygote a crime against a fetus, without any reference to the terrible harm suffered by the pregnant woman, speaks volumes about that view.

Recognizing an embryo or a zygote as a legal person is at odds with the holdings of the Supreme Court in *Roe v. Wade*. The Court clearly said, "The unborn have never been recognized in the whole sense" and concluded that person as used in the four—and there

is a quote again—that, “person as used in the 14th amendment of the Constitution does not include the unborn.”

The rhetoric used by proponents of this bill urging that the law must recognize the fetus as a victim, as a separate victim, is a direct assault on that holding in *Roe*. Rather than debate the abortion issue yet again, we should pass Representative Lofgren’s legislation that provides for the same severe penalties, for the same terrible crimes as does the bill before us without getting into the thorny issue of whether an embryo at 30 days gestation is a person.

The Lofgren bill provides for two separate crimes, one conviction for the assault and murder of the women and the new crime involving injury to the fetus or termination of the pregnancy. The major difference is that the Lofgren bill gives recognition to and imposes serious penalties for the additional and truly grotesque crime against the woman. It recognizes and punishes a separate crime. It does not get into the question of a separate person.

Regrettably, the majority is so intent on pursuing the abortion issue that Representative Lofgren’s legislation on which this Committee and the whole House have voted in the past was not even made part of this hearing, which it seriously should be.

If we are serious about this problem, we have effective remedies at our disposal. If we want to play abortion politics, we have the bill on our agenda today. Violence against a pregnant woman is, first and foremost, a criminal act of violence against a woman that deserves strong preventative measures and stiff punishment.

According to the Journal of the American Medical Association, homicides during pregnancy and in the year following birth represent a largely preventable source of premature mortality among young women in the United States, devastating children, family, and communities. While in the United States homicide is the leading killer of young women, pregnant or not, homicides of pregnant women occurred with much greater frequency than did homicides against all women.

Mr. Chairman, it is a disgrace that while these preventable crimes continue to occur Congress fiddles with largely symbolic legislation, rather than take affirmative steps to deal with the problem. Why, for example, did the Republican majority fall \$209 million short of President Clinton’s request for full funding of the Violence Against Women Act? Why, now that the Republicans control both Houses of Congress and the White House, are we still short-changing funding for the Violence Against Women Act? It appears that many of the Members who have signed on to this bill are the same ones who voted to divert funds from protecting women from violence to protecting stock dividends from taxation.

No one who listened to the testimony this Subcommittee has received in the past and will hear today could have been left unmoved by the murders and assaults against women who wanted nothing more than to bear a child. This legislation is named for one such woman, and we will hear from another victim today. We owe it to these women and to those who are closest to them to ensure that early intervention is available and that States and localities receive the full resources of the Violence Against Women Act to prevent violence against women by intervening before the violence

escalates to that level. We owe it to these victims to enact strong penalties, ones which are not constitutionally suspect for these heinous crimes.

Let's not cloud that issue. Let's not fail to enact strong penalties that will stand the constitutional test before the courts by plunging a legitimate law enforcement effort into the murky waters of the abortion debate.

Finally, this bill opens the door to prosecuting women or restraining them physically for the sake of a fetus. Some courts have already experimented with that approach.

The last time we had occasion to consider this bill, the Supreme Court had just struck down a practice in the then sponsor's home State of South Carolina in which a hospital would give the results of a pregnant woman's blood test to local law enforcement for the purpose of initiating legal action against those women if they used improper drugs.

Once we recognize a zygote, one cell, as this bill would do, as having the same legal status as the pregnant woman, it would logically follow that her liberty could be restricted in order to protect the zygote and the fetus. The whole purpose of *Roe* and of the Supreme Court holdings in these cases was to protect the liberty interests of the woman. This bill would undermine it.

Mr. Chairman, we should deal with the Lofgren bill that would protect these women, make it a separate crime, recognize a separate crime, and impose the same penalties as the bill before us would do without getting into the abortion debate, which is wholly unnecessary for this purpose but is the real purpose of this bill.

Thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. CHABOT. Thank you. The gentleman's time has expired.

The gentlelady from Pennsylvania is recognized, and I want to thank her for her leadership on this bill. She is the principal sponsor of this particular piece of legislation. Melissa Hart.

Ms. HART. Thank you. I also thank you for holding this hearing and for those who are here to testify on this issue today.

When a woman chooses to have a child and then someone violently takes that child away from her, I believe there must be accountability. This is especially important because that unborn child is often the motivator, the motivating factor behind the attack on the pregnant woman.

A Maryland study showed that homicide was the leading cause of death for pregnant women in the State, as the Chairman referred to earlier. According to the Maryland State Department of Health, there were 247 pregnancy-associated deaths between the years of 1993 and 1998; 50 of these were homicides.

This study confirms a trend across the Nation, where similar studies in New York and Illinois as well as others have shown homicide as a leading cause of death for pregnant women.

In Cook County, Illinois, 26 percent of the 95 deaths of pregnant women recorded between 1986 and 1989 were homicides.

In New York, 25 percent of the 293 deaths among pregnant women between 1987 and 1991 were also homicides.

The tragic theme here is that pregnant women have become targets of what is clearly an extreme pattern of domestic violence.

In my home State of Pennsylvania, we are one of 28 States with a fetal homicide law. I was a lead sponsor of this bill when I served as a State Senator. Just 2 months ago, that law was used to convict a woman who had kicked a pregnant woman in the stomach, killing the child. The attacker had dragged the victim to the ground by her hair, punching and kicking her repeatedly.

Forensic pathologists ruled that that unborn child died because of a blow to the victim's abdomen, to the mother's abdomen. Without this type of legislation, that attack would merely have been tried as an assault or a battery against that mother with little or no jail time for the assailant. Instead, because Pennsylvania has a fetal homicide law, the attacker faces 20 to 40 years for violently taking the life of the unborn child.

I and the other sponsors of this bill hope to extend this necessary and commonsense remedy to Federal law, and I am honored that Sharon Rocha, the mother of Laci Peterson and the grandmother of Conner, has chosen to back this initiative. In fact, Laci Peterson's family wrote to me requesting that this bill be named after Laci and her unborn son, Conner: "Knowing that the perpetrators who murder pregnant women will pay the price not only for the loss of the mother but for the baby as well will help bring justice for these victims." I pause because it is important to note that there is more than one victim. "And hopefully, also," she adds "that it will act as a deterrent to those who would consider such heinous acts."

I have met with Sharon Rocha, and she supports this legislation specifically and specifically opposes the one-victim solution. It is clear why she supports this legislation—because it recognizes that there are two victims in these crimes.

Her family certainly bears the burden, as do the families of others who have faced such tragedy. As she noted in a letter, which she asked me to submit for the record today, "please understand how adoption of such a single victim proposal would be a painful blow to those who, like me, are left to grieve after a two-victim crime because Congress would be saying that Conner and other innocent victims like him are not really victims, that they never really existed at all. But Conner did exist. He was loved. And we anxiously awaited meeting him. His room was decorated and waiting for his arrival. My daughter, Laci, wanted desperately to be a mother. His life was violently taken from him, as was Laci's, but before they ever even saw him.

Mr. Chairman, I submit Sharon Rocha's letter.

Mr. CHABOT. Without objection, it will be included in the record.

Ms. HART. Thank you very much, Mr. Chairman.

[The information referred to follows in the Appendix]

Ms. HART. Laci and Conner's Law will ensure that anyone who commits such brutal acts of domestic violence, regardless of whether they do so on Federal property, will face the possibility of serious jail time for their crimes.

I yield back, Mr. Chairman.

Mr. CHABOT. Thank you very much.

The gentleman from Virginia is recognized if he should like to make an opening statement.

Mr. SCOTT. Thank you, Mr. Chairman.

I won't make an opening statement, but I would want to, I guess, inquire generally to the witnesses whether or not the purpose of the bill could be achieved if the bill provided additional punishment for criminal attacks when the victim is a pregnant woman? I think that kind of bill could pass without much problem. You won't get into the constitutional issues of the abortion issue or evidentiary issues. And with that, Mr. Chairman, I would inquire why this legislation is in the Constitution Subcommittee and not the Crime Subcommittee if it purports to be a crime bill.

Mr. CHABOT. This was directed from the top, from the Chair of the overall Committee to this Committee. I think it is an appropriate Committee for it to be in.

Mr. NADLER. Mr. Chairman, can I comment on that?

I think it is properly in front of this Committee since it obviously raises major constitutional claims against the questions given and will face a constitutional attack if adopted, given the holding of the Supreme Court in the *Roe v. Wade* case in which it said we have never recognized a fetus as a person under the meaning of the 14th amendment.

I think certainly as—and given the holding of the Court as reaffirmed in subsequent cases as to the right of women for privacy to have abortions if they wish in the first trimester, subject to some regulation in the second trimester, and the right of a State to prohibit it if it wishes in the third trimester, as applied to—if this bill were to pass as applied within the first two trimesters, there would be a serious constitutional question on whether the bill is constitutional.

So I think this is—because it does seem to go exactly against the holding of the Supreme Court in *Roe v. Wade*. It does raise the question of why go this route, whereas the Lofgren bill would accomplish exactly the same purpose, except—that is of punishing the crime, of recognizing it as a separate crime, of giving the strong penalty, up to life imprisonment for the crime—without getting into that constitutional question.

But because of that constitutional question, I think it is properly—and I think the Republican leadership ought to be commended for recognizing that they are raising, unnecessarily, a major constitutional question with this bill in assigning it to the Constitution Subcommittee.

Mr. CHABOT. There clearly is and can always be a constitutional challenge to something of this nature.

I would note that it has been challenged in States that have enacted this legislation. It has always been upheld as an appropriate piece of legislation for those States and not unconstitutional. I fully expect that that would occur in this particular instance.

Our goal is to protect the mother of the child and to protect the unborn child as well, and therefore, it should be a much stronger penalty, and it should be an additional penalty if one harms not only the woman who is carrying the unborn child but also the unborn child, him or herself.

Mr. NADLER. Of course, that is the heart of the debate. No one disagrees that we ought to have a much stronger penalty, and it ought to be a penalty for harming the fetus, in addition to the penalty for harming the child. The question, as I said in my opening

remarks, is not recognition of a separate crime or recognition of a higher penalty up to life imprisonment, as the Lofgren bill provides, which we would all support. The question is, rather, the different question of recognition of a separate victim, of a separate person, of the fetus as a person. That is the real debate here.

It has nothing to do with the penalty. It has nothing to do with the recognition of a separate crime. It has nothing to do with the crimes in current law being too small because we all agree that it should be made up to life imprisonment. The question is simply a part of the abortion debate that the one bill that is before the Committee would recognize the fetus as a separate person; the Lofgren bill would not get into that question. That is the only thing that we are disagreeing on.

And, frankly, to use the heart-rending victims for one-sided purposes, because their purposes will be served by recognizing the separate crime and by enhancing the penalties or by making it a separate penalty, which both bills would do, I don't see why we have to subject them and really distort the debate by making this sound as if it isn't. The debate is really about should we increase the penalties; should we recognize the separate crime? We all agree on those questions. The question is, should we recognize the fetus as a separate person?

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Iowa, Mr. King, is recognized.

Mr. KING. Thank you, Mr. Chairman, and I especially want to thank you, and also Ms. Hart, for bringing this before us today.

This is an important piece, and the timing of it is something that I think is going to be helpful, that the country can look at these issues and be able to better frame the reality of the policy that we have and the policy that we have before us.

With regard to the question of whether this should be before the Constitution Subcommittee, judging from some of the recent decisions of our Supreme Court, this might be a very busy Committee indeed if we are to examine some of these things that might be considered unconstitutional by our current makeup of the Supreme Court.

Be that as it may, the Unborn Victims of Violence Act of 2003 or the Laci and Conner's Law would recognize that when a criminal commits a Federal crime against a pregnant woman and injures or kills her unborn child, he has claimed two victims. I firmly believe that if a pregnant woman is murdered, there are two victims. We must recognize the value of the life of the unborn child by holding the murderer responsible for crimes against both the mother and the child.

To ignore the death of an unborn child is to let the perpetrator literally get away with murder. Whether or not a pregnant female has a moral right to choose, no one else has that right, and taking that life is murder.

Mr. Chairman, I categorically disagree with the position taken in his opening remarks by the gentleman from New York, and I would ask unanimous consent to revise and extend my remarks, which will be include a full rebuttal of those remarks.

With that, Mr. Chairman, I would yield back the balance of my time. Thank you.

Mr. CHABOT. Thank you.

The gentleman from Florida, Mr. Feeney, is recognized for an opening statement.

Mr. FEENEY. Well, thank you. I will be brief. And I respect my good colleague from Iowa, but I actually want to associate myself with a very small part of the comments of the gentleman from New York because I think he is exactly right. But the question here today is whether or not there is one victim or two.

Ultimately, though, the gentleman from New York falls back on the precedent in *Roe*, and I think that Congressman King from Iowa is correct. This Supreme Court just invited us last week to reexamine virtually every precedent they have been involved in.

In the very first paragraph in the *Lawrence* case, they actually take up and reconsider the Court's holding 17 years ago in the *Bowers* case and the Texas sodomy law strike-down; and I do believe that fundamentally the constitutional integrity of some of the arguments that this Supreme Court is making in its cases are not founded in the basis of the Constitution. So I think the Constitution Subcommittee is the right place to hear this.

I think that the gentleman from New York is right, that their question is whether there is one victim or two. I think it is anybody's guess on any given day what five or six members of this Court will do with our United States Constitution.

I yield back.

Mr. CHABOT. Thank you.

At this time, we will introduce our panel here this afternoon. We have really an excellent panel.

Our first witness will be Tracy Marciniak. She currently lives in Wisconsin with her husband, Jeff, and two young children. Mrs. Marciniak also has a daughter currently attending college. Mrs. Marciniak is a full-time mother and wife and survived a violent crime in February 1992. That tragic event, which she will be sharing with us today, has led her to be a full-time fighter for unborn victims of violence. And we thank you for being here.

Next, we will hear from Juley Fulcher, who is currently the Public Policy Director for the National Coalition Against Domestic Violence. Ms. Fulcher previously served as Legislative Consultant for NOW, Legal Defense and Education Fund; and she was a Woman's Law and Public Policy Fellow at the Georgetown University Law Center Sex Discrimination Clinic.

She is a former litigator and has taught as a visiting professor at the Georgetown University Law Center Domestic Violence Clinic. She also has a Ph.D. in psychology from Johns Hopkins University and has been a part-time faculty member in the Psychology Department at Towson University for more than 10 years. And we welcome you here this afternoon.

Following Ms. Fulcher, we will hear from Serrin M. Foster, President of Feminists for Life. Feminists for Life is a nonpartisan grassroots organization that seeks equality for all human beings and champions the needs of women. They oppose all forms of violence against women and children and are a member of the National Task Force to End Sexual and Domestic Violence Against Women. Ms. Foster has been an outspoken advocate, appearing on numerous television programs, before the national presidential con-

ventions of both major political parties, and throughout many colleges and universities.

Prior to her work at Feminists for Life, Ms. Foster served as Director of Development for the National Alliance for the Mentally Ill in Arlington, Virginia, assisting those suffering from a no-fault brain disease. Ms. Foster also formerly worked at St. Jude Children's Research Hospital and is a graduate of Old Dominion University in Norfolk, Virginia. We welcome you here this afternoon.

And our final witness today will be Professor Gerard Bradley of the University of Notre Dame Law School in Indiana. Professor Bradley specializes in constitutional law as well as law and religion issues on which he has written numerous articles and publications.

Before joining the faculty of Notre Dame, Professor Bradley taught at the University of Illinois from 1983 to 1992. He also previously served as an Assistant District Attorney for the New York County District Attorney's Office. Professor Bradley earned his B.A. from Cornell University in 1976, and his J.D. from Cornell Law School in 1980. We welcome you here this afternoon, Professor Bradley.

We want to thank all of you for coming. Before we get to the testimonies, I just would ask that you try to keep it within the 5-minute rule. We will give a little leeway on that if necessary. But, as much as possible, we would ask you to try to do that.

We have a lighting system there. When the yellow light comes on, that means that you have a minute to wrap-up. The red light means your time is up, but—so try to keep it within that as much as possible.

Mr. CHABOT. We will begin with Mrs. Marciniak.

STATEMENT OF TRACY MARCINIAK, MOTHER OF VICTIM

Mrs. MARCINIAK. Mr. Chairman and honorable Members of the Subcommittee, my name is Tracy Marciniak. I thank you for the opportunity to appear before you today to tell you my story and to explain to you how it is related to the Unborn Victims of Violence Act.

I respectfully ask the Members of the Subcommittee to examine the photograph that you see before you. In this photo I am holding the body of my son, Zachariah Nathaniel. Often, when people see the photo for the first time, it takes a moment for them to realize that Zachariah is not peacefully sleeping. Zachariah was dead in this photo.

This photo was taken at Zachariah's funeral. I carried Zachariah in my womb for almost 9 full months. He was killed in my womb only 5 days before delivery date. The first time I ever held him in my arms, he was already dead. This photo shows the second time I held him, which was the last time.

There is no way that I can really tell you about the pain I feel when I visit my son's gravesite in Milwaukee and at other times thinking of all that I have missed with him. But that pain was greater because the man who killed Zachariah got away with murder.

Mr. Chairman, I ask you and the other Members of the Committee to look at this photo and ask yourselves, does it show one victim or two? If you look at this photo and you see two victims,

a dead baby and a grieving mother who survived a brutal assault, then you should support the Unborn Victims of Violence Act.

I know that some lawmakers and some groups insist that there is no such thing as an unborn victim and that the crimes like this only have a single victim. But this is callous, and it is wrong. Please don't tell me that my son was not a real victim of a real crime. We were both victims, but only I survived.

Zachariah's delivery date was to be February 13th, 1992, but on the night of February 8th my own husband brutally assaulted me in my home in Milwaukee. He held me against a couch, by my hair. He knew I very much wanted my son. He punched me very hard twice in the abdomen. Then he refused to call for help, and he prevented me from calling.

After about 15 minutes of screaming in pain that I needed help, he finally went to a bar. From there, he called for help. Zachariah and I were rushed by ambulance to the hospital where Zachariah was delivered by emergency cesarian section. My son was dead. The physician said he had bled to death inside me because of blunt force trauma.

My own injuries were life-threatening. I nearly died. I spent 3 weeks in the hospital. During this time, I was struggling to survive.

The legal authorities came and spoke to my sister. They told her something that she found incredible. They told her that, in the eyes of Wisconsin law, nobody had died on the night of February 8th.

Later, this information was passed on to me. I was told that, in the eyes of the law, no murder had occurred. I was devastated. My life already seemed destroyed by the loss of my son, but there was so much additional pain because the law was blind to what had really happened. The law, which I had been raised to believe in was based on justice, was telling me that Zachariah had not really been murdered.

It took over 3 years for this case to go to trial. The State prosecuted my attacker for first-degree reckless injury and false imprisonment, and he was convicted of these counts. They also prosecuted him under a 1955 abortion law, but they failed to win a conviction on the abortion count because the law required that they prove a specific intent to destroy the life of my unborn child.

I do not fault the State authorities or the jurors. They did not have the right legal tools for this type of case. The law simply failed to recognize what anybody who looks at the photo should be able to see, that Zachariah was robbed of his life.

Before his trial, my attacker said on TV that he would never have hit me if he had thought that he could be charged with the killing of his child.

My family and I looked for someone who would help us reform the law so that no such injustice would occur in our State in the future. We found only one group, and that was Wisconsin Right to Life. They never asked me my opinion on abortion or any other issue. They simply worked with me and with other surviving family members of unborn victims to reform the law.

It took years. Again and again, I told my story to State lawmakers, and I pleaded with them, as I plead with you today: correct the injustice in our criminal justice system. Finally, on June

16th, 1998, Governor Tommy Thompson signed a fetal homicide law. Under this law, an unborn child is recognized as a legal crime victim just like any other member of the human race.

Mr. Chairman, I understand very well that the Unborn Victims of Violence Act would only apply to Federal crimes and Federal jurisdiction. Therefore, even if the bill had been in force on the day that I was attacked, it would not have applied to Zachariah. But you very well know that there have been in the past cases like ours that did occur in Federal jurisdictions and during Federal crimes, and you know that tragically such cases are bound to occur in the future.

I do not want to think of any surviving mother being told what I was told, that she did not really lose a baby, that nobody really died. I say no surviving mother, father, or grandparent should ever again be told that their murdered loved one never even existed in the eyes of the law.

So I think that you should really look at these cases for illustrations of types of pain and injustice that result when unborn victims of violence are not recognized by the law. This has been called the Laci and Conner's bill, and it is. But it is also the Tracy and Zachariah bill, and it is also Shiwona and Heaven's bill, and it is a bill for every unborn victim and surviving family member.

I am encouraged that more and more States are enacting unborn victims laws. I have been told that 28 States now recognize the unborn child as a crime victim, at least in some circumstances. Fifteen of these laws cover the killing of an unborn child at any point of his or her development in the womb. Texas just enacted a strong law. These laws are all listed on the web site www.nrlc.org, and the photograph you see today is also posted there.

In Wisconsin, the Wisconsin law has been in effect for 5 years now, and it has not had any effect on legal abortions. Opponents of the bill should stop trying to turn it into an abortion issue. It is not.

I have read Congressman Lofgren's proposal, which she calls the Motherhood Protection Act. There is only one victim in that bill, the pregnant woman. So if you vote for that bill, you are really saying all over again to me, we are sorry, but nobody really died that night. There is no dead baby in this picture. More importantly, you would be saying to all of the future mothers, fathers, and grandparents who lose their unborn children in future Federal crimes, you didn't lose a baby. Please don't tell me that my son was not a crime victim.

If you really think that nobody died that night, if you really think there is no dead baby in this picture, then vote for the Lofgren amendment or Lofgren bill. But please remember Zachariah's name and face when do you so.

Thank you.

Mr. CHABOT. Thank you very much.

[The prepared statement of Mrs. Marciniak follows:]

PREPARED STATEMENT OF TRACY MARCINIAK

Mr. Chairman and honorable members of the subcommittee: My name is Tracy Marciniak. I thank you for this opportunity to appear before you today to tell you my story and to explain how it is related to the Unborn Victims of Violence Act (H.R. 1997).

I respectfully ask that the members of the subcommittee examine the photograph that you see before you. In this photo, I am holding the body of my son, Zachariah Nathaniel.

Often, when people see this photo for the first time, it takes a moment for them to realize that Zachariah is not peacefully sleeping. Zachariah was dead in this photograph. This photo was taken at Zachariah's funeral.

I carried Zachariah in my womb for almost nine full months. He was killed in my womb, only five days from his delivery date. The first time I ever held him in my arms, he was already dead. This photo shows the second time I held him, which was the last time.

There is no way that I can really tell you about the pain I feel when I visit my son's grave site in Milwaukee, and at other times, thinking of all that we missed together. But that pain was greater because the man who killed Zachariah got away with murder.

ONE VICTIM, OR TWO?

Mr. Chairman, I ask you and the other members of the committee to look at this photograph and ask yourselves: Does it show one victim, or two?

If you look at this photo and see two victims—a dead baby and a grieving mother who survived a brutal assault—then you should support the Unborn Victims of Violence Act.

I know that some lawmakers and some groups insist that there is no such thing as an unborn victim, and that crimes like this only have a single victim—but that is callous and it is wrong. *Please don't tell me that my son was not a real victim of a real crime. We were both victims, but only I survived.*

Zachariah's delivery date was to be February 13, 1992. But on the night of February 8, my own husband brutally attacked me at my home in Milwaukee. He held me against a couch by my hair. He knew that I very much wanted my son. He punched me very hard twice in the abdomen. Then he refused to call for help, and prevented me from calling.

After about 15 minutes of my screaming in pain that I needed help, he finally went to a bar and from there called for help. I and Zachariah were rushed by ambulance to the hospital, where Zachariah was delivered by emergency Caesarean section. My son was dead. The physicians said he had bled to death inside me because of blunt-force trauma.

My own injuries were life-threatening. I nearly died. I spent three weeks in the hospital.

During the time I was struggling to survive, the legal authorities came and they spoke to my sister. They told her something that she found incredible. They told her that in the eyes of Wisconsin law, nobody had died on the night of February 8.

Later, this information was passed on to me. I was told that in the eyes of the law, no murder had occurred. I was devastated.

My life already seemed destroyed by the loss of my son. But there was so much additional pain because the law was blind to what had really happened. The law, which I had been raised to believe was based on justice, was telling me that Zachariah had not really been murdered.

It took over three years for this case to go to trial. The state prosecuted my attacker for first-degree reckless injury, and for false imprisonment, and he was convicted of those counts. They also prosecuted him under a 1955 abortion law. But they failed to win a conviction on the abortion count, because that law required that they prove a specific intent to destroy the life of my unborn child. I do not fault the state authorities or the jurors—they simply did not have the right legal tool for this type of case. The law simply failed to recognize what anybody who looks at the photo should be able to see—that Zachariah was robbed of his life.

REFORM OF WISCONSIN LAW

Before his trial, my attacker said on a TV program that he would never have hit me if he had thought he could be charged with killing an unborn baby.

My family and I looked for somebody who would help us reform the law so that no such injustice would occur in our state in the future. We found only one group that was willing to help: Wisconsin Right to Life. They never asked me my opinion on abortion or on any other issue. They simply worked with me, and with other surviving family members of unborn victims, to reform the law.

It took years. Again and again, I told my story to state lawmakers and I pleaded with them, as I now plead with you, to correct this injustice in our criminal justice system.

Finally, on June 16, 1998, Governor Tommy Thompson signed the fetal homicide law. This means that it will never again be necessary for state authorities in Wisconsin to tell a grieving mother, who has lost her baby, that nobody really died. Under this law, an unborn child is recognized as a legal crime victim, just like any other member of the human race.

Of course, the state still has to prove everything beyond a reasonable doubt, to a jury, which is as it should be. But when this bill was under consideration in the legislature, it was actually shown to some of the former jury members in our case, and they said if that had been the law at the time I was attacked, they would have had no problem convicting my attacker under it.

Mr. Chairman, we surviving family members of unborn victims of violence are not asking for revenge. We are begging for justice—justice like we were brought up to believe in and trust in. Justice means that the penalty must fit the crime, but that is only part of it—justice also requires that the law must recognize the true nature of a crime.

Please hear me on this: On the night of February 8, 1992, there were *two victims*. I was nearly killed—but I survived. Little Zachariah died.

WHY FEDERAL BILL IS NEEDED

Mr. Chairman, I understand very well that the Unborn Victims of Violence Act would apply only to federal crimes and federal jurisdictions. Therefore, even if this bill had been in force on the day I was attacked, it would not have applied to Zachariah.

But you know very well that there have been in the past cases like ours that did occur in federal jurisdictions and during federal crimes. And you know that tragically, such cases are bound to occur in the future. I do not want to think of any surviving mother being told what I was told—that she did not really lose a baby, that nobody really died. I say, no surviving mother, father, or grandparent should ever again be told that their murdered loved one never even existed in the eyes of the law.

So, I think that you really should look at these state cases for illustrations of the type of pain and injustice that results when unborn victims of violence are not recognized in the law. This has been called Laci and Conner's bill, and it is, but it is also Tracy and Zachariah's bill, and it is also Shiwona and Heaven's bill, and it is a bill for every unborn victim and surviving family member.

I am encouraged that more and more states are enacting unborn victims laws. I've been told that 28 states now recognize the unborn child as a crime victim at least in some circumstances, and 15 of those laws cover the killing of the unborn child at any point in his or her development in the womb. Texas just enacted a strong law. These laws are all listed at the website www.nrlc.org. The photograph that you have before you today is also posted at that website.

I am also encouraged by recent national polls that show that more and more people "get it." A scientific *Newsweek* poll released June 1 asked people whether someone who "kills a fetus still in the womb" should face a homicide charge for that act—either throughout pregnancy, or from the point of "viability," or not at all. Fifty-six percent (56%) said throughout pregnancy, and another 28% said at viability, for a total of 84%. *Only 9% said there should be no such thing as a fetal homicide charge.*

Also in May, a national Fox News poll found that 84% favored a double-homicide charge in the Peterson murder case in California, while only 7% favored a single homicide charge.

NO EFFECT ON ABORTION

The Wisconsin law has been in effect for five years now and it has had no effect on legal abortion. Legal abortion is specifically exempted under that law. The bill that you are considering also has a specific exemption for abortion. Opponents of the bill should stop trying to turn it into an abortion issue.

It really boils down to the question that I asked you earlier. Does the photograph show one victim, or two?

Some lawmakers say that criminals who attack pregnant women should be punished more severely, but that the law must never recognize someone's unborn child as a legal victim. For example, I have read Congresswoman Lofgren's proposal, which she calls the "Motherhood Protection Act." There is only one victim in that bill—the pregnant woman. So if you vote for that bill, you are really saying all over again to me, "We're sorry, but nobody really died that night. There is no dead baby in the picture. You were the only victim."

More importantly, you would be saying to all of the future mothers, fathers, and grandparents, who lose their unborn children in future federal crimes, "You didn't really lose a baby."

Please don't tell us that. Please don't tell me that my son was not a real murder victim.

If you really think that nobody died that night, if you really think there is no dead baby in the picture, then vote for the Lofgren bill. But please remember Zachariah's name and face when you decide.

Mr. CHABOT. Ms. Fulcher.

STATEMENT OF JULEY FULCHER, DIRECTOR OF PUBLIC POLICY, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE

Ms. FULCHER. Good afternoon, Mr. Chairman and Members of the Subcommittee. On behalf of the National Coalition Against Domestic Violence I thank you for the opportunity to address the concerns of battered women who experience violence during their pregnancies. NCADV is a nationwide network of approximately 2,000 domestic violence shelters, programs and individual members working on behalf of battered women and their children.

My role here today is to advocate for increased safety for battered women, which in turn will lead to healthier pregnancies and births. Unfortunately, the Unborn Victims of Violence Act does not provide the protection that battered women need to obtain safety.

Historically, one of the major obstacles to eradicating domestic violence from the lives of women has been the unwillingness of the legal system to treat domestic violence as a serious crime. In 1994 and 2000, Congress passed the Violence Against Women Act and committed to a Federal investment in protecting battered women and their children. It is important that we continue this trend and recognize domestic violence threats, assaults, and murders as the serious crimes that they are.

Four to 8 percent of all pregnant women in this country are battered by the men in their lives. Studies now indicate that homicide is the number one killer of pregnant women, yet physicians do not usually screen for signs of domestic violence, even though instances are more common than routinely screened for medical problems.

As an attorney representing victims of domestic violence, I have seen the effects of this violence firsthand. Several years ago a client of mine lost a pregnancy due to domestic violence. No matter how many stories like this I hear, it never ceases to sicken me.

I should note that, in the cases I have worked on, it was clear by the batterer's words and actions that his intent was to cause physical and emotional injury to the woman and establish undeniably his power to control her. We are right to want to address this problem and protect women from such a fate. However, our response to the problem should be one that truly protects the pregnant woman by early intervention and prevention and not a reaction to a specific set of circumstances after the fact.

The Unborn Victims of Violence Act is not designed to protect women and does not help victims of domestic violence. The goal is to create a new cause of action on behalf of the unborn and further a specific political agenda. The result is that the crime committed against a pregnant woman is no longer about the woman victimized by violence. Instead, the focus will be shifted to the impact of that crime on the unborn embryo or fetus, once again diverting the

attention of the legal system away from domestic violence and other forms of violence against women.

Moreover, passage of the bill would set a dangerous precedent, which could easily lead to statutory changes that could hurt battered women. This bill would, for the first time, federally recognize that the unborn embryo or fetus could be the victim of a crime. It would not be a large intellectual leap to expand the notion of unborn fetus as victim to other realms. In fact, some States have already made that leap, and in those States, women have been prosecuted and convicted for acts that infringe upon these State-recognized rights.

While the Unborn Victims of Violence Act specifically exempts the mother from prosecution, it is easy to imagine subsequent legislation that would hold her responsible for injury to the fetus, even for violence perpetrated on her by her batterer under a failure to protect theory.

Moreover, a battered woman can be intimidated or pressured by her batterer not to reveal the cause of her miscarriage, and if she is financially or emotionally reliant on her batterer, she may be less likely to seek appropriate medical assistance. The long-term public health implications of such a policy would be devastating for victims of violence and all women.

The harmful potential of this bill is balanced by little or no additional protections for battered women and other women victimized by violence. The vast majority of domestic violence threats, assaults, and murders are prosecuted by the State. As this bill would apply only in Federal cases, the change would do little if anything to address the crime of domestic violence in our country against pregnant women.

Since the original Violence Against Women Act was passed in 1994, we have seen a 49 percent decrease in intimate partner violence. Unfortunately, the fiscal year 2003 appropriations for the Violence Against Women Act programming fell more than \$100 million short of the authorized amounts.

Last year, changes to the way the Victims of Crime Act funds were distributed resulted in the loss of more than \$30 million to programs serving victims of domestic violence, sexual assault, child abuse, and other crimes. Moreover, funding for programs critical to the sustained safety of battered women, such as transitional housing, received no funding at all. Entities that currently work on the front lines to end domestic violence are experiencing large cuts in funding.

If the United States Congress is serious about protecting women from domestic violence, whether they are pregnant or not, you must fully fund these programs that have already made so much difference in the lives of victims nationwide. Certainly there can be no doubt that a pregnancy lost due to domestic violence greatly increases that toll on a battered woman. We at NCADV wish to fully recognize and respond to that loss. However, the more appropriate means of dealing with this problem with respect to battered women is to provide comprehensive health care, safety planning, and domestic violence advocacy for victims. This solution would maintain the focus of any criminal prosecution on the intended victim of the violence, the battered woman, and make an important affirmative

step toward providing safety for her. If Congress wishes to protect the pregnancy, the way to do that is by protecting the woman.

Thank you.

Mr. CHABOT. Thank you.

[The prepared statement of Ms. Fulcher follows:]

PREPARED STATEMENT OF JULEY FULCHER, ESQ.

Good afternoon Mr. Chairman and Members of the Subcommittee. My name is Juley Fulcher and I am the Public Policy Director of the National Coalition Against Domestic Violence (NCADV). On behalf of the Coalition, I thank you for the opportunity to address the concerns of battered women who experience violence during their pregnancies. The National Coalition Against Domestic Violence is a nationwide network of approximately 2,000 domestic violence shelters, programs and individual members working on behalf of battered women and their children. My role here today is to advocate for increased safety for battered women, which in turn will lead to healthier pregnancies and births. Unfortunately, the "Unborn Victims of Violence Act" (H.R. 1997) does NOT provide the protection that battered women need to obtain safety.

Historically, one of the major obstacles to eradicating domestic violence from the lives of women has been the unwillingness of the legal system to treat domestic violence as a serious crime. The hard work of dedicated domestic violence advocates on the front lines has slowly brought about a change in the way we treat the crime of domestic violence. States began toughening laws on domestic violence and enforcing existing laws in the late 1980s. In 1994¹ and 2000,² Congress gave an important boost to this trend by passing the Violence Against Women Act and committing to a federal investment in protecting battered women and their children. As a result, we have seen increased criminal prosecutions of domestic violence nationwide. It is important that we continue this trend and recognize domestic violence threats, assaults and murders as the serious crimes that they are.

One-third of all female murder victims are killed by an intimate partner.³ According to a summary of recent studies, 4% to 8% of all pregnant women in this country are battered by the men in their lives⁴ with the highest rates of violence being experienced by pregnant adolescents.⁵ Studies now indicate that homicide is the number one killer of pregnant women.⁶ Women who experience abuse are more likely to delay prenatal care⁷ and are at a substantially increased risk of domestic violence.⁸ Yet physicians do not usually screen for signs of domestic violence even though instances are more common than routinely screened for gestational diabetes or preeclampsia.⁹ As an attorney representing victims of domestic violence, I have seen the effects of this violence first hand. Several years ago, a client of mine lost a pregnancy due to domestic violence. There was a history of domestic violence in her case and she had sought assistance several times. While she was 8 months pregnant, her batterer lifted her up in his arms and held her body horizontal to the ground. He then slammed her body to the floor causing her to miscarry. No matter how many stories like this I hear, it never ceases to sicken me. I should note that in this case and others I have worked on, it was clear by the batterer's words and actions that

¹Public Law 103-322 [H.R. 3355]; September 13, 1994.

²Public Law 106-386 [H.R. 3244]; October 28, 2000.

³Bureau of Justice, Bureau of Justice Statistics, *Homicide Trends from 1976-1999*, (2001).

⁴Gazmararian, Julie A., Petersen, Ruth, Spitz, Alison M., Goodwin, Mary M., Saltzman, Linda E., and Marks, James S., "Violence and Reproductive Health: Current Knowledge and Future Research Directions," *Maternal and Child Health Journal*, Vol. 4, No. 2, 2000.

⁵Wiemann, Constance M., Agurcia, Carloyn A., Berenson, Abbey B., Volk, Robert, J. & Rickert, Vaughn I., "Pregnant Adolescents: Experiences and Behaviors Associated with Physical Assault by an Intimate Partner," *Maternal and Child Health Journal*, Vol. 4, No. 2, 2000.

⁶Horon, I. and Cheng D. "Enhancing surveillance for Pregnancy-Associated Mortality—Maryland, 1993-1998." *Journal of American Medical Association*, Vol. 285, No. 11, pg. 1457. March 21, 2001. Study examines the most common cause of death for pregnant women between the years of 1993 to 1998.

⁷Parker, B. et al. "Physical and Emotional Abuse in Pregnancy: A Comparison of Adult and Teenage Women." *Nursing Research*, Vol. 42, No. 3, pg. 173-7. 1993

⁸Russo, Nancy Felipe and Jean Denious, *Understanding the Relationship of Violence Against Women to Unwanted Pregnancy and its Resolution*, (1999). In Beckman, Linda J. and S. Marie Harvey, eds. *The new civil war. The psychology, culture, an politic of abortion*. Washington DC, The American Psychological Association, pg. 211-234.

⁹Gazmararian, Julie A., Petersen, Ruth, Spitz, Alison M., Goodwin, Mary M., Saltzman, Linda E., and Marks, James S., "Violence and Reproductive Health: Current Knowledge and Future Research Directions," *Maternal and Child Health Journal*, Vol. 4, No. 2, 2000.

his intent was to cause physical and emotional injury to the woman and establish undeniably his power to control her. We, as a society, are right to want to address this problem and protect women from such a fate. However, our response to the problem should be one that truly protects the pregnant woman by early intervention and prevention and not a reaction to a specific set of circumstances after the fact, however horrible and sad.

The “Unborn Victims of Violence Act” is not designed to protect women and does not help victims of domestic violence. The goal of the Act is to create a new cause of action on behalf of the unborn and further a specific political agenda. The result is that the crime committed against a pregnant woman is no longer about the woman victimized by violence. Instead the focus often will be shifted to the impact of that crime on the unborn embryo or fetus, once again diverting the attention of the legal system away from domestic violence or other forms of violence against women.

Moreover, passage of the “Unborn Victims of Violence Act” would set a dangerous precedent, which could easily lead to statutory changes that could hurt battered women. This bill would, for the first time, federally recognize that the unborn embryo or fetus could be the victim of a crime. It would not be a large intellectual leap to expand the notion of the unborn fetus as a victim in other realms. In fact, some states have already made that leap and in those states women have been prosecuted and convicted for acts that infringe on state recognized legal rights of a fetus. While the “Unborn Victims of Violence Act” specifically exempts the mother from prosecution for her own actions with respect to the fetus, it is easy to imagine subsequent legislation that would hold her responsible for injury to the fetus, even for the violence perpetrated on her by her batterer under a “failure to protect” theory. Moreover, a battered woman can be intimidated or pressured by her batterer not to reveal the cause of her miscarriage and, if she is financially or emotionally reliant on her batterer, she may be less likely to seek appropriate medical assistance if doing so could result in the prosecution of her batterer for an offense as serious as murder. The long-term public health implications of such a policy would be devastating for victims of domestic violence and all women.

The harmful potential of this bill is, unfortunately, balanced by little or no additional protections for battered women and other women victimized by violence. The vast majority of domestic violence threats, assaults and murders—like other crimes of violence—are prosecuted by the state. While there are important federal laws to prosecute interstate domestic violence,¹⁰ interstate stalking¹¹ and interstate violation of a protection order,¹² these are stop-gap statutes which are appropriately applied in a very small number of cases relative to the incidence of domestic violence nationwide. In fact, the federal domestic violence criminal statutes have been called into play only 130 times between 1994 and 2000.¹³ As the “Unborn Victims of Violence Act” would only apply in federal cases, the change in the law would do little, if anything, to address the crime of domestic violence in our country or other assaults on pregnant women.

Federal programming already exists that positively impacts the lives of hundreds of thousands of battered women and their children. Since the original Violence Against Women Act was passed in 1994, we have seen a 49% decrease in intimate partner violence.¹⁴ Unfortunately, available services still do not come close to meeting the needs of victims. In a recent NCADV survey, as many as two-thirds of the victims seeking assistance at domestic violence shelters and programs were turned away last year due to lack of space. Since the passage of the Violence Against Women Act of 2000, the fiscal year 2003 appropriations for Violence Against Women Act programming fell more than 100 million dollars short of the authorized amounts. Last year, changes in the way Victims of Crime Act (VOCA) funds were distributed resulted in the loss of more than \$30 million to programs serving victims of domestic violence, sexual assault, child abuse and other crimes. In Indiana, 1,185 women and children were turned away this year due to the lack of funding. Michigan has been forced to make cuts of 5% to 10% in direct assistance to victims because of the reduction in VOCA funding. Ohio programs have lost over \$2 million dollars in funding and California is struggling to keep its 120 domestic violence pro-

¹⁰ 18 U.S.C. 2261(a).

¹¹ 18 U.S.C. 2261A.

¹² 18 U.S.C. 2262(a)(1).

¹³ This number reflects actual indictments under 18 U.S.C. 2261, 2261A and 2262 through November, 2000. It does not include the largest category of federal domestic violence prosecutions, those brought under 18 U.S.C. 922(g)(8)—a statute that is not addressed by the “Unborn Victims of Violence Act.”

¹⁴ “Intimate Partner Violence, 1993–2001,” Callie Marie Rennison, *Bureau of Justice Statistics Crime Data Brief*, U.S. Department of Justice, Office of Justice Programs, February, 2003.

grams open. Moreover, funding for programs critical to the sustained safety of battered women such as transitional housing received no funding at all. Women and their unborn children can be helped substantially more by other programs. The cost of intimate partner violence exceeds \$5.8 billion dollars in this country each year, not including the cost of the criminal justice process,¹⁵ yet entities that currently work on the front lines to end domestic violence are experiencing large cuts in funding. If the United States Congress is serious about protecting women from domestic violence, whether they are pregnant or not, you must fully fund these programs that have already made so much of a difference in the lives of victims nationwide.

I hope you agree with me that the crime of domestic violence is a horrendous one, not only in terms of the physical impact of the violence, but also in terms of its emotional, psychological, social and economic toll upon its victims. Certainly, there can be no doubt that a pregnancy lost due to domestic violence greatly increases that toll on a battered woman. We at the National Coalition Against Domestic Violence wish to fully recognize and respond to that loss. However, the more appropriate means of dealing with this problem with respect to battered women is to provide comprehensive healthcare, safety planning and domestic violence advocacy for victims. This solution would maintain the focus of any criminal prosecution on the intended victim of violence—the battered woman—and make an important affirmative step toward providing safety for her. If Congress wishes to protect the pregnancy, the way to do that is by protecting the woman.

Mr. CHABOT. Ms. Foster, you are recognized for the purpose of making a statement. Thank you.

STATEMENT OF SERRIN M. FOSTER, PRESIDENT, FEMINISTS FOR LIFE OF AMERICA

Ms. FOSTER. Thank you.

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Serrin Foster, and I am the President of Feminists for Life of America. Feminists for Life is an education and advocacy organization that continues the work of the early American feminists who worked both for the rights of women and legal protection for the unborn.

Feminists for Life is a member of the National Task Force to End Sexual and Domestic Violence Against Women. As a proud advocate of the Violence Against Women Act, we applaud the universal support by Members of Congress for VAWA—and might I add—for your work at the National Coalition Against Domestic Violence. We can all be proud that statistics show that violence against women has decreased since VAWA was enacted, but there is much work to be done.

Feminists for Life has a track record of getting beyond deadlock on polarizing issues by addressing the root causes of problems that women face. One of the ways we do this is by listening to women and then prioritizing what women really want.

Today I am pleased to speak from that perspective about an urgent question. What is the appropriate response to a woman who has lost her child due to an assault that she survived? What is the appropriate response to survivors when an assault takes the lives of both a pregnant woman and the child she carries?

The victims are speaking loudly and clearly on this issue, and we need to listen. According to a 2-year study by the Center for the Advancement of Women, reducing violence against women is the number one priority of women. Women who are pregnant are at particular risk of being targeted for violence. In fact, recent studies

¹⁵National Center for Injury and Prevention and Control. *Costs of Intimate Partner Violence Against Women in the United States*. Atlanta (GA): Centers for Disease Control and Prevention. 2003.

by two different State health departments have shown that a leading cause of maternal mortality is not complications during pregnancy or childbirth; rather, it is homicide. We are hearing more and more horrible stories via mainstream media of pregnant women who are assaulted by those who do not want them to carry a child to term.

A doctor was videotaped as he tried to poison his pregnant fiancée. Another doctor attacked his girlfriend's abdomen with a needle. A number of women have tried to kill the unborn child of another woman who was involved with the same man. Unwilling fathers have hired thugs to intentionally kill the unborn child.

For every story we hear, there are countless more that go untold. Such is the story of Marion Syversen, a board member of Feminists for Life, who lost her unborn child when her abusive father threw her down a flight of stairs when she was pregnant.

Women and their families who have survived such unthinkable violence are unequivocal: Justice demands recognition of and remedy for both their assault and the killing of their unborn child.

The gruesome and well-publicized case of Laci Peterson and her unborn baby, Conner, prompted Americans to examine their own convictions on this issue. According to a Newsweek/Princeton Survey Research Associates poll, 84 percent of Americans believe that prosecutors should be able to bring a homicide charge on behalf of a fetus killed in the womb.

Feminists for Life and our partners in the Women Deserve Better Campaign support the Unborn Victims of Violence Act because it would provide justice for the victims of Federal crimes of violence.

Congresswoman Lofgren has introduced an alternative called the Motherhood Protection Act of 2003. Instead of recognizing a woman's unborn child as an additional victim, it would, "provide additional punishment for certain crimes against women when the crimes cause an interruption in the normal course of their pregnancies."

We are not here to discuss an interruption. That implies something temporary, as if it were possible for the victim's pregnancy to start back up again. And dare we ask, mother of whom? Motherhood is neither protected nor honored through the proposed Motherhood Protection Act. Instead, it tells grieving mothers that their lost children don't count.

Ten days ago in the Bronx, a 54-year-old man allegedly kicked and punched his 24-year-old girlfriend in the abdomen. Julie Harris was 9 months pregnant at the time. She went through labor only to deliver stillborn twins. The Motherhood Protection Act, which some people call the single victim substitute, would only recognize one of three victims.

The family of the California murder victims, Laci and Conner Peterson, as Congresswoman Hart just entered into testimony, is explicitly urging Congress to pass the Unborn Victims of Violence Act, also known as Laci and Conner's Law, and not the single victim substitute which Sharon Rocha, Laci's mother and Conner's grandmother, called, "a step away from justice."

The Unborn Victims of Violence Act would also avoid multiplying the pain of survivors of horrendous Federal crimes of violence such

as the bombing in Oklahoma City or the terrorist attacks of September 11th.

After years of trying to have a child, Carrie and Michael Lenz, Jr., were overjoyed to learn that she was carrying their son, whom they named Michael Lenz, III. Carrying a copy of the sonogram, Carrie went to work early that morning to show coworkers the first photo of baby Michael. She and Michael were killed, along with three other pregnant women and their unborn children, when the Alfred P. Murrah Federal Building exploded on April 19th, 1995. This father's agony was multiplied later when he saw the memorial named only his wife, not his son as victims.

Ms. FOSTER. In the eyes of the Federal Government, there was no second victim for this father to mourn. If the legal system does not recognize the loss of an unborn child, it becomes an unwitting agent of the perpetrator who robbed the survivors of the child and the life they would have had together.

Women have a right to have children. On this we agree. But when a woman has this right taken away from her due to violence that kills the fetus in her womb, she needs and deserves the support of those on both sides of the abortion debate, those who support women's rights. It is also worthwhile to note that outside the context of abortion, unborn children are often recognized as persons who warrant the law's protection.

Some have questioned whether it is reasonable to apply this law if the perpetrator is unaware that the woman is pregnant, especially if she is in the earliest stages of gestation. Neither the Unborn Victims of Violence Act nor the Motherhood Protection Act makes the distinction about the age of the fetus. But would anyone seriously suggest, especially those who advocate a right of privacy, that it is the woman's responsibility to disclose her pregnancy to a potential attacker or murderer?

In 1990, the Supreme Court of Minnesota answered that question in *State v. Merrill*. A man who killed a woman was responsible for two deaths even though the woman was just 28 days pregnant. The court said, "the possibility that a female homicide victim of child bearing age may be pregnant is a possibility that an assaulter may not safely exclude."

We cannot tell grieving mothers like Tracy Marciniak, who testified here today, that Zachariah did not count, and we mourn with you for him. We cannot tell Julie Harris, the mother of twins, that there was only one victim when there were three. And we cannot tell the families of Laci and Conner, Carrie and Michael, III that there was only one loss to mourn.

The Motherhood Protection Act would deny these victims the recognition and justice they deserve. The women have spoken. Women want the justice promised by the Unborn Victims of Violence Act, and we are asking our federally elected officials to honestly answer the question in the case of Laci Peterson and baby Conner, in the case of Tracy Marciniak and baby Zachariah, was there one victim or were there two? Thank you.

[The prepared statement of Ms. Foster follows:]

PREPARED STATEMENT OF SERRIN M. FOSTER

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Serrin Foster and I am the President of Feminists for Life of America. Feminists for Life is an education and advocacy organization that continues the work of the early American feminists who championed both the rights of women and legal protection for the unborn.

Feminists for Life is a member of the National Task Force to End Sexual and Domestic Violence Against Women. As a proud advocate of the Violence Against Women Act, we applaud the universal support by Members of Congress for VAWA. I thank the Members of Congress here who have supported VAWA. We can all be proud that statistics show violence against women has decreased since VAWA was enacted. But there is much more work to be done.

Feminists for Life has a track record of getting beyond deadlock on polarizing issues by addressing the root causes of the problems women face. One of the ways we do this is by listening to women and then prioritizing what women really want. Today I am pleased to speak from that perspective about an urgent question: What is the appropriate response to a woman who has lost her unborn child due to an assault that she survived? What is the appropriate response to survivors when an assault takes the lives of both a pregnant woman and the child she carries?

Sarah Norton, an early American feminist who was the first woman to seek admission to Cornell University, asked this question more than a century ago. Speaking of the then-common situation in which an unwilling father attempted to kill an unborn child, she asked, "Had the scheme been successful in destroying only the life aimed at, what could have been the man's crime—and what should be his punishment if, as accessory to one murder he commits two?" (*Woodhull and Claflin's Weekly*, November 19, 1870)

Today's victims are speaking loudly and clearly on this issue. We need to listen. According to a recent two-year study by the Center for the Advancement of Women, run by Faye Wattleton, former president of the Planned Parenthood Federation of America, reducing violence against women is the number one priority of women. Women who are pregnant are at particular risk of being targeted for violence. In fact, recent studies by two different state health departments have shown that a leading cause of maternal mortality is not complications during pregnancy or childbirth—rather, it's homicide. For example, according to the *Journal of the American Medical Association*, a Maryland study concluded that, "A pregnant or recently pregnant woman is more likely to be a victim of homicide than to die of any other cause."

We are hearing more and more horrible stories via mainstream media of pregnant women who are assaulted by those who do not want them to carry a child to term.

- A doctor was videotaped as he tried to poison his pregnant fiancée.
- Another doctor attacked his girlfriend's abdomen with a needle.
- A number of women have tried to kill the unborn child of another woman who is involved with the same man.
- Unwilling fathers have hired thugs to intentionally kill the unborn child.

For every story we hear, there are countless more that go untold, such as the story of Marion Syversen, a board member of Feminists for Life, who lost her unborn child when her abusive father threw her down a flight of stairs when she was pregnant.

Women who have survived such unthinkable violence are unequivocal: justice demands recognition of and remedy for both their assault and the killing of their unborn baby. The Unborn Victims of Violence Act would support justice for women who lose children as the result of a federal crime of violence.

Many women do not survive such crimes, and their grieving survivors are equally unequivocal: justice demands recognition of and remedy for the killing of both victims, the woman and her unborn child or children.

The gruesome and well-publicized case of Laci Peterson and her unborn baby, Conner, prompted Americans to examine their own convictions on this issue. The American people, too, were unequivocal. They recognize and mourn the loss of both mother and child. According to a Newsweek/Princeton Survey Research Associates poll released June 1, 2003, 84% of Americans believe that prosecutors should be able to bring a homicide charge on behalf of a fetus killed in the womb. This figure includes 56% who believe such a charge should apply at any point during pregnancy, and another 28% who would apply it after the baby is "viable," i.e., of sufficient lung development to survive outside the mother. Only 9% believe that a homicide charge should never be allowed for a fetus.

Feminists for Life and our partners in the Women Deserve Better® campaign support the Unborn Victims of Violence Act because it would provide justice for the victims of federal crimes of violence. As victims, survivors, and the American people clearly demand, the Unborn Victims of Violence Act would recognize an unborn child as a legal victim when he or she is injured or killed during the commission of a federal crime of violence.

Congresswoman Lofgren has introduced an alternative to the Unborn Victims of Violence Act, called the Motherhood Protection Act of 2003. Instead of recognizing a woman's unborn child as an additional victim, it would "provide additional punishment for certain crimes against women when the crimes cause an interruption in the normal course of their pregnancies."

An "interruption?" That implies something temporary, as if it were possible for the victim's pregnancy to start back up again. Dare we ask: mother of whom? Motherhood is neither protected nor honored through the proposed Motherhood Protection Act. Instead, it tells grieving mothers that their lost children don't count. It ignores these mothers' cries for recognition of their loss and for justice. It is a step backward in efforts to reduce violence against women.

Ten days ago in the Bronx, a 54-year-old man allegedly kicked and punched his 24-year-old girlfriend in the abdomen. Julie Harris was nine months pregnant at the time. She went through labor only to deliver stillborn twins. The Motherhood Protection Act, which some call the single victim substitute, would only recognize one of these three victims.

The family of California murder victims Laci and Conner Peterson is explicitly urging Congress to pass the Unborn Victims of Violence Act, also known as Laci and Conner's Law—not the single-victim substitute. Sharon Rocha, Laci's mother and Conner's grandmother, concluded a letter to Senators DeWine, Hatch, and Graham and Congresswoman Hart:

I hope that every legislator will clearly understand that adoption of such a single-victim amendment would be a painful blow to those, like me, who are left alive after a two-victim crime, because Congress would be saying that Conner and other innocent unborn victims like him are not really victims—indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun. The application of a single-victim law, such as the [Lofgren] amendment, would be even more offensive in the many cases that involved mothers who themselves survive criminal attacks, but who lose their babies in those crimes. I don't understand how any legislator can vote to force prosecutors to tell such a grieving mother that she didn't really lose a baby—when she knows to the depths of her soul that she did. A legislator who votes for the single-victim amendment, however well motivated, votes to add insult to injury.

The advocates of the single-victim amendment seem to think that the only thing that matters is how severe a sentence can be meted out—but they are wrong. It matters even more that the true nature of the crime be recognized, so that the punishment—which should indeed be severe—will fit the true nature of the crime. This is a question not only of severity, but also of justice. The single-victim proposal would be a step away from justice, not toward it. For example, if Congresswoman Lofgren's legal philosophy was currently the law in California, there would be no second homicide charge for the murder of Conner.

The Unborn Victims of Violence Act would also avoid multiplying the pain of survivors of horrendous federal crimes of violence such as the bombing in Oklahoma City or the terrorist attacks of September 11, 2001.

After years of trying to have a child, Carrie and Michael Lenz, Jr. were overjoyed to learn that she was carrying their son, whom they named Michael Lenz III. Carrying a copy of the sonogram, Carrie went to work early the next morning to show coworkers the first photo of baby Michael. She and Michael were killed, along with three other pregnant women and their unborn children, when the Alfred P. Murrah Federal Building exploded on April 19, 1995. This father's agony was multiplied later when he saw that the memorial named only his wife, not his son, as a victim. In the eyes of the federal government, there was no second victim. Timothy McVeigh was never held accountable for killing Michael Lenz's namesake.

If the legal system does not recognize the loss of the unborn child, it becomes an unwitting agent of the perpetrator who robbed the survivors of the child and the life they would have had together.

Women have a right to have children. When a woman has this right taken away from her due to violence that kills the fetus in her womb, she needs and deserves the support of all those who champion women's rights, including those who support

legalized abortion. Columbia Law School Professor Michael Dorf, who is pro-choice, agrees: "Certainly pro-choice activists would oppose government-mandated sterilization. For similar reasons, they should support punishing feticide."

It is also worthwhile to note that outside the context of abortion, unborn children are often recognized as persons who warrant the law's protection. Most states, for example, allow recovery in one form or another for prenatal injuries. Roughly half the states criminalize fetal homicide. Unborn children have long been recognized as persons for purposes of inheritance, and a child unborn at the time of his or her father's wrongful death has been held to be among the children for whose benefit a wrongful death action may be brought. Federal law similarly recognizes the unborn child as a human subject deserving protection from harmful research.

Some have questioned whether it is reasonable to apply this law if the perpetrator is unaware that a woman is pregnant, especially if she is in the earliest stages of pregnancy.

Neither the Unborn Victims of Violence Act nor the Motherhood Protection Act makes a distinction about the age of the fetus. But would anyone seriously suggest—especially those who advocate a right to privacy—that it is a woman's responsibility to disclose her pregnancy to a potential attacker or murderer?

In 1990, the Supreme Court of Minnesota answered that question. In *State v. Merrill*, a man who killed a woman was responsible for two deaths, even though the woman was just 28 days pregnant. The court said: "The possibility that a female homicide victim of child-bearing age may be pregnant is a possibility that an assaulter may not safely exclude."

Knowing this may serve as a deterrent to future attacks on women of childbearing age.

We cannot tell grieving mothers like Tracy Marciniak, who testified here today, that her son Zachariah didn't count. We cannot tell Julie Harris, mother of twins, that there was only one victim when there were three. We cannot tell the families of Laci and Conner, or Carrie and Michael III, that they have only one loss to mourn. The Motherhood Protection Act would deny these victims the recognition and justice they deserve.

Women have spoken. Women want the justice promised by the Unborn Victims of Violence Act.

We are asking our elected Representatives to honestly answer the question in the case of Laci Peterson and baby Conner, was there one victim or two?

Those who support the single-victim substitute would deny women justice.

On behalf of women and families who have lost a child through violence, a father who has lost both his wife and child through terrorism, and Laci and Conner's family, I urge unanimous support for this bill, not the single-victim substitute.

Mr. CHABOT. Thank you very much. Professor Bradley.

STATEMENT OF PROFESSOR GERARD V. BRADLEY, UNIVERSITY OF NOTRE DAME SCHOOL OF LAW

Mr. BRADLEY. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to address the constitutionality of the Unborn Victims of Violence Act of 2003. The constitutional questions about the act seem to me are two. First, is it within Congress' enumerated powers, and second, if it is within Congress' enumerated powers, does the act nevertheless run afoul of *Roe v. Wade* and cases following it concerning women's reproductive liberty.

To answer the first question, there might really seem to be a question. Of course, under our Constitution, Congress has no general police power to prohibit private violence. You say a job assignment reserved for the States—a job assignment which the Supreme Court has emphasized in several cases over the last few years in the so-called new federalism cases exemplified by *U.S. v. Lopez*. I think there really is no question. As to the first question, Congress surely does have enumerated powers sufficient to sustain this act, and that is basically because this act does not extend Congress' regulatory reach. No act which is presently lawful is made unlawful by this act. It is this act relies on what might be called predi-

cate offenses—that is, offenses found elsewhere in the Federal criminal code—and adds to them an additional count and therefore enhanced punishment. The act says whoever engages in conduct that violates any of the listed provisions is guilty of the offense of assaulting the unborn child. So it is to be compared in this regard to the RICO statute, which is different in some respects, but nevertheless, RICO does not extend Congress' reach over primary conduct of individuals.

The second question, I think the leading question, the constitutional question about this act, has to do with *Roe v. Wade*, the cases following it, and women's reproductive rights.

I remind you that nothing in this act affects, much less unconstitutionally restricts a woman's right to terminate her pregnancy. The current expression of the constitutional standard is the undue burden test of *Casey v. Planned Parenthood*, affirmed by the Court 3 years ago in *Stenberg v. Carhart*. I refer the Committee Members to what I call the safe harbor provision of section (c) of the act. This is an air tight immunity thrown up around the pregnant woman and her unborn child by this act. Simply put, no woman may be prosecuted under this act with respect to her unborn child. This is all that *Roe* requires. It does not require more.

Now some say that it does require something; this act requires something inconsistent with *Roe*. I take this to be Mr. Nadler's position. He says it is inconsistent with *Roe* and, therefore, should be opposed on constitutional grounds. I disagree. Mr. Nadler said, in his opening remarks, that the *Roe* court said, and this is correct, that the unborn have not been recognized as persons in a whole sense. Well, maybe not, but this act refers to or pertains to part of legal protections that are afforded to persons. It refers to that part of personhood, one might say, which has to do with the right to be free of intentional assault or killing. Mr. Nadler rightly says that the court in *Roe* said, and I paraphrase, that the 14th amendment could not be read to establish or understood to include the unborn as, you might say constitutional persons. That is true as far as it goes, but this act is not an exercise of Congress' power under the 14th amendment. I think it would be section 5 if it were. So simply put, this is not an attempt by Congress to establish constitutional personhood. Congress is not here trying to say that the unborn are persons for purposes of the 14th amendment.

Now besides those two objections one might say in a more general sense that there is an opposition between *Roe* and this act because this act is tantamount to recognizing the unborn as persons in some ordinary legal sense. Well, that seems to me the case; that is to say, the arguments. But again, I disagree with Mr. Nadler. The *Roe* court did not itself say that the unborn are not persons. The *Roe* court said on the other hand, the judiciary, including the Supreme Court, is not in a position to speculate as to the answer to the question of when life begins. In any event, I think the key case here is not *Roe* but the *Webster* decision of 1989, where the Supreme Court was confronted with an act, in that case an act by the State of Missouri, which said that the life of each person began at conception. Some people thought and argued in the court below in that case that this adopted a theory of when life begins and that doing so was contrary to *Roe v. Wade*. But the Supreme Court said

no. The Supreme Court in *Webster* said of its own *Roe* decision that *Roe* meant only that a State could not justify an abortion regulation, otherwise invalid under *Roe v. Wade*, on the ground that life began at conception. But there, as here, there is nothing otherwise invalid about this act under *Roe v. Wade*. See again the safe harbor provision of subsection (c). So Congress, under *Roe*, *Webster*, and for that matter, *Casey v. Planned Parenthood*, is as free as was the State of Missouri in the late 1980's to conclude that outside the parameters of *Roe*, therefore outside the parameters of a woman's right to terminate her pregnancy, there are two victims, that the unborn are persons with at least a right to be free of assault and intentional killing.

Now, final word about this act's treatment of assaults upon pregnant woman. I speak here in ordinary legal terms and as a former prosecutor from Manhattan, and I refer or compare this bill to the leading alternative, Representative Lofgren's version, which of course adds a count, enhanced punishment, but still retains the notion of there being one victim in the case of assault upon a pregnant woman. I surely agree with the central notion of Representative Lofgren's approach that a mother suffers grievously with the injury or death of her child, born or unborn. This loss is particularly acute where a child is killed by a criminal act, but the criminal law does not generally treat crimes, injuries, assaults against children as any kind of aggravation of an accompanying crime against a parent.

Think of the case where a single violent act, such as planting a bomb or starting a fire, kills an entire family. In such cases, for each victim is a separate count, complete unto itself, for the injury or death of the particular person who is the subject of that count. My observation here is not that the alternative version proposed by Representative Lofgren is unconstitutional. I don't think it is unconstitutional. But it seems to me that this act's approach—separate victims, separate counts, and thus additional punishment—is not only constitutional but also more in line of the normal operation of criminal law principles than the alternative.

Thank you again to Members of the Committee.

[The prepared statement of Mr. Bradley follows:]

PREPARED STATEMENT OF GERARD V. BRADLEY

I am grateful to the Subcommittee for this opportunity to address the constitutionality of the *Unborn Victims of Violence Act of 2003*, also known as "Laci and Conner's Law." [Hereafter, "Act".]

The first question about the constitutionality of the Act is not whether it violates any right protected by the Constitution, including the right articulated by the Supreme Court in *Roe v. Wade*. That would be the first question were we talking about a bill in a state legislature. The first question when looking at proposed federal legislation is whether some power enumerated in the Constitution authorizes Congress to act. The national government possesses no general police power to prohibit private violence. That is, basically, a job for the states. Especially in light of the recent revival of judicially enforceable limits upon Congress's commerce power—see *U.S. v. Lopez*—and the narrow reading of Congress's "enforcement" power under Section 5 of the Fourteenth Amendment in *City of Boerne v. Flores*, one might doubt Congress's power to protect unborn children from private violence.

There is no question. The Act does not engage these recent developments. There is no doubt of its constitutionality lurking in the so-called "new federalism," as found (for example) in the Violence Against Women Act case, *U. S. v. Morrison*.

Why is there no question about Congress's affirmative power to pass the Act? Because the Act does not extend Congress's reach; no primary conduct which is pres-

ently free of federal regulation will be regulated if the Act becomes law. No conduct which was lawful is to be unlawful; no conduct which was legal is to be illegal.

The Act in this regard is comparable to the Racketeer Influenced and Corrupt Organizations Act—RICO. RICO relies upon (what it expressly calls) “predicate” offenses—and then lists them, as does the Act—in order to set up what is essentially an enhanced punishment statute. The Act relies upon predicate acts for its constitutional hook, one might say. If there is any question about the constitutionality of its reach, then, it is a question of the constitutionality of the “predicate” offense, and not about this Act.

The Act relies upon established criminal law principles of transferred intent to add a new offense to an already criminal act. The basic idea is simple: a bad actor with the requisite malice to, in the language of the bill, “violate [] any of the provisions of law listed in subsection (b),” may be charged with an additional violent offense. Some persons might object to this feature of the Act, saying it unfairly penalizes a criminal for the possibly unforeseeable effects of his acts. I grant that in some cases an assailant charged under this Act might not know that his victim is pregnant. But I deny that it is unfair to treat this assailant as the Act would. Our hypothetical assailant is treated like all other criminals, who are obliged to take their victims as they find them.

The classic expression of this common feature of criminal liability is the “egg-shell skull” rule. Consider A and B, who knock C and D, respectively, over the head with a glass. C is a veteran boxer, and is scarcely dazed. A is thus guilty of, at most, misdemeanor assault and gets a conditional discharge. D has a plate in his head due to an old sports injury, and dies from a brain hemorrhage. B is guilty of homicide, probably manslaughter, and goes to jail for a long time.

This established principle also illustrated in felony murder statutes, where the malice manifested in the commission of a felony is transferred to what may even be an accidentally caused death. So, for example, an arsonist who honestly believes the building he torches is unoccupied is nonetheless indictable for felony murder if, by chance, someone is inside, and is killed.

The leading constitutional question about the Act is undoubtedly about *Roe v. Wade* and its progeny. But nothing in the Act affects, much less unconstitutionally restricts, a woman’s right to terminate her pregnancy. (The current expression of the constitutional standard is the “undue burden” test of *Casey v. Planned Parenthood*, affirmed by the Court in *Stenberg v. Carhart*.) I can scarcely imagine language more adequate to the preservation of the right to abortion than that found in section (c) of the Act. Not only are the mother and all those cooperating with her in securing an abortion completely immunized against all potential liability. No woman may be prosecuted under this Act “with respect to her unborn child.” No woman engaged in predicate criminal conduct may be prosecuted for harm to her child, even where she did not intend to abort. So, a woman engaged in a hijacking or assault upon a federal juror or in animal terrorism or in *any* covered activity and who, as a result (of flight or some mishap) causes harm or death to her *own* fetus, is beyond prosecution under this Act, even though she may be liable for hijacking or assault upon a juror or animal terrorism. The Act simply does not inhibit the woman’s freedom to choose whether to bear a child or not.

Someone might object that the Act, because it protects a child in *utero* to practically the same extent as other persons, is somehow inconsistent with *Roe* or its progeny. Is there no difference, the objection might hold, between this Act and a flat Congressional declaration that the unborn *are* persons? And is not *that* declaration inconsistent with *Roe*?

The answer to this challenge would very likely have to be yes if the Supreme Court in *Roe* or some other case held that the unborn are *not* persons. But the Court has never so held. The *Roe* court said that it did not “need [to] resolve the difficult question of when life begins” (410 U.S. at 159). The Court there said the “the judiciary . . . is not in a position to speculate as to the answer.” (Id.) In no general or broad way, moreover, did the Court hold that the states or the Congress operated under a similar disability. All that the Court held in this regard was that Texas “could not override the rights of the pregnant woman by adopting an answer to the question of when life begins.” (See 410 U.S. at 162). But this Act does not affect, much less “override,” the rights of any pregnant woman. The *Roe* court opined that the unborn were not to be considered persons in the “whole” sense, an opinion consistent with treating the unborn as persons for *some* purposes, like inheritance, tort injury, and (here) third party assaults.

This understanding of *Roe* was explicitly confirmed by the Supreme Court in the 1989 *Webster* decision. There the state of Missouri had legislated that the “life of each human being begins at conception,” and the “unborn children have protectable interests in life, health, and wellbeing.” The 8th Circuit Court of Appeals seems to

have adopted the view of *Roe* stated as an “objection” here, that the state had, in light of *Roe*, “impermissibl[y]” adopted a “theory of when life begins.” But the Supreme Court reversed this part of the 8th Circuit holding, stating that its own prior decisions, including *Roe*, meant “only that a state could not justify an abortion regulation *otherwise invalid under Roe v. Wade* on the ground that it embodied the state’s view.” (emphasis added). Since this Act is no way questionable under *Roe* apart from the viewpoint issue, the matter is settled: Congress is as free as was the state of Missouri to conclude, and to enforce outside the parameters of *Roe*, its view that life begins at conception. If there remains something anomalous about the situation, it is an anomaly engendered by *Roe*, and not by this Act.

A final word about this Act’s treatment of assaults upon pregnant women, in comparison with the leading alternative: enhanced punishment for (what would remain) a single count of assault. I surely agree with the central notion of the alternative (a notion entirely consistent with this Act), that a mother suffers grievously with the injury or death of her child. This loss is particularly acute where the child is killed by a criminal act. But the criminal law does not generally treat crimes against children as aggravations of an accompanying crime against a parent. (Think of the case where a single violent act, such as planting a bomb or starting a fire, kills an entire family.) For each victim, a distinct count, complete unto itself, for the injury or death of that particular individual is the norm.

The facts to which this Act would apply are these: a woman carries a child in utero, and does not seek an abortion. For all the world can see, she considers that child her baby, to be treated as such by everyone: her doctors, her family, the law. Upon that child’s death she suffers, too, of course, but does she suffer more, or differently, than the woman who loses a newborn to a crime? A toddler? Who is to say? Is there any general answer?

My point is not that a simple enhancement of punishment is unconstitutional. But I do think this Act’s approach—separate victims, separate counts, and thus additional punishment—is much more in line with the normal operation of criminal law principles than is the leading alternative.

Mr. CHABOT. Thank you very much. And panel Members will now have an opportunity to question the witnesses for 5 minutes, and I will start with myself. Let me first of all begin by clearing up the record a bit. Ms. Fulcher, you had stated that fiscal year 2003 appropriations fell more than 100 million short of what was authorized for that year. But you failed to mention that funding for the Violence Against Women Act was actually boosted by more than 110 million from fiscal year 2001 to 2002 for a total of \$517.22 million. That is actually a 25 percent increase in that 1 year alone and an increase when you consider the budget as it currently is, pretty substantial increase. And the claim that we are not adequately funding the Violence Against Women Act and related programs I think is very misleading and a mischaracterization of the facts, but let me get on with the questions.

Mrs. Marciniak—

Ms. FULCHER. Mr. Chairman, may I address that comment?

Mr. CHABOT. When I ask you a question you can.

Thank you, Ms. Marciniak, for being here and courageously telling us your very tragic story. Let me first of all say, at least as one Member, there is no question in my mind that in that photo over there, there are two victims and two very tragic victims, no question about that. You stated in your testimony that your attacker said on a TV program that had he thought he could be charged with the killing of an unborn baby that he never would have beaten you. Based on this testimony, do you think the Unborn Victims of Violence Act could serve as a deterrent to individuals who might attack a pregnant woman, and why do you think that?

Mrs. MARCINIAK. I think so because if you look at the other laws, if you look at a drunk driver, if they know they can get punished for that crime, they are going to think twice. If an attacker of a

pregnant woman knows that they can get prosecuted for harming or killing that woman's child, they are going to think twice before they do it.

Mr. CHABOT. And your husband actually stated that.

Mrs. MARCINIAK. And he stated that if he knew that there was a law that could have prosecuted and convicted him for murdering his own son, he wouldn't have done it, and that was on national TV.

Mr. CHABOT. Ms. Fulcher, in your testimony you criticize H.R. 1997 because it is, "not designed to protect women." You heard Ms. Marciniak's testimony that her husband has said that he would not have attacked her had he known he could be prosecuted for injury or death of their unborn baby. Is it still your contention that the Unborn Victims of Violence Act will not deter violence against pregnant women? Yes or no.

Ms. FULCHER. The reality is—

Mr. CHABOT. Did you say yes?

Ms. FULCHER. I am trying to answer the question. We have plenty of laws on the books that allow us to prosecute a batterer for his crimes. They still continue to do that. Yes, we need to hold perpetrators completely accountable. This is one of many attempts to try to do that, and there are other ways that could do it more effectively.

Mr. CHABOT. On that same note, you also said that by recognizing the unborn child as the victim of a crime in addition to the child's mother, "the focus often will be shifted to the impact of that crime on the unborn fetus, once again diverting the attention of the legal system away from domestic violence or other violence against women." If that is your position, do you also believe that protecting born children from violence diverts attention away from the violence that might be committed against their mothers?

Ms. FULCHER. No, but the particular bill in question only addresses the violence against the unborn. In fact, it does not recognize two victims, but only one.

Mr. CHABOT. Well, right now if somebody harmed a mother and her child, there would be two separate crimes, no question about that. In this particular instance, we are saying that there ought to be a separate charge and a separate penalty for harming the unborn child as well.

Ms. Foster and Professor Bradley, let me ask you a question. Do you think that strengthening protections for children born or unborn will erode current statutes protecting women from violent crime? And we will start with you, Ms. Foster.

Ms. FOSTER. I need a booster seat, too. I don't see any problem with the Unborn Victims of Violence Act in this regard, no. I think that it is—we shouldn't be concerned about doing all things in every bill, and I do not think that protecting women is at odds with punishing a perpetrator. I think they are both laudable goals. And this bill, why we support it—and the Women Deserve Better Task Force as well as Feminists for Life—is because we recognize the fact that knowing that a woman may be pregnant may be a deterrent to a perpetrator who may attack a woman of child bearing age. We agree with that and support that. And of course, we also want programs that prevent and support and help women and

batterers to get over the problems that they have in terms of anger management. We don't see these things as mutually exclusive.

Mr. CHABOT. Thank you. Professor Bradley?

Mr. BRADLEY. My answer is no. It won't divert the protections of pregnant woman. Indeed, it will enhance them to the extent that it gives prosecutors another weapon in the arsenal against domestic violence and assault upon pregnant women.

Mr. CHABOT. Thank you. My time has expired. Gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Ms. Fulcher, would you answer the question that the Chairman didn't permit you to answer?

Ms. FULCHER. Yes. I would be happy to. As I am sure this Subcommittee knows, the Violence Against Women's Act of 1994 was reauthorized in 2000 by an overwhelming majority of the House and Senate because everyone recognized how powerful and effective it had been. We greatly increased the amounts of money that were authorized because of that, and that is the reason why we saw an increase in funding in the years you mentioned. But the reality is that we are still turning away as many as two-thirds of the women who are seeking assistance in trying to leave a violent relationship. And in my mind, no, there is not enough being done by the United States Congress. So I think at a minimum, we need to be fully funding the amounts of money that were authorized overwhelmingly by Congress, and we should be going a step further to make sure that no woman has to be turned away from services that she needs.

Mr. NADLER. The budget is still greatly inadequate. If we were serious about addressing this, we would increase that budget, fully fund the act?

Ms. FULCHER. Absolutely.

Mr. NADLER. Next question, first Ms. Fulcher, then Ms. Marciniak. Ms. Marciniak stated that this bill would be a deterrent if her husband knew that he could be prosecuted for damaging the fetus or killing the fetus and he would not have done it. Ms. Fulcher, assuming the truth of that, which I do, would the Lofgren bill be just as much a deterrent?

Ms. FULCHER. Absolutely. The penalties are the same, and as a matter of fact, the Lofgren bill goes a step further by not just recognizing the unborn as a victim but by recognizing the unity of the two as a victim in the State in which they were a victim.

Mr. NADLER. Mrs. Marciniak, do you think—why do you disagree, or do you, that the Lofgren bill would also be a deterrent at least to the same extent?

Mrs. MARCINIAK. The Lofgren bill only recognizes one victim. There are two victims.

Mr. NADLER. That is a different question. In terms of someone worried about if I caused the—if I damaged the fetus of my pregnant wife, I might be prosecuted beyond the point than if I just hit her and she weren't pregnant. Why would there be any psychological deterrent less or more for that guy?

Mrs. MARCINIAK. I am not exactly understanding what you are asking in that.

Mr. NADLER. Never mind. Professor Bradley, I was very struck by your remarks that this bill does not in any way establish a per-

son, does not in way establish that a fetus is a separate person, does not undermine the—does not go against the comments of *Roe v. Wade*, et cetera, et cetera. I am struck by the fact that every single other person who has testified, my colleagues on this side of the aisle, Ms. Foster, say exactly the opposite, that the whole purpose of this bill is to establish that the fetus which was killed, it is a separate crime, it is a separate person. Do you agree with them or not? And if you agree with them, how does this not, again forgetting the question of penalties, if the main difference between this bill and the Lofgren bill is that this establishes the fetus as a crime against a separate person, how does this not establish the fetus as a separate person and thereby undermine the various precedents that the Supreme Court used in *Roe v. Wade* itself?

Mr. BRADLEY. I agree with the panelists and, I think, rather disagree with what you said.

Mr. NADLER. The question is how can you both be right?

Mr. BRADLEY. We can both be right, but I think you are wrong. I didn't say that this bill doesn't establish at least in some sense, the ordinary legal personality of the unborn. What I did say, and I do believe, that it is not an attempt by Congress to establish on constitutional grounds for purposes of the 14th amendment that these are, for lack of a more precise term, constitutional persons within the meaning of the 14th amendment. Now *Roe* says something about that. Maybe it is obscure at points, but surely *Roe* talks about that prospect. But I take it that is not at issue here. Here, in a limited way, Congress is exercising a kind of ordinary police power with regard to Federal jurisdiction and that power is sufficient to recognize the unborn as persons, at least for the limited purpose of protecting their lives.

Mr. NADLER. Without any impact on the question of the—their being persons under the 14th amendment?

Mr. BRADLEY. Yes.

Mr. NADLER. I am glad to hear that, and I hope that goes into the record because I think that is the real purpose of the bill. Let me ask Ms. Foster; you take issue with the use of the phrase "interruption in the normal course of pregnancy" in the Lofgren bill. The sentence goes on to say, "resulting in prenatal injury (including termination of the pregnancy)." The bill before the Committee uses the term "death of or bodily injury to a child who is in utero."

What besides prenatal injury or miscarriage do you think ought to be covered? Would you urge the gentlewoman from California to add whatever else that is to her bill as well?

Ms. FOSTER. I think what our problem with this bill is that it doesn't recognize the loss. The use of the word "interruption," I think, was carefully chosen and most people understand.

Mr. NADLER. Excuse me, but that is not what you said. Interruption in the normal course of pregnancy resulting in prenatal injury, including termination of the pregnancy. So we are not talking about a temporary interruption, as you implied in your statement, as you stated in your statement. We are talking about an interruption resulting in prenatal injury, including termination of the pregnancy, which seems to me to be the equivalent of the phrase in the other bill, the main bill, the one before us, death or bodily injury

to a child who is in utero. Do you see any difference in those phrases or was that just verbiage?

Mr. CHABOT. The gentleman's time has expired, but you can answer the question.

Ms. FOSTER. I recognize that a pregnancy can be terminated by a miscarriage, by abortion, by this kind of violence and also by live birth. So there is a lot of different ways a pregnancy can end, one of them a very happy way with a happy, healthy, live child. I think what is missing here is answering the question that women are asking, will you recognize the loss of my son or daughter, and that is what I am here today to advocate.

Mr. CHABOT. The gentlelady from Pennsylvania, Ms. Hart, is recognized for 5 minutes.

Ms. HART. Thank you, Mr. Chairman. And actually before I get into my questions on that point I want to add something that neither the Lofgren language nor Mr. Nadler seem to recognize, a movement that really has been prevalent in both the Federal Congress and on State legislatures over the last 15 years, which is to make sure that you are recognizing victims of crimes. It is victims' rights. That is part of what this bill is all about, that a family has a grave loss and that is a big, big part of this. Unfortunately, the other language does not recognize that family's loss, and that is what this is really all about.

I would like to start with a question. Ms. Marciniak, thank you for coming again and helping to illustrate the terrible loss that you and your family suffers and for the rest of your life. You stated in your testimony that your attacker had mentioned this on TV, that if he thought he would be charged with that killing—you already answered the question that the Chairman had asked, that he said he wouldn't have hit you.

Mrs. MARCINIAK. Correct.

Ms. HART. Do you think he was motivated by something that was different than other people who would attack a pregnant woman? Was there something unique that motivated him?

Mrs. MARCINIAK. No.

Ms. HART. You think the act we are considering would be a deterrent to others?

Mrs. MARCINIAK. Oh, yes.

Ms. HART. I would like to go on, I think, to Professor Bradley. Opponents of the bill argue and also Ms. Fulcher today argue that recognizing the crime against the unborn child creates a whole range of dangerous legal consequences. Ms. Fulcher stated that the legislation holding a woman responsible for injuries inflicted on her unborn child is possible if this bill would pass. Others have argued that suit could be brought on behalf of the fetus to seek Federal benefits for civil rights claims.

Do you know of any State that has this type of legislation in place where an unborn victim law resulted in any such extensions of the law, and do you believe that there is a possibility of this kind of a consequence?

Mr. BRADLEY. I don't think there is a possibility because of this law. Now whether Congress has the power and if it does, whether it wants to use it to create a civil rights action on behalf of the unborn child survivors is a question I haven't thought about, but it

may well have the power to do so and, perhaps, it should. But nothing in this law leads logically to that, and certainly no court would infer from this law a cause of action. It seems to me that this law does not compel any particular unfortunate result if you do think those are unfortunate results.

Ms. HART. Also regarding that issue, we specifically state in our language that this would not apply to a woman's action upon herself. Is that something that a court would be likely to misconstrue?

Mr. BRADLEY. I can't imagine how. Courts have proven themselves willful at times, perhaps in the last few weeks especially. But I can't imagine language more clear and direct to the purpose to throw a complete immunity around a pregnant woman with regard to all of her acts concerning that unborn child. I can't imagine language more clear and direct.

Ms. HART. Thank you. Ms. Fulcher, I want to thank you for your work against domestic violence. In my 10 years as a State Senator and here, I have been working with different groups and working obviously to obtain funding with different programs in my district to help victims and to help make sure we fund the programs that help prevent domestic violence as well. You stated in your testimony that as a result of the passage of the Violence Against Women Act we have seen an increased number of criminal prosecutions of domestic violence nationwide. And I think that is fantastic, and we have seen it in our region as well when we look at the numbers. Would you—from some of your statements, it seems that you may think that this act may harm that or reverse this trend and end up decreasing prosecutions for domestic violence. Am I reading something in your testimony?

Ms. FULCHER. I think you are reading something into it. I am not saying that it would end up decreasing the prosecutions for domestic violence necessarily, but that it is not doing anything to provide added safety for victims to prevent these crimes from happening to them.

Ms. HART. It isn't actually—you know every law cannot do everything. We have a number of opportunities here in the Congress to help do those things. And one of them is a bill, and a lot of my other colleagues have sponsored that is sponsored by—the main sponsor is Rob Simmons from Connecticut and deals with VOCA, the Victims of Crime Act, which was one of those laws passed in the Nation's awakening really to facing the fact that we have victims who are not being attended to and are suffering during the time that the prosecutions are going on and later. I have supported Representative Simmons' bill. And for those of you who are not familiar with it, it would increase funding for victims of domestic violence and programs to help prevent it as well by removing the cap for all the money that comes in for crime victims that go back to the crime victims because unfortunately some of that money ends up going back to the general fund. So that is a way for us to do that. This bill is focused on a different issue, and I am concerned that if we can approach your concern from a different way, which we are doing and will continue to do, why would you oppose the bill?

Mr. CHABOT. The gentlelady's time has expired, but you can answer the question.

Ms. FULCHER. The reason for our opposition is our concern about how this particular piece of legislation may end up harming women and possibly also harming their pregnancies because of their possible reduced willingness to seek appropriate medical attention under these violent circumstances because they don't want their batterer to have to face a charge of murder.

Ms. HART. Mr. Chairman, if I may.

Mr. CHABOT. Ask unanimous consent for an additional 1 minute.

Ms. HART. Thank you, Mr. Chairman. I understand that concern. I have worked with volunteers who, you know, man our 24-hour phone lines and things back home for battered women. It is true that a lot of women continue to fear. But more and more, they have opportunities to get out, whether they are financially able to support themselves or not. And it seems to me that that really takes us backward, and it would keep women in a situation that they really should get out of for both them and their children. And I understand the fear and the concern, but I think we need to find a better way to address it and certainly not by ignoring the fact that a child has been lost.

Mr. CHABOT. Thank you. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, there is general agreement that crimes against pregnant women are more heinous than crimes against others. This bill is here before the Constitution Subcommittee for obvious reasons as we have heard. So, Professor Bradley, I just want to ask you a couple of questions and maybe kind of technical. You noted that because it is a Federal criminal statute, we have limited jurisdiction, particularly highlighted by the *Lopez* decision, and that there is a list of Federal crimes that are predicates to any action under this bill. Let me ask the first question, there is no provision for mens rea. There is no specific intent to harm the fetus, not even the requirement that you knew that the woman was pregnant?

Mr. BRADLEY. That is right.

Mr. SCOTT. Separate crimes generally require separate mens rea. How would this fair under attack on that point?

Mr. BRADLEY. It is unusual for a criminal statute not to have a particular set of mind attached to it knowingly, wittingly, recklessly, but it is not unknown although it is unusual, and this operates in a way that several types of statutes do operate. Felony murder is one example or, as the saying goes, you take your victim as you find him or her. And my answer—I guess I would incorporate in my answer the comment I made earlier, I think it was by Ms. Marciniak, quoting a Minnesota court, saying to the effect, look, a person who assaults a woman of child bearing age just runs the risk that she is pregnant and will have to bear the consequences of injury to an unborn child if she is. That strikes me as correct and not unfair to the defendant in that case. It is an unusual circumstance, but not unknown.

Mr. SCOTT. Well, let me see how this would work when you string all the statutes together, one is section 242, which is the color of State law statute. If a police officer were illegally arresting someone who subsequently had a miscarriage and he didn't know

she was pregnant and didn't intend to harm the fetus and the fetus died, is he looking at murder?

Mr. BRADLEY. Not really. First, that person, I guess the police officer in your example, would have to commit another Federal crime.

Mr. SCOTT. Violation of section 242?

Mr. BRADLEY. You have to commit another offense, which would be defined elsewhere in title 18.

Mr. SCOTT. Violation of title 18, section 242 depriving any person of Federal, legal, or constitutional rights. And subsequently or during the illegal arrest, there is a miscarriage. Is the police officer looking at a murder rap?

Mr. BRADLEY. Well, no, if it is a miscarriage—the officer's act would have had to cause the death of that child. If it caused the miscarriage, there could be liability for homicide. I am not sure if it would be murder.

Mr. SCOTT. The way the bill reads, you are guilty of the same punishment provided under Federal law for that conduct had that injury or death occurred to the unborn child's mother, that is death. So you would be looking at a homicide.

Mr. BRADLEY. Right. I think that is correct.

Mr. SCOTT. The police officer would be looking at a homicide. There is also provisions in here for drug dealers. If a person is involved in a major drug conspiracy, that is part of a drug conspiracy, which means you don't have to be the kingpin but just part of it, if the drugs cause a miscarriage, you are looking at a murder rap?

Mr. BRADLEY. I think that is correct also.

Mr. SCOTT. How does double jeopardy work on this? If you lose the original charge, can you come back for the crime against the fetus?

Mr. BRADLEY. Basically, you would have to charge both offenses at the same time.

Mr. SCOTT. Is that in the bill?

Mr. BRADLEY. That is not in the bill, but I think that would be the normal operation of double jeopardy principles. If it is a single act, whether selling drugs or a police officer brutalizing a pregnant woman, you have to bring one indictment, all of the charges that arise from that act—

Mr. SCOTT. If you have an explosion, do you have to bring everybody in the same indictment?

Mr. BRADLEY. At least generally, yes. If you have one criminal act, planting one bomb or causing one explosion, you have to bring everybody into that indictment who is killed as a result of that act, yes.

Mr. SCOTT. So if you leave somebody out you can't come back later?

Mr. BRADLEY. Typically not.

Mr. SCOTT. And you can't have a Federal charge and a State charge like they are doing in Oklahoma?

Mr. BRADLEY. Well, you could do that because double jeopardy doesn't bind the different sovereignties, as they say. The Federal Government and the States can operate independently of each other and, I guess, often do. And one going first doesn't have any

effect upon the liberty of the other jurisdiction to go second. Whether the State goes first or second doesn't matter either.

Mr. CHABOT. The gentleman's time has expired. The gentleman from Florida, Mr. Feeney, is recognized for 5 minutes.

Mr. FEENEY. Thank you, Mr. Chairman. I would like to direct a question or two to Mr. Bradley and maybe he can correct me where I am wrong. And first I want to welcome him back as well as the other panelists. You will have to understand it has been 20 years since I have been out of law school. I spent 3 years answering law professors' questions and turnabout eventually is fair play, but I have a lot of catching up to do. And I guess the first thing I want to do is thank you for your jurisdictional argument where the predicate for Federal jurisdiction is laid upon other Federal offenses. I think the gentleman, Mr. Scott, who is a good friend and able lawyer, may have some ideas about which offenses ought to be excluded and some additional ones that may want to be included. But more to the point about the fact, we are the Constitutional Subcommittee. I think some of the questions here raised are the perceived offenses against the alter of the *Roe* decision. I want to know whether you read the recent *Lawrence* decision by the United States Supreme Court.

Mr. BRADLEY. Yes.

Mr. FEENEY. Maybe you can correct me on where my analysis is wrong about where we may be heading based on their approach toward *stare decisis*. With respect to the underlying law in Texas, I thought it was a silly law, as Justice Thomas said. I would have voted to either eradicate the offense altogether or diminish the penalties. But nonetheless the question is who makes law. And under the *Bradley* decision—let us start so we understand where I am going here. In *Griswold*, the Supreme Court under some penumbra discovered a right that was later applied in the *Roe* case to say that the woman had the right to terminate pregnancy under certain conditions, viability, et cetera. In the *Bowers* case in 1986, the United States Supreme Court reviewing history, reviewing common law, basically said there was nothing in the Constitution that guaranteed the right to engage in certain private behavior known as sodomy and, therefore, States could do what they liked. In the *Lawrence* case, as I recently understand it and, I think, this is very important of where we may be going here and some of the concerns of the minority opponents on *stare decisis*. But the question there was the same as in *Bowers*, does a State have the right to prescribe certain private behavior? What the Court said is forget about *Bowers*. That was 17 years ago. What it basically said and it flatly stated that the *Bowers* decision was wrongly decided, so they threw out their own precedent. In fact, they cited as a reason to throw out the *Bowers* case the fact that some 25 States had under the democratic process actually changed the law to stay up with cultural norms and customs and basically either permitted the type of behavior, sodomy, or at least released or lowered the activity. So the fact that democracy was functioning full well did not stop the Court from creating a constitutional right to a behavior that was not a constitutional right 17 years ago.

Moreover, a very interesting twist, they actually cited, remember their own precedent in *Bowers*, as I understand it and I want you

to correct me, their own precedent in *Bowers* is not enough to stand on, but they cited a precedent in the European Court of Human Rights as a good reason to throw out at least 17 years worth of jurisprudence on whether States have the authority and the power to outlaw this behavior. Well, Congresswoman Hart has suggested that there is a growing democratic movement in States and Congress to recognize that there may be more victims of specific crimes than just the ones that are laid out in our statutes. And what this bill does is to suggest effectively that Laci and Conner are more than one person. Now, even if the *Roe* decision doesn't recognize—neither does it, as you say—it doesn't say that there are two persons, but it doesn't say there may not be two persons. And I guess it is possible under the jurisprudential legerdemain that the *Lawrence* court engaged it to suggest that culture, watching the Laci Peterson case, watching some of the horrific tragedies that one of our good witnesses described today, maybe our culture will catch up and suggest that Laci and Conner were two people and not one. Maybe you can tell me where my legal understanding is wrong about all this.

Mr. BRADLEY. I think you get an A or at least an A minus in this exam, but it seems to me that you know clearly in *Lawrence v. Texas*, the Supreme Court majority at least was gauging or gearing its own reasoning to an emerging cultural consensus and, as you correctly point out, involving not only American legal culture but European legal culture. So be that as it may, it would seem there is reason to think that there is now an emerging cultural consensus, partly based upon the notoriety of Laci and Conner, I guess partly based upon the evidence at these hearings, that there really are two victims in the kind of violent acts we are talking about. There is an emerging cultural consensus of the general type that the Court in *Lawrence* took quite a lot of notice of.

Mr. CHABOT. The gentleman's time has expired. The gentleman from California, Mr. Schiff, is recognized for 5 minutes.

Mr. SCHIFF. I thank the Chairman for yielding. And I want to start at the outset with a comment, which is really more about the practices in the House than about this Subcommittee, and our Chairman does an extraordinarily fine job. I wish we got to the point in the House regardless of who was in the majority and minority that we had an equal number of witnesses on both sides of the issue. To the degree that any of these issues help inform the Members' minds, I think it would be useful for us to have the issue equally portrayed. And Professor, I am going to put you in a little different position but one you should be used to from your academic environment, and that is I would like you to speak for the opposition from a legal point of view and that is if you were a constitutional scholar appearing on the other side of the issue on the Committee today, what is the most powerful argument you can make against this bill?

Mr. BRADLEY. The one that Mr. Nadler made.

Mr. SCHIFF. Tell me how you would fashion it.

Mr. BRADLEY. I would fashion it pretty much the way he did; that is to say, if you look at *Roe* and take away from it a moderate understanding, you would have a sense that the spirit of *Roe* or perhaps the meaning of *Roe* is that the unborn are not persons and

Congress or States are powerless to make them persons. That is one reading of *Roe*. It is not the reading that I myself think is the better one, and I have disagreed with Mr. Nadler's representations of *Roe*, but I think it is a plausible view of *Roe* although I would stress that the Court very studiously asserts over and over we are not saying finally who or what is a person. We are just saying that women get to do what they want when they are pregnant. But I think a decisive counterargument to Mr. Nadler's argument is the *Webster* case.

Mr. SCHIFF. Before we get to that, because you are a better advocate for both sides than that, what is—what would you point to as further support of that reading of *Roe*?

Mr. BRADLEY. Well, clearly the result in *Roe* is anomalous if you take the view of the unborn persons. You don't put in the charge of other persons, in this case walking around women, the fate or the life or death of any other person.

Mr. SCHIFF. Are there any other subsequent Supreme Court precedents that indicate that you would take that view of *Roe* even in the context where you are not talking about a woman deciding to terminate her pregnancy but rather a third person committing a crime?

Mr. BRADLEY. I don't think so. I think that *Roe* has to do with the pregnant woman context. I don't know an argument based—

Mr. SCHIFF. If we had Larry Tribe here on the other side what would he say?

Mr. BRADLEY. Larry Tribe would say that he probably disagrees with his honorable colleague from Notre Dame but that the better reading of *Roe* is more or less as Mr. Nadler describes it and that *Webster* should be disregarded as incorrect, poorly reasoned or in any event to be disregarded.

Mr. SCHIFF. Let me ask you then a less constitutional question, a more practical question, and that is what is the disadvantage, if there is a legitimate constitutional question here, what is the disadvantage from a practical criminal law standpoint of beefing up the penalty to the same point effectively where the sentences would be the same? Doesn't that avoid the constitutional question? Isn't it generally desirable from both a congressional and a Supreme Court position to avoid the unnecessary constitutional questions when you have a remedy that will accomplish the same objective?

Mr. BRADLEY. I think it is probably generally desirable though in certain cases I would hope that Congress would (in a certain sense) provoke a confrontation with the Court if it thought the Court were on the wrong track regarding the Constitution, and Congress would be trying to help the Court correct its wrong course. But generally, sure, conflict avoidance is the preferred route. But in this case I myself don't think there is a constitutional question. There are 28 or so of these laws in the States. Many have been tested up to the State's highest courts. I don't think there have been any holding these laws as unconstitutional. So I don't think in this case even a risk averse Member of Congress would be running much risk of a confrontation with the courts.

Mr. SCHIFF. Ms. Fulcher, if I could ask you to play the same devil's advocate role. It seems to me the most compelling argument in favor of this idea would be not in the case where the mother is

murdered as well, but rather where the mother is only injured and the fetus is terminated. How do you accomplish the same level of penalties in that kind of a circumstance, same deterrent factor? In my view, if someone is going to kill a pregnant woman, realizing they are murdering the woman, the fact that they are murdering a second fetus at the same time is not much of an additional disincentive. If they are going to commit murder, they are going to commit murder. But it seems to me different if you are talking about an assault that has the effect of terminating the life of the fetus as well.

Mr. CHABOT. The gentleman's time has expired, but the gentleman can answer the question, or gentlelady.

Ms. FULCHER. I would say that if your goal is to either prevent through deterrence or to provide accountability, that doing so is about penalties and what ultimately happens to the perpetrator. This is one of a number of different proposals that have been put forth that would do that.

Mr. SCHIFF. Mr. Chairman, may I ask a brief question on that?

Mr. CHABOT. Yes.

Mr. SCHIFF. How do you achieve the same deterrent impact if an assault, for example, might carry 1 to 5 years, whereas a murder charge could carry up to life? Wouldn't it be ironic if you change the penalty—how would you change the penalty, I guess is the question, so that you have a much greater deterrent impact in the case of a pregnant woman where you have a miscarriage?

Ms. FULCHER. Well, I think there is good precedent and law for enhanced penalties depending on who the victim is and what the circumstances of the crime are, and there could be a means of enhancing the penalties if that would occur in this situation.

Mr. SCHIFF. So you could have a statute that says that an assault maybe carries 1 to 5 years but an assault that has the effect of terminating a pregnancy would carry up to life?

Ms. FULCHER. Sure.

Mr. CHABOT. The gentleman from New York by unanimous consent is given the opportunity to ask one additional question.

Mr. NADLER. Thank you, Mr. Chairman. The question is for Professor Bradley. I want to put you in the hot seat now, and I appreciate your remarks about my constitutional views but going back to what we were discussing about the question of personhood and the question of the Supreme Court saying that—well, Supreme Court certainly did not say that a fetus is a person within the meaning of the 14th amendment.

Mr. BRADLEY. That is correct.

Mr. NADLER. My fear and the real reason for a lot of the opposition to this bill is that some of us can see precisely a development a few years down the road in which a future Supreme Court says the following: The passage by Congress of the Unborn Victims of Violence Act and the signature by the President and the similar passage of similar acts in X number of State legislatures and signed by X number of Governors shows the developing societal consensus that a fetus is a person within the meaning of the 14th amendment, and we so hold, and therefore, abortion is murder. It is not status quo ante before the *Roe v. Wade*. States can't decide to allow abortions, and to allow an abortion you need a constitu-

tional amendment. Now you are saying, as I understand it, that that is not a likely outcome or a danger of this bill.

I would ask you the following: Do you think that this bill in fact could in any way lead to such a thing or promote such a thing? And secondly, would you object, would you see any reason to object? Would you see the bill weaker in any way in terms of its professed objective if an amendment were to be included saying that this bill has no bearing or has no comment or doesn't have any relationship to the question of whether a fetus is a person under the meaning of the 14th amendment?

Mr. BRADLEY. I think that is what it does say, and section (c) does say this has nothing to do with abortion whatsoever.

Mr. NADLER. So if it were made more specific and said that this implies no personhood for purposes of the 14th amendment, you would think it would not weaken the bill and you would have no objection?

Mr. BRADLEY. I think that is what it does say.

Mr. NADLER. Thank you.

Mr. CHABOT. Gentleman's time has expired. In fairness, since I recognized the gentleman for one last question, let me ask one last question as well by unanimous consent, and I will just direct mine to Mrs. Marciniak. Again looking over at that photograph over there, you are trying to convince this Committee, and I think you are probably the one in this room that has felt this tragedy most directly and most profoundly. I will give you one last shot. Why do you think it is important that we recognize that there are two separate victims in that photograph, and what difference has it made in the lives that we see in that picture?

Mrs. MARCINIAK. Look at the picture and tell me how many people you see there? There is two, my son Zachariah who gave his life, and there is me, and I almost gave mine. The reason I survived I feel is to right the injustices that are going on. Wisconsin didn't have a law. If you think the pain of losing a child at the time is the worst you could ever feel, by having the law that you believe tell you that he wasn't a victim was worse. The pain that I feel today and I will for the rest of my life is tripled because of that, because the law told me my son didn't exist.

I took care of my son while he was inside of me. We waited for him. We decorated his nursery. We named him before he was born. We have the right for justice, and that is what we are begging for you to do. Stop letting these unborn victims die in vain.

Mr. CHABOT. Thank you very much.

Mr. NADLER. Mr. Chairman.

Mr. CHABOT. Mr. Nadler.

Mr. NADLER. Could you give us some idea as to the scheduling of this bill? The hearing I assume is basically over.

Mr. CHABOT. The hearing is going to be concluded.

Mr. NADLER. Do you anticipate a Subcommittee and a full Committee markup? Do you anticipate that we will have floor action before the August recess?

Mr. CHABOT. We will have to consult with the Chairman of the overall Committee, and we will certainly let the minority side know what our thinking is. At this time, we don't have a date set.

Mr. NADLER. I ask for unanimous consent, Mr. Chairman, that all Members have 5 legislative days to revise and extend their remarks and submit additional materials for the record.

Mr. CHABOT. Without objection. If there is no further business to come before the Committee, we are adjourned.

[Whereupon, at 3:50 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

July 7, 2003

Constitution Sub-Committee

I am the mother of Laci Peterson and the grandmother of Conner Peterson. I am writing to ask you to support the Unborn Victims of Violence Act, which is also referred to as "Laci and Conner's Law" at my family's request. I expect that you have seen the press coverage regarding their brutal murders, and that you are aware that two homicide charges have been filed by state authorities. If my daughter had been killed in a federal jurisdiction, or during commission of a federal crime, however, my grandson's murder would not be recognized or charged.

When a criminal attacks a woman who carries an unborn child, he claims two victims. I realize that 28 states now recognize the unborn child as a separate crime victim. My state, California, has recognized unborn victims of homicide since 1970. These laws have had no effect on legal abortion, and the proposed federal bill also says that it will not apply to legal abortion. It is most unfortunate that certain organizations are opposing Laci and Conner's Law in the misguided belief that it will somehow affect the law on abortion. I find it difficult to understand why groups who champion the pro-choice cause are blind to the fact that these two-victim crimes are the ultimate violation of choice.

I have been told that when the Senate takes up Laci and Conner's Law, a "single-victim" bill will be offered in its place – a bill that would increase penalties for federal crimes if the victim is pregnant, but without recognizing the killing of an unborn child as a loss of life.

Please understand how adoption of such a single-victim proposal would be a painful blow to those, like me, who are left to grieve after a two-victim crime, because Congress would be saying that Conner and other innocent victims like him are not really victims—that they never really existed at all. But Conner did exist. He was loved, and we anxiously awaited meeting him. His room was decorated and waiting for his arrival. My daughter Laci, wanted desperately to be a mother. His life was violently taken from him before he ever saw the sun.

And what about mothers who survive criminal attacks but lose their babies? I don't understand how anyone can vote to force prosecutors to tell a grieving mother that she didn't really lose a baby – when she knows to the depths of her soul that she did.

In the interests of justice, I ask that you reject the single-victim proposal and support the Unborn Victims of Violence Act.

Sincerely,

Sharon Rocha

DOCUMENTS SUBMITTED BY CHAIRMAN STEVE CHABOT



512 10th Street, NW Washington, DC 20004-1401
 (202) 626-8800 FAX: (202) 737-9189 Website: www.nrlc.org

(202) 626-8820

May 28, 2003

Re: In support of the Unborn Victims of Violence Act (H.R. 1997)
 and in opposition to the Lofgren single-victim substitute

Dear Member of Congress:

When a criminal attacks a pregnant woman, killing both her and her unborn child, has he claimed one victim, or two? The American people have recently considered that question in light of the much-publicized Peterson murder in case in California. In a Fox News-Opinion Dynamics nationwide poll of registered voters conducted in late April, 84% said that *two homicide charges* are appropriate in the deaths of Laci Peterson and her unborn son Conner; only 7% said that a single homicide charge would be appropriate.

Fortunately, California is one of 27 states that has an *unborn victims* law. The state unborn victims laws, upheld by many courts including the U.S. Supreme Court, do not affect legal abortion, but they do allow justice to be done for unborn babies whose lives are snuffed out by the actions of violent criminals. See: http://www.nrlc.org/Unborn_Victims/index.html

But if Laci Peterson had been a uniformed member of the U.S. military, murdered while on a military base, only *one* federal homicide charge would have been permitted; Conner's death would not have been recognized. Likewise, a man who stalks his pregnant wife across state lines and attacks her, injuring her and killing the unborn child, can be prosecuted under Section 2261 of Title 18 – but only for the mother's injury, not for the loss of the baby's life. Numerous other such examples could be given, all because the federal criminal code and the Uniform Code of Military Justice treat the unborn child as a non-entity. Here are some real cases:
http://www.nrlc.org/Unborn_Victims/UVVAFederalcases.html

The Unborn Victims of Violence Act (H.R. 1997), sponsored by Congresswoman Hart, would remedy this loophole in federal law. The bill would recognize that when a criminal commits a federal crime against a pregnant woman and injures or kills her unborn child, he has claimed *two victims*. The House of Representatives has passed the bill twice, by large bipartisan margins, in 1999 and again in 2001, but the Senate failed to act. Now, the family of Laci and Conner Peterson have sent a plea to Congress to pass the bill in memory of those victims. We urge you to heed their plea and support speedy passage of this legislation, without weakening or gutting amendments.

How the Law Would Work

The Unborn Victims of Violence Act would establish that if an unborn child is injured or killed during the commission of an already-defined federal crime of violence, prosecutors may

UNBORN VICTIMS OF VIOLENCE, PAGE 2

bring a second charge on behalf of the second victim – the unborn child. **The bill explicitly states that nothing in the bill shall be construed to permit the prosecution of any person “for conduct relating to an abortion for which the consent of the pregnant woman has been obtained. . . .” The bill also excludes any action by a woman that results in harm to her unborn child. The bill does not permit the death penalty to be imposed for a charge filed on behalf of an unborn victim.**

Some opponents have asserted that the bill contains a definition of “child in utero” that could somehow apply to methods of birth control or even in vitro fertilization. These are extravagant misrepresentations that cannot survive scrutiny of the actual bill language, which applies only to a “child in utero,” defined as “a member of the species homo sapiens, at any stage of development, *who is carried in the womb.*” Thus, under the bill, the government would be required to *prove beyond a reasonable doubt* (1) that a given woman had an established pregnancy – an unborn child attached to her own body and thus “carried in the womb,” and (2) that a defendant’s actions, committed with *criminal malice* towards the mother and/or the baby, caused injury or death to that unborn child.

Some opponents of the bill have claimed that the Unborn Victims of Violence Act is concerned only with violence against unborn children and not violence against their mothers. This assertion completely misrepresents the structure of the bill. In reality, the bill would have no effect *except* in cases in which federal authorities have a basis *under current law* to charge an attacker for an offense against a pregnant woman in one of 68 federal crimes of violence. If the authorities determine that in the course of that predicate offense, an unborn child was injured or killed, the bill would allow them to bring *a second charge on behalf of the second victim* – a charge appropriate to the circumstances and degree of harm suffered by the unborn victim. Thus, the bill actually references crimes against pregnant women *68 times*.

Single-Victim Substitute

In 1999 and 2001, the House rejected a substitute measure, offered by Congresswoman Lofgren, that would have stiffened penalties for interfering with “the normal course of the pregnancy,” but without recognizing any loss of human life in federal crimes in which an unborn child is killed. Ms. Lofgren has indicated that she will again offer such a “single-victim substitute.” We urge you to reject it, because it would codify a callous falsehood and compound the injuries already suffered by those who survive criminal assaults, and by the family members of crime victims.

In their May 5 letter to Congresswoman Hart, the family of Laci and Conner Peterson wrote, “[T]his bill is very close to our hearts. We have not only lost our future with our daughter and sister, but with our grandson and nephew as well.” A lawmaker who votes for the Lofgren Substitute is answering, in effect, “No, you are mistaken – you did not lose a grandson and nephew, because these crimes have only a single victim.” That lawmaker is also telling future grieving mothers who survive such assaults, but who lose

UNBORN VICTIMS OF VIOLENCE, PAGE 3

their babies, **"In the eyes of the law, nobody died in that crime – you did not really lose a baby."**

Consider the words of Tracy Marciniak of Wisconsin, whose unborn son Zachariah was killed during the ninth month of her pregnancy: "While I was hospitalized and grieving for my dead baby, law enforcement authorities told my family that in the eyes of the law, nobody had died in the attack. I was devastated." Weeks later, a funeral was held for Zachariah, at which a powerfully moving photograph was taken of Mrs. Marciniak holding her son for the last time. **Mrs. Marciniak recently said that sponsors of the single-victim amendment "are really telling me, all over again, that nobody died the night we were attacked. I say, no surviving mother, father, or grandparent should ever again be told that their murdered loved one never even existed in the eyes of the law."** (The photo and the complete statement of Tracy Marciniak on the single-victim amendment are here: http://www.nrlc.org/Unborn_victims/index.html)

Relationship to Abortion Law

Some opponents claim that the bill somehow contradicts the U.S. Supreme Court's doctrine in *Roe v. Wade*. But they know better. In the case of *Webster v. Reproductive Health Services* (1989), the U.S. Supreme Court nullified a negative lower-court judgment on the most expansive of the 27 state unborn victim laws, the Missouri "unborn child" law, which declares "the life of each human being begins at conception" and confers on the "unborn child at every stage of development, all the rights, privileges, and immunities available to other persons . . ." The Supreme Court indicated that the law could be construed not to apply to abortion. The law is in effect today and has been applied to criminal law by the state courts.

Numerous other courts also have ruled that state unborn victims laws do not contradict *Roe v. Wade* or otherwise affect legal abortion, or violate any constitutional rulings. (See www.nrlc.org/Unborn_Victims/statechallenges.html) Even Heather Boonstra, senior public policy analyst at the Alan Guttmacher Institute (an affiliate of Planned Parenthood), has acknowledged that the bill "would probably survive a court challenge." (*National Journal*, April 21, 2001, page 1173)

In conclusion: If you agree with the 84% of registered voters that *two homicide charges* are appropriate in the Peterson murder case, and if you agree that no grieving mother should be told that she did not really lose her baby, then please reject the "single-victim" ploy and vote for the Unborn Victims of Violence Act.

Sincerely,



Douglas Johnson
Legislative Director

(202) 626-8820, Legfederal@aol.com

June 16, 2003

Senator Mike DeWine, Senator Lindsey Graham,
Senator Orrin Hatch, Congresswoman Melissa Hart

Dear Honorable Members of Congress:

I am writing to thank you for your ongoing efforts to pass "Laci and Conner's Law," the Unborn Victims of Violence Act (S. 1019, H.R. 1997), and to encourage you to redouble those efforts.

On May 5, I and the other members of the family of Laci and Conner wrote to urge that this bill be passed as a tribute to Laci and Conner, and to allow true justice to be done in the future when such horrible crimes occur within the jurisdiction of federal criminal law or military criminal law. I want you to know that I appreciate your efforts, all the more so because of some of the unfair attacks and criticism to which you have been subjected in recent weeks by those who oppose the bill for misguided ideological reasons.

I know that you have been working for years for this legislation, but I have only become aware of your efforts because of our recent tragic circumstances. I have been astonished and somewhat offended to see, in the news media, recent statements by some critics who say that those who have been working for years on this legislation are inappropriately "exploiting" the public interest in the murder of Laci and Conner. I assure you that we do not see it that way. On the contrary, we believe that our case does provide a powerful illustration of why this type of law is absolutely necessary, and we urge you to continue to point that connection. I intend to do the same, for as long as necessary to achieve the needed reform in the law.

When a criminal attacks a woman who carries a child, he claims two victims. I lost a daughter, but I also lost a grandson. Fortunately, California law allows a double homicide charge in such a case – but if Laci and Conner been killed in a federal jurisdiction, or during commission of a federal crime of violence, Conner's death would not be recognized or charged. Now that so many people are becoming aware of this defect in federal law, I hope that the Congress will move swiftly to approve the Unborn Victims of Violence Act. I was heartened to read the White House statement of April 25, stating, "The President does believe that when an unborn child is injured or killed during the commission of a crime of violence, the law should recognize what most people immediately recognize, and that is that such a crime has two victims."

Over the last several weeks I have heard the arguments of opponents of Laci and Conner's Law, but they seem to me to miss the point. In the first place, they should stop trying to turn this into the abortion issue. California's unborn victim law has been the books since 1970 and it does not affect the availability of legal abortion, nor have any of the similar laws in effect in more than half the states. The Unborn Victims of Violence Act explicitly says that it does not apply to abortion, or to any acts of the mother herself. Having said that, I have no difficulty understanding that any legislator or group opposed to abortion logically would also support this

bill to protect the lives of unborn children like Conner from violent criminal actions, and I welcome their support. What I find difficult to understand is why groups and legislators who champion the pro-choice cause are blind to the fact that these two-victim crimes are the ultimate violation of choice.

I have looked very carefully at the "substitute" legislation proposed by the opponents of Laci and Conner's Law, which they call "The Motherhood Protection Act," proposed in the House of Representatives by Congresswoman Zoe Lofgren. This proposal would provide that if the victim of a federal crime happens to be a pregnant woman, and the crime somehow disrupts her pregnancy, a harsher sentence would be assessed than otherwise. But the Lofgren proposal would enshrine in law the offensive concept that such crimes have only a single victim – the pregnant woman. This would be a step in the wrong direction.

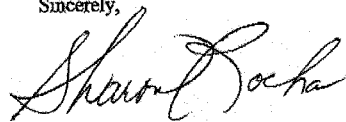
I hope that every legislator will clearly understand that adoption of such a single-victim amendment would be a painful blow to those, like me, who are left alive after a two-victim crime, because Congress would be saying that Conner and other innocent unborn victims like him are not really victims – indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun.

The application of a single-victim law, such as the Zofgren amendment, would be even more offensive in the many cases that involved mothers who themselves survive criminal attacks, but who lose their babies in those crimes. I don't understand how any legislator can vote to force prosecutors to tell such a grieving mother that she didn't really lose a baby – when she knows to the depths of her soul that she did. A legislator who votes for the single-victim amendment, however well motivated, votes to add injury to injury.

The advocates of the single-victim amendment seem to think that the only thing that matters is how severe a sentence can be meted out – but they are wrong. It matters even more that the true nature of the crime be recognized, so that the punishment – which should indeed be severe – will fit the true nature of the crime. This is a question not only of severity, but of justice. The single-victim proposal would be a step away from justice, not toward it. For example, if Congresswoman Lofgren's legal philosophy was currently the law in California, there would be no second homicide charge for the murder of Conner.

I know that most crimes of violence are not addressed by federal law, and so I hope that every state that does not have an unborn victim law will enact one, so that no surviving mother, grandmother, or other family member is ever again told, "We're sorry, but in the eyes of the law, there is no dead baby." Again, thank you for all that you are doing to bring about that day.

Sincerely,



STATE UNBORN VICTIMS LAWS STATE HOMICIDE LAWS THAT RECOGNIZE UNBORN
VICTIMS NATIONAL RIGHT TO LIFE COMMITTEE JUNE 23, 2003

[latest version always posted at <http://www.nrlc.org/Unborn—victims/Statehomicidelaws092302.html>]

FULL-COVERAGE UNBORN VICTIM STATES (15)

(States With Homicide Laws That Recognize Unborn Children as Victims Throughout the Period of Pre-natal Development)

Arizona: The killing of an “unborn child” at any stage of pre-natal development is manslaughter. Ariz. Rev. Stat. § 13-1103 (A)(5) (West 1989 & Supp. 1998). Also to be read with Ariz. Rev. Stat. § 13-702(c)(10).

Idaho: Murder is defined as the killing of a “human embryo or fetus” under certain conditions. The law provides that manslaughter includes the unlawful killing of a human embryo or fetus without malice. The law provides that a person commits aggravated battery when, in committing battery upon the person of a pregnant female, that person causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus. Idaho Sess. Law Chap. 330 (SB1344)(2002).

Illinois: The killing of an “unborn child” at any stage of pre-natal development is intentional homicide, voluntary manslaughter, or involuntary manslaughter or reckless homicide. Ill. Comp. Stat. ch. 720, §§ 5/9-1.2, 5/9-2.1, 5/9-3.2 (1993). Ill. Rev. Stat. ch. 720 § 5/12-3.1. A person commits battery of an unborn child if he intentionally or knowingly without legal justification and by any means causes bodily harm to an unborn child. Read with Ill. Rev. Stat. ch. 720 § 5/12-4.4.

Louisiana: The killing of an “unborn child” is first degree feticide, second degree feticide, or third degree feticide. La. Rev. Stat. Ann. §§ 14:32.5 – 14.32.8, read with §§ 14:2(1), (7), (11) (West 1997).

Michigan: The killing of an “unborn quick child” is manslaughter under Mich. Stat. Ann. § 28.555. The Supreme Court of Michigan interpreted this statute to apply to only those unborn children who are viable. *Larkin v. Cahalan*, 208 N.W.2d 176 (Mich. 1973). However, a separate Michigan law, effective Jan. 1, 1999, provides felony penalties for actions that intentionally, or in wanton or willful disregard for consequences, cause a “miscarriage or stillbirth,” or cause “aggravated physical injury to an embryo or fetus.” (M.C.L. 756.90)

Minnesota: The killing of an “unborn child” at any stage of pre-natal development is murder (first, second, or third degree) or manslaughter, (first or second degree). It is also a felony to cause the death of an “unborn child” during the commission of a felony. Minn. Stat. Ann. §§ 609.266, 609.2661– 609.2665, 609.268(1) (West 1987). The death of an “unborn child” through operation of a motor vehicle is criminal vehicular operation. Minn. Stat. Ann. § 609.21 (West 1999).

Missouri: The killing of an “unborn child” at any stage of pre-natal development is involuntary manslaughter or first degree murder. Mo. Ann. Stat. §§ 1.205, 565.024, 565.020 (Vernon Supp. 1999), *State v. Knapp*, 843 S.W.2d 345 (Mo. 1992), *State v. Holcomb*, 956 S.W.2d 286 (Mo. App. W.D. 1997).

Nebraska: The killing of an “unborn child” at any stage of pre-natal development is murder in the first degree, second degree, or manslaughter. Neb. Rev. Stat. § 28-391 to § 28-394. (2002)

North Dakota: The killing of an “unborn child” at any stage of pre-natal development is murder, felony murder, manslaughter, or negligent homicide. N.D. Cent. Code §§ 12.1-17.1-01 to 12.1-17.1-04 (1997).

Ohio: At any stage of pre-natal development, if an “unborn member of the species homo sapiens, who is or was carried in the womb of another” is killed, it is aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, negligent homicide, aggravated vehicular homicide, and vehicular homicide. Ohio Rev. Code Ann. §§ 2903.01 to 2903.07, 2903.09 (Anderson 1996 & Supp. 1998).

Pennsylvania: An individual commits criminal homicide in the first, second, or third-degree, or voluntary manslaughter of an “unborn child” if the individual intentionally, knowingly, recklessly or negligently causes the death of an unborn child. 18 Pa. Cons. Stat. Ann. §§ 2601 to 2609 (1998) “Unborn child” and “fetus.” Each term shall mean an individual organism of the species *Homo sapiens* from fertilization until live birth.”

South Dakota: The killing of an “unborn child” at any stage of pre-natal development is fetal homicide, manslaughter, or vehicular homicide. S.D. Codified Laws Ann. § 22-16-1, 22-16-1.1, 22-16-15(5), 22-16-20, and 22-16-41, read with §§ 22-1-2(31), 22-1-2(50A) (Supp. 1997).

Texas: Under a law signed June 20, 2003, and effective September 1, 2003, the protections of the entire criminal code extend to “an unborn child at every stage of gestation from fertilization until birth.” The law does not apply to “conduct com-

mitted by the mother of the unborn child” or to “a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent.” (SB 319, Prenatal Protection Act)

Utah: The killing of an “unborn child” at any stage of pre-natal development is treated as any other homicide. Utah Code Ann. § 76-5-201 et seq. (Supp. 1998) and UT SB 178 (2002).

Wisconsin: The killing of an “unborn child” at any stage of pre-natal development is first-degree intentional homicide, first-degree reckless homicide, second-degree intentional homicide, second-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, homicide by intoxicated use of vehicle or firearm, or homicide by negligent operation of vehicle. Wis. Stat. Ann. §§ 939.75, 939.24, 939.25, 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.10 (West 1998).

PARTIAL-COVERAGE UNBORN VICTIM STATES (13)

(States with Homicide Laws That Recognize Unborn Children as Victims, But only During Part of the Period of Pre-natal Development) NOTE: These laws are gravely deficient because they do not recognize unborn children as victims during certain periods of their pre-natal development. Nevertheless, they are described here for informational purposes.

Arkansas: The killing of an “unborn child” of twelve weeks or greater gestation is capital murder, murder in the first degree, murder in the second degree, manslaughter, or negligent homicide. Ark. Stat. Ann. § 5-1-102(13)(b)(i)(a), read with Ark. Stat. Ann. §§ 5-10-101 to 5-10-105. (A separate Arkansas law makes it a battery to cause injury to a woman during a Class A misdemeanor to cause her to undergo a miscarriage or stillbirth, or to cause injury under conditions manifesting extreme indifference to human life and that results in a miscarriage or stillbirth. Ark. Stat. Ann. § 5-13-201 (a)(5)(a)).

California: The killing of an unborn child after the embryonic stage is murder. Cal. Pen. Code § 187(a) (West 1999)

Florida: The killing of an “unborn quick child” is manslaughter, a felony of the second degree. Fla. Stat. Ann. § 782.09 (West 1999). The killing of an unborn child after viability is vehicular homicide. Fla. Stat. Ann. § 782.071 (West 1999).

Georgia: The killing of an “unborn child” after quickening is feticide, vehicular feticide, or feticide by vessel. Ga. Code Ann. § 16-5-80 (1996); § 40-6-393.1 (1997); and § 52-7-12.3 (1997).

Indiana: The killing of “a fetus that has attained viability” is murder, voluntary manslaughter, or involuntary manslaughter. Indiana Code 35-42-1-1, 35-42-1-3, 35-42-1-4.

Massachusetts: The killing of an unborn child after viability is vehicular homicide. *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984). The killing of an unborn child after viability is involuntary manslaughter. *Commonwealth v. Lawrence*, 536 N.E.2d 571 (Mass. 1989).

Mississippi: The killing of an “unborn quick child” is manslaughter. Miss. Code Ann. § 97-3-37 (1994).

Nevada: The killing of an “unborn quick child” is manslaughter. Nev. Rev. Stat. § 200.210 (1997).

Oklahoma: The killing of an “unborn quick child” is manslaughter. Okla. Stat. Ann. tit. 21, § 713 (West 1983). The killing of an unborn child after viability is homicide. *Hughes v. State*, 868 P.2d 730 (Okla. Crim. App. 1994).

Rhode Island: The killing of an “unborn quick child” is manslaughter. The statute defines “quick child” to mean a viable child. R.I. Gen. Laws § 11-23-5 (1994).

South Carolina: The killing of an unborn child after viability is homicide. *State v. Horne*, 319 S.E.2d 703 (S.C. 1984); *State v. Ard*, 505 S.E.2d 328 (S.C. 1998).

Tennessee: The killing of an unborn child after viability is first-degree murder, second-degree murder, voluntary manslaughter, vehicular homicide, and reckless homicide. Tenn. Code Ann. §§ 39-13-201, 39-13-202, 39-13-210, 39-13-211, 39-13-213, 39-13-214, 39-13-215 (1997 & Supp. 1998).

Washington: The killing of an “unborn quick child” is manslaughter. Wash. Rev. Code Ann. § 9A.32.060(1)(b) (West Supp. 1999).

CONFLICTING STATUTES

New York: Under New York statutory law, the killing of an “unborn child” after twenty-four weeks of pregnancy is homicide. N.Y. Pen. Law § 125.00 (McKinney 1998). But under a separate statutory provision, a “person” that is the victim of a homicide is statutorily defined as a “human being who has been born and is alive.” N.Y. Pen. Law § 125.05 (McKinney 1998). See *People v. Joseph*, 130 Misc.2d 377, 496 N.Y.S.2d 328 (County Court 1985); *In re Gloria C.*, 124 Misc.2d 313, 476

N.Y.S.2d 991 (N.Y. Fam. Ct. 1984); *People v. Vercelletto*, 514 N.Y.S.2d 177 (Co. Ct. 1987).

Constitutional Challenges to State Unborn Victims Laws

April 16, 2003

(All challenges were unsuccessful. All challenges were based on *Roe v. Wade* and/or denial of equal protection, unless otherwise noted.)

California

People v. Davis, 872 P.2d 591 (Cal. 1994).

Georgia

Smith v. Newsome, 815 F.2d 1386 (11th Cir. 1987). Related state supreme court decision: *Brinkley v. State*, 322 S.E.2d 49 (Ga. 1984) (vagueness/due process challenge).

Illinois

U.S. ex rel. Ford v. Ahitow, 888 F.Supp. 909 (C.D.Ill. 1995), and lower court decision, *People v. Ford*, 581 N.E.2d 1189 (Ill.App. 4 Dist. 1991).

People v. Campos, 592 N.E.2d 85 (Ill.App. 1 Dist. 1992). Subsequent history: *appeal denied*, 602 N.E.2d 460 (Ill. 1992), *habeas corpus denied*, 827 F.Supp. 1359 (N.D. Ill. 1993), *affirmed*, 37 F.3d 1501 (7th Cir. 1994), *certiorari denied*, 514 U.S. 1024 (1995).

Louisiana

Re double jeopardy -- *State v. Smith*, 676 So.2d 1068 (La. 1996), *rehearing denied*, 679 So.2d 380 (La. 1996).

Minnesota

State v. Merrill, 450 N.W.2d 318 (Minn. 1990), *cert. denied*, 496 U.S. 931 (1990).

Re establishment clause -- *State v. Bauer*, 471 N.W.2d 363 (Minn. App. 1991).

Missouri

In the 1989 case of *Webster v. Reproductive Health Services* (492 U.S. 490), the U.S. Supreme Court refused to invalidate a Missouri statute (Mo. Rev. Stat. 1.205.1) that declares that "the life of each human being begins at conception," that "unborn children have protectable interests in life, health, and well-being," and that all state laws "shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state," to the extent permitted by the Constitution and U.S. Supreme Court rulings. A lower court had held that Missouri's law

"impermissibl[y]" adopted "a theory of when life begins," but the Supreme Court nullified this ruling, and held that a state is free to enact laws that recognize unborn children, so long as the state does not include restrictions on abortion that *Roe* forbids.

In *State v. Knapp*, 843 S.W. 2nd (Mo. en banc) (1992), the Missouri Supreme Court held that the definition of "person" in this law is applicable to other statutes, including at least the state's involuntary manslaughter statute.

Pennsylvania

Commonwealth of Pennsylvania v. Corrine D. Wilcott, No. 2426 A & B of 2002 (Court of Common Pleas of Erie County, Pennsylvania, Criminal Division). Rejected challenges that Pennsylvania Crimes Against Unborn Children Act is unconstitutionally vague, violates U.S. Supreme Court abortion cases, violates equal protection clause, and conflicts with state tort law on definition of "person." January 24, 2003.

Wisconsin

Re due process -- *State v. Black*, 526 N.W.2d 132 (Wis. 1994) (upholding earlier statute).

REVISED STATUTES OF MISSOURI

Mo. Rev. Stat. § 1.205 (1988)

Life begins at conception – unborn child, defined – failure to provide prenatal care, no cause of action for

1. The general assembly of this state finds that:
 - (1) The life of each human being begins at conception;
 - (2) Unborn children have protectable interests in life, health, and well-being;
 - (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child.
2. Effective January 1, 1988, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.
3. As used in this section, the term "unborn children" or "unborn child" shall include all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development.
4. Nothing in this section shall be interpreted as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.

July 7, 2003

Senator Russell Feingold
304 Russell Senate Office Building
Washington, D.C. 20510

FAX NUMBER: 202-224-2725

Dear Senator Feingold:

I am the mother of Laci Peterson and the grandmother of Conner Peterson. I am writing to ask you to support the Unborn Victims of Violence Act, which is now also referred to as "Laci and Conner's Law" at my family's request.

You have seen the press coverage regarding the brutal murders of my daughter and grandson, and I expect that you are aware that two homicide charges have been filed by state authorities. However, if my daughter had been killed in a federal jurisdiction, or during commission of a federal crime, my grandson's murder would not be recognized or charged. It is that gap in federal law that we seek to correct with Laci and Conner's Law.

When a criminal attacks a woman who carries an unborn child, he claims two victims. I am told that 28 states (including Wisconsin) now recognize the unborn child as a separate crime victim in at least some circumstances -- counting Texas, where the governor signed a comprehensive law within the past month.

I have seen a letter that you sent to a constituent, in which you said, "I am concerned that this legislation may unintentionally undermine women's reproductive rights as set forth by the United States Supreme Court in *Roe v. Wade*."

Senator, this is not an abortion issue. California's unborn victim law has been the books since 1970 and it does not affect the availability of legal abortion. The very comprehensive unborn victims law in Wisconsin has not affected legal abortion, nor have any of the similar laws in effect in more than half the states. Also, the Unborn Victims of Violence Act explicitly says that it does not apply to abortion, or to any acts of the mother herself.

Having said that, I have no difficulty understanding that any legislator or group opposed to abortion logically would also support this bill to protect the lives of unborn children like Conner from violent criminal actions, and I welcome their support. What I find difficult to understand is why groups and senators who champion the pro-choice cause are blind to the fact that these two-victim crimes are the ultimate violation of choice.

Sponsors of the federal bill have told me that when the Senate takes up Laci and Conner's Law, a "single-victim" bill will be offered in its place -- a bill that would increase penalties for federal crimes if the victim happens to be pregnant, but without recognizing the killing of an unborn child as a loss of life. Then the Senate will have to choose between the two bills. I urge you to oppose the single-victim bill. That bill would not recognize that there are two victims in cases like my family's. In fact, it would enshrine in law the offensive concept that such crimes have only a single victim -- the pregnant woman.

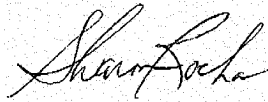
Please understand how adoption of such a single-victim proposal would be a painful blow to those, like me, who are left to grieve after a two-victim crime, because Congress would be saying that Conner and other innocent victims like him are not really victims -- indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun.

And what about mothers who survive criminal attacks but lose their babies? I don't understand how any senator can vote to force prosecutors to tell such a grieving mother that she didn't really lose a baby -- when she knows to the depths of her soul that she did.

The single-victim bill seems to be based on the idea that the only thing that matters is how severe a sentence can be imposed -- but that is wrong. It is important that the punishment be severe, definitely. But it is also important that the true nature of the crime be recognized. This is a question not only of severity, but of justice. The single-victim proposal would be a step away from justice, not toward it. If this single-victim bill were the law in California, there would be no second homicide charge for the murder of Conner. But there were two bodies that washed up in San Francisco Bay, and the law should recognize that reality.

Senator Feingold, in the interests of justice, I implore you to reject the single-victim proposal and support the Unborn Victims of Violence Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon Rocha".

Sharon Rocha

Please don't tell me that my dead son was not a real crime victim!

My name is Tracy Marciniak. In this photo, I am holding the body of my son, Zachariah, at his funeral. Zachariah was killed in my womb when I was terribly beaten. While I was hospitalized and grieving for my dead baby, law enforcement authorities told my family that they could charge the man who attacked me only with assault. In the eyes of the law, they said, nobody had died in the attack. I was devastated.

Later, my home state passed a strong unborn victims law. Twenty-eight states now allow criminal charges to be brought on behalf of unborn victims of violence. These laws do not affect legal abortion, but they do recognize that these terrible crimes have two victims.

Thank God, California has such a law. That's why prosecutors were able to file a double homicide charge in the brutal murders of Laci Peterson and her unborn son Conner. They didn't have to tell surviving family members that legally, Conner had never lived and never died. Yet even today, that's what a surviving mother would be told if her unborn child is killed during the commission of a *federal* crime, such as a terrorist bombing. Also, if her unborn child were killed by a criminal attack on a military base or some other federal

jurisdiction, she would be told that nobody died.

That is callous and it's wrong. That's why we need the Unborn Victims of Violence Act to cover federal crimes.

Some lawmakers say that criminals who attack pregnant women should be punished more severely, but that the law must never recognize someone's unborn child as a legal victim. These lawmakers are really telling me, all over again, that nobody died the night we were attacked. I say, no surviving mother, father, or grandparent should ever again be told that their murdered loved one never even existed in the eyes of the law.

If you see *two* victims in my photograph, then you should support the Unborn Victims of Violence Act – and reject the single-victim lie.

President Bush Urges Approval of Unborn Victims Bill

"The President does believe that when an unborn child is injured or killed during the commission of a crime of violence, the law should recognize what most people immediately recognize, and that is that such a crime has two victims." – White House Press Secretary Ari Fleischer, April 25, 2003

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http://www.nrlc.org/Unborn_victims/index.html



Newsweek Poll: 84% Favor Fetal Homicide Charge

Poll Question: "When, if ever, do you think prosecutors should be able to bring SEPARATE murder charges against someone who kills a fetus still in the womb? In other words, try them for two murders instead of one. Do you think this should be done in ALL cases where a pregnant woman is murdered, only in cases where the fetus is viable — that is, is able to survive outside the womb, or not at all?"

ALL CASES:	56%	} 84% total
FETUS VIABLE:	28%	

NOT AT ALL:	9%
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Newsweek / Princeton Survey Research Associates, national scientific sample of 1,009 adults, May 29-30, 2003. Margin of error +/- 3%.

RESPONSE SUBMITTED BY REPRESENTATIVE STEVE KING

I would like to respond to the opening statement made by the Ranking Member from New York, Mr. Nadler and refute some of his unfounded accusations.

Several of my colleagues, including Ranking Member Nadler in his opening statement, take exception with the fact that this bill would consider a fetus, embryo, or zygote as a person and a victim of a crime. This bill uses the term 'child in utero' and defines it as "a member of the species *homo sapiens*, at any stage of development, who is carried in the womb." (H.R. 1997, page 4, lines 21–25) They claim that this definition gives an unborn child status as a person and is therefore at odds with the Supreme Court decision in *Roe v. Wade*, that this bill is just an attempt to undermine a woman's 'right to choose', and that the use of this definition will lead to further legislation infringing on women's constitutional protections. However, it appears that none of these dire consequences were of concern to Mr. Nadler, Mr. Conyers, Mr. Scott, or Mr. Watt when they voted for The Innocent Child Protection Act of 2000 on July 25, 2000. (Congressional Record - House, July 25, 2000, page H6841) That bill contained the term 'child in utero' and defined that term using the exact same language with which it is defined in the resolution before us now. What has changed?

Opponents who say The Unborn Victims of Violence Act violates the principles set forth in *Roe* are simply wrong. We are not mired in the "back alleys of the abortion debate" as Mr. Nadler contends. We are not "playing abortion politics." We are protecting the unborn children that women have chosen to bring into this world. The Act itself specifically exempts any conduct relating to an abortion, both by medical professionals and the mother herself.

In his opening statement, Mr. Nadler says that in its decision in *Roe* "[t]he Court clearly said: the unborn have never been recognized in the whole sense, and concluded that 'person', as used in the Fourteenth Amendment of the Constitution, does not include the unborn." (internal quotations omitted) What he fails to add is that The Court also explicitly stated that it was not resolving "the difficult question of when life begins." (410 U.S. at 159) The court may have said that unborn children are not persons in the whole sense, but there is nothing in *Roe* that prohibits Congress from recognizing the lives of unborn children outside of the context of a woman's right to an abortion as specifically defined in that case. In fact, fifteen states already have laws that would protect unborn children throughout the entire period of prenatal development and another thirteen recognize unborn children as victims during part of their prenatal development. Unborn children are routinely recognized as persons for the purposes of inheritance and tort injury, and there is no reason why they cannot be recognized as persons in this context as well.

Mr. Nadler and company claim that this is just the first step in a path that would eventually lead to banning abortion. That could not be further from the truth. This act would exempt a pregnant woman from any harm to her own unborn child as a result of her own actions. This in no way infringes on a woman's freedom. While I would not object to making abortion illegal once again, and I would support limitations on the behavior of a woman when that behavior infringes on her child's unalienable right to life, these areas are simply not at issue in this bill.

The *Roe* decision was based on a woman's right to privacy, preventing the state from interfering with her right to make personal reproductive decisions. Thugs and batterers have no such right. Mr. Nadler and my other colleagues opposing this bill tout a woman's 'right to choose' an abortion, but women also have the right to choose to have a child. While they claim to support this proposition, they would deny that a child a woman has chosen to carry is a person. Once a woman has chosen to have a child, no one can take this right away from her, and the federal law should reflect this, punishing those who take the life of an unborn, but nonetheless loved and valued, member of a family.

I am unsure how the Innocent Child Protection Act that many of my colleagues—including the gentleman from New York—supported, can be devoid of the same evil intentions and catastrophic outcomes as have been attributed to the Unborn Victims of Violence Act. Perhaps it is because the former bill aligned with the ideological priorities of those who sit across the aisle more conveniently than the latter. Whatever the reason for this discrepancy, such doomsday predictions are as unfounded in this case as they would have been in July, 2000. We will not execute a pregnant woman, regardless of the heinousness of her crime, because we know that her "fetus" is a unique human being with the full rights of personhood. The current bill is about protecting innocent 'children in utero' as well—children who have no less need for protection from harm than do the unborn children of women convicted of crimes and sentenced to death.

Mr. Nadler further contends that this bill ignores the “truly grotesque crime against the woman” carrying the child. Once again, this is not true. We already have numerous laws punishing assault, battery, and murder. This bill would augment these crimes, which already exist to protect women, by also making the same behavior criminal with respect to the unborn child.

Mr. Nadler appears to be more concerned with protecting the criminals who would commit these crimes than the unborn children injured and killed by them. He correctly points out that an attacker would not even need to know that a woman was pregnant to be punished under this law. However, the settled legal principle of transferred intent makes it unnecessary that an attacker know of the child’s existence to be punished. If a person commits a crime with the intent to injure Victim A, but instead injures Victim B, that person’s intent to injure A is transferred to B, and the person is held responsible for B’s injuries. Any person who attacks a pregnant woman with an intent to injure her is therefore responsible for the injuries to her unborn child. Would Mr. Nadler really require a woman to tell her attacker she is pregnant if she wants to protect her child? This would be a preposterous imposition and would violate a woman’s freedom and privacy more than anything in the bill we are considering today.

Mr. Nadler has challenged the commitment of those who support this bill to protecting women. He asks why we are “short-changing funding for the Violence Against Women Act.” He knows as well as any other member of this committee that the appropriations process is about the distribution of limited funds. Tough choices must be made. The fact that a majority of the House has not seen fit to appropriate the full amount requested for this program does not mean we are ignoring the issue of violence against women or choosing to fight symbolic battles rather than helping women. In fact, this bill would be an additional deterrent to anyone considering committing violence against a woman, and has the added benefit of not requiring additional appropriations. This bill contributes to the prevention of and punishment for violence against women.

Mr. Nadler has also asserted that “homicide is the leading killer of young women, pregnant or not. . . .” This is false. While homicide is a leading killer of young women, accidents are the leading cause of death for young women ages twenty to thirty-four. Homicide is the second most frequent cause of death for women ages twenty to twenty-four and the fifth-leading cause of death for women ages twenty-five to thirty-four. The homicide rate for pregnant women is greater than the homicide rate for all women. (*source: NOW website*) While I do not dispute the fact that this is a serious problem, this issue is too important to let rhetorical flourish take precedence over truth.

Mr. Nadler and others have accused those of us who support this bill of “playing abortion politics” and fighting a “battle in a war of symbols.” We are not playing politics. This is not symbolic. This is about the real goal of protecting unborn children from violence committed against them and their mothers. This is about punishing those who would injure or take the life of a child whom a woman has chosen to bring into this world.

