I would like to take a moment to give the penalties from the Lofgren substitute, which are even stronger than those of the underlying bill. The Lofgren-Conyers substitute includes the following elements:

One, it creates a separate criminal Federal offense for harm to a pregnant woman, which protects the legal status of a woman.

Two, it recognizes the pregnant woman as the primary victim of the crime that causes termination of the pregnancy.

Three, it includes exactly the same sentences for the offenses as does the base bill, providing a maximum 20-year sentence for injury to the woman's pregnancy, and a maximum of life sentence for termination of a woman's pregnancy, and requires a conviction for the underlying predicate offense, requiring an intent to commit the predicate offense be proven.

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

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), the distinguished chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Speaker, I rise in strong support of H. Res. 119, and I would like to commend the gentlewoman from North Carolina (Mrs. MYRICK), the gentleman from California (Mr. DREIER), the chairman of the Committee on Rules, and all of the members of the Committee on Rules for their hard work on this fair rule.

Mr. Speaker, this rule is almost identical to the rule passed in the 106th Congress to consider similar legislation that provides for thorough consideration of H.R. 503 by authorizing 2 hours of debate and an opportunity for the minority to offer a substitute amendment which will be debated for 1 hour. This is a fair rule which will provide ample time for both debate and amendment.

Furthermore, the rule provides that the amendment committed in the Committee on Rules report, which makes a technical change to the Uniform Code of Military Justice shall be considered as adopted when the rule is adopted. I appreciate the indulgence of the Committee on Rules with regard to the small perfecting provision, and I would also like to thank the chairman of the Committee on Armed Services, the gentleman from Arizona (Mr. STUMP) for working with me to facilitate the consideration of this legislation.

Mr. Speaker, I urge all Members to support this rule.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in very strong opposition to the Rule for H.R. 503, ''Unborn Victims of Violence Act of 2001.'' We should have had more opportunity to discuss this extremely vital public policy matter in a serious way. This legislation has regrettably come to the House without more than nominal consideration of the consequences of the sponsor's bill. We can and should do better, Mr. Speaker.

At this time, I would like to express my opposition to H.R. 503, the ''Unborn Victims of Crime Act'' because I believe this is a veiled attempt to create a legal status for the unborn. While we would all like to protect pregnant women and the fetus from intentional harm by others, this bill seeks to create a legal status that will give anti-abortion advocates a back door to overturning current law. I have seen similar legislation come before our committee and I am sorry to see it before the Congress yet again.

I believe that the cosponsors of this bill had good intentions when it was introduced, but the practical effect of this legislation would effectively overturn 25 years of law concerning the right of a woman to choose. That would be a travesty.

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

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

H.R. 503 would amend the federal criminal code to create a new federal crime for bodily injury or death of an ''unborn child'' who is in utero. In brief, there is no requirement or intent to cause such death under federal law. The use of the works as ''unborn child,'' ''death'' and ''bodily injury'' are designed to inflame and establish in federal precedent of recognizing the fetus as a person, which, if extended further, would result in a major collision between the rights of the mother and the rights of a fetus. While the proponents of this bill claim that the bill would not punish women who choose to terminate their pregnancies, it is my firm belief that this bill will give anti-abortion advocates a powerful tool against women's choice.

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

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

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

In the unfortunate cases of random violence, we need to strengthen some of our other laws, such as real gun control and controlling the sale of explosives. These reforms are more effective in protecting life than this bill.

We do not need this bill to provide special status to unborn fetuses. A better alternative is to create a sentence enhancement for any intentional harm done to a pregnant woman. This bill is simply a clever way of creating a legal status to erode abortion rights.

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

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 503.

The SPEAKER pro tempore (Mr. RYAN of Wisconsin). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

UNBORN VICTIMS OF VIOLENCE ACT OF 2001

Mr. SENSENBRENNER. Mr. Speaker, pursuant to H. Res. 119, the rule just passed, I call up the bill (H.R. 503) to amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 119, the bill is considered read for amendment.

The text of H.R. 503 is as follows:

H.R. 503

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Unborn Victims of Violence Act of 2001''.

SEC. 2. PROTECTION OF UNBORN CHILDREN.

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

''CHAPTER 90A—PROTECTION OF UNBORN CHILDREN

''Sec.

''1841. Protection of unborn children.

''§ 1841. Protection of unborn children

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

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

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

''(i) the person engaging in the conduct had knowledge or should have had knowledge

that the victim of the underlying offense was pregnant; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. MILITARY JUSTICE SYSTEM.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The SPEAKER pro tempore. Pursuant to House Resolution 119, the amendment printed in House Report 107–50 is considered adopted.

The text of H.R. 503, as amended pursuant to House Resolution 119, is as follows:

H.R. 503

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Unborn Victims of Violence Act of 2001''.

SEC. 2. PROTECTION OF UNBORN CHILDREN.

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

''CHAPTER 90A—PROTECTION OF UNBORN CHILDREN

''Sec.

''1841. Protection of unborn children.

''§ 1841. Protection of unborn children

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. MILITARY JUSTICE SYSTEM.

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

''§ 919a. Art. 119a. Causing death of or bodily injury to unborn children

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

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

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

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

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

''(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under subparagraph (A), be punished as provided under sections

880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

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

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

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

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

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

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

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

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

''919a. Art. 119a. Causing death of or bodily injury to unborn children.''.

The SPEAKER pro tempore. After 2 hours of debate on the bill, as amended, it shall be in order to consider an amendment in the nature of a substitute printed in the CONGRESSIONAL RECORD and numbered 1, if offered by the gentlewoman from California (Ms. LOFGREN) or her designee, which shall be considered read and shall be debatable for 60 minutes, equally divided and controlled by the proponent and an opponent.

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 60 minutes of debate on the bill.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

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

Mr. Speaker, I rise in strong support of H.R. 503, the Unborn Victims of Violence Act of 2001. Under current Federal law, an individual who commits a Federal crime of violence against a pregnant woman receives an additional punishment for killing or injuring that woman's unborn child during the commission of the crime. As a result, except in those States that recognize unborn children as victims of such crimes, injuring or killing an unborn child during the commission of a violent crime has no legal consequence whatsoever.

This deficiency in the law is especially troubling, considering the findings of a recent study of women in Maryland published in the March 21, 2001, issue of the Journal of the American Medical Association. The authors of this study found that homicide is likely the leading cause of death among women who are pregnant or were recently pregnant.

Another recent study of autopsies performed on women here in the District of Columbia revealed that an inordinate number of women who died of violence were also pregnant. This study prompted a call for an investigation by the General Accounting Office and the FBI.

Mr. Speaker, H.R. 503, the Unborn Victims of Violence Act of 2001, was designed to correct this deficiency in Federal law by providing that an individual who injuries or kills an unborn child during the commission of certain predefined violent Federal crimes may be punished for a separate offense. The Subcommittee on the Constitution held a hearing on virtually identical legislation during the 106th Congress, and the bill passed the House with strong bipartisan support on September 30, 1999, by a vote of 254 to 172.

During the current Congress, the Subcommittee on the Constitution held a hearing on this legislation on March 15, 2001. The subcommittee held a markup on the legislation on March 21, 2001, and reported the bill without amendment by a voice vote. On March 28, 2001, the full Committee on the Judiciary held a markup and favorably reported H.R. 503, without amendment, by a recorded vote of 15 to 9.

Under the act, the punishment for an offense against the unborn child will be the same punishment that would have been imposed under Federal law had that conduct resulted in the same injury to the mother. For example, if an individual assaults a Federal official in violation of 18 United States Code Section 111, as a result of that assault kills the official's unborn child, the perpetrator may be punished for either second degree murder, voluntary manslaughter, or involuntary manslaughter, for killing the unborn child, the same punishment the individual would have received had the Federal official died as a result of the assault. By its own terms, the act does not apply to conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency.

□ 1045

So this is not an abortion bill. The act does not permit prosecution of any person for any medical treatment of the pregnant woman or her unborn child or the mother for any conduct with respect to her unborn child.

The Unborn Victims of Violence Act of 2001 will provide just punishment for criminals like Glendale R. Black of Wisconsin, who on February 8, 1992, brutally beat his wife, Terry Marciniak, who was 9 months pregnant with her unborn baby, Zachariah. Little Zachariah was just 4 days from being delivered from his mother's womb. At the hospital, Zachariah was delivered dead.

At that time, Wisconsin did not have an unborn victims law like H.R. 503, so Black was convicted of only assault and is already eligible for parole.

The bill would also provide punishment for criminals like Reginald Anthony Falice, who on April 28, 1998, shot his 8-month-pregnant wife, Ruth Croston, at least five times 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 did not currently recognize the unborn as victims, he received no additional punishment for killing the near-term infant.

Ms. Croston's brother, William Croston, testified before the Subcommittee on the Constitution regarding the tragic death of his sister and the failure of Federal law to recognize the murder of his unborn niece.

Or criminals who planted a bomb just outside of Tammy Lynn Baker's apartment in Louisa, Virginia. Ms. Baker was near term with her unborn child when the bomb exploded on December 3, 1997, killing her and the child.

Nearly 3 years later, Coleman Johnson, the unborn child's father, was arrested on a Federal explosives charge for the death of Ms. Baker and is awaiting trial. His charges do not include the murder of his unborn child.

A similar incident occurred in Connellsville, Pennsylvania on January 1, 1999, when Deanna Mitts, who was 8 months pregnant, returned home from a New Year's Eve celebration with her 3-year-old daughter, Kayla. A bomb exploded in her apartment, killing Ms. Mitts, Kayla, and the unborn child.

Almost a year later, Joseph Minerd, the presumed father of the unborn child, was arrested for Deanna and Kayla's murder, but is not being held criminally liable for the harm caused to the unborn child.

This legislation would also ensure just punishment for criminals like Gregory Robbins, an airman at Wright-Patterson Air Force Base, in Ohio who wrapped his fist in a T-shirt to reduce the chance he would inflict visible bruises, and beat his 8-months pregnant wife in the face and abdomen, killing their unborn baby.

Military prosecutors were able to charge Robbins for 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 river in Kentucky, a State which has no fetal homicide law, he would have received no additional punishment for killing the unborn child.

By enacting H.R. 503, Congress will ensure that criminals who commit violent acts against pregnant women are justly punished for killing unborn children or injuring them. Without this bill, crimes against these innocent victims will go unpunished.

I have given the Members of the House a list of several heinous crimes. It shows the need for this legislation. It shows specifically that killing an innocent unborn child should be prosecuted to the fullest extent of the law.

The only way to do this is to pass H.R. 503, and I urge my colleagues to support this important legislation.

Mr. Speaker, at the request of the Chairman of the Armed Services Committee, Mr. STUMP, I submit for the RECORD a letter he wrote to the Speaker relating to the floor consideration of H.R. 503, the "Unborn Victims of Violence Act of 2001."

COMMITTEE ON ARMED SERVICES,
Washington, DC, April 23, 2001.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: In recognition of the desire to expedite floor consideration of H.R. 503, the Unborn Victims of Violence Act of 2001, the Committee on Armed Services agrees to waive its right to consider this legislation. H.R. 503, as introduced and ordered reported by the Committee on the Judiciary on April 20, 2001, contains subject matter that falls within the legislative jurisdiction of the Committee on Armed Services pursuant to rule X of the Rules of the House of Representatives.

The Committee on Armed Services takes this action with the understanding that the Committee's jurisdiction over the provisions in question is in no way diminished or altered, and that the Committee's right to the appointment of conferees during any conference on the bill remains intact.

Sincerely,

BOB STUMP,
Chairman.

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

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

Mr. Speaker, I am delighted to join my colleagues in this discussion. I have listened to the chairman of the Committee on the Judiciary begin by describing, I lost count, about seven or eight horrible, offensive, violent incidents in which a pregnant mother and her unborn child were hurt or killed.

There is not anyone in the Congress that does not feel very strongly about the violence against unborn victims. But if that is going to be the way we get to undermining Roe v. Wade, I do not think it is going to happen here today, because I think our job is to make it clear what is really going on.

Just for the record, I would like everybody to know that there is punishment for the killing of a fetus. It was stated that there is no punishment that exists today. It is in the Federal law. It is in the current Federal sentencing guidelines that permit the enhancement of a sentence under the vulnerable victims guideline. So that is number one.

Number two, there is a substitute. There is a remedy to the flawed bill that has been brought on the floor. That is the Lofgren-Conyers substitute, which does everything, and in some instances it has more penalty for the person that attacks a pregnant mother and kills an unborn victim than the current bill, but it gets us around the subversion of Roe v. Wade, and it comports with Roe v. Wade.

I am amazed that we would begin this discussion trying to skip around the whole heart of this debate. This is not a matter of how many anecdotes you can dig up. I have 40. The gentleman has 10. I have twice that amount.

The question is, how are we going to deal with the subject, Mr. Speaker. The right way to do it is through the substitute, which is going to be dealing with a way to punish the people that violate mothers, and by the way, it is hard to deal with an unborn victim of violence without hurting the mother as well. So this is what we are here to discuss today.

Let us be friendly about this. This act was designed to erode the foundation of a woman's right to choose under Roe v. Wade by simply elevating the legal statuses of prenatal development under Federal law, and creates a separate offense during the commission of a crime ". . . which causes death to a member of the species homo sapiens at any stage of development." That is a quote from the bill.

Well, that sounds okay, but what does it mean? It means that if enacted, this would be the first time in the Federal legal system that we would begin to recognize a fertilized egg, a zygote, a preimplantation embryo, a blastocyst and an embryo through 8 weeks of pregnancy or a fetus after 8 weeks which can be a person, which can be an independent violent crime. That is what the bill is trying to do.

I did not know I would have to be the first to bring it to discussion, since I am against it, but no sneaking around today, we are going to have to put it all on the table, so we might as well start off now defending the proposition that is embedded fatally in H.R. 503.

These acts against women are tragic and especially for pregnant women. But the true aim of this legislation is not to stop violence against women. In fact, the protections for women are notably absent from this legislation.

So what we are here today to do is to determine whether or not we are going to undermine a woman's right to choose by recognizing that all of these things that have not had separate rights are now equal to and in some cases superior to women who are worthy of the legal protection.

The Supreme Court has held, I remind all the lawyers on the Committee on the Judiciary, the Supreme Court has held that fetuses are not persons within the meaning of the 14th amendment. I am not going to repeat that. If enacted, the bill would improperly inject debates about abortion into criminal prosecutions across the country. That is unfortunate and tragic.

I think that may be one of the purposes of why the proponents have written the bill up in this way. They have crafted a bill that is certain to inflame the national debate about when life begins. We do not want to do that. We just merely want to protect unborn victims of violence. The way to do it is by simply moving away from the notion that we have just created another category of persons that have not ever been recognized in the Federal legal system before now. That is why we are going to have a fair amount of opposition to this proposal.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 10 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the chairman for yielding time to me, and I thank him for his leadership on this very important issue.

Mr. Speaker, as we conduct this debate today, we going to hear from opponents that, for various reasons, the Unborn Victims of Violence Act of 2001 is unconstitutional. We will also hear that the legislation in some mysterious way applies to abortion.

I want to make very clear from the beginning that these assertions are false. In fact, these arguments only serve as a smokescreen, a distraction from the real issue at hand.

What are the real issues? Those of us supporting this legislation believe that when a criminal commits an act of violence against a woman and her unborn child, the criminal should face punishment for both the harm caused to the mother and for injuring or killing the innocent child that she is carrying.

Opponents of the legislation feel otherwise. They believe that the criminal should not face separate sanctions for harm inflicted on the unborn child, even if the unborn child, a child that the mother greatly wanted to bring into this world, is killed.

With that in mind, Mr. Speaker, I would like to take this opportunity to address the legal issues that have been raised regarding the Unborn Victims of Violence Act.

First, questions have been raised about Congress' constitutional authority to enact this legislation. The challenge to the bill on this ground is completely without merit. It is clear that Congress has such constitutional authority because the bill will only affect conduct that is already prohibited by Federal law.

H.R. 503 merely provides an additional offense and punishment for those who injure or kill an unborn child during the commission of one of the existing predicate offenses set forth in the bill. If there is any question regarding the constitutionality of the act's reach, that question is addressed to the constitutionality of the predicate offense, not H.R. 503.

Opponents of this legislation also argued that it somehow violates the decision of the Supreme Court in Roe v. Wade. This argument is also without merit. To begin with, H.R. 503 simply does not apply to abortion. On page 4 of the bill, beginning on line 9, prosecution is explicitly precluded "for any conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law."

□ 1100

So it does not apply to abortion. The act also does not permit prosecution

''of any person for any medical treatment of the pregnant woman or her unborn child or of any woman with respect to her unborn child.'' So it does not apply to abortion, period. The act could not be more clear in exempting abortion.

Moreover, there is nothing in Roe v. Wade that prevents Congress from giving legal recognition to the lives of unborn children outside the parameters of the right of abortion marked off in that case. In establishing a woman's right to terminate her pregnancy, the Roe court explicitly stated that it was not resolving ''the difficult question of when life begins,'' because ''the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.'' That is what the Court said.

What the court held was that the government could not override the rights of the pregnant woman to choose to terminate her pregnancy by adopting one theory of when life begins. The Supreme Court explicitly confirmed this understanding of Roe in Webster v. Reproductive Health Services. That was a 1989 case.

Courts addressing the constitutionality of State laws that punish killing or injuring unborn children have recognized the lack of merit in the argument that such laws violate Roe and as a result have consistently upheld those State laws. For example, in Smith v. Newsome, which was decided in 1987, the United States Court of Appeals for the 11th Circuit held that Roe was immaterial to whether a State can prohibit the destruction of a fetus by a third party.

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

In 1994, the California Supreme Court held in People v. Davis that the Roe v. Wade principles are inapplicable to a statute that criminalizes the killing of a fetus without the mother's consent. In State v. Coleman, a 1997 case, the Ohio court, my State, the Court of Appeals stated, ''Roe protects a woman's constitutional right. It does not protect a third-party's unilateral destruction of a fetus.''

Opponents of this legislation have also argued that the use of the term ''unborn child'' is ''designed to inflame.'' They contend that the use of this term may, in the words of those dissenting from the Committee on the Judiciary report, result in a major collision between the rights of the mother and the rights of the unborn.

This objection reflects nothing more than the semantical preferences of the most radical abortion advocates. It is based upon an apparent lack of knowledge of the widespread use of the term ''unborn child'' in the decisions of the United States Supreme Court and the United States Courts of Appeals, in State statutes and in State court decisions, and even in the legal writings of abortion advocates themselves.

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

Subsequent Supreme Court decisions have also used the term ''unborn child'' as synonymous with fetus. These cases include City of Akron v. Akron Center for Reproductive Health, decided back in 1983; Webster v. Reproductive Health services, decided in 1989; and International Union v. Johnson Controls, decided in 1991.

There are so many decisions by the United States Courts of Appeal using the term ''unborn child'' that it would be too time consuming to go through them all.

There are also at least 19 State criminal statutes similar to H.R. 503 that currently use the term ''unborn child'' to refer to a fetus, and these statutes have been consistently upheld by the courts.

Even abortion advocates such as Catharine MacKinnon have used the term ''unborn child'' as synonymous with the term ''fetus.'' In an article that was published in the Yale Law Journal entitled ''Reflections on Sex Equality Under the Law,'' Professor MacKinnon conceded that a ''fetus is a human form of life'' that is ''alive.'' In her defense of abortion, Professor MacKinnon expressed her view that ''many women have abortions as a desperate act of love for their unborn children.''

Finally, opponents of H.R. 503 have argued that the bill lacks the necessary means requirement for a valid criminal law and is therefore unconstitutional. This argument reflects a lack of understanding of H.R. 503 and the well-established doctrine of transferred intent in the criminal law.

Under H.R. 503, an individual may be guilty of an offense against an unborn child only if he has committed an act of violence with criminal intent upon a pregnant woman, thereby injuring or killing her unborn child. Relying upon the doctrine of transferred intent, H.R. 503 considers the criminal intent directed toward the pregnant woman to have also been directed toward the unborn child.

The transferred intent doctrine was recognized in England as early as 1576 and was adopted by the American courts during the early days of the Republic. A well-known criminal law commentator describes the application of the doctrine to the crime of murder in language that is remarkably similar to the language and operation of this legislation as follows: ''Under the common-law doctrine of transferred intent, a defendant who intends to kill one person but instead kills a bystander, is deemed the author of whatever kind of homicide would have been committed had he killed the intended victim,'' which is essentially what we have under this legislation.

Mr. Speaker, it is clear that the legal challenges to this bill cannot withstand serious scrutiny. It is clear that this law does not in any way impact abortion. It is especially clear that the opposition of the bill, in fact, stems from an objection to the very concept of unborn children. The opponents insist that a concept that is a well-recognized one in the law is somehow dangerous and subversive. These arguments should be soundly rejected. The only people who have anything to fear from this bill are the criminals who engage in violent acts against women and the unborn children that they are carrying.

So, again, let me remind my colleagues of what the true question is before us. Do you believe that a violent criminal who kills or injures an unborn child, a child who is loved and wanted by a mother and usually the father, should face an additional offense and punishment for their acts? I believe that the American people would answer that question with a resounding yes, and I hope the House would do the same today.

I thank the gentleman from South Carolina (Mr. GRAHAM) for his leadership on this issue. I also thank the gentleman from Wisconsin (Mr. SENSENBRENNER), chairman of the Committee on the Judiciary, for his leadership.

I urge Members to vote in favor of the Unborn Victims of Violence Act.

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

Mr. Speaker, I am delighted to hear from the gentleman from Ohio (Mr. CHABOT), the subcommittee chairman. I would like him to know that all of us on our side and those that support the substitute believe strongly that victims of violence should be punished; the victims, both the mother and the unborn infant, the unborn victim. Okay. We all believe that. We do not have a different view on that. Okay.

The second thing that you need to know is that, if this bill does not deal with abortion, which I will go into later, why is it coming out of the Subcommittee on the Constitution instead of the Subcommittee on Crime?

Mr. Speaker, I yield to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding to me. It is because the Subcommittee on the Constitution has jurisdiction over this particular issue, issues of privacy, issues of civil rights, a whole range of issues.

Mr. CONYERS. Mr. Speaker, this is a civil rights bill?

Mr. CHABOT. Pardon me?

Mr. CONYERS. The gentleman from Ohio said this is a civil rights bill?

Mr. CHABOT. Mr. Speaker, I am saying that is one among many of the

other issues. I was going to say it also has jurisdiction over constitutional amendments and all kinds of issues.

Mr. CONYERS. All right. Is it a crime bill?

Mr. CHABOT. Pardon me?

Mr. CONYERS. Mr. Speaker, is it a crime bill? Yes or no?

Mr. CHABOT. Mr. Speaker, it is an issue that clearly is a crime against unborn children and as well as the mothers.

Mr. CONYERS. Mr. Speaker, the gentleman from Ohio is saying yes, I take it. It is sort of a crime bill.

Mr. CHABOT. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Ohio. It is a crime bill.

Mr. CHABOT. Mr. Speaker, it is a crime bill as well as a constitutional issue.

Mr. CONYERS. Mr. Speaker, I thank the gentleman from Ohio. It took a half a minute of my time to get to that. But it is a crime bill that comes out of the Subcommittee on the Constitution in the Committee on the Judiciary.

Now, you think we do not know why, do you not? You think we thought that it was tossed there by accident. But it is tossed there because it is changing the fundamental constitutional law in the most controlling case on abortion in current Federal judicial practice, Roe v. Wade. That is why it went there.

So I think that we ought to put all these cards on the table and not try to demonize the other side because we have a bill that does the same thing as the primary bill. But the only thing that we do not do is that we do not redefine what an embryo is. We do not change the status of a fetus or a fertilized egg. We do not make them all persons, and you do. There it is, I say to the gentleman from Ohio (Mr. CHABOT). That is the difference. If my colleagues corrected that difference, we would all be supporting their bill.

It turned out that the Lofgren substitute is even more harsh on those who violate women who are pregnant. So I just wanted my colleagues to take that under consideration as we continue to debate.

Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. MILLENDER-MCDONALD) who is the chairperson of the Women's Caucus.

Ms. MILLENDER-McDONALD. Mr. Speaker, let me thank the ranking member for his leadership on this issue.

Mr. Speaker, I rise in strong opposition to H.R. 503. As the cochair of the Congressional Caucus on Women's Issues, I am insulted by this misleading piece of legislation. This legislation is deceptive, destructive, and a poor attempt to mislead and strip away a woman's reproductive rights. This bill is extremely volatile and has the potentiality to eradicate a woman's right to choose as recognized by the landmark case Roe v. Wade.

This bill, in fact, undermines a woman's right to choose as cited in the New York Times editorial yesterday, ''The Reproductive Rights Under Attack.'' In fact, it says, ''Packaged as a crime fighting measure, H.R. 503 is actually aimed at fulfilling a long-term goal of the right to life movement.''

I stand firmly in the belief that women's reproductive decisions are private and their individual freedoms must be preserved. Those who support this bill claim that it is necessary in order to vigorously punish offenders who harm pregnant women. If the emphasis of the bill is to protect women, why is this not mentioned anywhere in the bill.

Assault against pregnant women is serious. Legislation that has a separate agenda such as this one cannot provide the adequate protection to women.

I oppose H.R. 503 because its real purpose is to erode the reproductive rights of women. It is not intended to recognize violence against women. In fact, it does not even reference a woman. It could make matters worse for women by encouraging antiabortion prosecutors to pursue charges for harm to embryos or the fetus while ignoring the woman who has also been harmed.

Mr. Speaker, this is, indeed, a smoke screen. It is an affront to American women who wish to have their reproductive rights left to them. I say, if you are going to protect the rights of all other folks, the gun owners, the oil drillers, then protect the rights of women. I oppose H.R. 503.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, the gentleman from Michigan (Mr. CONYERS) has questioned the Subcommittee on the Constitution considering this bill and has said that this is a wholesale assault on the constitutional rights granted women by Roe v. Wade. He is wrong.

Twenty-four States have statutes similar to the one that is being considered today. If those statutes which protect the rights of unborn children were such an assault on the mother's constitutional right, every one of them would have been struck down by a Federal court, from the District Court to the Supreme Court level. They have not been, because it is not an assault on the constitutional right of a woman to choose.

Then we just heard from the gentlewoman from California (Ms. MILLENDER-MCDONALD) that this strips away women's reproductive rights. I would submit to the gentlewoman from California that, if the woman wanted to have an abortion, she would have had an abortion before the assault took place. In these cases that this bill will protect, the woman wants to have her child born.

□ 1115

So she has already made her choice, and that was for the child to be born. If someone takes away that child's right to life through an assault or through a murder, then that person, that criminal, ought to be prosecuted twice. You do not want the criminal prosecuted twice when the woman has chosen to bring that child to term and have that child born alive.

Mr. Speaker, I yield 4 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I rise in support of this bill and agree with the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Ohio (Mr. CHABOT) that this issue has nothing to do with abortion. Unlike the substitute that will be offered later today, this bill specifically exempts any activity involving a legal abortion. This bill is directed only at protecting the unborn child. It is an extension. In fact, this bill allows for an additional prosecution after a person has committed a violent act against the woman herself. Therefore, it does recognize the woman. In fact, it recognizes the woman first.

Mr. Speaker, this woman that we are talking about must be pregnant, but she must first be a victim of a crime of one of over 60 Federal statutes that are violent acts perpetrated against the woman. Only then will this legislation kick in, basically, as a way to also prosecute that perpetrator for the crime done against the unborn child.

I commend to my colleagues that this is a measure that respects the decision of the woman to bear her child. This is a measure that is an additional ability for the Federal Government to prosecute against an extreme act of domestic violence that causes not only harm to a woman, but also harm and often death to her unborn child.

Mr. Speaker, as a State Senator, I worked on issues of domestic violence, and was proud, in 1998, to support Pennsylvania's version of this bill. In fact, the vast majority of Senators and House members in Pennsylvania, both pro-choice and pro-life, supported this measure because we understand that domestic violence is a serious problem in this country. Unfortunately, statistics show that many of the children, the unborn children who are killed in these cases, their mothers are victims of domestic violence, as are they. In fact, as published in the Journal of the American Medical Association, March 21, 2001, a study that was done in Maryland recognized the highest percentage of pregnant women who die, die as a result of homicide.

Mr. Speaker, I submit to my colleagues that this is a serious issue of violence, a serious issue of domestic violence, and it should not be clouded by concern about future legislation or potential legislation that some believe may try to overturn Roe v. Wade.

Our ultimate concern here should be the real victims of crime. The real victims of crime continue to be women who are victims of domestic violence due to an outraged partner. The real victims of crime are their unborn children, who often are the cause of the violence directed towards the mother.

Mr. Speaker, I submit to my colleagues that this is commonsense legislation. It is supported across the country, and it is constitutional.

Mr. CONYERS. Mr. Speaker, I yield such time as she may consume to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I think it is unfortunate that this Congress has apparently failed to take the opportunity to unite on something that I think we could agree on, namely, that it is wrong to assault women. It is wrong to assault pregnant women. It is a dreadful crime to cause a miscarriage through an assault on a woman. Instead of addressing these dreadful offenses we are back to that same old fight that divides this country, abortion.

Mr. Speaker, I know that there are Members of this House on both sides of the aisle who disagree on the question of abortion. Oftentimes those viewpoints are rooted in one's religious beliefs. I accept the fact that this country has disagreements about abortion.

It is unacceptable that we would use the issue of violence against women and causing miscarriages as the entryway to having still another fight about choice.

Mr. Speaker, I believe the Unborn Victims of Violence Act will be found unconstitutional. The gentleman mentioned that there are State statutes that define a person as a zygote or an embryo, but those State statutes have not been tested in the Federal courts or in the Supreme Court, and are clearly at odds with Roe v. Wade. Instead we can adopt a substitute that will be offered later today that assures that any woman who is assaulted and, as a consequence of that assault, miscarries and loses her opportunity to have a much-wanted child, occasions a separate prosecution. We should not tolerate behavior that causes miscarriage.

Any person who has lost a child, any person who has had a miscarriage, understands that is a devastating event that one never forgets and never gets over. I am hopeful that we can put the abortion debate to one side and reserve the argument about abortion for another day and come together with the Lofgren-Conyers substitute that will be offered later today and not entangle this very serious issue, of harming a pregnant woman, with that other fight, about abortion and choice.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 15 seconds.

I agree we ought to talk about abortion when an abortion bill comes up. You are not hearing about abortion from this side of the aisle. The other side of the aisle is bringing up the issue of abortion.

Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. DELAY), the distinguished majority whip.

Mr. DELAY. Mr. Speaker, I have to agree with the gentleman from Wisconsin (Mr. SENSENBRENNER). This has become an abortion debate because the other side of the aisle has made it such. They are so extreme and so afraid that they would lose their right to have an abortion, that they would even deny those unborn children that are killed by crime the rights that are due every other citizen in this country.

Mr. Speaker, Members should support this bill and oppose the Lofgren amendment because it fails to acknowledge when unborn children are killed, they have been murdered. Life and death should not be subsumed beneath some semantic fog. It is time that our society begin recognizing and defending both victims who are harmed when violent criminals attack pregnant women. Those who would artificially discriminate between lives lost to crime within and outside the womb draw empty and callous distinctions. All life is precious. Society must protect every victim of crime.

Mr. Speaker, current Federal law devalues and denies significance to unborn children. This destructive precedence has two unfortunate consequences. First, current law accrues to the benefit of the murderous thugs who destroy the lives of unborn children. These criminals are not forced to atone for the young life that they have destroyed.

Second, by denying a legal identity to unborn victims, we create a society that is coarser, less feeling and less than it would otherwise be. The law must not look upon a violent criminal's unborn victim with an indifferent eye. Every young life must be acknowledged. Every young life must be protected from predatory criminals.

Of course society through manners and custom have always deferred to the care and comfort of pregnant women, but we would be callously deceived if we limited our heightened attention merely to the woman's physical condition without acknowledging a vital predicate. It is precisely because a woman carries the miracle of life within her that she becomes the most precious and treasured member of society. It is because two lives exist together that society seeks to protect the woman. And the law must protect both lives. The law cannot remain blind on this point.

Mr. Speaker, let us take the logic underlying the opposition to this bill and apply it to the case of an elderly victim. It would be a truly repugnant idea to suggest that criminals should serve diminished sentences if they preyed on elderly victims with only a few years left to live. Fortunately, society does not draw this ugly distinction. We value and protect life until a person draws their final breath. It is intrinsically flawed reasoning leading to an equally gross injustice to deny explicit protection to an unborn person who is months, weeks, or even days from breathing his or her first breath.

Society must extend the protection of a law to every vulnerable victim. The mothers of these murdered children see these crimes with the proper perceptive. In an all-too-common set of horrible circumstances, the criminal's unborn victim is actually the primary target when a murderer stalks a pregnant woman. Under current law, when an unborn victim is murdered, in the eyes of society, no one has died. That has to change in our society.

Mr. Speaker, it is time to end this awful and unconscionable oversight. This bill extends protection to every vulnerable victim in America. Support this bill so that society will acknowledge and defend every vulnerable American.

Mr. CONYERS. Mr. Speaker, I yield 7 minutes to the gentleman from New York (Mr. NADLER), and ask him to yield to me.

Mr. NADLER. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I wanted to say to the gentleman from Texas, the very distinguished majority whip, before he leaves the floor that we do recognize and make prosecutable killers of women that are pregnant.

Mr. Speaker, we create two separate crimes, so I do not want that misstated again unless you read the Lofgren-Conyers substitute. Two separate crimes, both prosecutable and will be prosecutable because they are constitutional.

Mr. NADLER. Mr. Speaker, I oppose this bill before us today because it is unnecessary, misguided and facially unconstitutional. The Supreme Court in Roe v. Wade clearly said, ''The unborn have never been recognized in the whole sense,'' and concluded that ''person,'' as used in the 14th amendment of the Constitution, does not include the unborn.

□ 1130

As the gentleman from Texas (Mr. DELAY) just made clear in his speech a moment ago, as everybody I have heard on the other side has made clear in their speeches, the whole purpose of this bill is precisely to label the unborn fetus or zygote or blastocyst as a person in the whole sense of the word. That is their purpose. Therefore, it is an abortion debate, because if it is murder to cause a miscarriage of a zygote or a fetus, then logically it is murder to perform an abortion. That is why we are debating abortion, and that is why they are debating abortion, whether they admit it or not.

Mr. Speaker, we are going to hear a lot today about violence to fetuses, embryos, zygotes, blastocysts. We will hear a lot about horrific acts of violence perpetrated against women at advanced stages of pregnancy, causing injury to the fetus. The sponsors will claim, even though this bill addresses only violence against fetuses, that this bill is really being considered to protect the welfare of these women.

We should have no illusions about the purposes of this bill, that it is 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 portray fetuses from

the earliest moments of conception as children 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 antichoice movement that a two-celled zygote is a person on exactly the same basis and with the same rights as a child or adult must secretly favor infanticide.

This bill, by making the destruction of a fetus or even a zygote, a separate crime of murder without reference to the actual harm to the pregnant woman speaks volumes about that view. If causing a miscarriage is murder, then by implication so is abortion. Even if the sponsors have papered over this premise with language to the contrary, no one should be under any illusions that this is the real and only purpose of this bill.

Let us take the sponsors at their word. In the last Congress, the report of the majority of the Committee on the Judiciary made clear that their concern was that ''except in those States that recognize unborn children as victims of such crimes, injuring or killing an unborn child during the commission of a violent crime has no legal consequence whatsoever,'' and that the bill's purpose was ''to narrow the gap in the law by providing that an individual who kills an unborn child during the commission of certain Federal crimes of violence will be guilty of a separate offense.'' Providing such a separate offense clearly recognizes the fetus as the victim of the violence, a proposition that is at odds with the holding of the Supreme Court in reading the Constitution.

In fact, this legislation marks a major departure from Federal law by elevating the legal status of a fetus at all stages of prenatal development to the same as that of the pregnant woman or any other person who is the victim of a crime. This is wrong, Mr. Speaker. It is against the whole scheme of Roe v. Wade, which recognizes a greater ability of the States to regulate, a greater interest in regulation in later stages of pregnancy, precisely because the Constitution recognizes that a fetus is not a full-fledged person from the moment of conception.

For anyone still in doubt about the real purpose of the bill, the National Right to Life Committee, in a memo distributed to members of the Committee on the Judiciary, laid it out:

They say that such a one-victim amendment, talking about the Lofgren amendment, would codify the fiction that when a criminal assailant injures a mother and kills her unborn child, there has been only a compound injury to the mother but no loss of any human life. The one-victim substitute would also enact the notion that when a criminal assailant kills a pregnant woman, the assailant should be punished once for killing the mother and then again for depriving her of her pregnancy, but if there is only one victim, it shows the difference between us.

So the radical antichoice groups acknowledge that the only difference of opinion here is not how much to punish these offenses, because both this bill and the Lofgren substitute would give heavy punishment, although under certain circumstances, the Lofgren substitute would give much heavier punishment than would this bill; the real difference is that this bill recognizes the crime of murder against a fetus or a zygote.

The bill is also unclear, as one of the majority's witnesses testified in the committee hearings. Does it cover only an embryo after implantation or at conception? Put another way, is it only murder if you cause the miscarriage of a viable fetus? Or is it also murder if you cause the miscarriage of a not-yet-viable fetus or of a two-celled zygote at the moment of conception?

I think the sponsor of this legislation, the gentleman from South Carolina (Mr. GRAHAM), should tell us what the bill means. It is a simple question that should have a simple, straightforward answer. Yet I used my entire 5 minutes at the Committee on the Judiciary trying to get an answer from the gentleman from South Carolina. He would not give me an answer.

So I will ask him now, yes or no, is it murder to murder a two-celled zygote under this bill or is it not?

Mr. GRAHAM. Mr. Speaker, will the gentleman yield?

Mr. NADLER. I yield to the gentleman from South Carolina.

Mr. GRAHAM. Mr. Speaker, as I said in the Committee on the Judiciary, the language that we adopted in the bill is exactly what exists——

Mr. NADLER. Yes or no. I do not have the time to have the whole explanation that is taken from the language of State law. Is causing a miscarriage murder of a two-celled zygote or not under this bill? Yes or no.

Mr. GRAHAM. When the fetus attaches to the womb, that is what the prosecutor has to prove.

And if I may answer your question, the definition used in this bill is the exact same definition that the House endorsed and passed 417–0 that the gentleman from New York voted for. This is the same definition that he voted for July 25, 2000.

Mr. NADLER. Reclaiming my time, he will not give a yes or no answer because he cannot.

One last sentence on this whole thing. This bill is not about violence against women. That is why all the violence against women groups are opposed to the bill. This bill is simply to undermine Roe v. Wade, and it will not succeed.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2½ minutes to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Mr. Speaker, look at this picture of Tracy Marciniak and her dead son. This little boy is not a zygote, not a blastocyst, not an embryo, not a fetus, not anything but a little baby, a little child who was brutally killed. His name was Zachariah. He was killed by his father, a man by the name of Glendale Black, 4 days before he was due to be born. He was beaten in the womb where he bled to death. And his father got away with it.

Yes, Glendale Black went to jail, but not because he killed Zachariah. He went to jail for assaulting Zachariah's mother. At the time, it was not a crime to kill a woman's baby in Wisconsin as long as he did it before he was born. If he had done it 4 or 5 days later, he might have gotten life imprisonment. Instead, he is now eligible for parole.

Wisconsin has since changed its law. If Tracy's ex-husband committed the same crime today, he would be charged with killing her child as well as assaulting her. But the Federal Government has no such law. In Federal jurisdictions, that man could get away with killing again.

Look again at this picture. How can anyone say that this child is not a human being? How can anyone say that Zachariah should not have the same right to live as you and I have? How can anyone say that the crime Zachariah's father committed was not more than just assault, but also taking of human life? Or as his mother Tracy herself says, ''If you really think that nobody died that night, then vote for the one-victim amendment. But please remember Zachariah's name and face when you decide.''

Mr. Speaker, America's first war was fought to prove that each of us has an inalienable right to life as well as liberty and pursuit of happiness. We need to affirm that we still believe in these principles. We need to show that we still believe in God-given rights, the right to life. We need to pass this good legislation. We need to pass it unanimously. And we should reject the so-called one-victim amendment. Pretending that nobody died the night Glendale Black beat his wife and killed his son is to deny reality. Even worse, it is to turn our backs on everything America stands for.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 5 minutes to the gentlewoman from New York (Mrs. MALONEY).

Ms. LOFGREN. Mr. Speaker, will the gentlewoman yield?

Mrs. MALONEY of New York. I yield to the gentlewoman from California.

Ms. LOFGREN. Mr. Speaker, I thank the gentlewoman for yielding.

I wanted to comment on the terrible crime that we just had a discussion of from the prior speaker. Clearly that was a horrible thing, and the monster who did that is now free. That is the wrong thing. That should be changed.

Unfortunately, H.R. 503 would not change a darned thing about that case. I understand from the mother that part of the problem with the prosecution was that the prosecutors could not prove the intent to harm the unborn child. Under H.R. 503, there is also an intent requirement. Otherwise, absent intent, one is limited to the term of

years of the underlying offense. In order to have Federal jurisdiction, the only assault that is cited in the bill is assault against a Federal officer.

So passing this bill would not prevent that terrible, terrible tragedy. I just thought it was important to note that.

Mrs. MALONEY of New York. Mr. Speaker, I thank the gentlewoman for her statement, her leadership on this, and also the ranking member's.

I rise in strong opposition to the Unborn Victims of Violence Act and urge its rejection. Some Members on the other side of the aisle today have indicated that they do not believe that it is a direct attack on Roe v. Wade and a woman's right to choose.

Mr. Speaker, I include for the RECORD editorials from the New York Times entitled ''Reproductive Rights Under Attack,'' and also editorials from the 1999 debate from the Washington Post, the St. Petersburg Times, and the Seattle Times, all in direct opposition to this bill. And all point out that it is a direct assault on Roe v. Wade.

The material referred to follows:

[From the New York Times]

REPRODUCTIVE RIGHTS UNDER ATTACK

Congressional opponents of abortion have no appetite for a direct and politically unpopular assault on Roe v. Wade. So they are pursuing other legislative strategies that would undermine women's reproductive freedom. One of the most deceptive of these schemes is the benign-sounding Unborn Victims of Violence Act, which is expected to come up for a vote in the House this week.

Packaged as a crime-fighting measure unrelated to abortion, the bill is actually aimed at fulfilling a longtime goal of the right-to-life movement. The goal is to enshrine in law the concept of ''fetal rights,'' equal to but separate and distinct from the rights of pregnant women. In essence, the bill would elevate the status of a fetus, embryo or other so-called ''unborn child'' to that of a ''person'' by amending the Federal criminal code to add a separate offense for causing death or bodily injury to a ''child'' who is ''in utero.'' The penalty would be equal to that imposed for injuring the woman herself and would apply from the earliest stage of gestation, whether or not the perpetrator knew of the pregnancy.

The vote this week represents a serious test. An identical bill passed the House last year by a 254-to-172 vote, and its present sponsors are plainly hoping the arrival of a new anti-choice administration will help gain passage this time around in the Senate.

Violence against women that results in compromising a pregnancy is a terrible crime. It may well deserve stiffer penalties, which some states have already imposed. But the bill's sponsors are more interested in furthering a political agenda than in preventing and punishing criminal conduct. Lawmakers who care for Roe v. Wade have no business voting for this disingenuous legislation.

EDITORIALS AGAINST ''UNBORN VICTIMS OF VIOLENCE ACT''

[From the Washington Post, Oct. 2, 1999]

''While the bill specifically exempts abortion; it is a clever, if transparent effort to establish a foothold in the law for the idea that killing a fetus can be murder. What makes this bill a bad idea is the very aspect of it that makes it attractive to its supporters: that it treats the fetus as a person separate from the mother, though that same mother has a constitutional right to terminate a pregnancy. This is a useful rhetorical device for the pro-life world. But it is analytically incoherent.''

[From the St. Petersburg Times, Oct. 2, 1999]

''The bill's sponsors . . . claim the measure is not an attack on reproductive freedom, but a bill to fight crime. They point to the bill's exceptions for legal abortion providers, medical caregivers and the mother herself as proof that it's not anti-abortion. They are being disingenuous. . . . The public not be fooled. This bill is about abortion, not crime.''

[From the Seattle Times, Sept. 28, 1999]

''It would make sense for Congress to enhance penalties for crimes against pregnant women, especially since pregnancy greatly increases a woman's risk of domestic assault. It does not make sense for Congress to exploit one critical health issue—violence against women—to erode women's reproductive rights. Its ludicrous to separate the pregnancy from the woman. In 1973, the Supreme Court ruled that reproductive freedom is part of the constitutional right to privacy; the state can claim compelling interest only after the fetus can survive outside the womb. For a quarter century, the price of such freedom has been constant vigilance against laws like this.''

[From the New York Times, Sept. 14, 1999]

''Congressional opponents of abortion rights have come up with yet another scheme to advance their agenda. . . . [T]he measure aims to chip away at women's reproductive freedom by granting new legal status to unborn children—under the deceptively benign guise of fighting crime . . . . By creating a separate legal status for fetuses, the bill's supporters are plainly hoping to build a foundation for a fresh legal assault on the constitutional underprintings of the Supreme Court's ruling in Roe v. Wade. Sending the nation down a legal path that could undermine the privacy rights of women is not a reasonable way to protect women or deter crime.''

We should call for ''truth in Advertising.'' The sponsors make it sound like they want to protect the fetus. Yet the definition is so broad that it would cover three cells. Make no mistake, this is an attack on a woman's right to choose, and now we know clearly and squarely where the Bush administration stands.

Mr. Speaker, I include for the RECORD the Statement of Administration Policy on this bill.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, April 24, 2001.

STATEMENT OF ADMINISTRATION POLICY

(This statement has been coordinated by OMB with the concerned agencies)

H.R. 503—UNBORN VICTIMS OF VIOLENCE ACT OF 2001

(Rep. Graham (R) SC and 95 cosponsors)

The Administration supports protection for unborn children and therefore supports House passage of H.R. 503. The legislation would make it a separate Federal offense to cause death or bodily injury to a child, who is in utero, in the course of committing any one of 68 Federal offenses. The bill also would make substantially identical amendments to the Uniform Code of Military Justice. The Administration would strongly oppose any amendment to H.R. 503, such as a so-called ''One-Victim'' Substitute, which would define the bill's crimes as having only one victim—the pregnant woman.

I might add, why are we here today? The Bush administration has told us that their top priority is education. Where is the education bill? The Bush administration has told us that they care about the Patients' Bill of Rights to protect our seniors. Where is the Patients' Bill of Rights bill?

But what we get on the floor is an attack on a woman's right to choose, attack on her health and on her privacy. That is what we get. I ask my colleagues, is that compassionate?

My colleagues on the other side of the aisle have said that this is not a pro-life statement, it is not an attack on choice, but the Traditional Values Coalition, on their Web site, I pulled it off today; they state and I quote, ''Enactment of the bill would be a landmark pro-life victory by recognizing the rights of the unborn.''

I include for the RECORD the pro-life organization's statement.

VICTORY: UNBORN VICTIMS OF VIOLENCE ACT PASSES IN THE HOUSE

Criminals who murder or assault a pregnant woman will now be held accountable to the violence inflicted on both victims, the mother and her unborn child. This week the Unborn Victims of Violence Act, sponsored by Representative Lindsey Graham (R–SC), passed the House of Representatives by a vote of 254–172. This bill recognizes that an unborn child who is injured or killed during the commission of a federal crime is a human victim, and the assailant could then be punished for the harm caused to this most vulnerable victim. This bill provides vital protection for expecting mothers and their unborn children. We applaud the House for passing such important legislation.

The House also rejected an attempt to water down the original act by opposing a substitute amendment offered by Representative Zoe Lofgren (D–CA) by a vote of 201–224. This victory is one step further in bringing justice for ALL humans, born and unborn.

Regrettably, the United States federal criminal law does not give unborn children the rights of personhood. Currently, a person can attack a pregnant woman, causing the death of her child and only be prosecuted for the assault on the mother! It is a federal crime to attack, injure, or kill a woman, but it is not considered a federal crime to do the same to the unborn child of the woman. However, legislation introduced by Representative Lindsey Graham (R–SC) proposes to recognize the humanity of unborn children by using the same standard to punish violence enacted upon the unborn as any other person. This major pro-life bill would protect unborn children from acts of violence and enactment of the bill would be a landmark pro-life victory by recognizing the rights of the unborn.

This bill treats a fetus as separate from the mother, though that mother has a constitutional right to abortion. This bill does not protect women in any way. In fact, there is nothing in the bill about punishing the perpetrator for the crime against the woman. That is why the National Coalition Against Domestic Violence opposes this bill. According to experts,

current Federal law already provides authority for the punishment of criminals that harm fetuses.

Mr. Speaker, I include for the RECORD the statement from Ronald Weich, a former Special Counsel, U.S. Sentencing Commission, that goes into further detail.

TESTIMONY OF RONALD WEICH, ZUCKERMAN SPAEDER, L.L.P., FORMER SPECIAL COUNSEL, U.S. SENTENCING COMMISSION, BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE HOUSE COMMITTEE ON THE JUDICIARY, MARCH 15, 2001

Mr. Chairman and members of the Subcommittee: My name is Ronald Weich and I am a partner in the law firm of Zuckerman Spaeder LLP. I respectfully request that this written statement appear in the record of the Subcommittee's hearing on H.R. 503, the Unborn Victims of Violence Act of 2001.[1]

In this statement I analyze the criminal law and sentencing implications of the pending bill. I bring several qualifications to this task. From 1983 to 1987 I worked as an Assistant District Attorney in New York City, where I prosecuted a wide array of criminal cases. Thereafter I served as Special Counsel to the United States Sentencing Commission and participated in drafting amendments to the federal sentencing guidelines. I then served on the staff of several Senate committees where I assisted in the development of federal crime and sentencing policy. I am now in private practice, but I continue to serve on the advisory board of the Federal Sentencing Reporter, a scholarly journal in which I have frequently published articles on sentencing law and policy. I am also a member of the Criminal Justice Council of the American Bar Association.[2]

After reviewing H.R. 503 in light of my experience in the criminal justice system, my knowledge of the federal sentencing guidelines and an examination of relevant case law, I reach one basic conclusion: this bill is unnecessary. Current federal law provides ample authority for the punishment of criminals who hurt fetuses. H.R. 503 adds nothing meaningful to the charging arsenal of federal prosecutors or the sentencing options available to federal judges.

Because the bill is unnecessary from a criminal law perspective, I suspect that its purpose, instead, is to score rhetorical points in the perennial struggle over abortion rights. For reasons that I will explain, I object to the use of the federal criminal code as a battlefield in the abortion wars.

I will first describe why the bill is unnecessary in light of current federal law and then explain why I believe it is an unwise addition to federal law.

I. H.R. 503 IS UNNECESSARY

Current federal law already provides sufficient authority to punish the conduct that H.R. 503 purports to punish.

At the outset it should be understood that very few violent crimes are prosecuted in the federal courts. Most street level violent crimes are prosecuted under state law by state prosecutors in state courts. Under our constitutional system, federal criminal jurisdiction only exists if the crime implicates federal civil rights or interstate commerce—which few violent crimes do—or if the crime occurs on a federal enclave such as a federal office building, a military base or an Indian reservation. Thus there are only a handful of federal murder and assault prosecutions each year, and most of those involve Native Americans.

H.R. 503 targets relatively rare conduct to begin with, namely criminal assault on a fetus. And in the federal context, that rare conduct is even more unusual. I researched federal case law and found only one reported case in recent years in which the victim of the offense of conviction was a fetus. In that case, *U.S.* v. *Spencer*, 839 F.2d 1341 (9th Cir. 1988), the Native American defendant assaulted a pregnant woman on an Indian reservation, kicking and stabbing her in the abdomen. The woman was successfully treated for life-threatening injuries, but her fetus was born alive and then died. The Ninth Circuit upheld the defendant's conviction under the federal murder statute, 18 U.S.C. §1111. Thus, even without the help of H.R. 503, a federal defendant was successfully prosecuted for murdering a fetus.

The Spencer decision is significant for several reasons. First, it illustrates how rare such cases are in the federal system—the court refers to the issue of federal criminal liability for fetal death as one of ''first impression'' and in the 13 years since it was decided, the issue decided in Spencer appears not to have arisen in another reported federal case. There is no crime wave of federal fetal assaults crying out for a legislative solution. But should this rare scenario present itself in federal court again, Spencer stands for the proposition that criminal liability may be imposed under current federal law.

The Spencer court relies on the well established common law doctrine, developed in state courts, that fetal death subsequent to birth due to fetal injuries may be prosecuted as homicide. See, Annotation, Homicide Based on Killing of Unborn Child, 64 A.L.R. 5th 671 (1998). Among the many state cases upholding homicide convictions for assaults that resulted in the death of a fetus are *William* v. *State*, 561 A.2d 216 (Maryland 1989); *State* v. *Cornelius*, 448 N.W.2d 434 (Wisconsin 1989); *People* v. *Hall*, 158 A.D.2D 69 (New York App. Div. 1st Dept. 1990); and *State* v. *Cotton*, 5 P.3d918 (Arizona 2000).

The broad support for this rule in the state courts does not argue for its necessity in the federal code, since state law of this nature is incorporated into federal law by the Assimilative Crimes Act, 18 U.S.C. §13, when the crime occurs in a federal enclave such as a military base. That was the basis on which the Court of Appeals for the Armed Forces recently upheld the homicide conviction of Gregory Robbins for beating his wife and thereby causing the termination of her pregnancy. *U.S.* v. *Robbins*, 52 M.J. 159 (1999). Proponents of the Unborn Victims of Violence Act had argued in 1999 that the Robbins case, then pending, demonstrated the need for a new federal law, but the successful outcome of the prosecution shows precisely the opposite: current federal law is sufficient.

Analytically separate from the question of criminal liability is the question of punishment. Here again, current federal law is sufficient. There is no dispute that causing harm to a fetus during the commission of a federal felony should generally result in enhanced punishment, and courts have uniformly held that such enhancements are available under the current sentencing guidelines. For example, in both *U.S.* v. *Peoples*, 1997 U.S. App. LEXIS 27067 (9th Cir. 1997) and *U.S.* v. *Winzer*, 1998 U.S. App. LEXIS 29640 (9th Cir. 1998), the court held that assaulting a pregnant woman during a bank robbery could lead to a two level enhancement (approximately a 25% increase) under §2B1.1(b)(3)(A) of the Guidelines relating to physical injury. In *U.S.* v. *James*, 139 F.3d 709 (9th Cir. 1998), the court held that a pregnant woman may be treated as a ''vulnerable victim'' under §3A1.1 of the Guidelines, again leading to a two level sentencing enhancement for the defendant. And in *United States* v. *Manuel*, 1993 U.S. App. LEXIS 14946 (9th Cir. 1993), the court held that the defendant's prior conviction for assaulting his pregnant wife warranted an upward departure from the applicable guideline range for his subsequent assault conviction.

While there have been no federal death penalty prosecutions of civilians in recent years involving fetal assaults, the military justice system treats the murder victim's pregnancy as an aggravating factor to be considered during the capital sentencing phase of a trial. *United States* v. *Thomas*, 43 M.J. 550 (U.S. Navy-Marine Corps Ct. of Crim. App. 1995). This holding follows state law precedents in which the pregnancy of the victim is a statutory aggravator in capital cases. See, e.g., Del. Code Ann. Tit. 11, §4209(e)(1)(p) (Supp. 1986).

In sum, H.R. 503 is unnecessary because federal case law and the federal sentencing guidelines, building on well-established common law principles, already authorize serious punishment for the harm that the bill seeks to address.

II. H.R. 503 IS DETRIMENTAL TO THE CRIMINAL JUSTICE SYSTEM

To say that H.R. 503 is unnecessary does not end the inquiry. As members of the Judiciary Committee are aware, the federal criminal code is characterized by much redundancy, and one more criminal law prohibiting what is elsewhere prohibited would barely add to the thicket. But for three reasons, H.R. 503 would not only constitute an unnecessary addition to the Code, it would also be an undesirable addition.

First, the bill has been drafted in a structurally unsound manner and will lead to considerable confusion and litigation. To be convicted under 18 U.S.C. §1841, the new criminal offense created by H.R. 503, a defendant must have ''engage[d] in conduct that violates'' one of the existing federal crimes enumerated in §1841(b). But must the defendant be convicted of one of those other offenses before he may be convicted of the separate offense under §1841? That is a fair reading of the text, but the answer is not without doubt. There is already considerable controversy and resource-draining litigation in the federal courts over whether various title 18 provisions constitute separate offenses requiring proof beyond a reasonable doubt or sentencing enhancements requiring only proof by a preponderance of evidence, see, e.g. *Appendix* v. *New Jersey*, 530 U.S. 466 (2000); *Jones* v. *United States*, 119 S. Ct. 1215 (1999). H.R. 503 would add to this confusion if there were ever a prosecution under the new criminal provision it establishes.

This problem could be addressed if, instead of creating a new criminal offense, H.R. 503 merely directed the Sentencing Commission to either establish a new sentencing enhancement when the victim of the crime is a pregnant woman, or make clear that a pregnant woman may be considered a ''vulnerable victim'' under existing §3A1.1 of the Sentencing Guidelines. As demonstrated above, the generic provisions of the Guidelines already accomplish this result. But at least a sentencing enhancement bill would not foster confusion and litigation.

Second, H.R. 503 is overbroad. To begin with, it incorporates by reference an unduly broad definition of ''bodily injury'' from 18 U.S.C. §1365. Whereas the common law rule applied to termination of the pregnancy, H.R. 503 would make it a violation of federal law to cause ''physical pain'' to the fetus or ''any other injury to the [fetus], no matter how temporary.'' 18 U.S.C. §1365(g)(4). That definition may make sense in the consumer safety context from which it derives, but it is bizarre and extreme in the prenatal context of H.R. 503. Further, H.R. 503 applies to all fetuses, not merely those that are viable, and explicitly applies to unintentional as well as intentional conduct. The common law rule, evolved over centuries of Anglo-

American jurisprudence, is that an assault causing the death of a viable (or, in the archaic phrase, ''quickened'') fetus gives rise to criminal liability. The rule in H.R. 503 is that an assault unintentionally causing ''pain'' to a weeks-old fetus gives rise to criminal liability.[3]

Third, the bill is a transparent effort to undermine *Roe* v. *Wade*. Since H.R. 503 adds nothing meaningful to substantive federal criminal law, its purpose is purely symbolic: to bestow statutory personhood on fetuses, even those that are not viable.

It is no accident that the bill says nothing about injuries to pregnant women; instead the newly created title is styled ''Protection of Unborn Children.'' An assault on a fetus cannot occur without an assault on the pregnant women, but the bill is deliberately framed in terms that ignore the woman. To be sure, there is an explicit exception to the criminal penalties in the bill for ''conduct relating to an abortion'' but make no mistake—this bill is just one more step in the anti-abortion movement's methodical strategy to humanize fetuses, marginalize women, demonize abortion providers, and make the image of abortion less palatable to the American people. The extreme overbreadth of H.R. 503 flows directly from that strategy.

The validity of the constitutional protections established in *Roe* v. *Wade* exceeds the scope of this testimony and is beyond my field of expertise. But as someone who cares about the integrity of the criminal law, I regret that this skirmish in the abortion wars flares up unnecessarily in the federal criminal code. The criminal justice system is built on ancient principles such as proportionality of punishment and the requirement that a wrongdoer have acted with intent to cause harm (mens rea). In ignoring these principles, H.R. 503 is an unsound piece of crime legislation.

Because I believe H.R. 503 to be both unnecessary and unwise, I urge the subcommittee to reject it.

NOTES

[1]On July 21, 1999, I testified before this Subcommittee in person regarding H.R. 2436, the version of the Unborn Victims of Violence Act introduced in the 106th Congress. Because H.R. 2436 and the pending H.R. 503 are substantially the same, my testimony this year substantially duplicates the testimony I previously provided. Nonetheless, I wish this statement to appear in the record of the current hearing so that it is available to members of Congress considering the pending bill.

[2]I wish to make clear that I am not testifying on behalf of the American Bar Association or any other entity with which I am affiliated. Nor am I testifying on behalf of any of my law or lobbying clients. For example, it is a matter of public record that I have represented Planned Parenthood Federation of America (PPFA) with respect to pharmaceutical pricing issues, but I do not represent PPFA at this hearing. The views I express herein are strictly my own.

[3]The bill's new §1841(a) defines the term ''unborn child'' tautologically as ''a child in utero.'' Unless the drafters of H.R. 2426 intend to word ''child'' to imply viability, the bill would apply to conduct that impacted a first trimester pregnancy. Whether an ''unborn child'' of such gestational age constitutes a human being raises constitutional issues beyond the scope of this testimony.

Mr. Speaker, this bill really has nothing to do with protecting a fetus and it has everything to do with taking away a woman's right to choose. That is why all the women's organizations, that is why all the domestic violence organizations oppose it, but the Bush administration supports it. It is a sham, it is aimed at overturning Roe v. Wade, it is further aimed at marginalizing female victims, and it is plainly unnecessary.

It is plainly wrong. I urge a no vote against this antiwoman bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1½ minutes.

Mr. Speaker, on July 25, 2000, the House of Representatives, by a vote of 417–0, passed the Innocent Child Protection Act. This bill would prohibit either the Federal Government or any State from executing a woman while she carries a child in utero. That bill defined ''child in utero'' in the same language as the legislation that is before us.

□ 1145

We heard the gentleman from New York (Mr. NADLER), and others, talk about two-cell zygotes and other terms that have been used during the development of the Homo sapiens, but the protection that was given to the child in utero by the bill that passed last year by a vote of 417–0, I have the roll call here. I noticed the gentleman from New York (Mr. NADLER) endorsed this definition when it came to the death penalty, as did the gentlewoman from New York (Mrs. MALONEY) and the gentlewoman from California (Ms. LOFGREN). Why should we not use the same definition that everybody endorsed last year when it came to executing pregnant women at the State and Federal level in the legislation that sets up this separate crime?

I intend to be consistent in my votes by voting for this definition in this bill, as I did last year for the definition in the other bill.

Mr. Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. PENCE).

Mr. PENCE. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for yielding me this time.

Mr. Speaker, I rise today as a new Member of this body in strong support of H.R. 503, the Unborn Victims of Violence Act, offered by my friend and colleague, the gentleman from South Carolina (Mr. GRAHAM).

Mr. Speaker, it amazes this new Member that there are those who oppose this initiative before the House, which is simply an effort to defend unborn children from violence. Do we not all have an interest in protecting mothers and their children from violent attackers? Who in this House has not read a story in the newspaper about an expectant mother like that described by the Committee on the Judiciary chairman, the story of Shawana Pace whose boyfriend paid to have her assaulted and because of that abuse she lost her child? The outrage and the anger of the public after these events demands that we take action.

Mr. Speaker, the opposition, in their zeal to prevent this bill from becoming law, would have us believe that punishing criminals for existing Federal crimes would compromise the rights of mothers. This premise is simply wrong. The Unborn Victims of Violence Act specifically targets not women or women's rights, but criminals who cause death or harm to an unborn child while committing one of 63 existing Federal crimes.

As the gentlewoman from Pennsylvania (Ms. HART) observed, the Journal of the American Medical Association published a recent study that found that homicide is the most common cause of death among pregnant women in Maryland. A week later, JAMA published another study that found that 6 percent of all pregnant women in North Carolina are abused while they are pregnant.

Despite these alarming facts, Federal law does not punish criminals who prey on pregnant women simply because they are pregnant.

The alternative to this bill to be offered later today fails to address a central cause of violence against pregnant women because it fails to recognize that the child is often the primary target of the assailant.

Mr. Speaker, by protecting the child we protect the mother. It is a fundamental axiom of Western civilization, the belief in the sanctity of human life. By failing to recognize crimes against the life of the unborn child, we place not only one life at risk but two. We must correct this oversight in Federal law and ensure that criminals who prey on pregnant women and their unborn children pay the appropriate penalty for their crimes.

I urge all of my colleagues to support the Unborn Victims of Violence Act. This Congress should seize this opportunity to extend the protection of the law to the most defenseless in our society.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. SOLIS).

Mr. Speaker, will the gentlewoman yield?

Ms. SOLIS. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I thank the gentlewoman from California (Ms. SOLIS) for yielding.

Mr. Speaker, I think the gentleman from South Carolina (Mr. GRAHAM) was the one that said that H.R. 503 is a two-victim bill. The bill on the floor is not a two-victim bill. The bill only recognizes one victim, the embryo or the fetus. Harm to the woman does not factor into the bill at all. The bill does not require prosecution of the crime against the woman, and so to call it a two-victim bill is a fallacy.

Ms. SOLIS. Mr. Speaker, I also would like to join my Democratic colleagues and rise in strong opposition to H.R. 503, the so-called Unborn Victims of Violence Act. While the bill supporters claim that they want to protect pregnant women from crime, their bill does no such thing. Instead, the bill recognizes for the first time a fetus as a person, with rights separate and equal to that of a woman.

I am disappointed that the sponsors of H.R. 503 would play politics with the issue of women's safety. Of course we can all agree that pregnant women deserve protection against crime and violence, but we all hold very different beliefs on a woman's right to choose. Therefore it is simply irresponsible to confuse the two issues in H.R. 503, as this does.

That is why I am not voting for H.R. 503 in favor of the substitute amendment, which will be offered by my colleague, the gentlewoman from California (Ms. LOFGREN). The Lofgren substitute, the Motherhood Protection Act, increases the penalty for attacking a pregnant woman. Let us work together to pass something we can all agree on, rather than playing politics, and let us preserve women's safety.

I urge my colleagues to oppose H.R. 503 and support the Lofgren substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Alabama (Mr. BACHUS).

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

Mr. BACHUS. Mr. Speaker, back in September of 1999, when this bill came before us, one of the opponents of the bill said this, because the criminal attack on a woman causing her to lose a child and an abortion are too easy to confuse, we need to vote against this bill.

Now we are again hearing today that it is hard to distinguish between a criminal attack on a woman which kills her baby and an abortion. But I say, I think the American people can distinguish between the two of those, and I think Members of this body can. We also heard today, and we heard in that earlier argument, that this bill would do a dangerous thing. It would recognize the legal status of an unborn child.

Now that is pretty dangerous, is it not, recognizing the legal status of an unborn child?

Is an unborn child illegal? Are they born into the world illegal? When do they pass from illegal to legal? I think if a mother wants to have a child, wants to have that child born, wants to raise that child, that child is legal.

I want to talk about something else, something else that the opponents I do not think would want to talk about, and I think this is particularly telling, it is an article in the March 2001 Journal of American Medicine, and it simply says one thing, the disturbing finding that a pregnant or recently pregnant woman is more likely to be a victim of homicide than due to any other cause. In other words, a pregnant woman is more likely to be a victim of homicide than die of any other cause.

It compared that to nonpregnant women in the same age group, and that was the fifth leading cause of death.

As that article asks the question, we ought to ask the same question. Only by having a clear understanding of the magnitude of pregnancy-associated mortality can there be comprehensive prevention.

In other words, pregnant women are victims of homicide in a far greater percentage than nonpregnant women. We need to understand that if we are to prevent it.

How do we prevent it? Why does one think pregnant women are five times more likely to die of a homicide in this study and in an earlier study in the Journal of Public Health and in two studies in obstetrics and gynecology? I would submit that the fact they are pregnant is making them a target. These studies certainly say that they are a target. This bill, and I praise the gentleman from South Carolina (Mr. GRAHAM) for offering it, it is a needed step to help what has become an attack on pregnant women.

REMARKS UPON PASSAGE OF BILL IN 106TH CONGRESS

Mr. BACHUS. Mr. Chairman, I rise in support of the Unborn Victims of Violence Act and opposed to the amendment.

We have heard some very interesting statements out here on the floor today. One of the opponents of this act said we ought to vote against this act because, and let me quote, ''because the criminal attack on a woman causing her to lose a child, and an abortion, it is too easy to confuse the two.''

In other words, a criminal attack on a woman which causes her to lose her unborn child, she said the only difference in that and an abortion is, she says, the result is the same except for the criminal intent, and we cannot always determine the difference.

Now, do my colleagues buy that? Do my colleagues buy that this Congress or the American people cannot distinguish between a criminal attack on a woman which causes her to lose her unborn child and an abortion? I do not think so. I think that is ludicrous.

Another reason we were told to vote against this act, we were told that the Federal court or the Federal jurisdiction may have jurisdiction over the mother, but they might not have jurisdiction over the unborn child.

In other words, an FBI agent who is pregnant, we can try someone for assaulting her or murdering her, but not her unborn child, because that would not be a Federal act.

Well, what do we do in those cases? Do we always try those? Would we try them, as that person who opposes it said, we ought to try that case in the State court? Of course not. That is ludicrous.

The final thing, which is probably the worst, is this statement, and I say this with respect to all Members: that this is the first occasion that this Congress or this Supreme Court has ever recognized the legal status of an unborn child. If we pass this act, we will be recognizing the legal status of an unborn child.

Well I ask you, is it an illegal status? Are unborn children illegal?

How about an unborn child whose mother has made a decision to keep that child? She wants to keep that child. She wants to have that child. She wants to raise that child. Is there anything wrong with recognizing the legal status of that child? Should that child have no status, no rights? Of course not.

[From JAMA, March 21, 2001]

ENHANCED SURVEILLANCE FOR PREGNANCY-ASSOCIATED MORTALITY—MARYLAND, 1993–1998

(By Isabelle L. Horon and Diana Cheng)

Complete and accurate identification of all deaths associated with pregnancy is a critical first step in the prevention of such deaths. Only by having a clear understanding of the magnitude of pregnancy-associated mortality can comprehensive prevention strategies be formulated to prevent these unanticipated deaths among primarily young, healthy women.

Death statistics compiled through the National Vital Statistics System by the National Center for Health Statistics, Centers for Disease Control and Prevention, are a major source of data on deaths occurring during pregnancy and in the postpartum period. Original death certificates from which state and national vital statistics are derived are filed in and maintained by individual states. Causes of death on death certificates are reported by attending physicians or, under certain circumstances such as death from external trauma or unexplained death, by medical examiners or coroners.

The National Center for Health Statistics is required to use the World Health Organization (WHO) definition of a maternal death for preparation of mortality data. According to the WHO definition, a maternal death is ''the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and the site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management but not from accidental or incidental causes.''[1] This definition includes deaths assigned to the cause ''complication of pregnancy, childbirth, and the puerperium'' (International Classification of Diseases, Ninth Revision [ICD–9] codes 630–676).

Death records are an important source of data on pregnancy mortality because they are routinely collected by the states and are comparable over time and across the nation. However, there are several limitations to using these data to identify all deaths associated with pregnancy. First, the cause-of-death information provided on these records is sometimes not accurate. Previous studies have shown that physicians completing death records following a maternal death fail to report that the woman was pregnant or had a recent pregnancy in 50% or more of these cases,[2–4] resulting in the misclassification of the underlying cause of death. Since these deaths cannot be identified as maternal deaths through routine surveillance methods, they are not included in the calculation of maternal mortality rates.

An additional limitation of using death records alone for comprehensive identification of all deaths associated with pregnancy is that the WHO definition of a maternal death limits the temporal and causal scope of pregnancy mortality. As defined by WHO, a maternal death does not include deaths occurring more than 42 days following termination of pregnancy or deaths resulting from causes other than direct complications of pregnancy, labor, and the puerperium.

To address these issues, the term ''pregnancy-associated death'' was introduced by the Centers for Disease Control and Prevention, in collaboration with the Maternal Mortality Special Interest Group of the American College of Obstetricians and Gynecologists, to define a death from any cause during pregnancy or within 1 calendar year of delivery or pregnancy termination, regardless of the duration or anatomical site of the pregnancy.[5] Pregnancy-associated deaths include not only deaths commonly associated with pregnancy such as hemorrhage, pregnancy-induced hypertension, and embolism—which are captured in the WHO definition—but also deaths not traditionally considered to be related to pregnancy such as accidents, homicide, and suicide. The term also includes deaths occurring 43 to 365 days following termination of pregnancy. Since

cause-of-death information on death certificates cannot identify deaths from nonmaternal causes or deaths occurring 43 or more days following termination of pregnancy as associated with pregnancy, additional sources of data must be used for complete ascertainment of all pregnancy-associated deaths.

Previous studies on pregnancy-associated deaths have relied largely on linkage or records[2,6–8] or the use of a check box on the death certificate[9] to identify pregnancy-associated deaths. Only 1 study (Allen et al[10]) in New York City used death certificates, linkage of records, and review of autopsy reports to identify pregnancy-associated deaths. However, this study did not include all pregnancy-associated deaths since only records for deaths occurring within 6 months of termination of pregnancy were collected, and medical examiner records for only certain causes of death were reviewed.

This article, based on Maryland resident data for the years 1993–1998, presents more comprehensive data on pregnancy-associated deaths since it includes all deaths occurring during pregnancy or within a year of termination of pregnancy. In addition, medical examiner records for all women of reproductive age who died during the study period, regardless of cause of death, were reviewed to identify pregnancy-associated deaths.

METHODS

Data for this analysis were collected from the following 3 sources: (1) review of death certificates to identify those records on which a complication of pregnancy, childbirth, or the puerperium (ICD–9 codes 630–676) was listed as an underlying or contributing cause of death; (2) linkage of death certificates of reproductive-age women with corresponding live birth and fetal death records to identify a pregnancy within the year preceding death; and (3) review of medical examiner records for evidence of pregnancy.

Vital records data were obtained from the Vital Statistics Administration of the Maryland Department of Health and Mental Hygiene. Identification of pregnancy-associated deaths through linkage of vital records was accomplished by matching death certificates for all women of reproductive age against live birth and fetal death records to identify pregnancies occurring in the year preceding death. Successful linkage of records was achieved by matching either mother's Social Security number or mother's name and date of birth on the death record with corresponding information on live birth and fetal death records. All linked records were manually reviewed to ensure accurate matching of records.

Medical examiner records, which include autopsy reports and police records, were reviewed for all 4195 women aged 10 to 50 years whose deaths were investigated by the medical examiner during the study period. Maryland law mandates that the medical examiner investigate all deaths that occur by violence, suicide, casualty, unexpectedly, or in any suspicious or unusual manner. Death certificates were obtained for 116 women for whom medical examiner records indicated evidence of pregnancy.

With the exception of 1 death to a 14–year-old adolescent, all deaths identified through medical examiner records occurred among women who were within the traditional reproductive age group of 15 to 44 years. All deaths identified through death certificates and record linkage were among women between the ages of 15 and 44 years.

All death records that did not identify a maternal cause as the underlying cause of death (n = 184) were reviewed by trained nosologists to determine the underlying cause of death that would have been assigned if a history of pregnancy had been reported on the death certificate. Nosologists were provided with information on pregnancy outcome and, if available, the date of delivery, date of pregnancy termination, or gestational age. Revised underlying cause-of-death information was used to categorize data by cause of death.

RESULTS

A total of 247 pregnancy-associated deaths occurring between 1993 and 1998 were identified from the 3 data sources. Sixty-seven pregnancy-associated deaths (27.1%) were identified through cause-of-death information obtained from death certificates. Sixty-two of these records listed pregnancy complications as the underlying cause of death; the remaining 5 certificates listed pregnancy complications as a contributing, but not underlying, cause of death. Linkage of records identified 174 (70.4%) of all pregnancy-associated deaths and review of medical examiner records resulted in the identification of 116 (47.0%) deaths (Table 1).

TABLE 1.—NUMBER OF PREGNANCY-ASSOCIATED DEATHS BY PREGNANCY OUTCOME AND SOURCES OF DATA, MARYLAND, 1993–1998[1]

Pregnancy outcome	Total deaths	Sources of data		
		Death certificates	Record linkage	Medical examiner records
All outcomes	247	67	174	116
Live births	182	46	172	60
Fetal death	5	3	2	4
Therapeutic abortion	1	0	0	1
Undelivered	53	12	0	50
Ectopic pregnancy	7	7	0	5
Molar pregnancy	1	1	0	1
All other undelivered	45	4	0	44
Unknown	6	6	0	1

[1] Deaths from any cause during pregnancy or within 1 calendar year of delivery or termination of pregnancy, regardless of the duration or anatomical site of the pregnancy. A single death may have been ascertained from more than 1 source, therefore columns do not sum to the total number of deaths.

Sixty-five percent (n = 160) of pregnancy-associated deaths were identified through a single surveillance method. One hundred two (41.3%) were identified only through linkage of records, 45 (18.2%) only through review of medical examiner records, and 13 (5.3%) only through cause-of-death information provided on death certificates. Thirty-five percent of pregnancy-associated deaths were identified through more than 1 data source (n = 87).

One hundred eighty-two (73.7%) of the 247 pregnancy-associated deaths identified in this study followed a live birth, 5 (2.0%) followed a fetal death, 1 followed a therapeutic abortion, and 53 (21.4%) occurred among women who were pregnant at the time of death. Of the 53 deaths that occurred among pregnant women, 7 were the result of ruptured ectopic pregnancies and 1 resulted from a molar pregnancy (Table 1). Eighty-four (34.0%) deaths occurred within 42 days of delivery or termination of pregnancy, and 103 (41.7%) deaths occurred 43 to 365 days following delivery or termination of pregnancy. The time of death was unknown for 7 women (Table 2).

TABLE 2—NUMBER OF PREGNANCY-ASSOCIATED DEATHS BY CAUSE OF DEATH, SOURCE OF DATA, AND TIME OF DEATH, MARYLAND 1993–1998[1]

Cause of death	All sources				Death certificates				Record linkage				Medical examiner records			
	Total[2]	During pregnancy	After delivery of termination of pregnancy		Total[2]	During pregnancy	After delivery or termination of pregnancy		Total[2]	During Pregnancy	After delivery or termination of pregnancy		Total[2]	During Pregnancy	After delivery or termination of pregnancy	
			≤42 d	43–365 d			≤42 d	43–365 d			≤42 d	43–365 d			≤42 d	43–365 d
All causes	247	53	84	103	67	12	45	3	174	0	71	103	116	50	48	16
Homicide	50	23	3	24	0	0	0	0	27	0	3	24	25	23	1	1
Cardiovascular	48	5	21	18	13	2	6	1	36	0	18	18	30	5	15	8
Embolism	21	5	14	2	11	1	9	1	14	0	12	2	14	5	8	1
accidents[3]	18	6	2	10	0	0	0	0	11	0	1	10	9	6	2	1
Hemorrhage	17	7	9	0	16	7	8	0	5	0	5	0	10	5	5	0
Hypertensive disorders of pregnancy	16	0	15	1	14	0	13	1	16	0	15	1	10	0	9	1
Infection	16	0	7	8	4	0	3	0	15	0	7	8	3	0	2	1
Neoplasms	15	0	0	15	0	0	0	0	15	0	0	15	0	0	0	0
Substance abuse	13	1	3	9	1	0	1	0	11	0	2	9	4	1	2	1
Suicide	7	2	0	5	0	0	0	0	5	0	0	5	3	2	0	1
All other causes	26	4	10	11	8	2	5	0	19	0	8	11	8	3	4	1

[1] Deaths from any cause during pregnancy within 1 calendar year of delivery or termination pregnancy, regardless of the duration or anatomical site of the pregnancy. A single death may have been ascertained from more than 1 source, therefore columns do not sum to the total number of deaths ascertained from all sources.
[2] Totals include 7 deaths for which the time of death was unknown.
[3] Includes deaths from motor vehicle collisions, falls, drowning, and other unintentional injuries.

The leading cause of pregnancy-associated death was homicide (n=50). All homicides were identified through record linkage or review of medical examiner records rather than from death certificates, as would be expected since homicide is not a maternal cause of death. Deaths from cardiovascular disorders, the second leading cause of death (n=48), were identified through all 3 data sources, although no single source was able to identify all deaths. Of the 26 deaths from cardiovascular disorders that occurred during pregnancy or within 42 days of delivery and should therefore have been classified as maternal deaths, only 8 were identified through death certificates. A substantial proportion of deaths from other maternal causes, including embolism and infection, could not be identified from death certificates since the physicians filling out the certificates failed to report that the women were pregnant or had recent pregnancies (Table 2).

All maternal deaths, by definition, occurred during pregnancy or within 42 days of delivery or termination of pregnancy. This included most deaths from embolism, hemorrhage, and hypertensive disorders of pregnancy as well as a substantial proportion of

deaths resulting from cardiovascular disorders and infection. Homicide was responsible for the majority of deaths during pregnancy (23 [43.4%]) and during the 43- to 365-day period following delivery or termination of pregnancy (24 [23.3%]), but accounted for only a small proportion of deaths occurring within 42 days of pregnancy (3 [3.6%]), when obstetric causes were responsible for most pregnancy-associated deaths. Cardiovascular disorders (n=21) were the leading cause of death in the 42-day period following delivery or termination of pregnancy and the second leading cause of death (n=18), following homicide, in the late postpartum period (Table 2).

Homicide, the leading cause of pregnancy-associated death, was responsible for 20.2% of all pregnancy-associated deaths. By comparison, homicide was the fifth leading cause of death among Maryland women aged 14 to 44 years who had not had a pregnancy in the year preceding death and was responsible for 457 (6.4%) of total deaths among this group (z=7.737, P<.001). The pregnant group was younger and included a higher percentage of African American women than the nonpregnant group, factors that are associated with higher rates of homicide independent of pregnancy. However, these factors did not explain the higher proportion of homicide deaths in the pregnant group. While adjustment for race and maternal age increased the proportion of deaths due to homicide to 11.2% among women who had not been pregnant in the year preceding death, the adjusted figure was still significantly lower than the figure of 20.2% among women who had been pregnant (z=4.349, P<.001).

COMMENT

The use of multiple data sources substantially enhances pregnancy mortality surveillance because no single source can identify all pregnancy-associated deaths. Death certificates are designed to collect only a small subset of pregnancy-associated deaths. Even these deaths are frequently not included in maternal mortality statistics because physicians completing death certificates fail to provide the information needed to correctly classify a maternal death. Analysis of data in this report indicated that 30 (34.5%) of the 87 deaths meeting the WHO definition of a maternal death could not be identified through cause-of-death information reported by physicians on the death certificate. Data linkage is an additional tool for identifying pregnancy-associated deaths, but it is limited to those deaths with a reported outcome, such as a live birth or fetal death. Medical examiner records are the most useful source for identifying pregnancy-associated deaths among women who have not delivered at the time of death.

Data linkage and review of medical examiner records contribute substantially to identification of pregnancy-associated mortality. In Maryland, this led to the disturbing finding that a pregnant or recently pregnant woman is more likely to be a victim of homicide than to die of any other cause. Other reports have identified homicide as a cause of pregnancy-associated death. However, none of these studies reported on pregnancy-associated deaths from other causes as well, and therefore could not provide a ranking of deaths by cause.

Although we have shown that homicide is responsible for a greater proportion of deaths among pregnant and postpartum women than among women who have not been pregnant in the year preceding death, our findings do not address the issue of whether the homicide rate is higher among pregnant and postpartum women in general than among women who have not had recent pregnancies. This highlights a well-recognized limitation of proportional mortality statistics, ie, that these statistics include only individuals who die, not those at risk of dying. Therefore, no direct inferences regarding increased homicide rates for all pregnant women can be made using only proportional mortality statistics.

The question of whether the homicide rate is higher among pregnant and postpartum women than among women who have not had recent pregnancies could be answered by comparing mortality rates in the 2 groups. However, a methodology for computing pregnancy-associated mortality rates and mortality rates for nonpregnant women has not yet been established because of complexities in determining the number of pregnant women in a population. Since a woman may experience more than 1 pregnancy and more than 1 pregnancy outcome (live birth, fetal loss, or induced abortion) in a given time period, the number of pregnant women cannot be computed by summing the number of pregnancy outcomes. Even if the number of pregnant women could be estimated, an additional issue that would have to be addressed is how to adjust mortality rates to account for differences in the time period of risk of death in the 2 populations. It is important that increased efforts be placed on development of appropriate methodologies for calculating pregnancy-associated mortality rates so that the questions raised by this article may be addressed.

The findings of this article also suggest that maternal mortality review committees should investigate homicides occurring during pregnancy and in the postpartum period to determine potential relationships between these events. For example, a homicide resulting from domestic violence may be related to the stress of pregnancy. Similarly, a suicide soon after delivery may result from postpartum depression. By broadening pregnancy mortality to include all possible causes, factors previously neglected may assume increased importance in prenatal and postpartum care.

Despite the use of enhanced surveillance techniques, it is likely that some pregnancy-associated deaths remain undetected, particularly those occurring in women who were pregnant at the time of death. Since autopsies are performed on all homicide victims, it is more likely that pregnancy would be detected among these women that among women dying from other causes, who are less likely to be autopsied. Since Maryland law mandates that the medical examiner investigate deaths among individuals who were in apparent good health at the time of death, which describes most pregnant women, the majority of deaths among these women should have been investigated by the medical examiner. Autopsies were in fact performed more frequently among women with recognized pregnancy-associated deaths who died from causes other than homicide (123 [62.4%]) than among women of reproductive age without recognized pregnancies (6696 [30.6%]). However, it is still possible that some pregnancies remain undetected, which could have an impact on the total number of pregnancy-associated deaths as well as on the distribution of deaths by pregnancy outcome, time of death, or cause of death.

Efforts are being made in Maryland to improve the identification of pregnancy-associated deaths. Recent legislation mandates that health care professionals and facilities report all pregnancy-associated deaths to the Maryland Maternal Mortality Review Program. In addition, the Maryland death certificate was revised in 2001 to include questions about current or recent pregnancies. Currently, only 17 states and New York City have a pregnancy check box or ask about pregnancy status on their death certificates. Use of pregnancy question by all states on the revised US Standard Certificate of Death has been recommended to the National Center for Health Statistics by the Panel to Evacuate the US Standard Certificates and Reports. Such a change, which would be consistent with a recommendation of the World Health Assembly in the International Classification of Diseases, 10th Revision (ICD–10),[13] would substantially improve ascertainment of pregnancy on death certificates. If approved by the US Department of Health and Human Services, states could adopt the pregnancy question in the 2003 revision of their death certificates. This change should help to identify deaths that remain difficult to detect, such as deaths that cannot be identified through linkage of records and deaths among women who had not delivered that are not reported to the medical examiner. However, it would be a service, as well as good medical practice, if physicians made a greater effort to report pregnancy as a factor contributing to death when appropriate.

Comprehensive identification of pregnancy-associated deaths can only be accomplished by collecting information from multiple data sources and including all deaths occurring up to 1 year after pregnancy termination. Through such enhanced surveillance, the Maryland Department of Health and Mental Hygiene has shown that the number of pregnancy-associated deaths is substantially higher and causes of death substantially broader than previously believed. Enhanced surveillance of pregnancy-associated deaths is necessary to accurately document the magnitude of pregnancy mortality, identify groups at increased risk of death, review factors leading to the death, and plan prevention strategies. It is therefore a critical step in the reduction of pregnancy-associated mortality.

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Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, first let me disabuse the gentleman from Wisconsin (Mr. SENSENBRENNER) of his notion that those of us who voted for the bill to bar capital punishment for pregnant women were recognizing the fetus or the unborn child as a person.

I vote against anything to limit capital punishment. I would say to the gentleman from Wisconsin (Mr. SENSENBRENNER), I am opposed to capital punishment. I think it is barbaric whether it is against pregnant women or barbaric against nonpregnant women.

Mr. Speaker, violence against pregnant women is first and foremost a criminal act of violence against the women that deserves strong preventive measures and stiff punishment.

The gentleman from Alabama (Mr. BACHUS) referred to the article in the Journal of the American Medical Association that said homicides during pregnancy and the year after are the largest cause of death among women, and they are.

Mr. Speaker, it is a disgrace that while these preventable crimes continue to occur, it is a disgrace that Congress fails with this largely symbolic legislation rather than taking affirmative steps to deal with the problem. Why, for example, did the Republican majority fall $209 million short of President Clinton's request last year for full funding of the Violence Against Women Act? Why did the Republicans on the Committee on the Judiciary vote against an amendment for full funding of the Violence Against Women Act? If we are concerned about violence against women and pregnant women and murders of pregnant women, as the Journal of the American Medical Association indicates, that is how to prevent it, by early intervention, by preventing the crime, not by fighting about the legal definition of the fetus from a legal point of view.

Are the Members who vote for this legislation today going to join the rest of us in seeking full funding for the Violence Against Women Act in the next fiscal year? Will they fight efforts to zero out for the second year in a row programs authorized by the Committee on the Judiciary last year to prevent such violence?

No one who listened to the testimony at our subcommittee could have been left unmoved by the terrible story of the young woman who was murdered by her intimate partner in the eighth month of pregnancy. I think we owe it to her and to the many women like her to ensure that early intervention is available that would prevent us and that States and localities receive the full resources of the Violence Against Women Act to prevent murders like this by intervening before the violence escalates to that level.

We should also enact strong penalties, ones which are enforceable, which are not constitutionally suspect, which will not lead to lengthy litigation for these violent crimes.

Finally, Mr. Speaker, this bill opens the door to prosecuting women or restraining them physically for the sake of a fetus. Some courts have already experimented with this approach. Just a few weeks ago, the Supreme Court struck down a practice in the home State of the gentleman from South Carolina (Mr. GRAHAM) where 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 them if they had used crack. Once we recognize the two-cell zygote or even a blastocyst just implanted in the womb as having the same legal status as a pregnant woman, it would logically follow that the liberty interest of the mother could be restricted to protect the fetus.

Do not believe the rhetoric that this is not an abortion bill. Women are already being prosecuted and imprisoned by courts, including courts in the sponsor's own State, in order to protect the fetuses.

The whole purpose of Roe v. Wade was to protect the liberty interests of these women. The women who sit in prison today can say what the legal consequences of making fetuses crime victims recognized in law really are. They can say what the real agenda is. The real agenda is to subject women's liberty to the interests of the fetus and to make the fetus accepted as a person, and that is why this is an abortion bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 7 minutes to the gentleman from South Carolina (Mr. GRAHAM), the author of the bill.

Mr. GRAHAM. Mr. Speaker, this has been a spirited debate, a lively debate. I think it is good for the country to have this debate. I hate to interrupt good stories with facts and law, but I guess I will.

I am going to go red herring fishing. That is a hard thing to catch; but when one catches it, they have something.

A couple of red herrings that I think have been thrown out here about the bill: this is an abortion bill. If this is an abortion bill, it is one of the worst-drafted abortion bills one could think of. It does a lousy job, and let me read from the bill: ''Nothing in this section shall be construed to permit the prosecution of any person for conduct relating to an abortion, for which the consent of the pregnant woman or person authorized by law to act on her behalf has been obtained or for which such consent is implied by law.''

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If we are trying to outlaw abortions, we did a pretty lousy job in that paragraph. ''Nothing in this section shall allow the prosecution of any person for medical treatment of the pregnant woman or her unborn child; or of any woman with respect to her unborn child.''

Why is that language in there? The purpose of this bill is very simple: Once the woman chooses to have the child and someone takes that child away from her through an assault or an act of violence, we want to put them in jail for the damage done to the unborn child.

This is not a two-victim bill. The gentleman from Michigan (Mr. CONYERS) is right. The reason it is not a two-victim bill is because there are laws all over the country preventing assaults against women who are pregnant in their own States. There are 24 States that make it a separate offense to take her unborn child's life. At the Federal level, there is no such law. There soon will be.

That will coexist with Roe v. Wade. Roe v. Wade has never stood for the proposition that the State or Federal Government cannot protect the unborn against violent criminal activity. It stood for the proposition that the Federal-State government cannot interfere with a woman's right to choose an abortion first trimester and under certain circumstances thereafter.

Why did 254 Members of this body last year vote for this bill? All of them are not pro-life. I happen to be pro-life. Why would a pro-choice person vote for my bill? I think they have sat down and read it, and they understand a couple of things about the bill, and I want to applaud them for doing it. We may disagree on a woman's right to choose, and America splits evenly on that. If you disagree with me on that issue, I will not question your politics, your religion, or your patriotism. I have my view; you have yours.

But here is what I am so excited about from last year's vote, and hopeful for this year that Congress has come together on this central theme, that once a woman chooses to have the baby, we are going to protect the baby and the mother. This body spends millions of dollars a year helping women through pregnancy. Low-income women get help from the Federal Government to make sure the child is fully developed. We help at-risk pregnancies. That is a good thing. That is not a bad thing. That is not about the abortion debate.

I think most Americans, even though we divide on the issue of abortion, would come together on the issue that if a woman has the child and some criminal takes that right away from the woman, we ought to put them in jail to the fullest extent of the law. That is what we do, and that is what 24 other States do.

Another red herring about the definition: The definition in this bill is exactly what exists in 11 other States and it withstood constitutional challenge and it is exactly what the House voted on on July 25, 2000.

Let me tell you how important that is. 417–0, the House came together and said we are not going to execute a pregnant woman. Why? Does that infringe on Roe v. Wade? No. I think there would be riots in the streets in this country, from pro-choice and pro-life people, if a pregnant woman was executed, because nothing good is served. No public policy is advanced by taking that unborn child's life. We have not helped anybody. We have done a bad thing, not a good thing.

So let us come together and do a good thing. Let us put criminals in jail who assault pregnant women to the fullest extent of the law, no more, no less, and my bill does that.

The definition will withstand constitutional scrutiny. It is a matter of proof. The two-cell zygote defense is a red herring. It is the same definition the body voted on before. It is the burden of proof problem for every prosecutor. If you said you could be prosecuted after 6 weeks of pregnancy, you would have to prove that the pregnancy existed longer than 6 weeks. Prosecutors can do those things, and defense attorneys will have their objections.

This bill is well drafted. It makes a lot of common sense. It is not about the abortion debate; it is about America coming together protecting unborn life when we find consensus.

We should be looking for consensus, from adoption to this bill, to partial-birth abortion, to bring life into the world where we can. And when we have these debates about a woman's right to choose, I honor your right to disagree with me, but that is not today. Today is about bringing the country together, this body together, to put people in jail that deserve to go.

As to the question does this really happen, let me tell you, it happens more than I thought it did. When I was a prosecutor in the Air Force, we had a handful of cases of pregnant women being assaulted and losing their child. There was no statute to prosecute them for that. That was frustrating. If this bill passes, they will have those tools.

Timothy McVeigh will be in the news again soon, and I respect the view of the gentleman from New York (Mr. NADLER) on the death penalty. I disagree with that. But we will be reminded about Oklahoma City soon.

You may not know this, but three women in that building were pregnant. One of them was the wife of Michael Lenz. They had a sonogram of the baby, she is showing it to office workers. The next day she goes to work, the building is blown up, she is killed, and the baby is lost. Mr. Lenz came to Congress 2 years ago and told us, ''That day will mark me for life, but that day I lost two things, not one. I lost the mother of my child, my wife, but I also lost Michael Lenz, III.''

Without this bill, there is no recognition of him as being a victim of Oklahoma City. He should have been a victim, because he was wanted by the family and his life was taken away through an act of violence. That person should go to jail for that act of violence.

I will tell you later why the substitute does not get us to where we need to go. It is not the way the law is trending here.

But read the bill, think about what we are trying to do. And to those pro-choice Members of Congress who voted for this bill last year, thank you. Thank you for coming together and having a rational debate on how to protect the unborn without getting into the abortion debate. I want to thank you very much.

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

Mr. Speaker, I just want to let the author of this bill, the gentleman from South Carolina who just spoke, know that what he claimed as a red herring really is not a red herring at all. The threat to Roe v. Wade made in this bill cannot be made more clear because this bill contradicts the definition of who a person is by writing it the way they did.

The Court, in Roe, recognized the woman's right to have an abortion as a right protected by the 14th amendment. In considering the issue of whether a fetus is a person, the Court noted, ''Except in narrowly defined situations, the unborn have never been recognized in law as persons in the whole sense,'' and concluded ''person'' as used in the 14th amendment does not include the unborn. The Court declined to grant fetuses the status of person because it recognized the difficulty in finding an end point to rights that the fetus might claim.

The current bill raises those same issues. In the 28 years since Roe, the Supreme Court has never afforded legal personhood to a fetus; and that, I would say to the gentleman from South Carolina (Mr. GRAHAM), is what the problem is about the bill; that, I would say to the gentleman from Ohio (Mr. CHABOT), is what the problem is about the bill; that, I would say to my dear chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER), is what the problem is about the bill.

The gentlemen are contradicting the definition of ''person'' by writing it in the way that they have. That is why the gentlewoman from California had to write a substitute, because we had to get that corrected. As a matter of fact, we go further to prosecute an assailant of a pregnant woman than you do.

So, let us not talk about that being a red herring. That is what the debate is all about.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Speaker, I want to thank particularly the gentleman from South Carolina (Mr. GRAHAM) for doing an excellent job on shepherding this legislation through, as well as the chairman of our committee.

Yesterday I had a conversation in my office with a lady who is a student at Georgetown University; and I thought, well, I will just ask her her view of this legislation. I said, have you looked at this, the Unborn Victims of Violence Act? She said she had.

I said what is your view on it? She said she supported it. I said are you pro-choice or pro-life? She said I am pro-choice.

So here is a pro-choice lady, a student at Georgetown University, very thoughtful, who recognized the importance of protecting women by extending the protection in this instance to the loss of the unborn child.

I asked her why, and she explained it particularly in those words, that there is nothing more important whenever you have someone commit a violent act against a pregnant woman than that they be held accountable for all of the loss that occurs.

I think this is a thoughtful person. I think she describes where we should be able to come together, whether it is pro-choice or pro-life, that this is something we should be able to unite together on.

I believe it simply follows the leads of a variety of States that have already given legal protection in the circumstance where a pregnant woman is attacked and there is the loss of the unborn child. Arkansas is a great example of that.

Many people have referred to the case of Shawana Pace. It was my nephew, Representative Jim Hendren, who sponsored the fetal protection law in the Arkansas General Assembly, and I am thankful that was passed, because that law allowed the perpetrators of the violence against Shawana Pace to be prosecuted.

It was simply an assault upon her, but it was the intentional death of that unborn child, literally days before that child was born, with the words saying, ''Today, your child will die.'' It was an intentional act. Other than under the fetal protection law, they could not have been prosecuted. So I think it does credit to the women.

The argument is made here that well, we are not fully supporting the Violence Against Women Act. I just want to tell my colleagues I have written to the appropriators and asked them to fully fund the Violence Against Women Act. I joined in the news conference for that purpose. I think it is very important, and you are right to raise the level of attention to the importance of the Violence Against Women Act. We need to join together. But that should not be a reason not to support this legislation.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. HUTCHINSON. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I want to congratulate the gentleman on his

latest observation. Now, with the woman that visited his office, and his asking her unsolicited opinion, did the gentleman ask her what she thought about the Lofgren substitute?

Mr. HUTCHINSON. Mr. Speaker, reclaiming my time, let me continue on with the Lofgren substitute.

Mr. CONYERS. Did the gentleman ask her?

Mr. HUTCHINSON. No, I did not ask her, sir. I did not.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from Wisconsin (Ms. BALDWIN).

Ms. BALDWIN. Mr. Speaker, I rise today to urge my colleagues to oppose this bill. I ask my colleagues to look at this legislation for what it is, not for what it claims to be.

On its face this bill could seem as an attempt to provide protections for pregnant women from assault and to provide prosecutors with another tool to punish those who cause the non-consensual termination of a pregnancy. However, on closer examination, this bill sets the stage for a legislative assault on Roe v. Wade by treating a fetus from the moment of conception as an individual with extensive legal rights, distinct from the mother.

Every time a criminal causes injury or death through violence, it is a tragedy. But we must all acknowledge that an attack against an unborn child is necessarily an attack against a pregnant woman. Unfortunately, rather than supporting tougher laws against domestic violence, sexual assault and battery, we are instead debating a bill that does not even recognize the harm to a pregnant woman.

I have heard some Members debating talk about stories of people they have met. I remember in the Wisconsin legislature hearing the personal story of a woman who was beaten when pregnant and lost her child. She was also beaten right after she first got married and beaten before her pregnancy and beaten in the early stages of pregnancy. If we had tough enough laws against violence against women, it would not have created that result.

I am a cosponsor of the Violence Against Women Act which expands protections for women against callous acts of violence. I believe we would be much better served by laws to protect women, pregnant or not, from violence, instead of establishing an entirely new legal framework to protect fetal rights. By switching the focus of the crime, we are diverting attention from the victimized women.

I urge my colleagues to vote against the underlying bill and support the Lofgren amendment.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas (Mr. RYUN).

Mr. RYUN of Kansas. Mr. Speaker, one thing that makes America great is its longstanding tradition to defend those incapable of defending themselves. Our Founding Fathers acknowledged the proverb to ''Speak up for those who cannot speak for themselves.''

It is our duty to stand up for the weaker members of society, and I believe the Unborn Victims of Violence Act does just that. Currently, when someone commits a crime in which a woman and her preborn baby are harmed, the accused can only be prosecuted for harm to the mother. This sends the wrong message. It says there is only one victim in this situation, and nothing could be further from the truth. There are two victims harmed in this crime, the mother and her preborn baby.

□ 1215

My colleagues who oppose this bill want to offer a substitute that would recognize the mother as a victim, but not the baby. I would like to remind them again that half the States do not agree; fully 24 have homicide laws that recognize unborn victims.

Furthermore, and I know we discussed this today, I would like to bring to my colleagues' attention a similar act that took place in the House last year. It was in July of last year that we voted 417–0 to deny Federal funds to execute pregnant women. This bill specifically protects a ''member of the species homo sapien at any stage of the development who is carried in the womb.''

If we are willing to protect preborn babies from Federal execution, why would we let a criminal harm an innocent life without facing specific penalty?

Let me say it again: If we are willing to protect preborn babies from Federal execution, why would we let a criminal harm an innocent life without facing specific penalties?

Those who say they believe in choice should be the strongest advocates of this bill. After all, any criminal who harms a preborn baby has interfered with a woman's choice to carry that baby to term.

Mr. Speaker, I urge my colleagues to join me in voting to defend those who cannot defend themselves.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. INSLEE).

Mr. INSLEE. Mr. Speaker, let us be candid. This debate is all about preserving the woman's right of choice. It is about preserving a woman's right of choice at the beginning of this debate, it is about preserving a woman's right of choice at the middle of this debate, and at the conclusion of this debate, it will be all about preserving a woman's right of choice.

The women of America who are afraid of losing that right sincerely, and rightfully so, understand this debate. They understand that if the desire of this Chamber is to punish, to give jail time, to give long periods of incarceration to any heinous criminal who attacks a pregnant woman, we would pass a bill that would do that with 435 votes, and the bill that the gentlewoman from California (Ms. LOFGREN) has brought before us does exactly that.

Now, why cannot intelligent members of this House, 435, come together on a bill that does exactly that? Why can we not design a bill like that?

The reason is that certain folks who want to take away a woman's right of choice. And I understand that their beliefs are sincere, and I respect their beliefs, but their beliefs do not respect the U.S. Constitution. Those folks have proposed language that is trying to set the stage to end the right of choice in this country. It is a calculated, concerted, and long-term plan to do that.

Let me tell my colleagues why that is important. Every morning I walk by the U.S. Supreme Court building. I live right across the street from the Supreme Court building, and every morning I look at that building, and when one looks at that building, one understands that if one vote changes, as the current President of the United States will attempt to do, there will be no longer constitutional protection in this country for a woman's right of choice, and that issue will be here in this Chamber.

Those who resist the approach of the gentlewoman from California (Ms. LOFGREN), those who resist the thing that would get 435 votes, those who resist the approach that brings union, not disunion, to this Chamber, seek to set the stage for a legislative taking away of a woman's right of choice as soon as the Supreme Court's protection for a woman's right of choice is taken away from American women. That is what this debate is about.

Support the Lofgren amendment. That is the goal we want to pursue, with 435 votes.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, the gentleman from Washington is dead wrong. This is similar to bills that have been enacted into law in many States, and anybody who is charged for killing an unborn child would have used that constitutional argument as a defense. In no State has a Federal court or a State court struck down a similar law.

The woman who is assaulted and whose unborn child has been killed or maimed has already made her choice, and that is to bear that child. Why do we not respect the choice that that woman has made?

Mr. Speaker, I yield 3 minutes to the gentleman from South Carolina (Mr. DEMINT).

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

Mr. DEMINT. Mr. Speaker, today I rise in support of H.R. 503, the Unborn Victims of Violence Act, and I commend the gentleman from South Carolina for introducing this legislation.

Let us consider for a moment the human side of this legislation. A friend of mine and his wife tried for years to

conceive a child. They had almost given up when unexpectedly they conceived twins, a double blessing. If someone had assaulted or otherwise committed a crime of violence against her that killed these children, one cannot tell me that punishment should only occur for the crime against the woman when the unborn children were the innocent victims of the violence. If these two lovely children that the couple had longed for had tragically died in the commission of a crime of violence, the criminal must be held accountable.

This legislation takes the important step of recognizing that violence against an unborn child against the will of the mother, taking away the mother's right to choose, can be prosecuted in a court of law. This is not a new concept. In fact, over half of the States in this Nation have State laws which protect unborn victims of violence in some form. I have with me today a list of these State homicide laws that recognize unborn victims, which will be inserted into the RECORD.

This legislation would not supersede those State laws, nor would it impose a new law for crimes which are under State jurisdiction. Rather, this bill recognizes an unborn child as a victim in the eyes of Federal criminal law.

Currently, if a criminal injures or kills an unborn child during the course of a violent Federal crime, he has not committed an additional offense, other than the violent crime. But that is not fair. If an unborn child dies because of a violent act perpetrated against his or her mother, then the criminal must be held accountable.

We have heard about an amendment to this legislation which would take away the recognition that a violent crime has occurred against an unborn child. I would urge my colleagues on both sides of the aisle to vote against this weakening amendment.

The title of this bill describes exactly what this bill is about: unborn victims of violence. This bill works to correct an unjust situation in which the life of an unborn child is lost, and there are no legal repercussions. I challenge my colleagues again on both sides of the aisle and on both sides of the abortion issue to hold criminals accountable for their violent crimes.

Mr. Speaker, I urge all of my colleagues to stand with me today and vote in favor of H.R. 503, the Unborn Victims of Violence Act.

STATE HOMICIDE LAWS THAT RECOGNIZE UNBORN VICTIMS

FULL-COVERAGE UNBORN VICTIM STATES (11) (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).

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).

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).

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).

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—The killing of an ''unborn child'' at any stage of pre-natal development is first, second, or third-degree murder, or voluntary manslaughter. 18 Pa. Cons. Stat. Ann. §§2601 to 2609 (1998).

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).

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).

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 murder, manslaughter, or negligent homicide. Enacted April 9, 1999, 1999 AR H.B. 1329. (A separate Arkansas law makes it a battery to cause injury to a woman during a felony or 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.)

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. Fla. Stat. Ann. §782.09 (West 1992).

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).

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).

Michigan—The killing of an ''unborn quick child'' is manslaughter. Mich. Stat. Ann. §28.554 (Callaghan 1990). The Supreme Court of Michigan has interpreted this statute to apply to only those unborn children who are viable. *Larkin* v. *Cahalan,* 208 N.W.2d 176 (Mich. 1973). (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 physical injury to an ''embryo or fetus.'')

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).

STATES WITHOUT UNBORN VICTIMS LAWS, WHICH INSTEAD CRIMINALIZE CERTAIN CONDUCT THAT ''TERMINATES A HUMAN PREGNANCY'' OR THAT CAUSES A MISCARRIAGE (7)

Note: These laws are gravely deficient, because they do not recognize unborn children as victims, nor allow justice to be done on their behalf. These laws are included here for informational purposes.

Indiana—An individual who knowingly or intentionally ''terminates a human pregnancy'' commits feticide. Ind. Code Ann §35–42–1–6 (Burns 1994 & Supp. 1998).

Iowa—An individual who intentionally ''terminates a human pregnancy'' without the consent of the pregnant woman commits a felony. This law also sets forth other crimes involving the termination of a human pregnancy, such as during the commission of a forcible felony. Iowa Code Ann §707.8 (West Supp. 1999).

Kansas—Injury to a pregnant woman during the commission of a felony or misdemeanor which causes a miscarriage results

in specific levels of offense severity. Kan. Stat. Ann §21–3440 (1997). Also, injury to a pregnant woman through the operation of a motor vehicle which causes a miscarriage results in specific levels of offense severity. Kan. Stat. Ann. §21–3441 (1997).

New Hampshire—It is a felony to cause injury to another person that results in a miscarriage or stillbirth. N.H. Rev. Stat. Ann §§631:1–631:2 (1996).

New Mexico—It is a felony to injure a pregnant woman during the commission of a felony and cause her to undergo a miscarriage or stillbirth. N.M. Stat. Ann. §30–3–7 (Michie 1994). It is also a crime to injure a pregnant woman through the unlawful operation of a vehicle which causes her to undergo a miscarriage or stillbirth. N.M. Stat. Ann §§66–8–101.1 (Michie 1998).

North Carolina—It is a felony to injure a pregnant woman during the commission of a felony and cause her to undergo a miscarriage or stillbirth. It is a misdemeanor to cause a miscarriage or stillbirth during a misdemeanor act of domestic violence. N.C. Gen. Stat. §14–18.2 (Supp. 1998).

Virginia—The premeditated killing of a pregnant woman with the intent to cause the termination of her pregnancy is capital murder. Va. Code Ann. 18.2–31 (Michie Supp. 1998). The unpremeditated killing of a pregnant woman with the intent to cause the termination of her pregnancy is also a crime. Va. Code Ann. §18.2–32.1 (Michie Supp. 1998). It is a felony to injure a pregnant woman with the intent to maim or kill her or to terminate her pregnancy and she is injured or her pregnancy is terminated. Va. Code Ann. §18.2–51.2 (Michie Supp. 1998).

New York: 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).

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

I just wanted to comment on the gentleman's argument about other States having similar laws, and so why can we not do the same thing? The reason we have not done the same thing is that many of these State laws are obviously drafted differently. They do not use controversial terms, some of them, as ''unborn child'' or ''child in utero.''

The second thing is that none of these State laws have been validated or upheld in a Federal court, let alone a Supreme Court decision. They have not been tested. So I do not think that gives us a presumption that we can copy State law. I say to my colleagues, we should be creating Federal law that States may want to pattern themselves after.

Then, we might want to take into consideration the experience with State laws that have not been very favorable on this subject. Some of these laws have been used as excuses to justify prosecuting women for their conduct while they are pregnant. A whole host of problems arise this way.

In South Carolina, ironically, now they prosecute women whose babies are found to have drugs in their system; the mothers are prosecuted. In another case, the court ordered into custody a pregnant woman who refused medical care because of religious convictions, in an attempt to ensure that the baby be born safely. We had a National Public Radio case about a pregnant woman being forced into custody at a State medical facility in Massachusetts to ensure that her baby was born safely. In another case, a court sent a student to prison to prevent her from obtaining a midterm abortion.

So I say to my colleagues, let us stop pointing recklessly to all of these laws in State courts as if they are giving us a reason to make the same kind of untested legislation that they are doing.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentlewoman from Virginia (Mrs. JO ANN DAVIS).

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, despite the claims of my colleagues who oppose H.R. 503, this legislation before us today is not about abortion. It does not infringe on a woman's legal right to abort her child. It does not place legal limitations upon those in the medical profession who perform abortion. In fact, the only time this bill even mentions abortion is to protect the woman's legal right to have one, and the doctor's legal right to perform them. Yet, those who oppose this bill would like the American people to believe that this is an attempt to reverse Roe v. Wade.

This leads me to ask my colleagues who oppose this bill, why the smoke screen? Why are they so fearful of protecting a pregnant woman and her unborn child? Why are they standing in the way of legislation which provides protection for a woman against violence? Recognizing the unborn child as a victim of crime does not affect the woman's legal right to abort the child.

Mr. Speaker, the smoke screen of abortion used by those in opposition to this bill will not work. The majority of Congress and the American people know that a woman and her unborn child must be protected against criminal acts of violence. When a pregnant woman is assaulted and bodily harm is brought about to her unborn child, there are two victims, not one.

This bill was not introduced to erode current abortion law. Let me tell my colleagues why this bill was introduced. Currently, under Federal law, if a criminal assaults or kills a woman who is pregnant and thereby causes the death or injury to that unborn child, the criminal faces no consequences for taking or injuring this unborn life. That is why this bill is introduced, and that is why it is a tragedy that this worthwhile piece of legislation is being muddled in abortion politics by those who instinctively reject any bill that deals with the child in the womb.

It is unfortunate that those in opposition to this bill today believe that a victim such as Zachariah Marciniak, whose story has been described previously by my colleagues, was not a child or not a human being. I wonder how many of my colleagues would suggest that when planning for the miracle of a birth, in painting the nursery, attending baby showers, buying a crib and clothes, often name the child before he or she is delivered, all in preparation for a newborn, is not preparation for a life, a life that lives within.

Mr. Speaker, I strongly believe, like the father who lost his wife in the Oklahoma City bombing, that the loss was even greater. He lost his wife and his unborn baby. In that awful tragedy, we as a nation lost not 168, but 171 people, as three of the women killed during that atrocity were with child. They were murdered along with their mothers.

Consider also the fact that last year the House of Representatives passed the Innocent Child Protection Act by a vote of 417–0. This bill prohibited a State or Federal Government for executing a woman ''while she carries a child in utero.'' That bill, which again passed unanimously, defined ''child in utero'' the same way it is defined in the Unborn Victims of Violence Act. If the House is, without dissension, willing to protect unborn children from execution, why is it controversial to also protect unborn children from a deadly assault?

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentleman from Pennsylvania (Mr. GREENWOOD).

Mr. GREENWOOD. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, those in the gallery, those watching this debate on national television around the Nation might assume that the reason that we are spending these hours on the floor pursuing this legislation is because we are trying to solve a problem, that there is somehow a problem that exists, that out in America on Federal property women are being assaulted, and they are losing their fetuses in those assaults, and their perpetrators are going unpunished or going too lightly punished.

□ 1230

I do not think there is any evidence at all that that is the problem. If it were, this legislation would be a priority for the police and law enforcement officials of our country. This would be a priority for the district attorneys in our counties. This would be a priority for the attorneys general. This would be a priority for the coalitions against domestic violence.

That is really not why we are here. My friend, the gentleman from South Carolina (Mr. GRAHAM), is a good friend of mine. I admire him more than I admire many Members of this Congress. He is a good man.

But I think in truth we all know that this bill is here because it is aimed at abortion politics. This bill is

strategized, is being pushed. The grassroots organizations that are pushing for this legislation are pushing it because they are part of the anti-abortion part of this country's population.

The reason they do that is because for the last 30 years abortion has been legal in this country and because the courts have said that, particularly in the early stages of a woman's pregnancy, the choice of what to do with that pregnancy is hers. It is well-established law.

How do you defeat that? You do not bring an amendment to the floor to change the Constitution in that regard. That is not popular in this country. So we bring bills like this, which are designed to come in the back door, and try to define a fetus as a human being, a full person.

This is brought here for the purpose of abortion politics to establish in law under the guise, under the obviously compelling notion that we want to protect women against violence, when its purpose is really quite otherwise.

If those Members who are really interested in solving this problem will support the Lofgren amendment, this really does get tough on those who would assault a pregnant woman; it does get tough, and does not have the ulterior motive of trying to play abortion politics with something as critical as a woman's assault.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). The Chair would remind all Members that it is not appropriate under the rules of the House to refer to our guests in the gallery.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. BRYANT).

Mr. BRYANT. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I strongly support this bill. One of the reasons to address a comment made by the prior speaker about there are not crimes like this being committed out there, I want to cite the March edition of the Journal of the American Medical Association, which published a study revealing that the leading cause of death among pregnant women in the State of Maryland was not health-related ailments, but rather, murder.

This is not simply a case that might occur on Federal property, but it covers a range of potential offenses where it is important for that unborn child to be recognized, and if injured or killed, appropriate punishment be given for that unborn child as well as the pregnant mother. In kidnapping cases, that is a Federal offense; in drug deals gone bad, bank robberies, and even the most recent example of Oklahoma City and the terrorism there, and the fact that there were three unborn children killed in that.

This type of violent act is exactly what H.R. 503 is designed to hopefully deter. We can maybe deter some of these offenses from taking place, and if necessary, if they occur, to appropriately punish them.

This bill will correct the failure of both Federal and military law to treat a criminal assault against a pregnant woman as an additional crime perpetrated against the unborn child. Currently, as has been said numerous times today, even one who purposely kills an unborn child, who sets out to kill that unborn child, has not committed a Federal crime, as the law now stands.

Let me make three additional points, if I could, very quickly. This is not an abortion vote. The sky is not falling on the issue of pro-choice pro-life. I do not understand why people come up here and stand and say that this is an abortion vote. I respect their opinion; but in reading the bill, I do not understand it.

Someone maybe can connect the dots for me on this, because if this bill is wrong, it is unconstitutional. It does not square with Roe v. Wade. This bill is not going to overturn Roe v. Wade; this bill will be held unconstitutional with Roe v. Wade being cited. So if there is a problem there, this bill is not going to overturn Roe v. Wade. It will be the other way around.

This act specifically excludes abortion, an abortion procedure consented to by the mother. It also specifically excludes any action by the mother which results in harm to the unborn child. So all these South Carolina cases and other cases that have been cited would not apply here. They are not covered.

To me, it should not matter whether one is pro-choice or pro-life, one ought to be able to support this bill. As has been mentioned several times already, this definition is something that is not new to this House. Last year we voted 417–0 to prohibit the death penalty being given to a pregnant woman. We use that same definition.

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

Mr. Speaker, I just want to remind my friend, who is a former member of the Committee on the Judiciary, who assured us that Roe v. Wade was not under attack, well, most people understand that it is under attack. That is why the National Abortion and Reproductive Rights Action League is opposed, Planned Parenthood Federation of America is opposed, the National Abortion Federation is opposed, the National Women's Law Center is opposed.

Does the gentleman think they do not understand this bill very much? I think they do.

The National Partnership for Women and Families, they are opposed. The Center for Reproductive Law and Policy, they are opposed. The American Civil Liberties Union, they are opposed. The Feminist Majority, they are opposed. The American Association of University Women, they are opposed. The National Family Planning and Reproductive Health Association, they are opposed. The American Women's Medical Association, they are opposed. The National Coalition Against Domestic Violence, they are opposed. The National Council of Jewish Women, they are opposed. The National Organization for Women, they are opposed. The Physicians for Reproductive Choice in Health, they are opposed. The People for the American Way, they are opposed.

Now, they do not understand what the Members are trying to do, do they? They do not get it? They have misunderstood the bill of the gentleman from South Carolina? All of these organizations, a dozen of them, they should relax, Roe v. Wade is not under attack. The gentleman in the well on the Republican side just told us so. It is okay. Relax.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I stand here today in opposition to H.R. 503.

As the mother of a pregnant daughter and the mother-in-law of a pregnant daughter-in-law, a proud grandmother of Isabel and Eve, the sense that somehow I do not understand the incredible mystery and magic and holiness of a pregnancy because I do not support this legislation, I really resent that very much.

We look forward in our family to welcoming these two new babies, and a crime against my daughter or daughter-in-law would be absolutely devastating, and even more so because each is pregnant. We all agree on that.

That is the part that I do not get. We all do agree that we need to change the law to add penalties because a crime against a pregnant woman is really devastating. Why can we not agree on that? We have the Motherhood Protection Act, the Lofgren amendment, that does just that, it increases the penalties. It is not their bill or no bill. We could agree that we should increase the penalties.

I am happy to connect the dots for the gentleman on why this is an anti-abortion bill. It creates personhood for even a fertilized egg equal to that of a woman. That does not make any sense. Even if she does not know she is pregnant, that fertilized egg now has equal value to her.

We should create law that recognizes that this is a devastating crime, and we should increase the penalties if my daughter or my daughter-in-law is violently assaulted. We agree on that.

Why do we not, then, move forward as a body in agreement that we should pass this amendment? It does not detract. In fact, it increases the deterrent against violence against women at a time when more violence than other times occurs. Pregnancy is an incentive for violence against women. That is when it occurs more.

Let us get together and pass the Lofgren amendment.

Mr. CONYERS. Mr. Speaker, I am delighted to yield 2 minutes to the gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, most of the Members of the House remember that I served as a prosecutor and a judge before I came to Congress. In fact, I served as a prosecutor with the acting Speaker this afternoon in the State of Ohio.

I hear the cry for legislation to deal with a situation that none of us want to happen, a situation where harm comes to a woman while she is pregnant. I hear the cry under the veil that we as Members of Congress have to stand up for pregnant women, and we have to do things so nothing happens to pregnant women.

But legislation is not the only answer to help pregnant women who are harmed. There are other ways in which we can help them. In fact, the Violence Against Women Act legislation could have helped women in this circumstance.

But be that as it may, as we are debating legislation, one of the jobs of a good legislator is to make sure that when we pass the legislation that we know it will stand up to judicial scrutiny. For those who are the proponents of this legislation, if they only look to it, they will recognize that it has problems to the extent that a judiciary would send this back.

As a prosecutor, I tried my darnedest to never take a case into court if I knew the law had a problem, because how could I explain to the victim that I prosecuted the case with the knowledge that the law had a problem that would not stand appellate scrutiny?

Let us look at why this legislation has some dilemmas. The provision or key phrase ''child who is in utero'' is vague. It makes it difficult to get before an appellate court and explain the vagueness of that phrase.

The legislation lacks a mens rea requirement, that one did not know or have reason to know that the woman who is the victim of the crime was pregnant.

And then even more importantly, the legislation lacks a predicate for the offense, that the crime against the woman be first established.

Now, to my colleagues who want to push for women who are harmed while they are pregnant, we offer them an alternative. We offer them an alternative that we as good legislators believe will withstand the scrutiny of an appellate court. We offer them an alternative that provides for the same penalty, that we believe is consistent with current law, regardless of what is happening in the other States.

As has previously been said, let us try and be 435 strong in favor of pregnant women who are harmed. Let us step up to the plate and say that this Congress, on a bipartisan basis, regardless of our view on choice, regardless of our view on many other issues, and we have not agreed on much since we have been here in this 107th Congress, but let us choose this legislation to agree on; that regardless of our position, we will support the Lofgren alternative.

Mr. CONYERS. Mr. Speaker, I yield 4 minutes to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, I rise today in opposition to the Unborn Victims of Violence Act of 2001. This bill will be the first, the first in the Federal statutes, to give separate legal status to a fetus.

The proponents of the legislation claim that they are protecting the mother, but that is not their true intention. If it were their true intention, why would the anti-choice right-to-life groups support the bill, and why would the domestic violence victims advocacy groups oppose the bill?

If people were so concerned about violence against pregnant women, why are not those pregnant women even mentioned in the bill?

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If the issue is about violence to women, why do the proponents of the bill not support the Lofgren substitute, which is concerned about the woman and her fetus? Mr. Speaker, the majority of Americans are pro-choice and they depend on this Congress to protect a woman's right to choose while simultaneously working to make abortion a rare occurrence. The women of this country count on us as legislators to craft Federal policies that are really intended to protect their health and well-being. They rely on us to pass legislation that will protect their reproductive choices. Women depend on us to know the difference between legislation that is truly intended to protect them and a poorly disguised vehicle designed to reopen the debate on Roe v. Wade.

We are not fooled by this legislation, Mr. Speaker, and, frankly, neither are the women we represent. If Members of this House really care about taking steps to protect pregnant women and to punish the terrible perpetrators who mercilessly beat them, then we will all join together, pro-life and pro-choice, and join hands across the aisle to vote for the Lofgren substitute.

The Lofgren substitute actually, as we will hear, provides greater levels of punishment to the perpetrators of the heinous crime of harming a pregnant woman. In fact, there is only one difference between the substitute and the underlying bill; and that underlying difference reveals the true goal of H.R. 503. The underlying bill creates a Federal criminal offense that provides a pregnancy from conception to birth with a legal status separate from that of the mother.

Regardless of what we are hearing today from proponents of this legislation, there is only one reason to support this new criminal offense over the Lofgren substitute, and that is to take the first step of defending a fetus at any stage of development as a person.

If the supporters of this legislation want to debate the merits of abortion, I think we should do it out in the open. They should be embarrassed about cloaking their true intent in an issue. They should be embarrassed about cloaking their true intent on an issue that we all agree upon and that we care deeply about, and that is protecting pregnant women from violence.

But the fact is, this is intentional; and the reason is there is a great reluctance on the part of the proponents of this bill to openly debate the issue of a woman's right to choose in this Chamber. Opponents of the right to choose know they are out of step with the majority of the American public, and so they are working sideways to begin to erode that right in our statutes.

We keep hearing that those who support this bill talk about two victims. But what they are omitting is the fact that this act does not mention women. So, in fact, the bill is not about two victims at all.

Mr. Speaker, the Lofgren substitute improves the bill. It is a good alternative. It punishes the perpetrators. I urge adoption of the amendment; and if the amendment is not adopted, I urge defeat of the ill-intentioned legislation.

Mr. CONYERS. Mr. Speaker, it is my pleasure to yield the balance of my time to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE), a ranking subcommittee member of the Committee on the Judiciary.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished ranking member for yielding me this time.

Mr. Speaker, let me quickly discuss something that is extremely private and extremely important. When I first came to this Congress, we started discussing this concept called partial-birth abortion.

As a new Member, I was unaware of a procedure that was out of line of a decision between mother and physician and God. But all of a sudden, this Congress began to raise its head about something called partial-birth abortion. It simply was a procedure that doctors were using to save the lives of mothers who wanted to have children.

We come here today, as the New York Times has said, with another scheme very personal for me, because I have had pregnancies that have survived and those that have not. I wish I did not have to come to the floor of the House to discuss this.

But I believe the Lofgren substitute speaks to the concern that we have as Americans. How dare you assault a woman who is pregnant. How dare you abuse her. How dare you take her as girlfriend or wife or friend and abuse her and cause the loss of that pregnancy. The Lofgren substitute answers that concern. If that woman is injured that results in an injury to that pregnancy or a death, that means that that pregnancy does not come to term, you will be faulted and convicted, 20 years or maximum life.

This is a scheme. Year after year after year, this is an attempt to violate

Roe v. Wade. Why? Because H.R. 503 does not speak to that woman who has been violated and abused. It simply says that we are tying it to that embryo. Why? Because we want to say to America that we are trying to destroy Roe v. Wade. That is a privilege of the American people. That is the constitutional law. That is the law of the land. That is the Supreme Court decision.

In committee, I tried to offer an amendment that would suggest to us whether the opposing side is truly sincere; and that amendment said that replacing unborn children in H.R. 503 to violence during pregnancy, that gets to the issue. It says that, if there is violence during pregnancy that resulted in the loss or injury to the woman and then the fetus, then there would be penalty.

But, no, they refused because they want to ensure that there is no relationship to that pregnant woman, there are no feelings about that pregnant woman. It is only to tear apart Roe v. Wade.

Let me say, Mr. Speaker, this is a constitutional issue because it comes to the Subcommittee on the Constitution of the House Committee on the Judiciary, and the very reason is to undermine Roe v. Wade.

I have passion and I have feelings about any woman who involuntarily is forced to lose that child that she is carrying. There is no doubt that our hearts are pure on both sides of the aisle. But this body is forced to follow the law. Vote for the Lofgren substitute and defeat that bill because this is an unconstitutional attack on the right to choose and the privacy of every American.

Mr. Speaker, I rise in very strong opposition of H.R. 503, ''Unborn Victims of Violence Act of 2001.'' This is an unacceptable attempt to create a legal status for the unborn, which would could have enormous adverse ramifications for women in America.

Let me be clear. I would like to express my opposition to H.R. 503, ''Unborn Victims of Crime Act'' because I believe this is a veiled attempt to create a legal status for the unborn. While we would all like to protect pregnant women and the fetus from intentional harm by others, this bill seeks to create a legal status that will give anti-abortion advocates a back door to overturning current law. I have seen similar legislation come before our committee and I am sorry to see it before the Congress yet again.

I believe that the cosponsors of this bill had good intentions when it was introduced, but the practical effect of this legislation would effectively overturn 25 years of law concerning the right of a woman to choose.

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

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

H.R. 503 would amend the federal crime code to create a new federal crime for bodily injury or death of an ''unborn child'' who is in utero. In brief, there is no requirement or intent to cause such death under federal law. The use of the words as ''unborn child,'' ''death'' and ''bodily injury'' are designed to inflame and establish in federal precedent of recognizing the fetus as a person, which, if extended further, would result in a major collision between the rights of the mother and the rights of a fetus. While the proponents of this bill claim that the bill would not punish women who choose to terminate their pregnancies, it is my firm belief that this bill will give anti-abortion advocates a powerful tool against women's choice.

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

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

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

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

In the unfortunate cases of random violence, we need to strengthen some of our other laws, such as real gun control and controlling the sale of explosives. These reforms are more effective in protecting life than this bill.

We do not need this bill to provide special status to unborn fetuses. A better alternative is to create a sentence enhancement for any intentional harm done to a pregnant woman. This bill is simply a clever way of creating a legal status to erode abortion rights.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have heard people opposed to this bill say time and time again that this bill takes away the right to choose, and they are so so wrong. This bill respects the right of those who have chosen to carry their baby to term, because they want the baby to be born.

The opponents of the bill have massed their arguments saying that we are providing legal protection for fertilized eggs and zygotes and blastocysts, but they ignore the fact that this bill provides protection regardless of at what stage of development the unborn child is.

They would turn around and say defeat this bill because this dead child as a result of an act of violence against a woman in my home State of Wisconsin should not be protected. This is a child that was about ready to be born before he was murdered. The man who committed this crime, because it was a mere assault on the mother, is now out of prison.

We have to pass this bill so that somebody who kills a child like this one spends a lot of time in prison to pay for his crime.

Mr. GILMAN. Mr. Speaker, I rise today in opposition to a bill that I find troublesome on many levels. H.R. 503, the Unborn Victims of Violence Act, at first glance, seems to be a compassionate piece of legislation that harbors only good intentions towards women. However, Mr. Speaker, this legislation has a significant impact on the Supreme court's findings in Roe v. Wade.

This measure would conflict with the Supreme Court's ruling in Roe v. Wade, and the constitution in general.

An alternative measure that I have reviewed and which I can support is the Lofgren substitute amendment.

Under the Lofgren proposal, a separate federal criminal offense would be created for any harm done to a pregnant woman; the pregnant woman being recognized as the primary victim of a crime causing the termination of a pregnancy. An offense would be created that protects women and punishes violence resulting in injury or termination of a pregnancy; a maximum 20-year sentence would be provided for the injury to a woman's pregnancy and a maximum life sentence for termination of a woman's pregnancy; and focuses on the harm to the pregnant woman, providing a deterrent against violence against women.

This amendment, otherwise known as the Motherhood Protection Act, provides for the full protection of expectant mothers against violent crimes without legislating any direct conflict with the highest court of the land.

If the supporters of H.R. 503 are truly concerned about protecting of pregnant women, then let us craft a bill that can be supported by all involved, and actually speaks to women's rights instead of advancing the pro-life agenda in this backdoor fashion.

When a crime is committed against pregnant women which results in the termination of the fetus, a tragedy has occurred. Accordingly let us adopt legislation that recognizes this tragedy without recognizing something antithetical to the Supreme Court's prior decision.

Mr. HOLT. Mr. Speaker, I rise today to express my opposition to H.R. 503, the ''Unborn Victims of Violence Act.'' This bill continues to demonstrate the troubling tendency in Congress to undermine women's constitutional reproductive rights.

Since 1973 and the Roe v. Wade decision, we have seen Congress slowly chip away at women's right to choose in an effort to ultimately nullify this landmark decision. H.R. 503 is an ill-disguised attack on Roe v. Wade. That is because at root it is an attempt to redefine when life begins.

The bill seeks to create a separate Federal criminal offense for criminal acts that cause death or bodily injury to the ''unborn'' fetus. Tellingly, it does not create any comparable offense for killing or injuring the woman bearing the fetus. I think that makes it clear that the real purpose here is not to protect the victims of violence, but to try to get Congress on

record as specifying that life begins at conception.

There are serious threats to women, including women bearing children, that we need to address. Domestic violence is the single greatest cause of injury to women. Although the statistics vary, according to the American Medical Association, approximately four million women were physically abused by their husbands or live-in partners in 1998. That means that 10,959 women on average are abused every day. This statistic is deeply disconcerting.

Domestic violence crimes resulting in the loss of pregnancy are terribly tragic, and these acts should be punished, but H.R. 503 is not the proper approach to eradicating this problem. We need to concentrate our efforts on protecting abused women by passing measures, such as the reauthorization of the Violence Against Women Act, to promote protection from violence as well as increasing assistance to abused women. That is why I support the amendment proposed by the gentlewoman from California, Congresswoman LOFGREN.

Mr. Speaker, I strongly urge my colleagues to help these victims of violence and protect their well being. Domestic violence is a national concern, and we need to do everything within our capabilities to make sure that it receives due attention. Let us avoid passing any Federal law that will undermine a woman's right to choose as protected by the Constitution of the United States, and let us focus on the real issue at hand—eradicating violence against women.

Mr. TIAHRT. Mr. Speaker, I rise today in strong support for H.R. 503, the Unborn Victims of Violence Act.

This important legislation would finally make it a separate Federal offense to cause death or bodily injury to a child in utero in the course of committing an already defined Federal offense. It is imperative that we hold criminals responsible for conduct that harms or kills an unborn child. I cannot understand the opposition to this bill. It will not affect abortion laws, it merely affirms that a violent act against a pregnant woman affects not only her but her unborn child as well. There are most certainly two victims in such crimes, as 24 States have already recognized.

I am horrified by stories such as that of Tracy Scheide Marciniak who was only 4 days from delivering her baby boy Zachariah. Four days. For 9 months she had been eagerly awaiting his arrival, planning for his birth and life, bonding with him in her womb. Unfortunately, her husband brutally attacked her, targeting a few blows specifically on her abdomen. Zachariah bled to death in her womb because of the blunt-force trauma. Tracy nearly died herself but did recover from her injuries and had to bury her baby boy without ever getting a chance to see him alive. At the time Wisconsin did not have an unborn victims law so Glendale Black was convicted on a assault to her alone and is now eligible for parole. The law did not recognize the loss of Zachariah's life and Glendale Black did not pay for his crime.

Ohio is one of the states where it is a crime to kill an unborn child in a violent act. Unlike Zachariah, Jasmine Robbins' father was prosecuted for her manslaughter. Gregory Robbins assaulted his wife Karlene who was 8 months pregnant with their daughter Jasmine. he repeatedly struck her in the face and abdomen. Due to the assault, Karlene' uterus ruptured and Jasmine died. Gregory Robbins pled guilty to assault and battery to his pregnant wife and involuntary manslaughter for Jasmine's death.

Jasmine's murder is no less tragic than Zachariah's but at least her mother did not have to suffer the heartbreak of not having her murder recognized under our laws.

We live in a society that does not respect life and that troubles me. We have children killing children in our schools, husbands beating their wives, and other violent crimes signifying that we as a culture do not value and treasure life as we should. A good first step towards recognizing the miracle of life is to ensure that those who take a life are punished for their crime.

We cannot bring back Zachariah or Jasmine or the other hundreds of unborn children violently murdered. We can, and must, however, protect other unborn children from the same fate. We must respect life and make criminals pay for attacks against all Americans, born and in utero.

Mr. CAPUANO. Mr. Speaker, today I rise in opposition to H.R. 503, the Unborn Victims of Violence Act. While many proponents of this bill contend that it is necessary to protect pregnant women from assault which results in the death of her fetus, I believe that this bill could jeopardize a woman's right to choose. I say this because H.R. 503 attempts to legally recognize the fetus as a ''person'' with rights and interests separate from and equal to those of the woman. In fact, if H.R. 503 is enacted into law, it will be the first time a federal law recognizes a zygote, embryo, or fetus as an independent victim of crime entitled to full legal rights distinct from the woman.

I would like to make it clear that I am not advocating leniency for a perpetrator of abuse against a pregnant woman. Instead, I believe that we need to recognize that the true victim of a violent act is the woman first and foremost.

Last year, I supported the Motherhood Protection Act which established a separate offense for abusive conduct against a pregnant woman resulting in the termination of her pregnancy. This crime would be punishable by a fine and imprisonment of up to 20 years, and if the pregnancy is terminated, regardless of if it was intentional, the assailant could be sentenced to life in prison. I will support this substitute again today.

It is undeniably a tragedy when a violent act committed against a woman results in the termination of her pregnancy. Actually, I believe it is a tragedy when violence against women, whether pregnant or not, is carried out. However, I believe the best way to enforce the law is to help the woman, not unnecessarily bring the threat of rescinding the right to choose into the debate.

Mrs. CHRISTENSEN. Mr. Speaker, I rise in strong opposition of H.R. 503, the Unborn Victims of Violence Act of 2001 and in support of the Lofgren-Conyers substitute.

While I fully support punishment for violent acts against women at any and every time, but most especially against pregnant women, the Unborn Victims of Violence Act of 2001 should be opposed. This bill as drafted will diminish, rather than enhance the rights of women and do nothing to protect pregnant women from violence.

Additionally, it is worthy to note, that H.R. 503 is unanimously opposed by a plethora of groups whose mission is the protection of women's rights and who oppose domestic violence; including Planned Parenthood Federation of America, the Women's law Center, the American Medical Women's Association, National Coalition Against Domestic Violence, National Council of Jewish Women and People for the American Way.

I support the Lofgren-Conyers substitute because it would protect pregnant women while upholding a woman's constitutional right to choose. We must focus on the goals that H.R. 503 calls for, which is to deter acts of violence against pregnant women that cause injury to their fetuses or the termination of a pregnancy. We must do so, however, without opening the door to overturning Roe v. Wade and making an abortion a federal crime.

Mr. RYAN of Wisconsin. Mr. Speaker, I would like to submit for the RECORD an article about Tracy Scheide Marciniak, a fellow Wisconsinite. She was brutally beaten 4 days before she was supposed to give birth to her son, Zachariah. I would like to submit her story for the RECORD.

Her husband at the time punched her twice in the abdomen and brutally beat her. Her husband refused to call for help until it was too late. By the time she reached the hospital, Zachariah had died from blunt force trauma. Her ex-husband, Glendale Black, was convicted of assaulting his wife, but not of murdering Zachariah, their unborn child.

In the aftermath of this violent crime, the Wisconsin Legislature enacted one of the nation's strongest unborn victim's laws. Regardless, there is no coinciding federal law. If this incident were to happen today in a federal jurisdiction, the killer would still only be prosecuted for assault. This needs to change.

H.R. 503, the Unborn Victims of Violence Act, can fix this injustice. Passage of this bill would make it a federal crime to harm an unborn child during a violent criminal act. Federal judges could impose the same punishment as if injury or death occurred to the unborn child's mother, except for the death penalty.

I disagree with those who believe that Zachariah was not yet a human being. Had his mother gone into labor a week before her husband abused her, Zachariah would today be a healthy and happy child. There was no difference between the Zachariah that was in his mother's womb when she was beaten with a Zachariah that may have been born a week earlier. He was still a living person. There should be no exception in the criminal code for violent acts on babies inside the womb as opposed to those who are in their mother's arms. The current law makes no logical sense and should be changed according to this act.

Zachariah is a biblical name. In the Bible, Zachariah and his wife Elizabeth were faithful followers of God's commandments. They never had any children and were both too old to do so. As Zachariah entered a room within the temple he presided over, Gabriel appeared before him and told him that he and his wife will have a son. God blessed this couple for being faithful. Their child was blessed, as was Tracy's child. In scripture, Zachariah means ''God remembers.''

We will not forget Zachariah. Because of him, hopefully violent offenders will not only be deterred from hurting pregnant mothers, but from harming their unborn children.

ONE VICTIM . . . OR TWO?

My name is Tracy Scheide Marciniak.

On February 8, 1992, I carried within my womb an unborn baby boy, Zachariah. We were in our ninth month, only four days from delivery.

That night, the man to whom I was then married, Glendale R. Black, brutally beat me. 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 doing so.

When he relented, I was taken 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 within my womb because of blunt-force trauma. I nearly died, but I recovered.

In 1992, Wisconsin, where the crime occurred, did not have an unborn victims law, and state prosecutors were unable to convict Glendale Black under a law that required them to prove that the assault was intended to kill Zachariah. So, Black was convicted of his assault on me, but not of any charge that recognized the loss of Zachariah's life. He is already eligible for parole.

In 1998, in response to my case and others like it, the Wisconsin Legislature overwhelming enacted one of the nation's strongest unborn victims laws.

But federal law still fails to recognize unborn victims, like Zachariah. Even today, if Zachariah had been killed in the same manner in a federal jurisdiction, his killer could be prosecuted only for assault.

That is wrong. Congress should approve the Unborn Victims of Violence Act (H.R. 503, S. 480). Under this bill, if an unborn child is injured or killed during the commission of an already-defined federal crime of violence, that child will be recognized as a victim.

Opponents of the bill have put forth a counterproposal, known as the Lofgren Amendment. I have read it, and it is offensive to me, because it says that there is only one victim in such a crime—the woman who is pregnant.

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

Any lawmaker who is thinking of voting for the Lofgren ''one-victim'' amendment should first look at the picture of me holding my dead son at his funeral.

Then I would say to that representative, ''If you really think that nobody died that night, then vote for the 'one-victim' amendment. But please remember Zachariah's name and face when you decide.''

Mr. BLUMENAUER. Mr. Speaker, today I voted in opposition to H.R. 503, the Unborn Victims of Violence Act. Since the landmark Roe v. Wade Supreme Court decision, Congress has slowly passed legislation that has eroded women's reproductive choices. This is a personal and private decision that should be made by a woman, her family, her physician, and her beliefs, not subjected to increasing levels of government interference.

Rather than being merely a good faith effort to protect pregnant mothers from violence, the ''Unborn Victims of Violence Act'' is actually a back door attempt to interject government into individuals private lives. Harsh penalties already exist in 38 States for crimes against pregnant women that result in the injury or death of her fetus.

The overwhelming majority of crimes against pregnant women that cause injury to her fetus occur in cases of domestic abuse or drunk driving accidents, instances that are prosecutable under currently existing state laws. H.R. 503 would do nothing to add to the existing protections against these serious and prevalent crimes. Nearly one in every three adult women experiences at least one physical assault by their partner during adulthood. Drunk driving accidents continue to result in substantial loss of life in every city across the nation. Instead of focusing on purely political measures aimed at the erosion of a woman's reproductive freedom, we should be protecting women from violence and increase assistance to women in life threatening domestic situations.

I did support the Lofgren Amendment that would have enacted strict punishments for crimes that result in the injury or death of the fetus with out the inclusion of constitutionally questionable language. If protecting pregnant women from violent crime were truly our priority, Congress would have passed this amendment to H.R. 503.

Mr. BENTSEN. Mr. Speaker, I rise in strong opposition to H.R. 503, legislation that does nothing to end violence against pregnant women but rather is a backdoor attempt to give a fetus the same legal status as the assaulted woman. Specifically, this measure affords a pregnancy at ''all stages of development'' legal rights that are equal to, and separate from, those of the woman. Though abortion is explicitly excluded from this bill, it clearly establishes new legal rights for the ''unborn child'' and would be a major step toward dismantling Roe v. Wade. The penalty would be equal to that imposed for injuring the woman herself and would apply from the earliest stage of gestation whether or not the perpetrator knew of the pregnancy.

In recent days, advocates of H.R. 503 have bombarded us with bone-chilling accounts of pregnant women being subject to heinous assaults. Clearly, no one in this body believes such acts of senseless violence should go unpunished. I strongly believe that violent crimes committed against women and in particular, pregnant women, should be punished to the fullest extent of the law. Moreover, we, as lawmakers, have a responsibility to ensure that Federal law properly addresses such violence. That being said, H.R. 503 does nothing to combat domestic violence. In fact, the National Coalition Against Domestic Violence has come forward in opposition to H.R. 503, arguing that it would only divert the attention of the legal system away from violence against women. Unfortunately, this bill is a canard, a red herring, purporting to do one thing while actually accomplishing another.

Mr. Speaker, rather than immersing this House in the theatrics of abortion politics, as the underlying bill does, Congress can make a difference in such heinous cases. The Lofgren substitute, known as the ''Motherhood Protection Act'' would more effectively address the concern of violence against pregnant women, creating a separate Federal criminal offense for harm to a pregnant woman. Specifically, under the Lofgren substitute, assaults of women that compromise a pregnancy would be subject to a maximum 20-year sentence and, if the assault results in termination, could mean a life sentence. Thus, under this measure, assaults that result in injury or death of an ''unborn child'' would be subject to the same punishment provided under Federal law as for the violent act against the woman. These penalties would be in addition to any punishment imposed on the assailant for the underlying offense. The key difference between the Lofgren alternative and H.R. 503 is that it does not create a new legal status for the ''unborn child.''

Mr. Speaker, the question at hand is what Federal law can do to address assaults on pregnant women. I am certain that my colleagues agree that such attacks should be punished to the fullest extent of the law. The penalties in the Lofgren substitute are equal to, and in some instances, actually stronger than, those in the underlying bill. Accordingly, Mr. Speaker, let's put our difference on abortion aside and enact legislation that genuinely addresses harm to pregnant women and provides a deterrent to violence against women—the Motherhood Protection Act.

Mr. WATTS of Oklahoma. Mr. Speaker, I rise today to support H.R. 503, the Unborn Victims of Violence Act. I commend the Gentleman from South Carolina, Mr. GRAHAM on this fine piece of legislation.

Mr. Speaker, there is no greater joy than seeing your child for the first time. Personally, I would not trade that feeling for anything in the world.

However, there is no greater pain than losing a child. I have seen the pain in the eyes of potential parents who have suffered the loss of their unborn children. Mr. Speaker, if you had ever seen the look in the eyes of those parents, then you would know that you would never want to feel that pain yourself. Especially, when the unborn child was lost due to an act of violence. Under current Federal and military laws, it is not a crime to end the life of an unborn child, regardless of the circumstances.

Mr. Speaker, today this body will rise up and take a stand against this atrocity. Today, we will make this act of violence a felony and illegal under all Federal laws.

I urge all of my colleagues to protect the lives of the unborn, and protect pregnant women by voting for H.R. 503, the Unborn Victims of Violence Act.

Ms. MCCOLLUM. Mr. Speaker, in the Minnesota State Legislature, I worked to secure health care for families, to fight against domestic violence, and to protect a woman's right to reproductive health choices. In the Minnesota State Legislature, we addressed the issue of violence against women in all stages of life—working with women, their families and doctors.

I am particularly concerned about the legislation that we are considering today. It appears the intention of this legislation is to reverse the Supreme Court ruling of Roe versus Wade.

Fundamentally, this legislation seeks to redefine when life begins. I support the landmark decision of Roe versus Wade in 1973 that establishes a woman's right to choose to terminate a pregnancy while also allowing individual States to determine the legality of such decisions as a pregnancy proceeds.

H.R. 503 fails to recognize that injury to a pregnancy is first and foremost an injury to a woman. This bill ignores the pregnant woman entirely, and would do nothing to stem violence against women. Crimes of this nature are more appropriately addressed by enhancing penalties for termination of, or injury to, a pregnancy.

H.R. 503 is said to be protection for pregnant women against a violent crime. But the words ''mother,'' ''women,'' or ''pregnant women'' are not even mentioned in the language of the bill.

I would proudly support a bill to prevent and punish the violent crimes against women and especially pregnant women. This bill does not address where and when these crimes most often occur or how to stop them.

This bill does not help the 37 percent of women who need to receive emergency help because of assault by their husband or boyfriend? Where is the legislation in maintaining a restraining order when a woman flees to another State because her life is in danger?

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

I urge my colleagues to vote for the Lofgren substitute, which recognizes that when a violent crime is perpetrated against a pregnant woman and causes injury to or termination of her pregnancy, there is additional harm to that woman.

Crimes committed against pregnant women are heinous and should be punished to the fullest extent. The Lofgren substitute actually provides harsher penalties on perpetrators of violent crimes against pregnant women than does H.R. 503.

I strongly urge my colleagues not to jeopardize the decisions women can make about their own bodies and to vote no on H.R. 503 and yes on the Lofgren substitute.

Mrs. LOWEY. Mr. Speaker, I rise in opposition to this misguided bill.

Let me make something perfectly clear from the outset: The loss or harm to a woman and her fetus is absolutely devastating to the woman and her family. Those who injure or kill a pregnant woman and her fetus should be severely punished, and families should have the legal tools to have their loss recognized. We will offer a substitute that does that, and I believe that the Lofgren substitute demonstrates very clearly that there is a lot of common ground on this issue if we would only look for that instead of looking for ways to disagree.

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

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

Frankly, this bill is just another way of writing a Human Life Amendment. In fact, the National Right to Life Committee admits that it participated in the drafting of the bill, and according to the NRTL website, ''[t]he bill challenges that [pro-choice] ideology by recognizing the unborn child as a human victim, distinct from the mother.''

If anti-choice members of this House want to recognize the fetus as a person—do that. Bring a Human Life Amendment to the floor and let us vote on it. But don't tell pregnant women in this country that you're trying to protect them with this bill when there are existing State and Federal laws to do that and when we are willing to join you in addressing the tragic cases when pregnant women are attacked. The American people are smarter than you're giving them credit for. They know that you're proposing a political statement today, not a real solution.

If you really want to crack down on cowardly criminals who would attack a pregnant woman, support the Lofgren substitute. It gets us to the same ends, without the overtly political means. And if you're serious about protecting women in this country from violence, let's fully fund the Violence Against Women Act today.

VAWA is the most effective way for us to help combat violence against women. Every year, over two million American women are physically abused by their husbands or boyfriends. A woman is physically abused every 15 seconds in this country. And one of every three abused children becomes an adult abuser or victim. The Unborn Victims of Violence Act will do nothing for these women. But VAWA makes all the difference in the world.

My colleagues, please do not be fooled. The Unborn Victims of Violence Act is not about protecting pregnant women from violent acts. Rather, it is yet another anti-choice attempt to undermine a woman's right to choose.

I have stood on the House floor many times and asked my colleagues to work with me to find ways to help women improve their health, plan their pregnancies, and have healthier children. It is tragic that every day over 400 babies are born to mothers who received little or no prenatal care, every minute a baby is born to a teen mother, and three babies die every hour. And it is tragic that 1 of every 3 women will experience domestic violence in her adulthood.

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

Please vote ''no'' on H.R. 503.

Mr. PAUL. Mr. Speaker, while it is the independent duty of each branch of the Federal Government to act Constitutionally, Congress will likely continue to ignore not only its Constitutional limits but earlier criticisms from Chief Justice William H. Rehnquist, as well.

The Unborn Victims of Violence Act of 2001, H.R. 503, would amend title 18, United States Code, for the laudable goal of protecting unborn children from assault and murder. However, by expanding the class of victims to which unconstitutional (but already-existing) Federal murder and assault statutes apply, the Federal Government moves yet another step closer to a national police state.

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

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

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

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

Perhaps, equally dangerous is the loss of another Constitutional protection which comes with the passage of more and more federal criminal legislation. Constitutionally, there are only three Federal crimes. These are treason against the United States, piracy on the high seas, and counterfeiting (and, because the constitution was amended to allow it, for a short period of history, the manufacture, sale, or transport of alcohol was concurrently a Federal and State crime). ''Concurrent'' jurisdiction crimes, such as alcohol prohibition in the past and federalization of murder today, erode the

right of citizens to be free of double jeopardy. The fifth amendment to the U.S. Constitution specifies that no ''person be subject for the same offense to be twice put in jeopardy of life or limb . . .'' In other words, no person shall be tried twice for the same offense. However, in United States v. Lanza, the high court in 1922 sustained a ruling that being tried by both the Federal Government and a State government for the same offense did not offend the doctrine of double jeopardy. One danger of unconstitutionally expanding the Federal criminal justice code is that it seriously increases the danger that one will be subject to being tried twice for the same offense. Despite the various pleas for federal correction of societal wrongs, a national police force is neither prudent nor constitutional.

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

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

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

Protection of life (born or unborn) against initiations of violence is of vital importance. So vitally important, in fact, it must be left to the States' criminal justice systems. We have seen what a legal, constitutional, and philosophical mess results from attempts to federalize such an issue. Numerous States have adequately protected the unborn against assault and murder and done so prior to the Federal Government's unconstitutional sanctioning of violence in the Roe v. Wade decision. Unfortunately, H.R. 503 ignores the danger of further federalizing that which is properly reserved to State governments and, in so doing, throws legal philosophy, the Constitution, the Bill of Rights, and the insights of Chief Justice Rehnquist out with the baby and the bathwater.

Mr. HALL of Texas. Mr. Speaker, I rise today in support of H.R. 503, and I thank Representative GRAHAM for introducing this legislation again in the 107th Congress. I am a cosponsor of this bill that makes killing a women's unborn child punishable as a Federal crime. The bill simply states that an individual who commits a Federal crime of violence against a pregnant woman and thereby causes death or injury to her unborn child will be held accountable for the harm caused to both victims, mother and child. Twenty-four States have already enacted laws which recognize unborn children as human victims of violent crimes—this bill simply gives the same protection in Federal jurisdictions.

Opponents of the bill have said that it is a back door to eliminating a women's right to choose, but this bill is about choice, Mr. Speaker, it is about respecting—and protecting—a women's choice to bring a new life into this world. H.R. 503 will allow under Federal law for the prosecutions of those who callously disregard that choice.

Mr. BRADY of Texas. Mr. Speaker, I strongly support H.R. 503, The Unborn victims of Violence Act and want to thank my colleague from South Carolina for introducing it.

As you know, H.R. 503 would make it a separate Federal crime to hurt or kill an unborn child during the commission of a Federal crime against a pregnant woman. 24 States currently recognize both the mother and the unborn child as victims of violent crimes. And in 1999, this chamber passed this legislation by a vote of 254 to 172. However, it was never brought up for a vote in the Senate.

I also strongly oppose the Substitute Amendment being offered by Congresswoman ZOE LOFGREN. Her amendment fails to recognize the unborn child as a victim of a crime, even in circumstances when the perpetrator acts with specific intent to kill the unborn child. Under her amendment, a criminal could receive a stiffer sentence for interfering with ''the normal course of the pregnancy'' while committing a Federal crime. The premise of this approach is that there has only been one victim, the mother, who has suffered a compound injury. However, if an expectant mother is shot and her baby is born disabled because of the bullet, would anyone say that only the mother and not the child had been injured. However, if the baby dies before being born, the supporters of the substitute amendment say only one person has suffered. This is wrong.

Mr. Speaker, I would also like to submit for the RECORD a letter from the National Right to Life Committee in support of H.R. 503 and why the Lofgren Substitute should be defeated. I urge my colleagues to consider the points it raises.

NATIONAL RIGHT TO LIFE
COMMITTEE, INC.
Washington, DC, April 23, 2001.

RE: In opposition to ''one-victim'' substitute amendment to the Unborn Victims of Violence Act (H.R. 503)

DEAR MEMBER OF CONGRESS: As the House of Representatives prepares to take up the Unborn Victims of Violence Act (H.R. 503), the National Right to Life Committee (NRLC) urges you to reject the assertion of those who say that when a criminal assaults a woman and kills her unborn child, nobody has really died.

That is the callous ideological doctrine embodied in the substitute amendment that we anticipate will be offered to H.R. 503 on the House floor (it was offered by Congresswomen Lofgren in the Judiciary Committee, where it was rejected).

The Unborn Victims of Violence Act creates no new federal crimes. Rather, the bill would come into play only when federal authorities have cause to arrest someone for an offense against a woman in one of 68 already-defined federal crimes of violence, by also allowing them to bring a second charge if there has been a second victim, an unborn child. A document circulated by the Planned Parenthood Federation of America asserts that ''nowhere in the bill is harm against women mentioned,'' but that is a blatantly misleading statement. The bill really mentions harm against women 68 times, as it cites the 68 federal crimes of violence against women in which H.R. 503 would apply.

Under the Lofgren Substitute, a criminal could receive a stiffer sentence for interfering with ''the normal course of the pregnancy'' while committing a federal crime, but under the premise that there has only been one victim, the mother, who has suffered a compound injury. This approach is incoherent. In those cases in which the woman dies in the assault, is it not a duplicative charge to prosecute the assailant both for killing the woman and for doing her an additional injury? In other cases, in which the mother survives but the baby dies, the Lofgren Substitute would impose a penalty of life in prison—which seems a harsh penalty, unless somebody has died.

Consider the words of Tracy Marciniak of Wisconsin, who was assaulted in the ninth month of her pregnancy. She was injured and her unborn son, Zachariah, was killed. Because Wisconsin at that time lacked an unborn victims law, the assailant was convicted only for the injury he did to Mrs. Marciniak, and he is already eligible for parole. Mrs. Marciniak explains, ''This one-victim proposal is offensive to me. Its premise is this: On the night my husband beat me, nobody died. But that is not true. That night, there were two victims. I was nearly killed—but I survived. Little Zachariah died.'' Mrs. Marciniak urges House members to look at the photo of her holding Zachariah in her arms at his funeral, and asks, ''Can anybody honestly tell me there is only one victim in that picture?'' (The photo is posted at www.nrlc.org, and appears in NRLC ads that are running various publications this week.)

H.R. 503 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.''

Nor does the bill pertain to any action by a woman that results in harm to her own unborn child. Moreover, the laws of 24 states already recognize the ''unborn child'' as a victim of violent crimes for all or some of the baby's period of pre-natal development. These laws are listed at www.nrlc.org/Whatsnew/sthomicidelaws.htm.

Numerous state and federal courts have ruled that these state unborn victims laws do not contradict Roe v. Wade or otherwise affect legal abortion. Moreover, the U.S. Supreme Court in 1989 found no problem with a Missouri law that establishes the ''unborn child'' as a legal member of the human family for purposes far broader than those covered by the Unborn Victims of Violence Act. Indeed, the April 21 issue of National Journal (page 1173) quotes Heather Boonstra, senior public policy analyst at the Alan Guttmacher Institute, as ''acknowledging that [Rep.] Graham's bill would probably survive a court challenge.'' For further discussion of the constitutional issues, see the Judiciary Committee report at ftp://ftp.loc.gov/pub/thomas/cp107/hr042.txt.

Some opponents of H.R. 503 have objected to the bill's recognition of the ''child in utero'' as a member of the human family. Yet, on July 25, 2000, the House by a vote of 417–0 passed a bill that contained the same definition of ''child in utero'' and that embodied the same basic legal principle. The roll call on that bill, and the text of the bill, are appended.

In NRLC's scorecard of significant congressional votes for 2001, a vote in favor of a one-victim substitute amendment to H.R. 503 will be accurately described as a vote to declare that when a criminal injures a mother and kills her unborn child, there has been no loss of a human life. Thank your for your consideration of NRLC's views on this legislation.

Sincerely,

DOUGLAS JOHNSON,
Legislative Director.
PATRICIA COLL,
Legislative Assistant.

Mrs. MINK of Hawaii. Mr. Speaker, I rise to express my opposition to H.R. 503, the Unborn Victims of Violence Act.

H.R. 503 claims to protect unborn children from assault and murder by giving the fetus—at any stage of development from the time of fertilization—the status of a person under the law so that crimes resulting in the death of a ''child in utero'' can be charged separately. The bill does not address the violence against the mother that resulted in the harm to the fetus.

The purpose of H.R. 503 is not to protect pregnant women from violence, it simply seeks to confer the same legal status to an embryo or fetus as to the woman who is pregnant. In fact, this act would give even a fertilized egg this status. H.R. 503 seeks to establish in law the principle of ''fetal rights'' that are equal to but distinct from the rights of pregnant women. The bill seeks to undercut Roe v. Wade, in which the Supreme Court held that at no stage of development are fetuses persons under the law.

I wish that the Members of this body who so fervently want to overturn the right of women to a legal abortion would present an honest and straightforward bill to confer full personhood on an embryo or fetus. Let's take a vote on that.

But we should not pretend that this bill is about protecting women from violence. If you want to protect pregnant women from violence, then it is important to address the problem of domestic violence by fully funding the Violence Against Women Act. The vast majority of attacks against pregnant women are domestic violence. In fact, this bill will only divert the attention of the legal system away from domestic violence or violence against women. The National Coalition Against Domestic Violence, which represents organizations and shelters in all 50 states, opposes this legislation.

H.R. 503 ignores the fact that when harm comes to a pregnancy, it happens to the woman who is pregnant. The bill fails to address the need for strong federal legislation to prevent and punish violent crimes against women.

If you want to provide for an enhanced penalty for attacks against women that result in harm to her pregnancy, then vote for the Lofgren amendment.

Mr. LANTOS. Mr. Speaker, H.R. 503 would undermine Roe v. Wade by recognizing for the first time in federal law a zygote, blastocyst, embryo, or fetus as a ''person,'' with rights equal to those of a woman. As a strong supporter of the Violence Against Women Act, I am concerned that the ''Unborn Victims of Violence Act'' does not ensure that programs aimed at taking action against domestic violence are fully funded.

Mr. KLECZKA. Mr. Speaker, we all agree that violence against a pregnant woman, where harm is brought to not only the mother but also the fetus, is a most heinous offense. These acts of violence are tragic and should be recognized by increased federal penalties for those convicted of violence to a pregnant woman.

To accomplish this goal, I will be supporting The Motherhood Protection Act, which creates a new, separate federal criminal offense for harm done to a pregnant woman. This bill provides for a maximum twenty year sentence for injury to a woman's pregnancy. Further, it provides a maximum life sentence for termination of a woman's pregnancy.

The underlying Unborn Victims of Violence Act (H.R. 503) and The Motherhood Protection Act achieve the exact same goal and provide identical penalties. The only difference is that H.R. 503 includes a legal definition of when life begins. However, medical experts and knowledgeable scientists are still debating this issue, and I don't believe Congress is in a position to make that determination today.

Sadly, this serious issue has been turned into an abortion debate, which it is not. The goal of the sponsors of this legislation is to protect pregnant women and the unborn, and The Motherhood Protection Act, sponsored by Representative ZOE LOFGREN, accomplishes this purpose. The Motherhood Protection Act has my full support.

Mr. GOODLATTE. Mr. Speaker, first, I want to thank my colleague on the Judiciary Committee, Mr. GRAHAM, for bringing this very important legislation before the House. I commend you for your extraordinary efforts on behalf of the unborn victims of violence.

I am proud to be a cosponsor of the Unborn Victims of Violence Act which promotes justice by holding violent criminals accountable for their conduct. It is unthinkable that under current federal law, an individual who commits a federal crime of violence against a pregnant woman receives no additional punishment for killing or injuring the woman's unborn child during the commission of the crime. Where is the justice when a criminal can inflict harm upon a woman, even with the express purpose of harming her unborn child, and not be held accountable for those actions?

Approximately half of the states, including my home state of Virginia, have seen the wisdom in holding criminals accountable for their actions by making violent criminals liable for conduct that harms or kills an unborn baby. Unfortunately, our federal statutes provide a gap in the law that usually allows the criminal to walk away with little more than a slap on the wrist. Criminals are held more liable for damage done to property than for intentional harm done to an unborn child. This discrepancy in the law is appalling.

Regardless of whether you are pro-choice or pro-life, those of us who are parents can identify with the hope that accompanies the impending birth of a child. No law passed by Congress could ever heal the devastation created by the loss of a child or replace a child lost to violence. However, we can ensure that justice is done by making the criminals who take the life of an unborn child pay for their actions.

When a mother chooses to bring a life into this world and that life is cut short by a violent criminal, that criminal should be held accountable under the law. Justice demands it, and so should we. I urge each of my colleagues to join me in voting for the Unborn Victims of Violence Act.

Mr. STARK. Mr. Speaker, I rise today in opposition to H.R. 503, the Unborn Victims of Violence Act.

I oppose this legislation because of its implications for the future of a woman's right to lawfully terminate a pregnancy, not because I oppose punishing crimes against pregnant women—or anyone else—to the full extent of the law.

Don't be fooled, this bill is an attack on the fundamental principles of Roe v. Wade. H.R. 503 would establish a zygote, blastocyst, embryo, and fetus as a person under federal law. Although the Supreme Court has held that fetuses are not persons under the 14th amendment, this bill would bestow separate rights to the fetus equal to that of the mother.

The Lofgren substitute, on the other hand, creates a separate criminal offense for harm to a pregnant woman, while maintaining the woman as the primary victim of the crime. It also creates an offense for violence resulting in the injury or termination of a pregnancy.

I urge my fellow colleagues to oppose H.R. 503 and to support the Lofgren substitute. H.R. 503 dislodges the cornerstone underpinning Roe v. Wade. In contrast, the Lofgren substitute strengthens punishments for crimes against pregnant women without weakening a woman's right to choose.

Mr. BARCIA. Mr. Speaker, I rise today as the Democratic Chair of the Pro-Life Caucus, to express my strong support for the Unborn Victims of Violence Act and to dispel some of the myths we've heard about it from those who are opposed to this commonsense, anticrime legislation.

In recent years, 28 States have passed laws similar to the Unborn Victims of Violence Act, allowing criminals who assault pregnant mothers to be prosecuted for injuring or murdering the unborn child during the attack. Unfortunately, under current Federal law, the criminal faces no such consequences.

We have all heard the tragic stories told here today, stories of brutal assaults on pregnant mothers which resulted in the deaths of

their unborn children. These violent acts went unprosecuted and unpunished. For the sake of these women and their unborn children, Congress must correct this oversight in Federal law and pass the Unborn Victims of Violence Act. It is pro-woman, pro-child, and anti-criminal.

This bill and its goal seem pretty straightforward. How could anyone oppose it? After all, every Member of this body wants to protect women and children, and punish criminals. Well, Mr. Speaker, it appears that we have a simple misunderstanding about what this bill actually does and I want to take a moment to set the record straight.

Some of my colleagues are concerned that The Unborn Victims of Violence Act prevents women from obtaining a legal abortion. This assertion is simply not true. The Unborn Victims legislation specifically prohibits the prosecution of women who terminate their pregnancies through abortion. While I am pro-Life and therefore very much opposed to abortion, I want to make it clear that this legislation has absolutely no impact on a woman's legal ability to terminate her pregnancy. This is not an abortion bill. It is a crime bill.

Others in this body are concerned that the act undermines the Roe v. Wade decision by recognizing unborn children as having rights outside of the mother. In fact, the Unborn Victims of Violence Act has zero impact on Roe v. Wade, because the Supreme Court has stated that unborn children already have legal rights outside the mother, specifically in tort and inheritance cases, and these rights do not preclude a woman from obtaining an abortion. This is not a bill which restricts abortion. It is a bill that punishes criminals who commit brutal acts of violence against women and their children.

Finally, we have heard from some who honestly believe that this act is somehow antiwoman. Mr. Speaker, the Unborn Victims of Violence Act not only reinforces existing laws which protect women against violence, but also ensures that the horrible emotional and physical anguish a pregnant woman would suffer from the death of her unborn child would not go unpunished due to a loophole in the law. It is hard for me to find any legislation which is more pro-woman than this.

In conclusion, Mr. Speaker, I urge my colleagues to support this important pro-woman, pro-child and anticriminal legislation, and vote in favor of the Unborn Victims of Violence Act.

Mr. TERRY. Mr. Speaker, I submit to the CONGRESSIONAL RECORD, and commend to my colleagues, the following document from the National Right to Life Committee. It provides important details on H.R. 503, the Unborn Victims of Violence Act.

KEY POINTS ON THE UNBORN VICTIMS OF VIOLENCE ACT

The Unborn Victims of Violence Act has been introduced in companion bills as H.R. 503, sponsored by Congressman Lindsey Graham (R–SC), and S. 480, sponsored by Senator Mike DeWine (R–Ohio). The full text is available at the NRLC website at www.nrlc.org/Unborn__Victims/index.html.

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, then the assailant may be charged with a second offense on behalf of the second victim, the unborn child. The bill would recognize that when a criminal attacks a pregnant woman, and injures or kills her unborn child, he has claimed two human victims. The bill would apply this two-victim principle to about 70 existing federal laws dealing with acts of violence. These laws affect federal geographical jurisdictions, the military justice system, protection of federal officials, and specific acts defined by law as federal crimes (such as certain terrorist bombings).

In current federal criminal law, an unborn child is not recognized as a victim with respect to violent crimes. Thus, for example, if a criminal beats a woman on a military base, and kills her unborn child, he can be charged only with the battery against the woman, because the unborn child's loss of life is not recognized by the law. This gap in federal law results in grave injustices, some real-world examples of which were described by former Congressman Charles Canady (R–Fl.) at a July 21, 1999 House Judiciary Constitution Subcommittee hearing on the issue. Congressman Canady's statement is posted at http://nrlc.org/news/1999/NRL899/cana.html.

Twenty-four (24) states have already enacted laws which recognize unborn children as human victims of violent crimes. Eleven (11) of these states provide this protection throughout the period of in utero development, while the other 13 provide protection during specific stages of development. For detailed information on state unborn victims laws, see ''State Homicide Laws That Recognize Unborn Victims,'' available at www.nrlc.org/Whatsnew/sthomicidelaws.htm. The Unborn Victims of Violence Act would not supersede state unborn victims laws, nor would it impose such a law in a state that has not enacted one. Rather, the bill applies only to unborn children injured or killed during the course of already-defined federal crimes of violence.

The bill explicitly provides that it does not apply to any abortion to which a woman has consented, to any act of the mother herself (legal or illegal), or to any form of medical treatment. Nevertheless, NRLC supports the bill because it achieves other pro-life purposes that are worthwhile in their own right: the protection of unborn children from acts of violence other than abortion, the recognition that unborn children may be victims of such violent criminal acts, and the punishment of those who harm unborn children while engaged in federally prohibited acts of violence.

It is well established that this type of legislation does not conflict with the Supreme Court's pro-abortion decrees (Roe v. Wade, etc.). Criminal defendants have brought many legal challenges to the state unborn victim laws mentioned above, based on Roe and other constitutional arguments, but all such challenges have been rejected by the courts. (A list of pertinent court decisions is available on request.)

Moreover, in the 1989 case of Webster v. Reproductive Health Services, the U.S. Supreme Court refused to invalidate a Missouri statute that declares that ''the life of each human being beings 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. The Minnesota Supreme Court took the same view in upholding the Minnesota law: ''Roe v. Wade . . . does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus.'' [State v. Merrill, 450 N.W.2d 318 (Minn. 1990)].

Some opponents have objected to the bill's recognition of the ''child in utero'' as a member of the human family who can be harmed in a crime. Yet, on July 25, 2000, the House passed on a vote of 417–0 a bill that contained the same definition of ''child in utero'' and that embodied the same basic legal principle. That bill, the Innocent Child Protection Act, said that no state or federal authority may ''carry out a sentence of death on a woman while she carries a child in utero. . . . 'child in utero' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.'' The principle embodied in the Innocent Child Protection Act was obvious. Whatever one's position regarding the morality of capital punishment as such, there is only one rational reason for delaying a lawfully ordered execution of a woman because she is pregnant—that is, carrying out the execution would take two human lives, not just one. The Unborn Victims of Violence Act would extend that same principle to the rest of the federal criminal code, recognizing that when a criminal attacks a woman, injuring or killing her and injuring or killing her unborn child, he has claimed two victims.

The Unborn Victims of Violence Act has come under vehement attack from pro-abortion groups such as NARAL, Planned Parenthood, and the ACLU. Even though the bill deals with acts of violence other than abortion, the pro-abortion lobby's ideology apparently compels it to deny the very existence of unborn human beings in any area of the law. Thus, during the 106th Congress, pro-abortion lawmakers proposed alternative legislation, the ''Motherhood Protection Act'' or Lofgren substitute amendment, which the House of Representatives rejected on September 30, 1999. This ''one-victim'' proposal did not mention the unborn child (by whatever name), but instead defined as an offense ''interruption to the normal course of the pregnancy.'' This approach would have codified a falsehood—the notion that there is only one victim in these crimes. In the real world, however, when an unborn child loses her life in a criminal attack, the parents and society mourn the death of a separate individual, rather than viewing it simply as an additional injury to the mother.

Moreover, arguments in favor of the one-victim proposal are internally inconsistent and illogical. Supporters of the one-victim approach insist that when a criminal injures a mother and kills her unborn child, there has been only a compound injury to the mother but no loss of any human life—yet, the Lofgren Amendment would have imposed a penalty (up to life in prison) commensurate with loss of human life. Also, advocates of the one-victim approach argue that when a criminal assailant kills a pregnant woman, the assailant should receive double punishment: once for killing the mother and then again for depriving her of her ''pregnancy''—but if there is only one victim, it is difficult to see why this would not be a duplicative criminal charge, since legally speaking a woman who has been murdered cannot herself suffer an additional ''loss.''

Some opponents of the bill have charged that the bill would punish harm to the unborn child ''utterly ignoring the harm to the pregnant woman.'' Others have charged that the bill would ''separate the mother from her fetus.'' These objections reflect misunderstandings or misrepresentations of how the bill is structured. In reality, the bill would

allow the government to win a conviction for harm to an unborn child only if it first proves that the defendant violated one of the 70 or so enumerated federal laws with respect to the mother.

Some opponents of the bill have charged that it would allow defendants to be convicted without a showing of intent to do harm. This is false. Under the bill, it is necessary to prove beyond a reasonable doubt that a defendant had intent to do criminal harm, at least towards the mother. If such criminal intent towards the mother is proved, then the defendant also will be held responsible for the harm done to the unborn baby, under the doctrine of ''transferred intent.'' As the House Judiciary Committee report (106th Congress) explained, transferred intent is a well-established principle in the law. (If a man shoots at a woman with intent to kill, and the bullet misses her, passes through a wall, and kills a child who the shooter did not know was there, he can be convicted of the murder of the child.) As the Minnesota Supreme Court ruled in upholding the Minnesota unborn victims law, ''The possibility that a female homicide victim of childbearing age may be pregnant is a possibility that an assaulter may not safely exclude.'' [State v. Merrill, 450 N.W. 2d 318 (Minn. 1990)].

In order to win a conviction under the bill, it would be necessary for the prosecution to prove beyond a reasonable doubt that a human being (1) already existed, and (2) was ''carried in the womb,'' which would be utterly impossible until after the embryo had implanted in the womb and sent out the chemical signals that announced his or her presence (i.e., after implantation). Moreover, even after the prosecution has met that burden, it must also prove beyond a reasonable doubt that a defendant's criminal conduct caused the death of the child in utero. The mere possibility or even the strong likelihood that a defendant's criminal conduct caused a baby's death would not suffice—the bill requires proof beyond a reasonable doubt.

National Right to Life legislative staff are available to discuss this issue with journalists and congressional offices. Please call (202) 626–8820, or e-mail to: Legfederal@aol.com. Extensive additional information on the federal bill and on state unborn victims laws is available at the NRLC website at www.nrlc.org/Unborn__Victims/index.html.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MS. LOFGREN

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

The SPEAKER pro tempore (Mr. LATOURETTE). The Clerk will designate the amendment in the nature of a substitute.

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

Amendment in the nature of a substitute offered by Ms. LOFGREN:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Motherhood Protection Act of 2001''.

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

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

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

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

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

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

(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247, 248, 351, 831, 844(d), (f), (h)(1), and (i), 934(j), 930, 1111, 1112, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203(a), 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952(a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of title 18, United States Code.

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

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

(4) Sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of title 10, United States Code (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

The SPEAKER pro tempore. Pursuant to House Resolution 119, the gentlewoman from California (Ms. LOFGREN) and a Member opposed each will control 30 minutes.

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

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

This debate this morning has been interesting, but I think it is clear, and we need to be honest about it, that the debate and the underlying bill is about choice and it is about Roe v. Wade. That is why the National Right to Life Committee has vigorously lobbied for H.R. 503 and why the National Coalition Against Domestic Violence has lobbied actively against 503.

What we are doing here today is offering a substitute that we hope can bring both sides of the choice to come together in unity to protect pregnant women from violent assault when that assault injures or terminates their pregnancy.

The Lofgren-Conyers substitute does not threaten Roe v. Wade as the underlying bill does. I have heard a lot of the arguments made here this morning, but I think it is worth pointing out that redefining personhood legislatively for the purposes of the 14th amendment in this criminal statute may have the impact of allowing, even though certain activities are carved out of the bill, for prosecutorial purposes, it does not deal with civil actions.

Clearly the bill could outline the ability for guardians to be appointed for fetuses or even zygotes, and that civil action and injunctions could be based upon this bill. The Lofgren-Conyers substitute does not do that. We do not needlessly inject the abortion debate into the matter of criminal justice. This bill focuses on the harm to the pregnant woman and provides, we hope, a deterrence of violence against women and provides very tough penalties when that violence results in injury to the fetus or a miscarriage.

This bill is tougher, this substitute is tougher than the underlying bill; and I will give my colleagues just an example of how that would work. Each of the measures, both the underlying bill and the substitute, recites various Federal criminal laws as jurisdictional offenses. One of the sections, one of the predicate offenses is section 248 of Title 18, which provides for a scheme to deter violence against women and others who are entering clinics, health clinics.

Now, in my part of California, Planned Parenthood provides extensive health care services. They provide prenatal care, pediatric care, and the like. If a pregnant woman is trying to enter the Planned Parenthood clinic through the protesters in San Jose to get her prenatal care and is assaulted by one of the protesters and miscarries, under the H.R. 503, there would need to be proven an intent to cause that miscarriage or in the language of the bill kill the unborn child.

Under the Lofgren substitute, no such requirement is in place. If a miscarriage occurred, the full sentence of up to a life sentence could be imposed. In the case of the underlying bill, the maximum sentence that could be imposed without proving intent, which is very difficult to do, would be 1 year or, if bodily injury was not afflicted on the woman, it would be 10 years.

So we have a difference really with the substitute providing up to a life sentence and the underlying bill merely 1 or 10 years. I think that those of us who want to give a strong message to those who would assault women would prefer the life sentence.

This is stronger as well because it is constitutional unlike the underlying bill. I recently reread Roe v. Wade, something that I think all of us should do from time to time. Some of us had not read it since law school. It was good to be reminded in the language of the Justices, their consideration, first of the personhood of the fetus, but also the discussion of what can be regulated and when.

Clearly, and we all know this as people, the horrible situation of the woman who was assaulted, and she was 4 days away from delivery, and I do not want to get into the personhood argument, but she could have induced labor. She lost her child in my view, and that was a tragedy. Our bill would protect that. But it also protects something else. If one is 6 weeks pregnant, the substitute that we are offering provides the same level of protection as the poor woman who was assaulted in the picture that has been used several times today.

□ 1300

Why is that? Those of us who have experienced a miscarriage understand this very essential truth. If a woman miscarries, whether it be from assault or from some other reason, that woman has lost one of life's great, great opportunities. A miscarriage is something that a woman never forgets, and it is a major life blow. Whether the woman is 6 weeks pregnant or 6 months pregnant, that loss is acutely felt by women who want to have a child, and it deserves the full penalty that the law can provide and up to a life sentence.

Mr. Speaker, I hope that we can come together on this substitute. Last Congress there were a number of Members of this House who are anti-choice who voted for the substitute, understanding that the penalties are indeed more severe and it would provide complete protection. I urge those individuals to do so again.

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

The SPEAKER pro tempore (Mr. LATOURETTE). Does the gentleman from Ohio (Mr. CHABOT) claim the time in opposition to the amendment?

Mr. CHABOT. I do, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. CHABOT) is recognized for 30 minutes.

Mr. CHABOT. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. HYDE), the former chairman of the Committee on the Judiciary and the current chairman of the Committee on International Relations.

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

Mr. HYDE. Mr. Speaker, John Quincy Adams, in a famous summation to the Supreme Court in 1841, spoke on behalf of 35 Africans he represented in the historic Amistad case involving that slave ship. Adams told the Supreme Court they would not have a more important case before them because this concerns the very nature of man.

Mr. Speaker, today we confront the same issue only today it is the unborn whose humanity is being threatened, not the slaves. The question we are faced with is whether a preborn child has value; value sufficient to warrant protection in the law from a criminal assault, or whether the tiny, unborn infant is beneath protection, without value, without standing, without significance. Whether this little unborn is merely a randomly multiplying bunch of cells, a sort of tumor, like Shakespeare's sound and fury, signifying nothing.

A famous novelist, Saul Bellow, once wrote, ''A great deal of energy can be invested in ignorance when the need for illusion is great.'' To rationalize the divesting of the little battered body of the unborn child, divest it of its humanity, its membership in the human family, is the ultimate indignity. My colleagues will not even call him a victim.

In the endless debate on abortion, the term ''extremist'' is hurled across the aisle. I cannot imagine a more extreme posture than to deny the humanity of the unborn. If you hold the view that the unborn child is without value, you have to explain why this House on July 25, 2000 voted 417 to zero to forbid the execution of a woman while she carries a child in utero. That pregnancy must have meant something. So the fact of a pregnancy makes a difference.

An obstetrician treats two patients when he treats a pregnant woman. Specialists perform fetal surgery of incredible complexity, heart surgery, spina bifida, exchange transfusions, all sorts of surgery to save that baby. How many times has a young couple exhibited proudly pictures of the sonogram? Tell these prospective parents their unborn child is without value.

Mr. Speaker, the Lofgren substitute dehumanizes the child in the womb. It echoes a line from a New York Times editorial yesterday, which cannot bring itself to describe the assault that kills a mother's child in the womb as anything more than ''compromising a pregnancy.'' Have you ever heard a colder phrase describing the death from violence in the womb than ''compromising a pregnancy.'' That is like saying a drug dealer is an unlicensed pharmacist or a bank robber is a holder not in due course.

Listen to the words of a famous obstetrician, Dr. Joseph DeLee, who wrote in the Yearbook of Obstetrics and Gynecology in 1940 as the world was about to be plunged into a bloody war, ''At the present time when rivers of blood and tears of innocent men, women and children are flowing in most parts of the world, it seems almost silly to be contending over the right to live of an unknowable atom of human flesh in the uterus of a woman. No, it is not silly. On the contrary, it is of transcendent importance that there be in this chaotic world one high spot, however small, which is safe against the deluge of immorality and savagery that is sweeping over us. That we, the medical profession, hold to the principle of the sacredness of human life and of the rights of the individual, even though unborn, is proof that humanity is not yet lost.''

The need for illusion is too great to justify weeding out of the human race the unborn. A pregnancy has not been compromised. A baby has been killed. In the words of Willy Loman's wife, Linda, in ''Death of a Salesman,'' ''Attention must be paid.'' Support Graham, defeat Lofgren.

Ms. LOFGREN. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. HARMAN).

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

Ms. HARMAN. Mr. Speaker, I would like to note for the House Chamber, I am here with my daughter-for-the-day, Laura Wasserman, who is sitting next to me, who is taking the place today for my four wanted children.

Mr. Speaker, I have borne children. I have also suffered a miscarriage; and I would like to say to the gentleman (Mr. HYDE) who just spoke before me who talked in terms of the Lofgren amendment dehumanizing the child, that the underlying bill dehumanizes the woman bearing the child, and I think that point needs to be noticed. We are talking about unborn children, and I take that very seriously. We are also talking about pregnant women who are bearing those fetuses that are about to become children. Mr. Speaker, I think attention must be paid to the mothers.

I rise in support of the amendment offered today by my friend and colleague, the gentlewoman from California (Ms. LOFGREN), which creates a separate Federal criminal offense for harm to a pregnant woman and specifically punishes violence against her resulting in injury to or the termination of a pregnancy.

If we are trying to protect pregnant women, let us protect them. Let us not insult the intelligence of women in this country by attacking their rights under the guise of protecting their unborn fetuses.

Mr. Speaker, I have read Roe v. Wade. It was a decision of the Supreme Court after I was a practicing lawyer. I knew Harry Blackmun, the late Justice Blackmun, who drafted Roe v. Wade and whose experience in this area came from his being general counsel to the Mayo Clinic. He carefully defined a framework in that decision that includes a definition of viability of the fetus. The underlying bill here would interfere with that definition and undercut Roe v. Wade.

Mr. Speaker, I urge support for this amendment and rise in opposition to the underlying bill.

Mr. Speaker, I rise today in strong opposition to H.R. 503, the Unborn Victims of Violence Act. Once again, opponents of choice are making an attempt to interfere with a woman's right to choose.

Supporters of H.R. 503 claim it increases punishments for individuals who commit violence against pregnant women. They claim it will help protect these women—however, the protection of the pregnant woman is never mentioned in the text of this bill.

Instead, the bill defines an unborn fetus as a person against whom a crime can be committed. It creates ''fetal rights.'' Congress should not be involved in defining when life begins nor should it create ''rights'' for which we do not know the full repercussions.

I strongly support the alternative offered by my friend and colleague ZOE LOFGREN, which creates a separate federal criminal offense for harm to a pregnant woman and specifically punishes violence against her resulting in injury or the termination of a pregnancy. If we are trying to protect pregnant women, then let's protect them. Let's not insult the intelligence of women in this country by attacking their rights under the guise of protecting their unborn fetuses.

Roe v. Wade establishes a careful framework which includes a definition of viability of the fetus. H.R. 503 is a backdoor attempt to

weaken Roe v. Wade and interfere with a woman's right to make her own reproductive choices.

Mr. Speaker, let's respect the women of this country. Let's not undermine a woman's Constitutional right to choose. Vote no on H.R. 503!

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind all Members that making reference to persons on the floor who are not Members of the House is not appropriate.

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

Mr. Speaker, the Lofgren substitute amendment would provide an enhanced sentence for a violent crime that causes an interruption to the normal course of the pregnancy resulting in prenatal injury, including termination of the pregnancy. This substitute clearly must be opposed.

First, the substitute ignores the injuries inflicted by violent criminals upon the unborn. It appears to operate as a sentencing enhancement. A sentencing enhancement is when you get attacked and the attacker throws you down and hurts your arm, your leg and your back, too. The attacker's penalties gets enhanced by the additional penalties done to the victim. But I challenge anyone to sit back and reflect on the loss they would feel if they were a pregnant woman who lost her unborn child or a relative of that woman. Would the loss felt be the same as the loss of an appendix or pancreas? I think not. Would you feel the same regret you felt for a bone if a bone were broken or a slipped disk in one's back? Surely not.

The loss that a person would feel would be a distinct and a unique loss, and the criminal law should appropriately reflect that loss in a separate offense protecting the unborn children. It is our goal to protect them and the mothers in this instance. The law does not simply punish criminals. The law, and especially criminal law, embodies the judgment of civilized society. As such it must credibly and fully respect and reflect the magnitude of the loss felt when a woman loses her unborn child to violence. This can only be done by creating a separate offense to protect the separate unborn person.

Second, the substitute is hopelessly ambiguous. So ambiguous that it puts in jeopardy the prosecution of any criminal for violence against the unborn. The confusing verbiage in the substitute amendment is incomprehensible; and if adopted, it will almost certainly doom any prosecution for injuring or killing an unborn child during the commission of a violent crime.

The substitute amendment provides an enhanced penalty for ''interruption to the normal course of the pregnancy resulting in prenatal injury, including termination and pregnancy.'' The amendment then authorizes greater punishment for an ''interruption'' that terminates the pregnancy than it does for a mere interruption of a pregnancy.

What is the difference between an interruption of a pregnancy and an interruption that terminates the pregnancy? Does not any interruption of a pregnancy necessarily result in a termination of the pregnancy; or have supporters of the substitute managed to find a way to place a developing human being in some sort of suspended animation.

Mr. Speaker, what does the phrase ''termination of pregnancy'' mean. Does it mean only that the unborn child died, or could it mean that the child was just born prematurely without suffering any injuries.

These ambiguities make the substitute almost impossible to make any sense of. But maybe this is not what the substitute does. It is so ambiguous that it admits of several readings. It is more like a bowl of tea leaves.

Subsection 2(a) of the substitute amendment appears to operate as a mere sentence enhancement authorizing punishment in addition to any penalty imposed for the predicate offense. Yet the language of subsection 2(b) describes the additional punishment provided in subsection 2(a) as punishment for a violation of subsection (a), suggesting that subsection 2(a) creates a separate offense for killing or injuring an unborn child. Which is it? What is going on here? Let us not support a substitute that is more like a Magic 8–Ball.

This ambiguity is magnified by the fact that subsection 2(a) requires that the conduct injuring or killing an unborn child ''result in the conviction of the person so engaging.'' So does this indicate a conviction must be obtained before the defendant may be charged with a violation of subsection 2(a); or does it mean that the additional punishment must be imposed at the trial for the predicate offense, so long as it is imposed after the jury convicts based on the predicate offense.

Mr. Speaker, is a separate charge necessary for the enhanced penalty to be imposed? The substitute amendment simply makes no sense except perhaps to criminals who will understand its significance crystal clear. They get away with the heinous crime.

Unlike the current language of the bill, the substitute stunningly contains no exemptions for abortion-related conduct, for conduct of the mother, or for the medical treatment of the pregnant woman or her unborn child. This omission leaves the substitute amendment open to the charge that it would permit the prosecution of mothers who inflict harm upon themselves or their unborn children, or doctors who kill or injure unborn children during the provision of medical treatment. This substitute as written is a magnet for a constitutional challenge.

□ 1315

The substitute amendment also appears to mischaracterize the nature of the injury that is inflicted when an unborn child is killed or injured during the commission of a violent crime. Under the current language of the bill, a separate offense is committed whenever an individual causes a death or a bodily injury to a child who is in utero at the time the conduct takes place.

The substitute amendment seems to transform the death of the unborn child into the abstraction ''terminating a pregnancy.'' ''Bodily injury'' inflicted upon the unborn child appears to become ''prenatal injury.'' Both injuries are described as resulting from an ''interruption to the normal course of the pregnancy.''

These abstractions ignore the fact that the death of an unborn child occurs whenever a pregnancy is violently ''terminated'' by a criminal. They also fail to recognize that a ''prenatal injury'' is an injury inflicted upon a real human being in the womb of his or her mother.

For example, if an assault is committed, for example, on a Federal employee, and her unborn child subsequently suffers from a disability because of the assault, that injury cannot accurately be described as an abstract injury to a ''pregnancy.'' It is an injury to a human being. Our bill recognizes that. The substitute does not. The substitute is thus fatally flawed and must be rejected.

The substitute amendment is so poorly drafted and ambiguous that obtaining a conviction of a violent criminal under it will be almost impossible. The substitute amendment is also subject to constitutional attack because it contains no exemption for abortion-related conduct, for conduct of the woman, or for medical treatment. And finally the substitute amendment ignores the injuries inflicted by violent criminals upon unborn children, transforming those injuries into mere abstractions.

For these reasons, the substitute amendment should be rejected.

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

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

I would just note that the gentleman's analysis, I thought, was both confused and confusing. The bill is well-drafted. The reason why there is no carve-out for abortion is that so far abortion is not a crime in America. The bill is based on criminal conduct in the code.

Finally, I would just note that the gentleman may not know what a miscarriage is, but those of us who have had one do understand it.

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

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

Ms. WOOLSEY. Mr. Speaker, I rise to express my wholehearted support for the Lofgren amendment and strong opposition to the underlying bill without that amendment. We must be clear on one thing. H.R. 503, the underlying bill,

is a sneak attack on Roe v. Wade, and there is no question whether it would threaten a woman's right to reproductive choice. At the same time, this bill does nothing to address the real need for Federal measures to prevent and prosecute violent crimes against women.

Mr. Speaker, we all agree that the loss of a pregnancy through violence to a woman is a tragedy for the woman and for her family. That is why I urge my colleagues to vote for the Lofgren amendment. The Lofgren amendment recognizes that a crime causing the end of a pregnancy is a crime against the woman. If my colleagues truly care about women and children, vote for the Lofgren amendment and vote no on H.R. 503 if the amendment is not included.

Mr. CHABOT. Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma (Mr. LARGENT).

Mr. LARGENT. Mr. Speaker, I thank my friend from Ohio for yielding me this time.

Mr. Speaker, I rise today in support of holding criminals accountable for their actions that affect the unborn. The Unborn Victims of Violence Act represents a much-needed clarification of current Federal code to protect preborn children from violent crime.

Last year, the House voted 415–0 in favor of the Innocent Child Protection Act. That act prevents any U.S. authority from carrying out a death sentence on a pregnant woman. There is no difference between the rationale of that bill and this one. If you believe in protecting an innocent, preborn child when the criminal mother is to be executed, you should agree that we must protect an innocent, preborn child when its innocent mother is attacked.

This bill supports women who want to carry a child to term, and it gives law enforcement the right to penalize someone who criminally interferes with her ability to do so. This bill is pro-choice, if you will. The choice in this case has already been made by the mother to keep the child, and when a criminal act takes away that woman's choice, there should be legal remedies to mete out punishment for that crime.

I urge my colleagues to protect the rights of the unborn and all mothers who have chosen to carry a child to term. Support H.R. 503 and reject the substitute.

Ms. LOFGREN. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I rise in strong support of the Lofgren amendment.

I would like to point out to the gentleman from Oklahoma (Mr. LARGENT) that actually I want to hold criminals accountable for crimes against pregnant women. Twenty-four States have higher penalties for assault of a pregnant woman and, in Connecticut, for assault of an elderly person. That is right and justified. If that is what this bill, the underlying bill, did, I would strongly support it. It is what the amendment does and that is why I support the amendment.

The amendment imposes much higher penalties, even up to the death sentence, on people who assault a woman who is pregnant. But it does something else.

I do find it almost unbelievable that my conservative colleagues would advocate such a radical piece of legislation. This legislation is truly extraordinary, because it changes the fundamental concept of law that has governed America since its founding. What is radical about this bill is not that it wants to punish people who assault pregnant women; I want to do that, too. What is radical about this bill is that for the first time under our laws, it will define fetal personhood. The consequences are going to be extraordinary.

What happens if a woman has a miscarriage because she worked too hard, she stayed up late, she drove herself, she did not take care of herself, and she has a miscarriage? Is she going to be a murderer? That may not be in this bill, but let me tell you, it is the next one down the road. What if, for good reason, for health reasons, she has to have an abortion? What if the doctor says, you will not survive if you do not have an abortion? Is the doctor then a murderer?

That is the underlying goal of this bill. Do not hide it from yourself. If you vote for it, know that you are voting for a radical change in the American legal statutes.

Mr. CHABOT. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri (Mr. AKIN).

Mr. AKIN. Mr. Speaker, when a woman and a child are assaulted or, even more seriously than that, the child is killed, there are two victims. The problem currently with our law is that we only recognize one of those victims. That is the purpose of H.R. 503 and that is the problem with the substitute. It fails to recognize one of the victims.

The gentlewoman before me made reference to the foundational principles of this country. What is it that is unique, that defines America? Why is America a different nation than other nations? Why is it that people have chosen to immigrate here? I would suggest that a great deal of our unique character is found in a sentence that says, ''We hold these truths to be self-evident, that all men are endowed by their Creator with certain inalienable rights.'' That is the purpose of our law, to create equal protection, because each life is important to us. That is a foundational American principle, and it is not currently in our law.

That is the purpose of H.R. 503. This substitute does not protect one of the victims of potential crimes, and that is the problem with the substitute.

I would urge my colleagues to vote against the substitute and to support the very foundational principle that America is based on, that all people deserve the protection of law.

Ms. LOFGREN. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. I thank the gentlewoman for yielding and for her leadership on this and so many other issues important to women.

Mr. Speaker, today in this Chamber we rise again to protect a woman's right to choose. Yes, once again. This full-scale assault on a woman's right to choose is dangerous and it is wrong. As a woman, I am deeply offended and angry.

First, President Bush reinstitutes the global gag rule as one of his very first actions in office. And now we have the Unborn Victims of Violence Act before us today. Where is the compassion for women?

I deplore acts of violence against women and stand as a strong advocate against domestic violence and domestic abuse. However, while this legislation claims to protect pregnant women, the reality is that it will harm women. H.R. 503 represents a direct attack on the Supreme Court ruling of Roe v. Wade, and therefore a woman's constitutional right to reproductive freedom. The National Coalition Against Domestic Violence has indicated that H.R. 503 would actually worsen the plight of women in domestic violence situations.

This substitute offered by the gentlewoman from California (Ms. LOFGREN) and the gentleman from Michigan (Mr. CONYERS) is equally tough on crimes against women without weakening our reproductive freedom. The substitute recognizes the pregnant woman as the primary victim of a crime. However, it also allows for further punishment if that woman's pregnancy is ended as a result of the attack.

If Congress wants to ensure safe pregnancies for both mothers and babies, we should be passing legislation to increase access to prenatal care and to support and strengthen WIC nutrition programs and food stamp programs. But, instead, we are once again forced to speak out to defend women's fundamental rights.

I urge my colleagues to recognize H.R. 503 for what it is, a misguided initiative, dangerous and harmful to women. I urge a no vote on H.R. 503 and support of this substitute.

Mr. CHABOT. Mr. Speaker, I yield myself 15 seconds.

Mr. Speaker, we have once again heard this described as an assault on a woman's right to choose. I want to reiterate that the woman has made her choice to keep that baby. It is the criminal that took away that choice. We just want to punish that criminal more severely than he is under existing law.

Mr. Speaker, I yield 4 minutes to the gentleman from South Carolina (Mr. GRAHAM), a proponent of this bill.

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

Mr. Speaker, the best way to describe how the substitute and the bill actually works in the real world is to tell a story that actually happened. You talk about an assault on Roe v. Wade; I am talking about a assault on Shawana Pace, an African American woman who lived in Arkansas. On August 26, 1999, she was kidnapped by three men, she was pregnant, she was near her due date, she had already named the baby Heaven once she got the ultrasound test back. She had a baby boy, and she had already named her unborn child Heaven.

Her boyfriend, the father, former boyfriend, paid three people $400 to kidnap her and terminate her pregnancy because he did not want to pay child support. They did that. They kidnapped her, they took her away. She is lying on the floor and they are beating her within an inch of her life, and one of them says, ''Your baby is dying tonight.'' Strangely enough, she was pleading for her baby's life, not hers.

The good news in this story, if there is any, is that the three people plus the boyfriend, two of them are on death row in Arkansas because Arkansas, several weeks before, had passed a law recognizing the unborn child as a separate victim; and under that statute, the prosecutor was able to bring a murder charge, not enhance the punishment on the assault charge.

Now, I did not have the death penalty in this bill because I did not want to get into that debate, but if this had happened in Federal jurisdiction, there would have been no enhancing of the assault charge, there would have been a murder charge because that is what they were hired to do, that is what they did, and I think most Americans would want them to be prosecuted for murder, not play some game of enhancing punishment that ignores what really happened.

□ 1330

They can do that without affecting Roe v. Wade. That is why I had so many pro-choice votes last time. One can be pro-choice and still support this bill. It happened before, and it is going to happen again today. Those people that were hired to do a terrible thing get the full force of the law because there is a statute on the books in Arkansas that is just like the one that I am trying to pass here in Congress.

Rae Carruth, NFL football player, hired a person to kill his pregnant girlfriend. She refused to have an abortion. He did not want to pay for the child. The hit man charged $5,000 for the mother and $5,000 for the baby, charged him twice.

Let us punish him twice. That is what this bill does.

The substitute is just an irrational way to deal with the unborn. We can have an honest, healthy debate about abortion rights. In my bill, I protect the right to have an abortion because it is the law of the land; but pro-choice and pro-life people should come together when the woman chooses to have the baby and put the full force and effect of the law against a criminal who is paid or otherwise takes that life away. They are not inconsistent.

It would be a better country if we passed this bill, and prosecutors will have more tools because if one takes the murder or assault charge off because they do not recognize the baby, the ability to fully prosecute that case is undermined, and I think most prosecutors would agree.

The gentleman from Pennsylvania (Mr. GREENWOOD) is my friend. He says this is an assault on abortion. It is not. In his State, they passed this same law using the same words in 1998.

People still have the Roe v. Wade rights in Pennsylvania, but people assaulting pregnant women face stiffer penalties and more punishment because of what Pennsylvania did.

Let us do this at the Federal level. Let us come together and make sure that people in the future who take money or otherwise assault a pregnant woman and destroy the unborn child are prosecuted to the fullest extent of the law, no excuses, no apologies.

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

Mr. Speaker, I just would like to note that the Arkansas statute is inconsistent with the Supreme Court decision, Meadows v. State, in Arkansas, and I do hope that the monster who committed that heinous crime does not walk because the statute is unconstitutional.

Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. SCHIFF), a former prosecutor and a member of the Committee on the Judiciary.

Mr. SCHIFF. Mr. Speaker, I am not going to attempt to speak on the unique tragedy and trauma suffered with the loss of a child. I think other Members have already spoken to that, and could speak to it with a passion of familiarity that neither I nor any other male Member of this Chamber could. Instead, I would like to speak as a former prosecutor, someone who for 6 years went into court and prosecuted a variety of Federal crimes, and has experience not only with the job of prosecuting those cases but also handling the inevitable motions, the appellate process, the habeas corpus petitions and all of the delays attendant to litigating complex issues.

This is a criminal justice bill. This is a public safety measure. Its ostensible purpose is to use the vehicle of the criminal justice system to deter attacks on pregnant women, to incapacitate those who would conduct them by lengthening the sentences, to bring about retribution on those who would commit such a heinous act. All of the purposes of the criminal justice system are served by both bill and substitute; but if one has to choose as a prosecutor going into court under one law or going into court on another, they would certainly choose to go into court under a law that is less subject to constitutional challenge and attack.

The bill, as it is drafted, using definitions like a member of the species Homo sapiens at any stage of development who is carried in the womb, invites, demands in fact, constitutional litigation. As a prosecutor, one can be assured in both motion and appeal to the highest courts of the land they will be required to litigate when life begins under the bill.

That is not required under the substitute. If it is our goal to give prosecutors that extra tool, as the gentleman from South Carolina (Mr. GRAHAM) mentioned, if it is our goal to allow prosecutors to take more vigorous action to have greater penalties at their beck and call to deter, to incapacitate, to bring about retribution for these crimes, let us choose a substitute which makes that possible without this unprecedented constitutional litigation.

Mr. CHABOT. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. BARTLETT).

(Mr. BARTLETT of Maryland asked and was given permission to revise and extend his remarks.)

Mr. BARTLETT of Maryland. Mr. Speaker, I wonder if one would imagine with me an infant in a nursery in a hospital on life support. There is a terrorist bomb or an arsonist fire, and that infant and several others are killed. Can one imagine an argument that says that those babies that were not on life support were murdered but the baby on life support was not murdered?

Mr. Speaker, the preborn baby, in its mother's womb, is simply on life support through the umbilical cord. When a pregnant woman is killed, clearly two lives are snuffed out. There are two murders. When a woman is assaulted, sometimes with the intention of killing that preborn child who is simply on life support in her womb, indistinguishable from a baby just born, clearly that also is murder.

This legislation is long past due. Defeat the amendment. Support the base bill.

Ms. LOFGREN. Mr. Speaker, I yield 1 minute to the gentlewoman from New York (Mrs. MALONEY), a leader in the fight for rights for women.

(Mrs. MALONEY of New York asked and was given permission to revise and extend her remarks and include extraneous material.)

Mrs. MALONEY of New York. Mr. Speaker, I thank very much the gentlewoman from California (Ms. LOFGREN) for yielding and congratulate her for her extraordinary leadership on this issue and so many other issues before the committee protecting women.

Very simply, if one wants to punish people who attack pregnant women and injure or destroy their fetuses, then vote for the Lofgren substitute, because that is what it does. Its penalties are stricter. If, however, the goal is to declare fetuses to be separate people

under the criminal code and to thereby further the right-to-life movement, then the underlying bill is what should be voted for. That is what the difference is about. The Bush administration is clearly in the camp of the right-to-life movement.

Mr. Speaker, I would like to place in the RECORD the statement of administration policy that clearly supports the underlying bill that erodes a woman's right to choose, knocks out one of the fundamental pillars under Roe v. Wade.

STATEMENT OF ADMINISTRATION POLICY

(This statement has been coordinated by OMB with the concerned agencies.)

H.R. 503—UNBORN VICTIMS OF VIOLENCE ACT OF 2001 (REP. GRAHAM (R) SC AND 95 COSPONSORS)

The Administration supports protection for unborn children and therefore supports House passage of H.R. 503. The legislation would make it a separate Federal offense to cause death or bodily injury to a child, who is in utero, in the course of committing any one of 68 Federal offenses. The bill also would make substantially identical amendments to the Uniform Code of Military Justice. The Administration would strongly oppose any amendment to H.R. 503, such as a so-called ''One-Victim'' Substitute, which would define the bill's crimes as having only one victim—the pregnant woman.

Mr. Speaker, vote for the Lofgren amendment. Vote for a woman's right to choose and a reasonable approach to protect her and against the underlying bill.

Mr. CHABOT. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from New Jersey (Mr. SMITH).

(Mr. SMITH of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. SMITH of New Jersey. Mr. Speaker, why would Planned Parenthood and a virtual who's who of abortion activists in America so vehemently oppose the Unborn Victims of Violence Act and promote a gutting substitute in its stead? Why is it that on the floor of the House on a very pleasant Thursday afternoon that so many intelligent and talented and gifted lawmakers, to whom so much has been given, are going to such great lengths to deny basic protections in law for an unborn child who has been shot, beaten, stabbed or otherwise mauled by an attacker?

Could it be that America's abortion culture, a culture of death, has so numbed our hearts and dulled our minds that we have become incapable or unwilling of recognizing the obvious? Could it be denial?

Amazingly, as a result of breathtaking breakthroughs in medicine, unborn children are today often treated as patients in need of curative procedures and healing, just like any other patient.

Is the concept of unborn child as victim really so hard to grasp, even when we are not talking about abortion, but assault by a mother? Is it lacking in logic or courage or common sense or compassion? Have the soothing voices of denial by credentialed people, especially in medicine and the media, ripped off our capacity to think? Has the horrific specter of 40 million poisoned or dismembered babies, legally enabled by Roe v. Wade, robbed us of our capability to see and to understand and to empathize? Have unborn children now become mere objects, a dehumanizing and deplorable status that feminists once rightly rebelled against?

Does a mugger, Mr. Speaker, have an unfettered access to maim or kill a baby without triggering a response for a separate penalty for that crime?

For years, Mr. Speaker, Congress has updated and strengthened laws and stiffened penalties for those who commit violence against women, and that is as it should be. Crafting such protections and penalties for perpetrators are among our highest responsibilities and duties as lawmakers.

Last year, I am happy to say, I was the prime sponsor of bipartisan legislation, Public Law 106–386, the Victims of Trafficking in Violence Protection Act of 2000, a $3.4 billion comprehensive package of sweeping new laws designed to protect women from violence at home and overseas.

Women who are victims of violence need every legal protection, appropriate shelter and assistance a caring society has to muster; but I would respectfully submit to my friends, so do children. A victim is a victim no matter how small. Why is it so difficult to recognize an unborn child as a victim who is all too capable of suffering trauma, disfigurement, disability or death?

Unborn children feel pain. Unborn children bleed and bruise easily. Unborn children are as vulnerable as their mothers to an assailant wielding a knife, a gun or a steel pipe. The amniotic sac is like a protective bubble, but it is not made of Kevlar. It pierces easily.

Earlier this week, Mr. Speaker, I met with Tracy Marciniak. Three years ago, her husband beat her and killed her almost full-term baby. The child, Zachariah, died from the bleeding; and this is what Tracy has said to all of us: ''Congress should approve the Unborn Victims of Violence Act. Opponents of the bill have put forth a counter-proposal known as the Lofgren amendment. I have read it,'' she said, ''and it is offensive to me because it says there is only one victim in such a crime, the woman who is pregnant. Please hear me on this,'' she goes on to say. ''On the night of February 8, 1992, there were two victims. I was nearly killed but I survived. Little Zachariah died,'' she goes on.

''Any law maker who is thinking of voting for the Lofgren one-victim amendment should first look at the picture of me holding my dead son at the funeral. Then I would say to that representative,'' she continues, ''if you really think that nobody died that night, then vote for the one-victim but please remember Zachariah's name and face when you decide.''

Vote for the underlying bill and against the substitute.

Mr. Speaker, why would Planned Parenthood and a virtual who's who of abortion activities in America so vehemently oppose the Unborn Victims of Violence Act and promote a gutting substitute in its stead?

Why is it, that on the floor of the House of Representatives on a pleasant Thursday afternoon in April, so many intelligent, talented and gifted lawmakers to whom so much has been given, are going to such great lengths to deny basic protections in law for an unborn child who has been shot, beaten, stabbed, or otherwise mauled by an attacker?

Could it be that America's abortion culture—a culture of death—has so numbed our hearts and dulled our minds that we have become incapable—or unwilling—of recognizing the obvious? Could it be ''Denial'' with a Capital D?

Amazingly, as a result of breathtaking breakthroughs in medicine, unborn children are today often treated as patients in need of curative procedures and healing just like any other patient. Is the concept of unborn child as victim really so hard to grasp—even when we are not talking about abortion, but assault by a mugger?

Have the soothing voices of denial by credentialed people—especially in medicine and the media—ripped off our capacity to think? Has the horrific specter of 40 million poisoned or dismembered babies legally enabled by Row v. Wade robbed us of our capability to see and understand and empathize?

Is it a lacking in logic, or courage or common sense or compassion?

Have unborn children become mere objects—a dehumanizing and deplorable status that feminists once rightly rebelled against?

Does a mugger—like an abortionist—have unfettered access to maim or kill a baby without triggering a separate penalty for the crime?

For years, Mr. Speaker, Congress has updated and strengthened laws and stiffened penalties for those who commit violence against women. And that is as it should be. Crafting such protections—and penalties for perpetrators—are among our highest responsibilities and duties as lawmakers.

Last year, I was the Prime Sponsor of bipartisan PL 106–386,—''Victims of Trafficking and Violence Protection Act of 2000—a $3.4 billion comprehensive package of sweeping new laws designed to protect women from violence at home and overseas.

Women who are victims of violence need every legal protection, appropriate shelter and assistance a caring society has to muster.

But, I would respectfully submit—so do children. A victim is a victim, it seems to me, no matter how small.

Why then is it so difficult to recognize an unborn child as a victim who is all too capable of suffering serve trauma, disfigurement, disability or death? Unborn children feel pain; unborn children bleed and bruise easily; unborn children are as vulnerable as their mothers to an assailant wielding a knife, or gun, or steel pipe.

The amniotic sac is like a protective bubble, but it isn't made of Kevlar. It pierces easily.

Earlier this week, I met with Tracy Marciniak. A few years ago her husband beat her and her almost full term baby. The child—Zachariah—died from the beating. Her attacker was charged and convicted of an assault on Tracy. He did minimal time. No charges, however, were brought against the

abuser for the crime—murder—he committed on Zachariah. Why? Because Zachariah had no legal value or standing—and could be killed with impunity.

Tracy has written:

Congress should approve the Unborn Victims of Violence Act. Opponents of the bill have put forth a counter proposal, known as the Lofgren Amendment. I have read it, and it is offensive to me, because it says that there is only one victim in such a crime—the women who is pregnant.

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.

Any lawmaker who is thinking of voting for the Lofgren ''one-victim'' amendment should first look at the picture of me holding my dead son at his funeral.

Then I would say to that representative, ''If you really think that nobody died that night, then vote for the ''one-victim'' amendment. But please remember Zachariah's name and face when you decide.

Anybody who thinks there is no dead baby in this picture should vote for the ''one-victim'' amendment. But anyone who sees a grieving mother holding her dead son should vote for the Unborn Victims of Violence Act.

Mr. Speaker, under H.R. 503, if an unborn child is injured or killed during the commission of an already-defined federal crime of violence, then the assailant may be charged with a second offense on behalf of the second victim—the unborn baby.

Of significance, 24 states have enacted laws recognizing unborn children as victims of violent crime. In upholding the Minnesota statute, the Minnesota Supreme Court said ''Roe v. Wade does not protect, much less confer on an assailant, a third party unilateral right to destroy the fetus.''

The Lofgren amendment, stripped of its surface appeal trappings and enhanced penalty has one pro-abortion strategic objective—Denial. Denial that an unborn child has inherent dignity. Denial that an unborn child has worth. Denial that an unborn child has innate value. How incredibly sad—and dangerous.

The Lofgren amendment must be rejected.

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

Mr. Speaker, I would just note that the gentleman from New Jersey (Mr. SMITH) asked, is there unfettered access for a mother to maim her child at any time in the pregnancy? If one reads Roe, clearly post-viability, the ability to secure abortions is severely limited only to those cases where a woman's health is severely damaged. I think that that needs to be made clear.

Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Speaker, I thank the gentlewoman from California (Ms. LOFGREN) for yielding me this time, and for her great leadership on this issue.

Mr. Speaker, I want to commend the ranking member of the Committee on the Judiciary as well for facilitating the Lofgren amendment coming to the floor.

It is masterful, it really is, because it answers the concerns that are posed by the proposers of the original bill to expand the penalty for those who commit violence against pregnant women, and it does so in a way that achieves that goal but is constitutional.

Mr. Speaker, we can all agree that acts of violence against pregnant women are reprehensible and should be punished. We all agree that acts of violence that harm a fetus are obviously unacceptable and repulsive to us. We can all agree that we must prevent violence against women whether pregnant or not.

The gentleman from New Jersey (Mr. SMITH), who just spoke, whom I hold in very high esteem, asked the question how could otherwise intelligent, caring people come to the floor and be opposed to this legislation that is being opposed by our colleagues on the other side? He said, could it be, he had a series of could-it-be's, that we could ignore violence against a pregnant woman?

□ 1345

But we are not ignoring it. The Lofgren amendment addresses it very directly without doing violence to the issue.

I urge my colleagues to vote for the substitute proposed by my colleague. The substitute would create a separate Federal criminal offense for harm to pregnant women, but would not confer new legal status on the fetus.

So I respond to my colleague, could it be that, as a woman, I know a little bit more about this subject than maybe he does? Could it be that as a mother of five, a grandmother of four, and hopefully more grandchildren to come, that I understand how reprehensible violence against a pregnant woman is?

But if that is the issue, the gentlewoman from California (Ms. LOFGREN) has responded to it. The bill on the floor is unconstitutional. It is a move to undo, which it cannot do, unless it is a constitutional amendment, but it is an attempt to undo Roe v. Wade.

In 1973, we all know the Supreme Court in Roe v. Wade stated that the unborn have never been recognized in the laws as persons in the whole sense. The Court specifically rejected the theory that grants personage to the fetus because it may override the rights of pregnant women that are at stake.

I urge my colleagues to accept the solution that is here, that addresses the problem in a constitutional way, and does not do violence to a woman's rights.

Mr. CHABOT. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Pennsylvania, (Ms. HART), a member of the Committee on the Judiciary.

Ms. HART. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in support of the underlying bill and in opposition to the Lofgren amendment. It does not, as is claimed by its supporters, accomplish the same goal that those who sponsored the original bill, the underlying bill, have. In fact, it does complicate and somewhat confuse the issue.

Claims have been made that are quite disingenuous regarding the underlying bill and also regarding the effectiveness of the proposed substitute. Firstly, the underlying bill is very clear about the violent act that must be committed against the pregnant woman. Although those supporters of the substitute claim that the pregnant woman is not recognized, she clearly is. Federal law recognizes violence against everyone as a crime, and enumerates a number of different crimes which would be the basis for the actual use of this proposal, H.R. 503.

The amendment does not refer to these particular laws. It in fact creates a separate offense which is unclear as to its effectiveness by prosecutors. The other legislation that has been on the books has been prosecuted many times. Those who were not even the intended victim of a crime would still be, those women, would still be victims, as a result of transferred intent. It is unclear in the substitute that that principle would be able to be used.

Mr. Speaker, I would implore my colleagues to quit hiding from the real issue. The real issue here is actual violence against women and children. The real issue is a way for us to actually prosecute a more severe crime when the woman is lucky enough to survive a dreadful assault, but the child is not.

Our goal here is to recognize reality. What our responsibility is here as Representatives is to recognize reality and to protect the citizens of the United States, the women who are victims and the children who are victims.

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

Mr. Speaker, before recognizing the gentlewoman from the District of Columbia, I would like to note that the criminal offenses in H.R. 503 are exactly the same as those in the substitute, except that we do require prosecution and then a separate prosecution for the miscarriage.

Mr. Speaker, I yield 2 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, I thank the gentlewoman for yielding me time.

Mr. Speaker, I am outraged at the use of old-fashioned abortion politics to get at a serious problem. Let me indicate just how serious the problem is. I participated recently in a press conference called by the American College of Nurses and Midwives here in the District of Columbia, now published in an AMA Journal.

In the District of Columbia, autopsies had been performed on pregnant women. What was discovered was that there were 13 homicides of pregnant women that had not been reported along with maternal deaths. These 13 unreported deaths accounted for 38 percent of pregnancy-associated deaths.

Now, these women had several things in common. They tended to be very young, 15 to 19; they were unmarried; they were murdered early in their pregnancy. There was no category in the FBI or accepted among the States to report these deaths. I have written to

the FBI to ask that a category be created, and I have written to the GAO asking that a study be done of such deaths throughout the country, because clearly what we found here is nationwide.

What is our answer this afternoon? Our answer is a clearly unconstitutional bill that defines a fetus as a person, in direct in-your-face violation of Roe v. Wade. There is a real problem out there. That problem is here in the Nation's capital. It is in your districts as well.

The substitute, the Lofgren substitute, gives us an opportunity to do something about a horrible crime, rather than play the same old abortion politics we have been playing ever since Roe v. Wade. In the name of nameless murdered pregnant women, unnoted even in the crime records, let us seize the opportunity to pass a constitutional bill that will help eliminate a crime of immense and unspeakable seriousness.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). The Chair would remind all Members and persons in the Chamber that it is the Speaker's policy that all audible devices be disabled before entering the House Chamber.

Mr. CHABOT. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. CUNNINGHAM).

Mr. CUNNINGHAM. Mr. Speaker, I would say that I respect the right of the gentlewoman from California (Ms. LOFGREN) to take the position she does. But let me address it as a father myself of two beautiful daughters and an adopted son.

If my wife was attacked and she was pregnant, or my daughters, and they both survived, then I would support the enhancement clause that the gentlewoman is trying to put in here. If either my wife or the unborn child was killed, then I would want justice, not enhancement. As a father, to know that a child that I was going to have that would not be born in this life because of some criminal act, I feel that that is wrong.

In Bosnia there was a Muslim that offered a private a child and says, ''Help me get my child to the hospital.'' On the way, the Muslim man said that, ''Help me, private.'' The point is that they are all our children.

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

Mr. Speaker, I would like to note that the Lofgren-Conyers amendment is not a sentencing enhancement measure; it is a second offense that is prosecuted and hopefully convicted in the case of heinous crime.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. HOEFFEL).

Mr. HOEFFEL. Mr. Speaker, I thank the gentlewoman for yielding me time and for her leadership, and the ranking member for his leadership as well.

This should be a debate, Mr. Speaker, about protecting women against violence, specifically about protecting pregnant women against violence, and the Lofgren amendment, the Lofgren substitute, does just that. It makes a new and very specific crime against violence to a pregnant woman that injures the fetus or terminates the pregnancy. That is the appropriate way to give such protection to pregnant women.

The underlying bill politicizes this issue. I do not think it is intended to politicize the issue, but it does, because it would give to the fetus a legal status that the courts nor Congress have ever given. It would give to the fetus the same legal status and a separate legal status from the woman, and that is the heart of the abortion debate. By writing their bill in such a fashion, they open up the whole floodgate to the very polarizing and politicized abortion debate that has not moved forward nor helped us deal with the issue at hand.

We should focus on potential injury to the woman, to violence to the pregnant woman, and pass the Lofgren substitute that is carefully written, that is constitutional, that is effective. It avoids the polarizing debate that prohibits us from solving this problem. The Lofgren substitute gets the job done. We should vote for it to protect women.

Ms. LOFGREN. Mr. Speaker, I yield 1½ minutes to the gentlewoman from New York (Ms. SLAUGHTER).

Ms. SLAUGHTER. Mr. Speaker, I thank the gentlewoman for yielding me time.

Mr. Speaker, I rise in strong opposition to H.R. 503. The Unborn Victims of Violence Act is the first volley this term by the anti-choice legislators to restrict a woman's right to choose. This bill would add to the Federal criminal code a separate new offense to punish individuals who injure or cause the death of a child which is in utero, regardless of the stage of development. It sounds innocuous enough, but in essence it is a sham.

No one would argue that an attack on a pregnant woman that results in a miscarriage or an injury is not a tragedy. As one of the most vocal leaders in Congress on behalf of women and families, I have spoken on this House floor numerous times to end violence against women and domestic violence of all sorts.

But that is not what we are talking about here today. H.R. 503 eliminates the mother from the picture. She is of no concern. Instead, it affords an embryo the legal status that should be hers as a human being. Precisely the goal that the authors of H.R. 503 and the National Right to Life Committee seek to achieve is reaching this status.

The supporters candidly admit that their purpose is to recognize the existence of a separate legal person, separate from its mother, before it is born. And supporters rejected a number of alternative tougher ways to address violence against the pregnant woman, each time citing the reason being that the alternative did not recognize embryonic personage.

Do not be fooled. This is an anti-choice bill disguised as a crime bill. I strongly urge my colleagues to vote for the Lofgren substitute which will provide the same penalties but does not separate the fetus from its mother.

Last Friday, the press reported that President Bush does not intend to launch a frontal attack on Roe v. Wade or let his Presidency become mired in this controversy. If that is true, then we hope that we will not see more of these bills. In the meantime, please vote for the Lofgren substitute.

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

Mr. Speaker, I hope that both pro-choice and anti-choice Members of this body will vote for the Lofgren-Conyers substitute. It provides stronger penalties and greater protections in the case of assault on a pregnant woman.

I note, and this is especially important to me and others who have spoken today from personal experience, that the protection will be to those who are in their 6th week of pregnancy, just as in their eighth month of pregnancy, and that is enormously important to us all.

Mr. Speaker, I yield the balance of my time to the distinguished gentleman from Michigan (Mr. CONYERS).

The SPEAKER pro tempore. The gentleman from Michigan is recognized for 3¼ minutes.

Mr. CONYERS. Mr. Speaker, I wanted to thank my colleague, the gentlewoman from California (Ms. LOFGREN), for the splendid substitute that she has let me help her work on, that we hope will bring us all back together.

Just a couple of points: Please let everyone that is voting on this measure know that the substitute is not a penalty enhancement. Lofgren-Conyers is not a penalty enhancement. It provides a new and separate offense for harm to a pregnant woman that can cause injury or termination of her pregnancy.

□ 1400

It contains two separate offenses. We got that out of the way.

Okay, next. The substitute is tougher on criminals than is H.R. 503. Under the substitute, if a pregnancy is terminated, even unintentionally, the assailant can be sentenced to life in prison. By comparison, H.R. 503, the criminal must intentionally terminate pregnancy in order to get a life sentence. There is a big, big difference there.

Now, to the reality of the matter. Because the major bill, H.R. 503, undermines Roe v. Wade, the Senate is not going to take it up. The Senate is not going to take up H.R. 503. We must come to that reality. They did not take it up in the last Congress; they will not take it up in this Congress in its present form. So if my friends on the other side of the aisle really want to protect unborn children, they will join us in supporting the substitute. So we are begging that our colleagues put

policy above the normal abortion politics.

Now, there is still the heart of the matter here that under the 14th amendment, as provided in Roe, ''person'' as used in the 14th amendment does not include the unborn. We cannot change that. We are not here to change it today. In the 28 years since Roe, the Supreme Court has never afforded legal personhood to a fetus. So in the name of all of the women and the men in this country that support a woman's right to choose, please join with me in supporting the Lofgren-Conyers substitute. We think it would be a beautiful day forward, and we will give this bill the life that it needs to go to the other body.

Mr. Speaker, I urge the support of the substitute and the rejection of the base bill, H.R. 503.

Mr. CHABOT. Mr. Speaker, I yield myself 15 seconds. Once again, we keep hearing the term, ''a woman's right to choose''; and I just want to say again that the woman chose to have the baby, it is the criminal that took away her right by killing her baby. And we are just trying to make it tougher on those criminals and to make the penalties much tougher and make it a separate offense if they take that child's life or harm that life.

Mr. Speaker, I yield the balance of my time to the gentleman from South Carolina (Mr. GRAHAM), a proponent of this bill.

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

I respectfully disagree with the gentleman from Michigan (Mr. CONYERS), my good friend. I am asking my colleagues to vote against the substitute and for the underlying bill.

When one writes a bill that says you cannot prosecute someone under the bill who is performing a lawful abortion, you can never prosecute the mother for any of her conduct, you cannot prosecute medical providers, one would think it would not be about abortion. But some people want to talk about that, and that is politics. That is okay. That is the way politics works.

I want to talk about the law and common sense. If one is a prosecutor and can pick between the substitute and my bill, I think every prosecutor I know of would pick my bill, because you could really have the full force and effect of the law against the criminal.

Abortion rights are not going to be enhanced by voting against my bill and for the substitute. The only person that wins is the criminal. In the Arkansas case, she was begging for her baby's life and the criminal was saying, ''Your baby is dying tonight.'' Let us get together as a Congress in saying, once the woman chooses to have the baby and she is assaulted by a criminal who is paid to terminate her pregnancy through beating her and her baby to death, that that is a crime, not a fiction.

She is begging for the baby's life; the man is saying, ''I am going to take your baby away from you tonight.'' Let us have a statute that allows that person to be prosecuted for what they intended to do, and that is, kill the unborn child; and in that statute, you protect Roe v. Wade rights.

The pro-choice people who voted for my bill last year, thank you. You can be pro-choice and not pro-abortion. People say that it is possible. This is a case of being pro-choice, but not being pro-abortion because there is no reason to let the criminal go or diminish their punishment with a poorly drafted substitute, simply because one is worried about abortion when it is not covered by the bill.

Let us focus our energies on putting criminals in jail when the mother chooses to have the baby. America will be better, prosecutors will have better tools, and we can go home and look pro-life and pro-choice people in the eye and say, Congress responded to a very serious event in a very logical way.

Please vote for the bill and against the underlying substitute. A lot is at stake. America will be better if we could pass this bill.

Mr. LEVIN. Mr. Speaker, I rise in strong support of the Lofgren substitute. Unlike the underlying bill before the House today, the substitute truly addresses the serious issue of violence against women and would impose stricter penalties for causing harm to a fetus or forcibly terminating a pregnancy than exist today.

Surely if we can find common ground on nothing else, we should all be able to agree that crimes against women that cause the loss of a pregnancy are tragic and deplorable acts. These crimes ought to be punished severely.

The fundamental problem with the underlying bill is that it ignores where and when these crimes most often occur. H.R. 503 establishes criminal punishments for those who harm a fetus while committing any one of 68 specified federal crimes. The difficulty with this approach is that few of these crimes are actually tried in federal court, and many of the listed offenses are unlikely to result in harm to pregnant women. For example, how many pregnant women are impacted each year as a result of transactions involving nuclear materials? How many pregnancies are lost each year due to assaults or kidnappings of Members of Congress, the President's cabinet or members of the Supreme Court? The answer is: not many.

At the same time, the bill is completely silent on the much more prevalent problem of domestic violence. It is estimated that domestic violence victimizes one million women a year. How can we discuss punishment of violence against pregnant women and ignore the crimes where this violence most often occurs?

The Lofgren substitute, on the other hand, creates legal protection that truly helps women and punishes violence resulting in injury or termination of a pregnancy. It provides for a maximum 20-year sentence for injury to a women's pregnancy and up to a life sentence for violent conduct against a woman that interrupts or terminates her pregnancy. It makes it a federal crime. The substitute focuses on the harm to the pregnant woman, providing a deterrent against violence.

I urge my colleagues to support the Lofgren substitute and oppose the underlying bill.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in strong opposition to H.R. 503, ''Unborn Victims of Violence Act of 2001.'' I am pleased that the ''Lofgren Substitute'' to H.R. 503, the ''Unborn Victims of Violence Act of 2001,'' brings the real issue of who is victimized in clear fashion. The substitute would replace the term ''unborn children'' where it appears in the appropriate places throughout the bill with ''violence during pregnancy.'' The result of my amendment would essentially ensure that the legislation recognizes the pregnant woman as the crime victim, not the ''unborn child.''

The substitute seeks to address what I believe is a veiled attempt to create a legal status for the unborn. While I sympathize with the mothers who have lost fetuses due to the intentional violent acts of others, I believe, however, that H.R. 503 would obscure the rights of women. The substitute would prevent this legislation from opening the door to future legislation by which a woman could be held civilly or criminally liable for fetal injuries caused by behavior during her pregnancy that might have potentially adverse effects on her fetus including failing to eat properly, using prescription, nonprescription and illegal drugs, being exposed to infectious disease, engaging in immoderate exercise or sexual intercourse or using general anesthetic or drugs to include rapid labor during delivery.

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

The state courts that have expressed an opinion on this issue have done so with the caveat that while Roe protects a woman's constitutional right to choose, it does not protect a third party's destruction of a fetus. This bill will create a slippery slope that will result in doctors being sued for performing abortions, especially if the procedure is controversial, such as partial birth abortion. Although this bill exempts abortion procedures as a crime against the fetus, the potential for increased civil liability is present. Thus, disenchanted husbands and relatives would be able to bring suit who exercises her right to choose.

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

I urge my colleagues to vote in favor of the Lofgren Substitute. We do not need this bill to provide special status to unborn fetuses. A better alternative is to create a sentence enhancement for any intentional harm done to a pregnant woman. This bill is simply a clever way of creating a legal status to erode abortion rights.

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to House Resolution 119, the previous question is ordered on the bill and on the amendment offered by the gentlewoman from California (Ms. LOFGREN).

The question is on the amendment in the nature of a substitute offered by the gentlewoman from California (Ms. LOFGREN).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Ms. LOFGREN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 196, noes 229, not voting 6, as follows:

[Roll No. 88]

AYES—196

Abercrombie	Gephardt	Moran (VA)
Ackerman	Gilman	Morella
Allen	Gonzalez	Nadler
Andrews	Gordon	Napolitano
Baca	Granger	Neal
Baird	Green (TX)	Obey
Baldacci	Greenwood	Olver
Baldwin	Gutierrez	Ose
Barrett	Harman	Owens
Bass	Hastings (FL)	Pallone
Becerra	Hill	Pascrell
Bentsen	Hilliard	Pastor
Berkley	Hinchey	Payne
Berman	Hinojosa	Pelosi
Biggert	Hobson	Pomeroy
Bishop	Hoeffel	Price (NC)
Blagojevich	Holt	Pryce (OH)
Blumenauer	Honda	Rangel
Boehlert	Hooley	Reyes
Bonior	Horn	Rivers
Bono	Houghton	Rodriguez
Boswell	Hoyer	Ross
Boucher	Inslee	Rothman
Boyd	Israel	Roukema
Brady (PA)	Jackson (IL)	Rush
Brown (FL)	Jackson-Lee	Sabo
Brown (OH)	(TX)	Sanchez
Capuano	Jefferson	Sanders
Cardin	Johnson (CT)	Sandlin
Carson (IN)	Johnson, E. B.	Sawyer
Carson (OK)	Kaptur	Schakowsky
Castle	Kelly	Schiff
Clay	Kennedy (RI)	Scott
Clayton	Kilpatrick	Serrano
Clyburn	Kind (WI)	Shays
Condit	Kirk	Sherman
Conyers	Kleczka	Simmons
Coyne	Kolbe	Slaughter
Crowley	Lampson	Smith (WA)
Cummings	Larsen (WA)	Snyder
Davis (CA)	Larson (CT)	Solis
Davis (FL)	Lee	Spratt
Davis (IL)	Levin	Stark
DeFazio	Lewis (GA)	Strickland
DeGette	Lofgren	Sweeney
Delahunt	Lowey	Tanner
DeLauro	Luther	Tauscher
Deutsch	Maloney (CT)	Thomas
Dicks	Maloney (NY)	Thompson (CA)
Dingell	Markey	Thompson (MS)
Doggett	Matheson	Thurman
Dooley	Matsui	Tierney
Dunn	McCarthy (MO)	Towns
Edwards	McCarthy (NY)	Turner
Engel	McCollum	Udall (CO)
Eshoo	McDermott	Udall (NM)
Etheridge	McGovern	Upton
Evans	McKinney	Velazquez
Farr	Meehan	Waters
Fattah	Meeks (NY)	Watt (NC)
Filner	Menendez	Waxman
Foley	Millender-	Weiner
Ford	McDonald	Wexler
Frank	Miller, George	Woolsey
Frelinghuysen	Mink	Wu
Frost	Moore	Wynn

NOES—229

Aderholt	Bonilla	Chambliss
Akin	Borski	Clement
Armey	Brady (TX)	Coble
Bachus	Brown (SC)	Collins
Baker	Bryant	Combest
Ballenger	Burr	Cooksey
Barcia	Burton	Costello
Barr	Buyer	Cox
Bartlett	Callahan	Cramer
Barton	Calvert	Crane
Bereuter	Camp	Crenshaw
Berry	Cannon	Cubin
Bilirakis	Cantor	Culberson
Blunt	Capito	Cunningham
Boehner	Chabot	Davis, Jo Ann
Davis, Tom	Kildee	Riley
Deal	King (NY)	Roemer
DeLay	Kingston	Rogers (KY)
DeMint	Knollenberg	Rogers (MI)
Diaz-Balart	Kucinich	Rohrabacher
Doolittle	LaFalce	Ros-Lehtinen
Doyle	LaHood	Royce
Dreier	Langevin	Ryan (WI)
Duncan	Largent	Ryun (KS)
Ehlers	Latham	Saxton
Ehrlich	LaTourette	Scarborough
Emerson	Lewis (CA)	Schaffer
English	Lewis (KY)	Schrock
Everett	Linder	Sensenbrenner
Ferguson	Lipinski	Sessions
Flake	LoBiondo	Shadegg
Fletcher	Lucas (KY)	Shaw
Fossella	Lucas (OK)	Sherwood
Gallegly	Manzullo	Shimkus
Ganske	Mascara	Shows
Gekas	McCrery	Simpson
Gibbons	McHugh	Skeen
Gilchrest	McInnis	Skelton
Gillmor	McIntyre	Smith (MI)
Goode	McKeon	Smith (NJ)
Goodlatte	McNulty	Smith (TX)
Goss	Mica	Souder
Graham	Miller (FL)	Spence
Graves	Miller, Gary	Stearns
Green (WI)	Mollohan	Stenholm
Grucci	Moran (KS)	Stump
Gutknecht	Murtha	Stupak
Hall (OH)	Myrick	Sununu
Hall (TX)	Nethercutt	Tancredo
Hansen	Ney	Tauzin
Hart	Northup	Taylor (MS)
Hastings (WA)	Norwood	Taylor (NC)
Hayes	Nussle	Terry
Hayworth	Oberstar	Thornberry
Hefley	Ortiz	Thune
Herger	Osborne	Tiahrt
Hilleary	Otter	Tiberi
Hoekstra	Oxley	Toomey
Holden	Paul	Traficant
Hostettler	Pence	Visclosky
Hulshof	Peterson (MN)	Vitter
Hunter	Peterson (PA)	Walden
Hutchinson	Petri	Walsh
Hyde	Phelps	Wamp
Isakson	Pickering	Watkins
Issa	Pitts	Watts (OK)
Istook	Platts	Weldon (FL)
Jenkins	Pombo	Weldon (PA)
John	Portman	Weller
Johnson (IL)	Putnam	Whitfield
Johnson, Sam	Quinn	Wicker
Jones (NC)	Radanovich	Wilson
Jones (OH)	Rahall	Wolf
Kanjorski	Ramstad	Young (AK)
Keller	Regula	Young (FL)
Kennedy (MN)	Rehberg	
Kerns	Reynolds	

NOT VOTING—6

Capps	Leach	Moakley
Lantos	Meek (FL)	Roybal-Allard

□ 1427

Messrs. YOUNG of Alaska, CRENSHAW, WHITFIELD, GILCHREST and PORTMAN and Mrs. JONES of Ohio changed their vote from ''aye'' to ''no.''

Mr. ROSS changed his vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 252, nays 172, answered ''present'' 1, not voting 7, as follows:

[Roll No. 89]

YEAS—252

Aderholt	Grucci	Peterson (PA)
Akin	Gutknecht	Petri
Armey	Hall (OH)	Phelps
Bachus	Hall (TX)	Pickering
Baker	Hansen	Pitts
Ballenger	Hart	Platts
Barcia	Hastert	Pombo
Barr	Hastings (WA)	Pomeroy
Bartlett	Hayes	Portman
Barton	Hayworth	Pryce (OH)
Bereuter	Hefley	Putnam
Berry	Herger	Quinn
Bilirakis	Hill	Radanovich
Bishop	Hilleary	Rahall
Blunt	Hobson	Ramstad
Boehner	Hoekstra	Rangel
Bonilla	Holden	Regula
Bonior	Hostettler	Rehberg
Borski	Hulshof	Reynolds
Brady (TX)	Hunter	Riley
Brown (SC)	Hutchinson	Roemer
Bryant	Hyde	Rogers (KY)
Burr	Isakson	Rogers (MI)
Burton	Issa	Rohrabacher
Buyer	Istook	Ros-Lehtinen
Callahan	Jenkins	Ross
Calvert	John	Royce
Camp	Johnson (IL)	Ryan (WI)
Cannon	Johnson, Sam	Ryun (KS)
Cantor	Jones (NC)	Saxton
Capito	Kanjorski	Scarborough
Castle	Kaptur	Schaffer
Chabot	Keller	Schrock
Chambliss	Kennedy (MN)	Sensenbrenner
Clement	Kerns	Sessions
Clyburn	Kildee	Shadegg
Coble	Kind (WI)	Shaw
Collins	King (NY)	Sherwood
Combest	Kingston	Shimkus
Cooksey	Knollenberg	Shows
Costello	Kucinich	Simpson
Cox	LaFalce	Skeen
Cramer	LaHood	Skelton
Crane	Langevin	Smith (MI)
Crenshaw	Largent	Smith (NJ)
Crowley	Latham	Smith (TX)
Cubin	LaTourette	Souder
Culberson	Lewis (CA)	Spence
Cunningham	Lewis (KY)	Spratt
Davis, Jo Ann	Linder	Stearns
Davis, Tom	Lipinski	Stenholm
Deal	LoBiondo	Stump
DeLay	Lucas (KY)	Stupak
DeMint	Lucas (OK)	Sununu
Diaz-Balart	Manzullo	Sweeney
Dingell	Mascara	Tancredo
Doolittle	Matheson	Tanner
Doyle	McCrery	Tauzin
Dreier	McHugh	Taylor (MS)
Duncan	McInnis	Taylor (NC)
Dunn	McIntyre	Terry
Ehlers	McKeon	Thornberry
Ehrlich	McNulty	Thune
Emerson	Mica	Tiahrt
English	Miller (FL)	Tiberi
Everett	Miller, Gary	Toomey
Ferguson	Mollohan	Traficant
Flake	Moran (KS)	Turner
Fletcher	Murtha	Upton
Fossella	Myrick	Vitter
Gallegly	Neal	Walden
Ganske	Nethercutt	Walsh
Gekas	Ney	Wamp
Gibbons	Northup	Watkins
Gilchrest	Norwood	Watts (OK)
Gillmor	Nussle	Weldon (FL)
Goode	Oberstar	Weldon (PA)
Goodlatte	Obey	Weller
Gordon	Ortiz	Whitfield
Goss	Osborne	Wicker
Graham	Otter	Wilson
Granger	Oxley	Wolf
Graves	Pence	Young (AK)
Green (WI)	Peterson (MN)	Young (FL)

NAYS—172

Abercrombie	Baird	Becerra
Ackerman	Baldacci	Bentsen
Allen	Baldwin	Berkley
Andrews	Barrett	Berman
Baca	Bass	Biggert

Blagojevich	Hinchey	Napolitano
Blumenauer	Hinojosa	Olver
Boehlert	Hoeffel	Ose
Bono	Holt	Owens
Boswell	Honda	Pallone
Boucher	Hooley	Pascrell
Boyd	Horn	Pastor
Brady (PA)	Houghton	Paul
Brown (FL)	Hoyer	Payne
Brown (OH)	Inslee	Pelosi
Capuano	Israel	Price (NC)
Cardin	Jackson (IL)	Reyes
Carson (IN)	Jackson-Lee (TX)	Rivers
Carson (OK)	Jefferson	Rodriguez
Clay	Johnson (CT)	Rothman
Clayton	Johnson, E. B.	Roukema
Condit	Kelly	Sabo
Conyers	Kennedy (RI)	Sanchez
Coyne	Kilpatrick	Sanders
Cummings	Kirk	Sandlin
Davis (CA)	Kleczka	Sawyer
Davis (FL)	Kolbe	Schakowsky
Davis (IL)	Lampson	Schiff
DeFazio	Larsen (WA)	Scott
DeGette	Larson (CT)	Serrano
Delahunt	Lee	Shays
DeLauro	Levin	Sherman
Deutsch	Lewis (GA)	Simmons
Dicks	Lofgren	Slaughter
Doggett	Lowey	Smith (WA)
Dooley	Luther	Snyder
Edwards	Maloney (CT)	Solis
Engel	Maloney (NY)	Stark
Eshoo	Markey	Strickland
Etheridge	Matsui	Tauscher
Evans	McCarthy (MO)	Thomas
Farr	McCarthy (NY)	Thompson (CA)
Fattah	McCollum	Thompson (MS)
Filner	McDermott	Thurman
Foley	McGovern	Tierney
Ford	McKinney	Towns
Frank	Meehan	Udall (CO)
Frelinghuysen	Meeks (NY)	Udall (NM)
Frost	Menendez	Velazquez
Gephardt	Millender-McDonald	Visclosky
Gilman	Miller, George	Waters
Gonzalez	Mink	Watt (NC)
Green (TX)	Moore	Waxman
Greenwood	Moran (VA)	Weiner
Gutierrez	Morella	Wexler
Harman	Nadler	Woolsey
Hastings (FL)	Napolitano	Wu
Hilliard	Olver	Wynn

ANSWERED ''PRESENT''—1

Rush

NOT VOTING—7

Capps	Leach	Roybal-Allard
Jones (OH)	Meek (FL)	
Lantos	Moakley	

□ 1447

Mr. BONIOR changed his vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mrs. JONES of Ohio. Mr. Speaker, I originally voted ''yes'' on rollcall 88. I then walked to the well thinking I was voting on 89 and I voted ''no''. Therefore, my vote on 88 was changed to ''no'' and I was not recorded on 89. I intended to vote ''no'' on rollcall 89.

Mr. LANTOS. Mr. Speaker, due to a longstanding commitment to deliver a graduation commencement address, I am unable to be present to vote against H.R. 503, the Unborn Victims of Violence Act today. Had I been present I would have voted ''no'' on final passage of H.R. 503 because this legislation is an attack on a woman's right to choose.

PERSONAL EXPLANATION

Mrs. CAPPS. Mr. Speaker, I was not present on rollcall Nos. 88 and 89 due to a recent death of a close friend. Had I been present, I would have voted ''aye'' on rollcall No. 88 and ''nay'' on rollcall No. 89.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 503, UNBORN VICTIMS OF VIOLENCE ACT OF 2001

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 503, the Clerk be authorized to make technical corrections and conforming changes to the bill.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1051

Mr. KANJORSKI. Mr. Speaker, I ask unanimous consent, pursuant to clause 7 of rule XII, that my name be deleted as a cosponsor of H.R. 1051. My name was inadvertently added to this bill in a clerical error by committee staff.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

JOELLE RICE RETIRES AFTER 34 YEARS

(Mr. HASTERT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HASTERT. Mr. Speaker, today I want to thank Joelle Rice, the assistant manager of the cloakroom, who is retiring from the Hill after 34 years of dedicated service. Joelle is responsible for making this House run smoothly. Day after day, Joelle keeps Members and staff up to date on what is happening on the floor. She lets us know what we are voting on, what time we are voting, and what time votes will end. Members have relied on her for years for good information; and no matter how busy she is and no matter how many phones are ringing off the hook, she delivers.

Thank you, Joelle, for all that you have done for us. You have served this Congress well. Joelle, we wish you and your husband, Wes, the best in your future years together. Thank you.

Mr. BOEHNER. Mr. Speaker, will the gentleman yield?

Mr. HASTERT. I yield to the gentleman from Ohio.

Mr. BOEHNER. Mr. Speaker, thank you for yielding. On behalf of us as individual Members, and even more importantly our offices, as Members go through the day all day long every day trying to find out when we are going to vote. All of our staff and all of us as Members talk to Joelle or others in the cloakroom on an ongoing basis from morning until late at night. As a Member who has been here for 10 years and on behalf of my staff who talks to her often, Joelle has been an invaluable asset to make our lives work, to make sure that we are here when we need to be here, and I know how much all of the staff across the street and all of the Members appreciate her worthwhile efforts.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. HASTERT. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding, and I want to rise on behalf of all of the Members on this side of the aisle. Joelle works for the majority. She used to work for the minority, and I was in the majority. Joelle and I have switched places. And I have been here 20 years, so I have known Joelle for a long, long time. I think I speak for everybody on our side of the aisle, Mr. Speaker, that she is perhaps not equally, because I do not want to get her in trouble with the majority, but she is very helpful to us, always courteous, always with a good word, always cheerful, and has made this institution a better place.

Mr. Speaker, on behalf of all of us on this side of the aisle, she has operated in a nonpartisan, bipartisan, efficient and effective way to make this institution run better; and we all join, Mr. Speaker, in congratulating her and thanking her for her service to this institution and to her country.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. HASTERT. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, I want to join the Speaker for taking this time to honor Joelle Rice, who has been of invaluable assistance to so many of us with her warm personality and always willing to be of help. We are going to miss Joelle. She is not only married this year, but now retiring. We wish her health and happiness in her years ahead.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. HASTERT. I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, if I may close this and if I may dare speak for the body, Joelle, we wish you Godspeed; and in the best spirit of a Texas country western song, let me say, we miss you already, and you are not even gone.

LEGISLATIVE PROGRAM

(Mr. HOYER asked and was given permission to address the House for 1 minute.)

Mr. HOYER. Mr. Speaker, for the purposes of informing us of next week's schedule, I am pleased to yield to the gentleman from Texas (Mr. ARMEY), the distinguished majority leader.

Mr. ARMEY. Mr. Speaker, I am pleased to announce that the House has completed its legislative business for the week.