AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 108–420, Part 1

LACI AND CONNER'S LAW

FEBRUARY 11, 2004.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1997]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1997) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	2
Purpose and Summary	3
Background and Need for the Legislation	4
Hearings	21
Committee Consideration	21
Vote of the Committee	21
Committee Oversight Findings	23
New Budget Authority and Tax Expenditures	24
Congressional Budget Office Cost Estimate	24
Performance Goals and Objectives	25
Constitutional Authority Statement	25
Section-by-Section Analysis and Discussion	25
Changes in Existing Law Made by the Bill, as Reported	26
Committee Jurisdiction Letters	30
Markup Transcript	32
Dissenting Views	81

THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Unborn Victims of Violence Act of 2004" or "Laci and Conner's Law".

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.".

PURPOSE AND SUMMARY

Under current Federal law, an individual who commits a Federal crime of violence against a pregnant woman receives no additional criminal charge or punishment for killing or injuring the woman's unborn child during the commission of the crime. Therefore, 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 Federal crime has no legal consequence.[1]

The "Unborn Victims of Violence Act of 2003" (the "Act"), H.R. 1997, was designed to fill this void in Federal law by providing that an individual who injures or kills an unborn child during the commission of certain Federal crimes of violence can be charged with a separate offense. The punishment for that separate offense is the same as the punishment provided under Federal law had the same injury or death resulted to the pregnant woman. If the perpetrator commits the predicate offense with the intent to kill the unborn child, the punishment for that offense is the same as the punishment provided under Federal law for intentionally killing or attempting to kill a human being.

By its express terms, the Unborn Victims of Violence Act does not apply to, nor in any way affect nor alter, the ability of a woman

[1] Fifteen States currently have laws that recognize the unborn as victims throughout the period of prenatal development. Another thirteen States have laws that recognize the unborn as victims during part of their prenatal development, and six other States criminalize certain specific conduct that "terminates a pregnancy" or causes a miscarriage. Thus, at least sixteen States provide little or no protection to unborn victims of violence.

to have an abortion. The law states that it will not permit prosecution "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." H.R. 1997, 108th Congress (1st. Sess. 2003), Sec. 2(c)(1). The bill would also exempt from prosecution "any person for any medical treatment of the pregnant woman or her unborn child" H.R. 1997, 108th Congress (1st. Sess. 2003), Sec. 2(c)(2) or "any woman with respect to her unborn child." 108th Congress (1st Sess. 2003), Sec. 2(c)(3). In this respect, the bill would rectify the current injustice in Federal law by protecting a mother's constitutional right and interest in having a baby from unwanted intrusion by third parties.

BACKGROUND AND NEED FOR THE LEGISLATION

Recent studies in Maryland, North Carolina, New York City, and Illinois have uncovered a disturbing statistic: homicide is the leading cause of death of pregnant women in those areas of the country.[2] Some States have already identified and addressed this tragic problem by enacting statutes permitting the prosecution of a person for the injury to, or murder of, an unborn child, in addition to the prosecution for the injury to, or death of, the mother. Allowing such prosecutions not only results in future deterrence of such crimes,[3] but it also brings a sense of closure to the grieving families who have lost not one, but two family members.[4] Because cur-

---

[2] *See* Victoria Frey, *Examining Homicide's Contribution to Pregnancy-Associated Deaths*, 285 JAMA 1510 (2001) (summarizing the various studies); Isabelle L. Horon and Diana Cheng, *Enhanced Surveillance for Pregnancy-Associated Mortality—Maryland, 1993–1998*, 285 JAMA 1455 (2001); Linn H. Parsons and Margaret A. Harper, *Violent Maternal Deaths in North Carolina*, 94 Obstet.Gynecol. 990–993 (1999); Dannenberg, *et al., Homicide and Other Injuries as Causes of Maternal Death in New York City, 1987 through 1991*, 172 Am.J.Obstet.Gynecol. 1557–1564 (1995); Fildes, *et al., Trauma: The Leading Cause of Maternal Mortality*, 32 J.Trauma 643–645 (1992).

[3] *See The Unborn Victims of Violence Act of 2003: Hearings on H.R. 1997 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 108th Cong. 11 (2003) (statement of Tracy Marciniak) [hereinafter "*Marciniak Testimony*"] ("Before his trial, my attacker said on TV that he would never have hit me if he had thought that he could be charged with the killing of his child."); *id.* at 28–29 ("if you look at the other laws, if you look at a drunk driver, if they know they can get punished for that crime, they are going to think twice. If an attacker of a pregnant woman knows that they can get prosecuted for harming or killing that woman's child, they are going to think twice before they do it.").

[4] *See Marciniak Testimony* at 11–12 ("I know that some lawmakers and some groups insist that there is no such thing as an unborn victim and that the crimes like this only have a single victim. But this is callous, and it is wrong. Please don't tell me that my son was not a real victim of a real crime. We are both victims but only I survived. . . . I do not want to think of any surviving mother being told what I was told, that she did not really lose a baby, that nobody really died. I say no surviving mother, father, or grandparent should ever again be told that their murdered loved one never even existed in the eyes of the law."); *see also The Unborn Victims of Violence Act of 1999: Hearings on H.R. 2436 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong. 40–43 (1999) (statement of Michael Lenz) [hereinafter "*Lenz Testimony*"] ("Should we as a people allow that act of violence [the Oklahoma City Bombing] to remain a victimless crime? No Michael James Lenz, III ever mentioned? I don't think that would be right. In any case, I lost the two people I loved the most that day, and the official death toll for the Murrah bombing remains at 168. In addition to Carrie, there were two other expecting mothers in the building that day, three unborn children. Passing this bill won't bring my wife and son back to me, but it would go a long way toward at least recognizing Michael's existence and the loss of 7 years of responsible action to gain that life. A violent criminal act that results in the death of a potential life is worth prosecution on its own merits, regardless of the other counts against the defendant."); *See The Unborn Victims of Violence Act of 2001: Hearing on H.R. 503 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 107th Cong. 33–36 (2001) (statement of William Croston) [hereinafter Croston Testimony] ("In closing, the Committee should understand that our family will forever be mourning the loss of Ruth Croston and our unborn niece. Our grief will last a lifetime. The emotional effects of the death of our niece resurface each time we hear about another unnecessary act of violence against a pregnant woman. The impact of the irresponsible actions of Reginald Falice will be with me and my family for the rest of our lives."); Letter from Sharon Rocha,

rent Federal law does not allow for such prosecution, there is an urgent need for such legislation. In fact, a recently-released poll conducted by Princeton Survey Research Associates for Newsweek reveals that 84% of Americans believe that prosecutors should be able to bring a homicide charge on behalf of an unborn child killed in the womb.[5] The Unborn Victims of Violence Act, H.R. 1997, is designed to respond to this overwhelming desire of the American public to provide, under Federal law, that an individual who injures or kills an unborn child during the commission of certain Federal crimes of violence will be charged with a separate offense and thus susceptible to additional penalties.

CURRENT FEDERAL LAW

The "Born Alive" Rule

Federal law does not currently permit prosecution of violent criminals for killing or injuring unborn children. Instead, Federal criminal statutes incorporate the common law "born alive" rule, which provides that a criminal may be prosecuted for killing an unborn child only if the child was born alive after the assault and later died as a result of the fetal injuries.[6]

The born alive rule, however, has been rendered obsolete by progress in science and medicine. As one commentator explains, "the historical basis of the born alive rule was developed out of a lack of sophisticated medical knowledge."[7] Because pregnancy was difficult to determine, the common law recognized that live birth was the most reliable means of ensuring that a woman was with child and that the child was in fact a living being.[8]

The use of ultrasound, fetal heart monitoring, in vitro fertilization, and fetoscopy has greatly enhanced our understanding of the development of unborn children.[9] Pursuant to this enhanced knowledge, most jurisdictions today recognize third party tort actions for injury or death of an unborn child.[10] Even the United States Supreme Court in *Roe* v. *Wade* acknowledged the inheritance and other property rights that unborn children enjoy in modern law.[11]

---

mother of Laci Peterson and grandmother of Conner Peterson, to United States Senators Mike DeWine, Lindsey Graham, and Orrin Hatch, and United States Congresswoman Melissa Hart (June 16, 2003) (on file with House Committee on the Judiciary) ("When a criminal attacks a woman who carries a child, he claims two victims. I lost a daughter, but I also lost a grandson. . . . I hope that every legislator will clearly understand that adoption of such a single-victim amendment [The Motherhood Protection Act] would be a painful blow to those, like me, who are left alive after a two-victim crime, because Congress would be saying that Conner and other innocent unborn victims like him are not really victims—indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before her ever saw the sun.").

[5] Fifty-six percent (56%) of those surveyed believe that a homicide charge could be brought at any point during the pregnancy. Twenty-eight percent (28%) believe such a charge should apply only after the baby is "viable." Only 9 percent (9%) believe that a homicide charge should never be allowed on behalf of an unborn child. Debra Rosenberg, *Should a Fetus Have Rights?*, Newsweek, June 2003.

[6] *See United States* v. *Spencer,* 839 F.2d 1341 (9th Cir. 1988).

[7] Cari L. Leventhal, Comment, *The Crimes Against the Unborn Child Act: Recognizing Potential Human Life in Pennsylvania Criminal Law*, 103 DICK. L. REV. 173, 175 (1998).

[8] *Id.* at 175–76. *See also State* v. *Trudell*, 755 P.2d 511, 513 (Kan. 1988) (same); Clarke D. Forsythe, *Homicide of the Unborn Child: The Born Alive Rule and Other legal Anachronisms*, 21 VAL. U. L. REV. 563, 567–80 (1987) (same).

[9] *See* Mary E. Barrazoto, Note, *Judicial Recognition of Feticide: Usurping the Power of the Legislature?*, 24 J. Fam. L. 43, 45 (1986).

[10] *See* Robin M. Trindel, note, "Fetal Interests vs. Maternal Rights: Is the State Going too Far?," 24 AKRON L.R. 743, 745 n. 17–18 (1991) (listing numerous cases defining such third party tort actions on behalf of unborn children).

[11] *See Roe* v. *Wade,* 410 U.S. 113, 162 (1973).

Because of these developments, the current trend in American law is to abolish the born alive rule.[12] In many States, this abolition is manifest in the enactment of legislation making it a crime to kill an unborn child.[13] Such legislation further reflects the growing trend in American jurisdictions of recognizing greater legal protections for unborn children, a trend consistent with the advancements in medical knowledge and technology.[14]

H.R. 1997 thus follows the current trend of modern legal theory and practice by dismantling the common law born alive rule at the

---

[12] *See* Leventhal, *supra* note 7, at 176.

[13] *See* Ariz. Rev. Stat. § 13–1103 (A)(5); Ariz. Rev. Stat. § 13–702(c)(10) (the killing of an "unborn child" at any stage of pre-natal development is manslaughter); Idaho Sess. Law Chap. 330 (SB1344) (murder defined as the killing of a "human embryo or fetus" under certain conditions. The law provides that manslaughter includes the unlawful killing of a human embryo or fetus without malice. The law provides that a person commits aggravated battery when, in committing battery upon the person of a pregnant female, that person causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus); Ill. Comp. Stat. ch. 720, §§ 5/9–1.2, 5/9–2.1, 5/9–3.2 (1993). Ill. Rev. Stat. ch. 720 § 5/12–3.1, Ill. Rev. Stat. ch. 720 § 5/12–4.4 (the killing of an "unborn child" at any stage of pre-natal development is intentional homicide, voluntary manslaughter, or involuntary manslaughter or reckless homicide; a person commits battery of an unborn child if he intentionally or knowingly without legal justification and by any means causes bodily harm to an unborn child); La. Rev. Stat. Ann. §§ 14:32.5–14.32.8, §§ 14:2(1), (7), (11) (the killing of an "unborn child" is first degree feticide, second degree feticide, or third degree feticide); Mich. Stat. Ann. § 28.555 (the killing of an "unborn quick child" is manslaughter); Minn. Stat. Ann. §§ 609.266, 609.2661–609.2665, 609.268(1) (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)); Mo. Ann. Stat. §§ 1.205, 565.024, 565.020 (the killing of an "unborn child" at any stage of pre-natal development is involuntary manslaughter or first degree murder); Neb. Rev. Stat. § 28–391 to § 28–394 (the killing of an "unborn child" at any stage of pre-natal development is murder in the first degree, second degree, or manslaughter); N.D. Cent. Code §§ 12.1–17.1–01 to 12.1–17.1–04 (the killing of an "unborn child" at any stage of pre-natal development is murder, felony murder, manslaughter, or negligent homicide); Ohio Rev. Code Ann. §§ 2903.01 to 2903.07, 2903.09 (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); 18 Pa. Cons. Stat. Ann. §§ 2601 to 2609 (an individual commits criminal homicide in the first, second, or third-degree, or voluntary manslaughter of an "unborn child" if the individual intentionally, knowingly, recklessly or negligently causes the death of an unborn child); S.D. Codified Laws Ann. § 22–16–1, 22–16–1.1, 22–16–15(5), 22–16–20, and 22–16–41, §§ 22–1–2(31), 22–1–2(50A) (the killing of an "unborn child" at any stage of pre-natal development is fetal homicide, manslaughter, or vehicular homicide); Texas legislation (SB 319, Prenatal Protection Act) (under a law signed June 20, 2003, and effective September 1, 2003, the protections of the entire Texas criminal code extend to "an unborn child at every stage of gestation from fertilization until birth;" the law does not apply to "conduct committed by the mother of the unborn child" or to "a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent"); Utah Code Ann. § 76–5–201 et seq. (the killing of an "unborn child" at any stage of pre-natal development is treated as any other homicide). Wis. Stat. Ann. §§ 939.75, 939.24, 939.25, 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.10 (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). Thirteen other States have homicide laws that recognize unborn children as victims during certain periods of prenatal development. *See* Ark. Stat. Ann. § 5–1–102(13)(b)(i)(a), Ark. Stat. Ann. §§ 5–10–101, Ark. Stat. Ann. § 5–13–201 (a)(5)(a)); Cal. Pen. Code § 187(a); Fla. Stat. Ann. § 782.09; Fla. Stat. Ann. § 782.071; Ga. Code Ann. § 16–5–80; § 40–6–393.1; and § 52–7–12.3; Indiana Code 35–42–1–1, 35–42–1–3, 35–42–1–4; *Commonwealth* v. *Cass*, 467 N.E.2d 1324 (Mass. 1984); *Commonwealth* v. *Lawrence*, 536 N.E.2d 571 (Mass. 1989); Miss. Code Ann. § 97–3–37; Nev. Rev. Stat. § 200.210; Okla. Stat. Ann. tit. 21, § 713, *Hughes* v. *State*, 868 P.2d 730 (Okla. Crim. App. 1994); R.I. Gen. Laws § 11–23–5; *State* v. *Horne*, 319 S.E.2d 703 (S.C. 1984), *State* v. *Ard*, 505 S.E.2d 328 (S.C. 1998); Tenn. Code Ann. § 39–13–201, 39–13–202, 39–13–210, 39–13–211, 39–13–213, 39–13–214, 39–13–215; Wash. Rev. Code Ann. § 9A.32.060(1)(b).

[14] *See People* v. *Hall,* 557 N.Y.S.2d 879 (N.Y. App. Div. 1990) (relying on advancements in medical technology to determine that a 28-week-old fetus removed from its mother's womb by Caesarian section and immediately placed on a ventilator was a "person" under New York Penal Law). *See also* Annissa R. Obasi, *Protecting Our Vital Organs: The Case for Fetal Homicide Laws in Texas,* 4 TEX. WESLEYAN L. REV. 207, 216 (1998) (explaining that advancements in medical science have influenced the development of fetal rights); Stephanie Ritrivi McCavitt, Note, *The "Born Alive" Rule: A Proposed Change to the New York Law Based on Modern Medical Technology,* 36 N.Y.L. SCH. L. REV. 609, 618 (1991) (arguing that courts should be willing to use technological advancements to determine whether unborn children are "persons" for homicide purposes).

Federal level. The legislation ensures that Federal prosecutors are able to punish those who injure or kill unborn children during the commission of violent Federal crimes, whether or not the child is fortunate enough to survive the attack and be born alive.

Inadequacy of Federal Sentencing Guidelines

Opponents of H.R. 1997 have argued that the Act is unnecessary because current Federal sentencing guidelines provide enhanced punishment for violent criminals who injure or kill unborn children during the commission of Federal crimes. This argument was set forth by attorney Ronald Weich in his testimony before the Subcommittee on the Constitution during a hearing in the 106th Congress on this legislation.[15] However, this argument is baseless. Not one of the cases cited by Mr. Weich held that Federal sentencing guidelines currently authorize enhanced punishment solely because the victim was pregnant or because an unborn child was injured or killed during the commission of a violent crime. In fact, in two of the cases specifically cited by Mr. Weich, the defendants received sentence enhancements under § 2B3.1(b)(3)(A) of the United States Sentencing Guidelines because the defendants caused "bodily injury" to the victims of robberies, not because the victims were pregnant or because their unborn children were injured or killed.[16] In a third case cited by Mr. Weich, *United States* v. *Manuel*,[17] the court upheld a sentence enhancement not because the victim of the crime was pregnant, but because of the defendant's criminal history, which included two assaults on his wife, on one occasion when she had been pregnant.[18]

Nor did the court hold, in *United States* v. *James*,[19] as Mr. Weich contended, that a pregnant woman may be treated as a "vulnerable victim" under § 3A1.1 of the United States Sentencing Guidelines, which provides a sentence enhancement if the defendant knew or should have known the victim was "vulnerable" because of "age, physical or mental condition." In that case, the court of appeals upheld a vulnerable victim sentence enhancement for a bank robber because he made the following statement to a pregnant bank teller during the commission of the robbery: "Don't give me any of the trackers, alarms or magnets or I'll kill you. I notice that you are pregnant and I love children, but I will come back and kill you and the baby."[20] The court noted that the defendant's sentence was properly enhanced under § 3A1.1 not "simply because [the victim] was pregnant,"[21] but because "her pregnancy created a potential

[15] *See The Unborn Victims of Violence Act: Hearings on H.R. 2436 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 106th Cong. (1999) (statement of Ronald Weich, Esq.).

[16] *See United States* v. *Winzer,* No. 97–50239, 1998 WL 823235, at *1 (9th Cir. Nov. 16, 1998) (upholding bodily injury sentence enhancement because victim "was knocked to the ground" and "experienced soreness to her right shoulder and neck and suffered a discharge of blood"); *United States* v. *Peoples*, No. 96–10231, 1997 WL 599363, at *1 (9th Cir. Sept. 22, 1997) (upholding bodily injury enhancement because "the victim, an 8-month pregnant woman forced to lie face down on the floor, suffered injuries and sought medical attention after being struck in the back by a twenty-five pound loot bag").

[17] No. 91–30232, 1993 WL 210680 (9th Cir. June 15, 1993).

[18] *See id.* at *2.

[19] 139 F.3d 709 (9th Cir. 1998).

[20] *Id.* at 714.

[21] *Id.*

vulnerability which [the defendant] acknowledged and exploited when he expressly threatened to kill her unborn child."[22]

Even assuming, however, that current Federal sentencing guidelines would permit a two-level sentence enhancement when the victim of a violent crime is pregnant, whether under the "bodily injury" or "vulnerable victim" provisions, such a trivial increase in punishment would not reflect the seriousness with which violent crimes against pregnant women and unborn children should be treated. For example, if an individual assaults a Federal official in violation of 18 U.S.C. § 111, the base offense level for that offense under the sentencing guidelines is 15, which carries a sentence of 18 to 24 months.[23] If the Federal official is pregnant and her unborn child is killed or injured as a result of the assault, a bodily injury or vulnerable victim sentence enhancement would result in an offense level of 17, which carries a sentence of 24 to 30 months.[24] The permissible range of punishment for the assault would thus increase by only an additional 6 months, even if the assailant intended to kill the unborn child. This minor increase in punishment is woefully inadequate for the offense of killing or injuring an unborn child.

In short, there does not appear to be a single published or unpublished decision in which a Federal court has enhanced a sentence for a violent criminal solely because the victim was pregnant or because an unborn child was killed or injured during the commission of the crime. And, even assuming a trivial sentence enhancement could be imposed under current Federal sentencing guidelines, such an enhancement would not provide just punishment for what should be treated as a very serious offense.

THE NEED FOR H.R. 1997

The Need to Protect the Unprotected

1. Laci and Conner Peterson

A tragic incident that recently occurred in Modesto, California, illustrates the value of unborn victim legislation on the State level and the necessity for such legislation in Federal law. On Christmas Eve, 2002, a 27-year-old substitute school teacher named Laci Peterson was reported missing by her family. At the time of her reported disappearance, Laci Peterson was about 8 months pregnant, expecting to give birth around February 10, 2003. Laci and her husband Scott had learned that they were having a boy and had named their son Conner. In anticipation of the arrival of Conner, Laci Peterson decorated Conner's room, picked out baby clothes, and closely monitored her health. A massive search for Laci began on the night of December 24, 2002. However, Laci and Conner were not found. Over the next several weeks and months, Laci and Conner's family, hundreds of police officers, and countless volunteers worked diligently to help find Laci and Conner. A volunteer center was set up in Modesto and the Carole Sund-Carrington Memorial Reward Foundation posted a $500,000 reward for Laci and Conner's safe return. On April 14, 2003, after months of searching, Laci and Conner's decomposed bodies were found washed ashore in

[22] *Id.* at 715.
[23] *See* U.S.S.G. § 2A2.2(a).
[24] *See* U.S.S.G. § 2A2.2(b)(A).

the San Francisco Bay about a mile apart. Laci's husband and Conner's father Scott was subsequently arrested and charged with two counts of first-degree murder under California law for the deaths of both Laci and Conner.[25]

Fortunately for the family of Laci and little Conner, California classifies the unlawful killing of a "fetus" as murder[26] and substantial justice might be achieved. Section 187 of the California Penal Code was amended in 1970 to include "fetus" in the definition of murder after the California Supreme Court determined that same year in *Keeler* v. *Superior Court*[27] that a man who killed a fetus carried by his former wife could not be prosecuted for murder. The court reasoned that the State legislature had intended the term "human being" in the statute to include only persons born alive. The California legislature responded immediately by amending the statutory definition of "murder" to include the unlawful killing of a "fetus."

2. Tracy and Zachariah Marciniak

Tracy Marciniak was just 4 days away from delivering her son, Zachariah, when her life changed forever. On the night of February 8, 1992, in Milwaukee, Wisconsin, Tracy had a fight with Glendale Black, her husband at the time. Fully aware that Tracy very much wanted the child, Mr. Black punched her twice in the abdomen, refused to call for help, and prevented Tracy from doing so. Eventually he relented, and Tracy was rushed to the emergency room where she delivered Zachariah by Caesarian section. Unfortunately, however, by the time she reached the hospital Zachariah was already dead. Tracy herself was given only forty-eight hours to live, although she miraculously survived the attack.

In 1992, Wisconsin did not have an unborn victims law, so Zachariah was not legally recognized as a victim of a crime. As a result, Tracy and Zachariah's attacker was convicted only for his assault on Tracy, and he was not punished for the loss of Zachariah's life. In 1998, in response to Tracy's case and others like it, the Wisconsin legislature overwhelmingly enacted one of the nation's strongest unborn victims laws.

3. Zaneta and Baby Browne

Zaneta Browne, a 29-year-old mother of three, lived in Rochester, New York. In 2002, she became pregnant with twins from a relationship with her former fiancé, Jerold Ponder. Ponder, however, did not want her to have the children. So, on July 14, 2002, Ponder lured Browne, who was at the time 4 months pregnant, to a wooded area and shot her in the face and the back of the head with a .22-caliber rifle. Ponder's wife, Keya, had recently bought the rifle and assisted Ponder by wrapping Browne in a pink blanket, covering her head and feet in plastic garbage bags, and burying Browne in a shallow grave in Chili, New York. Both Jerold and Keya Ponder were later arrested and ultimately convicted of sec-

[25] According to a FOX News opinion poll, 84% of Americans believe that Scott Peterson should be charged with two counts of murder—not one. *See* Dana Blanton, *Peterson Should Get Two Counts of Murder*, FOX News Channel (Apr. 25, 2003) *available at* http://www.foxnews.com/story/0,2933,85158,00.html (last visited January 18, 2004).

[26] Cal. Penal Code § 187 (2003) ("Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.").

[27] 470 P.2d 617 (Cal. 1970).

ond-degree murder in the death of Zaneta Browne. However, no charges were brought against the couple for the murder of the twins because New York does not recognize crime victims unless they are born alive. As a result, the violent deaths of these two unborn babies will go unpunished and the murderers will be eligible for parole by 2008.[28]

4. Karlene and Jasmine Robbins

The need for H.R. 1997 is further illustrated by the case of *United States* v. *Robbins*.[29] In that case, Airman Gregory Robbins and his wife Karlene, who was over 8 months pregnant with a daughter they had named Jasmine, resided on Wright-Patterson Air Force Base, Ohio, an area of exclusive Federal jurisdiction. On September 12, 1996, Mr. Robbins wrapped his fist in a T-shirt (to reduce the chance that he would inflict visible bruises) and badly beat his wife "by striking her repeatedly in her face and abdomen with his fist."[30]

Mrs. Robbins survived the attack with "a severely battered eye, a broken nose, and a ruptured uterus."[31] She was taken to the emergency room, but medical personnel could not detect the baby's heartbeat.[32] Doctors performed an emergency surgery on Mrs. Robbins and found:

> Jasmine laying sideways, dead, in [Mrs. Robbins's] abdominal cavity. As a result of [Mr. Robbins's] repeated blows rupturing [Mrs. Robbins's] uterus, the placenta was torn from the inner uterine wall, which expelled Jasmine into [Mrs. Robbins's] abdominal cavity.[33]

Air Force prosecutors recognized that "[f]ederal homicide statutes reach only the killing of a born human being,"[34] and that Congress "has not spoken with regard to the protection of an unborn person . . ."[35] As a result, the prosecutors attempted to prosecute Mr. Robbins for Jasmine's death under Ohio's fetal homicide law, using Article 134 of the Uniform Code of Military Justice.[36] Article 134 "incorporates by reference all Federal criminal statutes and those State laws made Federal law via the [Assimilated Crimes Act, 18 U.S.C. § 13]."[37]

Mr. Robbins pleaded guilty to involuntary manslaughter for Jasmine's death, and the military judge sentenced him to confinement for 8 years, a dishonorable discharge, and a reduction to the lowest enlisted grade.

---

[28] *See Married Couple Charged With Killing Pregnant Woman,* The Associated Press, July 20, 2002; Michael Zeigler, *Couple Indicted in Slaying, Tampering*, Democrat & Chronicle, Aug. 30, 2002; Michael Zeigler, *Maximum Sentence for Slaying Accomplice*, Democrat & Chronicle, May 3, 2003.

[29] 48 M.J. 745 (A.F.C.C.A. 1998). During the 106th Congress, the Subcommittee on the Constitution heard testimony regarding the Robbins case from Lieutenant Colonel Keith L. Roberts, Acting Chief of the Air Force Military Justice Division. *See The Unborn Victims of Violence Act: Hearings on H.R. 2436 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 106th Cong. (1999) (statement of Lt. Colonel Keith L. Roberts, Acting Chief of the Air Force Military Justice Division).

[30] *Id.* at 747.

[31] *Id.*

[32] *See id.*

[33] *Id.*

[34] *Id.* at 752.

[35] *Id.*

[36] *Id.* at 748.

[37] *Id.*

5. Shiwona and Heaven Pace

Shiwona Pace was a 23-year-old college student in Little Rock, Arkansas. She had a 5-year-old son and an unborn daughter named Heaven Lashay. On Aug. 26, 1999, 1 day before her expected delivery date, Shiwona was brutally attacked by three men who choked her, punched her, and hit her in the face with a gun while shouting, "Your baby is dying tonight."[38] After 30 minutes, they left her sobbing on the floor. At the hospital, Shiwona learned that Heaven had died in her womb. The assailants were later arrested and police learned that Erik Bullock, Shiwona's former boyfriend, had paid them $400 to kill Heaven.[39] A month before this incident, Arkansas had adopted a new State law that recognized unborn children as crime victims. Thanks to that law, Erik Bullock and the men he hired were prosecuted and convicted for their attack on Shiwona and her baby.[40]

6. Carrie and Michael James Lenz III

On April 19, 1995, Carrie Lenz, a Drug Enforcement Agency employee, was showing coworkers ultrasound pictures of her unborn child at 6 months when the Murrah Federal Building in Oklahoma City was destroyed by a bomb. Just the day before the horrific bombing, she and her husband, Michael Lenz, who testified before the Subcommittee on the Constitution during the 106th Congress, learned via the ultrasound that they were having a boy and named him Michael James Lenz III.[41] Under Federal law, those responsible for the bombing received no additional punishment for the death of the unborn baby. Fortunately, Oklahoma recognizes homicide of a "viable fetus" as first degree murder.

7. Ruth and Baby Croston

Ruth Croston was 5 months pregnant when she was shot on April 21, 1998, by her estranged husband, Reginald Anthony Falice, as she sat in her car at a Charlotte, North Carolina intersection. She and her unborn daughter died after being shot at least five times by Falice. He was prosecuted and convicted of interstate domestic violence and using a firearm in the commission of a violent crime.[42] However, there was no criminal charge for the murder of the unborn baby girl. Ms. Croston's brother, William Croston, testified at a hearing before the Subcommittee on the Constitution on March 15, 2001, concerning the Unborn Victims of Violence Act of 2001.[43] Mr. Croston recounted how his family had to endure the trial of Mr. Falice for the murder of Ms. Croston, while Mr. Falice was not charged with murder of the unborn child of Ms. Croston.[44] As Mr. Croston stated, "Under current law, we simply choose to

---

[38] Jim Brooks, *Mom's Jest at Door Turned Brutally Real*, Arkansas Democrat-Gazette, Sept. 9, 1999.

[39] *See* Matthew Waite, *Suspects in Death of Fetus Posts Bond*, Arkansas Democrat-Gazette (Nov. 12, 1999).

[40] *See Pine Bluff Man Pleads Guilty, Gets 40-Year Sentence,* Associated Press Newswires (Apr. 3, 2001).

[41] *See* Lenz Testimony. *See also* Karen Abbott & Lynn Bartels, *Tears Reflect the Horror of Loss, Nichols Courtroom in Shock at Wrenching, Desolate Tales as Jurors Begin Penalty Phase*, Rocky Mountain News, Dec. 30, 1997, at 5A.

[42] *See Georgia Man Convicted in Slaying of Estranged, Pregnant Wife,* Associated Press, July 14, 1999.

[43] *See Croston Testimony* at 33–36.

[44] *Id.* at 33.

dismiss the life of the unborn child. In fact, prior to the beginning of the trial, the Honorable Judge Graham C. Mullen indicated that he did not want the jury to know that Ruth Croston was carrying an unborn child."[45] The unborn child was the child of Ruth Croston and Reginald Falice, and the failure of the law is that it "does not consider the unborn child a part of the irresponsible actions committed by Reginald Falice."[46]

8. Monica and Baby Smith

Monica Smith, a pregnant secretary, and her unborn child were killed in the World Trade Center bombing in New York on February 26, 1993.[47] Jurors at one trial were told about the harm done to Ms. Smith's unborn child,[48] but no additional charge or punishment could be imposed under Federal law for the death of that child.

9. Deanna, Kayla, and Jessica Mitts

On January 1, 1999, Deanna Mitts, who was 8 months pregnant with a baby girl named Jessica, returned home with her 3-year old daughter, Kayla, after celebrating New Year's Eve with her parents. Shortly after entering her Connellsville, Pennsylvania apartment, she, Kayla, and her unborn child were tragically killed in an explosion from a pipe bomb.[49] Joseph Minerd, the father of Jessica, was arrested almost a year later and tried in Federal court under the Federal arson statute. At trial, it was learned that Minerd was an abusive ex-boyfriend of Mitts, and he had openly discussed killing baby Jessica.[50] Minerd did not want Mitts to have Jessica because he did not want to be the father and Mitts refused to have an abortion. It was also deduced at trial that the end cap of the pipe bomb had pierced Mitts stomach and killed Jessica, while Deana and Kayla were killed when the pipe bomb ruptured a natural gas line. Minerd was subsequently convicted in Federal court for the murder of Deanna and Kayla.[51] However, Minerd received no additional charge or punishment for killing Jessica.

10. Tammy Lynn and Baby Baker

On December 3, 1997, Tammy Lynn Baker was near term with her unborn child when a bomb exploded outside her apartment killing her and her unborn child.[52] Almost 3 years later, Ms. Baker's ex-boyfriend and the unborn child's father, Coleman Leake Johnson, Jr., were arrested on Federal explosives charges for the death of Ms. Baker. Johnson apparently did not want to pay child support for his unborn child. Johnson was subsequently convicted for the murder of Ms. Baker, but received no separate charge or addi-

---

[45] *Id.*
[46] *Id.* at 34.
[47] *See* Jeanne King, *Pictures of N.Y. Bombing Stir Emotional Response from Jury,* Houston Chronicle, Aug. 8, 1997, at 26.
[48] *See id.*
[49] *See* Lawrence Walsh, *Bombing Shocks Small Town Blast That Killed Mother*, Pittsburgh Post-Gazette, May 2, 1999, at B1.
[50] Torsten Ove, *Pipe Bomb Death Penalty Trial Opens*, Pittsburgh Post-Gazette, May 1, 2002.
[51] Torsten Ove, *Bomber is Guilty of Murder*, Pittsburgh Post-Gazette, May 18, 2002; Torsten Ove, *Convicted Bomber's Relatives Pleads for His Life*, Pittsburgh Post-Gazette, May 21, 2002.
[52] *See* Dominic Perella, *Bombings Instill Fear in Small Town: Suspicion of Serial Blasts Complicates Life in Louisa, Va.,* Detroit News, Dec. 27, 1998, at A2.

tional punishment for the intentional murder of his and Mrs. Baker's unborn child.[53]

There are numerous other instances where women have exercised their right to have a child only to have that right violently taken away from them by other individuals. Even opponents of H.R. 1997 equate a woman's right to have a child with that of a woman's right to have an abortion.[54] H.R. 1997 establishes equity in Federal law by granting the same protection to women who want to have a child as is enjoyed by women who want to have an abortion.

H.R. 1997

H.R. 1997 fills the current void in Federal law by providing that an individual who injures or kills an unborn child during the commission of one of over sixty Federal crimes will be guilty of a separate offense. The punishment for that separate offense would be the same as the punishment provided under Federal law for that conduct had the same injury or death resulted to the unborn child's mother. An offense under H.R. 1997 does not require proof that the defendant knew, or should have known, that the victim was pregnant, or that the defendant intended to cause the death or injury of the unborn child. If, however, the defendant committed the predicate offense with the intent to kill the unborn child, the punishment for the separate offense will be the same as that provided under Federal law for intentionally killing or attempting to kill a human being.

For example, if an individual assaults a Member of Congress in violation of 18 U.S.C. § 111, and as a result of that assault kills the Congresswoman's unborn child, the perpetrator may be punished for either second-degree murder, voluntary manslaughter, or involuntary manslaughter for killing the unborn child (depending upon the circumstances surrounding the assault)—that is, the same punishment the individual would have received had the Congresswoman died as a result of the assault.[55] If the prosecution proves that the defendant assaulted the Congresswoman with the intent to kill the unborn child, the perpetrator may be prosecuted for first or second degree murder or voluntary manslaughter if the unborn child dies, or attempted murder or manslaughter if the child survives the assault.

---

[53] Brooke A. Masters, *Va. Man Convicted in Fatal Bomb Attack*, The Washington Post, May 24, 2001.

[54] *See The Unborn Victims of Violence Act of 2003: Hearings on H.R. 1997 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 108th Cong. 28 (2003) (statement of Rep. Jerrold Nadler, Ranking Member) ("For those of us who are pro-choice, the right to choose extends not just to a woman's right to have an abortion but to a woman's right to carry her pregnancy to term and deliver a healthy baby in safety.").

[55] Under the Federal homicide statutes, second-degree murder requires proof of "(1) the physical element of unlawfully causing the death of another, and (2) the mental element of malice, satisfied either by an intent to kill, an intent to cause serious bodily injury, or the existence of a depraved heart." *United States* v. *Browner,* 889 F.2d 549, 552 (5th Cir. 1989). Voluntary manslaughter also requires proof of an unlawful and malicious killing of another, but the offense "is deemed to be without malice because it occurs in what the courts called 'the heat of passion.'" *Id.* Involuntary manslaughter is distinguished from both murder and voluntary manslaughter by an absence of malice, and that absence "arises not because of provocation induced passion, but rather because the offender's mental state is not sufficiently culpable to meet the traditional malice requirements." *Id.* at 553. With involuntary manslaughter, "the requisite mental state is reduced to 'gross' or 'criminal' negligence, a culpability that is far more serious than ordinary tort negligence but still falls short of that most extreme recklessness and wantonness required for 'depraved heart' malice." *Id.*

H.R. 1997 specifically exempts conduct for which the consent of the pregnant woman has been obtained or for which such consent is implied by law. The bill also exempts conduct related to medical treatment of the pregnant woman or her unborn child, or conduct of the pregnant woman with respect to her unborn child. The bill further provides that the death penalty shall not be imposed.

CONSTITUTIONAL ISSUES

Mens Rea and the Doctrine of Transferred Intent

Contrary to assertions made by opponents of H.R. 1997,[56] the bill does not permit the prosecution of those who act without criminal intent. Instead, H.R. 1997 operates in a manner consistent with long-established mens rea principles of criminal law.

As a general rule, H.R. 1997 provides that when one commits a violent crime against a pregnant woman, with criminal intent, and thereby injures or kills the victim's unborn child, the perpetrator is guilty of an additional offense, the punishment for which is the same as the punishment the defendant would have received had that same injury or death occurred to the unborn child's mother. In accordance with the well-established criminal law doctrine known as "transferred intent," the criminal intent directed toward the mother "transfers" to the unborn child, and the criminal is liable for the injury or death of the unborn child just as he would have been liable had a born person been injured or killed.

The transferred intent doctrine was recognized in England as early as 1576 in the case of *Regina* v. *Saunders*.[57] In that case, the court stated that

> it is every man's business to foresee what wrong or mischief may happen from that which he does with an ill-intention, and it shall be no excuse for him to say that he intended to kill another, and not the person killed. . . . For if a man of malice prepense shoots an arrow at another with an intent to kill him, and a person to whom he bore no malice is killed by it, this shall be murder in him, for when he shot the arrow he intended to kill, and inasmuch as he directed his instrument of death at one, and thereby has killed another, it shall be the same offense in him as if he had killed the person he aimed at, . . . so the end of the act, viz. the killing of another shall be in the same degree, and therefore it shall be murder, and not homicide only.[58]

The transferred intent doctrine was adopted by American courts during the early days of the Republic[59] and it is now black letter

---

[56] *See, e.g.* Memorandum of American Civil Liberties Union, Washington National Office, to Interested Persons 2 (March 14, 2001) (claiming that conviction for an offense under H.R. 1997 does not require proof of "a mens rea (or criminal intent) requirement"); Letter from Jon P. Jennings, Acting Assistant Attorney General, United States Department of Justice, to Chairman Henry Hyde, Committee on the Judiciary, United States House of Representatives 2 (Sept. 9, 1999) (characterizing H.R. 2436 as "mak[ing] a potentially dramatic increase in penalty turn on an element for which liability is strict"); Press Release of American Civil Liberties Union, Washington National Office 2 (July 21, 1999) (stating that "H.R. 2436 Lacks a Necessary Mens Rea Requirement").

[57] 2 Plowd. 473, 75 Eng. Rep. 706 (1576).

[58] *United States* v. *Sampol*, 636 F.2d 621, 674 (D.C. Cir. 1980) (quoting *Regina* v. *Saunders*, 2 Plowd. 473, 474a, 75 Eng. Rep. 706, 708 (1576)).

[59] *See id.*

law. One prominent criminal law commentator describes the modern formulation of the doctrine in this manner:

> [W]hen one person (A) acts (or omits to act) with intent to harm another person (B), but because of bad aim he instead harms a third person (C) whom he did not intend to harm, the law considers him (as it ought) just as guilty as if he had actually harmed the intended victim.[60]

In such situations, "A's intent to harm B will be transferred to C."[61] Therefore,

> where A aims at B with a murderous intent to kill, but because of a bad aim he hits and kills C, A is uniformly held guilty of the murder of C. And if A aims at B with a first-degree-murder state of mind, he commits first degree murder as to C, by the majority view. So too, where A aims at B with intent to injure B but missing B hits and injures C, A is guilty of battery of C.[62]

Another 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 bill:

> 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. If, as to the intended victim, the homicide would have constituted murder, the defendant is guilty of murder as to the actual bystander who was the actual victim. Similarly, if the homicide would have constituted voluntary manslaughter as to the intended victim, the defendant is guilty of voluntary manslaughter as to the bystander who was the actual victim; and if the homicide, as to the intended victim, would have been justifiable, as in the case of self-defense, the defendant is deemed the author of a justifiable homicide as to the bystander.[63]

H.R. 1997 operates on these basic and well-settled principles. It provides that when one commits a violent crime against a pregnant woman, and thereby injures or kills the victim's unborn child, the unlawful intent toward the mother transfers to the unborn child, and the perpetrator is guilty of an additional offense of the same level that would have resulted had the same injury or death occurred to the unborn child's mother.[64] It is not necessary for the

---

[60] Wayne R. LaFave & Austin W. Scott, Jr., *Criminal Law* 284 (2d ed. 1986).

[61] *Id.*

[62] *Id.* at 283.

[63] 2 *Wharton's Criminal Law* 291–94 (Charles E. Torcia ed., 15th ed. 1994).

[64] H.R. 1997 thus permits prosecution of the defendant for the offense against the unintended victim (*i.e.,* the unborn child), even though the defendant succeeded in committing the crime against the intended victim (*i.e.,* the pregnant woman). The defendant's intent with respect to the pregnant woman suffices for both offenses. This is the better view of the transferred intent doctrine. *See, e.g., State* v. *Worlock,* 569 A.2d 1314, 1325 (N.J. 1990) ("reject[ing] defendant's argument that the successful killing of the intended victim prevents the 'transfer' of that intent to an unintended victim" because "the purpose of deterrence is better served by holding that defendant responsible for the knowing or purposeful murder of the unintended as well as the intended victim"); *State* v. *Hinton*, 630 A.2d 593, 598–99 (Conn. 1993) (same). Indeed, one Federal court has held that "[t]here are even stronger grounds for applying the principle where the intended victim is killed by the same act that kills the unintended victim." *United States* v.

Continued

prosecution to prove that the defendant knew or should have known that the victim was pregnant, or that the defendant intended to kill or injure the unborn child.[65]

H.R. 1997 contains one exception to this general rule. In cases in which the prosecution proves that an individual committed one of the predicate violent crimes against a pregnant woman, *with the intent to kill the unborn child*, that individual shall be punished as provided under Federal law for intentionally killing or attempting to kill a human being. The bill thus ensures that those who engage in violent Federal crimes against pregnant women, with the intent to kill their unborn children, are subject to more severe punishment than those who do not act with the intent to kill.

In short, H.R. 1997 does not lack a criminal intent requirement.[66] In situations in which the defendant kills or injures an unborn child during the commission of a Federal crime of violence against a pregnant woman, the mens rea requirement is satisfied because the criminal intent directed toward the mother transfers to the unborn child in accordance with traditional common law principles. If the defendant commits that violent crime against the pregnant woman with the intent to kill the unborn child, that intent itself satisfies the mens rea requirement needed to impose criminal liability upon the defendant for killing or injuring the unborn child.

Constitutional Authority for H.R. 1997

Congress has the constitutional authority to enact H.R. 1997 because the bill does not extend Congress's reach to prohibit any conduct that does not currently violate Federal law. No conduct that is currently free of regulation will become regulated by H.R. 1997.[67]

Instead, H.R. 1997 merely provides an additional offense and consequent punishment when conduct constituting one of the already illegal predicate Federal offenses has the additional effect of injuring or killing an unborn child. Therefore, (with one qualification, discussed below) if there is any question regarding the con-

---

Sampol, 636 F.2d 621, 674 (D.C. Cir. 1980). The Committee rejects the view, followed by some courts, that the defendant's criminal intent does not transfer to the unintended victim if the crime was actually committed against the intended victim. *See, e.g., Ford* v. *State,* 625 A.2d 984, 997–98 (Md. 1993); *but see Poe* v. *State*, 671 A.2d 501, 530 (Md. 1996) (applying transferred intent doctrine where A shot at and hit B, and bullet went through B and killed C, to permit prosecution of defendant for attempted murder of B and murder of C; court refused to follow Ford "because there is a death and the doctrine is necessary to impose criminal liability for the murder of the unintended victim in addition to the attempted murder of the intended victim").

[65] The felony murder rule operates in similar manner, holding the perpetrator of a felony liable for death that results during the commission of the felony, even where that particular felon may not have intended or even participated directly in the killing. The relevant state of mind is the state of mind as to the commission of the underlying felony, not the killing that occurs subsequently. *See United States* v. *Nichols,* 169 F.3d 1255 (10th Cir. 1999); *United States* v. *Tham*, 118 F.3d 1501 (11th Cir. 1997); *Nesbitt* v. *Hopkins*, 907 F. Supp. 1317 (D. Neb. 1995).

[66] The bill does not, therefore, conflict with the notion that criminal statutes lacking a mens rea element are disfavored. *See Liparota* v. *United States,* 471 U.S. 419, 426 (1985).

[67] *See The Unborn Victims of Violence Act of 2003: Hearings on H.R. 1997 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 108th Cong. (2003) (statement of Professor Gerard V. Bradley, Notre Dame Law School); *The Unborn Victims of Violence Act of 2001: Hearings on H.R. 503 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 107th Cong. (2001) (statement of Professor Richard Myers, Ave Maria Law School); *The Unborn Victims of Violence Act of 1999: Hearings on H.R. 2436 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong. (1999) (statement of Professor Gerard V. Bradley, Notre Dame Law School).

stitutionality of the Act's reach, that question generally pertains to the constitutionality of the predicate offense, not H.R. 1997.[68]

The one qualification to this general conclusion relates to situations in which Federal jurisdiction is based upon the identity of the particular victim, such as the President, cabinet members, Members of Congress, and other government officials. In those situations, the constitutional authority for punishing offenses against such individuals extends to offenses against the unborn children of those victims because it is the discharge of Federal functions, not the identity of the persons as such, which grounds Federal jurisdiction in such cases.[69]

In other words, protection of Federal officers and jurors is justified by the national interest in protecting the functions that Federal officers and jurors perform. And those functions are threatened by assaults upon the person of those officers and jurors, as well as by threats to them and to their families.[70] Thus, it is clearly constitutional to extend Federal protection to the entire families of Federal officers and jurors in order to ensure that nothing distracts them or causes them to neglect their duties. That is, it is within Congress's power to determine that there is a distinct, punishable harm to the discharge of federally imposed duties where the unborn child or any other immediate family member of a protectable person is harmed or killed.[71] And that is precisely the rationale behind 18 U.S.C. § 115, which prohibits assaulting, murdering, or kidnapping members of the immediate family of United States officials (including Members of Congress) and law enforcement officers.

H.R. 1997 and Abortion Rights

H.R. 1997 does not affect, nor in any way interfere with, a woman's right to abort a pregnancy. Indeed, the bill clearly states that it does not apply to "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." H.R. 1997, 108th Congress (1st Sess. 2003), Sec. 2(c)(1). Similarly, the bill also clearly states that it does not permit prosecution "of any woman with respect to her unborn child." H.R. 1997, 108th Congress (1st Sess. 2003), Sec. 2(c)(3).

Nor is there anything in *Roe* v. *Wade* that prevents Congress from recognizing the lives of unborn children outside the parameters of the right to abortion specifically drawn in that case.[72] Indeed, in recognizing 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,"[73] because "the judiciary, at this point in the development of man's knowledge, is not in a position

[68] *See id.; see also The Unborn Victims of Violence Act of 1999: Hearings on H.R. 2436 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 106th Cong. (1999) (statement of Professor Hadley Arkes, Ney Professor of Jurisprudence and American Institutions, Amherst College) (same).

[69] *See* Statement of Professor Richard Myers, *supra*; Statement of Professor Gerard V. Bradley, *supra.*

[70] *See id.*

[71] *See id.*

[72] *See* Statement of Professor Richard Myers, *supra*; Statement of Professor Gerard V. Bradley, *supra; see also* McCavitt, *supra* note 15, at 639 (concluding that *Roe* "should not apply to non-consensual acts by third parties and should not be used as a bar to judicial or statutory sanctions for criminal acts of third parties").

[73] 410 U.S. at 159.

to speculate as to the answer."[74] 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.[75] In other words, the Court concluded that unborn children could not be considered "persons in the whole sense,"[76] for purposes of abortion. However, unborn children can be recognized as persons for purposes other than abortion, such as inheritance and tort injury, purposes which the *Roe* Court itself recognized as legitimate.[77]

The Supreme Court explicitly confirmed this understanding of *Roe* in *Webster* v. *Reproductive Health Servs.*[78] In that case, the state of Missouri had enacted a statute which stated that the "[t]he life of each human being begins at conception," and that "unborn children have protectable interests in life, health, and well-being."[79] The United States Court of Appeals for the Eighth Circuit struck down the law, holding that Missouri had "impermissibl[y]" adopted a "theory of when life begins."[80] The Supreme Court reversed this portion of the Eighth Circuit's decision, however, stating that the Court's own decisions mean "only that a State could not 'justify' an abortion regulation otherwise invalid under *Roe* v. *Wade* on the ground that it embodied the State's view about when life begins."[81] Therefore, Congress is perfectly free, as was the State of Missouri, to enforce its conception of human life outside of the parameters of *Roe*. Since H.R. 1997 in no way interferes with nor restricts the abortion right articulated in *Roe*, the Act is clearly constitutional.

Courts addressing the constitutionality of State laws that punish killing or injuring unborn children have spoken clearly to the lack of merit in the argument that such laws violate *Roe* v. *Wade*, and as a result have consistently upheld those laws in the face of constitutional challenges.[82] In *State* v. *Coleman*,[83] for example, the Ohio Court of Appeals held that "*Roe* protects a woman's constitutional right. It does not protect a third-party's unilateral destruction of a fetus."[84] In *State* v. *Holcomb*,[85] the Missouri Court of Ap-

---

[74] *Id.*
[75] *See id.* at 162.
[76] *Id.*
[77] *See id.*
[78] 492 U.S. 490 (1989).
[79] *Id. at 501.*
[80] *Reproductive Health Services* v. *Webster,* 851 F.2d 1071, 1076 (8th Cir. 1988).
[81] 492 U.S. at 506 (emphasis added).
[82] *See* decisions in California, *People* v. *Davis*, 872 P.2d 591 (Cal. 1994); Georgia, *Smith* v. *Newsome*, 815 F.2d 1386 (11th Cir. 1987), *Brinkley* v. *State*, 322 S.E.2d 49 (Ga. 1984) (vagueness and due process challenge); Illinois, *U.S. ex rel. Ford* v. *Ahitow*, 888 F.Supp. 909 (C.D.Ill. 1995), *People* v. *Ford*, 581 N.E.2d 1189 (Ill.App. 4 Dist. 1991), *People* v. *Campos*, 592 N.E.2d 85 (Ill.App. 1 Dist. 1992), appeal *denied*, 602 N.E.2d 460 (Ill. 1992), habeas corpus *denied*, 827 F.Supp. 1359 (N.D. Ill. 1993), *affirmed*, 37 F.3d 1501 (7th Cir. 1994), certiorari *denied*, 514 U.S. 1024 (1995); Louisiana, *State* v. *Smith*, 676 So.2d 1068 (La. 1996), rehearing *denied*, 679 So.2d 380 (La. 1996) (regarding double jeopardy); Minnesota, *State* v. *Merrill*, 450 N.W.2d 318 (Minn. 1990), cert. *denied*, 496 U.S. 931 (1990); *State* v. *Bauer*, 471 N.W.2d 363 (Minn. App. 1991) (regarding the establishment clause); Missouri, *Webster* v. *Reproductive Health Services*, 492 U.S. 490, *State* v. *Knapp*, 843 S.W. 2nd (Mo. en banc) (1992) (holding that the definition of "person" in this law is applicable to other statutes, including at least the State's involuntary manslaughter statute); Pennsylvania, *Commonwealth of Pennsylvania* v. *Corrine D. Wilcott*, No. 2426 A & B of 2002 (Court of Common Pleas of Erie County, Pennsylvania, Criminal Division) (rejecting challenges that Pennsylvania Crimes Against Unborn Children Act is unconstitutionally vague, violates U.S. Supreme Court abortion cases, violates equal protection clause, and conflicts with State tort law on definition of "person. "); Wisconsin, *State* v. *Black*, 526 N.W.2d 132 (Wis. 1994) (due process challenge).
[83] 705 N.E.2d 419 (Ohio Ct. App. 1997).
[84] *Id.* at 421.
[85] 956 S.W.2d 286 (Mo. Ct. App. 1997).

peals stated that "[t]he fact that a mother of a pre-born child may have been granted certain legal rights to terminate the pregnancy does not preclude the prosecution of a third party for murder in the case of a killing of a child not consented to by the mother."[86] Similarly, in *State* v. *Merrill*,[87] the Minnesota Supreme Court held 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."[88]

In *People* v. *Davis*,[89] the California Supreme Court held that "*Roe* v. *Wade* principles are inapplicable to a statute . . . that criminalizes the killing of a fetus without the mother's consent."[90] The United States Court of Appeals for the Eleventh Circuit echoed that sentiment in *Smith* v. *Newsome*,[91] holding that *Roe* v. *Wade* was "immaterial . . . to whether a State can prohibit the destruction of a fetus" by a third-party.[92] Legal scholars have reached similar conclusions.[93]

In short, H.R. 1997 clearly does not violate *Roe* v. *Wade* nor its progeny. The Act specifically exempts abortion-related conduct from prosecution and the protection it affords to unborn children does not in any way interfere with or restrict a woman's right to terminate her pregnancy.

Use of the Term "Unborn Child"

Opponents of H.R. 1997 have also argued that the use of the term "unborn child" is "designed to inflame" and may, in the words of those dissenting from the Judiciary Committee report during the 106th Congress, "result in a major collision between the rights of the mother and the rights of" the unborn child.[94] This objection belies 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 court decisions, and even in the legal writings of abortion advocates.

The use of the term "unborn child" by the Supreme Court can be illustrated by reference to *Roe* v. *Wade*[95] itself, in which Justice Blackman used the term "unborn children" as synonymous with "fetuses." Justice Blackman also used the term "unborn child" in *Doe* v. *Bolton*,[96] the companion case to *Roe* in which the Court struck down Georgia's abortion statute.

The Court has also used the term "unborn child" outside of the abortion context. In *Burns* v. *Alcala*,[97] for example, the Court held

---

[86] *Id.* at 291. *See also People* v. *Ford,* 581 N.E.2d 1189, 1199 (Ill. App. Ct. 1991) ("Clearly, a pregnant woman who chooses to terminate her pregnancy and the defendant who assaults a pregnant woman, causing the death of her fetus, are not similarly situated.")

[87] 450 N.W.2d 318 (Minn. 1990).

[88] *See id.* at 322.

[89] 872 P.2d 591 (Cal. 1994).

[90] *Id.* at 597.

[91] 815 F.2d 1386 (11th Cir. 1987).

[92] *See id.* at 1388.

[93] *See, e.g.,* Statement of Professor Richard Myers, *supra*; Statement of Professor Gerard V. Bradley, *supra*; Jeffrey A. Parness, *Crimes Against the Unborn: Protecting and Respecting the Potentiality of Human Life*, 22 HARV. J. ON LEGIS. 97, 144 (1985) ("The *Roe* decision . . . forbids the State's protection of the unborn's interests only when these interests conflict with the constitutional rights of the prospective parent. The Court did not rule that the unborn's interests could not be recognized in situations where there was no conflict.").

[94] H.R. Rep. No. 106–332, at 31 n.2 (1999).

[95] 410 U.S. 113 (1973).

[96] 410 U.S. at 179.

[97] 420 U.S. 575 (1975).

that "unborn children" are not "dependent children" for purposes of obtaining aid under the Aid to Families with Dependent Children ("AFDC") program. Not only did Justice Powell use the term "unborn child" in the majority opinion in *Burns*, but Justice Thurgood Marshall dissented in that case and argued that "unborn children" *should* be covered as "dependent children" under AFDC. Surely the opponents of H.R. 1997 would not seriously contend that Justice Marshall—a staunch defender of abortion rights—was putting abortion rights at risk by arguing that "unborn children" should be recognized under a Federal statute.

There are also other Supreme Court decisions that use the term "unborn child" as synonymous with "fetus," including *City of Akron* v. *Akron Center for Reproductive Health,*[98] *Webster* v. *Reproductive Health Services*,[99] and *International Union* v. *Johnson Controls*.[100] Additionally, there are so many decisions by the United States Courts of Appeals using the term "unborn child" that they cannot be fully discussed here.[101]

There are also at least nineteen State criminal statutes similar to H.R. 1997 that currently use the term "unborn child" to refer to a fetus.[102] Statutes such as these have been consistently upheld by the courts in the face of constitutional challenges.[103]

Even feminist abortion rights advocates such as Catharine MacKinnon have used the term "unborn child" as synonymous with "fetus." In an article that was published in the Yale Law Journal entitled *Reflections on Sex Equality Under the Law*,[104] Professor MacKinnon conceded that a "fetus is a human form of life" that "is alive,"[105] and opined that "[m]any woman have abortions as a desperate act of love for their unborn children."[106]

Objections to the use of the term "unborn child" in H.R. 1997 are without merit. The term "unborn child" has been widely used and accepted by judges, legislators, and legal scholars, and has withstood challenges in the courts.

CONCLUSION

H.R. 1997 is necessary legislation that is carefully crafted to address the harm done when violent crimes are committed against pregnant women and their unborn children. The legislation remedies the defects of existing Federal law by rejecting the antiquated and obsolete common law "born alive" rule and ensuring just punishment for those who commit these heinous crimes of violence.

---

[98] 462 U.S. 416 (1983).
[99] 492 U.S. 490 (1989).
[100] 499 U.S. 187 (1991).
[101] *See., e.g., Alexander* v. *Whitman,* 114 F.3d 1392 (3d Cir. 1997); *Jane L.* v. *Bangerter*, 61 F.3d 1493 (10th Cir. 1995); *Smith* v. *Newsome*, 815 F.2d 1386 (11th Cir. 1987).
[102] *See, e.g.,* Ariz. Rev. Stat. § 13–1103(A)(5); Ark. Code Ann. § 5–1–102(13)(B)(i)(a); Fla. Stat. Ann. § 782.09; Ga. Code Ann. §§ 16–5–80, 40–6–393.1, 52–7–12.3; 720 Ill. Comp. Stat. Ann. §§ 5/9–1.2, 5/9–2.1, 5/0–3.2; La. Rev. Stat. Ann. §§ 14:32.5–14–32.8; Mich. Stat. Ann. § 28.555; Minn. Stat. Ann. §§ 609.2661–609.2665, 609.267–609.2672; Miss. Code Ann. § 97–3–37; Mo. Ann. Stat. §§ 1.205, 565.024, 565.020; Nev. Rev. Stat. 200.210; N.D. Cent. Code §§ 12.1–17.1–05, 12.1–17–06;Okla. Stat. Ann. tit. 21, § 713; Pa. Cons. Stat. Ann. §§ 2601–2609; R.I. Gen. Laws § 11–22–5; S.D. Codified Laws Ann. §§ 22–16–1, 22–16–1.1, 22–16–20; Utah Code Ann. § 76–5–201; Wash. Rev. Code Ann. § 9A.32.060; Wis. Stat. Ann. §§ 939.75, 939.24, 939.25, 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.10.
[103] *See, e.g., State* v. *Coleman,* 705 N.E.2d 419, 421 (Ohio Ct. App. 1997); *State* v. *Merrill*, 450 N.W.2d 318, 322 (Minn. 1990); *People* v. *Davis*, 872 P.2d 591, 597 (Cal. 1994); and *Smith* v. *Newsome*, 815 F.2d 1386, 1388 (11th Cir. 1987).
[104] 100 Yale L.J. 1281 (1991).
[105] *Id.* at 1316.
[106] *Id.* at 1318.

Moreover, H.R. 1997 relies on the well-established doctrine of transferred intent in supplying the mental element necessary for prosecution, and it carefully excludes from its purview those acts committed by the mother or a third party that are otherwise protected by *Roe* v. *Wade* and its progeny. By recognizing the unique harms done to women and unborn children, and by mending the insufficiencies of current Federal law, H.R. 1997 serves vital national interests by extending the criminal law's protections to all human life.

HEARINGS

The Committee's Subcommittee on the Constitution held 1 day of hearings on H.R. 1997 on July 8, 2003. Testimony was received from the following witnesses: Tracy Marciniak, mother of victim, Wisconsin; Juley Fulcher, Director of Public Policy, National Coalition Against Domestic Violence; Serrin M. Foster, President, Feminists for Life; and Professor Gerard V. Bradley, University of Notre Dame School of Law.

COMMITTEE CONSIDERATION

On July 15, 2003, the Subcommittee on the Constitution met in open session and ordered favorably reported the bill H.R. 1997, without amendment, by a voice vote, a quorum being present. On January 21, 2004, the Committee met in open session and ordered favorably reported the bill, H.R. 1997, with an amendment, by a recorded vote 20 to 13, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following recorded votes occurred during the Committee consideration of H.R. 1997.

1. An amendment was offered by Ms. Lofgren that would have substituted for the bill an enhanced penalty for "interruption to the normal course of the pregnancy resulting in prenatal injury (including termination of the pregnancy)." The amendment was defeated by a rollcall vote of 11 yeas-19 nays.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn			
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher	X		
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff			
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	11	19	

2. An amendment was offered by Ms. Baldwin that would have added language to the bill stating that it shall not be construed as affecting a woman's right to choose an abortion. The amendment was defeated by a rollcall vote of 11 yeas to 20 nays.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher	X		
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Wexler	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	11	20	

3. Motion to report H.R. 1997 as amended, by a rollcall vote of 20 yeas to 13 nays was agreed to.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Ms. Hart	X		
Mr. Flake			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Carter	X		
Mr. Feeney	X		
Mrs. Blackburn	X		
Mr. Conyers		X	
Mr. Berman			
Mr. Boucher		X	
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Sensenbrenner, Chairman	X		
Total	20	13	

Committee Oversight Findings

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Rep-

resentatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the Unborn Victims of Violence Act of 2003, H.R. 1997, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 28, 2004.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1997, the "Unborn Victims of Violence Act of 2003."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1997—Unborn Victims of Violence Act of 2003.

CBO estimates that implementing H.R. 1997 would not result in any significant cost to the Federal Government. Enactment of H.R. 1997 could affect direct spending and receipts, but CBO estimates that any such effects would not be significant. H.R. 1997 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

H.R. 1997 would establish a new Federal crime for the injury or death of an unborn child that results from certain offenses committed against the mother. Violators would be subject to imprisonment and fines. As a result, the Federal Government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in Federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 1997 could be subject to criminal fines, the Federal Government might collect

additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and later spent. CBO expects that any additional receipts and direct spending would be negligible.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 1997 does not authorize funding. Therefore, clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title. This section provides that the title of the Act is the Unborn Victims of Violence Act of 2003. The Committee on the Judiciary adopted a technical amendment changing the year to 2004.

Section 2. Protection of Unborn Children. Section 2(a) amends title 18 of the United States Code by inserting a new Section 1841. These provisions provide the substantive component of the Act.

Section 1841(a)(1) provides that where one engages in violent conduct against a pregnant woman, in violation of one or more of the Federal criminal laws listed in subsection (b), the perpetrator shall be guilty of a separate criminal offense if an unborn child is killed or injured in the commission thereof. This subsection relies on the well-established doctrine of transferred intent in providing the mens rea element for the crime against the unborn child. That is, the criminal intent directed toward the unborn child's mother is transferred to the unborn child. This subsection further eliminates the obsolete common law born-alive rule, replacing it with widely accepted modern jurisprudence recognizing unborn children as victims of violent crime.

Section 1841(a)(2)(A) establishes the punishment for the separate offense committed against the unborn child. This subsection provides that when the death of, or bodily injury to, the unborn child results from the commission of an offense listed in subsection (b), the defendant shall receive the same punishment he or she would have received under Federal law had the same bodily injury or death resulted to the unborn child's mother.

Section 1841(a)(2)(B) provides that an offense under this section does not require proof that the defendant knew or should have known that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death or bodily injury to the unborn child.

Section 1841(a)(2)(C) provides that if the defendant engaged in the conduct against the pregnant woman and thereby intentionally killed or attempted to kill the unborn child, the defendant shall be

punished as provided under Federal law for killing or attempting to kill another human being. Section 1841(a)(2)(D) states that notwithstanding any other provision of Federal law, the death penalty shall not be imposed for an offense under this section.

Section 1841(b) lists the various provisions of the United States Code that serve as predicate offenses for the offense against the unborn child. Subsection (1) lists provisions of title 18; subsection (2) lists section 408(e) of the Controlled Substances Act of 1970, 21 U.S.C. 848; and subsection (3) lists section 202 of the Atomic Energy Act of 1954, 42 U.S.C. 2283. If the defendant engages in the violent conduct prohibited by these provisions, and his conduct results in death or bodily injury to an unborn child, he is guilty of a separate offense, as provided in Section 2(a).

Section 1841(c) prohibits the United States from prosecuting any of the following individuals for the death or injury of an unborn child: under subsection (1), any person for conduct relating to a legally consensual abortion; under subsection (2), any person who provides medical treatment to a pregnant woman or her unborn child; and, under subsection (3), the pregnant woman herself. These provisions ensure that this legislation does not implicate nor interfere with the right to an abortion established by *Roe* v. *Wade*, 410 U.S. 113 (1973) and its progeny.

Section 1841(d) defines "unborn child" as "a child in utero," a definition consistent with those State laws that courts have consistently upheld. "Child in utero" or "child, who is in utero" are, in turn, defined as "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

Section 2(b) of the Act is a clerical amendment, inserting "1841" after the item relating to chapter 90 in title 18 of the United States Code.

Section 3. Military Justice System. This section amends the Uniform Code of Military Justice to provide an additional offense for injuring or killing an unborn child during the commission of certain violent crimes punishable under the Uniform Code of Military Justice. Pursuant to Rule X of the Rules of the House of Representatives, this bill was referred secondarily to the Committee on Armed Services, because the Committee on the Judiciary does not have jurisdiction over this section of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

Chap.		Sec.
1.	**General provisions**	**1**
*	* * * * * *	
90A.	***Protection of unborn children***	***1841***
*	* * * * * *	

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.

* * * * * * *

TITLE 10, UNITED STATES CODE

* * * * * * *

Subtitle A—General Military Law

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

* * * * * * *

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

* * * * * * *

SUBCHAPTER X—PUNITIVE ARTICLES

Sec.	Art.	
877.	77.	Principals.
*	*	*
919a.	*119a.*	*Protection of unborn children.*
*	*	*

§ 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.

* * * * * * *

COMMITTEE JURISDICTION LETTERS

DUNCAN HUNTER, CALIFORNIA, CHAIRMAN
CURT WELDON, PENNSYLVANIA
JOEL HEFLEY, COLORADO
JIM SAXTON, NEW JERSEY
JOHN M. McHUGH, NEW YORK
TERRY EVERETT, ALABAMA
ROSCOE G. BARTLETT, MARYLAND
HOWARD P. "BUCK" McKEON, CALIFORNIA
MAC THORNBERRY, TEXAS
JOHN N. HOSTETTLER, INDIANA
WALTER B. JONES, NORTH CAROLINA
JIM RYUN, KANSAS
JIM GIBBONS, NEVADA
ROBIN HAYES, NORTH CAROLINA
HEATHER WILSON, NEW MEXICO
KEN CALVERT, CALIFORNIA
ROB SIMMONS, CONNECTICUT
JO ANN DAVIS, VIRGINIA
ED SCHROCK, VIRGINIA
W. TODD AKIN, MISSOURI
J. RANDY FORBES, VIRGINIA
JEFF MILLER, FLORIDA
JOE WILSON, SOUTH CAROLINA
FRANK A. LoBIONDO, NEW JERSEY
TOM COLE, OKLAHOMA
JEB BRADLEY, NEW HAMPSHIRE
ROB BISHOP, UTAH
MICHAEL TURNER, OHIO
JOHN KLINE, MINNESOTA
CANDICE S. MILLER, MICHIGAN
PHIL GINGREY, GEORGIA
MIKE ROGERS, ALABAMA
TRENT FRANKS, ARIZONA

COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515–6035

ONE HUNDRED EIGHTH CONGRESS

IKE SKELTON, MISSOURI
JOHN SPRATT, SOUTH CAROLINA
SOLOMON P. ORTIZ, TEXAS
LANE EVANS, ILLINOIS
GENE TAYLOR, MISSISSIPPI
NEIL ABERCROMBIE, HAWAII
MARTY MEEHAN, MASSACHUSETTS
SILVESTRE REYES, TEXAS
VIC SNYDER, ARKANSAS
JIM TURNER, TEXAS
ADAM SMITH, WASHINGTON
LORETTA SANCHEZ, CALIFORNIA
MIKE McINTYRE, NORTH CAROLINA
CIRO D. RODRIGUEZ, TEXAS
ELLEN O. TAUSCHER, CALIFORNIA
ROBERT A. BRADY, PENNSYLVANIA
BARON P. HILL, INDIANA
JOHN B. LARSON, CONNECTICUT
SUSAN A. DAVIS, CALIFORNIA
JAMES R. LANGEVIN, RHODE ISLAND
STEVE ISRAEL, NEW YORK
RICK LARSEN, WASHINGTON
JIM COOPER, TENNESSEE
JIM MARSHALL, GEORGIA
KENDRICK B. MEEK, FLORIDA
MADELEINE Z. BORDALLO, GUAM
RODNEY ALEXANDER, LOUISIANA
TIM RYAN, OHIO

ROBERT S. RANGEL, STAFF DIRECTOR

February 9, 2004

Honorable F. James Sensenbrenner, Jr.
Chairman
House Judiciary Committee
2138 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Sensenbrenner:

I am writing to you concerning the jurisdictional interest of the Committee on Armed Services in matters being considered in H.R. 1997, the Unborn Victims of Violence Act of 2003.

I recognize the importance of H.R. 1997 and the need for this legislation to move expeditiously. Therefore, at this time I will waive further consideration of this bill by the Committee on Armed Services. However, the Committee on Armed Services asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House-Senate conference. Additionally, I request that you include this letter as part of your committee's report on H.R. 1997.

Thank you for your attention to this request.

With best wishes.

Sincerely,

Duncan Hunter
Chairman

DH:rj

cc: Honorable J. Dennis Hastert
Honorable Ike Skelton

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
JOHN R. CARTER, Texas
TOM FEENEY, Florida
MARSHA BLACKBURN, Tennessee

ONE HUNDRED EIGHTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951
http://www.house.gov/judiciary

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California

February 9, 2004

The Honorable Duncan Hunter
Chairman
Committee on Armed Services
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Hunter:

Thank you for your letter regarding H.R.1997, the "Unborn Victims of Violence Act of 2003." H.R. 1997 was secondarily referred to the Committee on Armed Services because section 3 of the bill relating to the Uniform Code of Military Justice falls within its Rule X jurisdiction. I appreciate your willingness to forgo consideration of the bill.

I acknowledge that by agreeing to waive its consideration of the bill, the Committee on Armed Services does not waive its jurisdiction over the bill or any of the matters under your jurisdiction in Section 3.

I will include a copy of your letter and this response in our Committee's report on H.R. 1997 and the *Congressional Record* during consideration of the legislation on the House floor.

Thank you for you assistance in this matter.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable Ike Skelton
The Honorable Charles W. Johnson, III, Parliamentarian

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JANUARY 21, 2004

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

The Committee met, pursuant to notice, at 10:05 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda is the adoption of H.R. 1997, the "Unborn Victims of Violence Act of 2003." The Chair recognizes the gentleman from Ohio, Mr. Chabot, the Chairman of the Subcommittee on the Constitution.

[The bill, H.R. 1997, follows:]

I

108TH CONGRESS
1ST SESSION

H. R. 1997

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2003

Ms. HART (for herself, Mr. CHABOT, Mr. NEY, Mr. FORBES, Mr. ADERHOLT, Mr. AKIN, Mr. BACHUS, Mr. BAKER, Mr. BARTLETT of Maryland, Mr. BLUNT, Mr. BRADY of Texas, Mr. BURGESS, Mr. BURR, Mr. BURTON of Indiana, Mr. BUYER, Mr. CAMP, Mr. CANTOR, Mr. CARTER, Mr. COLE, Mr. COSTELLO, Mr. CRANE, Mrs. JO ANN DAVIS of Virginia, Mr. DEMINT, Mr. DOOLITTLE, Mrs. EMERSON, Mr. ENGLISH, Mr. EVERETT, Mr. FOSSELLA, Mr. FRANKS of Arizona, Mr. FERGUSON, Mr. GARRETT of New Jersey, Mr. GOODE, Mr. GOODLATTE, Mr. GREEN of Wisconsin, Mr. GUTKNECHT, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HAYWORTH, Mr. HEFLEY, Mr. HOEKSTRA, Mr. HOSTETTLER, Mr. HULSHOF, Mr. HYDE, Mr. ISTOOK, Mr. JANKLOW, Mr. JOHN, Mr. JONES of North Carolina, Mr. KELLER, Mr. KENNEDY of Minnesota, Mr. KING of New York, Mr. KING of Iowa, Mr. KINGSTON, Mr. KLINE, Mr. LAHOOD, Mr. MANZULLO, Mr. MCCOTTER, Mr. MILLER of Florida, Mrs. MYRICK, Mr. NORWOOD, Mr. OBERSTAR, Mr. OTTER, Mr. OXLEY, Mr. PETERSON of Pennsylvania, Mr. PENCE, Mr. PICKERING, Mr. PITTS, Mr. RENZI, Mr. REYNOLDS, Ms. ROS-LEHTINEN, Mr. RYAN of Wisconsin, Mr. RYUN of Kansas, Mr. SHIMKUS, Mr. SMITH of New Jersey, Mr. SOUDER, Mr. STEARNS, Mr. STENHOLM, Mr. SULLIVAN, Mr. TERRY, Mr. TIAHRT, Mr. VITTER, Mr. WELDON of Florida, Mr. WELLER, Mr. WICKER, Mr. WILSON of South Carolina, Mr. WOLF, Mrs. CUBIN, Mr. LUCAS of Kentucky, Mr. TOOMEY, Mr. CUNNINGHAM, Ms. HARRIS, Mr. LINCOLN DIAZ-BALART of Florida, Mr. DELAY, Mr. ROGERS of Alabama, Mr. TURNER of Ohio, Mr. FEENEY, Mrs. BLACKBURN, Mr. BEAUPREZ, and Mr. GINGREY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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.

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 2003'' or ''Laci and Conner's Law''.

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.".

○

Mr. CHABOT. Mr. Chairman, the Subcommittee on the Constitution reports favorably the bill H.R. 1997, the "Unborn Victims of Violence Act," and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, H.R. 1997 will be read and open for amendment at any point. The Chair recognizes the gentleman from Ohio, Mr. Chabot, to strike the last word.

Mr. CHABOT. Thank you, Mr. Chairman.

Tragically, recent studies in Maryland, North Carolina, New York City, and Illinois indicate that homicide is the leading cause of death of pregnant women in those parts of the country. Those homicides are often inspired by the desire to kill a woman's unborn child. Yet, due to the gaps in the Federal criminal law, an unborn child can be killed or injured during the commission of a violent Federal crime without any legal consequences. These gaps are appalling to the American people.

Recent polls have shown that upwards of 80 percent of registered voters, including 69 percent of registered voters who describe themselves as pro-choice, believe the prosecutors should be able to separately charge the violent attacker of a pregnant woman that kills her unborn child. Yet today, for example, if a man stalks his pregnant wife across State lines and attacks her, injuring her and killing their unborn child, that man could not be prosecuted under Federal law for the loss of the baby's life.

The Unborn Victims of Violence Act fills these glaring gaps in the Federal law with a simple expression of a basic understanding; namely, that the loss of an unborn child to an act of violence deserves separate recognition under Federal law. This bill provides that if an unborn child is injured or killed during the commission of crimes of violence already defined under Federal law, prosecutors can bring two charges, one on behalf of the mother, the other on behalf of the unborn victim. H.R. 1997 recognizes that the loss of an unborn child at any stage of development is a unique and separate loss both to society and to the mother who carried and loved that child. This bill for the first time under Federal law treats an unborn victim of violence as something more than just a torn spleen or a bruised appendix or other physical injuries incurred during the course of a violent attack on an expecting mother that might warrant enhanced penalties but not separate charges under Federal law. H.R. 1997 treats such unborn victims with the respect and dignity under the law their loving mothers and the American people rightfully demand for them. We must all ask ourselves, is the death of an unborn child the same thing as a broken bone, for example? If the answer is, it is not, it is not the same thing, then we should all look very closely at passing this particular piece of legislation.

Indeed, the House of Representatives in the 106th Congress by a unanimous 417 to 0 vote passed the Innocent Child Protection Act, a bill only two sentences long that banned the Federal execution of a woman while she carries a child in utero. A child in utero is defined in that bill exactly to the word as it is in this one; namely as, "a member of the species homo sapiens at any stage of development who is carried in the womb." A vote for the Innocent Child Protection Act cannot be defended on the grounds that the execution of a woman's unborn child would constitute an additional

harm to the woman, because a woman who is executed faces the ultimate and final punishment of death. Rather, the only logical rationale for the support of that legislation was to prevent the killing of an innocent unborn child. Fourteen of the 16 Democrats on this Committee today voted for the Innocent Child Protection Act, and the remaining two were not in office during the 106th Congress. Clearly, H.R. 1997 should logically have similarly overwhelming bipartisan support.

The legislation before us now requires us to reflect on the goals and purposes of the criminal law. Ultimately, the criminal law is not a schedule of punishment; it is an expression of society's values. Anything less than the legislation before us today simply does not resonate with society's sense of justice.

This legislation has been called merely symbolic by its opponents, but I wonder how many women in America would view the loss of their unborn child through a violent means as merely symbolic. Certainly not Tracy Marciniak, whose unborn child was murdered by her husband. She told the Constitution Subcommittee referring to the substitute amendment that will be offered today, quote, please don't tell me that my son was not a real murder victim, and please remember Zachariah's name and face when you vote on a substitute amendment that refuses to allow a separate charge for the killing of a wanted unborn child. Shawana Pace, whose unborn child was brutally murdered by three hired hit men, has also testified that, quote, it seems to me that any Congressman who votes for the one victim amendment is really saying that nobody died that night, and that is a lie, unquote.

Indeed, because unborn victims are distinct victims, the Unborn Victims of Violence Act is also referred to as Laci and Conner's Law for Laci and Conner Peterson, two recent victims of terrible violence. This bill protects the right of a mother to choose to bring her wanted and loved child to term safe from the violent hands of criminals who would brutally deny her that right. This bill, however, has nothing to do with abortion.

Mr. Chairman, I would ask for an additional minute.

Chairman SENSENBRENNER. Without objection.

Mr. CHABOT. Thank you.

That fact could not be expressed more clearly in the legislation which explicitly excludes abortion, and the Supreme Court in *Webster* v. *Reproductive Health Services* has already refused to strike down the State of Missouri's unborn victims of violence law, stating that it, quote, does not by its terms regulate abortion, unquote.

Before and since the Webster decision, every single unborn victim's law passed by State legislators that has been challenged has been upheld. Opponents of the legislation before us today claim it will open the door to all manner of terrible imagined future legislation. But the only door this legislation opens is the door to a distinct room in the edifice of the Federal Code in which unborn victims of violence can be granted the distinct respect they are owed. Just as expecting mothers reserve space in their home for a wanted and loved unborn child, we in Congress should reserve for unborn victims of violence a distinct place under the protective shield of the criminal law.

Chairman SENSENBRENNER. The time of the gentleman has once again expired.

Mr. CHABOT. I ask support for the legislation.

Chairman SENSENBRENNER. Is the gentlewoman from California going to make the Democratic opening statement?

Ms. LOFGREN. Yes.

Chairman SENSENBRENNER. She is recognized for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

Acts of domestic violence against women, especially pregnant women, are tragic and should be punished appropriately. However, we do not support the Unborn Victims of Violence Act. We believe that the bill as drafted will diminish rather than enhance the rights of women and will actually do little to protect pregnant women from violence. The bill would amend the Federal Criminal Code and the Uniform Code of Military Justice to create a new Federal crime for bodily injury or death of an unborn child and defines a member of the species homo sapiens at any stage of development who is carried in the womb, creates an offense that would occur when one or more enumerated Federal crimes have been committed in the, quote, death or bodily injury to the fetus have occurred.

You know, the result of this drafting would be a mish-mash of varying penalties that would inexplicably change the potential sentence for the attacker depending on the status of the victim, because the various penalties in the code vary wildly, depending on whether the jurisdiction is because the individual is a postal worker or a Member of Congress or whatever the other jurisdictional reach is. But the true concern is that the real rationale we believe behind this bill is not to protect pregnant women and to allow pregnant women to be secure and to allow them to have their pregnancies come to term and to give birth to much wanted children; it has in fact defined a zygote, a four or six cells as a person under law to undercut *Roe* v. *Wade*. We believe that is why groups that are really concerned about protecting a woman's right to choose and who are opposed to domestic violence also oppose this bill, including the National Abortion and Reproductive Rights Action League, Planned Parenthood, the National Women's Law Center, the National Partnership for Women and Family, the Center for Reproductive Law and Policy, the American Civil Liberties Union, the Feminist Majority, the American Association of University Women, the National Family Planning and Reproductive Health Association, the American Medical Women's Association, the National Coalition Against Domestic Violence, the National Council of Jewish Women, the National Organization for Women, Physicians for Reproductive Choice and Health, and People for the American Way.

We will have at the appropriate time a substitute that fully protects pregnant women who are assaulted. We believe that the right of women to carry their pregnancy to term and to give birth is indeed a valuable and important one, that we should make the strongest possible penalties for those who would assault pregnant women and prevent a pregnancy from going to term. We think it is regrettable that this effort to protect pregnant women has instead been caught up in the long and aged old fight over abortion. We understand that there are strong differences of opinion in this body and in the country about a woman's right to choose, but we think it is regrettable that that provision over a woman's rights to

choose has been dragged into this discussion which is about allowing women to be free from violence. That should unite us all. It should not be tied up in the fight over choice. And with that, I yield back the balance of my time.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will appear in the record at this time. Are there amendments?

Mr. WATT. Mr. Chairman.

Ms. LOFGREN. Mr. Chairman.

Chairman SENSENBRENNER. Does the gentlewoman from California have an amendment?

Ms. LOFGREN. I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 1997 offered by Ms. Lofgren. Strike Section 1 through Section 2, and insert the following: Section 1, short title. This act may be cited as the Motherhood Protection Act of 2004. Section 2. Crimes against a woman——

[The amendment follows:]

AMENDMENT TO H.R. 1997
OFFERED BY MS. LOFGREN

Strike section 1 through section 2 and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Motherhood Protection Act of 2004''.

SEC. 2. CRIMES AGAINST A WOMAN THAT AFFECT THE NORMAL COURSE OF 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), 924(j), 930, 1111, 1112, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203(a), 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952(a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of title 18, United States Code.

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

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

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentlewoman from California is recognized for 5 minutes.

Ms. LOFGREN. Mr. Chairman, this amendment is simple. It proposes to substitute sections 1 and 2 of the bill, and only those sections. We don't seek to change section 3 as I believe that would raise a germaneness concern.

This amendment recognizes that there are existing crimes in Federal law that protect women from violence such as violent assault. Further, this amendment recognizes that when such crimes hurt a pregnant woman and cause her to miscarry there is an additional and very serious harm to that woman. This amendment creates a second separate offense with severe and consistent penalties for causing this additional harm, up to a life sentence.

Why is it important to pass this amendment for such a crime and to enhance the penalty? All of us here on the Committee have had exciting moments and some fame or notoriety, but I have got to tell you that the absolute most exciting moment of my entire life was when I gave birth to my children. And it is a moment that—they are now 19 and 21, but I can remember as if it was yesterday. It is one of the most enriching and exciting experiences of one's life. And for anyone who has had a miscarriage, as I have had, you know the disappointment, really the devastation that comes with that loss. There is nothing really larger than to lose a pregnancy and to not have the child that you thought you would have. It is something that you really never get over. But when that is something that really comes from the hand of God rather than the hand of an assault, you make your peace with it. To imagine that that loss would be caused by the violence of another is really unbelievable and really deserves the very largest penalty that we can possibly devise, because to deny a woman the opportunity to have her much desired child is a lifelong sentence. And those who would assault someone and cause a miscarriage, they deserve a life sentence, in my judgment, for the harm that they have done. Now, that is why I have offered this substitute to Ms. Hart's bill.

If the goal of the criminal law is ever properly vengeance, then this sort of loss calls out for vengeance. And if the goal is justice, then the contrast with the proposed penalty for this grievous injury to a woman where the offense is deemed worthy of other maximum sentence of life. You can sentence the accused up to life for exploiting children, for drug trafficking, for aggravated sexual assault of underaged children, and many more crimes, so I think a life sentence really is appropriate.

I offer this amendment that would recognize the crime and creates a second, separate penalty, and I believe that this penalty is huge. Unlike the underlying bill, it is consistent. Ms. Hart's bill would provide for sentences that can go anywhere from a term of a year to a few years to life. And I think it is important, especially if the law is about deterrence in penalties, that anyone who would assault a pregnant woman should know that they are facing a life sentence.

Now, my substitute focuses on what is real for American women. Violence against women is epidemic. And as the Chairman of the Committee has said, and something—we don't agree on everything, but we do agree that the most dangerous time to be a woman in

America is when you are pregnant. That is the time when most assaults, shockingly enough, occur. So it is important that we have in our law a deterrent for that assault. I don't think, however, that we should use that violence as an excuse to cut away at the right of American women to make their own personal choices about reproduction.

Although the proponents of the bill argue that it has nothing to do with abortion, in fact it does. Senator Orrin Hatch, the Chairman of the Senate Judiciary Committee, admitted on their side of the building in the other body that the measure would have an impact on abortion law. And he said this, quote: They say it undermines abortion rights. It does undermine it, he said, but that is irrelevant. We are concerned here about a woman and her child. The partisan arguments over abortion should not stop a bill that protects women and children.

Well, this amendment allows us to do both. It allows us to avoid the fight over abortion, to allow a woman's right to make her own choice to continue in place, but to have the toughest law possible to protect women against violence and assault, and to punish those who would do the horrible wrong of denying a woman her chance to give birth to a healthy child and to enjoy raising that child throughout her life.

[11 a.m.]

Ms. LOFGREN. So I recommend the substitute to those of us who would like to take a stand against domestic violence, to stand up for women and protect women.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. LOFGREN. I would ask unanimous consent for an additional minute.

Chairman SENSENBRENNER. Without objection.

Ms. LOFGREN. I would ask also that we take this issue of protecting women from violence out of this perennial fight and recommend this substitute as the easiest way to do that, and I yield back the balance of my time.

Chairman SENSENBRENNER. Mr. Chabot.

Mr. CHABOT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Mr. Chairman, this substitute amendment should be defeated. The terminology in the substitute amendment is hopelessly confusing, and if adopted, it would almost certainly jeopardize any prosecution involving the injuring or killing of an unborn child during the commission of a violent crime.

I mentioned in my opening statement the tragic case of Tracy Marciniak. This is a picture of Tracy with her unborn child. She was attacked by her husband. Tracy survived, but her unborn child Zachariah did not. There are two victims in that picture. One victim, Tracy Marciniak, survived; the other, Zachariah, did not. The law should recognize both.

H.R. 1997 does that; the substitute amendment, in effect, does not. The substitute amendment provides an enhanced penalty for interruption to the normal course of the pregnancy resulting in prenatal injury, including termination of the pregnancy. The amendment then authorizes greater punishment for "interruption" that

terminates the pregnancy than it does for mere interruption of a pregnancy.

What exactly is the difference between an interruption of a pregnancy and an interruption that terminates the pregnancy? The substitute does not say. Doesn't any interruption of a pregnancy necessarily result in the termination of a pregnancy, or have the supporters of this amendment somehow succeeded in mastering the science of suspended animation?

By defining an interruption to the normal course of the pregnancy, the substitute is either science fiction or simply impossible for Federal prosecutors to decipher and apply. The substitute amendment appears to operate as a mere sentence enhancement, authorizing punishment in addition to any penalty imposed for the predicate offense. That is not right. No sentencing enhancement can adequately express society's disapproval for the distinct loss that occurs when a mother's unborn child is harmed or killed by a violent criminal, a loss that is both unique and uniquely offensive to both a loving, expectant mother and to the vast majority of Americans who want a separate and unique offense under the criminal law.

Indeed, the witnesses we hear from supporting H.R. 1997 have told us they are not Republicans or Democrats. They are not lawyers. They are people who have lost unborn children to violence. These are the people who have testified before Committee, and they want their unborn children treated appropriately under the law. That is precisely what H.R. 1997 would do for the purposes of Federal law. The substitute would not.

Sharon Rocha, the mother of Laci Peterson and the grandmother of unborn victim Connor Peterson, has written, "The Lofgren proposal would enshrine in law the offensive concept that such crimes have only a single victim, the pregnant woman." .

Shawana Pace, whose unborn child was brutally murdered by three hired hitmen, as I mentioned in my opening statement, has said, "It seems to me that any Congressman who votes for the one victim amendment is really saying that nobody died that night, and that is a lie." .

Those who focus this debate on penalties and abstract terms such as "harm to a pregnancy" rather than "a child" misunderstand the purposes of criminal law. The criminal law does not exist only to punish criminals, it exists to lend dignity to victims, including unborn victims. It is an expression not only of society's disapproval of certain conduct, but of its recognition of the victims of such conduct and the manner in which such victims should be recognized. Creating a separate offense for harm to an unborn child forces all of us, including potential criminals, to consider the act of harming an unborn child as an independent evil.

A *Newsweek* poll found only 9 percent of those surveyed, less than 1 in 10 Americans, oppose a separate offense for killing an unborn child. Those 9 percent of Americans should be heard, of course, and they have been heard through this substitute amendment, but they must not win as the law exists in large part to reflect America's overwhelmingly shared values, and those shared values support separate charges for the killing and injuring of wanted unborn children.

This substitute amendment embodies the extreme ideology of those who are unwilling to recognize the unborn child in the law in any context. The term "unborn child" has been used in many other cases. There is a legion of cases that could be referred to. I would urge my colleagues to reject this amendment and to pass the underlying bill.

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

Chairman SENSENBRENNER. The gentlewoman from Wisconsin Ms. Baldwin.

Ms. BALDWIN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. BALDWIN. Mr. Chairman, I speak today in support of Representative Lofgren's amendment. I know we all agree that violence against women and especially pregnant women is extremely tragic and should be punished to the full extent of the law. Unfortunately, the bill that we are considering also has another agenda. That agenda is to erode and undermine the *Roe* v. *Wade* decision by treating an embryo or fetus at any stage of development as an individual with extensive legal rights distinct from the mother.

But if we really want to punish the crimes committed against pregnant women, we can do it in a way that will not tangle this issue with the issue of the abortion debate; and that is exactly what Congresswoman Lofgren's amendment does.

This amendment goes to the heart of the problem by truly addressing the issues of violence against pregnant women. The amendment creates a second Federal offense for harm to a pregnant woman. This amendment imposes the same penalties for harm to a pregnancy as the Unborn Victims of Violence Act does. The amendment does this without conferring separate legal rights to the embryo or fetus.

In past years and still today, I have been a strong and vocal supporter of the Violence Against Women Act, which has served in our country to expand protections for women against callous acts of violence. I believe we are better served by laws that protect women, pregnant and not pregnant alike, from violence instead of establishing a whole legal framework to establish and protect fetal rights.

By switching the focus of the crime to the unborn child, we are diverting attention from the victimized woman and from the issue we need to be focused on: violence against women.

I sat in the Wisconsin Legislature when we debated a similar piece of legislation at the State level, and I was moved by heartbreaking stories, some of which you have already heard today. But what is true about this is you truly cannot harm the unborn child without harming the pregnant woman. In countless cases, we heard anecdotal testimony that these women experienced domestic violence for years prior to becoming pregnant, and they continued through the pregnancy.

We have to be serious about domestic violence. We have to be serious about it in any circumstance, whether there is a pregnancy or not. We can prevent these sort of crimes by a serious focus on domestic violence.

So if we are all sincere in our desire to punish crimes committed against pregnant women, we should be supportive of this amend-

ment. Let us abandon this thinly veiled attack on abortion rights that is called the Unborn Victims of Violence Act and address the true issue of providing real punishments for criminals who attack pregnant women and women generally.

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

Chairman SENSENBRENNER. The gentlewoman from Pennsylvania Ms. Hart.

Ms. HART. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. HART. Mr. Chairman, I oppose the amendment for a number of the reasons that were stated by Mr. Chabot, but also because the amendment would be a denial of a long-recognized legal principle of transferred intent. The bill, as written, recognizes a separate crime, as is often recognized in law. It also recognizes the fact that a majority of States have already adopted legislation similar to what we are proposing on the Federal level; that is, it recognizes a separate crime.

I am a bit baffled by the opposition and the claims that this legislation without the amendment denies a crime against the woman. It does nothing of the sort. Those crimes against women, whether pregnant or not, are already recognized in law. Clearly, this Congress has done quite a bit and continues to do more to fight domestic violence.

The recognition of the crime against the unborn child advances the cause of fighting domestic violence. At this point in time, Federal law would recognize a violent crime against the mother, it would recognize a crime against a born child; but, unfortunately, does not recognize a crime against an unborn child.

As was cited by several people in this debate, the unborn child is often the reason, the motive, for the violence against the woman. Not recognizing that fact is what would, I think, perpetrate more domestic violence. This amendment, in my opinion, does just the opposite of what its sponsor says it would do. It simply recognizes an extenuating circumstance or an additional problem regarding the crime against the woman. It does not recognize what it is: family violence, in many cases.

The other statement I want to share with the Members, some may recall Walter Dellinger, who is a former Solicitor General with the Clinton administration. He is now a professor at Duke University. He is also a strong advocate for a woman's right to choose abortion. He has stated he sees no major problem with these fetal homicide laws. To quote him, he does not believe "they undermine *Roe* v. *Wade*. We can decide that fetuses are deserving of protection without having to make any judgment that the entity being protected has to have any freestanding constitutional right that would violate *Roe* v. *Wade*." He asked, actually, that these proposals be considered on their own merit, that they are separate and distinct from any effect on *Roe* v. *Wade*.

Mr. Chairman, I was in the State senate in Pennsylvania when we passed our fetal homicide law that recognizes a separate crime, an additional crime, that is against the unborn child when there is already a crime committed against the mother. It is clear from the examples we have seen, especially the Peterson case, that a family suffers a great loss. Not only does the woman suffer a loss

physically when she is attacked, she suffers an emotional loss, her family suffers an emotional loss. The loss of the child is real, and the law should recognize that. It is offensive for us to do anything else.

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

Chairman SENSENBRENNER. The gentleman from North Carolina Mr. Watt.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I yield to Congresswoman Lofgren.

Ms. LOFGREN. Mr. Chairman, I thank the gentleman for yielding.

We have been through this discussion on many occasions, and I am not sure an extended debate rehashing the same points over and over again every year necessarily adequately informs either the Committee Members or the public, but I would note just for clarity's sake that the amendment I have offered does indeed create a separate offense with penalties that are more severe and certainly more consistent than the underlying bill.

I would also note that all of us, and I would note that *Roe* v. *Wade* as well, understands that there is a very big distinction between a situation where you have a fetus at the 9th month and six cells. The problem is no distinction is made in this bill.

Actually in my bill, which I am offering as a substitute, there is a recognition that even if the assaulter is unaware of the situation, if that assaulter, if he assaults a pregnant woman and she is a month pregnant and she loses that pregnancy, it is still a loss to her. It is still a loss to her, but we avoid going into the very serious problem area of overturning *Roe* and assigning independent rights under the Constitution to eight cells.

I think all of us have very strong views on the issue of choice, whether the Government should decide or whether the individual woman should decide about reproductive rights, but I would hope that we could adopt this substitute and come together to enact vigorous protections for pregnant women who face assault and who could lose the opportunity to have a child.

Mr. Chairman, I yield back to the gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I encourage my colleagues to support the Lofgren amendment.

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

Chairman SENSENBRENNER. The gentleman from Michigan Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to insert my statement in the record.

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS. Mr. Chairman and Members of the Committee, I just observe in some quarters the question is whether this is a frontal assault on *Roe* v. *Wade*, or is it a tempered, measured, sneaking up on *Roe* v. *Wade*? I would like to find out after this Committee hearing what people think about that, because what we are doing is we are saying this Supreme Court case, precariously arrived at a number of years ago, needs to be revisited for reasons outside of the fact that the people who want to move forward on it and have never, never thought about the larger part of the ques-

tion, the woman's right, the woman's life, and the choices that she has to make, and as Ms. Lofgren pointed out, these have to be made early on in the process.

I was away from the hearing a while, but did the term "murderers" come up here in this discussion, or are we past that yet? Because this thing gets very highly emotional. This is part of a larger cultural war that is going on that cannot be solved by this kind of a measure that is before us. So what the gentlewoman from California has done with her substitute is, to me, to make it a separate crime to violently assault a pregnant woman which could interrupt or terminate her pregnancy or injure her fetus. To me that makes perfectly logical sense. It is rational. It is not soft-headed or muddled thinking. It is not slipping something in on anybody that may have strong views one way or the other about the import of *Roe* v. *Wade*.

But, come now, it is an open secret that there is a group in our Government and in amongst our citizenry that have pledged to get rid of *Roe* v. *Wade* by any means necessary. Is there anybody that does not know that? To me, I take this as just another step in the battle, and maybe we can get that in, maybe we can get an ultra-conservative or more conservative justices and judges on the Court, and maybe, whammo, we will wake up one day, and *Roe* will be gone. That is a procedure that I have a lot of trouble with. That is why I support the Lofgren amendment.

Chairman SENSENBRENNER. The question is on agreeing to the gentlewoman's amendment. Those in favor will say aye.

Those opposed, no.

The noes appear to have it.

Ms. LOFGREN. Mr. Chairman, I would ask for a rollcall vote.

Chairman SENSENBRENNER. A rollcall vote is ordered. The question is on agreeing to the amendment offered by the gentlewoman from California. Those in favor will, as your names are called, answer aye. Those opposed, no. The Clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. No.

The CLERK. Mr. Hyde, no.

Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly.

[No response.]

The CLERK. Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.
Mr. Bachus.
[No response.]
The CLERK. Mr. Hostettler.
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green.
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller.
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Ms. Hart.
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake.
[No response.]
The CLERK. Mr. Pence.
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Mr. Forbes.
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King.
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Carter.
Mr. CARTER. No.
The CLERK. Mr. Carter, no.
Mr. Feeney.
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mrs. Blackburn.
[No response.]
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman.
[No response.]
The CLERK. Mr. Boucher.
[No response.]
The CLERK. Mr. Nadler.
[No response.]
The CLERK. Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye.
Ms. Jackson Lee.
[No response.]
The CLERK. Ms. Waters.

Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Mr. Delahunt.
[No response.]
The CLERK. Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Ms. Baldwin.
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff.
[No response.]
The CLERK. Ms. Sánchez.
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye.
Mr. Chairman.
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there Members in the Chamber who wish to cast or change their vote?
The gentleman from California Mr. Gallegly.
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Chairman SENSENBRENNER. The gentleman from Alabama Mr. Bachus.
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Chairman SENSENBRENNER. Are there further Members in the Chamber who wish to cast or change their vote?
The gentleman from Virginia Mr. Boucher.
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye.
Chairman SENSENBRENNER. Anybody else who wishes to cast or change their vote? If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 11 ayes and 19 noes.
Chairman SENSENBRENNER. The amendment is not agreed to.
Are there further amendments?
Ms. BALDWIN. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The Clerk will report the amendment.
The CLERK. Amendment to H.R. 1997 offered by Mrs. Baldwin. Page 7, after line 6——
Mr. CHABOT. Mr. Chairman, I reserve a point of order.
Chairman SENSENBRENNER. The gentleman from Ohio reserves a point of order.
Without objection, the amendment is considered as read.
[The amendment follows:]

AMENDMENT TO H.R. 1997
OFFERED BY MS. BALDWIN

Page 7, after line 6, insert:

1 ''(d) Nothing in this section shall be construed as un-
2 dermining a woman's right to choose an abortion as guar-
3 anteed by the United States Constitution or limiting in
4 any way the rights and freedoms of pregnant women.''.

Page 7, line 7, strike ''(d)'' and insert ''(e)''.

Chairman SENSENBRENNER. The gentlewoman from Wisconsin Ms. Baldwin is recognized for 5 minutes.

Ms. BALDWIN. Mr. Chairman, I offer this amendment today as a method of insurance, insurance that this bill not be used to erode a woman's right to choose an abortion. I ask my colleagues to look at this legislation for what it really is, not for what it sponsors claim it is.

On its face this bill could be seen as an attempt to protect pregnant women from assault and to provide prosecutors with another tool to punish those who cause the nonconsensual termination of a pregnancy. On closer examination, however, the bill sets the stage for yet another assault on *Roe* v. *Wade* through the legislative process by treating an embryo or a fetus, regardless of the stage of development, as an individual with extensive legal rights distinct from the mother.

In fact, as was said earlier, Senator Orrin Hatch has admitted, "They say it undermines abortion rights. It does; but that is irrelevant." other supporters of the Unborn Victims of Violence Act maintain their claim that their bill has nothing to do with abortion rights. If this is truly the case, then they should have no problem supporting this amendment, which simply states that nothing in this bill undermines a woman's right to choose an abortion.

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

Chairman SENSENBRENNER. Does the gentleman from Ohio insist upon his point of order?

Mr. CHABOT. Yes.

Chairman SENSENBRENNER. The gentleman will state his point of order.

Mr. CHABOT. I make a point of order that the amendment exceeds the scope of the referral because it addresses matters outside the rule 10 jurisdiction of the Judiciary Committee. The bill is referred to the Committee for consideration of provisions which fall within our jurisdiction. The matters in section 3 of the bill amend the Uniform Code of Military Justice, which falls within the rule 10 jurisdiction of the Committee on Armed Services. Thus, amendments to that section of the bill exceed the scope of the referral. The Committee on Armed Services has a secondary referral on the bill, and that section can be addressed there, if appropriate.

For those reasons, I would insist on my point of order.

Chairman SENSENBRENNER. Does the gentlewoman from Wisconsin wish to be heard on the point of order?

Ms. BALDWIN. First, I ask unanimous consent to modify this amendment to read, "Page 4, after line 25." .

Chairman SENSENBRENNER. Does the gentlewoman also wish to change the page 7, line 7, change?

Ms. BALDWIN. Probably, right. I do not have it exactly.

Chairman SENSENBRENNER. I am trying to help the gentlewoman out.

Ms. BALDWIN. I do not have the correct cites in front of me.

Chairman SENSENBRENNER. Would the gentlewoman suggest that the reference to page 7, line 7, be stricken, and that can be corrected in giving the staff authority to make technical and conforming changes?

Ms. BALDWIN. I so move, and thank the Chairman.

Chairman SENSENBRENNER. The question is on the point of order. You can ask to modify the amendment so as to strike line 5.

Ms. BALDWIN. Mr. Chairman, I ask unanimous consent to so modify the amendment.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

AMENDMENT TO H.R. 1997

OFFERED BY MS. Baldwin

Page ~~7~~ 4, after line ~~6~~ 20, insert:

1 "(d) Nothing in this section shall be construed as un-
2 dermining a woman's right to choose an abortion as guar-
3 anteed by the United States Constitution or limiting in
4 any way the rights and freedoms of pregnant women.".

Page ~~7~~ 4, line ~~7~~ 21, strike "(d)" and insert "(e)".

Chairman SENSENBRENNER. Does the gentleman from Ohio now wish to press his point of order?

Mr. CHABOT. I will withdraw my point of order.

Chairman SENSENBRENNER. The point of order is withdrawn.

Does the gentleman from Ohio wish to be recognized in opposition to the amendment?

Mr. CHABOT. Yes, Mr. Chairman, I do.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Mr. Chairman, this amendment also should be defeated. H.R. 1997, by its clear terms, does not implicate *Roe* v. *Wade* or anything in that opinion that speaks to the meaning of the word "person" in the 14th amendment. Adding the language of this amendment, as proposed, however, would indicate to courts that the bill would somehow otherwise implicate *Roe* v. *Wade* when it does not.

As Ms. Hart mentioned before, Walter Dellinger, who was President Clinton's legal adviser on constitutional issues, and prior to that he cochaired a NARAL-sponsored commission to defend *Roe* v. *Wade*, as constitutional law adviser to President Clinton, Mr. Dellinger has said he drafted five executive orders that were issued

by President Clinton on his third day in office nullifying various antiabortion policies adopted by earlier Presidents. Mr. Dellinger later served the Clinton administration as Assistant Attorney General and as Acting Solicitor General of the United States.

On July 13, 2003, the *Raleigh News Observer* published the following passage in a story titled, "A Question of Rights." Quoting from that article, "Mr. Dellinger, a former Solicitor General with the Clinton administration who teaches at Duke University, says that although he is a strong advocate for a woman's right to choose abortion, he sees no major problem with the fetal homicide laws. 'I don't think they undermine *Roe* v. *Wade*,' he said. 'The legislatures can decide that fetuses are deserving of protection without having to make any judgment that the entity being protected has freestanding Constitutional rights. I just think that proposals like this ought to be considered on their own merit.'"

So even President Clinton's legal adviser on constitutional law agrees that this bill has absolutely nothing to do with *Roe* v. *Wade*. Therefore, I think there is no reason to include this particular amendment. I would oppose it and encourage my colleagues to do the same.

Mr. WEINER. Mr. Chairman, would the gentleman yield to a question on that point?

Chairman SENSENBRENNER. The gentleman from New York Mr. Weiner is recognized for 5 minutes.

Mr. WEINER. Mr. Chairman, I ask for a purpose of clarification from the author.

Putting aside the language of the amendment, in your opinion should anything in the section be construed as undermining a woman's right to choose an abortion as guaranteed by the United States Constitution or limiting in any way the rights or freedoms of pregnant women? I would yield to the gentleman.

Mr. CHABOT. I don't think it is necessary for this amendment to be included. As was stated, there are many of us who are prolife. I have no question about that. But I think this particular bill itself has nothing to do with abortion.

Mr. WEINER. Mr. Chairman, reclaiming my time, just confirming, you answered in the affirmative when I asked should anything in this section be construed as undermining a woman's right to choose an abortion as guaranteed by the United States Constitution, or limiting in any way the rights or freedoms of pregnant women. Yet in a moment you are going to be voting in opposition to that concept because while you agree with it, you feel that it just has no place in the law?

Mr. CHABOT. Would the gentleman yield?

Mr. WEINER. Yes, just for the purpose of hearing if I understand it correctly.

Mr. CHABOT. No, it is not correct. By including this language, we are saying it does have to do with *Roe* v. *Wade*.

Mr. WEINER. Let me take out "entirely." the amendment in front of us—and let me ask you this question again and see if I get an answer. In your opinion as the author of this bill, should anything in this section be construed as undermining a woman's right to choose an abortion as guaranteed by the United States Constitution or limiting in any way the rights or freedoms of pregnant women?

Mr. CHABOT. If the gentleman would yield, no, I don't think this bill does. But relative to that particular issue, I would acknowledge what Mr. Conyers said before. There are many of us who are pro-life and would like to do away with *Roe* v. *Wade*, but that is not this bill.

Mr. WEINER. Thank you. It is the position, just to restate, as the author of this bill, that nothing in this section shall be construed as undermining a woman's right to choose an abortion as guaranteed by the United States Constitution or limiting in any way the rights and freedoms of American women. That was just the stated position of the author of this bill.

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

Chairman SENSENBRENNER. The question is on the amendment.

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. Mr. Watt.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I want to state that my good friend from Duke University Mr. Dellinger may or may not be right in his assessment of this. I remember a former constitutional scholar and Member of this Committee, Mr. Frank of Massachusetts, whose position was always when we came to these forks in the road like this and the objection to an amendment was that it was somehow redundant or unnecessary, he would always say, well, what else is new in the law? The law in almost every respect has redundancies and things that may or may not be necessary, but if they express a principle that is a correct principle that is not inconsistent with the underlying bill's purpose, what is the big deal?

That is kind of how I feel about this amendment. If this bill is, as the sponsors say, having nothing to do with a woman's right to choose, *Roe* v. *Wade*, or anything of that nature, then what would be the problem with having this amendment as part of the bill? Certainly the fact that it is unnecessary or redundant would not be a compelling argument not to put the language in there. It seems to me it would be a compelling argument to put it in there to ensure a bipartisan level of support for what you are trying to achieve.

I don't for the life of me understand that argument. I wish Barney Frank were still on this Committee to make his point in the way that he always used to make it because I know I am not doing justice to it. Redundancy is kind of the hallmark of most statutes. We say it 19 different ways to make sure that we cover 19 different contingencies, and certainly the fact that this amendment would be redundant does not strike me as being a compelling reason to be against it.

Mr. Chairman, I yield to Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Watt.

The resistance that we are encountering on this amendment and to me what seems an equivocal response to the gentleman from New York's question only reraises the concerns that I have already articulated.

This bill is a wolf in sheep's clothing. The amendment is good, but if this amendment is rejected, it establishes the fact that we have got a bill that may be a wolf in sheep's clothing. I am more

apprehensive than I already was when I came to the hearing, which was at a pretty high level. This is about the third time we have been going around on this one. It is confirming my worst suspicions.

I thank the gentleman.

Mr. WATT. Mr. Chairman, reclaiming my time, I am always leery of bills that want to make a point rather than make law.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT. Mr. Chairman, I ask for 30 additional seconds.

Chairman SENSENBRENNER. Without objection.

Mr. WATT. It seems to me we ought to be trying to get as much bipartisan support for something as we can. We can either have the bill, or we can have the point. Maybe we can have both of them, but I think if your real interest is in passing a bill with bipartisan support, this is an innocuous amendment.

Chairman SENSENBRENNER. The gentlewoman from Pennsylvania.

Ms. HART. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman from Pennsylvania is recognized for 5 minutes.

Ms. HART. Mr. Chairman, I don't believe the language is redundant, I believe the language is obtuse, because it refers to a guarantee within the United States Constitution which is not explained. There is no reference to any cases, and it is really an awkward thing to put in the Code.

We worded the bill very carefully that says nothing in this bill can be construed to permit the prosecution of anyone relating to a legal abortion. That is very clear. It is enumerated much more clearly in our bill than it is in the amendment.

I believe that the amendment should be opposed not because it is redundant, but because the language is actually awkward to put into the Code regarding limiting the rights and freedoms of pregnant women. There is nothing specific as far as what that actually means, and I think it actually makes the bill less clear. So I would oppose the amendment.

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

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentlewoman from Wisconsin Ms. Baldwin. Those in favor will say aye.

Those opposed, no.

The noes appear to have it.

Ms. BALDWIN. Mr. Chairman, I request a rollcall vote.

Chairman SENSENBRENNER. A rollcall is ordered. The question is on agreeing to the amendment offered by the gentlewoman from Wisconsin Ms. Baldwin. Those in favor will, as your names are called, answer aye. Those opposed, no. The Clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. No.

The CLERK. Mr. Hyde, no.

Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly.
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Mr. Goodlatte.
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Mr. Chabot.
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Mr. Jenkins.
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Mr. Cannon.
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Mr. Bachus.
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Hostettler.
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green.
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller.
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Ms. Hart.
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake.
[No response.]
The CLERK. Mr. Pence.
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Mr. Forbes.
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King.
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Carter.
Mr. CARTER. No.
The CLERK. Mr. Carter, no.
Mr. Feeney.
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mrs. Blackburn.
Mrs. BLACKBURN. No.
The CLERK. Mrs. Blackburn, no.
Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman.
[No response.]

The CLERK. Mr. Boucher.
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye.
Mr. Nadler.
[No response.]
The CLERK. Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye.
Ms. Jackson Lee.
[No response.]
The CLERK. Ms. Waters.
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan.
[No response.]
The CLERK. Mr. Delahunt.
[No response.]
The CLERK. Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Ms. Baldwin.
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff.
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Ms. Sánchez.
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye.
Mr. Chairman.
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there Members in the Chamber who wish to cast or change their vote?
If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 11 ayes and 20 noes.
Chairman SENSENBRENNER. The amendment is not agreed to.
Are there further amendments?
The gentleman from Virginia Mr. Scott.
Mr. SCOTT. Mr. Chairman, I have an amendment at the desk. It is the one designated .038.
Chairman SENSENBRENNER. The Clerk will report the amendment.
The CLERK. Amendment to H.R. 1997 offered by Mr. Scott of Virginia.

Mr. SCOTT. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

AMENDMENT TO H.R. 1997
OFFERED BY MR. SCOTT OF VIRGINIA

Strike section 1 through section 2 and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Enhanced Sentencing for Crimes against Pregnant Women Act of 2004.''

SEC. 2. AMENDMENT OF SENTENCING GUIDELINES WITH RESPECT TO CRIMES AGAINST PREGNANT WOMEN.

(a) Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate sentencing enhancement when a crime is committed in violation of title 18 of the United States Code, causing bodily injury or death to a pregnant woman. The enhancements shall consider whether or not the normal development of the fetus is interrupted or terminated other than by live birth, and whether it was reasonably foreseeable that

interruption or termination of a pregnancy would result from the commission of the offense.

(b) In implementing this section, the United States Sentencing Commission shall ensure that the sentencing enhancement shall not apply to—

(1) conduct relating to an abortion;

(2) conduct relating to the provision of medical treatment of the pregnant woman or the fetus, including but not limited to the provision of prenatal care; or

(3) conduct of the pregnant woman.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, it seems as though we are again engaged in a debate over the abortion issue and when life begins rather than over a substantive piece of legislation that could actually address violence against women. Indeed, the fact that this bill, which creates a new Federal crime, was heard in the Constitution Subcommittee instead of the Crime Subcommittee indicates that the constitutional jurisdiction over abortion was the focus of the discussion.

This bill offers no additional protections to pregnant women in its present form. It serves no purpose other than to engage Members in a discussion about when life begins. That discussion is not one for criminal law because the purpose of criminal law is to punish and deter crime.

Creating a separate crime against an embryo will not act as any deterrence against crime. Indeed, instead of creating a separate category of victims, it would be better to construct an enhanced penalties strategy for those who commit crimes against pregnant women. This would not require that we undertake the abortion question or a question of whether we are reconsidering *Roe* v. *Wade*. Sentencing enhancements could cover situations that this bill purports to address. In the case of a person assaulting a pregnant woman, the prospective sentence could include sentencing enhancements. This would be one meaningful way to deter violence against pregnant women without opening the criminal code to a debate about when life begins. I think this is a more reasonable approach to a serious problem and is a better way to go in this bill. I urge my colleagues to support the amendment.

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

Mr. CHABOT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman from Ohio is recognized for 5 minutes.

Mr. CHABOT. Mr. Chairman, this amendment should be defeated. Ultimately the criminal law is not a schedule of punishments. It is an expression of society's values. The legislation before us today, I submit, simply does not resonate with society's sense of justice.

This amendment treats the loss of a wanted and loved unborn child as a mere sentencing enhancement. It would reduce the loss of an unborn child to a small square in the grid that defines graduated penalties under the Federal sentencing guidelines. That is just not right. No sentencing enhancement can adequately express society's disapproval for the distinct loss a mother feels when her wanted unborn child is harmed or killed by a violent criminal. A loss that is both unique and uniquely offensive to both a loving expectant mother and to all Americans warrants a unique and separate offense under the criminal law.

This legislation respects both a woman's desire to carry and love a child and the distinct loss that occurs when her loved, unborn child suffers at the hand of a violent criminal. This amendment would allow the United States Sentencing Commission, not an elected body, the right to determine that the loss of a baby through violence 3 months from birth warrants a lesser penalty than a baby 2 months from birth. A woman's decision to carry her wanted, loved, unborn child into this world should not be weighted dif-

ferently depending whether the baby is months or days away from birth.

H.R. 1997 does not make such distinctions, but rather provides that whatever the harm caused to an unborn child by violent criminals, that harm warrants a separate offense. When a pregnant woman is murdered, her family mourns the death and loss of not one, but two family members. This is what 84 percent of Americans believe, that prosecutors should be able to bring a homicide charge on behalf of an unborn child killed in the womb, not that prosecutors should simply request more jail time for offenders.

Opponents of the Unborn Victims of Violence Act sometimes argue that the act is unnecessary because current Federal law already provides sufficient authority to punish violent criminals for injuring or killing unborn children either by imposing criminal liability or enhancing sentences for inflicting injuries upon unborn children. Ronald White, Esq., testified to that effect at the Subcommittee hearing during the 106th Congress on July 21, 1999. This is simply not true.The truth is that not one of the cases cited by Mr. White in his testimony held that a Federal court may impose criminal liability for killing or injuring an unborn child, nor do any of the other cases that the Committee looked at.

For these and many other reasons, I would strongly urge my colleagues to oppose this particular amendment.

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

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by gentleman from Virginia Mr. Scott. Those in favor will say aye.

Those opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, amendment number 2.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. "amendment to H.R. 1997 offered by Mr. Scott of Virginia.

"starting on page 3, line 3, delete lines 3-9 and redesignate the paragraphs accordingly."

[The amendment follows:]

AMENDMENT #2 TO H.R. 1997
OFFERED BY MR. SCOTT OF VIRGINIA

Starting on Page 3, Line 3, delete lines 3-9 and redesignate the paragraphs accordingly.

Chairman SENSENBRENNER. The gentleman from Virginia Mr. Scott is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this is a fairly straightforward amendment. If this amendment is not accepted, the bill will allow criminal prosecution without *mens rea* normally required in American States criminal jurisprudence. In addition to any other crime

you may be indicted for or prosecuted for in court, this bill, as it presently is constituted, has a specific exception to the traditional *mens rea* requirement, and that is you could be punished whether you knew you were committing the crime or not. If that is constitutional, it is bad policy to begin convicting people in violation of traditional due process, and I would hope that the *mens rea* provision that is in every other criminal law that I am aware of be reinstated by adopting the amendment.

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

Mr. CHABOT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5.

Mr. CHABOT. Mr. Chairman, this amendment should also be defeated because it would override the age-old, established concept of transferred criminal intent, as the gentlewoman from Pennsylvania mentioned before.

I want to belatedly commend Ms. Hart for pulling together this bill to begin with it and push for it. I think it is tremendous that she is doing this.

Some opponents of H.R. 1997 argue that this bill lacks the necessary requirement of *mens rea*, and it is, therefore, unconstitutional. Others opposing the bill argue that no intent to cause harm is necessary under the proposed language. Both of these arguments are without merit, however, as H.R. 1997 clearly requires that the defendant have committed an act of violence with criminal intent upon a pregnant woman which consequently injures or kills her unborn child.

This intent to harm the pregnant woman must be proven beyond a reasonable doubt. If such criminal intent towards the mother is proved, then the defendant will also be held responsible for the harm done to the unborn child based upon the centuries-old criminal law doctrine known as transferred intent. This doctrine simply states that the criminal intent directed toward the pregnant woman is also considered to have been directed toward the unborn child, and the criminal is liable for the injury or death of the unborn child just as he would have been liable had a born person been injured or killed.

For these reasons, I ask my colleagues to oppose this amendment.

I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by gentleman from Virginia Mr. Scott. Those in favor will say aye.

Those opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

If there are no further amendments, a reporting quorum is present. The question is on the motion to report the bill, H.R. 1997, favorably.

Before that, without objection, the short title will be amended by striking "2003" and inserting "2004." .

All those in favor of reporting the bill favorably will say aye.

Opposed, no.

The ayes appear to have it.

Mr. CHABOT. Mr. Chairman, I request a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. The question is on reporting the bill H.R. 1997 favorably as amended. Those in favor will, as your names are called, answer aye. Those opposed, no. The Clerk will call the roll.

The CLERK. Mr. Hyde.
Mr. HYDE. Aye.
The CLERK. Mr. Hyde, aye.
Mr. Coble.
Mr. COBLE. Aye.
The CLERK. Mr. Coble, aye.
Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Smith, aye.
Mr. Gallegly.
Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly, aye.
Mr. Goodlatte.
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye.
Mr. Chabot.
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye.
Mr. Jenkins.
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye.
Mr. Cannon.
[No response.]
The CLERK. Mr. Bachus.
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye.
Mr. Hostettler.
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye.
Mr. Green.
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Mr. Keller.
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Ms. Hart.
Ms. HART. Aye.
The CLERK. Ms. Hart, aye.
Mr. Flake.
[No response.]
The CLERK. Mr. Pence.
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye.
Mr. Forbes.
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye.
Mr. King.
Mr. KING. Aye.
The CLERK. Mr. King, aye.
Mr. Carter.
Mr. CARTER. Aye.

The CLERK. Mr. Carter, aye.
Mr. Feeney.
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye.
Mrs. Blackburn.
Mrs. BLACKBURN. Aye.
The CLERK. Mrs. Blackburn, aye.
Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no.
Mr. Berman.
[No response.]
The CLERK. Mr. Boucher.
Mr. BOUCHER. No.
The CLERK. Mr. Boucher, no.
Mr. Nadler.
[No response.]
The CLERK. Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt.
Mr. WATT. No.
The CLERK. Mr. Watt, no.
Ms. Lofgren.
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no.
Ms. Jackson Lee.
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no.
Ms. Waters.
Ms. WATERS. No.
The CLERK. Ms. Waters, no.
Mr. Meehan.
Mr. MEEHAN. No.
The CLERK. Mr. Meehan, no.
Mr. Delahunt.
[No response.]
The CLERK. Mr. Wexler.
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no.
Ms. Baldwin.
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin, no.
Mr. Weiner.
Mr. WEINER. No.
The CLERK. Mr. Weiner, no.
Mr. Schiff.
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Ms. Sánchez.
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no.
Mr. Chairman.
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Are there Members in the Chamber who wish to cast or change their votes?

The gentleman from Utah Mr. Cannon.

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye.

Chairman SENSENBRENNER. Further Members in the Chamber who wish to cast or change their votes? If none, the clerk will report.

The CLERK. Mr. Chairman, there are 20 ayes and 13 noes.

Chairman SENSENBRENNER. The motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendment adopted here today. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules.

Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by House rules in which to submit additional dissenting supplemental or minority views.

Ms. JACKSON LEE. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. Point of information, Mr. Chairman.

Mr. Chairman, I know this bill has concluded. I just wanted to make a note of my absence, and that I was drawn away by a presentation that I had to make off the Hill. I did have amendments, and I know that the bill has just been closed, and I would like to indicate that I would like to submit those amendments for the record.

Chairman SENSENBRENNER. The gentlewoman's statement will appear in the record following the unanimous consent requests that were agreed to and the right of Members to submit dissenting additional supplemental or minority views.

The Chair would also observe that one other way to do this is for the gentlewoman to avail herself of the right to submit dissenting or supplemental views as she wishes.

Ms. JACKSON LEE. I thank the Chairman very much.

[The material referred to follows:]

AMENDMENT TO H.R. 1997

OFFERED BY MS. JACKSON-LEE OF TEXAS

Strike "unborn child," and "unborn children" each place it appears and insert "pregnant mother", except for the following instances:

(1) Page 3, lines 1-2, strike "unborn child's mother" and insert "pregnant mother".

(2) Page 3, line 11, strike "intentionally kills or attempts to kill the unborn child" and insert "terminate the pregnancy of the victim against her will or without lawful consent".

(3) Page 3, lines 8-9, strike "cause the death of, or bodily injury to, the unborn child" and insert "terminate the pregnancy of the victim against her will or without lawful consent".

(4) Page 3, lines 11-12, strike "kills or attempts to kill the unborn child" and insert "terminates or attempts to terminate the pregnancy of the victim against her will or without lawful consent".

(5) Page 4, line 18, strike "or her unborn child".

(6) Page 4, lines 19-20, strike "her unborn child" and insert "her pregnancy".

(7) Page 5, line 11, strike "unborn children" and insert "pregnant mother".

(8) Page 5, lines 14-17, strike "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" and insert "terminate the pregnancy of the victim against her will or without lawful consent".

(9) Page 5, lines 21-22, strike "unborn child's" and insert "pregnant".

(10) Page 6, lines 4-5, strike "death of, or bodily injury to, the unborn child" and insert "terminate the pregnancy of the victim against her will or without lawful consent".

(11) Page 6, line 7, strike "kills or attempts to kill the unborn child" and insert "terminate the pregnancy of the victim against her will or without lawful consent".

(12) Page 7, line 4, strike "or her unborn child".

(13) Page 7, lines 5-6, strike "unborn child" and insert "pregnancy".

Page 4, lines 21-25, strike subsection (d).

Page 7, strike subsection (d).

AMENDMENT TO H.R. 1997

OFFERED BY M__. _____

Add at the end the following:

1 **"SEC. 4. EFFECTIVE DATE.**

2 "This Act and the amendments made by this Act
3 shall take effect only with respect to those fiscal years for
4 which there are appropriated one hundred percent of the
5 amounts authorized for programs established under the
6 Violence Against Women Act.".<amendment-
7 instruction></amendment-instruction></amendment-
8 doc>

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

STATEMENT BY

CONGRESSWOMAN SHEILA JACKSON LEE

CONCERNING

H.R. 1997, THE UNBORN VICTIMS OF VIOLENCE ACT OF 2003

Committee on the Judiciary, Markup Hearing

January 21, 2004, 10:00 a.m., 2141 RHOB
January 28, 2004, 10:00 a.m., 2141 RHOB

Chairman Sensenbrenner and Ranking Member Conyers, thank you for your efforts in convening today's markup hearing concerning H.R. 1997, the "Unborn Victims of Violence Act of 2003, (UVVA)" as introduced on May 7, 2003 by Congresswoman Melissa Hart. While I support the intent of this bill, that is, to protect the life of the pregnant mother who has suffered as a victim of a crime of violence and the viability of her pregnancy. However, I oppose the means by which the drafters of this bill have used to achieve its end.

On its face, this bill creates a penalty for violation of a number of criminal statutes if, in the course of commission of these crimes, an "unborn child" is injured or killed. Effectively, however, it would elevate the legal status of the fetus to that of an adult human being. This is merely the first step toward eroding a woman's right to choose. The loss of a wanted pregnancy is a tragedy, but solutions should be real, not political.

UVVA substantially departs from existing federal law by elevating the legal status of a fetus at all stages of prenatal development, and thus threatening to erode the foundations of the right to choose as recognized by the Supreme Court in *Roe v. Wade.*

By recognizing a fertilized egg or a fetus as a person that has separate legal rights equal to that of a woman, this legislation is clearly trying to establish fetal personhood. This creates a tension with the Supreme Court's decision in *Roe v. Wade* where the Court ruled that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." The sponsors of this legislation have assured that this bill doesn't concern abortion because it exempts prosecution for legal abortions, medical treatment, and the conduct of women. However, during Committee consideration of this bill in the 106th Congress, the bill's advocates at that time admitted that their true intent was to recognize the existence of a separate legal "person."

The majority of states have statutes on the books that address criminal conduct that results in harm to a pregnancy. Many states punish murder or manslaughter of an "unborn child," as that term is defined in state law. Some states punish assault, battery, or other harm resulting in injury or death to an "unborn child," as that term is defined in state law. For other states, if a crime committed against a pregnant woman results in termination of or harm to a pregnancy, the harm to the pregnancy is an adjunct to the crime or may be used as a sentence enhancement. Most states currently have laws addressing violence committed against pregnant women that results in termination of or harm to a pregnancy.

H.R. 1997 fails to mention the harm to the woman resulting from an involuntary termination of her pregnancy. In fact, the pregnant woman is not mentioned at all in the bill. Violence against women continues to be a significant problem in America – not yet fully addressed by Congress – but this bill does not focus on that problem. Instead, it

shifts the focus away from the women who are truly the victims of these crimes and onto the fetus, threatening to affect this nation's legal posture on the issue of abortion rights.

Amendment Proposals

In order to address the contravention of the *Roe v. Wade* decision, I offered the following amendment, JACKSO.174:

1. Replace all instances of the phrase "unborn child," or "unborn children" with the phrase "pregnant mother" except for the following instances:

    - On page 3, lines 1-2, replace the words "unborn child's mother" with "pregnant mother"

    - On page 3, line 11, delete the words "intentionally kills or attempts to kill the unborn child" and replace them with the following: "terminate the pregnancy of the victim against her will or without lawful consent"

    - On page 3, lines 8-9, replace the words "cause the death of, or bodily injury to, the unborn child" with "terminate the pregnancy of the victim against her will or without lawful consent"

    - On page 3, lines 11-12, replace the words "kills or attempts to kill the unborn child" with "terminates or attempts to terminate the pregnancy of the victim against her will or without lawful consent"

    - On page 4, line 18, delete the words "or her unborn child"

    - On page 4, lines 19-20, replace the words "her unborn child" with the words "her pregnancy"

    - On page 5, line 11, replace the words "unborn children" with the words "pregnant mother"

    - On page 5, lines 14-17, replace the words "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" with the words "terminate the pregnancy of the victim against her will or without lawful consent"

    - On page 5, lines 21-22, replace the words "unborn child's" with "pregnant"

- On page 6, lines 4-5, replace the words "death of, or bodily injury to, the unborn child" with "terminate the pregnancy of the victim against her will or without lawful consent"
- On page 6, line 7, replace the words "kills or attempts to kill the unborn child" with "terminate the pregnancy of the victim against her will or without lawful consent"
- On page 7, line 4, delete the words "or her unborn child"
- On page 7, lines 5-6, replace the words "unborn child" with "pregnancy"

2. On page 4, lines 21-25, delete subparagraph (d)
3. On page 7, delete subparagraph (d)

The above amendment would remove all references to "unborn child" and instead refer either to the "pregnant mother," or the "termination of the pregnancy of the victim without lawful consent" in the context of defining who the legislation has identified as the true victim.

This amendment would prevent this body from having to explain whether it intends to challenge the Supreme Court ruling. If accepted, all of the protections of this bill will be re-channeled to the control of the pregnant mother and her pregnancy-rather than requiring an analysis of fetal personhood and the beginning of a new debate over abortion rights.

In addition, I offered MDB.999.XML, which reads:

Section 4:

> This Act and the amendments made by this Act shall take effect only with respect to those fiscal years for which there are appropriated one hundred

> percent of the amounts authorized for programs established under the Violence Against Women Act.

This amendment aims at narrowly tailoring H.R. 1997 to do what it purports to do-protect pregnant women and provide punishment for those who assault or murder pregnant women, thereby causing the death of or injury to a fetus. If it the intent of this legislation is to truly protect pregnant women from violence, adding a provision that ensures the effectiveness of an already-promulgated legislative remedy, i.e., the Violence Against Women Act (VAWA), would be a sound measure for the Committee. As the Supreme Court has recognized, domestic abuse often escalates when a woman is pregnant. "Mere notification of pregnancy is frequently a flashpoint for battering and violence within the family. The number of battering incidents is high during the pregnancy and often the worst abuse can be associated with pregnancy." Congress commendably reauthorized VAWA in October of 2000 and should continue to support and adequately fund the programs in this important legislation.

I urged my colleagues on this Committee to support my amendments because legislation should be straightforward in its purposes. H.R. 1997 should stick to protecting the pregnant mother and not seek to affect abortion rights in America.

DISSENTING VIEWS

H.R. 1997 marks a major departure from existing Federal law by elevating the legal status of a fetus at all stages of prenatal development, and thus threatens to erode the foundations of the right to choose as recognized by the Supreme Court in *Roe* v. *Wade*.[1] While masquerading as legislation to protect pregnant women from crimes universally recognized as among the most heinous, this legislation does nothing to prevent violence against women, nor does it do anything to provide women with the health and other services they need to have healthy and safe pregnancies. This legislation would, rather, be another assault on women's autonomy and their right to decide whether and when to bring healthy children into the world. For these reasons, it has long been opposed by organizations committed to combating violence against women, and to protecting a woman's constitutional right to choose.[2]

For these reasons, we strongly dissent and urge our colleagues to take real steps to protect women and to help them obtain the assistance they need to be safe from violence and to protect their right to have healthy pregnancies and healthy children *when they choose to become parents.*

I. H.R. 1997 IS AN ASSAULT ON A WOMAN'S RIGHT TO CHOOSE

In *Roe*, the Court recognized a woman's right to have an abortion as a privacy right protected by the 14th amendment. In considering the issue of whether a fetus is a "person," within the meaning of the 14th amendment, the Court noted that, except in narrowly defined situations, and except when the rights are contingent upon live birth, "the unborn have never been recognized in the law as persons in the whole sense" and concluded that "'person,' as used in the 14th amendment, does not include the unborn."[3]

---

[1] 410 U.S. 113 (1973).

[2] *Letter to Members of the House of Representatives from Esta Soler, President, Family Violence Prevention Fund* (January 27, 2004); *Letter to Members of the House of Representatives from Nancy Rustad, President, American Association of University Women* (January 27, 2004); *Letter to Rep. Jerrold Nadler from Vicki Saporta, President, National Abortion Federation* (January 27, 2004); *Letter to Members of the U.S. Senate from Marcia D. Greenberger, Co-President, National Women's Law Center* (January 20, 2004); *Letter to Members of the House of Representatives from Marsha Atkind, National President, National Council of Jewish Women* (January 2004); *Letter to Rep. Jerrold Nadler from Rev. Carlton W. Veazey, President, Religious Coalition for Reproductive Choice* (January 27, 2004); *Letter to Members of the House of Representatives from Laura W. Murphy, Director, American Civil Liberties Union Washington Legislative Office* (January 20, 2004); *Letter to Rep. Jerrold Nadler from Kate Michelman, President, NARAL Pro-Choice America* (January 23, 2004); *Letter to Rep. Jerrold Nadler from Gloria Feldt, President, Planned Parenthood* (January 23, 2004); *Letter to Rep. Jerrold Nadler from Vicki Saporta, President, National Abortion Federation* (January 27, 2004); *Letter to Members of Congress from Ralph Neas, President, People for the American Way* (January 23, 2004); *Letter to Members of Congress from Kim Gandy, President, National Organization For Women* (January 26, 2004).

[3] *Id.* at 158.

It is not surprising that opponents of *Roe*, and of other cases building on the rights enunciated by the Court in *Roe*,[4] have made every effort to secure recognition of fetuses as full legal persons.[5] In the year 2003 alone, State legislatures considered 558 anti-choice measures (an increase of 35.1% from the prior year) and enacted 45 such measures (a 32.4% increase over the prior year).[6] This legislation falls squarely within that strategy.

Historically the destruction of a fetus *in utero* has not been deemed a homicide; the alleged victim must have been "born alive."[7] The Supreme Judicial Court of Massachusetts became the first American court to break with this long line of precedent. It held that a fetus was a person for purposes of the Massachusetts vehicular homicide statute, and thus a potential homicide victim.[8] A majority of States now consider fetuses that die *in utero* to be "persons" under wrongful death statutes.[9] In addition, a number of States have adopted legislation imposing criminal sanctions for the destruction of a fetus that are identical to those imposed for the murder of a person.[10]

Proponents of this legislation and its precursors have long asserted that, in the language of the bill, "[n]othing in this [act] 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 a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law."[11] Yet H.R. 1997 forges new ground in attempting to recognize a zygote, blastocyst, embryo, and fetus as a person with the same legal status as the woman or anyone else who has been the victim of a crime,[12] a proposition that is at odds with the rights of the pregnant woman under *Roe*.[13]

---

[4] *See e.g., Doe* v. *Bolton,* 410 U.S. 179 (1973) (extended *Roe* by precluding States from making abortions unreasonably difficult to obtain by prescribing elaborate procedural barriers); *Planned Parenthood of Southeastern Penn.* v. *Casey*, 505 U.S. 833 (1992) (reaffirmed the basic constitutional right to an abortion under *Roe*, but adopted a new analysis).

[5] *See generally Danos* v. *St. Pierre,* 402 So.2d 633, 639 (La. 1981) (citing legislative pronouncement that "a human being exists from the moment of fertilization and implantation"); *Vaillancourt* v. *Medical Center Hosp.*, 139 Vt. 138, 142–43 (1980) ("A viable unborn child is, in fact, biologically speaking, a presently existing person and a living human being . . .").

[6] NARAL—Pro-Choice America *2004 Who Decides? A State-by-State Report on the Status of Women's Reproductive Rights* (January 2004).

[7] *See Commonwealth* v. *Cass,* 467 N.E. 2d, 1324, 1328 (1984) ("Since at least the fourteenth century, the common law has been that the destruction of a fetus *in utero* is not a homicide . . . The rule has been accepted as the established common law in every American jurisdiction that has considered the question.").

[8] *Id.*

[9] *See* W. Prosser, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on the Law of Torts* § 55, at 370 (5th ed. 1984) (listing States); *Mone* v. *Greyhound Lines*, 368 Mass. 354, 331 N.E.2d 916 (1975); At least 27 States recognize the "unborn child" in murder or manslaughter; 15 States punish assault, battery, or other harm resulting in injury or death; six States punish termination of or harm to a pregnancy as an adjunct crime against the pregnant woman, or as a sentencing enhancement. Planned Parenthood, *Summary and Analysis: State Laws that Overlap with H.R. 503*, (March 2001).

[10] *See e.g.,* Cal Penal Code § 187 (West Suppl 1986) ("Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.") ILL. ANN. STAT. Ch 38, § 9–1.1 (Smith-Hurd Supp. 1985) IOWA CODE ANN § 707.7 (West 1979); MICH COMP. LAWS ANN. § 750.322 (West 1968); MISS. CODE ANN. § 97–3–37 (1973); N.H. REV. STAT. ANN § 585:13 (1974); OKLA. STAT.ANN. Title. 21, § 713 (West 1983); UTAH CODE ANN. § 76–5–201 (Supp. 1983); WASH. REV. CODE ANN. § 940–04 (West 1982).

[11] H.R. 1997 § 2(a) [creating a new § 1841 c)(1)].

[12] For example, if a defendant were to cause a miscarriage, or cause damage to the fetus, the punishment for the act would be a "separate offense" penalized as if the defendant had caused the death or injury to the pregnant woman.

[13] Proponents of H.R 1997, argue that it is not at odds with *Roe*: "there is nothing in [H.R. 503] that restricts a mother's right to an abortion . . . [m]oreover, the scare tactics that [H.R.

In the 30 years since *Roe*, the Supreme Court has never afforded legal personhood to a fetus. Outside of the abortion context, the Court has only twice been asked to uphold a State's determination that a fetus was an "unborn child," and in both cases, the Court declined to do so.[14]

The bill's repeated use of the term "bodily injury" raises questions as to how the sponsors intend to account for such speculative criteria as "fetal pain." The bill defines the term "unborn child—as a *"child in utero"* despite the fact that the term "unborn child" is not a known legal or medical term, and its only known use is found in anti-choice rhetoric.[15] The term is also technically imprecise, as "unborn child" implies that personhood begins prior to birth or viability, as early as the moment of conception. Proper medical terminology used to describe stages of gestation is either *zygote* (fertilized egg), *blastocyst* (a pre-implantation embryo), *embryo* (through the eighth week of pregnancy), or *fetus*.[16] The imprecise terms used by H.R. 1997's sponsors also clearly conflict with the Constitution as was clearly articulated by the Supreme Court in *Roe* v. *Wade* which stated "the use of the word ['person'] is such that it has application only post-natally"[17] and "the word 'person', as used in the 14th amendment, does not include the unborn."[18]

Finally, the original draft of this legislation, H.R. 2436, introduced in the 106th Congress, did not contain a definition of the phrase "child *in utero*." In response to criticism that the bill was vague, Rep. Charles Canady, and the sponsors of later versions, as

---

503] will empower so-called 'pregnancy police' are demolished by section (c)(3), which immunizes from prosecution . . . the woman for any actions taken with respect to her unborn child." *Hearing before the Subcommittee on the Constitution of the Committee on the Judiciary, House of Representatives on H.R. 503, the "Unborn Victims of Violence Act of 2001."* (March 15, 2001) (Hereinafter "'March 2001 hearing") (written statement of Richard S. Myers, Ave Maria School of Law). This argument is misguided. At issue is not whether this bill would penalize a woman for having had an abortion. This bill threatens a woman's right to choose because it would recognize a zygote, blastocyst, embryo, or a fetus as a person with the same rights as a pregnant woman. This is at odds with *Roe*.

[14] *See Burns* v. *Alcala,* 420 U.S. 575 (1975) (an "unborn child" is not a "dependant" for purposes of AFDC benefits), *Webster* v. *Reproductive Health Services*, 492 U.S. 490 (1989) (held that a Missouri law which afforded legal protection to "unborn children" was merely rhetorical, and not "operative" because it was a statement of principle, and was not actually being applied; as such, the Court never addressed the merits of the constitutionality).

[15] One proponent of the bill exclaimed: "'fetus' is Latin for offspring or young." *(March 2001 hearing)* (written statement of Robert J. Cynkar). While the speaker correctly identified the Latin root of the word "fetus," the technical definition was incorrect, as fetus refers to a stage of a *prenatal* development of 12 weeks or more, and does not connote postnatal development in any form. Robert Berklow, M.D., Editor-in-Chief, *et. al. The Merck Manual, 16th ed.,* at 1837 (1992). A member of the Subcommittee at the March 2001 hearing evidenced some confusion with the term:

> Mr. HOSTETTLER. The fetus. That is Latin, am I not correct?
>
> Ms. FULCHER. I don't know. I assume so.
>
> Mr. HOSTETTLER. Yes. Testimony by actually Mr. Cynkar says that is true. "Fetus" is simply Latin for offspring or young. I am not an attorney, so I just need to have that clarified, that some are speaking in the Latin while I speak in the English, so——
>
> Ms. FULCHER. My understanding is that the more traditional term in the legal sense is "fetus" at that point.
>
> Mr. HOSTETTLER. Right, and the 99 percent of us that aren't lawyers think in other terms.

[16] *See Statement of the Center for Reproductive Law and Policy* ("CRLP") *in Opposition to H.R. 2436*, (Sept. 7, 1999).

[17] 410 U.S. 113, 157 (1973).

[18] *Id.* at 157. Proponents of H.R. 1997 argue that it is within Congress' constitutional power because "no conduct whatsoever that is presently free of Federal regulation will be regulated." *March 15, 2001 Hearing* (written statement of Richard S. Myers, Ave Maria School of Law). This argument fails to recognize that, for the first time under U.S. law, the bill would criminalize harm to a zygote, blastocyst, embryo, or a fetus in the same manner as the law currently does to a person. This is a clear and unprecedented challenge to *Roe*.

well as H.R. 1997, attempted to address the problem by defining the term as "a member of the homo sapiens, at any stage of development, who is carried in the womb."[19]

This language is impermissibly vague. It is not clear whether the sponsors intend to include: (1) homo sapiens "at any stage of development" from conception to live birth. This definition would appear to include zygotes within the definition of "unborn child;" (2) homo sapiens "carried in the womb," whether before or after implantation in the uterine wall, which would seem to include zygotes and blastocysts; or (3) an embryo or fetus following implantation. Given this ambiguity, it is entirely possible that the sponsors intend to equate the rights of a zygote with those of a fully mature woman whose constitutional rights have vested at birth. In the alternative, the "unborn child" would be protected only after it entered the womb, or implanted in the uterine wall. In either case, this would pose a direct facial challenge to *Roe*. If the "unborn child" is covered only after implantation, determining when the harm occurred, and whether H.R. 1997 had been violated, would give rise to virtually unanswerable evidentiary problems.

II. DUE PROCESS IMPLICATIONS

H.R. 1997 lacks a *mens rea* requirement[20], and, therefore, runs afoul of the Constitution's due process requirement that criminal laws require that the perpetrator must have a *criminal* intent.[21] Under H.R. 1997, however, a person may be convicted of the offense of harm to a fetus even if he or she did not know, and had no reason to know, that the woman was pregnant. As such, this bill punishes people for crimes that they did not intend to commit.

Proponents of the bill claim that a separate *mens rea* provision is not needed because the bill incorporates the requisite mens rea elements of those underlying predicate offenses.[22] This is false for two reasons. First, § 2(a)(2)(B) states: "an offense under this section does not require proof that . . . (the person had the requisite intent)." Thereafter, § 2(b) states: "the provisions referred to in subsection (a) are the following: . . ."[23] These two sections read to-

[19] H.R. 1997 § 2(a) (adding § 1841(d) to title 18 U.S.C.)

[20] In fact, subsection (a)(2)(B) explicitly disavows a *mens rea* requirement: "An offense under this section does not require proof that . . . the person engaging in the conduct had knowledge that the victim of the underlying offense was pregnant . . . or the defendant intended to cause the death of, or bodily injury to, the unborn child."

[21] *See New York* v. *Ferber,* 458 U.S. 747, 765 (1982) (holding that, except in a small class of public welfare cases, not applicable here, "criminal responsibility . . . not be imposed without some element of *scienter* (intent) on the part of the defendant."; see also *Liporta* v. *United States*, 471 U.S. 419, 426, (1985) ("[C]riminal offenses requiring no mens rea have a generally disfavored status." (internal quotations omitted)); *Staples* v. *United States*, 511, 605 U.S. 6000 (1994) ("The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." (quoting *Morisette* v. *United States*, 342 U.S. 246, 250 (1952)).

[22] Relying on a theory of transferred intent, Robert J. Cynkar argued: "No element of murder requires that the perpetrator have the specific intent to kill the person who in fact was killed" and "an individual who commits a dangerous felony, which unintentionally results in the death of a person, is guilty of murder." *March 15, 2001 Hearing* (written statement of Robert J. Cynkar).

[23] The following Federal crimes are cross referenced in the new subsection (b)(1):

Sections of Title 18, U.S.C.:

36 (Drive-by shooting), 37 (Violence at international airports), 43(Animal enterprise terrorism), 111, 112,113, 114, 115, (sections 111–115 include the Federal crimes of assault in ch. 7, U.S.C., except sec. 116, (pertaining to Female genital mutilation), 229 (crimes involving chemical weap-

gether could eliminate the specific intent requirements contained in all of the enumerated criminal statutes in § 2 (b) even though such statutes in of themselves clearly contain an intent element. Second, the bill also fails to require a conviction on the underlying predicate offenses. This creates an extremely harsh strict-liability criminal scheme.[24] It is unlikely that these *mens rea* deficiencies would pass constitutional muster.

The sponsors of H.R. 1997 rely on the criminal law doctrine of *transferred intent*, which transfers the malevolent intent which the perpetrator of a crime harbors and acts upon against a pregnant woman, to her fetus.[25] For example, if A aims a gun at B with a murderous intent to kill B, but mistakenly hits and kills C, A's murderous intent to kill B is "transferred" to C, and A is guilty of murdering C. This reasoning similarly applies in cases involving assault and other crimes.

What is remarkable and improper about H.R. 1997's application of the doctrine of transferred intent to pregnancies is that it treats, as a matter of law, the pregnant woman and her fetus as two distinct victims of a crime, regardless of whether the perpetrator knew or should have known that the woman was pregnant, or whether the perpetrator intended to, or actually did, cause harm to the pregnant woman herself. In fact, harm to the woman, or intent to cause harm to the woman, is not a necessary predicate to the offense in the bill.

H.R. 1997's application of the transferred intent doctrine only makes sense if the intent transfers to a "person." Such an application appears on its face to violate *Roe* in which the Court clearly declined to determine that a fetus is a legal person prior to birth. Similarly, it is hard to apply the doctrine of "transferred intent" if

---

ons), 242 (depravation of rights under color of law), 245 (various civil rights violations and civil disorder crimes), 247(damage to religious property; obstruction of persons in the free exercise of religious beliefs), 248 (Freedom of access to clinic entrances), 351 (Congressional, Cabinet, and Supreme Court assassination, kidnaping, and assault), 831(Prohibited transactions involving nuclear materials), 844(d), (f), (h)(1), and (i) (offensives involving explosives), 924(j)(murder or manslaughter by firearm while in the commission of a crime of violence or a drug trafficking crime), 930 (possession or use of firearms and dangerous weapons in Federal facilities), [sec. 1091, pertaining to genocide, not included],1111, 1112, 1113, 1114, 1116, 1118, 1119, 1120, 1121 (homicide), 1153(a) (offenses committed within Indian country), 1201(a) (kidnaping), 1203 (hostage taking), 1365(a) (tampering with consumer products), 1501 (assault on a process server), 1503 (influencing or injuring officer or juror), 1505 (obstruction of proceedings before departments, agencies or committees), 1512 (tampering with a witness, victim, or an informant), 1513 (retaliating against a witness, victim, or an informant), 1751 (Presidential and Presidential staff assassination, kidnaping and assault), 1864 (hazardous or injurious devices on Federal lands), 1951 , 1952(a)(1)(B), (a)(2)(B), and (a)(3)(B), (sabotage), 1958 (murder for hire), 1959 (violent crimes in aid of racketeering), 1992 (wrecking trains), 2113 (bank robbery), 2241(a) (aggravated sexual abuse), 2245 (sexual abuse resulting in death), 2261 (interstate domestic violence), 2261A (interstate stalking), 2280 (violence against maritime navigation), 2281 (violence against maritime fixed platforms), 2332 (terrorism), 2332a (use of weapons of mass destruction), 2332b (international terrorism), 2340A (torture), and 2441 (war crimes).

Other offenses:

Sec. 408(e) of the Controlled Substances Act of 1970 (murder during the commission of a felony criminal enterprise).

Sec. 202 of the Atomic Energy Act of 1954 (murder of nuclear inspectors).

§ 3 of H.R. 1997 (proposed amendment to Title 10 U.S.C. adding a new § 919a. Art. 119a. to the Uniform Code of Military Justice). Sections of the Uniform Code of Military Justice cross-referenced are: 918 (murder), 919(a), 919(b)(2) (manslaughter), 920(a) (rape), 922 (robbery), 924 (maiming), 926 (arson), 928 (assault).

[24] § (a)(1) merely states: "[w]hoever engages in *conduct* that violates any of the provisions of law listed in subsection (b) . . . is guilty of a separate offense."

[25] *See e.g., United States* v. *Diaz,* 636 F.2d 621, 674 (D.C. Cir. 1980) (transferred intent was adopted by the American courts during the early days of the republic and is now black letter law) quoting *Regina* v. *Saunders*, 2 Plowd. 473, 474a, 75 Eng. Rep. 706, 708 (1576)).

the proposed statute has absolutely no requirement that the defendant ever had the intent to harm the woman (which might be transferred to the fetus), or even the knowledge necessary to harm a woman by reason of her pregnancy.

Additionally, the application of transferred intent to these cases is not necessary if the legitimate purpose of the bill is to fight the sort of horrendous crimes committed against pregnant women to which the sponsors consistently refer. To this end, a more reasonable alternative would be to increase the penalties against defendants accused of committing violent acts against pregnant women, and make the any harm caused to the woman's fetus a crime committed against the woman deserving of serious punishment. A substitute offered by Rep. Zoe Lofgren, which would have created such a separate offense with the same penalties as this bill for the same acts, without dealing with the issue of fetal life, was rejected by the Judiciary Committee.

III. POTENTIAL FOR EXTENSIVE LITIGATION CONCERNING THE FETUS

H.R. 1997 opens the door to litigation over when life begins and mini-trials on fetal pain embedded within criminal prosecutions. It would also open the door to imposing liability on anyone, including the pregnant woman, for acts that occur at any stage of fetal development. The bill specifically excludes the pregnant woman, a health care provider performing an abortion and the woman's health care proxy from prosecution, so the danger is prospective and theoretical, but the precedent, and the underlying theory of fetal personhood, pose a threat that these steps will follow.

This expansion of fetal rights undermines and conflicts with women's interests. It goes beyond current law which recognizes the fetus only in those cases where it is necessary to protect the interests of the subsequently born child or her or his parent. Rather, H.R. 1997 attempts to confer rights upon the fetus qua fetus. Endowing the fetus as an entity with legal rights independent of the pregnant woman, makes possible the creation of fetal rights that could be used to the detriment of the pregnant woman.[26] Although the bill specifically excludes the pregnant woman from the penalties, giving the fetus a legal status equal to that of the woman could open the door to legal sanctions in the future, and the rights of a pregnant women may be placed in direct conflict with, or subordinate to, those of her fetus. For example, a future statute might require a woman to be prosecuted for any act or "error" in judgement during her term, for her consumption of wine or cigarettes, or for her decision to fly during pregnancy. When expanded to cover fetuses, child custody provisions may be used as a basis for allowing a biological father awarded custody of the fetus to control the women's behavior, or in some cases, civilly commit pregnant women to "protect" their fetuses. The specter of the State arrogating to itself the right to control the fate of a fetus by exerting coercive control over a pregnant woman, even placing her in custody, reduces her to a mere vessel for the eventual delivery of the

[26] Several amendments to the U.S. Constitution have been proposed that would explicitly grant fetuses rights as "persons" under the Constitution, but only one, S.J.Res. 3, was ever brought to the floor and debated. *See* S.J. Res., 129 Congressional Record S9076, *et seq.*, daily ed., June 27, 1983; 129 Congressional Record S9265, *et seq.*, daily ed., June 28, 1983.

then fetus. Such governmental coercion is far from hypothetical. Several courts have exercised this extreme form of control.[27]

The growing attempts by legislatures and the courts to exercise this level of control over women forcefully demonstrates the threat to women's autonomy inherent in the creation of fetal rights independent of, and equal to, those of the woman. This is a direct challenge to the woman's autonomy that the Supreme Court sought to safeguard in *Roe* when it based the right to choose on the woman's privacy interest.

IV. CRIME AND VIOLENCE AGAINST WOMEN

H.R. 1997 vests rights in the fetus, but does not respond to violence against women, and fails to recognize that an injury to a fetus is first and foremost an injury to the woman, and, in the case of a live birth, an injury to that individual.

The bill is flawed because it fails to address the vast number of domestic violence acts perpetrated against women and prosecuted under *State* statutes. H.R. 1997 and other Federal statutes currently on the books directed at interstate domestic violence[28], stalking[29], and violations of protection orders[30] would have no effect on these cases.[31]

If the sponsors were legitimately concerned with the problem of violence against women, they should focus their efforts on the real problem of violence against pregnant women and full funding of the Violence Against Women Act[32] which expanded protections for women against acts of violence regardless of their pregnancy status. Tellingly, in fiscal year 2003, Congress appropriated $107,200,000 less than the fully authorized level. Programs including transitional housing, Federal victims counselors, and training for judges were not funded at all. Rape prevention/education was appropriated at half its authorized level.[33]

CONCLUSION

For 31 years, the constitutional right to choose has been the law of the land. That right is now under attack as never before. Efforts to confer upon fetuses, from the very moment of conception, the full panoply of rights that come with being declared a legal person would undermine the very basis of that right. The "Unborn Victims of Violence Act," plainly seeks to further that very dangerous agenda, and it would do so without making women who want to have children any safer. The right to bring healthy children into the

---

[27] In one case, a Judge ordered a pregnant woman who, because of religious convictions, refused medical care, into custody in an attempt to ensure that the baby be born safely. National Public Radio, *Pregnant Woman Being Forced Into Custody at a State Medical Facility in Massachusetts to Ensure That Her Baby is Born Safely,* (Sept 14, 2000). In another case, a Judge sent a student to prison to prevent her from obtaining a midterm abortion. Reuters, *Judge intends Prison Time to Block Abortion* (Oct. 10, 1998). "There should be no doubt that South Carolina can impose punishment upon an expectant mother who has so little regard for her own unborn that the risks causing him or her lifelong damage or suffering." *Ferguson* v. *City of Charleston* 532 U.S. 67, 89–90 (2001) (Kennedy, J. Concurring).

[28] 18 U.S.C. 2261(a).

[29] 18 U.S.C. 2261A.

[30] 18 U.S.C. 2262(a)(1).

[31] *March 2001 Hearing* (written statement of Juley Fulcher, National Coalition Against Domestic Violence).

[32] 18 U.S.C. § 2261.

[33] National Coalition Against Domestic Violence, *Violence Against Women Act Appropriations Fact Sheet* (February 20, 2003).

world in safety is at the core of the right to choose. Congress should stop playing abortion politics and act to protect women, children, and their families.

We respectfully dissent.

JOHN CONYERS, JR.
HOWARD L. BERMAN.
RICK BOUCHER.
JERROLD NADLER.
ROBERT C. SCOTT.
MELVIN L. WATT.
SHEILA JACKSON LEE.
MAXINE WATERS.
MARTIN T. MEEHAN.
ROBERT WEXLER.
TAMMY BALDWIN.
ANTHONY D. WEINER.
LINDA T. SÁNCHEZ.

○