



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

(202) 626-8820

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Dear Senator:

In the near future, the Senate may consider the Unborn Victims of Violence Act (S. 1019), introduced by Senator Mike DeWine, with forty cosponsors. This bill poses the fundamental question: When a criminal attacks a pregnant woman, killing or injuring both her and her unborn child, has he claimed one victim, or two?

Over the past year, the American people have considered that question in light of the much-publicized Peterson double murder in California -- and by overwhelming margins, they believe that the law should recognize that such crimes have *two* victims. In three national polls conducted during 2003, respondents endorsed "fetal homicide" legislation by margins ranging from 8-to-1 to 12-to-1. The polls are posted on the NRLC website here: http://www.nrlc.org/Unborn_victims/UnbornPolls110703.html

Unborn victims laws do not affect legal abortion, but they do allow justice to be done for unborn babies whose lives are snuffed out by the actions of violent criminals, and for the parents and grandparents of such victims.

Last year, the family of Laci and Conner Peterson sent a plea to Congress to pass the bill in memory of those victims. We urge you to heed their plea and to support speedy passage of this legislation, rejecting all weakening or gutting amendments -- particularly, the "single-victim substitute" of Senator Dianne Feinstein, which is discussed below.

Despite Senator Feinstein's stance, California is among the 28 states with an unborn victims law, which is what has allowed two homicide charges to be filed in the Peterson case. Other states are currently considering such legislation. The current state laws are summarized here: http://www.nrlc.org/Unborn_victims/Statehomicidelaws092302.html

It is long past time for reform of the federal and military codes to reflect the two-victim principle. If Laci Peterson had been a uniformed member of the U.S. military, murdered while on a military base, only one homicide charge would have been permitted. Moreover, a man who stalks his pregnant wife across state lines and attacks her, injuring her and killing the unborn child, can be prosecuted under Section 2261 of Title 18 -- but only for the mother's injury, not for the loss of the baby's life. Numerous other such examples could be given, all because the federal criminal code and the Uniform Code of

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Military Justice in effect separate the mother from her unborn child, by treating the unborn child as a non-entity. Here are some real cases:

http://www.nrlc.org/Unborn_Victims/UVVAFederalcases.html

S. 1019 would remedy this loophole in federal law. The bill would recognize that when a criminal commits a *federal* crime against a pregnant woman and injures or kills her unborn child, he has claimed two victims. The Unborn Victims of Violence Act does not really create any new federal crimes -- rather, it recognizes unborn victims of the crimes of violence that are already defined in federal law. If the bill is enacted, state laws would continue to govern the status of unborn children for all state crimes.

The House has passed this bill twice, by large bipartisan margins, in 1999 and again in 2001. On January 21, 2004, the House Judiciary Committee again approved the bill.

HOW THE BILL WOULD WORK

The Unborn Victims of Violence Act would establish that if an unborn child is injured or killed during the commission of an already-defined federal crime of violence, prosecutors may bring a second charge on behalf of the second victim -- the unborn child. **The bill explicitly states that nothing in the bill shall be construed to permit the prosecution of any person “for conduct relating to an abortion for which the consent of the pregnant woman has been obtained. . . .”** The bill also excludes any action by a woman that results in harm to her unborn child. The bill does not permit the death penalty to be imposed for a charge filed on behalf of an unborn victim.

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

Some opponents of the bill have claimed that the Unborn Victims of Violence Act is concerned only with violence against unborn children and not violence against their mothers. This assertion completely misrepresents the structure of the bill. In reality, the bill would have no effect except in cases in which federal authorities have a basis under current law to charge an attacker for an offense against a pregnant woman in one of 68

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federal crimes of violence. If the authorities determine that in the course of that predicate offense, an unborn child was injured or killed, the bill would allow them to bring a second charge on behalf of the second victim -- a charge appropriate to the circumstances and degree of harm suffered by the unborn victim. Thus, the bill actually references crimes against pregnant women 68 times.

SINGLE-VICTIM SUBSTITUTE

In 1999 and 2001, the House rejected a substitute measure, offered by Congresswoman Lofgren, that would have stiffened penalties for interfering with “the normal course of the pregnancy,” but without recognizing any loss of human life in federal crimes in which an unborn child is killed. This “single-victim” measure is currently introduced as H.R. 2247. Senator Feinstein has indicated that she will offer a similar substitute amendment in the Senate. We urge you to reject it, because it would codify a callous falsehood and compound the injuries already suffered by those who survive criminal assaults, and by the family members of crime victims.

Sharon Rocha -- whose daughter Laci and unborn grandson Conner were murdered in California -- has written that “adoption of such a single-victim amendment would be a painful blow to those, like me, who are left alive after a two-victim crime, because Congress would be saying that Conner and other innocent unborn victims like him are not really victims -- indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun.” The letter is posted here: http://www.nrlc.org/Unborn_victims/sharonrochalettertokeysponsors.html

Please also consider the testimony of Tracy Marciniak before the House Judiciary Committee on June 8, 2003 (www.nrlc.org/Unborn_victims/MarciniakTestimony.htm) . She described the brutal attack that killed her unborn son Zachariah. At Zachariah’s funeral, a powerfully moving photograph was taken of Mrs. Marciniak holding her son for the last time. The photo is posted here: http://www.nrlc.org/Unborn_victims/index.html

Tracy Marciniak testified, “I have read Congresswoman Lofgren’s proposal . . . There is only one victim in that bill -- the pregnant woman. So if you vote for that bill . . . you would be saying to all of the future mothers, fathers, and grandparents, who lose their unborn children in future federal crimes, ‘You didn’t really lose a baby.’ Please don’t tell us that. Please don’t tell me that my son was not a real murder victim. If you really think that nobody died that night, if you really think there is no dead baby in the picture, then vote for the Lofgren bill. But please remember Zachariah’s name and face when you decide.”

RELATIONSHIP TO ABORTION LAW

Criminal defendants have brought many legal challenges to the state unborn victims laws, based on *Roe v. Wade* and other constitutional arguments, but all such challenges have been rejected by state and federal courts. For example, the Minnesota Supreme Court ruled: “*Roe v. Wade* . . . does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus.” [*State v. Merrill*, 450 N.W.2d 318 (Minn. 1990)]. The U.S. Court of Appeals for the Eleventh Circuit ruled that *Roe v. Wade* “is simply immaterial in the present context to whether a state can prohibit the destruction of a fetus.” [*Smith v. Newsome*, 815 F.2d 1386 (11th Cir. 1987)]. For a summary of all of the pertinent court decisions, see: www.nrlc.org/Unborn_victims/statechallenges.html

Moreover, in the 1989 case of *Webster v. Reproductive Health Services*, the U.S. Supreme Court refused to invalidate a Missouri statute that declares that “the life of each human being begins at conception,” that “unborn children have protectable interests in life, health, and well-being,” and that all state laws (including criminal laws) “shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state,” to the extent permitted by the Constitution and U.S. Supreme Court rulings. A lower court had ruled that Missouri’s law “impermissibl[y]” adopted “a theory of when life begins,” and blocked its enforcement, but the Supreme Court nullified that ruling, allowing the law to go into effect so long as the state did not use it to restrict abortion.

In addition, a number of prominent legal experts who support *Roe v. Wade*, in recent essays and interviews, have explained why they see no conflict between *Roe* and fetal homicide laws. These include Prof. Walter Dellinger of Duke School of Law, who served President Clinton as his chief legal advisor on abortion-related issues and later as acting Solicitor General. See www.nrlc.org/Unborn_victims/RoesupportersspeakUVVA.html

If you agree that no grieving mother should be told that she did not really lose her baby, then please reject Senator Feinstein’s single-victim substitute and support the Unborn Victims of Violence Act.

Sincerely,

Douglas Johnson
NRLC Legislative Director
(202) 626-8820, Legfederal@aol.com