

May 12, 2003

Re: In support of the Unborn Victims of Violence Act (S. 1019)

Dear Senator:

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

Fortunately, California is one of 26 states that has an *unborn victims* law. The state unborn victims laws, upheld by many courts including the U.S. Supreme Court, do not affect legal abortion, but they do allow justice to be done for unborn babies whose lives are snuffed out by the actions of violent criminals. See: http://www.nrlc.org/Unborn_Victims/index.html

But if Laci Peterson had been a uniformed member of the U.S. military, murdered while on a military base, only *one* 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 woman’s injury, not for the loss of the baby’s life. Numerous other such examples could be given, all because the federal criminal code and the Uniform Code of Military Justice in effect separate the mother from her unborn child, and then treat the unborn child as a non-entity. Here are some real cases:

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

The Unborn Victims of Violence Act (S. 1019), sponsored by Senator DeWine, would remedy this loophole in federal law. The bill would recognize that when a criminal commits a federal crime against a pregnant woman and injures or kills her unborn child, he has claimed *two victims*. The House of Representatives has passed the bill twice, by large bipartisan margins, in 1999 and again in 2001. It is long past time for the Senate to act.

The family of Laci and Conner Peterson have sent a plea to Congress to pass the bill in memory of those victims. We urge you to heed their plea and support speedy passage of this legislation, without weakening or gutting amendments.

How the Law Would Work

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

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

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

One-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. No doubt such a “one-victim substitute” will also be offered to 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.

In their May 5 letter to Senator DeWine, the family of Laci and Conner Peterson wrote, “[T]his bill is very close to our hearts. We have not only lost our future with our

daughter and sister, but with our grandson and nephew as well.” But if the Senate were to adopt the one-victim substitute proposal, it would be telling this family (and others in the future), “No, you are mistaken – you did not lose a grandson and nephew, because these crimes have only a single victim.”

Or consider the words of Tracy Marciniak of Wisconsin, whose unborn son Zachariah was killed during the ninth month of her pregnancy: “While I was hospitalized and grieving for my dead baby, law enforcement authorities told my family that in the eyes of the law, nobody had died in the attack. I was devastated.” Weeks later, a funeral was held for Zachariah, at which a powerfully moving photograph was taken of Mrs. Marciniak holding her son for the last time (www.nrlc.org/Unborn_Victims/index.html). **A senator who votes for the one-victim substitute is in effect voting to tell other grieving mothers who survive such attacks in the future, “Nobody really died – in the eyes of federal law, there is no dead baby in your picture.”**

Relationship to Abortion Law

Some opponents claim that the bill somehow contradicts the U.S. Supreme Court’s doctrine in *Roe v. Wade*. But they know better. In the case of *Webster v. Reproductive Health Services* (1989), the U.S. Supreme Court upheld the most expansive of the 26 state laws, the Missouri “unborn child” law, which declares “the life of each human being begins at conception” and confers on the “unborn child at every stage of development, all the rights, privileges, and immunities available to other persons . . .” (including recognition in Missouri criminal law). The Supreme Court said there was no problem with this law so long as Missouri did not use the law to impermissibly restrict abortion.

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

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

Sincerely,



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