Prior to the war, the Iraqi police had a well-deserved reputation for being corrupt. Reports continue to indicate this remains a problem and, as I mentioned, there are indications the security forces have been infiltrated by terrorists. At the same time, many of the honest policemen are being targeted by terrorists. On Tuesday, 11 were killed in an ambush. So one should view numbers with a healthy skepticism and focus on quality.

I also had the opportunity to visit Balad, about 25 miles north of Baghdad. This will become the future center of air operations in Iraq, and we are now preparing a major airbase to service American troops for the next 3 to 5 years.

Elsewhere, there is the intent to move American troops out of Baghdad and consolidate forces in fewer installations on the periphery, thus reducing the visibility of the American footprint. This is going to be a very delicate maneuver. Reducing the American presence in Baghdad has to be balanced by an increase in the effectiveness of Iraqi security forces inside the city. We could run the risk of having that city of about 6 million become an even safer haven for terrorists while we hunker down in bases on the outskirts.

It also means we are planning for an extended stay in Iraq. While the administration indicates 33 countries are now contributing troops to Iraq, the bulk of the troops is American, and unless there is a change in strategy by the administration or a change in attitude by the international community, those troops for the foreseeable future will remain largely American.

Will there be American troops in Iraq by the time of the next Presidential election in 2008? Right now the answer is yes.

I was able to visit Kabul as well. So much attention and money have been focused on Iraq that I believe Afghanistan has been neglected to the detriment of our goal of defeating the terrorists who attacked us on 9/11.

One example: in Iraq we hope to field an army of 27 battalions in 12 months at a cost of $1.8 billion, while in Afghanistan we hope to field an army of 15 battalions in 26 months at a cost of $569 million. Yet, in Iraq, there is a military infrastructure of garrisons, facilities, and a history of a national army that Afghanistan lacks. There are huge cultural barriers to overcome in linguistics and ethnicity that make Iraq look homogenous in comparison. Our military is doing a great job in trying to stand up an army in Afghanistan, but it is an enormous job, and so far the international community is not providing sufficient resources either to rebuild the country or create a sustainable and professional security force.

Afghanistan has an even greater problem in the lack of a civic administrative infrastructure. Without the creation of a strong local and central government, we run the risk of creating a well trained army that the government cannot pay for or sustain, further increasing the risk that the Taliban and al-Qaida terrorists could return to power.

We need to give more attention and make a greater commitment to Afghanistan. In Kosovo, for example, 25 times more money was pledged on a per capita basis than to Afghanistan and 50 times more troops per capita were sent. Afghanistan needs an estimated $20 billion in assistance over the next 5 years but so far only $7 billion has been pledged and even less received. I worry that, 2 years after the fall of the Taliban, Afghanistan has become the forgotten war even as al-Qaida terrorists and Taliban remnants continue to make it their sanctuary and regroup their forces.

I opposed going to war in Iraq when we did. I did not think that the threat posed by weapons of mass destruction was imminent, nor did I think we had taken sufficient time to prepare for the consequences of a prolonged occupation of Iraq. I was concerned that starting another conflict before we had squashed the al-Qaida terrorist threat in Afghanistan would disperse our forces and expose us to even more terrorist problems. To be successful in both, with the least cost to the United States in terms of lives and resources, required an international coalition and consensus along the lines of the one created in the first gulf war. We have yet to achieve that either in Afghanistan, where there is international support but insufficient resources, or in Iraq where the bulk of resources and personnel are being provided by the United States.

We need to rebuild support for American foreign policy both abroad and at home. A recent Pew Foundation poll indicates that the U.S. image abroad remains negative in most nations. This cannot be good. For Americans to be secure, we need to be respected, and, as both Iraq and Afghanistan demonstrate, we cannot go it alone unless American citizens want to bear the full burden of sacrifice. We need international support. This does not mean sacrificing American interests to foreign interests, but it means working with other nations to gain a consensus in support of our objectives. In many we are one.

At home, too, we need to rebuild bipartisan support for American foreign policy. This has been lost in the last few years. Healthy debate requires a willingness to listen to arguments and to accept those that are valid in order to develop a consensus on American foreign policy. This ability has been lost.

Earlier this week, our former colleague, Bill Cohen, spoke before the 9/11 Commission. He talked about ''the kind of poisonous atmosphere that existed then that continues today,'' referring to the questioning of President Clinton's motives when he launched attacks against al-Qaida in Afghanistan and Sudan. Constructive criticism of strategy and oversight of its implementation are essential tools in sharpening the tip of our policy weapons. But they need to take place in an atmosphere where such debate is not just another arrow in the quiver of partisan politics.

I pray that one of the successes of the 9/11 Commission and other discussions in this very political year will be a determination to restore comity in foreign policy.

My recent travels in Iraq and Afghanistan have convinced me that, if we are to succeed in either country, we need to be prepared to remain in both countries for a long time, and we need to be prepared for additional sacrifices in terms of lives and financial resources. To accept that burden, there has to be a consensus in foreign policy. To bear that burden will require a determination to establish international support for our policies.

I thank the Chair. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DEWINE. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

UNBORN VICTIMS OF VIOLENCE ACT OF 2004

The PRESIDING OFFICER. Under the previous order, the hour of 10:30 having arrived, the Senate will proceed to the consideration of H.R. 1997, which the clerk will report.

The assistant legislative clerk read as follows:

A 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.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, I come to the floor this morning to begin the debate on the Unborn Victims of Violence Act. I would like first to thank our 40 cosponsors for their leadership and support on this issue.

Let me also thank specifically Senator LINDSEY GRAHAM, who championed this issue on the House side for a number of years before he joined us here in the U.S. Senate. He has worked tirelessly to see to it that the most vulnerable members of our society are, in fact, protected.

Let me also thank our lead House sponsors, Congresswoman MELISSA HART from Pennsylvania, and my friend and colleague from the State of Ohio, Congressman STEVE CHABOT. They have both been great champions of this great cause. They worked tirelessly to help get this important bill passed in the House of Representatives.

Our bill is very simple. I will take just a couple of minutes to explain it. It is a bill about simple justice. It is a bill about doing what is right. I was asked yesterday by one of my colleagues, Why do we need this bill? Why is this bill on the floor?

This is what I responded yesterday and this is what I would say to my colleagues here in the Senate this morning. Imagine a pregnant woman in a national park or a pregnant woman on an Air Force base and she is violently assaulted. As a result of that assault, she loses her child; that child dies. Today, there is no Unborn Victims of Violence Act. Today, unless that Federal park or Air Force base is located in a State that has a similar law, a Federal prosecutor would search the Federal statute books in vain to find anything to charge that assailant for the death of that child, for the death of that unborn infant, the fetus. The only thing that Federal prosecutor would be able to charge that defendant with is the assault of the woman. The death of that child would not be able to be charged as what we would think would be a separate offense. Justice would not be done for that, what we would think would be a separate offense.

This bill corrects that. This bill recognizes there are two victims. There is the victim, the mother, who was assaulted; and there is the victim, the unborn child, who was either injured or killed. It is that simple.

This bill recognizes when someone attacks and harms a mother and her unborn child that attack does in fact result in two separate victims: the mother and her child. That is what this bill does.

I will have more to say about this bill later. I will reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 2858

Mrs. FEINSTEIN. Madam President, I would like to call up amendment 2858.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN] for herself and Mr. LAUTENBERG, Mr. BINGAMAN, Mrs. BOXER, Mr. KENNEDY, and Mr. CORZINE, proposes an amendment numbered 2858.

Mrs. FEINSTEIN. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: Entitled the Motherhood Protection Act)

Strike all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

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

SEC. 2. PROTECTION OF PREGNANT WOMEN.

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

''CHAPTER 90A—PROTECTION OF PREGNANT WOMEN

''CHAPTER 90A—PROTECTION OF PREGNANT WOMEN

''Sec.

''1841. Causing termination of pregnancy or interruption of the normal course of pregnancy.

''§ 1841. Causing termination of pregnancy or interruption of the normal course of pregnancy

''(a)(1) Any person who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the termination of a pregnancy or the interruption of the normal course of pregnancy, including termination of the pregnancy other than by live birth 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 for that conduct under Federal law had that injury or death occurred to the pregnant woman.

''(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 termination or interruption of the normal course of pregnancy.

''(C) If the person engaging in the conduct thereby intentionally causes or attempts to cause the termination of or the interruption of the pregnancy, that person shall be punished as provided under section 1111, 1112, or 1113, as applicable, for intentionally terminating or interrupting the pregnancy or attempting to do so, instead of the penalties that would otherwise apply under subparagraph (A).

''(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), 844(f), 844(h)(1), 844(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), 1952(a)(2)(B), 1952(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) Subsection (a) does not permit prosecution—

''(1) for conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency;

''(2) for conduct relating to any medical treatment of the pregnant woman, or matters related to the pregnancy; or

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

(b) CLERICAL AMENDMENT.—The table of chapters for part 1 of title 18, United States Code, is amended by inserting after the item relating to chapter 90 the following:

''90A. Protection of pregnant women 1841''.

SEC. 3. MILITARY JUSTICE SYSTEM.

(a) PROTECTION OF PREGNANT WOMEN.—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:

''§ 919a. Art. 119a. Causing termination of pregnancy or interruption of normal course of pregnancy

''(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 termination of a pregnancy or the interruption of the normal course of pregnancy, including termination of the pregnancy other than by live birth, 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 for that conduct under this chapter had that injury or death occurred to the pregnant woman.

''(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 termination or interruption of the normal course of pregnancy.

''(C) If the person engaging in the conduct thereby intentionally causes or attempts to cause the termination of or the interruption of the pregnancy, that persons shall be punished as provided under section 918, 919, or 880 of this title (article 118, 119, or 80), as applicable, for intentionally causing the termination of or interruption of the pregnancy or attempting to do so, instead of the penalties that would otherwise apply under subparagraph (A).

''(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 111, 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

''(c) Subsection (a) does not permit prosecution—

''(1) for conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency;

''(2) for conduct relating to any medical treatment of the pregnant woman or matters relating to her pregnancy; or

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

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after the item relating to section 919 the following:

''919a. Causing termination of pregnancy and termination of normal course of pregnancy.''.

Mrs. FEINSTEIN. Madam President, I agree with virtually everything the Senator from Ohio has said. Although there are many State laws which do take into consideration a fetus, it is true that the Federal laws, which would impact only those on Federal property, are silent. I am in complete concurrence with everything the Senator has said. I have had the privilege of working with him, so it is a delight for me to be able to discuss and debate this issue with him.

The substitute amendment I have called up is on behalf of Senators BINGAMAN, BOXER, CORZINE, KENNEDY and LAUTENBERG. I would like to make clearer a couple of places in that amendment.

I ask unanimous consent to send a modification to the desk.

Mr. DEWINE. I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. FEINSTEIN. I hear the objection. I am rather surprised by the objection. It is generally common courtesy to allow a Senator to amend his or her amendment. However, I believe our amendment is clear on its face.

I would like to point out that since 2000, in the Senate, there has been no hearing on this amendment and no opportunity for the Judiciary Committee to make corrections. This amendment is on the floor as a rule XIV.

I am very disappointed the Senator will not allow me to make a modification. For the record, let me simply state that I was proposing a minor change designed to further clarify what I believe to be the clear intent and application of our amendment. The bottom line is this: Even without the technical changes, our amendment is clear. We include the same structure, the same crimes, and the exact same penalties as the DeWine bill.

The only real difference between our amendment and the DeWine bill is that we do not attempt to place into law language defining life as beginning at conception—beginning with an embryo.

Just to clarify for the purpose of giving judges more legislative history with which to interpret our amendment, let me be clear about the two provisions at issue.

The first modification concerns section (c)(2) of our amendment which reads ''For medical treatment of the woman or matters relating to the pregnancy.'' This language simply tracks the DeWine language and the House bill language. I believe it is quite clear what we meant by this was to exempt medical treatment of the woman or any other medical treatment related to the pregnancy.

The second criticism or modification was that section (c)(2) which applies to intentional crimes against the pregnant woman is awkwardly worded and thus vague. The intent of the section is also clear. Our amendment and the House and the DeWine bill would punish an individual who intentionally ends a pregnancy in accordance with the murder, manslaughter, or intent statutes already on the books. The level of penalty would be determined by a judge and would be based on the level of intent. For instance, punishment under the murder statute would require malice. Punishment under the manslaughter statute would not. But either way the intent is clear.

I believe the only real reason to raise these issues is to try to defeat our amendment without addressing the underlying fact that our amendment contains the same law enforcement goals as the DeWine and the House bill, but without injecting a debate over a woman's right to choose into the equation.

This issue is not as simple as it seems at first glance. Everyone in the Senate wants to accomplish the same goal—punishing those who, by attacking or killing a pregnant woman, deprive families not only of the mother but also of the joy to help raise the child yet to be born. Punishing those who end a pregnancy and thus end the potential life experience, all of the hopes and dreams embodied by that pregnancy and the child to come, is an important advance in Federal criminal law.

But here is where it gets more complicated. The House bill before us, the DeWine bill, now takes the position in law that life begins at conception. This, then, involves this bill directly into a woman's right to choose—an issue that need not be raised and should not be raised in this debate.

Although the text of the amendment itself technically provides an exception for abortion, experts on both sides of this issue agree the language in the bill will clearly place into Federal law a definition of life that will chip away at the right to choose as outlined in Roe v. Wade. I hope to make that crystal clear as I go on.

The Philadelphia Inquirer in its editorial yesterday put it succinctly by saying:

> If passed and signed, as promised by President Bush, the Federal law would be the first to recognize unborn children at any stage of development as victims with legal rights separate from those of their mothers. . . . It's so easy to see how a Federal unborn victims law, coupled with unborn victims laws in 29 States, will form the basis of a new legal challenge to Roe v. Wade, the landmark case that gives women the right to terminate certain pregnancies. If a fetus who dies during a crime is a murder victim, then isn't abortion murder?

That is the Philadelphia Inquirer editorial of yesterday.

That is why I offered this substitute amendment. I think when I am finished describing the differences between our amendment and the underlying legislation, it will become crystal clear that these two measures accomplish the same goal in terms of criminal justice and the same goal in terms of deterrence.

The difference between the two measures—the only difference—is our substitute does not include a new unprecedented definition of when life begins.

The bottom line is this: It is unnecessary to include a definition of when life begins in this legislation, and including such language could, and I believe will, make it much more difficult to obtain convictions in these cases.

The substitute amendment I offer today essentially provides that if a perpetrator of an attack on a woman commits certain violent Federal crimes against that woman and harms or ends her pregnancy, a prosecutor can charge the perpetrator with the underlying Federal crime first but can also charge the perpetrator with harming or ending her pregnancy and effectively harming or killing another potential life.

How is this different from the DeWine bill? It is not different at all. The DeWine bill provides exactly the same provisions. A prosecutor can charge two crimes—one for the underlying attack on the woman and one for the termination of the pregnancy. The penalties in the DeWine bill are identical to the penalties in our amendment.

For instance, the DeWine bill provides that if the separate offense results in the ending of the pregnancy, the penalty is identical to the penalty for taking an adult's life. The Feinstein substitute is the same. The DeWine bill says the maximum penalty for ending a pregnancy is a life sentence, and the maximum penalty for harming that pregnancy is a 20-year sentence. The Feinstein substitute is the same.

Neither bill allows for the death penalty and neither bill applies to conduct to which the pregnant woman has consented.

The simple truth is this: Whichever bill passes in the end, a prosecutor will be given exactly the same ability to charge a defendant. The crimes are the same. The penalties are the same. Everything will be the same except a few simple words that inject the abortion debate into this issue by clearly establishing in criminal law for the first time in history that life begins at the moment of conception. I contend that if this result is incorporated in law, it will be the first step in removing a woman's right to choice, particularly in the early months of a pregnancy before viability.

As we all know, the question of when life begins is a profound and a deeply divisive one. So I don't believe we should be addressing that issue here today—without a hearing since the year 2000, without expert testimony, and without need to do so. But, more importantly than that, this language unnecessarily turns a simple law into a controversial one and, most importantly, this language could make it more difficult for prosecutors to obtain a conviction for the second defense of harming or ending a pregnancy. I will describe why later.

It is possible that some pro-choice jurors might refuse to convict simply because the language of the law refers to an unborn ''child in utero''—that is a quote, ''child in utero,'' that is bill language—when the victim may have only been 1 week or even 1 day pregnant.

An embryo in this bill becomes a person for the purpose of Federal criminal sanctions for the first time in America's history. That is the significance of this bill. This substitute allows jurors to look at evidence and the law and it doesn't force jurors to grapple with the complicated and controversial issue of when life begins.

Including language defining the beginning of life is not in any way necessary to the criminal law but, rather, it is only relevant to the abortion debate.

Let me show you a statement that I believe reveals the clear intent of this

bill. That statement is made by Samuel Casey, executive director and CEO of the Christian Legal Society. This is the intent:

> In as many areas as we can, we want to put on the books that the embryo is a person . . . that sets the stage for a jurist to acknowledge that human beings at any stage of development deserve protection—even protection that would trump a woman's interest in terminating a pregnancy.

This will be the first strike against all abortion in the United States of America. This will draw back the veil and, I believe, makes crystal clear what this legislation actually is. This is the key to much of the support for this legislation: Not just adding a new criminal law on the books, but also defining life as beginning at conception in statute here and then in the future, wherever else and however else possible. This is a concerted effort to insert the definition of when life begins into the law wherever possible.

Let me give some examples of quotes that again make this very clear. The intention of the antichoice community has been clearly revealed by a Republican strategist by the name of Jeffrey Bell. Here is how he put it:

> Parental notification rules don't really prohibit anything. They don't ban the act of abortion. But a cloning ban—this is saying that something should be illegal. And if taking [unborn] human life became illegal, that would be a breakthrough. Since Roe, no one has been able to do that.

So this, Members of the Senate, is clearly the agenda, freezing the law, any law, in this case criminal law, that life begins at conception. Then, once declared legally, that law becomes the stepping-stone to refuse embryonic stem cell research and to ban abortion. Once the law defines human life as beginning at conception, stem cell research could become murder, abortion becomes murder, even in the first days of a pregnancy.

That is where this is going. Please see it. Understand it. Know it. Everyone in this body who believes embryonic stem cell research holds a promise for cures to Parkinson's, for cures to Alzheimer's, for cures to juvenile diabetes, for perhaps spinal cord rupture repair, will have to contend with a statute that has said life begins at conception. So embryonic stem cell research may become murder and abortion in the first trimester becomes murder. That is where this debate is taking us. That is the reason for this bill.

The supporters of this bill will say they do not want to undermine Roe, but that is precisely what Nebraska State senator Mike Foley said when he proposed legislation to allow wrongful death suits involving the termination of a pregnancy. Let me quote him. Let me pull back the veil again:

> We said specifically in our bill that we did not want to challenge Roe v. Wade, and that would not affect abortion in the legal sense. But philosophically, sure, these laws are a challenge . . . If a state can put someone in jail for life because they took the life of an unborn child, then we're clearly saying there is something very valuable there.

Why is he saying that? He is saying that because a fetus, even at conception, becomes a person, becomes a human being.

Professor R. Alta Charo of the University of Wisconsin further points out how these efforts are aimed at changing the law and how the Supreme Court might rule in future abortion cases. Charo said recently:

> If you can get enough of these bricks in place, draw enough examples from different parts of life and law where embryos are treated as babies, then how can the Supreme Court say they're not? This is, without question, conscious strategy.

This is a professor of law at the University of Wisconsin, pulling the veil back further and exposing this exactly for what it is, a ''conscious strategy'' to say life begins at conception and enshrine it in this Federal law, and then other laws, and then other laws, and then go to the Supreme Court and Roe vs. Wade is struck down.

In a CNN interview last May, the distinguished chairman of the Senate Judiciary Committee—and I have had the pleasure of serving on that committee for 12 years—made the following comment:

> They say it undermines abortion rights. It does undermine it. But that's irrelevant. We're concerned here about a woman and her child . . . The partisan arguments over abortion should not stop at a bill that protects women and children.

If that is true, then the Senator from Utah should vote for our amendment because our amendment does exactly the same thing, the same penalties for the same crimes as the House bill.

When Justice Harry Blackmun wrote in 1973 the Roe decision, he said:

> . . . the unborn have never been recognized in law as persons in the whole sense . . .

Let me repeat that: ''the unborn have never been recognized in the law as persons in the whole sense.''

What he did by saying that was actually, inadvertently provide a roadmap for the anti-choice people and those who want to undermine Roe and eventually to reverse it. This bill, the underlying bill, is following that roadmap by changing a criminal law in a way which clearly says an embryo can be an individual as a person for the purposes of criminal prosecution.

Clearly, this is a concerted effort to codify in law the legal recognition life begins at conception. If we allow that to happen today in this bill or in any bill, we put the right to choose squarely at risk. Roe v. Wade allowed States to claim a legitimate interest in preventing abortion postviability. Many states—and we both know that—have laws on the books with respect to the third trimester and even the second trimester.

If the concept of viability, which means when a fetus can live outside of the womb, gives way to a definition that provides life begins at conception, we could soon see abortion in this country outlawed entirely. Our amendment avoids that problem and focuses only on the need to increase penalties for those who attack pregnant women.

There has been a lot of discussion about the tragic Laci Peterson case in my State of California. I have had the pleasure of meeting with Laci's mother, Sharon Rocha, a very fine woman and a woman who I can understand is decimated by what happened to her daughter. Some in the Senate have suggested that this tragedy is evidence of a loophole in Federal law that needs to be closed.

However, the House bill and the DeWine bill will have no impact in any way, shape, or form on the Laci Peterson case. The perpetrator of that crime will be prosecuted and punished under current California law and the perpetrators of almost all similar crimes through the country will, in fact, be prosecuted under State laws, not a Federal law, unless the crime takes place on Federal property.

In my State of California, the legislature amended California's existing murder statute in 1970—that is 34 years ago—to read as follows:

> Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

Now, if this were the case, if this were written in Federal law, easy, I would support it in a minute because it draws a distinction, it permits the ''double charge'' that both Senator DEWINE and I agree is necessary. But the use of the words ''or fetus'' makes a distinction between a human being and a fetus for purposes of the application of the homicide statute. That is important. And that is the law under which Laci Peterson's alleged murderer is going to be prosecuted.

If you look at it, you will see it is completely adequate. The complexity of that case, which continues today, is one that relates to evidence and proof, not a problem with statutes or penalties. The California statute is wholly adequate. So the bill we discuss today would have absolutely no impact on the Laci Peterson case, none.

Now, I would like to bring to the Senate's attention a July 10 letter from a Stanford law professor. He goes into the problems of what this law, if passed, could actually do in the courtroom to actual prosecutions and to juries. His name is George Fisher. He is a criminal law expert. He is a former prosecutor. He served as an assistant DA, an assistant attorney general. He has taught criminal law at Stanford Law School since 1995, and he has founded Stanford's criminal prosecution unit.

He makes three points. Let me quote him:

> The Bill's apparent purpose of influencing the course of abortion politics will discourage prosecutions under any future Act. I do not know what motives gave rise to the Bill's use of the expressions ''child in utero'' and ''child, who is in utero,'' but I do know that any vaguely savvy reader will conclude that these terms and the Bill's definition of

them were intended by the Bill's authors to influence the course of abortion politics.

If the authors of the Bill truly seek to protect unborn life from criminal violence, they will better accomplish this purpose by avoiding such expressions as ''child in utero.'' Better alternatives would refer to injury or death to a fetus or damage to or termination of a pregnancy.

Dr. Fisher goes on to say:

The Bill's apparent purpose of influencing the course of abortion politics will motivate prosecutors to exclude those prospective jurors who otherwise would be most sympathetic to the prosecution's case.

I predict that many or most judges will bar prosecutors and defense counsel from questioning prospective jurors about their views on abortion or about related matters such as their religion, religious practices, or political affiliations. Forced to act largely on instinct, prosecutors may be inclined to exercise peremptory challenges against those prospective jurors who appear to be most sympathetic to the rights of pregnant women. This result clearly would frustrate the Bill's stated purpose of protecting unborn life from criminal violence.

He concludes:

The Bill's apparent purpose of influencing the course of abortion politics offends the integrity of the criminal law. To anyone who cares deeply about the integrity of the criminal law, this Bill's apparent attempt to insert an abortion broadside into the criminal code is greatly offensive.

Now, that is a former prosecutor, a former assistant DA, assistant AG, a professor of law at Stanford Law School—one of the great law schools of our country—and head of the criminal prosecution unit at Stanford Law School.

I ask unanimous consent to have the entire letter printed in the RECORD following my remarks.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered.

(See exhibit 1.)

Mrs. FEINSTEIN. Mr. President, the substitute amendment, which I have offered, has been crafted to avoid these problems.

Our amendment, the Motherhood Protection Act, will accomplish the same goal as the Unborn Victims of Violence Act, but will do so in a way that does not involve us in the debate about abortion or when life begins. In my view, there is no reason to vote against this substitute unless the intention is to establish legally that human life, for the purposes of Federal criminal law, begins at the moment of conception because, ladies and gentlemen, that is exactly what this bill does.

To emphasize the point, let me again turn to the comments of Samuel Casey, executive director and CEO of the Christian Legal Society, who clearly states the intention behind the bill in this quote:

In as many areas as we can, we want to put on the books that the embryo is a person. . . .That sets the stage for a jurist to acknowledge that human beings at any stage of development deserve protection—even protection that would trump a woman's interest in terminating a pregnancy.

Let there be no doubt about the intent. Anyone who is pro-choice cannot vote for this bill without the expectation that they are creating the first legal bridge to destroy Roe v. Wade.

Now, there is a time and a place to discuss the morality and philosophy of when life begins. This is not that time. Now is the time to change our Federal law to punish criminals who would inflict grievous injuries or death upon pregnant women on Federal lands. So I urge my colleagues to support the substitute amendment.

EXHIBIT 1

STANFORD LAW SCHOOL,
Stanford, CA, July 10, 2003.

Senator DIANNE FEINSTEIN,
U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I wish to express my concern about the current formulation of S. 1019, the Unborn Victims of Violence Act of 2003. Although I fully endorse the Bill's ultimate aim of protecting pregnant women from the physical and psychological trauma of an endangered or lost pregnancy, I believe that the Bill's current formulation will frustrate rather than forward this goal.

I write both as a former prosecutor and as a law professor specializing in criminal law and criminal prosecution. At the outset of my career, I served as an assistant district attorney in Middlesex County, Mass., and as an assistant attorney general in the Massachusetts Attorney General's office. I then went to Boston College Law School, where I administered and taught in the criminal prosecution clinic. I have been at Stanford since 1995 and a tenured professor of law since 1999; during the next academic year, I will serve as Academic Associate Dean. In 1996 I founded Stanford's criminal prosecution clinic and have administered and taught in the clinic ever since. I have also created a course in prosecutorial ethics, which I taught at Boston College Law School and, as a visitor, at Harvard Law School.

My background and interest in criminal prosecution prompt me to raise three objections to this Bill. All of them focus on the Bill's use of the expressions ''child in utero'' and ''child, who is in utero,'' and on its definition of these terms as ''a member of the species homo sapiens, at any stage of development, who is carried in the womb.''

First: The Bill's apparent purpose of influencing the course of abortion politics will discourage prosecutions under any future Act.

I do not know what motives gave rise to the Bill's use of the expressions ''child in utero'' and ''child, who is in utero,'' but I do know that any vaguely savvy reader will conclude that these terms and the Bill's definition of them were intended by the Bill's authors to influence the course of abortion politics. It is a fair prediction that when a pro-life President is in office, prosecutions under this Bill will be more frequent than when a pro-choice President is in office. That is because the public will interpret this Bill as suggesting that abortion is a potentially criminal act and will interpret prosecutions under the Bill as endorsing this sentiment.

If the authors of the Bill truly seek to protect unborn life from criminal violence, they will better accomplish this purpose by avoiding such expressions as ''child in utero.'' Better alternatives would refer to injury or death to a fetus or damage to or termination of a pregnancy.

Second: The Bill's apparent purpose of influencing the course of abortion politics will motivate prosecutors to exclude those prospective jurors who otherwise would be most sympathetic to the prosecution's case.

If I were prosecuting a case under this Bill, I would hope to have a jury that includes persons deeply sensitive to the rights and interests of pregnant women. Such jurors would regard an attack on a pregnant woman as being a twofold crime, comprising both the injury directly inflicted on the mother and the stark emotional and physical trauma resulting from injury to or loss of her pregnancy.

But such jurors also will be more likely than others to believe that pregnant women have the right to exercise autonomy over their bodies and to choose whether to abort a pregnancy. I predict that many or most judges will bar prosecutors and defense counsel from questioning prospective jurors about their views on abortion or about related matters such as their religion, religious practices, or political affiliations. Forced to act largely on instinct, prosecutors may be inclined to exercise peremptory challenges against those prospective jurors who appear to be most sympathetic to the rights of pregnant women. This result clearly would frustrate the Bill's stated purpose of protecting unborn life from criminal violence.

Third: The Bill's apparent purpose of influencing the course of abortion politics offends the integrity of the criminal law.

To anyone who cares deeply about the integrity of the criminal law, this Bill's apparent attempt to insert an abortion broadside into the criminal code is greatly offensive. The power to inflict criminal penalties is, second only to the power to wage war, the highest trust invested in our institutions of government. Because the power to make and enforce criminal laws inherently carries enormous potential for abuse, those who exercise that power must always do so with a spirit free of any ulterior political motive. The American Bar Association's Standards Relating to the Administration of Criminal Justice provide that ''[i]n making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved. . . .'' (Standard 3–3.9(d).) Not all prosecutors conduct themselves with fidelity to this principle, but we may readily condemn those who do not. We may likewise condemn other public actors who abuse the sacred public trust of the criminal sanction for political ends.

For these reasons, I object to the current formulation of the Unborn Victims of Violence Bill. As I am confident that an alternative version of the Bill can fully accomplish its stated purpose of protecting unborn life from criminal violence while avoiding each of the difficulties I have outlined above, I strongly encourage the Senate to modify the Bill in the ways I have suggested above or in some other manner that avoids the freighted and frankly politicized terms, ''child in utero'' and ''child, who is in utero.''

My thanks to you for your consideration of my views.

Sincerely,

GEORGE FISHER,
Professor of Law.

Mrs. FEINSTEIN. Mr. President, how much time have I consumed?

The PRESIDING OFFICER. The Senator has 89 minutes left.

Mrs. FEINSTEIN. I have 89 minutes remaining?

The PRESIDING OFFICER. Yes.

Mrs. FEINSTEIN. I thank the Chair.

I know the Senator from New Jersey is on the floor wishing time.

Mr. DEWINE. He can take it now.

Mrs. FEINSTEIN. Good. May I ask the Senator how much time he would like?

Mr. LAUTENBERG. I would like to have about 10 minutes.

Mrs. FEINSTEIN. Mr. President, I yield 10 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank my colleague from California and also our distinguished colleague from Ohio.

I rise to express my strong opposition to the underlying bill and support for the amendment by the Senator from California.

I have long supported legislation that combats domestic violence. I was the author of the domestic violence gun ban because abusers should not have access to weapons, to guns. Whether an abuser is terrorizing his wife or his children, let's take away their means to inflict further terror and abuse. So far, my law has prevented nearly 30,000 abusers from obtaining guns.

Because of my long-term commitment to stopping violence against women and children, I take offense at the fact that the backers of this bill are exploiting this issue in order to advance another anti-choice agenda.

We see this regularly around this place. I saw it in a commerce subcommittee meeting that was supposed to discuss science, space, and technology. The witnesses who were at the table were there to talk about their opposition to abortion and their experience after they themselves had abortions. They made their decisions after an action that they took that placed them in that position. Now they wanted to block everybody else from having a chance to make their personal choices.

We have to understand what underlies this issue. Yes, it is worthwhile to protect people and those who are not yet born against violence, but to make it a crime of this magnitude, when there is so much else at stake in the matter of choice, decided many years ago by the Supreme Court—supporters of this bill will tell you this legislation protects women, protects children, and this is a bill about punishing crime. But if you want to know what this bill is really about, you only need listen to what a leading supporter of this bill told CNN when asked about the legislation. I quote him:

> They say it undermines abortion rights. It does . . . But that's irrelevant.

That is the prevailing attitude of those who want to impose yet another restriction on a woman's choice, on the protection of a woman's health. This bill is intended, plainly and simply, to undermine Roe v. Wade. But rather than being direct about the goal, anti-choice advocates want to use tragedies like violence against women as a red herring to move their agenda.

Over and over, we see this body taking up legislation that I believe is part of an attempt to establish what I call a ''male-ogarchy'' in our society. A male-ogarchy is a society in which men are making decisions for and about women. Anti-choice advocates simply don't trust women and their doctors to know what is best for their bodies and their lives. We even encountered this male-ogarchy last year when this body told doctors and their patients that it is Congress, rather than the medical experts, who know best about their health. And when the so-called partial-birth abortion bill was signed, there were all men on the stage with the President of the United States, smiling and gloating as they took away the right of a woman, in consultation with her doctor and her conscience, to make a decision that, though painful, is appropriate for her well-being.

Do we want to decide here whether or not a woman has a right to make a decision about her choice for an abortion? Perhaps she has two, three, four other children at home and her health is in jeopardy. We are saying: It doesn't matter what you think, Madam. We are going to make the decision for you.

That is why there wasn't one woman standing with the President at the White House the day that so-called partial-birth abortion prohibition passed the Senate, when the President signed the bill.

President Bush and his supporters in the Senate say they care about domestic violence and protecting women. But if that is the case, how, then, do we explain the fact that the President's budget cuts funding for the Violence Against Women Act programs by $116 million next year? Is that going to help women? Is that going to make life better for them? No. It is going to make life worse. Those are living people. Those are people who were here. Those are people for whom this male group wants to decide, make decisions.

If Congress wants to get serious about violence against women and children, let's do something real about it. Let's fund programs that provide money to law enforcement to prevent domestic violence and sexual assault. Let's fund battered women's programs and rape crisis centers instead of cutting funding for these often lifesaving services. Let's improve access to shelters, making it easier for abused women and their children to flee that abuse.

If this so-called Unborn Victims of Violence Act were actually about violent crime, then the domestic violence community would be in support of it. But they oppose the bill. The National Network to End Domestic Violence, the National Coalition Against Domestic Violence, and the Family Violence Prevention Fund, all oppose this legislation.

Many backers of this bill also support giving a $1 trillion tax break to the wealthiest among us, rather than giving it to the struggling working families who need it to help pay for everyday goods and services, programs such as Head Start for children who don't have a comfortable home life that permits them to engage in the process of learning or of expecting to learn, who often get their only nutritional meal from the program. Three hundred thousand of those children are denied access to these programs because we have taken away the funding to give tax breaks to those who have been fortunate enough to live in this country, to make a lot of money, to succeed.

I am one of those. I had a good business career, as did many here. We don't need this kind of thing. We don't want it. We want our country to be strong. We want the strength to be built in a harmonious society and to lend a hand to those who don't have the ability to help themselves. But now that can't happen. We are focused on giving tax breaks to the wealthy and making them permanent, as we dig ourselves deeper into debt.

Many of my colleagues who support this bill also reject expending health insurance coverage for poor and lower middle-class children and their families. Many who support this bill will tell you they want to simply protect children. I find it ironic that they only want to protect children before they are born, but they don't want to do what they have to after they are born. I see it as hypocrisy.

I challenge supporters of this bill to get serious about protecting women and children and pass meaningful legislation that improves the lives of these women and children, not this undercover move to restrict choice for women.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I have a great deal of respect for my colleagues from New Jersey and California. My colleague from New Jersey knows I care about what happens after children are born. I care about their health. I believe I have demonstrated that in the Senate. In fact, he and I have worked on these issues together. I have worked with my colleague from California on many issues having to do with children. We just happen to disagree on this issue.

I have a great deal of respect for both of them. We have worked together on a bipartisan basis on a wide range of issues. I would hope that as we debate this bill, we would focus on the legislation. I say that with all due respect. I don't understand—again, with all due respect to my colleagues—what debate about the motives of people has to do with what the facts are.

I am going to try to confine my debate to what I think are the essential facts. I think they are fairly simple. Let me talk for a few moments about what I believe are the essential facts.

I ask my colleagues who are listening to this debate to remember a couple of things about the Feinstein amendment. I am going to keep coming back to these central facts about the Feinstein amendment.

No. 1, the Feinstein amendment does not recognize a second victim. Our bill does. The Feinstein amendment creates a legal fiction. It is contorted, it twists the law in a sense—maybe a better way of saying it is not that it twists the law; it doesn't do that, but it twists the reality of the common sense of people when they look at this. When they see a pregnant woman who is assaulted and her child dies, they intuitively know there is a victim besides the mother. They know the mother is a victim, but they also know there is a second victim.

The vast majority of the American people, if you ask them was there another victim, will say of course there are two victims. Our bill recognizes the second victim. The Feinstein amendment refuses to recognize the second victim. Now we can talk about punishment and all kinds of things, but it refuses to recognize good common sense.

This bill in front of us has nothing to do with abortion. It has absolutely nothing to do with abortion. We have explicitly exempted abortion in this bill. Yet opponents still try to argue this point.

Our statute could be no more clear on this point. Senator FEINSTEIN uses identical language to exempt abortion or any related activity in her amendment. This bill simply doesn't affect abortion rights whatsoever. The language could not be clearer. I invite my colleagues to pick up the bill and look at the section. It exempts any reference to abortion, anything a mother would do to her own child, anything a doctor would do is exempted. It has nothing to do with abortion, not at all. That is not what this is about.

Point No. 1, this bill recognizes a second victim; the Feinstein amendment does not. If you believe there is a second victim, you cannot vote for the Feinstein amendment. It denies there is a second victim.

The second point I want to make will come as a surprise, I think, to the Members of the Senate. It will come as a surprise to you until you pick up the Feinstein amendment and read it carefully. I invite you to do that. Pick up the amendment and read it carefully.

First, the Feinstein amendment does not punish the criminal for harming or injuring the baby. Let me read it. It only punishes the criminal for ''interrupting or terminating a pregnancy.'' That is the language, ''interrupting or terminating a pregnancy.'' But not for injuring. So if a child is injured, not killed, the pregnancy not terminated, the Feinstein amendment will not cover it. That, to me, is a problem. That is a fatal fallacy, fatal problem.

Here is the language:

> Any person who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the termination of a pregnancy or the interruption of the normal course of pregnancy, including termination of the pregnancy other than by live birth is guilty of a separate offense under this section.

It does not cover the injury of a fetus. That is a problem.

Let's turn to the penalty section. The penalty section is fatally flawed. The penalty section won't work. The Justice Department has sent a letter and, in their opinion, the penalty section provides no penalty, under the Feinstein amendment, for the killing of the fetus. It is vague; it is unclear at best. It defines additional crimes as the interruption or termination of a pregnancy. When it describes the punishment, it refers to injury or death. Whose injury or death are we talking about here? Is it the unborn child? Whose injury?

The Feinstein amendment doesn't recognize that the interruption and termination of the pregnancy means the injury or death of the fetus because it won't acknowledge the fetus, of course, as a separate being.

The amendment is circular and really without meaning. Put simply, there is no additional punishment because under this amendment there is no additional victim. The Feinstein amendment goes out of its way not to recognize another victim. What is the reference to? Let me read this section and, again, this is a technical reading, but that is how you have to read a criminal section. This is how judges have to do it. The bottom line is—I am going to say it again and again—if you vote for Feinstein, there will be no penalty at all for the killing of a second victim, the child. There clearly is none for the injury of that child. Let me read the penalty section, 2(a), under the Feinstein amendment:

> Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided for that conduct under Federal law had that injury or death occurred to the pregnant woman.

What injury or death are we talking about? To whom?

The language doesn't acknowledge injury or death to the fetus. Who is it referencing in the previous paragraph? It clearly is fatally flawed. It is difficult for me to read this and for people to understand it. But to get the section out, it clearly doesn't work and is fatally flawed. So this does not recognize the death, does not recognize any punishment. It would not provide punishment and it clearly presents a problem.

My friend from California has said the DeWine bill would have no effect on the Laci Peterson case. That is true; it would not. Fortunately, California has a similar law that provides for a second victim, the punishment for the death of that child. While it is true the DeWine bill would have no effect on the Laci Peterson case, the fact is if the Feinstein amendment, or a similar amendment to the Feinstein amendment, had been approved by the California legislature at the time their law was being considered, there would be no punishment for the death of baby Conner Peterson. There would have been in California no recognition for that second victim. There would have been no recognition of the death of that second victim.

If the Feinstein amendment would have passed, or a version of it, in California, if the California legislature would have done what Senator FEINSTEIN is asking us to do today in this Federal legislation, they would not have been able to prosecute for the death of Conner Peterson. They would not have been able to recognize that death as a second victim death. That is the fundamental fact, and that is the fundamental difference between the DeWine bill and the Feinstein amendment.

We have heard a lot of talk about motives and agendas. I think we should stop doing that, and I think we should look to the victims and hear from the victims. There are three victims. The families of the victims were here yesterday. When one talks with the victims, it is clear the victims believe there are two victims. Let me talk about several cases. They are tragic cases and are difficult to listen to, but I think it brings home what we are really talking about.

Let me talk about the example of Airman Gregory Robbins. This is a case about which I have talked many times on the Senate floor, but I think is worth repeating today because it illustrates the injustice that exists today in our Federal law.

In 1996, Airman Robbins and his family were stationed in my home State of Ohio at Wright-Patterson Air Force Base in Dayton. At that time, Mrs. Robbins was more than 8 months pregnant with their daughter they named Jasmine. On September 12, 1996, in a fit of rage, Airman Robbins wrapped his fist in a T-shirt and savagely beat his wife by striking her repeatedly about the head and stomach. Fortunately, Mrs. Robbins survived this violent assault, but tragically, her uterus ruptured during the attack, expelling the baby into her abdominal cavity, causing Jasmine's death.

Does anyone truly think Jasmine was not a victim? I think we know she was. Not only was her mom a victim, but she was as well.

Let me give another example. In August 1999, Shiwona Pace of Little Rock, AR, was days away from giving birth. She was understandably thrilled about her pregnancy. Her boyfriend, Eric Bullock, however, did not share her joy and enthusiasm. In fact, Eric wanted the baby to die. So he hired three thugs to beat his girlfriend so badly that she lost the unborn baby whom she named Heaven. I might add, she lost that baby 1 day shy of her predicted delivery date. Shiwona testified at a Senate judiciary hearing we held in Washington on February 23, 2000. This is what she said:

> I begged and pleaded for the life of my unborn child, but they showed me no mercy. In fact, one of them told me, ''Your baby is dying tonight.'' I was choked, hit in the face with a gun, slapped, punched, and kicked repeatedly in the stomach. One of them even put a gun in my mouth and threatened to shoot.

Do we really believe Shiwona was the only victim here? Do we really think

we should adopt an amendment that says she was the only victim? I don't think so. How can we suggest to Shiwona that her child was not murdered? Should we twist the law so we don't recognize that? I don't think we should. And Federal law, quite frankly, must recognize this wrong for what it is. It is a wrong against two separate and distinct victims.

Another example: I can think of no better way to tell the story of Baby Zachariah and his mother Tracy Marciniak than by simply reading from her testimony before the House Judiciary Subcommittee on the Constitution which occurred on July 8, 2003. Let me read it:

I carried Zachariah in my womb for almost nine full months. He was killed in my womb, only 5 days from his delivery date. The first time I ever held him in my arms, he was already dead.

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

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

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

My own injuries were life-threatening. I nearly died. I spent 3 weeks in the hospital. During the time I was struggling to survive, the legal authorities came and they spoke to my sister. They told her something that she found incredible. They told her that in the eyes of Wisconsin law, nobody had died on the night of February 8. Later, this information was passed on to me. I was told in the eyes of the law, no murder had occurred. I was devastated.

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

The true nature of a crime, Mr. President.

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

I will have more to say about this in a few minutes. At this point, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, may I briefly suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, I wish to respond to some of the concerns and complaints of the distinguished Senator from Ohio about our substitute amendment. Let me take on his allegation that this substitute does not provide a punishment for harming a child. In fact, it does. It clearly states that the interruption of the normal course of the pregnancy relates to injury to the fetus. So there is a penalty for harm.

Secondly, he stated my amendment would not provide any penalty for ending a pregnancy; that it was a legal fiction in that sense.

I think this is clearly a misunderstanding of the plain text of our amendment. We explicitly create a separate offense for interrupting or ending a pregnancy, and we explicitly state the penalty for that offense is the same as if the crime had resulted in the injury or death of a mother. That is explicit.

So the intent is clear. I think quibbling about whether the language is perfect, the amendment does exactly what the underlying bill does. I could have cleared that up with a modification, but the Senator would not let me send a modification to the desk, which in terms of just sheer congeniality is rather surprising because that could have been made crystal clear to everyone.

So I firmly believe our amendment does exactly the same thing as the DeWine amendment, but it does not do something his amendment does, and that is create life at the point of conception. His use of the words ''child in utero'' as opposed to the California statute's use of the words ''or fetus'' make a huge difference in the law legally. Once again, I think that is clear.

The bottom line is we believe the intent and the crafting of this bill is very clear. We do not create a child in utero. We try to avoid getting to the point where life is defined.

We say that if the pregnancy is intentionally terminated and specific damages are done to the fetus, it is punished either through manslaughter in a second charge or murder in a second charge. I think the language is very clear. I think it is nitpicking to say it is not.

I can change it, but I am not allowed to change it. We have the modification, but we are not allowed to send the modification to the desk. I believe Members can vote on this amendment and know clearly they are assessing the same penalties for the same crimes as the underlying bill does. The only difference is we do not decide in our bill when life begins.

Let me read a couple of editorials and statements that have come out in recent days. There is one editorial this morning in the Los Angeles Times. I would like just quickly to read one paragraph:

The Senate is likely to vote today on a bill intended largely to score points in the endless, wearying abortion debate. The proposed Unborn Victims of Violence Act defines a child in utero as a member of the species homo sapiens, at any stage of development, who is carried in the womb. In other words, the child exists at the moment of conception. The House passed similar legislation last month. As with nearly every aspect of the abortion debate, Americans are deeply divided over when human life begins. However courts in most States generally accord more rights to a fetus considered viable outside the womb. DeWine's bill, S. 1019, offers a sweeping declaration that ignores prevailing scientific views and the national legal consensus. True, his bill specifically bars prosecution for abortion, but its effect, as DeWine intends, would be to give one side a new legal bullet in the broader abortion wars.

That is clear. I will go on. The Los Angeles Times is not the only editorial page that believes that. I indicated earlier this is true of an editorial in the Philadelphia Inquirer:

It is so easy to see how a federal unborn victims law, coupled with unborn victims' laws in 29 States, will form the basis of a new legal challenge to Roe v. Wade, a landmark case that gives women the right to terminate certain pregnancies. If a fetus who dies during a crime is a murder victim, why, then, isn't abortion murder?

From the Buffalo News:

Passage by House Republicans of a bill that treats an attack on a pregnant woman as separate crimes against her and her unborn child is at heart an attempt to erode abortion rights. It's a disingenuous and misguided bill and the Senate should make sure it goes no further.

That is the Buffalo News.

The New York Times, April 25. This is 2001.

Packaged as a crime fighting measure unrelated to abortion, the bill is actually aimed at fulfilling a long-time goal of the right-to-life movement. The goal is to enshrine in law the concept of fetal rights equal to but separate and distinct from the rights of pregnant women.

Another editorial of the New York Times:

The bill would add to the Federal Criminal Code a separate new offense to punish individuals who injure or cause death to a child who is in utero.

The Washington Post, October 2, 1999,

What makes this bill a bad idea is the very aspect of it that makes it attractive to its supporters, that it treats the fetus as a person separate from the mother though that same mother has a constitutional right to terminate her pregnancy. This is useful rhetorically for the pro-life world, but it is analytically incoherent.

The Blethen, ME, newspaper:

First considered in 1999, the bill purports to create new Federal crimes for the intentional harm or death of a fetus or unborn child. But, no matter how much supporters deny it, the bill's real intent is to undermine women's reproductive choices. If the bill is passed and signed into law, it would weaken

the prudent and pragmatic decision handed down in Roe v. Wade.

In my remarks, I have tried to show that this is a concerted effort. It need not be so. You can attach the same penalties for the same crimes, as our substitute does, without getting into the debate of where life begins. This bill chooses to get into the debate of where life begins and it defines life beginning at conception. It does so in a Federal criminal statute. It is one step in the building blocks of statutes that will constitute the ability to demolish Roe v. Wade.

I think every Member of this body who is pro-choice should vote against the underlying bill and for this amendment because in this amendment, without creating the separate person at conception, we establish the penalties for interruption or termination of a pregnancy. Those penalties are the same—same for murder, same for manslaughter, same for attempted murder, same for attempted manslaughter.

Again, I point out that in California what the State did 34 years ago was essentially amend the murder statute. By amending the definition in the Penal Code section 187, they provided a new definition of murder which said:

Murder is the unlawful killing of a human being, or a fetus with malice aforethought.

That is the bill under which the Laci Peterson case will be brought to court. It is a different idea because it clearly says that it is a fetus.

Additionally, there is information from those who wish to continue this pursuit to make a fetus a human life, to make an embryo a human life, that this is a concerted strategy aimed at weakening Roe v. Wade.

What we have tried to do is mimic the House bill with respect to the penalties but connect it to the termination of a pregnancy and thereby avoid the distinction of exactly when life begins for the purposes of statute law, in this case criminal statute law, and therefore avoid the problem.

I have indicated, from legal scholars, where they believe this will undermine prosecutions in this situation because they will encourage peremptory challenges of individuals who may have strong beliefs in choice and, therefore, not one likely to recognize that an embryo, or a day pregnancy, or a week pregnancy, or a month pregnancy is, in fact, a living being subject to criminal sanctions if their rights are violated.

It is a complicated issue. But it is a significant issue. It is an important issue.

The more I look at it and see the strategy of the anti-choice movement, the more I see that if you can establish a beachhead of rights in Federal criminal law here, and another statute there, and in a third statute somewhere else, you then begin the march to the Supreme Court in an attack on Roe. Roe sets up a trimester system giving the woman total rights in the first trimester, and then the State the right in the second and third trimester to intervene in certain cases, which has been the case in many State laws that have been passed. You now give the Supreme Court the ability to begin to say: ''It is in law that the embryo has certain rights'' and, therefore, forms the bulwark of the attack on Roe.

You also do something else insidious. I think you very much intervene in stem cell research. Stem cell research, and a good deal of the most auspicious of that research, deals with embryonic stem cells. If you have a law that says an embryo or a zygote is, in fact, a human life, then it is murder if you use that embryo for stem cell research, just as it becomes murder if that embryo is harmed or rejected in the course of an attack on a woman. We avoid all of that.

We simply say termination of a pregnancy, and termination of a pregnancy in the course of a criminal attack creates a second charge, and that second charge carries with it the same penalty as the original charge against the woman herself would carry.

That is the clear intent.

I regret that the Senator would not allow me to modify my amendment. I can never in 12 years remember any Senator being refused the right to modify an amendment, but perhaps we are playing by new rules these days. I know what goes around comes around in this body. I regret that.

But I believe on its face our substitute amendment is clear, it is definitive, it will stand the test of time, and it will prevent what we hope to prevent, which is the first major law which decides when life begins.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Ohio.

Mr. DEWINE. Madam President, once again, I want to bring this debate back to its essence. I am afraid so much of the debate from the other side has been about motives—by quoting, with all due respect, the L.A. Times about peripheral issues.

Our intent, if you want to go by intent, is very simple. Our intent is to bring about justice for the victims of crime. Our intent is to bring about justice for the mother and for the child—for the unborn child as well as the mother. It is to conform with what the vast majority of the American people believe; that is, when a pregnant woman is assaulted and she either loses that child or that child is injured, there are, in fact, two victims. It is as simple as that.

On the abortion issue, let us be done with this once and for all. This bill has nothing to do with abortion. The language could not be simpler.

Let me read to the Members of the Senate and invite anybody to read it.

Nothing in this section shall be construed to permit the prosecution of any person with conduct relating to abortion for which 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.

Two, of any person for medical treatment of the pregnant woman or her unborn child, or of any woman with respect to her unborn child.

It is very clear. My colleague argues that this language is going to somehow roll back abortion rights. That is a debate for another day. It is not a debate for today. That language in this bill is very clear.

If this language was a threat to abortion rights, then the language in 29 other States would have been a threat. We have 29 States that recognize fetal homicide law. The language in 16 of those States is virtually identical to the language in this bill.

If the language in this bill was a problem for abortion rights, then it would have been a problem with these other States.

Also, there are some States that have had this language on the books for 30 years, and it has not been a problem for abortion rights.

That is just a bogus issue. Let us stop talking about it, and let us talk about what the issues are.

Let me get back to the two points that I made before. I want everyone to understand the Feinstein amendment. One is not in debate, and one my colleague and I do debate. One I think is not in debate at all; that is, the Feinstein amendment does not recognize a second victim. It goes against good common sense.

Ask someone back in your home State, if a pregnant woman is assaulted and she loses her child, how many victims are there? There are two. If you ask the average person in your State—whether your State is Ohio, California, wherever it is—the average person on the street is going to say: Senator, there are two victims.

That is all we are saying with this bill. We are trying to close a loophole so that if a pregnant woman who is hiking in a national park or is out walking in a national park or a pregnant woman on an Air Force Base—we are not making these stories up. This happens. Pregnant women are attacked all the time. I saw it as a county prosecutor. You ask any county prosecutor—yes, any police officer, anybody who is a victims rights advocate—how often pregnant women are attacked, a pregnant woman who is in a national park, a pregnant woman who is on Federal property and is attacked. What we are simply saying is that it is wrong if a national park or Federal property is in a State that does not have a similar law to this. It is wrong for that Federal prosecutor searching in vain the Federal statutes to find a law for which he can charge that person with the death of a fetus, a child—whatever word you want to use. It is wrong. That happens today. We are closing that loophole.

When this law passes, that won't happen anymore. A Federal prosecutor will be able to say, when law enforcement people come in and they have that case where a woman has been violently attacked, she has been injured but the

child has been killed, they will be able to charge for death of that child. That is the right thing to do. They will be able to file two charges, recognize two victims, and recognize that reality. That is what this does.

Let me state the second thing about the Feinstein amendment. Look at the amendment.

We have to go to the penalty section. This is the Feinstein amendment.

Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided for that conduct under Federal law had that injury or death occurred to the pregnant woman.

Remember, this is a criminal law. I go back to my days as a prosecutor: You have to construe a law strictly. When it is a criminal law, you construe it in favor of the defendant. You give every benefit of the doubt to the defendant. If this is vague, there is a problem for the prosecutor. We have a problem with this one. A serious problem.

We have a letter from the Justice Department that says there is no penalty under the Feinstein amendment. Let's look at this carefully and see why: ''Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as that punishment provided for that conduct under Federal law had that injury or death occurred to the pregnant woman.''

What injury or death? The problem under the Feinstein amendment is it does not recognize the baby or fetus. Who are we talking about? Read this section above. It talks about ''termination of a pregnancy or the interruption of the normal course of pregnancy.'' It does not recognize two assaults, two injuries, two people. There is nothing for it to reference to. With all due respect, it is not drafted right. If we pass the Feinstein amendment, with all due respect, not only are you not recognizing a separate victim—which we all agree on—but, worse than that, there is no penalty for killing the unborn; there is no penalty for injury.

I have already pointed out, and we looked at the language, why there is no penalty at all for injury. That is clear when we look at this: ''causes the termination of a pregnancy or the interruption of the normal course of pregnancy, including termination of the pregnancy other than by live birth,'' et cetera.

Clearly, that is no reference to the injury. What word here has to do with injury? Nothing. Clearly, this has nothing to do with injury. Any child who is injured, not killed, would not be covered. And in the paragraph below, there is no penalty at all.

If we get by that, which we cannot, but even if you get by all of that, you have the problem of the lesser included offense. We cannot get by that. But take one more problem, assuming you could get by that. There is another reason the Feinstein amendment fails to create a separate punishable offense to terminating pregnancy. All it does is recognize attacks on an unborn child under the label of ''interruption or termination of pregnancy,'' then tacks that label on as an element to any one of the 68 Federal crimes specified. The result is a new series of offenses identical to the previous 68, except for the addition of that one element.

For example, now a criminal could face a Federal charge of assault with the result of termination of pregnancy as well as the original charge of assault. This is important. But because he could be charged with both does not mean he could be convicted and punished for both. Instead, he would be protected by a legal principle known to lawyers as lesser included offenses. That principle protects a defendant from being convicted in and punished for a whole series of crimes that are all a subset of a lesser crime.

We know, for example, the crime of manslaughter and murder. We know one defendant cannot be convicted of both charges for the death of only one victim. If someone is guilty of murder, then he or she must have been guilty of all the components of murder, including the components that made him guilty of manslaughter, but that person, of course, is not convicted of both. You cannot be convicted of both manslaughter and murder. If a man is convicted of a felony for stealing $10,000, he is not also found guilty of the misdemeanor of having stolen $500.

Of course, we can convict one criminal of the murder and manslaughter of two separate people because the laws of these crimes differ on one critical point: They have different victims. That is the difference between our bill and Senator FEINSTEIN's amendment. Ours does not have that problem because we recognize two victims. Her amendment does not. Therefore, it is fatally flawed under this principle. Therein lies another problem.

The bottom line is the Feinstein amendment is fatally flawed. It has no penalty section, as well as not recognizing there is a separate and distinct victim.

The Justice Department analyzed and came to the same conclusion. Again, it is a vague amendment. They come at it a little differently, but here is what they say in a letter of March 24:

Additionally, by omitting any reference to the unborn child but retaining language contained in H.R. 1997 as introduced, the substitute appears to create an ambiguity that likely leaves an offense, could one be found, without a corresponding penalty. The substitute provides that punishment for an offense prescribed by the legislation is the same as the punishment provided under Federal law had the ''injury or deaths occurred,'' to the pregnant woman.

In H.R. 1997, the object of the ''injury or death'' was the unborn child. However, in the substitute the injury or death provision has no object because the only victim under the substitute is the woman herself. Because there are currently no penalties in federal law for the offenses of ''termination of a pregnancy,'' or ''the interruption of the normal course of pregnancy,'' there would be no penalty even assuming that a successful prosecution could be brought.

They have analyzed it a little differently than I did, but they come to the identical conclusion for the same reason. Again, it goes back to this sentence in their letter, ''However, in the substitute, the injury or death provision has no object because the only victim under the substitute is the woman herself.''

That is the problem. That is what we have.

Members who come to the Senate and vote on this Feinstein amendment, which is the key vote, need to understand three things: One, abortion has nothing to do with this debate. We have covered that in the language of the bill. But more important is the precedent in the States has already been set. States have bills like this. They have not interrupted people's rights under the Supreme Court in regard to Roe v. Wade and all the other court decisions. It has not interrupted rights having to do with abortion. It has nothing to do with abortion. That is No. 1.

No. 2, the Feinstein amendment fails to recognize what everybody in this country knows: When a woman is attacked, there are two victims.

And No. 3, the thing to remember is the Feinstein amendment carries no penalty. So we will be saying if the Feinstein amendment is passed, we are turning our backs on these victims. We are turning our backs on the unborn, these kids who are, in fact, injured or killed.

I yield the floor.

Mr. TALENT addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DEWINE. Madam President, I yield to my colleague.

Mr. TALENT. Two or three minutes?

Mr. DEWINE. Yes.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Madam President, I very much appreciate the Senator yielding and also the courtesy of the Senator from South Carolina who, I know, was expecting to go next. For that reason, I am going to be very brief.

I want to say a few words about what I understand us to be doing today and the importance of it. As I understand it, what we are doing today is conforming Federal law to the common understanding of people around the country, and certainly in the heartland where Missouri is and, indeed, the practice of most of the States.

If a man takes a woman across State lines—let's say she is his girlfriend, and she has gotten pregnant, and he does not like that fact—and he assaults her, hits her in the stomach or something, with the intention of getting rid of the baby, and his act of violence has the intended effect and the baby dies, what we are saying is he has claimed

two victims. He has hurt mom, or maybe done worse to her, and he has killed the baby, which is what his intention was to do.

I think all of us recognize the seriousness of that kind of offense and acknowledge that an offense like that against a pregnant woman, and directed at the baby, is more serious because of the status of pregnancy and because of the existence of that child than it would otherwise be.

So far I think we are agreed. My friend, the Senator from California, wants to call that second offense the ''interruption'' of a pregnancy rather than the claiming of the life of a child.

I appeal to the Senate, and to the country, through the Chair, and ask what our understanding is, what our instinctual reaction is to that kind of a crime.

When a woman loses a child in that kind of instance, she has not lost a pregnancy, she has lost a child.

Earlier in our marriage, my wife had several miscarriages. She did not think of it as losing a pregnancy. She lost children. That is why people have memorial services sometimes—often—in cases like that. That is why they go through a grieving process. That is why they may get counseling.

I do not see why, with the greatest respect to the substitute amendment and to the Senator from California, why we cannot conform Federal law to that common understanding. I think we should.

I understand the sensitivity on the issue of abortion. I really do. I think the Senator from Ohio and the Senator from South Carolina have tried to structure this bill to avoid those sensitivities. It is hard to do.

But just because—for overriding reasons of public policy that some here adhere to very strongly—we cannot recognize the status of this child when mom, for reasons that she thinks are justified, believes she must end the pregnancy, it seems to me, it does not mean we cannot accord the child the dignity of the status of a human being when the child has been the victim of a vicious act of violence against both mom and the child.

I thank my friend again for allowing me to intervene for a moment. I yield the floor.

Mr. DEWINE. Madam President, I yield to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Madam President, I thank the Senator for yielding. I may take a few minutes, I say to the Senator from Kansas, to explain my relationship to this bill and why I am here today.

No. 1, I want to thank the leadership for allowing the bill to come to the floor. Senator FRIST and Senator MCCONNELL and our leadership team has worked hard with Senator DASCHLE to get an agreement so we could come to the floor and debate what I think is an important issue, and to allow Senator FEINSTEIN to have her say about how we should craft this bill.

In July 1999, this bill was first introduced in the House. I was the author of the bill. Before I came to Congress, I spent some time in the Air Force. Senator DEWINE has taken the cause up in the Senate since it was first introduced. I really appreciate all that Mike has done. He has been very sympathetic to what we are trying to do. He was leading the charge in the Senate as this bill was being debated and voted on in the House.

But prior to getting into politics, from 1982 to 1988, I served as a prosecutor and a defense attorney in the U.S. Air Force domestically and overseas. During that experience, I realized at the Federal level there was a gap in law.

We had a case involving a pregnant woman who was beaten up, and her child was lost, and she was almost killed. I looked into the idea of charging the offender with the damage done to the unborn child, and under the Uniform Code of Military Justice there was no way to do that. So I was sensitive to it from a prosecutor's point of view early on in my legal career.

When I got to Congress, there was an effort in some States to create unborn victims statutes, and I associated myself with that effort federally. A lot of pro-life people came over and were very supportive of what we are doing. That is true. Pro-life people generally like the idea of protecting unborn children whenever they can.

Pro-choice people are very sensitive to the fact that a woman should decide what to do with her body in an intimate situation like a pregnancy. I understand that debate clearly.

I am a pro-life person, so I have biased there. But having said that, there are pro-life people who hate this bill. It surprised me, but it is true, because in the bill, we wrote it in a way that abortion is not covered at all. As a matter of fact, we preserve, under the current law—under this bill—the right to have a legal abortion, and you cannot prosecute the mother under any circumstances.

There are cases out there where mothers are being prosecuted who abuse drugs and alcohol and do damage to their children. What I wanted to do was to focus on what I thought we all could agree on, to a large extent. The law in abortion and the politics of abortion really do not play well here because we are talking about criminal activity of a third party. I do not know why you would want to give a criminal any more breaks than you had to if they go around beating on pregnant women.

And people say: Well, don't they have to know if the woman is pregnant? No. Why? The law is really common sense. If you attack a woman of childbearing years, you do so at your own peril. If you push somebody, you do not know if they have a severe medical condition. You are liable for the consequences of your actions.

There are plenty of cases that say, if you attack a woman of childbearing years, you do not have to have actual knowledge. You are responsible for the consequences of your illegal act.

In a poll, when people were asked, if a violent, physical attack on a pregnant woman leads to the death of her unborn child, do you think prosecutors should be able to charge the attacker with murder for killing the fetus, 79 percent said yes; 69 percent of pro-choice people, in that poll, said yes.

Why would a pro-choice person support this legislation? It passed three times in the House. The first time we had it up for a vote was September 30, 1999, I believe. Madam President, 254 folks voted for the bill in the House, as I recall. I assure everyone listening to my voice today, there are not 254 pro-life people in the House. Madam President, 52 Democrats have voted for this bill.

The parties tend to split on the issue of abortion, with the Democratic Party being more pro-choice and the Republican Party being more pro-life. But we had Democratic support, and we had pro-choice people supporting this idea that when it comes to criminal activity, we are going to define the unborn in terms that make it hard on the criminal—not hard on the mother.

You can never prosecute a woman for anything she does to her child, no matter how much you would like to, under this bill. I did not want to get into that debate. You can never ever prosecute anybody for receiving medical treatment related to their pregnancy or lawful abortion.

For over 30 years, in the State of California, two things have coexisted: the Roe v. Wade rights of a woman and a statute that will allow you to do what is happening in California today—prosecute a person for doing damage to the mother and the unborn child, such as the Laci Peterson case.

This has been a long journey. This July will be the fifth anniversary of the time that I introduced this bill. Back in 1999, I remember saying on the floor of the House there will be a case where a pregnant woman is brutalized and she loses her child and it will be front-page news.

The reason I said that then is, having been a prosecutor and a defense attorney, I understand the following: There are a lot of good people in this world, but there are some mean people, too. This happens more than you would ever want to believe. The No. 1 cause of death among pregnant women in the District of Columbia is murder. As much as we would like to believe otherwise, pregnant women have things come their way because of their pregnancy that shocks the conscience.

In Arkansas, there are three people sitting on death row today because they were hired by the boyfriend, who didn't want to pay child support, to kidnap his girlfriend, who wanted to

have the child, took her off to a remote area and beat her within an inch of her life with the express purpose of killing the child. And when she was on the floor, she begged for two things: Her own life and her baby's life. Those people under Arkansas law were charged with two crimes, making them eligible for the death penalty. They deserve to be.

Under this bill, you cannot get the death penalty. The reason I chose not to include the death penalty is, I did not want to get into the death penalty debate because people of goodwill and good reasoning may disagree with the State imposing that punishment. The Senator from California cares as much about pregnant women as anybody here. This is not about who cares about women and who is trying to do this or that. Her amendment may not be written the way she would like. I would oppose it, if it was changed.

It happens in America more times than you would ever believe that pregnant women are the victim of violent assault and their children get killed or severely injured.

That concept can and does exist with the idea that a woman, early on in the pregnancy, can choose whether to carry that child. These are two concepts the law recognizes that exist side by side.

Why do 84 percent of the people believe a criminal should be prosecuted twice, not once? Because it really does violate common decency. If a woman chooses to have a baby and she loses her baby because of a violent act, most of us, a large percentage of us, want to whack the person who did it as hard as we can. And we don't want to get into the debate about abortion. We want to make sure the prosecutor has the tools to bring about the most severe and just verdict possible.

This bill excludes abortion. It excludes the death penalty for political reasons and legal reasons. Pro-life people have criticized me because in this bill, in their opinion, I am legalizing abortion. This bill doesn't legalize abortion. This bill doesn't ban abortion. This bill says: If you are a criminal and you attack a pregnant woman and you hurt her kid, you will get the full force of the law.

What is going on in California? In 1999, when I said there will be a woman out there who suffers brutally and loses her child and we will all know about it because it will be front page news, I never dreamed it would happen so quickly. I never dreamed it would be so vicious. The authorities investigating the Laci Peterson crime have two pieces of evidence to offer the jury: The decomposed body of the mother and the decomposed unborn child late in the pregnancy. It is important the jury know about both. It is important the criminal be held accountable for both. We will debate abortion another day.

Sixteen States define life under the same legal terms I chose when we wrote this bill. That is as to the criminal world, if the pregnancy comes to an end and the unborn child's right to develop comes to an end because of third-party criminal activity, we are going to hold you legally responsible at the earliest onset of pregnancy. The Roe v. Wade standard makes no sense. Why give a criminal a benefit of the legitimate debate of abortion?

Thirteen States define it in stages. California, I think by law, defines the unborn victim statute at the sixth week of pregnancy. Some States, one or two, have the term ''viability.'' There is a sliding scale. But the dominant way to define this in State law is the way we have chosen to define it in this bill. This chart illustrates how the States break out.

There is another situation I would ask you to think about. Let's say there is a woman on death row. She is pregnant for whatever reason. How many people would let the execution go forward knowing the woman is pregnant? Think about that. What good would it do to allow the execution to go forward if you knew the woman was pregnant? Would you wait?

Here is what I suggest to you, if any State or the Federal Government decided to impose the death penalty on a woman who was pregnant during any stage of the pregnancy, there would be a riot in the street—among pro-choice people, too, because what good would it do at any stage of the pregnancy to have the State kill the kid? You are not enhancing Roe v. Wade. You are not advancing the abortion debate. You are doing something you don't need to do.

The definition that was used in the Innocent Child Protection Act of 2000, which I was involved in drafting, is the same definition that is in this bill about the unborn child. It passed 417 to nothing. To me, that makes perfect sense. Four hundred seventeen pro-life people do not exist in the House of Representatives. But when faced with the question, should the State wait if a woman is pregnant, even at the earliest stages of pregnancy, 417 people said yes.

The reason I mention this to you is, when it comes time to prosecute people who unlawfully attack a woman at the earliest stage of pregnancy, why should they get a pass? What good have you done? It does not change the abortion debate. Roe v. Wade rights still exist. All you have done is allow someone to interrupt another person's life, take something of value, and they get a pass because you are mixing concepts that don't need to be mixed. That is why over 50 pro-choice people voted for this bill in the House.

That is why if we ever get to final passage, we are going to have a bipartisan coming together of pro-life and pro-choice people to say one thing loud and clear: If you attack a woman of childbearing years where Federal law applies, you do so at your peril, and you are going to suffer the full consequences of your action. And the full consequences of that action could be the loss of the child and the loss of the mother or a combination thereof.

Why not sentence enhancement? I think there is a reason under the law that no State has gone down this road. Sentence enhancement would say the following: You get a stiffer penalty if the woman is pregnant, but you don't talk about the consequences in terms of the victim's life. That is an artificial distinction that I think denies justice.

This was a statement by Kent Willis, executive director of ACLU, and I disagree with this statement:

> That baby was not a murder victim.

He was talking about the Laci Peterson case, the son Connor. I think Connor was a murder victim. The point I guess I am trying to make is that when people talk about what happens to them, the law, wherever it can, should address the full range of what really happened to them.

There is another case you don't know about because it didn't get nearly the publicity, but it is just as real. It is a good example of why we need this statute.

Michael Lenz and his wife were expecting their first child. She worked in the Federal Building in Oklahoma City. She was in the midstages of her pregnancy. She went to work early the day of the bombing to show an ultrasound to her colleagues of their baby. That was going on at the moment the bomb goes off. She was killed. Michael Lenz III was killed. They had already named their little baby boy.

The father came before my committee when I was in the House to testify for this bill. He said: I am no expert on abortion, but here is what happened to my family. My wife was killed, and at the same moment I lost my son, Michael Lenz III.

The reason they lost their son is not because of Roe v. Wade rights; it was because of a third party crazy man, a criminal, who destroyed many lives that day. When you look at the victims of the Oklahoma City bombing case, when it came time in Federal court, you don't find a place for Michael Lenz III. If this bill had been law, there would have been 22 people, not 21 people, that would have been before the court. I cannot say it any better than that.

In terms of Michael Lenz and all the other victims who testified in support of this legislation, sentence enhancement doesn't speak to what happened to them. From a prosecutor's point of view, it makes all the difference in the world to have two charges facing the accused versus one. It gives you more leverage than you could ever dream of. Ladies and gentlemen, in cases like this, it is the right thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Madam President, I yield as much time as she requires to the Senator from California, Mrs. BOXER. She was here a moment ago.

Mr. DEWINE. Madam President, I inquire of the Chair, how much time does each side have remaining?

The PRESIDING OFFICER. The Senator from Ohio has 58 minutes. The Senator from California has 62 minutes.

Mr. DEWINE. Sixty-two?

The PRESIDING OFFICER. Right.

Mr. DEWINE. Thank you. Madam President, I yield to the Senator from Pennsylvania 5 minutes.

Mr. SANTORUM. Madam President, I thank the Senator from Ohio. If Senator FEINSTEIN's speaker arrives, I will be happy to abbreviate my remarks to accommodate the other side of the aisle.

I wanted to congratulate Senator DEWINE and Senator GRAHAM, who have really worked hard not just on this legislation, but getting this legislation to a point where we can have an up-or-down vote, have a vote on the amendments, and let the Senate work its will. That is one of the things we have not seen done in recent weeks. We have had an opportunity here on a very important issue to have the Senate's will be done. I also congratulate Senator FRIST and Senator MCCONNELL and the Democratic leaders for allowing us to debate this issue. This is an important debate.

I think Senator GRAHAM, who I had the privilege of listening to for a few moments, summarized it very well. The issue is, how many victims are there? Do we recognize the loss of a child in the womb, a child who is anticipated, is wanted, and whose life is very real to the mother and father and the family? When that life is taken away by a third party, do we recognize that child's existence in the law?

I don't think anyone would doubt that when a woman who has a child in the womb is attacked and injury comes to that child, another person is affected. If the child dies, that child is affected. There is something that goes on to another human being. The issue here is whether we are going to recognize that in the law. I agree with the Senator from South Carolina that it has nothing to do with abortion. It is specifically excluded from this legislation. So why do all of the abortion rights activists have a problem with this legislation?

It comes down to the very issue, do we recognize the humanity of a child in womb? How far would we go to protect this right to an abortion? Do we go so far as to even deny the existence of a child who is not subject to abortion? How far do we go to protect this right, the supreme right above all, the right to an abortion, a right that can have no restriction on it? In fact, it cannot even have a restriction that is not at all applicable to it. So, in other words, we cannot even talk about this, or some way, through some logic, attack the issue. We have to deny under every circumstance that the child in the womb is a human life. That is what this is about.

This is all about denying the humanity of the child. We just cannot contemplate that in our laws. We cannot have any admission anywhere in law that says what is inside the woman's womb is a child—when, of course, we all know that is exactly what it is. But we cannot express that legally. If we do, somehow or another, this right to abortion may be threatened down the road. Who cares about what harm we may bring? Who cares about what harm we may bring to a mother whose child is injured or what harm we may bring to the family who may lose or have an injury to a child in womb? Who cares that we cannot bring somebody who has done violence to a child in the womb to justice? All of those things are worth ignoring to protect this right that is not even at stake today.

This issue, as I have said many times, is a cancer. I thought at first it was a cancer that ate away at us in how we view the relationship between the mother and the child, but it is worse. It is a cancer that reaches in and infects even areas that have nothing to do with abortion.

We need to let common sense reign in the Senate today. The common sense is, this is a child who is loved and wanted by the mother. This is a child who, in many cases, has been given a name, such as Conner Peterson, and this is a child who deserves the dignity of recognition by our society.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. SANTORUM. Madam President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DEWINE. I yield to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I appreciate my colleague from California permitting me to go before her.

I rise today to urge my colleagues to vote in favor of the Unborn Victims of Violence Act. The importance of this issue has been made tragically clear by the grisly murders of Laci Peterson and her unborn son Conner. I met with her mother again yesterday and was very impressed with her and how she is handling this situation.

This bill will ensure Federal law appropriately protects unborn children from assault and murder. It has passed the House of Representatives by a strong bipartisan vote of 254 to 163. I believe the Senate should give similar overwhelming approval.

Before I begin the substance of my remarks, I commend Senators DEWINE and LINDSEY GRAHAM for their longstanding and essential leadership on this most important issue and for drafting the legislation that is before us today. This issue has already been addressed in many States across the country. In fact, in my home State of Utah, if a criminal assaults or kills a woman who is pregnant and thereby causes death or injury to the unborn child, the criminal faces the possibility of being prosecuted for having taken or injured that unborn life. Twenty-eight additional States have similar laws on the books. Sixteen of those States recognize the unborn child as a victim throughout the entire period of prenatal development. This is only proper and, it seems to me, only just.

However, there is a gap in the law under existing Federal criminal statutes. Current Federal law provides for no additional criminal penalty when a criminal assaults or kills a woman who is pregnant and thereby causes death or injury to that unborn child. It is time Congress eliminates this unjustified gap in the law.

This bill bridges this existing gap, and it does so in a way that protects the rights of the States. It creates a separate Federal offense to kill or injure an unborn child during the commission of certain already defined Federal crimes committed against the unborn child's mother.

Importantly, because this bill only applies to Federal crimes, it does not usurp jurisdiction over State law. If someone commits a crime that violates State law, but does not violate any Federal law, then State law will prevail, regardless of whether that State has laws that protect unborn victims of violence.

I cannot imagine why anyone would oppose this bill.

Some have mistakenly characterized this bill as anti-abortion. It is not, and I am not saying that because I am prolife.

Let me take this opportunity to clarify a remark I made on May 7 of last year. I am quoted as saying the bill undermines abortion rights, but that this effect is irrelevant. The point I was trying to make, and I guess I did not make it well and it has been quoted out of context many times, is there is no conflict between the bill language and Roe v. Wade. Some are prepared to bring the abortion issue into anything, any time, for any reason, even when it does not fit, such as in this case.

I do not believe this bill in any way undermines abortion rights. It certainly does not.

The bill explicitly says the Federal Government cannot prosecute a pregnant woman for having an abortion. In fact, the bill goes even further. The bill does not permit prosecution against any woman with respect to her unborn child regardless of whether the mother acted legally or illegally. If a woman chooses not to have her baby, the bill says she can have an abortion without Federal prosecution. That is how far the authors of this bill have gone. But importantly, for those women who have chosen to keep their baby, this bill says no coldblooded murderer can take that choice away from her by killing her baby and going unpunished.

Those who oppose this bill are, in effect, saying the murderer, not the mother, has the choice to take the baby away from his or her mother

against the mother's will and against the individual's will. Since the murderer will not be punished for this terrible offense, it exonerates his or her actions. That is simply not right.

I understand my dear friend Senator FEINSTEIN says this bill somehow threatens stem cell research. It does no such thing. I have been a supporter of embryonic stem cell research, and everyone in this body knows it and I guess most scientists throughout the world know that. I have been proud to stand shoulder to shoulder with Senator FEINSTEIN, Senator SPECTER, Senator KENNEDY, and Senator HARKIN on stem cell research. I believe we are right on that issue. But this bill in no way impedes stem cell research. This bill is about stopping and punishing heinous crimes.

Why would I support Laci and Conner's law if it jeopardized that research? The words ''stem cell research'' are nowhere in the bill. This is a criminal law, not an abortion law.

As I have said on many occasions, it is my view life begins in a mother's womb. What this bill does is penalize those who act to viciously end that life in the womb or any life in the womb.

Senator FEINSTEIN, the distinguished Senator from California, suggested this bill somehow may result in assigning legal status to the term ''embryo.'' But I cannot find the term ''embryo'' anywhere in the bill. Nor for that matter can I find the term ''embryo'' in the amendment put forth by the distinguished Senator from California, Mrs. FEINSTEIN.

In short, this bill does not affect abortion, embryos, or, for that matter, stem cell research. There is no legislative intent here to prosecute researchers working on stem cell research—none whatsoever.

I have the utmost respect for my dear friend from California, and she knows that. We have worked together on many issues during her 12 years on the Judiciary Committee. I admire her and appreciate working with her on so many of these issues. I admire her judicious way in fighting for the issues in which she believes, even when we disagree. If her bill truly considered the same crime, I would give strong consideration to supporting it. But it does not. It tries to do it, but it does not.

The phrase ''interrupt a pregnancy'' is overly vague and will probably be struck down by the courts on that ground. Because of this vagueness, the courts may well interpret the Feinstein amendment as providing no additional penalty for a crime committed against a fetus.

Some will try to claim this weakens domestic violence laws by averting attention to the unborn. That is simply not true. I am a strong supporter of domestic violence laws and, along with Senator BIDEN, was the main writer of those bills. I believe domestic violence is an evil plague that needs to be stopped.

My commitment to this issue has been longstanding. As many of my colleagues are aware, I was an original cosponsor of the Violence Against Women Act over a decade ago, and I have tirelessly fought in countless venues to protect the rights of women. This bill furthers that cause.

For many years, I have worked hard on the issue of domestic violence and violence against women, and when I stand here today before the entire Senate and offer my support for a bill, I certainly make sure that bill does not diminish in any way our capacity to curb domestic violence and protect women.

The bill before us strengthens the rights of women and provides those who fight against domestic violence with another tool in their arsenal to go after abusers. This bill focuses attention on both a pregnant woman and her child. Before the Government could prosecute someone for hurting the unborn child, it would first need to prove the pregnant woman was hurt. In other words, the Government needs to prove 1 of 68 enumerated predicate Federal crimes against the mother before it could obtain a conviction under this provision of this bill.

Moreover, this provision empowers abused women because it gives the Government a greater arsenal of prosecutorial tools to put the abusive spouse behind bars for a longer period of time. Many today will talk about the Peterson case. Suffice it to say that the public reaction to that case underscores the widespread support for the changes that we are making with H.R. 1997.

A news poll taken last April consisting of an almost even split of pro-life and pro-choice individuals indicated that 84 percent—let me repeat that, 84 percent—believed that Scott Peterson, who is currently on trial for the murder of his wife, should be charged with two counts of homicide for murdering his wife and unborn son.

California law permits criminals to be charged with murder for killing an unborn child when that child has developed past the embryonic stage. The tragic murder of an innocent unborn child is so shocking and so disturbing that regardless of any stance on abortion, the vast majority of all Americans strongly believe an unborn life taken in murder should result in murder charges brought against the perpetrator.

It is only fair and just to ask for our Federal judicial system to incorporate this strong desire of the vast majority of the American people on this issue.

I urge my colleagues to vote for H.R. 1997. I urge my colleagues to vote against amendments to H.R. 1997. Do it for Laci and Conner Peterson and for thousands of others in similar situations who have been abused. Do it for all women who have chosen to have their baby and are having that choice taken away from them by a cold-blooded murderer. Most of all, do it because it is the right thing to do.

I yield the floor.

The PRESIDING OFFICER (Mr. TALENT). The Senator from California.

Mrs. BOXER. Mr. President, I thank the Senator from Utah because he promised me he would keep within the 15 minutes so that I could get the floor at this time, and I appreciate his cooperation.

I also thank my colleague, the senior Senator from California, Mrs. FEINSTEIN, for her great leadership on this issue. I also have to express a little bit of dismay that she was not able to modify her amendment. It kind of gives one a clue that the people on the other side have a different agenda when they say they are not going to allow a colleague they respect and admire to send a modification to the desk.

So I thought I would want to place that on the record because we remember. These things we will remember because it is not right to not allow a colleague to modify an amendment that she has written. So the next time the other side wants to do it, we will have to think a bit. It is just sad. It is not the way the Senate should work.

Senator FEINSTEIN has yielded me 10 minutes of her time, so if the Chair would tell me when I have used 9 minutes, I would appreciate it.

The PRESIDING OFFICER. The Chair will so notify the Senator.

Mrs. BOXER. I am very much in favor of enhanced penalties for those offenders, those criminals, who harm pregnant women. I think Senator FEINSTEIN's substitute amendment is one that does exactly that. What I do not support are the efforts of some Members of this body who clearly are the leaders of the anti-choice movement in the Senate. We have heard from them seriatim. They have just come right down and spoken. I do not support what they are trying to do, which is to undermine pro-choice laws, particularly Roe v. Wade.

Now, one can dress up a bill to make it look like anything one wants, but the so-called Unborn Victims of Violence Act, although they try to dress it up as a criminal statute designed to deter violence, I think has tremendous weakness in the way it is written and in the way it would prosecute a violent criminal who harms a pregnant woman. It is another effort to undermine Roe v. Wade, which as we know, has given women in this country the right to choose, and it is a very important right of privacy.

How do I know this is the supporters' motivation? It is easy for me because if they wanted to create a law that says we believe that a pregnant woman should be protected and we want to punish someone who harms a pregnant woman, it is a pretty easy thing to just support Senator FEINSTEIN's amendment. It is clean; it is clear; she doubles the penalties just as they do in their bill. She avoids the issue, however, of a woman's right to choose, which this is not about. There is nothing about that in this bill.

The substitute that Senator FEINSTEIN has offered to us, which is like

H.R. 1997, creates a separate offense when someone harms a pregnancy or terminates a pregnancy while in the commission of a violent Federal crime. That is very important to do because these crimes are heinous and all the more heinous if a woman is pregnant. As the author of the Violence Against Women Act in the House and working with Senator BIDEN for 10 years to get it through the Senate and the House and get it signed into law, Senator FEINSTEIN's bill is in tune with that point that we will not stand by and allow violence against women. Particularly if a woman is pregnant, it makes the crime more vicious and it doubles the penalty for such a crime. It creates the same separate penalty for this separate crime, a maximum of 20 years for harm and a maximum of life in the event a pregnancy is terminated. It does not require proof that the offender had knowledge of the woman's pregnancy.

The sole difference between the substitute that Senator FEINSTEIN is offering and the Unborn Victims of Violence Act is that they want to bring in the issue of a woman's right to choose, and they want to make this bill about a woman's right to choose.

What on Earth does this have to do with a woman's right to choose? Nothing, not a thing. Senator FEINSTEIN's substitute focuses on the pregnant woman. That is the issue, the pregnant woman. So one wonders why the other side cannot accept it. The answer is simple. Again, they are trying to make this about abortion, not about convicting a criminal.

I want to correct something. When I referenced the House bill, I meant to reference the Zoe Lofgren bill—and I am not sure of that number—not the House bill that is identical to Senator DEWINE's bill. ZOE LOFGREN in the House had a similar bill to Senator FEINSTEIN's bill. That bill got a lot of support but not enough support.

Again, it is very simple why people over there who are anti-choice did not support the Lofgren bill, and they do not support the Feinstein bill, because they want to make this about abortion and they want to undermine Roe v. Wade and a woman's right to choose.

I am a little bit shocked because the experts who have written to us have told us that the bill that the anti-choice Senators are supporting would make it harder to convict a criminal.

For example, Peter Rubin, visiting associate professor at Georgetown Law Center, when he testified before the House Judiciary Committee, said:

> The phrase ''child in utero'' is ambiguous and would actually aid an offender in avoiding prosecution.

Imagine. It seems to me the other side is so anxious to undermine Roe and to confuse the subject and to make this bill about abortion, they are willing to pass an ambiguous bill which would actually aid the offender, the criminal, and would actually allow some heinous criminal to go free.

I ask unanimous consent that Peter Rubin's letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GEORGETOWN UNIVERSITY
LAW CENTER,
Washington, DC, July 21, 1999.

Re H.R. 2436, The Proposed ''Unborn Victims of Violence Act of 1999''—written testimony of Peter J. Rubin, Visiting Associate Professor of Law, Georgetown University Law Center, before the Subcommittee on the Constitution of the House Committee on the Judiciary.

I have been asked by this subcommittee to review and comment upon H.R. 2436, which would create a separate federal criminal offense where criminal conduct prohibited under a list of over sixty federal statutes, in the words of the proposed law ''causes the death of, or bodily injury . . . to a child, who is in utero.'' I am honored to have the opportunity to convey my views to the subcommittee.

Where an act of violence against a pregnant woman results in a miscarriage, that act of violence has wrought a distinct and unique harm in addition to the harm it would have done had the woman not been pregnant. Similarly, injury to a baby that may result from unlawful violence perpetrated upon its mother when it was a fetus in utero is something from which government may properly seek to protect the woman and the child.

Consequently, although many states adhere to the traditional rule that the criminal law reaches only conduct against a person already born alive, some states have enacted laws that penalize conduct that may kill or, in some cases, injure, a fetus in utero. One example is North Carolina's state statute which provides that ''A person who in the commission of a felony causes injury to a woman, knowing the woman to be pregnant, which injury results in a miscarriage or stillbirth by the woman is guilty of a felony that is one class higher than the felony committed.'' (N.C. Gen. State. §14–18.2.)

If the members of Congress conclude that causing injury in this way during the commission of a federal crime warrants additional punishment, it, too, could adopt such a provision. Indeed, it seems as though this is one area on which both sides of the debate about abortion might be able to find common ground in supporting a properly worded statute that might give additional protection to women and their families from this unique class of injury.

As currently drafted, however, the proposed statute differs from some state laws on this issue in two critical respects. First is its use of the phrase ''child, who is in utero'' to describe the fetus. This is not the ordinary way statutes refer to fetuses in utero. Indeed, the proposed law appears to be unique in its use of this formulation. The use of this language will likely subject H.R. 2436 to legal challenge, and will likely render the proposed law ineffective in preventing and punishing acts that harm or kill fetuses being carried by pregnant women.

Second is the bill's treatment of the fetus solely as a separate victim of certain federal crimes. This approach is different from that taken by some states that have enacted criminal laws addressing fetal injury or death in that it fails to focus at all on the woman who is the victim of the violence that may injure or kill the fetus. It would be far easier to reach common ground with an approach that takes account of the place of the pregnant woman when acts of violence against her lead to fetal injury or death. Indeed, the approach taken by the current statute may lead to some unintended results, and is not consistent with the treatment of the fetus in the American legal tradition.

To begin with, the proposed law refers to ''a child, who is in utero at the time the conduct takes place.'' Because it uses these words, the proposed law would likely result more in useless litigation about the statute's meaning than in the prevention and punishment of conduct that results in fetal injury or death. Its use of the phrase ''child, who is in utero'' may give a defendant an argument that the statute is ambiguous, and that he lacked the notice of what acts are criminal that is required by the Due Process Clause of the Fifth Amendment. Does it mean the statute applies only to the injury or death of a ''child,'' that is one who is subsequently born, but who was injured in utero? Does it refer to a fetus past the point of viability? Does it refer to a single-cell fertilized ova that has not yet implanted in the uterine wall? The statute does not tell us.

Even if the law is not held inapplicable because of unconstitutional vagueness, the Supreme Court has articulated a doctrine known as the doctrine of ''lenity.'' Rooted in part in separation of powers concerns, this doctrine means that an ambiguous federal criminal statute must be construed in the way most favorable to the defendant, lest an individual be criminally punished for conduct that Congress did not intend to criminalize. At best, the phrase ''child, who is in utero'' is ambiguous here, and a defendant is likely to be able to avoid prosecution for whatever conduct it is that the drafters of this law intend to criminalize.

In addition, this statute operates in a very unusual manner. It does not just increase the penalty for unlawful violence against a pregnant woman that results in the death of or injury to a fetus, nor does it criminalize injuring or killing a fetus if one has the requisite mental state and is aware of the woman's pregnancy. Rather it includes fetuses within the universe of persons who may be protected from injury or death resulting from violations of other federal criminal laws.

Many state laws address fetal injury and death only in certain circumstances, and, reflecting the unique nature of the developing fetus, many provide some penalty that is different from the penalty that would have applied had the defendant killed or injured a person who was already born. They tend also to take account of the fetus's stage of development. State feticide laws often do not treat even the intentional killing of a fetus through violence perpetrated upon the pregnant woman as murder equivalent to the murder of a person who has been born. Some, like North Carolina, enhance the penalty for the underlying criminal conduct. Others treat even intentional feticide only as manslaughter. Thus, in Mississippi, for example, the law provides that ''The wilful killing of an unborn quick child, by an injury to the mother of such child, which would be murder if it resulted in the death of the mother, shall be manslaughter.'' (Miss. Code. Ann. §97–3–37.)

The proposed law by contrast says that whenever causing death or injury to a person in violation of a listed law would subject an individual to a particular punishment, he shall be subject to the same punishment if he causes death or injury to a fetus. This is true regardless of the stage of fetal development. Whatever its rhetorical force, the proposed law would lead to some unusual, and probably unintended, results. To give just one example, under the Freedom of Access to Clinic Entrances Act (''FACE''), 18 U.S.C. §248,

one of the statues listed in H.R. 2436, if an individual who is engaged in obstructing access to an abortion clinic knocks a pregnant woman to the ground during a demonstration, he is liable to imprisonment for up to one year. If he causes her ''bodily injury'' when he knocks her down, he would be subject under FACE to a ten-year term of imprisonment. Under the proposed law, however, if she miscarried as a result of being knocked down, he would be subject to life imprisonment, the same as if his action had caused the death of the woman herself.

In addition to being far more practical, it would be fare easier to reach common ground on this issue with adoption of a statute similar to those state statutes, providing for enhanced punishments that I have described. For in addition to the practical consequences, the use of a statutory framework, that seeks to achieve its result through treating all fetuses at all stages of development as persons distinct from the women who carry them unnecessarily places federal statutory law on the path toward turning the pregnant women into the adversary rather than the protector of this fetus she carries. For although this law contains exceptions for abortion, for medical treatment of the woman or the fetus and for the woman's own conduct—exceptions that are both wise and constitutionally required—if the fetus were truly a ''person,'' there would be no principled reason to include such exceptions. Yet of course a law that did not contain them would be shocking to most Americans and both obviously and facially unconstitutional.

Finally, then, in failing to take account of the women, the proposed statute also sets federal law apart from the American legal and constitutional tradition with respect to the treatment of the fetus. As the Supreme Court has, described, ''the unborn have never been recognized in the law as persons in the whole sense.'' At common law, the destruction of a fetus in utero was not recognized as homicide unless the victim was born alive. And, of course, the Supreme Court has held that fetuses are not persons within the meaning of the Fourteenth Amendment. This is a position with which even as staunch an opponent of Roe v. Wade as Justice Antonin Scalia agrees.

In addition, therefore, to the practical and political considerations that counsel in favor of an alternative approach, the proposed law would also unnecessarily set federal statutory law on a conceptual collision course with the Supreme Court's abortion decisions. Whatever one may think of those decisions, an unnecessary conflict about them would not contribute to the important work of healing where possible the country's division over abortion.

Mrs. BOXER. Then you have Jon Jennings who in 1999 was the Acting Assistant Attorney General. He submitted a letter to Representative HENRY HYDE on behalf of the Justice Department. He also wrote the law would be hard to prosecute because of the difficulty in gathering evidence.

I ask unanimous consent to have Jon Jennings' letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 9, 1999.

Hon. HENRY HYDE,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on H.R. 2436, the ''Unborn Victims of Violence Act of 1999.''

Section 2 of H.R. 2436 would make it a separate federal offense to cause ''death or bodily injury'' to ''a child in utero'' in the course of committing any one of 68 enumerated federal crimes. The punishment for the new crime under H.R. 2436 is the same as if the harm had been inflicted upon the ''unborn child's mother,'' except that the death penalty is not permitted. Section 3 of H.R. 2436 would make substantively identical amendments to the Uniform Code of Military Justice.

The Justice Department strongly objects to H.R. 2436 as a matter of public policy and also believes that in specific circumstances, illustrated below, the bill may raise a constitutional concern. The Administration has made the fight against domestic violence and other violence against women a top priority. The Violence Against Women Act (VAWA), which passed with the bipartisan support of Congress in 1994, has been a critical turning point in our national effort to address domestic violence and sexual assault. VAWA, for the first time, created federal domestic violence offenses with strong penalties to hold violent offenders accountable. While most domestic violence crimes are appropriately prosecuted at the state and local level, the Department of Justice has brought 179 VAWA and VAWA-related federal indictments to date, and this number continues to grow. In addition, the Department of Justice alone has awarded well over $700 million through VAWA grant programs since 1994, directing critical resources to communities' efforts to respond to domestic violence and sexual assault. These funds have made a difference in women's lives, and in how communities respond to violence against women. Indeed, these funds have helped save the lives of many victims of domestic violence.

If the Committee wants to make a difference in the lives of women victims of violence, it should reauthorize the Violence Against Women Act. We hope that Congress will work with us on this common goal. H.R. 2436, however, is not an adequate response to violence against women. Our three main objections to H.R. 2436 are described below.

First, H.R. 2436 provides that the punishment for a violation shall be the same as the punishment that would have been imposed had the pregnant woman herself suffered the injury inflicted upon her fetus. The Department agrees that some additional punishment may be warranted for injury to pregnant women. H.R. 2436, however, would trigger a substantial increase in sentence as compared with the sentence that could otherwise be imposed for injury to a woman who is not pregnant.

Second, H.R. 2436 expressly provides that the defendant need not know or have reason to know that the victim is pregnant. The bill thus makes a potentially dramatic increase in penalty turn on an element for which liability is strict. As a consequence, for example, if a police officer uses a slight amount of excessive force to subdue a female suspect—without knowing or having any reason to believe that she was pregnant—and she later miscarries, the officer could be subject to mandatory life imprisonment without possibility of parole, even though the maximum sentence for such use of force on a non-pregnant woman would be 10 years. This approach is an unwarranted departure from the ordinary rule that punishment should correspond to culpability, as evinced by the defendant's mental state.

Third, H.R. 2436's identification of a fetus as a separate and distinct victim of crime is unprecedented as a matter of federal statute. Such an approach is unnecessary for legislation that would augment punishment of violence against pregnant women. Additionally, such an approach is unwise to the extent that it may be perceived as gratuitously plunging the federal government into one of the most—if not the most—difficult and complex issues of religious and scientific consideration and into the midst of a variety of State approaches to handling these issues.

Our policy concerns with H.R. 2436 are exacerbated by the likelihood that the bill will yield little practical benefit. Because the criminal conduct that would be addressed by H.R. 2436 is already the subject of federal law (since any assault on an ''unborn child'' cannot occur without an assault on the pregnant woman), H.R. 2436 would not provide for the prosecution of any additional criminals. At the same time, prosecutors proceeding under H.R. 2436 would be likely to encounter difficulty collecting evidence to support their prosecutions. For instance, the prosecutor would have to establish that the defendant's conduct ''cause[d]'' the injury—given the inherent risk of miscarriage and birth defects that occur absent any human intervention, causation may be very difficult to establish.

Finally and critically, the drafters of H.R. 2436 are careful to recognize that abortion-related conduct is constitutionally protected. The bill accordingly prohibits prosecution for conduct relating to a consensual abortion or an abortion where consent ''is implied by law in a medical emergency.'' Without this exception, the bill would be plainly unconstitutional. Including the exception does not, however, remove all doubt about the bill's constitutionality. The bill's exception for abortion-related conduct does not, on its face, encompass situations in which consent to an abortion may be implied by law (if, for example, the pregnant woman is incapacitated) even though there is no medical emergency. In this situation, the bill may unduly infringe on constitutionally protected conduct.

For these reasons, we strongly oppose H.R. 2436. The Administration, however, would work with Congress to develop alternative legislation that would strengthen punishment for intentional violence against women whom the perpetrator knows or should know is pregnant, strengthen the criminal provisions of VAWA, and reauthorize the grant programs established by this historic legislation.

Thank you for this opportunity to present our views. The Office of Management and Budget has advised us that from the standpoint of the Administration, there is no objection to submission of this letter. Please do not hesitate to call upon us if we may be of further assistance.

Sincerely,

JON P. JENNINGS,
Acting Assistant Attorney General.

Mrs. BOXER. Then there is a recent letter of George Fisher, a tenured professor at Stanford, former prosecutor and expert on the criminal justice system. He, too, believes it makes things worse in terms of convicting a criminal.

The PRESIDING OFFICER. The Senator has now used 9 minutes of time.

Mrs. BOXER. I ask unanimous consent for 2 more minutes from my colleague.

The PRESIDING OFFICER. Does the Senator from California yield an additional 2 minutes?

Mrs. FEINSTEIN. I yield as much time as she may require.

Mrs. BOXER. I thank my colleague.

I ask unanimous consent the letter from George Fisher be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STANFORD LAW SCHOOL,
Stanford, CA, July 10, 2003.

Senator DIANNE FEINSTEIN,
U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN, I wish to express my concern about the current formulation of S. 1019, the Unborn Victims of Violence Act of 2003. Although I fully endorse the Bill's ultimate aim of protecting pregnant women from the physical and psychological trauma of an endangered or lost pregnancy, I believe that the Bill's current formulation will frustrate rather than forward this goal.

I write both as a former persecutor and as a law professor specializing in criminal law and criminal prosecution. At the outset of my career, I served as an assistant district attorney in Middlesex County, Mass., and as an assistant attorney general in the Massachusetts Attorney General's office. I then went to Boston College Law School, where I administered and taught in the criminal prosecution clinic. I have been at Stanford since 1995 and a tenured professor of law since 1999; during the next academic year, I will serve as Academic Associate Dean. In 1996 I founded Stanford's criminal prosecution clinic and have administered and taught in the clinic ever sine. I have also created a course in prosecutorial ethics, which I taught at Boston College Law School and, as a visitor, at Harvard Law School.

My background and interest in criminal prosecution prompt me to raise three objections to this Bill. All of them focus on the Bill's use of the expressions ''child in utero'' and ''child, who is in utero,'' and on its definition of these terms as ''a member of the species homo sapiens, at any stage of development, who is carried in the womb.''

First: The Bill's apparent purpose of influencing the course of abortion politics will discourage prosecutions under any future Act.

I do not know what motives gave rise to the Bill's use of the expressions ''child in utero'' and ''child, who is in utero,'' but I do know that any vaguely savvy reader will conclude that these terms and the Bill's definition of them were intended by the Bill's authors to influence the course of abortion politics. It is a fair prediction that when a pro-life President is in office, prosecutions under this Bill will be more frequent than when a pro-choice President is in office. That is because the public will interpret this Bill as suggesting that abortion is a potentially criminal act and will interpret prosecutions under the Bill as endorsing this sentiment.

If the authors of the Bill truly seek to protect unborn life from criminal violence, they will better accomplish this purpose by avoiding such expressions as ''child in utero.'' Better alternatives would refer to injury or death to a fetus or damage to or termination of a pregnancy.

Second: The Bill's apparent purpose of influencing the course of abortion politics will motivate prosecutors to exclude those prospective jurors who otherwise would be most sympathetic to the prosecution's case.

If I were prosecuting a case under this Bill, I would hope to have a jury that includes persons deeply sensitive to the rights and interests of pregnant women. Such jurors would regard an attack on a pregnant woman as being a twofold crime, comprising both the injury directly inflicted on the mother and the stark emotional and physical trauma resulting from injury to or loss of her pregnancy.

But such jurors also will be more likely than others to believe that pregnant women have the right to exercise autonomy over their bodies and to choose whether to abort a pregnancy. I predict that many or most judges will bar prosecutors and defense counsel from questioning prospective jurors about their views on abortion or about related matters such as their religion, religious practices, or political affiliations. Forced to act largely on instinct, prosecutors may be inclined to exercise peremptory challenges against those prospective jurors who appear to be most sympathetic to the rights of pregnant women. This result clearly would frustrate the Bill's stated purpose of protecting unborn life from criminal violence.

Third: The Bill's apparent purpose of influencing the course of abortion politics offends the integrity of the criminal law.

To anyone who cares deeply about the integrity of the criminal law, this Bill's apparent attempt to insert an abortion broadside into the criminal code is greatly offensive. The power to inflict criminal penalties is, second only to the power to wage war, the highest trust invested in our institutions of government. Because the power to make and enforce criminal laws inherently carries enormous potential for abuse, those who exercise that power must always do so with a spirit free of any ulterior political motive. The American Bar Association's Standards Relating to the Administration of Criminal Justice provide that ''[i]n making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved. . . .'' (Standard 3–3.9(d).) Not all prosecutors conduct themselves with fidelity to this principle, but we may readily condemn those who do not. We may likewise condemn other public actors who abuse the sacred public trust of the criminal sanction for political ends.

For these reasons, I object to the current formulation of the Unborn Victims of Violence Bill. As I am confident that an alternative version of the Bill can fully accomplish its stated purpose of protecting unborn life from criminal violence while avoiding each of the difficulties I have outlined above, I strongly encourage the Senate to modify the Bill in the ways I have suggested above or in some other manner that avoids the freighted and frankly politicized terms, ''child in utero'' and ''child, who is in utero.''

My thanks to you for your consideration of my views.

Sincerely,

GEORGE FISHER,
Professor of Law.

Mrs. BOXER. Mr. President, according to the experts, creating a separate offense for a child in utero would make it less likely that someone who harms or terminates a pregnancy would be convicted of a separate offense. So I find it stunning that, rather than back Senator FEINSTEIN's substitute, which is very clear—you harm a pregnant woman, you are going to do double the time, you are going to get double the punishment, and it avoids all question of Roe v. Wade—it shocks me my colleagues on the other side would rather have a weaker bill, soft on the criminal, soft on crime, in order to undermine Roe v. Wade. It is an injection of a political agenda into the criminal justice system which I think harms the integrity of the system.

Again, I am at a loss for words. That is hard for me to believe. But if you look at domestic violence groups, they will tell you how they feel about it. They say they don't support the legislation. They feel it would actually be harmful to battered women.

Again, as someone who coauthored the Violence Against Women Act with Senator BIDEN, here we have a piece of legislation that is going to be harmful to battered women. Yet the other side will not support Senator FEINSTEIN's amendment, which absolutely avoids this problem.

Juley Fulcher, public policy director of the National Coalition Against Domestic Violence, who testified before the House subcommittee in July 2003, said in her written statement:

> The bill is not designed to protect women and does not help victims of domestic violence. Instead, the focus often will be shifted to the impact of the crime on the unborn embryo or fetus, once again diverting the attention of the legal system away from domestic violence or other forms of violence against women.

I commend to my colleagues the July 8, 2003 testimony of Juley Fulcher before the Subcommittee on the Constitution of the House Committee on the Judiciary.

We also have a letter from Lynn Rosenthal, the executive director of the National Network to End Domestic Violence, and the letter of Esta Soler, president of the Family Violence Prevention Fund. I ask unanimous consent to have them printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL NETWORK TO END
DOMESTIC VIOLENCE,
Washington, DC, February 18, 2004.

DEAR MEMBER OF CONGRESS: The National Network to End Domestic Violence (NNEDV), a social change organization representing state domestic violence coalitions, is dedicated to creating a social, political and economic environment where violence against women no longer exists. We are writing because we know that you will soon be considering the Unborn Victims of Violence Act (UVVA). We know that this is a difficult and emotional issue, and that you are carefully considering your position.

After very careful consideration and study on our part, we have concluded that the UVVA is not the appropriate remedy for addressing violence against pregnant women. We certainly share the concerns of the sponsors of the legislation about tragic crimes such as the murder of Laci Peterson and other pregnant women. We know that Congress is seeking tools and remedies to address such violence, and appreciate your ongoing support for the Violence Against Women Act. Our concerns about the UVVA are mainly focused on its potential impact on the safety and status of women who are victims of domestic violence.

Our first concern is that the legislation could potentially remove the focus on the women as the victim of violence. It would be possible under the UVVA that a violent crime specifically targeted at a woman could be prosecuted with the fetus presented as the primary victim. Yet, it is the violent act against the woman that is at the root of the devastating injuries to the women and the pregnancy. In our view, legislation and policy should be focused on recognizing violence against women as the serious crime it is, and need not rely on loss of a pregnancy to vigorously prosecute these crimes.

Our second concern is that while the UVVA on its face seems to protect women from prosecution of the violence causes her to lose the pregnancy, it may lead to a slippery slope that erodes women's rights and holds them responsible for this loss. This slippery slope has already formed in South Carolina and California, two states with unborn victims legislation. For example, in Whitner v. State, the court found that South Carolina's child endangerment statute could be used to punish a pregnant woman who engaged in any behavior that might endanger her fetus.

Legislation regarding violence against women must be carefully considered in order to prevent unintended effects from hurting the very women it is supposed to help. Battered women cannot control the violence against them, and should not face the possibility of prosecution simply because they are victims of domestic violence. The landmark case of Nicholson v. Williams, decided in the Eastern District of New York, represents an enormous step in clarifying this position. The federal district court in Nicholson found that mothers' due process rights had been violated when their children were taken away from them merely because they were victims of abuse. That decision correctly puts the emphasis on the abused woman, and stands for the proposition that an abused woman should not be punished, or prosecuted, for occurrences beyond her control.

Because of our work with battered women, we do know that violence often occurs during pregnancy, and that pregnant women may be both physically and psychologically more vulnerable to such abuse. We believe that by supporting sentencing enhancements, Congress can advance both its goals of protecting victims of domestic violence and providing a legal sanction for loss of pregnancy as a result of battering. Sentencing enhancements appropriately punish the additional injuries that such acts cause without causing the unnecessary complications, and potentially dangerous consequences, for the women we serve.

There are also a number of other steps Congress can take to more effectively address the problem of violence against women. First, Congress can fully fund the Violence against Women Act. Unfortunately, the 2004 budget includes $16.1 million in cuts to the STOP grant program, which provides funding to states, tribes and territories to enhance the law enforcement response to domestic violence and sexual assault, improve prosecution and support victim services. These cuts will have a detrimental impact on communities all across the country that are struggling to maintain core interventions for victims. In addition, the Battered Women's Shelter and Services funding was also cut in 2004, and remains at $48 million below the authorized level. Funds to battered women's programs and rape crisis centers have also received cuts at the local and state level over the past several years. These losses are devastating to providers facing bruised and bleeding women every day. Congress can work to address the problem of violence against women by fully funding these lifesaving services.

Thank you for considering our perspective on the UVVA. While the bill is noble in its intentions, we are concerned that it may not fulfill its purpose of creating a legal atmosphere in which women feel protected from violence. Please feel free to call me if you need any additional information. We appreciate for your commitment to ending violence against women, and look forward to continuing to work with you to address this most urgent social problem.

Sincerely,

LYNN ROSENTHAL,
Executive Director.

END ABUSE,
Washington, DC, March 23, 2004.

Hon. JERROLD NADLER,
2334 RHOB,
Washington, DC.

DEAR REPRESENTATIVE NADLER: On behalf of the Family Violence Prevention Fund, I am writing to express concern about the Unborn Victims of Violence Act, H.R. 1997, passed by the House Judiciary Committee on January 21. We are deeply disappointed that some are promoting this bill as a way to end domestic violence, when better and more direct measures to stop family violence languish in Congress year after year. Members of Congress who want to stop abuse will put their energy into passing the prevention and intervention measures that offer great promise to stop violence before it starts.

The murder of Laci Peterson was an unspeakable tragedy, but many laws designed as quick fixes have caused great harm. For example, mandatory domestic violence health reporting laws deter women from seeking the medical help they need. We need to stop back and consider what actually works. Our goal must be to stop violence against all women, regardless of whether they are pregnant.

If Congress is serious about stopping domestic violence against pregnant women and helping women and children who are victims, Members will quickly pass the Domestic Violence Screening, Treatment and Prevention Act, H.R. 1267. This essential bill would train health care providers to routinely screen female patients for a lifetime history of abuse and give women access to critical domestic violence services when abuse is identified. Introduced in the House in March of 2003 by Representatives Lois Capps (D–CA) and Steven LaTourette (R–OH), this bill has the potential to prevent tragedies by helping victims before violence escalates.

We also urge Congress to fully fund all Violence Against Women Act programs and support legislation that would actually prevent domestic violence before it begins. Domestic violence prevention legislation should include services for children who are exposed to abuse, programs that support young families at risk of violence, and efforts to each young men and boys how to develop healthy, non-violent relationships. Such legislation would do much more to stem the tide of domestic violence than the Unborn Victims of Violence Act.

Finally, we wish to thank you for your continued leadership and support on this issue. As an advocate in Congress and as one of our Founding Fathers, you truly make a difference in the movement to end violence against women and children. If we can be of assistance, please do not hesitate to contact Kiersten Steward in our Washington, D.C. office at 202–682–1212.

Sincerely,

ESTA SOLER,
President, Family Violence Prevention Fund.

Mrs. BOXER. Here we have it. I am going to finish with this. We have a bill before us Senator FEINSTEIN has improved greatly. We have a bill before us that, instead of concentrating on punishing the violent criminal, concentrates instead on trying to set the stage to reverse Roe v. Wade, which the vast majority of people in this country think is a good law that balances the rights of the woman and the rights of the fetus. Yet they are so interested in doing this that they have a bill that is going to make it difficult to convict the criminal who commits the heinous crime against the pregnant woman. It shows you how far the other side will go.

When we reach out our hand, as we have done many times with them, they will not take our hand. They push it away, because they are much more interested in the political agenda of taking away a woman's right to choose.

My heart goes out to Laci Peterson's family and to all the other families that have experienced the tragedy of losing a loved one to a violent crime and, on top of that, losing the joy I and Senator FEINSTEIN have of having grandchildren.

But we need to pass laws here that will make matters better, not make matters worse. We need to pass laws here that are clean, that will make the law clear and not murky. I think Senator FEINSTEIN's substitute—she wrote it with the Laci Peterson family in her heart. She wants to make sure criminals who would attack a pregnant woman are brought to justice and we don't get diverted to some other issues.

I am proud to stand with my colleague on this one. I know how hard this is. I know how hard she has worked. I will support her substitute very proudly, knowing it is the right thing to do, to crack down against these heinous crimes and to protect pregnant women.

I thank her very much, and I yield the floor and reserve the remainder of Senator FEINSTEIN's time.

The PRESIDING OFFICER. Who yields time? The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, on behalf of the Senator from Ohio, I yield myself such time as I might consume on his side.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized.

Mr. BROWNBACK. Mr. President, I inquire first how much time is remaining for the Senator from Ohio.

The PRESIDING OFFICER. There are 41 minutes remaining on the Senator's side.

Mr. BROWNBACK. Thank you, Mr. President.

I thank my colleagues for being here to participate in a difficult debate. I have a difficult set of stories I want to tell. If any of the individuals here in this body, or watching, are interested in talking to the individuals involved, they are actually outside in the lobby. I invite anybody to come out. There are grandparents, mothers of victims—there are the women who themselves were assaulted and lost a child. They are here. For those individuals here would care to visit with them, they would love to have a chance to tell their story.

The question is simple: do we have one victim or two involved in violent crimes such as these? That is the simple question. I will present a series of case studies to my colleagues and then I will ask my question again—colleagues, do we have here one victim, or two?

We start with the story of Christina and Ashley Nicole Alberts. We have a chart which presents a heartbreaking picture. I think it needs to be shown to better tell the story. This is a gut-wrenching picture of Christina and Ashley Nicole Alberts (you can see them there in the coffin). It is a difficult picture. This body needs to know what the Unborn Victims of Violence Act is about—the victim.

I ask my colleagues to bear in mind that the Unborn Victims of Violence Act states there are two victims—there are two victims in this picture. The amendment we are considering right now, the Feinstein amendment, says there is only one victim—one victim in this picture. I simply ask my colleagues to make that determination. Is there one victim or are there two in this picture? Here is the story.

In December 1998, Christina was nearly 9 months pregnant.

Ashley was looking forward to life with her soon-to-be-born daughter whom she could definitely feel moving, alive and well, and growing in her womb. When she found out she was going to have a girl, she decided to name her Ashley Nicole.

However, this earthly life—which all of us living and breathing here today enjoy—tragically came to a screeching halt for Christina and Nicole on December 12, 1998. On that day, some thugs were going around robbing homes for money. The thugs entered the house where Christina was. Christina recognized one of them, and because she recognized one of them, it cost her and her baby Ashley Nicole their lives.

Christina was beaten. Can you imagine someone beating a woman in the ninth month of her pregnancy? Yet they did. I think of my own family and my own wife if she were in that type of situation.

Christina was then forced to kneel, and she was executed—shot in the head. Once the trigger had been pulled, releasing the bullet that abruptly ended her life, one might think at least the physical pain from the crime was over for Ashley Nicole. It was not. When her mother's heart stopped, her inutero child does not die instantly. Instead, the inutero baby dies slower. When the mother's heart stops beating, the baby begins to suffocate for lack of oxygen. The baby can feel. The baby is in pain. At 4 minutes, the baby begins to suffer severe neurological damage. The process gets worse. Ashley Nicole would have finally died 15 minutes after her mother Christina had been shot and killed.

Look at this photo again of Christina and Ashley in the coffin. Is there one victim? Or are there two? Who will say there is only one victim in this coffin? Yet this substitute amendment we are considering will say there is only one victim.

What about the family? What about Ashley Nicole's grandparents? What happened to them after the murders? Christina and Ashley Nicole lived in Kanawah County, West Virginia.

Her grandmother is here today.

In addition to the horrific news of their daughter and granddaughter's murder, they were further traumatized to learn the West Virginia murder statute does not allow the prosecution of an individual for the murder of an unborn child.

Do you know what happened in the murder trial for Christina and Ashley's killer? Christina's pregnancy could not even be discussed in court. Any recent photos of Christina shown during the trial could only show facial shots. Why? Because the court said any pictures of Christina in which it would have been obvious she was pregnant would have been prejudiced.

I ask my friends from West Virginia to support their constituents, the Alberts, by opposing the Feinstein substitute and voting for passage of unamended Unborn Victims of Violence Act.

I have another story to tell—Heather Fliegelman Sargent.

In this picture with her mother, as you can see, 20-year-old Heather was well into her pregnancy. Heather was 8 months pregnant with her son Jonah.

I also point out that her mother and the grandmother of Jonah are here with us today in the lobby, if people should care to visit with her.

Sadly, both the lives of Heather and Jonah were taken in January 2003, over a year ago. Heather was found dead with multiple stab wounds in her home in Bangor, ME. Her husband Roscoe Sargent was tried on one—only one—count of murder.

The Bangor Daily News reported on January 10, 2003: ''That Heather Sargent was pregnant did not affect the charges brought against her husband . . . No matter how advanced the pregnancy, Maine's homicide law does not apply to unborn fetuses.''

But listen to this. Another news story on that same day, January 2, 2003, tells us that ''Police also reportedly found several dead cats at home. Whoever killed the cats faces charges under the State's animal welfare act, while no charges will stem from the death of the unborn baby.''

Is it even remotely rational to charge someone with the death of these cats and yet not charge them with the death of a viable 8-month-old baby?

As we move to the next chart in the same case, I want to pause for a moment and urge caution for any parents who may be watching with young children present. They may not want to view this. It is a serious matter, and these are real life stories that people need to hear. But, nonetheless, they are difficult.

I would simply ask as we move to the next chart, are we looking at one victim or two? On the left in the chart is Heather before she was stabbed to death, and on the right is Jonah who also died in the attack.

The grandmother of Jonah is here with us today.

I hope Senators will hear the pleas of their constituents—the family of Heather and Jonah who are here in the Senate today watching, as I noted. Please, in their behalf, on behalf of Heather and Jonah, oppose this substitute that says there is only one victim.

The Feinstein substitute would increase penalties for Federal crimes in which a pregnant woman is a victim, but it would also write into Federal law the doctrine that such a crime has only a single victim. If we pass this Feinstein amendment, and a mother survives such an attack, she will be told, ''We can prosecute your attacker for assault but not for murder—the law says nobody died.''

This cannot and should not be. On behalf of Heather and Jonah, I urge my colleagues to oppose the Feinstein substitute and support the underlying bill un-amended.

I have another story to tell. This picture shows the late Ashley Lyons of Kentucky. Ashley was killed when she was 21 weeks pregnant with her son Landon, in January of this year—just 3 months ago.

Her parents and Landon's grandparents are here today. They are in the lobby, if anybody would care to meet with them. I have met personally with them. They are very passionate about this case and about what took place. If Ashley and her son Landon were with us today, they would be planning for Landon's birth in just a little over a month. I have a staff member who is expecting a child in a little over a month, so this really hits home.

Rather than telling the story of Ashley and Landon myself,I would like to read their story as it was written by the mother and grandmother, Mrs. Carol Lyons. As I noted, Mrs. Carol Lyons is with us here today, along with her husband Buford. It was their efforts that helped get an unborn victims law passed in Kentucky—too late for their daughter and grandson, but not too late for other victims.

I will read you this story which actually quotes Ashley, as written by her mother, the grandmother of Landon. It was written February 25, 2004.

I note parenthetically that if this crime had happened on a military base where only Federal law applies, there would be only one victim—not two—unlike California law, which acknowledges two victims of violence.

Ashley's mother writes:

> On January 7, I was seeing my grandson, Landon, for the first time. Landon was moving around in an ultrasound image on the TV screen in our home in Stomping Ground, Kentucky. We could clearly see Landon's little heart beating. We could see his little face. Just a few hours later, Ashley and Landon were both dead. They were found murdered—shot to death in a local park.

Later, I found a journal that Ashley had been writing to her baby. Right at the beginning, when she was only two months pregnant, she wrote how she had rejected advice to get an abortion.

Clearly Ashley made a choice to have a child. She wrote in her journal: ''I couldn't do that. I already loved you.''

Ashley also wrote: ''You are the child I have always dreamed about. I know that it will be a long time before I meet you, but I can't wait to hold you for the first time. I love you more everyday. Always, Mommy.''

Yes, the killer took two lives—each with a long, bright future ahead. It is heartless and cruel to say that the law must pretend this is not so, in order to preserve ''choice'' on abortion. Ashley had made her choice—and she chose life.

This, again, is her mother Carol speaking.

Our case has been widely reported in Kentucky. In response, both houses of the legislature passed a strong fetal homicide bill, and on January 20th, Governor Ernie Fletcher signed it into law.

I pray that Congress, too, will soon pass the Unborn Victims of Violence Act, which will allow a criminal to be charged for any harm he does to an unborn child during commission of a Federal or military crime.

Of course, laws are not retroactive, so no laws enacted now will allow full justice to be done on Landon's behalf.

But they will ensure in the future no mother, grandmother, or other family member will ever again be told that the law is blind to the loss of a child who is unborn but already living and loved.

I ask my colleagues to listen again to Ashley's words to her child Landon—both victims, both were murdered:

You are the child I have always dreamed about. I know it will be a long time before I meet you, but I can't wait to hold you for the first time. I love you more every day. Always, Mommy.

I ask my colleagues, is there one victim, or are there two? Is it one victim or two when Ashley and Landon were murdered?

I have another case—unfortunately, there are too many of these cases—that demonstrates why this law needs to be dealt with. Here is a picture of Tracy Marciniak holding her son Zachariah 12 years ago. This is a case from Wisconsin.

We all have precious baby photos. I have five children, and I love each of them and have precious photos. This should be a happy baby photo, but if you look closely, you will see it is not. You can see it by the look on Tracy's case, by the coffin behind her, and by the funeral flowers. Tracy's son Zachariah is dead and she, Tracy, survived, and is here today. If people would like to visit with her, she is in the lobby.

In 1992, in Wisconsin, Tracy was terribly beaten. She lived and her son Zachariah died. I have spoken with Tracy, and I have heard how the loss of Zachariah hurts her to this very day. Regrettably, justice was not served. Was Tracy and Zachariah's assailant charged with the murder of Zachariah? No. In Wisconsin, law enforcement authorities told Tracy's family they could only charge the attacker with assault; in the eyes of the law, no one died.

What is more, Tracy's attacker says he would not have attacked her if he could have been charged with murder. Let me state that again: If Tracy's attacker had known he could have been charged with murder, he would not have attacked her.

I would like to read a portion of Tracy's July 8, 2003, testimony in front of the House Judiciary subcommittee, where she has spoken about this case before. This is Tracy Marciniak's statement:

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

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

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

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

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

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

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

My own injuries were life-threatening. I nearly died. I spent three weeks in the hospital. During the time I was struggling to survive, the legal authorities came and they spoke to my sister. They told her something that she found incredible. They told her that in the eyes of Wisconsin law, nobody had died on the night of February 8.

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

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

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

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

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

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

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

Next, I present a statement from Ms. Shiwona Pace of Arkansas. Ms. Pace suffered a horrible tragedy. She was severely beaten by several attackers, and as a direct result, her baby, whom she had named Heaven, died. Fortunately, Arkansas passed an unborn victims of violence law prior to the crime committed by Ms. Pace's assailants. Under the Feinstein amendment, Ms. Pace's assailants would not have even committed a crime, other than assault. Please listen to her plea to legislators.

My name is Shiwona Pace. On August 26, 1999, I was a 23-year-old college student in Little Rock. I was the mother of two—my five-year-old son, and an unborn baby girl named Heaven Lashay.

August 26 was one day before my predicted full-term delivery date. But that night, three men brutally murdered my unborn baby daughter. I curled up face down on the floor, crying, begging for them to stop beating me. But they did not stop. One shouted, ''F*** you! Your baby is dying tonight!''

They choked me, punched me, hit me in the face with a gun. They kicked me again and again in the abdomen. After about thirty minutes, they left me sobbing there on the floor. At the hospital, they found that Heaven had died in my womb. She was a perfect baby, almost seven pounds.

The assailants were arrested. They had been hired by Erik Bullock, my former boyfriend. He paid them $400 to kill little Heaven Lashay.

Only a month before, a new state law took effect that recognized unborn children as crime victims. If that law had not been enacted, Erik Bullock would have been prosecuted only for the assault on me, but not for the death of my baby.

But thanks to the state law, Bullock was also convicted for his role in killing my baby. The men who attacked me are also being prosecuted for what they did to Heaven.

I tell my story now for one reason: If this same attack occurred today within a federal jurisdiction, the men who killed my baby would be prosecuted only for assault. That is why I urge members of Congress to support the Unborn Victims of Violence Act, which would recognize unborn children as victims under 68 federal laws dealing with crimes of violence.

I was dismayed to learn that some members of Congress oppose this bill, and insist on adoption of a radically different [version] that says that such crimes only have one victim—the pregnant women.

This is not the same as what would happen under the Feinstein amendment. They are

wrong. On the night of August 26, 1999, there were two victims. I lived—but my daughter died. I lost a child, and my son lost the baby sister he had always wanted—but little Heaven lost her life.

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.

Then we have the well-known case of Laci and Conner Peterson in California that has been spoken of previously. This is a statement from Sharon Rocha, Laci Peterson's mother, and Conner Peterson's grandmother. She has spoken out often on this issue. This is a California case that is well known and has probably done as much to bring this up today on this floor as anything else we have examined.

This is from Sharon Rocha's statement. I will read a portion of it:

As you know, Laci and Conner were cruelly murdered. In this difficult time, my family is grateful that under California law the murders of Laci and Conner can both be prosecuted. But for the families of many other murder victims across the country, there can be no such comfort. Federal law does not recognize that these crimes have two victims.

So California law does recognize it.

When I became aware that Congresswoman Melissa Hart was working on a bill to correct this problem, I contacted her to express my support. I asked her to name it ''Laci and Conner's Law'' in memory of my daughter and grandson. I am grateful to Congresswoman HART, the House leadership, and the many congressmen, both Republicans and Democrats, who have agreed to support this common-sense legislation. I thank President Bush for his willingness to sign it into law.

The House of Representatives has shown their support for this law by approving it twice thus far, but the Senate has consistently failed to act. I call on every Senator to vote for this bill, so that the law will do justice for families of murder victims—families like mine. It is time for the Senate to stand up for innocent victims like Conner.

These are real stories. They are tough stories. But they speak to the situation in this country today. This type of crime happens all too frequently. Unfortunately, there are more cases that we could mention.

I wanted to put a real face on this issue for my colleagues, and to ask them this simple question when they vote on the Feinstein substitute: How many victims are there? Is it one victim, or are there two? That is the real decision in regard to this amendment.

I urge a vote against the Feinstein amendment.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Kansas yields the floor.

Who yields time?

The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, it is extraordinarily difficult to respond to the litany of atrocities the Senator from Kansas has just enumerated. I cannot help but wonder: What kind of animal can do this to a woman who is 7 or 8 or 9 months pregnant? I cannot help but wonder how our society produces men who would do this kind of thing to a woman. I cannot help, as a mother and a grandmother, to share with those for whom this is a life scar that will never, never heal.

And I understand it. I understand the need to want to punish, and understand the need to want to say this child—who is so close to birth, who would be capable of life outside of the womb at that moment—is a victim because, in fact, that child is a victim. I appreciate that and I understand it.

One of the reasons at the beginning of my remarks I said this bill is so controversial is because definitions have different meanings in law. The controversial part in the underlying bill is the definition of ''child in utero'' and ''child, who is in utero'' because the bill language is: ''means a member of the species homo sapiens,'' in other words, a person, ''at any stage of development''—''any stage of development,'' not when the fetus is what they call ''quick,'' which means it is capable of movement; not when it is viable, which means it is capable of life outside the womb; but at ''any stage of development.''

This is what causes the problem in the law once you set it in the law. That is what is so distressing about this bill. Because every Member of this Senate wants to vote yes. Every Member of this Senate wants to say: Throw the book at that animal. Who could be so callous? Who could be without any morality? Who could be so cruel? Who could practice such a heinous crime? Who could punch a 9-month pregnant woman in the stomach to the extent that it causes the killing of her unborn child?

So I am there. I am there entirely. I am there completely. But, again, it is complicated because the definition we are working from gives rights at the point of conception. It does not differentiate. It does not say the 8-month-old baby or the 7-month-old baby, who is capable of life today, is what we are talking about. It says the recently fertilized egg is what we are talking about. That is the difference.

It is so hard, because you stand here and you listen and your heart goes out, and you think of these beautiful women and their beautiful children, and some animal comes at them, and in some cases kills them both, in some cases kills one, and in some cases kills the other. Sure, throw the book at him.

I will go a step further. I would give them a death penalty because they have taken two lives, and I do believe a child at that period of gestation is a life.

The problem is the bill language, which begins this at the point of conception.

Now, every single case presented on this Senate floor this morning is of a child who is viable outside of the womb. But the bill covers children that are not children; that are a day old in the womb, that are at conception. That is the problem we have with this bill. Because once you give an embryo, at the point of conception, all of the legal rights of a human being, and you have said that embryo, then, if it is lost to humankind, is murdered, you have created the legal case to go against Roe v. Wade in Federal law for the first time in history.

Now, California and the Laci Peterson case was mentioned a great deal. The prosecution of Scott Peterson will be conducted under California law, which has amended the definition of the penal code section 187—which is first degree murder—to refer to a fetus. But then other parts of law in California only imposes criminal liability starting at 7 to 8 weeks of gestation. So where the California law effectively covers exactly the situation that the Senator from Kansas is mentioning—all of those situations—it takes into consideration the period prior to 7 to 8 weeks of gestation.

And, in fact, many other State laws do as well.

The problem is this is a much more comprehensive definition that doesn't make any of the distinctions that are made by many of the States with respect to these criminal statutes. Many of them cover when the fetus has quickened, which means the fetus or the child is capable of movement, and many of them cover after viability.

This creates the situation where the embryo has the rights of a person. That is the problem for many of us.

The Senator from Ohio—and I think he knows I respect him; we have worked on so many things—says don't bring in the abortion debate. But I can't help but bring in the abortion debate because the proponents—not the Senator from Ohio, but other proponents—have said ''this is part of our strategy—this is what we want to achieve.''

Then you get somebody like me and Senator BOXER and other cosponsors who want to protect a woman's right to control her own reproductive system, particularly in those early months, who read this bill and see the definition and say: ''There is the ball game—here we lose big time.''

It is like you say to me, ''gotcha,'' because I want to punish that guy who beat that woman to death, who killed her unborn child, because I know that child is capable of life. You know that child is capable of life. But to give that right to a fertilized egg or an embryo is a different thing. Your bill gives that right to a fertilized egg or an embryo or a zygote.

Then, when I go out and I look at what people have said about the bill, I see these statements, such as the statement of Mr. CASEY:

In as many areas as we can, we want to put on the books that the embryo is a person.

This bill puts on the books that an embryo is a person, a member of the species Homo sapiens, in bill language. This bill establishes exactly what the right-to-life movement wants to establish, that an embryo is a person. That

sets the stage for a jurist to acknowledge that human beings at any stage of development deserve protection. Once you have the embryo being a human being, then that human being at any stage of development deserves protection—meaning deserves rights under the law, which this establishes because it makes that embryo a victim—even protection that would trump a woman's interest in terminating a pregnancy. Think of that, that would trump a woman's interest in terminating a pregnancy.

Now, I am one who believes there should not be abortion if the baby is viable. I agree with Roe because it provides the woman choice in the first 3 months of a pregnancy where there is not viability. I lived and grew up at a time when abortion was illegal in California. I saw a good friend commit suicide because she was pregnant and in college. I saw women pass the plate so someone could go to Tijuana for an illegal abortion. You would say that is not relevant to this debate—''don't discuss it; don't bring it up in the Senate—just think about the mothers and the babies who were killed.''

I want to do that, too. And I think about the mothers and the babies. I want to throw the book at those guys. And the death penalty, too. I don't have a problem with that because I believe by your actions, you can vitiate your own right to live. That has been true for me since 1971, as well. That has been my consistent position.

But once in a statute you create a fertilized egg as a human being with specific rights, the march to eliminate Roe v. Wade is on its way in statute. That is what is happening with this bill. That is what I object to. There is no reference to viability.

I have the list of what all the States do. They all do different things. Many of them recognize it. For example, seven States impose criminal liability starting when a fetus is quick, in other words, capable of movement: Florida, Georgia, Mississippi, Nevada, Oklahoma, Rhode Island, Washington. Seven States impose criminal liability starting at the point of viability: Florida, Indiana, Massachusetts, Missouri, Oklahoma, South Carolina, Tennessee. So there are many differences. Different States do different things, even when they have this law.

But what this does, what this underlying bill does, is say from the moment of conception there is a baby and that baby is a human being and that baby has rights.

That is a problem in the criminal law. As the Stanford law professor pointed out, if a case comes before the court where, let's say, a woman was assaulted and she was 3 days pregnant, and the forensics could establish that she was 3 days pregnant, and you are voir-diring people for a jury and you are telling them that there is a second victim, and it is a fertilized egg that is 3 days old and there is a 20-year charge pending or life imprisonment pending for that 3- or 5-day-old fertilized egg, then this is what the law professor meant when he said: ''You are going to get the very people who are the most interested in protecting the woman being reluctant to go on that jury.''

Not every case under this law is going to be post-viability, going to be like the cases that the Senator from Kansas brought forward, where I would say: ''Give the guy the death penalty.'' I wouldn't have a problem with that. They did terrible things, the acts of an animal. But that is not what this law says. That is the difference.

What we have tried to do is say: If you end a pregnancy, if you harm a pregnancy, the same penalties would apply that apply in the House bill and Senator DEWINE's bill.

I wish this could have gone to the Judiciary. I wish it wasn't rule XIV. I wish I had an opportunity in committee, in markup, to make these points.

Let me go over once again, so that everybody is crystal clear on the point of the creation of a separate offense, where a defendant violates any of the enumerated Federal crimes, our bills are identical. On the provision that the separate offense is punished the same as the violation of the enumerated Federal crimes, our bill is identical. On the provision that if the separate offense harms or ends the pregnancy, the punishment is the same as a violation would be for the underlying crime: murder, manslaughter, or assault, as appropriate. Our bills are identical.

With respect to the provision of penalty for death of a fetus is a maximum life sentence, our bills are identical. With respect to the provision of penalty for harm to the fetus is a maximum 20-year sentence, our bills are identical. And both bills do not impose the death penalty. Where our bills are different—and this is important—is the definition of when life begins.

The underlying bill defines life as beginning at conception.

(Mr. ALEXANDER assumed the Chair.)

Mrs. FEINSTEIN. Mr. President, we do not address when life begins. I just read Justice Blackmun's opinion in Roe v. Wade. It is interesting, because he goes back to the Stoics, the Catholic Church, to the Middle Ages, and discusses the difference of opinion of when life begins, the difference of opinions in science. Then he reaches his conclusion that because these differences are so vast, the law generally does not directly enjoin that point of when life begins.

That is the problem we have here. That is the dilemma the Senate faces. This bill is on a fast track. This bill has passed the House. This bill has been subject to a Rule XIV, without a hearing, from the year 2000. You have heard the most poignant, disturbing, heartrending stories on this floor. I respond to them like everybody else does. But I also know if you give a fertilized egg rights in the Federal law, it is going to have repercussions downline. If you declare in this bill you can prove a 1-day-old fertilized egg was a victim and therefore murdered, how do you turn around and say in another law you can proceed with embryonic stem cell research? You have the same 1-day-old fertilized egg. If it is murder here, is it not murder there? What are the repercussions of doing that? They are enormous.

The other side doesn't talk about this. They talk about women who are 7 or 8 or 9 months pregnant. They talk about the most heinous and brutal assaults. But the bill does much more. The bill says a 1-day-old fertilized egg is a member of the species Homo sapiens. Translation: It is a person. Translation: It is a human being.

That is the problem, and this Senate, before it passes out this bill, should understand it and should understand there is an alternative, and the alternative aims to impose the same penalties, but doesn't create that victim fertilized egg, 1 day old—by nobody's stretch a human being—possible of becoming a human being, but not a human being. I have live cells, but they are not capable of producing life.

But once the child, the fetus in the womb, is capable of living, that is a different story. I am the first one to admit that is a different story. But everything in this bill, the underlying bill, goes back to the basic definition of what is being done here, and that is that personhood, life, is being given to a 1-day-old fertilized egg.

Now I have one child biologically, I have three stepdaughters, and I have five grandchildren. I have seen close friends—I know the glory of motherhood. I know the catastrophe that takes place when you lose a child. I have had miscarriages, so I understand that. But then there is the march to turn back the clock to when I was in college and abortion was illegal. Then after college, when I went out into the world, I actually sentenced women convicted of abortion in the State of California in the State prison. I saw the terrible morbidity and the terrible things they did illegally in back-alley abortions. At that point, I said this is so terrible. Then Roe v. Wade passed in 1973, and a woman could control her own reproductive system, particularly in that first trimester. I thought to myself, we should never go back to the way it was.

My concern about the underlying bill is it is the first bridge to take us back to the way it was because of the definition that is in this bill, which gives human rights to a 1-day-old fertilized egg in utero. That is the problem for me. That is the problem for a lot of us in the Senate. Whether it will be enough, I don't know.

I tried to perfect the bill. Remember, this was a rule XIV. We didn't have a chance to mark it up. I tried to perfect it. Unfortunately, I was not granted the usual privilege of being able to send a modified amendment to the

desk. But the intent is clear. I have made it crystal clear in my remarks. We will have the same penalties for the same crimes as the underlying bill. We will avoid one thing, and that is determining when life, for the purpose of law, actually begins.

I yield the floor. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 23 minutes 40 seconds.

Mrs. FEINSTEIN. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. In a moment, I will yield to my colleague from South Carolina.

Mr. President, before I yield to my colleague, I want to respond very briefly to my colleague and friend from California in regard, again, to the question of abortion. My colleague is concerned—I understand her sincerity because she has expressed it many times on the Senate floor. I don't doubt that sincerity at all—that somehow this bill sets a precedent regarding abortion.

First of all, we all know statutes cannot overcome the Supreme Court decisions, constitutional law. We should not be concerned about what the statute will do. We particularly should not be concerned when we know many of the States have statutes very similar to what we propose to enact today. In fact, several of the States have had these statutes in place for up to 30 years. They have not in any way changed or infringed on abortion rights. Whatever one might think of abortion rights, these have not affected them and this bill will not affect them. To make sure of that, we put provisions in this statute, which I have read on the floor today, which make it crystal clear they will not in any way affect that. So we have precedent.

We have the fact that statutes cannot interfere with constitutional law, plus we have precedent of many years of experience of State laws not interfering with abortion rights. So there is just no reason for anybody, when they come to the floor to vote on this, to think this is in any way going to affect abortion rights at all.

My friend has talked about the fact that we follow what I believe 16 States have done when we begin to protect the unborn. Some States define it differently. My colleague has cited what California and some States do. They are defined differently. But we follow in this statute what some others States have done.

In our proposed statute, we use this language, and I would say it is not what my colleague, with all respect, has said. This is what the language is:

. . . who is carried in the womb.

''Who is carried in the womb,'' that is the language, the precise term that is used, ''carried in the womb.''

As a practical matter, since this is a criminal statute, we all know that to prosecute under this statute, a prosecutor would have to prove beyond a reasonable doubt, to prosecute under this law, that there was this unborn child. They would have to prove the existence of the child. And then they would have to prove there was death or injury to the child beyond a reasonable doubt. They have to prove the existence, first of all, beyond a reasonable doubt, and then they have to prove the death or injury beyond a reasonable doubt.

It is not, with all due respect, a question of at the moment of conception that this protection, as a practical matter, would kick in. First, it has to be carried in the womb; second, you would have to be able to prove the existence and then prove there was injury or prove there was death. That is the practical application of the statute we propose to pass.

I yield to my friend and colleague from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, how much time remains?

The PRESIDING OFFICER. Eleven minutes.

Mr. GRAHAM of South Carolina. Will the Chair notify me when I have used 4 minutes?

The PRESIDING OFFICER. Yes.

Mr. GRAHAM of South Carolina. Mr. President, I wish to speak to how the bill was drafted and why.

Senator DEWINE articulated it well. You have to prove the pregnancy, and we defined the pregnancy like 16 other States. That is the dominant way of defining the child for the purpose of this statute. Thirteen States have a different view of it. In California, I think the law is at 6 weeks. If you can prove the child is beyond 6 weeks—not viable but beyond 6 weeks—the law kicks in.

In 1999, when we first drafted this statute—Senator DEWINE was carrying it in the Senate, I carried it in the House, and we are finally coming together to have a vote—it never made sense to me, if you believe this is not about abortion—because it is not; we wrote it so it is not—why would you give a criminal a break who destroyed a family's life in two ways, not one?

You are not going to prosecute medical researchers under this statute. You have to hurt the mother. This is not about medical research. It is not about abortion. It is about criminals who attack pregnant women.

Why would you give the criminal a break at 3 weeks? You could prove the baby has been around for 3 weeks. The criminal just totally gets away with it.

The Feinstein amendment—as much as I like Senator FEINSTEIN, and she is truly one of my favorites—nobody goes this way because this is not the way you would want to go if you are prosecuting criminals. You do not want to ignore the reality of what happened to this family and to these victims. This is not about abortion. If it was abortion law, you would not have any prosecutions except until the late terms of the abortion. Why would you let a criminal do that? This is not about a mother's right to choose. Under the statute, you cannot prosecute the woman at any time. You cannot do anything about abortion rights because the statute protects lawful abortions.

For 30-something years in California, they had the ability to prosecute criminals who attacked pregnant women and have Roe v. Wade rights. Look in the phonebook anyplace in California and you will find people who will provide a lawful abortion. Look at the criminal law and you will find a statute that allows people to be put in jail who attack a pregnant woman and do damage to her unborn child at the 6-week period.

My point is, when criminals attack pregnant women, don't play this game of the abortion debate. Don't bring it over here. The reason we voted 417 to 0 in the House was to prevent an execution of a pregnant woman at the earliest stages of pregnancy. It does no good to kill the chance of that child to grow to render justice to the mother.

With a vote of 417 to 0, the House adopted the same definition as this statute because the purpose of that statute was to prevent the State from executing a woman who we know to be pregnant at the early stages of a pregnancy. The reason being, it does no good. It does not advance Roe v. Wade. It just does something you do not need to do to render justice. You do need the ability to bring two prosecutions at the earliest stages of pregnancy to render justice for those who choose to violently assault pregnant women. No medical researcher is going to be harmed. We will have the stem cell debate. The Roe v. Wade rights that exist today are not going to be eroded. They have existed in conjunction with these statutes for years and years, and that debate will go on for years and years. But here is what is likely to happen.

The PRESIDING OFFICER. The Senator has used 4 minutes.

Mr. GRAHAM of South Carolina. There will be, unfortunately, human nature being what it is, another assault against a pregnant woman where Federal jurisdiction would exist if we have this statute. It is going to happen because people are mean, people are cruel, and they need to be dealt with when they are mean and cruel.

The Senate enhancement option has been rejected by everybody who looked at this because it does not render justice. It creates a legal fiction that is not necessary and destroys the whole purpose of this statute.

I mentioned the Arkansas case. Three teenagers were prosecuted for beating up a pregnant woman for the purpose of making sure one of them did not have to pay child support. They are not on death row. I misspoke. One of them received 40 years, one received life imprisonment. It was a capital statute, but it was not a death penalty case. I was wrong. I apologize.

The PRESIDING OFFICER. The Senator used 5 minutes.

Mr. GRAHAM of South Carolina. Five more seconds.

The Laci Peterson case is a death penalty case because there are two victims.

All we are saying is Federal law should address reality. When Michael Lenz lost his wife in the Oklahoma City bombing incident, he also lost his son, Michael Lenz III. All I am asking for is that justice be rendered in cases such as that. When somebody chooses to destroy a family—the mother and the unborn child—let them pay a severe price, and let's debate abortion another day, another time, and not interject it into a statute where it should not be interjected.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, could you give us the time remaining on both sides, please?

The PRESIDING OFFICER. Yes. The Senator from California has 23 minutes remaining. The other side has 5 minutes remaining.

Mrs. FEINSTEIN. I thank the Chair. Mr. President, this is a difficult discussion because I am very fond of both the Senators with whom I am debating. However, I certainly do not agree with the statement the Senator from Ohio just made with respect to the definition that is in the bill.

I will read the definition that is in the bill. The term ''a child who is in utero'' means:

> A member of the species Homo sapiens at any stage of development who is carried in the womb.

The one thing neither Senator DEWINE nor I know is how fast the egg gets to the womb, but I think it is pretty fast.

I just had a note passed to me by someone more erudite than I. I think we can all put this in our lexicon.

It takes about 7 days for a fertilized egg to get to the womb, but there is also the belief the underlying bill applies at the moment of conception. Let us say the egg gets to the womb in 7 days. The problem those of us on this side of the aisle have with the bill is it gives the status of a human being to that egg as soon as it is in the womb, and that creates for the first time in Federal criminal law a scenario whereby if that egg is hurt, criminal assault charges, criminal manslaughter charges, criminal murder charges can be brought because that egg, at any stage of development—they do not use trimesters, they do not use any way of deciding the development—at any stage of development, that egg in utero is a member of the species Homo sapiens, and that is where this, for criminal purposes, becomes so difficult.

That is why the letter from the professor from Stanford, who runs the criminal prosecution unit at Stanford Law School, becomes so relevant, because let's say I am in a jury pool and a woman has been beaten up and she was 7 days pregnant—at that moment it is a fertilized egg—and she lost the fertilized egg, and I was told the penalty would be an additional 10 years in prison because she lost that egg. Well, I would have to make a decision as to whether I want to be on that jury. So what the professor says is this can actually work contrary to our intent, particularly in these early cases.

He also said he suspects it is dependent on the administration as to whether early cases will be brought to a court or not, but the point is we cannot make that decision. We cannot say this is only going to be used when a mother is 7 months, 8 months, or 9 months, pregnant. In the horrific circumstances described by the Senator from Kansas, which got all of our hearts beating faster, we cannot assume that all cases will be of that type. The legislation clearly says for the purposes of definition the child is defined from the point it is in the womb at any stage of development as a child, as a person, with rights. That is the dilemma and that is why we have tried to craft a bill that does not do that, that says if someone harms or ends a pregnancy, they are subject to the same penalties.

This body is going to have to decide—and it is a very hard question. I think this is one of the most controversial bills we have had. This is probably why this bill has been around for 5 years now. I think it had a hearing in Judiciary in 2000. It has not had a hearing since. It has been rule XIVed to the floor.

Again, I wanted to make some small changes—I was not permitted to do so—by modifying my amendment. I believe, and my chief counsel believes, this bill provides the same penalties. The one difference is the definition is different. We use harm or end pregnancy, rather than that the unborn child becomes a child—well, that a child in utero and child who is in utero means a member of the species Homo sapiens, at any stage of development, who is carried in the womb. That is the problem and that is where for those of us who want to protect a woman's right to choose and who read the statements that are put out by the far right, we take them at their word that this is where they are going.

I did not make this up. This is a rather well-known statement. It clearly says, ''In as many areas as we can, we went to put on the books,''—this statute on the books—''that the embryo is a person . . . ''

For me, I am also very interested in being able to see that there are prudent regulations and Federal controls that will allow embryonic stem cell research. Well, if it is murder of a 7-day-old fertilized egg, then it is murder if it is used in stem cell research as well. That is where I think this is going.

There are also statements by people who want to ban embryonic stem cell research that also say this is the strategy. So I say, why get into it at all? Why not just say, if someone ends or terminates a pregnancy, the same penalties will apply. That is what we have tried to do. That is the intent of what we are doing.

I think the votes are very close. At this point, I will yield the floor, but I reserve the remainder of my time.

Mr. DEWINE. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Five minutes.

Mr. DEWINE. And the Senator from California?

The PRESIDING OFFICER. Fifteen minutes.

Mr. DEWINE. I suggest the absence of a quorum, with the time to run equally on both sides.

Mrs. FEINSTEIN. Equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DEWINE. We are getting close to the end of this debate. I think there are just a few points about this amendment I would again like to stress. One is this whole debate today has nothing at all to do with abortion. I talked about that. I will not belabor the point. We have made that clear in the language we have written. It is set down in the precedent of States that have passed similar legislation. It has not had anything to do with abortion.

If Members of the Senate truly believe what the vast majority of the American people believe, and that is there are two victims, then they have to turn down the well-intended Feinstein amendment. The Feinstein amendment tries to provide for enhanced penalties. I believe it is clear, from what I have spelled out a few moments ago, she has failed to do that, that there are no enhanced penalties. Even if there were, it is a contortion of the law and logic to deny the fact that when a pregnant woman is violently attacked and she loses her child, for the law to say we refuse to recognize there is a second victim, and that is what the Feinstein amendment, unfortunately, says. The Feinstein amendment denies the fact there is a second victim.

We have heard on the Senate floor today, time and time again, these horrible stories that Senator FEINSTEIN and I—our hearts go out to these victims. Everyone's heart does. But how can we say to these families that these children who were lost, sometimes the grandchildren who were lost, were really not, in the eyes of the law, victims?

In the eyes of everyone else in society they are victims. Shouldn't the law also recognize them as victims? That is what we are saying with our bill. Unfortunately, the Feinstein amendment denies them that.

I reserve the remainder of my time.

Mr. KYL. Mr. President, I am pleased that the Senate is debating this sensible measure, and I certainly hope that the outcome will be the rejection

of the two amendments and passage of the underlying bill. Such an outcome will lead immediately to the enactment of the Unborn Victims of Violence Act, as the legislation has already passed the House and the President has stated that he will sign it.

The Unborn Victims of Violence Act would recognize an unborn child as a victim when he or she is killed or injured during the commission of a Federal or military crime. The gist of this debate is the question of whether there are one victim or two in such instances. Polling suggests that upwards of 80 percent of the American people believe that there are two victims, a view no doubt reinforced by the well-known case of Laci and Connor Peterson. It has been noted that when definitive evidence of foul play in that case came to light, two bodies washed up on the shore, not one. The Unborn Victims of Violence Act would codify that common sense observation in Federal law.

Opponents of the bill contend that the bill's ''two victims'' premise is ''unprecedented,'' but 29 State laws—including the law in California, where Laci and Connor Peterson were killed—relfect that exact understanding of what merits punishment when a violent crime is committed against a woman and her unborn child. It is the ''one victim'' idea the Feinstein amendment would inscribe in law that would depart form the understanding embedded in the State laws addressing this question.

Finally, I sincerely hope that my colleagues—whatever their views on the question of one victim versus two victims—will firmly reject the amendment offered by the senior Senator from Washington State. I am very proud of my record of support for victims of domestic violence, and I believe that some of the ideas contained in the Murray amendment merit our consideration.

But passing the amendment we are presented with today would be a serious mistake. First, I must note that the Murray amendment was obviously drafted in haste because it contains serious technical flaws—not the least of which is a provision that would—as I understand it—give an abusive family member the same rights as a victim!

The Murray amendment would create an unpaid leave provision that is distinct from the provisions contained in the Family Medical Leave Act, FMLA, and State laws. This new leave provision would apply to employers with as few as 15 employees—compared to 50 for FMLA. FMLA applies to workers who have been employed for at least a year, but the proposed Murray leave program has no minimum requirements for length of service. Moreover, under this amendment, domestic violence leave could be taken without advance notice, and without corroborating evidence beyond the employee's own sworn statement. Given the extraordinary degree of uncertainty such a regime could create for employers, Congress must proceed cautiously here. To pass the Murray amendment today would be to flout that imperative.

I strongly support the unamended version of this bill.

Mr. LEAHY. Mr. President, acts of violence against women are always abhorrent, but they are especially disturbing when committed against pregnant women. When a violent crime causes injury to a pregnant woman that results in a miscarriage or other damage to the fetus, we all share the desire to ensure that our criminal justice system responds decisively and firmly to exact appropriate punishment. This is not an issue on which you will find any disagreement among Members of Congress, no matter their party affiliation or whether they are pro-choice or anti-abortion. Protecting pregnant women and their families from violence is a serious and compelling problem that deserves to be elevated above political agendas and partisan politics.

Today we consider a bill that proposes a new Federal crime to punish conduct that violates a list of over 60 existing federal crimes and ''causes the death of, or bodily injury to, a child, who is in utero.'' The terms ''a child, who is in utero'' and ''unborn child'' are defined in this proposal to be ''a member of the species homo sapiens, at any stage of development.'' Through this proposal, we will be forced to revisit the divisive political debate about when human life begins and what is meant by these terms—whether, for example, the term ''any stage of development'' is intended to cover an unfertilized human egg or a zygote, and how far away from viability the proposal is designed to move the federal definition of a ''person.''

Generally, our Federal and State criminal laws only penalize conduct that affects a person who was born alive. That does not mean we cannot or should not go further. I support additional punishment if a violent crime against a pregnant woman causes her to miscarry or otherwise injures the fetus. Senator FEINSTEIN will offer an amendment on this point, which I support, and which I will discuss in a moment.

While no other Federal criminal statute identifies a fetus as a distinct victim of crime, this does not mean that a fetus is left unprotected under our criminal laws. The Justice Department pointed out the obvious, in a letter dated September 9, 1999, to then-Chairman of the House Judiciary Committee, Representative HYDE. That letter states that ''[b]ecause the criminal conduct that would be addressed . . . is already the subject of federal law (since any assault on an 'unborn child' cannot occur without an assault on the pregnant woman), [the bill] would not provide for the prosecution of any additional criminals.'' As Ronald Weich, a former prosecutor and former Special Counsel to the Sentencing Commission, noted in his February 2000 testimony, defendants whose violent attacks against pregnant women resulted in harm to a fetus have been prosecuted, and thus ''it is very clear that criminal liability may be imposed under current federal law.''

Moreover, the Federal Sentencing Guidelines already provide a sentencing enhancement of two levels where the defendant knew or should have known that the victim was a ''vulnerable victim,'' a term that is defined as someone who is unusually vulnerable due to age, or physical or mental condition. Guidelines Manual, §3A1.1(b)(1). This provision has been used to cover violent crimes against pregnant women. Mr. Weich described several cases in which a pregnant woman was treated as a vulnerable victim, resulting in enhancements and upward departures in the applicable guideline sentencing ranges for the defendants. Nevertheless, if there is any question about the application of these enhancements in violent crimes against pregnant women, we should clarify that matter promptly.

Respectfully, it seems to me that this bill has not been crafted to find that common ground, nor designed to provide an effective means to prosecute or prevent violence against pregnant women.

First, this bill unnecessarily injects the abortion debate into our national struggle against violence towards women. The Supreme Court in Roe v. Wade held that ''the word 'person', as used in the Fourteenth Amendment, does not include the unborn.'' This bill purposely employs terms designed to undermine a woman's right to choose by recognizing for the first time in Federal law the legal rights of a person as applied to the earliest stages of development of a fetus, an embryo or an egg.

Second, the National Coalition Against Domestic Violence has warned that a consequence of the bill is that battered women who are financially or emotionally reliant on the batterer may be less likely to seek appropriate medical attention if doing so could result in the prosecution of the batterer for an offense as serious as murder. We should pay attention to the experts about the consequences of legislative proposals such as this one, particularly when the experts say this bill could have devastating effects for victims of domestic violence.

Finally, the bill ignores the problems of domestic violence, sexual assault and other forms of violence against women; in fact, the UVVA does not even mention the woman. In short, this bill ignores the reality that an attack that harms a pregnancy is inherently an attack on a woman.

The senior Senator from California will offer a substitute amendment to S. 1019 that does what the Unborn Victims of Violence Act purports to do without wading into the political waters of the abortion debate. This amendment,

commonly referred to as the Motherhood Protection Act, creates a separate, additional Federal criminal offense for harm to a pregnant woman. Under this legislation, the prosecutor may (1) charge the defendant with an offense against the woman, and (2) subsequently charge the defendant with the separate offense of interrupting—e.g., causing brain damage to the child—or terminating the normal course of her pregnancy. A defendant would face a maximum of 20 years in prison for interrupting the pregnancy and a maximum of life imprisonment for terminating the pregnancy. Such sentences would be in addition to any penalties for the underlying federal crime. These terms of imprisonment reflect the same sentences included in the UVVA.

Senator FEINSTEIN's amendment addresses harm to a pregnant woman, while recognizing the loss she suffers through injury to the fetus. By excluding the language in the UVVA that defines a human to include a fetus, the Feinstein amendment accomplishes the stated goal of the UVVA without undermining reproductive rights or ignoring violence against women.

The senior Senator from Washington will offer an amendment in support of domestic violence victims, which I am proud to cosponsor. The Murray amendment would authorize HHS grants to nonprofit agencies to help service providers design and implement intervention programs for children who witness domestic violence. The grants would encourage domestic violence agencies and schools to work together to address the needs of affected children. The amendment would also establish entitlement standards and guidelines for employees to use emergency leave to address domestic and sexual violence.

Unlike UVVA, these two amendments address the issue of violence against women. If we are serious about addressing this problem and trying to end the violence, then we should put a stop to the partisan politics surrounding UVVA and vote for these amendments.

When it has focused on the real issue of violence against women, Congress has taken aggressive action to address the problem of violence against women. Congress made great strides in the fight against domestic violence by passing the bipartisan Violence Against Women Act as a part of the 1994 Violent Crime Control and Law Enforcement Act. Senator BIDEN and Senator HATCH contributed considerable time and leadership to achieve the enactment of VAWA, which marked a turning point in our Nation's effort to address domestic violence and sexual assault.

This landmark legislation created federal domestic violence offenses with severe penalties to hold offenders accountable for their destructive and criminal acts of violence. Since the end of 1994, the Department of Justice has brought over 1000 VAWA and VAWA-related indictments and awarded over one billion dollars in VAWA grants to communities working hard to combat violence against women and to help cure the pain and suffering that results from it.

I am proud to say that Vermont was the first State in the country to apply for and receive funding under VAWA, and I have seen the way in which groups such as the Vermont Network Against Domestic Violence and Sexual Assault have worked effectively to stem violence against women and children and to assist those who have suffered from it.

I am also pleased that the conference report on the AMBER Alert and PROTECT Acts included Leahy-Kennedy-Biden legislation to establish a transitional housing grant program within the Department of Justice to provide victims of domestic violence, stalking, or sexual assault the necessary means to escape the cycle of violence. It amends the Violence Against Women Act of 1994 to authorize $30 million for each of fiscal years 2004–2008 for the Attorney General to award grants to organizations, States, units of local government, and Indian tribes. The grants will help victims of domestic violence, stalking, or sexual assault who need transitional housing or related assistance as a result of fleeing their abusers, and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. President Bush signed the conference report into law on May 7, 2003.

We know that violence against women pervades all areas of our country. It makes no difference if you are from a big city or a rural town; domestic violence and other violence against women can be found anywhere. This is a serious issue. We owe this country a serious response, not a debate on ideological proposals that ignore effective programs designed to help women crime victims. I urge my colleagues to join me in supporting the Feinstein and Murray amendments, and in voting against the Unborn Victims of Violence Act.

Mr. FEINGOLD. Mr. President, I will oppose H.R. 1997, the Unborn Victims of Violence Act, and instead support an alternative offered by Senator FEINSTEIN, and I would like to take a moment to explain why.

I join with Senator DEWINE and the supporters of this bill in condemning acts of violence against women, including pregnant women. The Unborn Victims of Violence Act would make it a Federal crime to injure or kill a fetus during the commission of a Federal crime against a pregnant woman. This separate offense would be punished as if injury or death had occurred to the pregnant woman. I believe that acts of violence against pregnant women are deplorable and should be punished severely. Congress has taken and should continue to take steps to protect women from violence and prosecute those who attack them. But I am concerned that by recognizing the fetus as an entity against which a separate crime can be committed, the Unborn Victims of Violence Act may undermine women's reproductive rights as set forth by the Supreme Court in Roe v. Wade.

That is why I plan to support a sound alternative, the Motherhood Protection Act, offered by my colleague Senator FEINSTEIN. the Motherhood Protection Act would accomplish the same stated goal as the Unborn Victims of Violence Act: establishing an additional, separate Federal offense for harm to a pregnant woman. It carries the same penalties as H.R. 1997: a maximum 20-year sentence for harm to a pregnancy and a maximum life sentence for termination of a pregnancy.

I believe that the Feinstein substitute is the better approach because it accomplishes the same goal that H.R. 1997 seeks to address without delving into the controversial issue of defining when human life begins. Regardless of our views on that highly charged question, we can agree that violence against pregnant women is a heinous crime and should be punished to the fullest extent of the law. That is why I will oppose H.R. 1997 and instead support the Feinstein substitute.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, how much time does the other side have remaining?

The PRESIDING OFFICER. They have 1 minute 58 seconds.

Mrs. FEINSTEIN. Mr. President, I agree that the debate is concluding, and I thank the Senator from Ohio. This is a serious subject and it is a difficult subject and it is a controversial subject. I appreciate the manner in which the debate has been conducted, because I think it has been conducted in the best tradition of the Senate, with the exception of your not letting me modify my amendment. But I will only interpret that as caused by the fact that the other side is worried and doesn't want my amendment to get any better, so they refuse to let me modify it.

We have two different bills here. I think we have expressed the differences. The underlying bill does recognize the unborn at any stage of development, as long as they are in the womb, as a human being, as a victim and with rights.

My bill, rather than enter into where life begins, at what point in this gestation period life actually begins enough to say this is a person with rights—it doesn't get into that. It takes the penalties and does a double charge and says if the predicate crime is present, and you carry out the crime to harm or end the pregnancy, it is a double charge so you are charged accordingly.

The hard part of this is that we all know there has been a march to turn back Roe v. Wade. Every Member of

this Senate knows it. We have had vote after vote after vote. Since 1994, the pro-choice side has lost most of the votes. That is irrevocable fact. We know the march is on.

So those of us who are pro-choice naturally are going to look at laws to see if those laws can constitute, in addition to what they are supposed to do, any kind of bulwark from which to attack Roe.

Because of the definition of a child in utero being, at any stage of development, a member of the species Homo sapiens, we come to a conclusion. We asked the question, first, why do they use that definition? So many States have passed laws and many of them have used different definitions, why do they select that definition?

Answer, because it accomplishes the purpose of determining that once a fertilized egg is in the womb, it becomes a human being. That, then, buttresses statements such as this one on the easel.

This isn't the only statement. I can give another statement by another professor which I used in my opening remarks. It is a statement of a Republican strategist. Professor Charo is at the University of Wisconsin. She made the statement recently:

> If you can get enough of these bricks in place, [meaning laws] draw enough examples from different parts of life and law where embryos are treated as babies, then how can the Supreme Court say they are not? This is, without question, a conscious strategy.

So if you believe it is without question a conscious strategy—and I, based on the history of how the erosion against Roe is being waged, piece by piece, bit by bit, law by law, action by action, I believe it is a conscious strategy. The hard part about it for me is that you feel this terrible empathy for women who have been the victims and who are 7, 8, 9 months pregnant. That has been every case that has been before us today, it has reached that stage of gestation, where you know your child can exist outside of the womb and some animal has taken the child away from you by beating you to the point where they have killed the child and in many of the same cases—the Senator from Kansas illustrated today—killed the mother as well. We want to throw the book at that perpetrator. And we do. We believe our bill is clear, and we believe our bill will stand the test of time.

So we ask the Senate to support the substitute amendment and turn down the underlying bill. I reserve the remainder of my time. I yield.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I will again point out for those who are worried about some great precedent being set here in regard to abortion that over half the States have similar laws and many of them are absolutely identical to what we are writing. So people should not be concerned about this.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN. I yield but I am reserving the remainder of my time. I may have something to say in a minute or so, and I may not.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I think I have just a short time left. How much time do I have?

The PRESIDING OFFICER. Five minutes.

Mrs. FEINSTEIN. Mr. President, for those who might have gotten involved in this late, I would like to use the 5 minutes to say a few things.

The first is that this is one of the most difficult areas in which to legislate because it is filled with so much emotion and so much difference of opinion. It is one of those great cultural problems that exists out there in our real world, as opposed to this world, where human lives are very much affected.

On the one hand, you have the situation the Senator from Kansas, the Senator from Ohio, and the Senator from South Carolina pointed out—situations where you have women who have terrible things done to them. It is just so hard for us to realize how that can happen, that any man can be that callous to beat to death a woman who is 7, 8, or 9 months pregnant; can use a knife; can cut her fetus when you know that child is capable of life.

I understand what drives this desire. What drives the desire is to see that there is equal punishment for the taking of that life, which I believe is a life because it can sustain life. Its pulmonary functions have cleared out in the last few weeks of pregnancy and those kinds of things. But basically it is a baby, and basically it is viable. I understand all of that.

When you get down to definitions, and when you look at the statute itself, what concerns many of us and makes us understand we are dealing with something much more than just what I have said is the definition of a child in utero who is made by this bill a person, a member of the species Homo sapiens at any stage of development as long as it is in the womb—that could be 3 days, I am now told, from conception—you are not only creating criminal law for the woman who can produce a child who can live and whose life is taken away but we are creating a sanction for an egg that is fertilized that may be 3 days old. That sanction can be murder and carry with it the full weight of murdering another human being. It is a very heavy sanction. You are giving rights to that newly conceived egg of a full person.

There are many of us who say this is another way of doing this. That is just saying if you harm or end a pregnancy, these full charges will revert.

The reason we do it that way is because it exists all around us. The fact that there is a reason for how this child in utero is defined and the reason is, as I have tried to elucidate—and there are many other cases—''In as many areas as we can, we want to put on the books that the embryo is a person.''

Why do they want to do that? It is simple. They want to do it because if we legislate, and the Federal crime is that if a 3-day-old egg is a person and has rights, then abortion under this same context is murder or manslaughter or assault. Full rights of a person are given.

I think that is a problem when you codify it in statute. This body is then saying: Yes, we agree. Therefore, a case can be brought against abortion of any kind at any time and also against embryonic stem-cell research that some of us believe is the new horizon of medicine, which is capable of finding cures for Parkinson's and Alzheimer's, and juvenile diabetes.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. FEINSTEIN. Just to sum up, I hope Members of the Senate will vote for the substitute amendment and against the underlying bill.

I thank the Chair. I thank the distinguished Senator from Ohio. It has been a very interesting morning.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from California. This has been a very good debate. No one in the Senate Chamber cares more about the victims we have been talking about than my colleague. I salute her for her compassion. I salute her for all the great work she does in this Chamber.

Three points: This bill has nothing to do with abortion. We shouldn't fear it. People who are on either side of abortion should not fear this bill. The States have already passed laws similar to this. They have not affected abortion. That is point No. 1.

Point No. 2: The Feinstein amendment denies that there is a second victim. If you care that there is a second victim, if you care about justice, don't vote for the Feinstein amendment.

Point No. 3: The Feinstein amendment is drafted, unfortunately, so there is no penalty for the killing or the injuring of the child.

That is a problem. I don't think anyone intends for that to be the case in the sense of voting that way. If you vote for the Feinstein amendment, you are denying that there is a second victim. You are also denying that there will be any penalty for the killing or the injuring of that victim. That is what a vote for the Feinstein amendment would do. I ask my colleagues to vote no on the Feinstein amendment.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment.

Mr. DEWINE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN) is absent attending the funeral of his wife's grandmother.

The PRESIDING OFFICER (Mr. CRAPO). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 49, nays 50, as follows:

[Rollcall Vote No. 61 Leg.]

YEAS—49

Akaka	Durbin	Lieberman
Baucus	Edwards	Lincoln
Bayh	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Byrd	Harkin	Pryor
Cantwell	Hollings	Reed
Carper	Inouye	Reid
Chafee	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Collins	Kennedy	Schumer
Conrad	Kerry	Snowe
Corzine	Kohl	Specter
Daschle	Landrieu	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Leahy	
Dorgan	Levin	

NAYS—50

Alexander	Dole	McConnell
Allard	Domenici	Miller
Allen	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Breaux	Frist	Roberts
Brownback	Graham (SC)	Santorum
Bunning	Grassley	Sessions
Burns	Gregg	Shelby
Campbell	Hagel	Smith
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Talent
Cornyn	Kyl	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeWine	McCain	

NOT VOTING—1

Biden

The amendment (No. 2858) was rejected.

Mr. FRIST. Mr. President, I move to reconsider the vote.

Mr. BROWNBACK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2859

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I have an amendment No. 2859 at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY] proposes an amendment numbered 2859.

Mrs. MURRAY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. There are 2 hours equally divided on the amendment. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, today I am offering an amendment to help prevent violence against women and children. We have heard a lot of talk today about punishing abusers. Now it is time to see who is serious about preventing abuse in the first place.

As someone who has spent my entire public life talking with victims, visiting shelters, working with advocates in law enforcement, and funding the programs victims rely on, I am here this afternoon to offer an amendment that will help women and children get the help they need to be safe and, most importantly, to save their lives.

Mr. President, the amendment I am offering this afternoon is built on what victims and experts have told me they need. That is why this amendment has been endorsed by the National Coalition Against Domestic Violence and the Family Violence Prevention Fund. These organizations know what victims need, and they say the Murray amendment will really help victims of violence.

Mr. President, I am honored to say that my amendment is named for Paul and Sheila Wellstone, who were such champions for victims of domestic violence. Senator Wellstone and I introduced legislation which is today included in this amendment. Paul's desk was just behind me here on the Senate floor. I can still see him behind me waving his arms and making the case for people who have no voice.

This amendment is a real tribute to Paul and Sheila and the fight we carry on for the millions of people who need a voice in the U.S. Senate. Whenever Paul debated an issue, you could always tell who was really standing up for families and who was just talking. The vote on my amendment will reveal who is truly concerned about giving women and children the tools they need to escape violent relationships, and who is more interested in playing politics and attempting to undermine women's constitutional rights. Any Senator who is truly concerned about the safety of women and children will join me and give battered women the support they need to escape violent relationships before it is too late.

Now, I have a feeling that during this debate we are going to hear a lot of excuses. Some Senators are going to stand up here and claim that preventing violence against women is somehow not relevant. Senators will stand up here with the talking points that have been prepared for them by the Chamber of Commerce and say that protecting women from deadly abuse is somehow bad for business.

We are going to hear a lot of excuses. But I have something stronger. I have the actual stories of dozens of women who are being abused, who have escaped abuse, or who have been killed by their abusers. Those are the voices that need to be heard on the Senate floor, not talking points from lobbyists, not the same old excuses from the very people who are cutting Violence Against Women Act programs by $10 million. We have had enough of that. We know where it has gotten us: 2 million women assaulted every year.

Nearly 1 in 3 adult women are assaulted. There are 4.9 million intimate partner rapes and physical assaults, and thousands of women every year are killed by a spouse or a boyfriend. We know what all those excuses have produced: Women who are beaten, raped, and murdered.

Some lobbyists and Members of Congress want to bury my amendment. You know what. We have had to bury enough people already. Let's see who is serious about helping to prevent violence and who is just playing politics with the lives of battered women.

Let me read a note I received from an advocate for victims of abuse. She writes:

> I have had many many clients over the years who have come to me after they have been fired from work because they missed a day of work to go to court to get a civil protection order. In some of these instances, the women had sick days, but they were still fired. Several of these women were forced to return to their batterers after they lost their jobs because they lost their income and they and their children would have been homeless if they did not return.

These are some of the women who are trapped today and who desperately need our help. Mr. President, my amendment is especially important because the Bush administration is cutting or freezing funding for critical domestic violence programs. Every year, 2 million American women are sexually assaulted, stalked, or physically assaulted—2 million women every year. You would think that the White House would recognize the need to fund domestic violence programs, but the President's latest budget offers more bad news to victims of violence.

Let me give you some examples. The President's budget cuts Violence Against Women Act programs by $10 million. It cuts a Justice Department rape prevention program by $29 million. It freezes funding for the domestic violence hotline, and it freezes funding for grants for battered women shelters, precisely at a time when we need increases because evidence shows us that domestic violence increases during tough economic times just as we are having today.

So I find it pretty ironic to be here today with a bill before the Senate that purports to help victims of domestic violence while it ignores all we know about preventing it. Anyone who has talked with victims' advocates and law enforcement knows that domestic violence prevention requires more support, not less—not less. It is clear that we need to help victims escape violent relationships, and the Paul and Sheila Wellstone domestic violence prevention amendment will help.

Mr. President, my amendment does several things. It gives victims of abuse

access to unemployment insurance if they have been forced to leave their job because of violence. It gives victims of violence access to expanded emergency leave so they can go to court or to the police to stop the abuse. It protects victims from employment and insurance discrimination. It provides services for children who witness domestic violence so we can end that cycle of abuse. It helps health professionals screen for abuse and respond appropriately. It gives victims better access to critical health services. Those are the steps we need to take today to protect the more than 2 million women who are sexually assaulted, stalked, or physically assaulted every single year.

Mr. President, let me say a word about the relevance of my amendment. I expect some Senators will come here and claim that preventing violence against women is somehow not relevant to the bill we are debating today. To them, it never seems to be the right time. There is always an excuse. In fact, these Senators are sending a message that victims are not relevant until they are dead. If any Senator wants to come down here and tell women across America that the abuse they face is not relevant, then they will have to make that insulting claim alone because I am going to keep fighting to get victims the help they need, to prosecute abusers and break the cycle of violence. You tell a woman who is being abused she doesn't deserve more help; you tell a child who is witnessing abuse every night that my amendment is unnecessary. I am not going to tell victims that. My amendment gives them the real help they need.

Mr. President, victims of violence have heard a lot of excuses over the years. Claiming that their daily abuse is not relevant to this Senate debate is just another of the excuses that have trapped women every year in this country. That claim is as insulting as it is false.

Just look at the recent debate in the House of Representatives on this underlying bill. During that debate, every single anti-choice Member who spoke referred to criminal acts of violence against women. Violence against women is a central part of this debate. Preventing violence against women and helping women and children who are being abused is central to this discussion.

Opponents cannot have it both ways. They cannot claim that their bill is needed to address the violence against women and then claim we should not debate ways to prevent violence against women. This amendment is clearly relevant and will truly help women and children.

Anyone who wants to claim it is not relevant will have to answer to the victims to whom they are denying help. Either you are serious about helping women and victims or you are playing politics and making excuses.

Women and children who are being violently abused every day deserve to know where their Senators stand, and Members of Congress are certainly hearing from outside groups on this, from groups that are not known—not known—for their advocacy on fighting domestic violence.

Yesterday, Senators received a letter from the U.S. Chamber of Commerce urging them to oppose my amendment. Bruce Josten, the Chamber's Executive Vice President for Government Affairs, makes the Chamber's case rather forcefully in his letter. He writes:

> It is important to note as a preliminary matter that H.R. 1997 is clearly an inappropriate vehicle for this amendment as the issues involved are completely unrelated.

''Unrelated.'' We are dealing with a bill that claims to address the crime of violence against women, but an amendment that would actually prevent violence is ''unrelated,'' according to the Chamber of Commerce.

Mr. Josten goes on to write:

> The ill-designed programs promise to impose significant costs on business, particularly small business.

So the Chamber argues that the cost of preventing further violence against women is too high to pay. In other words, preventing domestic violence and giving women the tools to escape from abusive relationships is bad for the bottom line.

Let's, for a minute, examine the economics of domestic violence. There are costs associated with allowing domestic violence to continue, not just for women but for businesses.

In 2002, economists Amy Farmer of the University of Arkansas and Jill Tiefenthaler of Colgate University published a report on the economic impact of domestic violence. They examined publicly available studies performed in the United States, including the annual National Crime Victimization Surveys, two Physical Violence in American Families studies, and seven studies in the national violence against women survey.

As Ms. Farmer explained:

> Each study was intended to answer different questions, so the data sets have different strengths and weaknesses. When we incorporated these data into a single model of domestic violence, a different picture emerged that can be seen from any one study.

They found that absenteeism, tardiness, and turnover rates are all high among domestic abuse victims. Farmer's research also concludes that domestic abuse may result in almost 7 million lost work days annually—7 million—reduced workplace productivity, increased insurance costs, and lower profits.

The researchers also cited a 1995 Roper report that found that 49 percent of the Fortune 100 executives surveyed believed that domestic violence hurt their company's productivity, and 33 percent said it lowered their profits. So this is a problem that is real, and it has real costs for businesses.

If you go to the Corporate Alliance to End Partner Violence, you can learn some other interesting facts about domestic violence and how it affects the bottom line. On their site, you will find medical expenses from domestic violence costs $3 billion to $5 billion a year. Businesses are paying $3 billion to $5 billion a year in health care for victims of domestic violence.

You also learn that 94 percent of corporate security directors rank partner violence as a high security problem. They estimate that 75 percent of victims of domestic violence are harassed at work by their abuser.

Here is a startling fact they have on their Web site: Homicide is the No. 1 leading cause of death on the job, and 20 percent of those murders were committed by their intimate partner at the workplace.

What should we conclude from this data? Domestic violence is bad for business. It has real and it has painful costs on employers. So for those Members who want to weigh this measure against its economic merits, as the Chamber does, the facts are clear. Providing the tools that will allow abused women to escape abusive relationships can help offset billions of dollars in costs that domestic violence imposes on businesses.

But I hope my colleagues will consider more than the economics as they cast their vote. I hope my colleagues will consider the cost to the women and children who are the victims of domestic violence—the cost in pain, the cost in lives—and the pain and the lives we can protect by giving women the tools they need to escape abusive relationships.

I would like to share with my colleagues this afternoon some of the stories of the women we are trying to help with this amendment. These stories were shared with me by a nationally recognized advocate for domestic violence victims.

Let me tell my colleagues a story about a woman who had worked at a medium-sized organization for over a year as an administrative assistant. Her husband had been beating her on and off for over 15 years of their relationship. When things escalated, she missed work due to a severe beating. She called in to work and was honest about what happened to her. She came in to work the next day and was told she was fired. Her company told her they were afraid that her husband would come to the workplace and hurt her coworkers, although that had never happened before.

She did not qualify for job guaranteed leave under the Family and Medical Leave Act because the company employed less than 50 employees and, arguably, her injuries from the beating did not qualify as a serious health condition. So it made her firing legal.

If VESSA—the act we are talking about—had been in effect, she would have had access to job guaranteed leave or perhaps a provision prohibiting employers from discriminating against victims of domestic violence.

She applied for and was denied unemployment insurance.

This is a real woman. This is what happened to her. It could be your next-door neighbor. It could be your daughter.

There is another woman who worked as a hospital nurse. She just left her batterer and was concerned that he might follow her to her workplace. She told her employer of her fears, and they fired her. She applied for unemployment insurance. She was denied.

Another story: Abusers often contact employers themselves to get the women they are abusing fired. One batterer called up the workplace and told them his victim was HIV positive. He then told the employer that the woman was a liar and was missing work so she could file a frivolous restraining order against him. The woman took an earned sick day off from work, but when she returned to work, she was told she was fired because she was a victim of domestic violence. If VESSA had been in place, that would have been illegal.

Another story: A woman was assaulted by her batterer in the parking lot at her workplace. She was then fired for ''being in a fight.''

Let me tell you about a woman who was strangled by her batterer. Her doctor told her to stay home from work for 5 days after being strangled. She called in sick to work, and she was fired because she did not have enough vacation days and she did not qualify for family and medical leave because her employer was too small.

These are real people, Mr. President. These are our next-door neighbors. These are women who live in our communities. These are real stories.

Another example: One morning a woman was getting ready to go to work and her abuser came to her home with a gun. He told her that if she left the house, he would kill her. She was able to call the police, and the police came to her home and arrested the batterer. She got a police report. She called her workplace and explained why she was unable to come to work that day. The next day she returned to work and was fired for missing work and was denied unemployment insurance.

Let me tell you another story: One woman got a call at work from her abuser. Her coworker overheard the conversation, and then her employer took her aside and said since she was dealing with so much, she couldn't possibly continue to work for him and fired her.

Here is an example of what happens when a woman tried to go to court to get help. A woman told her employer that she was in a violent relationship and that she would need to take a day off from work to go to court to get a protection order.

The employer seemed supportive and agreed, so she took the day off and went to the court. The next day when she arrived at work, her supervisor called her into his office and she was fired for missing work, even though she had obtained permission the day before.

These are just some of the people who desperately need our help. These are real stories. These are real women. They need this amendment to break out of these abusive relationships.

Let me take a minute to put this amendment in context because it is the next logical step in the progress that we have been making in fighting domestic violence. We have come a long way over the past few years in dealing with domestic violence. Not long ago domestic violence was considered a family problem. It was something people did not talk about. That climate made it very difficult for victims to seek help. It prevented friends or neighbors from getting involved in what was considered someone else's business.

Today stopping domestic violence is everyone's business, thanks to the Violence Against Women Act, which I was proud to work on and help pass. For the first time, the Violence Against Women Act recognized domestic violence as a violent crime and a national public health crisis. It laid out a coordinated strategy to bring advocates, shelters, prosecutors, and law enforcement professionals together to fight domestic violence. I was proud to help reauthorize the Violence Against Women Act in 2000.

Over the years, I have been proud to work with advocates from Washington State and across the country to strengthen these violence against women programs, to increase the funding, and to help raise awareness. So the Violence Against Women Act was the first step and it helped us respond to the immediate threat of abuse. Now it is time for us to address the long-term problems that victims face. We need to break down the economic barriers that trap these women in abusive relationships, and we need to reach out to the children who witness this violence, help health care professionals stop the cycle of violence and truly protect women and children.

Let me take a few moments to walk through the parts of my amendment and show how it will help prevent and stop abuse. My amendment gives victims of violence access to unemployment compensation. Specifically, it provides victims of domestic violence, dating violence, sexual assault, or stalking with unemployment insurance if they have been separated from their employment as a result of the violence.

Many abusers trap their victims financially, limiting their ability to work and forcing them out of a job. I will share some statistics that have been compiled by the National Coalition Against Domestic Violence. Many victims of domestic violence have current or former partners who interfere with their efforts to work by harassing them on the job, threatening them and their children, withholding transportation, or beating them so severely they cannot work. In addition, more than 25 percent of domestic violence victims surveyed in three national studies reported they lost a job due at least in part to domestic violence.

We know that a job is often the only way for a victim to build up resources for themselves to eventually leave a violent relationship, but abuse and stalking can make it impossible for a victim to keep a job. We know of cases where abusers will deliberately sabotage a victim's ability to work, placing harassing phone calls, cutting off their transportation, showing up at the workplace and threatening employees. When a victim loses her job because of violence, she should have access to unemployment insurance compensation benefits.

During this debate some may claim this is some big, onerous expansion. I have seen the talking points from the groups that want to kill this genuine effort to protect women from violence, and they have it wrong. This is not some dramatic expansion. In fact, today 25 States already provide some type of unemployment insurance assistance for victims of domestic violence. We can offer that same protection to victims in every State, and we have an obligation to do it.

My amendment will also protect victims by allowing them unpaid time to get the help they need. Today a woman can use family and medical leave to care for a sick or injured spouse, but many women cannot use that act to go to court to stop the abuse. My amendment fixes that. We know that taking a day off of work to go to court or to go to the police can save a woman's life. My amendment ensures women will not be punished for taking those steps that they need to take to protect themselves from abuse.

Let me turn to another part of my amendment which deals with the children who witness domestic violence. Batterers often harm children as well as their intimate partners, and witnessing violence can have a serious impact on young children and all children. Let me offer some statistics about abuse and children to put this in perspective.

Between 3.3 million and 10 million American children annually witness assaults by one parent against another. In 43 percent of households where intimate violence occurs, at least one child under the age of 12 lives in that home. Children are caught in the crossfire of abuse, and while we know all children are affected differently, we do know that children who witness violence at home may display emotional and behavioral differences as diverse as withdrawal, low self-esteem, nightmares, or aggression against their peers, family members or property.

We know that witnessing abuse by a child can contribute to the cycle of violence. The Office of Juvenile Justice and Delinquency Prevention at the U.S. Department of Justice finds that as many as 40 percent of violent juvenile offenders come from homes where

there is domestic violence. In my home State of Washington, we are now all too aware of the price children pay in cases of domestic violence.

In April of 2003, the Tacoma police chief, David Brame, shot and killed his wife Crystal. Then he took his own life, all while their two young children watched. The final tragic act was the last in a long history of abusive events that often played out in front of their two small children.

According to the police report, David Brame had been driving around in a shopping center parking lot in Gig Harbor that day when he spotted his wife Crystal and the couple's children as she was parking the car. Brame shot her and then turned the gun on himself.

According to a witness, 7-year-old Haley told her:

> My daddy is a policeman and he is very mean to my mommy. I think my daddy has killed her.

Then Haley told officers she had seen her dad point a gun at her mom's head in the past.

Detectives talked to the son, David, 5 years old, at the hospital a few hours later as the mother was fighting for her life. They asked the little boy, 5 years old, ''Did you see the gun?''

He answered:

> Yeah. And, it shooted my mom into flat dead.

The children talked about past anger between their mother and their father and what led to that terrible day. That is just one terrible example of the trauma that children who live with domestic violence have to live with. It should be our collective goal to help them overcome it.

This is how this amendment would help children who witness domestic violence. It establishes grants to children who have been exposed to domestic violence such as I just described. It supports direct counseling and advocacy, early childhood and mental health services, legal advocacy and specialized services. It provides training for school personnel to develop effective prevention and intervention strategies. It helps child welfare agencies, domestic violence, and sexual assault service providers work together to protect the children.

Finally, it supports multisystem intervention models and crisis nurseries for children who are exposed to violence in their home.

Children who witness domestic violence have special needs. They are not being addressed today. We have an obligation to change that.

Let me turn to the next part of my amendment, which increases health screening so more victims can get assistance. More than one in three women who seek care in emergency rooms for violence-related injuries were injured by their intimate partner. Unfortunately, most victims who seek health care leave the doctor's office without addressing the underlying cause of their injuries. They leave that untreated, and that is the violence they suffered. The cost of intimate partner violence exceeds $5.8 billion every year; $4.1 billion of that is for direct medical and mental health care services.

Health care providers can do a great deal to stem the tide of domestic violence before it becomes life threatening. A 1999 study published in the Journal of the American Medical Association found only 10 percent of primary care physicians routinely screen for intimate partner abuse during new patient visits, and 9 percent routinely screen during periodic checkups.

Emerging research shows us hospital-based domestic violence interventions could reduce health care costs by 20 percent. My amendment will help ensure health care providers are trained in how to identify and serve victims of domestic violence, and provide grants to strengthen health care systems' responses to domestic violence.

My amendment will promote public health programs that integrate family violence assessment and intervention into basic care. It encourages collaboration between health care providers, public health programs, and domestic violence programs.

My amendment will lead to more effective interventions, more coordinated systems of care, greater resources to educate health care providers about domestic violence, and ultimately what we all want, more women receiving help.

In December of 1999, the New England Journal of Medicine published a major study on the risk factors for injury to women from domestic violence. Here is what one of the researchers, Dr. Robert Muelleman, had to say.

> A lot of women who have died from domestic violence had been seen in their local emergency rooms at least 2 years before their deaths. In America, 2 to 4 million women are injured each year, and 1 to 2 million of those show up in emergency rooms. Of these, 2,000 to 3,000 a year end up as homicides.
>
> It's clear that medical professionals in the emergency room can be a great help in identifying at-risk women and directing many of them to supportive resources before it's too late.

That is from Dr. Robert Muelleman of the University of Nebraska Medical Center.

Let me turn to another part of my amendment, which expands the services available to victims of abuse. My amendment gives the States the option to use Medicaid to help victims, it ensures domestic violence screening and treatment is covered by the Federal Employees Health Benefit Program, and finally my amendment ensures States use some of the maternal and child health block grant on domestic violence screening and treatment.

Those are the main provisions of my amendment. Extending unemployment insurance benefits for victims of abuse, offering family and medical leave so a victim can go to court or the police station to get help, ending insurance and employment discrimination, providing help for those children who witness abuse, offering access to health care for victims, and improving the way our health care providers screen for domestic violence.

My amendment combines the protections and services victims, law enforcement, and advocates tell us are needed, based on their real world experiences every day on the front lines of domestic violence. We have an opportunity today finally to make a real difference for millions of women who are being assaulted. We can save lives and we can eliminate all the costs domestic violence imposes on our businesses, on our families, and on our communities. The question is whether we are serious about helping to prevent violence against women.

The underlying bill before the Senate today focuses only on penalties after a woman has been abused. My amendment aims to prevent that abuse in the first place. After a woman has been killed, it is too late. We have to stop this abuse before it ends up killing some woman. My amendment gives women today the tools to escape deadly abuse.

Are the Senators in the Chamber serious about helping victims of abuse? That is the question before us.

Frankly, I don't care what the lobbyists say out there. The Chamber of Commerce has lobbyists lined up and down the hall, and they have plenty of people making their case. But I tell you, the women whose stories I shared with you today don't have lobbyists lined up in the hall.

I have been to the shelters. I talked to the women who have been beaten. I have looked in their eyes and I know the odds they are up against. I know what I would say next time I am looking into the eyes of the victim of abuse.

My colleagues will have to decide for themselves if they are going to give her excuses or throw a lifeline to help her escape the violence that may kill her. I say to my colleagues, what are you going to say to the victims of abuse? Your vote will speak volumes.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I want to take a moment to address my concerns about the amendment my friend and colleague from Washington, Senator MURRAY, has offered to the underlying bill.

First, let me commend my colleague for her passion, for her dedication to promoting public awareness about domestic violence, and for her dedication to this cause. She certainly is a tireless advocate in these efforts to help end domestic abuse. She is steadfast and unwavering in her commitment to these issues, and I applaud her for offering this amendment today.

But, reluctantly, I come to the floor this afternoon to oppose this amendment. I say this not because I am opposed to all the provisions of her amendment, but because the reality is

this is not the time or the place for this amendment. Her amendment being offered to this bill, as a practical matter, does not have any chance of becoming law. We understand how not only this body but the other body operates. The truth is, what the agreement to this amendment would do is stop the underlying bill. When we look at the calendar, when we look at the reality of the other body, when we look at what is going on in this body, the agreement to this amendment to this bill will stop this bill. It will kill this bill.

So when Members come to the floor, I implore them to think about this, however tempting it might be to agree to this amendment. It is a very big amendment. It is a very complex amendment. Some of my other colleagues in just a moment will talk about the merits of this amendment. I am not going to get into that.

I have a long history in the House, when I was in the House and later when I was Lieutenant Governor of Ohio, and now in the Senate, of supporting the cause of dealing with the problem of domestic violence. So many other Members of the Senate have done that as well. I don't say I am the only one. Other Members have had a great record. My colleague has a great record.

But the reality is this amendment, however well intended, cannot become law this way. It will not become law this way, and it will have the effect of killing this underlying bill. So, therefore, I must oppose this amendment. This amendment would kill this bill.

We are so close to seeing the underlying bill, a bill we have worked so hard to pass, actually go to the President.

The House has passed it. We are very close to passing it here in the Senate and sending it on to the President for his signature. The only thing, frankly, that now stands between this bill becoming law and going to the President for his signature is the Murray amendment.

At this point, I will yield time to my colleague from the State of Utah for his comments about this amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I couldn't agree more with the comments the distinguished Senator from Ohio just made. This is a very important piece of legislation. It should not be killed on by this last-minute, 158-page amendment, which has not had a single hearing.

I have long been a supporter of ensuring that our Nation's laws extend all the protections available to women who are victimized by domestic and other violence.

Along with Senator BIDEN, I have taken the lead in addressing this issue through national legislation with the passage of Violence Against Women Act.

I commend Senator BIDEN for the work he has done on that. But it took a bipartisan effort to get that through. Of course, I worked very hard side by side with him to get that bill passed, and have stood up for it ever since.

Because of the passage of the Violence Against Women Act, the Department of Justice is now authorized to coordinate with Federal and State governments, as well as international governments, on matters concerning violence against women.

In fact, the Bush administration will allocate almost $400 million this year alone for these worthy programs.

I note with a sense of pride that a former adviser to my Woman's Advisory Council from Utah is now the director of the Office on Violence Against Women in the Department of Justice. She is doing a terrific job.

Violent crimes against women continue to be among the most under-reported. Even so, the statistics that are reported do not convey the feeling of fear and vulnerability millions of women across this country must face in our streets and all too often in their own homes.

To address this problem, effective intervention in the area of domestic violence requires coordinated efforts by police, prosecutors, counselors, and courts. It demands a major commitment by Government at all levels, Federal, State, and local. I am proud to help in coordinating the response to this important issue and have been very proud to have done so in the past. I intend to continue addressing these concerns in the future.

I say all of this to set the backdrop for why I urge my colleagues to vote against the Murray amendment.

Let me say at the outset I appreciate my colleague, Senator MURRAY, for attempting to advance the discussion on this issue. As someone who has been working on this matter my whole political career—and even before I officially began my political career—I know how difficult it is to craft effective legislation which truly makes a difference in this area of the law. It takes countless hours of hearings, meetings with interested and affected constituents, as well as committee markups to ensure what is ultimately passed is well formulated and well vetted so you accomplish the goals you set for yourself without causing unintended consequences.

This is a complex area of law. I am sorry to say, however, this amendment has not been adequately scrutinized. In fact, I am told no committee has examined this proposal, leaving it with far too many troubling provisions.

This is not a simple amendment. It is 158 pages long. Let me take a moment to point out just a few of the more troubling provisions contained within the Murray amendment. I am only talking about a few of them. There are plenty more.

In this Congress we have taken on a number of civil justice reforms. From class action to medical malpractice reform to asbestos reform, which I am hopeful we will consider in the next week or so, we have substantively addressed many of the more troubling aspects of civil lawsuit abuse. This amendment, however, takes us exactly in the wrong direction after all of that work.

For instance, section 112 allows plaintiffs to recover liquidated damages in addition to other damages under this amendment. This is a technical area of the law. But it is a very important area. What this amendment does makes absolutely no sense. It doesn't have a chance in the world of going through the whole Congress, but will in essence destroy this very worthy and important bill.

Liquidated damage provisions are appropriate when the actual damages are too difficult to ascertain. Accordingly, in lieu of actual damages, parties agree upon a reasonable estimate of liquidated damages. Thus, liquidated damages are used as a substitute for actual damages and not as a supplement to them. Courts simply do not enforce liquidated damages that are merely intended to serve as a penalty.

In this litigation-prone country we have right now, this would go completely awry, and it would undermine, it seems to me, what we are trying to do to prevent violence against women in the end.

What it seems the Murray amendment is trying to do is codify a set formula for determining punitive damages by automatically doubling the amount for compensatory damages with the possibility of a reduction if good faith is shown. But if that is the intent, the bill is not drafted properly to carry out that intent.

This glaring error is just one example of what occurs when a bill does not undergo the scrutiny required to pass sound legislation.

It took us years to pass the Violence Against Women Act—not because we were stupid and not because we didn't want to do it faster, but because we had to listen to experts and make the appropriate changes that have made it the great law it is today.

What will happen if this amendment is adopted? First of all, this amendment isn't going to go anywhere, anyway. But if it is adopted, it will destroy this bill. Basically it will undermine what all of us—a vast majority in this body—are trying to do.

The one reason we created the committee system, of course, is to correct and vet legislation rather than wasting valuable floor debate time.

An additional provision found in the Murray amendment pertaining to class action—section 112(g)—appears to fly in the face of the efforts of a vast majority of Senators. It makes no effort to take into consideration issues that trouble the majority of Senators. This amendment codifies in the United States Code a right to bring class actions.

I have helped lead the fight in this Congress to reform the substantial

abuses that have occurred by some unscrupulous trial lawyers, personal injury lawyers primarily, who have brought unjustified class actions in an attempt to extort settlements from companies across this country. That is right. Extort settlements. In fact, well over 50 of my colleagues—truth be known, over 60 of my colleagues have joined with me to take a stand against these abuses. In light of this clear expression of sentiment, it makes no sense to codify in the United States Code this class action authorization. It flies in the face of everything we are doing around here.

Obviously, there has been no serious effort to address the legitimate concerns of the bipartisan majority of the Senators working on the class action issue, and we have worked on it for years. We are still working on it. We have come a long way. We now have a supermajority of Senators who will support class action reform as it should be supported. But it took years for us to get there. Unlike some 158-page amendment that has not been well thought through but brought up on the floor suddenly. However well intentioned the efforts are, in the end, the result will be to destroy the underlying bill that the vast majority of us would like to pass.

I am sure Senators GRASSLEY, KOHL, CARPER, and I will work with the distinguished Senator from Washington in good faith, if she will work with us in good faith with regard to her concerns as exemplified in this 158-page amendment.

Finally, let me point out another provision of the Murray amendment that opens the door to further lawsuit abuse.

In a country that has long been known for its litigation abuse, and we all know this is true, these ill-thought-out litigation matters are running us into bankruptcy—ruining businesses throughout the country, not getting money to those who deserve them, and driving a set of unscrupulous trial lawyers who basically know better but who are more interested in making money than they are in doing what is right.

Section 134 of this 158-page amendment itemizes what can be recovered in a lawsuit brought under this amendment.

In addition to the ordinary recoveries already permitted in the civil justice system, this amendment proposed by the distinguished Senator from Washington would permit a money recovery when the plaintiff suffers ''inconvenience,'' ''loss of enjoyment,'' and other non-pecuniary losses. Recovery for inconvenience? Recovery for loss of enjoyment? My gosh, what does that mean in the law? Anyone who takes the metro during rush hour suffers from inconvenience. And, I might add, loss of enjoyment. This type of language is absurd. It should not even be considered by this right-thinking body.

I am just mentioning a few of the problems. I don't want to take much longer because there is only an hour on each side in this debate. These are just a few of the problems caused by this amendment as it relates to civil justice judiciary issues, important issues that should not be dealt with frivolously.

I have not touched on other problems caused by the amendment such as the increase in taxes on small business that will inevitably follow if it is passed, the wholesale restructuring of state unemployment insurance rules and regulations, as well as the substantial 11th amendment concerns raised by this poorly drafted but well-intentioned amendment.

I understand others will come to the floor to discuss these issues so I don't intend to repeat them now. They are important issues. This is not an itty-bitty amendment. This is a major amendment that literally has not had a day of hearings.

I take a backseat to no one, not anyone, in ensuring that Congress does everything it can to provide protections, support, and resources to combat domestic violence. But this amendment is not well written. Or perhaps I should say, not only is it not well written, it is overwritten in many respects.

Because of the problems replete in the Murray amendment, I cannot vote in favor of it. I recommend Senators on both sides of the aisle vote against this amendment. We will certainly sit down with the distinguished Senator and look at her goals and her aims, try to help her fashion this amendment so that it can pass the Senate in a form that literally makes sense in the law, makes sense in reality, and makes sense in practicality.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). Who yields time?

Mr. HATCH. I yield such time as he needs to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I rise in opposition to the amendment offered by the Senator from Washington. This amendment is a sweeping expansion of Federal employment law without a hearing, without committee debate, without committee amendments, and without any potential for floor amendments. We never legislate like that. This bill does not just have one concept in it; it has many concepts in it. It is 158 pages. That makes it evermore unworkable to do in the Senate. This just is not how we legislate.

As chairman of the Subcommittee on Employment, Safety, and Training, I am compelled to discuss the implications of such an unprecedented and misguided expansion of current law.

Let me begin by saying I share Senator MURRAY's concern about domestic violence. Domestic violence shatters families and with it the very foundation of our society. My opposition to the amendment is not based on a lack of concern for victims of domestic violence. A good title does not make a good amendment. I am opposing this amendment because it is an unprecedented expansion of workplace laws without any consideration for the committee of jurisdiction.

This amendment greatly expands workplace laws without any hearings or Committee consideration. The amendment creates a new set of laws requiring businesses—including small businesses—to provide employees with additional leave and special accommodation. However, the amendment has not been reviewed by the Committee of jurisdiction. It creates new workplace requirements without considering the impact of its implementation or its relation with existing laws. The process is flawed and irresponsible.

The amendment creates broad, vague workplace requirements that conflict with existing law and invite litigation. It creates new rights to leave and prohibitions against employment discrimination against domestic violence victims that are inconsistent with current employment laws, including the Family and Medical Leave Act (the FMLA), the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, and the Civil Rights Act of 1991. The nondiscrimination provisions extend to ''perceived'' victims of domestic violence who have never been subjected to domestic violence. The Murray amendment defines a victim of domestic or sexual violence to include family members of domestic or sexual violence victims. Under this definition, abusers such as parents who molested their own children would be protected under the Murray Amendment.

This amendment creates unprecedented Federal workplace regulation on small business. Congress has recognized the burden of workplace regulation on small businesses with limited resources. The FMLA exempts businesses with fewer than 50 employees from coverage. The Murray amendment would cover all employers with 15 or more employees.

The lack of administrative alternatives increases litigation and burdens courts. Unlike existing federal anti-discrimination laws, the Murray amendment allows claimants to bypass the Equal Employment Opportunity Commission, EEOC, and file a private suit directly in court. This undermines the efficacy of the EEOC and this amendment.

These are unlimited damages for employment discrimination caused by someone else. Unlike existing Federal laws which cap damages for employment discrimination, the Murray Amendment allows unlimited compensatory damages, and punitive damages of up to 300 percent of actual damages. Why should a victim of domestic violence discrimination be able to recover greater damages than a victim of race or disability discrimination?

The amendment imposes an unfunded Federal mandate on State unemployment compensation. The Murray Amendment imposes a Federal Mandate to cover domestic violence under

state unemployment compensation programs. This requires states to pay the tab, but gives them no voice in whether or now to do so. Employers in States that fail to comply must pay huge penalties in the form of higher Federal Unemployment tax. Unemployment compensation is—and should remain—a state issue.

With vague, broad language that conflicts with current employment law, lawyers—not domestic violence victims—will be the biggest winners under the Murray amendment.

The Senator from Washington is the ranking Member of the Subcommittee on Employment, Safety, and Training. Many of the provisions in this amendment fall within that subcommittee's jurisdiction. The rest of them fall under the jurisdiction of the Senator from Utah, who chairs the Judiciary Committee, who just spoke from that perspective.

The first time we are considering this major expansion of Federal employment law is on the Senate floor on a bill totally unrelated to employment and, I have to add, unamendable. There is an agreement between the two sides there would be two amendments today, and those amendments would not be amendable, nor would there be allowed any intervening action. What we have is what we get. I have to say, no one is going to want to get that.

The overly broad and vague provisions of this amendment conflict with and undermine existing employment laws. The committee process is so important because that is where we carefully evaluate in a much less formal situation the impact of pending legislation and its relation with current law.

Let me explain a little bit more how that committee process works. Besides the hearing part where we get to bring panels of experts before us and ask them extensive questions so we have a better understanding of what is going on and to give them an opportunity to speak on the provisions that are before us, we also have what we call a committee markup.

The committee markup is where most of the work for this Chamber is done. It is a much smaller group; it is a much more informal group. People turn in their amendments ahead of time so that they can be reviewed by all. Even on the day of the markup people can get together and work on amendments to get agreement. It is fairly successful. The amendment process usually results in a bill coming from committee with about 80-percent agreement.

The unfortunate thing for this country is that the bill comes to the floor, and what we usually debate is the 20 percent we do not agree on. That is not the case on this particular item. This has not even been discussed in committee, so the 80-percent agreement is not there. The ability to work out issues with some flexibility is not there. I am sure there are provisions in this bill that are written in a way that the author probably wishes were different. I certainly wish they were different.

The first bill I ever did in the Wyoming legislature was only a three-sentence bill when I took it to the legislature. In committee, it got two amendments. On the floor, it got three amendments. When it went to the Senate side, it did not get any in committee but it got one on the floor. What I learned through that process was that every step of that made an important difference. It turned out to be a far better bill because all of the opinions of all of the people serving in that body were injected and they could see a lot more different directions than any one member of that body.

That is how we work it here. We work it so that the 100 Senators have an opportunity to take something as complicated as this and make changes to it. Then the House looks at the same thing. Again, there are a lot more opinions that get into the bill.

The committee process is so important because that is when we carefully evaluate the impact of pending legislation and its relationship to current law. We did not do that here. What we have here is a 158-page proposal which is not related to the underlying bill, and that proposal rewrites employment law without the benefit of hearings or committee consideration. That process is flawed and irresponsible.

So, more specifically, what will this amendment do? It creates a new Federal law that mandates employers, including small employers, to give up to 30 days of leave to an employee to address domestic or sexual violence. However, this proposal ignores important requirements that Congress applied to leave taken under the Family and Medical Leave Act, FMLA.

Let me highlight a few of the differences between FMLA and the Murray amendment.

The Family and Medical Leave Act applies to employers with 50 or more employees. The Murray amendment applies to employers with 15—that is 15, instead of 50—employees. Most small businesses do not have the processes or personnel necessary to begin complying with this new leave requirement.

In the past, Congress has recognized the burden of workplace regulations on small businesses. However, this amendment would impose workplace regulations on small businesses never before covered by Federal employment laws. This amendment would undermine the small business exemption Congress included in the Family and Medical Leave Act.

The Family and Medical Leave Act imposes a length-of-service requirement for employees to be eligible for leave. The Murray amendment has no service requirement for an employee to be eligible. Under this amendment, a worker is presumably eligible for leave on the first day of work.

Under the Family and Medical Leave Act, employers can require a health provider to certify the need for leave. This amendment invites misuse and abuse because there is no third-party verification—no third-party verification—for the leave to be required. So if a person says they were abused, that is good enough to take time off.

The Murray amendment does not amend the Family and Medical Leave Act itself; instead, it gives more capability to someone, under this amendment, than they would get under the regular law. It is a backdoor effort to expand Federal leave law at the expense of equity and clarity.

This amendment prohibits employers from discriminating against an individual who is ''perceived'' to be a victim—that is interesting wording, ''perceived'' to be a victim—of domestic or sexual violence. Individuals with absolutely no legitimate claims of domestic or sexual violence would have a cause of action under this vague and broad standard.

How are employers and courts to determine who a ''perceived'' victim is? Whatever the intent of this legislation, the result will be excessive confusion and, worse yet, excessive litigation. The amendment defines a ''victim of domestic or sexual violence'' to include—and I am sure the Senator from Alabama, who is on this committee that has not had a hearing on it yet, who is on the floor, will make some comments on this—an ''individual whose family or household member has been a victim of domestic or sexual violence.''

Under this definition, family-member abusers—such as parents who molested their own children—would be protected under this poorly drafted legislation. People could get time off for bad behavior.

There is a good reason for this process we have of hearings, committee markup, debate on the floor, with amendments, and then the discussion between the two bodies.

The problems with the amendment extend beyond poor drafting. This amendment is inconsistent with the remedy and enforcement provisions of existing employment discrimination laws. Under title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, Congress gave the Equal Employment Opportunity Commission the role of investigating and enforcing complaints of employment discrimination. These existing laws require a claimant to first file a complaint with the Equal Employment Opportunity Commission before being able to file a private suit in court.

The Equal Employment Opportunity Commission plays a vital role in employment nondiscrimination laws. The Commission's mediation activities expedite resolution of cases and reduce the backlog of employment cases in our courts. This amendment would

allow victims of domestic violence discrimination to bypass the administrative process and file suit in court. Allowing claimants to bypass the Equal Employment Opportunity Commission undermines the efficiency of the agency and the legislation.

This amendment disregards the remedy structure of other Federal employment discrimination laws. Existing laws limit available damages. For example, consequential and punitive damages for claims under title VII of the Americans with Disabilities Act are progressive with the size of the employer and capped at $300,000. This amendment provides unlimited compensatory damages and punitive damages up to three times the amount of the actual damages.

Why should a victim of domestic violence discrimination be able to circumvent the complaint process that victims of race or disability discrimination must follow? Why should a victim of domestic violence discrimination be able to recover greater damages than victims of race or disability discrimination? There is no justification for this unequal treatment. We must guard against enacting legislation that, in an effort to protect individuals from one type of discrimination, creates inequities for those who have been subjected to another type of discrimination.

I find the leave and discrimination provisions of this amendment very troubling. I find the unemployment compensation provisions to be misguided as well. The amendment requires States to provide unemployment compensation benefits to individuals who are separated from employment as a result of domestic violence. That has always been and is a State decision. Under the amendment, that is taken away from the States. States can decide and, in many instances, have decided. Individuals would receive unemployment compensation if they leave employment because of a reasonable fear of domestic violence, a desire to relocate to avoid domestic violence, or to obtain physical or psychological treatment.

Eligibility for unemployment compensation is and should continue to be a State—not a Federal—decision. The terms of unemployment compensation are decided on a State-by-State basis. States have the authority to extend unemployment compensation to victims of domestic violence. A number of States have already done so. This amendment imposes a Federal mandate and higher costs on State unemployment compensation programs. The Federal mandate will impose huge penalties on employers in States that fail to comply. It is estimated that the Federal unemployment tax on all employers in the State will be increased from $56 per worker to $434 per worker. How many jobs will that cost?

A Federal mandate to cover domestic violence under State unemployment compensation programs requires States to pay the tab. However, we give the States no voice in whether or how to do so. It is unfair and irresponsible for Washington to impose this burden—and, in fact, against the law—on already burdened State unemployment programs and employers.

Domestic violence is a serious problem that devastates lives and shatters families. However, we cannot allow a misguided attempt—with no hearings—to address this problem and create new problems that will impose unfair burdens on States and employers, particularly small businesses.

When I am back in Wyoming, I like to hold town meetings so I can find out what is on the minds of my constituents. At each town meeting, there is usually someone in attendance who is quite concerned about Government regulations. I am often told to rein big government in, keep the rules and regulations simple and responsive, and make sure they make sense.

This amendment takes the opposite approach. It is a classic example of one size fits all that doesn't fit outside the beltway.

The amendment ignores the careful consideration Congress has given to existing employment laws with vague and broad language that conflicts with current Federal employment law. Lawyers, not domestic violence victims, will be the big winners in this one.

I will close by sharing a letter from a survivor of domestic violence who divorced her first husband in 1978 because of abuse and, in addition, is an employment attorney with 23 years of experience specializing in employment law.

I ask unanimous consent to print the letter in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OVERLAND PARK, KS,
March 22, 2204.

Re Murray amendment S.A. 2859 (Domestic Violence Prevention Act) to H.R. 1997 (Unborn Victims of Violence Act of 2004).

Senator SAM BROWNBACK,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR BROWNBACK: I am writing to ask that you oppose S.A. 2859 (Domestic Violence Prevention Act), proposed by Senator Murray as an amendment to H.R. 1997.

I have reviewed the Murray Amendment from what I believe is a rather unique perspective. I am a survivor of domestic violence and divorced my first husband in 1978 because of the abuse. I have also served on the Board of Directors for two organizations devoted to the prevention of domestic violence (see attached Exhibit ''A'' for more information). In addition, I am an employment attorney with almost 23 years of experience specializing in employment law.

As a result of my background and experiences, I am sensitive to the victims' perspective, but also sensitive to the employers' perspective. To say the least, the path from victim status to survivor status is not easy, and it is beneficial for victims to have resources available to help them. At the same time, I am aware of the challenges faced by employers in complying with new employment laws, especially laws with good intent but which are poorly written and which have not been given proper thought.

Although I very much appreciate the intent of the Murray Amendment, I cannot support it, particularly Subtitle A (Entitlement to Emergency Leave for Addressing Domestic and Sexual Violence). Its intent may be laudable, but it will have unintended consequences that could easily be avoided if a more thoughtful approach to such a law were to be taken.

I have a number of concerns about Subtitle A of the Murray Amendment. I have summarized my primary concerns below (with a more detailed explanation attached as Exhibit ''B''):

1. Potential for Misuse and Manipulation. Subtitle A has many loopholes that will allow it to be misused and manipulated by employees and their abusers. I have identified five different ways that Subtitle A can be easily misused or manipulated (see Exhibit ''B''). The potential for misuse and manipulation is directly related to the fact that an employee merely has to sign a self-serving certification stating that he/she is a victim of domestic violence. No verification is required, nor are any mechanisms included in Subtitle A to enable an employer to question the veracity of the certification or to prevent fraud.

2. Perpetuation of Domestic Violence. One of the outcomes of Subtitle A will be the perpetuation of domestic violence in some situations. This can occur in two ways. First, an abuser will be able to force a victim, under threat of violence, to take domestic violence leave from work whenever the abuser wants the victim to take time off from work for reasons unrelated to the proposed law's stated purposes. Second, a victim who is not making any effort to remove himself/herself from a domestic violence situation can simply take time off work after suffering abuse to ''recover'' from injuries, even if he/she seeks no medical or other help. In either situation, domestic violence leave will become a method of merely ''managing'' or ''tolerating'' abuse and threats of abuse. It will enable abuse instead of helping a victim become a survivor.

3. Adequate Time Off From Work Already Available. I seriously question the necessity of this law. I believe that most employees already have adequate time off work programs available to them in the event they need domestic violence leave. Those time off programs include family and medical leave under the Family and Medical Leave Act (FMLA) and its state counterparts, leave of absence or other accommodations under the Americans with Disabilities Act (ADA) and its state counterparts, employers' existing vacation and sick day policies, and employers' existing attendance policies. The proponents of Subtitle A have not provided any data to verify that employers' existing time off programs are inadequate.

4. Lack of Due Process for Employers. Considering that Subtitle A requires employers to provide a new benefit to employees, I find it appalling that employers have had no opportunity to provide input or be heard on this proposed law. Basic principles of fairness would seem to suggest that employers be given due process (rather than be dictated to) on an issue of this importance. I have no doubt that employers could provide very useful comments and suggestions.

Subtitle A of the Murray Amendment raises many questions that obviously have not been given much, if any, thought. This letter is by no means to be read as including all of my concerns about Subtitle A. I have others, but have tried to focus on the major ones in this letter.

For the sake of sound policy for victims of domestic violence like myself, for other employees who will have to absorb their workload when they are absent due to domestic

violence issues, and for employers who will have to comply with this proposed law, I urge you to oppose Senator Murray's Amendment S.A. 2859. Thank you for your thoughtful consideration of my comments.

Sincerely,

SUE KENNEDY WILLMAN.

Mr. ENZI. She writes:

Although I very much appreciate the intent of the Murray amendment, I cannot support it.

She gives an explanation and lists four very specific reasons: One, the potential for misuse and manipulation; two, the perpetuation of domestic violence; three, adequate time off from work already available; and four, the lack of due process for employers.

This is a person who has been there. This is a person who has been abused. She did find a way out. And incidentally, in her credentials, she has devoted most of her life to helping battered women in the Kansas City metro area and has an astounding record of doing that and is very concerned about us going this way.

Again, without a hearing, I am concerned, too. I urge my colleagues to oppose this amendment, and I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I listened carefully to the Senators from Ohio and Utah and Wyoming express their concerns about the amendment as we have written it. I know the underlying bill was not marked up in committee either, so I find that argument hard to believe.

I hear their argument. I understand they are going to defeat this amendment. I want to move forward on the issue of domestic violence. It is extremely important that when we are talking about the abuse of women, that we do something to prevent it. I want to make sure we do take a step forward.

Therefore, I ask unanimous consent to send a modified amendment to the desk.

Mr. DEWINE. I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. MURRAY. Mr. President, that is frustrating. I listened to the Senators from the other side say they want to do something about prevention. I hear them saying they have objection to specific concerns. I am willing to make a modification to my amendment to move it forward. It is fairly clear the Republican leadership simply doesn't want to engage in a serious debate to address the cycle of violence. That is unfortunate. We could take steps forward to change lives for women who have been victims of abuse.

I yield 15 minutes to the Senator from Louisiana, and I ask unanimous consent that she be listed as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Louisiana is recognized for 15 minutes.

Ms. LANDRIEU. Mr. President, I come to the floor to support my colleague from the State of Washington and her comprehensive amendment on this important bill and discussion this afternoon. I thank her for the extraordinary work she has done in the area of domestic violence, not just this year but in every year she has been a Member of this body, over a long period of time, her intense interest and advocacy for women and for children and for families and for communities which her effort shows today.

I have a great deal of respect for the Senator from Ohio. He and I usually don't find ourselves on opposite sides, so it is unusual that I would be here supporting an amendment and the Senator from Ohio, Mr. DEWINE, would be opposing it. I understand there are a few—not many—good reasons that people could raise today against this amendment. But I will tell you what one of the reasons is not that I have heard in this Chamber and I have seen sent out by such groups as the U.S. Chamber of Commerce and the U.S. Right to Life organization, two organizations that oppose Senator MURRAY's amendment. They have some legitimate arguments in this document about some of the details of the amendment, but they also go so far as to say that one of the reasons we should not support this amendment is because it is irrelevant to the underlying subject.

Irrelevant? Domestic violence is irrelevant to the deaths of pregnant women, when experts across the board, Republican and Democratic, people who have been prosecutors before—go look at any study—will tell you the majority of women who are killed in the latter terms of their pregnancies are killed not by strangers, not by people who just happen on to their house, but they are killed by the hands of their husbands or the fathers of their children?

I have to sit here and read a vote alert from the Chamber of Commerce, supposedly representing women who own businesses, supposedly representing women, many of whom are business owners, who perhaps have been victims of domestic violence, and not a word in this memo about ''so sorry that you were beaten so badly that you and your unborn died,'' nothing. They go on to say this is an inappropriate vehicle for this amendment because the issues involved are ''completely unrelated.''

I hope my Chamber of Commerce in Louisiana did not approve this document because I don't believe businesses in Louisiana think these subjects are unrelated, since one of the recent things that just happened in my State was a woman shows up to go to work about 2 years ago in Jefferson Parish, gets out of her car, and in front of about 50 people, going through the revolving doors to get into her place of business, her husband comes up to her, takes out a revolver, sticks it in her face and blows her head off. Whether she was pregnant or not, I can't recall. But to say that it is irrelevant to the subject that we are debating is an insult to many people.

Let me clarify one other point. People come to this floor and act like the Senator from Washington and the cosponsor, who was Senator Wellstone, before his death—he did a magnificent job on this subject the years he represented his State in the Senate. In his memory, I will say this: He worked like a Trojan on this subject. This bill was introduced in the 106th Congress, the 107th Congress, and the 108th Congress. But this bill, although there has been one hearing, pushed mostly by Democrats, has never received a markup, not in the 106th, 107th, and not in the 108th. Evidently, there is not enough Republican leadership thought that this is an important subject to discuss.

Those of us who came to the floor today to debate this issue to try to protect people from murder—women and, yes, their unborn children—wonder what we have actually accomplished today because with the underlying bill, the only way you can prosecute people is if the murder actually occurs on Federal property.

The bill we are going to pass today is not nearly as good as the 21 or 31 statutes that are already on the books that are legitimate and genuine efforts. When we asked to have some help for the victims of domestic violence, who are women and their children, we get all kinds of ''can't do it,'' ''too complicated,'' ''too expensive.'' Then I have to read the Chamber of Commerce business alert that says the whole subject is not relevant.

I want to read from ABCNEWS.com for the RECORD, ''Expectant Victim,'' April 25.

On Monday, police found the remains of 20-year-old April Renee Greer, whose dismembered body was found in a trash can that had washed into a farmer's field. She was 8½ months pregnant when she was reported missing on March 8.

Experts and women's advocates are not surprised to find that pregnant women are especially prone to violent deaths. In many cases, pregnant women are killed by their husbands or significant others.

''Most pregnant women are killed by people they know, like husbands or boy friends''. . . .

Think of that. It is one thing to get attacked in a dark alley by somebody you don't know; you are coming home later than you should be. It is another thing to be beaten to death by someone who is supposed to love you. It is very terrible for a child to sit there and watch their father, in many cases, beat up their mother in front of them. It breaks more than their spirit. It crushes their heart and destroys their life.

You would think that somebody on the other side of the aisle would think this was significant and relevant and would want to do something about it and put some money in this bill to do something about it. But, no, we don't have time for it, we can't have a hearing on it, and it is too complicated for anybody to understand.

I don't think this is complicated. Let me go on to read this:

''Sometimes it depends on how far along the woman is in the pregnancy,'' she said.

This is Pat Brown, a criminal profiler and CEO of the Sexual Homicide Exchange. I am sorry, I don't know what State.

''Sometimes it depends on how far along the woman is in the pregnancy,'' she said. ''If it's a serial killer, they normally go after women who may be three months pregnant and are not showing very much. With serial killers, the women are tiny, easy to handle, not too big—someone they can easily overcome. They go after a 'neat package,' something that is desirable where they could get something big.

''With husbands or boyfriends, women tend to be eight months pregnant—they're there and the baby is coming,'' Brown continued. ''They can see the woman and unborn child as something that is in the way, keeps them from living the lifestyle they want.''

And we come to the floor and ask for a little help for domestic or sexual violence, maybe a little time off of work to get her situation in order because her husband is working and he also happens to be the one beating her. She needs 30 days to get a job. They say: No, we cannot give you 30 days. We ask for 30 days of unpaid leave, and the Chamber of Commerce goes wild saying they can't afford it—and they don't have to pay for it.

We talk about increasing grants to local communities to help them provide shelters, since we have not seen a significant increase in shelters, but that is too complicated.

So I ask, What have we done today? Are we going to save any lives, whether it is the life of the unborn, or whether it is the life of a woman? No, because there is no money in this for prevention. We, obviously, want to just prosecute people in a very small place, on Federal land, maybe just to make a point. I came to the Senate to do more than just make a point, and I think the Senator from Washington came here to make more than a point. We came here to make a difference. This afternoon, there is no difference being made and it is a shame.

In conclusion, I want to say something about the Right to Life Association. I have worked with them on cloning. I don't support human cloning. Some people do; I don't. I have worked with them. When they came to my office yesterday to tell me they were sorry that they could not support the Murray amendment because it would ''mess up the bill''—and they need a clean bill—I would like to think they need an effective bill. But they just need a clean bill. For what, I am not sure. Maybe for television commercials.

I think we need an effective bill. I would like to prevent these deaths of unborn children, of women, give prevention on the front end, and then go ahead and prosecute people. In my State, that is what we do because we already have a law on the books. So I am happy that Louisiana is already there. The Right to Life Association said they could not support help for domestic violence victims because they, again, agreed with the Chamber of Commerce that it is not relevant.

I hope people who support the Right to Life Association might write them an e-mail or something today and explain to them that regardless of how you feel, whether you are pro-choice or pro-life, clearly, this is relevant to the underlying bill.

With that, I yield the floor. I support the Murray amendment.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, before I yield to my friend and colleague from Alabama, let me say that I understand what my colleague from Louisiana has said and what my colleague from Washington State has said. I will reiterate what I said a few minutes ago.

The reality of the way this place works, the way the House works, is that whatever the merits of this amendment, the passage of this amendment will effectively mean, that the underlying bill will simply die. The only thing to prevent the underlying bill from going to the White House and being signed by the President of the United States is the Murray amendment. That is what the facts are.

If the Murray amendment is attached to this bill, we can kiss this bill goodbye. That is a fact. I yield to my colleague from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Ohio for his leadership on this issue. He has taken the issue and considered it thoughtfully and prepared a seven-page piece of legislation that I believe, as a former prosecutor, stands the test of careful draftsmanship and is worthy of passage. I believe we have a majority in the Senate prepared to pass this legislation. But it is threatened by this amendment. The Senator is correct that if this amendment passes, this bill will not become law. So a vote for this amendment is a vote against the underlying legislation.

I further say the amendment—the 158-page amendment—is not so carefully drafted, has quite a number of problems, and does not deal effectively with the issue that the Senator seeks to promote.

The day before yesterday, in my office, I met with a group of people from one of America's great corporations, an international corporation. I asked the human resources officer—and I asked them all—how things were going out there and what can we do to help, what problems do they have. The human resources officer said: The one thing causing us the most grief is the Family Leave Act. For a lot of different reasons, complex reasons, this act is subject to abuse. We certainly believe and support a mother being home with a young child. We support the purposes of the act, but there are problems with it. We would like for you to look at it and see.

That was shared with me the other day. It was totally unrelated to this 158-page amendment that has not undergone careful scrutiny, and I believe goes much further and provides benefits that far exceed what is under the current Family Leave Act, which has problems with it.

We need to, as Members, be careful what we pass, what we mandate on private entities, and what we tell them they must do. We should do so in a way that furthers the public policy we want to further, which is to help families who need leave for family emergencies. We want to do that, and the act does it in many different ways. But it is not perfect. This amendment is even less perfect.

Let me show you a couple things we discovered in a brief reading of the Murray amendment. It says:

The term ''victim of domestic or sexual violence'' includes an individual whose family or household member has been a victim of domestic or sexual violence.

Clearly, I think I can say, as a former prosecutor, that would include the perpetrator. That would include the wrongdoer. So now is the wrongdoer going to be able to ask for time off? The law would mandate it, I suspect. Some say that would not happen. But I am telling you, people use the law as it is written to further their agendas when they want to. Maybe he had to go to court to defend himself, and he is going to claim time off for that. I bet you his lawyer would say he is entitled to time off.

Here is another one:

The term ''employee'' means any person employed by an employer on a full or part-time basis, for a fixed time period, on a temporary basis, pursuant to a detail, or as an independent contractor.

That is not even in the current Federal Leave Act. So we have added this statement. So the businessperson has to take care and provide leave or suffer. I think that is a step to which we ought to give a lot of thought before we put it into law.

Another thing that hit me in talking with this lady the day before yesterday, and talking about problems with the act, is the difficulty of a business in having any proof to ascertain that the person really does need leave. Under the act, after you get one approval, say, for a child's asthma, you never have to present proof again, or even just make a statement that it is so and the businesses are bound by it.

A lot of businesses on a manufacturing basis try to do things well. They have a team that produces a product. When one member of that team unexpectedly or routinely misses, it makes it difficult for them. If they have a legitimate excuse, OK. This says:

An employee may satisfy the certification requirement of paragraph (1) by providing to the employer . . . a sworn statement of the employee.

That automatically takes care of it—no proof of a doctor's certificate, a lawyer's statement, or anything else. I just point that out.

The hour is late. As a member of the Health, Education, Labor, and Pensions Committee, as Senator ENZI said so eloquently and in detail, these issues need to be given careful thought. Let's don't kill this underlying bill Senator DEWINE worked so hard on and has dealt with so many Members of this body to refine language so everybody can agree to it and it will have a majority vote.

Let's don't kill this legislation that is important to protecting those unborn victims of violence in America by tacking on an amendment that is not ready, that has problems with it, on which we have not had hearings and should not be added to this bill, anyway. If it is added to the bill, the bill will be in trouble.

I thank the Chair. I thank Senator DEWINE for his leadership. I yield the floor.

Mr. DEWINE. Mr. President, I yield time to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. COLEMAN. Mr. President, I had a chance to hear my colleague from Ohio speak in humble terms about the work he did, the commitment he made when he was working in Ohio at the State level and now in the Senate regarding issues of domestic abuse and sexual violence.

I don't know if there is a stronger champion in the Senate than my colleague from Ohio, Senator DEWINE, on these issues. I know where his heart is. I know where his passion is.

When I look at the Murray amendment, there are provisions in this amendment I would like to support. There are principles in this amendment on which I would like to work with her and I would like to see happen. I believe—I know my colleague from Ohio feels the same way, and we have to be very candid, we have to be very blunt—that the reality is that the effect of the Murray amendment, if it were to pass, would simply kill the underlying bill.

We have an opportunity to do something today for unborn victims of violence. We have an opportunity to do something. Or we can do what I see going on far too often in this Chamber, and that is to—I don't know whether it is political gamesmanship, I don't know if it is ''gotcha'' policy, I don't know what it is, but it is not about getting something done. We can get something done today. We can pass a clean Unborn Victims of Violence Act. For those of us who would like to work with my colleague from Washington on some of these important principles, who really want to get something done, let's be honest and let's do it in a form and manner in which we know something will happen.

If this amendment is attached to this bill, this bill dies. Some of the principles I may believe in and want to work on that are in the Murray amendment will go nowhere, and we all know that.

I did not come here to play a game, to participate in endless debates for the sake of debating, to cast votes to be measured on ''you are for sexual violence or you are against.'' That is not what this is about. I got elected on a belief that we could get some things done, and that is hard in this body because it is so easy to kill a bill. It is so easy to tack on an amendment that is so hard to vote against because we are afraid of being accused of being against domestic violence.

I am passionate about dealing with domestic violence. I was a prosecutor in the State of Minnesota and prosecuted some of the early child abuse cases. I was mayor of the city of St. Paul. I thought we did cutting edge things to deal with domestic and sexual violence. I want to do more about domestic and sexual violence while I am here in the Senate, but we are not going to do more about it by voting for the Murray amendment today.

I am going to cast my vote against the Murray amendment, even though I share a belief in some of the principles the good Senator from Washington is trying to raise. I am going to vote against it because I want to get something done, and the one opportunity we have today, I say to my colleagues, to get something done is to pass out of this body a clean Unborn Victims of Violence Act. If we pass this bill and it is signed into law, we have provided protection on the Federal level—by the way, it is similar to what many States do and what we do in the State of Minnesota—for a mom and an unborn baby, such as the Laci and Conner Peterson case. We all know many cases like that.

Again, I appreciate the principles my colleague from Washington is attempting to raise, but I think it is time to be very blunt and very honest. If you want to do something about that issue, this bill is not the place to do it. It will not go forward. It will not further the ends about which we are talking.

We have an opportunity to do something today, and that is to pass the Unborn Victims of Violence Act. I support this bill in a clean manner. Tomorrow I will work with my colleague from Washington and my colleague from Ohio and do what needs to be done to further some of the very laudable goals she desires.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I yield to my colleague from Oklahoma. How much time do I have?

The PRESIDING OFFICER. Eleven minutes 50 seconds.

Mr. DEWINE. I yield to my colleague from South Carolina first.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I thank Senator DEWINE for yielding. I will be brief.

We just rejected the idea Roe v. Wade rights should be used by criminals to avoid prosecution for their criminal activity that results in the mother being denied to have a child. Roe v. Wade is an honest, genuine debate that exists in this land. Eighty percent of Americans, when polled, believe if a criminal takes the right to have a child away from a mother, they ought to be prosecuted to the fullest extent of the law for what has happened to that family—damage to the mother and damage to the unborn baby.

Professor Walter Dellinger, a former adviser to President Clinton, said:

> . . . although he is a strong advocate for a woman's right to choose abortion, he sees no major problem with 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.''

That is all we are asking. Senator MURRAY has a very long and complicated amendment that deals with domestic violence, family leave, and other issues. South Carolina, to its shame, for lack of a better word, has one of the leading number of domestic violence cases against women. Our legislature is dealing with that. We can do more here. But this should stand on its own.

Just as we said no to Roe v. Wade being an impediment to prosecuting a criminal who attacks a mother who chooses to have a child, we will not let the criminal benefit from Roe v. Wade, nor should we allow an amendment to destroy a bill whose purpose is to put people in jail who attack pregnant women and do damage to the mother and the child.

No good purpose is served by destroying this bill, even though the underlying problem is very real. This bill should stand on its merits. There are more cases such as this than we would all like to admit. We have a chance to do something about it today. Please vote against Senator MURRAY's amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I yield to my colleague from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, to inform my colleague from Washington, at the appropriate time, when she concludes her statement, I plan on making a budget point of order.

First, I compliment my colleague, Senator GRAHAM from South Carolina, for his leadership on this issue for years. I believe today we are going to pass a bill that is long overdue.

I also compliment my colleague, Senator DEWINE from Ohio, for his leadership.

I complimented him in private. I have observed his very high quality of debate. We have had some excellent debate today, and I compliment Members

on all sides. I think it has been very important and we are going to pass a good bill today, largely due to the leadership of the Senator from Ohio, Mr. DEWINE, and also Senator GRAHAM of South Carolina. I compliment both of our colleagues for their effort. This is an important bill, one that deserves to be passed and sent to the President.

I rise today to speak against the amendment of our colleague from Washington. I have great respect for our colleague from Washington, especially for the title of the amendment. The Wellstone Domestic Violence Act is very well named, but when looking at the substance of the bill I find it leaves a lot to be desired.

I happen to believe in the legislative process. This bill has not had a hearing. I happen to be on the Finance Committee. There are two or three things that deal with Finance Committee issues that we have not touched. It did not go through the Labor Committee. It addresses family leave, not the Family Medical Leave Act. It is basically a whole new act. It is not consistent with the Family Medical Leave Act. To qualify for the Family Medical Leave Act, we exempt employers with 50 employees or less. This says employers of 15 or less. That does not make sense to me.

I look at the unemployment section of it, and a lot of people are not even aware of this—I have not heard very much debate about this—but if a State does not comply with the unemployment dictates given by this bill we tell the States they must have unemployment compensation for people who are victims of abuse as defined by this. The tax to the State goes from $56 a year to $434 a year. That is a 675-percent increase. That is a heavy penalty on the States.

One could say, well, they give States time to amend their law. They are given 25 days if they are in session and 180 days if they are not in session. Oklahoma is shortly going to be out of session and we do not go back into session for the rest of the year, so 180 days would not be adequate. I guess there would have to be a special session. I used to serve in the Oklahoma Legislature. Most legislatures are kind of like Congress, they do not move that fast. If they do not move that fast, they have a very heavy penalty increase in their unemployment compensation taxes.

The main thing I guess I am objecting to, as I look at it, there is a new tax credit in this bill. It is a 40-percent tax credit for a provision that is very expensive. It applies to a lot of things. It applies to a long definition that would qualify expenses that an employer might incur to implement workplace safety.

I used to be an employer in the private sector, and I know all employers are interested in safety. Almost all of those expenses related to safety are expensed. None of them, to my knowledge, get a tax credit. This amendment would say, for some safety provisions employers are going to get a 40-percent tax credit.

Then I started looking at the definition. It applies to basically any new security personnel, purchase, or installation of new security equipment and so on. That is wide open. In this day and age of terrorist threats, there are a lot of people who are going to be hiring more security personnel and they are going to say: Thank you very much, Government, because you just gave us a 40-percent tax credit.

If a company is profitable, that is worth a lot. If they are not profitable, it is not worth much.

I asked the Joint Tax Committee to give an estimate on how much this would cost. I just received it. I ask unanimous consent that a letter I received from Dr. George Yin, that gives the revenue estimate, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT COMMITTEE ON TAXATION,
Washington, DC, March 23, 2004.

Hon. DON NICKLES,
U.S. Senate, Committee on the Budget, Washington, DC.

DEAR SENATOR NICKLES: This letter is in response to your request dated March 17, 2004, for a revenue estimate for Senate amendment 2859, which according to your request may come up for a vote on March 24, 2004, under a unanimous consent agreement for H.R. 1997.

In general, the amendment would establish a new general business tax credit equal to 40 percent of the domestic and sexual violence safety and education cost paid or incurred by an employer during the taxable year. Any amount taken into account for purposes of determining the credit would not be eligible for any other credit or deduction. Under the amendment, the types of cost that may be included for purposes of determining the amount of the credit include, among other things, the hiring of new security personnel and the purchase or installation of new security equipment, the purpose of which is to address domestic or sexual violence. Because the hiring of all new security personnel and the purchase or installation of all new security equipment is, in part, for the safety of employees, we have assumed that all such expenditures would be eligible for the tax credit.

The amendment would apply to taxable years beginning after December 31, 2003. Estimated changes in Federal fiscal year budget receipts are as follows:

[By fiscal years in billions of dollars]

2004	−0.6
2005	−1.3
2006	−1.5
2007	−1.7
2008	−1.8
2009	−1.8
2010	−1.9
2011	−1.9
2012	−1.9
2013	−2.0
2014	−2.0
2004–09	−8.7
2004–14	−18.4

I hope this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,

GEORGE K. YIN.

Mr. NICKLES. He says the cost of this provision in 5 years is estimated at $8.7 billion, and over 10 years, $18.4 billion.

That is a lot of money. We are going to say companies get a 40-percent tax credit if they do something in the realm of safety, which one could almost drive a truck through anything and call it safety.

I am not a big fan of tax credits anyway, but that is beside the point. This is a very expensive provision, one, in my opinion, that has not been well thought out, one that is enormously expensive, one that is not paid for.

A week before last, we had votes saying we should be paying for these new spending proposals and tax cuts. Well, this is a big tax cut that is not paid for. Frankly, it is a big loophole that is not paid for. It also causes other little constitutional problems.

We have a Constitution that says all revenue measures have to originate in the House. We do not have a tax bill before us. This did not originate in the House of Representatives. I know my colleagues very well in the House. I respect them and I know they will blue-slip this if this amendment is passed because this would turn this into a tax bill. So this amendment would kill this bill.

Our colleagues in the House want to pass the bill as it is. I hope that a majority in the Senate want to pass the bill as it is.

As it is, this amendment does a couple of things. It increases spending and it increases taxes, both of which violate the budget, both of which I can make a budget point of order against, and at the appropriate time I will make a budget point of order against this amendment, certainly for the tax provision, and I will leave it at that.

I yield the floor.

MURRAY AMENDMENT TO THE UNBORN VICTIMS OF VIOLENCE ACT

Mr. KENNEDY. Mr. President, I support Senator MURRAY's amendment, and I want my colleagues to support it too. Violence against women—especially those who are pregnant—is a tragic example of violence in our society, and we need to do all we can to prevent it. Congress is right to address this issue and do more to protect women. But if the administration and Congress are serious about addressing the issue of domestic violence, let us do it effectively, and not turn it into yet another battleground in the debate over abortion.

As domestic violence experts and advocates make clear, the Unborn Victims of Violence Act will do nothing to provide the protection that battered women need to be safe. Instead of protecting women, the bill focuses solely on the fetus and what happens after the crime.

It does nothing to prevent domestic violence, and it punishes only one of the many possible consequences of such violence.

The harm to women at the hands of their abusers and attackers is not addressed anywhere in this bill. The support and services they need to avoid violence in their homes or escape from it are not addressed. It offers no financial safety net for women who move away from their homes to escape from abusers. It does not address children affected by the abuse. It offers no health care assistance for abused women.

The real purpose of this bill is obviously not to protect and support women who are victims of abuse. Its real purpose is to give new legal rights to the fetus, in a blatant effort to undermine women's rights under the Constitution and Roe v. Wade. In other words, this bill is a threat to women, not a protection for them.

Proponents of this measure also call it the Laci Peterson Act, but this bill would have done nothing to prevent that tragedy. Federal criminal jurisdiction over violent crimes is very limited. The bill would apply only to federal and military crimes. It would have no bearing on the law of California or any other State. Today, 95 percent of all criminal prosecutions, like the prosecution of Laci Peterson's murderer, take place at the State or local level.

A majority of States already have laws that enable prosecutors to file fetal homicide charges. In Massachusetts, the courts have treated the fetus as a separate victim of crime if the developing fetus has reached the stage of viability. That view is consistent with the careful balance between women's rights and fetal rights established by the Supreme Court in Roe v. Wade and reaffirmed in Planned Parenthood v. Casey. This bill completely ignores the Supreme Court's viability standard.

In cases where federal law or military law applies, prosecutors and judges already have ample discretion to impose longer sentences for flagrant crimes committed against vulnerable victims. Courts have regularly held that the Federal Sentencing Guidelines provide for a sentencing enhancement based on the victim's pregnancy or injury to a fetus. The military also makes clear that the pregnancy of the victim can lead to a harsher sentence.

The administration says it wants to prevent violence against women and children. But that priority is not reflected in the budget. The President's budget is cutting or starving key violence-prevention programs.

If Congress genuinely intends to do more to prevent such tragedies, we should be discussing ways to strengthen the Violence Against Women Act and its funding.

Since its enactment in 1994, violence against women has been reduced by 21 percent, so we are clearly making progress. We are on the right track, and there's no excuse for making a u-turn.

The most urgent priority is the need for additional funds. The services available today to victims of domestic violence come nowhere close to meeting the obvious need. The New England Learning Center for Women in Transition in Greenfield, MA, has to turn away ten families from its shelter for each family it is able to serve. Life-saving services such as hotlines and emergency shelters for battered women are funded $48 million below the level authorized by Congress. Women across the country are not obtaining the help they need when they face these dangers or suffer from them. We can do far more than we are doing to see that women do not suffer from domestic violence.

Senator MURRAY's amendment will do that. Unlike the underlying bill, her proposal will genuinely help to combat the serious problem of domestic violence in our country.

Incredible as it seems, nearly one-third of all American women report being physically or sexually abused by their husbands or boyfriends at some time in their lives. A shocking 25 percent to 40 percent of all women who are battered are battered when they are pregnant. One study found that 37 percent of all women who visited a hospital emergency room for violence-related injuries were injured by a current or former husband or boyfriend. According to a study published in the Journal of the American Medical Association, murder is actually the leading cause of death among pregnant women.

Over 3 million children are exposed to parental violence in the United States every year. According to a report of the American Psychological Association, a young boy who sees his father abusing his mother is the strongest risk factor for future violent behavior by that child.

Far from preventing such violence, the so-called Unborn Victims of Violence Act will actually prevent victims of abuse from seeking help. Juley Fulcher, Public Policy Director of the National Coalition Against Domestic Violence, testified before the House Subcommittee on the Constitution last July. She said that if a battered woman is financially or emotionally dependent on her batterer, she is less likely to seek medical assistance if she thinks it may result in the criminal prosecution of her batterer.

The underlying bill contains none of these urgently needed protections for battered women. The Murray amendment will give them the security and support they need to leave an abusive relationship before it's too late.

According to a GAO report in 1998, between a quarter and a half of domestic violence victims report that they lost their job at least partly because of domestic violence. A victim who was forced to change her name and Social Security number in order to escape her abuser testified before the Massachusetts Commission on Domestic Violence. She said that when she met with the human resources officers at her workplace to explain why she needed help, she lost her job because they thought her abuser might attack her in the office and be a safety threat to her co-workers too. Victims of domestic violence need job stability. They need economic independence in order to leave their abuser.

Without a viable source of income, victims to often have no way to escape from their abusive relationship.

Senator MURRAY's amendment helps these victims by guaranteeing them access to emergency leave to obtain medical attention, counseling or other services without fear of losing their job. It provides unemployment compensation. It supports the specific training for medical providers to recognize the signs of abuse, so that frightened women who arrive in the emergency room with tell-tale bruises will know that help is available and will be more likely to reveal and seek the further support they recall is available.

It will ensure that children who witness violence in the home will receive the help they need in order to break the tragic cycle of violence before it consumes the next generation in their families too.

We need laws that genuinely protect women in all of these ways, as Senator MURRAY's amendment will do. And it does so without undermining a woman's fundamental right to choose.

The Murray amendment provides long and overdue support to victims, employers, public health professionals and families to combat violence against women, and I urge my colleagues to support it.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Ohio.

Mr. DEWINE. I think we are about ready to close this out.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, if my colleagues on the other side are going to yield back, I will take a couple of minutes to wrap up. I know my colleagues want to get to the vote and final passage, so I will take only a few minutes to end the debate on this amendment.

I have listened carefully to the other side. They raised concerns about the tax credit side of it, and the budget point of order. I asked unanimous consent to send an amendment to the desk to at least move the other parts of the bill forward without the objectionable part and they refused. That says to me that, despite the rhetoric we have heard from the other side, they are not very willing to do something truly about preventing domestic violence.

I have heard my colleagues on the other side of the aisle say the reality of this place is that if this amendment gets added that it will kill the bill. I have been in the Senate almost 12 years and I know the reality of this place is when Members believe in something and want to solve a problem we can move mountains to get it done.

To the millions of women across this country who have been victims of domestic violence, what they are going to

see on the Senate floor today is Senators being allowed the opportunity to say whether they are actually going to do something to prevent domestic violence or if Senators are only willing to deal with domestic violence after the woman has died.

I believe we have the responsibility to do everything we can to prevent domestic violence. I hope the bill Senators are putting forward today never has to be used because we have prevented violence, but the fact is they are going to prevent us today from offering an amendment that would preclude the underlying bill from ever having to be used. I think that is a tragedy. I think it is a tragedy for the Senate. I think it is a tragedy for the country. I certainly think it is a tragedy for women who face abuse every single day.

Two million women are assaulted every year. I introduced this bill with my colleague Senator Paul Wellstone 3 years ago. We introduced it in three consecutive Congresses and the other side has not allowed us to bring it forward. I keep hearing that we have not had hearings on it. Well, we would love to have hearings on it. We would love to move forward, but it is always said that the time is never right. That is certainly something victims of abuse hear far too often.

This bill simply allows women the time to be able to go to court to get a court order to prevent their abuser from tracking them down and killing them. It allows them the ability to make sure that children who have seen domestic violence get the kind of help they need so they do not create a cycle of violence in their lives, which we know happens too often. It makes sure we offer health care to victims of domestic violence. These are victims who are still alive and need help. It makes sure our health care providers screen for domestic violence so we do not end up with murdered victims every single day. Not relevant? The Chamber of Commerce says this is unrelated? How can anyone look in the eye a woman who has been abused by a batterer and tell her we are not going to help you until you are gone, until you die? I think that is a real tragedy. I am sorry my colleagues on the other side see it that way. I don't.

I have heard rhetoric out here from some of my colleagues—and I do want to commend the Senator from Ohio. He has worked on this issue. I do want to work with you. But I find it a tragedy today that, again, the time is not right. That is what women who are victims of domestic violence hear every single day: The time is not right. We can't help you today. That is what we are doing today. I find that a tragedy.

I am going to continue to work on this issue. I know my colleagues on the other side are going to defeat it today. I know they are going to move on. They have other issues they are going to deal with. But this issue is critical. I have been to the shelters; I have looked the women in the eyes; I have promised them I will not forget, and I will not.

This amendment is named after Senator Paul Wellstone. Every one of us here know he and Sheila cared and were adamant that we provide victims of abuse with the ability to get out of their abusive situation. I hope my colleagues will continue to work with us and that the rhetoric we have heard on the other side about working with us is not forgotten when this bill is gone.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. I commend my colleague again for her dedication to this issue, and her passion. But the fact is, as I have said, this bill cannot pass through this method. It will have the unintended effect of killing the underlying bill. That is why I must come to the floor and oppose it.

Let me yield the remainder of my time to my colleague from Oklahoma.

Mr. NICKLES. Mr. President, is all time yielded back from our colleague from Washington?

Mrs. MURRAY. Yes.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, this bill has a big tax provision that is estimated to cost $18.4 billion. Therefore, a budget point of order does lie against this amendment.

Mr. President, I yield the remainder of our time.

The PRESIDING OFFICER. All time is yielded back.

Mr. NICKLES. Mr. President, the pending amendment offered by our colleague from Washington, Mrs. MURRAY, decreases revenues and if adopted would cause an increase in the deficit in excess of the levels permitted in the most recent budget resolution. Therefore, I raise a point of order against the amendment pursuant to section 505 of House current resolution on the budget for fiscal year 2004.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, pursuant to section 505(b) of H. Con. Res. 95 of the 108th Congress, I move to waive the Budget Act.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 46, nays 53, as follows:

[Rollcall Vote No. 62 Leg.]

YEAS—46

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Bayh	Edwards	Lincoln
Biden	Feinstein	Mikulski
Bingaman	Graham (FL)	Murray
Boxer	Harkin	Nelson (FL)
Breaux	Hollings	Pryor
Byrd	Hutchison	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	
Dodd	Leahy	

NAYS—53

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Feingold	Roberts
Brownback	Fitzgerald	Santorum
Bunning	Frist	Sessions
Burns	Graham (SC)	Shelby
Campbell	Grassley	Smith
Chafee	Gregg	Snowe
Chambliss	Hagel	Specter
Cochran	Hatch	Stevens
Coleman	Inhofe	Sununu
Collins	Kyl	Talent
Cornyn	Lott	Thomas
Craig	Lugar	Voinovich
Crapo	McCain	Warner
DeWine	McConnell	

NOT VOTING—1

Kerry

The PRESIDING OFFICER. On this question, the yeas are 46, the nays are 53. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Mr. NICKLES. I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RIGHT TO CHOOSE

Ms. COLLINS. Mr. President, I rise to engage the distinguished Senator from South Carolina, Senator GRAHAM, in a brief colloquy in order to make clear the intent behind the language in this bill. It is my understanding that there is nothing in the language of this bill that would, in any way, undermine the constitutional right of a woman to choose to terminate a pregnancy, as expressed by the Supreme Court in Roe v. Wade, and subsequent decisions.

I inquire of the Senator, who is one of the coauthors of the bill, if my understanding of the intent behind the language in the bill is correct.

Mr. GRAHAM. The Senator from Maine is correct. Nothing in the language of this bill is intended in any way to undermine the legal basis for abortion rights, as expressed by the Supreme Court in Roe v. Wade, and subsequent decisions.

Based on my extensive experience as a prosecutor in the U.S. Air Force, this legislation would, however, fill a gap in our Federal laws.

Ms. COLLINS. Mr. President, it is also my understanding that at least 27 States have statutes that criminalize the killing of a fetus or an ''unborn

child.'' Am I correct in understanding that there is no legal precedent where a court has held that any of these State statues in any way undermine abortion rights of a woman, as expressed by the Supreme Court in Roe v. Wade, and subsequent decisions?

Mr. GRAHAM. The Senator from Maine is correct. There is no legal precedent where a court has concluded that any of these State statutes undermines the legal basis for abortion rights.

Ms. COLLINS. Mr. President, I have one final inquiry I would like to make of my colleague. It is my understanding that the intent behind the language of this bill, H.R. 1997, is that this bill, like those State laws, not be construed to undermine the legal basis for abortion rights.

Mr. GRAHAM. The Senator from Maine is correct.

Ms. COLLINS. I thank my colleague for making the intent in this respect clear.

Mr. VOINOVICH. Mr. President, I rise today in strong support of the Unborn Victims of Violence Act. I firmly believe that we need this legislation to correct the loophole in federal law that currently does nothing to criminalize violent acts against unborn children. Sadly, we live in a violent world where unborn babies are the victims, intended or otherwise, of violent acts. I find this horrifying, and believe that all children, born or unborn, are a precious gift and responsibility.

This is something we have already recognized in Ohio. I am proud to say that we got this done on my watch when I was Governor of Ohio. In June 1996, I signed legislation making it a crime to injure or kill a prenatal child who could survive on his or her own outside the mother's womb. We passed this legislation in record time due to public outcry over a case in Indian Hill, a suburb of Cincinnati in 1995. Joseph Daly's wife and her unborn baby were killed in a car accident when a drunk driver hit her car. People were outraged that action could be brought on behalf of Mrs. Daly, but not their unborn daughter, who was 2 weeks away from being born. And people will be outraged.

Under current Federal law, an individual who commits a Federal crime of violence and kills or injures an unborn child cannot be prosecuted separately for those violent acts against the unborn child because Federal criminal law does not recognize the unborn child as a crime victim. Can you imagine? A baby that could be viable outside of its mother's womb would not be considered a crime victim? This bill will close that gap.

Under this bill, if an unborn child is injured or killed during the commission of a Federal crime of violence, the assailant could be charged with a separate offense on behalf of the unborn child. In 29 States, including Ohio, if a person commits a crime of violence against a pregnant woman under State law and kills or injures her unborn child, that person can be punished for the violence against both the mother and the unborn child. But if a person commits a Federal crime of violence against a pregnant woman and injures or kills her unborn baby, the death or injury of the unborn child would not be punished as a crime.

This bill extends the protections currently available in 29 States to the unborn victims of violent acts committed in violation of Federal law. Thus, where a Federal crime of violence has been committed and the injury or death of an unborn child results, the perpetrator will be held to account for the crime of violence against the unborn child.

I know some of my colleagues will want to paint this as an abortion issue. But, it is important to note that this bill has been drafted narrowly to apply only where the death or injury to the unborn baby occurs as a result of an existing Federal crime. The bill expressly excludes any death or injury to an unborn baby caused by abortion, any medical treatment of the mother, or an act of the mother herself.

As I stated before, we live in a violent world where unborn babies are the victims, intended or otherwise, of violent acts. And these babies, the smallest and most helpless victims, deserve justice, too. We must pass this legislation and take a stand against crimes committed against women and children. I therefore ask my colleagues to support this very important legislation.

Mr. BOND. Mr. President, I rise today to express my support for the Unborn Victims of Violence Act.

Any pregnant woman will tell you that all she wants is for her baby to be born healthy. A pregnant mother can take her vitamins, follow the instructions of her doctor, and do everything in her power to deliver a healthy baby. But, no amount of prenatal care can protect her unborn child from the hands of a violent criminal.

This question before us is simply—when a violent crime is committed against a pregnant woman—is there one victim or two? Pregnant women who have been harmed by criminal violence and their families know that there are two victims.

In a letter to the sponsors of this bill, the family of Laci and Conner Peterson, whose lives were brutally ended, requested that the bill before us today be referred to as ''Laci and Conner's Law in their memory.'' The Peterson family can, better than any of us, express the impact of this terrible loss. They wrote, ''As the family of Laci Peterson and her unborn son, Conner, this 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.'' No one can tell the Peterson family that there was only one victim. The Peterson family mourns for two lives that were brutally ended. There is no question that the criminal responsible should be accountable for the loss of both lives.

When pregnant women suffer at the hands of violent criminals I urge my colleagues to protect both victims under Federal law.

Mr. ALLEN. Mr. President, I rise today in support of the Unborn Victims of Violence Act, or what many individuals refer to as ''Laci and Conner's Law.''

We have all heard the tragic story of Laci and Conner Peterson; Laci, 8 months pregnant with her unborn son Conner, were viciously murdered at the hands of a killer. Regrettably, Laci and Conner's story is only one of many instances where a woman is harmed and may not only lose her life but the life of her unborn child.

In my Commonwealth of Virginia, we had a similar tragic situation occur in April of 2002. Ronda Robinson was maliciously gunned down in her Lynchburg home, while her two daughters watched in terror. Like Laci, Ronda was in her third trimester when she and her unborn child had their lives taken.

At that time, Virginia did not have a fetal homicide law on the books, and the Commonwealth was unable to bring a homicide charge against the murderer for the killing of Ronda's unborn child.

Unfortunately, the situation in Virginia and many other States remains the same. If a mother survives an assault, but loses her unborn child, the law currently does not recognize any loss of any human life at all.

However, I am pleased that the Virginia General Assembly has taken steps to correct this wrong. This year, the Virginia General Assembly overwhelmingly passed legislation that would hold an individual accountable who, ''unlawfully, willfully, deliberately, maliciously, and with premeditation kills the fetus of another.'' Twenty-Nine senators or 72 percent of the senate and 77 members of the house of delegates or 77 percent of the house supported this legislation.

While this legislation has not yet been signed into law, I am hopeful that Virginia will follow the lead of the 29 other States that have passed this important and meaningful legislation.

I have the same optimism for the Unborn Victims of Violence Act. We have a chance to hear the voice of the voiceless and bring fairness to a system that has essentially told hundreds of women and their families, their unborn child never existed.

I have been blessed with four great gifts, my loving wife and my three wonderful children. I have witnessed my children grow and live healthy and happy lives. I see what my children have accomplished so far in their lives and I am eager to see what other great accomplishments will follow. But many individuals are unable to witness the birth and growth of their child because of a violent criminal act.

Throughout my tenure in public service, whether it was in the Virginia

House of Delegates, U.S. House of Representatives, Governor's office, or now in the U.S. Senate, I have always tried to be tough on criminals. I have always believed in the principle that if you commit a crime, you should be punished.

The Unborn Victims of Violence Act closely upholds my beliefs by making criminals accountable for their actions. Under current Federal law, an individual who commits a Federal crime of violence and kills or injures an unborn child cannot be prosecuted for those violent acts against the unborn child. The Unborn Victims of Violence Act seeks to rectify this situation and close that loophole.

Under this bill, if an unborn child is injured or killed during the commission of an already-defined Federal crime of violence, then the assailant could be charged with a separate offense for the second, enhanced crime upon the unborn child.

Opponents of the Unborn Victims of Violence Act contend that this will hamper a woman's right to choose and constitute an attack on Roe v. Wade. This is simply false. In fact, this legislation explicitly provides that it does not apply to any abortion to which a woman has consented, to any act of the mother herself, legal or illegal, or to any form of medical treatment.

In addition, opponents have brought numerous challenges against State unborn victims laws, based on Roe and other constitutional arguments, and all of these challenges have been rejected by State and Federal courts.

I have always been a strong supporter of rights of the people in the States to determine their laws so long as it does not harm interstate commerce or our Constitution. This bill safeguards those States' laws. This legislation does not supersede State unborn victims laws, nor does it impose such a law in a State that does not have one on the books. The Unborn Victims of Violence Act merely applies to an already defined set of Federal crimes.

The bottom line is that criminals must be held accountable for their actions. The Unborn Victims of Violence Act ensures that justice is sought and available for the totality of the violent murderous act. This is good, solid legislation that is tough on crime, appropriately punishes criminals, and meets the ends of justice desired by law-abiding citizens.

I urge my colleagues to support this bill so that we can send it to President Bush for his signature and ensure that justice will be served.

Mr. DODD. Mr. President, I share the outrage of every other Member in this Senate over the heinous and violent crimes that are committed against over 300,000 women a year. These crimes are especially horrific when the perpetrator knows his victim and knows her to be pregnant.

Today, a significant number of States already allowed stricter penalties for crimes of violence committed against pregnant women. At the Federal level, I believe that it is appropriate and necessary to conform our Federal laws to the statutes of these States.

Particularly heinous crimes ought to receive particularly harsh penalties. And for that reason, I strongly supported the Feinstein amendment during today's debate. Like the underlying legislation, the Feinstein amendment would have allowed Federal prosecutors to ''double-charge'' those individuals convicted of crimes against pregnant women, and would have set forth severe and just punishments for those crimes. Unfortunately, this amendment was defeated.

I also realize that punishing individuals for crimes against women, both pregnant and not, is only one step toward reducing domestic violence. We must do more as a society not only to punish but to prevent domestic violence. For this reason, I strongly supported the Murray amendment today. This amendment would have protected the economic security of women who are victims of domestic violence by allowing them to keep their jobs if and when they needed to take time off to attend court and receive medical care related to an act of domestic violence committed against them. It would have also authorized important new initiatives for the establishment of family violence research and education centers to develop, implement, disseminate, and evaluate family violence prevention and early intervention services and strategies. Again, I was disappointed when this amendment failed.

We have come a long way from the days when domestic violence was considered a private matter. Major initiatives like the Violence Against Women Act have offered protection for women while treating domestic violence for what it is—crimes committed by cowards. However, as the continued prevalence of domestic violence cases show, we have a long way to go.

Regrettably, the underlying bill that was before us today is not principally focused on curbing violence and punishing those individuals found guilty of committing these heinous crimes. Rather, the legislation was focused on advocating a cause about which its proponents feel very deeply, but a cause that a majority of Americans do not share—the cause of eroding and ultimately ending women's right to choose.

I happen to support a woman's right to choose as set forth in the Roe vs. Wade decision. And I find it regrettable and inappropriate that legislation that ought to be focused on eroding the number of heinous crimes committed against all women focuses instead on eroding a woman's right to choose. For this reason, while I supported both the Feinstein and Murray amendments, I am unable to support the underlying bill.

For those who wish to advocate a cause not related to the issue of domestic violence, I urge them to advocate it in the open and not by stealth. But for those who want to reduce further the number and severity of crimes against women to continue working with people like Senators FEINSTEIN and MURRAY. Working together, I am confident we can make a substantial difference in the lives of hundreds of thousands of women across the country.

Mr. SMITH. Mr. President, I rise today to speak about the Unborn Victims of Violence Act and our duty to protect the most innocent among us.

A woman becomes a mother the moment she hears she is with child. From that time forward, her primary concern is providing for and protecting the new life within. Our concerns should be no different.

It is horrifying that an expectant mother could be the target of violence—yet it happens. And when such a crime is committed, there is not one victim, but two. Recognizing this fact in Federal law not only fulfills our commitment to mothers and the unborn, it also serves as a deterrent to crimes against the innocent.

Under the laws of 29 States, if a person commits a violent crime against a pregnant woman and seriously injures or kills her unborn child, that assailant can be punished for both the violence against the mother and the unborn child. This is not the case in federal law. A perpetrator who commits a violent crime under Federal jurisdiction and kills an unborn child cannot be prosecuted for that death. This is wrong.

Today, I am proud to join my colleagues in voting in favor of the Unborn Victims of Violence Act. Under this legislation, an assailant who commits a Federal crime and kills or injures an unborn child can be charged with a separate offense on behalf of the child. Passage of this bill sends an immediate message to criminals that they will be punished for violence against women and their unborn children.

This legislation and the ban on partial-birth abortion enacted last year further protect the sanctity of life. Like the ban on partial-birth abortions, this bill is supported by the vast majority of Americans who recognize it as a reasonable stop we can take to protect women and children.

I look forward to President Bush signing this legislation into law. It will show criminals that they can no longer act with impunity and it will tell expectant parents what they already know—that their unborn children have value, too.

Mr. DEWINE. I am prepared to yield back our time on the general debate.

The PRESIDING OFFICER. There is still time on the underlying bill.

The minority leader.

Mr. DASCHLE. We yield back on the minority side.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, for the information of our colleagues, the next vote is the last vote of the week. We will begin consideration of welfare reauthorization on Monday. There will be no rollcall votes on Monday. Any votes ordered will be stacked on Tuesday of next week.

Mr. DOMENICI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The PRESIDING OFFICER. Both sides having yielded back their time and the bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

The PRESIDING OFFICER (Mr. COLEMAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 38, as follows:

[Rollcall Vote No. 63 Leg.]

YEAS—61

Alexander	Dayton	Miller
Allard	DeWine	Murkowski
Allen	Dole	Nelson (NE)
Bennett	Domenici	Nickles
Bingaman	Dorgan	Pryor
Bond	Ensign	Reid (NV)
Breaux	Enzi	Roberts
Brownback	Fitzgerald	Rockefeller
Bunning	Frist	Santorum
Burns	Graham (SC)	Sessions
Campbell	Grassley	Shelby
Carper	Hagel	Smith
Chambliss	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Kyl	Talent
Conrad	Landrieu	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	McCain	
Daschle	McConnell	

NAYS—38

Akaka	Feingold	Levin
Baucus	Feinstein	Lieberman
Bayh	Graham (FL)	Lincoln
Biden	Harkin	Mikulski
Boxer	Hollings	Murray
Byrd	Inouye	Nelson (FL)
Cantwell	Jeffords	Reed (RI)
Chafee	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Corzine	Kerry	Snowe
Dodd	Kohl	Stabenow
Durbin	Lautenberg	Wyden
Edwards	Leahy	

NOT VOTING—1

Gregg

The bill (H.R. 1997) was passed.

Mr. SPECTER. Mr. President, I support enhanced penalties for criminal acts of violence against pregnant women.

My concern with the DeWine bill is that it unnecessarily seeks to weigh in on the abortion controversy with the definition of ''unborn child'' and ''child in utero.''

I voted for the Feinstein amendment because it accomplishes the substantive criminal law objectives of the DeWine bill without raising a potential issue on a possible challenge to Roe v. Wade.

When the Feinstein Amendment lost, I voted for final passage of the DeWine Bill in order to impose appropriate double sanctions for the murder or assault of a pregnant woman that interferes with a pregnancy.

MORNING BUSINESS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DEWINE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, am I right that we are in morning business?

The PRESIDING OFFICER. The Senator is correct.

DRUG TRAFFICKING AND TERRORISM

Mr. GRASSLEY. Mr. President, since the tragic events of September 11, we have all strived mightily to ensure that our great homeland is never subjected to a terrorist attack by the evildoers again. But everyday those very evildoers weaken the fabric of our country, their enemy, by flooding our great society with addictive and deadly drugs. While the link between terrorists and drugs has been made countless times publically, we, as a Nation, have yet to attack the problem with an approach that is consistent and successful.

On March 13, 2002, Rand Beers, Assistant Secretary for International Narcotics and Law Enforcement Affairs, and Francis Taylor, Ambassador-at-large for Counterterrorism, made the points in joint testimony prepared for a hearing on ''Narco-Terror: The Worldwide Connection Between Drugs and Terror'' held by the Judiciary Committee Subcommittee on Technology, Terrorism and Government Information. Taylor, who delivered the opening testimony, told us that ''relations between drug traffickers and terrorists benefit both.''

''Drug traffickers benefit from the terrorists' military skills, weapons supply, and access to clandestine organizations. Terrorists gain a source of revenue and expertise in illicit transfer and laundering of proceeds from illicit transactions,'' he said.

Taylor listed terrorist groups with known links to drug trafficking around the world—from the South American nations of Colombia, Peru, Bolivia and Paraguay to Afghanistan, which, he said, accounts for more than 70 percent of the world's supply of opiates.

Mr. President, we know that 12 of the 25 major terror organizations identified by the State Department in 2002 have ties to drug traffickers and we know that drugs are a major source of funding for these terrorist groups. We know these groups sometimes work as conspirators to carry out their evil purposes.

The Lebanese Hezbollah group is increasingly involved in drug trafficking and terrorist organizations in Europe and Southeast Asia also are tied to illicit drugs.

The Revolutionary Armed Forces of Colombia, commonly known as the FARC, protects cocaine laboratories and clandestine airstrips in southern Colombia and some FARC units directly control local cocaine base markets.

As evidence that terrorist groups cooperate and work together, the Colombian National Police arrested three members of the IRA in July, 2001, who are believed to have used the demilitarized zone to train the FARC in the use of explosives.

While we know these connections, we have not taken full advantage of the vast resources and knowledge available to exploit this connection. The link between terrorism and drug trafficking that may take many forms, ranging from facilitation—protection, transportation, and taxation—to direct trafficking by the terrorist organization itself in order to finance its activities. Traffickers and terrorists have many of the same needs in terms of the secret movement of goods, people and money.

There are no swans in the sewer, and the relationships between drug traffickers and terrorists benefit both. As Mr. Beers stated, ''Drug traffickers benefit from the terrorists' military skills, weapons supply, and access to clandestine organizations. Terrorists gain a source of revenue and expertise [from drug traffickers] in illicit transfer and laundering of proceeds from illicit transactions.'' Corrupt officials who are influenced by the dirty money of the narco-terrorists make it easier for the groups to get access to fraudulent documents, including passports and travel documents. This allows the terrorists to travel abroad under the stealth and protection of a shadowy network that is virtually undetectable.

Terrorists and drug traffickers also use the same methods to hide their illegal profits and conduct fundraising to feed their evil plans. The schemes used by the terrorists for the transferring and laundering of drug money for general criminal purposes are similar to those used to move money to support terrorist activities. The use of ''charities'' and informal networks such as ''hawalas'' are easy and efficient ways to launder money.

Yet these are the only methods we know about. Congress is in the process