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### ***Debate on the Unborn Victims of Violence Act***

Mr. BROWNBACK. 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.