



Testimony for the Senate Judicial Proceedings Committee
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SB 533 - Criminal Law – Homicide – Unborn Child (Laura and Reid’s Law)

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OPPOSE

The American Civil Liberties Union of Maryland (ACLU) opposes SB 533, which would repeal references to the terms “viable” and “viable fetus” in the statutory provisions concerning the offense of murder or manslaughter of a fetus. Additionally, it removes the word “fetus” and replaces it with “unborn child,” defined as “a fetus at any stage of development that is carried in the womb.”

The ACLU recognizes that a woman may suffer a serious physical and emotional injury if her pregnancy is ended by an assault, a drunk driving accident, or other criminal or negligent acts. The ACLU fully supports a woman's right to obtain redress under civil law for an injury to her fetus, and we support society's right to punish criminal conduct.

But we urge legislators and advocates of choice to take a careful look at bills designed to protect fetuses. They must be alert to the pitfalls in such bills and refrain from supporting statutes that endanger civil liberties.

SB 533 Violates the Supremacy Clause

In changing the language of the current statute from “fetus” to “unborn child,” SB 533 proposes to further treat the fetus as an independent victim, with legal rights distinct from the woman harmed or killed by the criminal conduct. A pregnant woman and her fetus should never be regarded as separate, independent, and even adversarial, entities. Yet that is precisely what this legislation and some anti-choice organizations have attempted to do in the past decade.

Anti-choice organizations have long promoted fetal protection legislation as one prong of their campaign to eliminate the right to choose. It is no accident that anti-choice groups like Americans United for Life have drafted and circulated such legislation all over the country. Passage of fetal protection laws gives anti-choice forces a propaganda coup and a launching pad for arguments to restrict abortion.

The equation of fertilized eggs, embryos, and fetuses with individuals (“child”) violates the Supremacy Clause of the U.S. Constitution. In *Roe v. Wade*,¹ the Supreme Court roundly rejected that claim.² There is no authority to pass laws directly at odds with Supreme Court’s constitutional ruling in *Roe* that a fetus is not a person (or “child,” as the case may be with SB 533).³

¹ 410 U.S. 113 (1973).

² *Id.* at 156-67.

³ Allowing criminal punishment for the “killing” of a non-implanted fertilized egg that medical authorities agree is not “human life,” impermissibly reflects the concerns of a handful of religions,

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Further, this bill contrasts sharply with the medical consensus that pregnancy begins days after fertilization, at implantation, where the American Medical Association defines pregnancy as beginning with implantation rather than fertilization, or certainly “any stage of development that is carried in the womb,” as is the language in SB 533.

SB 533 Violates Due Process Rights

SB 533 disregards the Constitution's promise that citizens are entitled to due process of law. It violates due process guarantees because it is unacceptably vague with regard to the provision on “wanton[] or reckless[] disregard[]” for the death of the fetus.

The Supreme Court has made clear that statutes may be vague in violation of the Due Process Clause due to concerns of “lack of notice,” and can only be overcome “in any specific case where reasonable persons would know that their conduct is at risk.”⁴ Under this bill, taking away the requirement of “viability” and replacing it with “any stage of development that is carried in the womb,” substantially increases the likelihood that the perpetrator, or the woman for that matter, would not know she was pregnant, therefore subjecting an individual to a potential murder charge on the basis of wanton and reckless disregard to someone who could not have known that the fetus was being harmed.

There are many reasons why a lay person would not necessarily know what conduct would knowingly or intentionally cause the death of a pre-viable fetus. Or, more importantly, any type of behavior that may be considered wanton and reckless disregard of a fetus in its very early stages.

Therefore, SB 533 is in violation of the Due Process Clause of the Fourteenth Amendment.

SB 533 seriously jeopardizes civil liberties, and we urge an unfavorable report.

instead of a legitimate state interest. *Oyler v. Boles*, 368 U.S. 448, 453 (1962) (forbidding prosecution based on religion).

⁴ See *Maynard v. Cartwright*, 486 U.S. 356, 361-62 (1988); Additionally, whether an accused “caused” the “death” of an embryo or non-viable fetus that may or may not have matured to a living person is a matter of philosophy and personal opinion, and proves far too vague to satisfy the rigorous demands of the Eighth Amendment. See, e.g., *Evans v. People*, 49 N.Y. 86 (1872) (“death cannot be caused when there is no life.”).