



Why the Americans United For Life Bill --Justifying the Use of Deadly Force to Protect an Unborn Child -- Is Dangerous to Pregnant Women

Americans United for Life is promoting model legislation that would treat eggs, embryos, and fetuses as though they were legally separate from the pregnant woman and create a special defense to murder and related charges.¹

According to the model legislation: *A pregnant woman is justified in using force or deadly force against another to protect her unborn child if: (a) Under the circumstances as the pregnant woman reasonably believes them to be, she would be justified in using force or deadly force to protect herself against the unlawful force or unlawful deadly force she reasonably believes to be threatening her unborn child; and (b) She reasonably believes that her intervention and use of force or deadly force are immediately necessary to protect her unborn child.*

Two states, Oklahoma and Missouri, have already passed such laws. South Dakota tried to introduce and pass such a law but its version of it was written so broadly that it appeared to make any murder justified, including the murder of doctors performing abortions, if done in defense of an unborn child.

Claim: This legislation will ensure that pregnant women who defend themselves from violence will have fair trials. AUL describes this legislation as a positive outgrowth of a Michigan court case, *Michigan v. Kurr*,² which held that a battered pregnant woman who had been convicted of killing her boyfriend was entitled to a new trial so that she could claim defense of her unborn child.

Fact: As the *Kurr* case itself demonstrated, such laws will make it more likely that pregnant women will, be put on trial twice – once for the murder they are accused of and again for everything they did or did not do during their pregnancies to protect their unborn child. This “defense” actually opens the door for the prosecution to raise anything a woman did—including contemplate having an abortion or planning to have a home birth—to show that she herself failed to value or protect her unborn child.

In fact, when the *Kurr* case was retried the prosecution cross examining her about any behavior she might have engaged in that could affect her unborn child, questioning her about her alleged drug use and whether she had taken precautions the prosecution deemed necessary for a high risk pregnancy. Ms. Kurr was convicted more quickly at her second trial where this defense was allowed than at her first trial where it was not. The jurors in the original *Kurr* trial took six hours to reach a verdict; the jurors in the second trial, in which Ms. Kurr was cross examined about her own failures to protect the unborn child, reached their verdict in a single hour.³

Claim: This legislation is primarily concerned with protecting pregnant women from violence.

Fact: As Americans United for Life itself clarifies: “*As importantly* the new law extends both legal recognition and legal protection to an unborn child. It also further isolates abortion as the only instance in which such legal recognition and legal protection are not afforded to an unborn child.”⁴ In other words, by passing such laws, states are creating legal precedent for overturning *Roe v. Wade*, for re-criminalizing abortion, for putting doctors who perform abortions and the women who have them in jail as murderers, and for prosecuting pregnant women for child abuse and other crimes when they “fail” to protect the eggs, embryos, and fetuses they carry, nurture, and sustain.

Claim: This legislation is an effective response to violence against pregnant women.

Fact: There is no evidence that violence against women, pregnant or not, has decreased in states that have passed such laws. And while no state with such a law can claim to lead the nation in protecting women from violence, Oklahoma is now the leader in incarcerating women, most of them mothers.⁵

Conclusion

The proposed legislation claims that by adopting this Act, a legislature is expressing its intent to, among other things, “ensure that the affirmative right of a pregnant woman to carry her child to term is protected.” Actual commitment to this would be demonstrated by such things as legislation increasing funding for nutrition and health programs for pregnant women, mothers, and families; ensuring that all pregnant women are protected from workplace discrimination (millions are not); and by taking steps to ensure that pregnant women are not punished or made more vulnerable as a result of seeking help from the police and other state officials.⁶

¹ “Pregnant Women’s Protection Act”, *Americans United for Life*, December 2010, 22 Feb. 2011 <http://www.aul.org/wp-content/uploads/2010/12/Pregnant-Womans-Protection-Act-2011-LG.pdf>.

² *People v. Kurr*, 253 Mich. App. 317 (Mich. Ct. App. 2002), available at <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/abortion/mikurr10402opn.pdf>.

³ Trial Heat, CourtTV, October 17, 2003.

⁴ Denise Burke, Missouri Becomes Second State to Enact AUL’s “Pregnant Woman’s Protection Act” American’s Unite for Life (June 25th, 2010) available at <http://www.aul.org/2010/06/missouri-becomes-second-state-to-enact-aul%E2%80%99s-%E2%80%9Cpregnant-woman%E2%80%99s-protection-act%E2%80%9D/> (emphasis added).

⁵ See Barbara Palmer, *Oklahoma Laws Foster Incarceration Rate*, Oklahoma Watch, <http://www.oklahomawatch.org/story.php?sid=16>, (“Oklahoma sends more women to prison than any other state on a per capita basis and has for 14 of the past 15 years.”).

⁶ See e.g., Anannya Bhattacharjee, *Whose Safety? Women of Color and the Violence of Law Enforcement*, AMERICAN FRIENDS SERVICE COMMITTEE AND THE COMMITTEE ON WOMEN, POPULATION AND THE ENVIRONMENT (2001) Available at <http://www.cwpe.org/resources/publications>. See also <http://www.incite-national.org/index.php?s=52>.