AMERICANS UNITED FOR LIFE

S 1404
Attachment 2c

March 17, 2016

To whom it may concern:

Consistent with U.S. Supreme Court precedent and good public policy, the *Idaho Unborn Infants Dignity Act*, Senate Bill 1404, provides guidance as to what happens to the bodily remains of an unborn infant after death; protects the personal right of a mother to receive and dispose of her unborn child's bodily remains; and prevents the undignified treatment or commodification of the child's bodily remains.

The bodies of deceased infants, like other deceased human bodies, are not egg, sperm, or mere tissue, and they are not part of another person's body. In *Gonzales v. Carhart*, the U.S. Supreme Court held that "by common understanding and scientific terminology, a fetus is a living organism while within the womb, whether or not it is viable outside the womb."[1]

A state's decision to treat the body of a miscarried, stillborn, or aborted infant with the same respect due any deceased person is consistent with Supreme Court precedent. Specifically, the Court "has recognized the legitimate interest of states and municipalities in regulating the disposal of fetal remains from abortions and miscarriages."[2] In *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, while striking down a particular fetal disposition law as unconstitutionally vague the Court held that a city or state "remains free, of course, to enact more carefully drawn regulations that further its legitimate interest in proper disposal of fetal remains."[3]

Prohibiting the use of aborted infants' bodily remains for experimentation or transplantation is good public policy and far from a novel concept.

The State has a recognized interest in protecting the integrity of the medical profession and scientific research. In *Gonzales v. Carhart,* the Court reaffirmed the principle that "the State has a significant role to play in regulating the medical profession,"[4] and held that "[t]here can be no doubt the government 'has an interest 'in protecting the integrity and ethics of the medical profession.'"[5]

The official notes of the *Uniform Anatomical Gift Act* (UAGA), adopted in some form in every state, acknowledge that states may choose to treat aborted fetuses differently, given the

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[1] 550 U.S. 124, 147 (2007).
[2] *Planned Parenthood v. Minnesota*, 910 F.2d 479, 481 (8th Cir. 1990) (*citing City of Akron v. Akron Ctr. for Reprod. Health Inc.*, 462 U.S. 416, 451-52 nn. 44, 45 (1983); *Planned Parenthood Ass'n v. Fitzpatrick*, 401 F. Supp. 554, 573 (E.D. Penn. 1975), *aff'd, without opin. sub nom., Franklin v. Fitzpatrick*, 428 U.S. 901 (1976)).
[3] 462 U.S. 416, 452 n. 45 (1983).
[4] 550 U.S. 124, 156-157.
[5] *Id.* (*citing Washington v. Glucksberg*, 521 U.S. 702, 731 (1997)).

"complicated legal, scientific, moral, and ethical issues which may arise."[6] Five states—Indiana,[7] North Dakota,[8] Ohio,[9] Oklahoma[10] and South Dakota[11]–have laws reflecting a policy determination that aborted infants should not be exploited for scientific and/or pecuniary gain.

In contrast to some state laws prohibiting research on the bodily remains of aborted infants that have been found unconstitutionally vague,[12] the *Idaho Unborn Infants Dignity Act* defines important terms, providing "constructive notice" and giving "police, prosecutors, juries and judges [] standards to focus the statute's reach."[13]

The *Idaho Unborn Infants Dignity Act* does not place an "undue burden" on a woman seeking an abortion; it neither proscribes any abortion nor prevents or hinders a woman from obtaining an abortion. Rather, in furtherance of recognized legitimate state interests, Senate Bill 1404 recognizes the humanity of the aborted infant by requiring that his or her bodily remains receive dignified treatment after an abortion is completed.

The *Idaho Unborn Infants Dignity Act* promotes both a respect for the lives of unborn infants and the State's interest in promoting ethical medical and scientific research. These interests are long-recognized and exist within and outside the context of abortion.

Sincerely,

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[6] *Revised Uniform Anatomical Gift Act*, p. 14 (2006) (Last Revised or Amended in 2009), drafted by the National Conference of Commissioners on Uniform State Laws, *available at* http://www.uniformlaws.org/shared/docs/anatomical_gift/uaga_final_aug09.pdf (last visited Mar. 17, 2016).
[7] Ind. Code § 16-34-2-6 (prohibiting experimentation on an aborted fetus).
[8] N.D. Cent. Code § 14-02.2-01 and N.D. Cent. Code § 14-02.2-02 (prohibiting use of aborted fetus for research or experimentation).
[9] Ohio Rev. Code § 2919.14 (prohibiting sale or experimentation on aborted fetus).
[10] Okla. Stat. tit. 63, §1-735 (prohibiting sale or experimentation on aborted fetus).
[11] S.D. Codified Laws § 34023A-17 (prohibiting use of aborted fetuses in research or transplantation).
[12] *See Forbes v. Napolitano*, 236 F.3d 1009, 1013 (9th Cir. 2000) (holding "The dearth of notice and standards for enforcement arising from the ambiguity of the words "experimentation," "investigation," and "routine" thus renders the statute unconstitutionally vague."); and *Margaret S. v. Edwards*, 794 F.2d 994, 999 (5th Cir. 1986) ("Our holding is based solely on our conclusion that the use of the terms "experiment" and "experimentation" makes the statute impersmissibly vague.").
[13] *Forbes v. Napolitano*, 236 F.3d at 1013.