

IDAHO ABORTION HUMAN RIGHTS ACT -EQUALITY FOR THE PREBORN

On December 18, 2012 Jeremy Keith Swanson clocked out of work, drove to Priest River, Idaho and purchased an ice pick at a local hardware store.

Upon arriving home, Jeremy then argued with his 27-year-old wife, Jennifer, before she ultimately retired to their bedroom. He later attacked her with the ice pick and a kitchen knife, stabbing her 37 times, which resulted in her death. At the time that she died, Jennifer was about 15 – 18 weeks pregnant with their preborn child.

Since Idaho Code 18-4001 already defines murder as “the unlawful killing of a human being including, but not limited to, a human embryo or fetus, with malice aforethought or the intentional application of torture to a human being, which results in the death of a human being”, Jeremy Swanson was charged with two counts of first-degree murder, one for the death of his wife Jennifer, and one for the death of his preborn child.

Swanson ultimately entered into a plea agreement with the state which stepped down the fetal first-degree murder charge to murder in the second degree. In exchange for the pleas, the prosecution agreed not to seek charge enhancements or the death penalty. Bonner County Prosecutor Louis Marshall recommended a life sentence without possibility of parole due to the ferocious and premeditated nature of the attack. “There’s no way to put a meaning on the evil that occurred that night in December,” said Marshall.

At his sentencing, Judge Benjamin R. Simpson found that the case was one of clear premeditation. “These two crimes were committed with unspeakable violence,” said Simpson. Swanson was sentenced to a life sentence for the first-degree murder of his wife and to a separate life sentence for the second-degree murder of his preborn child. There is no possibility of parole.

In this criminal case, the Idaho statutes had it right. Swanson should not have been allowed to kill his preborn child, and in doing so, he was rightly charged with first-degree murder, and due to the premeditated heinous nature of the crime, he was rightly punished with a severe penalty.

On that same day in 2012, Ms. Swanson or any other female Idaho resident could have premeditatively scheduled an appointment at an abortion facility and had the same preborn baby killed by brutal dismemberment, and because of Idaho Code 18-4016, she could not have been prosecuted for murdering her child. The Idaho statutes do not say that her abortion would not be considered a murder, but the statutes simply prohibits her prosecution for such a premeditated, heinous crime.

It is not a United States Supreme Court opinion from 1973 that makes abortion legal in Idaho, but rather it is Idaho statutes that make exceptions for murder. There is a special class of individuals who can murder other individuals without fear of prosecution, and because there is no punishment, Idaho women can avail themselves of the opportunity to kill their preborn children with impunity 1,750 times every year. Ecclesiastes 8:11 tells us “Because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil”.

The Idaho Abortion Human Rights Act is a bill being introduced by Idaho State Representatives Heather Scott of Blanchard and John Green of Rathdrum. The act honors Article I, Section 18 of the Idaho Constitution, which states in part that “Courts of justice shall be open to every person”, and “right and justice shall be administered without...denial, delay, or prejudice”. Separately, Idaho Code 32-102 states in part that “a child conceived, but not yet born, is to be deemed an existing person.” The Idaho Abortion Human Rights Act is aimed at the heart of the issue regarding abortion, that Article I Section 1 of the Idaho Constitution states “All men...have certain inalienable rights, among which are enjoying and defending life...and securing safety.”

By allowing legal access to abortion in Idaho statutes, Idaho is currently alienating what are supposed to be the inalienable rights of all persons in the jurisdiction of Idaho.

The act also strikes at the core of the abortion issue as to why abortion is wrong, that it is murder. In footnote 54 of the Roe v. Wade decision, Justice Harry Blackmun, delivering the opinion of the court wrote that Texas’ attempt to argue to the Supreme Court the right to life of the fetus failed because Texas did not itself treat the fetus as a person in its own statutes when it allowed exceptions for abortion and when it did not treat the mother securing the abortion as liable for any crime. The Idaho Abortion Human Rights Act is the first legislative proposal in Idaho since Roe v. Wade, without exceptions, that honors the preborn persons as worthy as the rest of us in regards to fundamental human rights and equal protection under law.

The act is also not an attempt to establish a test case for federal judicial review. Rather, it recognizes that the courts render opinions that are sometimes unconstitutional and that the State of Idaho and its officers are bound by oath to original interpretation of the constitutions. Idaho, as a sovereign state within the federal republic, has the fundamental duty to act as a check and a balance to the federal government when it err on constitutional issues. The executive and legislative branches are to act as a check and a balance against unconstitutional errors of the judiciary. In fact, courts don’t make laws, legislatures do.

A recent example of Idaho exercising its sovereign status against federal overreach can be found in Idaho Senate bill SB 1332 of 2014, the FEDERAL FIREARM, MAGAZINE AND REGISTER BAN ENFORCEMENT ACT. This act passed unanimously in the Idaho House and Senate and was signed into law by then Governor C.L. “Butch” Otter. SB 1332, now Idaho Code 18-3315B directs Idaho officials to ignore or defy federal laws that are contrary to the Idaho Constitution’s Article I, Section 11 regarding firearms. In the same fashion, the 2019 Idaho Abortion Human Rights Act asserts Idaho’s authority to ignore or defy federal laws or court opinions that are clearly contrary to the rights contained in the Idaho Constitution.

For more information about the 2019 Idaho Abortion Human Rights Act, please contact Idaho State Representative Heather Scott or Idaho State Representative John Green. Email hscott@house.idaho.gov and jgreen@house.idaho.gov.

Submitted by Representative Heather Scott & Representative John Green, North Idaho.