STATEMENT ON THE CONSTITUTIONALITY OF
THE *UNBORN INFANTS DIGNITY ACT*

Deceased unborn infants deserve the same respect as other human beings. Tragically, many states do not ensure that miscarried, stillborn, or aborted infants are treated with dignity. Unborn infants should not be disposed of as "medical waste" when they die before birth, regardless of whether their deaths are spontaneous, accidental, or induced. Further, the broken bodies of aborted infants should not be exploited for scientific or pecuniary gain.

To combat these and other injustices, Americans United for Life drafted the *Unborn Infants Dignity Act (UIDA)*. This memorandum demonstrates the constitutionality of two critical provisions of this model legislation:

a. Requirements pertaining to the final disposition of dead unborn infants (§§ 4, 5); and

b. Prohibitions on the purchase and, sale of or experimentation on unborn infants or the bodily remains from an abortion (§ 8).

The *UIDA*'s prohibition on the use of aborted infants' bodily remains for experimentation or transplantation is far from a novel concept. 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 "complicated legal, scientific, moral, and ethical issues which may arise."[1]

As explained in more detail below, five states currently have laws reflecting a policy determination that aborted infants should not be exploited for scientific and/or pecuniary gain.[2]

[1] *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 Nov. 8, 2015).
[2] Indiana, North Dakota, Ohio, Oklahoma, and South Dakota.

I. Authorization for Final Disposition of Dead Unborn Infants

A. *Description of Applicable UIDA Provisions*[3]

The *UIDA* provides that in every instance of fetal death,[4] the individual in charge of the institution where the infant was expelled or extracted must, upon the request of the mother, release to the mother or her representative the bodily remains[5] for final disposition.[6]

Further, in every fetal death where a mother does not request the release of her dead infant, the funeral director or other person assuming responsibility for the final disposition of the bodily remains must obtain from the mother or her representative a written authorization for final disposition.

The *UIDA* permits two means of final disposition for ***aborted*** infants: burial [*interment*] or cremation. The mother of a ***miscarried*** or ***stillborn*** infant is permitted to donate her infant's bodily remains in compliance with her state's *Anatomical Gift Act* or to have her child buried or cremated. Further, AUL's model language clarifies that bodily remains may not be incinerated with medical waste.[7]

B. *Constitutional Analysis*

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 U.S. 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***

[3] Sections 4 and 5, with definitions from Section 3.

[4] Defined as "death prior to expulsion or extraction from his or her mother of an unborn infant who has reached a stage of development so that there are cartilaginous structures and/or fetal or skeletal parts. The death is indicated by the fact that, after such expulsion or extraction, the unborn infant does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles."

[5] Defined as "the physical remains, corpse or body parts of a dead unborn infant who has been expelled or extracted from his or her mother and who has reached a stage of development so that there are cartilaginous structures and/or fetal or skeletal parts, whether or not the remains have been obtained by induced, spontaneous, or accidental means. The death is indicated by the fact that, after such expulsion or extraction, the unborn infant does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles."

[6] Defined as "the burial, [*interment*], cremation, or other legal disposition of a dead unborn infant."

[7] Cremation and incineration are not the same. A cremation is "[t]he mechanical and/or thermal or other dissolution process that reduces human remains to bone fragments." *See* Cremation Association of North America, "What is Cremation?" *available at* http://www.cremationassociation.org/?page=WhatIsCremation (last visited Sept. 28, 2015). In contrast, medical waste incineration "involves the burning of wastes produced by hospitals, veterinary facilities, and medical research facilities." *See* Environmental Protection Agency, "Medical Waste Incineration," *available at* http://www3.epa.gov/ttnchie1/ap42/ch02/final/c02s03.pdf (last visited Sept. 28, 2015).

***miscarriages*.**"[8] While the Court struck down a fetal disposal statute as unconstitutionally vague in *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, the Court also 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."[9]

Later, in *Planned Parenthood v. Minnesota*, the Eighth Circuit applied this distinction when it upheld a fetal disposition law. The challenged law clearly stated that disposal of fetal remains could be by "cremation," "interment by burial," or "in a manner directed by the commissioner of health."

Similarly, the *UIDA* permits disposition by "burial, [*interment,*] or cremation."[10] The Eighth Circuit has characterized these terms as "common terms with accepted meanings."[11] Further, the *UIDA* specifically defines any terms that might be otherwise viewed as or alleged to be ambiguous, including the terms "fetal death," "bodily remains," and "final disposition," avoiding concerns of constitutional vagueness.

The Eighth Circuit also rejected a claim that the Minnesota fetal disposition statute was vague because, at times, it might be difficult to determine the need for compliance with the law (*i.e*., in some first-trimester abortions). Like AUL's model language, the Minnesota law requires a dignified disposition once an infant has "cartilaginous structures" and "fetal or skeletal parts." The Eighth Circuit held that, while these cases may present challenges, "marginal cases cannot defeat the statute."[12]

Importantly, the next of kin maintain no constitutional or property right in a dead body that prevents a state from requiring a dignified disposition of that body. Any right of the next of kin is most properly described as an interest, held in trust, to bury the body with respect. As Wisconsin Supreme Court Justice Shirley Abrahamson explained in *Scarpaci v. Milwaukee County*:

> The law is clear in this state that the family of the deceased has a legally recognized right to entomb the remains of the deceased family member in their integrity and without mutilation. . . . The basis for recovery of

[8] *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)).
[9] *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. at 452 n. 45.
[10] Moreover, the *UIDA* permits mothers of miscarried or stillborn infants to donate their bodily remains in compliance with state *Anatomical Gift Acts*.
[11] *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. at 483.
[12] *Id*. at 486.

> damages is found not in a property right in a dead body, but in the personal right of the family of the deceased to bury the body.[13]

The bodies of deceased infants, like other deceased bodies, are not egg, sperm, or mere tissue, and they are not part of another person's body. In fact, in *Gonzales v. Carhart*, the 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."[14]

The language of the *UIDA* allows state legislators to provide guidance as to what happens to the bodily remains of an unborn infant after death. Through the enactment of the *UIDA*, a state protects the personal right of a mother to bury or cremate her unborn child and acknowledges its interest in that infant and its responsibility to prevent the undignified treatment or commodification of the child's bodily remains.

II. Prohibition on Buying, Selling, and Experimenting on Unborn Infants or Bodily Remains from Abortions

A. *Description of Applicable UIDA Provision*[15]

As mentioned in Part I above, Sections 4 and 5 of the *UIDA* do not permit the donation of bodily remains obtained from an abortion. This limitation is consistent with the guidance of the *Uniform Anatomical Gift Act*.[16] Section 8 of the *UIDA* further details the model prohibition on the use of aborted infants in experimentation or transplantation.

No person is permitted to sell, transfer, distribute, give away, accept, use, or attempt to use an infant, unborn infant, or bodily remains resulting from an abortion. Further, no person may aid or abet such actions.

Additionally, no person is permitted to use an infant, unborn infant, or bodily remains resulting from an abortion in animal or human research, experimentation, or study or for transplantation. This prohibition does not extend to diagnostic or remedial efforts that can protect the life of the infant or the mother or to pathological study.

Further, no person may experiment upon an unborn infant who is intended to be aborted unless the experimentation is helpful to the unborn infant, and no person may perform or offer to perform an abortion where part or all of the justification or reason for the abortion is that the bodily remains will be used for animal or human research,

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[13] *Scarpaci v. Milwaukee County*, 292 N.W.2d 816, 820-21 (Wisc. 1980). Additional citations available upon request.
[14] *Gonzales v. Carhart*, 550 U.S. 124, 147 (2007) (emphasis added).
[15] Section 8, with definitions from Section 3.
[16] *Revised Uniform Anatomical Gift Act*, p. 14, *supra*.

experimentation, or study or for transplantation.

B. *How this Provision Modifies Existing Law*

The *Uniform Anatomical Gift Act* (*UAGA*), adopted in some form in every state, includes stillborn babies and fetuses in the definition of "decedent" for purposes of obtaining consent from a relative before the deceased infant's body is donated for experimentation or transplantation. In the official notes to the *UAGA*, the drafters explain that the inclusion of stillborn babies and fetuses ensures that they "receive the statutory protections conferred by this [Act]; namely that their bodies or parts cannot be used for transplantation, therapy, research, or education without the same appropriate consents afforded other prospective donors."[17]

However, the notes also mention that states may choose to treat aborted fetuses differently, given the "complicated legal, scientific, moral, and ethical issues which may arise."[18] Five states currently have laws reflecting a policy determination that aborted infants should not be exploited for scientific and/or pecuniary gain: Indiana,[19] North Dakota,[20] Ohio,[21] Oklahoma,[22] and South Dakota.[23]

The *UIDA* effectively amends a state's *Anatomical Gift Act* to prohibit the use of aborted infants for experimentation or donation.

C. *State and Federal Regulation of Fetal Tissue Research*

Since *Roe v. Wade*,[24] the dignified disposition of the remains of aborted infants has been a topic of legislation and litigation.[25] Within months after the *Roe* decision, eight states

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[17] *Revised Uniform Anatomical Gift Act*, p. 14, *supra*.

[18] *Id*. at 14. *See also*, *Gonzalez, The Legitimization of Fetal Tissue Transplantation Research under Roe v. Wade*, 34 CREIGHTON L. REV. 895, 904-905 (2001) (The states have a compelling interest in regulating the final disposition of the bodies of infants who die as a result of miscarriages or abortions. This is exemplified in the *UAGA* and the state laws that are more restrictive than the *UAGA* in limiting fetal tissue experimentation.).

[19] Ind. Code § 16-34-2-6 (prohibiting experimentation on an aborted fetus).

[20] 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).

[21] Ohio Rev. Code § 2919.14 (prohibiting sale of or experimentation on aborted fetus).

[22] Okla. Stat. tit. 63, § 1-735 (prohibiting sale of or experimentation on aborted fetus).

[23] S.D. Codified Laws § 34-23A-17 (prohibiting use of aborted fetuses in research or transplantation).

[24] 410 U.S. 113 (1973).

[25] *See Catholic League, Southern California Chapter v. Feminist Women's Health Center*, 469 U.S. 1303, 1303 (1984) (regarding "the disposition of some 16,000 aborted fetuses" from a California lab, on Application for Stay to Rehnquist, J.); Dennis J. Horan, *Fetal Experimentation and Federal Regulation*, 22 VILL. L. REV. 325 (1977); Gregory L. Reback, *Note, Fetal Experimentation: Moral, Legal, and Medical Implications*, 26 STAN. L. REV. 1191, 1191 (1974) (hereinafter, "Reback") ("In the wake of *Roe v. Wade,* one highly controversial issue has been the practice of experimentation on aborted fetuses.").

enacted statutes to regulate or prohibit fetal experimentation.[26] In 1974, Congress enacted the *National Research Act,* creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research and, until the commission issued its report, prohibited the U.S. Department of Health, Education, and Welfare (HEW) from conducting or supporting fetal research before or after an abortion.[27] In 1975, the Commission prescribed a regulation limiting research on living fetuses *ex utero*, but it was not very restrictive.[28]

In 1993, Congress enacted 42 U.S.C. 289g, providing that it is unlawful for any person "to knowingly acquire, receive, or otherwise transfer any fetal tissue for valuable consideration if the transfer affects interstate commerce." Violation of this prohibition is a felony for which an individual may be sentenced to imprisonment of up to 10 years and a fine of up to $500,000.[29] The law defines "valuable consideration" to exclude "reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue."[30] Notably, the law does not prohibit research on the bodily remains of aborted babies.

D. *Constitutional Analysis*

Some state laws prohibiting research on the bodily remains of aborted infants have been found unconstitutionally vague because they do not clearly define important terms.[31] In contrast, the *UIDA* carefully defines important terms, providing "constructive notice" and giving "police, prosecutors, juries, and judges [] standards to focus the statute's reach."[32]

Further, the *UIDA* does not place an "undue burden" on a woman's access to abortion, because it neither proscribes any abortion nor prevents or hinders a woman from obtaining an abortion. Rather, the *UIDA* recognizes the humanity of the aborted infant by requiring that his or her bodily remains receive dignified treatment *after* an abortion is completed.

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[26] Reback at 1198 n.73, n.88.
[27] *See* 42 U.S.C. § 201 (1994)] ("the Secretary may not conduct or support research **...** on a living human fetus, before or after the abortion of such fetus, unless such research is done for the purpose of assuring the survival of such fetus." *Public Health Service Act* § 213).
[28] 40 Fed. Reg. 33,530 (1975).
[29] 42 U.S.C. 289g-2(a).
[30] 42 U.S.C. 289g-2(e)(3).
[31] *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 impermissibly vague.").
[32] *Forbes v. Napolitano*, 236 F.3d at 1013.

Since the provisions of the *UIDA* do not impose an undue burden on the "right to terminate [a] pregnancy," the only question is whether the bill has a rational relationship to legitimate state interests.[33] A state's interests in ensuring the dignified treatment of deceased infants are outlined below.

1. *State Interests*

States have an interest in requiring the dignified and respectful treatment of infants who die from abortions. Notably, states may require ***more*** dignified and respectful treatment than that required by federal law. As Justice Kennedy noted in *Stenberg v. Carhart*, in *Planned Parenthood v. Casey*, the Supreme Court "held it was inappropriate for the Judicial Branch to provide an exhaustive list of state interests implicated by abortion."[34] Justice Kennedy referred to "*Casey's* assurance that the State's constitutional position in the realm of promoting respect for life is more than marginal."[35] Further, he affirmed a state's interest "to ensure respect for all human life and its potential."[36]

While current Supreme Court jurisprudence prohibits states from placing an "undue burden" on abortion access, states are not prohibited from banning the commodification of the bodily remains of aborted infants. Instead, states may respect the short lives of these infants by requiring that they receive a dignified final disposition.

Long-recognized state interests that support the enactment of the *UIDA* include respect for the lives of unborn infants and an interest in medical and research ethics. These interests exist both within and outside the context of abortion.

a. *Respect for the lives of unborn infants*

A state's respect for the lives of unborn infants supports the enactment of the *UIDA*. State laws recognizing the dignity of unborn infants, outside of the context of abortion, have long been upheld as constitutional. For instance, states have demonstrated a substantial interest in, and protection for, the lives of unborn infants through enactment of laws prohibiting crimes against unborn children. These laws have been repeatedly upheld as constitutional in state and federal courts.[37] For example, 30 states currently treat the

[33] *See Gonzales v. Carhart*, 550 U.S. 124 (2007).
[34] 530 U.S. 914, 961 (2000) (*citing Planned Parenthood v. Casey*, 505 U.S. 833, 877 (1992).
[35] 530 U.S. at 964.
[36] 530 U.S. at 957 (*citing Casey,* 505 U.S. at 871). Further, in *Gonzales v. Carhart,* Justice Kennedy acknowledged and affirmed Congressional intent to protect "all vulnerable and innocent human life," and he affirmed Congress's decision that "[t]he [federal *Partial Birth Abortion Act*] expresses respect for the dignity of human life." 550 U.S. 124, 157 (2007).
[37] Paul Benjamin Linton, *The Legal Status of the Unborn Child under State Law*, 6 U. ST. THOMAS J. L. & PUB POL. 141, 144-46 nn.22-26 (2011) (citing *Smith v. Newsome*, 815 F.2d 1386, 1388 (11th Cir. 1987) (rejecting constitutional challenge to "feticide statute") and numerous other decisions).

killing of an unborn child from conception as homicide,[38] while an additional 8 states treating the killing of an unborn child at a later gestation as homicide.[39]

Laws requiring the dignified disposition of deceased unborn infants are a natural extension of prohibitions on violence against unborn children. If a state can apply the same penalty to the unlawful killing of an unborn infant that is applied to the killing of his or her mother, then the state can certainly require that an infant's bodily remains receive the same dignified treatment as his or her mother's bodily remains.

Further, while states are not permitted to unduly burden a woman's access to abortion (discussed *supra*), under current Supreme Court jurisprudence, they can enact laws that acknowledge the humanity of unborn infants who die from abortion.[40]

b. *Interest in ethical medicine and research*

As part of its interest in ethical medicine and research, a state maintains an interest in preventing fetal tissue research from leading to the commodification of the bodies of aborted infants. The *UIDA* advances these state interests by preventing a premediated, systematic relationship between abortion and fetal tissue research.

Justice Kennedy wrote in *Stenberg v. Carhart* that the "[s]tates also have an interest in forbidding medical procedures which, in the State's reasonable determination, might cause the medical profession or society as a whole to become insensitive, even disdainful, to life, including life in the human fetus."[41] It is also legitimate to affirm "that medical procedures must be governed by moral principles having their foundation in the intrinsic value of human life, including life of the unborn."[42]

Permitting the use of the bodily remains of aborted infants for research or transplantation creates the dangers that Justice Kennedy warns against. Abortion is fundamentally different from miscarriage or other human deaths resulting from diseases or accidents, in part because aborted infants' remains are too-often viewed as tissue or medical waste, not human corpses. This misconception creates a ***greater inclination to systematically exploit the bodily remains of aborted infants for pecuniary or scientific gain***. Given this concern, states can rationally distinguish how they regulate the disposition of the bodily

[38] Alabama, Alaska, Arizona, Arkansas, Georgia, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.
[39] California, Maryland, Massachusetts, Montana, Nevada, New York, Rhode Island, and Washington.
[40] *See e.g.*, *Planned Parenthood v. Casey*, 505 U.S. 833, 871 (1992).
[41] *Stenberg v. Carhart*, 530 U.S. at 961 (Kennedy, J. dissenting).
[42] 530 U.S. at 979 (Kennedy, J., dissenting).

remains of aborted infants from the disposition of the bodily remains of miscarried infants.

Federal law currently does not extend far enough to prevent the commodification of aborted infants because broadly defined "valuable consideration" is not the only market incentive for harvesting their bodily remains. First, the quest for scientific or medical discovery is a significant enough incentive to encourage the commodification of the bodily remains of aborted infants. Second, a state's interest in prohibiting the use of aborted infants in fetal tissue research or transplantation includes preventing a mother from being influenced to abort because of the purported *utility* of her infant's body and discouraging a growing commercial interest in aborted infant remains.

An example of commodification of the bodily remains of aborted infants can be seen in the alliance between Planned Parenthood and commercial beneficiary, StemExpress. The biotech firm StemExpress buys and resells the bodily remains of infants aborted at Planned Parenthood facilities. StemExpress receives fully intact aborted infants from Planned Parenthood, and the firm's Medical Director, Dr. Ronald Berman, is an abortion provider for Planned Parenthood.

Such a close relationship between an abortion provider and a biotech firm can clearly influence abortion providers to pressure women towards abortion or to modify abortion procedures and the timing of these procedures to meet their research demands, even though this practice is prohibited by federal law.[43]

The Center for Medical Progress (CMP) recorded comments made by Planned Parenthood employees suggesting that Planned Parenthood violates federal law by altering its abortion procedures to harvest infant bodily remains and may be willing to violate federal law as it expands its practice of harvesting the bodily remains of aborted infants. Planned Parenthood Federation of America (PPFA), Senior Medical Director of Medical Services, Dr. Deborah Nucatola, after being asked whether knowing what bodily remains are needed by researchers makes a difference in how the abortion is performed, stated:

> ***It makes a huge difference***. I'd say a lot of people want liver. And for that reason, most providers will do this case under ultrasound guidance, so they'll know where they're putting their forceps. . . .
>
> So then you're just kind of cognizant of where you put your graspers, you try to intentionally go above and below the thorax, so that, you know,

[43] Federal law prohibits the "alteration of the timing, method, or procedures used to terminate the pregnancy…solely for the purposes of obtaining the tissue." *See* 42 U.S.C. § 289g-1.

> we've been very good at getting heart, lung, liver, because we know that, so I'm not gonna crush that part, I'm going to basically crush below, I'm gonna crush above, and I'm gonna see if I can get it all intact. . . .
>
> ***And with the calvarium [head], in general, some people will actually try to change the presentation*** so that it's not vertex, because when it's vertex presentation, you never have enough dilation at the beginning of the case, unless you have real, huge amount of dilation to deliver an intact calvarium. So if you do it starting from the breech presentation, there's dilation that happens as the case goes on, and often, the last, you can evacuate an intact calvarium at the end. ***So I mean there are certainly steps that can be taken to try to ensure . . .***
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> So the preparation would be exactly the same, ***it's just the order of the removal of the products is different***. . . . And, we've been pretty successful with that. I'd say.
> ….
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> If you maintain enough of a dialogue with the person who's actually doing the procedure, so they understand what the end-game is, ***there are little things, changes they can make in their technique to increase your success***.

The only way that a state may completely prevent these and other dangerous and illegal practices is to prohibit the use of aborted infants' bodies for research. In *Margaret S. v. Edwards*, the Fifth Circuit acknowledged this "important state interest:"

> Louisiana wanted to remove some of the incentives for research-minded physicians either to promote abortions or to manipulate the timing of abortions in an effort to acquire fetal remains of a desired maturity. The statute is therefore ***rationally related to an important state interest***.[44]

2. *Countervailing Interests*

Importantly, there are no countervailing constitutional interests that outweigh the state's interests in enacting the *UIDA*; therefore, a court has no legitimate basis to override a state determination as to how the bodily remains of aborted infants should be disposed.[45]

[44] *Margaret S.*, 794 F.2d at 999, fn. 11 (emphasis added).
[45] *See Gonzales v. Carhart*, 550 U.S. at 157-58 (recognizing state interests).

As discussed *supra*, the *UIDA* does not conflict with the "right to abortion": a right consistently defined by the Supreme Court as limited to a right "to terminate pregnancy,"[46] not to provide the bodies of unborn infants for research or experimentation.

Further, there is no constitutional right of scientists or others to perform research on human subjects or to obtain dead human bodies. Conversely, a state has an interest in protecting the integrity of the medical profession and scientific research. In *Gonzales v. Carhart*, the Supreme Court reaffirmed the general principle that the medical profession is subject to democratic governance:

> There can be no doubt the government 'has an interest in protecting the integrity and ethics of the medical profession.' *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997); *see also Barsky v. Board of Regents*…347 U.S. 442, 451 (1954) (indicating the State has 'legitimate concern for maintaining high standards of professional conduct' in the practice of medicine). Under our precedents it is clear the State has a significant role to play in regulating the medical profession.[47]

The *Gonzales* Court further emphasized:

> The government may use its voice and its regulatory authority to show its profound respect for the life within the woman…Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power … in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including the life of the unborn.[48]

III. Conclusion

Deceased unborn infants deserve the same respect as other human beings. Unborn infants should not be disposed of as "medical waste" when they die before birth, regardless of whether their deaths are spontaneous, accidental, or induced. Further, the broken bodies of aborted infants should not be exploited for scientific or pecuniary gain.

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

[46] *See e.g.*, *Planned Parenthood v. Casey*, 505 U.S. at 871.
[47] *Gonzales v. Carhart*, 550 U.S. at 156-57.
[48] *Id*. at 157-58.