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FLOOR DEBATE

January 18, 2006 LB 57

SENATOR FOLEY: Well, I think the point that I was making to you and to other senators was that prosecutors enjoy winning more than losing, and when they believe they've got a case that they can take to a jury and prove beyond a reasonable doubt, they'll take the case forward, and when they think that there's elements lacking in their presentation of the case, then they will decline to proceed.

SENATOR CHAMBERS: If perchance a third party did something that resulted in the miscarriage of an embryo...and I'm not going to try to contrive a scenario how that happened, but the question that I'm asking I think will be clear to you. And let's say the embryo was recovered. What kind of...would a charge, in your opinion, be appropriate under this bill, of assault on a fetus or an embryo or unborn child?

SENATOR FOLEY: Senator, you may prefer to have me address this on my time, I don't know. But let me start into this. I think the disconnect between what you're suggesting and my position is that tucked away in your argument is the notion that the prosecutor must prove his case at the very instant that the act occurs, when in fact it may be after the child is born that all of the evidence is available to the prosecutor that would lead him to want to proceed with the criminal prosecution.

SENATOR CHAMBERS: I don't think I made my question clear, that the act of the third party would lead to a miscarriage, an embryo would be expelled as a result of that inappropriate act of a third party, and you have an embryo. Would it be appropriate for a prosecutor to allege serious bodily injury to this embryo, under this bill, in a situation such as that?

SENATOR FOLEY: If I understand your question, Senator Chambers, I think you're really asking a question that might have been more applicable to the fetal homicide statute of four years ago, because if I understand your hypothetical, you're talking about a case where a person killed the unborn child, did not damage the unborn child.

SENATOR CHAMBERS: So what you are conceding is that if an embryo should be expelled, it would not under any circumstances