



1446 Duke Street | Alexandria, Virginia 22314
(202) 626-8800 (voice) | www.nrlc.org | nrlc@nrlc.org



January 10, 2023

RE: Born-Alive Abortion Survivors Protection Act (H.R. 26)

Dear Member of Congress:

The National Right to Life Committee (NRLC), the nationwide federation of right-to-life organizations, urges you to support the *Born-Alive Abortion Survivors Protection Act* (H.R. 26) when it comes before the House of Representatives on January 11, 2023.

In the wake of the *Dobbs v Jackson* decision, several states are moving to not only fully legalize abortion up to the moment of birth, but are going to great lengths to insulate abortion providers from even the most basic scrutiny. Against this backdrop, there is renewed urgency to pass the Born-Alive Abortion Survivors Protection Act.

In 2002, Congress approved, without a dissenting vote, the Born-Alive Infants Protection Act (BAIPA), subsequently signed into law by President George W. Bush and codified as 1 U.S.C. §8. This important law states that “every infant member of the species homo sapiens who is born alive at any stage of development” is a “person” for all federal law purposes. The bill defines “born alive” in terms of explicit criteria – “complete expulsion from his or her mother . . . at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.”

The BAIPA was a response to troubling indications, well summarized in the House Judiciary Committee’s excellent 2001 report on the legislation, that some abortion providers and pro-abortion activists did not regard infants born alive during abortion procedures as legal persons – especially if the infants were deemed to be “pre-viable” (i.e., have limited life expectancy due to prematurity). Such a mindset puts a substantial number of live-born infant persons in jeopardy of gross neglect or overt violence. Live birth, as defined in 1 U.S.C. §8, may occur a month before “viability.” BAIPA made it crystal clear that life expectancy is entirely irrelevant for purposes of legal personhood.

However, in the years since 1 U.S.C. §8 was enacted, evidences have multiplied that some abortion providers do not regard babies born alive during abortions as persons, and do not provide them with the types of care that would be provided to premature infants who are born spontaneously. In some cases, such born-alive infants are even subjected to overt acts of deadly

violence. In 2013, Dr. Kermit Gosnell of Philadelphia was convicted under state law of multiple homicides of such born-alive infants, but such a prosecution and conviction is uncommon. In some jurisdictions, local authorities seem reluctant to investigate reports of infants born alive during abortions, or to bring appropriate indictments even in cases in which the publicly reported evidence of gross neglect or overt lethal acts seems strong.

Abortion survivor Melissa Ohden, survivor of a failed 1977 saline infusion abortion, has testified before Congress on numerous occasions. According to her June 16, 2021 testimony before the United States Senate Committee on the Judiciary, Subcommittee on the Constitution, "...I'm alive today because someone else's 'reproductive right' failed to end my life. The 384 abortion survivors we've connected with through The Abortion Survivors Network, the overwhelming majority of whom are female, live with this same collective grief."

National Right to Life believes that it is time for Congress to act decisively to put the entire abortion industry on notice that when they treat a born-alive human person as medical waste or as a non-entity who may be subjected to lethal violence with impunity, they will do so at legal peril. H. R. 26 would enact an explicit requirement that a baby born alive during an abortion must be afforded "the same degree" of care that would apply "to any other child born alive at the same gestational age," including transportation to a hospital.

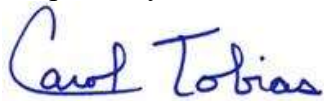
This language does not dictate bona fide medical judgments nor require futile measures, but rather, requires that babies born alive during abortions are treated in the same manner as those who are spontaneously born prematurely.

In addition, the bill applies the existing penalties of 18 U.S.C. Sec. 1111 (the federal murder statute) to anyone who performs "an overt act that kills a child born alive." Further, the bill provides a civil cause of action to women who are harmed by violations of the act.

NRLC intends to include the roll call on passage of H.R. 26 in its scorecard of key pro-life roll calls of the 118th Congress.

Should you have any questions, please contact us at (202) 378-8863, or via e-mail at jpopik@nrlc.org. Thank you for your consideration of NRLC's position on this important legislation.

Respectfully submitted,



Carol Tobias
President



Scott Fischbach
Executive Director



Jennifer Popik, J.D.
Legislative Director