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Hearing of the House Judiciary Committee,
Subcommittee on the Constitution and Civil Justice:

On “The Ultimate Civil Right:
Examining the Hyde Amendment and the Born Alive Infants Protection Act.”

September 23, 2016
9:00 a.m.
2237 Rayburn Building

Hon. Trent Franks, Chair
Hon. Steve Cohen, Ranking Member
Honorable Members

United States House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution and Civil Justice
2237 Rayburn House Office Building
Washington, DC 20515-6216

Chairman Franks, Ranking Member Cohen, and Distinguished Members of the Subcommittee:

I am grateful to have been invited by the Subcommittee to testify on “The Ultimate Civil Right: Examining the Hyde Amendment and the Born Alive Infants Protection Act.” My name is Arina Grossu and I am the Director of the Center for Human Dignity at the Family Research Council (FRC). As a policy analyst, my issues of expertise and research encompass the dignity of human life from conception until natural death.

FRC has long supported the Hyde Amendment, which has prevented government funding for elective abortion for over thirty years and since the 1990’s has prevented funding for health plans that include elective abortion coverage. This law, if revoked, would increase the number of abortions in the United States. According to the Guttmacher Institute, “approximately one-fourth of women who would have Medicaid-funded abortions instead give birth when this funding is unavailable.”¹ FRC also supports the *Born-Alive Abortion Survivors Protection Act* (H.R. 3504/S. 2066). My remarks will focus on the need for this legislation.

To summarize, I will address the stories which emerged years ago of babies being left to die after attempted abortions. In 2002, Congress responded by passing the *Born-Alive Infants Protection Act*, which was signed by President George W. Bush and is current federal law. This law recognized a child who is born alive after a failed abortion attempt, as a legal person under the

¹ Stanley K. Henshaw, et al. “Restrictions on Medicaid Funding for Abortions: A Literature Review,” Guttmacher Institute, June 2009, https://www.guttmacher.org/sites/default/files/report_pdf/medicaidlitreview.pdf.

Additional Note: “Studies published over the course of two decades looking at a number of states concluded that 18–35% of women who would have had an abortion continued their pregnancies after Medicaid funding was cut off.” In a study examining abortion and birthrates in North Carolina, where the legislature created a special fund to pay for abortions for poor women, researchers found that “one-third of women who would have had an abortion if support were available carried their pregnancies to term when the abortion fund was unavailable.” Boonstra, Heather D. “The Heart of the Matter: Public Funding Of Abortion for Poor Women in the United States,” Guttmacher Policy Review, Winter 2007, Volume 10, Number 1, p. 16, https://www.guttmacher.org/sites/default/files/article_files/gpr100112.pdf.

laws of the United States. The legal definition of live birth includes any sign of life, such as breath, heartbeat, pulsation of the umbilical cord, or definite movement of voluntary muscles.²

Unfortunately, incidents involving born alive children being killed after an attempted abortion have continued after this law was passed. Infanticide is unacceptable in a civilized society, regardless of what one may think about abortion itself. It should be uncontroversial for the federal government to supplement current law with enforcement protections for born-alive children after attempted abortions. That is why Congress must pass the proposed legislation known as the *Born-Alive Abortion Survivors Protection Act* (H.R. 3504/S. 2066).

The Need for the “*Born-Alive Infants Protection Act of 2002*”

In 2000 and 2001, Jill Stanek, a former nurse, testified before this Committee about her experience as a registered nurse in the Labor and Delivery Department at Christ Hospital in Oak Lawn, Illinois, where she discovered babies born alive after an attempted abortion and left to die in the department’s soiled utility closet.³

Stanek called them “live birth abortions.”⁴ She recounted, “In this particular abortion procedure doctors do not attempt to kill the baby in the uterus. The goal is simply to prematurely deliver a baby who dies during the birth process or soon afterward.” She stated that it is not uncommon for one of these live aborted babies to linger for an hour or two or even longer. One of them once lived for almost eight hours. The babies were not given help to survive.

She described one of those instances: “One night, a nursing co-worker was taking a Down syndrome baby who was aborted alive to our Soiled Utility Room because his parents did not want to hold him, and she did not have time to hold him. I could not bear the thought of this suffering child dying alone in a Soiled Utility Room, so I cradled and rocked him for the 45 minutes that he lived. He was between 21 and 22 weeks old, weighed about 1/2 pound, and was about 10 inches long.”

She continued: “Another nurse from Christ Hospital also testified with me in Washington. Allison described walking into the Soiled Utility Room on two separate occasions to find live aborted babies left naked on a scale and the metal counter.”

In another testimony she added that a baby was literally thrown into the trash: “A Support Associate told me about a live aborted baby who was left to die on the counter of the Soiled Utility Room wrapped in a disposable towel. This baby was accidentally thrown into the

² U.S. Congress. House. Judiciary Committee. *Born-Alive Infants Protection Act of 2002*, H.R. 2175, 107 th Cong., 2002, <https://www.congress.gov/bill/107th-congress/house-bill/2175/text>.

³ “Testimony of Jill L. Stanek, RN,” U.S. House Committee on the Judiciary - Subcommittee on the Constitution and Civil Justice, May 23, 2013, <https://judiciary.house.gov/files/hearings/113th/05232013/Stanek%2005232013.pdf>.

⁴ Sarah Terzo, “Looking back: Jill Stanek exposed live birth abortions at Illinois hospital,” Live Action News, July 25, 2015, accessed September 21, 2016, <http://liveactionnews.org/looking-back-jill-stanek-exposed-live-birth-abortions-illinois-hospital/>.

garbage, and when they later were going through the trash to find the baby, the baby fell out of the towel and on to the floor.”⁵

Stanek also pointed out the ironic juxtaposition between the amount of medical care available to a premature baby who is “wanted” and a live premature baby who is the result of an attempted abortion and deemed “unwanted”:

“I was recently told about a situation by a nurse who said, ‘I can’t stop thinking about it.’ She had a patient who was 23+ weeks pregnant, and it did not look as if her baby would be able to continue to live inside of her. The baby was healthy and had up to a 39% chance of survival, according to national statistics. But the patient chose to abort. The baby was born alive. If the mother had wanted everything done for her baby, there would have been a neonatologist, pediatric resident, neonatal nurse, and respiratory therapist present for the delivery, and the baby would have been taken to our Neonatal Intensive Care Unit for specialized care. Instead, the only personnel present for this delivery were an obstetrical resident and my co-worker. After delivery the baby, who showed early signs of thriving, was merely wrapped in a blanket and kept in the Labor & Delivery Department until she died 2-1/2 hours later.”

To respond to these instances, in 2002, Congress passed and President George W. Bush signed into law the *Born-Alive Infants Protection Act*. In fact, this bill passed by voice vote in the House of Representatives and with unanimous consent in the Senate. The law reasonably stated that the terms “person,” “human being,” “child,” and “individual” shall include “every infant member of the species homo sapiens who is born alive at any stage of development.”⁶

Instances of Babies Born Alive After an Attempted Abortion in the U.S. Since the Enactment of the 2002 Federal Born-Alive Law

The numerous instances of babies who continue to be born alive and killed in the United States despite the 2002 *Born Alive Infants Protection Act* federal law demonstrates the urgent need for the enforcement provisions in the *Born-Alive Abortion Survivors Protection Act* (H.R. 3504/S. 2066).

Abortifacient Kermit Gosnell operated his dirty and dangerous Philadelphia abortion business and committed horrendous crimes in Philadelphia for over three decades. His facility went nearly two decades without being inspected by Pennsylvania health officials, despite numerous complaints that were filed against him with the Pennsylvania Department of Health, Pennsylvania Department of State, and the Philadelphia Department of Public Health. The Pennsylvania Department of Health conducted inadequate and sporadic inspections for thirteen years and then no inspections at all for seventeen years between 1993 and 2010. The Grand Jury report detailed that the Pennsylvania Department of Health’s policy of not inspecting Gosnell’s

⁵ “Testimony from Nurse Jill L. Stanek during the Born Alive Infant Protection Act Congressional Hearings,” California ProLife Council, accessed September 21, 2016, <http://www.californiaprolife.org/testimony-from-nurse-jill-l-stanek-during-the-born-alive-infant-protection-act-congressional-hearings/>.

⁶ *Born-Alive Infants Protection Act of 2002*, <https://www.congress.gov/bill/107th-congress/house-bill/2175/text>.

facility during Governor Ridge’s administration “was motivated by a desire not to be ‘putting a barrier up to women’ seeking abortions.”⁷

Until 2010, Gosnell got away with physically injuring many of his patients, causing the death of at least one woman, Karnamaya Mongar, and killing countless babies in-utero as well as babies born alive. Not even Mongar’s death triggered an inspection or investigation.

His heinous and murderous practices of snipping the spines of born-alive children were only discovered by accident when federal and state authorities raided his facility in 2010, not because he was illegally killing born-alive infants, but because of his illegal prescription drug activity. The current federal law was not the impetus for first investigating Gosnell, who clearly had been snipping the spines of born-alive children for many years.

Gosnell often snipped the necks of babies born alive as part of his abortion process. The Grand Jury Report described Gosnell’s process:

“Babies that big are hard to get out. Gosnell’s approach, whenever possible, was to force full labor and delivery of premature infants on ill-informed women... Many of them gave birth before he even got there. When you perform late-term ‘abortions’ by inducing labor, you get babies. Live, breathing, squirming babies. By 24 weeks, most babies born prematurely will survive if they receive appropriate medical care. But that was not what the Women’s Medical Society was about. Gosnell had a simple solution for the unwanted babies he delivered: he killed them. He didn’t call it that. He called it ‘ensuring fetal demise.’ The way he ensured fetal demise was by sticking scissors into the back of the baby’s neck and cutting the spinal cord.”

Although the Grand Jury Report detailed that there were “hundreds of snippings,” most of them could not be prosecuted because Gosnell destroyed the files. As a result, Gosnell was convicted of first degree murder in 2013 in the deaths of only three of the infants born alive after an attempted abortion and involuntary manslaughter in the death of Karnamaya Mongar.

While Gosnell’s case was particularly gruesome, he is not an outlier.⁸ For example, three former employees of current Texas abortionist Douglas Karpen⁹ came forward to reveal the infanticide and stomach-turning practices that went on in Karpen’s facility. Deborah Edge, one of those former employees, described how Karpen regularly killed babies born alive by snipping their spinal cords, fatally injuring them with blows to the soft spot on their heads, and twisting their necks. Ms. Edge described:

When he did an abortion, especially in an over twenty week abortion, most of the time the fetus would come completely out before he either cut the spinal cord or introduced one of

⁷ “Report of the Grand Jury,” Court of Common Pleas – First Judicial District of Pennsylvania – Criminal Trial Division, January 14, 2011, p. 147, <http://www.phila.gov/districtattorney/pdfs/grandjurywomensmedical.pdf>.

⁸ “Worst Offenders,” AbortionDocs.org, accessed September 21, 2016, <http://abortiondocs.org/worst-offenders/>.

⁹ Sarah Terzo, “Abortion clinic workers share how babies are born alive and killed,” Live Action News, August 19, 2015, accessed September 21, 2016, <http://liveactionnews.org/abortion-clinic-workers-share-how-babies-are-born-alive-killed/>.

the instruments into the soft spot [of the head] of the fetus in order to kill the fetus...I think every morning I saw several, on several occasions, if we had, maybe twenty patients of course, maybe ten or twelve or fifteen patients would be large procedures, and out of those large procedures, I'm pretty sure I was seeing at least three or four that were completely delivered in some way or another.

And most of the time we would see him, when the fetus would come completely out, of course the fetus would still be alive, because it was still moving... of course you could see the stomach breathing and that's when he would do his – he would snap the spine as they're saying that this doctor [Kermit Gosnell] did and of course the soft spot was where he would take one of the forceps... the dilators, and he would stick it into the soft spot of the fetus's head.

Yet, despite the gruesome photo and eyewitness evidence,¹⁰ Karpen was cleared in December 2013 by the same Harris County District Attorney, Devon Anderson, who indicted David Daleiden in January 2016, although all charges against Daleiden were dismissed by July 2016.

Additional reports indicate killing born-alive babies may be more routine than these instances suggest. Videos and transcripts released in the summer of 2015 by the Center for Medical Progress (CMP) revealed this is a much more common practice than the abortion industry would have the public believe.¹¹ It is important to note that CMP investigative videos have been confirmed as completely authentic in an in-depth forensic analysis by Coalfire Systems Inc., a highly accredited and independent forensic analysis and cybersecurity company that does work for Fortune 500 companies.¹²

The videos show top Planned Parenthood directors and abortionists discussing the harvesting of baby body parts. Their discussions of “intact” babies should be of particular interest to this Subcommittee.

“Intact” babies are usually born alive, unless they are first poisoned with digoxin, a chemical drug used in later-term abortions to cause the death of the baby to prevent a live birth from occurring. An “intact” delivery, whether for an abortion or not, usually signifies a baby is born alive. If the baby was not born alive in an “intact” delivery, most physicians would add some other qualifier such as “miscarriage” or “stillborn.”

¹⁰ “Special Report: New Stunning Photos, Testimony Show Texas Abortionist Kills Babies Born Alive,” Operation Rescue, May 15, 2013, accessed September 21, 2016, <http://www.operationrescue.org/archives/special-report-new-stunning-photos-testimony-show-texas-abortionist-kills-babies-born-alive/>.

¹¹ “Investigative Footage,” The Center for Medical Progress, accessed September 21, 2016, <http://www.centerformedicalprogress.org/cmp/investigative-footage/>.

¹² The report concluded: “Coalfire’s analysis of the recorded media files contained on the flash drive indicates that the video recordings are authentic and show no evidence of manipulation or editing. This conclusion is supported by the consistency of the video file date and time stamps, the video timecode, as well as the folder and file naming scheme. The uniformity between the footage from the cameras from the two Investigators also support the evidence that the video recordings are authentic.” Source: “Digital Forensics Analysis Report,” Alliance Defending Freedom, November 5, 2015, accessed September 22, 2016, <http://www.adfmedia.org/files/CoalfireCMPvideosReport.pdf>.

CMP's videos revealed that the abortionists and directors involved did not prefer to poison the baby with digoxin because the procurement companies would not accept baby body parts that had been "tainted" with the chemical, causing the baby's stem cells to be unusable for research purposes.

An intact and digoxin-free delivery during an abortion essentially means a live birth.

First, Deborah Nucatola, Planned Parenthood Federation of America's Senior Director of Medical Services, described an abortion procedure that sounded very similar to the illegal partial-birth abortion which involved switching the baby to breech position to get the baby's body parts intact. Speaking about how abortionists get around the "Federal [Partial-Birth] Abortion Ban" to extract intact fetuses prime for organ harvesting, Nucatola noted a split among abortionists. Some "providers who use digoxin use" it to "induce [fetal] demise" prior to the procedure to avoid falling under the ban, which only applies to a "live" baby. Others, she noted, who do partial-birth abortions without using digoxin to "induce demise" prior, say that "partial-birth abortion" is "not a medical term, it doesn't exist in reality," and "so there are some people who interpret it [the federal partial birth abortion ban] as intent. So if I say on Day 1 I do not intend to do this, what ultimately happens doesn't matter. Because I didn't intend to do this on Day 1 so I'm complying with the law." Nucatola advised: "If you want no dig[oxin], your options are UCSF and Planned Parenthood New York City."¹³

Second, Jennefer Russo, Medical Director at Planned Parenthood of Orange & San Bernardino Counties in California, also mentioned changing the baby's position and said that having "fully intact specimens... happens sometimes, but it's pretty rare" and they "try" not to have it. While she claimed that they try not to have what is essentially a live birth, she still admitted that it happens sometimes. Russo also confirmed that they do not use the poison digoxin, which means that any intact babies are born alive: "There's a nationwide shortage of dig[oxin]... We don't 'Dig' right now."¹⁴ CMP investigators called one of procurement companies that Russo said the Planned Parenthood affiliate worked with, Da Vinci Biosciences, LLC, and a sales representative confirmed their fetal specimens do not have digoxin saying, "My assumption would be that it is feticide-free, considering that we have such a large catalogue of fetal tissue that I believe that would be a requirement for us, in order to have so many fetal products available."¹⁵ A procurement company could not have "such a large catalogue" of baby body parts unless the baby body parts were free of digoxin.

Third, Melissa Farrell, Director of Research of Planned Parenthood Gulf Coast, advertised the Texas Planned Parenthood branch's track record of its ability to deliver fully intact babies and that they were "just a matter of line items."¹⁶

¹³ "FULL FOOTAGE: Planned Parenthood Uses Partial-Birth Abortions to Sell Baby Parts," YouTube, July 14, 2015, accessed September 22, 2016, <https://www.youtube.com/watch?v=H4UjIM9B9KQ>.

¹⁴ "FULL FOOTAGE: Planned Parenthood Orange County Changes Abortions to Harvest Intact Fetuses," YouTube, March 1, 2016, accessed September 22, 2016, https://www.youtube.com/watch?v=U9zz_d5BYTM.

¹⁵ Ibid.

¹⁶ "FULL FOOTAGE: Intact Fetuses "Just a Matter of Line Items" for Planned Parenthood TX Mega-Center," YouTube, August 6, 2015, accessed September 22, 2016, https://www.youtube.com/watch?v=MCiD9_ICt44.

Fourth, Savita Ginde, Vice President and Medical Director of the Planned Parenthood of the Rocky Mountains admitted, “Sometimes, we get- if someone delivers before we get to see them for a procedure, then they are intact, but that’s not what we go for.”¹⁷ Delivering before an abortion procedure means there is a born-alive baby. She admitted that “less than ten percent” of their second trimester babies are born “intact” before the abortion procedure is finished. Even *one* baby born alive after an attempted abortion who is then killed, is one too much.

Fifth, Perrin Larton, a procurement manager from Advanced Bioscience Resources, even admitted that sometimes babies are born alive: “The whole point is not to have a live birth” but when women who have had “six pregnancies and six vaginal deliveries” come in for an abortion, they have quick deliveries. Larton wondered, “I literally have had women come in and they’ll go in the O.R. and they’re back out in three minutes, and I’m going, ‘What’s going on?’ Oh yeah, the fetus was already in the vaginal canal whenever we put her in the stirrups. It just fell out.”¹⁸

Sixth, another video showed StemExpress’ CEO Cate Dyer, who may soon be held in contempt of Congress along with Stem Express for refusing to comply with a subpoena by the House Select Investigative Panel on Infant Lives, admitted that they get “intact” babies from the abortion facilities they work with shipped to their laboratory. “Case” is the clinical term for an individual baby in the context of this dialogue. Dyer said: “I mean if you had intact cases, which we’ve done a lot, we sometimes ship those back to our lab in its entirety.”¹⁹

Seventh, in another video, Holly O’Donnell, a former procurement technician with StemExpress, described her harvesting of intact babies post-abortion at Planned Parenthood Mar Monte’s Alameda facility in San Jose, which does abortions up to 20 weeks of pregnancy. O’Donnell recounted one incident where her supervisor said, ‘I want to see something kind of cool... And she just taps the heart, and it starts beating. And I’m sitting here and I’m looking at this fetus, and its heart is beating, and I don’t know what to think.’ O’Donnell remarked, “I don’t know if that constitutes it’s technically dead, or it’s alive... She gave me the scissors and told me that I had to cut down the middle of the face. I can’t even describe what that feels like.” O’Donnell also recounted an incident in which she “saw a message saying that the doctor had aborted a fully intact fetus, fully intact, and StemExpress was sending it straight to the lab.”²⁰

In another part of this video, Ben Van Handel, the Executive Director of Novogenix Laboratories, LLC, which works with Planned Parenthood in San Diego and other abortion facilities nationwide admitted that during procedures to extract the hearts from intact babies from

¹⁷ “FULL FOOTAGE: Planned Parenthood VP Says Fetuses May Come Out Intact, Agrees Payments...,” YouTube, July 30, 2015, accessed September 22, 2016, <https://www.youtube.com/watch?v=wV2U9unI1NM>.

¹⁸ “FULL FOOTAGE: Planned Parenthood Pacific Southwest Dr. Katharine Sheehan,” YouTube, September 1, 2015, accessed September 22, 2016, <https://www.youtube.com/watch?v=69mC-B9aFJk> and “FULL FOOTAGE: Planned Parenthood Baby Parts Vendor Advanced Bioscience Resources,” YouTube, September 1, 2015, accessed September 22, 2016, <https://www.youtube.com/watch?v=fWJb78ynVT8>.

¹⁹ “FULL FOOTAGE: Planned Parenthood Baby Parts Buyer StemExpress Wants “Another 50 Livers/Week”,” YouTube, August 27, 2015, accessed September 22, 2016, <https://www.youtube.com/watch?v=jCQno6hdU6s>.

²⁰ “Human Capital - Episode 3: Planned Parenthood’s Custom Abortions for Superior Product,” Youtube, August 19, 2015, accessed September 22, 2015, <https://youtu.be/FzMAycMMXp8>

abortions, “there are times when after the procedure is done that the heart actually is still beating.”²¹

One has to wonder how many of those “fully intact” babies were first born alive. If an enforcement mechanism had been in place to protect those babies and prosecute abortionists and staff who violated federal law, perhaps some of these babies would still be alive today. These are just some of the stories that have emerged. There are many others which we do not know about because of lack of reporting, cover-ups by the abortion industry, and witnesses being afraid to share their testimonies.

U.S. Statistics on Babies Born Alive After Termination of Pregnancy

While anecdotal stories offer a window into the practice of the killing of babies born alive after an attempted abortion, even the federal government admits it happens and statistical evidence validates that it happens even more than we may think. Data reports from the Centers for Disease Control and Prevention (CDC) show the incidence of born-alive abortion survivors who are killed in the United States.

The CDC collects mortality records statistics including on the underlying cause of death of infants.²² Infants born alive after “termination of pregnancy, affecting fetus and newborn” are classified under the ICD-10 code P96.4.²³ Those who are classified under this code are infants who are born alive after a miscarriage as well as those born alive after an attempted abortion.

Two CDC databases show that between the years 2003 and 2014 there were somewhere between 376²⁴ and 588²⁵ infant deaths of babies born alive under the ICD-10 code P96.4.²⁶

In one review, the CDC determined by looking at the cause-of-death of the 588 babies, that 143 of the infant deaths could “definitively” be classified as infants born alive after an attempted

²¹ Ibid.

²²The National Vital Statistics System (NVSS) Mortality Data is provided through contracts between the National Center for Health Statistics (NCHS) and “vital registration systems operated in the various jurisdictions legally responsible for the registration of vital events – births, deaths, marriages, divorces, and fetal deaths.”

“National Vital Statistics System,” Centers for Disease Control and Prevention, accessed September 21, 2016, <http://www.cdc.gov/nchs/nvss/>.

²³ The International Classification of Diseases (ICD) 10th revision created by the World Health Organization lists ICD-10 code P96.4 as “Termination of pregnancy, affecting fetus and newborn.” “Termination of pregnancy, affecting fetus and newborn,” ICD-CODE.org, accessed September 21, 2016, <http://www.icd-code.org/codes/p96-4-termination-of-pregnancy-affecting-fetus-and-newborn>.

²⁴ Centers for Disease Control and Prevention, National Center for Health Statistics. Underlying Cause of Death 1999-2014 on CDC WONDER Online Database, released 2015. Data are from the Multiple Cause of Death Files, 1999-2014, as compiled from data provided by the 57 vital statistics jurisdictions through the Vital Statistics Cooperative Program. Accessed at <http://wonder.cdc.gov/ucd-icd10.html> on September 21, 2016.

²⁵ “Mortality Records with Mention of International Classification of Diseases-10 code P96.4 (Termination of Pregnancy): United States, 2003-2014,” Centers for Disease Control and Prevention, accessed September 21, 2016, http://www.cdc.gov/nchs/health_policy/mortality-records-mentioning-termination-of-pregnancy.htm

²⁶ The discrepancy in the numbers of the two databases shows a need for more standardized system for reporting babies born alive under the ICD-10 code P96.4 and it also shows a need to notate more clearly whether or not they were spontaneous terminations of pregnancy (miscarriage), induced terminations of pregnancy (abortion), the degree of care administered (if any), and the cause of their death.

abortion. However, it admits that “it is possible that this number (143) underestimates the total number of deaths involving induced termination [abortion].”²⁷ Those 143 babies “definitively” born alive after an attempted abortion lived *from minutes to one or more days*, with 47.6% of the babies living between one to four hours. What kind of care, if any, were they given?

It is crucial to note that these are just the *reported* numbers of babies born alive after attempted abortions and may not reflect actual numbers. They do not reflect the facilities that did not choose to report information about babies born alive at their center after an attempted abortion. Gosnell is only one abortionist who was responsible for “hundreds of snippings” of born-alive babies, yet he did not report them to the CDC. His numbers *alone* exceed the “definitive” numbers of the CDC collected data. It was not in his interest to report them. How many other abortionists and facilities currently fail to report babies born alive in their facilities and get away with infanticide without any criminal penalties?

The 2002 federal born-alive law does not have any reporting requirements or any enforcement protections. The anecdotal information and CDC data show the urgent need for Congress to pass the *Born-Alive Abortion Survivors Protection Act* (H.R. 3504/S. 2066) to stop the brutal killing of America’s youngest and most vulnerable persons, who have a right to full legal protection under our current laws.

The proposed *Born-Alive* bill would require mandatory reporting of violations if an abortionist or staff member fails to provide care for a baby born alive after an attempted abortion. Killing babies born alive after an attempted abortion is infanticide and it must be enforced as such in our federal laws.

Can Babies Born Alive After an Attempted Abortion Survive?

There are about 5,000 premature babies born annually in the U.S. between 20 to 21 weeks post-fertilization.^{28 29}

Due to developments in technology, babies who are considered “extremely preterm” can now survive outside the womb as early as 20 weeks post-fertilization, if medically treated, a May 2015 *New England Journal of Medicine* study revealed. The study looked at nearly 5,000 extremely premature babies born between 22 and 27 weeks gestation. Of babies who were

²⁷ “Mortality Records with Mention of International Classification of Diseases-10 code P96.4 (Termination of Pregnancy): United States, 2003-2014”.

²⁸ Pam Belluck, “Premature Babies May Survive at 22 Weeks if Treated, Study Finds,” *The New York Times*, May 6, 2015, accessed September 22, 2016, http://www.nytimes.com/2015/05/07/health/premature-babies-22-weeks-viability-study.html?_r=0.

²⁹ Fetal age can be given as age “post-fertilization” meaning the time from conception, or gestational age meaning the time since the last menstrual period (LMP), which is usually easier to determine and occurs approximately two weeks before ovulation and fertilization. Thus gestational age will be 2 weeks older than post-fertilization age, i.e., 22 weeks gestation is equal to 20 weeks post-fertilization.

actively treated at 20 weeks post-fertilization, 23% survived. Of babies actively treated at 21 weeks post-fertilization, 33% survived.³⁰

Another July 2016 study about the survival among infants at 20 to 21 weeks post-fertilization following active prenatal and postnatal care showed that 67% of the infants who received active care survived until hospital discharge without severe complications.³¹

The 2002 federal born alive law requires that all babies born alive “at any stage of development” after an attempted abortion be protected. The supplemental *Born-Alive* legislation would make sure that this is enforced.

Under the proposed legislation, care must be given to any infant born alive regardless of gestational age. Immediate care becomes even more critical for infants who can feel pain (between 18-20 weeks post-fertilization)³² and who can survive if given active treatment (as early as 20 weeks post-fertilization).

Dr. David Burchfield, the chief of neonatology at the University of Florida, said about the May 2015 study, “It confirms that if you don’t do anything, these babies will not make it, and if you do something, some of them will make it.”³³

The *Born-Alive* Abortion Survivors Protection Act (H.R. 3504/ S. 2066)

No person to date has been charged or convicted under the *Born-Alive Infants Protection Act of 2002*. Even Kermit Gosnell was only convicted of murder under Pennsylvania state law for

³⁰ Matthew A. Rysavy, Lei Li, et al., “Between-Hospital Variation in Treatment and Outcomes in Extremely Preterm Infants,” *The New England Journal of Medicine* 372 (2015), <http://www.nejm.org/doi/pdf/10.1056/NEJMoa1410689>. Note: Of the 357 babies born at 22 weeks gestation (20 weeks post-fertilization), 79 were actively treated. Eighteen of the 79 babies who were actively treated survived (23%). Of the 755 babies born at 23 weeks gestation (21 weeks post-fertilization), 542 were actively treated. Of the 542 who were actively treated, 180 babies survived (33%).

³¹ Katrin Mehler, André Oberthuer, et al., “Survival Among Infants Born at 22 or 23 Weeks’ Gestation Following Active Prenatal and Postnatal Care,” *JAMA Pediatrics* 170 (2016). More specifically, “of 106 liveborn infants (45 born at 22 weeks and 61 born at 23 weeks and 6 days), 20 (19%) received palliative care (17 born at 22 weeks and 3 born at 23 weeks), and 86 (81%) received active care (28 born at 22 weeks and 58 born at 23 weeks). Of the 86 infants who received active care (mean [SD] maternal age, 32 [6] years), 58 (67%) survived until hospital discharge (17 born at 22 weeks and 41 born at 23 weeks). Eighty-five infants survived without severe complications, with 1 infant born at 22 weeks excluded because of missing data.”

³² Dr. Jean A. Wright, who testified before this Subcommittee in 2005 stated: *After 20 weeks of gestation [18 weeks post-fertilization], an unborn child has all the prerequisite anatomy, physiology, hormones, neurotransmitters, and electrical current to “close the loop” and create the conditions needed to perceive pain...The development of the perception of pain begins at the sixth week of life. By 20 weeks [18 weeks post-fertilization], and perhaps even earlier, all the essential components of anatomy, physiology, and neurobiology exist to transmit painful sensations from the skin to the spinal cord and to the brain.* Source: U.S. Congress. House. Judiciary Committee. *Pain of the Unborn*, 109th Cong., 1s sess., November 1, 2005, http://commdocs.house.gov/committees/judiciary/hju24284.000/hju24284_0.htm.

For more information about What Science Reveals About Fetal Pain, see: <http://downloads.frc.org/EF/EF15A104.pdf>.

³³ Pam Belluck, *The New York Times*.

snipping the necks of babies. The only federal crime that Gosnell was convicted of were charges of conspiracy to distribute controlled substances to which he pled guilty.

The proposed *Born-Alive* legislation explicitly states that killing born-alive babies is murder under federal law. It would protect babies born alive, no matter in which state they are born.

In response to this continued problem of the born-alive deaths due to the lack of enforcement in current federal law, Congress must pass the *Born-Alive Abortion Survivors Protection Act* (H.R. 3504/S. 2066) sponsored by Rep. Trent Franks (R-AZ) in the House and Sen. Ben Sasse (R-NE) in the Senate. The House passed this bill by a vote of 248-177 in 2015, but the Senate has not yet taken action.

The *Born-Alive Abortion Survivors Protection Act* (H.R. 3504/S. 2066) is a modest bill. First, it provides enforcement mechanisms to current federal law to hold abortionists accountable for killing born-alive infants after an attempted abortion. Second, it explicitly requires health care practitioners to treat born-alive abortion survivors with the same care they would treat any other baby born at the same gestational age, and admit such babies immediately to a hospital. Third, the bill includes criminal sanctions against anyone who intentionally kills an infant born alive. Fourth, it requires any violations to be reported to state or federal law agencies, and creates penalties for failure to report such violations. Fifth, the bill also expressly excludes any prosecution of the mother of a child born alive, and it gives her a private right of action to seek relief if an abortionist were to kill her born-alive infant. A mother should, of course, have a right to sue a doctor who kills her born-alive child, whether directly or through intentional neglect.

As noted, a key provision in the bill requires abortionists and other practitioners to treat a child born alive after an attempted abortion with “the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care practitioner would render to any other child born alive at the same gestational age” and second, “would ensure that the child born alive is immediately transported and admitted to a hospital.”³⁴

Some of these provisions may, in effect, require that abortion facilities have basic medical supplies and procedures in place to quickly respond to a live birth after an attempted abortion. In addition to adequately trained and prepared staff, some of the items that an abortion facility should have include an oxygen mask that would fit a newborn, a tracheal tube to intubate a newborn, blankets, and warming pads. The facility should also have protocol in place to immediately transport the baby to the hospital.³⁵

³⁴ U.S. Congress. House. Judiciary Committee. *Born-Alive Abortion Survivors Protection Act*, H.R. 3504, 114th Cong., 1s sess., 2015, Sec. 3, 1532, <https://www.congress.gov/bill/114th-congress/house-bill/3504/text>

³⁵ In May 2016, the Select Investigative Panel on Infant Lives subpoenaed notorious late-term Maryland abortionist LeRoy Carhart and is seeking information into the policy and procedures at his facility for infants born alive after an attempted abortion. Some of the documents that he is required to present include “any training provided to staff on how to care for an infant born alive”... “the presence of any equipment that serves infants born alive or persons trained to provide neonatal care for an infant born alive”... “the dates on which any child was born alive at LC entities, the person(s) who assisted with the care of that child, and the disposition of the child, including any death certificates prepared for that child and any related referrals to a funeral home.” Subpoena available here:

As the proposed legislation states, “Any infant born alive after an abortion or within a hospital, clinic, or other facility has the same claim to the protection of the law that would arise for any newborn, or for any person who comes to a hospital, clinic, or other facility for screening and treatment or otherwise becomes a patient within its care.”³⁶

Despite the importance of this bill, the White House issued a “Statement of Administration Policy,” shocking in its callousness, which promises that the President would veto the *Born-Alive* legislation because the bill would have a “chilling” effect on “the provision of abortion services.”³⁷ This could not be farther from the truth. I cannot think of a more chilling effect than continuing to let abortionists get away with infanticide, the intentional killing of born-alive, breathing babies after an attempted abortion.

Conclusion

Born-alive babies after an attempted abortion are already recognized as legal persons under the laws of the United States since the 2002 enactment of the *Born-Alive Infants Protection Act*. The *Born-Alive Abortion Survivors Protection Act* (H.R. 3504/S. 2066) simply recognizes the obligations that follow from this reality, to ensure that babies born alive after attempted abortions will be given the best medical care available and the full and equal protection of our laws. I earnestly ask that you support this bill to stop infanticide in the United States.

<https://energycommerce.house.gov/sites/repUBLICANS.energycommerce.house.gov/files/documents/114/letters/20160511CarhartPersonalLetter.pdf>

³⁶ *Born-Alive Abortion Survivors Protection Act*, Sec 2,2.

³⁷ “Statement of Administration Policy,” Executive Office of the President, September 16, 2015, https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr3134-3504r_20150916.pdf.