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Hearing of the House Judiciary Committee Regarding H.R. 962,  
“Born-Alive Abortion Survivors Protection Act”

September 10, 2019, 1:00 p.m.  
HVC-215



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Hon. Steve Scalise, Republican Whip  
Hon. Ann Wagner, Sponsor of H.R. 962  
Hon. Chris Smith, Pro-Life Caucus Chairman  
Honorable Members  
United States House of Representatives  
Minority Hearing on H.R. 962, Born-Alive Abortion Survivors Protection Act  
House Visitor Center, 215  
Washington, DC 20515

Republican Whip Scalise, Congresswoman Wagner, Congressman Smith, and Members of Congress:

Representative Wagner, Minority Whip Scalise, and other members participating in the hearing today, thank you for inviting me to testify on the Born-Alive Abortion Survivors Protection Act. My name is Tessa Longbons, and I am a research associate with the Charlotte Lozier Institute. Today I will discuss the national and state statistics that can shed light on this issue.

The Born-Alive Infants Protection Act of 2002 defined a baby who survives an abortion as a legal person, but it did not extend any additional protections. The Born-Alive Abortion Survivors Protection Act would fill in those gaps by requiring the abortion provider to provide the same care to a baby born alive during an abortion that would be provided to any other child born at the same gestational age. The act would also create penalties for abortion providers who fail to comply and give women who undergo abortions the right to sue for civil penalties.

Despite claims to the contrary, both national and state data show that infants do in fact survive attempted abortions. The U.S. Centers for Disease Control and Prevention (CDC) reviewed infant death records from 2003-2014 that had been coded as a death resulting from an induced abortion or spontaneous miscarriage.<sup>1</sup> The CDC examined each death certificate to

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<sup>1</sup> Centers for Disease Control and Prevention, National Center for Health Statistics. "Mortality Records with Mention of International Classification of Diseases-10 code P96.4 (Termination of Pregnancy): United States, 2003-

identify deaths that resulted from babies being born alive during induced abortions and then dying. The CDC found 143 such deaths over the 12-year period, and the CDC acknowledges that this may be an underestimate.

In fact, state-level data suggests that these estimated 143 babies may be a considerable undercount. Seven states have provided CLI with information on infants who survive abortions: Arizona,<sup>2</sup> Florida,<sup>3</sup> Indiana,<sup>4</sup> Michigan,<sup>5</sup> Minnesota,<sup>6</sup> Oklahoma,<sup>7</sup> and Texas.<sup>8</sup> Although the states have reported for varying timeframes, these seven states alone have together reported at least 160 abortion survivors. While we do not know how many babies survive abortions in the other 43 states, it is likely that the true total is significantly higher.

Montana is one example. Currently, in Montana, it is considered homicide if a person causes the death of an infant who survives an abortion.<sup>9</sup> Similar to current federal law, infants' lives are legally protected, but there are no requirements for active steps that medical professionals must take to keep babies alive. By law, Montana requires abortion providers to report whether the infant showed any signs of life after the abortion.<sup>10</sup> However, because of the lack of enforcement, the Montana health department considers the data to be unreliable and does not track or record this data in Montana's abortion data system.<sup>11</sup> To address some of these issues, the Montana legislature passed the Montana Born-Alive Infant Protection Act earlier this year.<sup>12</sup> The act would have required doctors to provide medical care for babies who are born alive and created penalties if the law were violated, just as the federal Born-Alive Abortion Survivors Protection Act seeks to do. The Montana act was vetoed by Governor Bullock.

Texas reporting reflects a similar situation. Since 2013, Texas has included information on born-alive babies in its abortion reports, but in that time has reported zero babies born alive. However, that may change in future reports. This year, Texas enacted a new law strengthening its protections by establishing a physician-patient relationship between the doctor performing the

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2014." April 11, 2016. Retrieved from [https://www.cdc.gov/nchs/health\\_policy/mortality-records-mentioning-termination-of-pregnancy.htm](https://www.cdc.gov/nchs/health_policy/mortality-records-mentioning-termination-of-pregnancy.htm) (accessed August 30, 2019).

<sup>2</sup> Arizona Department of Health Services. Annual Abortion Report, 2017

<sup>3</sup> Florida Agency for Health Care Administration. ITOP Reports of Infants Born Alive, By County Where Terminations Occurred, Florida, 2013-2019

<sup>4</sup> Data provided to the Charlotte Lozier Institute by the Indiana State Department of Health, Division of Vital Records

<sup>5</sup> Michigan Department of Health and Human Services, Division for Vital Records and Health Statistics. Induced Abortions in Michigan, 2006-2018. Data for 1997-2006 provided to the Charlotte Lozier Institute by the Michigan Department of Health and Human Services

<sup>6</sup> Minnesota Department of Health, Center for Health Statistics. Induced Abortions in Minnesota Reports to the Legislature, 2015-2018

<sup>7</sup> Oklahoma State Department of Health. Abortion Surveillance in Oklahoma Summary Reports, 2012-2018

<sup>8</sup> Texas Health and Human Services Commission, Center for Analytics and Decision Support. Induced Terminations of Pregnancy Statistics, 2013-2017

<sup>9</sup> Mont. Code Ann. § 50-20-108 (Enacted 1974; Last Amended 2009)

<sup>10</sup> Mont. Code Ann. § 50-20-110 (Enacted 1974; Last Amended 1981)

<sup>11</sup> Information provided to the Charlotte Lozier Institute by the Montana Department of Public Health and Human Services

<sup>12</sup> S.B. 354, 66<sup>th</sup> Leg., Reg. Sess. (Mont. 2019).

abortion and any surviving infant.<sup>13</sup> Similar to the federal Born-Alive Abortion Survivors Protection Act, Texas' new law provides methods of enforcement and requires people aware of any violations to report them. The law went into effect on September 1<sup>st</sup>.

However, still only two-thirds of the states have any laws to protect infants who survive abortions<sup>14</sup>, and some states have been barred from establishing protections for these babies. In 2019, 14 states considered legislation to create or strengthen protections for infants who survive abortions.<sup>15</sup> In only five states, bills were passed by the legislature, and just two were signed into law: in Texas and in Arkansas,<sup>16</sup> which now requires doctors to report born-alive babies to the Arkansas Department of Health. In three states, the protections were vetoed by the governor. These states were Montana, North Carolina,<sup>17</sup> and Wisconsin.<sup>18</sup>

Even when states have strong protections for babies who survive abortions, they are unable to extend these protections to residents who obtain abortions in other states. Seven states and the District of Columbia have no restrictions on how late in pregnancy babies may be aborted,<sup>19</sup> yet none of these jurisdictions has established legal protections for born-alive infants. New Mexico is one of these jurisdictions. In 2017, 22 percent of New Mexico abortions were performed on women from other states.<sup>20</sup> It is likely that some of these women traveled from states with protections for born-alive babies, such as neighboring Arizona and Texas. A baby who survives a late-term abortion in New Mexico has just as much of a right to medical treatment as a baby who survives an abortion in Arizona. Enacting the Born-Alive Abortion Survivors Act would ensure that federal law protects those babies equally. Thank you.

Sincerely,

Tessa Longbons

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<sup>13</sup> H.B. 16, 86<sup>th</sup> Leg., Reg. Sess. (Tex. 2019).

<sup>14</sup> Americans United for Life. "Defending Life 2019." Retrieved from <https://aui.org/wp-content/uploads/2019/04/Defending-Life-2019.pdf> (accessed September 4, 2019). Illinois and New York have since removed protections: S.B. 25, 101<sup>st</sup> Gen. Assemb., Reg. Sess. (Ill. 2019) and S.B. 240, 2019 Leg., Reg. Sess. (N.Y. 2019).

<sup>15</sup> Alabama, Arkansas, Hawaii, Illinois, Kentucky, Minnesota, Missouri, Montana, New Jersey, New York, North Carolina, Oregon, Texas, Wisconsin

<sup>16</sup> S.B. 278, 92<sup>nd</sup> Gen. Assemb., Reg. Sess. (Ark. 2019).

<sup>17</sup> S.B. 359, 2019 Gen. Assemb., Reg. Sess. (N.C. 2019).

<sup>18</sup> A.B. 179, 2019 Gen. Assemb., Reg. Sess. (Wis. 2019).

<sup>19</sup> Henry J Kaiser Family Foundation. "States with gestational limits for abortion." Retrieved from <https://www.kff.org/womens-health-policy/state-indicator/gestational-limit-abortions/> (accessed August 30, 2019).

<sup>20</sup> Data provided to the Charlotte Lozier Institute by the New Mexico Department of Health, Bureau of Vital Records and Health Statistics