



Patrina Mosley, M.A.
Director of Life, Culture and Women's Advocacy
Family Research Council

Hearing of the U.S. Senate Committee on the Judiciary,

On "The Infant Patient: Ensuring Appropriate Medical Care for Children Born Alive."

February 11, 2020
10:00 a.m.
Dirksen Senate Office Building 226
Washington, D.C. 20002

To the Distinguished Chairman, Presiding Member Sen. Sasse, and Honored Members of the Committee:

My name is Patrina Mosley, and I am the Director of Life, Culture and Women’s Advocacy at Family Research Council (FRC). As a policy analyst, my expertise and research center on human dignity, particularly regarding the sanctity of life and sexual exploitation. I am grateful to be invited here today to testify on “The Infant Patient: Ensuring Appropriate Medical Care for Children Born Alive.”

That is what the *Born-Alive Abortion Survivors Protection Act* is all about: having protections for infants who have clearly become the patient.

For some who believe that we already have adequate protections for infants born alive after a failed abortion attempt, this effort may seem like Groundhog Day. In 2002, Congress did pass the *Born-Alive Infants Protection Act*, but this law was only a definitional change stating that all infants who survive abortion are full persons under the law.¹ This was great and praiseworthy.

However, incidents involving born-alive infants being killed after an attempted abortion have continued even after this law was passed.

Number of Reported Born-Alive Infants

In fact, the Center for Disease Control and Prevention (CDC) reports that from 2003-2014 at least 143 infants died after being born alive during an abortion procedure, and the report admits that this is almost certainly an underestimate.² There are no federal abortion reporting requirements, which leaves a massive gap in state reporting. But also, the report notes that “[b]ecause of the strong association between severe congenital anomalies or maternal complications and premature labor and birth, terminations were assumed to be spontaneous when reported as “due to” or “caused by” an anomaly/complication. However, if the language used was something like “termination of pregnancy for [congenital anomaly/maternal complication],” then the termination was assumed to be induced” and thus how the 143 infants were categorized. Of these 143 deaths involving induced terminations, 97 involved a maternal complication or, one or more congenital anomalies. We do not know how the remaining 46 infants died. The question then becomes, were these infants given care or simply left to die? The report does not tell us this. What it does tell us is that some of these infants clung to life for more than 24 hours.

The distribution of age at death for deaths involving induced terminations are as follows:³

Age at death	Frequency	Percent
<10 minutes	25	17.5
10-59 minutes	35	24.5
1-4 hours	68	47.6
5-23 hours	9	6.3
1 day or more	6	4.2

¹ U.S. Congress, House, *Born-Alive Infants Protection Act of 2002*, HR 2175, 107th Cong., introduced in House June 14, 2001, <https://www.congress.gov/107/plaws/publ207/PLAW-107publ207.pdf>.

² “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 May 15, 2019, https://www.cdc.gov/nchs/health_policy/mortality-records-mentioning-termination-of-pregnancy.htm.

³ Ibid.

The CDC took this data from the National Vital Statistics System (NVSS) Mortality Data regarding infant deaths, which included deaths occurring to infants who met the legal definition of a live birth, which includes “any sign of life, *e.g.*, breath, heartbeat, pulsation of the umbilical cord, or definite movement of voluntary muscles.”⁴ That’s 143 babies that were reported to be clearly alive and who later died.⁵

Current Federal Protections are Insufficient

To date, there have been no cases involving prosecutions under the *Born-Alive Infants Protection Act* for these 143 infants, that we know of. Why? Because there is currently no federal criminal statute specifically prohibiting taking the lives of born-alive infants.

While the 2002 *Born-Alive Infants Protection Act* gave us the base, recognizing that all infants born alive are “persons,” we now need to build on that with requirements that health care practitioners treat the infant with the same degree of care afforded to any other newborn. The *Born-Alive Abortion Survivors Protection Act* would solve this problem by requiring that the same degree of professional skill, care, and diligence be given to infants who survive an abortion and establishing criminal consequences for practitioners who fail to do so. We would have hoped that medical professionals would have seen it as their professional duty to administer some type of care to helpless infants born alive, but a law is often only as good as its enforcement mechanisms. French economist and statesman Frédéric Bastiat wrote: “the purpose of the law is to prevent injustice from reigning.”⁶ It must be made clear that infants born alive are full legal persons under the law and should not be discriminated against because they were born as the result of an abortion attempt.

Current Born-Alive State Protections

If the 2002 Born Alive measure was enough, then why did 34 states take it upon themselves to enact born-alive protection statutes? Infants born alive after surviving abortion are entirely dependent on a patchwork of state-level protections to receive appropriate medical care.

Currently, 34 states have at least some born-alive protections. However, only **twenty-six**⁷ require healthcare practitioners to exercise professional skill, care, and diligence to preserve the life of an infant born-alive after an abortion attempt and only **eighteen**⁸ have a health care requirement like mandating that the born-

⁴ Ibid.

⁵ Regarding infant deaths, the NVSS Mortality Data only included deaths occurring to those infants born alive and did not include fetal deaths (stillbirths).

⁶ Frédéric Bastiat, *The Law* (1850), accessed February 7, 2020, http://bastiat.org/en/the_law.html.

⁷ Alabama (ALA. CODE §§ 26-22-3), Arizona (ARIZ. REV. STAT. ANN. §§ 36-2301), Arkansas (ARK. CODE ANN. § 20-16-604), Delaware (DEL. CODE ANN. tit. 24, § 1795), Florida (FLA. STAT. §§ 390.0111), Georgia (GA. CODE ANN. § 16-12-141), Indiana (IND. CODE § 16-34-2-3), Iowa (IOWA CODE §§ 707.10), Kansas (KAN. STAT. ANN. § 65-6709), Louisiana (LA. REV. STAT. ANN §§ 14:87.5), Maine (ME. REV. STAT. tit. 22, § 1594), Massachusetts (MASS. GEN. LAWS ch. 112, § 12P), Michigan (MICH. COMP. LAWS §§ 333.1073), Minnesota (MINN. STAT. §§ 145.423), Mississippi (MISS. CODE ANN. § 97-3-4), Missouri (MO. REV. STAT. § 188.030), Nebraska (NEB. REV. STAT. §§ 28-331), Nevada (NEV. REV. STAT. § 442.270), North Dakota (N.D. CENT CODE §§ 14-02.1-05), Ohio (OHIO REV. CODE ANN. § 2919.13), Oklahoma (OKLA. STAT. §§ 63-1-734), Pennsylvania (18 PA. CONST. STAT. ANN. §§ 3212), Rhode Island (R.I. GEN. LAWS § 11-9-18), Tennessee (TENN. CODE ANN. § 39-15-206), Texas (TEX. FAM. CODE ANN. § 151.002), Wyoming (WYO. STAT. ANN. § 35-6-1).

⁸ Alabama (ALA. CODE §§ 26-22-3), Arizona (ARIZ. REV. STAT. ANN. §§ 36-2301.01), Arkansas (ARK. CODE ANN. § 20-16-604), Florida (FLA. STAT. §§ 390.0111), Indiana (IND. CODE § 16-34-2-3), Louisiana (LA. REV. STAT. ANN 40:1061.13), Massachusetts (MASS. GEN. LAWS ch. 112, § 12P), Michigan (MICH. COMP. LAWS §§ 333.1073), Minnesota (MINN. STAT. §§ 145.423), Missouri (MO. REV. STAT. § 188.030), Nevada (NEV. REV. STAT. § 442.270), North Dakota (N.D. CENT CODE §§ 14-02.1-05), Ohio (OHIO REV. CODE ANN. § 2919.13), Oklahoma (OKLA. STAT. §§ 63-1-734), Pennsylvania (18 PA. CONST. STAT. ANN. §§ 3211), Tennessee (TENN. CODE ANN. § 39-15-206), Texas (TEX. FAM. CODE ANN. § 151.002), Virginia (VA. CODE ANN. §§ 18.2-74).

alive infant be hospitalized or that a second physician be present. Only **fifteen**⁹ states have the three elements of strong born-alive protection, which are reflected in the *Born-Alive Abortion Survivors Protection Act*, currently pending in the House of Representatives (H.R.962) and here in the Senate (S.130), that encompasses:

1. A requirement that practitioners must exercise professional skill, care, and diligence to preserve the life of infants who survive abortion;
2. A health care requirement (providing for hospitalization of the surviving infant and/or requiring the presence of a second physician during the abortion); and
3. Legal penalties for abortionists who do not comply.

At this moment, federal law and 35 states do not adequately protect the lives of infants who survive abortion.

Current Born-Alive State Reporting

The CDC report ranging from 2003-2014 reporting 143 born-alive infants is not the end of the story. There are still babies being born alive after surviving an abortion attempt. Remember, the CDC report acknowledged that the numbers were likely underestimated. This should not be surprising, considering there are no federal abortion reporting requirements, and the CDC must rely on states that *voluntarily* report on abortion – and even with states that do report, that data may not be comprehensive.

With Arkansas passing a law in 2019, there are now only eight states that require reporting on infants who are born alive during an abortion, those are:

Arizona,¹⁰ Florida,¹¹ Indiana,¹² Michigan,¹³ Minnesota,¹⁴ Oklahoma,¹⁵ and Texas.¹⁶ and Arkansas as of 2019.¹⁷

⁹ Alabama ((ALA. CODE §§ 26-22-3), Arizona (ARIZ. REV. STAT. ANN. §§ 36-2301-36-2301.01), Arkansas (ARK. CODE ANN. § 20-16-604), Florida (FLA. STAT. §§ 390.0111), Indiana (IND. CODE § 16-34-2-3), Louisiana (LA. REV. STAT. ANN §§ 14:87.5 & 40:1061.12 - 40:1061.13), Minnesota (MINN. STAT. §§ 145.423, 145.4131, Missouri (MO. REV. STAT. § 188.030), Nevada (NEV. REV. STAT. § 442.270), North Dakota (N.D. CENT CODE §§ 14-02.1-05, 14-02.1-08), Ohio(OHIO REV. CODE ANN. § 2919.13), Oklahoma (OKLA. STAT. §§ 59-524, 63-1-734), Pennsylvania (18 PA. CONST. STAT. ANN. §§ 3211- 3212), Tennessee (TENN. CODE ANN. § 39-15-206), Texas (TEX. FAM. CODE ANN. § 151.002).

¹⁰ “36-2301,” Arizona State Legislature, accessed May 15, 2019, <https://www.azleg.gov/ars/36/02301.htm>.

This bill was signed into law by Gov. Doug Ducey (R) on March 31, 2017.

¹¹ “The 2018 Florida Statutes – Chapter 390 – Termination of Pregnancy,” Florida Legislature, accessed May 15, 2019, http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0390/0390.html.

¹² “IC 16-34-2-5,” Indiana Code 2019- General Assembly 2020 Session, accessed, February 10, 2020, <http://iga.in.gov/legislative/laws/2019/ic/titles/016#16-34-2-5>.

¹³ “Public Health Code (Excerpt) – Act 368 of 1978,” Michigan Legislature, accessed May 15, 2019, [http://www.legislature.mi.gov/\(S\(ocmmxioo4qx5sxcpl0qqi0w2\)\)/mileg.aspx?page=GetObject&objectname=mcl-333-2822](http://www.legislature.mi.gov/(S(ocmmxioo4qx5sxcpl0qqi0w2))/mileg.aspx?page=GetObject&objectname=mcl-333-2822).

¹⁴ “145.4131 Recording and Reporting Abortion Data – 2018 Minnesota Statutes,” Minnesota Legislature, accessed May 21, 2019, <https://www.revisor.mn.gov/statutes/cite/145.4131>.

¹⁵ “Oklahoma Abortion Statutes – November 1, 2017,” Oklahoma State Department of Health, [https://www.ok.gov/health2/documents/Oklahoma Abortion Statutes 20171101.pdf](https://www.ok.gov/health2/documents/Oklahoma%20Abortion%20Statutes%20171101.pdf).

¹⁶ “Sec. 171.006 – Abortion Complication Reporting Requirements; Civil Penalty,” Texas Health and Safety Code, accessed May 15, 2019, https://texas.public.law/statutes/tex._health_and_safety_code_section_171.006.

¹⁷ “SB278,” Arkansas State Legislature, accessed February 7, 2020, <http://www.arkleg.state.ar.us/assembly/2019/2019R/Pages/BillInformation.aspx?measureno=SB278>.

Of these reporting states, at least 170 cases¹⁸ of infants born alive have been documented.

- **Arizona:** Arizona has reported double-digit numbers for years 2017 and 2018 for infants who survive abortion, reporting 10 in 2017¹⁹ and 12 in 2018²⁰. The annual abortion reports do not specify whether any of these babies survived past birth or what else happened to them.
- **Florida:** Florida has reported 23 cases since 2015²¹, including 11 in 2017²², six in 2018²³, and two in 2019.²⁴ Florida’s reports do not say what happened to the babies after they were born.
- **Indiana:** Indiana requires all physicians who perform a surgical abortion to report whether the child was delivered alive, and if the physician “gave the fetus the best opportunity to survive.” As of 2019, Indiana has reported 27 cases in which the infant survived a failed abortion.²⁵
- **Michigan:** Michigan reports on whether there are signs of life after a failed abortion; so far, Michigan has reported 84 such cases, the most of any state.²⁶ Since 2008 Michigan has reported 12 such cases²⁷, with as many as five in 2011.²⁸

¹⁸ Totaling all reported cases from the eight reporting states as far back as 1997 to present.

¹⁹ “Abortions in Arizona: 2017 Abortion report,” Arizona Department of Health Services, July 22, 2017, accessed February 7, 2020, <https://www.azdhs.gov/documents/preparedness/public-health-statistics/abortions/2016-arizona-abortion-report.pdf>.

²⁰ “Abortions in Arizona: 2018 Abortion report,” Arizona Department of Health Services, September 21, 2018, accessed February 7, 2020, <https://azdhs.gov/documents/preparedness/public-health-statistics/abortions/2018-arizona-abortion-report.pdf>.

²¹ “10 babies born alive after botched abortions in 2015...in just 3 states,” *Life Site News*, April 12, 2017, accessed February 8, 2020, <https://www.lifesitenews.com/news/10-babies-born-alive-after-abortion-in-2015-in-only-3-states>. The link containing the state’s 2015 Report on Infants Born Alive could not be found and we had to rely on screenshots of the report from this news article. Reports for years prior to 2017 had to be requested through the Florida Agency for Health Care Administration Public Records Office.

²² “2017 ITOP Report of Infants Born Alive,” Florida Agency for Health Care Administration, March 3, 2019, accessed February 8, 2020 https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/docs/LiveBirthsByCounty_2017.pdf.

²³ “2018 ITOP Report of Infants Born Alive,” Florida Agency for Health Care Administration, March 3, 2019, accessed February 8, 2020 https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/docs/LiveBirthsByCounty_2018.pdf.

²⁴ “2019 ITOP Report of Infants Born Alive,” Florida Agency for Health Care Administration, March 3, 2019, accessed February 8, 2020 https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/docs/LiveBirthsByCounty_2019.pdf.

²⁵ Data cited here was provided to the Charlotte Lozier Institute by the Indiana State Department of Health, Division of Vital Records. Most of Indiana Induced Termination of Pregnancy (ITOP) reports are not publicly accessible, but the Indiana Department of Health collects this data regularly and this page hosts the collection, or ITOP reports, or information to request data on ITOP reports from 2000 to 2018: <http://www.lb7.uscourts.gov/documents/118-cv-19043.pdf>.

²⁶ Data for 1997-2006 provided to the Charlotte Lozier Institute by the Michigan Department of Health and Human Services. Data for 2006-2018 provided by the Michigan Department of Health and Human Services, Division for Vital Records and Health Statistics.

²⁷ “Induced Abortions in Michigan, January 1 through December 31, 2008,” Michigan Department of Community Health Division for Vital Records and Health Statistics, p.36, accessed February 8, 2020, <https://www.mdch.state.mi.us/pha/osr/annuals/Abortion%202008.pdf>.

²⁸ “Induced Abortions in Michigan, January 1 through December 31, 2011,” Michigan Department of Community Health Division for Vital Records and Health Statistics, p.36, accessed February 8, 2020, <https://www.mdch.state.mi.us/pha/osr/annuals/Abortion%202011.pdf>.

- **Minnesota:** Minnesota has reported 16 babies born alive following a failed abortion, with five in 2015,²⁹ five in 2016,³⁰ three in 2017³¹, and three in 2018.³² Minnesota also reports on what type of treatment was administered to the child but does not state at what gestational age each child was born.³³
- **Oklahoma:** Oklahoma only reports the instances of failed termination, meaning after the abortion attempt, the pregnancy was still viable. Because this reporting is so vague, the actual number of babies born alive as a result of a failed abortion is not clear in the reports.³⁴

Records for born-alive infants between the years 2008-2018 are as follows and can be located here: 1 (2008), 1 (2009), 1 (2010), 5 (2011), 1 (2012), 2 (2013), 0 (2014), 1 (2015), 0 (2016), 0 (2017), 0 (2018).

https://www.michigan.gov/mdhhs/0,5885,7-339-73970_2944_4669_4681---,00.html.

²⁹ “Induced Abortions in Minnesota January - December 2015: Report to the Legislature,” Minnesota Department of Health Center for Health Statistics, July 2016, p.37, accessed February 8, 2020, <https://www.health.state.mn.us/data/mchs/pubs/abrpt/docs/2015abrpt.pdf>. “Two hospitals, included in Table 1.1 as ‘Independent Physicians’, reported a total of 5 abortion procedures resulting in a born alive infant. All of these infants were reported to have lethal fetal anomalies incompatible with life and thus no measures were taken to preserve the life of these infants. None survived.” Ibid.

³⁰ “Induced Abortions in Minnesota January - December 2016: Report to the Legislature,” Minnesota Department of Health Center for Health Statistics, July 2017, p.37, accessed February 8, 2020, <https://www.health.state.mn.us/data/mchs/pubs/abrpt/docs/2016abrpt.pdf>.

³¹ “Induced Abortions in Minnesota January - December 2017: Report to the Legislature,” Minnesota Department of Health Center for Health Statistics, July 01, 2018, p.27, accessed February 8, 2020, <https://www.health.state.mn.us/data/mchs/pubs/abrpt/docs/2016abrpt.pdf>. “For the calendar year of January 1, 2017 through December 31, 2017, three (3) abortion procedures resulting in a born-alive infant were reported. In one instance, APGAR score was 1/1. No measures were taken, and the infant did not survive. In one instance, comfort care measures were provided as planned and the infant did not survive. In one instance, no specific steps taken to preserve life were reported and the infant did not survive.” Ibid. (The Apgar score is a test given to newborns soon after birth to checks a baby’s heart rate, muscle tone, and other signs to see if extra medical care or emergency care is needed. In the test, five things are used to check a baby’s health: Appearance (skin color), Pulse (heart rate), Grimace response (reflexes), Activity (muscle tone) and Respiration (breathing rate and effort). Each is scored on a scale of 0 to 2, with 2 being the best score. Mary L. Gavin, MD, “What Is the Apgar Score,” February 2018, accessed February 8, 2020 <https://kidshealth.org/en/parents/apgar.html>).

³² “Induced Abortions in Minnesota January - December 2018: Report to the Legislature,” Minnesota Department of Health Center for Health Statistics, July 01, 2019, p.37, accessed February 8, 2020, <https://www.health.state.mn.us/data/mchs/pubs/abrpt/docs/2018abrpt.pdf>. “For the calendar year of January 1, 2018 through December 31, 2018, three (3) abortion procedures resulting in a born-alive infant were reported. In one instance, APGAR score was 1 at 1 and 5 minutes. There were anomalies incompatible with life. No measures taken to preserve life were reported and the infant did not survive. In one instance, comfort care measures were provided as planned and the infant did not survive. In one instance, the infant was previable. No measures taken to preserve life were reported and the infant did not survive.” Ibid.

³³ “Induced Abortions in Minnesota January - December 2015: Report to the Legislature,”: “The 2015 Minnesota Legislature enacted the “Born Alive Infant Protection Act” - a portion of which amended the abortion reporting requirements to add whether an abortion results in a born alive infant. Information collected includes medical actions taken to preserve the life of the infant, whether the infant survived and the status of a surviving infant. The text of this act can be found in the Appendix of this publication. [Minnesota Statutes, sections 145.4131, subdivision 1 and 145.423, subdivisions 1 through 9].”

³⁴ “The Abortion Surveillance in Oklahoma 2002-2018,” Center for Health Statistics Oklahoma State Department of Health, accessed February 8, 2020, <https://www.ok.gov/health2/documents/2018%20ITOP%20Report.pdf>.

- **Texas:** Texas has included reporting on infants who survive abortion since 2013, but so far has reported zero cases. With Texas strengthening their enforcement of born-alive protections in 2019, future reports may show cases of infants who survive abortion.³⁵

The Dreaded Question

So, the dreaded question becomes, what actually happens to a child born alive after a failed abortion attempt? Are they administered medical care or does infanticide³⁶ take place, which is the act of killing of a newborn child?

Here's what we do know:

Gosnell

In 2013, Dr. Kermit Gosnell was found guilty of first-degree murder in the case of three babies who were born alive in his clinic after failed abortions. According to the grand jury report:³⁷

- “One employee testified in the trial that she witnessed Gosnell snip the necks of more than 30 babies.”
- “A 28-week-old baby boy was found frozen in a gallon water bottle.”
- “One of the babies was reportedly moving and breathing for 20 minutes before an employee cut the spinal cord.”
- “Gosnell severed the spine of one breathing, moving, born-alive baby and put the body in a plastic shoebox for disposal.”
- “When authorities searched Gosnell’s office, they found bags and bottles holding aborted fetuses scattered throughout the building.”³⁸
- “Gosnell’s staff testified about scores of gruesome killings of such born-alive infants carried out mainly by Gosnell... These killings became so routine that no one could put an exact number on them. They were considered “standard procedure.”³⁹

³⁵ Texas reporting law: “Sec. 171.006 – Abortion Complication Reporting Requirements; Civil Penalty,” Texas Health and Safety Code, accessed May 15, 2019, https://texas.public.law/statutes/tex._health_and_safety_code_section_171.006.

³⁶ “Infanticide”, Infanticide Law and Legal Definition, U.S. Legal.com, accessed February 7, 2020, <https://definitions.uslegal.com/i/infanticide/>.

³⁷ Charlie Spiering, “58 horrific details from the Kermit Gosnell trial that you do not want to read,” *Washington Examiner*, April 18, 2013, accessed May 16, 2019, <https://www.washingtonexaminer.com/58-horrific-details-from-the-kermit-gosnell-trial-that-you-do-not-want-to-read>.

³⁸ Ibid.

³⁹ “Report of the Grand Jury,” Court of Common Pleas – First Judicial District of Pennsylvania – Criminal Trial Division, January 14, 2011, p. 99, accessed February 7, 2020, <https://cdn.cnsnews.com/documents/Gosnell,%20Grand%20Jury%20Report.pdf>.

Karpen

Testimony from a former abortion clinic worker testified that Texas abortionist Douglas 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.⁴⁰

Karpen's ex-assistant, Deborah Edge, testified that "When he did an abortion, especially an over 20-week abortion, most of the time the fetus would come completely out before he either cut the spinal cord or he introduced one of the instruments into the soft spot of the fetus in order to kill it... or actually twisting the head off the neck with his own bare hands."

Unfortunately, a Texas grand jury cleared Karpen of any wrong-doing, saying they could find "no evidence of criminal behavior."⁴¹ However, the evidence gathered at the Karpen trial was handed over to the House Select Investigative Panel on Infant Lives, where the findings were so egregious that on December 7, 2016, they referred allegations of the Karpen case to the DOJ for investigation.⁴²

As of May 11, 2018, the investigation of abortionist Douglas Karpen has been "forwarded to the FBI Houston field office for 'any action deemed necessary' related to the murder of killing babies after failed abortions."⁴³

Virginia Governor Ralph Northam

Virginia Governor Ralph Northam, a pediatric neurologist, was confident in his answer to the dreaded question:

"I can tell you exactly what happens: If a mother is in labor...the infant would be delivered. The infant would be kept comfortable. The infant would be resuscitated if that's what the mother and the family desired, and then a discussion would ensue between the physicians and mother."⁴⁴

So, whether a newborn gets the chance to live or not is a matter for "discussion," while precious moments slip by as the infant is fighting for her life on the delivery table. At this point, we are no longer talking about abortion or a woman's body. We are talking about a child who has clearly become the patient.

Abortion Survivors

Here are two personal accounts of abortion survivors:

⁴⁰ Helen Pow, "Second 'house of horrors' abortion clinic where doctor 'twisted heads off fetus' necks with his bare hands' is investigated in Texas," *Daily Mail*, May 16, 2013, accessed May 16, 2019, <https://www.dailymail.co.uk/news/article-2325786/Douglas-Karpen-Second-house-horrors-abortion-clinic-investigated-Texas.html>.

⁴¹ Erik Eckholm, "Texas: Grand Jury Clears Abortion Provider," *The New York Times*, December 23, 2013, accessed May 21, 2019, <https://www.nytimes.com/2013/12/24/us/texas-grand-jury-clears-abortion-provider.html>.

⁴² "FBI Reviewing Claims Against 'Head-Twisting' Abortionist," *WorldNetDaily*, May 21, 2018.

⁴³ Talia Wise, "Former Abortionist Who 'Twisted Necks' of Babies Under FBI Investigation," CBN News, May 22, 2018, accessed May 16, 2019, <https://www1.cbn.com/cbnnews/us/2018/may/former-abortionist-who-twisted-necks-of-babies-under-fbi-investigation>.

⁴⁴ Steven Ertelt, "Virginia Gov Ralph Northam Defends Infanticide: 'Infant Would be Resuscitated If That's What the Mother Desired'," January 30, 2020, accessed February 7, 2020, <https://www.lifenews.com/2019/01/30/virginia-gov-ralph-northam-defends-infanticide-infant-would-be-resuscitated-if-thats-what-the-mother-desired/>.

Gianna Jessen had been in the womb for seven months before her mother went to a Planned Parenthood facility⁴⁵ to have a late-term saline abortion.⁴⁶ (Saline abortions rarely if ever happen anymore in the United States for abortions up to 24 weeks gestation. This technique has been replaced with an equally gruesome one that dismembers a child limb from limb, known as a dilation & excavation, or “D&E.”⁴⁷) Saline abortions use a saline solution to poison the baby, which burns him or her inside and out, even burning off the outer layer of their skin. The child suffers in these conditions for over an hour until their demise, and the mother must deliver her dead child the next day.

But Gianna survived. At that Planned Parenthood facility, Gianna was delivered alive, and because the abortionist was not in the office yet, a nurse called an ambulance to transport her to the hospital.

She became the patient.

“Had [the doctor] been there, he would have ended my life with strangulation, suffocation, or leaving me to die without a thought,” she says.⁴⁸

Melissa Ohden’s biological mother also had a saline abortion. But Melissa survived.⁴⁹ After being born alive, it was found that she was seven months old and weighed two pounds. When the saline abortion was over, she was discarded, but a nurse heard her crying from the medical waste.⁵⁰ Two nurses intervened and rushed her to the NICU.

She became the patient.

Years later, when Melissa found these nurses to thank them for saving her life, they told her “that she kept ‘gasping for breath’ and decided [they] couldn’t just leave her.”⁵¹

Today, Melissa is a pro-life advocate and the founder of the Abortion Survivors Network (ASN), which has had contact with over 200 other abortion survivors.

There was no legal or medical requirement to resuscitate Melissa or Gianna. They survived because someone acted with compassion.

In an ad meant to air during the Super Bowl, pro-life group Faces of Choice featured fourteen survivors of abortion. Each of the 14 survivors looks the viewer in the eye and asks some variant of the question, “Can

⁴⁵ “Abortion Survivors,” TeenBreaks.com, accessed May 15, 2019, <http://www.teenbreaks.com/abortion/abortionssurvivors.cfm>.

⁴⁶ Cassy Fiano-Chesser, “Do saline abortions, where babies are burned in salt, still happen in the U.S.?” Live Action, November 30, 2016, accessed May 15, 2019, <https://www.liveaction.org/news/saline-abortions-still-happen-america/>.

⁴⁷ Patrina Mosley, “Dismemberment Abortion,” Family Research Council, 2018, <https://downloads.frc.org/EF/EF18F25.pdf>.

⁴⁸ Ginny Montalbano, “She Survived a Saline Abortion. Here’s Her Story.,” *The Daily Signal*, February 12, 2019, accessed May 16, 2019, <https://www.dailysignal.com/2019/02/12/she-survived-a-saline-abortion-heres-her-story/>.

⁴⁹ “Melissa Ohden Bio,” MelissaOhden.com, accessed May 16, 2019, <https://melissaohden.com/about/>.

⁵⁰ “Melissa Ohden: Surviving Her Abortion,” *CBN*, accessed May 16, 2019, <http://www1.cbn.com/700club/melissa-ohden-surviving-her-abortion>.

⁵¹ John Jalsevac, “Melissa’s birth mother didn’t know she had survived the abortion. Then they met face-to-face.,” *LifeSiteNews*, February 20, 2019, accessed May 16, 2019, <https://www.lifesitenews.com/news/the-incredible-moment-this-abortion-survivor-met-her-birth-mother-face>.

you look me in the eye and tell me that I shouldn't be alive?" When confronted with these "faces of choice," no reasonable viewer can deny their existence and humanity.⁵²

In many of these cases, the infant's survival depended on the compassion of others. Yet we cannot rely on the extraordinary for these infants to have a chance at life. Instead, we should expect that ordinary care be given to anyone considered a full person under the law.

Premature Babies Can Survive with Proper Medical Treatment

We have seen premature babies go on to live full lives by simply receiving adequate care. The viability of a fetus has previously been set at 24 weeks LMP by the medical community.⁵³ However, due to advancements in technology, babies who are considered "extremely preterm" can now survive outside the womb as early as 20 weeks post-fertilization, if treated.

A 2015 *New England Journal of Medicine* study examined nearly 5,000 extremely premature babies born between 22 and 27 weeks. 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 percent). 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 percent).⁵⁴

A smaller 2016 study about "Survival Among Infants Born at 22- or 23-Weeks' Gestation [20 to 21 weeks post-fertilization] Following Active Prenatal and Postnatal Care" found that 67% of the babies that received active care survived.⁵⁵

⁵² Patrina Mosley, "Watch the Abortion Survivors Ad Too Powerful for the Super Bowl," *Daily Signal*, February 03, 2020, accessed February 7, 2020, <https://www.dailysignal.com/2020/02/03/watch-the-abortion-survivors-ad-too-powerful-for-the-super-bowl/>.

⁵³ Viability was at 28 weeks when the Supreme Court decided *Roe v. Wade*; it was at 23-24 weeks when the Court upheld *Roe* in *Planned Parenthood v. Casey*. The Court noted that the principle that states have an interest in protecting the fetus after viability would be true regardless of when that point was: "The soundness or unsoundness of that constitutional judgment in no sense turns on whether viability occurs at approximately 28 weeks, as was usual at the time of *Roe*, at 23 to 24 weeks, as it sometimes does today, or at some moment even slightly earlier in pregnancy, as it may if fetal respiratory capacity can somehow be enhanced in the future. Whenever it may occur, the attainment of viability may continue to serve as the critical fact, just as it has done since *Roe* was decided" *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 860 (1992), <https://supreme.justia.com/cases/federal/us/505/833/>.

⁵⁴ Matthew Rysavy et al., "Between-Hospital Variation in Treatment and Outcomes in Extremely Preterm Infants," *New England Journal of Medicine* 372 (2015): 1801-1811, accessed February 7, 2020, <https://www.nejm.org/doi/full/10.1056/NEJMoa1410689>.

⁵⁵ Specifically, "of 106 liveborn infants (45 born at 22 weeks and 61 born at 23 weeks and 6 days), 20 (19 percent) received palliative care (17 born at 22 weeks and 3 born at 23 weeks), and 86 (81 percent) 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 percent) 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." 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).

Baby Ellie

Baby Ellie Schneider and her mother Erin were recently guests at last week's State of the Union address. Ellie was born at just 21 weeks and six days. She is one of the youngest babies to survive in the United States. Today, Ellie is a healthy 2-year-old girl.⁵⁶

Baby Saybie

In San Diego, California, Baby Saybie weighed the same as a large apple at just 245g (8.6oz), when she was born at 23 weeks and three days in December of 2018. Saybie's mother gave birth to the little girl by emergency C-section three months ahead of schedule after she was diagnosed with pre-eclampsia – a pregnancy complication involving high blood pressure, which can prove fatal for mother and baby. Baby Saybie was transferred to the intensive care unit at Sharp Mary Birch Hospital and survived.⁵⁷

Baby Lyla

In Texas, baby Lyla was born at 21 weeks and whisked to the neonatal intensive care unit. She survived and is thriving today.⁵⁸

Conclusion

These are real lives we are talking about here today. They are surviving by the grace of God and by our technological advancements.

Infants surviving abortion are full persons under the law. It is time we make sure they are treated as such.

When a child comes into this world, wanted or unwanted, they should be met with a warm hat typically given by hospitals to newborns. Afterward, they can be adopted into a loving home by those who desire children. There is no need to kill the unwanted child just because moments prior they were destined for death.

When infants survive abortion, they will be either intentionally kept alive or intentionally put to death. A newborn child should not be killed on its birthday.

There can be no good reason for obstructing the care of an innocent child who has clearly become the patient unless one believes the child should never have been born at all – whether out of the understanding that abortion is a tool of eugenics meant to target minorities, the disabled, and the poor; or the belief that there is something to be gained by enabling the industry of harvesting “intact fetuses” (as the 2015 Center for Medical Progress undercover videos revealed);⁵⁹ or some other motivation.

The *Born-Alive Abortion Survivors Protection Act* is about offering medical care to a child who has now become the patient—nothing else. We must decide as a country to be morally and logically consistent

⁵⁶ White House, “Special Guests for President Trump’s 3rd State of the Union Address,” February 4, 2020, accessed February 7, 2020 <https://www.whitehouse.gov/articles/special-guests-for-president-trumps-3rd-state-of-the-union-address/>.

⁵⁷ “World's smallest' surviving premature baby released from US hospital,” *BBC News*, May 30, 2019, accessed February 8, 2020, <https://www.bbc.com/news/world-us-canada-48458780>.

⁵⁸ A. Pawlowski, “Miracle baby': Born at 21 weeks, she may be the most premature surviving infant,” *Today*, November 21, 2018, accessed February 8, 2020, <https://www.today.com/health/born-21-weeks-she-may-be-most-premature-surviving-baby-t118610>.

⁵⁹ “Investigative Footage,” Center for Medical Progress, accessed February 7, 2020 <https://www.centerformedicalprogress.org/cmp/investigative-footage/>.

with ourselves in that if any infant born-alive is a full person under federal law, then they are worthy of humane care and protection under federal law. Thank you.