

Congress Considers Prosecuting Abortionists who Kill Living Babies Outside the Womb

Incredible as it sounds, until 2002 there was no federal legislation forbidding abortionists from killing babies who were born alive during botched abortions, or denying them medical treatment—even if those babies could have survived independently, outside the womb. The Born Alive Infant Protection Act (BAIPA) made that practice a federal crime. Unfortunately, it has not been applied uniformly. National Right to Life sent this letter to every member of Congress, urging them to support new legislation to change that. Readers may wish to write their Congressmen, expressing their opinions on the legislation, as well. – BJ.

Dear Member of Congress:

The National Right to Life Committee (NRLC), the federation of state right-to-life organizations, urges you to support the *Born-Alive Abortion Survivors Protection Act* (H.R. 3504), introduced today by Congressman Trent Franks, when it comes before the House of Representatives on September 17 or 18.

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 18 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 . §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 . §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.

Public concern has been increased by a recent series of hidden-camera videos released by the Center for Medical Progress, in which various persons described events and

practices within certain Planned Parenthood abortion clinics that, at the very least, raise questions about whether it is generally recognized among abortion-clinic personnel that a born-alive baby is a legal "person," whether before or after "viability." Other passages raise similar questions regarding some persons who operate firms that obtain and sell baby body parts, obtained from abortion clinics.

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, as a source for organ harvesting, or as a creature who may be subjected to lethal violence with impunity, they will do so at grave legal peril. H.R. 3504 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. This language is based on very similar provisions contained within H.R. 36, passed by the House of Representatives on May 13, 2015.

In addition, the bill applies the existing penalties of 18 U.S.C. 1111 (the federal murder statute) to anyone who performs "an overt act that kills a child born alive." This would apply, for example, to an abortion clinic staff person who dissects a breathing born-alive infant in order to harvest an intact liver, or to an abortionist who ends a born-alive baby's whimpers with a sharp blow to the skull, or by snipping the spine.

In addition, the bill provides a civil cause of action to women who are harmed by violations of the act. The civil action provisions are similar to language in H.R. 36.

NRLC urges you to oppose any attempts to weaken H.R. 3504, including any motion to recommit, and to vote for passage of H.R. 3504. **We reserve the right to include these roll calls in our scorecard of key pro-life roll calls of the 114th Congress.** Thank you for your consideration of NRLC's position on this important legislation.

Sincerely,

Carol Tobias, President

Douglas Johnson, Legislative Director