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

Written Testimony

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:

My name is Dr Kathi Aultman and I am a Life-Fellow of the American College of Obstetricians and Gynecologists. I earned my MD degree at the University of Florida College of Medicine in 1977 and completed my OB/GYN Residency at the University of Florida affiliated, Jacksonville Health Education Program in 1981. I retired in 2014 for medical reasons after 33 years as a board-certified OB/GYN in private practice in Orange Park, FL.

I have been an advocate for women and their health issues for my entire career. I was the co-founder and co-director of the first Rape Treatment Center in Jacksonville, Florida, and performed sexual assault exams on women and children as a medical examiner for Duval and Clay Counties. I also served as the Medical Director for Planned Parenthood of Jacksonville from 1981 to 1983. I served on the Ethics Commission of the Christian Medical and Dental Associations from June 2000 to June 2002 and on the Board of Community Health Outreach which provides free health care and food to the poor from 2016-2018.

I testified before several state legislatures, state courts, and before Congress on the Partial Birth Abortion Ban and other issues from 1997-2002 and was a consultant for the United States Department of Justice on the Partial Birth Abortion Ban from 2003-2004.

I have testified extensively before state legislatures and twice before the US Congress on a variety of abortion-related issues from 2016 to the present.

I performed 1st trimester suction D&C abortions and received special training in 2nd trimester D&E's otherwise known as Dismemberment abortions. I have treated women with the medical, surgical and psychological complications of abortion and pregnancy. I have performed C-sections, vaginal deliveries, and gynecological surgeries including laparoscopy and robotic hysterectomy. I had an abortion prior to the birth of my two daughters.

I have stayed current with my Continuing Education Requirements and have been continually reviewing the medical literature on abortion, especially since 2016 when I began testifying again. I am currently an Associate Scholar with the Charlotte Lozier Institute and a member of the American Association of Pro-Life Obstetricians and Gynecologists and the Christian Medical and Dental Associations.

There are those who say we don't need this law because late term abortions are so extremely rare that the law isn't necessary. The data is incomplete, because not all states are required to report abortions or their complications, but we know from the CDC Abortion Surveillance Report that 1.3 % of abortions performed in 2015 were done after 20 weeks. (Jatlaoui TC 2018). That sounds like a small number, but 1.3% of 638,169 abortions represents 8,296 late term abortions.

We are told that Late Term abortions are only done in the most difficult and tragic circumstances where the mothers health is threatened, or she is carrying a baby with severe fetal anomalies.

Julie Wilkinson is an RN who worked with Dr Warren Hern for years in the 1980's. She assisted him with late term abortions through 26 weeks. I recently spoke with her about her work at the clinic and she told me that the vast majority of the abortions that they performed were done for convenience, not for fetal anomalies or maternal health problems.

Researchers with the Guttmacher Institute recently published an article looking at the characteristics of women who seek abortions after 20 weeks. They reported, "women in our

study who obtained first-trimester abortions and women who obtained abortions at or after 20 weeks' gestation were remarkably similar demographically, the only significant differences between the two groups were in age (women aged 20–24 were more likely than women aged 25–34 to seek later abortion) and in employment status (employed women were less likely than unemployed women to have later abortions).” (Foster DG and Kimport K 2013) (p 216) Most women seeking later abortions fit one or more of five profiles: They were raising children alone (47%), were depressed or using illicit substances (30%), were in conflict with a male partner or experiencing domestic violence (34%), had trouble deciding and access problems (22%), or were young and nulliparous (24%). (Foster DG and Kimport K 2013) (p 215-216).

Doctors are under tremendous pressure to deliver normal babies. If a doctor doesn't disclose a congenital defect, and give the patient the option of abortion, he or she can be sued. That puts conscientious physicians in a terrible bind today when sophisticated sonography and genetic testing can pick up many subtle abnormalities which may or not be significant.

When Suzanne was pregnant with my friend Rachel, she was told that she didn't have enough amniotic fluid and that her baby would be deformed and die a terrible death. They recommended she abort to spare herself and her child the agony and grief of a delivery. She refused and was discharged from the practice for not following medical advice. She subsequently delivered Rachel prematurely. Rachel stayed in the intensive care unit for 5 months but today Rachel is a vibrant normal intelligent young woman.

Just to give you some insight into the mind of at least one obstetrician, I will tell you a story about one of my patients. I had stopped doing abortions because the fact that the baby was unwanted was no longer enough justification for me to kill it, but I still believed that abortion was a woman's right, and I still referred women for abortion. I treated a patient for an infection with doxycycline. At the time neither of us knew she was pregnant. When she told me that she was pregnant, I was panic stricken. I was afraid she would sue me if the baby was born with abnormal teeth or other abnormalities due to the medication. I immediately recommended abortion to cover myself. She refused and left my practice. Years later I went to see her to apologize. By that time, her completely normal son was a high school football star. I was so

thankful she didn't follow my advice. I can't tell you how many women I have met during the course of testifying, who delivered completely normal children after being told that they should abort a child that was abnormal and wouldn't survive 'til term or would die a horrible, painful death after birth.

There are those who say this bill isn't necessary because babies can't survive abortion and yet we have living, breathing reminders that they do in Melissa Ogden and Gianna Jessen, saline abortion survivors; Hope Hoffman, D&C with Suction abortion survivor; Claire Culwell, a surgical abortion survivor whose twin was aborted at 20 weeks; Nik Hoot, a dismemberment abortion survivor at 24 weeks (Johnston 2019) (Kilano, They Are Real: Meet Born-Alive Abortion Survivors 2019) (Kilano, They Are STILL Real: Meet Born-Alive Abortion Survivors 2019); and my cousin, a late term induction abortion survivor. Melissa's organization, Abortion Survivors Network, has been in contact with over 300 abortion survivors and you can read some of their testimonies on her site including one from a young man who survived a Partial Birth Abortion (Testimonies 2019). They lived only because someone other than their mother and her abortionist, intervened. Should we really leave this "very personal and private" decision as to whether the baby lives or dies up to the patient and her doctor because they claim, "They know what is best!", when these are the very people who just tried unsuccessfully to kill the baby?

Since the passage of laws in a few states requiring that babies born alive after abortion be reported, we know that in Florida the number of babies born alive after abortions was 11 in 2017 and 6 in 2018. Arizona reported 10 live births after abortions in 2017 and Minnesota reported 3 live births after abortions in 2017. What we don't know is what happened to these babies, how they were treated, or whether they survived or not.

I know what happened to one baby born alive after a late term abortion. A woman came to me because of prolonged bleeding after her abortion at 20 + weeks. She went in for a medical induction abortion because she didn't want to be pregnant. When the appropriate time came, she was sent to the bathroom and told to sit on the toilet and push. She delivered a completely normal baby boy into the toilet where he drowned. By the time she came to see me she was

extremely distraught over what she had done and the heartless way she and her baby were treated. This scenario was apparently common in Dr Gosnell's clinic as well. (Spiering 2013)

A CDC report from the National Center for Health Statistics was prepared in response to a congressional inquiry on infant deaths related to termination of pregnancy from 2003-2014. They stated they could identify 143 that were definitely associated with an induced abortion rather than a spontaneous abortion. The authors stated that this was probably an underestimation because they did not count any cases where the terminology was unclear. They reported that over 58% lived an hour or more. (Mortality Records with Mention of Termination of Pregnancy 2016) In the process of verifying this information I found that the ICD-10 code they used, P96.4, actually only applies to terminations of pregnancy, not premature birth, spontaneous abortion, or stillbirth, which all have their own codes. There were 588 deaths associated with this code. I also found that this code was deleted after 2016, in the US but not Canada, so I am assuming that this same search can no longer be done for data collected after 2016 in the US.

The International Classification of Diseases (ICD) 10th revision, produced by the World Health Organization, lists ICD-10 code P96.4 as "Termination of pregnancy, affecting fetus and newborn" and specifically excludes that which affects the mother. In the U.S., the CDC records this data in their WONDER database. This official record only includes mortality data for live births as reported to the CDC. A query to the CDC WONDER database for mortality statistics, under ICD-10 code P96.4 ("Termination of pregnancy, newborn"), revealed that 362 infant deaths (first born alive), as a result of an attempted abortion, were reported from 2001-2010. CDC Statistician Kenneth Kochanek confirmed to the investigator that ICD-10 code P96.4 "Termination of pregnancy, newborn" implies a medical termination of the pregnancy. This code is used when "termination of pregnancy" or "abortion" is the only reported cause of an infant death. (Clark 2013)

I accessed the Wonder database myself and have included links to the results of my queries. I got the same total as Clark for 2001-2016 but broke the information down by state. It is interesting to see how much of the information by state has been suppressed because it is "confidential". My conclusion after doing this is that we need better reporting methods. The

ICD-10 system is the most logical system to use, but the terms need to be better defined and P96.4 needs to be reactivated.

<u>Dates</u>	<u>Newborn Deaths related to P96.4</u>	<u>URL</u>
2001-2010	362	https://wonder.cdc.gov/controller/saved/D76/D64F993
2011-2016	129	https://wonder.cdc.gov/controller/saved/D76/D64F994
2017	14	https://wonder.cdc.gov/controller/saved/D76/D64F995
2003-2014 *	376	https://wonder.cdc.gov/controller/saved/D76/D64F996

(*This number is different than the number from the National Center for Health Statistics for the same time period.)

There are those who say that today, using modern methods, babies are not born alive after medical abortions, but I can tell you how it happens. It is claimed that the baby dies during the process of an induction abortion where the patient is given medication to go into labor. Obviously, that didn't happen in the case I just described, and a live birth can occur in any case where the abortionist doesn't kill the baby prior to the induction. In a retrospective study done at a tertiary care center in Europe, and published in *Obstetrics and Gynecology* in 2018, researchers reported a fetal survival rate of 50% when a feticide was not used in second trimester terminations between 20-24 weeks on babies with fetal or genetic anomalies. (Springer, *Fetal Survival in Second-trimester Termination of Pregnancy Without Feticide* 2018) This number may have been higher if the babies had not had anomalies.

We are told that it is impossible for a baby to survive a D&E or dismemberment abortion and yet it is possible even in this situation. If the cervix is over-dilated, the baby can accidentally be spontaneously expelled prior to the start of the procedure, as in the Florida case described below (Associated 2009), or when the abortionist grasps and pulls on a portion of the body, intending to dismember it, the whole baby can be delivered. This was the argument my opponents gave when I was testifying 20 years ago on the ban on Partial Birth Abortion. They claimed that doctors intending to do a D&E might accidentally deliver the baby intact and then be prosecuted under the ban. This may be how the young man from Canada survived a Partial Birth Abortion (Testimonies 2019).

We are told that today we have ways to cause fetal demise prior to the abortion so this can't happen. (Incidentally, abortionists use this technique to circumvent the ban on Partial Birth Abortion, or intact D&E, since the procedure is only illegal if done on a live baby.) This is only true if the doctor decides to take the time to inject potassium chloride (KCL) into the baby's heart or umbilical vein or inject digoxin into the amniotic fluid or into the baby. (Sfakianaki Last updated: Jul 23, 2019.) It assumes that the medication is injected correctly, and the doctor waits long enough for the baby to die. If not, the baby can be born alive.

In July of 2018, an article appeared in the Bolton News about an inquest regarding a baby born alive after an abortion. Sofia Kahn decided to abort her baby, because of spina bifida, at 21 weeks. Dr Phillip Bullen injected a chemical into the umbilical cord Feb 16th. He listened for a heartbeat and hearing none sent Mrs. Kahn to Royal Bolton Hospital where labor was induced. On Feb 17th she delivered a live, crying boy who later died in her arms. (Naylor 2018)

We are told that doctors and medical staff don't really kill babies who survive an abortion or leave them to die by withholding medical care but there have been many cases and multiple witnesses who have come forward and admitted that they saw babies either actively or passively killed after they survived an abortion. A live baby is a "dreaded complication" of an abortion.

In Florida, a woman who had laminaria placed in her cervix to dilate it returned for her procedure, but the doctor was late, and she delivered a live baby girl at 23 weeks. A clinic owner with no medical experience sniped the cord and placed the still living baby and the placenta in a biohazard bag. The remains were found by police a week later after several calls from an informer. (Associated 2009)

Liz Jeffries and Rick Edmonds gave multiple examples of the fate of babies born alive after abortion in their article titled "Abortion". I have recorded two of their many examples.

Dr Ronald Bolognese gave this response to an inquiry from a physician who was troubled by what to do with an aborted infant who showed signs of life. "At the time of delivery, it has

been our policy to wrap the fetus in a towel. The fetus is then moved to another room while our attention is turned to the care of [the woman]. She is examined to determine whether complete placental expulsion has occurred and the extent of vaginal bleeding. Once we are sure that her condition is stable, the fetus is evaluated. Almost invariably all signs of life have ceased.” He later recanted that statement in a 1979 interview and stated they would now transport it to the intensive care nursery. (Jeffries and Edmonds n.d.) (p 315-316)

July 1979, “Cedars-Sinai Medical Center, Los Angeles: Dr. Boyd Cooper delivered an apparently stillborn infant, after having ended a problem pregnancy of 23 weeks. Half an hour later the baby made gasping attempts to breathe, but no efforts were made to resuscitate it because of its size (1 pound 2 ounces) and the wishes of the parents. The baby was taken to a small utility room that was used, among other things, as an infant morgue. Told of the continued gasping, Cooper instructed a nurse, "Leave the baby there—it will die." Twelve hours later, according to testimony of the nurse, Laura VanArsdale, she returned to work and found the infant still in the closet, still gasping. Cooper then agreed to have the baby boy transferred to an intensive care unit, where he died four days later. A coroner's jury ruled the death "accidental" rather than natural but found nothing in Cooper's conduct to warrant criminal action.

A common thread in all these incidents is that life was recognized, and the episode brought to light by someone other than the doctor. Indeed, there is evidence that doctors tend to ignore all but the most obvious signs of life in an abortion baby.” (Jeffries and Edmonds n.d.) (p315)

We are told this law isn’t necessary because there are already laws on the books that protect a baby once it is born and this is proved by the fact that Dr. Kermit Gosnell was convicted of killing 3 babies that survived his abortions. President George W. Bush signed the Born-Alive Infant Survivors Protection Act into law in 2002 which recognized that all babies born alive are full persons under the law, but it did not establish any specific requirements of care for practitioners regarding the care of infants born alive after a failed abortion and it does not prevent practitioners from passively allowing them to die. Gosnell was only convicted in the cases where they could prove that he did something overt to actively kill the baby. (Hurdle and Gabriel 2013) Dr Douglas Karpen, who was also accused of killing babies who survived

abortion, has yet to be convicted despite the testimony from 3 witnesses who worked for him. (Eckholm 2013)

The Born-Alive Abortion Survivors Protection Act of 2019 (H.R. 962) establishes requirements for the degree of care a health care practitioner must exercise in the event a child is born alive following an abortion or attempted abortion. A health care practitioner who is present must exercise the same degree of care as reasonably provided to another child born alive at the same gestational age, and immediately admit the child to a hospital. The bill also requires a health care practitioner or other employee to immediately report any failure to comply with this requirement to law enforcement. A person who violates the requirements is subject to criminal penalties. Additionally, an individual who intentionally kills or attempts to kill a child born alive is subject to prosecution for murder.

No reasonable person should have a problem voting yes on the Born-Alive Abortion Survivors Protection Act of 2019 (H.R. 962). It does not restrict abortion; it protects babies, like Melissa, who survive abortion, from being passively left to die simply because they are not wanted. It prevents them from being discriminated against just because they were aborted. It takes the decision making out of the hands of those who tried to kill them and requires they be given the same care that would be given to any other baby of the same gestational age. It gives medical personnel, law enforcement, and the courts clear guidance as to what must be done if a baby is born alive after an abortion.

Please do everything in your power to ensure that this bill is passed. If we won't protect the most innocent and vulnerable among us who should we protect?

Sincerely,

Kathi A. Aultman, M.D.

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