ROGER ROTH
PRESIDENT
WISCONSIN STATE SENATE

May 7, 2019
Senate Committee on Judiciary and Public Safety

2019 Senate Bill 175

Relating to: requirements for children born alive following abortion or attempted abortion and providing a penalty.

Thank you Chairman Wanggaard and members of the Senate Committee on Judiciary and Public Safety for holding a public hearing on Senate Bill 175.

Today I testify before you to advance legislation that protects human life, specifically the life of newborn children. I'm a father of four amazing little boys, and I was in the room with my wife when each of my children were born. With all four of my sons, holding each one of them in my arms when they took their first breaths was an incredible experience. And I know if any of them needed medical attention in those first minutes and hours, the doctors and nurses in the room would have jumped into action to provide the care that my children needed.

To me, it is a universal truth that we would protect such delicate life without a moment's hesitation.

But now across America the unthinkable is happening. In the last few months leaders around the country challenged that universal truth. From New York to Virginia to North Carolina, elected officials pushed back on the value that newborn babies – *all* newborn babies – deserve, and are entitled to, lifesaving treatment. I cannot fathom how they could be led to believe that such protections are unnecessary.

That is why we are here today. Regardless of the circumstances a baby comes into this world, he or she must have the same rights and protections that you and I have. Committee members, whether you are steadfastly pro-life or adamantly supportive of abortion or fall anywhere in between, there can be no ambiguity in the law on that point. Because this is not an abortion issue. Our bill simply provides the clarity necessary for health care providers to follow after a child is born alive.

{continued}

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Senate Bill 175 says that a survivor of an abortion is entitled to the "same degree of professional skill, care, and diligence to preserve the life and health of the child" that any other child born alive would receive.

Following the administration of that care, a survivor would need to be "immediately transported and admitted to a hospital." Our bill makes crystal clear that failure to provide such care would result in a Class H felony, and a provider who explicitly denies care to an infant with the intent to kill that child would be guilty of a Class A Felony.

Here in the state legislature we deal with a wide range of issues of varying impact, however, Senate Bill 175 pertains to each and every one of us because it is upholding the sanctity of life.

Melissa Ohden is a survivor of a failed saline abortion. She now tells her story around the world. Melissa has provided written testimony to you today and I want to leave you with a portion of her words:

> *"Instead of being delivered as a successful abortion – a deceased child, I was miraculously born alive... Timely medical care is of the utmost importance for a child like me who survives an abortion. I truly believe I am alive today not only because I was miraculously saved from death in the abortion, but also because life-saving medical care was right down the hallway for me, once someone decided they couldn't leave me to die."*

I thank my colleagues for holding this hearing today and I encourage each of you to support advancing this bill to the floor of the State Senate.

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Jill Stanek Written Testimony
May 7, 2019
Submitted to Wisconsin Legislature

When I heard Virginia Governor Ralph Northam, a pediatric neurologist, describe during an interview the process by which doctors determine to shelve unwanted newborns to die, it hit painfully home to me.

He said, quoting, "If a mother is in labor, I can tell you exactly what would happen. 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."

Governor Northam was right. That *is* exactly what happens. I know because I cared for a dying baby who was on the other side of that decision.

My experience was 20 years ago, but as Governor Northam made clear, it could have happened yesterday. I was a Registered Nurse at Christ Hospital in Illinois, when I learned it committed abortions into the second and third trimesters. The procedure, called induced labor abortion, sometimes resulted in babies being aborted alive.

In the event a baby was aborted alive, he or she received no medical assessments or care but was only given what my hospital called "comfort care"- made comfortable, as Governor Northam indicated.

One night, a nursing co-worker was transporting a baby who had been aborted because he had Down syndrome to our Soiled Utility Room to die – because that's where survivors were taken.

I could not bear the thought of this suffering child dying alone, so I rocked him for the 45 minutes that he lived. He was 21 to 22 weeks old, weighed about 1/2 pound, and was about the size of my hand. He was too weak to move very much, expending all his energy attempting to breathe. Toward the end he was so quiet I couldn't tell if he was still alive unless I held him up to the light to see if his heart was still beating through his chest wall.

After he was pronounced dead, I folded his little arms across his chest, wrapped him in a tiny shroud, and carried him to the hospital morgue where we took all our dead patients.

That word "comfortable," which Governor Northam used, is particularly grating. How far will doctors go to comfort themselves for letting abortion survivors die? After I went public about

survivors being taken to the Soiled Utility Room, Christ Hospital created what it called the "Comfort Room." This was a small, nicely decorated room complete with a First Foto machine if parents wanted professional pictures of their aborted baby, baptismal supplies, and a foot printer and baby bracelets in case parents wanted keepsakes of their aborted baby.

Clearly, little abortion survivors desperately need Wisconsin to pass the Born Alive Protections Act, to provide them with legal medical protections and not leave open the decision whether they live or die.

WISCONSIN CATHOLIC CONFERENCE

TESTIMONY ON SENATE BILL 175
THE BORN ALIVE PROTECTION ACT
Presented to the Senate Committee on Judiciary & Public Safety
By Barbara Sella, Associate Director
May 7, 2019

The Wisconsin Catholic Conference (WCC), the public policy voice of the Catholic bishops of Wisconsin, urges you to support Senate Bill 175, the Born Alive Protection Act. The Catholic Church has always held that induced abortion is both immoral and cruel, because it treats some human lives as completely disposable. This bill seeks to inform women and the public about the value of all human life.

Senate Bill 175 does three very simple, yet necessary things. First, it establishes a standard of care for infants who survive an induced abortion. It does this by requiring that health care providers "exercise 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 provider would render to any other child born alive at the same gestational age." And it ensures "that the child born alive is immediately transported and admitted to a hospital."

Second, it sends a message to the medical profession and to the public at large that even though abortion may still be legal, for children outside of the womb, intentional neglect causing death is murder.

Third, it makes health care providers or employees mandatory reporters when violations occur.

Some have argued that this legislation is not necessary in Wisconsin. However, so long as there are those who advocate for abortion, who debase and devalue those who are vulnerable and who face challenges in life, there is a need to provide certainty that all born in Wisconsin have a right to life.

We must remember that the law is a teacher. It represents the collective conscience of the citizenry. The Born Alive Protection Act upholds the essential principle that every human life has dignity and should be treated equally by those to whom it is entrusted.

Finally, it is important to be specific about the number of lives that could be affected by this law. According to Wisconsin's Department of Health Services (DHS), which provides an annual report on the number of induced abortions in the state, Wisconsin in 2017 reported 5,640 induced abortions. Of these, 52 (or less than 1 percent) were performed on children at or over 20 weeks gestation.[1] It is these children who are the ones who might survive an attempted abortion,

[1] https://www.dhs.wisconsin.gov/publications/p45360-17.pdf , p. 14.

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because an increasing number of children are viable even as early as 20 weeks. For example, a 2019 study has found that in Sweden, where neonatal care is more advanced than in the U.S., "For infants younger than 22 weeks, the survival rate has improved from 3.6 percent to 20 percent over the last decade, and for those born at 26 weeks, eight in 10 survive."[2]

While the WCC supports this bill, there are ways in which it could be improved. First, since most late-term abortions are of children who are thought to have little chance of surviving more than a few days, weeks, or months, we believe that more information should be given to the birth parents regarding their options. They should be informed about advancements in maternal health and premature treatments and survival rates. Parents should have the option of utilizing perinatal hospice. This type of hospice cares for infants and their families when death may be imminent. Wisconsin is fortunate to have some excellent perinatal hospice programs. Too few parents, however, are aware of the support they could receive there.

Birth parents should also be informed about the demand for adoption of children with Downs Syndrome and other serious, but not life-threatening, conditions. Finally, the State should require abortion providers to provide additional data on the complications related to abortion procedures, as well as the options provided to parents, so that lawmakers and citizens can have a better idea of what the abortion industry is doing.

This bill defends children, educates women, medical professionals, and the public, and makes certain the State of Wisconsin guarantees appropriate care for all children. We urge you to support its passage.

Thank you for the opportunity to testify today.

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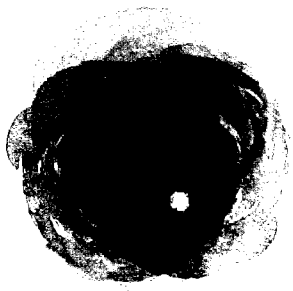
[2] Cited in https://medicalxpress.com/news/2019-03-sweden-world-extremely-preterm-babies.html. The 2019 study: https://jamanetwork.com/journals/jama/article-abstract/2728924



Pro Life WI.
LOVE. FOR LIFE.

Testimony in Opposition to Senate Bill 175: requirements for children born alive following abortion or attempted abortion and providing a penalty
Senate Committee on Judiciary and Public Safety
By Matt Sande, Director of Legislation

May 7, 2019

Good afternoon Chairman Wanggaard and Committee members. My name is Matt Sande and I serve as director of legislation for Pro-Life Wisconsin. Thank you for this opportunity to express our opposition to Senate Bill (SB) 175 as currently written, legislation entitled the *Born Alive Protection Act.*

Pro-Life Wisconsin supports legislation that aims, through its requirements and penalties, to enhance current law protections for babies born alive following failed abortions. Under current law s. 990.001(17), babies born alive after an abortion attempt have the same legal status and rights as babies born naturally, or by induction or cesarean section. Under current law, intentionally killing that born alive baby can be punished as a Class A felony under Wisconsin's first-degree intentional homicide statute, s.940.01(1)(a).

Senate Bill 175 places new requirements on health care providers who are "present at the time an abortion or attempted abortion results in a child born alive." They must "(e)xercise 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 provider would render to any other child born alive at the same gestational age" and "ensure that the child born alive is immediately transported and admitted to a hospital." Anyone who violates this section is guilty of a Class H felony (a fine not to exceed $10,000, imprisonment not to exceed six years, or both). We have no concern with the immunity clause for the mother in Section 1 of the bill since the requirements in this section apply only to the healthcare worker.

Section 2 of the bill creates a new section, s.940.01(1)(c), under Wisconsin's first-degree intentional homicide statute that specifically makes intentionally causing the death of a child born alive as a result of an abortion a Class A felony with a penalty of life imprisonment. The problem with Section 2 is that it applies to anyone but the mother. It provides complete immunity to the mother who intentionally kills her born alive child. **We fear this blanket immunity clause in Section 2 of the bill will undermine current law protections against maternal filicide - the killing of children by their own mothers.** We want to ensure that Senate Bill 175 complements current law, not undermines it.

The harmful impact of Senate Bill 175 can be easily remedied by either removing Section 2 entirely [since under current law 940.01(1)(a), we can already prosecute infanticide], or by removing the immunity clause (exemption) for the mother in Section 2. We prefer the latter option.

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The North Carolina *Born-Alive Abortion Survivors Protection Act* provides an example of a bill that does NOT provide immunity for the mother for intentionally killing her born alive child. The exemption for the mother in Senate Bill 359 does NOT extend to the murder section of the bill [Section 2.(b)] but only to the healthcare provider section [Section 2.(a)] - which is not a problem. Regrettably, the bill was recently vetoed.

Along with my written testimony, I have handed to committee members a legal memorandum prepared for Pro-Life Wisconsin by Personhood Alliance President Gualberto Garcia Jones concerning this legislation. We asked Mr. Jones what impact the exemption for the mother in Section 2 of the bill would have on the equal protection of born alive infants as codified in current law 990.001(17). T**o be clear, SB 175 completely exempts from prosecution the mother of a child born alive after an abortion if she kills or conspires to kill her born alive child after an abortion.**

Current law 990.001(17) states that ..."whoever undergoes a live birth as the result of an abortion, as defined in s. 253.10 (2) (a), has the same legal status and legal rights as a human being at any point after the human being undergoes a live birth as the result of natural or induced labor or a cesarean section." The legal memorandum concludes that the bill "provides a new, unnecessary, and dangerous exemption from prosecution for mothers who kill their own children after an abortion" that "erode(s) the protections granted in 990.001(17)."

How so? Mr. Jones explains that

> "Because Wisconsin law 990.001(17) recognizes that a child born alive after an attempted abortion has the same legal rights as a human being at any point after a natural birth, this exemption in (Senate Bill 175) is highly problematic. Section 990.001(17) requires equal protection for the child born alive after an abortion. While 990.001(17) is consistent with the requirement of (Senate Bill 175) that healthcare providers extend life-saving care to the born alive child, it is inconsistent with allowing a mother to avoid prosecution for intentionally killing her born alive child. In essence, (Senate Bill 175) violates the equal protection of the law that 990.001(17) requires for all children born alive."

Mr. Jones goes on to explain how the exemption for the mother in Section 2 has grave implications for holding accountable mothers who, following failed self-induced abortion attempts, kill their own born alive children. These cases of infanticide by a mother are known as maternal filicide.

> "The definition of abortion used in (Senate Bill 175) is contained in 253.10(2)(a) and is broad enough to include self-abortion. As used in the bill, 'Abortion' means to terminate the pregnancy of a woman with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus. In many filicide cases the mother hides her pregnancy and gives birth with the intent to kill her child as soon as he or she is born alive. Often, the mother resorts to drugs or devices to induce early labor. These actions would constitute self-abortion and as such would create the fact pattern for the intended prosecution under Senate Bill 175.

> "Currently in Wisconsin, as in most other states, cases of maternal filicide - mothers who kill their infants - are treated as intentional homicides and they are prosecuted under the first degree intentional homicide law 940.01(1)(a). However, with the creation of 940.01(1)(c) dealing specifically with the intentional killing of a born alive child after an abortion, it would be the clear legislative intent that this newer more specific statute be the favored statute used for prosecuting cases of filicide after abortion. Since mothers are exempted from prosecution, it would follow that according to (Senate Bill 175) the intent of the legislature in cases where a mother kills her own child after an abortion would be to exempt her completely from prosecution for first degree intentional homicide.
>
> "In an attempt to exempt the mother from prosecution in cases like those of abortionist Kermit Gosnell, (Senate Bill 175) is in fact unwittingly opening the door for mothers who commit filicide to avoid prosecution."

In a noble effort to uphold the dignity of human life and effectuate equal protection for born alive children by requiring equal care for them, this bill unfortunately provides *less* protection for born alive children by providing total immunity to the mothers who intentionally kill them. **An anti-infanticide bill inadvertently allows infanticide. This must be corrected.** It is our hope that an amendment removing the exemption in Section 2 will be introduced and approved by this committee.

Thank you for your consideration, and I would be happy to answer any questions committee members may have for me.

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Memorandum for Pro-Life Wisconsin on LRB-2675/1

From: Gualberto Garcia Jones, Esq.,
Personhood Alliance President
garcia@personhood.org

Date: April 17, 2019

Subject: LRB-2675/1: potential unintended consequences

As a member affiliate of Personhood Alliance, you asked me to clarify whether LRB-2675/1 could erode the rights of children born alive after an abortion.

Summary of LRB-2675/1
LRB-2675/1 contains two main provisions. LRB-2675/1 in s. 253.109 deals with healthcare providers and contains no exceptions which erode the rights of children born alive after an abortion and therefore is not relevant to this analysis. Under LRB-2675/1 in s. 940.01 (1) (c) whoever causes the death of the child born alive resulting from an abortion or attempted abortion as described under the bill is guilty of a class A felony. This section would be an additional subsection to the current first degree intentional homicide statute Section 940.01 (1) (a) and would deal specifically with killing a child born alive after an abortion, whereas the existing intentional homicide statute is applicable to all human beings after birth. LRB-2675/1 completely exempts from prosecution the mother of a child born alive after an abortion if she kills or conspires to kill her born alive child after an abortion.

While granting the mother immunity is understandable as a way of seeking the mother's cooperation in those cases where the prosecution is seeking to pursue charges against doctors who killed the born alive child, the complete exemption from prosecution for the mother is highly problematic in the case of infanticide after a self-abortion.

Unfortunately these gruesome cases of infanticide by a mother, properly called maternal filicide, are not rare. A study published by researchers at Brown University[1] found that every year there are roughly 500 cases of filicide - the killing of one's child - in the United States. Of these 500 annual cases, roughly one third were related to the killing of infants younger than one year. Researchers found that:

[1] https://news.brown.edu/articles/2014/02/filicide

> "The final hypothetical motive category pertains mostly to those youngest of victims, 'the unwanted child.' This evolutionarily motivated idea, also informed by other studies, suggests that parents, particularly young mothers, may kill young children who are sick or for whom they feel they cannot provide care."

The definition of abortion used in LRB-2675/1 is contained in 253.10(2)(a) and is broad enough to include self-abortion. As used in the bill, "Abortion" means to terminate the pregnancy of a woman with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus. In many filicide cases the mother hides her pregnancy and gives birth with the intent to kill her child as soon as he or she is born alive. Often, the mother resorts to drugs or devices to induce early labor. These actions would constitute self-abortion and as such would create the fact pattern for the intended prosecution under LRB-2675/1.

Currently in Wisconsin, as in most other states, cases of maternal filicide - mothers who kill their infants - are treated as intentional homicides and they are prosecuted under the first degree intentional homicide law 940.01(1)(a). However, with the creation of 940.01(1)(c) dealing specifically with the intentional killing of a born alive child after an abortion, it would be the clear legislative intent that this newer more specific statute be the favored statute used for prosecuting cases of filicide after abortion. Since mothers are exempted from prosecution, it would follow that according to LRB-2675/1 the intent of the legislature in cases where a mother kills her own child after an abortion, would be to exempt her completely from prosecution for first degree intentional homicide.

In an attempt to exempt the mother from prosecution in cases like those of abortionist Kermit Gosnell, LRB-2675/1 is in fact unwittingly opening the door for mothers who commit filicide to avoid prosecution.

While the Legislative Attorney's analysis is correct that LRB-2675/1 addresses only "a particular action that constitutes first-degree intentional homicide" the fact of the matter is that the particular action described in the proposed new section 940.01(1)(c) is precisely the fact pattern of a self-abortion followed by the killing the born alive child.

The Legislative Attorney is also correct that LRB-2675/1 "does not affect any ability to prosecute a person for other actions that constitute first-degree intentional homicide" but again, we are not concerned with other actions, but with the specific case addressed by LRB-2675/1 of an abortion followed by the murder of the born alive child. Because basic rules of interpretation dictate that more specific statutes control over less specific ones and newer statutes over older ones, it is evident that cases of filicide after an abortion would be dealt with prosecution under the more specifically tailored and newer proposed section 940.01(1)(c) instead of the older more general 940.01(1)(a). Since LRB-2675/1 specifically exempts the mother from filicide after an abortion, it is reasonable that the legislative intent in addressing the issue directly and exempting the mother is to prevent the mother from being prosecuted for first degree intentional homicide.

Because Wisconsin law 990.001(17) recognizes that a child born alive after an attempted abortion has the same legal rights as a human being at any point after a natural birth, this exemption in LRB-2675/1 is highly problematic. Section 990.001(17) requires equal protection for the child born alive after an abortion. While 990.001(17) is consistent with the requirement of LRB-2675/1 that healthcare providers extend life saving care to the born alive child, it is inconsistent with allowing a mother to avoid prosecution for intentionally killing her born alive child. In essence, LRB-2675/1 violates the equal protection of the law that 990.001(17) requires for all children born alive.

In the fetal homicide case of State v. Black (1994) the Wisconsin Supreme Court held that "when two provisions are similar ... we must make every attempt to give effect to both by construing them together so as to be consistent with one another." In the current case, the only possible way to construe 990.001(17) along with the exemption in LRB-2675/1 for mothers who kill their born alive children is to erode the protections granted in 990.001(17).

As the Legislative Attorney's memo makes clear, infanticide is currently capable of prosecution under Wisconsin's first-degree intentional homicide statute 940.01(1)(a) as applied to any person, including the mother of an unwanted child. While LRB-2675/1 does introduce a new and necessary penalty for healthcare providers who refuse to provide medical care to born alive children after an abortion, it also provides a new, unnecessary, and dangerous exemption from prosecution for mothers who kill their own children after an abortion. Because the definition of an abortion is broad enough to encompass a self-abortion, this exemption, which is specifically intended to apply to the killing of a child after an attempted abortion, could arguably be used to show that the legislature does not intend either 990.001(17) or the first degree intentional homicide statutes to apply to women who self-abort and then kill their own born alive children.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S 1

SENATE BILL 359

Short Title:	Born-Alive Abortion Survivors Protection Act.	(Public)
Sponsors:	Senators Krawiec, Hise, and Harrington (Primary Sponsors).	
Referred to:	Rules and Operations of the Senate	

March 27, 2019

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known and may be cited as the "Born-Alive Abortion Survivors Protection Act."

PART II. BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT

SECTION 2.(a) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 1L.

"Born-Alive Abortion Survivors Protection Act.

"**§ 90-21.130. Definitions.**

As used in this section, the following definitions apply:

(1) Abortion. – As defined in G.S. 90-21.81.

(2) Attempt to perform an abortion. – As defined in G.S. 90-21.81.

(3) Born alive. – With respect to a member of the species homo sapiens, this term means the complete expulsion or extraction from his or her mother of that member, 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.

"**§ 90-21.131. Findings.**

The General Assembly makes the following findings:

(1) If an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of North Carolina and entitled to all the protections of such laws.

(2) 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.

"**§ 90-21.132. Requirements for health care practitioners.**

In the case of an abortion or an attempt to perform an abortion that results in a child born alive, any health care practitioner present at the time the child is born alive shall do all of the following:

(1) Exercise 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.

(2) Following the exercise of skill, care, and diligence required under subdivision (1) of this section, ensure that the child born alive is immediately transported and admitted to a hospital.

"**§ 90-21.133. Mandatory reporting of noncompliance.**

A health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic who has knowledge of a failure to comply with the requirements of G.S. 90-21.132 shall immediately report the failure to comply to an appropriate State or federal law enforcement agency, or both.

"**§ 90-21.134. Bar to prosecution of mothers of infants born alive.**

The mother of a child born alive may not be prosecuted for a violation of, or attempt to or conspiracy to commit a violation of, G.S. 90-21.132 or G.S. 90-21.133 involving the child who was born alive.

"**§ 90-21.135. Penalties.**

(a) In General. – Except as provided in subsection (b) of this section, unless the conduct is covered under some other provision of law providing greater punishment, a person who violates G.S. 90-21.132 or G.S. 90-21.133 is guilty of a Class D felony which shall include a fine of not more than two hundred fifty thousand dollars ($250,000).

(b) Unlawful Killing of Child Born Alive. – Any person who intentionally performs or attempts to perform an overt act that kills a child born alive shall be punished as under G.S. 14-17(c) for murder.

"**§ 90-21.136. Civil remedies; attorneys' fees.**

(a) Civil Remedies. – If a child is born alive and there is a violation of this Article, a claim for damages against any person who has violated a provision of this Article may be sought by the woman upon whom an abortion was performed or attempted in violation of this Article. A claim for damages may include any one or more of the following:

(1) Objectively verifiable money damage for all injuries, psychological and physical, occasioned by the violation of this Article.

(2) Statutory damages equal to three times the cost of the abortion or attempted abortion.

(3) Punitive damages pursuant to Chapter 1D of the General Statutes.

(b) Attorneys' Fees. – If judgment is rendered in favor of the plaintiff in any action authorized under this section, the court shall also tax as part of the costs reasonable attorneys' fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, then the court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant against the plaintiff."

SECTION 2.(b) G.S. 14-17(c) reads as rewritten:

"(c) For the purposes of this section, it shall constitute murder where a child is born alive but (i) dies as a result of injuries inflicted prior to the child being born ~~alive.~~ alive or (ii) dies as a result of an intentional, overt act performed after the child is born alive. The degree of murder shall be determined as described in subsections (a) and (b) of this section."

SECTION 2.(c) This section becomes effective December 1, 2019, and applies to offenses committed on or after that date.

PART III. SAVINGS CLAUSE

SECTION 3. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act becomes effective December 1, 2019.

Testimony of

Heather Weininger

Executive Director, Wisconsin Right to Life

Kristen Nupson

Legislative Director, Wisconsin Right to Life

Senate Committee on Judiciary and Public Safety

SB 175 The Born Alive Survivors Protection Act

Tuesday, May 7, 2019

Thank you Chairman Wanggaard for your time today and allowing us to testify in favor of Senate Bill 175. My name is Heather Weininger and I am the Executive Director of Wisconsin Right to Life. I am joined by Kristen Nupson, our Legislative Director at Wisconsin Right to Life.

Wisconsin does in fact have a law that was written and signed into law on December 18, 2003 which created definitions for what it means to be born alive and also gives those who are born alive during a failed abortion attempt the same legal status as any human being born.

However, because of recent events across our country it has become apparent that more needs to be done to protect those who are born alive during failed abortion attempts. We see that greater guidance needs to be given in the care that is expected for a baby born alive after a failed abortion attempt, and a way for someone who witnesses this act to report it to the proper authorities.

It is important to remember that Wisconsin has had its own experience with babies being born alive in failed abortion attempts. While it dates back to 1982, it happened right here in Madison, WI.

In 1982, three babies were born alive after failed abortion attempts. Two at UW Hospital and one at the former Madison General Hospital. How do we know? Our predecessors at Wisconsin Right to Life are the ones who received the anonymous call to share the information.

It is unknown if babies still survive abortions in Wisconsin because there isn't any requirement for this information to be reported. There also is not a federal law which requires this to be reported.

All that we have is information from the CDC between 2003 and 2014 which is coded as "Termination of pregnancy, affecting fetus and newborn." From this information we can see that 588 of these cases were recorded, and that of those cases at least 143 could "definitely be classified as involving an induced termination." This number could be underestimated, as the CDC acknowledges, because the vagueness of the terminology used and a lack of clarity about spontaneous abortions.

We also must point out that people do survived failed abortion attempts. At Wisconsin Right to Life we work with many of them. You have written testimony from Melissa Ohden, who was born just two months after me in a failed saline abortion attempt. If it had not been for a nurse who heard her cries, she might not

have survived to lead a life of finding answers and finding an organization where others who survived an abortion attempt share their stories.

There are some states who do require this to be reported. Most recently, Florida reported six babies born alive in 2018 and eleven in 2017. Arizona had ten in 2017, and Minnesota reported three in 2017.

There is also a case that brought national attention, that of Kermit Gosnell, he is serving three life sentences for first-degree murder of three infants who were born alive after a failed abortion attempt. He then took it upon himself to end their lives, rather than giving them any kind of health care that could have given them a chance at life.

The Born Alive Survivors Protection Act does not in any way deny a woman access to abortion, instead it gives clear guidance to the health care community on the standard of care a child born after a failed abortion attempt should receive.

We thank you for your time and ask you to support Senate Bill 175. Born and unborn children deserve a chance at life, especially after a failed abortion attempt.

Heather Weininger
Executive Director, Wisconsin Right to Life

Kristen Nupson
Legislative Director, Wisconsin Right to Life

LWV LEAGUE OF WOMEN VOTERS® OF WISCONSIN

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May 7, 2019

To: Senate Judiciary and Public Safety Committee

Re: Opposition to SB 175

SB 175 (AB 179) --Requirements for children born alive following abortion or attempted abortion and providing a penalty

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The League of Women Voters opposes SB 175 restricting a woman's constitutional right of privacy to make reproductive choices in consultation with her healthcare provider. In addition, this legislation violates a woman's right to privacy and choice under Roe v. Wade.

SB 175 is medically inaccurate, since the D & C method of abortion is the standard procedure in the first and second trimesters and ends a pregnancy 100% of the time. No fetus can live after this procedure has been used for an abortion.

This bill has no practical purpose except to raise the cost of the abortion, which creates an undue burden on the woman, and heighten fear in doctors who perform abortions with a possible felony conviction and penalty of fines and imprisonment.

The League opposes SB 175, which interferes with the right of privacy of an individual to make reproductive choices, and we urge you to do so as well.

Hello – I am Matthew Trewhella and I am speaking for myself.

I am opposed to the murder of the preborn through abortion - and I oppose this bill.

The preborn have waited for justice for 46 years now – and yet this is what you propose? Making a law which says if the assassin somehow fails in his effort to murder the preborn child – a near-mythical occurrence – the assassin is required to provide aid for the child and not finish the child off?

This is nothing more than predictable political posturing we have come to expect from Robin Vos and those who claim to be against the killing of the preborn. They want everyone who is against abortion to be mad at Tony Evers for declaring he would veto this bill. What those against abortion should really be mad about, however, is that the Republicans are once again *using* the preborn for their own political purposes.

The Republican leadership will use an Evers' veto to rally their base against him for the next gubernatorial election. They know he will veto anything they propose. He is the lackey for their political ends and the preborn are – once again – their political football.

This bill is the latest version of Republicans giving the impression that they are doing something for the preborn while in reality they continue to do nothing for the preborn.

This bill is as irrelevant as the Baby-Body Parts bill that the pro-life/pro-family groups spent four years and hundreds of thousands of dollars trying to pass. The failed Baby Body Parts bill would have made it unlawful to sell the body parts of babies murdered by abortion. I guess no one realized that if they simply outlawed the murder, there would be no body parts to haggle over.

The message of this current bill is simple: If you want to murder the preborn – fine. Just make sure you finish the job or you might find yourself in trouble.

The GOP politicians and the pro-life/pro-family groups have been playing this dopey despicable game where the preborn are used as political tools

for GOP political ends for 46 years now. When will their followers recognize that they are being played as well?

The pro-life/pro-family groups – predictably - are already busy pandering for the Republicans by denouncing Evers. This gives the phony, hypocritical Republicans the cover they need to appear against abortion so they can garner votes once again from the gullible pro-lifers, while the pro-life/pro-family groups play upon the heart strings so they are sent plenty of money by pro-lifers who keep them in business.

The pro-life/pro-family groups in Wisconsin have routinely over the years acted as mere lapdogs for GOP politics. One day they will stand before God and have to give an account.

Consider this Wisconsin Republican politicians: if you had done your duty and passed a law to end abortion in Wisconsin while you had the governorship and both houses of the legislature, we wouldn't have to be concerned with the near-mythical abortion survivor because *all* the preborn people would be protected by law.

Once again the pro-lifers are allowing the Republican leadership to create the narrative and get them all concerned about late-term abortions rather than defend *all* the preborn and demand interposition and complete abolition of abortion by the Republicans that they put into office.

What is needed and necessary regarding this continued slaughter of the preborn is interposition. Your duty ladies and gentlemen is to defy the Supreme Court and their lawless *Roe* opinion and protect the preborn.

You are right to do so historically, constitutionally, and legally, not to mention biblically/morally.

Here is a fresh thought - just stop the murder! After 46 years, it is time to issue a bill which declares abortion to be what it is - murder – protects ALL the preborn; has no exceptions, creates equal justice as all involved in the murder, including the mother, are culpable for prosecution, and defies the federal courts and SCOTUS.

May Christ be praised – and may you do right by Him.

Wisconsin Alliance for
Women's Health
www.supportwomenshealth.org

TO: Senate Committee on Judiciary and Public Safety
FROM: Sara Finger, Executive Director, Wisconsin Alliance for Women's Health
RE: Testimony in Opposition of SB 175
DATE: May 7, 2019

Chairman Wanggaard and members of the Senate Committee on Judiciary and Public Safety, thank you for the opportunity to provide written testimony in opposition of SB 175.

Our vision at the Wisconsin Alliance for Women's Health (WAWH) is that every Wisconsin woman - at every age and every stage of life - is able to reach her optimal health, safety and economic security. In the spirit of our vision, we oppose all legislation that seeks to advance an anti-abortion agenda under the guise of protecting women's health and anti-discrimination legislation.

If reducing the number of abortions in Wisconsin is truly the goal of the individuals and organizations supporting these bills, WAWH would humbly suggest that they cease their focus on implementing every fathomable obstacle to accessing abortion care and begin to prioritize public policies that have demonstrated success in preventing unintended pregnancies and reducing abortion rates. Study after study indicates that increasing women's access to contraception and family planning services significantly reduces the occurrence of unintended pregnancies and abortion rates. Despite this overwhelming evidence, for the past eight years this Legislature has virtually ignored proactive public policies that would increase women's access to family planning services and has worked to undermine and degrade the existing family planning services infrastructure in Wisconsin.

Just as importantly, for elected leaders who claim to value the health of mothers and babies in Wisconsin, we encourage their support of positive, proactive policies that will improve maternal and child health outcomes in our state. For too long, Wisconsin has ranked #1 in the nation around infant mortality of black babies. We need to look to the strong evidence that supports Medicaid expansion as a way to reduce the African American infant mortality rate and fully expand BadgerCare.

We also need to fully invest in and advance the "Healthy Women Healthy Babies Initiative" that includes additional evidence-based programs like home visiting, community based doulas, and a new Infant Mortality Prevention Program. Without Medicaid expansion in the budget, our state will lose funds Wisconsin needs to invest in healthier pregnancies and births to address our state's infant mortality and black healthcare disparities.

It is important to note that the communities this bill directly affects have not asked for this bills to be crafted or advanced. On the contrary, these advocacy groups are actively engaged in the budget process and are focused on lifting up proposals in Governor Evers' budget around transportation, education, social supports and healthcare access.

As an organization devoted to promoting comprehensive women's health in Wisconsin, we ask this committee to stop playing political games with women's reproductive health. Women in Wisconsin do not need politicians inserting themselves in their doctor's office and further restricting access. Please vote no on SB 175.

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DATE: May 7, 2019
TO: Senate Committee on Judiciary and Public Safety
FROM: Dr. Doug Laube, MD
RE: Opposition of SB 175

Chairman Wanggaard and members of the Senate Committee on Health, thank you for the opportunity to provide written testimony regarding Senate Bill 175. As the former Chair of the Department of Obstetrics and Gynecology at the University of Wisconsin, former President of the American College of Obstetricians and Gynecologists (ACOG), and an abortion provider, I feel compelled to voice my strong opposition to SB 175

In my 45 years as a physician, I have always practiced patient-centered care. From a clinical perspective, my patients deserve the right to make their own healthcare decisions based on what is best for their own health and well-being. Patients should be provided with the full spectrum of their options by their doctor, including access to abortion care.

From my over four decades of experience, the scenario described by President Trump in Green Bay - in reference to SB 175 – just does not happen in Wisconsin. Our President's statement was grotesque, ignorant and irresponsible - and not backed up by any clinical or scientific information. This dangerous rhetoric paints medical providers in a grossly false light and can lead to violence against providers.

SB 175 is not being brought forth on behalf of any legitimate statewide or national medical or provider organization. SB 175 does nothing to reduce unplanned pregnancies or abortions and impedes the patient-doctor relationship. Most importantly, SB 175 does nothing to enhance the safety of patients. SB 175 is just part of the national effort to chip away further at abortion access.

I strongly oppose SB 175 and ask the committee members to do the same.

WISCONSIN FAMILY ACTION
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TESTIMONY ON SENATE BILL 175
ASSEMBLY COMMITTEE ON HEALTH
TUESDAY, MAY 7, 2019
JULAINE K. APPLING, PRESIDENT

Thank you, Chairman Wanggaard and committee members, for holding this hearing on Senate Bill 175. Wisconsin Family Action supports this bill with at least one reservation. I regret that I am unable to attend the hearing due to a previously scheduled business trip and appreciate the opportunity to submit this testimony digitally.

Senate Bill 175, the "Born-Alive Protection Act," at a minimum clarifies the standard of medical care expected for a baby who survives an abortion or an attempted abortion, a clarification that highlights that in Wisconsin we will rightly value and protect all babies born alive. Some have indicated existing law is sufficient to ensure these babies are given appropriate medical treatment; however, the law nowhere specifically addresses babies who survive an abortion or attempted abortion. This bill does that and specifies the standard of care, which would include transportation to and admittance in a hospital.

We also believe it is also important that our law specifies that it is murder when a child born alive dies because he or she is intentionally neglected. Requiring those who know about such neglect to report it is also an important addition to our laws.

Our concern has to do with Section 2 of the bill. We do not believe it is appropriate to give anyone immunity in a situation where a child born alive is intentionally killed, even if that child is born a live as a result of an abortion or attempted abortion. This is a very different situation from providing the mother immunity from prosecution for having the abortion. In essence this provision in the bill actually allows for infanticide while rightly seeking to prevent infanticide.

While we support the intent of the bill and the vast majority of the provisions, we find Section 2 very problematic; and urge the authors to consider removing this provision.

We also support recommendations made by others speaking in support of this bill today.