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Testimony on Assembly Bill 6
Assembly Committee on Health
Thursday, October 7, 2021

Dear Chairman Sanfelippo and members,

Thank you for the opportunity to come before your committee today to discuss Senate Bill 16 — the Born Alive Abortion Survivors legislation I've authored along with Senator Roth.

As a father of three, there is nothing that I wouldn't do for my kids. Over the past sixteen years, I've had a front row seat as I've watched our children grow to be active, intelligent young adults. There's nothing more in my life that I cherish more than having had the opportunity to bring these three young adults into life alongside my wife.

The lives of my children, and frankly, every child are something we should hold dear — doing everything in our power to protect and defend.

As a parent, you can imagine the fright I feel as I continue to watch the idea and practice of abortion being advertised and promoted by activists, legislators and even sitting governors across the United States. For far too long the pro-abortion industry has hidden behind the cloak of medical terminology in an attempt to dehumanize an unborn child. Last session, our governor likened the horrific process of an abortion to that of a tonsillectomy. The fact that individuals of authority can discuss young life with such disregard is beyond troubling.

It has been these instances and more that has led to today's hearing.

Today, I'm here to discuss legislation that will ensure that should any baby being delivered in our state survive a botched abortion, that child cannot be gruesomely murdered after its delivery. Often referred to as "born alive" legislation, this bill further codifies our commitment to protecting young life — requiring that any health care provider present at the time of a failed abortion, exercise care and compassion to preserve the life of the surviving child.

Some will say this bill goes too far or that it is simply unneeded. Again, I'll harken back to instances that occurred in which leading voices from the left were advocating for killing a young child after its birth, saying such egregious things as "an infant would be kept comfortable," after delivery while a "discussion would ensure between the physicians and the mother," about whether or not to let that child live or die.

Coupled with heinous bills signed into law in places like New York and Virginia, I, along with the long list of supporters this bill has garnered, am here to say that this bill is absolutely needed. As lawmakers, it's our duty to step in and support those who cannot support themselves.

Republicans in the legislature have consistently taken a stand to protect our most vulnerable. Today, we're reaffirming that commitment and making it known that our state will not follow the suit of others around the country and move backward when it comes to protecting young lives.

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Chairman Sanfelippo, again, I appreciate the opportunity to come before you to have this important conversation today, and I'd be happy to answer any questions you or the members of the committee may have.

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TESTIMONY ON ASSEMBLY BILL 6
ASSEMBLY COMMITTEE ON HEALTH
THURSDAY, OCTOBER 7, 2021
JULAINE K. APPLING, PRESIDENT

Thank you, Chairman Sanfelippo and committee members, for holding this hearing on Assembly Bill 6. Wisconsin Family Action supports this bill with one reservation. Assembly Bill 6, 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 an 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 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 a critical addition to our laws.

We are thankful Representative Steineke and Senator Roth have authored this bill and that others have joined in support of it. We sincerely wish we could give a full-throated endorsement. Unfortunately, we cannot. Our reservation has to do with the last portion of 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 alive as a result of an abortion or an attempted abortion. This is a very different situation from providing the mother immunity from prosecution for having the abortion. Assembly Bill 6 does not affect that immunity.

A child who somehow manages to survive an abortion or attempted abortion is deemed by the law to have been "born alive." Current state statutes (990.001(17) are clear that a born-alive child after an abortion or attempted abortion 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." To allow anyone, including the mother, to kill such a child with impunity would be in violation of existing law. In essence this provision in the bill regrettably 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 this portion of Section 2 very problematic and urge that the bill be amended to address this unnecessary exception.

Thank you for your thoughtful and careful attention to our position on this bill.

Testimony in Opposition to Assembly Bill 6: requirements for children born alive following abortion or attempted abortion and providing a penalty
Assembly Committee on Health
By Matt Sande, Director of Legislation

October 7, 2021

Good morning, Chairman Sanfelippo 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 Assembly Bill (AB) 6 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).

Section 1 of Assembly Bill 6 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). There is a general immunity clause for the mother in Section 1 of the bill.

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. We certainly support this just penalty.

The problem with Section 2 is that it applies to anyone but the mother. **It 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.** This erodes the equal protection that babies born alive following failed abortions enjoy under current law s.990.001(17). We want the *Born Alive Protection Act* to enhance current law, not undermine it.

The harmful impact of Assembly Bill 6 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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Along with my written testimony, I have handed to committee members a legal memorandum prepared by Personhood Alliance President Gualberto Garcia Jones for Pro-Life Wisconsin concerning last session's identical legislation, 2019 AB 179. 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).

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 (AB 179) 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 (AB 179) 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, (AB 179) 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 (AB 179) 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 Assembly Bill 179."*

> *"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 (AB 179) 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."*

Mr. Jones continues,

> *"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)."*

Babies born alive following failed abortions must be fully protected as persons and given the same medical care as babies born naturally, or by induction or cesarean section. The specific requirements and penalties in AB 6 aim to ensure this. But **we fear the 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.**

Although we acknowledge that a district attorney could use the current law homicide statute s.940.01(1)(a) to attempt prosecution of a mother who kills her born alive child following a failed abortion, it is more likely that a zealous criminal defense attorney would use the newly created immunity clause in Section 2 of the bill, 940.01(1)(c), to fully exculpate her. We want to preclude this dangerous possibility by amending out the immunity clause in Section 2.

The North Carolina *Born-Alive Abortion Survivors Protection Act*, 2021 Senate Bill (SB) 405, provides an example of a born-alive bill that does NOT provide immunity for the mother for intentionally killing her born alive child. The exemption for the mother in SB 405 does NOT extend to the murder section of the bill [Section 2.(b)] but only to the healthcare provider section [Section 2.(a)] **Let's make clear that Wisconsin, like North Carolina, makes NO exceptions for the murder of born alive human beings.**

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 approved by this committee.

Representative Wichgers has introduced Assembly Amendment (AA) 1 to AB 6, which removes the exemptions from prosecution for the mother in both Section 1 and Section 2 of the bill. The amendment states that if a parent or guardian of a child born alive does not give consent to the unlawful actions of a health care provider under the bill, the parent or guardian may not be held criminally or civilly liable. Pro-Life Wisconsin strongly supports AA 1 to AB 6. If the intent of the legislature is to prevent mothers from being held liable for the actions of healthcare providers who harm a child born alive after an abortion, then Rep. Wichgers' proposed simple amendment is clearly needed for AB 6.

To be sure, we commend the efforts of those in our state legislature who seek to prosecute individuals who do not provide the utmost care for children born alive after a failed abortion attempt, or worse, intentionally kill them. But there remains a serious flaw with the *Born Alive Protection Act* as currently written that can and must be corrected.

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

WISCONSINRIGHTTOLIFE

Gracie Skogman, Legislative Director, Wisconsin Right to Life
Assembly Committee on Health
AB 6, Re: requirements for children born alive following abortion or attempted abortion and providing a penalty.
Thursday, October 7, 2021

Thank you, Chairman Sanfelippo, and members of the Assembly Committee on Health for your time today. My name is Gracie Skogman, and I am the Legislative Director of Wisconsin Right to Life, testifying in favor of AB 6, which will provide clear guidance to the health care community on the standard of care necessary for a child born after a failed abortion attempt.

While Wisconsin does have a law which created definitions for what it means to be born alive and also gives those who are born alive during a failed abortion attempt legal status; 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. In 1982, three babies were born alive after failed abortion attempts. Two at UW Hospital and one at the former Madison General Hospital. 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.

The undisputed reality is, people do survive failed abortion attempts. At Wisconsin Right to Life we work with many of them. Melissa Ohden, who has testified on this legislation in Wisconsin in the past, was born after a failed saline abortion attempt. If it had not been for a nurse who heard her cries, she might not have survived.

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 chose end their lives, rather than attempting any lifesaving care.

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.

Born and unborn children deserve a chance at life, especially after a failed abortion attempt. Wisconsin Right to Life thanks Representative Steineke and Senator Roth for bringing AB 6 forward.

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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.

WISCONSIN CATHOLIC CONFERENCE

TO: Members, Assembly Committee on Health

FROM: Barbara Sella, Associate Director for Respect Life and Social Concerns

DATE: October 7, 2021

RE: AB 6, Born Alive Protection

The Wisconsin Catholic Conference (WCC), the public policy voice of the Catholic bishops of Wisconsin, urges you to support Assembly Bill 6, 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.

AB 6 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." Standards of care are especially valuable in unexpected situations when medical staff are called on to make split-second decisions.

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 illegal.

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 or face challenges in life, we need to affirm 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 2019 reported 6,511 induced

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abortions. Of these, 60 (or 1 percent) were performed on children over 20 weeks gestation.[1] It is these children who are the ones who might survive an attempted abortion, 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 these programs provide.

Birth parents should also be informed that many families want to adopt children with Downs Syndrome and other serious, but not life-threatening, conditions.

Finally, women seeking abortions should be told that if their child is born alive, medical staff will provide the care necessary to preserve life. Women should also be told that they can choose to place their child with Safe Place for Newborns (https://www.safeplacefornewborns.org) should they choose not to parent their child.

AB 6 is humane and just. We urge you to support its passage.

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[1] Wisconsin Dept. of Health Services Division of Public Health Office of Health Informatics, "Reported Induced Abortions in Wisconsin" (January 2021), https://www.dhs.wisconsin.gov/publications/45360-19.pdf, p. 9.

[2] Cite in Ivan Couronne, "New studies confirm improved survival of extremely preterm babies" Medical Press (March 26, 2019), https://medicalxpress.com/news/2019-03-sweden-world-extremely-preterm-babies.html. Study found at Mikael Norman, et al., "Association Between Year of Birth and 1-Year Survival Among Extremely Preterm Infants in Sweden During 2004-2007 and 2014-2016" Journal of the American Medical Association, (March 26, 2019) https://jamanetwork.com/journals/jama/article-abstract/2728924.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0840/1dn
TJD:amn

October 5, 2021

Representative Wichgers:

2021 Assembly Bill 6 subjects to a Class H felony any person who violates the bill's requirements that the health care provider present at the time of an abortion exercises the same professional skill and care for a child born alive as any other child and ensures that the child born alive is immediately transported and admitted to a hospital. Assembly Bill 6 exempts the mother of the child born alive from prosecution for a violation of or an attempt or conspiracy to violate the requirement. Assembly Bill 6 also subjects any person who intentionally kills a child born alive after an attempted abortion to a Class A felony, with the same exception for the mother.

This amendment (LRBa0840) removes the exemptions from prosecution for the mother and instead exempts a parent or guardian of a child born alive from liability for actions that would be subject to a criminal penalty under the bill for which the parent or guardian did not give consent. The effect of this amendment is that a mother who is unaware of a health care provider's action toward a child born alive could not be prosecuted but that protection from liability does not extend to a mother who directs or agrees to a health care provider's actions that cause the death of a child born alive.

Tamara J. Dodge
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State of Wisconsin
2021 - 2022 LEGISLATURE

LRBa0840/1
TJD:amn

ASSEMBLY AMENDMENT ,

TO ASSEMBLY BILL 6

At the locations indicated, amend the bill as follows:

1. Page 3, line 8: delete "NO PENALTY FOR MOTHER" and substitute "LIABILITY OF PARENT OR GUARDIAN".

2. Page 3, line 10: delete lines 10 to 12 and substitute:

"(b) A parent or guardian of a child born alive may not be held criminally or civilly liable for the actions of a health care provider to which the parent or guardian did not give consent and that are in violation of sub. (2) or (3) or s. 940.01 (1) (c).".

3. Page 5, line 16: delete the material beginning with "The mother" and ending with "paragraph." on line 19.

(END)

October 7, 2021

To whom it may concern:

I've been a physician in Wisconsin for 15 years, and it has been my privilege to serve the remarkable women in this community. As I reviewed the bills before this committee today, I became afraid for their wellbeing. Many of these bills do nothing to improve access to safe and affordable health care for women, rather they increase interference between women and their healthcare providers.

I am ardently opposed to **2021 Assembly Bill 493**. The idea of withholding Medical Assistance payments to penalize providers of abortion services is mean spirited and hurtful to women. This dangerous bill would necessitate that providers choose between caring for low-income women and providing comprehensive health care for those same women. At a time where access in our rural and urban communities is in crisis, this bill threatens to worsen the problem.

2021 Assembly Bill 593 seeks to place limitations on why women may receive abortions. I am particularly opposed to the concept of preventing an abortion for a fetus with a congenital disease or defect. Having guided several couples through the grief of a diagnosis of severe birth defects, these situations require compassion and nuance without further external constraints on care. These diagnoses generally occur following a 20-week anatomical ultrasound. Women must then meet with a perinatology specialist to clarify the diagnosis and discuss neonatal prognosis. Additional consultations with pediatric specialists may be necessary. Women have a very brief window to understand the status of their child and what their future may look like. Existing legal barriers already compound this challenging time. Further legislation would make it worse.

Earlier this year, I cared for a couple whose fetus was found to have partial VACTRL syndrome. The ultrasound showed a fetus with no anus and a sealed esophagus. Surgeries exist to treat these anomalies, however lifelong feeding and stooling difficulties are common. Furthermore, these infants are usually affected by severe cognitive abnormalities. Our ability to provide accurate prognosis can be limited, and the full scope of an infant's needs may not be fully understood for years. I feel strongly that complicated scenarios like this preclude a one size fits all approach. This family needed compassionate counseling and a full range of treatment options to determine the best outcome for their needs.

For similar reasons, I am opposed to **2021 Assembly Bill 594**. Although I fully support patients being well educated and providing the best possible resources to aid decision making, I believe providers should have the flexibility to determine what resources are most appropriate to emphasize. Mandated forms quickly become outdated and usually provide too little or irrelevant information. There is no combination of patient education documents that could exactly apply to my above patient's situation. I think this Assembly Bill is an example of a laudable concept turned bureaucratically unhelpful.

Additionally, I am opposed to **2021 Assembly Bill 6**. The verbiage of this legislation is inflammatory and seeks to correct a scenario that I have never seen nor heard of happening in my 15 years of clinical practice.

This is my first-time submitting testimony, but I felt that the topics above are so important for women's health that I could not stay silent. I feel strongly that legislative interference into how patients and providers approach their health care are inappropriate. I proudly stand with the women of this state and wholeheartedly believe that with comprehensive compassionate counseling, they can make the best choices for their health care. Thank you for considering my remarks.

Respectfully,

Ryan McDonald, MD FACOG

To: Assembly Committee on Health
From: American College of Obstetricians and Gynecologists – Wisconsin Section
Date: October 7, 2021
Re: Legislation to Restrict Access to Women's Health Care

ACOG
The American College of Obstetricians and Gynecologists
Wisconsin Section

The Wisconsin Section of American College of Obstetrician Gynecologists (ACOG), an organization focused on providing quality, compassionate and often life-saving health care to women, strongly denounces the rhetoric that is being used to promote the bills before you today. Assembly Bills 6, 262, 493, 528, 593, 594 and 595 spread false, dangerous information and undermine the public's trust in OB/gyns. These bills insert legislative interference in the patient-physician relationship and decrease access to preventative health care and constitutionally protected women's health care, namely abortion care.

Assembly Bill 6 comprises inflammatory language that intentionally mischaracterize the provision of health care. This bill is irresponsible and dangerous. In the rare case that a woman undergoes an abortion via induction of labor during the periviable period and a baby is born alive, all decisions regarding possible resuscitation are made between herself and a multidisciplinary team of doctors who use compassion, ethics, and evidence-based expertise to help navigate what are often difficult decisions. These decisions are complex, nuanced, often heart wrenching and are quite simply not conducive to a one-size-fits-all law that all but ignores not only the scientific facts at hand, but also the individual circumstances that a woman and her family are faced with. We oppose this bill in the strongest terms.

The reporting of certain vital statistics information is generally important and useful to furthering legitimate public health interests. However, **Assembly Bill 262** is motivated by animus to abortion and exploits reporting that exists for public health purposes to shame women and intimidate health care providers. Alarmingly, this bill attempts to create and maintain a public list of medical practices that provide abortion care. Such a public registry would be an invitation for intimidation, threats, and even violence against women's health care providers and their patients. There is real fear that providers could be targeted using this information. In this way, abortion is distinct from other types of health care procedures and vital health statistics about which the state collects information. Stigma, harassment, and violence discourage abortion access and provision and harm patients. Acts of harassment include picketing, picketing with physical contact or blocking, vandalism, picketing of homes of staff members, bomb threats, harassing phone calls, noise disturbances, taking photos or videos of patients and staff, tampering with garbage, placing glue in locks or nails on the driveway of clinics, breaking windows, interfering with phone lines, approaching cars, and recording license plates.

Instead of increasing health care access for patients who already suffer disproportionately poor health outcomes – including high rates of breast and cervical cancer, sexually transmitted infection, premature birth, infant mortality, and maternal mortality – **Assembly Bills 493 and 528** further restrict access to basic health care for women in our state. As is well known, there is already a shortage of primary care physicians in Wisconsin and many providers limit the number of uninsured, underinsured, and Medicaid patients they serve. At a time when we should be focused on improving the health of ALL Wisconsinites, it is unconscionable to cut off access to preventive care for women at highest risk. The best way to reduce costly public health problems is to provide preventative healthcare, health education, prenatal and postpartum care, and reliable contraception, not further restrict access to basic health care for women.

Assembly Bill 593 would mandate that physicians provide information to patients which is not based on rigorous scientific evidence. If this bill becomes law physicians would be required to misled patients into believing that evidence-based treatment is available to "reverse" the effects of mifepristone. So-called "abortion reversal" regimens have not been adequately studied or evaluated for the safety of the mother or the fetus, and do not meet clinical standards of care. Legislative mandates based on unproven, unethical research are dangerous to women's health. Politicians should never mandate treatments or require that physicians tell patients inaccurate information. Requiring doctors to offer a medical therapy that lacks the requisite evidence base is unethical at best and harmful at worst. We cannot allow political interference to compromise the care and safety of our patients.

Assembly Bill 594 would require physicians to give legislatively mandated information regarding a fetal condition to a patient. It is the ethical responsibility of a physician, and indeed we take an oath, to provide patients with medically correct information to help them make their own informed choices regarding their diagnosis and based on their individual prognosis. It is not the place of politicians to interfere into the patient-physician relationship. Physicians have open, honest, and confidential discussions with their patients about the diagnosis, prognosis, and appropriate treatment options a patient may be faced with. Politicians should be looking to scientific data and the knowledge and experience of our excellent and compassionate physicians to be providing evidence-based, safe, and quality care to our patients.

We are additionally opposed to **Assembly Bill 595** which represents gross interference in the patient-physician relationship. People seek abortion for many different reasons, which can be complex, and reflect a variety of considerations including her health, her family, and her future. Ob-gyns will tell you that some of the most difficult decisions are made by women whose pregnancies are affected by genetic disorders, and they are not taken lightly. This proposed bill stigmatizes women who seek abortion care by

questioning the motivation behind their decisions; invites discriminatory profiling by doctors against our own patients; and discourages honest, confidential conversations between patients and their doctors. When health care providers must question their patients' motivations for obtaining an abortion, some patients may feel forced to withhold information or lie to their provider—or they may be dissuaded from seeking care from a provider altogether. Such legislation not only restricts a woman's constitutional right to access safe abortion, but it jeopardizes her ability to access accurate medical information and safe, timely and compassionate health care.

In closing, as the largest organization of women's health care providers, ACOG proudly stands behind our members who provide comprehensive health care for women, delivered with quality, safety, integrity, and compassion. The bills before us today create a dangerous and hostile environment for physicians and patients, and ultimately prevent doctors from providing a patient with the best possible health care.