

Congress of the United States

Washington, DC 20515

September 13, 2000

Support Passage of H.R. 4292, The Born-Alive Infants Protection Act Reject the Legalization of Infanticide Under *Roe v. Wade*

Dear Colleague:

H.R. 4292, The Born-Alive Infants Protection Act, is expected to be brought up on the House floor during the next two weeks. This simple but critical piece of legislation is designed to insure that all infants who have been born alive are treated as persons who are entitled to the protections of federal law, and to repudiate recent judicial expansions of the "right to abortion" that place some such infants in increasing jeopardy. We strongly urge you to support this legislation, as well as the attached Manager's Amendment that will be offered to the bill.

Why, you may ask, is such legislation necessary? Hasn't it long been accepted as a legal principle that infants who are born alive are persons who are entitled to the protections of the law? Indeed it has. But the corrupting influence of a seemingly illimitable right to abortion has brought this well settled principle into question.

Just weeks ago, for example, in *Stenberg v. Carhart*, the United States Supreme Court struck down a Nebraska law banning partial-birth abortion, a procedure in which an abortionist delivers an unborn child's body until only the head remains inside of the mother, punctures the back of the child's skull with scissors, and sucks the child's brains out before completing the delivery. What the Supreme Court described in *Roe v. Wade* as a right to abort "unborn children" has now been extended by five Justices to include the violent destruction of *partially-born* children just inches from birth.

Even more striking than the simple holding of the case is the fact that the *Carhart* Court considered the location of an infant's body at the moment of death during a partial-birth abortion – delivered partly outside the body of the mother – to be of no legal significance in ruling on the constitutionality of the Nebraska law. Implicit in the *Carhart* decision was the pernicious notion that a partially born infant's entitlement to the protections of the law is dependent not upon whether the child is born or unborn, but upon whether or not the partially born child's mother wants the child.

Following *Stenberg v. Carhart*, on July 26, 2000, the United States Court of Appeals for the Third Circuit made that point explicit in *Planned Parenthood of Central New Jersey v. Farmer*, in the course of striking down New Jersey's partial-birth abortion ban. According to the Third Circuit, under *Roe* and *Carhart*, it is "nonsensical" for a legislature to conclude that an infant's location in relation to the mother's body has any relevance in determining whether that infant may be killed. The *Farmer* Court concluded that a child's status under the law, regardless of the child's location, is dependent upon whether the mother intends to abort the child or to give birth. The *Farmer* Court stated that, in contrast to an infant whose mother intends to give birth, an infant who is killed during a partial-birth abortion is not entitled to the protections of the law because "[a] woman seeking an abortion is plainly not seeking to give birth."

The implications of these decisions are shocking. Under the logic of these decisions, once a child is marked for abortion, it is wholly irrelevant whether that child emerges from the womb as a live baby. That child may still be treated as a non-entity and would have not the slightest rights under the law – no right to receive medical care, to be sustained in life, or to receive any care at all. And if a child who survives an abortion and is born alive would have no claim to the protections of the law, there would, then, be no basis upon which the government may prohibit an abortionist from *completely* delivering an infant before killing it or allowing it to die. The “right to abortion,” under this logic, means nothing less than the right to a dead baby, no matter where the killing takes place.

Credible public testimony received by the Subcommittee on the Constitution indicates that this is, in fact, already occurring. According to eyewitness accounts, “live-birth abortions” are indeed being performed, resulting in live-born premature infants who are simply allowed to die, sometimes without the provision of even basic comfort care such as warmth and nutrition. On one occasion a living infant was found lying naked on a scale in a soiled utility closet, and on another occasion an living infant was found lying naked on the edge of a sink. One baby was wrapped in a disposable towel and thrown in the trash.

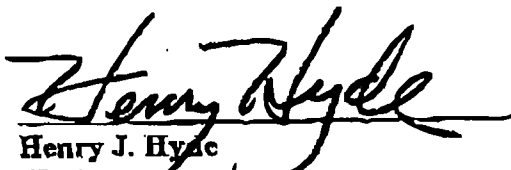
Statements made by abortion supporters indicate that they support this expansion of *Roe v. Wade*. For example, on July 20, 2000, the National Abortion and Reproductive Rights Action League, or “NARAL,” issued a press release criticizing H.R. 4292 because, in NARAL’s view, extending legal personhood to premature infants who are born alive after surviving abortions constitutes an “assault” on *Roe v. Wade*. According to NARAL, by seeking to provide legal rights to born-alive infants “at any stage of development,” the proponents of H.R. 4292 are “directly contradicting one of *Roe*’s basic tenets.”

The purpose of this bill is to repudiate the pernicious ideas that result in tragedies such as “live birth abortion” and to firmly establish that, for purposes of federal law, an infant who is completely expelled or extracted from her mother and who is alive is, indeed, a person under the law – regardless of whether or not the child’s development is believed to be, or is in fact, sufficient to permit long-term survival, and regardless of whether the baby survived an abortion.

The attached Manager’s Amendment is designed to repudiate the Third Circuit’s decision in *Farmer*, which was handed down the day of the Full Committee markup on H.R. 4292, and therefore was not addressed in that forum. The amendment accomplishes this by setting forth findings outlining the tragic implications of the *Farmer* decision, and its interpretation of the Supreme Court’s decision in *Carhart*.

We strongly urge you to support H.R. 4292 and the Manager’s Amendment, and reject the legalization of infanticide under *Roe v. Wade*.

Sincerely yours,


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Committee on the Judiciary


Charles T. Canady
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**AMENDMENT TO H.R. 4292
OFFERED BY MR. CANADY OF FLORIDA**

After section 1, insert the following:

SECTION 2. FINDINGS AND PURPOSE.

(a) **FINDINGS.** - Congress finds the following:

(1) It has long been an accepted legal principle that infants who are born alive, at any stage of development, are persons who are entitled to the protections of the law. But recent decisions by the United States Supreme Court and the United States Court of Appeals for the Third Circuit have expanded *Roe v. Wade* and brought this well-settled principle into question.

(2) In *Stenberg v. Carhart*, 120 S. Ct. 2597 (2000), the United States Supreme Court struck down a Nebraska law banning partial-birth abortion, a procedure in which an abortionist delivers an unborn child's body until only the head remains inside of the womb, punctures the back of the child's skull with scissors, and sucks the child's brains out before completing the delivery. What was described in *Roe v. Wade* as a right to abort "unborn children" has thus been extended by the Court to include the violent destruction of partially born children just inches from complete birth.

(3) The *Carhart* Court considered the location of an infant's body at the moment of death during a partial-birth abortion — delivered partly outside the body of the mother — to be of no legal significance in ruling on the constitutionality of the Nebraska law. Instead, implicit in the *Carhart* decision was the pernicious notion that a partially born infant's entitlement to the protections of the law is dependent upon whether or not the partially born child's mother wants him or her.

(4) Following *Stenberg v. Carhart*, on July 26, 2000, the United States Court of Appeals for the Third Circuit made that point explicit in *Planned Parenthood of Central New Jersey v. Farmer*, 220 F.3d 127 (3rd Cir. 2000), in the course of striking down New Jersey's partial-birth abortion ban. According to the Third Circuit, under *Roe* and *Carhart*, it is "nonsensical" and "based on semantic machinations" and "irrational line-drawing" for a legislature to conclude that an infant's location in relation to his or her mother's body has any relevance in determining whether that infant may be killed.

(5) Instead, the *Farmer* Court repudiated New Jersey's classification of the prohibited procedure as being a "partial birth," and concluded that a child's status under the law, regardless of his or her location, is dependent upon whether the mother intends to abort the child or to give birth. Thus, the *Farmer* Court stated that, in contrast to an infant whose mother intends to give birth, an infant who is killed during a partial-birth abortion is not entitled to the protections of the law because "[a] woman seeking an abortion is plainly not seeking to give birth." In other words, a real child, with an objective existence, is treated as merely a conceptual construct, and in that way, swept aside as though he or she had no existence at all that anyone was obliged to acknowledge.

(6) The logical implications of *Carhart* and *Farmer* are both obvious and disturbing. Under the logic of these decisions, once a child is marked for abortion, it is wholly irrelevant whether that child emerges from the womb as a live baby. That child may still be treated as though he or she did not exist, and would have not the slightest rights under the law no right to receive medical care, to be sustained in life, or to receive any care at all.

(7) And if a child who survives an abortion and is born alive would have no claim to the protections of the law, there would, then, be no basis upon which the government may prohibit an abortionist from completely delivering an infant before killing the child or allowing the child to die. The "right to abortion," under this logic, means nothing less than the right to a dead baby, no matter where the killing takes place.

(8) Credible public testimony received by the Subcommittee on the Constitution of the Committee on the Judiciary indicates that this is, in fact, already occurring. According to eyewitness accounts, live-birth abortions are indeed being performed, resulting in live-born premature infants who are simply left to die, sometimes without the provision of even basic comfort care such as warmth and nutrition.

(9) Statements made by proponents of abortion indicate that they support the expansion of *Roe v. Wade*. For example, on July 20, 2000, the National Abortion and Reproductive Rights Action League ("NARAL") issued a press release criticizing the Born-Alive Infants Protection Act because, in NARAL's view, recognizing the legal personhood of premature infants who are born alive after surviving abortions constitutes an "assault" on *Roe v. Wade*. According to NARAL, by seeking legal protection for born-alive infants "at any stage of development," including those not yet considered to have achieved "viability," the proponents of this Act are "directly contradicting one of *Roe*'s basic tenets".

(10) Thus, having created in *Roe v. Wade* a legal regime in which a child's status under the law was dependent upon that child's location in relation to the body of his or her mother - "born" or "unborn" - the Federal judiciary has now rejected that regime as irrational, creating instead an expanded *Roe v. Wade* regime in which a child's entitlement to the protections of the law depends upon whether the child's mother intends to abort the child or to give birth.

(b) PURPOSE. - It is the purpose of this Act -

(1) to repudiate the flawed notion that a child's entitlement to the protections of the law is dependent upon whether that child's mother or others want him or her;

(2) to repudiate the flawed notion that the right to an abortion means the right to a dead baby, regardless of where the killing takes place;

(3) to affirm that every child who is born alive - whether as a result of induced abortion, natural labor, or cesarean section - bears an intrinsic dignity as a human being which is not dependent upon the desires, interests, or convenience of any other person, and is entitled to receive the full protections of the law;

(4) to establish firmly that, for purposes of Federal law, the term "person" includes an infant who is completely expelled or extracted from his or her mother and who is alive regardless of whether or not the baby's development is believed to be, or is in fact, sufficient to permit long-term survival, and regardless of whether the baby survived an abortion.

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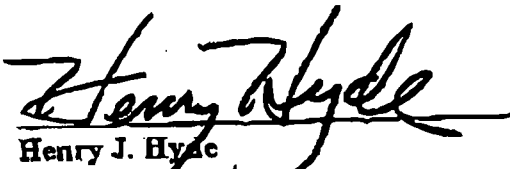
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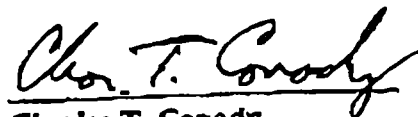
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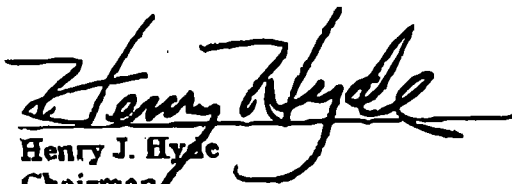
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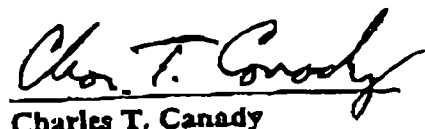
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- (4) Following *Stenberg v. Carhart*, on July 26, 2000, the United States Court of Appeals for the Third Circuit made that point explicit in *Planned Parenthood of Central New Jersey v. Farmer*, 220 F.3d 127 (3rd Cir. 2000), in the course of striking down New Jersey's partial-birth abortion ban. According to the Third Circuit, under *Roe* and *Carhart*, it is "nonsensical" and "based on semantic machinations" and "irrational line-drawing" for a legislature to conclude that an infant's location in relation to his or her mother's body has any relevance in determining whether that infant may be killed.
- (5) Instead, the *Farmer* Court repudiated New Jersey's classification of the prohibited procedure as being a "partial birth," and concluded that a child's status under the law, regardless of his or her location, is dependent upon whether the mother intends to abort the child or to give birth. Thus, the *Farmer* Court stated that, in contrast to an infant whose mother intends to give birth, an infant who is killed during a partial-birth abortion is not entitled to the protections of the law because "[a] woman seeking an abortion is plainly not seeking to give birth." In other words, a real child, with an objective existence, is treated as merely a conceptual construct, and in that way, swept aside as though he or she had no existence at all that anyone was obliged to acknowledge.
- (6) The logical implications of *Carhart* and *Farmer* are both obvious and disturbing. Under the logic of these decisions, once a child is marked for abortion, it is wholly irrelevant whether that child emerges from the womb as a live baby. That child may still be treated as though he or she did not exist, and would have not the slightest rights under the law no right to receive medical care, to be sustained in life, or to receive any care at all.

(7) And if a child who survives an abortion and is born alive would have no claim to the protections of the law, there would, then, be no basis upon which the government may prohibit an abortionist from completely delivering an infant before killing the child or allowing the child to die. The "right to abortion," under this logic, means nothing less than the right to a dead baby, no matter where the killing takes place.

(8) Credible public testimony received by the Subcommittee on the Constitution of the Committee on the Judiciary indicates that this is, in fact, already occurring. According to eyewitness accounts, live-birth abortions are indeed being performed, resulting in live-born premature infants who are simply left to die, sometimes without the provision of even basic comfort care such as warmth and nutrition.

(9) Statements made by proponents of abortion indicate that they support the expansion of *Roe v. Wade*. For example, on July 20, 2000, the National Abortion and Reproductive Rights Action League ("NARAL") issued a press release criticizing the Born-Alive Infants Protection Act because, in NARAL's view, recognizing the legal personhood of premature infants who are born alive after surviving abortions constitutes an "assault" on *Roe v. Wade*. According to NARAL, by seeking legal protection for born-alive infants "at any stage of development," including those not yet considered to have achieved "viability," the proponents of this Act are "directly contradicting one of *Roe*'s basic tenets".

(10) Thus, having created in *Roe v. Wade* a legal regime in which a child's status under the law was dependent upon that child's location in relation to the body of his or her mother - "born" or "unborn" - the Federal judiciary has now rejected that regime as irrational, creating instead an expanded *Roe v. Wade* regime in which a child's entitlement to the protections of the law depends upon whether the child's mother intends to abort the child or to give birth.

(b) PURPOSE. - It is the purpose of this Act -

(1) to repudiate the flawed notion that a child's entitlement to the protections of the law is dependent upon whether that child's mother or others want him or her;

(2) to repudiate the flawed notion that the right to an abortion means the right to a dead baby, regardless of where the killing takes place;

(3) to affirm that every child who is born alive - whether as a result of induced abortion, natural labor, or cesarean section - bears an intrinsic dignity as a human being which is not dependent upon the desires, interests, or convenience of any other person, and is entitled to receive the full protections of the law;

(4) to establish firmly that, for purposes of Federal law, the term "person" includes an infant who is completely expelled or extracted from his or her mother and who is alive regardless of whether or not the baby's development is believed to be, or is in fact, sufficient to permit long-term survival, and regardless of whether the baby survived an abortion.

Redesignate succeeding sections accordingly.

Congress of the United States

Washington, DC 20515

September 13, 2000

Support Passage of H.R. 4292, The Born-Alive Infants Protection Act Reject the Legalization of Infanticide Under *Roe v. Wade*

Dear Colleague:

H.R. 4292, The Born-Alive Infants Protection Act, is expected to be brought up on the House floor during the next two weeks. This simple but critical piece of legislation is designed to insure that all infants who have been born alive are treated as persons who are entitled to the protections of federal law, and to repudiate recent judicial expansions of the "right to abortion" that place some such infants in increasing jeopardy. We strongly urge you to support this legislation, as well as the attached Manager's Amendment that will be offered to the bill.

Why, you may ask, is such legislation necessary? Hasn't it long been accepted as a legal principle that infants who are born alive are persons who are entitled to the protections of the law? Indeed it has. But the corrupting influence of a seemingly illimitable right to abortion has brought this well settled principle into question.

Just weeks ago, for example, in *Stenberg v. Carhart*, the United States Supreme Court struck down a Nebraska law banning partial-birth abortion, a procedure in which an abortionist delivers an unborn child's body until only the head remains inside of the mother, punctures the back of the child's skull with scissors, and sucks the child's brains out before completing the delivery. What the Supreme Court described in *Roe v. Wade* as a right to abort "unborn children" has now been extended by five Justices to include the violent destruction of *partially-born* children just inches from birth.

Even more striking than the simple holding of the case is the fact that the *Carhart* Court considered the location of an infant's body at the moment of death during a partial-birth abortion – delivered partly outside the body of the mother – to be of no legal significance in ruling on the constitutionality of the Nebraska law. Implicit in the *Carhart* decision was the pernicious notion that a partially born infant's entitlement to the protections of the law is dependent not upon whether the child is born or unborn, but upon whether or not the partially born child's mother wants the child.

Following *Stenberg v. Carhart*, on July 26, 2000, the United States Court of Appeals for the Third Circuit made that point explicit in *Planned Parenthood of Central New Jersey v. Farmer*, in the course of striking down New Jersey's partial-birth abortion ban. According to the Third Circuit, under *Roe* and *Carhart*, it is "nonsensical" for a legislature to conclude that an infant's location in relation to the mother's body has any relevance in determining whether that infant may be killed. The *Farmer* Court concluded that a child's status under the law, regardless of the child's location, is dependent upon whether the mother intends to abort the child or to give birth. The *Farmer* Court stated that, in contrast to an infant whose mother intends to give birth, an infant who is killed during a partial-birth abortion is not entitled to the protections of the law because "[a] woman seeking an abortion is plainly not seeking to give birth."

The implications of these decisions are shocking. Under the logic of these decisions, once a child is marked for abortion, it is wholly irrelevant whether that child emerges from the womb as a live baby. That child may still be treated as a non-entity and would have not the slightest rights under the law – no right to receive medical care, to be sustained in life, or to receive any care at all. And if a child who survives an abortion and is born alive would have no claim to the protections of the law, there would, then, be no basis upon which the government may prohibit an abortionist from *completely* delivering an infant before killing it or allowing it to die. The “right to abortion,” under this logic, means nothing less than the right to a dead baby, no matter where the killing takes place.

Credible public testimony received by the Subcommittee on the Constitution indicates that this is, in fact, already occurring. According to eyewitness accounts, “live-birth abortions” are indeed being performed, resulting in live-born premature infants who are simply allowed to die, sometimes without the provision of even basic comfort care such as warmth and nutrition. On one occasion a living infant was found lying naked on a scale in a soiled utility closet, and on another occasion an living infant was found lying naked on the edge of a sink. One baby was wrapped in a disposable towel and thrown in the trash.

Statements made by abortion supporters indicate that they support this expansion of *Roe v. Wade*. For example, on July 20, 2000, the National Abortion and Reproductive Rights Action League, or “NARAL,” issued a press release criticizing H.R. 4292 because, in NARAL’s view, extending legal personhood to premature infants who are born alive after surviving abortions constitutes an “assault” on *Roe v. Wade*. According to NARAL, by seeking to provide legal rights to born-alive infants “at any stage of development,” the proponents of H.R. 4292 are “directly contradicting one of *Roe*’s basic tenets.”

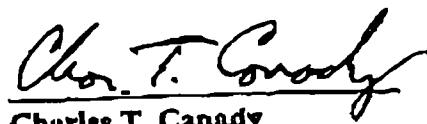
The purpose of this bill is to repudiate the pernicious ideas that result in tragedies such as “live birth abortion” and to firmly establish that, for purposes of federal law, an infant who is completely expelled or extracted from her mother and who is alive is, indeed, a person under the law – regardless of whether or not the child’s development is believed to be, or is in fact, sufficient to permit long-term survival, and regardless of whether the baby survived an abortion.

The attached Manager’s Amendment is designed to repudiate the Third Circuit’s decision in *Farmer*, which was handed down the day of the Full Committee markup on H.R. 4292, and therefore was not addressed in that forum. The amendment accomplishes this by setting forth findings outlining the tragic implications of the *Farmer* decision, and its interpretation of the Supreme Court’s decision in *Carhart*.

We strongly urge you to support H.R. 4292 and the Manager’s Amendment, and reject the legalization of infanticide under *Roe v. Wade*.

Sincerely yours,


Henry J. Hyde
Chairman
Committee on the Judiciary


Charles T. Canady
Chairman
Subcommittee on the Constitution

**AMENDMENT TO H.R. 4292
OFFERED BY MR. CANADY OF FLORIDA**

After section 1, insert the following:

SECTION 2. FINDINGS AND PURPOSE.

(a) **FINDINGS.** - Congress finds the following:

(1) It has long been an accepted legal principle that infants who are born alive, at any stage of development, are persons who are entitled to the protections of the law. But recent decisions by the United States Supreme Court and the United States Court of Appeals for the Third Circuit have expanded *Roe v. Wade* and brought this well-settled principle into question.

(2) In *Stenberg v. Carhart*, 120 S. Ct. 2597 (2000), the United States Supreme Court struck down a Nebraska law banning partial-birth abortion, a procedure in which an abortionist delivers an unborn child's body until only the head remains inside of the womb, punctures the back of the child's skull with scissors, and sucks the child's brains out before completing the delivery. What was described in *Roe v. Wade* as a right to abort "unborn children" has thus been extended by the Court to include the violent destruction of partially born children just inches from complete birth.

(3) The *Carhart* Court considered the location of an infant's body at the moment of death during a partial-birth abortion - delivered partly outside the body of the mother - to be of no legal significance in ruling on the constitutionality of the Nebraska law. Instead, implicit in the *Carhart* decision was the pernicious notion that a partially born infant's entitlement to the protections of the law is dependent upon whether or not the partially born child's mother wants him or her.

(4) Following *Stenberg v. Carhart*, on July 26, 2000, the United States Court of Appeals for the Third Circuit made that point explicit in *Planned Parenthood of Central New Jersey v. Farmer*, 220 F.3d 127 (3rd Cir. 2000), in the course of striking down New Jersey's partial-birth abortion ban. According to the Third Circuit, under *Roe* and *Carhart*, it is "nonsensical" and "based on semantic machinations" and "irrational line-drawing" for a legislature to conclude that an infant's location in relation to his or her mother's body has any relevance in determining whether that infant may be killed.

(5) Instead, the *Farmer* Court repudiated New Jersey's classification of the prohibited procedure as being a "partial birth," and concluded that a child's status under the law, regardless of his or her location, is dependent upon whether the mother intends to abort the child or to give birth. Thus, the *Farmer* Court stated that, in contrast to an infant whose mother intends to give birth, an infant who is killed during a partial-birth abortion is not entitled to the protections of the law because "[a] woman seeking an abortion is plainly not seeking to give birth." In other words, a real child, with an objective existence, is treated as merely a conceptual construct, and in that way, swept aside as though he or she had no existence at all that anyone was obliged to acknowledge.

(6) The logical implications of *Carhart* and *Farmer* are both obvious and disturbing. Under the logic of these decisions, once a child is marked for abortion, it is wholly irrelevant whether that child emerges from the womb as a live baby. That child may still be treated as though he or she did not exist, and would have not the slightest rights under the law no right to receive medical care, to be sustained in life, or to receive any care at all.

(7) And if a child who survives an abortion and is born alive would have no claim to the protections of the law, there would, then, be no basis upon which the government may prohibit an abortionist from completely delivering an infant before killing the child or allowing the child to die. The "right to abortion," under this logic, means nothing less than the right to a dead baby, no matter where the killing takes place.

(8) Credible public testimony received by the Subcommittee on the Constitution of the Committee on the Judiciary indicates that this is, in fact, already occurring. According to eyewitness accounts, live-birth abortions are indeed being performed, resulting in live-born premature infants who are simply left to die, sometimes without the provision of even basic comfort care such as warmth and nutrition.

(9) Statements made by proponents of abortion indicate that they support the expansion of *Roe v. Wade*. For example, on July 20, 2000, the National Abortion and Reproductive Rights Action League ("NARAL") issued a press release criticizing the Born-Alive Infants Protection Act because, in NARAL's view, recognizing the legal personhood of premature infants who are born alive after surviving abortions constitutes an "assault" on *Roe v. Wade*. According to NARAL, by seeking legal protection for born-alive infants "at any stage of development," including those not yet considered to have achieved "viability," the proponents of this Act are "directly contradicting one of *Roe's* basic tenets".

(10) Thus, having created in *Roe v. Wade* a legal regime in which a child's status under the law was dependent upon that child's location in relation to the body of his or her mother - "born" or "unborn" - the Federal judiciary has now rejected that regime as irrational, creating instead an expanded *Roe v. Wade* regime in which a child's entitlement to the protections of the law depends upon whether the child's mother intends to abort the child or to give birth.

(b) PURPOSE. - It is the purpose of this Act -

(1) to repudiate the flawed notion that a child's entitlement to the protections of the law is dependent upon whether that child's mother or others want him or her;

(2) to repudiate the flawed notion that the right to an abortion means the right to a dead baby, regardless of where the killing takes place;

(3) to affirm that every child who is born alive - whether as a result of induced abortion, natural labor, or cesarean section - bears an intrinsic dignity as a human being which is not dependent upon the desires, interests, or convenience of any other person, and is entitled to receive the full protections of the law;

(4) to establish firmly that, for purposes of Federal law, the term "person" includes an infant who is completely expelled or extracted from his or her mother and who is alive regardless of whether or not the baby's development is believed to be, or is in fact, sufficient to permit long-term survival, and regardless of whether the baby survived an abortion.

Redesignate succeeding sections accordingly.

**House Committee on the Judiciary Subcommittee on the Constitution Hearing on
Born-Alive Infants Protection Act of 2000**

Summaries of Selected Prepared Testimonies

Robert P. George McCormick, Professor of Jurisprudence, Princeton University

Urging the passage of the Act, Prof. McCormick claimed: "The legitimization of infanticide constitutes a grave threat to the principle of human equality at the heart of American civil rights ideals. If weak and vulnerable member of the human family -- and infants are surely among the weakest and most vulnerable -- can be defined out of the community of 'persons' whose fundamental rights must be respected and protected by law, the constitutional principle of equal protection becomes a sham." Arguing that our most basic rights, including the right to life, are inherent and not contingent upon external judgements nor earned privileges, McCormick condemns other scholarly work suggesting rights are linked to more qualitative measures of personhood. He attacks colleague Professor Peter Singer, a theorist mired in the controversy surrounding this Act, for his assertion that human beings only become 'persons,' and acquire a right to life, sometime well after birth. McCormick suggests that failing to pass the Act would allow for the killing of unwanted children free from moral judgement since they could be argued out of being considered 'person,' and thus robbed of their right to life.

---However, there is a clear distinction between begin a living being and being a person. What does it mean for a being to be a person? What about babies born without brains? What about the implications of technological innovation -- i.e. children / beings who would not live or exist without the aid of external assistance or supportive technology? It is difficult to apply such clear classifications when the process of bearing children is inherently complicated.

F. Sessions Cole, M.D.

As a physician whose specialty is the care of newborn infants, Dr. Cole routinely encounters babies whose problems place them on the edge of viability. According to Dr. Cole, "The language of H.R. 4292 would impose on doctors and parents a universal definition of 'life' or 'alive' which is, in [his] ... experience as a neonatologist, inconsistent with the harsh reality presented by a number of circumstances. The fact is that the indicia identified in the bill -- breathing, or a beating heart, or pulsation of the umbilical cord, or definite movement of voluntary muscles -- are not themselves necessarily indicative of life or continued viability.... The language of H.R. 4292 will ... significantly interfere with the agonizing, painful and personal decisions that must be left to parents in consultation with their physicians." He emphasized that although technological advances have provided much hope for newborn survival, often life support technology may be futile and only prolong the pain of the dying process. He claimed that the Act would inject an unnecessary and unrealistic definition of 'life,' with all its legal implications, into the already agonizing and heart-breaking situation faced by parents of infants in the dying process.

---Interesting that he emphasized infants with complications at birth, rather than babies that have survived abortions. Also, the notion of 'viability' is not value-free and the subjectivity of that term ought to be recognized. Just as the notion of what constitutes a 'person' is debatable, so is the notion of whether a newborn infant is 'viable.'

good point

Ken Thomas, Congressional Research Service

Having been asked to describe the statutory impact of the bill if it becomes law, Thomas discussed the theoretical legal implications of the Act clearly, though it is difficult to determine how this would translate into practice. The Act would amend the United States Code to clarify the definition of the words 'person,' 'human being,' 'child,' and 'individual' as they are used in any act of Congress or any administrative ruling, regulation, or interpretation. Although only able to conduct a "cursory review" of the Code due to time constraints, according to Thomas, it "appears that the addition of this new language would have minimal effect on the prospective application of federal statutes." The interests of those who are 'born alive' are recognized most commonly in the areas of tort law, trusts and estates law, and criminal law.

The most controversial legal implication Thomas discusses is the issue of whether the 'born-alive' requirement for the federal homicide statutes would be interpreted consistent with prevailing interpretations of common law. The proposed Act's term seems to be broader than the common law definition since the concept of born alive appears to be intended to apply to fetuses expelled prior to viability. Currently, states vary as to whether or not their definitions of a 'live birth' are limited to viable fetuses. Furthermore, the definition applies where fetal expulsion is the result of natural or induced labor, cesarean section, or induced abortion, which is also broader than the common law definition, generally applied to non-consensual fetal demise, and not abortion. Consequently, it is not clear if the statute would be limited to the situation where the cause of death was inflicted after the fetal expulsion, or whether it could be interpreted to cover injury inflicted in utero during an abortion. Application of the homicide statutes for damage incurred during an abortion would raise constitutional issues based on a woman's liberty interests under the 14th Amendment. As Thomas emphasized, "While the canon on constitutional doubt would lean against the application of a statutory ambiguity in a way that may violate the Constitution, it is not clear how this statute would be applied."

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The terms "person," "human being," "child," and "individual" appear in over 15,000 sections of the United States Code, and in over 57,000 sections of the Code of Federal Regulations. Thus, the Congressional Research Service claims an evaluation of the statutory and regulatory impact of the Act is beyond its resources.

---Since a comprehensive analysis of the implications of the proposed Act is essentially impossible, more cautious support would seem logical. However, with the exception of Rep. Mel Watt, D-N.C., the committee has not been rigorously questioning the Act's impact. Others, including committee chairman Henry Hyde, R-Ill., insists that the "bill is not all that complicated." While it potentially may not be complicated, the possibility that the proposed Act's diction could be problematic cannot be ignored.

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April 13, 2000

REP. CANADY INTRODUCES BILL TO PROTECT BORN-ALIVE INFANTS

WASHINGTON, D.C. - U.S. Rep. Charles T. Canady (R-FL) today introduced the "Born- Alive Infants Protection Act of 2000," legislation to ensure that all infants who are born alive are treated as persons for purposes of federal law.

Canady, who is chairman of the House Judiciary Subcommittee on the Constitution, issued the following statement:

"It has long been accepted as a legal principle that infants who are born alive are persons and are entitled to the protections of the law, and that a live birth has occurred whenever an infant is expelled from her mother's body and displays any of several specific signs of life – breathing, heartbeat, and/or definite movements of voluntary muscles. Many states have statutes that, with some variations, explicitly enshrine this principle as a matter of state law, and some federal courts have recognized the principle in interpreting federal criminal laws. But recent changes in the legal and cultural landscape appear to have brought this well-settled principle into question.

The Supreme Court's decision in *Planned Parenthood v. Casey*, for example, reaffirmed the right of a woman to abort her unborn child, and adhered to the notion that the government's interest in protecting the unborn child is related to "viability," or the point at which an unborn child can survive independently of the mother, with or without medical assistance. The Court's reliance upon the viability concept has caused some to wrongly conclude that even infants who have been born alive are not persons if they are not yet "viable," or were "marked" for abortion. Yet, particularly after the halfway point of pregnancy, many infants are born alive at 20 to 22 weeks and survive for hours, even though their lung capacity does not permit sustained survival. Infants are also born-alive at 23 weeks and have a 39% chance of sustained survival, and at 24 weeks a greater than 50% chance of sustained survival, with the odds improving all of the time. Most of these premature live births occur spontaneously, but some occur during attempted abortions.

The principle that born-alive infants are entitled to the protection of the law is being questioned at one of America's most prestigious universities. Princeton University Bioethicist Peter Singer argues that parents should have the option to kill disabled or unhealthy newborn babies for a certain period after birth. According to Professor Singer, "a period of 28 days after birth might be allowed before an infant is accepted as having the same right to live as others." This is based on Professor Singer's view that the life of a newborn baby is "of no greater value than the life of a nonhuman animal at a similar level of rationality, self-consciousness, awareness, capacity to feel, etc." According to Professor Singer, "killing a disabled infant is not morally equivalent to killing a person. Very often it is not wrong at all."

If ideas such as these are permitted to go unchecked, the end result will be legal and moral confusion as to the status of newborn infants that are on the outskirts of viability or were marked for abortion. Evidence of this confusion can be illustrated by events that happened just this week in Professor Singer's native country of Australia. On April 10, 2000, in Sydney, Australia, a baby survived an abortion and lived for 80 minutes while hospital staff waited for the baby to die. When the midwife nurse called the abortion doctor (who was not present) to inform him that the baby had survived, he responded, "So?" The nurse then did what she could to make the baby comfortable, covering her with a blanket to keep her warm until her breathing and heartbeat slowed and she died.

The coroner who investigated this incident condemned the actions of the abortion doctor, stating that "[t]he [baby] having been born alive deserved all the dignity, respect and value that our society places

on human life. . . . The fact that her birth was unexpected and not the desired outcome of the [abortion] should not result in her . . . being perceived as less than a complete human being." Noting that the old, infirm, sick and terminally ill are all entitled to proper medical and palliative care and attention, the coroner stated that "newly-born unwanted and premature babies should have the same rights. The fact that [the baby's] death was inevitable should not affect her entitlement to such care and attention."

The purpose of this bill is to repudiate the pernicious ideas that result in tragedies such as this and to firmly establish that, for purposes of federal law, an infant who is completely expelled or extracted from her mother and who is alive is, indeed, a person under the law – regardless of whether or not her lung development is believed to be, or is in fact, sufficient to permit long-term survival, and regardless of whether the baby survived an abortion.

The bill would not mandate medical treatment where none is currently indicated. Nothing in the bill would alter the existing standard of medical care. While there is debate about whether or not to aggressively treat premature infants below a certain birth weight, this is a dispute about medical efficacy, not regarding legal status. Medical authorities who argue that treatment below a given birth weight is futile are not arguing that these low-birth weight infants are non-persons, or that it would be legally permissible to dispatch them with hammer blows to the skull.

The bill would also have no impact on any method of abortion. Under the Act, an infant will be considered to have been born alive if she is completely extracted or expelled from her mother and breathes, has a beating heart, a pulsation of the umbilical cord, or definite movement of the voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the baby was born as a result of natural or induced labor, cesarean section, or induced abortion."

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.-Alive Infants Protection Act of 2000 (Introduced in the House)

HR 4292 IH

106th CONGRESS

2d Session

H. R. 4292

To protect infants who are born alive .

IN THE HOUSE OF REPRESENTATIVES

April 13, 2000

Mr. CANADY of Florida introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect infants who are born alive .

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Born -Alive Infants Protection Act of 2000'.

SEC. 2. DEFINITION OF BORN -ALIVE INFANT.

(a) IN GENERAL- Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

'Sec. 8. 'Person', 'human being', 'child', and 'individual' as including born -alive infant

(a) In determining the meaning of any Act of Congress, or of any ruling, regulation, or