



Advancing Pro-Life Leadership

## **Pro-Life Backgrounder**

115<sup>th</sup> Congress

### **The Pain-Capable Unborn Child Protection Act, H.R. 36**

*Sponsor: Representative Trent Franks (AZ-8)*

#### **Bill Status:**

Awaiting Vote in U.S. House of Representatives and Senate

#### **Bill History:**

114<sup>th</sup> Congress: [Passed U.S. House of Representatives 242-184](#)

[Failed to Invoke Cloture in U.S. Senate 54-42](#)

#### **Executive Summary**

The Pain-Capable Unborn Child Protection Act protects unborn children at 20 weeks post-fertilization (22 weeks gestation or LMP) based on the child's ability to feel pain. It's estimated that this law will save approximately 12,000-18,000 babies annually.<sup>1</sup>

This legislation explicitly does not apply in instances where the mother's life is at risk or in cases of rape or incest.

For a woman who seeks an abortion at 20 weeks or later, this bill includes provisions that protect the mother and give the child the best opportunity to survive the abortion. Specifically, the born-alive infant protections in the bill ensure that babies born alive are transported to a hospital and are given active care for the best opportunity for survival. To protect the mother, this bill requires an informed consent form which identifies the age of the child, a description of the law, an explanation of born-alive protections, and identifies a woman's civil right of action so that she understands her right to sue an abortionist if the proper procedures are not followed.

#### **Background**

In 2010, studies began to emerge detailing an unborn child's ability to feel pain as early as 20 weeks post-fertilization.<sup>2</sup> Other studies also acknowledge the use of anesthesia in fetal surgeries, and this practice becoming a routine procedure for unborn and premature infants undergoing surgery.<sup>3</sup> As our understanding of unborn life has expanded, so has the need for U.S. policy to protect the thousands of babies who are subject to excruciating pain when they are killed in late abortions.

As the understanding of fetal pain has permeated the public consciousness, protections for Pain-Capable unborn children have been signed into law in 20 states.<sup>4</sup> While efforts to pass this legislation in additional states are underway, it is incumbent upon Congress to protect vulnerable pain-capable babies across all 50 states.

Late abortion is not rare. Despite claims from the pro-abortion lobby, most late abortions are performed on an elective basis—not because of rare lethal fetal anomalies discovered late in pregnancy.<sup>5</sup> (In instances where lethal fetal anomaly exists, patients and their families can and should be offered the option of perinatal hospice).<sup>6</sup> As recently as 2014, it was estimated that 430 abortion facilities in the U.S. were willing to perform abortions at 20 weeks and later.<sup>7</sup> Late abortion is not safe. Women seeking abortion at 20 weeks are 35 times more likely to die from abortion than when the procedure is done in the first trimester. At 21+ weeks, a woman is 91 times more likely to die from abortion than she was in the first trimester.<sup>8</sup> For surviving mothers, late abortions are a factor in increased adverse mental<sup>9</sup> and physical health outcomes.<sup>10</sup>

The Pain-Capable Unborn Child Protection Act presents the Supreme Court with a new construct under which they should consider the rights of the unborn child, instead of viability.<sup>11</sup> Medical and scientific advancement now tell us that prior to viability, abortion is a painful procedure for the unborn child. The court should take the child's ability to experience pain into consideration.

### **Talking Points**

- This legislation protects unborn children after 20 weeks, or five months, more than halfway through pregnancy, based on their ability to feel excruciating pain.
- An unborn baby at 20 weeks can suck his or her thumb, yawn, stretch, and make faces.<sup>12</sup>
- The United States is one of only seven countries that allows elective abortions past 20 weeks including: China, North Korea, Vietnam, Singapore, Canada, and the Netherlands.<sup>13</sup>
- This legislation would protect pain-capable children from Planned Parenthood's horrific organ trade and preclude the horror of trafficking in the body parts of babies in the second half of pregnancy.<sup>14</sup>
- The American people broadly support this legislation including 60% of women,<sup>15</sup> 56% of Independents, and 46% of Democrats.<sup>16</sup>
- This legislation would stop nearly 18,000 late-term abortions. Studies show that most of these late-term abortions are performed on an elective basis.<sup>17</sup>
- The Pain-Capable bill has already passed in 20 states.
- Advances in modern medicine help babies born at 20, 21, and 22 weeks post-fertilization survive outside the womb.<sup>18</sup>

### **Conclusion**

For a generation, the politics of "choice" has led people to believe that the unborn human is merely a "clump of cells" to be discarded. Science and advances in modern medicine proving fetal pain, has helped the American people remove political blinders which have prevented them from seeing the humanity of the unborn child. Passing the Pain-Capable bill is a modest step in the right direction, moving our country away from the radical pro-abortion policies that have decimated over 55 million unborn Americans since *Roe v. Wade*.<sup>19</sup>

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<sup>1</sup> Jones R and Jerman J. (2017). Abortion Incidence and Service Availability in The United States, 2014; Guttmacher Institute. Retrieved from: [https://www.guttmacher.org/sites/default/files/article\\_files/abortion-incidence-us.pdf](https://www.guttmacher.org/sites/default/files/article_files/abortion-incidence-us.pdf); Guttmacher Institute.

See also Jatlaoui TC *et al.* (2016). Abortion Surveillance—United States, 2013, Morbidity and Mortality Weekly Report, 2016, Vol. 65, No. SS-12. Retrieved from: <https://www.cdc.gov/mmwr/volumes/65/ss/ss6512a1.htm>; Centers for Disease Control and Prevention.

See also Jones R and Kooistra K. (2008). Abortion Incidence and Access to Services in The United States, 2008; Guttmacher Institute. Retrieved from: <https://www.guttmacher.org/sites/default/files/pdfs/pubs/psrh/full/4304111.pdf>; Guttmacher Institute.

See also Guttmacher Institute (2011). Facts on Induced Abortion in the United States, 2008. Retrieved from: [http://web.archive.org/web/20110202182248/http://www.guttmacher.org/pubs/fb\\_induced\\_abortion.pdf](http://web.archive.org/web/20110202182248/http://www.guttmacher.org/pubs/fb_induced_abortion.pdf)

<sup>2</sup> Greco C and Khojasteh S. (2014). Pediatric, Infant and Fetal Pain, *Case Studies in Pain Management*, Alan David Kaye and Rinoo V. Shah, Eds., (Cambridge: Cambridge University Press) 379.

<sup>3</sup> See, e.g., Ramirez MV. (2003). Anesthesia for fetal surgery, *Colombian Journal of Anesthesiology* 40, 268, 2012; Schwarz U and Galinkin JL, Anesthesia for fetal surgery, *Semin Pediatr Surg* 12, 196.

<sup>4</sup> Charlotte Lozier Institute. (2017, May 5) Map: Landmark Pain-Capable Abortion Bans Passed at the State Level. Retrieved from: <https://lozierinstitute.org/pain-capable-abortion-bans-in-the-u-s/>

<sup>5</sup> Johnson, Elizabeth. (2015 January). The Reality of Late-Term Abortion Procedures; Charlotte Lozier Institute, On Point Issue: 10. [https://lozierinstitute.org/wp-content/uploads/2015/01/On-Point-The-Reality-of-Late-Term-Abortion-Procedures\\_Elizabeth-Johnson.pdf](https://lozierinstitute.org/wp-content/uploads/2015/01/On-Point-The-Reality-of-Late-Term-Abortion-Procedures_Elizabeth-Johnson.pdf)

<sup>6</sup> Calhoun, Byron C. (2015 May). The Perinatal Hospice: Allowing Parents to be Parents; Charlotte Lozier Institute, American Report Series: Issue 1. <https://www.lozierinstitute.org/the-perinatal-hospice/>

<sup>7</sup> This is an estimate generated from the numbers the Guttmacher Institute provides under the "Providers and Services" section. Note: Guttmacher is using LMP dating. [http://www.guttmacher.org/pubs/fb\\_induced\\_abortion.html](http://www.guttmacher.org/pubs/fb_induced_abortion.html)

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- <sup>8</sup> Americans United for Life. (2013). Women's Health Defense Act (Late-Term Abortion Limitation), Model Legislation & Policy Guide for the 2014 Legislative Year. Retrieved from: [http://www.aul.org/downloads/2014-Legislative-Guides/abortion/Womens\\_Health\\_Defense\\_Act-2014\\_LG.pdf](http://www.aul.org/downloads/2014-Legislative-Guides/abortion/Womens_Health_Defense_Act-2014_LG.pdf)
- <sup>9</sup> Sullivan, N and de Faoite E. (2017). Psychological Impact of Abortion Due to Fetal Anomaly: A Review of Published Research. *Issues in Law and Medicine* 32, 1, 19-30. See also Coleman, P.K. (2011). Abortion and Mental Health: A Quantitative Synthesis and Analysis of Research Published from 1995-2009. *British Journal of Psychiatry*, 199, 180-186.
- <sup>10</sup> Calhoun, Byron C. and Mailee R. Smith. (2013). Significant Potential for Harm: Growing Medical Evidence of Abortion's Negative Impact on Women; Americans United for Life. <http://www.aul.org/wp-content/uploads/2013/12/Abortions-Medical-Risks-2013.pdf>
- <sup>11</sup> Messner, Thomas. (2015 June 25). Why Abortion Groups Are Not Challenging Laws to Protect Pain-Capable Unborn Children. *National Review*. Retrieved from <http://www.nationalreview.com/article/420276/why-abortion-groups-are-not-challenging-laws-protect-pain-capable-unborn-children> (June 25, 2015).
- <sup>12</sup> Web MD. (2014 October 9). Slideshow: Fetal Development Month by Month. Retrieved from <http://www.webmd.com/baby/ss/slideshow-fetal-development>
- <sup>13</sup> Baglini, Angelina. (2014 February). Gestational Limits on Abortion in the United States Compared to International Norms. Charlotte Lozier Institute, American Reports Series: Issue 6. <https://lozierinstitute.org/wp-content/uploads/2014/02/American-Reports-Series-INTERNATIONAL-ABORTION-NORMS.pdf>
- <sup>14</sup> Dannenfelser, Marjorie. (2015 September 14). The Abortion Debate Will Never Be the Same. Retrieved from <http://dailycaller.com/2015/09/14/the-abortion-debate-will-never-be-the-same/>
- <sup>15</sup> ABC News/Washington Post Poll: Abortion. (2013 July 25). Majority Supports Legal Abortion, But Details Indicate Ambivalence. Retrieved from <http://www.langerresearch.com/wp-content/uploads/1150a4Abortion.pdf>
- <sup>16</sup> Quinnipiac University Poll (2014 November 25). American Voters Split on Obama's Immigration Move, Quinnipiac University National Poll Finds; President's Approval Near All-Time Low. Retrieved from <https://poll.qu.edu/national/release-detail?ReleaseID=2115>
- <sup>17</sup> Johnson, *op. cit.*, p. 6.
- <sup>18</sup> Blennow M *et al.* (2009). One-Year Survival of Extremely Preterm Infants After Active Perinatal Care in Sweden, *JAMA* 301, 2225, 2009.
- <sup>19</sup> Donovan C and Gonzales R. (2016 August). Abortion Reporting: Toward a Better National Standard. Charlotte Lozier Institute, American Reports Series: Issue 12. <https://lozierinstitute.org/wp-content/uploads/2016/08/Abortion-Reporting-Toward-a-Better-National-Standard-FINAL.pdf>