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Comment in support of HB 1795, “Abortion; born alive infant, treatment and care, penalty,” as requested by the Virginia Department of Health Office of Licensure and Certification.

Susan B. Anthony Pro-Life America, headquartered in Shirlington, supports HB 1795, a bill ensuring that a baby born alive during a late-term abortion receives the same lifesaving medical treatment that a doctor would provide to that child if he or she was born under any other circumstances.

HB 1795 fills in the gaps of existing federal law.

This bill reinforces the federal Born-Alive Infants Protection Act of 2002 by establishing affirmative state protections for babies who are born alive after an attempted abortion. Codified at 1 U.S.C. § 8, federal law recognizes the unborn child and that he or she needs immediate medical attention at the time of birth. This legislation would create accountability for any Virginia doctor who does not provide medical care for a baby born alive following a failed abortion.

Indeed, former Virginia Governor Dr. Ralph Northam stated in 2019 that if a child was born during an abortion, “the infant would be resuscitated *if that’s what the mother and the family desired*, and then a discussion would ensue between the physicians and the mother” (emphasis added).¹ This statement suggests that he would not feel bound by federal law to provide lifesaving care, and it demonstrates a clear need to enact into Virginia law consequences medical professionals will take seriously.

HB 1795 states that if a baby is born alive as a result of an attempted abortion, the child must be administered the same reasonable care as would be given to any other baby born at the same gestational age and requires that he or she is transported immediately to a hospital for further medical care.² Failure to provide this standard of equal and reasonable care could lead to criminal prosecution of the abortionist, while the mother on whom an abortion is performed or attempted could not be prosecuted. Failure to comply with this bill would also constitute unprofessional conduct which could lead to discipline against a medical professional’s license. Enacting HB 1795 would protect Virginia babies regardless of the circumstances of their birth and create consequences for medical professionals who would turn a blind eye to their littlest patients.

Babies do survive late-term abortions.

Despite significant gaps in national and state abortion reporting, there are documented cases of babies who survive attempted abortions.³ Due to abortion advocacy groups’ opposition to accurate and detailed reporting, there is not comprehensive national data on how often babies are born alive after botched abortions. But of the eight states that have reported data on babies who survive abortions, just four of those states accounted for 111 babies born

¹ https://twitter.com/sbaprolife/status/1101186619648995330?s=20&t=wRi193Cd3Sxf_uF2oiN2yA

² <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+HB1795>

³ <https://www.sba-list.org/born-alive-abortion-survivors-documented-cases>

alive after failed abortions in the last five years.⁴ Even the Centers for Disease Control and Prevention (CDC) admits that its estimate that 143 babies were born-alive between 2003 and 2014 is likely an undercount due to most states' lack of reporting.⁵

Just last year the bodies of five aborted babies were discovered in Washington, D.C. Each appeared to be victims of violations of the federal Born-Alive Infants Protection Act and the Partial-Birth Abortion Ban. Despite outcries and Congressional pressure, the D.C. medical examiner's office refused to conduct autopsies⁶ on these little bodies to determine whether federal laws were broken by late-term abortionist Cesare Santangelo, at the Washington Surgi-Clinic. Neonatologist Dr. Robin Pierucci, an associate scholar with Charlotte Lozier Institute; Ob-Gyn Dr. Ingrid Skop, the Director of Medical Affairs at Charlotte Lozier Institute; and retired Ob-Gyn and former abortionist Dr. Kathi Aultman, reviewed the available evidence and concluded it was more than likely these unborn children were killed via partial-birth abortion or left to die after being delivered prematurely through botched abortions.⁷

It is also impossible to forget that Kermit Gosnell "snipped" the spines of abortion survivors in Pennsylvania, a crime for which he is now serving a life sentence.⁸ In Illinois, Nurse Jill Stanek found a tiny abortion survivor abandoned without care in a soiled hospital utility room.⁹ This little baby was 21 weeks and 4 days and had Down Syndrome. Jill held him for 45 minutes until he died. Abortion survivors Melissa Ohden¹⁰ and Gianna Jessen¹¹ are among those who miraculously survived attempted abortions. As adults, Melissa and Gianna have testified before Congress in defense of countless unborn and other abortion survivors.

When we collect data and listen to the stories of witnesses like Jill Stanek and abortion survivors themselves, it is impossible to say that this bill is "unnecessary,"¹² especially in jurisdictions that permit elective, late-term abortions.

Babies undoubtedly survive late-term abortions in Virginia.

Post-*Dobbs*, states can and should move their gestational limits forward for the dual purposes of preventing painful late-term abortions and aligning with advances in medical technology that are moving the age of survival for premature infants earlier in gestation.¹³ Current Virginia law permits abortion for any reason until the "third trimester," or at least ten weeks after a child feels the pain¹⁴ of the procedure¹⁵ and for several weeks after children can survive outside the womb.

Compare that to Florida, which enacted a 15-week limit that took effect mid-year, yet still reported that 8 children were born alive in 2022.¹⁶ Ideally, the 15-week law should bring this number to zero in 2023 because virtually no abortions are being performed after 15 weeks' gestation. But if it does occur, Florida health officials should know

⁴ https://sbaproflife.org/wp-content/uploads/2023/01/Born-Alive_SBA-Pro-Life-America-score-letter.pdf; <https://lozierinstitute.org/questions-and-answers-on-born-alive-abortion-survivors/>

⁵ https://www.cdc.gov/nchs/health_policy/mortality-records-mentioning-termination-of-pregnancy.htm

⁶ <https://sbaproflife.org/home/sba-list-urges-investigation-of-potential-illegal-partial-birth-abortions-infanticide-at-d-c-facilit>

⁷ <https://www.youtube.com/watch?v=S2pccwibRo4>

⁸ <https://www.sba-list.org/suzy-b-blog/kermit-gosnell-trial-abortion-house-horrors>

⁹ U.S. Senate, Committee on the Judiciary. Feb. 11, 2020. https://www.youtube.com/watch?v=40FQ_o6mcFo

¹⁰ U.S. House, Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties. June 4, 2019.

<https://www.youtube.com/watch?v=UdAtHIGZfZc>

¹¹ U.S. House, Judiciary Committee, Subcommittee on the Constitution and Civil Justice. Sept. 23, 2016.

<https://www.youtube.com/watch?v=uLzwbNVpGjY>

¹² <https://www.foxnews.com/politics/democrats-vote-against-bill-requiring-medical-care-babies-born-alive-abortion-attempt>

¹³ <https://lozierinstitute.org/fetal-development/weeks-19-20/>

¹⁴ <https://lozierinstitute.org/fetal-development/weeks-15-16/>

¹⁵ <https://lozierinstitute.org/questions-and-answers-on-late-term-abortion/>

¹⁶ https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/Reports.shtml

about it and investigate for evidence of lawbreaking. HB 1795 would gather similar information in Virginia and create an enforcement mechanism to discipline a healthcare professional who refuses to follow the law.

The fact of babies surviving late-term abortions is acknowledged in existing Virginia law, which requires “measures of life support” be “available and utilized” if there is evidence of viability during a third-trimester abortion.¹⁷ But no such protection is afforded to babies aborted in the second trimester, even though Neonatal Intensive Care Units (NICUs) treat and save babies at 21-22 weeks’ gestation.¹⁸ Furthermore, the law does not contain an enforcement mechanism, leaving it vulnerable to the same weaknesses as the federal born-alive law.

Virginia law is based on outdated information and the demands of court cases that have been reversed.¹⁹ HB 1975 mandates lifesaving care for a baby born-alive regardless of an arbitrary trimester distinction and collects data on the frequency of what one abortionist called “the dreaded complication” – a baby born alive.²⁰ As long as Virginia law permits late-term abortions, it is inevitable that there will be children who survive these procedures and need lifesaving medical care. State laws must ensure they get it.

Americans support born-alive protections.

Polling conducted by McLaughlin & Associates on behalf of SBA Pro-life America found that 77% of Americans support this legislation, including 70% of Democrats and 75% of Independents.²¹ All Americans should be able to agree that at a minimum, that babies born alive deserve protection and appropriate medical care. State laws like HB 1795 have the public’s support. It is critical that Virginia protects these vulnerable born-alive infants and stands firmly against infanticide by enacting HB 1795.

Submitted on behalf of Susan B. Anthony Pro-Life America.

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Susan B. Anthony Pro-Life America is a network of more than one million pro-life Americans nationwide, dedicated to ending abortion by electing national leaders and advocating for laws that save lives, with a special calling to promote pro-life women leaders.

¹⁷ <https://law.lis.virginia.gov/vacode/title18.2/chapter4/section18.2-74/>

¹⁸ <https://lozierinstitute.org/dive-deeper/saving-extremely-premature-babies/>

¹⁹ Most states have rejected the trimester framework, which was created in law under *Roe v. Wade* and replaced with “viability” two decades later in *Planned Parenthood v. Casey*. States increasingly use development-based benchmarks like heartbeat and pain-capability to enact laws based on gestational age. <https://sbapro-life.org/lifesavinglaws>

²⁰ <https://www.govinfo.gov/content/pkg/GPO-CHRG-OCONNOR/pdf/GPO-CHRG-OCONNOR-5-5.pdf>

²¹ <https://www.sba-list.org/polling#born-alive>