

BORN-ALIVE INFANTS PROTECTION ACT OF 2000

SEPTEMBER 11, 2000.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 4292]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4292) to protect infants who are born alive, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

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 changes in the legal and cultural landscape have brought this well-settled principle into question.

In *Stenberg v. Carhart*,¹ for example, 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.

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 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*,² 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. 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 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."³

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 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 in-

¹ 120 S. Ct. 2597 (2000).

² 220 F.3d 127 (3rd Cir. 2000).

³ *Id.* at 143.

fant before killing the infant or leaving the infant 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 of the Committee on the Judiciary indicates that this is, in fact, already occurring. According to eyewitness accounts, “induced-labor” or “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.

H.R. 4292, the Born-Alive Infants Protection Act of 2000, was designed to repudiate the pernicious and destructive ideas that have brought the born-alive rule into question, and to firmly establish that, for purposes of Federal law, an infant who is completely expelled or extracted from his or 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. H.R. 4292 accomplishes this by providing that, for purposes of Federal law, “the words ‘person,’ ‘human being,’ ‘child,’ and ‘individual,’ shall include every infant member of the species homo sapiens who is born alive at any stage of development.”

BACKGROUND AND NEED FOR THE LEGISLATION

I. EROSION OF LEGAL RIGHTS OF BORN-ALIVE INFANTS

It has long been accepted as a legal principle that infants who are born alive are persons who are entitled to the protections of the law, and that a live birth occurs whenever an infant, at any stage of development, is expelled from the mother’s body and displays any of several specific signs of life—breathing, a heartbeat, 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 Federal courts have recognized the principle in interpreting Federal criminal laws. Recent changes in the legal and cultural landscape appear, however, to have brought this well-settled principle into question.

A. *The Supreme Court’s Recent Partial-Birth Abortion Decision Erodes the Born-Alive Principle and Creates Confusion Regarding Infanticide and the Legal Status of Abortion Survivors*

On June 28, 2000, in *Stenberg v. Carhart*,⁴ the United States Supreme Court struck down a Nebraska law banning partial-birth abortion, a procedure in which an abortionist dilates a pregnant woman’s cervix, delivers the 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. It is a matter of public record that this grisly abortion procedure is extremely painful to the child, is never medically necessary to preserve the life or health of the mother, and indeed is dangerous to women who undergo it. In the words

⁴ 120 S. Ct. 2597 (2000).

of the American Medical Association, partial-birth abortion is “not medically indicated” in any situation and is “not good medicine.”⁵

Notwithstanding the compelling record against partial-birth abortion, the *Carhart* Court held that the abortion right created in *Roe v. Wade* encompasses the right to partial-birth abortion. That is, what was described in *Roe v. Wade* as a right to abort “unborn children” has now been extended by the Court to include the brutal killing of *partially-born* children just inches from birth. The *Carhart* Court based its conclusion on claims by abortionists that partially delivering an infant before killing it is safer for the mother because it requires less “instrumentation” in the birth canal and reduces the risk of complications from “retained fetal body parts.”⁶ As discussed below, these same claims would support an abortionist’s argument that *fully* delivering an infant before killing it is safer for the mother and is, therefore, constitutionally protected.

The *Carhart* Court thus thwarted Nebraska’s efforts (and the efforts of numerous other States) to, in the words of Justice Thomas in dissent, “prohibit[] a procedure that approaches infanticide, and thereby dehumanizes the fetus and trivializes human life.”⁷ The result of the Court’s decision, as Justice Scalia noted in dissent, “is to give live-birth abortion free rein,” and to endorse the absurd notion that “the Constitution of the United States, designed, among other things, ‘to establish Justice, insure domestic Tranquility, . . . and secure the Blessings of Liberty to ourselves and our Posterity,’ prohibits the States from simply banning this visibly brutal means of eliminating our half-born posterity.”⁸

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. (Indeed, two members of the majority, Justices Stevens and Ginsburg, went so far as to say that it was “irrational” for the Nebraska legislature to take the location of the infant at the point of death into account.⁹) 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.

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*,¹⁰ 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 “irra-

⁵ Letter from P. John Seward, M.D., Executive Vice President, American Medical Association, to U.S. Sen. Rick Santorum (May 19, 1997) (on file with the Subcomm. on the Constitution of the House Comm. on the Judiciary).

⁶ See *Carhart*, 120 S. Ct. at 2608–10.

⁷ *Carhart*, 120 S. Ct. at 2649 (Thomas, J., dissenting). Justice Thomas noted that “[t]he AMA has recognized that this procedure is ‘ethically different from other destructive abortion techniques because the fetus, normally twenty weeks or longer in gestation, is killed outside the womb. The ‘partial birth’ gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body.’” *Id.* (quoting AMA Board of Trustees Factsheet on H.R. 1122 (June 1997), in App. to Brief for Association of American Physicians and Surgeons *et al.* as Amici Curiae 1).

⁸ *Id.* at 2621 (Scalia, J., dissenting).

⁹ See *id.* at 2617 (Stevens, J., concurring) (stating that “the notion that [partial-birth abortion] is more akin to infanticide than [any other abortion procedure] . . . is simply irrational”).

¹⁰ 220 F.3d 127 (3rd Cir. 2000).

tional 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.¹¹

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. 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.”¹²

The logical implications of *Carhart* and *Farmer* are both obvious and disturbing. If the right to abortion entails the right to kill without regard to whether the child remains in the mother’s womb, and a child’s entitlement to the protections of the law depends upon whether or not the child’s mother intends to abort the child or give birth, it follows that infants who are marked for abortion but somehow survive and are born alive have no legal rights under the law—no right to receive medical care, to be sustained in life, or receive any care at all.

Indeed, that is precisely where the abortion right has taken the law in South Africa. Under guidelines promulgated by the South African Department of Health, babies who survive abortions are to be left to die even if they are gasping for breath and struggling to survive.¹³ The guidelines state that “if an infant is born who gasps for breath, it is advised that the foetus does not receive any resuscitation measures.”¹⁴ Many doctors and nurses in South Africa have expressed outrage at the guidelines. One female physician in KwaZulu-Natal said that “[i]t is inhuman and against all my principles. . . . No way will I stand by and do nothing to resuscitate a child. It is impossible and we should not be put in such a position.”¹⁵

A debate over this same issue is also currently taking place in Australia. Some medical experts contend that babies who survive abortions have the right to medical attention from a physician, just as the elderly and terminally ill do.¹⁶ Other experts contend that abortion survivors should not receive medical attention.¹⁷ For example, the chairman of Family Planning Australia, Gab Kovacs, contends that babies who survive abortions “should be left to succumb in peace, on a cot in a back room, for example.”¹⁸

Moreover, if, under *Carhart* and *Farmer*, a child who survives an abortion and is born alive is not entitled to the protections of the law simply because the child’s mother did not intend to give birth, then there is no basis—other than what the Third Circuit in *Farmer* dismissed as “semantic machinations” and “irrational line-drawing” based on the infant’s “born” or “unborn” status—upon which the government may prohibit an abortionist from *completely* deliv-

¹¹ See *id.* at 143–44.

¹² *Id.* at 143.

¹³ See Angella Johnson, *Abortion babies ‘should be left to die’*, Africa News Service, Mar. 3, 1997.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Victoria Button, *Experts Divided on Foetus Protocols*, The Age, Apr. 12, 2000.

¹⁷ See *id.*

¹⁸ *Id.*

ering an infant before killing the infant or leaving the infant to die. Under the logic of these decisions, if a woman decides to abort her unborn child, and the abortionist decides that the health risks to the woman are reduced by his *not* stabbing the child in the back of the skull in order to kill the child before completing delivery—the risk reduction occurring because surgical instruments would not be inserted into the birth canal—the abortionist may simply completely deliver the child before killing the child. The right to abortion created in *Roe* thus appears to encompass, at least under the logic of *Carhart* and *Farmer*, the right to infanticide.

B. The “Viability” Doctrine in the Supreme Court’s Abortion Jurisprudence Has Eroded the Born-Alive Principle and Created Confusion Regarding the Legal Status of Premature Infants Who Survive Abortions

The “viability” doctrine in the Supreme Court’s decisions in *Planned Parenthood v. Casey*¹⁹ and *Carhart* has also created confusion regarding the legal status of premature infants who survive abortions but have little or no chance of sustained survival. In *Casey* the Court 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 child’s capacity for sustained survival independent of the mother, with or without medical assistance. The *Carhart* Court also relied upon the viability doctrine in striking down Nebraska’s partial-birth abortion ban.

The Court’s reliance upon the viability concept in the abortion context appears to have caused some to wrongly conclude that premature infants who survive abortions are not legally-protected persons if they have little or no chance of sustained survival. Indeed, that appears to be the position of opponents of H.R. 4292. On July 20, 2000, for example, the National Abortion and Reproductive Rights Action League (“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*.²⁰ According to NARAL, by seeking to provide legal rights to born-alive infants “at any stage of development,” including those not yet considered to have achieved “viability,” the proponents of H.R. 4292 are “directly contradicting one of *Roe*’s basic tenets.”²¹ It will come as a surprise to many that one of *Roe*’s “basic tenets” is that a premature baby who is marked for abortion, but somehow survives and is born alive, is not a person that the law may protect.

Rep. Stephanie Tubbs Jones took a similar position in her testimony on H.R. 4292 before the Subcommittee on the Constitution. According to Rep. Jones, providing legal personhood to premature infants who survive abortions “is an attempt to do what the U.S. Supreme Court has strictly forbidden over and over—it unduly re-

¹⁹505 U.S. 833 (1992).

²⁰NARAL Statement: *Roe v. Wade Faces Renewed Assault in the House, Anti-Choice Lawmakers Hold Hearing on So-Called “Born-Alive Infants Protection Act*, July 20, 2000 (on file with the Subcomm. on the Constitution of the House Comm. on the Judiciary).

²¹*Id.*

stricts a woman's right to terminate a pregnancy.”²² H.R. 4292 unduly restricts a woman's right to choose, Rep. Jones contends, by extending protection to fully born, premature infants in “direct contravention of *Roe v. Wade* and subsequent Supreme Court rulings.”²³

The question of whether a live birth has occurred does not, however, depend upon whether an infant is sufficiently developed for sustained survival. The definition of “born alive” contained in H.R. 4292 was derived from a model definition of “live birth” that was promulgated by the World Health Organization in 1950 and is, with minor variations, currently codified in 30 States and the District of Columbia.²⁴ The Illinois statute provides a model of this definition:

Live birth means the complete expulsion or extraction from its mother of a product of human conception, *irrespective of the duration of pregnancy*, which after such separation breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.²⁵

Pennsylvania's statute includes a similar but somewhat broader definition: “Live birth means the expulsion or extraction from its mother of a product of conception, irrespective of the period of gestation, which shows any evidence of life at any moment after expulsion or extraction.”²⁶

The reason these statutes do not define a live birth as dependent upon the infant's gestational age is fairly obvious. Many infants are born alive at 20 to 22 weeks and survive for hours, even though their lung capacity typically does not permit sustained survival. Under the prevailing standards of medical care, such infants are understood to be born-alive persons and are treated as such, even though they may only live for a short time. They are, for example, treated humanely, given comfort care, and issued a death certificate. And an individual could not escape criminal prosecution for entering a neonatal intensive care unit and murdering one of these infants simply because the infant will only survive for a short time.

Many infants are also born-alive at 23 weeks, and currently have a 39% chance of sustained survival, and at 24 weeks with a greater than 50% chance of sustained survival, with the odds improving all of the time. Determining whether any given one of these children should be treated as a born-alive person, on the basis of his or her

²² *Born-Alive Infants Protection Act: Hearings on H.R. 4292 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong., July 20, 2000 (statement of Rep. Stephanie Tubbs Jones).

²³ *Id.*

²⁴ See Alaska Stat. § 18.50.950; Ariz. Rev. Stat. Ann. § 36-301; 17 Ca. Adc. § 915; Fla. Stat. Ann. § 382.002; Ga. Code Ann. § 31-10-1; Haw. Rev. Stat. § 338-1; Idaho Code § 39-241; Ill. Ann. Stat. Ch. 420, para. 535; Kan. Stat. Ann. § 65-2401; Ky. Rev. Stat. Ann. § 213.011; Me. Rev. Stat. Ann. tit. 22, § 1595; Md. Code Ann., Health-Gen. § 4-201; Mo. Rev. Stat. § 193.015; N.J. Stat. Ann. § 26:8-1; N.M. Stat. Ann. § 24-14-2; N.Y. Pub. Health Law § 4130; N.D. Cent. Code § 23-02.1-01; Ohio Rev. Code Ann. § 3705.01; Okla. Stat. Ann. tit. 63, § 1-301; Or. Rev. Stat. § 432.005; R. I. Gen. Laws § 23-3-1; S.D. Codified Laws Ann. § 34-25-1.1; Tenn. Code Ann. § 68-3-102; Va. Code Ann. § 32.1-249; W. Va. Code § 16-5-1; Wyo. Stat. § 35-1-401; D.C. Code § 6-201(9); Minn. R. 4600.0100(Subp. 4); N.C. Admin. Code tit. 15A, r. 19H.0102(5); S.C. Admin. Code § 61-19(1)(f); 25 Tex. Admin. Code § 181.1(16).

²⁵ Ill. Ann. Stat. ch. 420, para. 535 (emphasis added).

²⁶ 35 Pa. Const. Stat. § 450.105.

ultimate viability, could only be accomplished retrospectively, by looking at whether the child actually survived. The law has avoided this conundrum by defining a live birth without regard to the gestational age of the child.

C. Princeton University Bioethicist Peter Singer Advocates Legal Killing of Disabled or Unhealthy Newborn Infants

The principle that born-alive infants are entitled to the protection of the law is also being questioned at one of America's most prestigious universities. In his book *Practical Ethics*, 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 contention 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."

II. EVIDENCE OF THE MORAL AND LEGAL CONFUSION REGARDING THE STATUS OF LIVE-BORN INFANTS

A. "Live-Birth" Abortions

The legal and moral confusion that flows from these pernicious ideas is well illustrated by disturbing events that are reported to have occurred at Christ Hospital in Oak Lawn, Illinois. Two nurses from the hospital's delivery ward, Jill Stanek and Allison Baker (who is no longer employed by the hospital), testified before the Subcommittee on the Constitution that physicians at Christ Hospital have performed numerous "induced labor" or "live-birth" abortions, a procedure in which physicians use drugs to induce premature labor and deliver unborn children, many of whom are still alive, and then simply allow those who are born alive to die.²⁷

According to medical experts, this procedure is appropriately used only in situations in which an unborn child has a fatal deformity, such as anencephaly or lack of a brain, and infants with such conditions who are born alive are given comfort care (including warmth and nutrition) until they die, which, because of the fatal deformity, is typically within a day or two of birth. According to the testimony of Mrs. Stanek and Mrs. Baker, however, physicians at Christ Hospital have used the procedure to abort healthy infants and infants with non-fatal deformities such as spina bifida and Down Syndrome.²⁸ Many of these babies have lived for hours after birth, with no efforts made to determine if any of them could have survived with appropriate medical assistance.²⁹ The nurses

²⁷ See *Born-Alive Infants Protection Act: Hearings on H.R. 4292 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong., July 20, 2000 (statement of Jill L. Stanek, R.N.); *Born-Alive Infants Protection Act: Hearings on H.R. 4292 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong., July 20, 2000 (statement of Allison Baker, R.N., B.S.N.).

²⁸ See Statement of Jill L. Stanek, R.N., *supra*; Statement of Allison Baker, R.N., B.S.N., *supra*.

²⁹ See Statement of Jill L. Stanek, R.N., *supra*; Statement of Allison Baker, R.N., B.S.N., *supra*.

also witnessed hospital staff taking many of these live-born babies into a “soiled utility room” where the babies would remain until death.³⁰ Comfort care, the nurses say, was not provided consistently.³¹

Ms. Stanek testified regarding numerous live-birth abortions that she alleges have occurred at Christ Hospital. The first she described as follows:

One night, a nursing co-worker was taking an aborted Down’s Syndrome baby who was born alive to our Soiled Utility Room because his parents did not want to hold him, and she did not have time to hold him. I could not bear the thought of this suffering child dying alone in a Soiled Utility Room, so I cradled and rocked him for the 45 minutes that he lived. He was 21 to 22 weeks old, weighed about ½ pound, and was about 10 inches long. He was too weak to move very much, expending any energy he had trying to breathe. Toward the end he was so quiet that I couldn’t tell if he was still alive unless I held him up to the light to see if his heart was still beating through his chest wall. After he was pronounced dead, we folded his little arms across his chest, wrapped him in a tiny shroud, and carried him to the hospital morgue where all of our dead patients are taken.³²

Mrs. Stanek testified about another aborted baby who was thought to have had spina bifida, but was delivered with an intact spine.³³ On another occasion, an aborted baby “was left to die on the counter of the Soiled Utility Room wrapped in a disposable towel. This baby was accidentally thrown in the garbage, and when they later were going through the trash to find the baby, the baby fell out of the towel and on to the floor.”³⁴ Mrs. Stanek further testified regarding a live-birth abortion that was performed on a healthy infant at more than 23 weeks gestation, a stage of development at which premature infants have an almost 40% chance of survival.³⁵ According to Mrs. Stanek,

[t]he baby was born alive. If the mother had wanted everything done for her baby, there would have been a neonatologist, pediatric resident, neonatal nurse, and respiratory therapist present for the delivery, and the baby would have been taken to our Neonatal Intensive Care Unit for specialized care. Instead, the only personnel present for this delivery were an obstetrical resident and my co-worker. After delivery the baby, who showed early signs of thriving, was merely wrapped in a blanket and kept in the Labor & Delivery Department until she died 2½ hours later.³⁶

Mrs. Baker testified regarding three live-birth abortions she witnessed at the hospital. According to Mrs. Baker, she was informed

³⁰ See Statement of Jill L. Stanek, R.N., *supra*; Statement of Allison Baker, R.N., B.S.N., *supra*.

³¹ See Statement of Jill L. Stanek, R.N., *supra*; Statement of Allison Baker, R.N., B.S.N., *supra*.

³² Statement of Jill L. Stanek, R.N., *supra*.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

about the live-birth abortions, described by the hospital as “therapeutic abortions,” when she began working in the high risk labor and delivery unit at the hospital in August 1998. She described her first encounter with this procedure as follows:

The first occurred on a day shift. I happened to walk into a “soiled utility room” and saw, lying on the metal counter, a fetus, naked, exposed and breathing, moving its arms and legs. The fetus was visibly alive, and was gasping for breath. I left to find the nurse who was caring for the patient and this fetus. When I asked her about the fetus, she said that she was so busy with the mother that she didn’t have time to wrap and place the fetus in a warmer, and she asked if I would do that for her. Later I found out that the fetus was 22 weeks old, and had undergone a therapeutic abortion because it had been diagnosed with Down’s Syndrome. I did wrap the fetus and place him in a warmer and for 2½ hours he maintained a heartbeat, and then finally expired.³⁷

The second induced labor abortion Mrs. Baker witnessed involved a 20 week-old fetus with spina bifida who was born alive. According to Mrs. Baker,

[d]uring the time the fetus was alive, the patient kept asking me when the fetus would die. For an hour and 45 minutes the fetus maintained a heartbeat. The parents were frustrated, and obviously not prepared for this long period of time. Since I was the nurse of both the mother and the fetus, I held the fetus in my arms until it finally expired.³⁸

The third incident witnessed by Mrs. Baker involved a 16 week-old fetus with Down’s Syndrome. “Again,” Mrs. Baker testified, “I walked into the soiled utility room and the fetus was fully exposed, lying on the baby scale.”³⁹ Mrs. Baker then found the nurse who was caring for the mother and the baby and offered her assistance. “When I went back into the soiled utility room,” Mrs. Baker said, “the fetus was moving its arms and legs. I then listened for a heartbeat, and found that the fetus was still alive. I wrapped the fetus and in 45 minutes the fetus finally expired.”⁴⁰

When allegations such as these were first made against Christ Hospital, the hospital claimed that this procedure was only used “when doctors determine the fetus has serious problems, such as lack of a brain, that would prevent long-term survival.”⁴¹ Later, however, the hospital changed its position, announcing that although it had performed live-birth abortions on infants with non-fatal birth defects, it was changing its policy and would henceforth use the procedure to abort only fatally-deformed infants.⁴²

³⁷ Statement of Allison Baker, R.N., B.S.N., *supra*.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Jeremy Manier, *Rare Abortions by Induced Labor Probed by State*, Chicago Tribune, Sept. 29, 1999.

⁴² See Jeremy Manier, *Christ Hospital, Network to Allow Fewer Abortions*, Chicago Tribune, Oct. 14, 1999.

B. Confusion Regarding the Status of Abortion Survivors

The confusion regarding the status of abortion survivors is reflected in events that happened last year in Cincinnati, Ohio. A young woman learned she was pregnant and sought assistance at the clinic of the abortionist Dr. Martin Haskell, inventor of one variation of the partial-birth abortion procedure.⁴³ Dr. Haskell performed the first step of the partial-birth abortion procedure—dilating the woman’s cervix—and she was to return the next day. The next morning the woman began experiencing severe abdominal pains and reported to the emergency room of Bethesda North Medical Center in Cincinnati. While she was being examined, the young woman gave birth to a baby girl.⁴⁴ The attending physician placed the baby in a specimen dish—like any other substance that is removed from the body—to be taken to the lab by a medical technician. When the technician, Shelly Lowe, saw the baby girl in the dish she was stunned when she saw the girl gasping for air. “I don’t think I can do that,” Ms. Lowe reportedly said. “This baby is alive.”⁴⁵

After doctors concluded that the baby was too premature to survive (by some estimates she was born at 22 weeks, although some members of the hospital staff believed she was older), Ms. Lowe held the baby, whom she named “Baby Hope,” wrapping her in a blanket and singing to her as she stroked her cheeks, until the child died. Ms. Lowe said: “I wanted her to feel that she was wanted. . . . She was a perfectly formed newborn, entering the world too soon through no choice of her own.”⁴⁶ Surprisingly, Baby Hope lived for 3 hours, without the benefit of an incubator or other intensive care, and breathing room air, but her condition was not reassessed by the physicians.⁴⁷ And although it is impossible to determine at this point whether a reassessment would have made any difference in Baby Hope’s ultimate survival, the lack of any such reassessment, coupled with the attending physician’s initial placement of then-breathing Baby Hope in a specimen dish, at least raises serious questions as to whether a similarly-situated infant who *was* wanted by her mother would have received the same treatment.

Confusion regarding the legal status of abortion survivors is not a problem only in the United States. Evidence of this confusion can be further illustrated by events that occurred in Professor Peter Singer’s native country of Australia. On April 10, 2000, in Sydney, Australia, a Coroners Court heard testimony regarding a baby who survived an abortion in 1998 and lived for 80 minutes while hospital staff waited for the baby to die.⁴⁸ When the midwife nurse called the abortion doctor (who was not present) to inform him that the baby had survived, he responded, “So?”⁴⁹ The nurse then did what she could to make the baby comfortable, covering her with a

⁴³ See *Finger-pointing follows Baby Hope*, Cincinnati Post, Apr. 22, 1999, at 15A.

⁴⁴ See *id.*; see also Mona Charen, *Baby Hope*, Washington Times, May 17, 1999.

⁴⁵ Mona Charen, *Baby Hope, Part 2*, Washington Times, May 24, 1999.

⁴⁶ Mona Charen, *Baby Hope*, Washington Times, May 17, 1999.

⁴⁷ See *id.*

⁴⁸ See *Australian Baby Lives 80 Minutes After Abortion*, Sydney Morning Herald, Apr. 10, 2000.

⁴⁹ *Id.*

blanket to keep her warm until her breathing and heartbeat slowed and she died.⁵⁰

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 and babies like her being perceived as anything less than a complete human being.”⁵¹ 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.”⁵²

A similar incident occurred in Germany in 1998.⁵³ In that case, an infant survived an abortion attempt at 25 weeks gestation. The doctors who attempted to abort the baby left it wrapped in a blanket for 10 hours “under observation” but without any medical assistance. The doctors then consulted with the parents and decided to provide the baby medical assistance. The infant survived, but was severely damaged and has had several operations. The German government brought charges against the physicians.

III. THE BORN-ALIVE INFANTS PROTECTION ACT

H.R. 4292, the Born-Alive Infants Protection Act of 2000, was designed to repudiate the pernicious and destructive ideas that have brought the born-alive rule into question, and to firmly establish that, for purposes of Federal law, an infant who is completely expelled or extracted from the 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. H.R. 4292 accomplishes this by providing that, for purposes of Federal law, “the words ‘person,’ ‘human being,’ ‘child,’ and ‘individual,’ shall include every infant member of the species *homo sapiens* who is born alive at any stage of development.” The term “born alive” is defined as

the complete expulsion or extraction from its mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of the voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

As stated above, this definition of “born alive” was derived from a model definition of “live birth” that has been adopted, with minor variations, in 30 States and the District of Columbia.⁵⁴

⁵⁰ See *id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See Andrew Gimson, *Outrage as baby survives abortion*, Daily Telegraph, London, Jan. 8, 1998.

⁵⁴ See discussion, *supra*, p. 7.

H.R. 4292 draws a bright line between the right to abortion—which the Supreme Court has now said includes the right to kill partially-born children—and infanticide, or the killing or criminal neglect of completely born children. The bill reaffirms that a born-alive infant’s legal status under Federal law does not depend upon the infant’s gestational age or whether the infant’s birth occurred as a result of natural or induced labor, cesarean section, or induced abortion. If, for example, an infant is born alive at a Federal hospital as a result of a failed abortion attempt, this bill makes clear that the attending physicians and other medical professionals should treat the infant just as they would treat a similarly-situated infant who was born as a result of natural labor.

H.R. 4292 thus affirms that, as Professor Hadley Arkes of Amherst College testified before the Subcommittee on the Constitution, every child who is born alive “has an *intrinsic* dignity, which must in turn be the source of rights of an intrinsic dignity, which cannot depend then on the interests or convenience of anyone else.”⁵⁵ The bill makes clear that a child’s legal status does not depend upon whether anyone happens to want the child.

The protections afforded newborn infants under H.R. 4292 for purposes of Federal law are consistent with the statutory protections afforded those infants under the laws of the 30 States and the District of Columbia that define a “live birth” in virtually identical terms. Like those laws, H.R. 4292 would not mandate medical treatment where none is currently indicated. 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 the legal status of the patient. That is, the standard of medical care applicable in a given situation involving a premature infant is not determined by asking whether that infant is a person. 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, only that providing treatment in those circumstances is not warranted under the applicable standard of medical care. H.R. 4292 would not affect the applicable standard of care, but would only insure that all born-alive infants—regardless of their age and regardless of the circumstances of their birth—are treated as persons for purposes of Federal law.

IV. CONGRESSIONAL AUTHORITY TO ENACT H.R. 4292

H.R. 4292 is exclusively a definitional provision, identical in structure and function to the immediately preceding provision of the United States Code. That provision, 1 U.S.C. §7, defines “marriage” and “spouse” for the purpose of construing “any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus of the United States.” H.R. 4292 defines the words “person,” “human being,” “child,” and “individual” for identical purposes.

H.R. 4292 does not, therefore, articulate any new substantive rule of law. Thus, as Professor Gerard V. Bradley of Notre Dame Law School testified before the Subcommittee on the Constitution, H.R. 4292 “does not call for an as-yet-unarticulated constitutional

⁵⁵ *Born-Alive Infants Protection Act: Hearings on H.R. 4292 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong., July 20, 2000 (statement of Professor Hadley Arkes, Amherst College),

basis for lawmaking.”⁵⁶ If the Federal law using the word “person,” “human being,” “child,” or “individual,” rests upon a proper enumerated basis, then no *additional* question about enumerated power is raised by Congress’ clarification of what that term means.⁵⁷ For, *if* Congress has the power to count “persons,” to protect “persons” against assault, to grant tax exemptions for all dependent “children,” or to take some other action with regard to “human beings” or “individuals,” that power necessarily implies the authority to provide a definition of “persons,” “children,” and “individuals.” Congress also has the authority to define these terms under the Necessary and Proper Clause of Article 1, section 8 of the Constitution.

HEARINGS

The committee’s Subcommittee on the Constitution held 1 day of hearings on H.R. 4292 on July 20, 2000. Testimony was received from several witnesses: Hadley Arkes, Edward Ney Professor of Jurisprudence and American Institutions, Amherst College; Allison Baker, Charlottesville, Virginia; Jill L. Stanek, Mokena, Illinois; Matthew G. Hile, Ph.D., St. Louis, Missouri; Gianna Jessen, Franklin, Tennessee; Honorable Stephanie Tubbs Jones (D–OH); Kenneth Thomas, Legislative Attorney, American Law Division, Congressional Research Service, The Library of Congress; Gerard V. Bradley, Professor of Law, Notre Dame Law School; F. Sessions Cole, M.D., Professor of Pediatrics and Cell Biology and Physiology, Washington University School of Medicine, St. Louis, Missouri; Watson A. Bowes, Jr., M.D., Professor Emeritus, Department of Obstetrics and Gynecology, University of North Carolina at Chapel Hill School of Medicine; and Robert P. George, McCormick Professor of Jurisprudence, Department of Politics, Princeton University.

COMMITTEE CONSIDERATION

On July, 26, 2000, the committee met in open session and ordered favorably reported the bill H.R. 4292, without amendment, by a recorded vote of 22 to 1, a quorum being present.

VOTE OF THE COMMITTEE

Motion to report H.R. 4292, the “Born-Alive Infants Protection Act of 2000.” By a rollcall vote of 22 yeas to 1 nay, the motion was agreed to.

ROLLCALL

	Ayes	Nays	Present
Mr. Sensenbrenner			
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (TX)			
Mr. Gallegly			

⁵⁶ See *Born-Alive Infants Protection Act: Hearings on H.R. 4292 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong., July 20, 2000 (statement of Professor Gerard V. Bradley, Notre Dame Law School).

⁵⁷ *Id.*

ROLLCALL—Continued

	Ayes	Nays	Present
Mr. Canady	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins			
Mr. Hutchinson	X		
Mr. Pease			
Mr. Cannon	X		
Mr. Rogan	X		
Mr. Graham			
Ms. Bono	X		
Mr. Bachus	X		
Mr. Scarborough			
Mr. Vitter	X		
Mr. Conyers	X		
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Rothman	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Hyde, Chairman	X		
Total	22	1	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 4292, the following estimate and comparison prepared

by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 22, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4292, the Born-Alive Infants Protection Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 4292—Born-Alive Infants Protection Act of 2000.

H.R. 4292 would amend the United States Code by expanding the definition of the words “person, human being, child, and individual” as they are used in any act of the Congress or any administrative ruling, regulation, or interpretation. Under the bill, such words would be defined to include every infant born alive at any stage of development. The bill also would define the term “born alive.”

The interests of those who are born alive are recognized most commonly in the areas of tort law, trust and estate law, and criminal law. Because the words “person, human being, child, and individual” are used frequently throughout the United States Code, CBO cannot determine how the new definitions could be interpreted in all situations. However, CBO assumes that the bill would have no effect on federal tort law or trust and estate law. In the area of criminal law, CBO expects that the circumstances under which the new definitions could be used to bring lawsuits in federal court are very limited. Therefore, we estimate that the effect of H.R. 4292 on the federal budget would be negligible.

Anyone prosecuted and convicted under H.R. 4292 could be subject to criminal fines. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. Because H.R. 4292 could affect direct spending and receipts, pay-as-you-go procedures would apply. CBO expects, however, that any additional receipts and direct spending would be negligible because it is not likely that the federal government would pursue many cases under this bill.

Because definition changes in this bill would affect such a large number of citations in the United States Code, CBO cannot determine with certainty whether those changes might impose new enforceable duties on state, local, and tribal governments or the private sector. CBO has identified no such instances, however, and be-

lieves that it is unlikely that H.R. 4292 would impose new federal mandates as defined by the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Lisa Cash Driskill, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8, clause 18 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title. This section provides that the title of the act is the Born-Alive Infants Protection Act of 2000.

Section 2. Definition of Born-Alive Infant. This section inserts into Chapter 1 of title 1 of the United States Code a new section 8, defining “person,” “human being,” “child,” and “individual” as including born-alive infants. Section 8(a) provides that in determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words “person,” “human being,” “child,” and “individual,” shall include every infant member of the species homo sapiens who is born alive at any stage of development.

Section 8(b) provides that the term “born-alive,” with respect to any member of the species homo sapiens, means the complete expulsion or extraction of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

CHAPTER 1 OF TITLE 1, UNITED STATES CODE

CHAPTER 1—RULES OF CONSTRUCTION

Sec.

1. Words denoting number, gender, etc.

* * * * *

8. “Person”, “human being”, “child”, and “individual” as including born-alive infant.

* * * * *

§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 interpretation of the various administrative bureaus and agencies of the United States, the words “person”, “human being”, “child”, and “individual”, shall include every infant member of the species homo sapiens who is born alive at any stage of development.

(b) As used in this section, the term “born alive”, with respect to a member of the species homo sapiens, means the complete expulsion or extraction from its mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

ADDITIONAL VIEWS

While H.R. 4292 was reported favorably out of the Judiciary Committee, I wish to make clear that support for this bill hinges on a critical assumption: that H.R. 4292 merely restates existing law. Because this assumption is based primarily upon the assertions of the bill's sponsor rather than on the clear language of the bill itself or supporting legal analysis, I have expressed three primary concerns with respect to the bill.

First, the bill was rushed through the committee process, without a subcommittee mark-up and without the benefit of a thorough assessment of the nature and scope of the bill's impact on Federal law. This point is especially troublesome in light of the legislation's breadth. H.R. 4292 is not a bill narrowly tailored to meet its purported objectives. Indeed, H.R. 4292 would change, in every Federal law, rule or regulation, the definition of the terms "person," "human being," "child," and "individual" to include those "born alive" as defined by the bill. Such terms appear in at least 15,000 sections of the United States Code and over 57,000 sections of the Code of Federal Regulations. A comprehensive analysis of the bill's impact on Federal law, therefore, would require significantly more time than permitted by the committee's abbreviated schedule for consideration of the bill. In spite of some hurried, preliminary analyses, many implications of H.R. 4292 remain unknown. Consequently, it seems unwise to proceed so quickly.

Second, H.R. 4292 defines the term "born alive" as the "complete expulsion or extraction *from its mother* of that member [of the species homo sapiens], at any stage of development, who . . . breathes or has a beating heart, pulsation of the umbilical cord, or a definite movement of voluntary muscles. . ." (emphasis added). Because the bill refers to the "complete extraction or expulsion from its mother" rather than the "complete extraction or expulsion from the mother's *body*," it is unclear whether a fetus that has emerged from the uterus but is still completely or partially in the vaginal canal would fall within the bill's ambit. In other words, is it the intent of the bill's sponsors to confer legal rights of personhood on a fetus that is outside the uterus, but not completely outside the body? In order to eliminate this ambiguity and protect the right to abortion, I offered an amendment during full committee mark-up which would have clarified that "born alive" means the complete extraction or expulsion from "the woman's body." A colloquy ensued with Representative Charles Canady (R-FL) who argued that the amendment was unnecessary because the language of the bill was "crystal clear" in requiring complete physical separation from the mother's body in order to be born alive. Satisfied with Mr. Canady's response, the amendment was withdrawn. It is my understanding, therefore, as explicitly confirmed by Mr. Canady, the sponsor of H.R. 4292, that a fetus that has been extracted or expelled from

the womb and is still completely or partially in the vaginal canal is *not* a “born alive” member of the species homo sapiens under this bill.

Finally, as reflected through testimony and debate at the subcommittee hearing on H.R. 4292, there is concern that the bill, if passed, would require medical professionals to provide treatment that is not mandated under existing and future applicable standards of care. The majority has assured the minority, both verbally and through written statements, that this is not so. H.R. 4292, therefore, should not affect current and future standards of medical care. Nor should the bill affect the principle that personal, and often agonizing and painful, medical decisions regarding care and treatment of “born-alive” infants should be left to parents and consultation with their physicians. According to the majority, H.R. 4292 will not impose any more stringent obligation, duty, or standard of care than is otherwise applicable under Federal or State law.

JERROLD NADLER

DISSENTING VIEWS

I voted against H.R. 4292, the “Born Alive Infant Protection Act,” at the July 26, 2000 House Judiciary Committee markup because this bill has not been studied in a responsible way before being rushed through the Judiciary Committee.

According to Congressional Research Service, H.R. 4292 would amend some 15,000 provisions of the U.S. Code and 57,000 provisions of the Code of Federal Regulations.¹ Both the Congressional Research Service (CRS) and the Congressional Budget Office (CBO) reviewed the bill. Neither reached a definitive conclusion about what the bill would do. The CRS concluded:

A definitive statutory analysis of the effect of the proposed act would require a review and evaluation of the use of the terms “person,” “human being,” “child,” and “individual” as they appear in all Federal statutes and in agency rulings, regulations, or interpretations. A computer search of these terms reveals that they appear in over 15,000 sections of the United States Code, and in over 57,000 sections of the Code of Federal Regulations. Consequently, an evaluation of the statutory and regulatory impact of the act is beyond the resources of our office.²

The CBO concluded: “Because the words ‘person, human being, child, and individual’ are used frequently throughout the United States Code, CBO cannot determine how the new definitions could be interpreted in all situations.”³

As I understand the bill’s proponents, they intend to codify and reaffirm, not change, the substantive law. The language they have chosen to achieve this goal, however, carries an enormous risk of unintended consequences. As stated by the CBO: “[b]ecause definition changes in this bill would affect such a large number of citations in the United States Code, CBO cannot determine with certainty whether those changes might impose new enforceable duties on State, local, and tribal governments or the private sector.”⁴

These reports certainly do not provide the assurances we should have before reporting a bill to the House. If we took our roles as lawmakers more seriously, we would examine this bill thoroughly to ensure that it serves only the intended symbolic purpose and does not result in unintended consequences.

Given the unanswered questions about the impact of H.R. 4292, the prudent course would have been to work the bill carefully through the committee. While a hearing was held on July 20, 2000, the fact-finding purpose of that hearing was obscured when a

¹ Kenneth Thomas and Jon Shimabukuro, “The Born Alive Infant Protection Act of 2000,” CRS Memorandum, p. 1, fn. 1 (July 18, 2000).

² *Id.*

³ Congressional Budget Office, Cost Estimate: H.R. 4292 (August 22, 2000).

⁴ *Id.*

markup notice was sent prior to the hearing stating that the bill would be marked up on the following day. The bill was marked up on July 21, 2000, and immediately placed on the Full Committee's July 25, 2000 markup calendar. The bill was then voted out of the committee on July 26, 2000. Over four straight working days, the bill was rushed through the subcommittee and the Full Committee, and not one member of the committee has furnished an analysis of how this bill would work alongside the 72,000 laws it amends. It is quite apparent that the Majority considered the political objective much more important than the legislative or substantive objective.

In the end, H.R. 4292 may be the symbolic bill its proponents contend that it is, imposing no unintended results. I am not satisfied that we know enough to draw that conclusion today. The bill's proponents bear the burden of demonstrating that the bill will work its symbolic purpose with no unintended consequences. Because that burden has not been met, I stand on my vote against this bill.

MELVIN L. WATT

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