



April 11, 2019

**Written Testimony of Catherine Glenn Foster, Esq.
President & CEO, Americans United for Life
In support of S.B. 354, the Montana Born-Alive Infant Protection Act
Submitted to the House Judiciary Committee**

Dear Chair Doane and Members of the Committee:

My name is Catherine Glenn Foster, and I serve as President and CEO of Americans United for Life (AUL). Established in 1971, AUL is a national law and policy organization with a specialization in abortion, end-of-life issues, and bioethics law. Our vision at AUL is a nation where everyone is welcomed in life and protected in law. In my practice, I specialize in life-related legislation and constitutional law. I appreciate the opportunity to submit testimony in support of S.B. 354, which would require an abortion practitioner to take all medically appropriate steps to preserve the life of a born-alive infant.

In 2002, the federal Born-Alive Infant Protection Act (BAIPA) became law, clarifying that infants born alive at any stage of development are recognized as persons under federal law. On the Senate floor, Senator Boxer voiced her strong support for the bill, exclaiming, “Who would be more vulnerable than a newborn baby?” She continued, stating that “all of our people deserve protection, from the very tiniest infant to the most elderly among us.”¹ While the federal BAIPA ensures that all infants born alive have equal legal standing regardless of how they are born, it does not ensure life-saving protection. It is still necessary to require an affirmative action by a physician to ensure that an infant born alive after an abortion receives the same level of medical care as any other infant would.

S.B. 354 is more comprehensive than the federal BAIPA, reinforces the legal status provided in the federal version, and expands protections for born-alive infants. S.B. 354 states any viable² born-alive infant may not be denied or deprived of “nourishment with the intent to cause or allow the death of the infant for any reason” or deprived of “medically appropriate and reasonable medical care, medical treatment, or surgical care” by any person. It would also specifically require that an abortion practitioner “take all medically appropriate and reasonable

¹ Congressional Record, S7062-S7064, June 28, 2001.

² The Act states “an infant born alive is presumed to be viable until the health care provider attending the infant’s birth determines otherwise.”

steps to preserve the life and health of a born-alive infant who is viable.” These requirements would ensure all born-alive infants will get the medical care and attention they need to survive.

Additionally, while Montana currently criminalizes “purposely, knowingly, or negligently”³ causing the death of a premature, viable born-alive infant, the Act would bring Montana in line with many other states that go beyond that. At least eighteen states have laws creating a specific affirmative duty for physicians to provide medical care and treatment to born-alive infants at any stage of development.⁴ At least two other states have laws creating a specific affirmative duty for physicians to provide medical care and treatment to born-alive infants after viability.⁵

S.B. 354 is also necessary because the federal BAIPA has limited application. It only extends to hospitals operated by the federal government or which receive federal funding and the hospital’s employees. It would not require private or state-operated clinics and hospitals to provide care or medical attention to born-alive infants. However, the “right” to an abortion does not include the right to kill a live born child, or justify the denial of basic protections for born, living human infants, and S.B. 354 would create the affirmative duty of health care providers to give medically appropriate and reasonable care for the most vulnerable members of the community.

In conclusion, Montana should support S.B. 354, the Montana Born-Alive Infant Protection Act, thereby continuing to uphold its duty to protect the lives of all its citizens, no matter the circumstances in which they were born. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine", written over a large, stylized cursive initial "C".

Catherine Glenn Foster
President & CEO
Americans United for Life

³ Mont. Code Ann. § 50-20-108.

⁴ See e.g., Ala. Code § 26-22-3(c)(5), Ariz. Rev. Stat. Ann. § 36-2301, Ark. Code Ann. § 20-16-604, Cal. Health & Safety Code § 123435, Del. Code Ann. tit. 24 § 1795, Fla. Stat. § 390.0111, 720 Ill. Comp. Stat. § 510/6(2)(b), Ind. Code § 16-34-2-3, La. Rev. Stat. Ann. § 40:1061.12, Me. Rev. Stat. tit. 22 § 1594, Mich. Comp. Laws § 333.1073, Minn. Stat. § 145.423, Neb. Rev. Stat. § 28-331, Nev. Rev. Stat. § 442.270, 18 Pa. Cons. Stat. § 3212, R.I. Gen. Laws § 11-9-18, Tenn. Code Ann. § 39-15-206, and Wash. Rev. Code § 18.71.240.

⁵ See e.g., Miss. Code Ann. § 97-3-4 and Wyo. Stat. Ann. § 35-6-104.