



April 22, 2025

The Honorable Bob Ferguson
Governor, State of Washington
501 13th Ave SE
Olympia, WA, 98501
Phone: (360) 902-4111

RE: SENATE BILL NO. 5093 – SENT VIA EMAIL AND FEDEX

The American Center for Law and Justice (ACLJ) writes to oppose Senate Bill 5093 (SB5093). Despite serious legal issues that SB5093 presents, it has proceeded through the legislative process, passing the Senate and the House of Representatives by an alarming majority that followed party lines. The bill, titled “An Act Relating to Dignity in Pregnancy Loss” does little to provide dignity or protection for children born-alive in any number of unfortunate circumstances and creates a longer shadow for criminals to hide infant deaths in the repeal of Wash. Rev. Code § 9.02.050. By decriminalizing the concealment of the remains of a child who was born alive and then died, it legalizes infanticide. Now that the bill has reached your desk, we respectfully request that you veto it. The ACLJ opposes the passage of SB5093 on behalf of itself and over 532,000 of its supporters, generally, and 15,718 Washington residents, specifically, who value the sanctity of human life and are signatories to our petition to “Stop Barbaric Abortion Laws.”¹ Moreover, 12,873 Washington residents explicitly oppose letting born-alive babies die after a botched abortion, a heinous practice this bill would sanction.²

By way of introduction, the ACLJ is a national nonprofit organization dedicated to the defense of constitutional liberties secured by law, including the defense of the sanctity of human life. Counsel for the ACLJ have presented expert testimony before state and federal legislative bodies, and have presented oral arguments, represented parties, and submitted amicus briefs before the Supreme Court of the United States and numerous state and federal courts in cases involving a variety of issues, including the right to life. *See, e.g., Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022); *June Medical*

¹ *Stop Barbaric New Abortion Laws*, ACLJ.ORG, <https://aclj.org/pro-life/stop-barbaric-new-abortion-laws> (last visited April 17, 2025).

² *Demand Congress Pass the Born-Alive Abortion Survivors Protection Act*, ACLJ.ORG, <https://aclj.org/pro-life/demand-congress-pass-the-born-alive-abortion-survivors-protection-act> (last visited April 17, 2025).

Servs. v. Russo, 591 U.S. 299 (2020); *Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582 (2016); *Pleasant Grove City v. Sumnum*, 555 U.S. 460 (2009).

Legal Analysis of SB5093

I. *Background*

SB5093 places primary jurisdiction of investigation of suspicious infant deaths in multiple ways with the coroner’s office, rather than with law enforcement agencies, and repeals Wash. Rev. Code § 9.02.050, which carries a criminal penalty for concealing the birth of a child.

The bill was first introduced by Rep. M. Dhingra on December 20, 2024, and read on the Senate floor on January 13, 2025, and referred to the Senate Committee on Law & Justice. On January 20, 2025, the committee held a public hearing on the bill and on January 23, 2025, the committee passed the first substitute bill. The bill was referred to the Rules Committee and went through a second reading on January 29, 2025. After a third reading at the Rules Committee, the Senate floor passed the bill with thirty “yeas” and nineteen “nays” on February 5, 2024. The bill then went to the House of Representatives and a public hearing in the House Committee on Civil Rights and Judiciary where it was heard on March 14, 2025. That committee passed the bill and then referred the bill to the Rules Committee for review on March 21, 2025. The bill was read a second time on March 25, 2025. On April 9, 2025, the bill’s only amendment was adopted, the bill read a third time, passing the House with fifty-eight “yeas” and thirty-nine “nays” with one excused. It now makes its way to your desk, and we respectfully request that you veto this ambiguous, poorly constructed bill that undermines legal protections for vulnerable women and infants.

II. *Legal Issues*

The title of this bill attempts to deflect focus from the true consequences of the bill with the empathetic claim that it is necessary so that women may retain dignity in the loss of a pregnancy. That claim is wrong. The bill creates *greater* vulnerability for women and infants and invites abuse from nefarious actors rather than achieving its stated objective.³ The bill leaves a multitude of women and girls susceptible to coercion, corruption, and violence in pregnancy and postpartum and endangers the lives of newborn infants. Moreover, it removes an avenue of justice for both mothers and deceased babies.

This bill removes a major pillar in the protection of pre-born and infant life by repealing Wash. Rev. Code § 9.02.050 (“Concealing Birth”). That statute makes it a misdemeanor for anyone to conceal the birth of a child by “*any disposition of its dead body, whether the child died before or after its birth.*” This law accords with other laws that require the proper disposition of a human body after death. It is not a trap, or a snare, set up to penalize women experiencing miscarriage or stillbirths. But repealing this

³ *Substitute Senate Bill 5093*, Washington Legislature, <https://lawfilesext.leg.wa.gov/biennium/2025-26/Pdf/Bills/Senate%20Passed%20Legislature/5093-S.PL.pdf?q=20250417181029> (Last visited April 20, 2025).

provision creates a two-tier system of justice, with vulnerable women and innocent babies receiving a lesser degree of protection and justice than other Washington citizens. This is a gross miscarriage of basic legal principles and law enforcement consistency, and makes Washington's statutes criminalizing the murder and unlawful disposal of a body to be internally inconsistent within the State of Washington.

a. The bill is inconsistent with existing Washington Criminal Statutes

Were this bill to be signed into law, it would not only conflict with, but invalidate other existing criminal statutes and associated penalties including, but not limited to the following:

- Murder in the First Degree: Wash. Rev. Code § 9A.32.030;
- Murder in the Second Degree: Wash. Rev. Code § 9A.32.050;
- Manslaughter in the First Degree: Wash. Rev. Code § 9A.32.060;
- Manslaughter in the Second Degree: Wash. Rev. Code § 9A.32.070;
- Homicide by Abuse: Wash. Rev. Code § 9A.32.055;
- Controlled Substances Homicide: Wash. Rev. Code § 69.50.415; and
- Unlawful Disposal of Remains: Wash. Rev. Code § 68.50.130.

Stripping law enforcement of the jurisdiction to investigate a potential crime under Washington's Concealing Birth law would be to ensure that justice is unlikely for the infant intentionally, recklessly, or negligently murdered to the benefit of the perpetrator at the cost of the mother and baby's dignity.

b. SB5093 does not adequately replace the so-called "antiquated" law of concealing the birth and death of an infant.

We agree with one narrow stated goal of this bill: mothers who experience the loss of a child through miscarriage, stillbirth, or sudden infant death syndrome (SIDS) is something that should be treated with great respect, and both mother and baby should be given love and dignity. But this bill does not address that stated principle, nor does it adequately replace the provision in Wash. Rev. Code § 9.02.050 that penalizes concealment of a birth or death of a baby stillborn or born-alive and intentionally, recklessly, or negligently left to die. Enacting this bill without a reasonable replacement for the Concealed Birth law would allow human traffickers, domestic abusers, and other bad actors to evade investigation, leaving well-trained law enforcement agencies with no legal recourse but to surrender jurisdiction over to the non-investigative agency of the coroner's office rather than retaining it themselves.

The bill restricts law enforcement and elevates the non-investigative body of the coroner's office to a position it is ill-equipped to handle. A medical examiner or a coroner is an observational body. A police agency has the authority, resources, and know-how to investigate facts, interview witnesses and suspects, evaluate motives, and make factual findings. A medical examiner or coroner

is not similarly equipped, regardless of the plethora of television programs that would like us to believe otherwise.

Moreover, repealing the “Concealing Birth” law makes possible an unthinkable situation: a child is born-alive yet needs immediate medical care and the persons present do not want that child to receive life-saving treatment, even if doing so would ensure the baby had a normal life. We are aware that your state allows abortions until “viability,” which is defined by statute as a medical professional’s determination that a baby has a “reasonable likelihood” of “*sustained survival outside the uterus without the application of extraordinary medical measures.*” Wash. Rev. Code §§ 0.02.170, .110. Thus, under Washington law, an abortion performed on a baby capable of surviving outside the womb is illegal, and any baby born—whether from a botched abortion, domestic abuse, or a natural delivery—is a person under the law, entitled to the same equal protection as any other person.

Repealing Wash. Rev. Code § 9.02.050 without providing in SB5093 that any individual who fails to provide reasonable medical care to an infant born-alive and has a “reasonable likelihood” of survival without extraordinary medical measures raises a statutory harmony issue, in that there is no recourse for someone who intentionally, recklessly, or negligently allows a baby to die because they withhold care from that born-alive infant. If the Concealed Birth law is repealed without replacement, it will be virtually impossible to prosecute child murder in your state.

In addition, should the bill be enacted, children born-alive not “in the course of an abortion procedure” would be entitled to fewer legal protections than children born-alive during an abortion procedure. Wash. Rev. Code § 18.71.240 provides that “The right of medical treatment of an infant born-alive in the course of an abortion procedure shall be the same as the right of an infant born prematurely of equal gestational age.” SB5093 has no similar language that would protect the rights of a child born-alive during or after an abortion. It violates common sense to afford greater legal protection to a child born-alive in the course of an abortion than one born-alive in other circumstances. By creating such inequality among born-alive infants in similar medical circumstances with equal chances of survival, the bill violates the guarantee of equal protection under the Fourteenth Amendment to the U.S. Constitution.

c. There is no evidence of misuse of the current law to “target” women traumatized by stillbirth or miscarriage through false claims of illegal abortion.

To suggest that a law protecting murdered infants should be repealed and is somehow merciful to the mother because someone “might weaponize” that law against a grieving mother is more than fearmongering; it is a false statement used for the express purpose of coercing support for a dangerous loophole for abusive fathers, family members, and human traffickers.

Contrary to the unfounded assertions that Wash. Rev. Code § 9.02.050 is so dangerous as to render it a weapon, the Chair of the Washington House of Representatives Committee on Civil Rights &

Judiciary Committee, Ms. Jamila Taylor—a supporter of SB5093—stated at the committee hearing that Wash. Rev. Code § 9.02.050 is *rarely used*.⁴

Thus, it is completely unnecessary for a law that protects women and children that has **not** been weaponized for any purpose to be repealed on a baseless assertion that it “may” be used as a “tool of weaponization” in the future. This hypothetical “weaponization” is unsupported by concrete facts, even among its own supporters. Washington’s Concealed Birth law prevents legitimate criminals from escaping criminal liability for committing infanticide. Repealing this law is wrong for current and future citizens of the State of Washington.

d. Rather than introduce “progressive” protections, this bill increases the number of vulnerable persons in Washington State that no longer receive the protection of law as crime victims guaranteed by the Washington State Constitution.

SB5093 claims to speak for the vulnerable, but it only increases the number of vulnerable people in your state, including both mothers of babies born-alive and intentionally, recklessly, or negligently killed, and the babies themselves. Should the bill become law, these two groups will have less protection than they did before the bill’s passage. That, Governor Ferguson, is not progress—it is dangerous.

Article I, Section 35 of the Washington State Constitution outlines the rights of crime victims in the state, ensuring that victims can play a meaningful role in the criminal justice system. In the event the victim is deceased, the prosecuting attorney can identify a representative to exercise the deceased victim’s rights. Were SB5093 to be signed into law, neither mothers forced to watch their children die nor deceased babies through representatives would be able to exercise their constitutionally protected rights as there would be no crime. Intentionally, recklessly, or negligently murdered born-alive babies would be left without legal protections or legal rights. This, loosely summarized, is a crime and a constitutional violation.

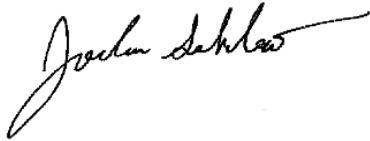
⁴ *House Civil Rights & Judiciary: March 19, 2025, 8:00 a.m.*, TVW, <https://twv.org/video/house-civil-rights-judiciary-2025031316/?eventID=2025031316> (Last visited April 20, 2025).

CONCLUSION

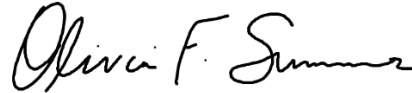
For the above reasons, we oppose SB5093 and respectfully request you veto this bill for the good of the citizens of Washington.

Sincerely,

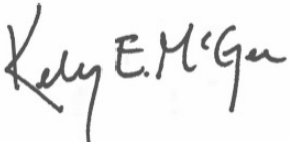
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