



**Written Testimony of Benjamin P. Sisney¹
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Re: In Support of Maryland HB 975, the “Pain-Capable Unborn Child Protection Act”

March 8, 2019

For the reasons set forth herein, the American Center for Law & Justice (“ACLJ”), on behalf of over 352,000 concerned citizens, *including nearly 4,500 from Maryland*, who have signed our Petition to Ban Abortions After 20 weeks, urges that Maryland legislators vote YES on H.B. 975.

The Pain-Capable Bill is constitutional under the U.S. Constitution and Supreme Court precedent.

1. The Pain-Capable Bill is a Post-Viability Bill.

It is undisputed that the abortion precedents of the U.S. Supreme Court allow states to prohibit abortion after viability, subject to an exception for serious threats to the mother’s life and health.² Viability means the ability to survive outside the womb, including with proper medical care. A study from a few years ago found that actively treated newborns as early as 22 weeks gestational age were surviving.³

The bill at issue today merely serves to protect viable babies, which is clearly and unarguably allowed under Supreme Court precedent. “Gestational age” is measured from a woman’s last menstrual period and is often referred to by the acronym LMP. Because the conception (fertilization) of the new child typically takes place about two weeks after LMP, an unborn child’s “post-fertilization age” will correspond to an LMP that is two weeks greater. With regard to the proposed Pain-Capable Bill, then, a post-fertilization age of 20 weeks means a gestational/LMP age of 22 weeks. That, in turn, means that the prohibition on aborting babies after 20 weeks post-

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²See *Roe v. Wade* (1973); *Planned Parenthood v. Casey* (1992).

³“Between-Hospital Variation in Treatment and Outcomes in Extremely Preterm Infants” (May 7, 2015), www.nejm.org/doi/full/10.1056/NEJMoa1410689.

fertilization means a prohibition on aborting babies after 22 weeks LMP – *precisely the age at which studies have found babies are surviving outside the womb.*

Again, the Pain-Capable Bill is a *post*-viability abortion restriction – exactly what the Supreme Court has repeatedly said is permissible.

2. *The Pain-Capable Bill is an Anti-Torture Bill.*

Even if Supreme Court Precedent supporting this bill did not exist, there would still be solid grounds to uphold the constitutionality of the bill. In *Gonzales v. Carhart* (2007), the Supreme Court ruled that its past precedent “confirms the State’s interest in promoting respect for human life at all stages of the pregnancy.” As Justice Kennedy wrote in his dissent in *Stenberg v. Carhart* (2000), a dissent subsequently vindicated in *Gonzales*, “States also have an interest in forbidding medical procedures which, in the State’s reasonable determination, might cause the medical profession or society as a whole to become insensitive, even disdainful, to life, including life in the human fetus.”

It is well established⁴ that pain receptors are present throughout the baby’s entire body by no later than 20 weeks after fertilization, or 22 weeks LMP, and that nerves link these receptors to the brain’s thalamus. Thus, as indicated above, this bill covers the exact time period at which unborn babies are *known* to feel pain. In fact, by this time in its development, an unborn child will recoil if the stimulus introduced would be painful if applied to an adult human.

Science also reveals that such painful stimuli increases the unborn baby’s stress hormones and is associated with long-term harmful neurodevelopmental effects. This is precisely why, when undergoing in utero surgery, anesthesia is given to the unborn baby.

Common abortion methods are barbaric, and it is preposterous to think that anything resembling common abortion methods would be allowed by law on anyone outside the womb. The thought that these procedures are allowed by law on the most helpless – unborn children – is unconscionable. It can be no coincidence that its victims have no voice in the political process. As such, abortion is, by its very nature, a procedure that tortures and kills a live human being – an unborn child who is sufficiently developed to feel pain. Thus, it is plainly a procedure that fosters insensitivity to, and disdain for, the life in the womb. If torturing animals is inhumane, so much more so is torturing unborn human children to death. The State of Maryland clearly has a legitimate interest in prohibiting this type of practice. In fact, it has an obligation to do so. The Pain-Capable Bill unquestionably promotes respect for human life.

3. *The Pain-Capable Bill Contains Valuable Testing and Reporting Requirements.*

The Pain-Capable Bill also includes important additional requirements, namely, that the abortionist should first determine the gestational age of the child and report basic statistical data about the abortion. Measuring the length of the pregnancy and size/age of the child before undertaking any medical procedure, including abortion, would seem to be essential to avoiding malpractice, and

⁴*Fetal Pain: The Evidence*, Doctors on Fetal Pain, <http://www.doctorsonfetalpain.com/>, (last visited Mar. 5, 2019).

thus is protective of maternal health. Collecting demographic data about abortions is just common sense when dealing with such a widespread procedure of uncertain health consequences. Indeed, the Supreme Court has repeatedly endorsed the constitutionality of recordkeeping and reporting requirements for abortion.

CONCLUSION

In short, for the reasons stated above, the proposed bill should be upheld as valid under the U.S. Constitution and furthers the State of Maryland's legitimate interest in the life of the unborn child and the health of the child's mother.