Favorable with Amendments
SB535 – Unborn Child Protection from Dismemberment Act
Laura Bogley, JD
Director of Legislation, Maryland Right to Life

On behalf of the Board of Directors for Maryland Right to Life, I ask for your favorable report with amendments on Senate Bill 535 **–** the ***Unborn Child Protection from Dismemberment Act*****.** This is a humane bill that *with amendment*, will bring Maryland policy in line with current medical knowledge about human fetal development and the ability of unborn children to feel the pain of their abortions.

To have one's limbs ripped off is a horrible and painful way to die. And, it is completely medically unnecessary to perform an elective Dismemberment abortion on a fetal human being.

Furthermore the Supreme Court of the United States has acknowledged that the states have the right to ban barbaric procedures like Partial Birth Abortion and Dismemberment Abortion.

Bans on Barbaric Procedures Found Constitutional

The Supreme Court of the United States, upon banning Partial Birth Abortion, made clear that states can ban barbaric procedures done in the name of elective abortion, especially those procedures which cause excruciating pain to living fetuses.

The Supreme Court based its decision in part on the following premise:

> "*that the State, from the inception of the pregnancy, maintains its own regulatory interest in protecting the life of the fetus that may become a child…. Where it has a rational basis to act, and does not impose an undue burden, the State may use its regulatory power to* ***bar certain procedure****s and substitute others all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including the life of the unborn*."[i]

Justice Ginsberg, recognized that the performing a **Dismemberment Abortion**, also known as Dissection and Evacuation (D&E) on a ***living*** fetus is equivalently gruesome to performing a partial birth abortion procedure on a living fetus:

> *"… the Court emphasizes that the Act does not proscribe the nonintact D&E procedure. See ante, at 34. But why not, one might ask. Nonintact D&E could equally be characterized as "brutal," ante, at 26, involving as it does "tear[ing] [a fetus] apart" and "ripp[ing] off" its limbs, ante, at 4, 6. "[T]he notion that either of these two equally gruesome procedures . . . is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one but not the other, is simply irrational." Stenberg, 530 U. S., at 946–947 (STEVENS, J., concurring)."*

The Supreme Court not only recognized the brutality of both partial birth abortion and Dismemberment of the fetus, but also gave consideration to the effects on the medical profession. In *Gonzales v.Carhart,* the Court justified the federal law protecting unborn children from partial birth abortions based on the government's "*interest in protecting the integrity and ethics of the medical profession*."[ii]

Human Fetus Feels Pain Beginning at 16 weeks

According to the American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG), human feti react to painful stimuli, beginning at the second trimester (16 weeks), when Dismemberment Abortions are performed.

Fetal Human Beings who are victims of Dismemberment Abortions react to painful stimuli with the same physiological responses that any other human being would display: increase in heart rate, increase in stress hormones in the blood stream, and withdrawal from painful stimuli.

> *"**Fetal stress***
>
> *There is considerable evidence that the fetus may experience pain. Not only is there a moral obligation to provide fetal anaesthesia and analgesia, but it has also been shown that pain and stress may affect fetal survival and neurodevelopment.[7][iii] Factors suggesting that the fetus experiences pain include the following.*
>
> *i. Neural development. Peripheral nerve receptors develop between 7 and 20 weeks gestation, and afferent C fibres begin development at 8 weeks and are complete by 30 weeks gestation. Spinothalamic fibres (responsible for transmission of pain) develop between 16 and 20 weeks gestation, and thalamocortical fibres between 17 and 24 weeks gestation.*
>
> *ii. Behavioural responses. Movement of the fetus in response to external stimuli occurs as early as 8 weeks gestation, and there is reaction to sound from 20 weeks gestation. Response to painful stimuli occurs from 22 weeks gestation.*
>
> *iii. Fetal stress response. Fetal stress in response to painful stimuli is shown by increased cortisol and β-endorphin concentrations, and vigorous movements and breathing efforts.[7,9][ivv] There is no correlation between maternal and fetal norepinephrine levels, suggesting a lack of placental transfer of norepinephrine. This independent stress response in the fetus occurs from 18 weeks gestation.10 There may be long-term implications of not providing adequate fetal analgesia such as hyperalgesia, and possibly increased morbidity and mortality."*

A 2012 review article[vi] on fetal anesthesia concurs, and concludes with a call for adequate fetal pain relief:

> *"Evidence is increasing that from the second trimester onwards, the fetus reacts to painful stimuli and that these painful interventions may cause long-term effects. It is therefore recommended to provide adequate pain relief during potentially painful procedures during in utero life."*

Dr. Warren Hern, a Colorado abortionist who has performed numerous Dismemberment Abortions and has written a textbook on abortion procedures, has stated "*there is no possibility of denial of an act of*

destruction by the operator [of a D&E abortion]. It is before one's eyes. The sensations of dismemberment flow through the forceps like an electric current."[vii]

A Dismemberment Abortion procedure is accurately described in **VIDEO** by Dr. Tony Levatino, former abortionist, and current AAPLOG Board member.[viii]

Dismemberment Ban will not put women's lives at risk

Opponents of SB 535 falsely claim that banning Dismemberment Abortion on human fetuses will somehow put a mother's life at risk. This assertion is false. This wording clearly gives a physician the freedom to legally exercise their medical judgment and legally perform whatever procedure is necessary to save the life of the woman, or to avert serious risk of substantial physical harm.

Under SB 535, a Dismemberment Abortion can be done legally on a human fetus if there is a "*serious health risk to the pregnant woman*". This risk is clearly defined in the text of the bill at section 20-217 (G) (1) beginning at line 23 :

> " '*Serious health risk to the pregnant woman' means that, in the reasonable medical judgment of a physician, the pregnant woman has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert a serious risk of substantial and irreversible physical impairment of a major bodily function*".

SB 535 clearly states at section 20-217 (B)(2) and corresponding subsection (II) at lines 7 and 11 that this ban does not apply to procedures used to remove the remains of a unborn child already deceased.

Proposed Amendment #1

Maryland Right to Life does not support exceptions for rape or incest in the case of a Dismemberment Abortion ban. It is an abhorrent violation of human rights to kill a fetal human being for the crime of his or her father.

We respectfully ask the bill's sponsor to remove these exceptions by striking the following language:

> **20-2019**
>
> (D) THIS PART MAY NOT BE CONSTRUED TO PREVENT AN ABORTION FOR ANY REASON, INCLUDING RAPE AND INCEST, OR BY ANY OTHER METHOD.

The Maryland Department of Legislative Services in their *Analysis of the FY22 Maryland Executive Budget,* reported than out of 9,864 Medicaid Funded Abortions in 2021, *less than 10* were due to rape, incest or to save the life of the mother combined.

Proposed Amendment #2

Maryland Right to Life does not support **feticide**, or the killing of a living human being *in utero*. This bill only bans elective DISMEMBERMENT ABORTION abortions on ***living*** human fetuses, in cases where there is no risk to the mother's life. If SB 535 is in effect, any abortionist who wants to perform an elective Dismemberment Abortion could first perform a feticide procedure and then dismember the child.

Feticide is usually accomplished with injection of potassium chloride, injection of digoxin, or by cord transaction (cutting) which result in death within 15 minutes. Inserting a needle into the baby is associated with a measurable[ix] pain response. Feticide procedures are in and of themselves painful, but less than the horrible pain of being dismembered while still alive.

We respectfully ask the bill's sponsor to amend the following sections:

20-217. (B)(2)(II) (II) REMOVE THE REMAINS OF ~~A DEAD~~ UNBORN CHILD **WHO IS DECEASED DUE TO NATURAL CAUSES**.

20-217 (D) (1) "DISMEMBERMENT ABORTION" MEANS, WITH THE INTENT TO ~~CAUSE THE DEATH OF THE UNBORN CHILD, TO~~ PURPOSELY DISMEMBER A LIVING UNBORN CHILD BY USING CLAMPS, GRASPING FORCEPS, TONGS, SCISSORS, OR SIMILAR INSTRUMENTS THAT, THROUGH THE CONVERGENCE OF TWO RIGID LEVERS, SLICE, CRUSH, OR GRASP A PORTION OF THE UNBORN CHILD'S BODY TO CUT OR RIP IT OFF AND TO EXTRACT THE PIECES OF THE BODY OF THE UNBORN CHILD ONE AT A TIME WITH THE AFOREMENTIONED DEVICES OR TOOLS OR BY USE OF A SUCTION DEVICE.

20–218. AN INDIVIDUAL MAY NOT PURPOSELY PERFORM OR ATTEMPT TO PERFORM A DISMEMBERMENT ABORTION **OF** ~~THAT KILLS~~ AN UNBORN CHILD UNLESS THE ABORTION IS NECESSARY TO PREVENT A SERIOUS HEALTH RISK TO THE PREGNANT WOMAN **AS DEFINED IN SECTION 20-217(G)(2) OF THIS ARTICLE.**

In Conclusion

Clearly there are no legal or Constitutional barriers for you to pass this humane law to prevent fetal human beings from suffering the pain of their Dismemberment Abortions. However, we urge you to consider our proposed amendments that would ban the use of Dismemberment Abortions for any reasons other than to save the life of the mother from imminent risk of death, or to remove the remains of a fetal human being who already has died of natural causes.

For these reasons we urge you to issue a favorable report *with amendments* on SB 535.

---

[i] https://www.law.cornell.edu/supct/html/05-380.ZS.html
[ii] https://www.law.cornell.edu/supct/html/05-380.ZS.html
[iii] Boris P, Cox PBW, Gogarten W, Strumper D, Marcus MAE. Fetal surgery, anaesthesiological considerations. Curr Opin Anaesthesiol 2004; 17: 235–40
[iv] Boris P, Cox PBW, Gogarten W, Strumper D, Marcus MAE. Fetal surgery, anaesthesiological considerations. Curr Opin Anaesthesiol 2004; 17: 235–40
[v] Giannakoulopoulos X, Teixeira J, Fisk N. Human fetal and maternal noradrenaline responses to invasive procedures. Pediatr Res 1999; 45: 494–9
[vi] Van de Velde M, De Buck F. "Fetal and maternal analgesia/anesthesia for fetal procedures" Fetal Diagn Ther 2012;31:201–209.

[vii] Warren M. Hern, M.D., and Billie Corrigan, R.N., *What About Us? Staff Reactions to the D & E Procedure, paper presented at the Annual Meeting of the Association of Planned Parenthood Physicians,* San Diego, California, (October 26, 1978).

[viii] http://www.abortionprocedures.com/
[ix] Giannakoulopoulos X , Sepulveda W, Kourtis P, Glover V, Fisk NM
Fetal plasma cortisol and beta-endorphin response to intrauterine needling. Lancet. 1994 Jul 9;344(8915):77-81.