

Open Letter to Rep. Joe Cunningham

July 6, 2019

in response to his letter to residents of Beaufort County who asked him to support the
Born Alive Abortion Survivors Protection Act

On June 25, 2019 Rep. Cunningham wrote the following:

JOE CUNNINGHAM
1ST DISTRICT, SOUTH
CAROLINA

Congress of the United States
House of Representatives
Washington, DC 20515

June 25, 2019

MRS. XXXXXXXXXXXXX
XXXXXXXX ST.
BEAUFORT, SC XXXXXXXXX

Dear MRS. XXXX::

Thank you for contacting me to share your thoughts on the *Born-Alive Abortion Survivors Protection Act*. I appreciate hearing from my constituents about issues facing the Lowcountry and the nation.

I recognize and respect your deeply-held views on the subject of abortion. I know that your opposition to the practice is rooted in your moral and ethical code, and I would never seek to question the legitimacy of your views or the passion with which they are held.

There are many existing laws at the federal and state level that prohibit a physician from ending the life of a baby born alive during an abortion. In 2002, an almost identical measure, the *Born-Alive Infants Protection Act* clarified that babies born in this manner have the same legal rights as babies born naturally. The *Born-Alive Abortion Survivors Protection Act* aims to prohibit a practice that is already illegal.

I oppose this bill, primarily because it is redundant, and includes problematic provisions that would violate the Constitution as interpreted by the Supreme Court. I believe that legislation should be written to solve our nation's real challenges, not divide Americans in the name of political games. This bill is misleading and seeks to criminalize an act that is already criminal. I plan to focus my time and energy on problems that have not been addressed instead of political posturing, as this bill does. As your Representative in Congress, I will always vote for measures that solve real issues and make the government work for you.

As always, I am open to learning more from you and I appreciate you taking the time to express your views. If you would like to stay connected to my office, please sign up for my newsletter for updates on how I am working for you: <https://bit.ly/2Fsy6c9>

With kind regards, I remain

Very truly yours,



Joe Cunningham
Member of Congress

What follows is a fact check and analysis of this letter:

Rep. Cunningham says-

“There are many existing laws at the federal and state level that prohibit a physician from ending the life of a baby born alive during an abortion. In 2002, an almost identical measure, *the Born-Alive Infants Protection Act* clarified that babies born in this manner have the same legal rights as babies born naturally. *The Born-Alive Abortion Survivors Protection Act* aims to prohibit a practice that is already illegal. I oppose this bill primarily because it is redundant....”

“This bill is misleading and seeks to criminalize an act that is already criminal.”

The bill is not redundant. The 2002 law amended the definition of person in U.S. law to include born-alive infants regardless of the circumstances of their birth. The 2019 Born Alive Abortion Survivors Protection Act seeks to augment the 2002 law by requiring that the infant who survives an abortion receives medical care equal to that afforded to any other infant of the same gestational age. It specifies penalties if this care is neglected or denied. A living infant in an abortion setting is an unexpected outcome which necessitates defined legal safeguards for its life and health.

CDC data confirms the existence of significant numbers of live births during abortion and testimony before committees in Congress has confirmed that viable abortion survivors have been treated differently than other infants.

Although 29 states do have laws that require medical care and treatment for born-alive infants, 31 do not specifically protect them in this way. In addition, there have been no federal prosecutions regarding abortion survivors since the 2002 law was passed. Very recently, the Governor of Virginia said that life-saving medical care for an abortion survivor in his state would be a decision between the mother and the abortion provider, potentially leaving a living child without legal protections in that state.

In general, Rep. Cunningham’s comments seem to be focused only on deliberate action taken to effect infanticide whereas the born-alive issue also rightly includes neglect and withholding of medical care.

Rep. Cunningham says-

The bill “includes problematic provisions that would violate the Constitution as interpreted by the Supreme Court.”

This statement is totally ambiguous. Rep. Cunningham needs to explain why he finds the following provisions of the bill to be in violation of the Constitution:

The bill (H.R. 962) would:

- Require that health care practitioners “exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care practitioner would render to any other child born alive at the same gestational age”;
- Require that health care practitioners “ensure that the child born alive is immediately transported and admitted to a hospital”;

- Require practitioners and hospital, physician's office, and abortion clinic employees to report violations;
- Establish criminal penalties (fines and/or imprisonment) for failure to comply.

See: <https://www.congress.gov/bill/116th-congress/house-bill/962/text>

Rep. Cunningham says-

The legislation doesn't "solve our nation's real challenges"

When Rep. Cunningham recently spoke at "Strolling Thunder", an event in Washington DC organized by ZERO to THREE to advocate for making babies and toddlers a national priority, he recognized that Congress has an important role to play in supporting the well-being of babies and toddlers. He should extend the same importance to the lives of the youngest, most vulnerable infants by supporting the Born-Alive Abortion Survivors Protection Act.

Rep. Cunningham says-

Legislation shouldn't divide Americans "in the name of political games".

The bill represents "political posturing."

The Born-Alive Abortion Survivors Protection Act does not address or change a woman's right to an abortion. Its only mission is to protect the fragile new life that enters the world when an abortion has failed. It should not be considered controversial or a partisan issue. There are in fact two Democrat Congressmen who have co-sponsored the bill, Rep. Daniel Lipinski (D, IL-3) and Rep. Collin Peterson (D, MN-7). When asked about medical care for abortion survivors in a February McLaughlin & Associates survey for Susan B. Anthony List 77% of likely voters supported legislation that would require this, including large majorities of Republicans, Democrats, Independents, women and men.

Rep. Cunningham says-

"I will always vote for measures that solve real issues and make government work for you."

Rep. Cunningham is a member of the House Problem Solvers Caucus which has both Democrat and Republican members. He should take the lead of two of its Democrat members (Rep. Daniel Lipinski and Rep. Collin Peterson) who view medical care for the abortion survivor to be a real issue and have co-sponsored the bill as a means of solving it.

Rep. Cunningham says-

'As always, I am open to learning more from you....'

Rep. Cunningham should use this discussion of his response to constituents in Beaufort County regarding the Born Alive Abortion Survivors Protection Act to revisit his analysis of the issue and decision on the bill. Equal protection of all born-alive infants is a serious issue that every member of Congress should embrace. Unsupported statements regarding the constitutionality of the bill and the denigration of supporters of the Born Alive Abortion Survivors Protection Act with accusations of political games and dividing the country are not helpful.

Rep. Cunningham and other Representatives on his side of the aisle should sign the discharge petition for the Born Alive Abortion Survivors Protection Act which would allow the normal democratic legislative process to resume on this bill. The 2002 Born Alive Act he references received vigorous debate and was passed with Democrat support. In 2019, the Born Alive Abortion Survivors Protection Act which seeks to clarify and enforce those protections deserves to receive a similar debate and timely vote. Protecting the rights of a person defined as such by our Constitution can never be a political game.

Respectfully submitted,

Diane Ivy

Beaufort, South Carolina