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COMMUNITY VALUES**

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To: Chairman David Burke
Vice Chairman Matt Huffman
Ranking Member Nickie Antonio
Members of the Senate Health Committee

From: Rachel Citak, Esq.
Legal Counsel
Citizens for Community Values

Re: Support of SB 208

My name is Rachel Citak and I am the Legal Counsel for Citizens for Community Values, Ohio's Family Policy Council.

I am here today as a legal professional and advocate for SB 208, because this is a law designed to ensure that everyone's beginnings and endings occur fairly. At a previous hearing for this bill, it was asked whether there were any instances in Ohio where a botched abortion resulted in a "baby who was left to die, and the physician was not prosecuted?" It has been suggested this law was under consideration in order to "solve a problem that does not exist."

April 7th, 1999, Bethesda Hospital in Cincinnati, Ohio. Six years after my birth, in my hometown, in the hospital where I was born, there was another baby girl born there, but under very different circumstances. On April 4th, a young woman was seen by Dr. Haskell and she underwent the first day of a three-day abortion that would be required in order to terminate her 22-week pregnancy. This woman, like any other patient, probably expected to terminate her pregnancy without complications.

But the next day, she was rushed to her local Bethesda hospital with severe abdominal pains. Once the baby was delivered, the doctor cut the umbilical cord...he didn't place the baby on her mother's chest and she wasn't placed in the neonatal care unit... She wasn't even "made comfortable."

No, he had this baby placed in a room to expire in the arms of the nursing staff who found her, Nurse Shelly Lowe and Connie Boyles. That baby breathed air on this earth for three whole hours. No prosecution occurred, because there was no law penalizing a physician for this form of neglect. This was all part of news coverage provided by the Washington Times and Cincinnati Post, not once, but twice in their 1999 issues.

So yes, this very situation has occurred in Ohio, in my hometown Cincinnati, in the very hospital where I was born. There is currently no way to know how many others in Ohio share her fate.

Public records, physicians, obstetricians, and health professionals have testified for SB 208 and bills protecting abortion survivors across the nation. During North Carolina's hearings on similar legislation, NYU Medical Center bioethicist Arthur Caplan testified in opposition to such measures in North Carolina. Yet, he still admits that "allowing to



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die does happen,” as supported by public record and CDC reports of 143 instances of induced fetal health.

The prevailing legal issue for SB 208 seems to be: *are the provisions and penalties within SB 208 unnecessary and/or already illegal?*

The answer is no, and passing SB 208 is necessary for two reasons:

1. The state level is the best level for SB 208 regulations and reporting to be enacted, enforced, and clarified.
 2. SB 208 protects babies who survive botched abortions, as well as providing a proper state-level cause of action for mothers.
- 1. The state level is the best level for SB 208 to be enacted and enforced because there are insufficient federal protections in place for abortion survivors and the existing Ohio law must be clarified.**

This year, the Ohio Senate unanimously adopted SR 41, a Senate resolution urging Congress to pass The Born Alive Abortion Survivors Protection Act. This Congressional measure was also unanimously passed by the US Senate, though it has not progressed to the floor for a vote.

Still, it makes good legal sense that an abortion-related law would be most likely enacted and enforced at the state level. State enforcement of federal law is a complex legal subject. It is important to remember that nearly all enforcement federal law is assigned to a federal agency, and federal agencies go after a very small percentage of offenders. The heads of federal agencies are often appointed, whereas enforcement arms of the state are usually elected.

In the article “State Enforcement of Federal Law,” Professor Margaret M. Lemos of the Cardozo School of Law says that the state is much closer to the state citizens, and acts with greater regard for state interests rather than national interests. States may also choose to reject or ignore federal law under the doctrine of *nullification*, which means abortion survivors are still unprotected. This is why states often “enshrine” federal or constitutional principles in state law as well.

- 2. SB 208 protects babies who survive botched abortions, providing a proper cause of action at the state level.**

The Supreme Court allows the states to protect, guide, regulate, and monitor abortion providers within certain parameters prescribed by the Court. The “undue burden” standard is defined as a “substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.” This broad discretion means that it is often up the states to ensure that the standard of infant medical care is upheld.

SB 208 will not create more bureaucracy for the patient in this process—it should be the responsibility of health professionals, not hers. SB 208 will provide more accountability,



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clarity, and well-defined consequences for doctors who purposefully act below the professional standards of obstetrics and neonatal care granted to any other child.

Currently, state prosecution for post-abortive baby deaths would be nearly impossible due to the inadequacies of reporting standards. We are not keeping track of how many babies are born from failed abortion attempts, which sends a message to the medical field that these babies matter less than others—and that no one will be held accountable for their substandard care.

SB 208 reaffirms the efforts that Ohio government and legislators have taken in actively working to decrease maternal & infant mortality rates, as well as promoting the health of Ohio mothers. As we continue these developments in caucuses, initiatives, nonprofits, and governmental programs, I ask the Senate Health Committee to pass SB 240 and further protect *all* infants from mortality.

Thank you for your time and consideration.

Citizens for Community Values (CCV) is a non-profit, non-partisan organization that endeavors to create an Ohio where God's blessings of life, family, and religious freedom are treasured, respected, and protected.

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