

## **Oppose HB 346 – Don’t Interfere With a Doctors’ Ability to Provide the Most Appropriate Care**

**Bill Summary:** HB 346 would restrict doctors’ ability to provide the standard of care in very complicated circumstances such as early labor and fatal fetal diagnosis through the threat of criminal penalties. This bill would control how families can spend the last moments with their babies before they pass.

**HB 346 could deny parents the ability to choose the type of compassionate care that works for their family and their faith in these situations**, as we would allow them to do at any other point in their child’s life. Anyone who has had to make the impossible decision of when to take a loved one off life-support knows how excruciating those decisions are, and knows how there is no one-size-fits-all decision for all end-of-life scenarios. If a child were dying at the age of one, five, or even six months, we would entirely trust the parents, in consultation with their doctor, to make the best decision regarding compassionate care for their child. No politician would dare insert their own judgment into that situation. And yet, this bill says parents and doctors cannot be trusted in just such an end-of-life decision merely because of when this tragedy is happening. This bill impacts these impossible decisions, where an infant has only hours or days to live and a family must decide how to spend the little time they have left with their child.

**If this bill becomes law, doctors would be forced to administer futile and painful treatment to extend the life of an infant for even just minutes or hours, against the wishes of the parents, under the threat of criminal liability.** Rather than relying on their training and expertise to care for a dying infant, doctors would have to take direction from politicians to avoid criminal liability. The bill explicitly requires doctors to apply medical care to “preserve the life and health of the born alive infant,” which could include preserving the life for a few minutes or maybe an hour. There are and will be cases where medical procedures could give an infant an extra hour or day to live, but it would take the infant out of the arms of its family and cause more pain and grief. Like a family’s decision about when to end life support, the decision about how to treat an infant, including putting it on life support, should be left to that infant’s parents, their faith, and their doctor.

**Legislation like this has shown to be unpopular with voters.** Last year, Montana voters opposed a ballot initiative that would have required doctors to provide futile care to fetuses or infants born prematurely, despite having no chance of survival beyond a short period of time.<sup>i</sup> Physician advocates in the state of Montana have also expressed this type of legislation functions as an “invasion of privacy that harms families suffering from pregnancy complications.”<sup>ii</sup> As infanticide is already illegal at the federal level, critics have noted the Montana referendum, like HB 346, is unnecessary.<sup>iii</sup>

**HB 346 would harm families already struggling in tragic situations, and is an act of state overreach** into what should be a private healthcare decision between families and qualified healthcare providers. End-of-life decisions are hard, and legislation like this does nothing to help families or doctors. For these reasons, the ACLU-NH respectfully urges members of this committee to vote inexpedient to legislate on HB 346.

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<sup>i</sup> Olivia Weitz, *Montana voters reject so-called ‘Born Alive’ ballot measure*, National Public Radio, Nov 10, 2022, available at <https://www.npr.org/2022/11/10/1134833151/montana-midterms-results-born-alive-abortion#:~:text=McVay%2FGetty%20Images-,Under%20the%20measure%2C%20medical%20professionals%20who%20%22fail%20to%20take%20medically,t o%20%20years%20in%20prison.>

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<sup>ii</sup> Denali Sagner, *Montanans Reject 'Born-Alive' Measure Despite Broad Wins for Republicans*, Flathead Beacon, Nov. 10, 2022, available at <https://flatheadbeacon.com/2022/11/10/montanans-reject-born-alive-measure-despite-broad-wins-for-republicans/>

<sup>iii</sup> Lori Robertson, *The Facts on the Born-Alive Debate*, FactCheck.org, March 4, 2019 <https://www.factcheck.org/2019/03/the-facts-on-the-born-alive-debate/>