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May 31, 2013

Bob Goodlatte  
Chairman  
Congress of the United States  
House of Representatives  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Room B-351  
Washington, DC 20515-6216

Trent Franks  
Chairman, Subcommittee on the  
Constitution and Civil Justice  
Congress of the United States  
House of Representatives  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Room B-351  
Washington, DC 20515-6216

Dear Representatives Goodlatte and Franks:

Thank you for your letter of May 7, 2013 pertaining to the State of Delaware's efforts to protect the civil rights of newborn infants and their mothers.

We in Delaware were particularly shocked and horrified by the facts and circumstances uncovered during the investigation and prosecution of Dr. Kermit Gosnell because, as you know, Dr. Gosnell practiced at an abortion clinic in Wilmington, Delaware during much of the time he was also committing murder and other inhuman acts of medical malpractice in Philadelphia, PA. Immediately upon learning of the facts of the Philadelphia investigation, the Wilmington Police Department began an intensive investigation focused on determining whether Dr. Gosnell was engaging in similar behavior in Delaware. My office partnered with the Wilmington Police during their investigation. We assigned an experienced prosecutor from the Homicide Unit of our Criminal Division to assist with the investigation. Ultimately, after a comprehensive investigation, and despite our suspicions and some anecdotal evidence, the Wilmington Police did not uncover evidence sufficient to initiate a criminal prosecution. However, attorneys and investigators in our Civil Division were able to successfully conclude an administrative action that culminated in the permanent closing of Dr. Gosnell's Wilmington clinic.

In response to the specific questions posed in your letter, please be assured that Delaware's prosecutors treat the "deliberate killing of newborns" as a criminal offense. Delaware's Criminal Code specifies that any "person" may be the victim of a violent crime, including homicide. The Code further defines the term "person" in pertinent part as "a human being who has been born and is alive."<sup>1</sup> In Delaware, the offense of homicide is divisible into

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<sup>1</sup> 11 Del.C. §222(21)

four degrees: Murder First Degree, Murder Second Degree, Manslaughter and Criminal Negligent Homicide.<sup>2</sup> These offenses are applicable to any person (as the term is defined above) without regard to his or her age. Delaware has also promulgated two unique and powerful homicide statutes entitled Murder by Abuse or Neglect First and Second Degree that are applicable specifically when a defendant causes the death of a person who has not yet reached his or her 14<sup>th</sup> birthday through an act or pattern of child abuse or neglect.<sup>3</sup>

Unfortunately, Delaware's various criminal justice information systems do not provide us with the ability to exhaustively search our previous arrests and prosecutions to provide you with a comprehensive list of all of our cases involving newborn infants as victims. That said, our research has identified eight such cases since 1996. None of these cases involve newborns who were delivered alive during the process of an abortion, and we are unaware of any such cases over the last few decades. The log of the eight cases identified is as follows:

1. Case #9611007818 – Convicted of Manslaughter – Sentence: Two (2) years and six (6) months of Incarceration, followed by one (1) year Home Confinement, followed by two (2) years of Probation.
2. Case #96110078711 – Convicted of Manslaughter – Sentence: Two (2) years and six (6) months of Incarceration, followed by one (1) year Home Confinement, followed by two (2) years of Probation.
4. Case #0004019366 – Convicted of Manslaughter – Sentence: Four (4) years of incarceration, followed by one (1) year Intense Supervision, followed by two (2) years of Probation.
5. Case # 0004004124 – Convicted of Manslaughter – Sentence: Four (4) years of Incarceration, followed by one (1) year Intense Supervision, followed by two (2) years of Probation.
6. Case #0409005305 – Convicted of Murder by Abuse 1<sup>st</sup> Degree – Sentence: Twenty (20) years of Incarceration, followed by one (1) year Work Release, followed by eighteen (18) months Probation.
7. Case # 0911006507 – Convicted of Murder 2<sup>nd</sup> Degree – Sentence: Ten (10) years of Incarceration, followed by eighteen (18) months of Intense Supervision.
8. Case # 0911006541 – Convicted of Criminally Negligent Homicide and Reckless Endangerment 1<sup>st</sup> Degree – Sentence: Six (6) years of Incarceration, followed by two (2) years of Intense Supervision.

Delaware's Medical Practices Act contains a provision that requires a person who performs an abortion or attempted abortion that results in a live birth to "exercise that degree of

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<sup>2</sup> 11 Del.C. §§631, 632,635 and 636.

<sup>3</sup> 11 Del.C. §§633, 634.

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medical skill, care and diligence” that would be rendered to a child born alive following a natural birth.<sup>4</sup> This statute was enacted in 1981. The statute has not “changed our prosecutorial practices,” in part because there have been no instances of abortions resulting in live births brought to the attention of our police or prosecutors within recent memory.

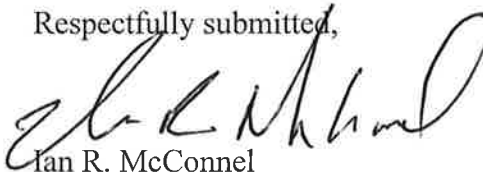
Delaware’s statute of limitations does not operate with regard to the age of the victim in a criminal case. Several of the homicide offenses that might conceivably be applicable in an infanticide case, Murder First and Second Degree and Murder by Abuse or Neglect First Degree, are Class A felonies, and as such, there is no applicable statute of limitation.<sup>5</sup> The remaining homicide offenses are subject to a five year statute of limitations.<sup>6</sup>

We are unaware of any criminal investigations or prosecutions in recent memory in Delaware involving the death or serious injury of a woman during an abortion.

Delaware’s late term abortion statute is set forth at 24 *Del. C.* § 1790 *et seq.* It purports to prohibit the abortion of fetuses with a gestational age of 20 weeks or more except where the fetus is dead or continuation of the pregnancy is likely to result in the death of the mother. It also prohibits abortions of fetuses with a gestational age of fewer than 20 weeks except where continuation of the pregnancy is likely to result in the death of the mother, there is a substantial risk that the fetus is gravely deformed, the pregnancy is a result of rape or incest, or continuation of the pregnancy would involve substantial risk of permanent injury to the mother. On several occasions, the Delaware Department of Justice has opined upon request that these restrictions on both pre-viability and post-viability abortions were unenforceable under *Roe v. Wade*, 410 U.S. 113 (1979) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Consequently, as of this writing, Delaware law does not contain any enforceable statutory limits on late-term abortions.

Please let me know if I can be of further assistance to the Congress in this matter.

Respectfully submitted,



Ian R. McConnell

Chief Deputy Attorney General

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<sup>4</sup> 24 Del.C. §1795(a).

<sup>5</sup> 11 Del.C. §205(a).

<sup>6</sup> 11 Del.C. §205(b).