



## **FACT SHEET: BARACK OBAMA AND THE BORN-ALIVE INFANTS PROTECTION ACT**

**By Doug Carlson  
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Sen. Barack Obama (D-IL) has claimed since 2004 that he would have supported the Born-Alive Infants Protection Act in the Illinois state Senate if the language tracked the federally-enacted bill with clarity in its protection of *Roe v. Wade*. His claims are false.

### **A History In Brief**

In 2002, Congress passed, with not a single dissenter in either house, and President Bush signed into law the Born-Alive Infants Protection Act (BAIPA), which ensures full protections of the law to babies who are born alive, at any stage of development, whether or not the baby's delivery was natural or the result of a botched abortion. The law defines a child as "born alive" if, after "the complete expulsion or extraction from his or her mother," the baby "breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut."<sup>1</sup>

In contrast to earlier versions in 2000 and 2001, the federally-enacted BAIPA includes a so-called neutrality clause to clarify that *Roe v. Wade* would not be affected. It states, "Nothing in this section shall be construed to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being 'born alive' as defined in this section."

Meanwhile, between 2001 and 2003 then-Illinois state Sen. Obama effectively voted against the state legislature's BAIPA on at least three occasions—once voting "present" and twice voting "no." Still, Obama has repeatedly maintained that he would have supported the federally-enacted bill if he were in the U.S. Senate, arguing that it included a provision that would not interfere with *Roe v. Wade*, unlike the legislation in the Illinois state Senate. Such claims are false.

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<sup>1</sup> Born-Alive Infants Protection Act of 2002, Public Law 107-207, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ207.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ207.107.pdf).

## **Obama's Years-Long Defense**

On August 11, the National Right to Life Committee pieced together much of the hidden truth, uncovering Obama's pattern of falsehoods.<sup>2</sup> Obama's false claims of support for the BAIPA are well documented, beginning in 2004—less than two years after he voted against the legislation in the Illinois state Senate—until as recently as August 16, 2008. A few news reports, among many, are quite telling.

The *Chicago Tribune* reported on October 4, 2004:

“Obama said that had he been in the U.S. Senate two years ago, he would have voted for the Born-Alive Infants Protection Act, even though he voted against a state version of the proposal. The federal version was approved; the state version was not. . . . The difference between the state and federal versions, Obama explained, was that the state measure lacked the federal language clarifying that the act would not be used to undermine *Roe vs. Wade* [sic], the 1973 U.S. Supreme Court opinion that legalized abortion.”<sup>3</sup>

CNN reported on June 30, 2008:

“Senator Obama says if he had been in the U.S. Senate in 2002, he, too, would have voted in favor of the Born Alive Infant Protection Act because unlike the Illinois bill, it included language protecting *Roe v. Wade*.”<sup>4</sup>

The *New York Times* reported on August 7, 2008:

“Mr. Obama has said he had opposed the bill because it was poorly drafted and would have threatened the Supreme Court decision in *Roe v. Wade* that established abortion as a constitutional right. He said he would have voted for a similar bill that passed the United States Senate because it did not have the same constitutional flaw as the Illinois bill.”<sup>5</sup>

Obama continued his defense in an interview with CBN News' David Brody on August 16, 2008:

He claimed that the National Right to Life Committee has been “lying” in recent reports that state he has misrepresented his position on the BAIPA. “They have not been telling the truth,” he said. “And I hate to say that people are lying, but here's a situation where folks are lying. I have said repeatedly that I would have been completely in, fully in support of the federal bill that everybody supported, which was to say that you should provide assistance to any infant that was born—even if it was as a consequence of an induced abortion. That was not the bill that was presented at the state level. What that bill

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<sup>2</sup> National Right to Life Committee, “Obama Cover-up Revealed on Born-Alive Survivors Bill,” August 11, 2008, <http://www.nrlc.org/ObamaBAIPA/ObamaCoverup.html>; “Index of Documents Regarding Obama Cover-up on Born-Alive Abortion Survivors Bill,” <http://www.nrlc.org/ObamaBAIPA/index.html>.

<sup>3</sup> National Right to Life Committee, “Obama Cover-up on Born-Alive Abortion Survivors Continues to Unravel After Sen. Obama Says NRLC is ‘Lying,’” August 18, 2008, <http://www.nrlc.org/ObamaBAIPA/ObamaCoverup.html>.

<sup>4</sup> CNN's *The Situation Room*, June 30, 2008, <http://transcripts.cnn.com/TRANSCRIPTS/0806/30/sitroom.02.html>.

<sup>5</sup> “Obama's View on Abortion May Divide Catholics,” *New York Times*, August 7, 2008, [http://www.nytimes.com/2008/08/07/us/politics/07catholics.html?\\_r=3&adxnml=1&oref=slogin&ref=politics&adxnmlx=1218121316-TOu56PZCFJlbmJWZV/Pg9A&pagewanted=print](http://www.nytimes.com/2008/08/07/us/politics/07catholics.html?_r=3&adxnml=1&oref=slogin&ref=politics&adxnmlx=1218121316-TOu56PZCFJlbmJWZV/Pg9A&pagewanted=print).

also was doing was trying to undermine *Roe v. Wade*. By the way, we also had a bill, a law already in place in Illinois that insured life saving treatment was given to infants. So for people to suggest that I and the Illinois medical society, so Illinois doctors were somehow in favor of withholding life saving support from an infant born alive is ridiculous. It defies commonsense and it defies imagination and for people to keep on pushing this is offensive and it's an example of the kind of politics that we have to get beyond. It's one thing for people to disagree with me about the issue of choice, it's another thing for people to out and out misrepresent my positions repeatedly, even after they know that they're wrong. And that's what's been happening."<sup>6</sup>

### **Who Is Lying, Really?**

Obama tried to kill the BAIPA on at least three occasions when it was before him in the Illinois state Senate between 2001 and 2003—once voting “present” and twice voting “no.”<sup>7</sup>

1. **March 30, 2001:** Obama voted “present” on a floor vote on SB 1095 (*without neutrality clause*); bill passed 34-5, with another 13 voting “present,” including Obama.<sup>8</sup>

- A “present” vote was effectively a “no” vote in the Illinois legislature and a strategy of Planned Parenthood to advance its radical agenda.
- “We worked on the ‘present’ vote strategy with Obama,” said Pam Sutherland, chief lobbyist for the Illinois branch of Planned Parenthood, according to a *Washington Post* fact checker report. “He was willing to vote ‘no,’ and was always going to be a ‘no’ vote for us.” The report continued: “Sutherland said Planned Parenthood calculated that a ‘present’ vote by Obama would encourage other senators to cast a similar vote, rather than voting for the legislation. ‘They were worried about direct mail pieces against them. The more senators voted present, the harder it was to mount an issues campaign against the senator.’”<sup>9</sup>
- Obama was the only senator to speak against this bill on the Illinois Senate floor.<sup>10</sup>

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<sup>6</sup> Obama interview with CBN News’ David Brody, August 16, 2008, <http://www.cbn.com/CBNnews/429328.aspx>.

<sup>7</sup> Some analysts argue that Obama opposed the BAIPA a fourth time. They contend he voted “no” on SB 1662 (*without neutrality clause*) in the Illinois Senate Judiciary Committee on March 6, 2002; the bill, they say, passed 6-3 in a straight party line vote, with 1 Republican voting “present.” Primary documentation has not been located. See the roll call vote for Illinois SB 1663, which is supposedly identical in voting information to SB 1662, Illinois Senate Judiciary Committee Action Report, March 6, 2002, [http://www.jillstank.com/Senate\\_Committee\\_Vote\\_3502.pdf](http://www.jillstank.com/Senate_Committee_Vote_3502.pdf).

<sup>8</sup> Roll Call Vote on Illinois SB 1095, March 30, 2001, [http://www.ilga.gov/legislation/votehistory/srollcalls92/920SB1095\\_03302001\\_030000T.PDF](http://www.ilga.gov/legislation/votehistory/srollcalls92/920SB1095_03302001_030000T.PDF).

<sup>9</sup> “The Fact Checker: Obama’s Voting Record on Abortion,” *Washington Post*, February 2008, [http://blog.washingtonpost.com/fact-checker/2008/02/obamas\\_voting\\_record\\_on\\_aborti\\_1.html](http://blog.washingtonpost.com/fact-checker/2008/02/obamas_voting_record_on_aborti_1.html).

<sup>10</sup> Transcript of Obama’s Verbal Opposition to Born-Alive Infants Protection Act, SB 1095, March 30, 2001, 84-90, <http://www.ilga.gov/senate/transcripts/strans92/ST033001.pdf>.

2. **April 4, 2002:** Obama voted “no” on SB 1662 (*without neutrality clause*) on the Senate floor; bill passed 30-12, with 10 voting “present.”<sup>11</sup>

- SB 1662 was one of three bills in a “Born Alive” package. Votes, however, were held on each bill separately, not as a package, as some suggest.
- SB 1662 defines “born alive” to secure equal protection under the law to infants who are born under any circumstances.

3. **March 12-13, 2003:** Obama, as chairman of the Health and Human Services Committee, voted with his colleagues 10-0 to amend SB 1082 to *include the neutrality clause*.<sup>12</sup> Then Obama voted “no” on the overall bill in the committee in a straight party line vote, 4-6, defeating the bill.<sup>13</sup>

- Widespread reports that Obama killed the bill in committee by refusing to bring it up for a vote are inaccurate. He did bring up SB 1082 for consideration, although he voted against it, thereby helping to keep it from reaching the Senate floor.<sup>14</sup>
- At least two glaring problems exist between Obama’s words and actions:
  - **Identical Language:** This bill was a mirror image of the federal bill. In fact, the authors of the bill and its added neutrality clause in the Illinois legislature took pains to ensure the state and federal bills were identical.
  - **Timing:** Both votes in committee to amend SB 1082 with the neutrality clause and on the final amended bill took place after both houses of the U.S. Congress had already passed the identical language—fully one year earlier in the House and nearly eight months earlier in the Senate.

<sup>11</sup> Text of Illinois SB 1662, <http://www.ilga.gov/legislation/legisnet92/sbgroups/sb/920SB1662LV.html>; Legislative History of Illinois SB 1662, <http://www.ilga.gov/legislation/legisnet92/status/920SB1662.html>; Roll Call Vote on Illinois SB 1662, April 4, 2002,

[http://www.ilga.gov/legislation/votehistory/rollcalls92/920SB1662\\_04042002\\_014000T.pdf](http://www.ilga.gov/legislation/votehistory/rollcalls92/920SB1662_04042002_014000T.pdf); Roll Call Votes and Transcript of Obama’s Verbal Opposition to the “Born-Alive” package, SB 1661, 1662, and 1663, April 4, 2002, 28-35, <http://www.ilga.gov/senate/transcripts/strans92/ST040402.pdf>.

<sup>12</sup> Amendment to Illinois SB 1082, <http://www.nrlc.org/ObamaBAIPA/SenateAmdt1toSB1082.pdf>.

<sup>13</sup> “Lawmakers Approve Abortion-friendly Legislation,” *Associated Press* Report, March 13, 2003, <http://www.nrlc.org/ObamaBAIPA/ObamaKillsBAIPA2003APstory.pdf>; Illinois Senate Committee Action Report,

<http://www.nrlc.org/ObamaBAIPA/ObamaKills2003amendedBAIPASenateCommitteeActionReport.pdf>;

Text of Illinois SB 1082, killed by Obama in committee, <http://www.nrlc.org/ObamaBAIPA/ExactBillKilledbyObama.html>.

<sup>14</sup> “More on Obama and Babies Born Alive,” Terence Jeffrey, *Human Events*, January 16, 2008, <http://www.humanevents.com/article.php?id=24481>.

## **The Cover Up**

Years of falsely claiming that the federal version of the BAIPA was not the same as the bill he opposed in the Illinois legislature finally caught up to Obama. On August 18, shortly after he accused the National Right to Life Committee of “lying” about his record, a *New York Sun* story reported a concession from the Obama campaign that he did vote against an Illinois bill that mirrored the federal bill.<sup>15</sup>

Obama, unable to continue to travel down one trail of falsehood, quickly found another. The state bill, his campaign now argues, could have interfered with pre-existing Illinois state law that already requires doctors to provide medical care to babies who survive abortions.<sup>16</sup> That, the argument now goes, was reason to oppose it. This, again, is false.

Ramesh Ponnuru, senior editor of *National Review*, exposed this backpeddling, saying that, on the contrary, the Illinois bill was necessary to “fill the gap” in the law. “Illinois law has rules ... requiring treatment of babies who have ‘sustainable survivability,’” he wrote in an August 20 essay, but “[i]f an attempted abortion of a pre-viable fetus results in a live birth, the law did not protect the infant.” Jill Stanek, a nurse who helped trigger the “Born Alive” debate in Illinois, testified that multiple pre-viable babies were induced to live birth at her hospital, only to be left to die.<sup>17</sup> The state attorney general found that such infanticide broke no law. In a letter dated July 17, 2000, Illinois Attorney General Jim Ryan reported that the Illinois Department of Public Health found there was “no basis for legal action” under then-current Illinois law to prosecute hospitals or doctors that deny such babies medical attention.<sup>18</sup> Clearly, Obama has yet to find an argument that matches the facts.

## **Widespread Liberal Support for ‘Born-Alive Act’**

Initially, NARAL Pro-Choice America opposed the federal “Born-Alive” bill in July 2000, calling it an assault on “the basic tenets of *Roe v. Wade*,” and asserting, “The Act would effectively grant legal personhood to a pre-viable fetus—in direct conflict with *Roe*....”<sup>19</sup> However, NARAL later changed its position. One day prior to the introduction of the 2001 bill in the House, NARAL expressed its support for the bill in a statement: “Consistent with our position last year, NARAL does not oppose passage of the Born Alive Infants Protection Act. Last year’s committee and floor debate served to clarify the

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<sup>15</sup> “Obama Facing Attacks From All Sides Over Abortion Record,” *New York Sun*, August 18, 2008, <http://www.nysun.com/national/obama-facing-attacks-from-all-sides-over-abortion/84059/>.

<sup>16</sup> *Ibid.*

<sup>17</sup> “Fathering More Lies: Obama’s Latest Spin on Born-Alive,” *National Review Online*, August 20, 2008, <http://article.nationalreview.com/?q=Nzk2M2VkMWQ2YTk4ZDVkMTM0YjM3ZjU4YTNhZDEzMjQ>.

<sup>18</sup> Illinois Attorney General Jim Ryan’s letter on Illinois abortion law, July 17, 2000, in hearing before U.S. House Judiciary Committee’s Subcommittee, 42-43, <http://judiciary.house.gov/Legacy/73696.pdf#page=46>; FRC Action Update, August 20, 2008.

<sup>19</sup> NARAL Press Release, July 20, 2000, [http://www.nrlc.org/Federal/Born\\_Alive\\_Infants/NARALonlive-born.pdf](http://www.nrlc.org/Federal/Born_Alive_Infants/NARALonlive-born.pdf).

bill's intent and assure us that it is not targeted at *Roe v. Wade* or a woman's right to choose."<sup>20</sup>

Liberal democratic U.S. senators also praised the "Born-Alive" bill. On June 28, 2001, Sens. Edward Kennedy (MA) and Barbara Boxer (CA) spoke on the Senate floor in favor of the Born-Alive Infants Protection Act, encouraging its support as an amendment to another bill. The "Born-Alive" amendment passed unanimously the following day, 98-0. Some comments:

Sen. Kennedy: "Madam President, I am going to urge the Senate to accept the amendment tomorrow. I think we have had a good discussion about it. I hope that we will move ahead and accept it."

Sen. Boxer: "I say to my friend [Sen. Rick Santorum] from Pennsylvania, our side has no disagreement with this whatsoever. Of course, we believe everyone born should deserve the protections of this bill. The Senator, in his amendment, mentions infants who are born and that they deserve the protections of this bill. Of course they deserve the protections of this bill. Who could be more vulnerable than a newborn baby? So, of course, we agree with that. . . . We join with an 'aye' vote on this. I hope it will, in fact, be unanimous. I also hope the underlying bill will get a very strong vote and we will say that all of our people deserve protection, from the very tiniest infant to the most elderly among us. I urge an 'aye' vote."<sup>21</sup>

### **Timeline of U.S. Congress Votes on 'Born-Alive Act'**

The U.S. Senate passed the BAIPA on two occasions without a dissenting vote—the first vote in 2001 without the neutrality clause, the second in 2002 with the clause.

Here is a timeline of activity on the BAIPA:

#### **106<sup>th</sup> Congress (1999-2000)**

**September 26, 2000:** U.S. House passes H.R. 4292 by a 380-15 vote.<sup>22</sup>

**September 27, 2000:** Born-Alive Infants Protection Act of 2000 (S. 3127) introduced in U.S. Senate.

**October 13, 2000:** Objection in U.S. Senate to Sen. Trent Lott's (R-MS) request for Unanimous Consent to proceed to consideration of H.R. 4292 was made by Sen. Kent Conrad (D-ND). Sen. Conrad objected, saying, "There are Members on our side who

<sup>20</sup> "Timeline on the Federal Born-Alive Infants Protection Act," National Right to Life Committee, <http://www.nrlc.org/ObamaBAIPA/TimelineFederalBAIPA.html>.

<sup>21</sup> Congressional Record, S7062-S7064, June 28, 2001, <http://thomas.loc.gov/cgi-bin/query/D?r107:1:/temp/~r107scnrrT>.

<sup>22</sup> U.S. House Roll Call Vote No. 495 on BAIPA, Sept. 26, 2000, <http://clerk.house.gov/evs/2000/roll495.xml>.

would like to offer amendments, and on their behalf I am constrained to object at this point.”<sup>23</sup>

### **107<sup>th</sup> Congress (2001-2002)**

**June 14, 2001:** Born-Alive Infants Protection Act of 2001 introduced in U.S. House (H.R. 2175) and U.S. Senate (S. 1050). The bills are identical, containing new language known as the neutrality clause, clarifying that the bill is neutral with respect to abortion.”<sup>24</sup>

**June 29, 2001:** The Santorum Amendment (S. Amdt. 814) to incorporate the Born-Alive Infants Protection Act, which included the neutrality clause, in the Bipartisan Patient Protection Act (S. 1052) is approved by U.S. Senate 98-0. All Democrats were present and voted “yes,” including Sens. Hillary Clinton (NY) and John Kerry (MA); Republican Sens. Pete Domenici (NM) and Lisa Murkowski (AK) were not present.

**March 12, 2002:** House passed BAIPA by voice vote (*with neutrality clause*).

**July 18, 2002:** H.R. 2175 passed the U.S. Senate without amendment by unanimous consent.

**August 5, 2002:** H.R. 2175 signed into law by President Bush.

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<sup>23</sup> Congressional Record (S10526), October 13, 2000, <http://thomas.loc.gov/cgi-bin/query/D?r106:1:/temp/~r106WLKA0U>.

<sup>24</sup> Born-Alive Infants Protection Act of 2002, Public Law 107-207, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ207.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ207.107.pdf); “Timeline on the Federal Born-Alive Infants Protection Act,” National Right to Life Committee, <http://www.nrlc.org/ObamaBAIPA/TimelineFederalBAIPA.html>.