



Brief: End wrongful birth lawsuits

86th Regular Session, Policy Paper No. 4 of 43

January 26, 2019

Key Points:

1. We must respect innocent life and care for the defenseless.
2. Texas allows a disabled person's life to be reduced to a financial damage.
3. Proposed legislation would prohibit a wrongful birth lawsuit in Texas.

A Catholic perspective: A wrongful birth lawsuit is one in which a parent of a child with congenital defects claims that the physician's treatment or advice deprived the parent of the right to decide whether to avoid the birth of the child through abortion.¹ By allowing doctors to be sued on these grounds, the law considers a disabled child to be a damage to his or her parents. In technical terms, the law provides such parents with a "cause of action" to sue their physician. The TCCB supports eliminating the wrongful birth cause of action because we believe that the birth of a disabled child is not a valid reason to sue a physician.

We believe this because we have received from Christ a commandment of love: "You shall love the Lord your God with all your heart, and with all your soul, and with all your mind. This is the greatest and first commandment. And a second is like it: You shall love your neighbor as yourself."² Christ teaches us that our neighbor is precisely the individual who is most vulnerable, marginalized, forgotten, and cast aside.³ Catholics thereby receive two of our most fundamental moral imperatives: *respect innocent life* and *care for the weak and defenseless*. In the words of Pope Francis, "even the weakest and most vulnerable, the sick, the old, the unborn and the poor, are masterpieces of God's creation, made in his own image, destined to live forever, and deserving of the utmost rever-

ence and respect."⁴

Texas law and policy: In Texas, this cause of action was established in 1975 by the Texas Supreme Court in *Jacobs v. Theimer*, in which the parents of a disabled child born in 1968 sued their physician for negligence because he did not inform them that Mrs. Jacobs had contracted rubella during pregnancy and therefore the child was likely to be born with physical disabilities.⁵ After noting the difficulty of comparing the financial burden of *no* life to *disabled* life, the Court permitted a wrongful birth cause of action in which parents could recover the cost of disabilities caused by the child's birth.⁶ Figure 1 illustrates that 10 states in the U.S. currently prohibit this cause through state law; another 4 states prohibit this cause through state courts.

This cause of action implies that allowing a disabled person to be born is an injury or damage to his or her parents. The TCCB rejects this notion and has supported bills such as Senate Bill 25 from the 85th Legislative Session.⁷ The bill's authors explained that such lawsuits encourage doctors to take a defensive posture by searching for disabilities and recommending abortion to avoid litigation.⁸ Laws which foster eugenic abortions must be removed.

Additionally, Texas law requires physicians to offer prenatal diagnostic tests, communicate

the results to their patients, and allows patients to sue physicians who are negligent or engage in malpractice. We fully support these laws because they maintain a high standard of healthcare. The proposed law would never excuse a doctor from the duty to offer tests and communicate the results to patients. Nevertheless, when those tests indicate that an unborn child is disabled, there should be no ability to sue a doctor for their willingness to care for the disabled child. We see intrinsic value and in-effaceable human dignity in every person and we encourage legislators to reject the idea that someone's life can be reduced to a financial damage that must be repaid.

Call to action: To support this proposal in the Texas legislature, please visit txcatholic.org/life to find and contact your lawmaker. Please also pray for Texas and for our legislators, that they may respect innocent life and care for the weak and defenseless.

Research and analysis by Michael Barba and Oksana Lyon.

The TCCB is a federation of all Roman Catholic dioceses and ordinariates in Texas. There are 8 million Catholics living in our state. To contact us, call our office at 512-339-9882, email jennifer@txcatholic.org, or find TXCatholic on [Facebook](#) and [Twitter](#).

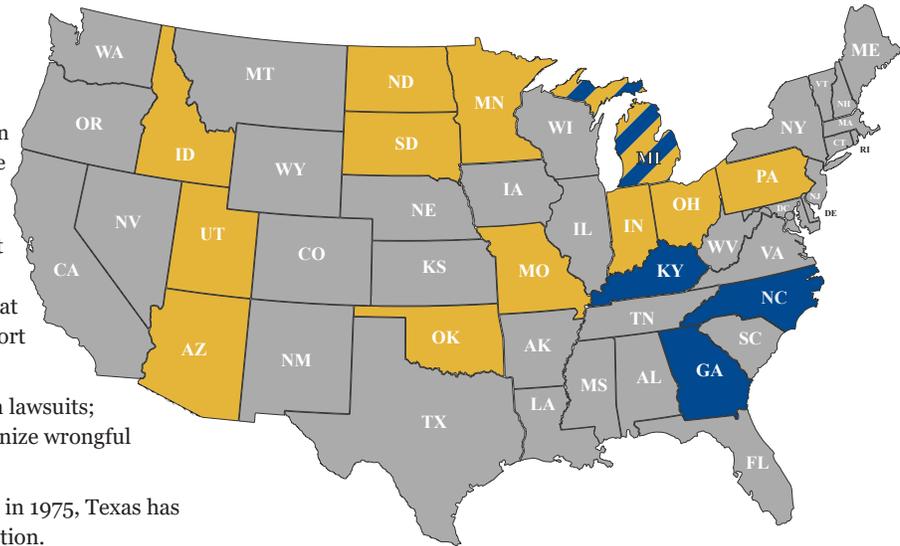
Figure 1: Wrongful birth causes of action, by state (Jan. 2019)

- Courts prohibit cause of action
- Legislators prohibit cause of action
- Courts & legislature prohibit cause
- Allows cause of action

In a wrongful birth lawsuit, a parent of a child born disabled sues their physician for treatment or advice that does not offer the opportunity to abort the child.

Laws in 12 states ban wrongful birth lawsuits; courts in 4 more states do not recognize wrongful birth as grounds to sue a doctor.

Since a Texas Supreme Court ruling in 1975, Texas has allowed a wrongful birth cause of action.



Endnotes

1. [Haymon v. Wilkerson](#), 535 A.2d 880, 883 (D.C. 1987).
2. Mt. 22:37-40; cf. Deut. 6:5; Lev. 19:18; CCC #2055.
3. Lk. 10:25-37.
4. Vatican Radio, *Pope Francis: All life has inestimable value*. (July 17, 2013)
5. See [Haymon v. Wilkerson](#) for a discussion of the distinction between wrongful birth and wrongful life causes of action.
6. [Jacobs v. Theimer](#) 519 S.W.2d 846 (1975) at 849-850.
7. TCCB, [Bill positions: Senate Bill 25](#). (November 21, 2016)
8. Texas Senate Audio/Video Archive, [Layout of CSSB 25](#). (March 20, 2017)