



# Brief: End Wrongful Birth Lawsuits

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## 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. We support HB 4199 to prohibit wrongful birth lawsuits 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.<sup>1</sup> 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."*<sup>2</sup>

Christ teaches us that our neighbor is precisely the individual who is most vulnerable, marginalized, forgotten, and cast aside.<sup>3</sup> We thereby receive two of our fundamental moral rules: *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 reverence and respect."*<sup>4</sup>

**Texas law and policy:** This cause of action was established in our state in 1975 by the Texas Supreme Court ruling *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.<sup>5</sup> 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.<sup>6</sup> 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. We reject this notion and support **HB 4199** to end this law which encourages doctors to take a defensive posture by searching for disabilities and recommending abortion to avoid litigation.<sup>7</sup> Laws fostering eugenic abortions must be repealed.

Additionally, Texas law requires physicians to

