Written Testimony of Danielle Pimentel, J.D.
Policy Counsel, Americans United for Life
In Opposition to Senate Bill 1590
Submitted to the Senate Judiciary Committee
March 11, 2024

Dear Chair Gardenhire, Vice-Chair White, Vice-Chair Rose, and Members of the Committee:

My Name is Danielle Pimentel, and I serve as Policy Counsel at Americans United for Life ("AUL"). Established in 1971, AUL is a national law and policy nonprofit organization with a specialization in abortion, end-of-life issues, and bioethics law. AUL publishes pro-life model legislation and policy guides,[1] tracks state bioethics legislation,[2] and regularly testifies on pro-life legislation in Congress and the states. Our vision at AUL is to strive for a world where everyone is welcomed in life and protected in law. As Policy Counsel, I specialize in life-related legislation, constitutional law, and abortion jurisprudence.

Thank you for the opportunity to testify in opposition to Senate Bill 1590 ("SB 1590"), titled the "Fundamental Right to Reproductive Health Care Act."[3] If this bill is passed, there would be devastating consequences for preborn children, women, and girls in the state of Tennessee. The bill authorizes abortion-on-demand throughout all nine months of pregnancy, endangers women's welfare, potentially threatens the existence of Tennessee's current pro-life laws, impedes the state from enacting future commonsense protections for women and preborn children, and furthers the false and harmful narrative that abortion is necessary for women's equality in America. For these reasons, the Committee should reject SB 1590.

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[1] *Pro-Life Model Legislation and Guides*, AMS. UNITED FOR LIFE, https://aul.org/law-and-policy/ (last visited Mar. 11, 2024). AUL is the original drafter of many of the hundreds of pro-life bills enacted in the States in recent years. *See* Olga Khazan, *Planning the End of Abortion*, ATLANTIC (July 16, 2020), www.theatlantic.com/politics/archive/2015/07/what-pro-life-activists-really-want/398297/ ("State legislatures have enacted a slew of abortion restrictions in recent years. Americans United for Life wrote most of them."); *see also* Anne Ryman & Matt Wynn, *For Anti-Abortion Activists, Success of 'Heartbeat' Bills was 10 Years in the Making*, CTR. FOR PUB. INTEGRITY (Jun. 20, 2019), https://publicintegrity.org/politics/state-politics/copy-paste-legislate/for-anti-abortion-activists-success-of-heartbeat-bills-was-10-years-in-the-making/("The USA TODAY/Arizona Republic analysis found Americans United for Life was behind the bulk of the more than 400 copycat [anti-]abortion bills introduced in 41 states.").

[2] *Defending Life: State Legislation Tracker*, AMS. UNITED FOR LIFE, https://aul.org/law-and-policy/state-legislation-tracker/ (last visited Mar. 11, 2024).

[3] AUL's opposition is limited to the bill's implications regarding abortion.

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I. The Bill is Radical and Protects Abortion-On-Demand Up Until the Baby's Birth Date.

The bill contrives an unfettered "right" to "reproductive health care," *i.e.*, abortion, in Tennessee's statutory law. The bill deceptively defines "reproductive health care" as services related to "family planning and contraceptive care; abortion care; prenatal, postnatal, and delivery care; fertility care; sterilization services; and treatments for sexually transmitted infections and reproductive cancers." By including "abortion care" amongst services that are freely accessible to women in Tennessee, the drafters of the bill attempt to conceal the true intent and nature of the legislation,[4] which is to ensure that abortions are allowed for any reason throughout all nine months of pregnancy. Accordingly, the bill goes well beyond the overruled decisions in *Roe v. Wade*[5] and *Planned Parenthood of Southeastern Pennsylvania v. Casey*,[6] which only licensed abortion through viability.

Despite the common narrative that late-term abortions are only performed in rare circumstances for medically necessary reasons, "most abortions are done for social reasons."[7] In fact, as study on late-term abortion notes, "[t]he Guttmacher Institute has provided a number of reports over 2 decades which have identified the reasons why women choose abortion, and they have consistently reported that childbearing would interfere with their education, work, and ability to care for existing dependents; would be a financial burden; and would disrupt partner relationships."[8] Thus, the overwhelming majority of abortions occur for elective reasons of the mother, not because of either the baby's or the mother's medical condition.[9]

The Guttmacher Institute further estimates that abortionists perform around 10,000 abortions at 21 weeks' gestation or later *each year*.[10] However, the number of late term abortions is likely significantly higher given that states voluntarily report abortion data and abortion destination states, such as California and Maryland refuse to provide any abortion data to the Centers for Disease Control and Prevention.[11] If Tennessee passes the bill, the number of late term abortions in the state will likely increase, which will subject more

[4] Notably, regardless of whether the bill passes, women will still have access to services like family planning, contraceptives, prenatal and postnatal care, delivery care, fertility treatments, *etc*. In other words, enacting a bill like SB 1590 is not necessary for women to have access to such services and care in the state of Tennessee.
[5] 410 U.S. 113 (1973), *overruled by* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022)
[6] 505 U.S. 833, *overruled by Dobbs*, 142 S. Ct. 2228.
[7] AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, STATE RESTRICTIONS ON ABORTION: EVIDENCE-BASED GUIDANCE FOR POLICYMAKERS, Comm. Op. 10, at 10 (updated Sept. 2022).
[8] James Studnicki, *Late-Term Abortion and Medical Necessity: A Failure of Science*, HEALTH SERVS. RSCH. & MANAGERIAL EPIDEMIOLOGY, Apr. 9, 2019, at 1, 1.
[9] *See, e.g.*, *The Assault on Reproductive Rights in a Post-Dobbs America: Hearing before the S. Comm. on the Jud.,* 118th Cong. 15 (2023) (written testimony of Monique Chireau Wubbenhorst, MD, MPH) (stating that "95 percent of abortions are for elective or unspecified reasons.").
[10] Guttmacher Institute, *Induced Abortion in the United States*, GUTTMACHER (2019), https://www.guttmacher.org/fact-sheet/induced-abortion-united-states.
[11] *See Questions and Answers on Late-Term Abortion*, CHARLOTTE LOZIER INST. (May 16, 2022), https://lozierinstitute.org/questions-and-answers-on-late-term-abortion/.

women to dangerous abortion procedures that threaten their welfare and subject preborn children to barbaric and gruesome deaths.

A. ***There are Numerous Health and Safety Risks to Late-Term Abortions***

If Tennessee enshrines a "right" to abortion in its state law, more women will be put at risk of suffering severe and life-threatening complications from late-term abortions. Abortion already poses inherent dangers to women's health and safety; however, abortions carry even higher risks when done later in pregnancy.[12]

Gestational age is the strongest risk factor for abortion-related mortality, and the incidence of major complications is significantly higher after 20 weeks' gestation.[13] For example, compared to an abortion at 8 weeks' gestation, the relative risk of mortality increases exponentially (by 38 percent for each additional week) at higher gestational ages.[14] Further, researchers have concluded that it may not be possible to reduce the risk of death in later-term abortions because of the "inherently greater technical complexity of later abortions."[15] This is because later-term abortions need to dilate the cervix to a greater degree, and the increased blood flow predisposes women to hemorrhage, and the myometrium relaxes and is more subject to perforation.[16]

Some immediate complications from abortion include blood clots, hemorrhaging, incomplete abortions, infection, and injury to the cervix and other organs.[17] Immediate complications from abortions overall affect approximately 10% of women undergoing abortion, and approximately one-fifth of these complications are life-threatening.[18] If the bill is passed and Tennessee authorizes abortion-on-demand, more women will experience life-threatening complications from late-term abortions.

B. ***Abortion Negatively Affects Women's Mental Wellbeing***

Enshrining an unfettered "right" to abortion will further the psychological harms women suffer after having an abortion. Numerous studies demonstrate the psychological trauma women experience from abortion. "[P]regnancy loss (natural or induced) is associated with an increased risk of mental health problems."[19] "Research on mental health

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[12] *See* Planned Parenthood, *How Safe Is an In-Clinic Abortion?*, https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion (last visited Mar. 11, 2024) ("The chances of problems get higher the later you get the abortion, and if you have sedation or general anesthesia."

[13] Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 731 (2004).

[14] *Id*. at 731; PRO. ETHICS COMM. OF AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *Induced Abortion & the Increased Risk of Maternal Mortality*, Comm. Op. 6 (Aug. 13, 2019).

[15] Bartlett, *supra* note 13, at 735.

[16] *Id*.

[17] *See* Planned Parenthood, *supra* note 12.

[18] REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005).

[19] David C. Reardon & Christopher Craver, *Effects of Pregnancy Loss on Subsequent Postpartum Mental Health: A Prospective Longitudinal Cohort Study*, 18 INT'L J. ENV'T RSCH. & PUB. HEALTH 1, 1 (2021).

subsequent to early pregnancy loss as a result of elective induced abortions has historically been polarized, but recent research indicates an increased correlation to the genesis or exacerbation of substance abuse and affective disorders including suicidal ideation."[20]

Scholarship shows "that the emotional reaction or grief experience related to miscarriage and abortion can be prolonged, afflict mental health, and/or impact intimate or parental relationships."[21] In fact, a recent 2023 study found that American "women whose first pregnancy ends in induced abortion are significantly more likely than women whose first pregnancy ends in a live birth to experience mental health problems throughout their reproductive years."[22] Similarly, "[s]everal recent international studies have demonstrated that repetitive early pregnancy loss, including both miscarriage and induced abortions, is associated with increased levels of distress, depression, anxiety, and reduced quality of life scores in social and mental health categories."[23]

Enshrining a "right" to abortion in Tennessee will increase the number of women and young girls suffering from the psychological harms of having an abortion. By authorizing abortion-on-demand, the rates of mental health issues—such as depression, anxiety, and suicidal ideation—will increase and thus diminish women's overall quality of life.

C. ***Abortion Subjects Preborn Children to Painful Abortion Procedures***

In addition to harming women's physical and mental health, abortion also subjects preborn children to fetal pain. The most common abortion procedures performed after 20 weeks gestation are dilation and evacuation procedures, *i.e.*, dismemberment abortions.[24] Another procedure used in later-term abortions is intact dilation and extraction, *i.e.*, partial-birth abortions.[25] Both procedures are gruesome and barbaric and involve either dismembering or crushing the preborn child's body in the womb, which are undoubtedly painful for the preborn child.[26] As a result, Congress enacted the Partial-Birth Abortion Ban in 2003,[27] recognizing the need to protect preborn children from the gruesome procedure.

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[20] Kathryn R. Grauerholz et al., *Uncovering Prolonged Grief Reactions Subsequent to a Reproductive Loss: Implications for the Primary Care Provider*, 12 FRONTIERS IN PSYCH. 1, 2 (2021).
[21] *Id*.
[22] James Studnicki et al., *A Cohort Study of Mental Health Services Utilization Following a First Pregnancy Abortion or Birth*, 15 INT'L J. WOMEN'S HEALTH 955, 959 (2023).
[23] Grauerholz, *supra* note 20; *see, e.g*., Louis Jacob et al., *Association Between Induced Abortion, Spontaneous Abortion, and Infertility Respectively and the Risk of Psychiatric Disorders in 57,770 Women Followed in Gynecological Practices in Germany*, 251 J. AFFECTIVE DISORDERS 107, 111 (2019) (finding "[a] positive relationship between induced abortion . . . and psychiatric disorders").
[24] Patricia A. Lohr et al., *Surgical Versus Medical Methods for Second Trimester Induced Abortion*, Cochrane Database of Systematic Rev. (Jan. 2008).
[25] *See* Elizabeth Johnson, *The Reality of Late-Term Abortion Procedures*, CHARLOTTE LOZIER INST. (Jan. 20, 2015), https://lozierinstitute.org/the-reality-of-late-term-abortion-procedures/.
[26] *See id*.
[27] 18 U.S.C. § 1531.

There is ample research on fetal pain in the 50 years after *Roe*. As one example, in 2019, scientists found evidence of fetal pain as early as 12 weeks' gestation.[28] A 2010 study found that "the earlier infants are delivered, the stronger their response to pain"[29] because the "neural mechanisms that inhibit pain sensations do not begin to develop until 34–36 weeks[] and are not complete until a significant time after birth."[30] As a result, preborn children display a "hyperresponsiveness" to pain.[31] According to one group of fetal surgery experts, "[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures."[32] Given the medical advancements in fetal medicine and the evidence of fetal pain early in a pregnancy, it is well within the state's legitimate interests to enact laws that preserve prenatal life as well as minimize fetal pain as much as possible.[33]

If the bill passes, the state will be authorizing abortion-on-demand up until the baby's birth date. In effect, preborn children, who can feel pain, will be subjected to abortion violence. Ultimately, the bill disregards the humanity of children in the womb and results in more preborn children intentionally being subject to barbaric and painful abortion procedures, which runs contrary to the state's legitimate interest to preserve prenatal life and mitigate fetal pain.[34]

II. The Bill May Threaten Existing Life-Affirming Laws and Impede Tennessee from Enacting Future Health and Safety Safeguards for Women

The passage of the bill could place Tennessee's current pro-life protections at risk of being challenged in court or being removed by the legislature, similar to what has occurred in Michigan in 2023. In the same vein, Tennessee may face difficulty enacting any future protections for women, girls, and preborn children if it enshrines a right to abortion in its state law.

The bill prohibits the state from 1) "deny[ing], restrict[ing], interfere[ing] with, or discriminat[ing] against a person's" purported right to abortion, and from 2) "criminaliz[ing] an action taken by a person in the exercise of the person's fundamental rights…" With such broad language, abortion activists may argue that any existing pro-life law or proposed legislation interferes with a women's "right to make decisions about the person's reproductive health care" under state law. Additionally, even though the Supreme Court found that states have a legitimate interest in protecting maternal health and safety and preserving prenatal life,[35] a court may nevertheless find that a person's purported "right to

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[28] Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain,* 46 J. MED. ETHICS 3 (2020)
[29] Lina K. Badr et al., *Determinants of Premature Infant Pain Responses to Heel Sticks*, 36 PEDIATRIC NURSING 129 (2010).
[30] *Fact Sheet: Science of Fetal Pain*, CHARLOTTE LOZIER INST. (Sept. 2022), https://lozierinstitute.org/fact-sheetscience-of-fetal-pain/#_ednref14.
[31] Christine Greco & Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES PAIN MGMT. 379 (2014).
[32] Maria J. Mayorga-Buiza et al., *Management of Fetal Pain During Invasive Fetal Procedures. Lessons Learned from a Sentinel Event*, 31 EUROPEAN J. ANAESTHESIOLOGY 188 (2014).
[33] *See Dobbs*, 142 S. Ct. at 2284.
[34] *See id.*
[35] *See id.*

make decisions about the person's reproductive health care" outweighs such interests and balance the competing interests in favor of abortion.

This extreme abortion "right," even may impact common-sense informed consent and health and safety protections for women and girls considering abortion, which is concerning given the number of women who are forced into having abortions. There are several studies that highlight the prevalence of coerced abortions. A recent peer-reviewed study showed that 43% of post-abortive women described their abortion as "accepted but inconsistent with their values and preferences," while 24% indicated their abortion was "unwanted or coerced."[36] Similarly, another study found that 61% of women reported experiencing "high levels of pressure" to abort from "male partners, family members, other persons, financial concerns, and other circumstances."[37]

The bill also impacts laws unrelated to abortion. For example, the bill states that "[a] fertilized egg, embryo, or fetus does not have independent or derivative rights under the laws of this state." This language is contrary to existing Tennessee law that recognizes the rights of preborn children in non-abortion contexts, such as in the state's fetal homicide law.[38] Tennessee's fetal homicide statute protects unborn children against homicide in other scenarios, such as fatal domestic abuse. However, if this bill is passed, preborn children and their parents will be stripped of such protections.

During the 2023 legislative session, Michigan residents faced a similar challenge as their legislature sought to repeal virtually all pro-life policies in the state only one year after the residents voted to amend their constitution to enshrine an unfettered right to abortion. The legislature sought to repeal portions of the state's informed consent process, licensing requirements for abortion clinics, abortion reporting requirements, prohibitions of gruesome partial-birth abortions, a law that required doctors to screen for coercion and provide victims of coercive abuse with helpful resources, *etc*. Michigan's abortion amendment has similar language to Tennessee's Bill in that it guarantees a "right to reproductive freedom," which cannot be infringed upon "unless justified by a compelling state interest achieved by the least restrictive means."

If Tennessee enshrines a "right" to abortion in its state law, the state could face threats to its remaining life-affirming laws, similar to what has occurred in Michigan. These safeguards are crucial to keeping women and preborn children safe from the harms of abortion violence.

III. The Bill Perpetuates the False Narrative that Women Need Abortion

Abortion is anything but empowering. Abortion not only intentionally destroys preborn human life, but it is also detrimental to women's physical and mental well-being, as

[36] David C. Reardon et al., *The Effects of Abortion Decision Rightness and Decision Type on Women's Satisfaction and Mental Health*, CUREUS, May 11, 2023, at 1.
[37] David C. Reardon & Tessa Longbons, *Effects of Pressure to Abort on Women's Emotional Responses and Mental Health*, CUREUS, Jan. 31, 2023, at 1.
[38] Tenn. Code Ann. § 39-13-214.

mentioned above. However, by seeking to enshrine an unfettered "right" to abortion, the bill further the narrative that women "need" abortion in order to obtain equality and success in American society. This belief is unfounded and anti-woman.

The bill uses vague and broad language that mask the reality of abortion and its harms to women and preborn children. Abortion is not healthcare as the bill implies. It is the intentional destruction of innocent preborn human life. The American Association of Pro-Life Obstetricians and Gynecologists ("AAPLOG") define elective abortion as "those drugs or procedures with the primary intent to end the life of the human being in the womb."[39] Elective abortions are not medically required, as AAPLOG explains, "[e]lective' . . . refers to inductions done in the absence of some condition of the mother or the fetus which requires separation of the two in order to protect the life of one or the other (or both)."[40] Indeed, "there is no medical indication for elective induced abortion, since it cures no medical disease."[41]

Additionally, abortion activists often imply that pregnancy is some sort of illness or disability, rather than a natural physiological process that many women experience. As AAPLOG notes, "[p]regnancy is not a disease, and the killing of human beings in utero is not medical care."[42] Further, "[t]o date, the medical literature offers no support for the claim that abortion improves mental health or offers protection to mental health. In fact, there is evidence to the contrary."[43]

Despite these evident truths, abortion activists continue to push forth false narratives about pregnancy and women's alleged "need" for abortion. However, the evidence abortion activists rely upon, which "claim[s] to show that abortion has facilitated women's health and equality is feeble and/or scientifically invalid."[44] Women are harmed by "the repetition and acceptance of the 'equality' argument for favoring legal abortion," because it "easily communicates that women's pregnancy and parenting is a disability most females suffer. It explicitly or implicitly assumes that the male body and reproductive model is the norm, to which women should conform in order to achieve 'agreed' measures of success . . . ."[45]

Yet, converse to the cultural narrative, pregnancy is neither an illness nor a disability and to imply that it is such results in discriminatory treatment towards women. "A system that undervalues both mothering and fathering severely disadvantages women as well as

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[39] *AAPLOG Statement: Clarification of Abortion Restrictions*, AM. ASS'N PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS (July 14, 2022), https://aaplog.org/aaplog-statement-clarification-of-abortion-restrictions/.
[40] Rsch. Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10, at 5 (Aug. 2022).
[41] Pro. Ethics Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *Hippocratic Objection to Killing Human Beings in Medical Practice,* Comm. Op. No. 1, at 8 (May 8, 2017).
[42] *Id*.
[43] Rsch. Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *supra* note 40, at 5.
[44] Helen M. Alvare, *Nearly 50 Years Post-*Roe v. Wade *and Nearing its End: What is the Evidence that Abortion Advances Women's Heath and Equality*, 35 REGENT L. R. 165, 216 (Feb, 2022).
[45] *Id*. at 213.

men and children, and interferes with children receiving the care they require."[46] Additionally, this leads to both a "public and private resistance to accommodating motherhood" in employment, which "leads to additional disadvantages for women."[47] "For example, discrimination on the basis of pregnancy and motherhood has succeeded outright discrimination on the basis of sex."[48]

Abortion neither resolves nor combats the discrimination pregnant women face. If anything, it only furthers the discriminatory view of pregnancy and motherhood by perpetuating the lie that women cannot be both mothers and thrive in American society. The women of Tennessee deserve better than to have the abortion industry subject them to deceptive language surrounding abortion, which is a life-altering—and at times, life-threatening—decision. The bill furthers the abortion industry's lies and efforts to mask the realities of abortion, which is to the detriment of women's health, safety, and success and equality in America.

IV. Conclusion

By enabling abortion-on-demand throughout pregnancy, the bill threatens the health and safety of some of Tennessee's most vulnerable citizens. The bill seeks to abandon women and preborn children without any health and safety safeguards, which will dramatically increase abortion violence throughout the state. I urge the Committee to reject the bill to protect mothers and their preborn children from such harm.

Respectfully Submitted,

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[46] *Id*.
[47] *Id*. at 214.
[48] *Id*. at 216.