May 31, 2018

Sen. Erin Lynch Prata, Chair
Members of the Senate Committee on Judiciary
January Session, 2018, of the State of Rhode Island General Assembly

Re: Testimony of Bradley N. Kehr, Esq., Government Affairs Counsel, Americans United for Life, Against S 2163, the Reproductive Health Care Act, Regarding Enshrining Expansive Abortion Measures into Law

Dear Chair Prata and Honorable Members:

I am Bradley N. Kehr, Government Affairs Counsel with Americans United for Life (AUL). Established in 1971, AUL has been active in all fifty states and is known as the legal architect of the pro-life movement. AUL attorneys are experts on constitutional law and abortion jurisprudence. We appreciate the opportunity to submit legal testimony concerning S 2163, regarding enshrining expansive abortion measures in Rhode Island law.

I have thoroughly reviewed S 2163, and it is my opinion that S 2163 expands abortion allowances beyond *Roe v. Wade* and its progeny, eliminating the state's legitimate interest in protecting life and prohibiting commonsense protections for women's health.

The Act Expands Abortion Allowance Beyond* Roe *and its Progeny

S 2163 immediately rejects the Supreme Court's supposition in *Roe* that "a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life."[1] The language of the Act explicitly removes this important role of the State, prohibiting restrictions on "preventing, commencing, continuing, or terminating" a pregnancy prior to fetal viability or interfering with a woman from terminating her pregnancy after viability "to preserve the health or life" of that woman. However, no definition of health is given. In so doing, the Act effectively creates abortion on demand at any point in the pregnancy.

The Supreme Court has upheld restrictions on the provision of abortion due to the state's legitimate interest in protecting life and provisions to ensure the informed consent and health of the woman on whose child the abortion will be performed.[2] Most recently in *Whole Women's Health*, the Supreme Court reiterated that the "State has a legitimate interest in seeing to it that abortion, like any

[1] *Roe v. Wade*, 410 U.S. 113 at 154 (1973)
[2] *See*, *Planned Parenthood of Southeast Pa. v. Casey*, 505 U.S. 833 (1992)

medical procedure, is performed under circumstances that insure maximum safety for the patient."[3] This Act would remove the ability of Rhode Island to act upon its legitimate interest in protecting life and ensuring the mother's health.

The Act Prohibits Actions to Protect Health, Putting Women and Children at Risk

By focusing on preventing any restrictions on abortion, the Act would establish an extremely high bar for protections for women and children's health that touch on abortion. Such prohibited protections could include informing the woman what an abortion involves, what procedure will be done, the gestational age of the baby, and the risks of an abortion. It could prevent ensuring that she has time to consider the impact and consequences of an abortion.

It could prevent giving notice to the woman that adoption services are available and that there are options for pre-natal and perinatal care regardless of income. It could prevent protections against coerced abortion, sex selective abortion, and abortion based on genetic anomalies such as Down syndrome. Even more troubling, it could leave teenage girls without the protection and support of their families and community.

Additionally, it would clearly prohibit protections for unborn children who feel pain and would remove the state ban on partial-birth abortion (a gruesome procedure detailed in *Gonzales v. Carhart*[4]). By failing to define health, the Act allows for abortion up to the moment of delivery of the child.[5]

Ultimately, the Act would reject what the Supreme Court acknowledged, that "the medical, emotional, and psychological consequences of an abortion are serious and can be lasting…."[6] Only by rejecting S 2163 can this committee further Rhode Island's important state interest in preserving human life, as well as protecting women's health.

Sincerely,

Bradley N. Kehr
Government Affairs Counsel
Americans United for Life

[3] *Whole Women's Health v. Hellerstedt*, 790 F.3d 563 (2016) (quoting *Roe*, 410 U.S. at 150)
[4] 550 U.S. 124 (2007)
[5] The Supreme Court considered health to include all factors, including "physical, emotional, psychological, familial, and the woman's age" for the purposes of post-viability abortions. *Doe v. Bolton*, 410 U.S. 179, 192 (1973). This was later circumscribed by legitimate state interests. *See, Casey*, 505 U.S. 833.
[6] *H.L v. Matheson*, 450 U.S. 398, 411 (1981)