



**Written Testimony of Bradley N. Kehr  
Government Affairs Counsel, Americans United for Life  
On A.21/S.240, Reproductive Health Act  
Submitted to the members of the Assembly Committee on Health  
1/14/2019**

Dear Members of the Committee:

My name is Bradley N. Kehr and I am Government Affairs Counsel with Americans United for Life (AUL), the oldest and most active pro-life non-profit advocacy organization. Established in 1971, AUL has dedicated nearly 50 years to advocating for comprehensive legal protections for human life from conception to natural death. AUL attorneys are experts on constitutional law and abortion jurisprudence, including the constitutionality of laws protecting children born alive during attempted abortions. I appreciate the opportunity to bring before you legal testimony concerning S. 240 and A. 21, the Reproductive Health Act (RHA), regarding enshrining expansive abortion measures in New York law.

I have thoroughly reviewed S. 240 and A. 21, and it is my opinion that the RHA has severe consequences for the health of women and the unborn. It expands abortion allowances beyond *Roe v. Wade* and its progeny by rejecting the state's legitimate interest in protecting life and prohibiting commonsense protections for women's health.

***The Act Puts Women and Children at Risk, Affirmatively Rejecting Actions to Protect Health***

The RHA harms women by eliminating common sense protections for women and children's health and affirmatively rejecting future protections. It removes protections for infants born alive after an abortion (NY Public Health Law 4164). It reinstates infanticide by removing fetal homicide and manslaughter criminal penalties (NY Penal Code 125.00-125.20). It removes necessary protections for minors on access to abortifacients and makes them available through non-pharmacist sources (NY Education Law 6811(8)). It opens the door to back-alley abortions by removing criminal penalties for the manufacture, sell, or delivery of abortion supplies, including chemical abortion drugs (NY Penal Code 125.60). And, it eliminates accountability on abortion providers by removing the ability of coroners to investigate deaths from abortion (RHA Sec. 11).

The RHA doesn't even bother to make this a "possible" parade of horrors. They are laid out explicitly in the text of the legislation. While New York has consistently ranked low on AUL's Life List, it does currently have some protections, such as the requirement that an abortion be performed by a physician, protections for infants born alive after an abortion, and fetal homicide protections. The RHA removes each of these commonsense protections.

Additionally, the RHA paves the way for preventing any future protections for the health of the mother and child, which could include informing the woman what an abortion involves, the nature of the specific abortion procedure, 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.

Notices meant to fully inform the woman about her options, such as adoption services or need-based prenatal and perinatal aid would be stifled. It could prevent required sex-trafficking reporting and prohibit protections against coerced abortion, sex-selective abortion, and abortion based on genetic anomalies such as Down syndrome. Even more troubling, it would leave teenage girls without the protection and support of their families and community.

Moreover, it would clearly prohibit protections for unborn children who feel pain and would prevent a state ban on partial-birth abortion (a gruesome procedure detailed in *Gonzales v. Carhart*<sup>1</sup>). By failing to define health, the Act allows for abortion up to the moment of delivery of the child.<sup>2</sup>

The consequences of such an explicit disdain for life are not theoretical. A prime example is Kermit Gosnell who operated in a state that had far more value for life than New York is showing. Set free by the RHA, there is no telling how extreme the results of similar abortionists will be.<sup>3</sup> And Gosnell is not alone. New York has its own Dr. Rho who botched an abortion which led to the death of Jamie Lee Morales.<sup>4</sup> Women continue to die at the hands of abortionists.<sup>5</sup> In the RHA, New York not only turns a blind eye to these outcomes, suggesting that such abortionist's underlying motivations are the anomaly instead of the norm among those who make a business out of taking unborn life, it explicitly joins with them, abdicating its rightful authority to protect women.

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<sup>1</sup> 550 U.S. 124 (2007).

<sup>2</sup> 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.

<sup>3</sup> Conor Friedersdorf, *Why Dr. Kermit Gosnell's Trial Should Be a Front-Page Story*, ATLANTIC, (Apr. 12, 2013), <https://www.theatlantic.com/national/archive/2013/04/why-dr-kermit-gosnells-trial-should-be-a-front-page-story/274944/>.

<sup>4</sup> The Associated Press, *NY Doctor Pleads Guilty to Negligent Homicide in Botched Abortion Procedure that Killed Woman*, NY DAILY NEWS, (May 5, 2018), <https://www.nydailynews.com/new-york/queens/ny-doctor-pleads-guilty-abortion-procedure-killed-woman-article-1.3972502>.

<sup>5</sup> AMS. UNITED FOR LIFE, UNSAFE, (2d ed. 2018).

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

The RHA 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.”<sup>6</sup> The language of the Act explicitly removes this important role of the State, prohibiting “enforcement of laws or regulations that ... burden abortion access.”

The RHA immediately expands abortion to any time it “*is necessary to protect the patient’s life or health.*” 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.<sup>7</sup> Most recently in *Whole Woman’s Health v. Hellerstedt*, the Supreme Court reiterated that the “State has a legitimate interest in seeing to it that abortion, like any medical procedure, is performed under circumstances that insure maximum safety for the patient.”<sup>8</sup> Not only does this Act remove the ability of New York to act upon its legitimate interest in protecting life and ensuring the mother’s health, it actively rejects that the state has any affirmative interest in the life of the unborn altogether.

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....”<sup>9</sup> Only by rejecting S. 240 and A. 21 can this committee further New York’s important state interest in preserving human life, as well as protecting women’s health.

Sincerely,



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Americans United for Life

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<sup>6</sup> *Roe v. Wade*, 410 U.S. 113, 154 (1973).

<sup>7</sup> See *Planned Parenthood of Southeast Pa. v. Casey*, 505 U.S. 833 (1992).

<sup>8</sup> 790 F.3d 563 (2016) (quoting *Roe*, 410 U.S. at 150).

<sup>9</sup> *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).