



**Written Testimony of Catherine Glenn Foster, Esq.
President & CEO, Americans United for Life
On Proposal 5
Submitted to the Senate Committee on Health and Welfare
March 13, 2019**

Dear Chair Lyons, Vice Chair Westman, and Members of the Committee:

My name is Catherine Glenn Foster, and I serve as President and CEO of Americans United for Life (AUL), America's original and most active pro-life 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 submit legal testimony concerning Proposal 5, regarding enshrining expansive abortion measures in Vermont's constitution.

I have thoroughly reviewed Proposal 5, and it is my opinion that Proposal 5 expands abortion allowances well beyond *Roe v. Wade* and its progeny, eliminating the State's legitimate interest in protecting both life and maternal health.

The Proposal Expands Abortion Allowance Beyond Roe and Its Progeny

Proposal 5 would impede Vermont's ability to act on its legitimate interests in protecting both life and maternal health. By preventing any regulation of the abortion process unless it is "justified by a compelling State interest achieved by the least restrictive means," this Proposal 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 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

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."³ This Proposal would go against Vermont's legitimate interests by establishing an extremely high bar for commonsense protections for women and

¹ *Roe v. Wade*, 410 U.S. 113, 154 (1973).

² See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

³ 790 F.3d 563 (2016) (quoting *Roe*, 410 U.S. at 150).

children’s health, which could include informing the woman on the nature of the abortion procedure, informing her on the risks associated with the particular abortion procedure, and protecting women from coercion to abort. The Proposal would also prevent protections against sex-selective abortion and abortion based on genetic anomalies such as Down syndrome.

Proposal 5 could also result in the prohibition of any type of regulation—including commonsense health and safety measures—of abortion providers or facilities because they could be considered a restriction on the practice of abortion. Legalized abortion has not eliminated substandard medical care, kept people without medical licenses from performing abortions, ensured competent post-abortive care, or prevented women from dying from unsafe abortions, and this Proposal engenders a regulatory regime akin to the one in Pennsylvania that allowed the infamous abortionist Kermit Gosnell to operate his “House of Horrors” for decades. Gosnell, ultimately convicted of involuntary manslaughter, was able to perform unsafe, unsanitary, and deadly abortions for many years because, according to the Grand Jury report, the Pennsylvania Department of Health thought it could not inspect or regulate abortion clinics because that would interfere with access to abortion.⁴ By lowering professional accountability, abortion facilities in Vermont will be free to operate without regulation and oversight, to the detriment of women and young girls.⁵ By passing this Proposal, Vermont will turn a blind eye to unsafe abortion practices by abdicating its proper duty to protect women.

Ultimately, the Proposal would reject what the Supreme Court acknowledged, that “the medical, emotional, and psychological consequences of an abortion are serious and can be lasting....”⁶ This Committee must reject Proposal 5 so that Vermont continue to further its important state interests in preserving human life and protecting women’s health.

Sincerely,



Catherine Glenn Foster, M.A., J.D.
President & CEO
Americans United for Life

⁴ See, e.g., 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/> (discussing the case of Kermit Gosnell).

⁵ See, e.g., Ams. United for Life, *Unsafe* (2d ed. 2018) (report documenting unsafe practices of abortion providers and harm to women’s health and safety).

⁶ *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).