Written Testimony of Catherine Glenn Foster, Esq.
President & CEO, Americans United for Life
On H. 57, the "Freedom of Choice" Act
Submitted to the Senate Committee on Health and Welfare
April 12, 2019

Dear Chairwoman Lyons 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 organization advocating for everyone to be welcomed in life and protected in law. Established in 1971, AUL has dedicated nearly 50 years to working towards comprehensive legal protections for human life from conception to natural death. Thank you for the opportunity to provide legal testimony on H. 57, the "Freedom of Choice Act," which would enshrine expansive pro-abortion measures in Vermont law.

I have thoroughly reviewed H. 57, and it is my legal opinion that the Act would have severe consequences for the health of women and unborn children. It expands abortion allowances beyond *Roe v. Wade* and its progeny, rejects the state's legitimate interest in protecting life, and prohibits commonsense protections for women's health.

The Act is straightforward and sweeping in its operation. It prohibits every "agency, department, office, or other subdivision" of State or local government and any elected or appointed officer or employee of State or local government from "interfer[ing] with or restrict[ing]" an individual or healthcare provider from terminating a pregnancy. Vt. H. 57, Sec. 2, § 9496(2) (definition of "public entity"), § 9497. Thus, the Act effectively expands abortion up until birth, allowing abortion well beyond what was permissible under *Roe v. Wade.*

These changes are unnecessary according to federal constitutional law, and harmful to the women of this State. In *Roe v. Wade*, the Supreme Court explained that "a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life."[1] Most recently, in *Whole Woman's Health v. Hellerstedt*, the 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."[2] As a reflection of a state's legitimate interest in protecting life, a state may pass common-sense health and safety abortion regulations, including provisions to ensure the

[1] *Roe v. Wade*, 410 U.S. 113, 154 (1973).
[2] 136 S. Ct. 2292, 2309 (2016) (quoting *Roe*, 410 U.S. at 150).

informed consent and health of a woman who chooses to have an abortion.[3] In blatant disregard of the State's prerogative, the Act not only circumscribes Vermont's ability to act upon its legitimate state interest in protecting life and ensuring the mother's health, but also rejects that Vermont has any affirmative interest whatsoever in the life of the unborn.

Further, the Act could reasonably be interpreted to prohibit any regulation of abortion providers or abortion facilities that could be considered any form of restriction on the practice of abortion, even common-sense health and safety measures. The Act thereby engenders a regulatory regime that is akin to the one in Pennsylvania that allowed the infamous abortionist Kermit Gosnell to operate his "House of Horrors" for decades. Gosnell, who was ultimately convicted of involuntary manslaughter, was able to provide unsafe, unsanitary, and deadly abortions for so 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] If Vermont passes the Act, it will turn a blind eye to unsafe abortion practices by abdicating its proper duty to protect women.

Finally, H. 57 would also repeal all existing rights of an unborn child in prenatal injury law, wrongful death law, property law, and guardianship law – eliminating any remedy for an injury to a child in utero. Sec. 9493(c). This provision effectively abolishes any recognition of rights enjoyed in utero – even rights that a majority of states recognize in tort, property, and criminal law.

In conclusion, I urge this Committee to further Vermont's important state interests in protecting women's health and preserving human life, and reject H. 57.

Sincerely,

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

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[3] *See Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).
[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).