Written Testimony of Catherine Glenn Foster, Esq.
President & CEO, Americans United for Life
Opposing the Abortion Legislation Bill
New Zealand Parliamentary Select Committee
September 19, 2019

Dear Chair Dyson and Honorable Members of the Select Committee:

My name is Catherine Glenn Foster, and I serve as President and CEO of Americans United for Life (AUL), the oldest and most active pro-life non-profit advocacy organization in the United States. Established in 1971, AUL has dedicated nearly 50 years to advocating for comprehensive legal protections for human life from conception to natural death. Thank you for the opportunity to provide legal testimony opposing the Abortion Legislation Bill, which would greatly expand access to elective abortion in New Zealand, and effectively create a legal regime of "abortion on demand" as we have in the U.S. I have thoroughly reviewed the Bill, and it is my legal opinion that the legislation would have severe consequences for the health of women and unborn children. It would expand abortion allowances through all nine months of gestation, and it rejects New Zealand's legitimate interest in protecting life and providing commonsense safeguards for women's lives and health. Accordingly, we respectfully urge the Select Committee to reject this Bill.

The Bill effectively expands abortion up until birth.

The Bill would permit "qualified health practitioners" to do abortions up to 20 weeks gestation. (Part 1, Sec. 7, new Sec. 10.) After 20 weeks, abortion would be available if the physician doing the abortion (the "qualified health practitioner") "reasonably believes that the abortion is appropriate in the circumstances," considering the mother's physical health, mental health and "well-being". (*Id*., new Sec. 11.) Thus, abortion will be available from any abortionist who subjectively believes that a woman's "well-being" makes it appropriate. Since the same abortionist who is making this determination will be paid for the procedure – anywhere from $400 NZ to $3,000 NZ, depending on the age of the baby – obviously the Bill imposes no real limit on abortion whatsoever. Even the judge-made constitutional law of abortion in the U.S., among the most pro-abortion in the world since *Roe v. Wade* in 1973[1] expanded access to abortion to any time it is "necessary to preserve the health or life of that individual," at least contemplated

[1] 410 U.S. 113, 154 (1973).

some limits, though these have been poorly enforced.[2] The Bill thus allows for abortion up to the moment of delivery of the child and effectively creates abortion on demand at any point in the pregnancy.

The Bill Puts Women at Risk.

The Bill also would prevent laws designed to protect the health of the mother and ensure her choice for abortion is fully informed, which are commonplace in the U.S. even under the regime of *Roe v. Wade*. In *Roe*, the Supreme Court explained that "a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life."[3] 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."[4] As a reflection of a state's legitimate interest in protecting life, States may pass common-sense health and safety abortion regulations, including provisions to ensure the informed consent and health of a woman who chooses to have an abortion.[5] In blatant disregard of the State's prerogative, the Bill not only circumscribes New Zealand's ability to act upon its legitimate state interest in protecting life and ensuring the mother's health, but also rejects that the Nation has any affirmative interest whatsoever in the life of the unborn.

America has repeatedly experienced the result of a regime of neglect of protection for women's lives and health. Failing or refusing to require abortion businesses to abide by basic health and safety mandates will engender a regulatory regime that is akin to the one in the State of 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.[6] By lowering professional accountability, abortion facilities in New Zealand will be free to operate without regulation and oversight, to the detriment of women and young girls. Already in the U.S., with its judicially-imposed ready availability of abortion, women are dying and being maimed by abortionists all over the country, as AUL's publication *Unsafe* documents.[7] If New Zealand passes this Bill, it will turn a blind eye to unsafe abortion practices by abdicating its proper duty to protect women.

---

[2] The Supreme Court considers "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, and a limitation to physical conditions and diagnosable psychological conditions was accepted. *See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).
[3] *Roe v. Wade*, 410 U.S. at 154.
[4] 136 S. Ct. 2292, 2309 (2016) (quoting *Roe*, 410 U.S. at 150).
[5] *See Casey*, 505 U.S. 833.
[6] *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/.
[7] *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).

The Bill Tramples on the Fundamental Right of Conscience of Pro-Life Healthcare Professionals.

Additionally, the Bill would vitiate legal protections for healthcare professionals who object to destroying life in the womb, contrary to their professed oath to "First do no harm." The Bill would force pro-life doctors, nurses and pharmacists to materially participate in abortion by telling their patients how to obtain a government list of abortionists to be maintained by the Director-General of Health – as if that list won't be readily available to anyone who cares to Google it! As discussed above, even apart from the firmly held belief against abortion of many in the healthcare professions, abortion is not free of risks, nor is it practiced "safely" where it is allowed. A government mandate that healthcare professionals ensure their patients know how to call someone who could kill or maim them in an elective procedure is an atrocious deprivation of their right of conscience, and their dignity as caring professionals.

The Bill Ignores the Deeply Held Convictions of Most New Zealanders.

A final note: because the Select Committee's point of reference for the proposed legislative amendments begins with a false premise, the Committee is unlikely to arrive at the correct conclusions on this Bill. The Committee's Explanatory Note discusses provisions in the Crimes Act this Bill would leave unchanged, that outlaw "killing an unborn child" "if the [perpetrator] causes the death of any fetus in such a manner that they would be guilty of murder *if it had become a human*." The fact is, a life in utero is a *human life*; it is a member of the species *homo sapiens* from conception, as a matter of biological fact. The U.S. Supreme Court in *Roe* did not hold otherwise, and several U.S. courts have upheld as constitutional a requirement that mothers considering abortion be reminded by abortionists that the procedure terminates "the life of a whole, separate, unique, living human being."[8] Public sentiment has come to recognize this fact, as polls have shown (as they similarly show in the U.S.) that half of all New Zealanders are "pro-life," and even those who are self-described as "pro-choice" desire more restrictions, not fewer, on abortion. Submissions to the Law Commission last year were overwhelmingly (69%) opposed to any change in the abortion legislation. New Zealand is a model for the whole world in the orderliness of its central government, and in its responsiveness to the will of its people in making governance decisions. Why the rush to nullify national laws that are already widely regarded as lax in their effect?

In conclusion, I respectfully urge the Select Committee to protect the lives and health of Kiwi mothers and their children, and reject the Abortion Legislation Bill. If it pleases the Select Committee, I

[8] See, e.g., *Planned Parenthood v. Rounds*, 530 F.3d 724 (8th Cir. 2008) (en banc).

would be privileged to provide verbal testimony by Skype or in person, at your convenience. Thank you for your gracious consideration of this vitally important matter.

Sincerely,

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