



December 19, 2019

Committee on Government Operations  
The Council of the District of Columbia

**Re: Testimony of Katie Glenn, Esq., Government Affairs Counsel,  
Americans United for Life, Against DC B23-434, the “Strengthening  
Reproductive Health Protections Amendment Act of 2019.”**

Chairperson Todd and Members of the Committee:

Thank you for the opportunity to provide legal testimony concerning the D.C. Council’s proposed Bill 23-434, the “Strengthening Reproductive Health Protections Amendment Act of 2019.” My name is Katie Glenn, and I am a DC resident, living in the Truxton Circle neighborhood in Ward 5. I also serve as Government Affairs Counsel for Americans United for Life (AUL), America’s oldest and most active pro-life nonprofit advocacy organization.

Since its founding in 1971, two years before the Supreme Court’s decision in *Roe v. Wade*, AUL has been active in all fifty states, as well as the District of Columbia. AUL attorneys are experts on constitutional law and abortion jurisprudence, dedicating nearly 50 years to advocating for comprehensive legal protections for human life from conception to natural death, including the protection of conscience rights in health care and for health care providers.

I have thoroughly reviewed the Act, and it is my opinion that the Act violates the First Amendment, including the free exercise of religion, the freedom of speech, and the freedom of association. Furthermore, it would have severe consequences for the health of women and the unborn. The Act expands abortion allowances beyond *Roe v. Wade* and its progeny, rejects the District’s legitimate interest in protecting life, and prohibits commonsense protections for women’s health from being enacted in the future.

***The Act Applies to All Religious Health Care Providers***

The Act defines “health care provider” as “[a]ny person, group of persons, partnership, institution, corporation, organization, or board engaged in the provision of health care in any manner; or . . . engaged in, or authorized for, credentialing or

licensing of a health care professional.”<sup>1</sup> The Act does not define “health care,” but the *Law Dictionary* broadly defines “health care” as: “Taking the necessary medical and preventative procedures to improve wellbeing. It can be medical or change a lifestyle.”<sup>2</sup> The modifier “in any manner” suggests that, for purposes of the Act, both “health care provider” and “health care” are meant to be defined in the broadest sense possible.

Thus, the Act would apply to everyone in the spectrum of healthcare from traditional primary care providers, including hospitals and clinics, to nonprimary care providers such as Catholic Charities and the Little Sisters of the Poor.<sup>3</sup> Also swept up in the definition are pro-life pregnancy centers, school nurses, religious medical schools, case workers, and mental health providers, among others.

The Act is massively overbroad in its scope and includes persons and organizations unrelated to the stated purpose of the Act—to prevent “discrimination.” In doing so, it exposes that the Act’s prima facie intent is to force individuals who have conscience objections to providing or facilitating abortions to condone the provision and facilitation of abortions. Such government coercion without any regard for conscience objections is unconstitutional. By failing to exclude health care providers who have conscience objections to abortion, the Act violates the First Amendment rights of the freedom of religion, the freedom of speech, and the freedom of association.

### *The Act Violates the First Amendment*

The freedom of conscience and the freedom of religious exercise are foundational rights protected by the First Amendment. This Act contravenes both of those constitutional guarantees by stripping away the rights of health care providers to act in accordance with their sincerely held religious beliefs and moral convictions against abortion and sterilization.

Under the Act, health care providers are prohibited from disassociating themselves from a health care professional “based on the health care professional’s participation in abortion . . . procedures . . . , or based on the fact that the health care professional is willing to participate in abortion . . . procedures.”<sup>4</sup> The Act is not

<sup>1</sup> Act § 291(2)(A)–(B)

<sup>2</sup> *Health Care*, THE LAW DICTIONARY (2d ed. 1910), <https://thelawdictionary.org/health-care/> (featuring Black’s Law Dictionary).

<sup>3</sup> The Little Sisters of the Poor’s facility in D.C. contains “40 Nursing Facility rooms” and they provide regular medical services on-site, including “physical therapy, medical, podiatry, and dental and psychiatry services.” *Our Home*, Little Sisters of the Poor of Washington, D.C., <http://www.littlesistersofthepoorwashingtondc.org/our-home/>

<sup>4</sup> Act § 292(a).

viewpoint neutral and would create a legal preference for health care professionals who are pro-abortion.

In effect, the Act would require health care providers to support, promote, and, by association, condone acts antithetical to their sincerely held religious beliefs and moral convictions. This is a blatant violation of their First Amendment rights to the free exercise of religion, the freedom of speech, and the freedom of association (and disassociation).

Under the Act, religious health care providers would be prohibited from operating according to their mission and statement of faith, being coerced by the Act's requirements to introduce ideology in opposition to both. As a result, religious health care providers would no longer be able to maintain the integrity of their mission and would be coerced by the government into being a platform for ideology that they conscientiously oppose. By forcing these providers to accept or retain individuals who directly contradict their religious beliefs and methodology of care, the Act is certain to undermine the health care providers' ability to provide care in the first place.

The Act would force health care providers who conscientiously oppose abortion to hire or retain a person who is pro-abortion. For example, the Act would require a pro-life pregnancy center, which exists to support women in unplanned pregnancies and to provide counsel regarding pregnancy, to open its doors to pro-abortion health care professionals whose beliefs and actions are directly contrary to its very purpose for existence.

If the Act passes, health care providers would be required to promote and facilitate the performance of abortion. For instance, religious hospitals and medical schools would now be required to give health care professionals who facilitate or perform abortions staff privileges, admitting privileges, and staff appointments, effectively requiring these hospitals and medical schools to facilitate the performance of abortions in violation of their deeply held religious convictions. Religious hospitals and medical schools would also likely have to recognize, give credit to, subsidize, or offer training opportunities for abortion procedures, thereby giving a stamp of approval by a health care provider that is conscientiously opposed to abortion.

Forcing pro-life health care providers to violate their moral and religious beliefs under the guise of "nondiscrimination" is antithetical to the very value—pluralism—this law is meant to defend. Like Congress's long history of protecting conscience,

religious beliefs, and moral convictions under federal law,<sup>5</sup> this Committee should likewise protect the First Amendment rights of health care providers who have conscientious objection to abortion under D.C. law.

### *The Act Impedes Necessary Regulatory Oversight*

In addition to violating the First Amendment rights of a number of Washington-based health care providers, the Act would significantly limit the ability of this Council to enact desperately needed public policy that furthers the Court-sanctioned goals of protecting the health and safety of women and girls and valuing human life.

The District of Columbia provides virtually no protection for human life and fails to protect women from the harms inherent in abortion. AUL does not rank D.C. in its annual “Life List,” but the District would undoubtedly find itself at the very bottom of the list. D.C. has virtually no informed consent protections or health and safety regulations. A minor may obtain an abortion without even notifying her parents, even when her pregnancy is evidence of sexual abuse. D.C. law does not recognize the unborn as potential crime victims. And yet, the Council considers this Act that would make it even more difficult to pass or enforce any abortion regulations, no matter how commonplace or commonsense.

The Act states that “The District recognizes the right of every individual who becomes pregnant to decide whether to carry a pregnancy to term, to give birth to a child, or to have an abortion.”<sup>6</sup> It mandates that “[t]he District government shall not [d]eny, interfere with, or restrict, in the regulation or provision of benefits, facilities, services, or information, the right of an individual, including individuals under state control or supervision, to . . . choose or refuse to carry a pregnancy to term, to give birth to a child, or to have an abortion. . . .”<sup>7</sup>

Currently, D.C. is one of just three jurisdictions that explicitly permits a minor to obtain an abortion without notifying or involving her parents. The Act doubles down on this existing bad policy. Minors who obtain abortions without parental notice or involvement are at the risk of being coerced due to an abusive situation. News stories

<sup>5</sup> Federal law has a rich history of protecting individuals and entities with religious and conscience objections to performing, assisting, providing, providing coverage of, or referring for abortion. *See, e.g.*, 42 U.S.C. § 300a-7 *et seq.* (The Church Amendments); 42 U.S.C. § 238n (The Coates-Snow Amendment); Consolidated Appropriations Act, 2017, Pub. L. 115-31, Div. H., Tit. V, § 507(d) (The Weldon Amendment).

<sup>6</sup> Act § 105a(b).

<sup>7</sup> Act § 105a(c).

frequently reveal yet another teen who has tragically been sexually abused by a person in authority: a coach, a teacher, or another authority figure. And teens are routinely taken to abortion clinics without the consent or even the knowledge of their parents. Minors are at risk of continuing, untreated trauma in the absence of parental consent laws. Passing a law that makes it even more difficult to provide any kind of legal protection to minors and their families will only harm young girls.

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.”<sup>8</sup> 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 other medical procedure, is performed under circumstances that insure maximum safety for the patient.”<sup>9</sup> 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 informed consent and health of a woman who chooses to have an abortion.<sup>10</sup> In blatant disregard of the state’s prerogative, the Act not only circumscribes the Council’s ability to act upon its legitimate state interest in protecting life and ensuring the mother’s health, but also rejects that the Council has any affirmative interest in the life of the unborn altogether.

The Act prohibits regulations of abortion providers that could be considered a restriction on an individual from having an abortion, thereby engendering a regulatory regime that is akin to the one in Pennsylvania that allowed the infamous abortion provider, Kermit Gosnell, to operate his “House of Horrors” for many years. Gosnell, who was ultimately convicted of involuntary manslaughter, was able to provide 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.<sup>11</sup> By lowering professional accountability, abortion providers in D.C. will be free to operate without

<sup>8</sup> 410 U.S. 113, 154 (1973).

<sup>9</sup> 790 F.3d 563, 567 (2016) (quoting *Roe*, 410 U.S. at 150).

<sup>10</sup> See, e.g., *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S.833, 883 (1992) (“[R]equiring that the woman be informed of the availability of information relating to fetal development and the assistance available should she decide to carry the pregnancy to full term is a reasonable measure to ensure an informed choice, one which might cause the woman to choose childbirth over abortion. This requirement cannot be considered a substantial obstacle to obtaining an abortion, and, it follows, there is no undue burden”).

<sup>11</sup> 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).

regulation and oversight, to the detriment of women and young girls.<sup>12</sup> If the Council passes this Act, it will turn a blind eye to unsafe abortion practices by abdicating its proper duty to protect women.

In conclusion, passing the Act would create the conditions for Gosnell-like clinics that endanger women seeking abortions. Doubling down on existing bad public policy while further limiting the ability of regulators to oversee clinics is a recipe for disaster. This does not improve “women’s health.” It is dangerous and wrong.

I strongly encourage this Committee to oppose Bill 23-434 in order to protect the health and safety of women and the religious and conscience rights of health care providers. Thank you.

Sincerely,

Katie Glenn, *J.D.*  
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AMERICANS UNITED FOR LIFE

<sup>12</sup> 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).