



AMERICANS UNITED FOR LIFE
STATEMENT OF ETHICAL
FIRST PRINCIPLES IN A NATIONAL CRISIS

Good Friday, April 10, 2020

AN UNPRECEDENTED CRISIS

America and the world are facing a health crisis that no one in living memory has endured. Americans United for Life offers its deepest condolences to those who have lost treasured loved ones in the COVID-19 pandemic. The Nation's grieving families and the loved ones left behind, as well as the sick and fearful coping with this tragedy, are in all of our thoughts and prayers.

At a time like this, we believe that it is important to remind ourselves that the laws of a nation or a state must be derived from fundamental ethical principles, even as they are animated by prudential considerations that seek to foster and protect the general welfare. Chief among these "First Principles" is a profound respect for human life as a gift of such inestimable worth that the loss of a single person diminishes every one of us. The British poet John Donne may have expressed it best in *Meditation 17*, written when he was seriously ill. "No man is an island," said Donne. "Every man is a piece of the continent, a part of the main.... Any man's death diminishes me, because I am involved in mankind." An ancient Jewish proverb echoes, "He who saves one life saves the whole world."

The cardinal virtues of charity and benevolence compel us to redouble our commitment to respecting all lives when many among us are vulnerable by virtue of their tender age, and others are made vulnerable by advancing age or infirmity. Vulnerability is a universal and recurring portion of the human condition. From the smallest infant who cannot suck the breast without assistance, to the adult debilitated by a serious ailment, to the aged nursing home resident, every human being experiences helplessness and dependence repeatedly in the course of a lifetime. An enlightened society does not call the helpless, sick and infirm "undignified" by virtue of their condition. We understand that tending to babies, nursing the sick and mending the suffering ennoble us, nurture humility, and strengthen the bonds of community. Human dignity depends upon affirming human worth; a government that implements a medical-legal regime that denies the value of any life based on its intrinsic vulnerability risks abolishing human dignity and human worth.

The moral commitments that flow out of these foundational principles are uniquely challenged in a time of national crisis such as the one America now faces in the COVID-19 viral pandemic. As of April 9, 2020, the United States has seen 15,938 deaths from COVID-19 – or over five times the number of lives lost on September 11, 2001 - with over 435,000 more struggling with the disease.¹ The figures from New York alone are staggering: 5,150 deaths. Beginning April

¹ See Watson Inst. Int'l and Pub. Affairs, Johns Hopkins University, *Coronavirus Resource Center*, <https://coronavirus.jhu.edu/map.html>. To place these figures in perspective, the death toll from COVID-19 has already far surpassed the number of lives lost in recent conflicts in Afghanistan and Iraq combined. See <https://watson.brown.edu/costsofwar/costs/human/military/killed>.

8th through April 22nd, America is expected to experience the equivalent in loss of life of a 9/11 attack or a Pearl Harbor bombing *every single day for at least two weeks*. As in many things, minority communities in the U.S. suffer disproportionately; African-Americans in Louisiana, for example, account for 70% of the Coronavirus patients in the state, although they make up just a third of the state's population.²

It is a well known but unfortunate fact that individual rights and freedoms come under the greatest stress during times of national turmoil, such as plague and war. We also know that a society is judged by how it treats its most vulnerable members. As Senator Hubert Humphrey expressed it, "The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; those who are in the shadows of life, the sick, the needy and the handicapped."³ A crisis like the COVID-19 pandemic places these two truths in high relief by seeming to pit one principle against the other, testing how firm our commitment is to both.

A BULWARK OF LIFE-AFFIRMING LAW

Americans United for Life believes that while many voices are competing to utilize this crisis to advance long held political agendas, there is ultimately no real conflict between these truths. What is needed at this time, as at all times, is a steady and determined adherence to the values that made America great, as reflected in the structure of its system of constitutional jurisprudence, laws, policies and regulations. These include:

Protections for the fundamental right to human life and the means to safeguard that life established in the Fifth and Fourteenth Amendments to the U.S. Constitution and equivalent constitutional provisions in all fifty States;

Protections for the rights and opinions of minority citizens expressed in the First Amendment to the U.S. Constitution and equivalent constitutional provisions in all fifty States;

Protections for the aged and disabled set forth in numerous federal statutes and states analogs, such as the Americans with Disabilities Act,⁴ Section 504 of the Rehabilitation Act,⁵ the Age Discrimination in Employment Act,⁶ and Section 1557 of the Affordable Care Act (prohibiting discrimination in HHS-funded health programs or activities);⁷

² See Laura Barron-Lopez, et al., *Health professionals warn of 'explosion' of coronavirus cases in minority communities*, Apr. 6, 2020, <https://www.politico.com/news/2020/04/06/coronavirus-demographics-170353>

³ *Remarks of Sen. Hubert H. Humphrey at the Democratic National Convention*, July 13, 1976, <http://www2.mnhs.org/library/findaids/00442/pdfa/00442-04021.pdf>.

⁴ 42 U.S.C. 12101 *et seq.*

⁵ 29 U.S.C. § 701 *et seq.*

⁶ 29 U.S.C. §§ 621-634.

⁷ See Health and Human Servs. Office for Civil Rights in Action, *Bulletin: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19)* (Mar. 28, 2020), <https://www.hhs.gov/sites/default/files/ocr->

Prohibitions on expending public funds to destroy human life through elective abortion and human experimentation, established in the federal Hyde Amendment,⁸ Title X of the Social Security Act,⁹ the Dickey-Wicker Amendment,¹⁰ statutes and policies governing the National Institutes of Health,¹¹ and constitutional and statutory provisions of thirty-five States and the District of Columbia; and

Protections for the right of conscience of those in the healing professions in various federal statutes and state analogs, including the Patient Protection & Affordable Care Act,¹² the Weldon Amendment,¹³ Coates-Snowe Amendment,¹⁴ and Church Amendments.¹⁵

[bulletin-3-28-20.pdf](#). As the HHS Office of Civil Rights admonished recently, “[t]hese laws... remain in effect:”

[P]ersons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person’s relative “worth” based on the presence or absence of disabilities or age. Decisions by covered entities concerning whether an individual is a candidate for treatment should be based on an individualized assessment of the patient, based on the best available objective medical evidence.

Id. A laudable example of the implementation of this administrative authority is HHS-OCR’s resolution of allegations that the State of Alabama engaged in age and disability discrimination in ventilator triaging guidelines. See <https://www.hhs.gov/about/news/2020/04/08/ocr-reaches-early-case-resolution-alabama-after-it-removes-discriminatory-ventilator-triaging.html>.

⁸ Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. 115–245, § 506, 132 Stat. 3118, (2018).

⁹ 42 U.S.C. § 300a-6; “None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.”

¹⁰ Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. 115–245, § 508, 132 Stat. 3118–19, (2018).

¹¹ See Public Health Service Act, Secs. 498A (addressing research involving the transplantation of fetal tissue for therapeutic purposes) and 498B (making it unlawful for “any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce”); 45 CFR §46.204 (prohibiting financial inducements to terminate a pregnancy, and forbidding individuals engaged in research to have “any decisions as to the timing, method, or procedures used to terminate a pregnancy” or “in determining the viability of a neonate”); 45 CFR §46.206 (research involving “the placenta, the dead fetus or fetal material” is subject to all applicable state, local, and federal laws); <https://www.hhs.gov/about/news/2019/06/05/statement-from-the-department-of-health-and-human-services.html>.

¹² Pub. L. No. 111-148 as amended by Pub. L. No. 111-152, §§ 1303(b)(4) (healthcare provider conscience protections within the health insurance Exchange program) and 1553 (conscience protections regarding assisted suicide).

¹³ Consolidated Appropriations Act, 2009, Pub. L. No. 111-117, 123 Stat 3034.

¹⁴ Public Health Service Act § 245, 42 U.S.C. § 238n.

¹⁵ 42 U.S.C § 300a-7 et seq.; see also Executive Order No. 13535, 75 F.R. 15597 (2010) (known as the “Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act”) (March 24, 2010) (affirming that under the Affordable Care Act, longstanding federal health care provider conscience laws remain intact, and new protections prohibit discrimination against health care facilities and health care providers based on their unwillingness to provide, pay for,

AN AGENDA FOR RESPONSE

In view of the current crisis, and the innumerable proposals it has spawned for safeguarding the strong and healthy at the expense of the weak and vulnerable,¹⁶ Americans United for Life believes it is prudent and timely to reaffirm the First Principles that have animated this great Nation's commitment to the dignity and value of human life, and to urge leaders at every level of government to affirm their commitment to seeing them implemented in law and policy. In particular, we call on government leaders to:

Deny the abortion industry's efforts to secure special treatment to those who are devoted to the destruction of innocent human life by abortion – even to the point of risking the health and safety of healthcare workers, pregnant women and others;

Resist efforts to expand chemical abortion (RU-486 abortion) in ways that increase the already significant risks the drug poses to women;

Refuse to countenance the rationing of healthcare services and life-saving technology by age, race, disability, or pre-existing condition;

Uphold the right of clinically vulnerable patients in critical care to continue to receive life-sustaining medical care and access to family and loved ones; and

Reject efforts to broaden the use of human embryos and human fetal tissue for research.

provide coverage of, or refer for abortions); and 42 CFR Secs. 438, 440, 460; 45 CFR Secs. 86, 92, 147, 155, and Proposed Rule, *Nondiscrimination in Health and Health Education Programs or Activities*, 156 RIN 0945-AA11,

¹⁶ See, e.g., Alan Guttmacher Inst., “Nine Things Congress Must Do to Safeguard Sexual and Reproductive Health in the Age of COVID-19,” <https://www.guttmacher.org/content/nine-things-congress-must-do-safeguard-sexual-and-reproductive-health-age-covid-19>; American College of Obstetricians & Gynecologists, <https://www.acog.org/news/news-releases/2020/03/joint-statement-on-abortion-access-during-the-covid-19-outbreak>; World Health Organization, “Safe Abortion is Essential to Protecting Women's Human Rights,” <https://reproductiverights.org/press-room/who-report-safe-abortion-is-essential-to-protecting-women's-human-rights>; C-Fam, “Abortion ‘Essential’ in UN's \$2B COVID-19 Funding Plan,” https://c-fam.org/friday_fax/abortion-essential-in-uns-2b-covid-19-funding-plan/; Center for Reproductive Rights, “Texas Abortion Providers File Emergency Lawsuit to Keep Essential Abortion Procedures Available During Pandemic,” Mar. 25, 2020, <https://reproductiverights.org/press-room/texas-abortion-providers-file-emergency-lawsuit-keep-essential-abortion-procedures>; Office of the Att’y General of California, “Attorney General Becerra Leads Coalition of 21 Attorneys General Asking FDA to Increase Access to Reproductive Telehealth Care During COVID-19 Pandemic,” Mar. 30, 2020, <https://oag.ca.gov/news/press-releases/attorney-general-becerra-leads-coalition-21-attorneys-general-asking-fda>; Ariana Eunjung Cha, “Hospitals across U.S. consider universal do-not-resuscitate orders for coronavirus patients,” Mar. 25, 2020, <https://www.adn.com/nation-world/2020/03/25/hospitals-across-us-consider-universal-do-not-resuscitate-orders-for-coronavirus-patients/>; and cf. Disability Rights Education & Defense Fund, *Preventing Discrimination in the Treatment of COVID-19 Patients: The Illegality of Medical Rationing on the Basis of Disability*, <https://dredf.org/the-illegality-of-medical-rationing-on-the-basis-of-disability/>.

RECOMMENDATIONS FOR ACTION

In order to advance these First Principles and to effectuate their articulation, dissemination and implementation, Americans United for Life strongly recommends that the federal and governments take the following actions as expeditiously as possible:

First, that the President instruct the Secretary of Health & Human Services to issue guidance to all recipients of federal healthcare funding re-affirming that all statutory and regulatory civil liberties protections for patients and healthcare professionals are to be respected and accommodated to the uttermost extent possible during this health crisis.

Second, that the Governor of each State similarly instruct health officials to abide by and accommodate said civil liberties protections in federal and state law.

Third, that the President appoint a successor Presidential Council on Bioethics and Pandemic Response, similar to the councils appointed by his predecessors Bill Clinton, George W. Bush and Barack Obama. This Council can advise the President on bioethical issues that may emerge as a consequence of a pandemic and speak to other pressing bioethical issues at-hand.

A FINAL WORD OF GRATITUDE

Americans United for Life salutes in grateful thanks the healers and first responders who have worked tirelessly to save and protect life, often at the risk of their own lives. They have done this before, after 9/11 and in numerous wars and times of unrest, and will have to do it again. To them, we offer the words of French philosopher Albert Camus, writing of another time and another epidemic, but eerily like every other one, including our own:

None the less, he knew that the tale he had to tell could not be one of a final victory. It could be only the record of what had had to be done, and what assuredly would have to be done again in the never-ending fight against terror and its relentless onslaughts, despite their personal afflictions, by all who, while unable to be saints but refusing to bow down to pestilences, strive their utmost to be healers.¹⁷

For this reason, those in the healing professions will be foremost in our thoughts and prayers well after the current crisis is passed.

¹⁷ Albert Camus, *THE PLAGUE* 271: Everyman's Library (Alfred A. Knopf 2004).