



**Written Testimony of Danielle Pimentel, J.D.  
Policy Counsel, Americans United for Life  
In Opposition of Constitutional Amendment Concurrent Resolution 2,  
“Reproductive Freedom”  
Submitted to the House Committee on Judiciary  
February 15, 2023**

Dear Chairman Lynn, Vice-Chair Wallace, and Members of the Committee:

My name is Danielle Pimentel, and I serve as Policy Counsel at Americans United for Life (“AUL”). Established in 1971, AUL is a national law and policy nonprofit organization with a specialization in abortion, end-of-life issues, and bioethics law. AUL publishes pro-life model legislation and policy guides,<sup>1</sup> tracks state bioethics legislation,<sup>2</sup> and regularly testifies on pro-life legislation in Congress and the states. Our vision at AUL is to strive for a world where everyone is welcomed in life and protected in law. As Policy Counsel, I specialize in life-related legislation, constitutional law, and abortion jurisprudence.

Thank you for the opportunity to testify in against CACR 2 (the “Resolution”). I have thoroughly reviewed CACR 2, and it is in my opinion that it would have severe consequences for the health of women and unborn children in New Hampshire. The Resolution prohibits commonsense protections for women’s health from being enacted in the future, and infringes on healthcare providers’ conscience rights. I strongly urge the Committee to oppose the Resolution.

**I. The Resolution Significantly Limits New Hampshire’s Ability to Enact Commonsense Health and Safety Protections for Women**

New Hampshire law provides very few protections for pregnant women and the unborn. As a result, New Hampshire currently ranks #41 on AUL’s annual “Life List,” ranking states from most to least life-affirming.<sup>3</sup> This is partly due to the state’s lack of health and safety regulations for abortions. There are no abortion reporting requirements in the state nor is there an informed consent process. Further, New

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<sup>1</sup> *Pro-Life Model Legislation and Guides*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/> (last visited Feb. 13, 2023).

<sup>2</sup> *Defending Life: State Legislation Tracker*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/state-legislation-tracker/> (last visited Feb. 13, 2023).

<sup>3</sup> Natalie M. Hejran, *Arkansas Ranks First on Americans United for Life’s Annual “Life List” for Third Straight Year*, AMS. UNITED FOR LIFE (Jan. 5, 2023), <https://aul.org/2023/01/05/arkansas-ranks-first-on-americans-united-for-lifes-annual-life-list-for-third-straight-year/>.

Hampshire allows a minor to obtain an abortion with only minimal notice to her parents, even when the pregnancy is the result of sexual abuse. Now, the legislature has put forth this Resolution, which will make it even more difficult to pass or enforce any abortion regulations, no matter how commonplace or commonsense they may be.

The Resolution states that “an individual’s right to personal reproductive autonomy is central to the liberty and dignity to determine one’s own life course and shall not be denied or infringed unless justified by a compelling state interest achieved by the least restrictive means.” This language severely limits New Hampshire from enacting abortion regulations unless the state has a compelling interest that is narrowly tailored to the legislation. As a result, the Resolution would make it difficult to enact future protections for the health of the mother and the unborn child, including critical medical disclosures that inform pregnant women what an abortion involves, the nature of the specific abortion procedure, the gestational age of the baby, and the risks of an abortion. It could prevent women from having the time necessary to consider the impact and consequences of an abortion. For example, notices meant to fully inform the woman about her options, such as adoption services or need-based prenatal and perinatal aid would be stifled under the Resolution. The Resolution could prevent required sex-trafficking reporting and prohibit protections against coerced abortion, sex-selective abortion, and abortion based on genetic anomalies such as Down syndrome.

*a. The Resolution Prevents New Hampshire From Enacting Informed Consent Safeguards for Women*

The decision to abort one’s unborn child is a life-altering decision, and informed consent is critical to this decision. In its basic definition, informed consent “is a process by which the treating health care provider discloses appropriate information to a competent patient so that the patient may make a voluntary choice to accept or refuse treatment.”<sup>4</sup> A woman cannot agree to medical treatment unless she is “competent, adequately informed and not coerced” in giving informed consent.<sup>5</sup>

New Hampshire does not have an informed consent process for women undergoing abortions. However, approximately thirty-four states have enacted informed consent safeguards in their abortion laws.<sup>6</sup> Twenty-nine states have reflection periods ranging from 18-hours to 72-hours, which ensure that a woman has the time she needs to take all the given information into account without the pressure of making an immediate decision since the “medical, emotional, and psychological

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<sup>4</sup> Christine S. Cocanour, *Informed Consent—It’s More Than a Signature on a Piece of Paper*, 214 AM. J. SURGERY 993, 993 (2017).

<sup>5</sup> *Id.*

<sup>6</sup> The states are Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

consequences of an abortion are serious and can be lasting.”<sup>7</sup> States often require certain informed consent disclosures about the nature and risks of abortion procedures. Yet, this Resolution prevents New Hampshire from passing or enforcing any type of informed consent safeguards for women.

Informed consent is critical because women seeking abortion face serious risks of intimate partner violence (“IPV”) and reproductive control. IPV includes physical violence, sexual violence, stalking, and psychological aggression by a current or former intimate partner.<sup>8</sup> Notably, abortion increases the risk of IPV. There are “[h]igh rates of physical, sexual, and emotional IPV . . . among women seeking a[n] abortion.”<sup>9</sup> For women seeking abortion, the prevalence of IPV is nearly three times greater than women continuing a pregnancy.<sup>10</sup> Post-abortive IPV victims also have a “significant association” with “psychosocial problems including depression, suicidal ideation, stress, and disturbing thoughts.”<sup>11</sup>

Another public policy concern for women seeking abortion is reproductive control, which describes “actions that interfere with a woman’s reproductive intentions.”<sup>12</sup> Reproductive control occurs over “decisions around whether or not to start, continue or terminate a pregnancy, including deployment of contraception, and may be exercised at various times in relation to intercourse, conception, gestation and delivery.”<sup>13</sup> Individuals that assert reproductive control over pregnant women include intimate partners, family members, and sex traffickers.<sup>14</sup> Reproductive control not only produces coerced abortions or continued pregnancies, it also affects whether the pregnancy was intended in the first place.<sup>15</sup> “As many as one-quarter of women of reproductive age attending for sexual and reproductive health services give a history of ever having suffered [reproductive control].”<sup>16</sup>

Reproductive control and IPV are prevalent issues for women. Thus, by limiting New Hampshire’s ability to ensure women’s informed consent, the Resolution raises grave domestic violence and coercion concerns.

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<sup>7</sup> *H.L. v. Matheson*, 450 U.S. 398, 411 (1981), *overruled on other grounds by Dobbs*, 142 S. Ct. 2228.

<sup>8</sup> *Id.*

<sup>9</sup> Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLOS MED. 1, 15 (Jan. 2014).

<sup>10</sup> COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (reaffirmed 2022) (internal citation omitted).

<sup>11</sup> Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLOS MED. 1, 15 (Jan. 2014).

<sup>12</sup> Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 BMJ SEXUAL & REPROD. HEALTH 61, 62 (2019).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 65.

<sup>15</sup> *Id.* at 61–62.

<sup>16</sup> *Id.* at 62.

*b. The Resolution Fails to Protect Minor Girls*

New Hampshire law permits a minor to obtain an abortion with minimal notice to and without the consent of her parents, which is inadequate to protect young girls from the inherent harms of abortion. The Resolution would make it virtually impossible to pass stronger parental involvement laws in the future. For example, the Resolution makes no mention of age when asserting “an individual’s right to personal reproductive autonomy.” Thus, this “right” would likely extend to minor girls, possibly striking down the existing parental notice law and increasing the risk of harm and trauma to teenage women in extremely vulnerable situations.

Parental involvement helps adolescent girls select a competent healthcare professional who prioritizes her health.<sup>17</sup> Moreover, parents may “provide additional medical history and information [regarding their minor daughter] to abortion providers prior to [the] performance of the abortion,” safeguard that their minor daughter understands the medical risks of abortion procedures, and offer her advice during the informed consent process.<sup>18</sup> Parental involvement “ensures that the parents have the ability to monitor for post-abortion complications.”<sup>19</sup> This is especially important given that adolescent girls have high risk pregnancies and often delay prenatal care. During pregnancy, “adolescent girls are a particularly vulnerable group since the demands of regular growth and development are augmented by heightened nutritional requirements of supporting a fetus.”<sup>20</sup> The high-risk nature of adolescent pregnancy is compounded by the fact that pregnant adolescent patients often delay care.<sup>21</sup>

Additionally, minors who obtain abortions without parental notice or involvement are at risk of being coerced due to an abusive situation. News stories frequently reveal yet another teen who has tragically been sexually abused by a person in authority: a coach, a teacher, or another authority figure. These teens are often taken to abortion clinics by their abusers without the consent or even knowledge of their parents. If enacted, the Resolution would make it more difficult to provide any kind of legal protection to minors to safeguard them from coerced abortions.

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<sup>17</sup> *Child Interstate Abortion Notification Act: Hearing on H.R. 2299 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 112th Cong. 19 (2012) (statement of Teresa Stanton Collett, Professor of Law, University of St. Thomas School of Law).

<sup>18</sup> *Id.* at 26-27.

<sup>19</sup> *Id.* at 19.

<sup>20</sup> Nadia Akseer et al., *Characteristics and Birth Outcomes of Pregnant Adolescents Compared to Older Women: An Analysis of Individual Level Data from 140,000 Mothers from 20 RCTs*, *ECLINICALMED.*, Feb. 26, 2022, at 1, 3.

<sup>21</sup> Nathalie Fleming et al., *Adolescent Pregnancy Guidelines*, 37 *J. OBSTETRICS & GYNAECOLOGY CAN.* 740, 743 (2015).

## II. The Resolution Jeopardizes the Conscience Rights of Healthcare Providers and Subverts Federal Conscience Protections

The Resolution contains broad protections for abortion, which raises serious conscience rights issues. New Hampshire is one of the few states that does not protect conscience rights of healthcare providers in the abortion context. New Hampshire’s constitution includes a purported “Right[] of Conscience,” declaring “Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.”<sup>22</sup> However, this is an inadequate protection for healthcare providers because the constitution merely states that rights of conscience are “in their very nature unalienable” without providing specifics. The constitution makes no mention of healthcare or abortion or any other direct language that would ensure the protection of healthcare providers’ conscience rights. Furthermore, it is unclear from the language how far these rights of conscience extend, i.e., whether a provider would be forced to refer out abortion procedures, or whether a provider would be forced to participate in the procedure if he or she works for a public hospital.

Additionally, the United States has a rich legal tradition of protecting conscience rights against abortions. These protections include:

- The Church Amendment, which protects healthcare facilities and individuals’ conscientious objections to performing or assisting an abortion.<sup>23</sup>
- The Coat-Snowe Amendment, which establishes anti-discrimination protections for healthcare entities that conscientiously object to training for or performing an abortion, as well as providing referrals for abortion training or abortion services.<sup>24</sup>
- The Weldon Amendment, which establishes anti-discrimination protections for medical professionals and facilities that conscientiously object to “provid[ing], pay[ing] for, provid[ing] coverage of, or refer[ring] for abortions.”<sup>25</sup>

In violation of these federal conscience protections, the Resolution threatens the conscience rights of healthcare providers to act in accordance with their sincerely

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<sup>22</sup> N.H. Const. art. IV.

<sup>23</sup> 42 U.S.C. § 300a-7.

<sup>24</sup> *Id.* § 238n.

<sup>25</sup> *See, e.g.*, Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. H, tit. V, § 507(d), 136 Stat. 49, 496 (2022).

held religious beliefs and moral convictions. Under the Supremacy Clause, federal conscience laws preempt state laws when the two are in conflict.<sup>26</sup> Accordingly, the Resolution is unconstitutional because it infringes on federal conscience protections. This Committee should reject the Resolution because it could leave healthcare providers with a choice to either perform or facilitate abortions in violation of their conscience or to stop providing care altogether.

### III. Conclusion

In conclusion, I strongly encourage this Committee to oppose CACR 2 in order to protect the health and safety of women and the conscience rights of healthcare providers.

Respectfully Submitted,



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<sup>26</sup> U.S. Const. art. VI, cl. 2.