



**Written Testimony of Danielle Pimentel, J.D.  
Policy Counsel, Americans United for Life  
In Opposition of House Bill No. 271  
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 on end-of-life issues,<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 provide written testimony against House Bill No. 271, “Repealing the Fetal Life Protection Act” (“HB 271” or “bill”). As the bill’s name indicates, HB 271 would repeal the Fetal Life Protection Act. The Fetal Life Protection Act requires that a health care provider determine the gestational age of an unborn child before performing an abortion, directs a health care provider to perform an ultrasound if the provider knows that the unborn child is at least 24 weeks’ gestation, and prohibits abortions at 24 weeks’ gestation. The Fetal Life Protection Act allows for exceptions in cases of fetal abnormalities and medical emergencies.

I have thoroughly examined HB 271, and it is in my opinion that the bill removes necessary protections for the health and safety of pregnant women and their unborn children, and is inconsistent with New Hampshire’s legitimate interest in protecting human life. For these reasons, I urge you to oppose this bill.

**I. Later-Term Abortions Carry High Risks to Women**

If HB 271 is passed, abortion-on-demand will be allowed in New Hampshire up until a baby’s birth date, which will subject women to higher risks of health

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

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

complications and maternal death. When the Supreme Court decided *Roe v. Wade* in 1973, the Court erroneously failed to consider the impact of abortion on maternal health. In fact, no medical data was entered into the legal record. In 1973, there were few, if any, peer-reviewed studies related to the long-term risks of abortion.<sup>3</sup> Now, it is well-known that abortion harms women, and the risk of harm increases substantially with gestational age. Thankfully, the Supreme Court overruled *Roe* and corrected the record in *Dobbs v. Jackson Women’s Health Organization*, recognizing that states have a legitimate interest in protecting maternal health and safety.<sup>4</sup>

It is undisputed that abortions carry a higher medical risk when done later in pregnancy. Even Planned Parenthood states on its national website that, “[t]he chances of problems gets higher the later you get the abortion, and if you have sedation or general anesthesia. . . ,” which would be necessary for an abortion at or after 20 weeks of gestation.<sup>5</sup> Ten percent of women undergoing abortions experience immediate complications such as blood clots, hemorrhage, incomplete abortions, infection, and injury to the cervix and other organs.<sup>6</sup> Approximately 1/5 of these complications are life-threatening.<sup>7</sup> After 20 weeks’ gestation, the risk of experiencing a major complication during an abortion is significantly higher.<sup>8</sup> Specifically, “the risk of death increases by 38% for every week after eight weeks gestation.”<sup>9</sup>

Because HB 271 allows abortion-on-demand up until birth, more women will experience life-threatening complications from later-term abortions, which will likely increase the number of maternal deaths. The women of New Hampshire deserve better than to be subjected to later-term abortion procedures that threaten their

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<sup>3</sup> See Clarke D. Forsythe, *ABUSE OF DISCRETION: THE INSIDE STORY OF THE SUPREME COURT’S CREATION OF THE RIGHT TO ABORTION* (2013) (Providing information on the legal and medical landscape in 1973).

<sup>4</sup> See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2284 (2022) (recognizing that states have an interest in the “respect for and preservation of prenatal life at all stages of development, the protection of maternal health and safety, the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; [and] the mitigation of fetal pain . . .”).

<sup>5</sup> See *How Safe Is An In-Clinic Abortion?*, PLANNED PARENTHOOD <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion> (last visited Feb. 14, 2023).

<sup>6</sup> *Id.*; REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005).

<sup>7</sup> REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION, *supra* note 6.

<sup>8</sup> Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 *OBSTETRICS & GYNECOLOGY* 729, 731 (2004); Janet P. Pregler & Alan H. DeCherney, *WOMEN’S HEALTH: PRINCIPLES & CLINICAL PRAC.* 232 (2002). See also Slava V. Gauferg, *Abortion Complications*, *MEDSCAPE* (updated Jun. 24, 2016) (recognizing several large-scale studies have revealed that abortions after the first trimester pose more serious risks to women’s physical health than first trimester abortions).

<sup>9</sup> Bartlett, *supra* note 8; PROFESSIONAL ETHICS COMM. OF AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *INDUCED ABORTION & THE INCREASED RISK OF MATERNAL MORTALITY*, Comm. Op. 6 (Aug. 13, 2019).

health and safety. This Committee can protect the maternal health of its citizens by rejecting HB 271.

## II. New Hampshire Has a Legitimate Interest in Preventing Fetal Pain

By opposing HB 271, this Committee will protect New Hampshire’s legitimate interest in preserving prenatal life and mitigating fetal pain.<sup>10</sup> Currently, New Hampshire permits abortion up until 24 weeks’ gestation. However, repealing the Fetal Life Protection Act will allow abortions up until birth. In effect, HB 271 will leave unborn babies who can experience pain from abortion unprotected.

Current medical science has firmly established the existence of pain in preborn infants at or before 20 weeks.<sup>11</sup> In 2019, scientists even found evidence of fetal pain as early as 12 weeks’ gestation.<sup>12</sup> Another study from 2010 found that “the earlier infants are delivered, the stronger their response to pain”<sup>13</sup> because the “neural mechanisms that inhibit pain sensations do not begin to develop until 34-36 weeks[] and are not complete until a significant time after birth.”<sup>14</sup> As a result, unborn children display a “hyperresponsiveness” to pain.<sup>15</sup> According to one group of fetal surgery experts, “[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures.”<sup>16</sup> Given the substantial medical evidence illustrating that preborn babies can experience pain by at least 20 weeks, if not earlier, it is well within New Hampshire’s legitimate interest to oppose HB 271 and minimize fetal pain as much as possible.<sup>17</sup>

## III. New Hampshire’s Ultrasound Requirement Furthers the State’s Legitimate Interest in Protecting the Life of the Mother and her Unborn Child

The Fetal Life Protection Act requires a health care provider to perform an ultrasound if the provider knows that the unborn child is at least 24 weeks’ gestation. This provision promotes woman’s physical and psychological health as well as advances New Hampshire’s legitimate interest in protecting life. Ultrasounds are the only method of diagnosing ectopic pregnancies, which, if left undiagnosed, can result

<sup>10</sup> See, e.g., *Dobbs*, 142 S. Ct. at 2284.

<sup>11</sup> Federal Pain Capable Act, S. 160, 116th Cong. § 2(1)–(11) (2019).

<sup>12</sup> Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 JOURNAL OF MEDICAL ETHICS 3 (2020).

<sup>13</sup> Lina K. Badr et al., *Determinants of Premature Infant Pain Responses to Heel Sticks*, 36 PEDIATRIC NURSING 129 (2010).

<sup>14</sup> Charlotte Lozier Institute, *Fact Sheet: Science of Fetal Pain*, [https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#\\_ednref14](https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#_ednref14) (last updated Feb. 19, 2020).

<sup>15</sup> Christine Greco and Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES IN PAIN MANAGEMENT 379 (2014).

<sup>16</sup> Maria J. Mayorga-Buiza et al., *Management of Fetal Pain During Invasive Fetal Procedures. Lessons Learned from a Sentinel Event*, 31 EUROPEAN JOURNAL OF ANAESTHESIOLOGY 188 (2014).

<sup>17</sup> *Gonzales v. Carhart*, 550 U.S. 124, 163 (“The Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty.”)

in infertility or even fatal blood loss.<sup>18</sup> Furthermore, an ultrasound enables healthcare providers to date the gestational age of an unborn child more accurately. Accurate dating of pregnancy both protects the woman by ensuring that the appropriate abortion procedure is performed and provides relevant information necessary to make an informed decision, since the risks of abortion increase as gestational age increases.

Ultimately, the Fetal Life Protection Act ensures the protection of unborn children after 24 weeks' gestation who can feel pain while also greatly reducing the risks women face when seeking an abortion. HB 271 seeks to repeal these essential protections, thereby endangering the lives of mothers and their unborn children. Thus, rejecting HB 271 is necessary to further New Hampshire's legitimate interest in protecting the health and safety of its citizens, both in and out of the womb.

#### **IV. Numerous States Have Enacted Strong Pro-Life Limits After the United States Supreme Court overturned *Roe v. Wade***

In *Dobbs*, the United States Supreme Court overturned *Roe* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* and held that “[t]he Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision.”<sup>19</sup> Now that the Supreme Court has recognized that the federal Constitution does not protect abortion as a purported fundamental right, the abortion issue has been returned to the People and the democratic process. Several states have acted on the legitimate interest of protecting both maternal health and the unborn. For example, at least 3 states maintain an enforceable limitation on abortion at 24 weeks LMP (last menstrual period), including Nevada, Massachusetts, and Pennsylvania. Other states have enacted even stronger pro-life limits. Eighteen states have laws that protect life starting at conception,<sup>20</sup> and 3 states have laws that protect life after a fetal heartbeat is detected at or after 6 weeks' gestation.<sup>21</sup> On the contrary, only six jurisdictions explicitly endorse abortion-on-demand throughout pregnancy.<sup>22</sup> By rejecting HB 271, New Hampshire will join numerous other states that have affirmed their legitimate interest in protecting life.

#### **V. Conclusion**

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<sup>18</sup> See, e.g., John M. Thorp Jr., *Public Health Impact of Legal Termination of Pregnancy in the U.S.: 40 Years Later*, 2012 SCIENTIFICA 1 (Oct. 15, 2012).

<sup>19</sup> *Dobbs*, 142 S. Ct. at 2252–53.

<sup>20</sup> States that have laws protecting life at any gestation age include Alabama, Arkansas, Arizona, Idaho, Indiana, Kentucky, Louisiana, Missouri, Mississippi, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, Wisconsin, West Virginia, and Wyoming.

<sup>21</sup> States that have laws protecting life at the detection of a fetal heartbeat include Georgia, Iowa, and Ohio.

<sup>22</sup> CAL. CONST. art. I, § 1.1; MICH. CONST. art. I, § 28; 775 ILL. COMP. STAT. 55/1-1 to 55/1-97 (2019); MINN. STAT. §145.409; N.Y. PUB. HEALTH LAW §§ 2599-AA to 2599-BB (McKinney 2019); VT. CONST. ch. I, art. 22.

The Fetal Life Protection Act reduces the risks women face when seeking late-term abortions, furthers the state's legitimate interest in mitigating fetal pain and preserving fetal life, and is consistent with other states' life-affirming measures. For these reasons, I strongly encourage this Committee to protect maternal health and prevent fetal pain by voting in opposition of HB 271.

Respectfully Submitted,



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AMERICANS UNITED FOR LIFE