



**Written Testimony of Danielle Pimentel, J.D.
Policy Counsel, Americans United for Life
In Support of House Bill No. 562
Submitted to the House Committee on the Judiciary
February 16, 2023**

Dear Chairman Lynn, Vice Chairman 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,¹ tracks state bioethics legislation,² 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 in support of House Bill No. 562, the “Women’s Right to Know Act” (“HB 562” or “bill”). The bill clarifies the preexisting duty to obtain a woman’s informed consent for abortions. I have thoroughly examined HB 562, and it is my opinion that the bill safeguards women’s informed consent and ensures women understand the real alternatives to abortion. For these reasons, I urge the Committee to support HB 562.

I. States Have Broad Powers to Safeguard Women’s Informed Consent Following *Dobbs v. Jackson Women’s Health Organization*.

In *Dobbs v. Jackson Women’s Health Organization*, the United States Supreme Court overruled *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* and returned the abortion issue to the democratic process.³ Federal courts now review abortion litigation under a rational basis review. The Supreme Court notes: “[u]nder our precedents, rational-basis review is the appropriate standard for such challenges. As we have explained, procuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution’s text or in

¹ *Pro-Life Model Legislation and Guides*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/> (last visited Feb. 13, 2022).

² *Defending Life: State Legislation Tracker*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/state-legislation-tracker/> (last visited Feb. 13, 2022).

³ *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228, 2242–2243 (2022).

our Nation’s history.”⁴ Accordingly, “States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot ‘substitute their social and economic beliefs for the judgment of legislative bodies.’”⁵ The Court recognizes that:

These legitimate interests include 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; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability.⁶

Furthermore, “[a] law regulating abortion, like other health and welfare laws, is entitled to a ‘strong presumption of validity.’”⁷ In this regard, New Hampshire has broad powers to pass informed consent protections, which ensure a woman’s decision to abort her unborn child is informed and voluntary.

II. HB 562 Clarifies the Preexisting Duty to Obtain a Woman’s Informed Consent.

a. The Bill Protects the Informed Consent of Women Seeking Abortion.

Informed consent is a foundational principle of modern medicine. 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.”⁸ A woman cannot agree to medical treatment unless she is “competent, adequately informed and not coerced” in giving informed consent.⁹ If you consider abortion “medicine,” then irrespective of H.B. 562, healthcare professionals must receive a woman’s voluntary, informed consent before inducing an abortion. In this regard, H.B. 562 merely codifies and clarifies standard informed consent procedures within the abortion context.

The decision to abort one’s unborn child is a life-altering decision. Aware of the gravity of this decision, approximately thirty-four states have enacted informed consent safeguards in their abortion laws.¹⁰ H.B. 562 works similarly by giving a

⁴ *Id.* at 2283.

⁵ *Id.* at 2283–2284 (citations omitted).

⁶ *Id.* at 2284.

⁷ *Id.* (citation omitted).

⁸ Christine S. Cocanour, *Informed Consent—It’s More Than a Signature on a Piece of Paper*, 214 AM. J. SURGERY 993, 993 (2017).

⁹ *Id.*

¹⁰ 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.

woman the facts—including the medical risks, benefits, and nature of the procedure—and time to make her decision.¹¹ H.B. 562 requires a woman be informed of the medical risks of abortion, the probable gestational age of her unborn child, and the medical risk of carrying the unborn child to term. This information is not only relevant to a woman’s decision of whether to abort her unborn child, but it is also medically critical to a woman’s choice of abortion procedure. Abortion-inducing drugs, for example, are only medically approved by the U.S. Federal Drug Administration up until 10 weeks gestation and have risks and contraindications specific to that procedure.¹²

The 24-hour reflection period¹³—like the reflection periods ranging from 18-hours to 72-hours in 29 other states¹⁴—helps ensure 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 consequences of an abortion are serious and can be lasting.”¹⁵

The bill also provides a woman the option to see her unborn child via ultrasonography.¹⁶ This is a concrete, effective step states can take to ensure that the mother’s consent for an abortion is as fully informed as possible. As such, at least sixteen states require medical professionals to perform ultrasounds to ensure women have the opportunity to make a fully informed choice.¹⁷

Ultrasound provisions both promote the woman’s physical and psychological health and advance the states’ important and legitimate interest in protecting life. Ultrasound laws serve an essential and irreplaceable medical purpose in that they are the only method of diagnosing ectopic pregnancies, which if left undiagnosed can result in infertility or even fatal blood loss.¹⁸ Furthermore, an ultrasound enables the healthcare provider to more accurately date the gestational age of a child. Accurate

¹¹ See, e.g., Owen A. Anderson & I. Mike J. Wearne, *Informed Consent for Elective Surgery—What Is Best Practice?*, 100 J. ROYAL SOC’Y MED. 97, 97 (2007) (“Sufficient information to make a decision should also include an explanation of (1) the risks and benefits involved; (2) any alternative treatments; and (3) the risks and benefits of doing nothing.”).

¹² *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. FOOD & DRUG ADMIN. (Jan. 4, 2023), <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>.

¹³ H.B. 562, ch. 132-B:2, §§ I to II, 2023 Leg., Reg. Sess. (N.H. 2023).

¹⁴ The states are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin.

¹⁵ *H.L. v. Matheson*, 450 U.S. 398, 411 (1981), *overruled on other grounds by Dobbs*, 142 S. Ct. 2228.

¹⁶ H.B. 562, ch. 132-B:2, §§ II(a)(4), III.

¹⁷ The states are Alabama, Arizona, Arkansas, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, New Hampshire, North Carolina, Oklahoma, Tennessee, Texas, and Wisconsin.

¹⁸ See, e.g., *Ectopic Pregnancy*, MAYO CLINIC (Mar. 12, 2022), <https://www.mayoclinic.org/diseases-conditions/ectopic-pregnancy/symptoms-causes/syc-20372088>.

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.¹⁹

Allowing a woman the opportunity to view her ultrasound helps ensure an informed choice because it gives the mother the option of seeing her unborn child as he or she really is—by seeing his or her form and face on a screen and by hearing his or her heartbeat. Medical evidence indicates that women feel bonded to their children after seeing them on the ultrasound screen.²⁰ Once that bond is established, researchers argue, a woman no longer feels ambivalent toward her pregnancy and in fact begins to feel invested in her preborn child.²¹ And thus, by giving every woman the choice to view her child’s ultrasound image, the state also furthers its interest in protecting life, as some women may ultimately decide to carry their child to term. In fact, a study found that 78% of women who see an ultrasound image of their infant in utero choose life for their baby.²² Thus, HB 562 safeguards, clarifies, and protects informed consent process for women seeking abortion.

b. *The Bill Safeguards Women’s Informed Consent Against the Heightened Risks of Chemical Abortion Drugs.*

HB 562 also addresses the hazards of chemical abortion drugs. The “chemical abortion pill” (also known as a “medical abortion”) is a regimen of two drugs, mifepristone and misoprostol.²³ “[M]ifepristone (brand name, Mifeprex), is an antiprogesterone, which starves the pregnancy. The second, misoprostol (brand name, Cytotec), a prostaglandin, causes the uterus to contract, which mechanically expels the fetus and placenta.”²⁴ The FDA has approved chemical abortion up to 10 weeks gestation,²⁵ but the drugs come with serious risks of infection, sepsis, hemorrhaging and even death.²⁶

¹⁹ See, e.g., John M. Thorp, Jr., *Public Health Impact of Legal Termination of Pregnancy in the U.S.: 40 Years Later*, SCIENTIFICA, Dec. 13, 2012, at 1, 4 (“[Abortion] epidemiologists lump all deaths together across the full spectrum of gestational age despite the well-known fact that [abortion] morbidity and mortality increase with advancing gestational age.”).

²⁰ See J. C. Fletcher & M. I. Evans, *Maternal Bonding in Early Fetal Ultrasound Examinations*, 308 N. ENG. J. MED. 392 (1983).

²¹ *Id.* at 392.

²² Thomas A. Glessner, *National Survey of Pro-life Pregnancy Centers Shows Major Influence of Ultrasound on a Mother’s Choice for Life*, CHRISTIAN NEWSWIRE (Mar. 3, 2015), <https://bit.ly/2tHbopX> (surveying 75,318 ultrasounds performed for pregnant patients identified as either abortion-minded or abortion-vulnerable and finding 58,634 chose to allow their children to live, or about 78%).

²³ *Questions and Answers on Mifepristone*, *supra* note 12.

²⁴ Clarke D. Forsythe & Donna Harrison, *State Regulation of Chemical Abortion After Dobbs*, 16 LIBERTY U. L. REV. 377, 377 (2022).

²⁵ *Questions and Answers on Mifepristone*, *supra* note 12.

²⁶ *Mifepristone U.S. Post-Marketing Adverse Events Summary Through 06/30/2022*, U.S. FOOD & DRUG ADMIN. 1, 1–2 (June 30, 2022), <https://www.fda.gov/media/164331/download>.

HB 562 requires medical professionals to disclose that “[i]t may be possible to counteract the intended effects of a mifepristone chemical abortion by taking progesterone if the female changes her mind, before taking the second drug” This provision is consistent with the 12 states that require similar disclosures about “the established medical process of reversing progesterone with administration of natural progesterone.”²⁷ According to, Clarke D. Forsythe, AUL Senior Counsel, and Dr. Donna Harrison, CEO of the American Association of Pro-Life Obstetricians and Gynecologists:

This [chemical abortion] reversal process is based both on understanding the basic pharmacology of mifepristone as well as animal studies and human retrospective studies. Mifepristone works by blocking a natural pregnancy hormone called progesterone. Progesterone is produced by the mother’s body to allow her womb to grow the placenta—the organ needed to provide nourishment to the baby. Mifepristone blocks progesterone’s actions in a woman’s uterus. When mifepristone blocks progesterone, the placenta deteriorates and can no longer provide nourishment to the baby. During the development of mifepristone, researchers clearly demonstrated that mifepristone is a reversible blocker of progesterone. Thus, if a woman’s progesterone is blocked with mifepristone, and then, within a limited time period, a physician administers more progesterone, the mifepristone blockade may be overcome, and the effects of mifepristone nullified. By giving a woman progesterone, the mifepristone abortion can be stopped and the chances of the baby surviving increase from 25% (the survival rate without natural progesterone) to 68% (the best protocol survival rate after giving natural progesterone). This is a significantly increased chance of the baby surviving the attempted chemical abortion after mifepristone. For a woman who changes her mind after starting a chemical abortion, the administration of progesterone can give her real hope of saving her unborn child.²⁸

Accordingly, it is essential that a woman understand she may revoke her informed consent during the chemical abortion and seek to reverse the abortion process before taking the second drug.

HB 562 also ensures a woman has written medical discharge instructions that explain if she revokes her informed consent after taking the first chemical abortion drug, she should consult her physician, and may experience a complete abortion, an incomplete abortion in which the baby dies but was not expelled (which requires follow-up care to prevent the risk of infection), or a continued pregnancy.²⁹ In this

²⁷ Forsythe, *supra* note 24, at 406–407.

²⁸ *Id.* at 407–408.

²⁹ H.B. 562, ch. 132-B:2, § I(d)(2).

regard, a woman has received critical medical information about the effects of discontinuing the chemical abortion before taking the second drug.

III. HB 562 Ensures Women Understand There Are Real Alternatives to Abortion.

H.B. 562 provides a woman with material information to guide her abortion decision. In addition to telling a woman of the medical risks and benefits of abortion, a woman is informed that she may receive medical assistance benefits for prenatal care, childbirth, and neonatal care, and that the father is liable for child support.³⁰ Similarly, the state will maintain a website listing pregnancy, childbirth, and family services.³¹ This is important and material information which lets a woman know she is not alone in her decision. She has financial and social support, which give her real options of giving birth and raising her child or placing her child for adoption to a loving family.

This information is vital as a woman considers abortion because she may be under stressful circumstances. Women seek abortion for multiple reasons, including financial considerations, timing of the pregnancy, partner related reasons, and childcare concerns.³² The pregnancy may be “unintended,” which may be a reason to seek an abortion. Notably, half of all pregnancies are characterized as “unintended.”³³

A woman may be facing intimate partner violence (IPV). There are “[h]igh rates of physical, sexual, and emotional IPV . . . among women seeking a[n] abortion.”³⁴ For women seeking abortion, the prevalence of IPV is nearly three times greater than women continuing a pregnancy.³⁵ Post-abortive IPV victims also have a “significant association” with “psychosocial problems including depression . . . , suicidal ideation . . . , stress . . . , and disturbing thoughts.”³⁶

Similarly, intimate partners, family members, and sex traffickers may be asserting reproductive control over the woman, which are “actions that interfere with a woman’s reproductive intentions.”³⁷ In the context of abortion, reproductive control

³⁰ H.B. 562, ch. 132-B:2, § II(a)(1) to (2).

³¹ *Id.* ch. 132-B:3, § I(a).

³² M. Antonia Biggs et al., *Understanding Why Women Seek Abortions in the US*, BMC WOMEN’S HEALTH, JULY 5, 2013, at 1, 1.

³³ COMM. ON GYNECOLOGIC PRACTICE LONG-ACTING REVERSIBLE CONTRACEPTION WORKING GRP., AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, INCREASING ACCESS TO CONTRACEPTIVE IMPLANTS AND INTRAUTERINE DEVICES TO REDUCE UNINTENDED PREGNANCY, Comm. Op. No. 642, at 1 (reaffirmed 2018).

³⁴ Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, PLOS MED., Jan. 7, 2013, at 1, 15.

³⁵ COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, REPRODUCTIVE AND SEXUAL COERCION, Comm. Op. No. 554, at 2 (reaffirmed 2022).

³⁶ Hall, *supra* note 34, at 11.

³⁷ Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 BMJ SEXUAL & REPROD. HEALTH 61, 62, 65 (2019).

not only produces coerced abortions or continued pregnancies, but it also affects whether the pregnancy was intended in the first place.³⁸ Reproductive control is a prevalent issue for women. “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].”³⁹

Abortion is not the norm. Less than one in four women in the United States will have an abortion by age forty-five.⁴⁰ This means that the majority of women will choose abortion alternatives. This bill guarantees a woman knows and understands her options.

IV. Conclusion

I strongly encourage this Committee to ensure women are fully informed of the medical nature of abortion and the real alternatives to the procedure. HB 562 provides women with material information as she considers this life-changing decision.

Respectfully Submitted,



Danielle Pimentel, J.D.
Policy Counsel
AMERICANS UNITED FOR LIFE

³⁸ *Id.* at 62–63.

³⁹ *Id.* at 62.

⁴⁰ Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 112 AM. J. PUB. HEALTH 1284, 1284 (2022).