



FEBRUARY 6, 2019

**WRITTEN TESTIMONY REGARDING H.57- AN ACT RELATING TO
PRESERVING THE RIGHT TO ABORTION**

For the reasons set forth herein, the American Center for Law & Justice (“ACLJ”), on behalf of over 88,400 concerned citizens, including 140 from Vermont, who have signed our Petition to Expose and Defeat Barbaric Abortion Laws, urges that Vermont legislators vote *NO* on Bill H. 57.

By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued and participated as counsel of record in numerous cases involving constitutional issues before the Supreme Court of the United States. *See Sumnum v. Pleasant Grove*, 555 U.S. 460 (2009); *NOW v. Scheidler*, 547 U.S. 9 (2006); *McConnell v. FEC*, 540 U.S. 93 (2003); *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997); *Lamb’s Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); *Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569 (1987).

Abortion is a grave offense against justice because it entails the deliberate killing of an innocent member of the human race. It is indisputable that the unborn child is a distinct biological organism, is alive, and belongs to the species *homo sapiens*. A justification of abortion (aside from the life vs. life situations where a mother is at serious risk of dying from continuing the pregnancy) must therefore fundamentally rest on the proposition that some members of the human race do not have even the most basic of human rights, the right to live. That proposition is incompatible with the very notion of human rights, not to mention the recognition in the Declaration of Independence that “all men are created equal” and the constitutional principle of “equal protection of the laws.”

For many people, fundamental principles of justice and morality therefore require strong efforts to reduce, and ultimately eliminate, the intentional taking of the lives of human children prior to birth, just as those same principles would preclude the deliberate killing of children after birth. But even if one were to leave aside questions of morality and justice, reducing the number of abortions definitely would reflect sound public policy.

The immediate adverse effects of abortion upon the child in the womb are obvious. In the years since abortion has become a widespread practice in the United

States and elsewhere, other, less-obvious effects upon other persons have become clear. For example, abortion, especially when repeated, increases the odds that a future pregnancy will miscarry or result in a premature birth, the former resulting in the undesired loss of a child's life in the womb, the latter posing the threat of developmental difficulties to children successfully born alive after the abortion of one or more prior pregnancies.¹ Moreover, the negative effects of abortion upon a woman's physical and mental health after abortion have now been documented extensively. In addition, the social problems abortion was theorized to ameliorate (out of wedlock births; child abuse) have not in fact been eliminated, and in many cases have increased, in the wake of liberalized recourse to abortion.

Furthermore, scientific developments over the past decades have heightened society's awareness of the uniqueness, humanity, and sensitivity of prenatal human beings at earlier and earlier stages of gestation.² Likewise, the public has begun to appreciate the horrific nature of particular abortion methods, such as partial birth abortion and dismemberment abortion.

Additionally, there is a growing body of evidence that, in many cases, abortion represents, not an empowering of women, but rather an instrument for facilitating male irresponsibility or sexual predations.³

¹ For a list of studies documenting the risks mentioned in this statement, and others, *see* www.afterabortion.org (click on link for "Research").

² The advent of 4-D ultrasounds has produced poignant images unveiling the humanity of the developing unborn child. *See* Brian Handwerk, *4-D Ultrasound Gives Video View of Fetuses in the Womb*, NAT'L GEOGRAPHIC NEWS (Feb. 25, 2005), *available at* http://news.nationalgeographic.com/news/2005/02/0225_050225_tv_ultrasound.html (describing movement by the unborn visible at as early as 8 weeks into gestation and the gleeful responses of parents who are "immediately" able to recognize the ultrasound images because the fetus actually looks like a baby). Evidence of fetal pain also points to the humanity of the unborn and has posed a challenge for abortion activists who argue that unborn babies are incapable of feeling pain. *E.g.*, Annie Murphy Paul, *The First Ache*, N.Y. TIMES MAGAZINE (Feb. 10, 2008), *available at* <http://www.nytimes.com/2008/02/10/magazine/10Fetal-t.html> (describing the research of Drs. Kanwaljeet Anand and Nicholas Fisk, both of whom have discovered that unborn and premature babies are capable of experiencing tremendous pain and have subsequently begun to administer anesthesia to infant patients). Finally, the advances in preterm birth survival rates also have provided strong confirmation of the unborn child's independent humanity. *See* Dara Brodsky & Mary Ann Ouellette, *Introduction: Transition of the Premature Infant from Hospital to Home*, in PRIMARY CARE OF THE PREMATURE INFANT 1, 1 (Brodsky & Ouellette eds., 2008) (explaining that "medical advancements in obstetric and neonatal care have led to dramatically greater chances for survival of extremely premature infants [of whom those] born at 24 weeks' gestation currently have a survival rate of approximately 40% to 60%" and "almost 100% of infants born at 34 weeks' gestation survive"). *See also* Kim Carollo, *One of the World's Smallest Surviving Infants Goes Home*, ABC Good Morning America (July 10, 2012), *available at* <http://abcnews.go.com/Health/worlds-smallest-surviving-babies-home/story?id=16714169> (recounting story of baby born at 24 weeks and weighing 9.6 ounces). **Error! Main Document Only.** More recently, a study in the New England Journal of Medicine, "Between-Hospital Variation in Treatment and Outcomes in Extremely Preterm Infants" (May 7, 2015), www.nejm.org/doi/full/10.1056/NEJMoa1410689, found that actively treated newborns as early as 22 weeks gestational age were surviving. "Gestational age" is measured from a woman's last menstrual period and is often referred to by the acronym LMP.

³ *See* ELLIOT INSTITUTE, REVERSING THE GENDER GAP at 13 (2010) [hereinafter Elliot Institute], *available at* <http://www.afterabortion.info/pdf/gendergapbooklet.pdf> (compiling data related to, *inter alia*, coerced abortions) ("[Sixty-four] percent [of women] reported that they were pressured to abort by others. Indeed,

Finally, published research strongly indicates that abortion, rather than being safer than childbirth, is in fact more dangerous.

In Finland, for example, researchers drew upon national health care data to examine the pregnancy history of all women of childbearing age who died, for any reason, within one year of childbirth, abortion, or miscarriage, between the years of 1987 and 1994 (a total of nearly 10,000 women). The study found that, adjusting for age, women who had abortions were 3.5 times more likely to die within a year than women who carried to term.⁴

A subsequent study based upon Medicaid records in California likewise found significantly higher mortality rates after abortion. The study linked abortion and childbirth records in 1989 with death certificates for the years 1989-97. This study found that, adjusting for age, women who had an abortion were 62% more likely to die from any cause than women who gave birth.⁵

Yet another study, this one of nearly a half million Danish women, found that the risk of death after abortion was significantly higher than the risk of death after childbirth.⁶ The study specifically examined both early (before 12 weeks gestation) and late (after 12 weeks gestation) abortions, and found statistically significantly higher death rates for both groups as compared to mortality after childbirth.

most abortions are primarily the result of lack of support, pressure, emotional blackmail, coercion, manipulation, deceptive counseling, threats or even violence from partners, parents, employers, doctors, counselors or others with influence over women's lives") (footnotes omitted); *see also* Vincent M. Rue et al., *Induced abortion and traumatic stress: a preliminary comparison of American and Russian women*, MEDICAL SCIENCE MONITOR, Oct. 2004, abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/15448616>. Studies show that most women feel coerced into, or at least inadequately informed about, having an abortion: "More than 50 percent [of post-abortive women] described themselves as feeling rushed or uncertain before the abortion; 79 percent said they were not counseled on alternatives to abortion; 84 percent said they did not receive adequate counseling before abortion; and 67 percent said they received no counseling before abortion." ELLIOT INSTITUTE, REVERSING THE GENDER GAP at 14 (2010) (footnote omitted). Furthermore, coercive action can become violent and deadly. *See, e.g., Boyfriend Tells Police He Struck Pregnant Girlfriend With Bat, Strangled Her*, WBNS-10TV (Oct. 13, 2014), available at www.10tv.com/content/stories/2014/10/23/columbus-ohio-boyfriend-tells-police-he-struck-pregnant-girlfriend-with-bat-strangled-her.html (last visited Nov. 19, 2014) (man allegedly murdered pregnant girlfriend after trying to convince her to abort); *Homicide: A Top Cause of Death Among Pregnant Women*, ABCNEWS (June 24, 2007), available at <http://abcnews.go.com/WN/story?id=3311859> (last visited Nov. 19, 2014) (discussing Ohio victim).

⁴ Mika Gissler, et al., *Pregnancy-associated deaths in Finland 1987-1994-definition problems and benefits of record linkage*, 76 ACTA OBSTETRICA ET GYNECOLOGICA SCANDINAVICA 651 (1997).

⁵ David C. Reardon, et al., *Deaths associated with pregnancy outcome: A record linkage study of low income women*, 95 SO. MED. J. 834 (2002).

⁶ David C. Reardon & Priscilla K. Coleman, *Short and long term mortality rates associated with first pregnancy outcome: Population register based study for Denmark 1980-2004*, 18 MED. SCI. MON. 71 (2012).

A more recent meta-analysis of nearly 1000 studies concluded that a woman's risk of premature death increase by 50% and that this lethal effect lasts at least ten years.⁷

The Finland and California studies mentioned above both showed, *inter alia*, a heightened risk of suicide after abortion.⁸ (The Danish study did not examine this aspect.) A British study found the same thing.⁹ All these studies are consistent with the many studies documenting adverse emotional consequences after abortion.¹⁰

Of course, abortion can also cause physical harm, beyond the harm (*i.e.*, death) to the unborn child. This can result directly from the procedure itself (*e.g.*, perforation of the uterus, laceration of the cervix), from the deprivation of the health benefits of continuing pregnancy (*e.g.*, eliminating the protective effect of a full-term pregnancy against breast cancer),¹¹ or by masking other dangerous symptoms (*e.g.*, a woman with an infection or an ectopic pregnancy may believe her symptoms are merely normal after-effects of abortion, leading her to delay seeking medical help).¹² See generally *Physical effects of abortion: Fact sheets, news, articles, links to published studies and more*, The UnChoice, www.theunchoice.com/physical.htm (listing sequelae and referencing sources); Reardon, *Deaths Associated with Abortion, supra*, at 311-17 (same).

In short, the tragic and inhuman downsides of abortion have become more obvious, while the previously assumed advantages have failed to materialize. Abortion has proven to be, to say the least, a harmful social experiment.

Instead of establishing commonsense measures to ensure that abortions are “safe and rare,” and instead of pursuing measures that women are made aware of the risks and potential perils of abortion, Bill H. 57, grants a statutory right to abortion on demand, without any restrictions whatsoever. If adopted, Vermont will surely become one of the most, if not *the most*, anti-life jurisdictions in the country. Vermont women deserve better than this. Unborn children of those women deserve better than this. The bill should be defeated.

⁷ David C. Reardon & John M. Thorp, *Pregnancy associated death in record linkage studies relative to delivery, termination of pregnancy, and natural losses: A systematic review with a narrative synthesis and meta-analysis*, 5 SAGE OPEN MEDICINE 1 (2017).

⁸ See also Mika Gissler, *et al.*, *Suicides after pregnancy in Finland: 1987-94: register linkage study*, 313 BRITISH MED. J. 1431 (1996) (suicide rate after induced abortion was six times higher than suicide rate after childbirth).

⁹ Christopher L. Morgan, *et al.*, *Mental health may deteriorate as a direct effect of induced abortion*, 314 BRITISH MED. J. 902 (Mar. 22, 1997) (letters section) (found suicide attempts more than four times as frequent after abortion than after childbirth).

¹⁰ See David C. Reardon, *Abortion Decisions and the Duty to Screen: Clinical, Ethical and Legal Implications of Predictive Risk Factors of Post-Abortion Maladjustment*, 20 J. CONTEMP. HEALTH L. & POL'Y 33, 39 n.14 (2003) (citing nearly three dozen sources).

¹¹ See Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54 CATH. U.L. REV. 1273, 1288-89 & nn.119 & 121 (2005) (citing sources).

¹² Cf. Reardon, *Deaths Associated with Abortion, supra*, at 284 & nn.26-27 (CDC does not count as abortion death a death from ectopic pregnancy that ruptures after the woman had an abortion, even though “the deaths are at least partially due to the failure of the abortion provider to verify the site of the pregnancy and the completion of the abortion”).

The American Center for Law & Justice strongly urges that Vermont legislators vote **NO** on Bill H. 57.

Respectfully submitted,
AMERICAN CENTER FOR LAW &
JUSTICE



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