

**Testimony of Helen M. Alvare**  
Professor of Law  
George Mason University School of Law,  
Antonin Scalia Law School  
To the Vermont House Health Care Committee

April 16, 2019

Concerning Proposal 5: A Proposed Amendment to the Constitution of  
the State of Vermont.

Thank you sincerely for this opportunity to present testimony concerning Proposal 5.

It goes without saying that it is a momentous event when a state amends its very Constitution, especially considering the age of the Vermont Constitution, and its generous recognition of “natural, inherent, and unalienable rights”<sup>1</sup> and of government’s purpose “for the common benefit, protection, and security of the people.”<sup>2</sup>

Given this human rights language, and the medically supported fact that abortion destroys the life of a human being,<sup>3</sup> Proposal 5 is a humanitarian tragedy, which can only stain the legal and social fabric of Vermont.

Abortion advocates do not appear to take this moment seriously. For example, the Testimony of Cary Brown, Executive Director of the Vermont Commission on Women before the House Committee on Health Care, devotes less than a full page toward justifying all abortions

---

<sup>1</sup> Constitution of the State of Vermont, Chapter I, Article I.

<sup>2</sup> Constitution of the State of Vermont, Chapter I, Article 7.

<sup>3</sup> See e.g. Keith L. Moore, *The Developing Human: Clinically Oriented Embryology*, 10<sup>th</sup> edition (Philadelphia: Elsevier, 2016) (Kindle Locations 739, 1094); T.W. Sadler, *Langman’s Medical Embryology*, 13<sup>th</sup> edition (Philadelphia: Wolters Kluwer, 2015): 14; Keith L. Moore, *Before We Are born: Essentials of Embryology*, 9<sup>th</sup> edition (Philadelphia: Elsevier 2008) (Kindle Location 555); Ronan O’Rahilly & Fabiola Muller, *Human Embryology and Teratology*, 3<sup>rd</sup> edition (New York: Wiley-Liss, 2001): 8.

at any time and for any reason. A total of eight footnotes are employed, seven of which rely upon the online summary of a “turnaway study” written by abortion advocates<sup>4</sup>, or an online news report about the same study, written by one of its researcher directors.<sup>5</sup> The eighth footnote supports a statement concerning the high rates of unintended pregnancy among poorer women.<sup>6</sup>

Here are the significant shortcomings of such an argument:

First, it is neither wise, nor respectful of the important deliberative role of a state legislature, to offer testimony supported almost exclusively with the conclusions of researchers ideologically committed to abortion.

Second, although the official summary and online-reporting regarding the turnaway study sometimes employ the language of causation, a reading of the studies themselves indicates that the authors are, at best, able to determine only a “correlation” between a woman’s being denied an abortion, and subsequent experiences and events such as poverty, receipt of public assistance, single parenting, full-time employment, and maternal bonding. The turnaway study claiming to demonstrate negative effects of a denied abortion on existing children, for example,<sup>7</sup> acknowledged that any differences in child well-being might *actually* be “confounded by factors such as the pregnant woman’s circumstances— financial, health, or relationship status, for example--that might lead to poor child health outcomes, as well as to the increased likelihood of having an unintended pregnancy or of retrospectively reporting a

---

<sup>4</sup> See notes 11, 13, 14, 15, 16, of Testimony of Cary Brown, Executive Dir. of the Vermont Commission on Women before the House Committee on Health Care, Jan. 30, 2019. All of these footnotes referred to the same summary of studies concerning women turned away from abortion because they were past the gestational limits imposed by various abortion clinics: <https://www.ansirh.org/research/turnaway-study>.

<sup>5</sup> See notes 17 and 18, of Testimony of Cary Brown, Executive Dir. of the Vermont Commission on Women before the House Committee on Health Care, Jan 30, 2019. These footnotes refer to a brief news report by the research director of the turnaway studies.

<sup>6</sup> See note 12, of Testimony of Cary Brown, Executive Dir. of the Vermont Commission on Women before the House Committee on Health Care, Jan 30, 2019.

<sup>7</sup> Diana Greene Foster, et al., Effects of Carrying and Unwanted Pregnancy to Term on Women’s Existing Children, 205 *J. of Pediatrics* 183 (2019).

pregnancy as unintended.”<sup>8</sup> In simpler words, the authors are here admitting that there may be *no proof* that an abortion-turnaway actually *caused* negative outcomes for a woman’s existing children; instead some third factor, like a woman’s chaotic life, propensity for risk, poor relationship with the father, or health or income status, led *both* to her unintended pregnancy, and to her delayed search for an abortion (such that she was turned away as too far along), *and* to the situation of the existing children in her home, post-turnaway. Furthermore, the authors of this study admit what so many others studying “unintended pregnancy” have admitted: the term “is an inherently complex phenomenon” to measure, and often mistakenly includes women who have “mixed or ambivalent” feelings and later come to welcome the children they bear.<sup>9</sup>

These same types of error plague all of abortion advocates’ claims that “unintended pregnancies” or denied abortions “cause” poverty or single parenting or less-employment, or other losses; researchers regularly fail to capture the meaning of “unintended,” and they are regularly forced to admit that third factors – such as poverty, low-education, risk-taking, poor-health, and violent relationships, among others - are responsible *both* for unintended pregnancy, *and* for what these same women experience post-birth.

Third, if correlation matters, and *even if* one can draw a causal line between fewer abortions and some of the events and experiences women undergo, then it would have to be acknowledged that as abortion numbers and rates *declined* from the early 1990s to today, women’s participation in the labor force and in higher education has *grown*. At the same time, soon after abortion became legal, and numbers of abortions *rose* precipitously in the US, women’s levels of happiness *declined* so that for the first time in recent history, women reported themselves less happy than men.

---

<sup>8</sup> Id. at 188.

<sup>9</sup> Id. at 188.

It is helpful to look first at figures taken from reliable federal labor<sup>10</sup> and education<sup>11</sup> and health care<sup>12</sup> databases. Here we find that abortion rates declined steadily in every single year from 1991 to 2014 both in terms of absolute numbers and in ratios. In 1991 there were nearly 1.4 million abortions (338 for every 1000 live births, and 24 per 1000 women of reproductive age). By 2014, the federal government reported 650 thousand abortions (192 for every 1000 live births, and 12 per every 1000 women of reproductive age). During that same time, however, rates of women's labor force participation grew from about 66.6% in 1991 to 70.2% in 1996, peaking at 71.2% in the year of the Great Recession, and settling at about 70.8% currently. Over the past six decades, including the past three during which abortion rates and numbers have been declining, the percentage growth of the labor force for women has been greater than for men.<sup>13</sup>

---

<sup>10</sup> U. S. Dept of Labor, Bureau of Labor Statistics, Women in the labor force: a databook, Nov 2017 (Table 7 Women's Employment Status, March 1975 to March 2016) <https://www.bls.gov/opub/reports/womens-databook/2017/home.htm>.

<sup>11</sup> National Center for Education Statistics, *Findings From The Condition of Education 1995, The Educational Progress of Women*, NCES 95-768 ( Nov 1995), <https://nces.ed.gov/pubs/96768.pdf>;

Camille L. Ryan & Kurt Bauman, *Educational Attainment in the United States: 2015* (Current Population Reports), Figure 6: Percentage of the Population 25 Years and Older With a Bachelor's Degree or Higher by Sex: 1967 to 2015, page 8, <https://www.census.gov/content/dam/Census/library/publications/2016/demo/p20-578.pdf>;

Thomas D. Snyder, Ed., U.S. Dept. of Education, National Center for Education Statistics, *120 Years of American Education: A Statistical Portrait*, 1993

<sup>12</sup> U.S. Centers for Disease Control, *Abortion Surveillance – United States*, Surveillance Summaries, Morbidity and Mortality Weekly Reports, Volume 67 (13): 1-45 Nov. 23, 2018, Table 1. Number, percentage, rate, and ratio of reported abortions, - selected reporting areas, United States, 2006-2015,

<https://www.cdc.gov/mmwr/volumes/67/ss/ss6713a1.htm>; U.S. Centers for Disease Control, *Abortion Surveillance – United States, 1999*, Morbidity and Mortality Weekly Reports, Surveillance Summaries, Nov. 29, 2002, Vol 51 (SS09): 1-28. <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss5109a1.htm>;

<sup>13</sup> Mitra Toosi & Teresa L. Morisi, Bureau of Labor Statistics, Women In The Workforce Before, During And After The Great Recession (July 2017): 5, <https://www.bls.gov/spotlight/2017/women-in-the-workforce-before-during-and-after-the-great-recession/pdf/women-in-the-workforce-before-during-and-after-the-great-recession.pdf>.

Women's completion rates for higher education have also soared during the last several decades' declines in abortion numbers and rates. In 1991, for example, women achieved parity with men regarding the completion of four years of college. Today, when abortion rates are about half of their 1991 figures, 6% more American women are annually completing a four year college education, and women in the United States are now generally *more likely* than men to have a bachelor's degree.

Women's self-reported happiness, however, took a sharp dive after the 1970s, when abortion became legal and widespread. A widely-hailed study by two economists at the University of Pennsylvania<sup>14</sup> reported that, previously, women traditionally reported higher levels of happiness than men. By the 1990s, however, women were less happy than men. The decline is, in their words, "ubiquitous, and holds for both working and stay-at-home mothers, for those married and divorced, for the old and the young, and across the education distribution."<sup>15</sup> It is also similar as between the United States, and almost all of the nations of western Europe, where abortion has for the most part been freely available during those decades.<sup>16</sup> The authors cannot pinpoint the precise reasons for these declines but ask: "Did men garner a disproportionate share of the benefits of the women's movement? Alternatively, perhaps the wellbeing data point to differential impacts of social changes on men and women, with women being particularly hurt by declines in family life, rises in inequality, or reductions in social cohesion."<sup>17</sup> They also ask about the decline's possible relationship to a changed sexual marketplace made possible by the sexual revolution (of which nonmarital sex, contraception and abortion were a part) and its effects upon women.<sup>18</sup>

Fourth, claims that easily available abortion is a one-way ratchet favoring women's well-being fail to account for its possible negative

---

<sup>14</sup> Betsey Stevenson and Justin Wolfers, *The Paradox of Declining Female Happiness*, Institute for the Study of Labor, Discussion Paper No. 4200, May 2009, <http://ftp.iza.org/dp4200.pdf>

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 2-3.

effects. An honest evaluation of the sum-total of outcomes associated with abortion would at least have to note that more than a few studies in top medical journals have raised the possibilities of harmful psychological and physical health effects upon women.<sup>19</sup>

Abortion advocates regularly and vehemently dismiss as partisan all claims that women experience post-abortion difficulties. But a close look at these studies reveal them to be not at all partisan. I recall my time during the early 2000s as an appointee on the Council of the National Institute of Child Health and Human Development at NIH; several times in that role I implored the leadership to study the mental and physical health effects upon women, if any, of undergoing an abortion. No action was taken. If abortion advocates wished to know the answer to the question of abortion's effects upon women, they would pursue it honestly, with the ample academic tools and budgets at their disposal.

Furthermore, there is a flourishing body of literature regarding the effects of legal abortion upon the "sexual marketplace," leading to *more, not fewer*, nonmarital pregnancies and births. In literature by leading economists<sup>20</sup>--including President Obama's appointee as the Chair of the Federal Reserve Bank, Janet Yellen--scholars claim that, as compared with other explanations of nonmarital pregnancies and births, a "technology shock" hypothesis--combined with the declining stigma of a nonmarital birth--better explains the magnitude and timing of changes in the numbers and rates of nonmarital pregnancies and births during a historical period in which federal, state and private support for both contraception and abortion were increasingly widespread. They conclude that the current sex and mating market enabled both by contraception and abortion operates to the disadvantage of women respecting pregnancy and marriage, and the relative advantage of men, due to a series of incentives structured by

---

<sup>19</sup> See e.g. Carlo V. Bellieni, Giuseppe Buonocore, Abortion and subsequent mental health: Review of the literature, July 16, 2013, *Psychiatry and Clinical Neurosciences*, 67: 301-310 <https://doi.org/10.1111/pcn.12067>; Priscilla K. Coleman, Abortion an mental health: quantitative synthesis and analysis of research published 1995-2009, 199 *British J. of Psychiatry* 180 (September, 2011).

<sup>20</sup> George Akerlof, Janet L. Yellen, and Michael L. Katz, "An Analysis of Out-of-Wedlock Childbearing in the United States," *The Quarterly Journal of Economics* 111 (1996);

their availability. First, “[w]hen the cost of abortion is low, or contraceptives are readily available, potential male partners can easily obtain sexual satisfaction without making . . . promises [to marry in the event of pregnancy] and will thus be reluctant to commit to marriage.” Single women thus feel “pressured,” because if they do not participate in sex, they are at a classic “competitive disadvantage” because “[s]exual activity without commitment is increasingly expected in premarital relationships.” “If they ask for . . . a guarantee [of marriage in the event of pregnancy], they are afraid that their partners will seek other relationships.” The stigma of nonmarital parenting then declines as more and more women bear children without marriage.<sup>21</sup>

According to this theory, even women who want children, reject contraception and abortion, and want a marriage guarantee as a condition for sex, have nonmarital sex anyway because it is the price of entering the mating market. Such a market, in these researchers’ view, is therefore likely to produce higher rates of sexual activity, nonmarital pregnancy, nonmarital births, and abortions all at the same time.

Eminent Princeton sociologist Sara McLanahan, relying upon the above research, notes further that while the pill likely boosted women’s confidence to invest in advanced education, it is also true that both the pill and legalized abortion made it “easier for men to shirk their parental responsibilities.”<sup>22</sup>

In sum, the simplistic notion that abortion is clearly and causally linked to improved well-being for women is easily falsified. Clearly, many important factors helped cause the rises in women’s educational and labor-force-participation rates, during the very periods of time in which abortion rates were falling. And clearly, abortion has not assisted the families of the poor. In the United States, nonmarital births as a percentage of all births have risen during the time of abortion’s legal availability: they rose from to 5 percent in 1960, to about 18 percent in 1980, to 33 percent in the mid-1990s, to over 40 percent in 2013, where

---

<sup>21</sup>Akerlof, et al., “An Analysis of Outof-Wedlock Childbearing in the United States,” 280, 290, 296, 305.

<sup>22</sup> McLanahan, “Diverging Destinies: How Children are Faring Under the Second Demographic Transition,” 618.

the rate hovers today.<sup>23</sup> The poor – who annually receive billions of federal and state dollars to pay for contraception and abortion<sup>24</sup> – have the very highest rates of nonmarital births.<sup>25</sup> And the single-family form that results tends to reproduce itself intergenerationally, helping to cause a historically large gap between richer and poorer, and between black and white Americans, determined very largely by family structure.<sup>26</sup>

As for the equality and freedom of women in relation to abortion, it must be said that it is a sad day for women when abortion is valorized as the means to such ends. If abortion advocates are right – and the child is nothing more than a part of the mother’s body, and her “property,” – then the case for legal abortion boils down to an argument that women are required to destroy *a part of themselves* in order to achieve equality. If opponents of abortion are right – and abortion destroys a completely vulnerable, genetically unique, self-developing human life – then the case for legal abortion boils down to the claim that a woman has to destroy *another’s* life in order to be equal. There is no logical, complete, or intellectually sound argument that widely-available legal abortion favors women’s well-being, happiness and freedom. There are too many counter examples, too many questions abortion advocates are afraid to explore, and too much human and moral history demonstrating that a program of even *legally sanctioned*

---

<sup>23</sup> Carmen Solomon-Fears, *Nonmarital Births: An Overview*, Congressional Research Report 7-5700, R43667, July 30, 2014, 8.

<sup>24</sup> See Congressional Research Service, *Federal Support for Reproductive Health Services: Frequently Asked Questions*, R44130 (2015), [https://www.everycrsreport.com/files/20150925\\_R44130\\_1c3a440302a2dfa547112c0e34eaf9c9d1dddc10.pdf](https://www.everycrsreport.com/files/20150925_R44130_1c3a440302a2dfa547112c0e34eaf9c9d1dddc10.pdf).

<sup>25</sup> Elizabeth Wildsmith, Jennifer Manlove, Elizabeth Cook, Child Trends, *Dramatic Increase in the proportion of births outside of marriage in the United States from 1990 to 2016*, Child Trends Report, Aug. 8, 2018, <https://www.childtrends.org/publications/dramatic-increase-in-percentage-of-births-outside-marriage-among-whites-hispanics-and-women-with-higher-education-levels>.

<sup>26</sup> Sara McLanahan, “Fragile Families and the Reproduction of Poverty,” 621 *Ann. Am. Acad. Pol. Soc. Sci.* 111 (Jan. 2009); Robin S. Högnäs & Marcia J. Carlson, “Like Parent, Like Child? The Intergenerational Transmission of Nonmarital Childbearing,” *Social Science Research* 41, no. 6 (2012): 1480-1494; Raj Chetty et al., “Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States,” *The Quarterly Journal of Economics* 129, no. 4 (2014):1553-1623..

violence against vulnerable human beings can never have a happy ending.

It should also be noted in closing that Proposal 5's particular support for "personal reproductive autonomy" is a recipe for humanitarian disaster. This notion – of "self-law"/auto-nomos – has been employed by scholars<sup>27</sup> and activists in the family and reproduction fields to include everything from genetically engineered babies,<sup>28</sup> to cloning to the purchase of gametes or embryos on the basis of a prediction that a child technologically engineered from "superior materials" will have certain traits including skin color, talents, intelligence and beauty.<sup>29</sup> It is unimaginable that Vermont wants to adopt not only unlimited abortion, but also parent's and doctors unlimited power and direction over the human beings of the next generation.

---

<sup>27</sup> See generally John A. Robertson, *Children Of Choice: Freedom And The New Reproductive Technologies*, (1994): 119-145.

<sup>28</sup> See e.g. Pam Belluck, "Gene Edited Babies: What a Chinese Scientist Told an American Mentor," *The New York Times*, April 14, 2019, <https://www.nytimes.com/2019/04/14/health/gene-editing-babies.html?action=click&module=Top%20Stories&pgtype=Homepage>;

<sup>29</sup> See generally Michael J. Sandel, *The Ethical Implications of Human Cloning*, 48 *Perspectives in Biology and Medicine* 241 (2005).