**Written Testimony of Danielle Pimentel, J.D.**
**Policy Counsel, Americans United for Life**
**In Opposition to Senate Bill No. 37**
**Submitted to the House Committee on Health Care**
**April 7, 2023**

Dear Chair Houghton, Vice-Chair McFaun, 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,[1] tracks state bioethics legislation,[2] and testifies on pro-life legislation in Congress and the states. AUL has represented pro-life pregnancy centers and medical professionals in briefs before the United States Supreme Court in *National Institute of Family and Life Advocates v. Becerra* ("*NIFLA*")[3] and *First Resort v. Herrera*.[4] Our vision at AUL is to strive for a world where everyone is welcomed in life and protected in law.

Thank you for the opportunity to testify against S. 37 ("the bill" or "S. 37"). My testimony is in limited opposition to the language 1) requiring health insurance plans to provide coverage for abortion under Section 4, 2) concerning the alleged "deceptive" practices of "limited-service" pregnancy centers under Section 8, and 3) concerning public universities' "reproductive health services readiness" under Section 12-13.[5] In effect, the bill

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[1] *Pro-Life Model Legislation and Guides*, AMS. UNITED FOR LIFE, https://aul.org/law-and-policy/ (last visited Apr. 5, 2023). AUL is the original drafter of many of the hundreds of pro-life bills enacted in the States in recent years. *See* Olga Khazan, *Planning the End of Abortion*, ATLANTIC (July 16, 2020), www.theatlantic.com/politics/archive/2015/07/what-pro-life-activists-really-want/398297/ ("State legislatures have enacted a slew of abortion restrictions in recent years. Americans United for Life wrote most of them."); *see also* Anne Ryman & Matt Wynn, *For Anti-Abortion Activists, Success of 'Heartbeat' Bills was 10 Years in the Making*, CTR. FOR PUB. INTEGRITY (Jun. 20, 2019), https://publicintegrity.org/politics/state-politics/copy-paste-legislate/for-anti-abortion-activists-success-of-heartbeat-bills-was-10-years-in-the-making/("The USA TODAY/Arizona Republic analysis found Americans United for Life was behind the bulk of the more than 400 copycat [anti-]abortion bills introduced in 41 states.").

[2] *Defending Life: State Legislation Tracker*, AMS. UNITED FOR LIFE, https://aul.org/law-and-policy/state-legislation-tracker/ (last visited Apr. 5, 2023).

[3] Brief *Amicus Curiae* of the American Association of Pro-Life Obstetricians & Gynecologists et al. in Support of Petitioners, *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018), https://aul.org/wp-content/uploads/2018/10/AUL-Amicus-Brief-NIFLA-Becerra.pdf.

[4] Brief *Amicus Curiae* of Heartbeat International, Inc. in Support of Petitioner, *First Resort, Inc. v. Herrera*, No. 17-1087 (U.S. March 5, 2018), https://aul.org/wp-content/uploads/2018/10/20180305165317599_USSC-17-1087-Amicus-Brief-of-Heartbeat-International.pdf.

[5] AUL is not opining on the language with regard to "gender-affirming health care services" or "gender-affirming health care readiness."

infringes upon the conscience rights of Vermont citizens who oppose abortion, threatens to close pregnancy resource centers that provide essential services to women and families across the state, and threatens the health and safety of women and young girls.

## I. S.37 Infringes on the Conscience Rights of Vermont Citizens who Oppose Abortion

S.37 requires every Vermont citizen to participate in abortion by using taxpayer dollars to pay for elective induced abortions, as well as forces private health insurers to provide coverage for abortion regardless of their personal beliefs. Conscientious objections to abortion are refusals to participate in taking a life through abortion, which raises grave religious, moral, and ethical questions. Under Section 4, the bill requires both public and private health insurance plans to provide "coverage for abortion and abortion-related care" and that such coverage "shall not be subject to any co-payment, deductible, coinsurance, or other cost-sharing requirement or additional charge," with a few exceptions.[6] The bill broadly defines "Health insurance plan" to include Medicaid and other public health care, as well as "any individual or group insurance policy" and "any other health benefit plan offered, issued, or renewed for any person in this state by a health insurer as defined by 18 V.S.A. § 9402."[7] Notably, "Health Insurer" under 18 V.S.A. § 9402 means "any health insurance company, nonprofit hospital and medical service corporation, managed care organizations, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."[8]

Accordingly, under the broad language of the bill, both state and private health insurance plans must provide coverage for abortion regardless of the conscientious objections of either the taxpayer or private health insurer. This is concerning because the majority of Americans oppose taxpayer funding of abortion.[9] In fact, since 2008, polling data has shown a consistent and clear consensus of Americans supporting restrictions on abortions, including funding restrictions.[10] In a 2023 poll, 60% of Americans said that they opposed taxpayer funding of abortion.[11] This number jumps to 78% for funding of abortions performed overseas.[12] These polls show that Americans across the political spectrum agree that the government should be supporting women and families rather than using their taxpayer dollars to fund abortions, which harm women and young girls.

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[6] S. 37 § 4099e (2) (b-(c) 77th Gen. Assemb., Reg. Sess. (Vt. 2023).
[7] *Id*. at § 4099e (2).
[8] 18 V.S.A. § 9402 (2018).
[9] See *New 2023 Knights of Columbus-Marist Poll: Post Roe, A Majority of Americans Continue to Support Legal Limits on Abortion*, KNIGHTS OF COLUMBUS (Jan. 18, 2023), https://www.kofc.org/en/resources/communications/polls/majority-americans-still-support-abortion-limits.pdf.
[10] *Id*.
[11] *Id*.
[12] *Id*.

Although Vermont already allows state funds to be used for abortion coverage,[13] S. 37 solidifies the requirement that all health insurance plans are to provide coverage for abortion with no co-payments, deductibles, or additional charges, which will expend additional taxpayer dollars towards abortion. Additionally, the bill is silent as to whether private health insurers may conscientiously object to providing coverage for abortion and abortion related services. Consequently, this will result in the state forcing private health insurers to participate in abortion by providing abortion coverage despite their conscientious objections. This bill will not only infringe on many taxpayers' conscience rights but also the conscience rights of private health insurers that object to abortion.

## II. S. 37 is a Blatant Effort to Silence Pro-Life Pregnancy Centers' Pro-Life Viewpoints and Stifle Their Good Work

### *a. Pro-Life Pregnancy Centers Provide Essential Services Throughout Vermont and the United States*

Over the past 50 years, pregnancy resource centers ("pregnancy centers") have provided invaluable services to underserved women across the United States, including pregnancy testing, obstetrical ultrasounds, STD and STI testing and treatment, sexual risk avoidance education, and counseling. Pregnancy centers offer these services at either low or no cost for women seeking their help. Pregnancy centers also serve as a connection point for other available resources and often refer women and men to trusted maternity homes, job centers, housing agencies, public health resources, drug rehabilitation centers, and other social services organizations; parenting and childbirth classes; fatherhood programs; adoption support; abortion recovery programs; and material assistance. In 2019, pregnancy centers served 1,848,376 people, provided over 2 million baby outfits, over 1.2 million packs of diapers, over 19,000 strollers, and over 30,000 car seats to their clients at no cost.[14] Additionally, they provided 486,213 free ultrasounds, 731,884 free pregnancy tests, 160,201 free STI/STD tests and counseling, and 1,290,079 free packs of diapers.[15]

Vermont has pregnancy centers throughout the state that have been faithfully serving women and families for years.[16] These pregnancy centers provide confidential and free services to pregnant women in Vermont. Nevertheless, the bill's legislative findings falsely state that these pregnancy centers are misleading pregnant women. The reality is that most women who access resources at pregnancy centers report a positive experience.[17] In a 2019 study, 99% of women surveyed nationwide that used resources from a pregnancy center

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[13] *See* Doe v. Celani, No. S81-84CnC at 5 (Vt. Super. Ct. May 23, 1986) (holding that ban on Medicaid funding violated state constitution).

[14] *See* Charlotte Lozier Institute, PREGNANCY CENTERS STAND THE TEST OF TIME, 16, 24, 61–62 (2020), https://lozierinstitute.org/wp-content/uploads/2020/10/Pregnancy-Center-Report-2020_FINAL.pdf; Family Research Council, A Passion to Serve, 6–11, 20–21 (2d ed. 2010), https://downloads.frc.org/EF/EF12A47.pdf.

[15] *Id*.

[16] *Help in Your Area*, PREGNANCY RESOURCE CTR. DIRECTORY, https://helpinyourarea.com/vermont/ (last visited 3/14/2023).

[17] *See* Moria Gaul, *Fact Sheet: Pregnancy Centers – Serving Women and Saving Lives (2020 Study)*, CHARLOTTE LOZIER INST. (July 19, 2021), https://lozierinstitute.org/fact-sheet-pregnancy-centersserving-women-and-saving-lives-2020/#_ftn8.

reported "high client satisfaction."[18] Notably, another recent study in *Contraception* confirmed that pro-life pregnancy resource centers offer better and less expensive services than abortion facilities.[19]

These studies show that pregnancy centers engage in high standards of care in the course of offering their services. The three largest national networks of pregnancy centers—Care Net, Heartbeat International, and the National Institute of Family and Life Advocates—in addition to eight other pregnancy center networks, submit to a national code of ethics, "Our Commitment of Care and Competence," whereby pregnancy centers must abide by "*truthfulness in all communications*," provide accurate scientific and medical information, and "maintain strict confidentiality protections as guided by federal, state, and local law."[20] The national code of ethics also requires that a licensed physician supervise and direct all medical services "in accordance with applicable medical standards."[21] All staff members, board members, and volunteers at the pregnancy center must "receive appropriate training to uphold these standards."[22] Similarly, Vermont pregnancy centers provide a wide range of essential services and free resources to clients and do so with a high standard of care. Allowing Vermont pregnancy centers to function as they have been provides women the opportunity to make informed decisions for themselves and their futures.

*b. S. 37 Targets Pro-Life Pregnancy Centers*

S. 37 targets pro-life pregnancy centers. The bill's provisions under Section 8 apply only to a "limited-services pregnancy center," which is defined as a "pregnancy services center that does not directly provide, or provide referrals to clients, for abortions or emergency contraception."[23] Additionally, the bill defines "pregnancy services centers" as "a facility . . . where the primary purpose is to provide services to individuals who are or may be pregnant and that either offer obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant individuals or has the appearance of a medical facility."[24]

Under the bill, if a facility's primary purpose is to provide services to pregnant women and either offers ultrasounds, sonograms, or prenatal care or has the appearance of a medical facility, it is not considered a "limited-services pregnancy center" so long as it provides or refers for abortion, or emergency contraception. However, if a facility has the same primary purpose but does *not* refer for abortion or emergency contraception, it is considered an "limited-services pregnancy center." As a result, the only facilities that would fall under the definition of "limited-services pregnancy centers" are pro-life pregnancy centers since they are the only facilities that do not, often for reasons of conscience or conviction, provide or

[18] *Id*.
[19] Kavita Vinekar et al., *Early Pregnancy Confirmation Availability at Crisis Pregnancy Centers and Abortion Facilities in the United States*, 117 CONTRACEPTION 30 (2023).
[20] Charlotte Lozier Institute, *supra* note 14 at 63 (emphasis added).
[21] *Id.*
[22] *Id.* at 65.
[23] S. 37 § 2492, 77th Gen. Assemb., Reg. Sess. (Vt. 2023).
[24] *Id*.

refer for abortion or emergency contraception.[25] Furthermore, if a facility does not provide or refer for abortions, it would be subject to state action, harassing lawsuits, and fines if it is accused of disseminating advertisements that are "untrue or clearly designed to mislead the public about the nature of services provided."[26] Yet, a facility that provides or refers for abortion would remain completely unaffected. Some pregnancy centers would not be able to stay open after facing such burdensome litigation and financial costs, which would result in pregnancy centers closing their doors as a consequence of providing a wide array of services other than abortion and emergency contraception referrals.

This bill does not prohibit deceptive advertisements by *all* pregnancy centers, but only advertisements made by *pro-life* pregnancy centers that do not provide or refer for abortion or emergency contraception. Thus, the bill's blatant under-inclusiveness reveals that its purpose is to disfavor a particular viewpoint, particularly pro-life pregnancy centers and the pro-life viewpoint, to the detriment of the thousands of women who benefit from their resources every year.

*c. S. 37 Allows for the Harassment and Silencing of Pro-Life Pregnancy Centers and Their Pro-Life Views*

The bill discriminates against both pro-life content and viewpoints. Under the First Amendment, the government may not engage in this kind of discrimination.[27] Pro-life pregnancy centers are free to offer non-abortion services without discrimination and legal harassment based on their pro-life viewpoint. In *NIFLA v. Becerra*, for example, the Supreme Court found unconstitutional a California law that mandated pro-life pregnancy centers, if "licensed," provide information to patients on how to obtain a state-funded abortion or, if "unlicensed," provide notice it is an unlicensed facility.[28] The Court found that mandating the provision of abortion information was an impermissible content-based action that failed constitutional review.[29] Requiring notice that a pro-life facility is unlicensed "targets speakers, not speech, and imposes an unduly burdensome disclosure requirement that will chill their protected speech."[30] Similarly, Vermont cannot trespass on the First Amendment rights of pregnancy centers that forego abortion services merely because the pregnancy centers are pro-life.

The bill's statutory remedies open pro-life pregnancy centers to targeting and harassment. Specifically, the bill gives Vermont's Attorney General broad authority to "make rules, conduct civil investigations, and bring civil actions with respect to violations of" the

[25] Hypothetically, there could be a non-pro-life pregnancy center that does not provide referrals for abortion or emergency contraception, but if such a center did exist, it could easily exclude itself from the contours of the bill by now providing referrals for abortion or emergency contraception. It is only the pregnancy centers that hold pro-life views who will be unable, for reasons of conscience and conviction, to self-exempt from the bill's requirements.
[26] *Id*. at § 2493.
[27] Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819, 846 (1995).
[28] 138 S. Ct. 2361 (2018).
[29] *Id*. at 2375–2376.
[30] *Id*. at 2378.

bill.[31] This is concerning given that Vermont's current Attorney General, Charity Clark, has openly made it her goal to target pro-life pregnancy centers under Vermont's Consumer Protection Act.[32] Vermont's unfettered ability to open an investigation and bring suit, coupled with the expansive nature of the behavior prohibited, opens pro-life pregnancy centers to targeting and harassment by Attorney General Clarke who clearly disfavors pro-life speech.

Additionally, under Vermont's Consumer Protection Act (the "Act"), the Attorney General may seek a temporary or permanent injunction of "the use of such method, act, or practice" that they believe is in violation of the Act.[33] The Attorney General may also request that the court impose civil penalties ranging from up to $10,000 for each "unfair or deceptive act or practice."[34] If S. 37 is passed, pregnancy centers found in violation of the bill will be subject to these harsh penalties. These fines would not merely funnel money away from helping pregnant women. Just one lawsuit could financially cripple and shut down an allegedly offending pro-life pregnancy center. Most pregnancy centers offer their services at low cost or free of charge, are funded mainly by donations,[35] and are largely staffed by unpaid volunteers.

In the end, this bill would harm women, children, and families who rely on pro-life pregnancy centers for care and support. While Vermont can disagree with pregnancy centers' pro-life positions, it cannot harass them and prevent the women, children, and families of Vermont from receiving care and support by government fiat. This form of discrimination is unconstitutional and deeply detrimental to communities across the state.

## III. S. 37 Puts Young Women's Health and Safety at Risk by Subjecting them to the Dangers of Chemical Abortion

This bill encourages public universities to either provide abortion on campus or refer young women to abortion providers, which will result in more young women undergoing harmful abortion procedures. Section 12 of the bill requires public colleges to annually report to the Agency of Human Services the "current status of its . . . reproductive health care readiness," which is "each institutions preparedness to provide reproductive health care services to students or assist students in obtaining reproductive health care services."[36] This includes providing the Agency of Human Services with information about whether the university "has an operational health center on campus," the types of "reproductive health care services that the institution offers to its students on campus and the supports that the institution provides to students who receive those services," the university's "efforts to assist students with . . . reproductive health care services," "the referral information that the

[31] S. 37 § 2493 (c), 77th Gen. Assemb., Reg. Sess. (Vt. 2023).
[32] *See* Charity Clark, *Deceiving People About Abortion or Pregnancy Is Not Only Wrong, It Could Be Illegal*, FACEBOOK (July 29, 2022), https://www.facebook.com/charityforvermont/videos/3186968554901273/.
[33] 9 V.S.A. § 2458(a)-(b) (2020).
[34] *Id*.
[35] *See* Gaul, *supra* note 17 ("[A]t least 90 percent of funding for pregnancy centers is raised locally at the community level.").
[36] S. 37 §§ 2501-2502, 77th Gen. Assemb., Reg. Sess. (Vt. 2023).

institution provides regarding facilities that offer . . . reproductive health care services that are not available to students on campus," etc.[37] The bill states that "reproductive health care services" includes "medication abortion," which is "an abortion provided by medication techniques."[38]

To achieve "reproductive health care readiness" under the bill, Vermont colleges will have to either promote and offer abortion services on campus or refer young women to obtain an abortion elsewhere. Consequently, more young women will feel pressure to have an abortion if they become pregnant and experience life-threatening complications from the abortion as a result. Chemical abortions make up more than half of all abortions performed in the United States annually.[39] A chemical abortion (also known as a "medical abortion") consists of a regimen of two drugs, mifepristone and misoprostol.[40] Chemical abortion can be extremely dangerous, if not deadly, to the women choosing to undergo it, which makes physician involvement necessary. For example, there are many side effects to the chemical abortion regimen, including nausea, weakness, fever and chills, vomiting, diarrhea, dizziness, bacterial infection, and fatal septic shock.[41] Additionally, mifepristone is contraindicated in the cases of confirmed or suspected ectopic pregnancy, hemorrhagic disorders, chronic adrenal failure, and when an intrauterine device (IUD) is in place.[42] A 2021 peer-reviewed study showed that chemical-abortion related emergency room visits (*i.e.*, visits medically coded as chemical abortion complications) per 1,000 abortions "went from 8.5 to 51.7, an increase of 507%" over thirteen years.[43] Another study found that women are four times more likely to experience medical complications from a chemical abortion than a surgical abortion.[44]

Notably, the risks of chemical abortion are even higher now that the U.S. Food and Drug Administration (FDA) unlawfully approved and deregulated chemical abortion drugs. Federal law prohibits the use of the United States Postal Service and private carriers from mailing abortion-inducing drugs.[45] Yet, the FDA has blatantly ignored federal law to allow telemedicine and mail-order chemical abortion drugs, endangering women's health and

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[37] *Id*. at § 2502(a).
[38] *Id*. at § 2501 (4)-(5).
[39] *Medication Abortion Now Accounts for More than Half of All US Abortions*, GUTTMACHER INST. (updated Dec. 1, 2022), https://www.guttmacher.org/article/2022/02/medication-abortion-now-accounts-more-half-all-us-abortions.
[40] *See 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.
[41] U.S. Food & Drug Admin., *Mifeprex Highlights of Prescribing Information and Full Prescribing information* (Mar. 2016), https://www.accessdata.fda.gov/drugsatfda_docs/label/2016/020687s020lbl.pdf.
[42] *Id.* at 4-5.
[43] James Studnicki et al., *A Longitudinal Cohort Study of Emergency Room Utilization Following Mifepristone Chemical and Surgical Abortions, 1999–2015*, 8 HEALTH SERVS. RSCH. & MANAGERIAL EPIDEMIOLOGY 1, 5 (2021).
[44] Maarit Niinimaki et al., *Immediate Complications After Medial Compared with Surgical Termination of Pregnancy*, 114 OBSTETRICS & GYNECOLOGY 795, 795 (Oct. 2009).
[45] 18 U.S.C. §§ 1461–1462.

safety at a national scale.[46] Women can now obtain chemical abortions without proper medical oversight even though in-person visits are necessary for medical abortions.

Medical institutions agree that "[a] medical abortion involves at least two visits to a doctor's office or clinic."[47] At the first visit, the healthcare provider must confirm a woman is a medically appropriate candidate for chemical abortion. Women who have ectopic pregnancies or an IUD in place are ineligible to take chemical abortion drugs.[48] Chemical abortion cannot terminate an ectopic pregnancy and should not be used after the first seventy days of pregnancy due to heightened risk to the woman's health.[49] A physician can only diagnose an ectopic pregnancy by blood tests and an ultrasound, which means a physician cannot determine via telemedicine whether a pregnancy is ectopic.[50] The follow-up visit and reporting are critical to ensure that if a woman has retained tissue, she receives essential follow-up care.

S.37 completely disregards the necessity of physician involvement in chemical abortions and disclosing the risks associated with the regimen. There is no provision in the bill to ensure that women who receive "reproductive health care services" on college campuses are fully informed about the process and the risks of abortion procedures. Further, S. 37 encourages public universities to refer young women to other facilities that offer abortion services, which may include pharmacies given the FDA now allows pharmacies to dispense chemical abortion drugs. In effect, this will increase the number of young women undergoing dangerous medical abortions without any medical oversight and without knowing the risks associated with the drugs. As a result, more young women in Vermont will suffer life-threatening complications when undergoing chemical abortions, which will only be exacerbated by the lack of physician involvement.

## IV. Conclusion

S. 37 infringes upon the conscience rights of Vermont citizens by requiring both public and private insurance plans to cover elective abortions, explicitly targets pro-life pregnancy centers, and encourages public universities to promote abortion, which subjects young girls to the inherent harms of abortion. This Committee should strike the language highlighted above in Sections 4, 8, 12, and 13 of the bill to protect its citizens' conscience right and the health and safety of women and young girls.

Respectfully Submitted,

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[46] The FDA has been sued over their unlawful actions and is ongoing litigation. *See, e.g.*, All. for Hippocratic Med. v. U.S. Food & Drug Admin., No. 2:22-cv-223 (N.D. Tex. filed Nov. 18, 2022)

[47] *Medical Abortion*, UNIV. OF CAL. SAN FRANCISCO HEALTH, www.ucsfhealth.org/treatments/medical-abortion (last visited Apr. 6, 2023).

[48] U.S. FOOD & DRUG ADMIN, *supra* note 40.

[49] *Id*.

[50] *Ectopic Pregnancy*, MAYO CLINIC (Mar. 12, 2022), https://www.mayoclinic.org/diseases-conditions/ectopic-pregnancy/diagnosis-treatment/drc-20372093.

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