

## Testimony Before House Health Care Committee on S.28

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Thank you for the opportunity to testify on S.28. I would like to address three parts of the bill that are of particular concern to Vermont Right to Life.

First, Section 3 of S.28 amends language contained in Act 15, which became law less than two years ago in May of 2023. Act 15 includes provisions specifically targeting pro-life Pregnancy Resource Centers for regulation because they do not provide or refer for abortion. These provisions are currently being challenged as unconstitutional in federal district court by the National Institute for Life Advocates and two of the pregnancy resource centers located in Vermont. Oral arguments were heard by Judge William Sessions and he rejected the State's arguments that the case should be dismissed *in toto*. In his [opinion](#), Sessions found that the pregnancy resource centers, "stated a plausible claim for violation of their First Amendment rights."

However, instead of addressing the First Amendment problems in Act 15, S.28 doubles down, expanding the State's unconstitutional regulation of speech and opening it up to additional costly litigation.

S.28 defines *all* "advertising" about health care services or proposed services – by any person - as commercial speech, even if there is no economic motivation underlying the speech. In addition, it employs a very broad definition of "advertising," which would capture an individual's social media posts, opinions expressed in a letter to the editor, comments made on a radio call-in show, even a political candidate's campaign materials. Courts have ruled that, in order to be considered commercial speech (which receives less First Amendment protection) certain test have to be met. It is not permissible to simply decree speech is "commercial" as an excuse to restrict it. But that is what §2493 does. The speech of any person – not just health care providers advertising specific products or services, or persons with economic motivation– would be subject to these provisions.

To be clear, Vermont Right to Life does not disseminate advertising that is untrue or misleading. Other pro-life organizations with which we partner are also committed to truth and accuracy. However, we are all acutely aware that the current Attorney General, who would have the power to enforce this law and levy \$10,000 fines on our organizations, is a staunch abortion advocate. The abortion lobby labels many claims about abortion that they don't like to have spoken as "untrue" or "misleading".

Consider the topic of abortion pill reversal. Act 15 declared it "unprofessional conduct" for health care providers regulated by the Office of Professional Regulation to provide or claim to provide services or medications that are purported to reverse the effects of a medication abortion.

Lawmakers ignored the evidence that abortion pill reversal protocols developed by medical providers can safely be used to try and reverse the effects of the first abortion drug, adding the prohibition to Act 15 at the last minute at the request of Planned Parenthood. Such protocols have been used successfully over 5,000 times, saving the lives of unborn children and protecting a woman's right to change her mind and carry her pregnancy to term.



Under S.28, holding a sign outside an abortion facility informing patients about abortion pill reversal, or sharing a Facebook post about this option would place a person at risk of a \$10,000 fine – not because it is untrue or misleading, but because the State disagrees with the message.

The proposed expanded language in S.28 is yet another attempt by the state to chill the speech of pro-life advocates and others whose opinions on health care matters are politically unfavorable at the moment. §2493 should not be amended, it should be repealed.

Next, Section 6 makes concerning changes to the availability of fetal death reports for criminal or civil cases, such as assault or medical malpractice. Currently, Vermont law states that fetal death certificates are for statistical purposes and are not public records. S.28 as introduced would add that such reports are confidential. Senate Health and Welfare, at the last minute, and without discussion or testimony, added that the reports shall not be disclosed or discoverable in any civil, criminal, administrative, or other proceeding.

With so much focus on protecting abortion, some forget that Vermont also protects a woman's right to carry a baby to term. The Report of Fetal Death provides vital information that could enable a woman to hold a person who causes the death of her unborn child through negligence or violence accountable.

In fact, under current law, if there is evidence of violence or unusual or suspicious circumstances surrounding a fetal death, the medical examiner is to be immediately notified to investigate and complete the medical portion of the fetal death report

Under the language proposed in S.28, would the fetal death report be kept confidential from even the child's parents? Would they be prevented from seeking justice?

Finally, S.28 would further the trend of lowering standards for providers of so-called "legally protected health care." The legislature has already done so under Act 15, allowing providers of "legally protected health care" to treat patients in other states via telehealth, *even if they are not licensed to practice in those states* - an action which would constitute unprofessional conduct for a provider of any other type of health care. In S.28, there is another carve-out, allowing certain providers to prescribe abortion pills based on an electronically administered adaptive questionnaire, *which would continue to be considered inadequate and unprofessional conduct if used to provide any other medical service.*

The lack of a face-to-face interaction not only makes evaluating the veracity of the patient's response to health questions more challenging, it also allows individuals to obtain abortion pills for criminal and abusive use, as has recently been [alleged](#) in Louisiana. A mother allegedly obtained abortion pills from a New York doctor via an online questionnaire, and upon receiving them coerced her pregnant 17-year-old daughter into taking them. According to officials, the daughter wanted to keep her baby and was planning a gender reveal party. The teen's mother has been charged with criminal abortion by means of abortion-inducing drugs.

There are many cases of men secretly giving abortion drugs to their pregnant partners, or coercing them into taking the pills.<sup>1</sup> Eliminating any face-to-face interaction with the prescriber will make it easier for men to obtain abortion pills for nefarious purposes.

The increasing ease of obtaining abortion pills suggests that the risks of taking them are minor. However, medication abortion has a complication rate four times that of surgical abortion, and up to 20% of women will experience a complication. These complications can be extremely serious, and include incomplete abortion requiring surgical follow-up, infection, and hemorrhage. Complications increase the later in pregnancy the abortion drugs are taken. (see fact sheet, attached.)

Certain providers should not be granted an exception to the usual standards of professional conduct and allowed to prescribe abortion pills without face-to-face interaction with a patient. The risks of the drug for the woman are serious and must be clearly explained, and the risk of deception to obtain the drugs must be minimized. The provisions that would allow that should be struck from the bill.

<sup>1</sup><https://www.cnn.com/2013/09/10/justice/girlfriend-abortion-case/index.html>  
<https://www.cbsnews.com/boston/news/abortion-pill-misoprostol-boyfriend-arrested-pregnant-girlfriend/>  
<https://people.com/man-allegedly-sneaked-abortion-pills-body-pregnant-girlfriend-8610547>  
<https://lawandcrime.com/crime/attorney-who-secretly-slipped-abortion-pills-in-wifes-drink-7-times-because-pregnancy-would-ruin-his-plans-sentenced-to-6-months/>  
<https://www.msn.com/en-us/crime/general/man-blindfolds-pregnant-woman-for-kinky-sex-secretly-drugs-her-with-abortion-pills-to-force-miscarriage/ar-AA1vp21x>  
<https://www.heritage.org/life/commentary/abortion-pills-coercion-and-abuse>