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Testimony Before Senate Health and Welfare Committee on S.28

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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 Pregnancy Resource Centers for regulation because they do not provide or refer for abortion. Despite testimony that those provisions would be challenged as unconstitutional violations of the Centers' free speech rights, they remained in the bill as passed.

As anticipated, in July of 2023, the National Institute for Life Advocates and two of the pregnancy resource centers located in Vermont filed suit in federal district court challenging the provisions. 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."

That case is proceeding, which is likely why S.28 is before this Committee today. It attempts to mitigate the constitutionally problematic provisions of ACT 15 targeting the speech of *only* pro-life pregnancy resource centers, in an attempt to bolster the State's case in court, or get the case dismissed entirely by changing statute to claim the case moot.

However, S.28 contains it own set of constitutionally problematic provisions.

It defines *all* advertising about health care services or proposed services in Vermont as commercial speech, even if there is no economic motivation underlying the speech. 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. This 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 §2493 should be repealed.

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 hear 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.

Next week begins the semi-annual 40 Days for Life campaign. Four cities in Vermont will be holding campaigns. One of the signs available links to information about abortion pill reversal:

Under S.28, holding this sign outside an abortion facility in Vermont would place a person at risk of a $10,000 fine because the state disagrees with the message, not because it is actually untrue or misleading.

Regarding the language to be added to the various unprofessional conduct statutes: it seems likely that this is another instance where changes are being proposed to try and improve the state's chances of success in the case currently before the federal district court. Striking the existing language that regulates *only* health care providers that work with so-called "limited services pregnancy centers", and inserting similar language into the unprofessional conduct statutes of several medical professions creates the appearance of neutrality, replacing the blatant viewpoint discrimination evident in Act 15. Yet the proposed language could still be used to target pregnancy resource centers in Vermont. As the Vermont Medical Society noted it their testimony, the draft language, "could bring health care services to a halt in many settings."

There are many in state government who would like to restrict services provided by Vermont's pregnancy resource centers and bring them to a halt.

S.28 would also 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*.

Not only does it make 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.[1] 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.

[1].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

ABORTION PILL RESCUE NETWORK™

2023 Impact Report

By the *Numbers*

5,000+

LIVES SAVED
through Abortion Pill Reversal, statistics show.

1,400

PROVIDERS, CLINICS & HOSPITALS
are a part of the Abortion Pill Rescue Network worldwide.

77%

OF MISSION CRITICAL CALLS
are received within 24 hours of a woman taking the abortion pill

The *Reversal* Process

A woman who regrets her decision after taking the first pill can save her pregnancy, but time is of the essence!

1. Progesterone is administered to reverse the effects of the abortion pill.
2. An ultrasound confirms viability of the baby.
3. Progesterone treatments continue for a minimum of two weeks.
4. Ongoing support continues through a referred local pregnancy center.

Success Stories

"I thought I was alone. I thought it was the end of the pregnancy. I regretted it so bad ... thank you! I prayed so hard for this. I hope other women realize there's hope, God and a second chance."

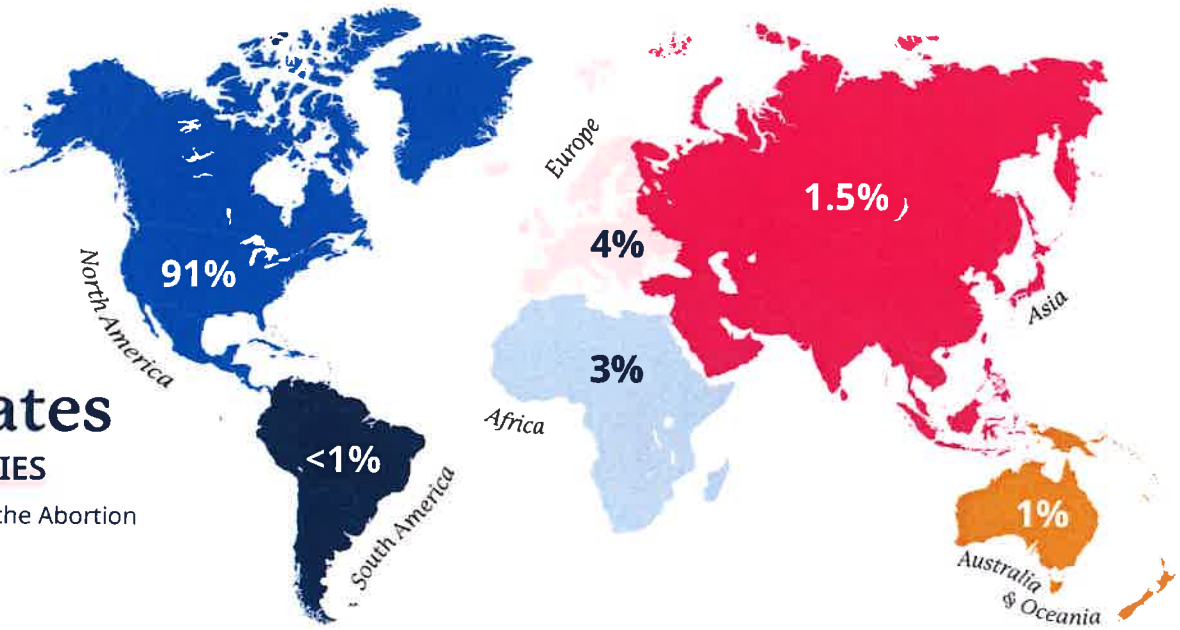
-APRN Client, October 2023

"I'm so glad you guys were all able to help me! It's a very emotional time right now, but I want to thank you so much for all your help and for caring and supporting me through this process. You all are amazing!! Thank you!"

-APRN Client, August 2023

Global Reach

2,922 Worldwide Mission Critical Contacts in 2023



WOMEN IN ALL

50 states

AND 93 COUNTRIES

have been assisted by the Abortion Pill Rescue® Network.

Supported by Heartbeat International

Fact Sheet: Risks and Complications of Chemical Abortion

August 2023

Physical Risks

- Chemical abortion has a complication rate four times that of surgical abortion, and as many as one in five women will suffer a complication.[1, 2]Three to seven out of every hundred women who choose chemical abortion early in pregnancy will need follow-up care to finish the abortion, with as many as 7-10% needing follow-up care in the first trimester after 63 days of pregnancy and up to 39% requiring surgery if the regimen is accidentally taken in the second trimester.[3,4,5]
- As many as 15% of women will experience hemorrhage, and 2% will have an infection. The risk of incomplete abortion and infection increases with increasing gestational age.[6,7]
- Chemical abortion drugs are increasingly likely to send women to the emergency room (ER): in a study of the Medicaid population in states that fund abortion for low-income women, the rate of chemical abortion-related emergency room visits increased over 500% between 2002-2015.[8]

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[1] Maarit Niinimäki et al., "Immediate complications after medical compared with surgical termination of pregnancy," *Obstet Gynecol* 114, no. 4 (2009): 795-804, doi:10.1097/AOG.0b013e3181b5ccf9.

[2] Ushma D Upadhyay et al., "Incidence of emergency department visits and complications after abortion," *Obstet Gynecol* 125, no. 1 (2015): 175-183, doi:10.1097/AOG.0000000000000603.

[3] Melissa J Chen, Mitchell D Creinin, "Mifepristone With Buccal Misoprostol for Medical Abortion: A Systematic Review," *Obstet Gynecol* 126, no. 1 (2015): 12-21, doi: 10.1097/AOG.0000000000000897.

[4] Elizabeth G Raymond et al., "First-trimester medical abortion with mifepristone 200 mg and misoprostol: a systematic review," *Contraception* 87, no. 1 (2013): 26-37, doi:10.1016/j.contraception.2012.06.011.

[5] Maarit J Mentula et al., "Immediate adverse events after second trimester medical termination of pregnancy: results of a nationwide registry study," *Hum Reprod* 26, no. 4 (2011): 927-932, doi:10.1093/humrep/der016.

[6] Maarit Niinimäki et al., "Immediate complications after medical compared with surgical termination of pregnancy."

[7] Maarit J Mentula et al., "Immediate adverse events after second trimester medical termination of pregnancy: results of a nationwide registry study."

[8] James Studnicki et al., "A Longitudinal Cohort Study of Emergency Room Utilization Following Mifepristone Chemical and Surgical Abortions, 1999-2015," *Health Serv Res Manag Epidemiol* 8 (2021): 23333928211053965, doi:10.1177/23333928211053965.

- Chemical abortions are over 50% more likely than surgical abortions to result in an ER visit within 30 days, with one woman experiencing an abortion-related ER visit for every 20 chemical abortions.[9]
- Some abortion advocates encourage women to lie to their doctors if they need urgent care following a chemical abortion and to say they are having a miscarriage.[10] However, if a chemical abortion is miscoded as a miscarriage in the ER (which occurred 60% of the time in one study), the woman is at significantly greater risk of needing multiple hospitalizations and follow-up surgery.[11]

Abortion-by-Mail

- When abortion pills are ordered online and sent through the mail with no medical oversight, no ultrasound is provided to confirm gestational age. Many pregnant women do not accurately estimate their gestational age, and chemical abortion complications increase as pregnancy advances.[12,13]
- Only ultrasound can rule out an ectopic pregnancy. Mifepristone cannot treat an ectopic pregnancy and can mask the symptoms of tubal rupture, putting women at risk of severe bleeding and death. Approximately 2% of all pregnancies are ectopic and half of women have no risk factors.[14]

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[9] Ibid.

[10] See for ex.: Zawn Villines, "A Guide to Surviving in a Post-Roe World: Advice from Doctors, Midwives, & Experts on Abortion," *Daily Kos*, May 19, 2022, https://www.dailykos.com/stories/2022/5/19/2098906/-A-Guide-to-Surviving-in-a-Post-Roe-World-Advice-from-Doctors-Midwives-Experts-on-Abortion; "Will Medical Staff be Able to Notice That I am Having an Abortion?," Safe2Choose, accessed June 6, 2023, https://safe2choose.org/faq/medical-abortion-faq/during-abortion-with-pills/will-medical-staff-be-able-to-notice-that-i-am-having-an-abortion; "Frequently Asked Questions: Can I get in trouble for using abortion pills?," Plan C, accessed June 6, 2023, https://www.plancpills.org/guide-how-to-get-abortion-pills#faq.

[11] James Studnicki et al., "A Post Hoc Exploratory Analysis: Induced Abortion Complications Mistaken for Miscarriage in the Emergency Room are a Risk Factor for Hospitalization," *Health Serv Res Manag Epidemiol*, 9 (2022): 23333928221103107, doi:10.1177/23333928221103107.

[12] Charlotte Ellertson et al., "Accuracy of assessment of pregnancy duration by women seeking early abortions," Lancet 355, no. 9207 (2000): 877-881.

[13] "Methods for Estimating the Due Date, Committee Opinion," The American College of Obstetricians and Gynecologists, accessed August 18, 2023, https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2017/05/methods-for-estimating-the-due-date.

[14] "Surveillance for Ectopic Pregnancy – United States, 1970-1989," CDC MMWR Surveillance Summaries, last modified September 19, 1998, https://www.cdc.gov/mmwR/preview/mmwrhtml/00031632.htm.

- If an Rh-negative woman is not administered Rhogam at the time of her chemical abortion, she could experience isoimmunization, which would pose serious risks to future pregnancies.[15]

Social and Emotional Risks

- With no medical oversight, abortion pills can fall into the hands of traffickers and abusive partners. Already, there are accounts of women being given abortion pills without their knowledge or consent. The risk of forced abortions will increase if the pills are available online without an in-person visit with the woman's doctor, visits during which it might be determined whether the woman is being coerced in an abusive situation.[16]
- The risks of chemical abortions aren't just physical: women have reported that their chemical abortion experiences left them feeling unprepared, silenced, regretful, or left with no other choice.[17]
- Many online abortion pill vendors do not provide women with a real-time conversation with the abortion provider, jeopardizing her ability to ask medical questions prior to purchasing the pills or discover options that would support continuing her pregnancy, and ultimately provide her the opportunity for informed consent.[18]

Data Issues

- U.S. abortion data is generally very poor. A key analysis of abortion pill-related adverse events submitted to the FDA shows significant underreporting. Planned Parenthood independently reported over twice as many adverse events as the FDA in 2009-2010, despite the fact that FDA's data is supposed to reflect complications from all abortion providers.[19] FDA's data is

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[15] Ingrid Skop, "The Evolution of 'Self-Managed' Abortion: Does the Safety of Women Seeking Abortion Even Matter Anymore?", *Charlotte Lozier Institute*, March 1, 2022, https://lozierinstitute.org/the-evolution-of-self-managed-abortion/

[16] Hannah Howard, "Medical and Social Risks Associated with Unmitigated Distribution of Mifepristone: A Primer," *Charlotte Lozier Institute*, October 1, 2020, https://lozierinstitute.org/medical-and-social-risks-associated-with-unmitigated-distribution-of-mifepristone-a-primer/.

[17] Katherine A. Rafferty, Tessa Longbons, "*#AbortionChangesYou*: A Case Study to Understand the Communicative Tensions in Women's Medication Abortion Narratives," *Health Communication* 36, no. 12 (2021): 1485-1494, doi:10.1080/10410236.2020.1770507.

[18] See, for example, "Frequently Asked Questions," Abuzz, accessed August 16, 2023, https://www.abuzzhealth.com/faqs. In response to the FAQ "Do I have to have a video visit or phone call?", the abortion pill-facilitating website responds, "In most cases, a phone or video call is not required. Everything is done through the intake form. You will receive a phone number so that you can contact the medical team for any follow up questions. We are here to support you if you choose."

[19] Christina A Cirucci, Kathi A Aultman, Donna J Harrison, "Mifepristone Adverse Events Identified by Planned Parenthood in 2009 and 2010 Compared to Those in the FDA Adverse Event Reporting System and Those Obtained Through the Freedom of Information Act," *Health Serv Res Manag Epidemiol* 8 (2021): 23333928211068919, doi:10.1177/23333928211068919.

estimated to be missing as many as 95% of all serious adverse events.[20] Making matters worse, since 2016, FDA no longer requires abortion providers to report any complications other than death.

- Even with the data known to be incomplete, there is enough data to show multiple deaths and many serious complications resulting from chemical abortion. FDA's own data shows that chemical abortion has resulted in at least 26 deaths and thousands of adverse events since the drug was first approved.[21,22]

[20] "AAPLOG Committee Opinion Number 9, October 2021," AAPLOG, 2021, https://aaplog.org/wp-content/uploads/2021/11/CO-9-Mifepristone-Restrictions-1.pdf.

[21] Kathi Aultman et al., "Deaths and Severe Adverse Events after the use of Mifepristone as an Abortifacient from September 2000 to February 2019," *Issues Law Med* 36, no. 1 (2021): 3-36, PMID: 33939340.

[22] "Mifepristone U.S. Post-Marketing Adverse Events Summary through 06/30/2021," U.S. Food & Drug Administration, https://www.fda.gov/media/154941/download.