



**Written Testimony of Danielle Pimentel, J.D.
Policy Counsel, Americans United for Life
In Opposition of LD 1619
Submitted to the Judiciary Committee
May 1, 2023**

Dear Madam Chair Carney, Vice-Chair Moonen, 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 regularly testifies on pro-life legislation in Congress and the states. Our vision at AUL is to strive for a world where everyone is welcomed in life and protected in law. As Policy Counsel, I specialize in life-related legislation, constitutional law, and abortion jurisprudence.

Thank you for the opportunity to testify against LD 1619 (“LD 1619” or “bill”). If enacted, this bill will result in further harm to women and young girls by 1) authorizing elective abortions after viability, and 2) removing criminal penalties that protect their health and safety. I strongly urge this Committee to oppose LD 1619 and act in accordance with its responsibility to protect the welfare of the women and young girls of Maine.

I. The Bill Threatens the Welfare of Women and Young Girls by Allowing Elective Abortions Up Until Birth

To say that LD 1619 is an extreme bill would be an understatement. If enacted, LD 1619 would allow a woman to obtain an elective abortion up until her baby’s birth date. Although Section 2 of the bill only removes the short phrase, “to preserve the life or health of the mother,” and replaces it with 16 seemingly innocent words, the consequences of this new language will have detrimental effects on the health and safety of women. These 16 new

¹ *Pro-Life Model Legislation and Guides*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/> (last visited Mar. 13, 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 Mar. 13, 2023).

words broadly authorize physicians to perform elective abortions up until birth as long as the physician deems it “necessary” according to their own “professional judgment.” Under Maine’s current law, elective abortions are prohibited after an unborn baby is viable, i.e., after the unborn baby is around 20 to 24 weeks’ gestation. A woman may undergo an abortion after viability only if it is “necessary to preserve the life or health of the mother.” However, under LD 1619, a mother’s life or health would not have to be at risk in order for her to have an abortion after her unborn child is viable. In fact, LD 1619 would allow a woman to obtain an abortion for any given reason, as long as the physician deems it “necessary.” Notably, the bill fails to define the word “necessary,” thus, it will be left to each physician’s subjective opinion as to when an abortion is “necessary.” Maine would, thereby, abdicate its role in protecting human life at all stages.

Additionally, by authorizing elective abortions up until birth, this bill goes well beyond the overruled decisions in *Roe v. Wade*,³ and *Planned Parenthood of Southeastern Pennsylvania v. Casey*,⁴ which only licensed abortion through viability. Only six jurisdictions explicitly endorse abortion-on-demand throughout pregnancy, endangering some of their most vulnerable citizens.⁵ Rather, the legislature should reject LD 1619 and affirm Maine’s legitimate interest to protect life like many other states have done.⁶

a. The Bill Subjects Women to Late-Term Abortions that Carry Higher Risks of Life-Threatening Health Complications

Under Maine’s current abortion statute, women are already subjected to grave health complications due to the risks associated with abortion. However, the passage of LD 1619 will result in even greater harm to women by authorizing elective abortion up until birth. It is undisputed that abortion poses risks to women, and the risk of harm increases substantially at later gestational ages. Even Planned Parenthood agrees that abortion becomes riskier later in pregnancy, and states on its national website that, “[t]he chances of problems gets higher the later you get the abortion, and if you have sedation or general anesthesia. . . ,” which would be necessary for an abortion at or after 20 weeks of gestation.⁷

Ten percent of women suffer immediate complications from abortion, including blood clots, hemorrhages, incomplete abortions, infections, and injuries to the cervix and

³ 410 U.S. 113 (1973), *overruled by* *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

⁴ 505 U.S. 833, *overruled by* *Dobbs*, 142 S. Ct. 2228.

⁵ Eighteen states have laws abolishing abortions at any gestational age, including Alabama, Arkansas, Arizona, Idaho, Indiana, Kentucky, Louisiana, Missouri, Mississippi, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, Wisconsin, West Virginia, and Wyoming. Three states have laws that abolish abortion at six weeks’ gestation, including Iowa, Ohio, and Georgia.

⁶ CAL. CONST. art. I, § 1.1; MICH. CONST. art. I, § 28; 775 ILL. COMP. STAT. 55/1-1 to 55/1-97 (2019); MINN. STAT. § 145.409; N.Y. PUB. HEALTH LAW §§ 2599-AA to 2599-BB (McKinney 2019); VT. CONST. ch. I, art. 22; *see also* *Dobbs*, 142 S. Ct. at 2282-84 (acknowledging that states have a legitimate interest in protecting maternal health and safety and preserving prenatal life).

⁷ *See How Safe Is An In-Clinic Abortion?*, PLANNED PARENTHOOD <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion> (last visited Apr. 28, 2023).

other organs.⁸ Even more concerning is that 1/5 of these complications are life-threatening.⁹ Further, the incidence of major complications during an abortion procedure is significantly higher after 20 weeks' gestation.¹⁰ For example, after 8 weeks' gestation, the relative risk of mortality increases by 38 percent for each additional week.¹¹

Because LD 1619 allows abortion throughout a woman's pregnancy, more women will experience life-threatening complications from later-term abortions, which will also increase the number of maternal deaths. The women of Maine deserve better than to be subjected to late-term abortion procedures that threaten their health and safety. Today, this Committee can protect the maternal health of its citizens by rejecting LD 1619.

b. The Bill Ignores Maine's Legitimate Interest in Preventing Fetal Pain

By opposing LD 1619, this Committee will also protect Maine's legitimate interest in preserving prenatal life and mitigating fetal pain.¹² Because LD 1619 authorizes elective abortion up until a baby's birth date, unborn babies who can experience pain from abortion are left unprotected.

Current medical science has firmly established the existence of pain in preborn infants at or before 20 weeks.¹³ In 2019, scientists even found evidence of fetal pain as early as 12 weeks' gestation.¹⁴ Another study from 2010 found that "the earlier infants are delivered, the stronger their response to pain" because the "neural mechanisms that inhibit pain sensations do not begin to develop until 34-36 weeks[] and are not complete until a significant time after birth."¹⁵ As a result, unborn children display a "hyperresponsiveness" to pain.¹⁶ According to one group of fetal surgery experts, "[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures."¹⁷ Given the substantial medical evidence illustrating that preborn babies can experience pain by at least 20 weeks, it is well within Maine's legitimate interest to oppose LD 1619 and minimize fetal pain as much as possible.

⁸ See *id.* (listing complications that arise from later-term abortions); see also REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005) (finding that 10% of women undergoing induced abortion will suffer immediate complications).

⁹ REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION, *supra* note 8, at 48.

¹⁰ Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 731 (2004).

¹¹ *Id.* at 731; PROFESSIONAL ETHICS COMM. OF AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *Induced Abortion & the Increased Risk of Maternal Mortality*, Comm. Op. 6 (Aug. 13, 2019).

¹² See *Dobbs*, 142 S. Ct. at 2282-83 (acknowledging that states have a legitimate interest in preserving prenatal life and mitigating fetal pain).

¹³ Federal Pain Capable Act, S. 160, 116th Cong. § 2(1)-(11) (2019).

¹⁴ Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 JOURNAL OF MEDICAL ETHICS 3 (2020).

¹⁵ Charlotte Lozier Institute, *Fact Sheet: Science of Fetal Pain*, https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#_ednref14 (last updated Feb. 19, 2020).

¹⁶ Christine Greco and Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES IN PAIN MANAGEMENT 379 (2014).

¹⁷ Maria J. Mayorga-Buiza et al., *Management of Fetal Pain During Invasive Fetal Procedures. Lessons Learned from a Sentinel Event*, 31 EUROPEAN JOURNAL OF ANESTHESIOLOGY 188 (2014).

II. Repealing the Criminal Penalties in Maine’s Abortion Statute Prevents Women from Seeking Justice if They Are Harmed During an Abortion

Maine has a legitimate interest in protecting maternal health and safety, as noted by the United States Supreme Court in *Dobbs v. Jackson Women’s Health Organization*.¹⁸ Yet, LD 1619 directly contradicts with Maine’s legitimate interest to safeguard pregnant mothers because the bill removes commonsense protections for their life and health. Under Maine’s current abortion statute, if an unlicensed person knowingly performs an abortion on a pregnant woman, they are guilty of a Class C crime.¹⁹ Anyone who assists an unlicensed person in the performance of an abortion is also guilty of a Class C crime.²⁰ Furthermore, if a physician performs an abortion after viability and knowingly disregards the viability of the unborn child and that the abortion “was not necessary for the preservation of the life or health of the mother,” they are guilty of a Class D crime.²¹ These criminal penalties ensure women receive justice for harm caused by physicians or unlicensed persons performing illegal abortions. Yet, LD 1619 seeks to eliminate these penalties. As a result, if an unlicensed person or physician performs an illegal abortion and gravely harms a pregnant woman, the injured woman will have no legal recourse to hold them accountable under Maine’s abortion statute.

The policy behind this bill – reducing criminal penalties for physicians’ misconduct at the expense of women’s health and safety – is gravely concerning, especially when abortion providers have caused the death of many women.²² The criminal penalties under Maine’s abortion statute are necessary because they protect women who are harmed during illegal abortions and hold the offending physician or non-physician accountable for their malfeasance. In removing these criminal penalties, women will be forced to suffer from the harms of abortion in silence, while physicians and non-physicians will be allowed to violate the law without punishment.

III. Conclusion

For years, the abortion industry has marketed abortion as essential healthcare. This could not be farther from the truth. Abortion is the intentional destruction of a unique human being. Not only does abortion destroy a preborn child, but it is also a devastating practice for

¹⁸ See *Dobbs*, 142 S. Ct. at 2282-83. (2022).

¹⁹ Me. Stat. tit. 22 §1598 (3)(B).

²⁰ *Id.*

²¹ *Id.* at §1598 (4).

²² Some examples include Kermit Gosnell, who was found guilty of involuntary manslaughter, and Robert Rho, who botched an abortion that led to the death of the young woman. See Conor Friedersdorf, *Why Dr. Kermit Gosnell’s Trial Should Be a Front-Page Story*, ATLANTIC (Apr. 12, 2013), <https://www.theatlantic.com/national/archive/2013/04/why-dr-kermit-gosnells-trial-should-be-a-front-page-story/274944/>; Associated Press, *NY Doctor Pleads Guilty to Negligent Homicide in Botched Abortion Procedure that Killed Woman*, NY DAILY NEWS (May 5, 2018), <https://www.nydailynews.com/new-york/queens/ny-doctor-pleads-guilty-abortion-procedure-killed-woman-article-1.3972502>. In New Mexico, Keisha Atkins died following an elective 24-week abortion after the clinic instructed her to not seek emergency care. See Marian Camacho, *Wrongful Death Lawsuit Targets Albuquerque Abortion Clinic*, KOB 4 (Sept. 12, 2018), <https://www.kob.com/albuquerque-news/southwestern-womens-options-wrongful-death-lawsuit/5067812/>.

women that harms their health and endangers their lives. By authorizing elective abortions throughout pregnancy and repealing criminal penalties under Maine's abortion statute, the state is abandoning women and unborn children to the life-threatening harms of abortion and turning a blind eye to physicians and unlicensed people who violate the law and harm women. If this bill is passed, Maine will become a safe haven for unscrupulous abortion doctors. Rather than reducing legal protections for women, the legislature should be enacting measures that safeguard maternal health, preserve prenatal life, and mitigate fetal pain. For these reasons, I strongly urge the Committee to reject this bill, and, in doing so, protect mothers and unborn children in Maine.

Respectfully Submitted,



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AMERICANS UNITED FOR LIFE