Americans United for Life

Written Testimony of Catie Kelley, J.D.
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In Support of Legislative Document 886 (H.P. 572)
Submitted to the Joint Judiciary Committee
March 28, 2025

Dear Chair Carney, Chair Kuhn, Ranking Minority Member Poirier, and Members of the Committee:

My name is Catie Kelley, 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 in support of Legislative Document 886 ("H.P. 572" or "bill"). This bill is a common-sense measure that prohibits telemedical prescriptions of chemical abortion drugs, requires a prescription for abortion drugs, and requires a health care provider to oversee a patient undergoing a chemical abortion. (1) Maine has the authority to pass H.P. 572 post-*Dobbs*, (2) H.P. 572 is consistent with the federal prohibitions on the mailing of abortion-inducing drugs, (3) H.P. 572 protects the health and safety of women seeking chemical abortions, and (4) H.P. 572 helps safeguard women against intimate partner violence and reproductive control. I urge the

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[1] *Pro-Life Model Legislation and Guides*, AMS. UNITED FOR LIFE, https://aul.org/law-and-policy/ (last visited Mar. 28, 2025). 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. 28, 2025).

Committee to support H.P. 572 and defend the welfare of women seeking chemical abortion drugs.

I. Maine Has Broad Powers to Pass Informed Consent and Health and Safety Safeguards for Women Seeking Chemical Abortions

In *Dobbs v. Jackson Women's Health Organization*, the United States Supreme Court overruled *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* and returned the abortion issue to the democratic process.[3] Federal courts now review abortion litigation under a rational basis review. The Supreme Court notes: "[u]nder our precedents, rational-basis review is the appropriate standard for such challenges. As we have explained, procuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution's text or in our Nation's history."[4] Accordingly, "States may regulate abortion for legitimate reasons" if the law is rationally related to those reasons, "and when such regulations are challenged under the Constitution, courts cannot 'substitute their social and economic beliefs for the judgment of legislative bodies.'"[5] The Court recognizes that:

> These legitimate interests include respect for and preservation of prenatal life at all stages of development . . . the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability.[6]

Furthermore, "[a] law regulating abortion, like other health and welfare laws, is entitled to a 'strong presumption of validity.'"[7] In this regard, Maine has broad powers to pass the bill, which safeguards the informed consent and health and safety of women seeking chemical abortion drugs.

II. The Bill is Consistent with Federal Law, Which Prohibits the Mailing of Chemical Abortion Drugs

Federal law proscribes the mailing of chemical abortion drugs. "Every article or thing designed, adapted, or intended for producing abortion . . . is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier."[8] Similarly, Congress prohibits "knowingly us[ing] any express company or other common carrier or interactive computer service . . . for carriage in interstate or foreign commerce . . . any drug, medicine, article, or thing

[3] Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 2242–2243 (2022).
[4] *Id.* at 2283.
[5] *Id.* at 2283–2284 (citations omitted).
[6] *Id.* at 2284.
[7] *Id.* (citation omitted).
[8] 18 U.S.C. § 1461.

designed, adapted, or intended for producing abortion."[9] As discussed below, these prohibitions are essential for the informed consent and health and safety of women seeking chemical abortions.

III. In-Person Medical Evaluations Are Essential to the Health and Safety of Women Seeking Chemical Abortion Drugs

In-person visits are a necessary health and safety safeguard for chemical abortions. The Mayo Clinic states that: "Medical abortion isn't an option if you . . . *[c]an't make follow-up visits to your doctor* or don't have access to emergency care."[10] Medical institutions are in agreement about this, as "[a] medical abortion involves at least two visits to a doctor's office or clinic."[11] Follow-up visits and reporting are critical to ensure that if a woman has retained tissue, she receives essential follow-up care.

But even before a chemical abortion, healthcare providers must confirm a woman is a medically appropriate candidate for chemical abortion. In most states, this consultation is with a physician. In a few states, like California, it can be done by a midlevel provider, such as a nurse practitioner, certified nurse-midwife, or physician assistant.[12] A number of medical conditions make a woman ineligible to take chemical abortion drugs, including having a potentially dangerous ectopic pregnancy (a pregnancy outside of the uterus) or having an intrauterine device (IUD) in place.[13] 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.[14] 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.[15]

Determining gestational age is also usually done in person by ultrasound. Ultrasound is the most accurate method to establish or confirm gestational age in the first

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[9] 18 U.S.C. § 1462. Although a Department of Justice Office of Legal Counsel memo explored the idea that federal laws do not prohibit the mailing of chemical abortion drugs, Members of Congress subsequently wrote to Attorney General Merrick Garland, reminding him that the "plain text and clear meaning of the law" prohibit the mailing of chemical abortion drugs. Letter from James Lankford, Senator, U.S. Cong., et al., to Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. 1 (Jan. 25, 2023), https://www.lankford.senate.gov/imo/media/doc/dojletterabortionmail.pdf.

[10] *Medical Abortion*, MAYO CLINIC (July 29, 2022), https://www.mayoclinic.org/tests-procedures/medical-abortion/about/pac-20394687 (emphasis in original).

[11] *Medical Abortion*, UNIV. OF CAL. SAN FRANCISCO HEALTH, www.ucsfhealth.org/treatments/medical-abortion (last visited Mar. 28, 2025).

[12] Cal. Bus. & Prof. Code § 2253(b) (2022).

[13] *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.

[14] *Id.*

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

trimester.[16] Dating a pregnancy by using a woman's last menstrual period (LMP) is far less accurate. The American College of Obstetricians and Gynecologists (ACOG) indicates only one half of women accurately recall their LMP.[17] In one study, forty percent of women had more than a five-day discrepancy between their LMP dating and the ultrasound dating.[18] In this regard, LMP dating is not nearly as precise as an ultrasound. But an accurate measurement of gestational age is required to show that a woman is even a candidate for a chemical abortion.

Without an in-person evaluation, abortion providers also cannot test for Rh negative blood type. During pregnancy, if a woman has Rh negative blood while her fetus is Rh positive, the woman's body may produce antibodies after exposure to fetal red blood cells.[19] Abortion can cause maternal exposure to fetal blood, even in the first trimester.[20] Therefore, if indicated, a healthcare provider must give a woman with Rh negative blood an Rh immuneglobulin injection. Without the injection, antibodies can damage future pregnancies by creating life-threatening anemia in fetal red blood cells.[21] ACOG describes that "Rh testing is recommended in patients with unknown Rh status before medication abortion, and Rh D immunoglobulin should be administered if indicated."[22] Rh negative blood typing is thus a medically necessary test, but it cannot occur during chemical abortions consultations that are done entirely via telemedicine.

Furthermore, scientific evidence indicates that "[m]edication abortions were 5.96 times as likely to result in a complication as first-trimester aspiration abortions."[23] Mifeprex's 2023 label states that one in every twenty-five women who take abortion drugs end up in the emergency room.[24] Abortion-pill related emergency room visits

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[16] Comm. on Obstetric Practice, Am. Coll. of Obstetricians & Gynecologists et al., *Methods for Estimating the Due Date*, Comm. Op. No. 700, at 1 (reaffirmed 2022).
[17] *Id.* at 2.
[18] *Id.*
[19] *Rh Factor Blood Test*, MAYO CLINIC (July 29, 2022), https://www.mayoclinic.org/tests-procedures/rh-factor/about/pac-20394960.
[20] *Id.*
[21] *Id.*
[22] Comm. On Practice Bulletins—Gynecology and the Soc'y of Family Planning, Am. Coll. of Obstetricians & Gynecologists, *Medication Abortion Up to 70 Days of Gestation*, Comm. Op. 225, at 40 (reaffirmed 2023).
[23] Upadhyay, et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 OBSTET. GYNECOL. 175, 181 (Jan. 2015), https://www.ansirh.org/sites/default/files/publications/files/upadhyay-jan15-incidence_of_emergency_department_visits.pdf.
[24] Mifepristone comes with a "black box" warning that "[s]erious and sometimes fatal infections occur very rarely…following MIFEPREX use." *See* FDA, 2023, *Abortion pill black box warning*, https://www.accessdata.fda.gov/drugsatfda_docs/label/2023/020687Orig1s025Lbl.pdf. It notes that "patients with serious bacterial infections and sepsis can present without fever, bacteremia or significant findings on pelvic examination. A high index of suspicion is needed to rule out serious infection and sepsis." *Id.* It further notes that "prolonged heavy bleeding may be a sign of incomplete abortion or other complications and prompt medical or surgical intervention may be needed." *Id.*

could be in the tens of thousands annually.[25] In addition, Mifeprex's medication guide acknowledges that up to 7% of women who have taken the drug will require surgery afterward "to stop bleeding" or to complete the abortion.[26] That is one in every fourteen women. Without a treating physician, the most likely result for these women is the emergency department.

Thus, by prohibiting telemedical chemical abortion prescriptions, the bill safeguards the health and safety of women in Maine.

IV. The Use of Telemedicine Exacerbates the Risks to Women of Intimate Partner Violence and Reproductive Control

There are grave informed consent issues within abortion decisions because a woman may be facing intimate partner violence (IPV). There are "[h]igh rates of physical, sexual, and emotional IPV . . . among women seeking a[n abortion]."[27] For women seeking abortion, the prevalence of IPV is nearly three times greater than women continuing a pregnancy.[28] Post-abortive IPV victims also have a "significant association" with "psychosocial problems including depression . . . , suicidal ideation . . . , stress . . . , and disturbing thoughts."[29]

Similarly, intimate partners, family members, and sex traffickers may be asserting reproductive control over the woman, which are "actions that interfere with a woman's reproductive intentions."[30] In the context of abortion, reproductive control not only produces coerced abortions or continued pregnancies, but it also affects whether the pregnancy was intended in the first place.[31] Reproductive control is a prevalent issue for women. "As many as one-quarter of women of reproductive age attending for sexual and reproductive health services give a history of ever having suffered [reproductive control]."[32]

Medical professionals must "[s]creen for IPV in a private and safe setting with the woman alone and not with her partner, friends, family, or caregiver."[33] Yet, telemedicine

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[25] *See* Carole Novielli, *Emergency room visits from abortion pill estimated in the tens of thousands*, LIVE ACTION NEWS (Mar. 8, 2024), https://www.liveaction.org/news/emergency-room-visits-abortion-pill-tens-thouands/.

[26] *Medication Guide Mifeprex (Mifepristone) tablets, 200mg*, DANCO LAB'Y (Jan. 2023), https://www.earlyoptionpill.com/wp-content/uploads/2023/03/DANCO_MedGuide_ENG_Web.pdf.

[27] Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, PLOS MED., Jan. 7, 2014, at 1, 15.

[28] Comm. on Health Care for Underserved Women, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (reaffirmed 2022).

[29] Hall, *supra* note 28, at 11.

[30] Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 BMJ SEXUAL & REPROD. HEALTH 61, 62, 65 (2019).

[31] *Id.* at 62–63.

[32] *Id.* at 62.

[33] Comm. on Health Care for Underserved Women, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Intimate Partner Violence*, Comm. Op. No. 518, at 3 (reaffirmed 2022).

cannot ensure that a coercive partner, friend, family member, or caregiver is not in the room with a woman seeking a chemical abortion. In a telehealth setting, ACOG recommends healthcare providers screen patients multiple times because patients may not be able to disclose abuse each time they are screened.[34]

In other words, domestic violence screening by telehealth "may not allow individuals the privacy or safety needed to disclose abuse."[35] Thus, telehealth ineffectively screens women seeking chemical abortions as a result of domestic violence or coercion. If she changes her mind, no medical professional is there to help her. She is left alone to care for her physiological and psychological health, as well as her safety if complications or IPV arise. Thus, by restricting telemedical chemical abortions, the bill is a critical safeguard against the risks of IPV and reproductive control.

V. Conclusion.

Maine has broad powers to protect women's welfare, especially for a bill that is consistent with federal prohibitions on the mailing of chemical abortion drugs. I urge the Committee to support the bill as a common-sense protection for the informed consent and health and safety of women seeking chemical abortion drugs.

Respectfully Submitted,

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[34] *COVID-19 FAQs for Obstetricians-Gynecologists, Obstetrics*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS (rev. July 1, 2021), https://www.acog.org/clinical-information/physician-faqs/covid-19-faqs-for-ob-gyns-obstetrics; *see also Intimate Partner Violence*, *supra* note 30, at 3 (noting IPV screening should occur periodically and "at various times . . . because some women do not disclose abuse the first time they are asked").
[35] *Id.*