



**Written Testimony of Catherine Glenn Foster, J.D.**  
**President & CEO, Americans United for Life**  
**In Support of H.B. 1162, 1179 1227, and 1321**  
**Submitted to the Health and Government Operations Committee**  
**March 13, 2020**

Dear Chair Pendergrass and Members of the Committee:

My name is Catherine Glenn Foster, and I serve as President and CEO of Americans United for Life (AUL), America's founding national pro-life organization. I am also a Maryland resident. Established in 1971, AUL has dedicated nearly 50 years to advocating for comprehensive legal protections for human life from fertilization to natural death. AUL attorneys are experts on constitutional law and abortion jurisprudence. I appreciate the opportunity to submit legal testimony in support of H.B. 1162, 1179, 1227, and 1321—bills that would add commonsense protections to the abortion process.

**H.B. 1162, An Act Concerning Abortion Reporting Requirements**

The U.S. Supreme Court has stated that abortion reporting laws are constitutional.<sup>1</sup> H.B. 1162 is a constitutional, valid exercise of the State's right to ensure that accurate, reliable data and statistics on abortion procedures are available to women, the medical community and the general public. Abortion reporting is vital to preventing morbidity and mortality resulting from abortions, improving women's healthcare by making legal abortions safer, and to ensure the practice of evidence-based medicine in the abortion context.

***Abortion reporting is a public health necessity with an objective purpose.***

Reporting on medical procedures and their results is a medical norm.<sup>2</sup> The medical community has instituted the collection, analysis and dissemination of information related to abortion procedures, abortion morbidity and abortion mortality as an established branch of epidemiological surveillance. This is because abortion reporting is necessary for scientists and public health professionals to determine the effectiveness, efficiency, and safety of the different forms of abortion.

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<sup>1</sup> *Planned Parenthood v. Danforth*, 428 U.S. 80 (1976).

<sup>2</sup> Jack C. Smith & Willard Cates, Jr., *The Public Health Need for Abortion Statistics*, 93 PUB. HEALTH REP. 194, 194–97 (1978). See also Keith Maule, *Record Keeping: Is It Really that Important?*, J. AM. CHIROPRACTIC ASS'N, 20–22 (2000). (Even the chiropractic industry acknowledges the importance and need for reporting and record keeping).

The overarching goal of the public health community is to provide scientific data and authoritative recommendations regarding the effectiveness, efficiency, and safety of all medical procedures, including abortion. In line with this mission, the objective purpose of abortion reporting is the prevention of morbidity and mortality associated with induced abortion by ensuring the woman is has the information necessary to make an informed decision.<sup>3</sup>

The medical and public health community have uniformly and consistently held that abortion reporting and accurate abortion statistics are essential for the “practice of evidence-based medicine.”<sup>4</sup> Jack Smith, the founder of the Centers for Disease Control and Prevention (CDC) abortion reporting system, testified to the public health need for complete, accurate abortion reporting. He stated, “public health is very much part of the abortion issues. Moral and constitutional questions related to abortion may be argued philosophically; however, *health questions related to abortion should be answered by sound epidemiologic reasoning based on adequate abortion statistics.*”

### ***Abortion reporting laws are constitutional.***

The Supreme Court has held that abortion reporting laws do not impose an undue burden on a woman’s right to choose. In *Planned Parenthood v. Danforth*, the Court upheld a Missouri abortion reporting law, stating that “record keeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient’s confidentiality and privacy are permissible.”<sup>5</sup> In *Planned Parenthood v. Casey*, the Supreme Court reaffirmed its decision in *Danforth*, holding that “[t]he collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the requirements serve no purpose other than to make abortions more difficult.”<sup>6</sup>

H.B. 1162 meets this standard—first, the collection of abortion information for the sake of compiling accurate, reliable statistical data is reasonably related to the preservation of maternal health; second, H.B. 1162 contains a provision specifically prohibiting the inclusion of patient names in abortion reporting forms, and requires that patient privacy be respected.

### ***Abortion reporting laws are essential to improving women’s healthcare.***

Statistics on the frequency, performance and results of abortions contribute to the body of medical knowledge that informs practicing abortion providers on (1) which abortion techniques are safest and most effective; (2) how to safely perform a specific abortion procedure; and (3) how to improve the procedure. Accurate abortion data is necessary for the development of physician training programs for managing

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<sup>3</sup> Smith & Cates, at 194 (emphasis added).

<sup>4</sup> Willard Cates, Jr., David A. Grimes, & Kenneth F. Schultz, *Abortion Surveillance at the CDC: Creating Public Health Light Out of Political Heat*, 19 AM. J. PREV. MED., Number 1S (2000).

<sup>5</sup> 428 U.S. 80 at 52, 79–81 (1976).

<sup>6</sup> 505 U.S. 833 at 900–901 (1992).

complications resulting from abortions.

In addition to physician training, accurate abortion statistics are necessary in order to prepare hospitals and health facilities for the medical needs of women who have abortions. Hospitals and health facilities must be prepared to provide women with adequate medical care before and during an abortion, as well as any emergency care she may need after the abortion has been performed. Good abortion statistics will inform hospitals and health facilities as to what care a woman will need before, during, and after an abortion.

Moreover, an abortion reporting system that looks into the woman's motivation for getting the abortion can help the government and other groups understand what needs are not being met. For example, if many women are getting an abortion due to financial hardship or lack of resources, these concerns can be addressed.

***Maryland should pass H.B. 1162 to require basic abortion reporting.***

H.B. 1162 passes constitutional muster and directly furthers Maryland's legitimate interest in "preserving and protecting the health" of women.<sup>7</sup> I urge the legislature to enact H.B. 1162 and to ensure mandatory, comprehensive abortion reporting legislation.

**H.B. 1179, the Humane Disposition of Human Remains Act**

***Requiring humane and dignified disposition of human fetal remains is reasonable.***

How human fetal remains can and should be disposed of is an important national question. With at least 926,200 abortions each year in the United States (not to mention fetal deaths from miscarriages), medical practitioners need to dispose of the remains of approximately 2,538 unborn humans every day.<sup>8</sup> While human fetal remains can be disposed of humanely, they often aren't.

There are three main ways to dispose of human fetal remains: burial, cremation (or interment), and incineration as medical waste. Cremation and incineration are similar except the former means "[t]o reduce a dead body to ash by burning,"<sup>9</sup> while the latter means "the removal or reduction of waste materials by burning."<sup>10</sup> It is considered inhumane to incinerate a human body, especially when

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<sup>7</sup> *Casey*, 505 U.S. at 875–76.

<sup>8</sup> The most recent data available is for the year 2014. See Rachel K. Jones & Jenna Jerman, *Abortion Incidence and Service Availability in the United States, 2014*, 49 *Perspectives on Sexual & Reprod. Health* 17, (2017), <https://doi.org/10.1363/psrh.12015>; see also Tara C. Jatlaoui et al., *Abortion Surveillance—United States, 2014*, CDC (Nov. 24, 2017), [https://www.cdc.gov/mmwr/volumes/66/ss/ss6624a1.htm?s\\_cid=ss6624a1\\_w](https://www.cdc.gov/mmwr/volumes/66/ss/ss6624a1.htm?s_cid=ss6624a1_w) (Based on voluntary reporting by states, the U.S. Center for Disease Control and Prevention reported that in 2014 there were at least 652,639 abortions.).

<sup>9</sup> *Cremate*, *TABER'S CYCLOPEDIA MEDICAL DICTIONARY* 580.

<sup>10</sup> *Incineration*, *MOSBY'S MEDICAL DICTIONARY* 913.

incinerated together with medical waste. Even more inhumane, human fetal remains have been dumped in landfills and burned to generate electricity.<sup>11</sup>

Recognizing the need to treat human remains with dignity, most states regulate the disposition of human fetal remains, and several explicitly require the humane disposition of human fetal remains, including Alabama, Arkansas, Idaho, Indiana, Louisiana, Minnesota, North Carolina, North Dakota, Ohio, Oklahoma, and Texas. Joining these states by passing H.B. 1179 would properly address the health, safety, and moral concerns over how to properly dispose of human fetal remains.

***Requiring humane and dignified disposition of human fetal remains is constitutional.***

The Supreme Court has recognized that states have a legitimate interest in the proper disposition of human fetal remains.<sup>12</sup> In *Akron*, the Court addressed whether the city could require physicians performing abortions to ensure that fetal remains were disposed of in a “humane and sanitary manner.”<sup>13</sup> Ultimately, the Court found that the law violated the Due Process Clause because the undefined phrase “humane and sanitary,” coupled with the imposition of criminal liability, failed to give a physician “fair notice that his contemplated conduct [wa]s forbidden.”<sup>14</sup>

After *Akron*, the Eighth Circuit addressed the constitutionality of a Minnesota law regulating the disposal of human fetal remains by hospitals, clinics, and medical facilities within the state. The court recognized that “*Akron* makes clear that more carefully drawn regulations might suffice to ‘further [the government’s] legitimate interest in proper disposal of fetal remains.’”<sup>15</sup> And unlike *Akron*’s fetal disposition law, Minnesota’s fetal disposition law was “sufficiently clear to avoid vagueness concerns.”<sup>16</sup>

Since the *Akron* Court recognized “the legitimate interest of states and municipalities in regulating the disposal of fetal remains from abortions and miscarriages,”<sup>17</sup> the Eighth Circuit concluded that Minnesota’s law was reasonably related to the state’s legitimate interest in protecting “public

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<sup>11</sup> See, e.g., Jeremy Pelzer, *Aborted Fetal Remains from Ohio Planned Parenthood Ended Up in Landfills, Incinerators, Attorney General Says*, Cleveland.com (Dec. 11, 2015, 12:16 PM), [http://www.cleveland.com/open/index.ssf/2015/12/aborted\\_fetal\\_remains\\_from\\_ohi.html](http://www.cleveland.com/open/index.ssf/2015/12/aborted_fetal_remains_from_ohi.html); Katie Pavlich, *Horrrifying: Bodies of Aborted Babies Burned to Power Homes in Oregon*, Townhall (Apr. 24, 2014, 8:21 AM), [http://townhall.com/tipsheet/katie\\_pavlich/2014/04/24/horrifying-bodies-of-aborted-babies-bur-ned-to-power-homes-in-oregon-n1828680](http://townhall.com/tipsheet/katie_pavlich/2014/04/24/horrifying-bodies-of-aborted-babies-bur-ned-to-power-homes-in-oregon-n1828680); AP, *2 Texas Abortion Clinics Fined for Fetus Disposal*, My San Antonio (Feb. 11, 2012, 8:35 PM), [http://www.mysanantonio.com/news/local\\_news/article/2-Texas-abortion-clinics-fined-for-fetus-disposal-3305551.php](http://www.mysanantonio.com/news/local_news/article/2-Texas-abortion-clinics-fined-for-fetus-disposal-3305551.php).

<sup>12</sup> See *City of Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416, 452 n.45 (1983) (“Akron remains free, of course, to enact more carefully drawn regulations that further its *legitimate interest in proper disposal of fetal remains*.” (emphasis added))

<sup>13</sup> *Id.* at 451–52.

<sup>14</sup> *Id.*

<sup>15</sup> *Planned Parenthood of Minnesota v. Minnesota*, 910 F.2d 479, 482 (8th Cir. 1990). (alteration in original) (quoting *Akron*, 462 U.S. at 452 n.45).

<sup>16</sup> *Id.* at 484.

<sup>17</sup> *Id.* at 481 (citing *Akron*, 462 U.S. at 451–52 nn.44–5)

sensibilities.”<sup>18</sup> The Minnesota legislature’s decision to draw the line at regulating abortions and miscarriages at home was not enough to invalidate the state’s interest, especially given “the privacy concerns implicit in activity in one’s home.”<sup>19</sup> Following the example of Minnesota, at least ten states have passed constitutionally-sound fetal remains laws.

***Maryland’s legitimate interest in the humane and dignified disposition of human fetal remains does not conflict with Roe or Casey.***

The Supreme Court recognizes a state’s interest in unborn human fetal life. It recognized in *Roe v. Wade* that states have an “important and legitimate interest in potential life.”<sup>20</sup> Then in *Casey*, it rejected *Roe*’s trimester framework because it “undervalue[d] the State’s interest in potential life.”<sup>21</sup> In *Stenberg v. Carhart*, it recognized the state’s interest “to ensure respect for all human life and its potential.”<sup>22</sup> “*Casey*’s assurance that the State’s constitutional position in the realm of promoting respect for life is more than marginal.”<sup>23</sup> Then in *Gonzales*, the Court emphasized:

The government may use its voice and its regulatory authority to show its profound respect for the life within the woman. . . . Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power . . . in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn.<sup>24</sup>

The states have a legitimate interest and play a significant role in “protecting the integrity and ethics of the medical profession.”<sup>25</sup> This includes a medical practitioner’s disposition of human fetal remains within his or her possession. Justice Kennedy wrote in his dissent, “States also have an interest in forbidding medical procedures which, in the State’s reasonable determination, might cause the medical profession or society as a whole to become insensitive, even disdainful, to life, including life in the human fetus.”<sup>26</sup> It is also legitimate to affirm “that medical procedures must be governed by moral principles having their foundation in the intrinsic value of human life, including life of the unborn.”<sup>27</sup>

Regulating the disposition of human fetal remains does not conflict with *Roe* or *Casey*. As the Eighth Circuit explained, a human fetal disposition law “does not burden the abortion choice,” because

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<sup>18</sup> *Id.* at 488.

<sup>19</sup> *Id.*

<sup>20</sup> 410 U.S. 113, 163 (1973).

<sup>21</sup> 505 U.S. at 873.

<sup>22</sup> 530 U.S. 914, 957 (2000) (citing *Casey*, 505 U.S. at 871).

<sup>23</sup> *Id.* at 964.

<sup>24</sup> 550 U.S. at 157–58.

<sup>25</sup> *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997); see also *Barsky v. Bd. of Regents*, 347 U.S. 442, 451 (1954) (indicating the state has “legitimate concern for maintaining high standards of professional conduct” in the practice of medicine).

<sup>26</sup> *Stenberg*, 530 U.S. at 961.

<sup>27</sup> *Id.* at 979.

the regulation had “no significant impact” on a woman’s exercise of her choice.<sup>28</sup> “Rather than regulating abortion, [a human fetal disposition] statute acknowledges the existence of abortion and regulates an issue related to abortion.”<sup>29</sup> While a human fetal disposition law admittedly touches on abortion, it does not interfere with or burden a woman’s abortion choice, which by definition has already been made at the time of fetal disposition.<sup>30</sup> The Eighth Circuit also rejected Planned Parenthood’s arguments that the increased cost from disposing of fetuses and the alleged associated psychological trauma created an undue burden on a woman’s abortion decision.<sup>31</sup> In short, requiring the humane disposition of human fetal remains does not conflict with *Roe* or *Casey* because it does not burden a woman’s abortion choice.

***Maryland should pass H.B. 1179 to ensure the humane and dignified disposition of human fetal remains.***

It is rational for Maryland to ensure that human fetal remains are disposed of humanely and with dignity. According to scientific and medical definitions, and as recognized by federal and state governments, as well as the Supreme Court and other courts, human fetuses are human beings in early stages of development. As human beings, human fetuses are worthy of being treated humanely and with dignity, whether in life or in death. Laws requiring the humane and dignified disposition of human fetal remains are a natural extension of this fact.

It is also rational to regulate the proper disposition of human fetal remains by medical practitioners as an exercise of a state’s legitimate interests in the life of the unborn and the regulation of the medical profession, as recognized by this Court and other courts. H.B. 1179 addresses the health, safety, and moral concerns over how to properly dispose of human fetal remains. In sum, Maryland should vote to pass H.B. 1179 and require the dignified disposal of human fetal remains.

**H.B. 1227 and 1321, Acts Concerning Ultrasound Requirements**

Ultrasound laws—or the lack thereof—have had a deep impact on my life. In 2001, when I was a sophomore at college in Georgia, I found myself unexpectedly pregnant. By default, I scheduled an appointment at an abortion facility. At the time, I wasn’t aware of any other type of clinic to turn to with an unexpected pregnancy and that might truly help women and girls with life-affirming choices, and knew of nowhere else to go. But I assumed the facility would at least provide me with the information, resources, and answers I was looking for as I decided what my next steps would be.

As clinic staff performed an ultrasound on me, I asked to see the image. I wanted to be able to make a fully informed decision, and I wanted to be able to see my child. But the woman who was maneuvering the wand over my belly said no. She told me it was against clinic policy to allow a mother

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<sup>28</sup> *Planned Parenthood of Minn. v. Minnesota*, 910 F.2d 479, 486 (8th Cir. 1990).

<sup>29</sup> *Id.* at 487.

<sup>30</sup> *See id.*

<sup>31</sup> *Id.* at 487.

to see the ultrasound image of her baby. And with that, they moved me on to the next workstation in the assembly-line process towards abortion.

I walked into that clinic because I felt I had no other choice, and nothing that took place there that day restored my agency or my empowerment. I was deeply conflicted, looking for information and resources to give me hope and options, but was given neither. I have never been able to see my child's only photo, and that fact remains on my mind to this day. That clinic stripped me of my choice. When we as a society do not ensure that abortion facilities provide women and girls with the information they have asked for, it can have devastating consequences. I know that firsthand.

With each passing year, more and more women like me emerge from the silence after abortion. They are wounded and speak out in anguish on the physical, emotional, spiritual, and psychological harm they have suffered and still suffer as a direct result of their abortions. Often, this harm arises as a consequence of women "choosing" abortion without adequate and accurate information concerning the procedure itself and abortion's risks, alternatives, and long-term consequences. Our experiences reflect the fact that abortion facilities often fail to provide adequate and accurate medical information, including access to and the option of viewing ultrasounds, to women considering abortions.

States have the constitutional power to take measures that can prevent the harm women often experience as a result of abortion by passing comprehensive and carefully drafted informed consent laws. Ultrasound requirements, like H.B. 1227 and 1321, which would provide a woman the option to see her unborn child and hear his or her heartbeat are concrete, effective steps states can take to ensure that the mother's consent for an abortion is as fully informed as possible. In *Casey*, the Supreme Court stated that "[a]s with any medical procedure, the State may enact regulations to further the health or safety of a woman seeking an abortion."<sup>32</sup> As such, over 25 states have enacted ultrasound requirements to ensure women have the opportunity to make a fully informed choice.<sup>33</sup>

Ultrasound provisions both promote the woman's physical and psychological health and advance the states' important and legitimate interest in protecting life.<sup>34</sup> Ultrasound requirements serve an essential and irreplaceable medical purpose in that they are the only method of diagnosing ectopic pregnancies, which, if left undiagnosed, can result in infertility or even fatal blood loss.<sup>35</sup> Furthermore, an ultrasound enables the healthcare provider to more accurately date the gestational age of a child. Accurate dating of pregnancy both protects the woman by ensuring that the appropriate abortion procedure is performed and

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<sup>32</sup> 505 U.S. 878 (1992).

<sup>33</sup> The states are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

<sup>34</sup> In both *Gonzales v. Carhart* and *Planned Parenthood v. Casey*, the Supreme Court affirmed "the principle that the State has legitimate interests from the outset of pregnancy in protecting the health of the woman." *Gonzales*, 550 U.S. 124, 145 (2007) (quoting *Casey*, 505 U.S. at 846 (1992) (citing *Roe v. Wade*, 410 U.S. 113 (1973))).

<sup>35</sup> See, e.g., Mayo Clinic, *Ectopic Pregnancy*, <http://www.mayoclinic.org/diseases-conditions/ectopic-pregnancy/basics/complications/con-20024262> (last visited Jan. 30, 2019).

provides relevant information necessary to make an informed decision, since the risks of abortion increase as gestational age increases.<sup>36</sup>

Allowing a woman the opportunity to view her ultrasound helps ensure an informed choice because it gives the mother the option of seeing her unborn child as he or she really is—by seeing his or her form and face on a screen and by hearing his or her heartbeat. Medical evidence indicates that women feel bonded to their children after seeing them on the ultrasound screen.<sup>37</sup> Once that bond is established, researchers argue, a woman no longer feels ambivalent toward her pregnancy and in fact begins to feel invested in her preborn child.<sup>38</sup> And thus, by giving every woman the choice to view her child’s ultrasound image, the State also furthers its interest in protecting life, as some women may ultimately decide to carry their child to term. In fact, a recent study found that 78% of women who see an ultrasound image of their infant in utero choose life for their baby.<sup>39</sup>

***Maryland should pass H.B. 1227 and 1321 to ensure women have complete informed consent.***

Today, this Committee has an opportunity to take an important step toward ensuring the women of Maryland are not denied vital information like I was, but instead empowered to make a fully informed decision. When an ultrasound is medically required for abortion for the reasons I’ve discussed, why not insist that the abortion provider give the patient the most important information conceivable – the very image and sounds from her own body that speak to the real nature of the human life within her? I strongly encourage you to pass H.B. 1227 and 1321 to give women the option of viewing an ultrasound and to consider additional ways to utilize ultrasounds to protect women’s physical and psychological health.

Sincerely,



Catherine Glenn Foster  
President & CEO  
Americans United for Life

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<sup>36</sup> See, e.g., John M. Thorp Jr., *Public Health Impact of Legal Termination of Pregnancy in the U.S.: 40 Years Later*, 2012 SCIENTIFICA (Oct. 15, 2012), <https://www.hindawi.com/journals/scientifica/2012/980812/>.

<sup>37</sup> See J. C. Fletcher & M. I. Evans, *Maternal Bonding in Early Fetal Ultrasound Examinations*, 308 N.E.J.M. 392 (1983).

<sup>38</sup> *Id.* at 392.

<sup>39</sup> Thomas A. Glessner, *National Survey of Pro-life Pregnancy Centers Shows Major Influence of Ultrasound on a Mother’s Choice for Life*, Christian News Wire (Mar. 3, 2015), <https://bit.ly/2tHbopX> (Survey of 75,318 ultrasounds performed for pregnant patients identified as either abortion-minded or abortion-vulnerable; 58,634 chose to allow their children to live, about 78%).