



**Written Testimony of Catherine Glenn Foster, Esq.  
President & CEO, Americans United for Life  
Against S.B. 0664  
Submitted to the Senate Judicial Proceedings Committee  
March 11, 2020**

Dear Chair Smith, Vice Chair Waldstreicher, 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 original and most active pro-life advocacy organization. Established in 1971, AUL has dedicated nearly 50 years to advocating for comprehensive legal protections for human life from conception to natural death. AUL attorneys are experts on constitutional law and abortion jurisprudence. I appreciate the opportunity to submit legal testimony against S.B. 0664, the proposed amendment regarding enshrining expansive abortion measures in Maryland's constitution.

I have thoroughly reviewed S.B. 0664 and it is my opinion that the Amendment expands abortion allowances well beyond *Roe v. Wade* and its progeny, eliminating the State's legitimate interest in protecting both life and women's health. In order to ensure this Amendment solely guarantees the right to *informational* privacy, clarifying language stating this does not create a right to abortion must be added.

***S.B. 0664 would impede the State's ability to act in furtherance of its legitimate interest recognized in Roe and its progeny.***

S.B. 0664 would impede Maryland's ability to act on its legitimate interests in protecting both life and maternal health. By preventing any regulation of the abortion process unless there is "a showing of a compelling state interest," this Amendment would reject the Supreme Court's supposition in *Roe* that "a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life."<sup>1</sup> In *Planned Parenthood v. Casey*, the Court asserted that "it is a constitutional liberty of the woman to have some freedom to terminate her pregnancy. . . . The woman's liberty is not so unlimited, however, that from the outset [of pregnancy] the State cannot show its concern."<sup>2</sup> In both *Casey* and *Gonzales v. Carhart*, the Court continued to affirm its "essential holding" that states have "legitimate interests from the outset of the pregnancy in protecting the health of the woman."<sup>3</sup> Again the Supreme Court reiterated in *Whole Woman's Health v. Hellerstedt* that the "State has a legitimate interest in seeing to it that abortion, like any medical procedure, is performed

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<sup>1</sup> *Roe v. Wade*, 410 U.S. 113, 154 (1973).

<sup>2</sup> *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 869 (1992).

<sup>3</sup> *Id.* at 846; *see also Gonzales v. Carhart*, 550 U.S. 124, 145 (2007).

under circumstances that insure maximum safety for the patient.”<sup>4</sup> S.B. 0664 would ignore the State’s rights and interests that have been repeatedly recognized in *Roe*, *Casey*, and *Hellerstedt*.

***S.B. 0664 would take power from the people’s hands to implement commonsense laws.***

The U.S. Supreme Court has upheld restrictions on the provision of abortion due to the state’s legitimate interest in protecting life and provisions to ensure the informed consent and health of the woman on whose child the abortion will be performed.<sup>5</sup> This Amendment would go against Maryland’s legitimate interests by establishing an extremely high bar for commonsense protections for women and children’s health, which could include informing the woman on the nature of the abortion procedure, informing her on the risks associated with the particular abortion procedure, and protecting women from coercion to abort. The Amendment would also prevent protections against sex-selective abortion and abortion based on genetic anomalies such as Down syndrome.

S.B. 0664 could also result in the prohibition of any type of regulation—including commonsense health and safety measures—of abortion providers or facilities because they could be considered a restriction on the practice of abortion. Legalized abortion has not eliminated substandard medical care, kept people without medical licenses from performing abortions, ensured competent post-abortive care, or prevented women from dying from unsafe abortions, and this Amendment engenders a regulatory regime akin to the one in Pennsylvania that allowed the infamous abortionist Kermit Gosnell to operate his “House of Horrors” for decades. Gosnell, ultimately convicted of involuntary manslaughter, was able to perform unsafe, unsanitary, and deadly abortions for many years because, according to the Grand Jury report, the Pennsylvania Department of Health thought it could not inspect or regulate abortion clinics because that would interfere with access to abortion.<sup>6</sup> By lowering professional accountability, abortion facilities in Maryland will be free to operate without regulation and oversight, to the detriment of women and young girls.<sup>7</sup> By passing this Amendment, Maryland will turn a blind eye to unsafe abortion practices by abdicating its proper duty to protect women.

This concern is not merely a theoretical one. We have seen this very scenario play out in Florida. In 1980, Florida voted to amend the state constitution to include the right to privacy, that “[e]very natural person has the right to be let alone and free from governmental intrusion into his private life.”<sup>8</sup> The Florida Supreme Court stated the amendment “expressly and succinctly provides for a strong right of privacy not found in the United States Constitution,” and so “it can only be concluded that the right is

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<sup>4</sup> 790 F.3d 563 (2016) (quoting *Roe*, 410 U.S. at 150).

<sup>5</sup> See *Casey*, 505 U.S. 833 (1992).

<sup>6</sup> See, e.g., 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/> (discussing the case of Kermit Gosnell).

<sup>7</sup> See, e.g., Ams. United for Life, *Unsafe* (2d ed. 2018) (report documenting unsafe practices of abortion providers and harm to women’s health and safety).

<sup>8</sup> Art. I, SS 23, Fla. Const.

much broader in scope than that of the Federal Constitution.”<sup>9</sup> “In other words, the amendment embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal Constitution.”<sup>10</sup> As a result, the Florida Supreme Court found that the “privacy provision is clearly implicated in a woman's decision of whether or not to continue her pregnancy” and struck down a commonsense parental consent law that ensured minor girls were not alone when contemplating having an abortion.<sup>11</sup> If the Amendment is truly just an effort to protect *informational* privacy, rather than some nebulous concept of “privacy” that sweeps in everything from Internet data to abortion, a clarifying section must be added to prevent the same thing from happening in Maryland.<sup>12</sup>

Maryland legislators cannot afford to abdicate their responsibility to protect the health and safety of their constituents in the future. Already, the Maryland Department of Health lists dozens of health and safety violations across the state on a website dedicated to publishing abortion facility deficiency reports.<sup>13</sup> These abysmal facilities will only get worse if Maryland laws allows them to operate unchecked.

***S.B. 0664 should be rejected by this Committee.***

Ultimately, the Amendment would reject what the Supreme Court acknowledged, that “the medical, emotional, and psychological consequences of an abortion are serious and can be lasting.”<sup>14</sup> This Committee must reject S.B. 0664 so that Maryland continue to further its important state interests in preserving human life and protecting women’s health.

Sincerely,



Catherine Glenn Foster, M.A., J.D.  
President & CEO  
Americans United for Life

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<sup>9</sup> *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985).

<sup>10</sup> *In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989).

<sup>11</sup> *Id.* at 1193.

<sup>12</sup> S. B. 0664 already includes language stating, “the right to privacy does not prohibit the state from regulating the sale or purchase of a firearm or ammunition,” so language clarifying this does not meant to guarantee a right to abortion can easily be added.

<sup>13</sup> See attachment for a summary of the most frequent health and safety violations committed in Maryland abortion facilities. Md. Dep't of Health, *Surgical Abortion Facility Surveys*, <https://health.maryland.gov/ohcq/ac/Pages/Surgical-Abortion-Facility-Surveys.aspx> (last visited Mar. 9, 2020).

<sup>14</sup> *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).