



**TESTIMONY OF MICHAEL J. NORTON
SENIOR COUNSEL, ALLIANCE DEFENDING FREEDOM**

Regarding House Bill 15-1128 Concerning the Adoption of
“Women’s Health Protection Act”

February 12, 2015

My name is Michael J. Norton. I am an attorney with Alliance Defending Freedom (ADF), an alliance-building, non-profit legal organization that promotes religious liberty and marriage and the family. I have also had the privilege of serving as the United States Attorney for the District of Colorado.

Most of my work with ADF is to advocate for the right of people to freely live out their faith. I am currently involved in a number of lawsuits in federal and state courts concerning religious liberties and the conscience rights of private business owners and religious organizations to be free from being required by the government to violate their sincerely held religious beliefs by providing contraceptives and abortifacients as part of their employee health insurance plans.

I am privileged to testify today on House Bill 15-1128 on behalf of Colorado Family Action (CFA). The mission of CFA is to strengthen families by applying founding principles and faith to policy and culture. CFA seeks to establish through citizen advocacy and enactment of Colorado law a safe, prosperous and wholesome climate for families. CFA’s public policy decisions are based on the principles of life, marriage, parental authority, constitutional government, and religious liberty.

Greenwood Corporate Plaza, Building No. 3
7951 E. Maplewood Avenue, Suite 100
Greenwood Village, CO 80111
720-689-2410
mjnorton@alliancedefendingfreedom.org

On behalf of CFA, I urge the adoption of this bill which would require all Colorado abortion clinics to be licensed by the Colorado Department of Public Health and Environment.

As my ADF colleague Casey Mattox relates in the attached Townhall article, Planned Parenthood, this nation's largest abortion provider, performs nearly 900 abortions per day. That amounts to one abortion every 95 seconds. According to the Centers for Disease Control ("CDC"), 10,474 abortions took place in Colorado in 2011, the last year for which such statistics are available.¹ These statistics are from 2012 or earlier; so these numbers and the frequency of abortions are undoubtedly even greater today.

For years, the abortion industry claimed that its goal was to make abortion "safe, legal and rare" and that if only abortion were legalized, which it was in 1973, deaths abortion advocates disingenuously claimed resulted from so-called "back-alley" abortions would be eliminated.

Today, as these statistics demonstrate, abortion is not rare. It is all too common. And, increasingly, while it is still legal, it is not safe. Today's abortionists, unlicensed in Colorado, are often performed using dirty, unsanitary procedure rooms and unsterile, inadequate instrumentation, and no competent post-abortion care. The result is more deaths from abortions today than the abortions falsely represented to be the case 40 years ago.

Abortion is also very lucrative. Nationwide, the abortion industry rakes in over \$1 billion each year. In fact, Planned Parenthood alone has annual revenues well-exceeding \$1 billion and a net worth of at least that amount. With this amount of revenue, the abortion industry can afford to make its "product" safer.

Abortion, like any other invasive medical procedure, carries serious health and safety risks. Abortion is not constitutionally privileged over other similar medical procedures. There is nothing "undue" in requiring Colorado abortionists to abide by the same standards that apply to other medical procedures and facilities. When a State permits political concerns to override the primary concern for the health and safety of their citizens, those risks become casualties.

¹ See http://www.abort73.com/abortion_facts/states/colorado/. Last visited February 11, 2015.

The horrific conditions of abortionist Kermit Gosnell's West Philadelphia, PA abortion clinic, which had not been inspected since 1993, are more often the rule, rather than the exception. What federal agents who raided Gosnell's West Philadelphia abortion clinic in February 2010 found was "deplorable and unsanitary" conditions including blood on the floors; parts of aborted children stored in jars; post-operative recovery areas that consisted solely of recliners; padlocked emergency exits; and broken and inoperable emergency equipment.

In May 2013, Gosnell was convicted of murdering three born-alive infants, killing an abortion patient, and committing hundreds of violations of Pennsylvania abortion laws.

In Maryland, a young woman died after an abortion by one of the nation's most experienced and famed abortionists, Dr. Leroy Carhart. This was at least the third death of one of Dr. Carhart's patients in recent years. All over the country, it is reported that state health departments are shutting down abortion clinics following deaths, chronic health and safety violations, repeated 911 responses to abortion clinics as a result of injuries, and medical malpractice lawsuits.

In Colorado, you will hear testimony from another witness of the unfortunate injuries to a Colorado Springs woman as a result of a botched abortion at a Colorado Springs clinic. This woman sought post-abortion care from the Planned Parenthood clinic where her abortion was performed; but told Planned Parenthood could not help her; she should report to the emergency room of a local hospital.

And, you should be aware of *Sisk, et al., v. Rocky Mountain Planned Parenthood, Inc.*, (Case No. 14CV31778) now being litigated in Denver District Court

In this case, it is alleged that a Planned Parenthood abortion clinic performed an abortion on a 13-year old child who had been the victim of multiple sexual assaults by her step-father. The step-father² presented the 13-year old girl to

² The step-father was convicted, by way of a plea bargain, of "attempted sexual assault on a child by a person in a position of trust and first degree assault with a deadly weapon." See *People v. Timothy Smith*, 12CR2061, Adams County District Court.

Planned Parenthood for an abortion and Planned Parenthood, without providing notice to her mother, committed the abortion. Following the abortion, Planned Parenthood released the 13-year old girl to the step-father who continued to sexually abuse the young girl.

In Brooklyn, NY, an abortion clinic dumped trash bags on the public sidewalk which contained, often having spilled out onto the sidewalk, privileged and sensitive medical records, a clear violation of HIPAA, the federal law that protects the privacy of patient medical records, and medical waste.

In Texas, dozens of abortion clinics dumped sensitive patient medical records in a public area and illegally disposed of hazardous bio-medical and infectious waste, including tissue that appeared to be the partial remains of aborted babies.

In state after state, there are reports of similar acts by abortion providers. Because Colorado's abortion clinics are not regulated by the State of Colorado, none of Colorado's abortion clinics have ever been inspected.

THE PROPOSED BILL, IF ENACTED, WILL
PROTECT WOMEN'S HEALTH

Colorado's Women's Health Protection Act would protect women's health by authorizing the Colorado Department of Public Health and Environment to (1) develop, implement, and enforce medically appropriate standards of care and safety in abortion clinics; (2) license and inspect such abortion clinics to assure compliance with these standards of care and safety; and (3) require incident reporting by such abortion clinics.

The Colorado Department of Public Health and Environment is well-equipped for this purpose. It has promulgated a number of similar regulations, which it also administers and enforces, including Ambulatory Surgical Center regulations (6 CCR 1011-1), Emergency Medical Services (6 CCR 1015-3), and Statewide Emergency Medical & Trauma Care System regulations (6 CCR 1015-4).

As abortion is an invasive medical procedure, it should come as no surprise that women die and suffer other serious medical complications often requiring hospitalization every year. Based on "voluntary reporting" to the Centers for Disease Control, the CDC determined: "In 2008, the most recent year for which

data were available, 12 women were reported to have died as a result of complications from known legal induced abortions.”

It is not too much to ask that abortionist and the facilities in which they perform these abortions be safe and be required to meet similar health and safety regulations so as to protect women’s health.

In addition and because of the lack of mandatory reporting requirements in Colorado, it is impossible to know the actual number of serious injuries or deaths from abortions in Colorado. Colorado’s Women’s Health Protection Act would allow Colorado to assess the safety of its abortion clinics by requiring such reporting.

COLORADO’S WOMEN’S HEALTH
PROTECTION ACT IS CONSTITUTIONAL

Rather than interfere with U.S. Supreme Court requirements that a woman’s right to an abortion not be unduly burdened, enactment of Colorado’s Women’s Health Protection would enhance that “right” by making such abortions even safer than abortionists claim to be the case today.

It is well established that the regulation of abortion clinics can be accomplished in an appropriate, constitutional manner to ensure the safety and well being of women.

In *Roe v. Wade*, 410 U.S. 113, 162-64 (1973), the Supreme Court recognized two vital state interests in connection with a pregnant woman’s consideration of an abortion, *i.e.*, (i) the “important interest” in protecting a pregnant woman’s health and (ii) “still another important and legitimate interest in protecting the potentiality of human life.” “

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the Supreme Court rejected *Roe*’s trimester framework and imposed instead a bifurcated pre-viability/post-viability framework and applying an “undue burden” standard to gauge the constitutionality of legislation which could conceivably restrict abortions. The Supreme Court reaffirmed *Roe*’s holding that “subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.” *Id.* at 878-79 (quoting *Roe*, 410 U.S. at 164-65).

The Supreme Court has assessed the “interest in protecting fetal life” and “in preserving and protecting the health of the pregnant woman.” *Casey*, 505 U.S. at 876. The Court has also considered such interests as “express[ing] respect for the dignity of human life,” *Gonzales v. Carhart*, 550 U.S. 124, 157 (2007); “protecting the integrity and ethics of the medical profession,” *id.* at 157; ensuring that a woman makes her decision with “informed consent,” *Casey*, 505 U.S. at 882; and encouraging a minor “to seek the help and advice of her parents,” *Hodgson v. Minnesota*, 497 U.S. 417, 480 (1990) (Kennedy, J., concurring in the judgment in part and dissenting in part); *see also Casey*, 497 U.S. at 899.

Importantly, in regard to *Casey*, Justice Kennedy wrote:

[In *Casey*] [w]e held it was inappropriate for the Judicial Branch to provide an exhaustive list of State interests implicated by abortion. 505 U.S. at 877. *Casey* is premised on the States having an important constitutional role in defining their interests in the abortion debate. It is only with this principle in mind that Nebraska’s interests can be given proper weight. . . . 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. . . . A State may take measures to ensure the medical profession and its members are viewed as healers, sustained by a compassionate and rigorous ethic and cognizant of the dignity and value of human life, even life which cannot survive without the assistance of others.

Stenberg v. Carhart, 530 U.S. 914, 948-59 (2000) (Kennedy, J., dissenting).

In summary, in *Casey*, the Supreme Court adopted the “undue burden” standard to balance the competing interests that it found to be at stake in the abortion context. Under that standard, a State law violates the Constitution “if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.” *Casey*, 505 U.S. at 878. However, “not all regulations must be deemed unwarranted.” *Id.* at 876. “The fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it.” *Id.* at 874.

COLORADO'S WOMEN'S HEALTH
PROTECTION ACT IS A GOOD BILL

The thousands of women injured or killed by abortions every year remind us that abortion is not "safe." If abortion proponents remain concerned about avoiding "back alley abortions," even in their own facilities, and even when safer standards might undercut their bottom line, enactment of Colorado's Women's Health Protection Act should be unobjectionable to abortionists and would hardly make a dent in these abortionists' astounding bottom line.

According to a 2014 report from Americans United for Life, five states have adopted laws imposing stringent ambulatory/outpatient surgical center standards on abortion facilities. Twenty states maintain varying degrees of abortion clinic regulations that apply to abortion facilities. Four states regulate facilities performing post-first trimester abortions. See attached Americans United for Life "State of the States: Where Are We Now? Abortion Clinic Regulations."

Colorado's Women's Health Protection Act serves valid purposes, does not "strike at the heart" of a pregnant mother's abortion right, does not have the effect of imposing a substantial obstacle on abortion, particularly in the context of a facial challenge, and will thus be upheld as constitutional, if challenged.

Instead, it seeks to ensure that women who seek abortion at facilities subject to the regulations do so in facilities that are clean, safe, inspected and licensed by the Colorado Department of Public Health and Environment. This act would no more deny a woman a right to an abortion than a fire marshal's requirement that a church provide enough exits to make the church safe for its worshippers violates the First Amendment.

The question is whether any of the Colorado's women, no matter what medical procedures they are being faced with, should be subjected to unsafe and unsanitary conditions. Whatever our differences, surely we can agree on that.

Thank you.



FEBRUARY 11, 2015

Planned Parenthood Keeps Abortion Legal (Not so Much Safe and Rare)

Casey Mattox

9/14/2012 12:01:00 AM - Casey Mattox

Remember just a decade or so ago when the mantra of the abortion industry was that abortion should be “safe, legal, and rare?” It was even in the Democrat Party platform for a while.

It seemed part of an effort to brand abortionists like Planned Parenthood as reluctant facilitators of a necessary evil instead of owner/operators of a thriving billion dollar industry.

Those days are gone. Planned Parenthood is now the nation’s largest abortion provider, performing nearly 900 abortions per day, or just over 37 an hour—that’s an abortion every 95 seconds. Which means Planned Parenthood carries out 330,000 of the 1.2 million abortions in America annually.

Suffice it to say, a Planned Parenthood abortion every 95 seconds is not “rare.” And, as illustrated by Planned Parenthood’s resistance to even basic health inspections and regulation in Virginia, any pretense of concern about real safety is also out the window. All that matters to Planned Parenthood is that abortion be unrestricted, nevermind safety and rarity.

For example, last year the Board of Health issued emergency regulations, over the strenuous objection of Virginia Planned Parenthood, requiring health inspections of Virginia abortion clinics for the first time in two decades. As a result, initial announced inspections of abortion clinics were performed this year and the reports have been obtained by the Virginia Family Foundation via a Freedom of Information request.

As Victoria Cobb, President of VFF put it, “Some of this is just horrific.”

The Commissioner of Health reported that every one of the nine abortion clinics inspected had some deficiency.

These included the remains of unborn children and blood frozen to the bottom of freezers, sponges that were used to clean surgical implements for a full week without being changed—yes, the same sponge was used over and over and over for a week—and abortion clinic staff that admitted not knowing which instruments were clean and which were dirty. And the evidence keeps growing, 80 violations in just 9 clinics.

Again, these were not random inspections. *The abortion clinics knew the inspectors were coming.*

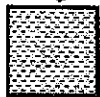
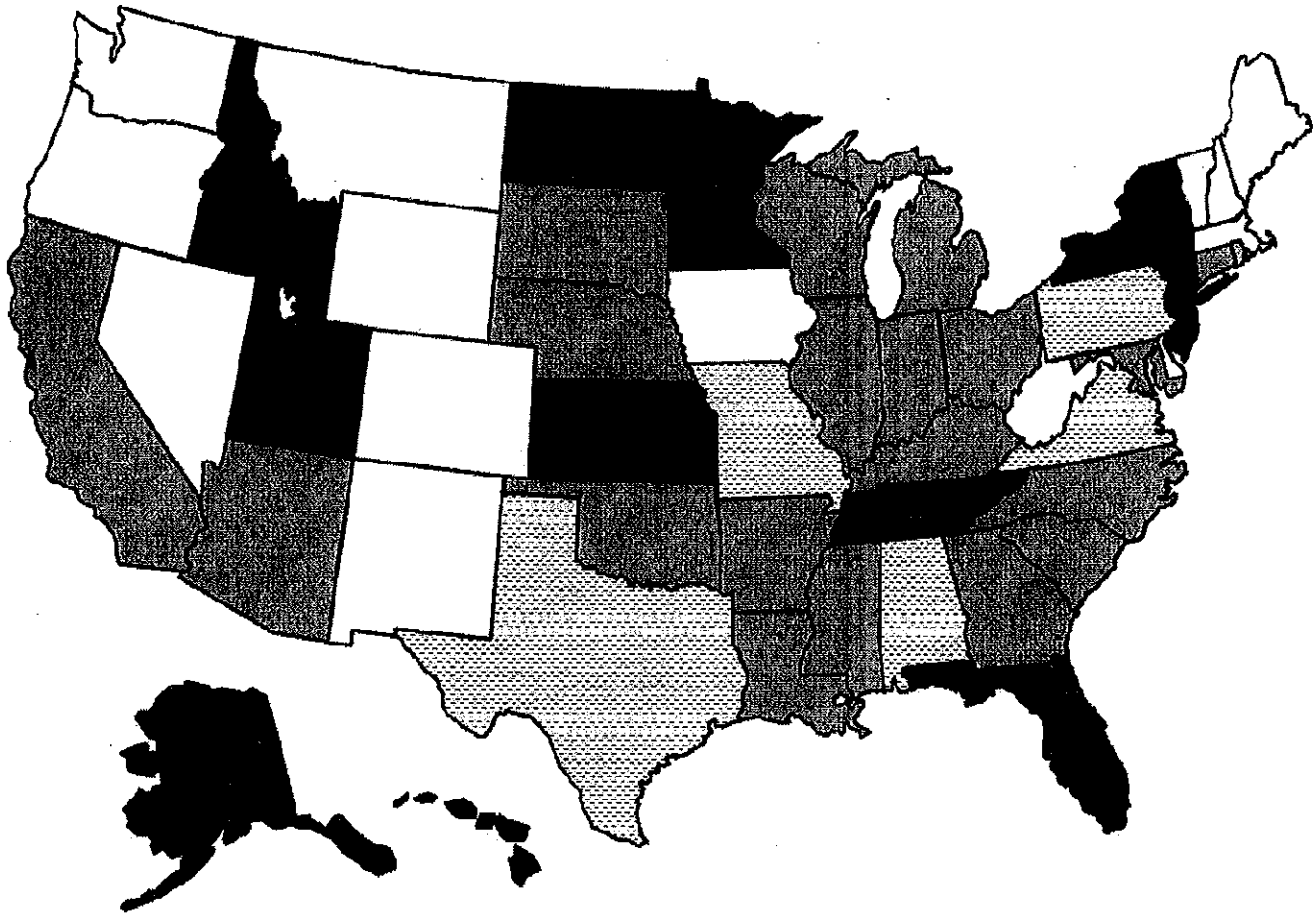
Yet on Friday, September 14, these same Virginia abortionists will be out in force in Richmond to try to stop the Board of Health from issuing final health and safety regulations.

Alliance Defending Freedom has sent a letter to members of the Board of Health urging them to enact regulations to ensure the health and safety of Virginia abortion clinics.

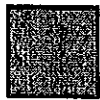
Abortion clinics will never be safe for the unborn children whose lives they take with alarming frequency. But shouldn't they at least be safe for the women?

STATE OF THE STATES: WHERE ARE WE NOW?

ABORTION CLINIC REGULATIONS




Five states have adopted laws imposing stringent ambulatory/outpatient surgical center standards on any facilities performing abortions: AL, MO, PA, TX, and VA.



Twenty states maintain varying degrees of abortion clinic regulations that apply to facilities performing abortions: AZ, AR, CA, CT, GA, IL, IN, KY, LA, MD, MI, MS, NE, NC*, OH, OK, RI, SC, SD, and WI.



Four states regulate facilities performing post-first trimester abortions: FL, MN, NJ, and UT.



Seven states have abortion clinic regulations that are in litigation, enjoined or otherwise not enforced: AK, HI, ID, KS, NY, ND, and TN.

* In 2013, NC enacted a measure authorizing the state Department of Health to apply any requirement for the licensure of ambulatory surgical centers to clinics certified by the department for the performance of abortions. As administrative rules have yet to be issued, the impact of this new law on abortion clinic regulations in the state cannot yet be determined.

More detailed information about the need and justification for comprehensive health and safety regulations for abortion clinics can be found in AUL's annual publication *Defending Life*.

Defending Life 2013, Deconstructing Roe: Abortion's Negative Impact on Women is available online at AUL.org and for purchase at Amazon.com.

For further information regarding this or other AUL policy guides, please contact:

AMERICANS UNITED FOR LIFE
655 15th Street, NW, Suite 410
Washington D.C. 20005
202.289.1478 | Fax 202.289.1473 | Legislation@AUL.org

www.AUL.org

©2013 Americans United for Life

This policy guide may be copied and distributed freely as long as the content remains unchanged and Americans United for Life is referenced as the creator and owner of this content.