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for LAW & JUSTICE
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WRITTEN TESTIMONY OF DONN PARSONS
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Re: In Support of Senate Joint Resolution Number 2

March 28, 2023

Chairman Rulli, Vice-chairman Schuring, Ranking Member DeMora, and members of the Senate General Government Committee. For the reasons set forth herein, the American Center for Law & Justice ("ACLJ"), on behalf of itself and over 203,000 of its supporters, including over 6,800 Ohio residents, who oppose abortion[1], supports SJR 2.

By way of introduction, the ACLJ is a national nonprofit organization dedicated to the defense of constitutional liberties secured by law, including the defense of the sanctity of human life. Counsel for the ACLJ have presented expert testimony before state and federal legislative bodies, and have presented oral argument, represented parties, and submitted amicus briefs before the Supreme Court of the United States and numerous state and federal courts around the country in cases involving a variety of issues, including the right to life. *See, e.g.*, *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016); *June Medical Servs. v. Russo*, 140 S. Ct. 2103 (2020); and *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

[1] *Defend Life, Defeat Abortion in All 50 States*, AM. CTR. L. & JUST., https://aclj.org/pro-life/defend-life-defeat-abortion-in-all-50-states (last visited Feb. 27, 2022).

The proposed resolution serves to protect against future unnecessary and undesirable attempts to amend Ohio's Constitution and to expand Ohio's abortion laws, jeopardizing the health, wellbeing, and rights of Ohio citizens.

I. BACKGROUND

Abortion advocates have an insatiable desire to promote abortion and to force the adoption of their viewpoint that abortion should be wholly unregulated and accessible on demand anywhere and everywhere. They constantly downplay and discount the cost that abortion has already and will continue to impose: chiefly, the loss of innocent human life, and the physical, mental, emotional, and spiritual damage on women who have abortions. They do so by cleverly disguising their agenda with euphemistic and broad terms in an attempt to downplay the horrific nature of the act that they support and promote – namely, the killing of innocent, preborn, human beings. Moreover, they attempt to limit and control the information available to the public.

Since the Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113, 154 (1973), in which the Court purported to find a constitutional "right" to abortion under the scope of "privacy," words such as "privacy" and "freedom" when combined with "reproductive" have become synonymous with "abortion." ("We, therefore, conclude that the right of personal privacy includes the abortion decision"). Despite the fact that the Supreme Court rightly corrected its erroneous decision, and there is in fact no "right" to abortion that exists within the scope of privacy, abortion advocates keep advancing that argument at the state level. In fact, Planned Parenthood (an organization that profits greatly from abortion)[2] is even now working to include a proposed amendment to Ohio's constitution as a ballot measure. The title of this proposed amendment is "The **Right** to **Reproductive Freedom** with Protections for Health and Safety" (emphasis added).

The Constitutional Amendment proposed by Planned Parenthood is fraught with legal issues, yet it will be difficult for the state of Ohio to fully inform its citizens to the seismic effect that this amendment, if adopted, would have on Ohio law and, consequently, its citizens.

[2] In 2020-2021, Planned Parenthood performed over 380,000 abortions and earned over $1.7 trillion in revenue. *2020-2021 Annual Report*, PLANNED PARENTHOOD 27, 30 (2022), https://cdn.plannedparenthood.org/uploads/filer_public/40/8f/408fc2ad-c8c2-48da-ad87-be5cc257d370/211214-ppfa-annualreport-20-21-c3-digital.pdf.

SJR 2 is necessary to protect Ohio's citizens from being victimized by Planned Parenthood's corporate interests, including in removing parental rights that help protect minor children, and helps ensure that Ohio does not become a state where abortion is available on demand, wholly unregulated, and unsafe, putting Ohio women and children at risk with no way for the state to intervene.

In fact, Planned Parenthood's proposed amendment effectively strips a certain section of human beings – preborn babies – of all dignity and human rights. Moreover, it would eliminate the ability of Ohio and its citizens to oppose state funding of abortion, adopt laws that protect life and promote and elevate human rights and dignity, legislate protections for those with conscientious objections to participating in abortion, favor childbirth over abortion, and place any limits on abortion.

II. THE OHIO CONSTITUTION DOES NOT CONTAIN A RIGHT TO ABORTION – AND IT NEVER SHOULD

Since the founding of the United States, Americans have valued and protected innocent human life. As recently affirmed by the U.S. Supreme Court, the U.S. Constitution clearly contains no language conferring a right to abortion. And, while Planned Parenthood is trying to change this fact, neither does the Ohio Constitution. The Ohio Constitution does, in alignment with the U.S. Constitution, protect the "inalienable" right to life. In fact, it protects the right to "enjoy[] *and defend[]* life." As will we will explain in detail below, Planned Parenthood's proposed amendment would conflict – not only with the constitutionally protected right to life, but with the right to *defend life*.

It is an indisputable biological fact that abortion kills "a whole, separate, unique, living human being." *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 735 (8th Cir. 2008) (en banc). As such, abortion implicates many significant interests—including those of the preborn child who may be killed, the child's parents, the government, and the public—and it also "presents a profound moral issue on which Americans hold sharply conflicting views." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2240 (2022). The basic premise of Planned Parenthood's proposed amendment, however, is that the state constitution should give one group of human

beings (pregnant women) a freedom-based "right" to intentionally kill other separate, unique, living human beings (preborn children), and no one has much, if any, say in the matter.

Yet, the question of when and whether the law should authorize, or at least excuse, the intentional killing of a living human being is *never* a primarily *private* or individual question. To the contrary, both the public and the government clearly have compelling interests at stake whenever human life is being taken, regardless of whether the circumstance entails abortion, capital punishment, murder, the use of lethal force by individuals asserting defense of self or others, deaths caused in military operations, suicide, or euthanasia. The fact that a particular killing impacts the individuals involved in a more direct way than it impacts the general public does *not* render legislatures powerless to carefully weigh the competing interests at stake and set policies that reflect the values of the public. However, Planned Parenthood's amendment, if enacted, severely restricts the ability of the public and the legislature to even *speak* out in opposition to the intentional killing of preborn babies, let alone the ability to regulate abortion.

III. THE FULL SCOPE AND REPERCUSSIONS OF PLANNED PARENTHOOD'S PROPOSED CONSTITUTIONAL AMENDMENT IS UNCLEAR AND COULD SEVERELY IMPACT THE RIGHTS AND FREEDOMS OF OHIO AND ITS CITIZENS

Because the radical measures that would be implemented should Planned Parenthood's amendment be adopted are relatively new, and because the language of Planned Parenthood's amendment is both broad in scope, and vague, it is not possible to fully quantify the effects on law that Planned Parenthood's amendment would have if passed. Nonetheless, the proposed amendment would have seismic effects, disrupting the many laws in place that currently protect life and conscience. Most notably, the passage of Planned Parenthood's amendment would undermine all pro-life laws that have already been enacted and would prohibit future legislative efforts to place even reasonable restrictions on abortion, thwarting those who value innocent life and seek to protect it.

A. Prohibiting the State from "burdening," "penalizing," "prohibiting," "interfering with," or "discriminating against" a woman seeking abortion or an abortion provider.

Section A of Planned Parenthood's amendment states that every individual has a right to, among other things, "carry out" a decision to have an abortion. Section B proscribes the state (which is defined as "*any* governmental entity and *any* political subdivision) from

> directly or indirectly, ***burden, penalize, prohibit, interfere with, or discriminate against*** either an individual's voluntary exercise of this right or a person or entity that assists an individual exercising this right, unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care.

This section of the Amendment alone is so egregiously dangerous to Ohio and its citizens that it must be carefully broken down and dissected piece by piece.

Historically, states have favored childbirth over abortion. This is a commonsense preference for a form of population growth, without which a state will cease to exist. Yet, Planned Parenthood's amendment prohibits a state from even "discriminating" against abortion or abortion providers. The amendment uses other concerning terms, such as "interfere with," and "burden," and *none* of these terms are defined within the proposed amendment. However, when a state has a *preference* for childbirth, and acts in ways to advance that preference, it will naturally pursue activities that disfavor abortion. For example, a state may provide state funding to family planning programs that do not provide abortion, thus prohibiting tax-payer funds from paying for abortion services.

There are many ways in which the state may favor childbirth over abortion and could be sued for constitutional violations for "discriminating against," "burdening," or "interfering with" and individual's "right" to abortion, and an abortion provider's "right" to perform abortion. This portion of the amendment should be gravely concerning for Ohio, as it sets that state up for an unlimited number of potential lawsuits.

B. Against Women Seeking Abortions and Abortion Providers (like Planned Parenthood).

Section B places restrictions on Ohio with regard to women seeking abortions, but also with regard to abortion providers: "*burden, penalize, prohibit, interfere with, or discriminate against* either **an individual**'s voluntary exercise of this right or a person **or entity that assists an individual** exercising this right." This is one of the most blatantly self-serving provisions included in Planned Parenthood's proposed amendment. All restrictions on the State apply equally in the case of an abortion provider being restricted from providing abortions. The full impact of this provision will become clear with further analysis.

C. Least Restrictive Means to Advance the *Individual's* Health

Since the fall of *Roe*, the ACLJ has seen many similar laws or amendments proposed that use the flawed and failed "strict scrutiny" standard that was established in *Roe* and modified by *Casey*. Yet, Planned Parenthood's amendment goes far beyond simply attempting to codify the (erroneous) decisions of *Roe* and *Casey.* It incorporates "strict scrutiny" for abortion claims in a manner that will have a deleterious effect on a host of other laws, and neglects the balancing pursued by the Court.

In *Casey*, the Supreme Court rejected strict scrutiny for abortion explicitly as an insufficient test, emphasizing instead "that the State has legitimate interests in the health of the woman *and in protecting the potential life within her*."[3] Under *Casey* only "where state regulation imposes an undue burden on a woman's ability" to seek abortion was a constitutional issue raised.[4]

Planned Parenthood's amendment goes far beyond this standard, prohibiting any burden, penalty, prohibition, interference with, or discrimination against the "right" to abortion (or to perform an abortion) unless justified and achieved by the "least restrictive means *to advance the **individual's** health* . . ." **This standard completely annihilates *any* interest that the state has in protecting the life and health of the preborn child**.

[3] *Planned Parenthood v. Casey*, 505 U.S. 833, 871 (1992).
[4] *Id.* at 874.

Such a standard would invalidate many of the laws adopted by the state of Ohio in order to protect the interests of Planned Parenthood and other abortion providers. An abortion amendment would invalidate state abortion restrictions that are supported by the majority of the public, including the following common sense, protective laws: partial-birth abortion bans; infanticide bans; bans on selective abortion based on gender or disability; parental notification; informed consent; and many more. Planned Parenthood's amendment contains no saving provisions for already existing laws – even those laws that are clearly acceptable and legitimate under current Supreme Court precedent.

D. "Widely Accepted" and "Evidence-Based" Standards of Care

It is no secret that the United States is heavily divided on the issue of abortion. Twenty-four states are listed by the Center for Reproductive Rights as being states that are "hostile" towards or have made abortion "illegal."[5] Another three states are listed as states where abortion is "unprotected." Thus, according to the pro-abortion Center for Reproductive Rights, those states that value and protect innocent human life are the majority of states. In fact, only nine states – including California and New York have "expanded access" to abortion in the manner that is being pushed in Ohio by Planned Parenthood.

Yet, the language in Planned Parenthood's amendment references "widely accepted" and "evidence-based" standards of care as the kinds of only forms of restriction that the state may place (via the "least restrictive" means) for protecting the *pregnant woman's health*. Again, this amendment provides no ability for the state to restrict abortion in the interest of the *preborn baby's health*.

The terms "widely accepted" and "evidence-based" are not defined in Planned Parenthood's amendment, but these are commonly used terms that abortion advocates use to push back on the scientifically-based arguments of pro-life advocates. For example, Colorado legislators have recently proposed a bill that penalizes a medical provider's decision to prescribe to their patient the abortion reversal pill ("ARP"). The Colorado bill relies on the position of the American College of Obstetricians and Gynecologists ("ACOG") that medication abortion reversal is "a

[5] *After Roe Fell: Abortion Laws by State*, CTR. REPROD. RTS., https://reproductiverights.org/maps/abortion-laws-by-state/ (last visited Mar. 28, 2023).

dangerous and deceptive practice that is not supported by science or clinical standards."[6] According to ACOG's website, studies on the efficacy of medication abortion reversal have been too small and/or have failed to comport with certain procedural requirements, such as supervision by an institutional review board and no control group.[7]

However, ACOG ignores a 2018 study that met these alleged deficiencies. The study, published in a peer-reviewed professional journal, analyzed "754 patients who decided to attempt to reverse the medical abortion process."[8] The study received institutional review board approval and "[t]he lead author contributed clinical data from a variety of clinical settings across the United States and several other countries for comparison."[9]

According to the study, 547 of the 754 initial patients had "analyzable outcomes [and] underwent progesterone therapy."[10] The study, which utilized different modes of treatment delivery, found that the overall reversal rate was forty-eight percent, with the highest reversal rate being sixty-eight percent.[11] The study also addressed the safety of progesterone (a naturally-occurring hormone) in reversing medication abortions.[12] In addition, the study recognized its inherent limitations in that the trial was not randomly controlled through a placebo; however, the study also expressly stated that "a placebo-controlled trial in the population of women who regret their abortion and want to save the pregnancy would be unethical."[13] As a control, the study relied on "a 25% embryo or fetus survival rate, if mifepristone alone is administered, as a control because it is at the upper range of mifepristone survival rates" and close to an earlier study's survival rate.[14]

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[6] S.B. 23-190 § 1(1)(f), 74th Gen. Assemb., 1st Reg. Sess. (Colo. 2023).
[7] *Facts Are Important: Medication Abortion "Reversal" Is Not Supported by Science*, Advocacy, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, https://www.acog.org/advocacy/facts-are-important/medication-abortion-reversal-is-not-supported-by-science (last visited Mar. 21, 2023).
[8] George Delgado et al., *A Case Series Detailing the Successful Reversal of the Effects of Mifepristone Using Progesterone*, 33 ISSUES L. & MED. 21, 21 (2018).
[9] *Id.* at 24.
[10] *Id.* at 26. Medication abortion reversal involves a pregnant mother taking progesterone to counteract the effects of the first abortion pill. *See id.* at 23.
[11] *Id.*
[12] *Id.* at 26-28.
[13] *Id.* at 28-29.
[14] *Id.* at 24.

Additionally, even Planned Parenthood recognizes that only taking the first abortion pill may not result in an abortion, and merely states that medication abortion reversal is "untested."[15]

Furthermore, prohibiting abortion reversals[16] is irrational if there is a fair possibility that abortion pill reversal works.[17] It also jeopardizes a well-established practice for medical professionals to provide women at risk of losing a pregnancy with the *naturally occurring* hormone, progesterone. Progesterone "has been used for over 40 years in the IVF industry, to help women carry pregnancies after the embryo is transferred into her womb."[18] Thus, contrary to the baffling claims of the legislators sponsoring this bill, "[t]here is a very long and solid history of safety of the use of natural progesterone in a pregnancy."[19]

The bill proposed in Colorado, and the arguments against life-saving measures used by pro-life medical providers, is merely *one* example of "widely accepted" and "evidence-based" standards that Planned Parenthood intends to force on Ohio through its proposed amendment.

Another example is the fact that Planned Parenthood and other abortion advocates consistently deny the negative side-effects of abortion, including the detrimental effects on women's health, despite significant evidence of those adverse effects. For instance, one abortion-related lawsuit produced extensive evidence that:

- "women are often herded through their procedures with little or no medical or emotional counseling,"
- "what counseling is received is heavily biased in favor of having an abortion,"
- women "are rushed through the process, and exposed -- without sufficient warning -- to health risks ranging from unsanitary clinic conditions to physical and psychological damage,"
- countless women seek post-abortion counseling for "the emotional, physical, and psychological symptoms" they experienced after the abortion, and
- in some instances, "both abortion counselors and physicians worked on commission and aggressively followed a script to encourage prompt election of the procedure."

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[15] *Can the Abortion Pill Be Reversed After You Have Taken It?*, PLANNED PARENTHOOD (Sept. 14, 2017, 7:08 PM), https://www.plannedparenthood.org/learn/ask-experts/can-the-abortion-pill-be-reversed-after-you-have-taken-it.
[16] S.B. 23-190 § 3.
[17] *See* Delgado et al., *supra* note 8; *Can the Abortion Pill Be Reversed After You Have Taken It?*, *supra* note 15.
[18] *2019 AAPLOG Position Statement on Abortion Pill Reversal*, ProLife OB/GYNS, https://aaplog.org/wp-content/uploads/2019/02/2019-AAPLOG-Statement-on-Abortion-Pill-Reversal.pdf (last visited Mar. 24, 2023).
[19] *Id.*

McCorvey v. Hill, 385 F.3d 846, 850-51 & n.8 (5th Cir. 2004) (Jones, J., concurring).

The evidence in the case included "about a thousand affidavits of women who have had abortions and claim to have suffered long-term emotional damage and impaired relationships from their decision," and "[s]tudies by scientists . . . [that] suggest that women may be affected emotionally and physically for years afterward and may be more prone to engage in high-risk, self-destructive conduct as a result of having had abortions." *Id*.; *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 775 (8th Cir. 2015) (same); *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007) ("[S]ome women come to regret their choice to abort the infant life they once created and sustained. . . . Severe depression and loss of esteem can follow.").

E. Abortion "May Be" Prohibited After Viability

Planned Parenthood pretends to offer a consolation to the pro-life community by suggesting that its proposed amendment will allow abortion "after viability." As Planned Parenthood knows, the overwhelming majority (79%) of Americans are in favor of restrictions on abortion. According to a recent Pew Research Center survey,[20] 8% of Americans believe that abortion should be illegal in all cases, with no exceptions, 2% think it should be illegal in all cases, with a few exceptions, 27% think it should be illegal in most cases, 36% believe it should be legal in *most cases*, and 6% believe it should be legal in all cases, but that there are exceptions when abortion should be against the law. This leaves only 19% of Americans who believe that abortion should be legal in all cases with no exceptions.

Knowing this, Planned Parenthood has inserted the appearance of a limitation on abortion that still allows abortion on demand, for any reason, up until the point of birth. This has been achieved in two ways.

First, by stating that "abortion may be prohibited after *fetal viability*" and then defining "fetal viability" as "the point in a pregnancy when, *in the professional judgement of the pregnant patient's treating physician*, the fetus has a *significant likelihood of survival* outside the uterus *with reasonable measures*." Moreover, viability is determined on a "case-by-case basis." By using this

[20] *America's Abortion Quandary*, PEW RSCH. CTR. (May 6, 2022), https://www.pewresearch.org/religion/2022/05/06/americas-abortion-quandary/.

language, Planned Parenthood is eliminating any ability of the state to implement a bright-line standard for viability, such as the typical bans on abortion after 20-weeks' gestation. Not only does it prevent *any* gestational limit on abortion, but it leaves the determination of viability up to the abortion provider in every individual case, and fails to define what "reasonable measures" would be with regard to the likelihood of the baby surviving outside of the mother's womb.

Second, since the first limitation was not a sufficient hindrance on the state's ability to protect "viable" pre-born babies (capable of feeling the excruciating pain of being killed), Planned Parenthood's amendment also allows the abortionist to determine that the abortion (at any stage of pregnancy, even up to the point of birth), is necessary for the "health" of the woman. Again, "health" has no definition, and may broadly be interpreted to include mental health.

IV. SJR NO. 2 WOULD SERVE TO PROTECT OHIO CITIZENS FROM DECEPTIVE AND MISLEADING PROPOSED CONSTITUTIONAL AMENDMENTS BY REQUIRING A GREATER NUMBER OF CITIZENS TO BE INFORMED AND ENGAGED IN THE PROCESS OF CONSTITUTIONAL AMENDMENTS

Ohio's Constitution would benefit from an update to reflect the current ability of corporations to influence and change its laws. Currently in Ohio, it is easier for a corporation (such as Planned Parenthood) to use dark money to alter the Ohio Constitution than it is for Ohio's elected officials to follow the legal process to amend the Constitution.

SJR 2 applies a consistent standard to amend the Ohio Constitution. As you know, the General Assembly may pass a resolution with 3/5 of the body voting for the constitutional amendment and send it to the ballot. The second method permits a corporation to pay community organizers to gather signatures and place constitutional changes directly before voters. SJR 2 aligns the legislative approval requirement with the corporate led constitutional process by bringing each to 60%.

CONCLUSION

For the reasons stated above, among others, the ACLJ supports SJR 2.