



September 18, 2019

SUBMISSION IN OPPOSITION TO ABORTION LEGISLATION BILL

The American Center for Law and Justice (ACLJ) submits the following comments, on behalf of itself and over 270,000 of its members from 170 countries and territories,¹ including 184 members from New Zealand, opposing the adoption of the proposed Abortion Legislation Bill issued by the New Zealand Parliament.

By way of introduction, the ACLJ is an organization dedicated to protecting human rights and religious freedom in the United States and around the world. Our organization is dedicated to the concept that freedom and democracy must be protected both domestically and internationally. ACLJ attorneys often appear before the United States Supreme Court as counsel for a party, e.g., *Pleasant Grove City v. Sumnum*, 555 U.S. 460 (2009), or for amicus, e.g., *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), combatting, *inter alia*, the injustice of denying human rights to children in the womb. In addition, the ACLJ, through its European affiliate, the European Centre for Law and Justice (ECLJ), which holds Special Consultative status before the United Nations, advocates these same issues at the European Court of Human Rights and other mechanisms afforded by the United Nations, Council of Europe, and the European Parliament.

New Zealand has a long standing position of protecting life. But now, in an effort to “modernise”² the laws protecting life, this bill seeks to decriminalize the taking of an innocent life, while entirely disregarding scientific evidence and common sense. What New Zealand inherently knew throughout its history - that a developing baby has a right to life that deserves protection - it now can confirm with scientific advancements. So in reality, this bill actually relies on outdated information and sentiment, which entirely contradicts the alleged purpose of modernization. Therefore, this bill must not be adopted.

¹ *Defeat Barbaric Abortion Laws Worldwide*, AMERICAN CENTER FOR LAW AND JUSTICE, <https://aclj.org/pro-life/stop-barbaric-new-abortion-laws-worldwide> (last visited 18 Sept. 2019).

² *Abortion Legislation Bill*, NEW ZEALAND PARLIAMENT, https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_89814/abortion-legislation-bill (last visited 16 Sept. 2019).

Abortion is one of the gravest of all offenses against human life and against justice because it entails the deliberate killing of an innocent human being. A procedure that deliberately takes the life of a live human being, heart pounding away in his or her mother's womb, is plainly a procedure that fosters insensitivity to, and disdain of, the life in the womb. Indeed, such a killing is the embodiment of disdain for human life.

It is an indisputable scientific fact that the human child in the womb is a distinct biological organism, is alive, and belongs to the species *homo sapiens*. Thus, any justification of abortion (aside from the extremely rare life vs. life situations where a mother is at serious risk of dying from continuing the pregnancy) fundamentally rests on the proposition that some members of the human race do not have even the most basic of human rights, the right to live. That proposition is incompatible with the very notion of human rights, not to mention the recognition found in the International Covenant on Civil and Political Rights (ICCPR) "*of the inherent dignity and of the equal and inalienable rights of **all members of the human family*** is the foundation of freedom, justice and peace in the world, [that] these rights derive from the *inherent dignity of the human person*, . . . [and that] **[e]very human being has the inherent right to life**. This right shall be protected by law."³

For over 50 years, these words have been enumerated in the International Covenant on Civil and Political Rights (ICCPR) – one of the international community's commitments to protecting the life of *every human being*. New Zealand has signed and ratified the ICCPR, and as such, is bound to the statements and recognitions therein. Furthermore, one of the New Zealand's Parliament's declared roles is to "represent the people."⁴ Yet, New Zealand's Parliament is now attempting to deny the rights of and withdraw protections from its most vulnerable citizens – innocent babies.

While there is debate in politics about the humanity of children in the womb, science, on the other hand, has provided us with detailed and undeniable information about the life of a child in the womb. For instance, the New Zealand Ministry of Health provides a detailed description of the baby's life from conception to birth: "At 7 weeks [the] baby is about 8 mm long from head to bottom. The brain is growing and the heart is beginning to beat. Ears, eyes, arms and legs are also starting to grow."⁵ "By 12 weeks [the] baby is fully formed. They have all their organs, muscles, limbs and bones and can kick and move."⁶ By 14 weeks, the "baby can swallow, suck and grip and is covered in soft, downy hair. Baby's arms and legs are working and moving."⁷ By 21 weeks, the baby can recognize its mother's voice and "has a pattern of wake and sleep times. Their eyes begin to open. Baby starts sucking their fingers and thumbs."⁸ And by 30 weeks, the "baby's eyes are open and

³ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, preamble, art. 6.

⁴ *Role of Parliament*, NEW ZEALAND PARLIAMENT, <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/role-of-parliament/> (last visited 16 Sept. 2019).

⁵ *Your Developing Baby*, MINISTRY OF HEALTH, <https://www.health.govt.nz/your-health/pregnancy-and-kids/pregnancy/weeks-0-14/your-developing-baby-weeks-0-14> (last visited 16 Sept. 2019).

⁶ *Id.*

⁷ *Id.* at <https://www.health.govt.nz/your-health/pregnancy-and-kids/pregnancy/weeks-14-30/your-developing-baby-weeks-14-30>.

⁸ *Id.*

baby can see and hear. Baby doesn't grow much more but does gain weight.”⁹ “By 40 weeks [the] baby is about 50 cm long and weighs over 3 kg – remember though that all babies are different; babies can be longer or shorter, bigger or smaller. [The] baby is now fully developed and the lungs have matured, ready for birth.”¹⁰ Based on the Ministry of Health's own publication, supported by scientific fact, it is clear that there is human life and human development within a mother's womb from conception.

In addition, it is well established¹¹ that pain receptors are present throughout the baby's entire body by no later than 20 weeks after fertilization, or 22 weeks LMP, and that nerves link these receptors to the brain's thalamus. In fact, by this time in its development, a child in the womb will recoil if the stimulus introduced would be painful if applied to an adult human.

Science also reveals that such painful stimuli increases the child in the womb's stress hormones and is associated with long-term harmful neurodevelopmental effects. This is precisely why, when undergoing in utero surgery, anesthesia is given to the baby.

Furthermore, scientific developments over the past decades have heightened society's awareness of the uniqueness, humanity, and sensitivity of prenatal human beings at earlier and earlier stages of gestation.¹² Likewise, the public has begun to appreciate the horrific

⁹ *Id.* at <https://www.health.govt.nz/your-health/pregnancy-and-kids/pregnancy/week-30-onwards/your-developing-baby-week-30-onwards>.

¹⁰ *Id.*

¹¹ *Fetal Pain: The Evidence*, Doctors on Fetal Pain, <http://www.doctorsonfetalpain.com/>, (last visited Mar. 5, 2019).

¹² The advent of 4-D ultrasounds has produced poignant images unveiling the humanity of the developing unborn child. See Brian Handwerk, *4-D Ultrasound Gives Video View of Fetuses in the Womb*, NAT'L GEOGRAPHIC NEWS (Feb. 25, 2005), available at http://news.nationalgeographic.com/news/2005/02/0225_050225_tv_ultrasound.html (describing movement by the unborn visible at as early as 8 weeks into gestation and the gleeful responses of parents who are “immediately” able to recognize the ultrasound images because the fetus actually looks like a baby). Evidence of fetal pain also points to the humanity of the unborn and has posed a challenge for abortion activists who argue that unborn babies are incapable of feeling pain. *E.g.*, Annie Murphy Paul, *The First Ache*, N.Y. TIMES MAGAZINE (Feb. 10, 2008), available at <http://www.nytimes.com/2008/02/10/magazine/10Fetal-t.html> (describing the research of Drs. Kanwaljeet Anand and Nicholas Fisk, both of whom have discovered that unborn and premature babies are capable of experiencing tremendous pain and have subsequently begun to administer anesthesia to infant patients). Finally, the advances in preterm birth survival rates also have provided strong confirmation of the unborn child's independent humanity. See Dara Brodsky & Mary Ann Ouellette, *Introduction: Transition of the Premature Infant from Hospital to Home*, in PRIMARY CARE OF THE PREMATURE INFANT 1, 1 (Brodsky & Ouellette eds., 2008) (explaining that “medical advancements in obstetric and neonatal care have led to dramatically greater chances for survival of extremely premature infants [of whom those] born at 24 weeks' gestation currently have a survival rate of approximately 40% to 60%” and “almost 100% of infants born at 34 weeks' gestation survive”). See also Kim Carollo, *One of the World's Smallest Surviving Infants Goes Home*, ABC Good Morning America (July 10, 2012), available at <http://abcnews.go.com/Health/worlds-smallest-surviving-babies-home/story?id=16714169> (recounting story of baby born at 24 weeks and weighing 9.6 ounces). More recently, a study in the New England Journal of Medicine, “Between-Hospital Variation in Treatment and Outcomes in Extremely Preterm Infants” (May 7, 2015), www.nejm.org/doi/full/10.1056/NEJMoa1410689, found that actively treated newborns as early as 22 weeks gestational age were surviving. “Gestational age” is measured from a woman's last menstrual period and is often referred to by the acronym LMP.

nature of particular abortion methods, such as partial birth abortion and dismemberment abortion.

Common abortion methods are barbaric, and it is preposterous to think that anything resembling common abortion methods would be allowed by law on anyone outside the womb – or even on pets or farm animals. The thought that these procedures would be allowed by law on the most helpless – children in the womb – is unconscionable. It can be no coincidence that its victims have no voice in the political process. As such, abortion is, by its very nature, a procedure that tortures and kills a live human being – a child in the womb who is sufficiently developed to feel pain. Thus, it is plainly a procedure that fosters insensitivity to, and disdain for, the life in the womb. If torturing animals is inhumane, so much more so is torturing unborn human children to death. New Zealand clearly has a legitimate interest in continuing to prohibit this type of practice. In fact, it has an obligation to do so.

Furthermore, although another stated purpose of this bill is to regulate abortion as a *safe* health issue, under the bill, an abortion would be available to women at any stage of pregnancy. And while the Bill *requires* health practitioners to inform women about the availability of abortion, there is no requirement that health practitioners also inform women about the *dangers* of abortion. This ignores published research which strongly indicates that abortion is in fact more dangerous than childbirth.

In Finland, for example, researchers drew upon national health care data to examine the pregnancy history of all women of childbearing age who died, for any reason, within one year of childbirth, abortion, or miscarriage, between the years of 1987 and 1994 (a total of nearly 10,000 women). The study found that, adjusting for age, women who had abortions were 3.5 times more likely to die within a year than women who carried to term.¹³

A subsequent study based upon Medicaid records in California likewise found significantly higher mortality rates after abortion. The study linked abortion and childbirth records in 1989 with death certificates for the years 1989-97. This study found that, adjusting for age, women who had an abortion were 62% more likely to die from any cause than women who gave birth.¹⁴

Yet another study, this one of nearly a half million Danish women, found that the risk of death after abortion was significantly higher than the risk of death after childbirth.¹⁵ The study specifically examined both early (before 12 weeks gestation) and late (after 12 weeks gestation) abortions, and found statistically significantly higher death rates for both groups as compared to mortality after childbirth.

¹³ Mika Gissler, et al., Pregnancy-associated deaths in Finland 1987-1994-definition problems and benefits of record linkage, 76 Acta Obstetrica et Gynecologica Scandinavica 651 (1997).

¹⁴ David C. Reardon, et al., *Deaths Associated with Pregnancy Outcome: A Record Linkage Study of Low Income Women*, 95 SO. MED. J. 834 (2002).

¹⁵ David C. Reardon & Priscilla K. Coleman, *Short and Long Term Mortality Rates Associated with First Pregnancy Outcome: Population Register Based Study for Denmark 1980-2004*, 18 MED. SCI. MON. 71 (2012).

A more recent meta-analysis of nearly 1000 studies concluded that a woman's risk of premature death increases by 50% after having an abortion, and that this lethal effect lasts at least ten years.¹⁶

The Finland and California studies mentioned above both showed, *inter alia*, a heightened risk of suicide after abortion.¹⁷ (The Danish study did not examine this aspect.) A British study found the same thing.¹⁸ All these studies are consistent with the many studies documenting adverse emotional consequences after abortion.¹⁹

Of course, abortion can also cause physical harm, beyond the harm (*i.e.*, death) to the child in the womb. This can result directly from the procedure itself (*e.g.*, perforation of the uterus, laceration of the cervix), from the deprivation of the health benefits of continuing pregnancy (*e.g.*, eliminating the protective effect of a full-term pregnancy against breast cancer),²⁰ or by masking other dangerous symptoms (*e.g.*, a woman with an infection or an ectopic pregnancy may believe her symptoms are merely normal after-effects of abortion, leading her to delay seeking medical help).²¹

Additionally, there is a growing body of evidence that, in many cases, abortion represents, not an empowering of women, but rather an instrument for facilitating male irresponsibility or sexual predations.²² That is, abortion may be convenient for sexual predators and

¹⁶ David C. Reardon & John M. Thorp, *Pregnancy Associated Death in Record Linkage Studies Relative to Delivery, Termination of Pregnancy, and Natural Losses: A Systematic Review with a Narrative Synthesis and Meta-analysis*, 5 *Sage Open Medicine* 1 (2017).

¹⁷ See also Mika Gissler, *et al.*, *Suicides after Pregnancy in Finland: 1987-94: Register Linkage Study*, 313 *BRITISH MED. J.* 1431 (1996) (suicide rate after induced abortion was six times higher than suicide rate after childbirth).

¹⁸ Christopher L. Morgan, *et al.*, *Mental Health may Deteriorate as a Direct Effect of Induced Abortion*, 314 *BRITISH MED. J.* 902 (Mar. 22, 1997) (letters section) (found suicide attempts more than four times as frequent after abortion than after childbirth).

¹⁹ See David C. Reardon, *Abortion Decisions and the Duty to Screen: Clinical, Ethical and Legal Implications of Predictive Risk Factors of Post-Abortion Maladjustment*, 20 *J. CONTEMP. HEALTH L. & POL'Y* 33, 39 n.14 (2003) (citing nearly three dozen sources).

²⁰ See Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54 *CATH. U.L. REV.* 1273, 1288-89 & nn.119 & 121 (2005).

²¹ See generally *Physical effects of abortion: Fact sheets, news, articles, links to published studies and more*, The UnChoice, www.theunchoice.com/physical.htm (listing sequelae and referencing sources).

²² See ELLIOT INSTITUTE, *REVERSING THE GENDER GAP* at 13 (2010), available at <http://www.afterabortion.info/pdf/gendergapbooklet.pdf> (compiling data related to, *inter alia*, coerced abortions) (“[Sixty-four] percent [of women] reported that they were pressured to abort by others. Indeed, most abortions are primarily the result of lack of support, pressure, emotional blackmail, coercion, manipulation, deceptive counseling, threats or even violence from partners, parents, employers, doctors, counselors or others with influence over women’s lives”) (footnotes omitted); see also Vincent M. Rue *et al.*, *Induced abortion and traumatic stress: a preliminary comparison of American and Russian women*, *MEDICAL SCIENCE MONITOR*, Oct. 2004, abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/15448616>. Studies show that most women feel coerced into, or at least inadequately informed about, having an abortion: “More than 50 percent [of post-abortive women] described themselves as feeling rushed or uncertain before the abortion; 79 percent said they were not counseled on alternatives to abortion; 84 percent said they did not receive adequate counseling before abortion; and 67 percent said they received no counseling before abortion.” ELLIOT INSTITUTE, *REVERSING THE GENDER GAP* at 14 (2010) (footnote omitted). Furthermore, coercive action can become violent and deadly. See, *e.g.*, *Boyfriend Tells Police He Struck Pregnant Girlfriend With Bat, Strangled Her*, *WBNS-*

deadbeat males, but the selfish interests of such men are the farthest things from genuine concern for and empowerment of women.

In short, the tragic and inhuman downsides of abortion have become more obvious, while the previously assumed advantages have failed to materialize. Abortion has proven to be, to say the least, a harmful social experiment.

Not only does this bill decriminalize the taking of innocent life, but it removes protections for health care providers who value human life, and who do not want to participate in any way in abortion.

It is wrong to force someone to be complicit in acts that violate his or her conscience. Under current law, no doctor, nurse, or any other person is obliged to perform or assist with an abortion. But, according to the proposed bill “[a] person with a conscientious objection to providing or assisting with an abortion must tell the patient of their objection at the earliest opportunity and **must tell them how to access the official list of abortion services maintained by the Ministry of Health.**”²³ Such a requirement obviously still violates an objector’s conscience as it *requires* them to refer a woman to an abortion provider. This does not protect them from violating their conscience, as their objection is to participating in any way in the killing of an unborn child. Moreover, the proposed law fails to protect conscientious objectors from having to *participate* in abortions by including overly vague language: an employer “must accommodate [the] conscientious objection applicant or employee unless it would cause **unreasonable disruption to [the employer’s] activities.**”²⁴ In fact, *if* the “employer considers that accommodating the applicant’s or employee’s objection would unreasonably disrupt the employer’s activities, the employer may . . . :

- (a) refuse or omit to employ the applicant for work that is available; or
- (b) **offer or afford the applicant or the employee less favourable terms of employment, conditions of work**, superannuation or other fringe benefits, and opportunities for training, promotion, and transfer than are made available to applicants or employees of the same or substantially similar capabilities employed in the same or substantially similar work; or
- (c) **terminate the employment of the employee** in circumstances in which the employment of other employees employed in the same or substantially similar work would not be terminated; or
- (d) subject the employee to any detriment in circumstances in which other employees employed in the same or substantially similar work would not be subjected to such detriment; or

10TV (Oct. 13, 2014), *available at* www.10tv.com/content/stories/2014/10/23/columbus-ohio-boyfriend-tells-police-he-struck-pregnant-girlfriend-with-bat-strangled-her.html (last visited Nov. 19, 2014) (man allegedly murdered pregnant girlfriend after trying to convince her to abort); Homicide: A Top Cause of Death Among Pregnant Women, ABCNEWS (June 24, 2007), *available at* <http://abcnews.go.com/WN/story?id=3311859> (last visited Nov. 19, 2014) (discussing Ohio victim).

²³ Abortion Legislation Bill 2019 (164-1) (N.Z.).

²⁴ Abortion Legislation Bill 2019 (164-1), cl 19 (N.Z.).

(e) retire the employee, or to **require or cause the employee to retire or resign.**²⁵

The proposed bill, although it appears to contain *some* protection for those healthcare providers who object to performing or participating in abortions is woefully inadequate. The language in the bill, moreover, is sufficiently vague and ill-defined as to allow foreseeable abuse of the supposed protection: what qualifies as an “unreasonable disruption”? In the United States, even greater protections are afforded to conscientious objectors under a 1970s federal law known as the Church amendment, which protects the conscience rights of individuals and entities that object to performing or assisting in the performance of abortion if doing so would be contrary to the provider’s religious beliefs or moral convictions, and prohibits discrimination in employment of “any physician or other health care personnel . . . because of his religious beliefs or moral convictions respecting . . . abortions.”²⁶

However, these protections are abused by employers. One recent example is that of a nurse in Vermont who was forced to participate in an abortion procedure against her deeply held religious beliefs by her employers who deliberately misled her into thinking she was assisting in a procedure following a miscarriage. Once trapped inside the operating room, she discovered that it was, in fact, an elective abortion and that this had been known all along by her superiors who then callously refused to relieve her. In addition, her position was well known to the hospital and her superiors, and other non-objecting nurses were available and could have easily taken her place. This nurse is only one of several medical professionals at this same hospital who was forced to participate in abortions. In fact, a U.S. Government investigation into the case found that other health care personnel at the same hospital “since at least the spring of 2017, have been intentionally, unnecessarily, and knowingly scheduled by [the hospital] to assist with elective abortions against their religious or moral objections.”²⁷ The Government went on to state that “[h]ealth care personnel who are coerced in that way suffer moral injury, are subjected to a crisis of conscience, and frequently experience significant emotional distress, even if they succeed in declining to assist in the procedure after the assignment was made.”²⁸

Again, this is just one isolated and recent example of how conscience protections laws have been abused in the United States. The U.S. Government recently recognized that “[c]onscience protection is a civil right guaranteed by laws that *too often haven’t been enforced.*”²⁹

²⁵ Abortion Legislation Bill 2019 (164-1), cls 20(2), 20(1)(a)-(e) (N.Z.).

²⁶ 42 U.S.C. § 300a-7 *et seq.*

²⁷ Press Release, Health & Human Services (28 Aug. 2019) *available at* <https://www.hhs.gov/about/news/2019/08/28/ocr-issues-notice-violation-university-vermont-medical-center-after-it-unlawfully-forced-nurse.html>

²⁸ *Id.*

²⁹ Press Release, Health & Human Services (19 Jan. 2018), *available at* <https://www.hhs.gov/about/news/2018/01/19/hhs-takes-major-actions-protect-conscience-rights-and-life.html>.

New Zealand should continue to value its health care professionals, including those health care professionals who have religious and moral objections to killing babies. It is clear that this proposed law fails to protect the consciences of those health care providers who believe that life is sacred, that abortion is wrong, and who desire not to participate in any way in abortions.

In light of all the above information, the ACLJ respectfully and strongly recommends that the New Zealand Parliament reject the Proposed Abortion Bill, that undermines New Zealand's longstanding position of protecting innocent life, by allowing the deliberate slaying of innocent human beings, and instead seek to ensure that it is providing a level of protection for children in the womb against abortion that is more consonant with basic human dignity.