March 20, 2018

Senator Terry Gerratana
Senator Heather Somers
Representative Jonathan Steinberg
Connecticut State Legislative Joint Committee on Public Health

RE: HB 5148

Dear Sens. Gerratana and Somers, Rep. Steinberg, and Public Health Committee Members,

My name is Matthew Lifson, I live in New Haven, Connecticut, and I am here to support HB 5148. I am a law student at Yale, a member of Yale Law School's Reproductive Rights and Justice Project legal clinic, and have spent two years researching laws that invalidate the advance directives of pregnant women, also known as pregnancy exception laws. I am testifying here in my personal capacity and do not purport to represent the views of Yale Law School, if any.

Connecticut's pregnancy exception law nullifies the healthcare instructions of all pregnant women and is among the worst in the country.

Connecticut's pregnancy exception law is one of the worst in the entire country, on par with Texas and Alabama. Right now there is no such thing in Connecticut as a pregnant woman with an advance directive. If a pregnant patient with an advance directive falls into a coma, the document becomes void and she must remain on life support (potentially for months) until the hospital can remove her fetus through an unauthorized Cesarean section. Similarly, if a pregnant woman does not have an advance directive, she must be kept on life support regardless of the wishes of her partner and family.

Extreme Feature #1: Women must be kept on life support even if the fetus cannot survive.

One especially extreme feature of Connecticut's law is that it requires mothers to be kept on life support even if there is zero chance that a fetus could be born alive. Medical catastrophes that cause a mother to fall permanently unconscious tend to harm her fetus as well. And the medications necessary to sustain a patient on life support are not designed for pregnancy and can have horrible side effects on the fetus. Because most fetuses affected by Connecticut's pregnancy exception are unlikely to survive, it is severe and illogical to force life support on women regardless of fetal health.

Extreme Feature #2: There is no exception for women experiencing pain.

A second reason why Connecticut's law is so extreme is that there is no exception for patients who are experiencing pain. This is a real concern because Connecticut's law affects more than just unconscious patients. It also applies to conscious women who are terminally ill and medically incompetent.

Connecticut's current law unconstitutionally violates the rights to refuse medical treatment and terminate a nonviable pregnancy.

Connecticut's extreme pregnancy exception law violates two constitutional rights. First, by disregarding women's advance directives, it violates the right to refuse medical treatment. In *Cruzan v. Missouri Department of Health*, the Supreme Court found that this right is guaranteed by the 14th Amendment.[1]

Second, Connecticut's law violates the right to terminate a previable pregnancy.[2] It is unconstitutional to require women to maintain a pregnancy before the fetus is viable, but the law forces women to carry previable fetuses to term.

The Solution: HB 5148 follows the lead of New Jersey, Maryland, Virginia, Arizona, and Vermont.

Fortunately, Connecticut does not have to look far for examples of states that have repealed their pregnancy exceptions. New Jersey,[3] Maryland,[4] Virginia,[5] Arizona,[6] and Vermont[7] all give women the affirmative right to specify how their healthcare instructions should apply during pregnancy.

HB 5148 is most similar to Maryland and Virginia's laws, which are the best of the available models. HB 5148 and the Maryland and Virginia laws all work by adding a voluntary section to the sample advance directive form. This optional section allows women to include any additional instructions or modifications if they are pregnant when their advance directive is needed.

There are two major virtues of this approach: (1) it unambiguously returns control to patients and (2) it alerts women to the need to make their preferences on this issue known. This easy solution has already been tested in Virginia and is the best way to respect patients' decisions.

For incapacitated women on life support who do not have advance directives, HB 5148 would reinstate the typical process that doctors use for all other patients. If a patient has no written instructions, doctors would consult with her appointed healthcare representative or family for a determination of her wishes.[8]

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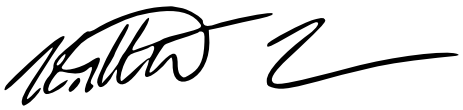
[1] Cruzan v. Dir., Missouri Dep't of Health, 497 U.S. 261, 279 (1990) (recognizing "a constitutionally protected right to refuse lifesaving hydration and nutrition.").
[2] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 879 (1992) ("[A] State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.").
[3] N.J. STAT. ANN. § 26:2H-56 (West) ("A female declarant may include in an advance directive executed by her, information as to what effect the advance directive shall have if she is pregnant.").
[4] MD. CODE ANN., HEALTH-GEN. § 5-603 (West) (providing the option on the advance directive model form to add additional instructions in case of pregnancy).
[5] VA. CODE ANN. § 54.1-2984 (providing the option on the advance directive model form to add additional instructions in case of pregnancy).
[6] ARIZ. REV. STAT. ANN. § 36-3262 (prompting women to indicate applicability of living will during pregnancy on sample form).
[7] VT. STAT. ANN. tit. 18, § 9702 (West) ("An adult may . . . direct which life sustaining treatment the principal would desire or not desire if the principal is pregnant at the time an advance directive becomes effective.").
[8] CONN. GEN. STAT. § 19a-571.

Respectfully submitted,



Matthew Lifson