TESTIMONY IN SUPPORT OF HB 1313-FN

Dana Albrecht

House Judiciary Committee

2026 Legislative Session

Chairman and Members of the Committee:

I respectfully urge this Committee to recommend HB 1313-FN **Ought to Pass**. This bill repeals RSA 132:37 through 132:40, a statute that is constitutionally indefensible, currently unenforced, and a ticking time bomb of legal liability for the State of New Hampshire.

This Is a First Amendment Issue, Not an Abortion Issue

Let me be clear at the outset: this bill is about free speech. It is about time, place, and manner restrictions on First Amendment activity on public sidewalks. In *McCullen v. Coakley*, 573 U.S. 464 (2014), the United States Supreme Court struck down a virtually identical Massachusetts buffer zone law. The vote was **9-0.**

There is no such thing as a 9-0 Supreme Court decision that is about abortion. Every Justice on that Court—across the full ideological spectrum—agreed that buffer zone statutes like the one on our books violate the First Amendment. This is settled, unanimous constitutional law.

The Current Law Is Unenforced—But That Does Not Make It Harmless

RSA 132:37 through 132:40 has never been enforced in New Hampshire. It sits on the books as a dead letter. But a dead letter with teeth.

In *Reddy v. NH Attorney General*, No. 1:14-cv-00299 (D.N.H.), plaintiffs challenged the constitutionality of this very statute. That case was resolved solely on **standing** grounds—the court found that because no buffer zone had yet been demarcated, the plaintiffs lacked standing to challenge it. The court made clear that standing would ripen the moment any facility actually demarcates a zone.

In other words: the only thing standing between this statute and a successful constitutional challenge is enforcement. The moment anyone tries to enforce it, the floodgates open.

Enforcement Means Liability

If a buffer zone is demarcated and enforced, New Hampshire will face an immediate federal civil rights lawsuit under 42 U.S.C. § 1983. Given the controlling precedent of *McCullen*—a unanimous decision—the State would almost certainly lose.

And the cost of losing is not merely the injunction. Under 42 U.S.C. § 1988, a prevailing plaintiff in a § 1983 action is entitled to recover **attorney's fees** from the defendant—which in this case would be the State of New Hampshire and its taxpayers.

The *McCullen* litigation itself is instructive. The attorney's fees awarded to plaintiff Eleanor McCullen and her co-plaintiffs against the Commonwealth of Massachusetts were approximately **$3 million**—paid by the taxpayers of Massachusetts for defending a law the Supreme Court struck down unanimously. New Hampshire should not invite the same outcome.

The Prudent Course

This Committee has the opportunity to take a simple, fiscally responsible, and constitutionally sound action: repeal a statute that is unconstitutional under binding Supreme Court precedent, has never served any public purpose, and exposes the State to millions of dollars in potential liability. There is no policy justification for keeping an unenforced, unconstitutional law on the books merely to wait for someone to enforce it and trigger an expensive and losing lawsuit.

I urge the Committee to recommend **Ought to Pass** on HB 1313-FN.

Thank you for your time and consideration.

Sincerely,

Dana Albrecht