

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Matthew J. Fader  
Chief Justice

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 438  
Family Law – Fundamental Parental Rights  
**DATE:** January 31, 2024  
(2/14)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 438. This bill establishes that a parent has the fundamental right to direct the upbringing, education, care, and welfare of the parent’s child. It also prohibits the State or a political subdivision from infringing on a parent’s fundamental right to direct the upbringing, education, care, and welfare of the parent’s child unless the State or political subdivision can demonstrate by clear and convincing evidence certain factors; and generally relating to fundamental parental rights.

At the outset, it does not appear to exempt the Judicial Branch as part of “the State,” and therefore would impose restrictions on the Judiciary in family law actions including custody, adoption, child welfare, paternity actions, and as drafted, could be interpreted to apply juvenile delinquency, name change, or any other action that could impact a parent’s interests. Specifically, it would require the judges to establish by clear and convincing evidence that a judicial decision meets the requirements set forth in § 5-2B-02(b)(1)-(3) (that the decision is necessary to achieve a compelling government interest; is narrowly tailored to achieve the compelling government interest; and is the least restrictive means to achieve the compelling government interest).

This bill would also change the burden of proof in domestic cases to the clear and convincing standard as well as replace the long-standing best interest of the child standard to the aforementioned compelling government interest standard. The latter would eliminate the analysis of factors that are based on each family’s unique facts and circumstances. Further, the bill provides no standard by which the courts are to reconcile disputes between parents who would each have a “fundamental parental right.” This bill also appears to abrogate the state’s *parens patriae* doctrine, which would severely limit the government’s ability to intervene when a child’s safety or interests need to be protected.

Finally, this bill will likely instigate frivolous claims and is unnecessary. The rights of parents have been enshrined by the United States Supreme Court and the Maryland State

Courts; if enacted, it would disrupt decades of jurisprudence pertaining to children and parents.

cc. Hon. Justin Ready  
Judicial Council  
Legislative Committee  
Kelley O'Connor