

**Lee\_FAV\_SB664**

Uploaded by: Senator Lee, Senator Lee

Position: FAV

SUSAN C. LEE  
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MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on  
Cybersecurity, Information Technology,  
and Biotechnology

Chair Emeritus  
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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

March 11, 2020

Senate Judicial Proceedings Committee

**SB 664 – Declaration of Rights – Right to Privacy**

Senate Bill 664 proposes an amendment to the Maryland constitution that enshrines Marylanders right to privacy and freedom from government intrusion as Article 48 of the Declaration of Rights. The language broadly provides that each individual has a natural, essential, and inherent right to privacy that guarantees freedom from government intrusion. The proposed amendment specifically enumerates Marylanders right to live free from government and non-government **intrusion caused by the unauthorized collection of personal data.**

An individual's right to privacy has been recognized as a fundamental human, social and political right by the international community. Article 12 of the Universal Declaration of Human Rights enumerates a right to privacy, as does the International Covenant on Civil and Political Rights, to which the U.S. is a signatory and a party.

Further, 11 state Constitutions have an explicit provision regarding the right to privacy. Six of these states explicitly enumerate privacy as an individual right separate from protections against unreasonable searches and seizures. Those six states run the gambit of ideological diversity from California to Montana to Florida to Alaska. The deep purple state of New Hampshire added an individual right to privacy to their Constitution in 2018 with bipartisan backing in the both legislative chambers and over 80% support from voters on a subsequent referendum. The broad right to individual privacy is accepted as the norm across the world and in many states around the country; it should be an explicit right of all Marylanders.

The novelty of this proposed amendment is, in addition to the broad right to privacy, the inclusion of specific right to privacy as it relates to personal data. Data recently surpassed oil as the most valuable asset in the world; the personal data that businesses and governments collect about us allow them to peer into even the most intimate and sensitive facets of our lives. The

value and sensitivity of such information gives those with access to it immense power to infringe on our basic privacy rights. As such, if we are serious about protecting privacy broadly, data privacy specifically should be addressed in our bedrock legal framework, the Maryland Constitution.

Maryland currently has protections for search and seizure in the Declaration of Rights, but those protections do not extend subpoenas of private companies that collect vast troves of information about us, nor does it apply to other invasive government measures that invade our privacy in ways unforeseen by the founders. Government surveillance around the world is a growing threat to individual liberty. The authoritarian surveillance hardware, software and philosophy that the People's Republic of China has developed to monitor the population and suppress dissent is already being exported around the world to countries like Ecuador, the UAE, Kenya and dozens of others. While interpretations of the federal constitution in the United States provide some protection against this sort of government data collection and surveillance by the federal government, such protections are not explicitly spelled out in our state constitution.

Adopting the proposed language into the Maryland Declaration of Rights would provide a constitutional legal basis for the types of laws our state has already embraced and will need to continue to adopt to protect Marylander's data, and therefore their privacy, from being exploited by governments, businesses and individuals. Existing Maryland code would be strengthened by this amendment and privacy laws like the Maryland Personal Information Protection Act and the Maryland Consumer Protection Act would have a more solid foundation. Moreover, legislation pending this session ranging from Del. Love's efforts to reign in private-sector misuse of geolocation data, to Sen. Lam's bill to prohibit federal immigration agents from accessing State databases choc-full of sensitive personal information, to my own efforts to allow Maryland consumers to opt-out of third-party disclosure of their personal data, would be legally bolstered by this amendment.

While we do our best to stay ahead of the curve on privacy issues through legislation and regulation, the pace of change in the data collection and usage space is such that our legal framework is often behind the technological realities. That's why we need a broad constitutional privacy protection to underlie and augment our more specific legislative and regulatory efforts.

I'm sure that all of our constituents have raised concerns that they seem to have no choice but to compromise their privacy in order to participate in 21<sup>st</sup> century social and economic life. What better message could we send to voters **than to allow them** the opportunity, via a referendum, to enshrine a basic individual right to privacy and a specific right to data privacy in our constitution.

As the sponsor, I felt it necessary to clarify that the privacy of owning a firearm should not be read into the broad right to privacy; the protections of the 2<sup>nd</sup> amendment in the federal constitution still apply and this bill does nothing to limit, nor broaden, those protections. There is however no broad right to privacy enshrined in the U.S. Constitution, so I feel it necessary to push this vehicle despite some opposition that I have been made aware of regarding a feared applicability to abortion issues. Since this proposed amendment does not reference women's

health issues, I assume the connection is made broadly with the Griswold decision allowing married couples to obtain birth control as an implied federal right to privacy. As that decision is from our highest federal court, it is confusing why a debate from the 1960s is being rehashed here. This Right to Privacy, if approved by the voters, may have broad implications at the state level for governmental privacy protections, but it does not overturn an interpretation of the U.S. Constitution, nor would it, in any way, prevent the state from maintaining reasonable restrictions on abortion that are already in place.

For all these reasons, I respectfully urge a favorable report on SB664.



**Bauman\_unf\_SB664**

Uploaded by: BAUMAN,RN, CHRISTINE

Position: UNF

Christina Bauman  
3336 Texas Avenue  
Baltimore, MD 21234

## OPPOSE: The Abortion Amendment SB664

Honorable Legislators,

I have been a nurse serving the healthcare needs of Marylanders for 50 years and now I stand before you asking for your vote to defeat SB664, or as this Assembly defines it a Declaration of Rights or a Right to Privacy. No one has a “right” to infanticide or abortion on demand through her 9<sup>th</sup> month of pregnancy. We all have a right to life and the first stage of that life begins as a zygote, progresses to an embryo, then a fetus, then a newborn. We don’t just get to live as a human being any other way. It’s a progression of life through stages and this bill wants to undermine the science, medical technology and reason we now have to prove that. Ignoring genetically-distinct human beings growing in a woman’s womb, and confusing that with a “right” to kill a human being, you have no regard for the human beings “right to life” in any stage they may be in.

**SB644** will deregulate the abortion industry in Maryland, making all abortions *back alley* with no requirements for sterile instruments or licensed physicians. It will also weaken the existing Infanticide and Partial Birth abortion bans and prohibition of procurement and sale of aborted body parts, effectively legalizing all three practices without knowledge of same and therefore impossible to prosecute. It will outlaw data collection so all this can happen. Everyone wants privacy from the government but this bill is not about that. It is about abortion. This bill will change the Constitution of Maryland under the guise of "privacy" and will wipe out existing regulations and prevent future regulations and bills

Abortion is also a form of racism that targets minorities. According to the CDC, a black woman is 5 times more likely to have an abortion than a white woman and a Hispanic woman, twice as likely. Don’t their babies have a right to life like all human beings do? Do you really want to promote this killing of all human lives with verbal engineering, calling it a right to privacy and not what it really is?

The data regarding abortion is there for you to know. The truth regarding this bill is to support that cause. You do not have a right to enable others to kill. None of us do.

As a Maryland voter I vehemently oppose SB664, and ask you to do the same.

# **MarylandRighttoLife\_UNF\_SB664**

Uploaded by: BOGLEY, LAURA

Position: UNF



## **Opposition Statement Senate Bill 664**

Declaration of Rights- Right to Privacy  
By Laura Bogley-Knickman, JD  
Director of Legislation, Maryland Right to Life

### **We Strongly Oppose Senate Bill 664**

On behalf of our members across the state, we respectfully yet strongly object to Senate Bill 664 – Declaration of Rights – Right to Privacy.

### **Abortion is not a fundamental right**

The Constitution of the United States is silent on abortion but clear on the right to Life. The Constitution affirms that no one can “be deprived of life, liberty or property” and deliberately echoes the Declaration of Independence’s proclamation that “all” are “endowed by their Creator” with the unalienable right to Life.

Life is the first and foremost fundamental human right. A right to *take life* cannot peacefully coexist with the fundamental right to life and has no place in the Maryland Constitution or anywhere else in a civilized society.

The vast majority (76%) of people favor some reasonable restrictions on abortion, particularly later in pregnancy when an unborn child can feel pain and when a child is likely to survive if delivered rather than aborted. 60-70% of people oppose the use of our tax dollars to fund abortion. But this bill takes that choice away from the voters by shifting the power to the courts instead of our elected representatives.

Senate Bill 664 – Sponsored by Senator Susan Lee, is a radical expansion of publicly-funded abortion in Maryland. Senator Lee’s bill seeks to establish a state constitutional right to privacy, which courts have consistently interpreted to include a right to abortion. The type of privacy asserted in the first paragraph of this bill is not an action in tort, but a broad constitutional right to privacy, even broader than the Supreme Court’s interpretation in *Roe v. Wade*.

The Supreme Court of the United States never held that abortion is a “fundamental” right. This bill attempts to make it so in Maryland. The Supreme Court has held that states may restrict abortion and that there is no right to public funding for abortions.

Abortion was never the law of the land in Maryland, until the judicial overreach of the Supreme Court in 1973 struck down Maryland’s abortion ban along with bans in 45 other states.

Prior to that time, abortion was a crime in Maryland. In fact, the highest court of the state, the Maryland Court of Appeals once called abortion an “abhorrent crime” (*Worthington v. State* 1901). Later Maryland statutes only permitted abortion in rare cases, including the life of the mother, rape and incest.

The Constitution of the State of Maryland (of 1867) is silent on abortion but clearly affirms the natural right to life. Statutes enacted at that time protected the lives of the unborn. Article 24 of the Maryland Declaration of Rights states:

#### **Article 24. Due process -**

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

The abortion amendment would silence the voices of everyday Marylanders who want to engage in a meaningful public discussion and debate over the availability, safety, and even desirability of abortion. This bill takes that choice away from voters by shifting the power to the courts rather than our elected representatives.

Senate Bill 664 is intended to deregulate the abortion industry, reducing Maryland to a state of Do-It-Yourself and Back Alley abortions. The amendment would invalidate state abortion-related laws that are supported by the majority of the public including the following common sense, protective laws: sex trafficking reporting requirements; bans on selective abortion based on race, gender or disability; parental notification; informed consent; wrongful death laws that protect unborn children; religious freedom and rights of conscience laws that protect healthcare workers and employers; clinic safety regulations; and public funding restrictions. It also would make it more difficult to enforce existing laws against partial-birth abortion, infanticide, human cloning and physician assisted suicide.

### **No public funding for abortions**

Taxpayers should not be forced to fund elective abortions, which make up the vast majority of abortions performed in Maryland. State funding for abortion on demand with taxpayer funds is in direct conflict with the will of the people. A 2019 Marist poll showed that 54% of Americans, both “pro-life” and “pro-choice” oppose the use of tax dollars to pay for a woman’s abortion. Never has more than 40% of the American public supported taxpayer funding of abortion regardless of the context or way in which the question is asked.

### **Funding restrictions are constitutional**

The Supreme Court has held that the alleged constitutional “right” to an abortion “implies no limitation on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds.” When a challenge to the constitutionality of the Hyde Amendment reached the Supreme Court in 1980 in the case of *Harris v. McRae*, the Court ruled that the government may distinguish between abortion and other procedures in funding decisions -- noting that “no other procedure involves the purposeful termination of a potential life” -- and affirmed that *Roe v. Wade* had created a limitation on government, not a government entitlement.

**We respectfully urge your unfavorable report on Senate Bill 664.**

# **Burns\_unf\_SB664**

Uploaded by: BURNS, PAIGE

Position: UNF

March 10, 2020

Bill SB664 (Declaration of Rights – Right to Privacy)  
Paige Burns  
Catherine Foundation Pregnancy Resource Center  
Position – Opposed

The Catherine Foundation Pregnancy Resource Center provides free and confidential resources and supplies to anyone in need. We offer pregnancy tests, limited ultrasounds, abortion pill reversals, an abortion recovery program, maternity clothes, prenatal vitamins, baby essentials and supplies, referrals for community and social services, childbirth and parenting classes and a fatherhood mentorship program. We provide counseling and complete information to anyone who is pregnant regarding the choices available to them and the ramifications of each of those choices. Unlike Planned Parenthood, we do not charge our clients for anything. We want the women who come to us to have a real choice, not to be coerced into doing what they believe will be the easy way out, only to find out that their choice led to more devastation and pain than they could have imagined. Abortion kills children and hurts women. We believe women should be provided with all the facts to help them make informed choices for their families. We believe in empowering them to make the best choice.

One of many examples of this occurred in 2018 at the Catherine Foundation. One of our clients found us by searching the internet about how to reverse the abortion pill. They came to us after taking the abortion pill and realizing it was not what they wanted to do. They wanted to save their baby. The baby was born on April 25, 2019 and will be one-year old next month. What if they had not had that choice? What if there was no way for them to find the needed help? We exist to offer that help and hope. We work extremely hard every day to help moms, dads and their babies.

The Privacy Amendment (Bill SB664) is seriously flawed. It is so ambiguous as to its intention that it obviously would expose the state to lawsuits regarding what constitutes a compelling interest and which subject matter would require a right to privacy. Courts have consistently held that a constitutional right to “privacy” includes a woman’s right to have an abortion. A privacy amendment would invalidate all existing health and safety statutes and regulations regarding abortion and make any future attempts to pass lifesaving legislation impossible.

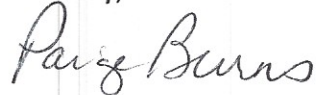
I do not support an amendment enshrining abortion in our state constitution. Abortion is already protected in Maryland state law. Maryland’s current law would not be affected by any Supreme Court ruling on Roe v. Wade. Abortion is not a human right. Abortion is not healthcare and should not be pushed by our state lawmakers. Why should Maryland continue to support abortion at any time of pregnancy for any reason up until birth by constitutional amendment, especially when 76% of people favor some restrictions on abortion after the first trimester? It is extreme, barbaric and indefensible that Maryland has some of the most permissive abortion laws in the nation.

I cannot help but read the text in the proposed amendment and wonder why, if the goal is to reduce government intrusion, the lawmakers do not see the irony in the fact that in supporting the act of abortion the government is sanctioning the intrusion into a woman’s body with metal instruments and a suction tube to end a person’s life. A person with their own unique DNA, separate from the mother’s DNA. Do we not, as citizens of this state, have a moral obligation to protect children? Are they not citizens, too? The wording of the proposed amendment specifically states, “to establish that each individual has a natural, essential, and inherent right to privacy that guarantees freedom from government intrusion...” Does the state really not understand that a

baby in the womb is also a unique individual worthy of protection? How can you ignore the fact that 77 individual human beings are slaughtered each day in Maryland due to abortion?

It is disturbing that something this open-ended would even be proposed without foreseeing the consequences. We need you, as our elected leaders, to support a more reasonable, informed and humane position on abortion restrictions. Please stand with your voters against this unnecessary and extreme privacy amendment. Please join with us in loving them both - the mother and the baby.

Sincerely,



Paige Burns

Executive Director

Catherine Foundation Pregnancy Resource Center

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**christianson\_unf\_SB664**

Uploaded by: CHRISTIANSON, SANDY

Position: UNF

Re: SB 664  
Judicial Proceedings Committee  
Dr. Sandy Christiansen, MD, FACOG  
Care Net National Medical Director  
Care Net Pregnancy Center of Frederick Maryland  
Oppose

Mr. Chairman and Distinguished Members,

My name is Dr. Sandy Christiansen and I'm the National Medical Director for Care Net and medical director of the Care Net pregnancy center of Frederick and a board certified obstetrician/gynecologist licensed in the state of Maryland. I've spent my career of 30 plus years dedicated to women's reproductive health and have met scores of women who have been harmed by abortion and that makes me passionate about women receiving full informed consent before undergoing a procedure that carries the risks of significant complications.

I'm opposed to SB 664 because it sets the stage where select medical procedures, namely induced abortion, may be removed from safeguards that protect the women of our state, and it promotes bad medicine.

If we are truly pro-woman than we will all work hard to fully protect women's health and that means applying a consistent standard to all medical procedures.

- ✓ **Uniform standard of care:** The state has a compelling interest in the health of pregnant women.

Pregnant women and girls seeking abortions deserve the same standard of care required for every other medical procedure. Abortion requires greater scrutiny because, it isn't a "simple procedure" like getting your gall bladder removed. It can affect women and men profoundly for years to come. It carries the risk of:

1. Hemorrhage, infection, and damage to organs
2. Late term and dilation and evacuation abortions substantially increase the risk of these complications, including lacerations due to fragmented fetal bones, and infection due to retained fetal parts
3. Other risks include: clots, anesthesia complications and death (6.7 per 100,000 abortions for pregnancies over 18 weeks);
4. Scientific data from peer-reviewed journals around the world point to induced abortion as a risk factor for clinical depression, anxiety, suicidal thoughts and behavior, and substance abuse.
5. A 2011 meta-analysis published in the British J of Psychiatry found nearly 10% of the incidence of all mental health problems was shown to be directly attributable to abortion.<sup>i</sup>

6. There is abundant data clearly demonstrating that induced abortion increases the risk for preterm delivery and shows a dose related effect.<sup>ii</sup> Preterm delivery carries a host of associated complications for the preemie newborn.

✓ **Abortion carries risks, like any other medical procedure, and then some**

We can argue the validity of these studies, we may disagree about the overall safety of abortion, but we should all agree that it carries certain risks, just like any other medical procedure involving pregnant women. Women seeking abortions deserve to be protected, this bill is focused on protecting the procedure, not the women.

Nowhere else in the practice of medicine do we neglect protections for patients or make exceptions for medical providers to the degree we tolerate in abortion.

Maternal mortality is on the rise in the U.S., putting us near the top of the list among developed nations. Black women have over three times the maternal mortality rate compared to white women and also have disproportionately more abortions.<sup>iii iv</sup> This disparity will not be aided by this bill. Plus, maternal mortality data often do not include abortions.

While Maryland champions access to abortion, it's not particularly interested in monitoring its safety, being one of only three states that doesn't give the CDC abortion-related statistics.

The systems that the U.S. currently uses to capture maternal and abortion related mortality are woefully inadequate and are riddled with flaws. **The shocking reality is that in this country and in this state, we do not keep accurate records about abortion and related complications.** We need to stop and ask ourselves why that is.

- ✓ **Loss of existing protections:** In light of this, I do not see how, in good conscience, this distinguished body can move this bill forward—it would invalidate any existing health and safety standards for women seeking abortions and prevent the state from enacting any new laws to address their health needs, paving the way to unrestricted access to abortion on demand, without the protection of our current due process for addressing public health concerns and removing any *medical necessity* for abortion.

Abortion related risks are real and they happen to people every day. If this bill is passes, the only recourse citizens of Maryland will have is to sue the provider and the government for failing to provide adequate protections under the law.

The priority must be on the patient and her specific health needs; this is in step with the ethical practice of medicine. More regulation in this area is needed, not less.

If I was a cardiac surgeon and I started lobbying to put unrestricted access to robotic heart transplants in the state constitution, you would rightly ask me how this would improve healthcare for this population.

The truth is, SB 664 does nothing to improve the healthcare of women seeking abortions, in fact, and it would likely be detrimental.

Maryland is notorious for out-of-state abortion providers setting up shop. Do we want more or less protections against the likes of another Kermit Gosnell? This bill effectively silences the people of Maryland, removes power from this body, and wipes out existing processes that were established for the good of women's health.

I ask for an unfavorable report for SB 664.

Sandy Christiansen, MD

March 11, 2020

See written testimony for full bibliography

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<sup>i</sup> Coleman, P.K. (Sept, 2011). Abortion and Mental Health: A Quantitative Synthesis and Analysis of Research Published from 1995-2009. *British Journal of Psychiatry*

<sup>ii</sup> Alexander, Greg. 2007. Prematurity at Birth: Determinants, Consequences, and Geographic Variation. In *Preterm Birth: Causes, Consequences, and Prevention*. (Ed.), R. E. Behrman and A. S. Butler. Retrieved from <http://www.ncbi.nlm.nih.gov/books/NBK11386/>

Shah, P. S., Zao, J. (2009). Induced termination of pregnancy and low birthweight and preterm birth: A systematic review and meta-analyses. *British Journal of Obstetrics*

<sup>iii</sup> <http://healthymaryland.org/wp-content/uploads/2019/01/Health-General-Article-%C2%A713-1207-2018-Annual-Report-Maryland-Maternal-Mortality-Review.pdf>

[https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal\\_mortality\\_a/state/MD](https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/MD)

<sup>iv</sup> <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>

# **Delegate Cox\_UNF\_SB664**

Uploaded by: Cox, Dan

Position: UNF

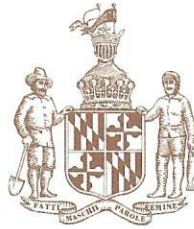
DANIEL L. COX  
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Subcommittees

Family Law

Public Safety



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THE MARYLAND HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401

March 2, 2020

TESTIMONY IN OPPOSITION TO SB 664

Declaration of Rights – Right to Privacy

Dear Honorable Chairman Smith, Senator Lee, and Members of the Senate Judicial Proceedings Committee:

This letter is to respectfully urge your withdrawing or “unfavorable” report of SB 664 – Declaration of Rights – Right to Privacy.

The constitutional amendment as proposed does nothing for privacy in our private or personal data, or a corporation’s data, and instead repeals the Second, Fifth and Fourteenth Amendments rights to life, and to keep and bear arms, and repeals the privacy doctrine in constitutional law as to businesses.

Although the bill section (B) is laudable in its inclusion of protection from unauthorized collection of data of individuals, the bill is fatally flawed constitutionally.

Only 11 states have passed constitutional right to privacy-type provisions, but since 1974 only Missouri and New Hampshire have passed a constitutional provision for privacy for data only – the Missouri amendment passed in 2014 and New Hampshire’s passed in 2018. However, both of those constitutional amendments explicitly limit the amendment to “information” only, and in Missouri’s case, refused to use the words “right to privacy”. Indeed, Missouri instead protected data privacy in its search and seizure portion of the existing constitution. New Hampshire expressly limits its right to “live free from governmental intrusion in private or personal information” only.

Yet, in SB 664 Maryland seeks to take a first-in-the-nation approach to broadly make Abortion enshrined forever in the first clause of Article 48 of our Declaration of Rights. “Guaranteeing freedom from government intrusion on grounds of natural rights” denies the right to life, since the laws of nature and the 5<sup>th</sup> and 14<sup>th</sup> amendments of the United States Constitution mandate protection of the right to life under law. This bill goes even farther to limit the natural and God-given right to keep and bear arms, and exposes corporations to a total loss of privacy and speech. In short, it repeals these rights by claiming to support a natural privacy right which will supersede and change the definition of person, which under the *Citizens United* Supreme



Letter of opposition to SB 664

Delegate Dan Cox

March 2, 2020

Court ruling demonstrated a long precedent of artificial persons being distinct from natural individuals and both having the Constitutional protections of fundamental liberties.

Not only does SB 664 exclude “persons” and inserts “individuals”, it does not protect private or personal data from being spied upon and collected as its clause (B) purports to do.

First, individuals are natural persons, not corporations. Thus businesses stand to lose their protected status in Maryland as persons guaranteed liberty interests if this were to pass.

Second, the freedom from intrusion language only limits a cause or “directly traceable” link for collection of data. If the data intrusion is untraceable via any direct action, it can be argued that it is lawful under this bill. Most spyware applications use third party access to cover their tracks so no “direct access” can ever be easily proven.

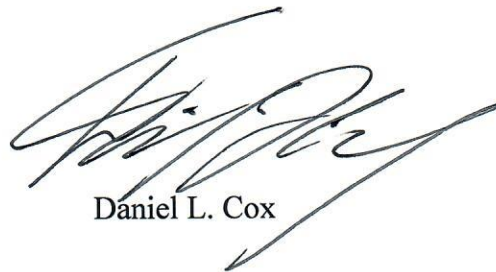
Third, the bill completely allows authorized collection of data – which is undefined. Authorized by whom? The United States government? What about foreign governments? Clearly the federal government has authorized data collection to be gathered without a warrant. This is why the Missouri amendment targeted this practice with a mandate under the search and seizure section of its constitution, requiring a warrant.

Also, the use of language “appropriate” for the Governor to enforce the bill or the Legislature to pass enabling legislation is overly broad and too vague.

Finally, the fact that firearms and the right to keep and bear arms is expressly included means that Maryland citizens will lose their right to privacy under the 14<sup>th</sup> amendment in regards to the seizure and regulation of firearms and ammunition. This is patently unconstitutional.

I respectfully ask you to firmly oppose this language and report unfavorably on this bill.

Very respectfully,



Daniel L. Cox

Cc: House GOP Caucus



**Donovan\_unf\_SB664**

Uploaded by: Donovan, Charles

Position: UNF

CHARLOTTE  
 LOZIER  
INSTITUTE

Charles A. Donovan  
President  
Charlotte Lozier Institute  
State of Maryland, Senate Judicial Proceedings  
Senate Bill 0664  
March 10, 2020

The Charlotte Lozier Institute (CLI), the education and research arm of the Susan B. Anthony List, is pleased to submit this testimony regarding Senate Bill 664, a proposal to amend the constitution of Maryland to, among other provisions, declare a “right to privacy that guarantees freedom from government intrusion.”

Various provisions of the federal and state constitutions implicate rights that have generally been understood as protecting the liberties of the people from intrusive acts of government. The Fourth Amendment to the U.S. Constitution specifies that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” States, including Maryland, have acted in their own sphere to secure and protect the right to privacy in various ways, including with respect to, for example, the secrecy of the ballot box.

Since 1973, the existence of a right to privacy (though no such words appear in the U.S. Constitution) has been inferred by the U.S. Supreme Court to apply to and guarantee an expansive right to abortion. Writing for a 7-2 majority of the Court, Justice Harry Blackmun argued for a broad right to privacy, saying, “This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.”<sup>1</sup> Consequently, the invocation of a right to privacy in any constitutional context raises a wide range of questions about the scope of that right, especially where, as here, the language of the amendment is exceedingly broad and limitations of the right must, in order to be valid, meet the high test of a compelling state interest.

These issues deserve the most careful scrutiny. The Charlotte Lozier Institute, however, reserves its comment today to a particular potential implication of the broad and needlessly vague language of the amendment regarding data collection. In particular, the amendment states the

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<sup>1</sup> Roe v. Wade, 410 U.S. 113 (1973).

“right to privacy includes the right of an individual to live free from intrusion caused by or directly traceable to the unauthorized collection of data concerning the individual by another.”<sup>2</sup>

To be sure, all Americans are rightly concerned about the collection and dissemination of data of a personal nature by sources both public and private. Prior to the advent of modern computing and sophisticated handheld voice and data devices, Americans generally consumed information and media in a one-way transaction, reading newsprint, hearing radio transmissions, and using visual media in a passive mode which permitted the user access to the content of communications with a minimal rebound of information about the consumer to the content provider. In 2020, this one-way transaction has long since given way to communications technologies, either selected by consumers or imposed upon them by various forms of surveillance, that are capable of, and indeed do, transfer and network vast amounts of information about the individual. This information can, in turn, be auctioned or sold to other parties, private and public, for use in targeting offers of products or services, whose use can amalgamate additional information about the consumer and make it readily available to others.

Concern about declining privacy protections in a complex, advanced-technology society is a valid and proper subject matter for legislative consideration. The Health Insurance Portability and Accountability Act (HIPAA) of 1996 is but one example of Congressional action taken to protect the privacy rights of patients on sensitive personal matters. The seriousness of the statute is underscored by the punishment Congress has levied for violations of patient privacy, which include civil and criminal penalties for unauthorized disclosure of patient medical records. The HIPAA statute, however, makes appropriate exceptions for the purpose of protecting public health, by permitting the disclosure of certain forms of data of public interest with full respect for the right of individuals not to be identified or identifiable as a result of the data collected.<sup>3</sup>

As a controversial topic subject to public debate at virtually all levels of government, abortion is a prototypical example of a need for well-calibrated data collection that is sensitive to the requirements of individual privacy. Privacy in this regard is not itself a controversial topic. Research organizations with diverse positions on the legal and moral status of abortion concur that public officials have an affirmative duty to ensure that the identity of individuals obtaining abortions is not compromised. Likewise, while points of view differ about what characteristics of abortions and abortion providers constitute a public interest, broad consensus exists that information regarding such topics as demographics, in-state residency, abortion methods, prior use of contraception, previous pregnancy outcomes, stage of pregnancy, public funding, and other matters are issues of public moment.

Thus, current practice in the state of Maryland is particularly curious and anomalous. Only three of the 50 states fail to collect and publish information about abortion incidence and patient characteristics on an annual basis. Maryland, New Hampshire, and California are exceptions to the general rule, as the remainder of the nation not only collects and publishes a range of data but

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<sup>2</sup> SB 664 bill text is available online at: <http://mgaleg.maryland.gov/2020RS/bills/sb/sb0664F.pdf>

<sup>3</sup> Pub. L. 104-191.

voluntarily shares that data with the U.S. Centers for Disease Control and Prevention (CDC).<sup>4</sup> This data is afflicted with numerous deficiencies, and the national CDC abortion surveillance summary is slow in coming and lacking in key information of interest to policymakers, but useful insights can still be gleaned from what is reported.<sup>5</sup> At the same time, states have taken a variety of measures to safeguard individual privacy, including imposing penalties on anyone who exposes an individual's information and masking information when the small quantity measured poses a risk of individual exposure. These measures seem to have worked well in a wide variety of states with more or less robust schemes of abortion reporting.

In 2012, Charlotte Lozier Institute released a study of state abortion laws, praising some states and chiding others for the paucity of, or shortcomings in, their abortion reporting.<sup>6</sup> Our review of the states examined their reporting standards and recommended new public investments in improving U.S. data collection, access of scholars to data, and public dissemination of key information. Maryland maintained a voluntary abortion reporting system until 2006. Even before that date, Maryland's Department of Health acknowledged that "the data contained in this report are incomplete. The number of facilities submitting data can change from year to year, making comparisons over time unreliable. The quality of the data is uncertain because no independent verification has been done."<sup>7</sup> In response to a CLI inquiry in August 2018, the Maryland Department of Health informed us that "Maryland does not require reporting, or record information, on induced terminations. Therefore the Vital Statistics Administration does not produce reports on these events."<sup>8</sup>

Understanding rates of abortion and other facts about abortion is clearly a metric of keen public interest. The accumulation of year over year data in a single state or multiple states allows detection of trends in abortion incidence and assessment of the effect of various policy approaches. Maryland is among the minority of states that publicly fund abortions, reinforcing the public interest in how funds are being expended and fostering discernment of how patterns of resort to abortion may respond to changes in public policy. The Maryland Department of Health and Mental Hygiene reports on this one aspect of abortions performed, showing that in 2016, the

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<sup>4</sup> For a map of states' abortion reporting status and linked analyses of state reports, see "State Abortion Reporting," Charlotte Lozier Institute, <https://lozierinstitute.org/state-abortion-reporting/> (Accessed March 9, 2020).

<sup>5</sup> "Although most reporting areas collect and send abortion data to CDC, three of the 52 reporting areas (California, Maryland, and New Hampshire) did not provide CDC data for 2007–2016, and one reporting area (DC) did not provide data to CDC for 2016. In 2016, abortions performed in California, DC, Maryland, and New Hampshire accounted for 20% of the abortions counted through the Guttmacher Institute's national survey of abortion-providing facilities." See Jatlaoui TC, Eckhaus L, Mandel MG, et al. Abortion Surveillance — United States, 2016. *MMWR Surveill Summ* 2019;68(No. SS-11):1–41. DOI: <http://dx.doi.org/10.15585/mmwr.ss6811a1>. (Accessed March 9, 2020).

<sup>6</sup> Donovan, Charles A., and Nora Sullivan. Abortion Reporting Laws: Tears in the Fabric. *American Reports Series*, Issue 3 (Dec 2012), available at <https://s27589.pcdn.co/wp-content/uploads/2012/12/American-Report-Series-ABORTION-REPORTING-LAWS-Dec-12-Update-1-13.pdf> (Accessed March 9, 2020).

<sup>7</sup> "Abortion Reporting: Maryland," Charlotte Lozier Institute (Oct 2019), available at <https://lozierinstitute.org/abortion-reporting-maryland/> (Accessed March 9, 2020).

<sup>8</sup> *Ibid.*

state spent \$5.3 million with state and federal funds to pay for 7,812 abortions.<sup>9</sup> The most recent national survey of abortion facilities by the Guttmacher Institute shows that an estimated 29,800 abortions were performed in Maryland in 2017. The same survey showed that there was a 7% increase in the abortion rate in Maryland between 2014 and 2017, from 23.4 to 25.0 abortions per 1,000 girls and women of childbearing age.<sup>10</sup> Maryland's abortion rate is the 4<sup>th</sup> highest in the nation<sup>11</sup> as is the proportion of pregnancies in the state that are aborted, that is, nearly 30 percent.<sup>12</sup>

These sparse details about abortion in Maryland offer only a glimpse of what should be a subject of public interest and debate. The neighboring state of West Virginia has an abortion rate<sup>13</sup> one-sixth of Maryland's and Virginia's rate<sup>14</sup> is barely 40% of Maryland's.

What effect would the proposed constitutional amendment have on the Free State? The amendment text discloses little. As noted above, it refers to an individual's right "to live free from intrusions caused by or directly traceable to the unauthorized collection of data concerning the individual by another." The amendment does not affirmatively state what kinds of data it seals in a zone of personal privacy. Whatever that data may be, it is screened from view if the data will involve an "intrusion" "directly traceable" to an "unauthorized collection" of certain data. But which data? The amendment makes no reference, but apparently the data is something in particular, though it is not clear whether the amendment means to exclude only the collection of personally identifiable data.

More concerning, the amendment does not specify what constitutes "unauthorized collection" of data. Does a state statute collecting abortion data and allowing aggregation of deidentified data for analysis of public health trends constitute an intrusion under the language of the amendment? Does the amendment bar not only the release of such data, which all states and the federal government alike observe with respect to abortion data, but also the mere collection of such data as an intrusion on personal freedom and the right to privacy? Candor is called for on such a vital matter before an amendment of potentially vast scope is submitted for voter approval.

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<sup>9</sup> See "Exhibit 42 Abortion Funding under Medical Assistance Program\* Three-year Summary Fiscal 2014-2016" at Medical Care Programs Administration, DHMH, <http://mgaleg.maryland.gov/pubs/budgetfiscal/2018fy-budget-docs-operating-m00q01-dhmf-medical-care-programs-administration.pdf#page=78> (Accessed March 10, 2020); and "Abortion Reporting: Maryland," Charlotte Lozier Institute (Oct 2019), <https://lozierinstitute.org/abortion-reporting-maryland/> (Accessed March 9, 2020).

<sup>10</sup> "State Facts About Abortion: Maryland," Guttmacher Institute (March 2020), available at

<https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-maryland> (Accessed March 9, 2020).

<sup>11</sup> Jones RK, Witwer E and Jerman J, Abortion Incidence and Service Availability in the United States, 2017, New York: Guttmacher Institute, 2019, [https://www.guttmacher.org/sites/default/files/report\\_pdf/abortion-incidence-service-availability-us-2017.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/abortion-incidence-service-availability-us-2017.pdf) (Accessed March 9, 2020).

<sup>12</sup> Johnston, Wm. Robert, Historical abortion statistics, Maryland (USA), available at

<http://www.johnstonsarchive.net/policy/abortion/usa/ab-usa-MD.html> (Accessed March 9, 2020).

<sup>13</sup> "State Facts About Abortion: West Virginia," Guttmacher Institute (March 2020)

<https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-west-virginia> (Accessed March 9, 2020)

<sup>14</sup> "State Facts About Abortion: Virginia," Guttmacher Institute (March 2020) <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-virginia> (Accessed March 9, 2020).

This concern is further heightened due to the specificity of the exclusion contained in the amendment, which sets forth affirmatively what the amendment authorizes the state to collect, which is information pertinent to the regulation of firearms and ammunition. Treated as an exception to the general rule of the amendment, Senate Bill 664 can be construed in its entirety to deny authorization by the state to collect data on abortion incidence, demographics, complications or more, even if the patient information is deidentified.

#### Conclusion

Senate Bill 664 does not create public concern over the unavailability of information about the incidence and features of abortion in Maryland, but it does draw that concern into sharp focus. Maryland is nearly alone among U.S. states in failing to collect or publish abortion data and it has not done so for nearly a decade and a half. It has among the highest abortion rates in the nation, and the rate is climbing. Abortions are publicly funded with state taxpayer dollars in Maryland, reinforcing the public interest in understanding the phenomenon and the stakes in making abortion rare. The impact of the proposed constitutional amendment on this topic of intense public interest must be disclosed and weighed in the balance. The people of Maryland have a right to know what is happening in their communities and not succumb to blindness about an issue of such importance.

*Charles A. Donovan is President of the Charlotte Lozier Institute in Arlington, Virginia*

# **Right to Privacy\_UNF\_SB664**

Uploaded by: ennis, ella

Position: UNF

The Honorable William C. Smith, Jr., Chairman  
And Members of the Judicial Proceedings Committee

Re: SB 664 – Declaration of Rights – Right to Privacy – Ella Ennis – OPPOSED

I strongly oppose SB 664-Declaration of Rights – Right to Privacy. The wording is vague and overly-broad. This new Article 48 declares:

(A) That each individual has a natural, essential, and inherent right to privacy that guarantees freedom from government intrusion. (B) The Right to privacy includes the right of an individual to live free from intrusion caused by or directly traceable to the unauthorized collection of data concerning the individual by another.

This vagueness cloaks the primary purpose of the amendment to place in the Maryland Constitution an unlimited right to abortion for a woman through all 9 months of pregnancy and unrestricted right to decide life or death if the infant survives an abortion.

The unborn or pre-born baby is a human being. A woman's right to privacy as provided by the United States Supreme Court, to control her body, does not automatically negate the right to live of the pre-born child she is carrying. That child is not her body. The baby is always a separate human being. As a baby develops and reaches the capacity to feel pain (20 weeks), and is at or near-viability its right to live needs to be accommodated. The woman can end her pregnancy with a method that gives the living pre-born child a reasonable chance for survival. Her right to end her pregnancy is not an automatic right to demand a dead child.

If a pregnant woman has a medical emergency and desires to keep the child, every medical assistance available will be used to help that child survive. The same medical help should be available for a child subject to abortion of the same gestational age. A pre-born child's humanity is not determined by whether it is wanted by its biological mother. The child's humanity is God-given. When Government decides that a woman has a right to end her pregnancy, then government has an obligation to provide for the pain-capable and viable pre-born child that can survive an abortion. Such children can be adopted. There is no legitimate reason for the deliberate killing of a living, viable pre-born child.

An unlimited right to choose to end the life of a viable unborn baby or a baby still-alive after an abortion conflicts with Article 16 of the Maryland Declaration of Rights that states "...and no law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time, hereafter." Medical science recognizes that babies in the womb feel pain by 20 weeks and doctors use anesthesia when performing life-saving surgery on babies in the womb. It cannot be denied that abortions performed after 20 weeks cause pain to the live baby as it is poisoned with salt solutions, cut apart limb from limb, or crushed with instruments for its organs. SB 664 is so opposite of the General Assembly's determination that the death penalty -even for mass murderers—is so cruel and unusual a punishment as to be unconstitutional. But the Constitutional Amendment – Right to Privacy-- will enshrine an unrestricted right of a woman to demand, cruel and painful deaths to viable unborn babies in Maryland's Declaration of Rights.



SB 664 – Opposed

Page 2

Under SB 664, the only stated restriction to this “right to privacy” is that it does not prohibit the State from regulating the sale or purchase of a firearm or ammunition. A right that I thought was protected in the U.S. Constitution’s second amendment.

It is hard to know what else is possibly covered by the undefined “right to privacy” of SB 664, but a number of constitutional issues were raised in the written testimony of Delegate Daniel Cox, dated March 2, including:

“Not only does SB 664 exclude “persons” and inserts “individuals”, it does not protect private or personal data from being spied upon and collected as its clause (B) purports to do.

First, individuals are natural persons, not corporations. Thus businesses stand to lose their protected status in Maryland as persons guaranteed liberty interests if this were to pass.

Second, the freedom from intrusion language only limits a cause or “directly traceable” link for collection of data. If the data intrusion is untraceable via any direct action, it can be argued that it is lawful under this bill. Most spyware applications use third party access to cover their tracks so no “direct access” can ever be easily proven.

Third, the bill completely allows authorized collection of data – which is undefined. Authorized by whom? The United States Government? What about foreign governments?... “

Please give careful consideration to all of these concerns and vote for an UNFAVORABLE Report for SB 664.

Sincerely,

Ella Ennis  
P.O. Box 437  
Port Republic, MD 20626  
E-mail: eee437@comcast.net

**foster\_unf\_SB664**

Uploaded by: Foster, Catherine Glenn

Position: UNF



**Written Testimony of Catherine Glenn Foster, Esq.  
President & CEO, Americans United for Life  
Against S.B. 0664  
Submitted to the Senate Judicial Proceedings Committee  
March 11, 2020**

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Committee:

My name is Catherine Glenn Foster, and I serve as President and CEO of Americans United for Life (AUL), America's original and most active pro-life advocacy organization. Established in 1971, AUL has dedicated nearly 50 years to advocating for comprehensive legal protections for human life from conception to natural death. AUL attorneys are experts on constitutional law and abortion jurisprudence. I appreciate the opportunity to submit legal testimony against S.B. 0664, the proposed amendment regarding enshrining expansive abortion measures in Maryland's constitution.

I have thoroughly reviewed S.B. 0664 and it is my opinion that the Amendment expands abortion allowances well beyond *Roe v. Wade* and its progeny, eliminating the State's legitimate interest in protecting both life and women's health. In order to ensure this Amendment solely guarantees the right to *informational* privacy, clarifying language stating this does not create a right to abortion must be added.

***S.B. 0664 would impede the State's ability to act in furtherance of its legitimate interest recognized in Roe and its progeny.***

S.B. 0664 would impede Maryland's ability to act on its legitimate interests in protecting both life and maternal health. By preventing any regulation of the abortion process unless there is "a showing of a compelling state interest," this Amendment would reject the Supreme Court's supposition in *Roe* that "a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life."<sup>1</sup> In *Planned Parenthood v. Casey*, the Court asserted that "it is a constitutional liberty of the woman to have some freedom to terminate her pregnancy. . . . The woman's liberty is not so unlimited, however, that from the outset [of pregnancy] the State cannot show its concern."<sup>2</sup> In both *Casey* and *Gonzales v. Carhart*, the Court continued to affirm its "essential holding" that states have "legitimate interests from the outset of the pregnancy in protecting the health of the woman."<sup>3</sup> Again the Supreme Court reiterated in *Whole Woman's Health v. Hellerstedt* that the "State has a legitimate interest in seeing to it that abortion, like any medical procedure, is performed

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<sup>1</sup> *Roe v. Wade*, 410 U.S. 113, 154 (1973).

<sup>2</sup> *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 869 (1992).

<sup>3</sup> *Id.* at 846; *see also Gonzales v. Carhart*, 550 U.S. 124, 145 (2007).

under circumstances that insure maximum safety for the patient.”<sup>4</sup> S.B. 0664 would ignore the State’s rights and interests that have been repeatedly recognized in *Roe*, *Casey*, and *Hellerstedt*.

***S.B. 0664 would take power from the people’s hands to implement commonsense laws.***

The U.S. Supreme Court has upheld restrictions on the provision of abortion due to the state’s legitimate interest in protecting life and provisions to ensure the informed consent and health of the woman on whose child the abortion will be performed.<sup>5</sup> This Amendment would go against Maryland’s legitimate interests by establishing an extremely high bar for commonsense protections for women and children’s health, which could include informing the woman on the nature of the abortion procedure, informing her on the risks associated with the particular abortion procedure, and protecting women from coercion to abort. The Amendment would also prevent protections against sex-selective abortion and abortion based on genetic anomalies such as Down syndrome.

S.B. 0664 could also result in the prohibition of any type of regulation—including commonsense health and safety measures—of abortion providers or facilities because they could be considered a restriction on the practice of abortion. Legalized abortion has not eliminated substandard medical care, kept people without medical licenses from performing abortions, ensured competent post-abortive care, or prevented women from dying from unsafe abortions, and this Amendment engenders a regulatory regime akin to the one in Pennsylvania that allowed the infamous abortionist Kermit Gosnell to operate his “House of Horrors” for decades. Gosnell, ultimately convicted of involuntary manslaughter, was able to perform unsafe, unsanitary, and deadly abortions for many years because, according to the Grand Jury report, the Pennsylvania Department of Health thought it could not inspect or regulate abortion clinics because that would interfere with access to abortion.<sup>6</sup> By lowering professional accountability, abortion facilities in Maryland will be free to operate without regulation and oversight, to the detriment of women and young girls.<sup>7</sup> By passing this Amendment, Maryland will turn a blind eye to unsafe abortion practices by abdicating its proper duty to protect women.

This concern is not merely a theoretical one. We have seen this very scenario play out in Florida. In 1980, Florida voted to amend the state constitution to include the right to privacy, that “[e]very natural person has the right to be let alone and free from governmental intrusion into his private life.”<sup>8</sup> The Florida Supreme Court stated the amendment “expressly and succinctly provides for a strong right of privacy not found in the United States Constitution,” and so “it can only be concluded that the right is

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<sup>4</sup> 790 F.3d 563 (2016) (quoting *Roe*, 410 U.S. at 150).

<sup>5</sup> See *Casey*, 505 U.S. 833 (1992).

<sup>6</sup> See, e.g., Conor Friedersdorf, *Why Dr. Kermit Gosnell’s Trial Should Be a Front-Page Story*, Atlantic (Apr. 12, 2013), <https://www.theatlantic.com/national/archive/2013/04/why-dr-kermit-gosnells-trial-should-be-a-front-page-story/274944/> (discussing the case of Kermit Gosnell).

<sup>7</sup> See, e.g., Ams. United for Life, *Unsafe* (2d ed. 2018) (report documenting unsafe practices of abortion providers and harm to women’s health and safety).

<sup>8</sup> Art. I, SS 23, Fla. Const.

much broader in scope than that of the Federal Constitution.”<sup>9</sup> “In other words, the amendment embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal Constitution.”<sup>10</sup> As a result, the Florida Supreme Court found that the “privacy provision is clearly implicated in a woman's decision of whether or not to continue her pregnancy” and struck down a commonsense parental consent law that ensured minor girls were not alone when contemplating having an abortion.<sup>11</sup> If the Amendment is truly just an effort to protect *informational* privacy, rather than some nebulous concept of “privacy” that sweeps in everything from Internet data to abortion, a clarifying section must be added to prevent the same thing from happening in Maryland.<sup>12</sup>

Maryland legislators cannot afford to abdicate their responsibility to protect the health and safety of their constituents in the future. Already, the Maryland Department of Health lists dozens of health and safety violations across the state on a website dedicated to publishing abortion facility deficiency reports.<sup>13</sup> These abysmal facilities will only get worse if Maryland laws allows them to operate unchecked.

***S.B. 0664 should be rejected by this Committee.***

Ultimately, the Amendment would reject what the Supreme Court acknowledged, that “the medical, emotional, and psychological consequences of an abortion are serious and can be lasting.”<sup>14</sup> This Committee must reject S.B. 0664 so that Maryland continue to further its important state interests in preserving human life and protecting women’s health.

Sincerely,



Catherine Glenn Foster, M.A., J.D.  
President & CEO  
Americans United for Life

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<sup>9</sup> *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985).

<sup>10</sup> *In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989).

<sup>11</sup> *Id.* at 1193.

<sup>12</sup> S. B. 0664 already includes language stating, “the right to privacy does not prohibit the state from regulating the sale or purchase of a firearm or ammunition,” so language clarifying this does not meant to guarantee a right to abortion can easily be added.

<sup>13</sup> See attachment for a summary of the most frequent health and safety violations committed in Maryland abortion facilities. Md. Dep't of Health, *Surgical Abortion Facility Surveys*, <https://health.maryland.gov/ohcq/ac/Pages/Surgical-Abortion-Facility-Surveys.aspx> (last visited Mar. 9, 2020).

<sup>14</sup> *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

# Hayden\_unf\_SB664

Uploaded by: HAYDEN,RN, MARIA

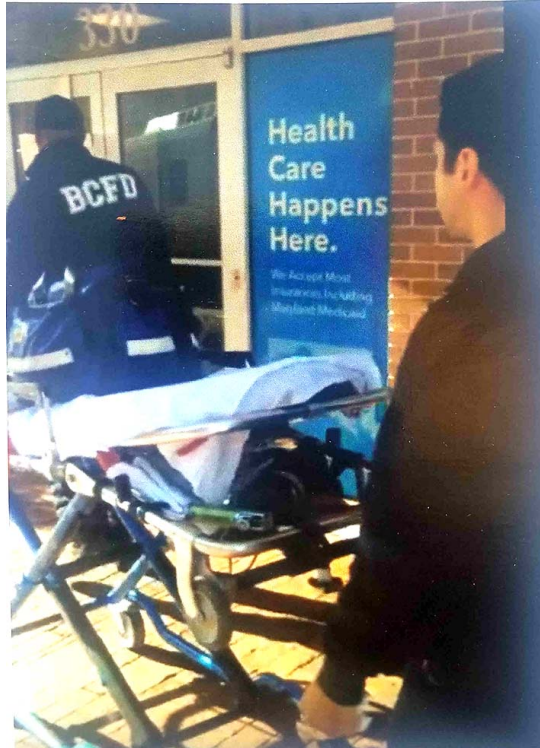
Position: UNF

## Written Testimony - SB664 Declaration of Rights – Right to Privacy

Maria Hayden BSN RN VA-BC, Howard County Right to Life

8331 Old Frederick Rd., Ellicott City, MD 21043

Oppose



Ambulance arrives at Planned Parenthood

My name is Maria Hayden, I am a resident of Ellicott City and a nurse of 34 years.

This proposed amendment is precariously vague. It does not define its application or purpose and its overreaching nature should arouse concern. I am not aware of a huge outcry from Marylanders protesting “We need more privacy!” No. “Privacy” is legal code for abortion. We know the intention of this bill is to encompass and blanketly permit the practice of abortion in the Maryland Constitution. I fear SB664 will be harmful to women – it will not protect women but leave them vulnerable to abuse.

The danger of this amendment is that it will not adorn abortion to be an epitome of freedom, but it would rather encrust it in immovable law. The procedure could not be governed to provide regulation in the time and type of procedure, the

location, the practitioner, the medications, the licensing, the tests, the information dispersed. No, under the guise of privacy, a woman's rights to safety and information would be erased.

This so-called right to privacy is not defined anywhere in our nation's constitution. In the Roe v. Wade decision the Supreme Court, while intimating a right to privacy from the 14<sup>th</sup> Amendment, did specify that **privacy is not absolute**- that it must quote: **"be balanced against the government's interests in protecting the woman's health and protecting prenatal life."**

78% of Americans want abortion regulated in some way. This amendment would eliminate that possibility. It would take away your power, our elected Maryland officials, and prevent you from performing your duty to protect your constituents by regulating or deregulating the procedure of abortion. As science changes, as social, economic or legal issues arise, the people of Maryland deserve to have legislators who are allowed to shape the laws that govern one of the most common and significant procedures done on women in our state.

In the facility where I work, informed consent must be obtained for any invasive, special or surgical procedure. As a Vascular Access Specialist, I am required to ensure that there is full understanding of the health condition, treatment options, and the material risks and benefits before I begin a procedure. And I'm only inserting a catheter into a vein, not administering anesthesia or performing surgery. The majority of my time may be spent speaking to patients because this matter of patients' rights is so important. Should I proceed without an informed consent and there is a complication, I could be sued for battery.

Women seeking abortion deserve these same rights. Presently, women are not informed about the risks of abortion which include: hemorrhage, infection, pelvic inflammatory disease, uterine perforation, infertility, hysterectomy, future miscarriage. Nor are they told that post-abortive women have higher incidence of eating disorders, depression, drug and alcohol abuse, and suicide. Women are harmed by abortion. The photo at the beginning of this testimony shows Baltimore City Fire Department paramedics wheeling a gurney into the Baltimore City Planned Parenthood to a woman suffering a hemorrhage after an abortion. The ambulance ran "hot" to the facility, meaning it used lights and sirens due to the severity of the call. This is not an isolated, but a periodic



occurrence. Hemorrhaging is a life-threatening condition that is the most common abortion complication for which ambulances are called.

What if risks became even more critical— if a new abortion method were devised, performed by unqualified practitioners, and was wrought with frequent grave complications and death? If SB664 were in place atrocities like this couldn't be reported, couldn't be regulated, and women would not be required to be informed about it. What if there were a startling rise in human trafficking with women being forced into dangerous procedures. Do we want this to be private? The danger of coercion is obvious. How many illegal abortions and other crimes could be concealed under the cloak of privacy?

SB664 deceptively uses the euphemism of privacy when it would really leave women defenseless. Instead of empowering women, this amendment would diminish their dignity and disentitle them to the right to be informed, the only way can they be truly free to make a choice.

# **Geary Higgins\_UNF\_SB664**

Uploaded by: Higgins, Geary

Position: UNF

Dear Senator Lee,

I was born Baltimore and raised in Montgomery County, Maryland and I currently live across the river in Loudoun County, Virginia. I have been a public servant in Loudoun for 12 years, four as a School Board Member and eight on the Board of Supervisors. My most recent term on the Board of Supervisor expired in January.

I do not support your SB 664 for a constitutional amendment!

It is very troubling to me that the same people who claimed they wanted abortion to be "safe, legal and rare", now demand no education, no sonograms, no waiting period, no safety regulation, no ambulatory requirements and don't even want to require that doctors perform the medical procedure. And they claim to support "woman's rights"? They claim they wanted to "end back alley abortions", but with no safeguards, no doctor and a "right to privacy... to live free from intrusions" you are bringing the "back alley abortions" right on to main street. Not to mention the fact that every abortion leads to the death of an innocent child.

Unfettered abortion is not about women's rights and it is certainly not about the innocent child, it is about the money for your friends in Planned Parenthood.

If abortion was a legitimate constitutional right, as you maintain, your bill is unnecessary. Legitimate constitutional rights cannot be created or taken away by the courts.

How could the author of the words, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" and the others that signed the Declaration of Independence possibly have written a right to abortion into the US Constitution?

Sincerely,  
Geary Higgins

The Honorable  
Geary M. Higgins  
Waterford, VA

# **Maryland Catholic Conference\_UNF\_SB664**

Uploaded by: KRASKA, JENNY

Position: UNF



ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

**March 11, 2020**

**Senate Bill 664**

**Declaration of Rights – Right to Privacy**

**Senate Judicial Proceedings Committee**

**Position: OPPOSE**

The Maryland Catholic Conference represents the mutual public-policy interests of the three (arch)dioceses serving Maryland, including the Archdiocese of Baltimore, the Archdiocese of Washington, and the Diocese of Wilmington. We offer this testimony in opposition to Senate Bill 664.

SB 664 would enshrine in our State Constitution a broad “right to privacy.” Although the MCC has been assured by the Sponsor of this legislation that the sole intent of this constitutional amendment is to provide for privacy in the area of unauthorized collection of data, we are very concerned that the constitutional amendment as written would go far beyond privacy in regards to data collection and would instead be interpreted to enshrine a right to abortion in our State Constitution.

Both case law (*Roe v. Wade*) and the privacy rights outlined in other state constitutions give rise to our concern with Senate Bill 664. In *Roe v. Wade* the United States Supreme Court relied on precedent in *Griswold v. Connecticut (1965)* that a broad “right to privacy” could be crafted from “penumbras, formed by emanations.” The court then extended that right to privacy to include the right to abortion and overrode state definitions of human life in the process. In States, such as Florida, the broad privacy rights in their state constitution have been used to strike down several laws restricting abortions.

If the true intent of SB 664 is to create a right to privacy regarding the unauthorized collection of data then we would respectfully offer the following amendments, any of which, that would alleviate our concerns:

**Amendment 1 - On page one, line 22, strike "." On page one, lines 23-4, strike "(B) THE RIGHT TO PRIVACY INCLUDES THE RIGHT OF AN INDIVIDUAL TO LIVE FREE FROM INTRUSION"**

21 (A) THAT EACH INDIVIDUAL HAS A NATURAL, ESSENTIAL, AND INHERENT  
22 RIGHT TO PRIVACY THAT GUARANTEES FREEDOM FROM GOVERNMENT INTRUSION.  
23 ~~(B) THE RIGHT TO PRIVACY INCLUDES THE RIGHT OF AN INDIVIDUAL TO~~  
24 ~~LIVE FREE FROM INTRUSION~~ CAUSED BY OR DIRECTLY TRACEABLE TO THE  
1 UNAUTHORIZED COLLECTION OF DATA CONCERNING THE INDIVIDUAL BY ANOTHER.

**Alternate Amendment 1 - On page one, lines 22-23, strike "PRIVACY THAT GUARANTEES FREEDOM FROM GOVERNMENT INTRUSION. (B) THE RIGHT TO PRIVACY INCLUDES THE RIGHT OF AN INDIVIDUAL TO"**

21 (A) THAT EACH INDIVIDUAL HAS A NATURAL, ESSENTIAL, AND INHERENT  
22 RIGHT TO ~~PRIVACY THAT GUARANTEES FREEDOM FROM GOVERNMENT INTRUSION.~~  
23 ~~(B) THE RIGHT TO PRIVACY INCLUDES THE RIGHT OF AN INDIVIDUAL TO~~  
24 LIVE FREE FROM INTRUSION CAUSED BY OR DIRECTLY TRACEABLE TO THE  
1 UNAUTHORIZED COLLECTION OF DATA CONCERNING THE INDIVIDUAL BY ANOTHER.

**Amendment 2 - On page one strike lines 21-22**

~~21 (A) THAT EACH INDIVIDUAL HAS A NATURAL, ESSENTIAL, AND INHERENT  
22 RIGHT TO PRIVACY THAT GUARANTEES FREEDOM FROM GOVERNMENT INTRUSION.~~

For these reasons we respectfully ask for an unfavorable report on Senate Bill 664.

## **Mansfield\_unf\_SB664**

Uploaded by: Mansfield, Leslie

Position: UNF

Bill: SB664 Declaration of Rights - Right to Privacy

Name: Leslie Mansfield

Organization: Individual

Position: Opposed

Thank you for accepting written testimony in opposition to SB664. While on the surface, this bill appears to protect individuals from “intrusion caused by or directly traceable to the unauthorized collection of data concerning the individual by another,” it follows on the heels of the 2020 effort by Delegate Busch to introduce his Declaration of Rights – Right of Bodily Integrity and Privacy amendment.

As a Marylander, who opposed Delegate Busch’s effort, I was following the submission of legislation to see if another “bodily integrity” bill would be introduced. As it was not submitted, I became interested in knowing more about this bill, SB664. And, in talking with a member of Senator Lee’s staff, I was told that she was concerned about third party use of personal data. While I do not want to appear to call into question her concern, there is precedent for bills such as this to unknowingly protect abortion from being regulated as has happened in other states.

It is clear that Senator Lee and this committee are concerned about consumer data protection. To address this concern, it appears that this type of legislation has been proposed in the past here in Maryland. In 2019, HB141, HB901, SB490 and SB613 were all proposed to address this issue. SB613, titled Online Consumer Protection Act, was sponsored by Senator Lee and this year she has now sponsored SB957. In her testimony on February 9, 2020, before the Finance Committee, she pointed out that the bill provides “five basic rights in a digital landscape.” But, she goes on to say that, “Privacy is a complicated subject, but I hope the opposition will not muddy the waters.” One of the experts testifying points out that the bill gives individuals the “right to say ‘no’ to certain disclosures of it [their personal data]” and “the right to delete information.”

Given these efforts, it would appear that SB644 would then not be necessary to protect Marylanders from data collection and sharing; however, staff has indicated that SB644 addresses government intrusion which is not covered in SB957. If that is the issue, then it seems reasonable that a bill similar to SB957 could be written to provide the same “five basic rights in a digital landscape” that Senator Lee addressed in her testimony February 9, 2020. If we are to lay SB957 side-by-side with SB644, it does not seem that the same detailed procedures are being outlined for our protection against government or public entity data collection. Admittedly, it then raises a concern for me that *this bill is not as it appears*. The broad language and move toward a constitutional right, could possibly have great unintended consequences.

I am a regular Maryland resident with no background in law whatsoever, but I attempted to look at abortion regulations in other states which have provided privacy rights in the state constitution and whether or not there was a correlation between that amendment and abortion rights. It appears to have started in California prior to the passage of *Roe v. Wade*. “Also in 1972, only a few months before *Roe v. Wade* was decided, California voters added the right of ‘privacy’ to the California Constitution by



voter initiative. By the time Roe v. Wade was decided by the U.S. Supreme Court in 1973, the right to abortion was firmly established under California law.” Further, “In 1981, the California Supreme Court struck down state funding restrictions on abortion in California’s Medi-Cal program, recognizing that the right of privacy in the state constitution was broader than the federal right. In 1997, the California Supreme Court struck down California’s parental consent law, finding the law violated the right of privacy in the state constitution. Over the years, California voters have repeatedly rejected attempts to amend the California Constitution to require parental consent or notification for abortion.” These statements are from “Abortion in California: A Medical-Legal Handbook.”  
<http://californiaabortionlaw.com/wp/wp-content/uploads/2012/03/AIC-Handbook1.pdf>

I very respectfully request that this committee oppose SB644. At a minimum, I would very respectfully request that the sponsor address the concern that this bill may be a broader attempt to prevent real open, honest, transparent discuss of abortion in Maryland.

“Congress and the states have enacted laws to protect individuals' privacy in various specific areas, such as medical and financial records, and courts have determined a right to privacy in certain areas. State constitutions also have provided for an expanded scope of privacy protections than are provided by federal law.” <https://www.ncsl.org/research/telecommunications-and-information-technology/privacy-protections-in-state-constitutions.aspx>

Please ensure that SB644 is not an effort to present last year’s “bodily integrity” bill under a different name and with a different approach – one which may leave Marylanders blind-sided.

Very respectfully submitted,

Leslie Mansfield  
7611 Yale Court  
Frederick, MD 21702  
(301)471-6114

## **Marshall\_unf\_SB664**

Uploaded by: Marshall, Robert

Position: UNF

Honorable Robert Marshall - Virginia House of Delegates (Jan. 1992-Jan. 2018)

Before the Maryland Senate Judicial Proceedings Committee, March 11, 2020

on behalf of the Hosea Initiative

Senate Bill 664 -- Privacy Amendment, Maryland Constitution

Mr. Chairman, Vice Chairman, and committee members, thank you for allowing my testimony today. I grew up in Maryland attended public and private schools and have relatives in the Free State.

SB 664 would add a right of privacy for individuals in Maryland's Constitution ostensibly subject to a "compelling state interest" test.

Such a right is not a supplement to or merely the back side or inverse of what the Fifth Amendment to the Constitution asserts, namely, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ..."

The right intended to be established by SB 664 suffers from the same vagueness as the Judge created "privacy" status discovered by Justice Douglas in the 1964 Planned Parenthood Birth Control case of *Griswold v. Connecticut*, "the First Amendment has a penumbra where privacy is protected from governmental intrusion ... cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."

Other than a limit in SB 664 relating to a privacy claim relating to firearms and ammunition, there are no parameters to the manifold privacy claims that could be proffered by "individuals" if SB 664 were made part of Maryland's Constitution.

First, why is the term "individuals" used instead of persons? The architect of the Judge created right to privacy, Justice Douglas suggested in his *Sierra Club v. Morton* (1972) dissent that trees and other inanimate objects of Nature be given standing to sue. Would the term "individuals" be similarly used under SB 664?

Second, there is no minimum age for declaring the right to privacy to be applicable. Will seven year olds have a “claim” to sex change surgery or drugs?

A “right to privacy” clearly will be used as a defense against criminal prosecutions for “hard” and “soft” drug use, sex between minors and adults, sex between humans and animals, the production of sexually explicit materials between adults and between minors and adults and other behaviors now prohibited by criminal law.

The reference to “data” in the preamble for SB 664 will be used as a defense against Maryland’s Sex Offender Registry, as well as requirements for job history or criminal record history in public and private employment including day care and schools, school records, driving records and more.

To say that these matters would be covered by the “compelling interest” clause is to acknowledge that endless litigation would proceed from SB 664 based on slight alterations of subsequent privacy claims.

Could a disclosure of a child’s grades on a report card be the basis for civil or even criminal litigation of invasion of privacy suits? Would parents have a right to see their child’s report card?

The privacy right in the past has been closely associated with sexual matters starting with birth control and then applied to legalizing abortion.

The immediate concerns of the Hosea Initiative are directed at the Right to Life. The assertion of a “right to privacy” proposed in SB 664 would provide a legal basis in the Maryland Constitution for abortion and tax funding of abortion should the US Supreme Court reverse the *Roe* decision.

*Roe v. Wade* affirmed a right to abortion based on the application of the so-called privacy right affirmed in *Griswold*.

The recent efforts attempting to secure the purported ratification of the long thought dead Equal Rights Amendment are largely predicated on apprehensions that the Trump Administration will appoint a sufficient number of judges to the US Supreme Court and

other federal courts to reverse the central holding in *Roe* and push the criminalization of abortion back to the states.

At the June 2018 shadow hearings, Congressman Jerrold Nadler (D-NY) made clear his concerns for resurrecting the ERA have much to do with issues besides equal rights. He noted that, “We cannot trust the Supreme Court not to go back ... what the Supreme Court giveth, the Supreme Court can taketh away ... we are worried now that another Supreme Court nominee ... might overturn *Roe v. Wade* ...”<sup>i</sup>

The contentious and tawdry fight over President Trump’s Supreme Court nominee, Brett Kavanaugh, has shown that the Constitution itself does not support abortion. The Justices themselves legalized abortion in *Roe v. Wade*. The Constitution did not establish such a right. Should Maryland approve a constitutional privacy amendment, the birth control and abortion related legislative and judicial history of the “privacy” right will give a pregnant female **of any age** in Maryland an unrestrained right to make decisions with respect to her “privacy” including abortion and abortion funding.

Scholars have long acknowledged that *Roe* was a weak prop for abortion.

Harvard’s Laurence Tribe (pro-*Roe* and ERA) has written: “One of the most curious things about *Roe* is that, behind its own verbal smokescreen, the substantive judgments on which it rests are nowhere to be found.” John Hart Ely, past Dean of Stanford Law School, stated that *Roe v. Wade* “is not constitutional law and gives almost no sense of an obligation to try to be. What is frightening about *Roe* is that this super-protected right is not inferable from the language of the Constitution ...”<sup>ii</sup>

Because legal abortion has no actual constitutional authority in the federal Constitution, abortionists in Maryland will need to secure a constitutional basis for abortion if *Roe* is reversed.

If protecting abortion IS NOT a goal of the privacy constitutional amendment then adding another exception to the one already in the SB 664 pertaining to firearms will do no harm.

Accordingly, I suggest adding the abortion neutral amendment to SB 644 as Congressman Sensenbrenner (R-WI) proposed to the reintroduced ERA in 1983. His amendment stated: “Nothing in this article shall be construed to grant or secure any right relating to abortion or the funding thereof.” (His amendment did not pass, and that led to the ERA’s rejection.)

Adding the abortion-neutral amendment to SB 664 would eliminate one area of contention that is certain to arise should SB 664 be proposed as an Amendment to the Maryland Constitution, but that would, of course, start other equally contentious controversies.

Approval of SB 664 by Members of the Maryland General Assembly would ensure that lawmakers would be questioned as to whether they even understand the full implications of adding SB 644 to Maryland’s Constitution. You would have to defend yourselves against many complaints of unrecognized, unintended or intended consequences.

There is an old adage in politics, that when you are explaining, you are losing.

Legislators who vote for such an open-ended constitutional proposal would have a lot of explaining to account for to voters, beginning with privacy protections for child porn and sex trafficking, child molesters, persons with reckless driving records operating school buses and other felons being hired by schools, and the list will get longer.

You can avoid these problems. Just vote NO to SB 664.

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<sup>i</sup> Representative Carolyn Malone, ERA Shadow Hearing, We are live # ERAnow, June 6, 2018, 2247 Rayburn House Office Building, Washington DC, 3-5 PM, <https://www.pscp.tv/w/1YpJkEkjMbYKj>

<sup>ii</sup> Senator Sam Brownback, comments, Senate Judiciary Committee Nomination Hearing, Judge Samuel Alito, January 9-13, 2006, 109<sup>th</sup> Congress, Second Session, Serial No. J-109-56, p. 464.

# **Stoney Creek Fishing and Hunting Club\_UNF\_SB664**

Uploaded by: Mathison, Theodore

Position: UNF

**Stoney Creek Fishing & Hunting Club**  
**9090 Ft. Smallwood Rd.**  
**Pasadena, MD 21122**

March 11, 2020

**SB 664: Declaration of Rights – Right to Privacy**  
**Oppose**

The Stoney Creek Fishing and Hunting Club (SCF&HC), which has some 300 members and has been in existence for over 70 years, **STRONGLY OPPOSES SB 664**.

We oppose the Bill because it denies a significant segment of Maryland citizens a right to privacy but grants this right to other citizens of the State. Secondly, the Bill violates Section 1, XIV Amendment of the U.S. Constitution.

SB 664 proposes amending the Maryland Declaration of Rights by adding a new Article 48. The proposed article would set forth:

- (A) That each individual has a natural, essential, and inherent right to privacy that guarantees freedom from government intrusion.
- (B) The right to privacy includes the right of an individual to live free from intrusion caused by or directly traceable to the unauthorized collection of data concerning the individual by another.
- (C) The right to privacy does not prohibit the State from regulating the sale or purchase of a firearm or ammunition. (Highlighting Added)
- (D) The right to privacy may not be infringed without a showing of a compelling State interest.
- (E) (1.) The General Assembly may protect the right to privacy through appropriate legislation.  
(2) The Governor may enforce the right to privacy through appropriate Executive Action.

We of the SCF&HC support the right of all Maryland citizens to the right of privacy. However, we are appalled by the proposed carve out of law abiding, legitimate firearms owners (Section C above) from this right. The State has regulated firearms and ammunition for decades, so why now must the authority to do so be spelled out in an amendment to the Maryland Declaration of Rights? The intent not to extend the right of privacy to firearms owners is patently obvious. We fear the intent of Section C of the amendment is to subject firearm owners to search and seizure actions without a warrant. If this is not the intent, then why is Section C included, as no other segments of Maryland's society are enumerated in the text?

SCF&HC was founded soon after the end of World War II in 1945. The Club was founded by a number of veterans of that war who wanted a place to practice and continue the competitive firearm skills they had learned in military service.



SB 664: Declaration of Rights – Right to Privacy  
Testimony of Stoney Creek Fishing and Hunting Club  
Oppose  
March 11, 2020  
Page 2

Today, the membership includes a number of military veterans, retirees, active law enforcement personnel, business owners, and professional people. It is a very diverse membership that includes a number of women all of whom enjoy the shooting sports.

The Club has supported the Maryland Department of the Environment Hunter Safety program for many years. We have trained over 4,000 adults and youngsters in the safe handling of firearms and how to hunt as respectful guardians of the outdoor environment. Yet, despite the service of these individuals to their Country, the State and communities, they are now being singled out and treated as though they are no longer citizens of the State. The intent of SB 6644 is shameful at best.

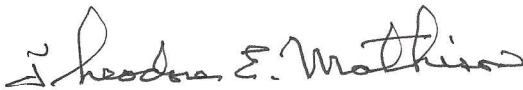
We oppose the Bill as well because it violates the XIV Amendment of the U.S. Constitution which states:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Clearly SB 664 with the carve out of firearms owners runs afoul of the XIV Amendment, in particular, the denial of the “equal protection” provision.

Again, we are appalled by the apparent attempt in SB 664 to deny a significant segment of Maryland’s citizens the rights afforded to all other citizens of the State.

We urge in the strongest terms that SB 664 receive an unfavorable report.



Theodore E. Mathison  
Ch, Legislative Committee,  
410-987-9591;  
Email: tem2@verizon.net

**Katie\_Novotny\_UNF\_SB664**

Uploaded by: Novotny, Katherine

Position: UNF

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*Written Testimony of Katie Novotny in Opposition of SB664*

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March 11, 2020

I am a member of Multiple Gun Rights organizations. Maryland Shall Issue, Associated Gun Clubs, Maryland State Rifle and Pistol Association, and the National Rifle Association. I am a certified Range Safety Officer with the NRA. I compete in multiple shooting events such as Steel Challenge, 3-gun, small bore, and vintage military rifle matches. I am an avid firearms collector. I oppose SB664.

This bill that wishes to create a “right to privacy” has one major glaring issue. The carve out for gun owners, excluding them from this “right to privacy” is blatantly unconstitutional. It violates the 14<sup>th</sup> Amendment’s Equal Protection Clause. The intent of this carve out is clear, to allow for future laws requiring invasion of privacy for gun owners. In fact, many of those bills have already been introduced this session. HB35 requiring the unconstitutional monitoring and tracking of a firearm owners lawfully owned property, SB816, requiring audio and video recording of citizens purchasing firearms lawfully. If any other lawful activity was inserted in place of “purchase of a firearm or ammunition”, everyone would be up in arms over how this was unacceptable. Instead, this state considers firearms owners second class citizens. *McDonald* established that the 2<sup>nd</sup> Amendment is not a second class right.

At the very least this bill needs Page 2, lines 2 and 3 struck out.

Because of these reasons above, I request an unfavorable report.

Katherine Novotny

District 7

443-617-7568

Katie.Novotny@hotmail.com

**O'Clock\_unf\_SB664**

Uploaded by: O'CLOCK, JAMES

Position: UNF

**Bill SB664 (Declaration of Rights – Right to Privacy)**  
**Commander James W. O’Clock, Retired**  
**Oppose**

I would first like to thank the hearing committee for this opportunity to speak today on SB664.

When one first reads the bill’s language it could be interpreted that this proposed constitutional amendment mainly focuses on such things as stopping government intrusion in such matters as unauthorized collection of certain data on Maryland citizens. Most voting members in our State would basically agree to an amendment that would protect us from government intrusion in our day to day lives. What’s disturbing about this bill is that there is very little explanation or expansion on what Senator Lee states in Article 48 (A) which says, “That each individual has the natural, essential, and inherent right to privacy that guarantees freedom from government intrusion.” The way the bill is written could easily sway voters to think they are agreeing to a new constitutional amendment that protects an individual’s right to privacy in matters dealing with information and regulations and not recognizing the fact that the proposed bill has a hidden agenda.

Regrettably, I see SB664 as a backdoor strategy to create a constitutional amendment that would basically make it legal to protect unrestricted abortion in Maryland. This type of legislation increases my mistrust in our state legislators when they do not present their bills with honesty and clarity. If this bill has nothing to do with the important issue of abortion, it should have been clearly stated in SB664, since the language highlights “right to privacy” and “freedom from government intrusion” verbiage which is noticeably linked to the wording of the Roe v Wade Supreme Court decision.

My wife Pirkko and I have been residents of Silver Spring for 21 years and believe abortion should be illegal except to save the life of the mother. We realize that many individuals in Maryland state government and the community support abortion. What needs to be understood is that many in the State of Maryland want abortion legal only under certain circumstances. We want to trust our legislators and they should not try to impose hidden agendas upon their constituents. This bill will anger many Marylanders for its deceptive tactics and it won’t be just those who are against abortion like my wife and I.

James W. and Pirkko K. O’Clock  
10 Aylesbury Court  
Silver Spring, MD 20905  
oclocks@verizon.net

**Kellogg\_unf\_SB664**

Uploaded by: Page, Paula

Position: UNF

March 11, 2019

Terri Kellogg for Hope Hoffman  
Regarding SB 664 "Right to Privacy"

As you consider Senate Bill 664, I would ask that you consider the story of my adopted daughter, Hope.

Hope's birthmother was 22 years old, going through a divorce, raising two children on her own, when she discovered she was pregnant.

She had a D & C abortion at 10 ½ weeks, and was told, of course, that it had been successful.

Time passed, and months later, she felt Hope kick in the womb. She was likely about 5 ½ months along when it was discovered that the abortion had failed. At this time, she didn't go through with another abortion, and she decided to place the baby for adoption.

Hope was born 8 weeks premature in 1991, weighing 3lbs 6 oz and fighting again for her life. Hope had a large injury to her head from the failed first trimester abortion, and in her medical records it is recorded as having the "appearance of an old wound."

The instrument used in the abortion had scraped her scalp and skull away leaving her brain exposed.

Hope is a miracle, she is an abortion survivor! Despite her many difficulties as a result of the failed abortion, despite the 24 hour care she required due to cerebral palsy and epilepsy, among other health issues, she is full of life. She is more than a choice, she is our daughter. And she deserved life and timely medical care after her survival.

Behind the words privacy and choice there is a child. My child is Hope.

Sincerely,

Terri Kellogg  
Florida

**page\_unf\_SB664**

Uploaded by: Page, Paula

Position: UNF



March 11, 2019  
Maryland Senate  
SB 664

For the record my name is Paula J. Page and I live in Milton, NH.

I may not be here today if there weren't skilled doctors & nurses who were able to care for a 3 pound 1 ounce baby girl born February 24th, 1954 after a failed instrument abortion. I was that baby girl, born two months early and wasn't much longer than my father's hand, in fact, his wedding ring fit on my wrist like a bracelet. I had a sister born 2 years before me that didn't live to 24 hours because she was also born early and a little smaller than me.

CONCLUSIONS:

If not for the grace of God and the medical care I received 65 years ago, I wouldn't be alive to make a difference in this world today. My husband and I also suffered through the heartbreak of 4 miscarriages before being blessed with 4 children, three of whom were born early. The doctors and nurses were there to care for each of my babies and give me direction and support that I was grateful for.

If I wasn't alive:

My life long friend of 61 years would never have met me.

If I wasn't alive:

My brothers wouldn't have had a sister.

If I wasn't alive:

There would have been one missing at my HS graduation in 1973.

If I wasn't alive:

My husband wouldn't be the happy man that he is.

If I weren't alive:

There wouldn't be 4 beautiful children born that I'm very proud of. Each are hardworking members of Society that are making a difference in this world.

\* My oldest daughter an RN, military wife, & mother of two boys 15 & 17.

\*My oldest son, dialysis tech/phlebotomist, attending nursing school & dad of a 4 year old boy & 2 year old girl.

\*My youngest son a Journeyman electrician and father of five children, 3 girls 16,14,8, and 2 sons 7,4

\* Youngest daughter, business owner and mother of two, a son 14 & daughter 12.

If I weren't alive:

Who would have cared for our parents in their late senior years? They both avoided the nursing home because I was alive. My brothers couldn't, one lived too far away, and the other was raising his family.

I'm grateful God had His hand on my life before I was born. He knows the purpose for my life.

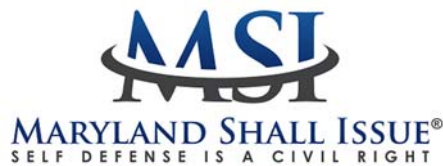
As you consider this bill, please consider the impact of each life, impacted by abortion. Please think of me, my four children and 11 grandchildren.

Respectfully submitted,  
Paula J. Page

# **Pennak\_President\_MSI\_UNF\_SB664**

Uploaded by: Pennak, Mark

Position: UNF



March 11, 2020

## **WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 664**

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of Maryland and of the Bar of the District of Columbia. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland firearms law, federal firearms law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License (“HQL”) and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home and in muzzle loader. I appear today as President of MSI in OPPOSITION to SB 664.

### **This Bill:**

This bill proposes an amendment to the Maryland Constitution to create a new State constitutional right of privacy in a new Article 48. The bill provides:

**(A) THAT EACH INDIVIDUAL HAS A NATURAL, ESSENTIAL, AND INHERENT RIGHT TO PRIVACY THAT GUARANTEES FREEDOM FROM GOVERNMENT INTRUSION.**

**(B) THE RIGHT TO PRIVACY INCLUDES THE RIGHT OF AN INDIVIDUAL TO LIVE FREE FROM INTRUSION CAUSED BY OR DIRECTLY TRACEABLE TO THE UNAUTHORIZED COLLECTION OF DATA CONCERNING THE INDIVIDUAL BY ANOTHER.**

**(C) THE RIGHT TO PRIVACY DOES NOT PROHIBIT THE STATE FROM REGULATING THE SALE OR PURCHASE OF A FIREARM OR AMMUNITION.**

**(D) THE RIGHT TO PRIVACY MAY NOT BE INFRINGED WITHOUT A SHOWING OF A COMPELLING STATE INTEREST.**

**(E)(1) THE GENERAL ASSEMBLY MAY PROTECT THE RIGHT TO PRIVACY THROUGH APPROPRIATE LEGISLATION. (2) THE GOVERNOR MAY ENFORCE THE RIGHT TO PRIVACY THROUGH APPROPRIATE EXECUTIVE ACTION.**

## The Bill Is Unconstitutional In Its Carve-Out of Gun Owners From The Right of Privacy.

The “right to privacy” created by this bill would recognize the right of persons to a “right to privacy that guarantees freedom from government intrusion” and protect the right of individuals “to live free of intrusion” that would arise from the “unauthorized collection of data by another.” The scope of this new right of privacy is, of course, quite unclear. But, no matter unclear in other respects, one thing is clear: this right would not apply to gun owners as it provides that this right of privacy “does not prohibit the state from regulating the sale or purchase of a firearm or ammunition.” Thus, as long as the State can justify its governmental “intrusion” and “data collection” as a regulation of “the sale or purchase of a firearm or ammunition” the right to privacy created by the bill would not exist. Under this bill, gun owners, alone of all the citizens in Maryland, are carved out as a special class of citizens who are not protected by this new right of privacy. This carve-out is nothing short of outrageous. It is also blatantly unconstitutional under the 14th Amendment.

The Equal Protection Clause of the 14th Amendment to the Constitution provides that “no State” may “deny to any person within its jurisdiction the equal protection of the laws.” The Equal Protection Clause prohibits states from creating unreasonable, arbitrary, and invidious classifications. In particular, the State violates this Clause if the law employs suspect classification *or significantly burdens a fundamental right*. See *Pennell v. City of San Jose*, 485 U.S. 1, 14 (1988). The courts “apply strict scrutiny under the Equal Protection Clause where \* \* \* the challenged action interferes with a fundamental right.” *Jesus Christ Is the Answer Ministries, Inc. v. Baltimore County, Maryland*, 915 F.3d 256, 265 (4th Cir. 2019). Under that test, the “government decision fails strict scrutiny if it is not narrowly tailored to advance a compelling state interest.” *Id.*, citing *Bostic v. Schaefer*, 760 F.3d 352, 375 (4th Cir. 2014) (citing *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978)).

Here, the Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that all law-abiding, responsible citizens have a constitutional right protected by the Second Amendment to own and use firearms for self-defense. In *McDonald v. City of Chicago*, 561 U.S. 742, 767-68 (2010), the Supreme Court applied *Heller* to the States, holding that “[a] survey of the contemporaneous history also demonstrates clearly that the Fourteenth Amendment's Framers and ratifiers counted the right to keep and bear arms **among those fundamental rights necessary to the Nation's system of ordered liberty.**” (Emphasis added). The right to own and acquire firearms is no less fundamental than the right to privacy, including the right to marry recognized in *Obergefell v. Hodges*, 135 S.Ct. 2584, 2604-05 (2015) (holding that state laws regulating marriage are “invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples”), and the right to privacy addressed by the Supreme Court in other contexts. See, e.g., *Griswold v. Connecticut*, 381 U.S. 478 (1965) (birth control law); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (contraceptives).

Certainly gun owners have an abiding interest in their personal information and their privacy. See *Ferguson v. City of Charleston*, 186 F.3d 469, 482 (4th Cir. 1999), *rev'd on other grounds* 532 U.S. 67 (2001) (recognizing that an individual's constitutional right to privacy may be implicated when a public official discloses “information that touch[es] on rights that are fundamental or implicit in the concept of ordered liberty.” Gun owners, no less than any other law-abiding persons are entitled to protection from “the unauthorized collection of

data concerning the individual by another.” Gun owners, no less than anyone else, are entitled to the “natural, essential, and inherent right to privacy that guarantees freedom from government intrusion.” See *Whalen v. Roe*, 429 U.S. 589, 599 & n.25 (1977) (recognizing that individuals possess a constitutional “interest in avoiding disclosure of personal matters”). That is especially true where the disclosures of information touch on rights that “are fundamental or implicit in the concept of ordered liberty.” *Paul v. Davis*, 424 U.S. 693, 713 (1976). As *McDonald* holds, the fundamental right to keep and bear arms protected by the Second Amendment is “implicit in the concept of ordered liberty.”

In short, excluding gun owners from this newly minted State right of privacy is a violation of the Equal Protection Clause because it facially accords persons who have purchased “a firearm or ammunition” disfavored treatment. Such a “purchase” is part and parcel of the Second Amendment right. See *Dearth v. Holder*, 641 F.3d 499, 502 (D.C. Cir. 2011); *Teixeira v. City of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (en banc). See also *Ass’n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014) (“[T]he right to keep and bear arms for self-defense under the Second Amendment . . . must also include the right to *acquire* a firearm.”) (emphasis in original). Cf. *United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010) (“If there were somehow a categorical exception for [commercial] restrictions, it would follow that there would be no constitutional defect in prohibiting the commercial sale of firearms. Such a result would be untenable under *Heller*.”). The State has no “compelling interest” in facially excluding all gun owners from the right of privacy. Certainly there is nothing “narrowly tailored” associated with such a facial exclusion. The bill would thus fail strict scrutiny.

Stated differently, the State is not empowered to pick and choose fundamental constitutional rights that it will respect and those to which the State will ignore or accord second-class treatment. As the Supreme Court stated in *McDonald*, the Second Amendment is not a “second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause.” *McDonald*, 561 U.S. at 799. See also *Caplin & Drysdale v. United States*, 491 U.S. 617, 628 (2012) (“there is no such distinction between, or hierarchy among, constitutional rights”). The bill, as written, will not survive judicial review should it become part of the Maryland Constitution. We urge an unfavorable report.

Sincerely,



Mark W. Pennak  
President, Maryland Shall Issue, Inc.  
mpennak@marylandshallissue.org

**Peterson\_unf\_ SB664**

Uploaded by: Peterson, Analeta

Position: UNF

03/04/2020

Dr. Analeta Peterson MD, FACOG

SB 664: Opposed

Dear Maryland Legislators ,

As an Ob/Gyn at a local community hospital I witness the tragedies of abortion on a regular basis.

Whether it's the unfortunate discussion about a woman's inability to carry a desired pregnancy to term, related to multiple D&C procedures for abortions she's had in the past; the regret that women face after making this decision; the frequent ER and doctor office visits they need for minor post-abortion complications that the abortion clinic does not handle; or the emergent hospitalization and operations required for serious, life threatening complications from an abortion.

If the Ob/Gyns of this country would write a book of the many serious and life threatening complications of abortions, I'm certain many people would have a better understanding of how unsafe these procedures can be.

Last year, I helped take care of two women who nearly lost their lives after second trimester abortions in outpatient clinics. The first patient came to my ER after an abortion at a nearby clinic. She apparently was told that her procedure went well. Later, she woke up in a pool of blood at her home. Her worried mother rushed her to the ER where she was beginning to show signs of instability.

Myself and a colleague rushed her to the operating room where we made a large incision on her abdomen to locate the source of her bleeding. We found a gaping hole in her uterus at the location of the uterine arteries and her fallopian tube on that side had been severed. There were also intact fetal parts remaining in her pelvis. We were able to stop the bleeding and save her uterus but she received a few units of blood in the operating room.

This patient was kept in the hospital for a week where she received treatment for a pelvic infection and severe anemia. When she was ready to leave the hospital, she was able to resume her daily functions but it was obvious that she had a long recovery ahead. I saw her again a few weeks later. She still had not completely recovered, but she reported that she was making progress.

The second patient I took care of also required emergent surgery to stop internal bleeding following a second trimester abortion. This woman's situation was much more grave. The abortion clinic sent her directly to the ER shortly after her procedure because they recognized something had gone



terribly wrong. When she arrived to the hospital, her blood pressure was critically low from the loss of blood. A surgical specialist was called in from out of town to save this woman's life. She required multiple units of blood transfusions as well. She too survived, but was left with emotional and physical scars.

These stories don't even take into account the additional costs and burden on the medical system and their families. And it's hard to believe that these women almost lost their lives and made orphans of their children, for an elective procedure.

These incidents are only two of a few serious complications that I helped to manage at my hospital. My department later decided to ask the local abortion clinic to transfer their patients to a larger hospital in the area. These complications will eventually lead to death or other irreversible medical conditions.

The doctors at the abortion clinic are trained Ob/Gyns. They are not unskilled or inexperienced. They have completed residency programs like all of us and are working within their scope of practice.

Abortions are simply dangerous. The outcomes cannot be predicted. As mentioned earlier, this letter only contains my personal experience. I see complications of abortions weekly. None of which are performed at my hospital. I can only imagine how many stories that could be added to mine by simply asking my colleagues about their experiences with complications from abortions. I also wonder how much we could potentially cut down on Maryland's maternal mortality statistics by simply eliminating abortion.

Analeta Peterson MD, FACOG

**Rison\_unf\_SB664**

Uploaded by: RISON, KATHLEEN

Position: UNF

Bill SB664

Kathleen Rison

Maryland Right to Life supporter

Position - Opposed

I'm from Charles County, Maryland and I am writing to share that I oppose SB664. It is an obvious matter to me that all individuals have an inherent right to privacy when it comes to personal choices such as what book to read or which store should earn my business. This right to privacy no longer applies when the life of another person is at stake. I'm sure you understand this concept because the bill mentions that it should not prohibit the State from regulating firearm/ammunition sales. I assume the reason for this sidenote is because you are aware of the possible consequences of irresponsible and immoral citizens being allowed to privately purchase firearms with ill intent. Another instance in which you forfeit your right to privacy is if you injure your infant child. Yes, the government can and should intrude at that point and serve justice for the inhumane treatment of another human being. If this applies to an infant at two-weeks old, it should also follow that this applies to an infant two-weeks from being born into the world. Nobody, not even a mother carrying her (and the baby's father's) own flesh and blood should be exempt from government intrusion when their decision may affect the life of another person. in a negative manner. Even if that small, vulnerable person whom is affected is still residing in the womb of his or her mother.

I am a mother to three living children, and I have lost two children before they were born. Those that I lost were real. They were tiny people, too fragile to survive on their own without me, but still worth protecting and valuing nonetheless. The "right to privacy" would allow irresponsible individuals to decide for themselves at any point of gestation, even up to 40-weeks, to end the life of that tiny person for no justifiable reason. I do not support this right, just as I do not support a parent abandoning their infant in a toilet or trashcan after being born. I do not support this right, just as I do not support an abusive spouse from punching and injuring their family members. Government intrusion is bad, as I mentioned when it comes to trivial personal decisions that do not affect anyone but ourselves. The government should not be able to dictate to me that television program I watch or which groceries to buy. But government intrusion is sometimes necessary to protect all of our citizens from potentially irresponsible actions by others who are too immoral to be trusted to make their own decision, or too ignorant to know the harm of their actions to others.

Kathleen Rison, Charles County, MD

**Roswell\_unf\_SB664**

Uploaded by: ROSWELL, JOHN

Position: UNF

John C. Roswell  
6357 Old Washington road  
Elkridge,MD.21075  
[johnroswell@msn.com](mailto:johnroswell@msn.com)  
3/11/2020

Reference: SB664

There is absolutely no need for this amendment,so why is it being proposed? The truth is that this is a piece of snake legislation that has been purposely written to disguise it's hidden agenda to protect abortion and abortionists. Both our State and United States Constitutions were written to protect and preserve life,not to desecrate and destroy it.

I as a Sidewalk Advocate For Life stand in front of the Baltimore planned parenthood 4 or 5 mornings a week on a weekly basis to offer help to those women who would rather accept help than face the consequences of abortion,but while I am there many women walking by me stop to speak about the harm that has been done to them by abortionists. I have also heard from women who have become pregnant because of having been raped. All who have spoken to me of this,are opposed to abortion. One of them spoke of how as a totally innocent and sexually inexperienced 15 year old she had been raped at gun point and several months later taken by her parents to an abortionist at planned parenthood,but though this occurred 45 years ago, she still mourns the loss of that aborted child! When women who have been raped say that abortion is wrong,how can it ever be right?

I frequently see women being abused and pressured into entering into the planned parenthood building. On one such occasion when I was there a couple was arguing outside that building entrance. The man slammed the women's head into the building's window and then followed her inside. The planned parenthood security guard ignored what had happened. In another case, a woman called the police to complain that her daughter was inside because a man had put a gun to her daughters head to force her to go to there for an abortion but planned parenthood would not allow her to talk to her daughter and at that point I saw both the security guard and the maintenance man barring her entry. I see women crying both before they enter and after they leave following an abortion, I also see women grimacing in pain,hardly able to walk,even falling in the street that have been abandoned once they step out the door of planned parenthood. This all happens because planned parenthood is more interested in it's bottom line than it's clients. The abortion industry is a callus business of contractual murder! Please do not desecrate our State Constitution by trying to protect the participants of this industry and

help them hide the horrendous nature of it's activities from public observance and knowledge. Please prevent SB664 from moving forward!

While you are considering this request to prevent the passage of SB664, I would like to point out why the right to privacy is errantly being used to protect the abortion industry. Because of the right to privacy, my home is my castle and no one may enter it without my permission but this right does not permit me to kill my children while they are within that domain especially not because at some point their presence there may just be an inconvenience to me,so the right to life supersedes the right to privacy. My right to privacy does not protect criminal activity as a properly processed search warrant will allow the proper authorities to enter someone's house and an arrest warrant also allows that. So the right to justice also supersedes the right to privacy. Eventually the courts may recognize and correct this current misconception as to the extent that the right of privacy exists, but in the meantime please do not use this misguided concept to protect,promote and exonerate the murder of innocent unborn children

John C. Roswell

# **SHARPLESS\_UNF\_SB664**

Uploaded by: Sharpless, Bradford

Position: UNF

**DATE:** March 11, 2020  
**BILL NO.:** Senate Bill 664  
**COMMITTEE:** Judicial Proceedings  
**TITLE:** *Declaration of Rights – Right to Privacy*  
**POSITION:** Oppose

Testimony from: Bradford V. Sharpless  
316 Townleigh Road  
Reisterstown, MD 21136  
[bvsharpless@hotmail.com](mailto:bvsharpless@hotmail.com)  
Registered Democrat, District 10

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SB 664, *Declaration of Rights – Right to Privacy*, seeks to amend the Maryland Constitution for the purposes of:

- 1) Explicitly, securing the State’s authority to infringe upon the citizens’ right to keep and bear arms.
- 2) Implicitly, enshrining the practice of abortion as a right that is nearly immune to State regulation.

In Maryland, it the right to keep and bear arms, not the right to abortion, that is under any realistic threat. Additionally, the bill’s benign title and its wording deliberately seek to misinform the citizen voter regarding the bill’s actual intentions and consequences. SB 664 is unnecessary, deceptive, and represents the worst sort of partisan political pandering.

I request an “unfavorable” vote on SB 664.



## **Shuping\_unf\_SB664**

Uploaded by: Shuping, Martha

Position: UNF

Name: Martha W. Shuping, M.D.  
Organization: Martha Shuping, M.D. (my own private practice of psychiatry)  
Address: 1400-B Millgate Drive, Winston-Salem, NC 27103  
Email: [martha.shuping@gmail.com](mailto:martha.shuping@gmail.com)  
Maryland SB664: Oppose.

I am writing in opposition to SB664. I am a former “abortion counselor” and now a psychiatrist who has been involved in the care of more than one thousand women who have suffered psychological distress related to past abortions. I am concerned that passage of this bill would be harmful to those women who are at risk for adverse psychological effects of abortion. This bill appears likely to shut down discussion of abortion, and shut down consideration of future legislation that could be beneficial to many women.

Carole Joffe is a former board member of the National Abortion Federation (NAF), making such substantive contributions to abortion advocacy that she received a lifetime achievement award from the NAF.<sup>1</sup> Joffe interviewed experienced abortion counselors in a 2013 article in *The American Journal of Public Health*.<sup>2</sup> Joffe says it was admittedly difficult for some of the counselors to acknowledge the ambivalence, if not anguish, of some patients” Joffe quotes abortion counselor Charlotte Taft who describes the experience of some abortion patients, for example, “...her heart is breaking...or she’s sobbing, or she says, ‘I think an abortion is killing my baby, but I have to have one anyway’” (p. 62).

Another abortion counselor interviewed by Joffe, Anne Baker, is also an NAF-approved author who was lead author on a chapter about abortion counseling in the current NAF textbook (a book that is apparently intended to set out “best practices” for abortion from the perspective of the abortion providers.<sup>3</sup> In the Joffe article (p. 60), Baker says, describing her abortion patients: “They would start talking about guilt, they would start crying, they would start talking about killing the baby...” These abortion patients sound like many of my own psychiatric patients after Their abortion – the tears, the guilt, missing their child. Obviously, the ones who are happy about their abortions don’t come to my office for help, but some whose anguish persisted, have come to me for help.

In the counseling chapter of the current NAF textbook (Baker & Beresford, 2009), the authors list a total of 18 different risk factors, which, if present, indicate that the woman has greater vulnerability to having adverse psychological reactions after her abortion. These risk factors are widely recognized by both pro-choice and pro-life authors and by apparently neutral

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<sup>1</sup> <https://www.ansirh.org/staff-members/carole-joffe>

<sup>2</sup> Joffe, C. (2013). The politicization of abortion and the evolution of abortion counseling. *American Journal of Public Health*, 103(1), 57-65.

<sup>3</sup> Baker, Anne, & Beresford, T. (2009). Chapter 5, Informed consent, patient education and counseling. In M. Paul, E. S. Lichtenberg, L. Borgatta, D. A. Grimes, P. G. Stubblefield, & M. D. Creinin (Eds.), *Management of unintended and abnormal pregnancy: Comprehensive abortion care*. Chichester, UK: Wiley-Blackwell.

researchers.<sup>4</sup> Some of the risk factors include having an abortion after one has already bonded or attached to the unborn child, a belief that abortion is killing a child, and ambivalence (having conflicting thoughts and feelings about the abortion as illustrated by Joffe, 2013). Even from these brief descriptions above, it seems clear from Joffe’s report, that some women *do* have abortions of wanted pregnancies, for example, the women described above who are crying and sobbing, the woman whose “heart is breaking.” The American Psychological Association (APA), in their 2008 report on abortion and mental health, acknowledge that aborting a *wanted* pregnancy can lead to distress,<sup>5</sup> also recognizing most of the same risk factors identified by Baker and Beresford.

Sadly, in one recent study (Sullins, 2019), approximately 18% of the women who obtained abortions stated that the pregnancy was wanted at the time of the abortion.<sup>6</sup> This study used data from the “Add Health” study, a longitudinal study in which the women had been followed from early adolescence into young adulthood over many years, with input and funding from more than twenty government agencies and private foundations. It is an excellent data set with complete data on reproductive history, mental health history and general health history. About 80% of the women were retained in the study over the years. In Sullins’ 2019 study, the women who had abortions had increased risk for eight different mental health variables, including depression, anxiety, suicidal thoughts, several types of substance use or dependence (including opioids), and total mental health problems. While the group of women who aborted had increased risk of these adverse conditions compared to those who delivered their child, when considering abortions of wanted pregnancies, the mental health risks were even higher for those women. Of note, the women who gave birth on average had reduced mental health risks, regardless of whether the pregnancy was considered wanted or unwanted at the time of the abortion.

This is all pertinent to the current bill, SB664. Courts have repeatedly held that a right to “privacy” includes a woman’s right to have an abortion. Thus, a broadly-based privacy amendment may invalidate existing health and safety statutes and regulations regarding abortion. This would potentially shut down discussion of abortion, and shut down further attempts to pass legislation that would be of benefit to those women who are at risk for adverse psychological effects from abortion.

Back in 1973, when *Roe* was newly decided, and I was undergraduate student, I served as a volunteer in a pro-choice clinic which helped women to obtain abortions. Back then, I thought that being pro-choice meant having actual choices – plural, choices – as in, having options and being able to choose. Today, I know abortion is often *not* a choice, as stated by the woman above

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<sup>4</sup> Shuping, M. (2016). Risk Factors. In R. MacNair (Ed.), *Peace Psychology Perspectives on Abortion* (pp. 94-114). Kansas City, MO: Feminism and Nonviolence Studies Association.

<sup>5</sup> American Psychological Association. (2008). *Report of the Task Force on Mental Health and Abortion*. Washington, DC: Author. Retrieved from [www.apa.org/pi/wpo/mental-health-abortion-report.pdf](http://www.apa.org/pi/wpo/mental-health-abortion-report.pdf)

<sup>6</sup> Sullins, D.P. (2019). Affective and substance abuse disorders following abortion by pregnancy intention in the United States: A longitudinal cohort study. *Medicina*, 55(11), 741, <https://doi.org/10.3390/medicina55110741>

who said, "...I have to have one anyway," though her "heart was breaking." The article doesn't state *why* she had to have the abortion, but that doesn't sound like a choice. In fact, Baker and Beresford (2009) included "perceived coercion" in their list of risk factors. These authors recognize some women do feel they are coerced in regard to their abortion decision *and* that when women feel they are not entirely free to make their own choice, they are at higher risk of psychological distress after abortion.

In the peer-reviewed book *Peace Psychology Perspectives on Abortion*, an entire chapter is devoted to the topic of coercion (Coyle, 2016).<sup>7</sup> In Coyle's review of research on coerced abortion, it was shown that the prevalence of coerced abortion may be anywhere from 11% to 64% with various authors discovering different rates of coercion in different populations. However, even NAF-endorsed author Alissa Perrucci (2012)<sup>8</sup> reports on coercion, recognizing that some women are coerced by their male partners, and that some adolescents are coerced by parents; Perrucci cites one study in which 18% of one sub-group of adolescent women reported being "forced" to abort by their parents. Reproductive coercion is such a frequent problem that the pro-choice American College of Obstetrics and Gynecology wrote a committee opinion about this problem, with recommendations that women should be screened for this.<sup>9</sup>

In my professional experience, I have known many women who were strongly coerced by parents, partners, and by others to abort wanted children. For example, a homeless woman in a county mental health system where I worked had an abortion after being told by a charitable organization that she would not receive needed assistance unless she aborted her child. She had not wanted the abortion and later sought my help for abortion-related distress. She later committed suicide. This is consistent with a number of studies showing increased risk of suicide after abortion.<sup>10 11 12 13</sup> However, my point here is that some women are coerced to have

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<sup>7</sup> Coyle, C. (2016). Coercion and pressure. In R. MacNair (Ed.), *Peace psychology perspectives on abortion* (pp. 21 - 35). Kansas City, MO: Feminism and Nonviolence Studies Association.

<sup>8</sup> Perrucci, A.C. (2012) *Decision Assessment and Counseling in Abortion Care: Philosophy and Practice*. Lanham: Rowman & Littlefield.

<sup>9</sup> American College of Obstetrics and Gynecology, Committee on Underserved Women. (2013). *ACOG committee opinion: Reproductive and sexual coercion*. Committee Opinion (Number 554). Washington, DC: Author. Retrieved from <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Reproductive-and-Sexual-Coercion>

<sup>10</sup> Gissler, M., Hemminiki, E., & Lonnqvist, J. (1996). Suicides after pregnancy in Finland, 1987-94: register linkage study. *British Medical Journal*, 313,1431. doi: <http://dx.doi.org/10.1136/bmj.313.7070.1431>.

<sup>11</sup> Reardon, D.C., Ney, P.G., Scheuren, F.J., Cogle, J.R., Coleman, P.K., Strahan, T. (2002). Deaths associated with pregnancy outcome: A record linkage study of low-income women. *Southern Medical Journal*, 95(8), 834-41.

<sup>12</sup> Sullins, D.P. (2019). Affective and substance abuse disorders following abortion by pregnancy intention in the United States: A longitudinal cohort study. *Medicina*, 55(11), 741, <https://doi.org/10.3390/medicina55110741>

<sup>13</sup> Sullins, D.P. (2016, July 22). Abortion, substance abuse and mental health in early adulthood. Thirteen-year longitudinal evidence from the United States. *Sage Open Medicine* 4: 2050312116665997. Retrieved from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2813546](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2813546).

abortions, and such coercion is not uncommon, and not without consequences to the women who experience coercion. Thus, my concern that discussion concerning abortion, and my concern that consideration of woman-protective legislation not be prematurely shut down. Why should even one woman in any state undergo an abortion she does not desire? I know the current legislation is not about abortion per se, and does not directly promote or oppose any specific woman-protective legislation, but it may be used to shut down discussions that are needed to protect those women who may be vulnerable to adverse effects of abortion.

It is also necessary to consider the claim of some abortion advocates that are *no* harmful effects from abortion, ever. As a young abortion counselor in 1973, I was taught this myself, and repeated this to women I “counseled” before helping them to obtain their abortion appointments – no side effects at all after abortion, I believed in 1973. Much later, as a psychiatry resident, experience showed me that not all woman who have abortions actually wanted the abortion, and some women suffer abortion-related distress that can be severe enough to require hospitalization due to risk of suicide.

A new study by Rocca and colleagues (2020)<sup>14</sup> has been widely reported as showing that the primary emotion experienced after abortion was relief and only relief. According to Rocca, there was no evidence of any negative emotion after abortion in the short-term or the long-term, stated Rocca. What a relief it would be if Rocca’s statement were true – no negative emotions after abortion. But – it’s false.

In the background section at the beginning of the article, when Rocca stated “no evidence” of any negative emotions, she cited a report by Broen et al. (2005)<sup>15</sup> in which women who aborted were compared with women who had miscarried. It is true that test scores for “relief” were significantly higher after abortion compared to miscarriage, at all times measured – from 10 days after the abortion or miscarriage until 5 years later when the study ended. But, Rocca insisted there were *no* negative emotions, in the short term or the longer term, and this is false. The women who aborted did show relief. But – shame was higher also at all measurements from 10 days to 5 years, and guilt was higher from 6 months to five years after abortion. Women who had abortions, compared to the general population, had significantly more anxiety from 10 days to 5 years. In addition, “avoidance,” a type of symptom of PTSD, was also increased in the post-abortive women at all measurements. Thus, it’s clear that along with relief, there are negative emotions in the short and long term, and relief can co-exist with PTSD symptoms. Rocca seriously misrepresented Broen’s study.

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<sup>14</sup> Rocca, C., Samari, G., Foster, D.G., Gould, H., Kimport, K. (2020). Emotions and decision rightness over five years following an abortion: An examination of decision difficulty and abortion stigma. *Social Science and Medicine*. Retrieved from <http://www.sciencedirect.com/science/article/pii/S0277953619306999?via%3Dihub>

<sup>15</sup> Broen, A.N., Moum, T., Bødtker, A.S., & Ekeberg, Ø. (2005). The course of mental health after miscarriage and induced abortion: a longitudinal, five-year follow-up study. *BMC Medicine*, 3(18). doi: 10.1186/1741-7015-3-18. Retrieved from <http://www.biomedcentral.com/1741-7015/3/18> .

There are also problems with the data set Rocca used as the basis for analysis in her report, a large data set named the “Turnaway Study.” This was produced as a project of ANSIRH, which stands for Advancing New Standards in Reproductive Health, at the University of California at San Francisco. The Turnaway Study has already been used as a basis for more than 60 published research articles (ANSIRH webpage).

The concept of the Turnaway Study was to study women with unwanted pregnancies, to discover whether it is worse for a woman’s mental health to have an abortion, or to carry an unintended pregnancy to term. But it’s important to understand the fatal flaws which prevent this data set from providing any useful information.

Thirty abortion clinics in several states were selected to participate. Staff at each clinic were tasked with inviting women to participate in the study, to include women actually obtaining abortions, and also to include women who came to the clinic too late to obtain an abortion, either due to state law or the limits of that particular clinic. The women who waited until it was too late and were “turned away” are the “turnaways” referred to in the name of the study (Biggs et al., 2017).<sup>16</sup> But one problem is that there was no randomization so that the clinic staff could choose who to invite to participate in the study. From conversations between the researchers and the clinic staff, it’s possible that some women were thought to be “too distraught” to participate in the research (Dobkin, 2014).<sup>17</sup> If distressed women were not invited to participate, this would lead to a less distressed sample and to misleading results regarding the true occurrence of distress after an abortion or after being denied an abortion (Biggs et al., 2017).

Another problem at the start of the Turnaway Study is that although it is known which women had abortions during the study and which women were turned away, we know nothing about any previous abortions or miscarriages. If women had already had a reproductive loss (whether miscarriage or abortion) prior to their arrival at the clinic at the start of the Turnaway Study, this could produce misleading results. It’s not really a comparison between aborting or delivering an unwanted pregnancy, if women in both groups had previous abortions that may still be causing some distress – and there would have been post-abortive women in the abortion group and in the turnaway group. Previous research has shown that a substantial number of currently pregnant women have PTSD associated with a previous reproductive loss (miscarriage or abortion - Seng et al., 2009), but prior losses were not taken into account in the Turnaway Study. Besides that, abortions during the 5 years of follow up were not considered either. Thus, women who had abortions were being compared to women who supposedly didn’t have abortions – but there were actually women with reproductive losses including abortions in both groups.

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<sup>16</sup> Biggs, M.A., Upadhyay, U.D., McCulloch, C.E., & Foster, D.G. (2017). Women’s mental health and well-being 5 years after receiving or being denied an abortion: a prospective, longitudinal cohort study. *JAMA Psychiatry*. 74(2), 169-178. doi:10.1001/jamapsychiatry.2016.3478

<sup>17</sup> Dobkin, L.M., Gould, H., Barar, R.E., Ferrari, M., Weiss, E.I., Foster, D.G. (2014). Implementing a prospective study of women seeking abortion in the United States: Understanding and overcoming barriers to recruitment. *Women’s Health Issues*, 24(1), e115-e123. Retrieved from [https://www.whijournal.com/article/S1049-3867\(13\)00099-6/pdf](https://www.whijournal.com/article/S1049-3867(13)00099-6/pdf)

In any case, 3,016 eligible women were invited by clinic staff to participate in this study. However, only 37.5% agreed to participate in informed consent (which was done by phone for convenience of the women). Then, after the women had consented to be part of the study, 15% of them dropped out before even giving the first interview (Biggs et al., 2017). There were intended to be interviews twice a year for five years, and the women were offered a \$50 gift certificate for each interview (Dobkin et al., 2014). Thus, they could have earned \$500 if they had stayed in the study to answer questions about their experience. However, starting with the initial 3,016 who were invited, only about 18% were still in the study at the end of 5 years.

Just on the face of it, it doesn't seem logical to make broad, sweeping conclusions about what all women think and feel about their abortions or their giving birth, when the majority of the women who were eligible and were invited, were not even there at the end of the study.

But there is more than that. There is evidence from several sources that those who are most distressed are least likely to participate in a study in the first place, and are more likely to drop out (Adler, 1976,<sup>18</sup> Broen et al., 2005, Weisaeth, 1989<sup>19</sup>). The women who remained in this study are the ones who didn't mind talking about their experiences, apparently because it didn't bother them much if at all. But those who were more distressed, didn't consent to the study, or dropped out at various points in time. Even Biggs, another ANSIRH author who has used data from the Turnaway Study says, "We cannot rule out the possibility that women with adverse mental health outcomes may have been less likely to participate and/or to be retained" (Biggs et al. 2017).

One other problem with Rocca's report about "relief" is that this study focused on measuring a small number of positive and negative emotions using a very simplistic measure—rather than well-established psychological tests (Rocca et al., 2013,<sup>20</sup> 2020). And, Rocca was looking only at "feelings" and not evaluating for psychological disorders.

There are a number of studies by other authors, using much better data sets, and better methodology, which give very different results compared to Rocca's report. An example is research by Sullins (2019), as above, and Sullins (2016), which also showed significantly increased risk of adverse mental health conditions and substance abuse after abortion.<sup>21</sup>

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<sup>18</sup> Adler N. E. (1976). Sample attrition in studies of psychosocial sequelae of abortion: How great a problem?" *Journal of Applied Social Psychology*, 6(3), 240–59. doi: 10.1111/j.1559-1816.1976.tb01329.x

<sup>19</sup> Weisaeth (1989). Importance of high response rates in traumatic stress research." *Acta Psychiatrica Scandinavica Supplementum*, 80(s355), 131–137. doi: 10.1111/j.1600-0447.1989.tb05262.x.

<sup>20</sup> Rocca, C.H., Kimport, K., Gould, H., Foster, D.G. (2013). Women's emotions one week after receiving or being denied an abortion in the United States. *Perspectives on Sexual Reproductive Health*, 45(3), 122-31. doi: 10.1363/4512213. <https://www.ncbi.nlm.nih.gov/pubmed/24020773>

<sup>21</sup> Sullins, D.P. (2016, July 22). Abortion, substance abuse and mental health in early adulthood. Thirteen-year longitudinal evidence from the United States. *Sage Open Medicine* 4: 2050312116665997. Retrieved from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2813546](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2813546)

I know that I told women there were no side effects from abortion, in the earliest days after *Roe*, when young feminists like myself were celebrating “choice.” Back then, none of us had any idea how many women would end up with abortions of *wanted* pregnancies, and how many women would suffer from losing their children. In my opinion, it would be a tragic mistake to shut down discussion of the ways that abortion affects women, and to shut down consideration of the best ways to protect the vulnerable.



# Sisney\_unf\_SB664

Uploaded by: SISNEY, BEN

Position: UNF



**Written Testimony of Benjamin P. Sisney<sup>1</sup>  
Senior Counsel for Litigation and Public Policy,  
American Center for Law & Justice**

**Re: In Opposition to Maryland SB 664: Constitutional Amendment, “Declaration of Rights  
– Right to Privacy”**

**March 11, 2020**

For the reasons set forth herein, the American Center for Law & Justice (“ACLJ”), on behalf of itself and its members, urges that Maryland legislators vote NO on S.B. 664.

The proposed bill is an attempt by abortion proponents unnecessarily to amend Maryland’s Constitution.

*1. Under the Guise of “Privacy,” this Bill Seeks to Establish a State Constitutional “Right” to Abortion*

Supporters of this bill are seeking to establish a constitutional “right” to abortion that would serve to invalidate common-sense state abortion-related laws that are supported by a majority of Americans.

Under the proposed bill, Maryland’s constitution would be amended to include an unlimited and “inherent right to privacy.”<sup>2</sup> “Privacy” is the same rubric under which the Supreme Court purported to find a constitutional right to abortion in *Roe v. Wade*, 410 U.S. 113, 154 (1973) (“We, therefore, conclude that the right of personal privacy includes the abortion decision”). An express privacy amendment therefore might be read as an invitation to find a right to abortion under the state constitution.

The experience with other state constitutions confirms this likelihood. The constitutions of eleven states – Alaska, Arizona, California, Florida, Hawaii, Illinois, Louisiana, Montana, New Hampshire, South Carolina, and Washington – have provisions explicitly related to a right to

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<sup>1</sup>Mr. Sisney serves as Senior Counsel for Litigation and Public Policy at the ACLJ’s Washington D.C. office. He also serves as the ACLJ’s Director of FOIA Practice. Mr. Sisney practiced law in Oklahoma City for five years, following the conclusion of his two-year clerkship with United States District Judge Gregory K. Frizzell in Tulsa, two years with the American Center for Law & Justice in Virginia, and a Legal Fellowship with Senator James M. Inhofe in Washington, D.C. Mr. Sisney graduated from Regent University School of Law in 2007. As a law student, he interned with an Oklahoma District Attorney’s office and Oklahoma’s oil and gas administrative law court. Mr. Sisney’s practice has focused on the areas of government affairs and accountability, international and United Nations affairs, pro-life litigation and issues, family law, First Amendment law, and religious liberty.

<sup>2</sup> S.B. 664 (Md. 2020).

privacy. Notably, not one of these state constitutions' privacy clauses expressly mention abortion. Nonetheless, abortion advocates frequently use privacy clauses in state constitutions to advocate for a "right" to abortion under state law. For instance, in a 2013 Illinois case, abortion advocates argued that "because [the Illinois] state constitution contains an explicit right of privacy which the federal constitution does not have, the right to an abortion under [the Illinois] state constitution is broader than the right to an abortion under the federal constitution."<sup>3</sup> While the court in that case ultimately found that "any right to abortion in Illinois is clearly not grounded in the privacy clause of [the Illinois] state constitution,"<sup>4</sup> other state courts *have* interpreted privacy to include a "right" to abortion.

For example, the Alaska Supreme Court has interpreted the privacy provision in that state's constitution to include a right to abortion. Moreover, the court found that the state constitution was even more protective of abortion than the U.S. Constitution.<sup>5</sup> Alaska's constitution had been amended in 1972 to include a provision for a right to privacy. This amendment was "prompted by a fear of the potential for misuse of computerized information systems,"<sup>6</sup> yet was later used to create a "right" to abortion.

Similarly, the Supreme Court of California found that all women possess a fundamental constitutional right to choose abortion under the California constitutional privacy provision.<sup>7</sup> The Florida Supreme Court has likewise interpreted Florida's privacy provision.<sup>8</sup> The Montana Supreme Court found a right to abortion in the Montana state constitution stating:

the delegates to Montana's 1972 Constitutional Convention viewed the textual inclusion of this right in Montana's new constitution as being necessary for the protection of the individual in 'an increasingly complex society . . . [in which] our area of privacy has decreased, decreased, decreased.' This 'right to be let alone . . . the most important right of them all,' as Delegate Campbell put it, 'produces . . . a semipermeable wall of separation between individual and state' in much the same fashion that a constitutional wall separates church from state.<sup>9</sup>

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<sup>3</sup> *Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745, 754 (2013).

<sup>4</sup> *Id.* 756.

<sup>5</sup> *Planned Parenthood of the Great Nw.*, 375 P.3d 1122, 1129 (Alaska 2016) ("In 1997 we examined this express privacy provision in the context of pregnancy-related decisions and held that a woman's fundamental privacy right to reproductive choice is more broadly protected by the Alaska Constitution than the United States Constitution") (citing to *Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 971 (Alaska 1997)).

<sup>6</sup> GORDAN HARRISON, *ALASKA'S CONSTITUTION: A CITIZEN'S GUIDE*, ALASKA LEGISLATIVE AFFAIRS AGENCY 38 (2018, 5<sup>th</sup> Edition).

<sup>7</sup> *Comm. to Defend Reprod. Rights v. Myers*, 625 P.2d 779 (Cal. 1981) (striking down limits on Medicaid coverage for abortions); *Am. Acad. of Pediatrics v. Lungren*, 940 P.2d 797 (Cal. 1997) (invalidating parental-consent requirement).

<sup>8</sup> FLA. CONST. art. I, § 23. *See Gainesville Woman Care v. State*, 210 So. 3d 1243, 1254 (Fla. 2017) ("Florida's constitutional right of privacy encompasses a woman's right to choose to end her pregnancy."); *In re T.W.*, 551 So. 2d 1186, 1193 (Fla. 1989) ("The Florida Constitution embodies the principle that [f]ew decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman's decision ... whether to end her pregnancy. A woman's right to make that choice freely is fundamental.") (internal quotations and citations omitted).

<sup>9</sup> *Armstrong v. State*, 989 P.2d 364, 373-74, 376 (Mont. 1999).

The court also found that, “Montana’s Constitution affords significantly broader protection than does the federal constitution.”<sup>10</sup> This, as in the Alaskan case, is because there is no provision in the U.S. Constitution for a right to privacy.

The language in the Montana case is quite telling. In quoting Delegate Campbell, the Montana Supreme Court focused on the apparently diminishing nature of privacy and his belief that privacy is the most important right. However, we know both that the American people are often content with their apparent diminishing amount of privacy, and that the right to privacy is by no means the greatest right. We live in the age of Facebook, Instagram, Twitter, and facial recognition as a means of unlocking our phones. We willingly invite programs to spy upon our activities in the name of convenience. We are not here today to talk about privacy. That is just a guise. The real issue here today is whether we are willing to sacrifice the truly greatest right of all – the right to life.

## 2. *The U.S. Constitution Clearly States a Right to Life.*

While supporters of this bill will argue to the contrary, S.B. 664 is an attempt by abortion advocates to establish a right to abortion under the Maryland Constitution. However, each and every member of this body should ask themselves the following question: when are rights protected, and more specifically, when is the right to life protected?

Although this question has been debated since the highly contested opinion in *Roe v. Wade*, even Justice Blackmun himself conceded that *Roe* fails if it is ever established that an unborn baby has the right to life.<sup>11</sup> Blackmun goes on to state, as a matter of fact, that the right to life would absolutely trump the judicially fabricated right to abortion created in the majority opinion. Thus, the author of one of the most controversial Supreme Court decisions to date set the path to invalidate that same decision. Although the opinion tries to claim that there is no historical argument to support a preborn baby’s right to life, this conclusion is completely erroneous, with the most condemning rebuttal found in the United States Constitution and in the Declaration of Independence.

As Supreme Court Justice Thomas recently noted in a concurring opinion, “The Constitution itself is silent on abortion.”<sup>12</sup> It is, however, clear on the right to life, stating: “nor shall any person . . . be deprived of life . . . .”<sup>13</sup> And we are all familiar with the language in the Declaration of Independence that says “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”<sup>14</sup> However, the opinion of *Roe* and anyone who supports the killing of preborn children clearly have missed the meaning of those words. It unmistakably declares that all men are *created* equal and endowed by their Creator with certain unalienable rights. Again, we are endowed with unalienable rights upon *creation*. Our founders did not declare

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<sup>10</sup> *Id.* at 376.

<sup>11</sup> *Roe v. Wade*, 410 U.S. 113 at 157 (1973).

<sup>12</sup> *Box v. Planned Parenthood of Indiana and Kentucky, Inc.*, 587 U.S. \_\_\_\_, 20 (2019).

<sup>13</sup> U.S. CONST. amend. V

<sup>14</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

that we are *born* equal and endowed with rights, but that we were *created* equal and endowed with rights.

Therefore, although Blackmun tried so hard to argue that we were never given any indication of when rights attach, there is clear room for substantiated and vehement disagreement. The Declaration could not be more clear that rights attach at creation. Furthermore, the language in the Declaration is equally important, as it states that governments were specifically created to secure those unalienable rights, of which life is of utmost importance. Therefore, the government of Maryland absolutely not only has the right to secure the right to life from creation, but the duty to do so.

Consider that modern scientific developments confirm beyond debate that the life of a human being, as a biological organism, begins at the moment of fertilization. We've all seen the ultrasound photos of babies before birth. We've also heard stories of babies surviving at earlier and earlier stages of gestation when born prematurely – and even surviving outside the womb at the opposite end of pregnancy, namely when living in a petri dish after in vitro fertilization before being placed in a mother's womb. Given the overwhelming evidence that humans before birth are just as much members of the human species as you and I, we face a question. Do we want to say that there are human beings who have no rights at all, not even the most basic right to life?

### 3. *Roe v. Wade is Highly Controversial and not Settled Law*

Abortion is an issue that has torn apart our country for 47 years. Reliance upon *Roe* to support a judicially fabricated right to abortion (or “privacy” as supporters of this bill will call it) above the right to life is misguided. The *Roe* opinion does claim to find a previously unknown constitutional right to abortion. However, the rest of the opinion cannot simply be ignored, and as Justice Thomas so aptly put it, “[h]aving created the constitutional right to an abortion, this Court is dutybound to address its scope.”<sup>15</sup> Supreme Court cases subsequent to *Roe* have merely assumed the “right” to abortion created by the *Roe* opinion, and then address its faults and limit its reach.<sup>16</sup>

In fact, *Roe*'s opinion has been limited and attacked repeatedly over the years.

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<sup>15</sup> *Box*, *supra* note 12.

<sup>16</sup> See *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). Importantly, the Supreme Court in *Casey* overturned the part of *Roe* that applied different levels of judicial scrutiny to abortion regulations, depending on the trimester. *Casey*, *Id.* at 872–74. Under this set of rules,

almost no regulation at all [was] permitted during the first trimester of pregnancy; regulations designed to protect the woman's health, but not to further the State's interest in potential life, [were] permitted during the second trimester; and during the third trimester, when the fetus is viable, prohibitions [were] permitted provided the life or health of the mother is not at stake.

*Id.* at 872. *Casey* replaced this “elaborate but rigid construct” with a simpler test which allows regulation of abortion so long as it does not impose an “undue burden” on the woman's right to have an abortion. *Id.* at 874–76. This test, the Court concluded, places sufficient weight on the State's interest in protecting potential human life and balances it with the woman's right to abort. *Id.* at 876. See also *Gonzales v. Carhart*, 550 U.S. 124, 158 (2007). The Court had previously struck down a ban on partial birth abortions in *Stenberg v. Carhart*, 530 U.S. 914 (2000). In upholding the Partial-Birth Abortion Ban Act in *Gonzales*, the Court also lowered the standard of abortion regulation even further by adding a “rational basis” test (the lowest level of protection under the Constitution) to the undue burden standard outlined in *Casey. Id.*

Furthermore, a 2019 Gallup poll show that 74% of Americans support restrictions on abortion.<sup>17</sup> In fact, according to that same poll, 60% of Americans desire abortion to be illegal in most or all circumstances.<sup>18</sup> In other words, a *large majority* of Americans think that abortion should be restricted – significantly restricted. Supporters of this bill are seeking to silence the voices of those Maryland residents who are among the majority of Americans desirous of restrictions on abortion.

### **CONCLUSION**

For the reasons stated above, the proposed bill should be opposed.

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<sup>17</sup> *Abortion*, GALLUP, <https://news.gallup.com/poll/1576/abortion.aspx> (last visited Mar. 10, 2020).

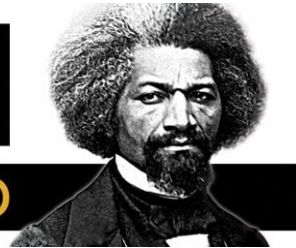
<sup>18</sup> *Id.*

# **TorreySnow\_UNF\_SB664**

Uploaded by: SNOW, TORREY

Position: UNF

THE **FREDERICK  
DOUGLASS**



**FOUNDATION OF MARYLAND**

Bill# SB664 -Opposed  
Torrey Snow  
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Odenton, MD  
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## **Frederick Douglass Foundation of Maryland opposes SB 664**

Dear Honorable Chairman Smith, Senator Lee, and Members of the Senate Judicial Proceedings Committee:

The Maryland Senate is in the process of reviewing Senate Bill 664 for the 2020 legislative session. The Frederick Douglass Foundation of Maryland strongly opposes this legislation, not only for the nefarious intent behind the legislation, but also for the thinly veiled attempt to shroud from public view the controversial practice of human abortion. We respectfully urge the withdrawal or “unfavorable” report on Senate Bill 664 “Declaration of Rights – Right to Privacy”.

We express grave concerns over the echoes of racist United States policy in which euphemistic titles were applied to laws with more nefarious intents. For example, the Fugitive Slave Act of 1793 was codified as “*An Act respecting fugitives from justice, and persons escaping from the service of their masters.*” In like manner, this so called “*Declaration of Rights - Right to Privacy*” is a thinly veiled attempt to remove from scrutiny the controversial practice of human abortion. The authors of this legislation should be transparent with the community and declare the full intent of this law.

Those familiar with the abortion debate understand that the “right to privacy” is a fundamental component of securing the constitutional blind eye to the controversial practice of human abortion. It is common knowledge that the abortion industry so desperately craves “privacy” so as not to be exposed to the public eye. How appropriate that Maryland’s own Frederick Douglass, in his memoir, *My Bondage and My Freedom*, described our state as a place where, “...*slavery, wrapt in its own congenial, midnight darkness, can, and does, develop all its malign and shocking characteristics; where it can be indecent without shame, cruel without shuddering, and murderous without apprehension or fear of exposure.*”

The passage of Senate Bill 664 likewise allows the controversial practice of human abortion to flourish within our state, free of scrutiny or examination. Those sensitive to the racial legacy of Maryland and its dramatic role in the racial discourse throughout the history of our country should reject this law as tasteless and inappropriate. From the painful horrors of the Crownsville Hospital for the Negro Insane, to the shameful opinions of Supreme Court Chief Justice, Roger Taney, lawmakers would be wise to steer Maryland clear of euphemisms, legislative manipulation, and dark secrecy to advance the cause of abortion in our state.

For these reasons and others not declared, The Frederick Douglass Foundation of Maryland respectfully urges your “unfavorable” report on Senate Bill 664 “Declaration of Rights – Right to Privacy”. Please consider an alternate and more direct method of helping our community decide how we want to address the controversial practice of human abortion.

Respectfully,

Torrey Snow  
President, Frederick Douglass Foundation of Maryland



## **Wallace\_unf\_SB664**

Uploaded by: WALLACE, STEPHEN

Position: UNF



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gabrielnetwork.org

**Bill SB664**  
**Stephen Wallace, Executive Director**  
**Gabriel Network**  
**Position - Opposed**



Gabriel Network opposes SB 664 because every woman and every child deserve better than abortion. Gabriel Network is part of a vibrant and growing pro-woman, pro-child movement that serves thousands each year in Maryland. This movement builds up our communities by valuing each woman, child, and family. We freely offer the support they need to welcome every child with joy and growing strength. Churches, pregnancy help centers, maternity homes, and many other groups and organizations work together in good will to offer women a better choice. While many of the women we work with face great challenges, we have been amazed over and over again by what they can overcome when they are loved, valued, encouraged, and supported. This movement is ready and willing to serve.

*Empowering Women to Choose Life*



Over the past 25 years, Gabriel Network has worked with over 100 local churches to provide free housing, transportation, friendship, and loving support to 18,000 women and children in Maryland and Washington, D.C. These churches and their volunteers serve out of their deep faith commitments and love for their neighbors. Our maternity homes, which have been home to hundreds of women and children, offer free supportive housing before and after childbirth, including case management, life goal

support, scholarships, food assistance, and life skills classes. Right now, volunteer teams at 38 local churches provide direct services to more than 80 families each month. These churches serve their neighbors regardless of creed, race, or nationality, providing baby showers, pregnancy support, and transportation to work or doctor's appointments as a few examples. Their support can last for months or years at a time, sometimes leading to life-long friendships.

A recent example shows how this movement is able and willing to surround a woman and child with love. Maria\* (*name changed to maintain confidentiality*) called us when she was a few months pregnant. She was homeless, moving from bus to bus to sleep. She was under pressure from her situation and people in her life to abort her child. She visited one of our movement partners, and that partner introduced her to us. Maria was amazed by the resources that were available to help her. She was so relieved when we told



her that we had a warm, safe place where she and her child could come and live. It was like a great weight was lifted off her shoulders. Maria came to live in one of our maternity

homes and has thrived. With the help of our staff she found a good job, but she needed a car to get back and forth to work and to doctor's appointments. One of our partnering churches put the word out, and a member of the church donated a car to her. Because of that gift, Maria and her son have saved enough to transition to their own apartment. She is so grateful for the gift of her son and for the support she found.

In several states, including Alaska, California, Florida, and Montana, privacy amendments similar to SB 644 which were intended to protect individuals' data privacy have been construed by state courts to establish a state constitutional right to abortion. Maryland has a legitimate interest in protecting the data privacy of its citizens in an age of expanding technological innovation and challenges. That laudable goal can and should be accomplished without negative side effects. Legislation limited specifically to data privacy issues that does not evoke the vague and expansive "fundamental" privacy language found in the United States Supreme Court's abortion opinions would more aptly accomplish the bill's worthy purposes and avoid the deadly and damaging effects of establishing a state constitutional right to abortion.

Gabriel Network, therefore, opposes SB 664, which would likely establish a state constitutional right to abortion. Abortion destroys innocent human lives and leaves mothers, fathers, grandparents, brothers and sisters, and whole communities of relationships with scars that take years or decades to heal. Women and children deserve better. Gabriel Network and its partners in the life-affirming movement stand ready and able to give women the support they need to welcome their children with joy. Maryland should spend its efforts treasuring, protecting, and supporting every human life.

## **Wharam\_unf\_sb664**

Uploaded by: WARHAM, SHEILA

Position: UNF

*Maryland Legislative Lobby for Life, Inc.*

**P.O. Box 5481**

**Lutherville, MD 21094-5481**

**OPPOSE  
SB 664**

Senate Judicial Proceedings Committee  
Constitutional Amendment  
Declaration of Rights-Right to Privacy

March 11, 2020

Good afternoon. My name is Sheila Wharam, Maryland Legislative Lobby for Life.

Article 1 of the **Maryland Constitution** states that our Government is “instituted solely for the good of the whole”. The good of the whole means there can be no absolute right of privacy that will provide individuals wholesale freedom from government intrusion.

The bill itself recognizes no absolute right of privacy on page 2, lines 2 and 3, in its provision that the state can regulate the sale or purchase of firearms or ammunition.

**This bill will make everything a fight.**

People will claim a “right of freedom from government intrusion” to grow their own marijuana or make methamphetamine at home or run a red light when they judge it to be safe, as part of their guaranteed “freedom from government intrusion” page 1, lines 21 and 22.

**Lawyers may benefit from this but no one else will.**

Certainly it will not stop citizens and legislators, who see abortion as killing innocent babies, and physically and psychologically damaging women, from arguing there is a **compelling state interest, page 2 lines 4-5**

in protecting women by **inspecting** the sanitation and emergency supplies of abortion clinics, or

by requiring abortionists to have **admitting privileges at a hospital,**



or from mandating **immediate medical care for babies born alive after an abortion attempt**, or

from **protecting unborn babies** from abortion in most circumstances.

**Page 1, lines 23-24 and page 2, line 1, is obscure. Would this stop the state from collecting statistics?**

Abortion causes

perforated uteruses,

lacerated cervixes,

hemorrhages, and

retained products of conception.

Women need to know this and the state has a **compelling interest** in knowing this so as to judge the competence or incompetence of abortionists and the damage abortion does to its girls and women.

Please reject SB 664. Thank you. Sheila Wharam, Secretary, MLLL, Inc.  
md\_III@hotmail.com

## **dwhitney\_UNF\_sb 664**

Uploaded by: whitney, david

Position: UNF



SB 664 Declaration of Rights - Right to Privacy

**Opposed**

Honorable Chairmen Smith, Senator Lee and members of the Senate Judicial Proceedings Committee, I am Pastor David Whitney Senior Instructor at Institute on the Constitution where I teach the only course offered anywhere on the Maryland State Constitution. I had the privilege of developing this course with the help of scholars and attorneys and I have taught this to many citizens in our Old Line State for the past ten years. The Student Manual which contains a detailed outline of each of the lectures I deliver along with reading assignment for the student tops out at 283 pages.

I oppose this bill on Constitutional grounds. Our Maryland Constitution in the Declaration of Rights states that governments are instituted among men to secure God given rights. In essence that Declaration of Rights is the job description for the civil government.

Our Maryland State Constitution begins,

*We, the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare:*

The Declaration of Rights is foundational to our Maryland Government. It is a very momentous thing to amend the Constitution to begin with, but an even larger thing to amend the Declaration of Rights. No change of the Declaration of Rights should be attempted hastily without due consideration and full debate. The fact that this Bill was dropped late in the current session and that it was not cross filed in the House of Delegates (which means there will be no public hearing of this Bill in the House, making today's hearing the only public hearing) should give even supporters of this Bill pause. What is the rush, why not a full consideration and a full debate in both the House of Delegates as well as in the Senate? If the supports believe this Bill will ultimately prevail, it would seem that careful, deliberative and full debate would be allowed. Otherwise it appears that the rush is due to an attempt to put something in place without careful consideration.

what reason that you lose your right to privacy? Considering what was done based on known lies and false reports in order to spy on Candidate Trump. The message to the rest of us is clear. If you can do this to a Candidate for the Presidency who now is in the White House, what can they do to the little people in Maryland.

The message is clear and fully supported by SB 664, your rights come from Government and the Government can take those rights away anytime they please.

That is not the philosophy of Government our country was founded upon. The Declaration of Independence clearly states our rights come from our Creator and not from civil government. The only job of civil government is protect and defend those God given rights.

SB 664 does not comport with the American philosophy of civil government nor the Maryland Declaration of Rights. I urge that you give this Bill an unfavorable report.

Thank you.