
BILL NO: House Bill 1171 – Cross File
TITLE: Declaration of Rights – Right to Reproductive Liberty
COMMITTEE: Finance
HEARING DATE: March 30, 2022
POSITION: **SUPPORT**

The Women's Law Center of Maryland (WLC) is a non-profit legal services and advocacy organization dedicated to ensuring the physical safety, economic security, and bodily autonomy of women in Maryland. While our direct representation projects are limited to primarily survivors of domestic violence, our advocacy is in support of gender justice as a whole, because all women are entitled to access to justice, equality, and autonomy. We recognize that all the issues we fight for are interconnected. Women cannot have bodily autonomy unless they have physical safety. They cannot have physical safety without economic security. And they cannot have economic security without bodily autonomy.

The WLC wholeheartedly supports House Bill 1171 – Declaration of Rights – Right to Reproductive Liberty. This legislation would constitutionally enshrine the rights of Marylanders to reproductive freedom. Specifically, the bill recognizes that a central component of an individual's rights to liberty and equality includes the fundamental right to reproductive liberty. This includes the right to make decisions and choices regarding their own reproduction, including decisions related to preventing, continuing, or terminating a pregnancy. Significantly, the bill also states that those rights may only be abridge if "justified by a compelling state interest achieved by the least restrictive means."

In its landmark ruling *Roe v. Wade*, 410 US 113 (1973), the Supreme Court recognized that the right to abortion is a fundamental liberty protected by the Due Process clause of the 14th Amendment of the Constitution. Building on prior case law recognizing a fundamental right to privacy, the Court held that privacy right extended to an individual's rights to reproductive autonomy. See *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). But the ruling didn't make the right to privacy absolute. And while the Supreme Court has continued to uphold *Roe* over the past five decades, including as recently as *June Medical Services v. Russo*¹ in 2020, Supreme Court Justice Ruth Bader Ginsburg famously remarked that the *Roe* decision "might have been less of a storm center" had it been grounded in the equal protection clause, rather than in the right to privacy². Indeed, almost immediately after the *Roe* decision was issued, courts and politicians attempted to chip away at those rights, and in 1992 the Court replaced the strict scrutiny standard of *Roe* with a new, lesser, "undue burden" standard in *Planned Parenthood v. Casey*³. This has led to states imposing even more restrictions on access to abortion. In fact, since 1973, states have enacted more than 1,336 abortion restrictions nationwide⁴.

¹ 591 U.S. ____ (2020).

² A Look At *Roe v. Wade* v. Ginsburg: The Case Against the Case, The Washington Post, Ruth Bader Ginsburg, <https://www.washingtonpost.com/archive/opinions/1993/06/20/a-look-at-roe-v-wade-v-ginsburg-the-case-against-the-case/41596c4e-c489-4809-98ca-85dc39718932/>

³ 505 U.S. 833 (1992).

⁴ Guttmacher Institute, October 2021 Policy Analysis, <https://www.guttmacher.org/article/2021/10/first-time-ever-us-states-enacted-more-100-abortion-restrictions-single-year>

In December 2021, the Supreme Court heard arguments in *Dobbs v. Jackson Women's Health Organization*, No. 19-16392 (U.S. Dec. 1, 2021), regarding Mississippi's law banning abortion after 15 weeks of pregnancy. The WLC was proud to be part of an amicus brief in support of the abortion provider. Despite nearly fifty years of Supreme Court jurisprudence, this is the first time the Court is taking up the issue of pre-viability abortion bans since *Roe*, and there is a very high likelihood that the Court uses this case to overturn *Roe*. Even if the case does not fully overturn the holding in *Roe*, it would no doubt open the door to additional challenges, including those being made in a pipeline of at least two dozen cases designed to constrict our reproductive freedoms.

While we watch the continued attack on abortion rights across the country, they are thankfully strong here in Maryland. Maryland voters overwhelmingly approved a ballot measure in 1992 that led to a statutory right to an abortion. The Maryland legislature has vigilantly and successfully defended against an onslaught of attempts to chip away at those rights over the past several decades. But we cannot take for granted that those rights could not at some point be stripped, not when so much is at stake. And while our statutory protections extend to abortion care, they do not extend to other forms of reproductive health care. A constitutional amendment would be the strongest protection we could provide to ensure future generations of Marylanders have meaningful access to the full range of reproduction health care, from birth control to infertility treatments, to abortion. And by including a strict scrutiny standard, *i.e.*, by explicitly requiring that the "state may not, directly or indirectly, deny, burden, or abridge the right unless justified by a compelling state interest achieved by the least restrictive means," we would ensure that the right to reproductive liberty is unequivocal.

As reproductive rights are being eroded in neighboring states, Maryland must not give in to complacency and must act affirmatively to ensure all Marylanders have the fundamental right to reproductive liberty, regardless of what the Supreme Court – or any other state – determines. For these reasons, the Women's Law Center of Maryland strongly urges a favorable report on House Bill 1171.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.