

Planned Parenthood of Maryland

Committee: House Health and Government Operations Committee

Bill Number: House Bill 1171 - Declaration of Rights - Right to Reproductive Liberty

Hearing Date: February 22, 2022

Position: Support

Planned Parenthood of Maryland strongly supports *House Bill 1171 – Declaration of Rights – Right to Reproductive Liberty*. The bill provides protection of the rights of individuals to make their own reproductive health decisions in the Maryland Constitution:

“That every person, as a central component of the individual’s rights to liberty and equality, has the fundamental right to reproductive liberty which includes the right to make and effectuate decisions regarding the individual’s own reproduction, including but not limited to the ability to prevent, continue, or end their pregnancy 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.”

Many of us in Maryland think of our state as a “safe state” and that we are immune from the impact of pending decisions by the U.S. Supreme on *Roe v. Wade*. It is true that we are safer than states like Texas which have enacted a near total abortion ban or even our neighboring state of West Virginia which is on the brink of enacting a 15-week abortion ban, similar to Mississippi. But the truth is that our statutory protections only create a legal buffer against the erosion of our rights in Maryland.

Marylanders’ reproductive freedom is protected by a layering of Maryland law, Maryland’s constitution, federal law, and the U.S. Constitution. And unfortunately one of those layers is crumbling and its demise may be in the near future. The U.S. Supreme Court

has long recognized that the fundamental right to privacy protects our ability to make our own reproductive health provisions. The right to privacy is recognized not just in the landmark case of *Roe v. Wade*. It is also the underpinning of cases like *Griswold v Connecticut* in which the Court found in 1965 that married couples had a fundamental right to privacy to make their own birth control decisions. And in 1972, the Court reaffirmed the right to privacy to make birth control decisions and extended those rights to unmarried couples through the Court's findings in *Eisenstadt v. Baird*.

In the pending *Jackson Women's Health Organization v Dobbs*, the U.S. Supreme Court is considering whether Mississippi can enact a ban on abortion at 15-weeks gestational age. But their decision will be about more than one state and one law. Attorney General Lynn Fitch of Mississippi made Mississippi's intent to overturn *Roe v Wade* clear in her brief:

*"The Constitution does not protect a right to abortion. The Constitution's text says nothing about abortion. Nothing in the Constitution's structure implies a right to abortion or prohibits States from restricting it."*ⁱ

If the U.S. Supreme Court rules favorably for *Dobbs* as is expected, we will witness the most rapid unraveling of civil rights in our lifetime. It's not just abortion at stake. Even our rights to make decisions to make birth control decisions may be at risk because so many prior U.S. Court decisions depend the legal underpinning of the right to privacy. And *Dobbs* is just the first case in a pipeline of at least two dozen cases designed to constrict our reproductive freedoms.

Maryland's law to protect the legal right to abortion is strong. We used to think it would be strong enough to protect Marylanders forever. Now, we are not confident that is the case. There are two reasons to worry.

- First, we have seen the results of decades-long campaigns of anti-abortion activists to erode abortion rights. In state after state, those campaigns have started small and worked deliberately and incrementally and slowly made gains over long periods of time. The two-dozen cases in the Supreme Court pipeline did not happen overnight. They were built through decades of work with the ultimate goal of overturning *Roe v. Wade*.

We look around Maryland at this moment, and we are confident that this Maryland General Assembly would not enact legislation to restrict abortion access. Our confidence extends through the next several generations of Maryland General Assembly. But it would be foolish of us to be so confident in the far future. We have seen what has happened in other states. It would be prudent to act now while we have the opportunity with HB 1171.

- Second, Marylanders depend on the U.S Constitution for rights not specifically enshrined in Maryland law. Maryland’s landmark efforts on Question 6 were to protect abortion rights. At the time, no one could have imagined that other reproductive rights, such as the right to birth control, would be in peril in the future. While we are not aware of any federal cases specifically targeting the right to birth control, we cannot rule out that these cases could emerge. We have seen a coordinated effort to erode the right to birth control coverage with cases such as *Burwell v Hobby Lobby* and *Little Sisters of the Poor Saints Peter and Paul v Pennsylvania*.

There may be a combination of arguments that Maryland law and Maryland’s Constitution do protect reproductive health decisions beyond abortion, such as birth control. However, we are certain that Marylanders would feel much more comfortable if there were explicit protections.

HB 1171 provides constitutional protections for the full range of reproductive health decisions, from birth control to abortion. It is the strongest protection that we can provide to future generations of Marylanders. In the past few tumultuous years, we have learned that it is a mistake to be overconfident that the fundamental underpinnings of our democracy will remain protected. We must think ahead – beyond our immediate generation – about what might be at risk for future Marylanders. We ask for a favorable vote on HB 1171 so that we have the strongest possible protections for reproductive rights for today’s Marylanders and the generations of Marylanders ahead.

If we can provide any additional information or support, please contact Robyn Elliott at relliott@policypartners.net.

ⁱ https://www.supremecourt.gov/DocketPDF/19/19-1392/184703/20210722161332385_19-1392BriefForPetitioners.pdf