

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
Senate Finance Committee

FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523

RE: Senate Bill 504
Equal Protection of Unborn Human Beings Act of 2022

DATE: February 9, 2022
(2/16)

POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 504. This legislation would repeal Section 2-103 of the Criminal Law Article and add Title 2.5 “Equal Protection of Unborn Human Beings.”

At Criminal Law Article, § 2A-102(b)(2) the bill declares “null and void” any “federal regulation, executive order, or court decision that purports to supersede, stay, or overrule the provisions” in the bill. That conflicts with established principles of separation of powers between the federal and state governments. The bill, therefore, improperly directs Maryland State courts to treat as null and void certain binding federal law, including case law.

In addition to the principles of separation of powers between the federal and state governments, the bill also violates the separation of powers between the branches of state government in Maryland. Article 8 of the Declaration of Rights in the Maryland Constitution says: “the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other[.]” The judicial power vested in the Judicial Branch by Article IV of the Maryland Constitution includes the power “to determine whether constitutional limitations have been transcended[.]” *Maryland Committee for Fair Representation v. Tawes*, 228 Md. 412, 426 (1962). The bill, at § 2.5-102(b)(1), seeks to nullify that power of the Maryland Judicial Branch by declaring: “the General Assembly acknowledges as void and of no effect any and all federal **or State** court opinions that would deprive an unborn person of the unborn person’s unalienable right to life as protected by the Fifth and Fourteenth Amendments to the United States Constitution.” (Emphasis added.) Thus, the bill attempts to strip from the Maryland Judicial Branch the power to determine what is, or is not, constitutional in regards to certain matters. In doing so, the bill violates the constitutionally-mandated

separation of powers between the branches of Maryland Government.

cc. Hon. Johnny Ray Salling
Judicial Council
Legislative Committee
Kelley O'Connor