



**Written Testimony of Danielle Pimentel, J.D.  
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In Opposition of Senate Bill 798 “Declaration of Rights – Right to Reproductive  
Freedom”  
Submitted to the Senate Finance Committee  
March 1, 2023**

Dear Madam Chair Griffith, Vice-Chair Klausmeier, and Members of the Committee:

My name is Danielle Pimentel, and I serve as Policy Counsel at Americans United for Life (“AUL”). Established in 1971, AUL is a national law and policy nonprofit organization with a specialization in abortion, end-of-life issues, and bioethics law. AUL publishes pro-life model legislation and policy guides,<sup>1</sup> tracks state bioethics legislation,<sup>2</sup> and regularly testifies on pro-life legislation in Congress and the states. Our vision at AUL is to strive for a world where everyone is welcomed in life and protected in law. As Policy Counsel, I specialize in life-related legislation, constitutional law, and abortion jurisprudence.

Thank you for the opportunity to testify against Senate Bill 798 (“SB 798” or “bill”). I recently submitted written testimony against HB 705, which is an identical bill to SB 798. For the same reasons I opposed HB 705, I urge the Committee to oppose SB 798.

**I. The Bill Protects Abortion-on-Demand Up Until Birth**

To say that SB 798 is legally extreme would be an understatement. The bill seeks to enshrine an unfettered right to abortion in the state constitution of Maryland, which would have severe consequences for the health of women and unborn children. SB 798 states that every person “has the fundamental right to reproductive freedom, including but not limited to the ability to make and effectuate decisions to prevent, continue, or end one’s own pregnancy.”

The bill fails to impose any gestational limit as to when a woman can “end one’s pregnancy,” *i.e.*, have an abortion. In doing so, the bill authorizes abortion-on-demand up until the baby’s birth date. Consequently, this bill goes well beyond the overruled decisions in *Roe v. Wade*,<sup>3</sup> and *Planned Parenthood of Southeastern Pennsylvania v. Casey*,<sup>4</sup> which only licensed abortion through viability. Furthermore, only six jurisdictions explicitly endorse

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<sup>1</sup> *Pro-Life Model Legislation and Guides*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/> (last visited Feb. 13, 2023).

<sup>2</sup> *Defending Life: State Legislation Tracker*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/state-legislation-tracker/> (last visited Feb. 13, 2023).

<sup>3</sup> 410 U.S. 113 (1973), *overruled by* *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

<sup>4</sup> 505 U.S. 833, *overruled by* *Dobbs*, 142 S. Ct. 2228.

abortion-on-demand throughout pregnancy, endangering some of their most vulnerable citizens.<sup>5</sup> Maryland should not make the same mistake. Rather, the legislature should reject SB 798 and affirm Maryland’s legitimate interest to protect life like many other states have done.<sup>6</sup>

## II. The Bill Significantly Limits Maryland’s Ability to Enact Commonsense Health and Safety Protections for Women

SB 798 would impede Maryland’s ability to act on its interests in protecting the lives of mothers and unborn children. By preventing any regulation of the abortion process unless “justified by a compelling state interest achieved by the least restrictive means,” this bill would reject the United States Supreme Court’s supposition in *Dobbs v. Jackson Women’s Health Organization*, that “States may regulate abortion for legitimate reasons” if the law is rationally related to those reasons.<sup>7</sup> Some examples of a state’s legitimate interests include “respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; [and] the mitigation of fetal pain . . . .”<sup>8</sup> The Supreme Court has consistently recognized that states have “legitimate interests from the outset of the pregnancy in protecting the health of the woman.”<sup>9</sup> Even in *Roe* and *Casey*, the Supreme Court held that “a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life,”<sup>10</sup> and that “it is a constitutional liberty of the woman to have some freedom to terminate her pregnancy . . . . The women’s liberty is *not so unlimited, however, that from the outset [of pregnancy] the State cannot show its concern.*”<sup>11</sup>

Accordingly, Maryland has broad powers to pass protections that ensure the health and safety of women and unborn children. Yet, SB 798 would ignore Maryland’s rights and interests that have been repeatedly recognized in abortion jurisprudence.

Furthermore, the Supreme Court has upheld laws restricting abortion after a certain gestational age due to the state’s interests in protecting human life.<sup>12</sup> However, this bill would go against Maryland’s interests by establishing an extremely high bar for commonsense protections for women and children’s health, including informed consent safeguards and parental involvement laws. SB 798 could also result in the prohibition of

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<sup>5</sup> Eighteen states have laws abolishing abortions at any gestational age, including Alabama, Arkansas, Arizona, Idaho, Indiana, Kentucky, Louisiana, Missouri, Mississippi, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, Wisconsin, West Virginia, and Wyoming. Three states have laws that abolish abortion at six weeks’ gestation, including Iowa, Ohio, and Georgia.

<sup>6</sup> CAL. CONST. art. I, § 1.1; MICH. CONST. art. I, § 28; 775 ILL. COMP. STAT. 55/1-1 to 55/1-97 (2019); MINN. STAT. § 145.409; N.Y. PUB. HEALTH LAW §§ 2599-AA to 2599-BB (McKinney 2019); VT. CONST. ch. I, art. 22.

<sup>7</sup> *Dobbs*, 142 S. Ct. at 2283.

<sup>8</sup> *Id.* at 2283-2284 (citations omitted).

<sup>9</sup> *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 869 (1992); *see also* *Gonzales v. Carhart*, 550 U.S. 124, 145 (2007).

<sup>10</sup> *Roe*, 410 U.S. at 154.

<sup>11</sup> *Casey*, 505 U.S. at 869 (emphasis added).

<sup>12</sup> *Dobbs*, 142 S. Ct. 2228.

regulating abortion providers or facilities because they could be considered restrictions on the practice of abortion.<sup>13</sup> Legalized abortion has neither eliminated the presence of substandard medical care at abortion clinics, kept people without medical licenses from performing abortions that cause harm to women, ensured that women receive competent post-abortive care, or prevented women from dying from unsafe abortions. This bill lowers professional accountability for abortion providers, which will result in such facilities being free to operate without regulation and oversight, to the detriment of women and young girls.<sup>14</sup> Ultimately, by passing this bill, Maryland will be turning a blind eye to unsafe abortion practices by abdicating its proper duty to protect women and children.

*a. The Bill Subjects Women to Late-Term Abortions that Carry High Risks*

Maryland currently allows abortions up until viability, which subjects women to grave health complications due to the risks associated with later-term abortions. However, the passage of SB 798 will result in even greater harm to women because it authorizes elective abortions up until a baby's birth date. It is undisputed that abortion poses risks to women, and the risk of harm increases substantially at later gestational ages. Even Planned Parenthood agrees that abortion becomes riskier later in pregnancy, and states on its national website that, "[t]he chances of problems gets higher the later you get the abortion, and if you have sedation or general anesthesia. . .," which would be necessary for an abortion at or after 20 weeks of gestation.<sup>15</sup>

Ten percent of women suffer immediate complications from abortion, including blood clots, hemorrhages, incomplete abortions, infections, and injuries to the cervix and other organs.<sup>16</sup> Even more concerning is that 1/5 of these complications are life-threatening.<sup>17</sup> Further, the incidence of major complications during an abortion procedure is significantly higher after 20 weeks' gestation.<sup>18</sup> For example, after 8 weeks' gestation, the relative risk of mortality increases by 38 percent for each additional week.<sup>19</sup>

Because SB 798 allows abortion-on-demand throughout a woman's pregnancy, more women will experience life-threatening complications from later-term abortions, which will also increase the number of maternal deaths. The women of Maryland deserve better than

<sup>13</sup> See, e.g., Ams. United for Life, *Unsafe* (2d ed. 2018) (finding 44 health and safety violations in Maryland abortion clinics).

<sup>14</sup> See, e.g., *id.* (report documenting unsafe practices of abortion providers and harm to women's health and safety).

<sup>15</sup> See *How Safe Is An In-Clinic Abortion?*, PLANNED PARENTHOOD <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion> (last visited Feb. 28, 2023).

<sup>16</sup> See *id.*; see also REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005).

<sup>17</sup> REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION, *supra* note 16.

<sup>18</sup> Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 731 (2004); Janet P. Pregler & Alan H. DeCherney, *WOMEN'S HEALTH: PRINCIPLES & CLINICAL PRAC.* 232 (2002). See also Slava V. Gauferg, *Abortion Complications*, MEDSCAPE (updated Jun. 24, 2016) (recognizing several large-scale studies have revealed that abortions after the first trimester pose more serious risks to women's physical health than first trimester abortions).

<sup>19</sup> Bartlett, *supra* note 18; PROFESSIONAL ETHICS COMM. OF AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *INDUCED ABORTION & THE INCREASED RISK OF MATERNAL MORTALITY*, Comm. Op. 6 (Aug. 13, 2019).

to be subjected to later-term abortion procedures that threaten their health and safety. Today, this Committee can protect the maternal health of its citizens by rejecting SB 798.

*b. The Bill Ignores Maryland's Legitimate Interest in Preventing Fetal Pain*

By opposing SB 798, this Committee will also protect Maryland's legitimate interest in preserving prenatal life and mitigating fetal pain. Because SB 798 authorizes abortion up until a baby's birth date, unborn babies who can experience pain from abortion are left unprotected.

Current medical science has firmly established the existence of pain in preborn infants at or before 20 weeks.<sup>20</sup> In 2019, scientists even found evidence of fetal pain as early as 12 weeks' gestation.<sup>21</sup> Another study from 2010 found that "the earlier infants are delivered, the stronger their response to pain"<sup>22</sup> because the "neural mechanisms that inhibit pain sensations do not begin to develop until 34-36 weeks[] and are not complete until a significant time after birth."<sup>23</sup> As a result, unborn children display a "hyperresponsiveness" to pain.<sup>24</sup> According to one group of fetal surgery experts, "[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures."<sup>25</sup> Given the substantial medical evidence illustrating that preborn babies can experience pain by at least 20 weeks, it is well within Maryland's legitimate interest to oppose SB 798 and minimize fetal pain as much as possible.

*c. The Bill Prevents Maryland from Enacting Informed Consent Safeguards for Women*

Maryland does not have an informed consent process, which is concerning given that the choice to abort one's unborn child is a life-altering decision. In its basic definition, informed consent "is a process by which the treating health care provider discloses appropriate information to a competent patient so that the patient may make a voluntary choice to accept or refuse treatment."<sup>26</sup> A woman cannot agree to medical treatment unless she is "competent, adequately informed and not coerced" in giving informed consent.<sup>27</sup> Consequently, informed consent safeguards ensure that a woman is provided with vital and material information to guide her abortion decision, such as the medical risks and benefits

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<sup>20</sup> Federal Pain Capable Act, S. 160, 116th Cong. § 2(1)-(11) (2019).

<sup>21</sup> Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 JOURNAL OF MEDICAL ETHICS 3 (2020).

<sup>22</sup> Lina K. Badr et al., *Determinants of Premature Infant Pain Responses to Heel Sticks*, 36 PEDIATRIC NURSING 129 (2010).

<sup>23</sup> Charlotte Lozier Institute, *Fact Sheet: Science of Fetal Pain*, [https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#\\_ednref14](https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#_ednref14) (last updated Feb. 19, 2020).

<sup>24</sup> Christine Greco and Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES IN PAIN MANAGEMENT 379 (2014).

<sup>25</sup> Maria J. Mayorga-Buiza et al., *Management of Fetal Pain During Invasive Fetal Procedures. Lessons Learned from a Sentinel Event*, 31 EUROPEAN JOURNAL OF ANESTHESIOLOGY 188 (2014).

<sup>26</sup> Christine S. Cocanour, *Informed Consent—It's More Than a Signature on a Piece of Paper*, 214 AM. J. SURGERY 993, 993 (2017).

<sup>27</sup> *Id.*

of abortion, alternatives to abortion, any medical assistance benefits available to her for prenatal care, childbirth, etc.

Approximately 34 states have recognized the need for such protections and have enacted informed consent safeguards in their abortion laws.<sup>28</sup> Specifically, 29 states have reflection periods ranging from 18-hours to 72-hours, which ensure that a woman has the time she needs to take all the given information into account without the pressure of making an immediate decision since the “medical, emotional, and psychological consequences of an abortion are serious and can be lasting.”<sup>29</sup> These states often require certain informed consent disclosures about the nature and risks of abortion procedures as well.

Despite the importance of these safeguards, this bill prevents Maryland from passing any type of informed consent protections for women, which is particularly detrimental to women who are seeking abortions because of intimate partner violence (“IPV”) or reproductive control. IPV includes physical violence, sexual violence, stalking, and psychological aggression by a current or former intimate partner.<sup>30</sup> In the same vein, reproductive control occurs over “decisions around whether or not to start, continue or terminate a pregnancy, including deployment of contraception, and may be exercised at various times in relation to intercourse, conception, gestation and delivery.”<sup>31</sup> Individuals that assert reproductive control over pregnant women include intimate partners, family members, and sex traffickers.<sup>32</sup>

Women seeking abortion face serious risks of IPV and reproductive control. Abortion increases the risk of IPV, as there are “[h]igh rates of physical, sexual, and emotional IPV . . . among women seeking a[n] abortion.”<sup>33</sup> For women seeking abortion, the prevalence of IPV is nearly three times greater than women continuing a pregnancy.<sup>34</sup> Post-abortive IPV victims also have a “significant association” with “psychosocial problems including depression, suicidal ideation, stress, and disturbing thoughts.”<sup>35</sup> Further, reproductive control not only produces coerced abortions or continued pregnancies, it also affects whether the pregnancy was intended in the first place.<sup>36</sup> “As many as one-quarter of women

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<sup>28</sup> The states are Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

<sup>29</sup> *H.L. v. Matheson*, 450 U.S. 398, 411 (1981), *overruled on other grounds by Dobbs*, 142 S. Ct. 2228.

<sup>30</sup> Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLOS MED. 1, 15 (Jan. 2014).

<sup>31</sup> Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 BMJ SEXUAL & REPROD. HEALTH 61, 62 (2019).

<sup>32</sup> *Id.* at 65.

<sup>33</sup> Hall, *supra* note 30, at 15.

<sup>34</sup> COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (reaffirmed 2022) (internal citation omitted).

<sup>35</sup> Hall, *supra* note 30, at 15.

<sup>36</sup> Rowlands, *supra* note 31, at 61–62.

of reproductive age attending for sexual and reproductive health services give a history of ever having suffered [reproductive control].”<sup>37</sup>

Informed consent safeguards let women know that they are not alone in their decision. Ensuring that women experiencing reproductive control or IPV fully understand the risks of abortion, the resources available to them, and the alternatives to abortion, empowers them to make informed, *voluntary* decisions. Unfortunately, IPV and reproductive control are prevalent issues for women. Thus, by limiting Maryland’s ability to ensure women’s informed consent, the bill raises grave domestic violence and coercion concerns.

### **III. The Bill Infringes on Parental Rights, Which the United States Constitution Protects Under the Fourteenth Amendment**

Maryland law permits a minor to obtain an abortion with only notice to and without the consent of her parents. Parental involvement ensures that adolescent girls understand the medical risks of abortion and select competent healthcare professionals who will prioritize their health,<sup>38</sup> ensures that abortion providers have essential and “additional medical history and information [regarding their minor daughter] . . . prior to [the] performance of an abortion,”<sup>39</sup> and “ensures that the parents have the ability to monitor for post-abortion complications.”<sup>40</sup> Parental involvement is especially important given that adolescent girls have high risk pregnancies and often delay prenatal care.<sup>41</sup> However, this bill would make it virtually impossible to pass stronger parental involvement laws in Maryland because the bill makes no mention of age when asserting that every person has a “fundamental right to reproductive freedom.” In effect, this “right” would extend to minor girls, possibly strike down the existing parental notice law, and increase the risk of harm to adolescent girls seeking abortions.

Further, this bill infringes upon parental rights. Under the Fourteenth Amendment’s Due Process Clause, “nor shall any State deprive any person of life, liberty, or property, without due process of law.”<sup>42</sup> Parental rights have a rich history of constitutional protection under the Due Process Clause. “The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond

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<sup>37</sup> *Id.* at 62.

<sup>38</sup> Child Interstate Abortion Notification Act: Hearing on H.R. 2299 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary, 112th Cong. 19, 26-27 (2012) (statement of Teresa Stanton Collett, Professor of Law, University of St. Thomas School of Law).

<sup>39</sup> *Id.* at 26–27.

<sup>40</sup> *Id.* at 19.

<sup>41</sup> See, e.g., Nadia Akseer et al., *Characteristics and Birth Outcomes of Pregnant Adolescents Compared to Older Women: An Analysis of Individual Level Data from 140,000 Mothers from 20 RCTs*, eCLINICALMED., Feb. 26, 2022, at 1, 3 (stating that during pregnancy, “adolescent girls are a particularly vulnerable group since the demands of regular growth and development are augmented by heightened nutritional requirements of supporting a fetus.”); Nathalie Fleming et al., *Adolescent Pregnancy Guidelines*, 37 J. OBSTETRICS & GYNECOLOGY CAN. 740, 743 (2015) (discussing the high-risk nature of adolescent pregnancy is compounded by the fact that pregnant adolescent patients often delay care).

<sup>42</sup> U.S. CONST. amend. XIV, § 1.

debate as an enduring American tradition.”<sup>43</sup> “[Supreme Court] decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.”<sup>44</sup> Yet, as stated above, the bill enables an unemancipated minor to access abortion services without parental involvement, which subverts parents’ constitutional rights to the care and upbringing of their minor pregnant daughters.

Under the Supremacy Clause, the “Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land.”<sup>45</sup> This means that a state statute cannot infringe upon the Constitution’s protection of parental rights. Accordingly, the bill is unconstitutional by infringing upon parental rights.

#### **IV. Conclusion**

For years, the abortion industry has marketed abortion as essential healthcare. This could not be farther from the truth. Abortion is the intentional destruction of a unique human being. Not only does abortion destroy a preborn child, but it is also a devastating practice for women that harms their health and endangers their lives. By enabling abortion-on-demand throughout pregnancy, the state is abandoning women and unborn children to the life-threatening harms of abortion, hamstringing Maryland from enacting any future health and safety safeguards for women and unborn children, and trampling on parental rights. For these reasons, I strongly urge the Committee to reject the bill to protect mothers and unborn children in Maryland.

Respectfully Submitted,



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<sup>43</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

<sup>44</sup> *Moore v. E. Cleveland*, 431 U.S. 494, 504 (1977).

<sup>45</sup> U.S. CONST. art. VI, cl. 2.