
BILL NO: Senate Bill 798
TITLE: Declaration of Rights – Right to Reproductive Freedom
COMMITTEE: Finance
HEARING DATE: March 1, 2023
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 Senate Bill 798 – Declaration of Rights – Right to Reproductive Freedom, which would amend the Maryland Constitution, subject to adoption by voters in the next general election, to include reproductive freedom as a fundamental right. Specifically, the bill recognizes that a central component of an individual’s rights to liberty and equality contains the fundamental right to reproductive freedom. This includes the right to make decisions regarding their own reproduction, including decisions related to preventing, continuing, or ending one’s own 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 was 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. 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*, 505 U.S. 833 (1992).

In June 2022, the Supreme Court issued its radical decision *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022) overturning nearly fifty years of constitutional protection and legal precedence. Among the many arguments contained within the opinion was a position that our nation’s laws in the year that the 14th Amendment was ratified should be a determining factor in whether a right to privacy and abortion exist within the constitutional framework. The *Dobbs* majority found that abortion rights were not a part of the nation’s history and traditions at that time and thus could not be a right connected to the constitution. This decision, and the travesty left in its wake, does not take into account the fact that women were not a part of the “body politic” during that period of our nation’s history and

thus had no say or right to participation in our democratic process¹. Decisions were made about them, and their bodies, without their input. This cannot be allowed to happen again.

It has been less than a year since the *Dobbs* decision was issued, and yet we have already seen its devastating affects across the nation. The abortion landscape has become fragmented and increasingly polarized as pro-abortion states work hard to protect access to abortion care, and anti-abortion states have passed bans and restrictions making it difficult, if not impossible, for people to access the care they need. Indeed, at least twenty-four states have banned abortion or are likely to do so in the imminent future. This means millions of Americans are without access to critical health care and are denied the right to bodily autonomy.

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 give guidance to the courts in how to interpret the amendment and ensure that the right to reproductive freedom is unequivocal.

The Court in *Dobbs* has made clear that abortion is an issue left to be decided by the States, and so it is now up to the state of Maryland to ensure that those who can become pregnant are not left out of the conversation yet again. We must be entitled to chart our own course and have full autonomy over our reproductive decisions. A constitutional amendment is the clearest and most explicit method of ensuring that the right to reproductive freedom is not vulnerable to attack and will remain for generations to come. While reproductive rights are being eroded in neighboring states, Maryland must act affirmatively to ensure all Marylanders have the fundamental right to reproductive freedom.

For these reasons, the Women’s Law Center of Maryland strongly urges a favorable report on Senate Bill 798.

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.

¹ Testimony of Khiara M. Bridges, Professor of Law, UC Berkeley School of Law, Senate Committee on the Judiciary, July 12, 2022, <https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Bridges%20-%202022-07-121.pdf>