



February 24, 2023

House Health and Government Operations Committee
Maryland General Assembly
Room 241
House Office Building
Annapolis, MD 21401

Re: **House Bill 482** - FWA

Dear Chair Pena-Melnyk, Vice Chair Cullison, and Members of the Committee:

We write with regard to HB 482. We appreciate the leadership and thoughtfulness with which lead sponsor, Delegate Shetty, is approaching these complex matters. We look forward to collaborating with her on amendments. We **support HB 482 only if amended** to align with Article 9 of the Uniform Parentage Act of 2017, as outlined briefly below.

Brief Background

We are LGBTQ organizations deeply committed to LGBTQ families and their children so that they can truly thrive in our communities.

GLBTQ Legal Advocates & Defenders (“GLAD”) works in New England and nationally to promote justice on the basis of sexual orientation, gender identity and expression, and HIV status. GLAD has a long history of working to protect LGBTQ people and families, particularly ensuring that the lives of children are stable and secure. Nationally, GLAD has been a leader in establishing and protecting the fundamental right to marry and its attendant benefits, including rights and responsibilities vis a vis children, through our work on cases including *Obergefell v. Hodges*, 135 S. Ct. 1039 (2015) and *Pavan v. Smith*, 137 S. Ct. 2075 (2017). GLAD has successfully worked in coalition in numerous states to pass legislation promoting the security of children regardless of the circumstances of their birth, including children born through assisted reproduction, to nonmarital parents, and to LGBTQ parents.

For over thirty years, COLAGE has been the only national organization expressly dedicated to supporting people with one or more LGBTQ+ caregivers, uniting them with a network of peers and supporting them as they nurture and empower each other to be

skilled, self-confident, and just leaders in their communities. COLAGE's donor conceived community is a core constituency for our organization and we are proud to represent their interests with regard to AB 1896.

For many people, there is a deep longing to care for children and to nurture a new generation. There are many ways to build a family, and there is a great diversity of family structures in the United States. Assisted reproduction using gamete donation is one of the many ways that people, including those struggling with infertility, single parents, and LGBTQ people, seek to build their families.

At GLAD, we routinely hear from LGBTQ community members facing barriers to building and protecting their families. In our work, we are committed to reducing economic and legal barriers to building families and to increasing protections for children and families. It is very important for the LGBTQ community that assisted reproduction, including gamete donation, is accessible, affordable, and provided in a nondiscriminatory and inclusive way.

Experiences of and Impact on LGBTQ Families and their Children

Assisted reproduction is one means to joyfully form a family with children and welcome them into the world. Unfortunately, significant barriers exist for LGBTQ people who wish to build families through assisted reproduction. According to Resolve, the National Infertility Association, only nineteen states have passed fertility insurance coverage laws.¹ No state Medicaid plan provides comprehensive coverage for fertility care. Even in states that provide some access to insurance for fertility care, LGBTQ people face additional requirements or barriers to accessing that care and bringing children into our families.

After intentionally and thoughtfully welcoming children, LGBTQ parents also experience barriers to protecting their children due to a patchwork of legal protections across the country for children born through assisted reproduction. The Uniform Law Commission recently issued an important update to its model act - the Uniform Parentage Act of 2017 - to recommend to states that they comprehensively update parentage protections to ensure that all families can secure legal recognition of their children's parentage regardless of the gender, sexual orientation, or marital status of the parents or the circumstances of the child's birth through, for example, assisted reproduction.²

¹ See Resolve, *Insurance Coverage by State*, <https://resolve.org/learn/financial-resources-for-family-building/insurance-coverage/insurance-coverage-by-state/>.

² Uniform Parentage Act (UPA) 2017.

Although a number of states have acted to update their parentage laws to protect children born through assisted reproduction to LGBTQ parents, much more work is needed in states across the country to ensure that children of LGBTQ parents have equal access to the security of a legal parent-child relationship.³ For children who lack parentage protections, the results can be devastating, including lack of access to benefits, involvement in state child welfare systems, and separation from beloved parents.

The Bill – HB 482

As with any community, children and adults who were conceived through gamete and embryo donation and their families are a diverse and multi-faceted community. For LGBTQ people within this community, there is a commitment to openness and honesty with children about the circumstances of their birth through assisted reproduction and donor gametes.

The topics addressed in this bill are complex and multi-layered, requiring input and consideration by a host of stakeholders to identify the issues, understand them thoroughly, and design solutions – legislative or not – that might effectively address them without having significant unintended negative consequences. GLAD and COLAGE have appreciated the opportunity to provide feedback about the bill and these complex matters.

In its current form, we are concerned that this bill, while well-meaning, may have some unintended consequences. In particular, we are worried that the bill might undermine the security of LGBTQ families as well as principles of reproductive justice and freedom that are particularly important in light of *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022). Some of the provisions of concern include:

- Provisions to give this bill extraterritorial effect beyond the borders of Maryland; and
- Provisions that limit reproductive autonomy, including but not limited to limits on family size monitored through invasive reporting requirements, eliminating the option of unknown gamete donation, and age limits for gamete donation.

GLAD and COLAGE, along with other LGBTQ movement organizations, believe that amending the bill to align with Article 9 of the Uniform Parentage Act of 2017 would meet the articulated goals of the bill and align with best practice happening in other states. The goal of HB 482 is to ensure that people born from gamete provision have

³ See Douglas NeJaime, *The Nature of Parenthood*, 126 Yale L.J. 2260, 2367-68 (2017) (App. B); Courtney G. Joslin, *(Not) Just Surrogacy*, 109 Calif. L. Rev. 401 (2021).

access to available medical history information. Article 9 of the UPA ensures that adults born from gamete provision, and their parents or guardians during their minority, are able to access non-identifiable medical information about their gamete provider. Article 9 has already been passed in California, Connecticut, Rhode Island, and Washington State and provides a helpful roadmap for Maryland. We understand that Del. Shetty aims to align HB 482 with Article 9, and we look forward to supporting her in this work.

We are grateful for the opportunity to share our perspectives. We hope that the committee will favorably report the bill so long as it is amended to align with Article 9 of UPA 2017. We remain available for any questions or further assistance.

Sincerely yours,

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[ARTICLE] 9

INFORMATION ABOUT DONOR

SECTION 901. DEFINITIONS. In this [article]:

(1) “Identifying information” means:

(A) the full name of a donor;

(B) the date of birth of the donor; and

(C) the permanent and, if different, current address of the donor at the time of the

donation.

(2) “Medical history” means information regarding any:

(A) present illness of a donor;

(B) past illness of the donor; and

(C) social, genetic, and family history pertaining to the health of the donor.

SECTION 902. APPLICABILITY. This [article] applies only to gametes collected on or after [the effective date of this [act]].

SECTION 903. COLLECTION OF INFORMATION.

SECTION 903. COLLECTION OF INFORMATION.

(a) A gamete bank or fertility clinic licensed in this state shall collect from a donor the donor’s identifying information and medical history at the time of the donation.

(b) A gamete bank or fertility clinic licensed in this state which receives gametes of a donor collected by another gamete bank or fertility clinic shall collect the name, address, telephone number, and electronic mail address of the gamete bank or fertility clinic from which it received the gametes.

(c) A gamete bank or fertility clinic licensed in this state shall disclose the information

collected under subsections (a) and (b) as provided under Section 905.

SECTION 904. DECLARATION REGARDING IDENTITY DISCLOSURE.

(a) A gamete bank or fertility clinic licensed in this state which collects gametes from a donor shall:

(1) provide the donor with information in a record about the donor's choice regarding identity disclosure; and

(2) obtain a declaration from the donor regarding identity disclosure.

(b) A gamete bank or fertility clinic licensed in this state shall give a donor the choice to sign a declaration, attested by a notarial officer or witnessed, that either:

(1) states that the donor agrees to disclose the donor's identity to a child conceived by assisted reproduction with the donor's gametes on request once the child attains 18 years of age; or

(2) states that the donor does not agree presently to disclose the donor's identity to the child.

(c) A gamete bank or fertility clinic licensed in this state shall permit a donor who has signed a declaration under subsection (b)(2) to withdraw the declaration at any time by signing a declaration under subsection (b)(1).

SECTION 905. DISCLOSURE OF IDENTIFYING INFORMATION AND MEDICAL HISTORY.

(a) On request of a child conceived by assisted reproduction who attains 18 years of age, a gamete bank or fertility clinic licensed in this state which collected the gametes used in the assisted reproduction shall make a good-faith effort to provide the child with identifying

information of the donor who provided the gametes, unless the donor signed and did not withdraw a declaration under Section 904(b)(2). If the donor signed and did not withdraw the declaration, the gamete bank or fertility clinic shall make a good-faith effort to notify the donor, who may elect under Section 904(c) to withdraw the donor's declaration.

(b) Regardless whether a donor signed a declaration under Section 904(b)(2), on request by a child conceived by assisted reproduction who attains 18 years of age, or, if the child is a minor, by a parent or guardian of the child, a gamete bank or fertility clinic licensed in this state which collected the gametes used in the assisted reproduction shall make a good-faith effort to provide the child or, if the child is a minor, the parent or guardian of the child, access to nonidentifying medical history of the donor.

(c) On request of a child conceived by assisted reproduction who attains 18 years of age, a gamete bank or fertility clinic licensed in this state which received the gametes used in the assisted reproduction from another gamete bank or fertility clinic shall disclose the name, address, telephone number, and electronic mail address of the gamete bank or fertility clinic from which it received the gametes.

SECTION 906. RECORDKEEPING.

(a) A gamete bank or fertility clinic licensed in this state which collects gametes for use in assisted reproduction shall maintain identifying information and medical history about each gamete donor. The gamete bank or fertility clinic shall maintain records of gamete screening and testing and comply with reporting requirements, in accordance with federal law and applicable law of this state other than this [act].

(b) A gamete bank or fertility clinic licensed in this state that receives gametes from another gamete bank or fertility clinic shall maintain the name, address, telephone number, and

electronic mail address of the gamete bank or fertility clinic from which it received the gametes.