



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.<sup>1</sup> 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.<sup>2</sup>

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

<sup>2</sup> 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.<sup>3</sup> 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

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<sup>3</sup> 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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