



**Written Testimony of Steven H. Aden, J.D.**  
**Chief Legal Officer & General Counsel, Americans United for Life**  
**In Support of H.B. 1271**  
**Submitted to the Committee on Health and Government Operations**  
**February 27, 2025**

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

My name is Steven H. Aden, and I serve as Chief Legal Officer and General Counsel at Americans United for Life (“AUL”). Established in 1971, AUL is a national law and policy nonprofit organization that specializes 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 General Counsel, I specialize in constitutional law and abortion jurisprudence, including informed consent laws that empower women with authentic choice.

Thank you for the opportunity to testify in support of H.B. 1271, which safeguards the informed consent of a woman considering abortion. This bill ensures a woman may view her ultrasound and has time to reflect upon this life-changing decision. It is my expert opinion that (I) Maryland’s Constitution permits the State to regulate abortion if the law passes strict scrutiny; (II) protecting informed consent is a compelling state interest, which satisfies the first part of the strict scrutiny test; and (III) ultrasounds and reflection periods ensure women’s informed consent through the least restrictive means, which passes the second part of the strict scrutiny test. Accordingly, I urge this Committee to pass H.B. 1271 to safeguard informed consent and empower women with authentic choice.

**I. Maryland’s Constitutional Right to Abortion Recognizes the State May Regulate Abortion if the Law Passes Strict Scrutiny.**

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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. 25, 2025).

<sup>2</sup> *State Spotlight*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/state-legislation-tracker/> (last visited Feb. 25, 2025).

Just last year, Maryland voters amended the state constitution to create a right to abortion. The amendment provides:

That every person, as a central component of an individual's rights to liberty and equality, 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 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.<sup>3</sup>

Accordingly, the Maryland Constitution now protects a right “to make and effectuate decisions to . . . end one's own pregnancy.”

Although the Maryland Constitution confers a right to abortion, this right is not absolute. The Maryland Constitution permits laws regulating abortion if those laws, first, are “justified by a compelling State interest,” and, second, further a compelling State interest that is “achieved by the least restrictive means.” This is commonly known as the “strict scrutiny” test. As discussed *infra* sections II and III, H.B. 1271 passes strict scrutiny by empowering women with authentic choice.

## **II. Ensuring Informed Consent is a Compelling State Interest.**

H.B. 1271 furthers a compelling State interest: ensuring the informed consent of women considering abortion. Informed consent is a foundational principle of modern medicine.<sup>4</sup> It is not unique to abortion. Rather, healthcare providers must have a patient's informed consent before they perform *any* medical intervention.

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>5</sup> It “involves discussion of the benefits and risks of available treatment options in the context of a patient's values and priorities.”<sup>6</sup> Informed consent “requires that the patient has the ability to understand and reason through this information and is free to ask questions and to make an intentional and voluntary choice, which may include refusal of care or treatment.”<sup>7</sup> A woman cannot agree to medical treatment unless she is “competent, adequately informed and not coerced” in giving informed consent.<sup>8</sup> “Some informed consent

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<sup>3</sup> MD. CONST., DECL. OF RTS. art. 48.

<sup>4</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>5</sup> *Id.*

<sup>6</sup> COMM. ON ETHICS, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Informed Consent and Shared Decision Making in Obstetrics and Gynecology*, Comm. Op. No. 819, at 1 (2021).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Cocanour, *supra* note 4, at 993.

challenges are universal to medicine, whereas other challenges arise more commonly in the practice of obstetrics and gynecology than in other specialty areas.”<sup>9</sup>

Women considering abortion often face unique informed consent challenges. Abortion is a life-altering decision, that has both short- and long-term risks.<sup>10</sup> On top of this, “[a]bortion presents a profound moral issue” about human life and liberty for many women.<sup>11</sup> There are problems in ensuring a woman’s decision is volitional. Unfortunately, there are “[h]igh rates of physical, sexual, and emotional violence among women seeking a[n abortion].”<sup>12</sup> In fact, for women seeking abortion, the prevalence of intimate partner violence is nearly three times greater than women continuing a pregnancy.<sup>13</sup> These factors make informed consent counseling difficult for a woman considering an abortion. However, heightened informed consent protections can mitigate these challenges.

Although the Maryland Constitution permits abortion as a medical intervention, medical professionals nevertheless must receive a woman’s voluntary, informed consent before inducing an abortion. H.B. 1271 requires the provider to perform an ultrasound and offer for the woman to view the ultrasound image.<sup>14</sup> Likewise, the bill establishes a reflection period so a woman has time to consider this life-changing decision.<sup>15</sup> These provisions further the State’s compelling interest in ensuring a woman provides informed consent before the provider performs or induces an abortion. H.B. 1271 empowers women with authentic choice when considering their pregnancy options.

### **III. The Ultrasound and Reflection Period Provisions Safeguard Women’s Informed Consent Through the Least Restrictive Means.**

H.B. 1271 passes strict scrutiny because the ultrasound and reflection period provisions further the State’s compelling interest in protecting informed consent, and the provisions do so through the least restrictive means.

As a preliminary note, the bill applies to the “qualified provider”, restricting his or her ability to “perform or induce an abortion on a pregnant woman” before performing the ultrasound and ensuring the woman has 24 hours to reflect upon her decision and the information given her.<sup>16</sup> In this regard, the bill directly regulates the

<sup>9</sup> COMM. ON ETHICS, *supra* note 6, at 1.

<sup>10</sup> RSCH. COMM., AM. ASS’N OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *State Restrictions on Abortion: Evidence-Based Guidance for Policymakers*, Comm. Op. No. 10, at 12, 16 (2022).

<sup>11</sup> *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2240 (2022).

<sup>12</sup> Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLOS MED., Jan. 2014, at 1, 21.

<sup>13</sup> COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (2022).

<sup>14</sup> H.B. 1271, § 20-210(C), 2025 Leg., Reg. Sess. (Md. 2025).

<sup>15</sup> *Id.* § 20-210(B).

<sup>16</sup> *Id.*

provider's medical standard of care, not the woman's right to an abortion. H.B. 1271 is written to minimize any burden upon the woman. For example, the bill's provisions do not apply if "[t]he woman is the victim of an alleged rape or of incest," which has been "reported to law enforcement."<sup>17</sup> The ultrasound and reflection period provisions further narrowly tailor their requirements to safeguard a woman's informed consent without unduly burdening her decision making.

*A. The Ultrasound Provisions Ensure Informed Consent Through the Least Restrictive Means to the Woman.*

The ultrasound requirement promotes the State's compelling interest in safeguarding a woman's informed consent through the least restrictive means. H.B. 1271 foremost sets a standard of care for the medical provider. The medical professional must "[b]e trained in sonography and working under the supervision of a qualified provider."<sup>18</sup> Likewise, the medical professional must use the ultrasound image to determine the gestational age of the unborn child through "[m]easurement of the fetus in as manner consistent with the standard of care" or, alternatively, through "measurement of the gestational sac" if it is visible.<sup>19</sup> In turn, these provisions provide important benefits for a woman considering abortion.

Ultrasound provisions both promote the woman's physical and psychological health and are critical to informed consent counseling.<sup>20</sup> The ultrasound provisions serve an essential and irreplaceable medical purpose because it is the only method of diagnosing ectopic pregnancies, which if left undiagnosed can result in infertility or even fatal blood loss for the mother.<sup>21</sup>

An ultrasound enables the healthcare provider to more accurately date the gestational age of a child. Accurate dating of pregnancy protects the woman's physical health and ensures the abortion provider offers appropriate pregnancy options. For

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<sup>17</sup> *Id.* § 20-210(A). Unless otherwise defined, when the law discusses abortion, it is referring to "[a]n artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus." *Abortion*, BLACK'S LAW DICTIONARY 6 (12th ed. 2024). In this regard, the law views abortion as a question of an "individual's rights to liberty and equality." See MD. CONST., DECL. OF RTS. art. 48. A separate legal question—concerning the mother's right to life—presents itself when there is a life-threatening situation for the mother that necessitates the premature separation of the mother and unborn child. Legally, there is no longer "the purpose of destroying an embryo or fetus," but, rather, the intent to save the mother's life. Accordingly, since the provider lacks the requisite intent to destroy the unborn child, the ultrasound and reflection period provisions would not apply in scenarios in which the mother's life is at risk. However, the Committee should consider explicitly clarifying this within the bill.

<sup>18</sup> H.B. 1271, § 20-210(C)(1).

<sup>19</sup> *Id.* § 20-210(C)(2).

<sup>20</sup> See *Dobbs*, 142 S. Ct. at 2284 (discussing the State's "legitimate interests includ[ing] . . . the protection of maternal health and safety . . . [and] the preservation of the integrity of the medical profession").

<sup>21</sup> See, e.g., *Ectopic Pregnancy*, MAYO CLINIC (Mar. 12, 2022), <https://www.mayoclinic.org/diseases-conditions/ectopic-pregnancy/symptoms-causes/syc-20372088>.

example, the U.S. Food and Drug Administration has only approved chemical abortion drugs up to ten weeks gestation.<sup>22</sup> Likewise, abortion providers offer different surgical options based upon the gestational age of the unborn child.<sup>23</sup> “[W]omen who do not receive an ultrasound prior to abortion are suboptimally dated, which diminishes the accuracy of providers’ counseling about procedure risks.”<sup>24</sup> This is especially concerning because “[t]he frequency of complications increases with gestational age due to the greater degree of anatomic and physiologic changes later in pregnancy.”<sup>25</sup>

The ultrasound provisions empower the woman with authentic choice during the informed consent process. The provider must offer to perform additional ultrasonography for the woman if the provider cannot determine the gestational age of the unborn child.<sup>26</sup> The provider must also offer the woman the option to “[v]iew the ultrasound image,” “[r]eceive a printed copy of the ultrasound image,” and “[h]ear the fetal heartbeat in a manner consistent with the standard of care.”<sup>27</sup> However, it is ultimately the woman’s choice whether she accepts these offers. H.B. 1271 explicitly recognizes that “[a] woman is not required to accept anything offered during transabdominal ultrasound imaging performed in accordance [with this bill].”<sup>28</sup>

Allowing a woman the opportunity to view her ultrasound and hear the fetal heartbeat helps ensure an informed choice. At least sixteen states recognize this value and require medical professionals to perform ultrasounds as part of informed consent counseling for abortion.<sup>29</sup> The ultrasound imaging gives the mother the option of seeing her unborn child as he or she really is—by seeing his or her form and face on a screen and by hearing his or her heartbeat. Medical evidence indicates that a woman feels bonded to her unborn child after seeing him or her on the ultrasound screen.<sup>30</sup> Once that bond is established, researchers argue, a woman no longer feels ambivalent toward her pregnancy and in fact begins to feel invested in her unborn child.<sup>31</sup> And thus, by giving every woman the choice to view her child’s ultrasound image, the State also furthers its interest in protecting life, as some women may ultimately decide to carry

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<sup>22</sup> *Mifeprex Prescribing Information*, U.S. FOOD & DRUG ADMIN. (Jan. 2023), [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2023/020687Orig1s025Lbl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2023/020687Orig1s025Lbl.pdf).

<sup>23</sup> RSCH. COMM., AM. ASS’N OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10, at 8 (2022).

<sup>24</sup> RSCH. COMM., *State Restrictions*, *supra* note 10, at 9.

<sup>25</sup> *Id.* at 12.

<sup>26</sup> H.B. 1271, § 20-210(C)(3).

<sup>27</sup> *Id.* § 20-210(C)(6).

<sup>28</sup> *Id.* § 20-210(D).

<sup>29</sup> The states are Alabama, Arizona, Arkansas, Florida, Indiana, Iowa, Kansas (temporarily enjoined), Kentucky, Louisiana, Mississippi, North Carolina, Ohio (temporarily enjoined), Oklahoma, Tennessee, Texas, and Wisconsin.

<sup>30</sup> See John C. Fletcher & Mark I. Evans, *Maternal Bonding in Early Fetal Ultrasound Examinations*, 308 NEW ENG. J. MED. 392 (1983).

<sup>31</sup> *Id.*

their child to term. In fact, a 2015 study found that 78% of women who see an ultrasound image of their infant in utero choose life for their baby.<sup>32</sup>

In sum, ultrasonography is critical to providing complete informed consent counseling about pregnancy options. H.B. 1271 furthers this compelling interest in safeguarding informed consent through the least restrictive means to a woman's right to continue or end her pregnancy. The bill sets a standard of care for abortion providers, while empowering women with accurate informed consent counseling and the option of viewing the ultrasound image.

*B. The Reflection Period Provision Protects Informed Consent Through the Least Restrictive Means to the Woman.*

H.B. 1271's reflection period supports the State's compelling interest in promoting informed consent, and it does this through the least restrictive means to the woman considering abortion. Under the bill, "[a] qualified provider may not perform or induce an abortion on a pregnant woman . . . [w]ithin 24 hours after the woman receives transabdominal ultrasound imaging in accordance with [requirements under the bill]."<sup>33</sup> However, the bill considers the potential burden upon a woman if she needs to travel. The reflection period is reduced to 2 hours "[i]f the woman resides at least 100 miles from the facility in which the abortion will be performed."<sup>34</sup>

Reflection periods support the informed consent of women considering abortion. The 24-hour reflection period—like the reflection periods ranging from 18 hours to 72 hours in 28 other states<sup>35</sup>—helps ensure a woman has the time she needs to consider the information she has received from the abortion provider without the pressure of making an immediate, life-altering decision. This is critical since the "medical, emotional, and psychological consequences of an abortion are serious and can be lasting."<sup>36</sup>

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<sup>32</sup> Thomas A. Glessner, *National Survey of Pro-life Pregnancy Centers Shows Major Influence of Ultrasound on a Mother's Choice for Life*, STANDARD NEWSWIRE (Mar. 4, 2015), <http://standardnewswire.com/news/23610063.html> (surveying 75,318 ultrasounds performed for pregnant patients identified as either abortion-minded or abortion-vulnerable and finding 58,634 chose to allow their children to live, or about 78%).

<sup>33</sup> H.B. 1271, § 20-210(B)(1).

<sup>34</sup> *Id.* § 20-210(B)(2).

<sup>35</sup> The states are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas (temporarily enjoined), Kentucky, Louisiana, Michigan (temporarily enjoined), Mississippi, Missouri (temporarily enjoined), Montana (temporarily enjoined), Nebraska, North Carolina, North Dakota, Ohio (temporarily enjoined), Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin.

<sup>36</sup> *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).



Before the Supreme Court overruled *Roe v. Wade*,<sup>37</sup> it notably upheld a 24-hour reflection period under the purported federal constitutional right to abortion.<sup>38</sup> In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court determined a 24-hour reflection period was not an “undue burden” and “[t]he idea that important decisions will be more informed and deliberate if they follow some period of reflection” was not “unreasonable.”<sup>39</sup>

Even beyond the abortion context, many States have established reflection periods that implicate other fundamental rights concerning the family and parenting, such as reflection periods for marriage, adoption, or divorce.<sup>40</sup> In fact, Maryland has a 48-hour waiting period for marriages,<sup>41</sup> even though “the right to marry is protected by the Constitution.”<sup>42</sup>

In sum, the reflection period provision serves the compelling State interest of empowering a woman to give informed consent, and the bill does this through the least restrictive means to the woman considering abortion.

#### IV. Conclusion.

Ultrasounds and reflection periods are critical to women’s agency and decision making when considering abortion. I urge you to pass H.B. 1271 to give women full information and empower them with authentic choice in their pregnancy decisions.

Respectfully Submitted,



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<sup>37</sup> *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs*, 142 S. Ct. 2228.

<sup>38</sup> 505 U.S. 833, 887 (1992).

<sup>39</sup> *Id.* at 885.

<sup>40</sup> *See, e.g., Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 975 N.W.2d 710, 719 (Iowa 2022) (“In any event, Iowa law has waiting periods for other important decisions that implicate fundamental rights, including marriage, adoption, and divorce.” (citations omitted)).

<sup>41</sup> MD. CODE ANN., FAM. LAW § 2-405(d)(1) (2022).

<sup>42</sup> *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015).