



Constitutional Peril in Maryland: The Legal and Policy Implications of Enshrining a Right to Abortion in Maryland’s Constitution

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Introduction

The pro-life movement has accomplished many victories in the wake of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*,³ while also facing new challenges. Now that the Supreme Court has overturned *Roe v. Wade*⁴ and returned the abortion issue to the democratic process, abortion activists have sought to enshrine a “right” to elective abortion in state constitutions across the country. These efforts pose a serious threat to pro-life laws and the protection of preborn human beings, women, and adolescent girls. Recently, voters in Ohio and Michigan amended their state constitutions to enshrine a “right” to elective abortion. Upon the passage of these amendments, abortion activists were quick to challenge life-affirming laws in both states. For example, in the year following Michigan’s abortion amendment, the legislature successfully repealed numerous protections for women and preborn children, including the state’s ban on partial-birth abortions and provisions requiring abortion facilities to be licensed and operated under necessary health and safety standards.

This November, Marylanders will face a similar ballot initiative entitled, the “Maryland Right to Reproductive Freedom Amendment” (“amendment”). If passed, the ballot initiative would amend the Maryland constitution to state, “[t]hat 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.”⁵ Further, the amendment prohibits the state from enacting laws that protect women by directing that Maryland “may not[] directly or indirectly, deny, burden, or abridge the right (to reproductive autonomy) unless justified by a compelling state interest achieved by the least restrictive means.”⁶

The amendment’s language is deceptive. First, the misleading phrasing of this amendment makes it appear as though Maryland currently restricts or is attempting to restrict individuals from making decisions about contraception or “continu[ing] . . . one’s own pregnancy.” This is not true, as Marylanders can freely obtain contraception as well as “continue” their pregnancies. Current law also permits elective abortions up to

³ *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

⁴ 410 U.S. 113 (1973).

⁵ The Maryland Right to Reproductive Freedom Amendment (Maryland 2024).

⁶ *Id.*

viability, with broad exceptions for the “life or health of the women” and when “[t]he fetus is affected by genetic defect or serious deformity or abnormality.”⁷ In other words, even if voters reject this amendment, Maryland residents can still obtain contraception, continue their pregnancies, and have an abortion.

Unfortunately, Maryland already has little to no legal protections for preborn life. As stated above, the state allows for abortions up until viability, with broad exceptions in place.⁸ Further, Maryland statutes define fetal viability, which is an arbitrary and vague standard, as “that stage when, in the best clinical judgement of the qualified provider based on the particular facts of the case before the qualified provider, there is a reasonable likelihood of the fetus’s sustained survival outside the womb.”⁹ Thus, Maryland allows the abortionist to determine fetal viability on a case-by-case basis.¹⁰ If the amendment is passed it will enshrine abortion and all reproductive “rights” into the constitution. This will make it incredibly difficult to repeal and will keep the state from regulating and ensuring the safety of women in these highly sensitive areas of reproductive health.

Moreover, the amendment is deceptive in disguising itself to appear to be solely entrenched with abortion rights when in fact it is masking protection for all “matters relating to [women’s] pregnancies, including prenatal care, childbirth, postpartum care, birth control, vasectomies and tubal ligations, abortion and abortion care, and care for miscarriages and infertility.”¹¹ In Nevada, a constitutional amendment with similar language was raised and went through litigation for violating Nevada’s single-subject rule.¹² The court found that the Nevada amendment alone touches on all reproductive measures and will prevent the state from regulating any measure the individual or entity assisting or exercising on the outcome of a pregnancy.¹³ Nevada changed the language of the constitutional amendment to solely protect abortion, but Maryland has made no such change and continues using incredibly vague language.¹⁴ If this amendment is enacted, it will change the face of the entire reproductive world and how it is regulated in the state.

Furthermore, the misleading language of the amendment attempts to disguise abortion as healthcare. As discussed below in Section V, abortion is not healthcare. It is the intentional destruction of innocent preborn human life. Additionally, as the Supreme Court acknowledges in *Dobbs*, states have a legitimate interest in preserving prenatal life, mitigating fetal pain, and protecting maternal health.¹⁵ Thus, Maryland can regulate abortion in furtherance of these important interests.

⁷ Md. Code Ann., Health-Gen. § 20-209 (West 2024).

⁸ Md. Code Ann., Health-Gen. § 20-209 (West 2024).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Nevadans for Reprod. Freedom v. Washington*, 546 P.3d 801, 2024 Nev. LEXIS 19, 5 (Nev. 2024).

¹² *Id.*

¹³ *Id.* at 6

¹⁴ The Maryland Right to Reproductive Freedom Amendment (Maryland 2024).

¹⁵ *Dobbs*, 142 S. Ct. at 2284.

However, if Maryland passes the amendment, the fallout will be devastating, especially for the welfare of Maryland women and their preborn children. The amendment increases the number of late-term abortions, threatens to eliminate protections for women’s welfare and parental involvement laws, gives abortionists free rein to operate clinics without health and safety regulations, increases the number of coerced abortions in Maryland, and furthers the harmful and false narrative that abortion is necessary for women to have equality and success in America. The amendment will take Maryland’s extremely broad abortion laws and apply it to all reproductive questions and prevent the state from protecting women.

I. The Maryland Right to Reproductive Freedom Amendment Will Increase the Number of Late-Term Abortions in the State.

By affording constitutional protection to elective abortion, the amendment will further the state’s reputation as an abortion destination, leading to more late-term abortions. In turn, more women and preborn children will be subject to abortion violence in the state. Maryland’s current law already effectuates abortion-on-demand up until a preborn baby’s birth date.¹⁶ Although the statutory language seemingly prohibits abortion after fetal viability, it allows for a broad “health” exception. The statute states, abortion may be prohibited after fetal viability, except if “[t]he termination procedure is necessary to protect the life or health of the women.”¹⁷ Courts, including the U.S. Supreme Court, have broadly interpreted this health exception. In *Doe v. Bolton*¹⁸, which was the companion case to *Roe*, the Supreme Court defined “health” in abortion laws as “all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well-being of the patient. All these factors may relate to health.”¹⁹ Since then, “whenever and wherever used in abortion law, ‘health’ means ‘emotional well-being,’ and it’s a trap door for any state regulation. A state regulation cannot be applied if ‘emotional well-being of the patient—including any minor—might be affected by the regulation’.”²⁰

Under Maryland’s broad health exception, if a pregnancy is affecting a woman’s “emotional well-being” for whatever reason, she can have an abortion up to the date of her preborn child’s birth. By including this health exception, Maryland has authorized abortion-on-demand throughout all nine months of pregnancy. The abortionist simply has to find the abortion necessary to protect the patient’s “health”. This could be any foreseeable social reason such as the woman’s age, the ending of the relationship between the mother and the father of the baby, financial concerns, etc.

¹⁶ Md. Code Ann., Health-Gen. § 20-209 (West 2024).

¹⁷ *Id.*

¹⁸ Although *Doe v. Bolton* was the companion case for *Roe*, the Supreme Court did not overturn *Doe* in the *Dobbs* decision.

¹⁹ *Doe v. Bolton*, 410 U.S. 179, 192 (1973).

²⁰ Clarke D. Forsythe, *Feingold and Kagan on the Doe ‘Health’ Exception*, NAT’L REV. (June 29, 2010), <https://www.nationalreview.com/bench-memos/feingold-and-kagan-doe-health-exception-clarke-d-forsythe/>.

Although it is a common misconception that abortions performed under a health exception, or late-term abortions, are only performed in rare circumstances for medically necessary reasons, as the American Association of Pro-Life Obstetricians and Gynecologists (“AAPLOG”) states, “most abortions are done for social reasons.”²¹ “Overall, common exceptions to abortion restrictions are estimated to account for less than five percent of all abortions meaning that 95 percent of abortions are for elective or unspecified reasons.”²² Dr. James Studnicki published a similar outcome in *Health Services Research and Managerial Epidemiology* regarding late-term abortions. As he says,

[t]he Guttmacher Institute has provided a number of reports over 2 decades which have identified the reasons why women choose abortion, and they have consistently reported that childbearing would interfere with their education, work, and ability to care for existing dependents; would be a financial burden; and would disrupt partner relationships.²³

Accordingly, most abortions occur for elective reasons of the mother, not because of the either the baby’s or the mother’s medical condition.

Given how extreme Maryland’s current abortion laws are, the amendment will make it even more difficult to reverse the effects of having such bold abortion protections. The Maryland Right to Reproductive Freedom Amendment will also prevent the state from enacting any type of regulation in all matters of pregnancy, which will inevitably increase the number of late-term abortions and decrease legislation protecting women.

Furthermore, it is estimated that abortionists perform around 10,000 abortions at 21 weeks’ gestation or later each year.²⁴ Although, the number of late-term abortion is likely significantly higher given that the Centers for Disease Control and Prevention’s (“CDC”) data is limited by voluntary state reporting and abortion destination states, such as California and Maryland itself, refuse to provide any data to the CDC.²⁵ The amendment will enshrine this devastating reality into the foundation of Maryland law and increase the difficulty in repealing statutes that increase the number of late-term abortions due to its broad health exception, putting more women at risk of suffering severe and life-threatening complications, as well as subjecting preborn children to painful abortion procedures. The amendment will also broaden these protections to all matters affecting pregnancy. Passing this amendment is not in the best interest of

²¹ AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, STATE RESTRICTIONS ON ABORTION: EVIDENCE-BASED GUIDANCE FOR POLICYMAKERS, Comm. Op. 10, at 10 (updated Sept. 2022).

²² *The Assault on Reproductive Rights in a Post-Dobbs America: Hearing before the S. Comm. on the Jud., 118th Cong. 15* (2023) (written testimony of Monique Chireau Wubbenhorst, MD, MPH).

²³ James Studnicki, *Late-Term Abortion and Medical Necessity: A Failure of Science*, HEALTH SERVS. RSCH. & MANAGERIAL EPIDEMIOLOGY, Apr. 9, 2019, at 1, 1.

²⁴ Guttmacher Institute, *Induced Abortion in the United States*, GUTTMACHER (2019), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>.

²⁵ See Questions and Answers on Late-Term Abortion, CHARLOTTE LOZIER INST. (May 16, 2022), <https://lozierinstitute.org/questions-and-answers-on-late-term-abortion/>.

women and only deepens the abortion industry's pockets while subjecting women to dangerous late-term abortions that threaten their physical and emotional well-being.

a. Late-Term Abortions Carry a Higher Risk of Health Complications.

By enshrining constitutional protection for late-term abortions in the state, Maryland will put more women at risk of suffering severe and life-threatening complications. Abortions carry a higher medical risk when done later in pregnancy. Even Planned Parenthood, the largest abortion business in the United States, agrees that abortion becomes riskier later in pregnancy.²⁶

Gestational age is the strongest risk factor for abortion-related mortality, and the incidence of major complications is significantly higher after 20 weeks' gestation.²⁷ For example, compared to an abortion at 8 weeks' gestation, the relative risk of mortality increases exponentially (by 38 percent for each additional week) at higher gestational ages.²⁸ Further, researchers have concluded that it may not be possible to reduce the risk of death in later-term abortions because of the "inherently greater technical complexity of later abortions."²⁹ This is because later-term abortions need to dilate the cervix to a greater degree, and the increased blood flow predisposes women to hemorrhage, and the myometrium relaxes and is more subject to perforation.³⁰

Later-term abortions also pose an increased risk to the woman's physical and mental health. Some immediate complications from abortion include blood clots, hemorrhaging, incomplete abortions, infection, and injury to the cervix and other organs.³¹ Immediate complications affect approximately 10% of women undergoing abortion, and approximately one-fifth of these complications are life-threatening.³² If Maryland memorializes these laws into its constitution and supports abortion-on-demand, more women will experience life-threatening complications from late-term abortions.

b. The Maryland Right to Reproductive Freedom Amendment Furthers the Psychological Harm of Abortion on Women.

Amending Maryland's constitution to enshrine a "right" to abortion will result in more women suffering post-abortive psychological harms. "[P]regnancy loss (natural or induced) is associated with an increased risk of mental health problems."³³ "Research on mental health subsequent to early pregnancy loss as a result of elective induced

²⁶ See Planned Parenthood, *How Safe Is an In-Clinic Abortion?*, <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion> (last visited Oct. 20, 2023).

²⁷ Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 *OBSTETRICS & GYNECOLOGY* 729, 731 (2004).

²⁸ *Id.* at 731; PRO. ETHICS COMM. OF AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *Induced Abortion & the Increased Risk of Maternal Mortality*, Comm. Op. 6 (Aug. 13, 2019).

²⁹ Bartlett, *supra* note 20, at 735.

³⁰ *Id.*

³¹ See Planned Parenthood, *supra* note 18.

³² REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005).

³³ David C. Reardon & Christopher Craver, *Effects of Pregnancy Loss on Subsequent Postpartum Mental Health: A Prospective Longitudinal Cohort Study*, 18 *INT'L J. ENV'T RSCH. & PUB. HEALTH* 1, 1 (2021).

abortions has historically been polarized, but recent research indicates an increased correlation to the genesis or exacerbation of substance abuse and affective disorders including suicidal ideation.”³⁴

Scholarship shows “that the emotional reaction or grief experience related to miscarriage and abortion can be prolonged, afflict mental health, and/or impact intimate or parental relationships.”³⁵ In fact, a recent 2023 study found that American “women whose first pregnancy ends in induced abortion are significantly more likely than women whose first pregnancy ends in a live birth to experience mental health problems throughout their reproductive years.”³⁶ Similarly, “[s]everal recent international studies have demonstrated that repetitive early pregnancy loss, including both miscarriage and induced abortions, is associated with increased levels of distress, depression, anxiety, and reduced quality of life scores in social and mental health categories.”³⁷

Maryland authorizes dangerous abortion procedures on women and young girls that negatively impact their mental and emotional well-being. By constitutionally protecting abortion-on-demand, the rates of mental health issues—such as depression, anxiety, and suicidal ideation—will increase and diminish their overall quality of life.

c. The Maryland Right to Reproductive Freedom Amendment Subjects Preborn Children to Painful Abortion Procedures.

In addition to harming women’s physical and mental health, abortion also subjects preborn children to fetal pain. There is ample research on fetal pain in the 50 years after *Roe*. As one example, in 2019, scientists found evidence of fetal pain as early as 12 weeks’ gestation.³⁸ Pain receptors [] begin forming at seven weeks’ gestational age, with the nerves linking pain receptors to the pain-sensing part of the brain, the thalamus, forming at 12 weeks.³⁹ Furthermore, by twelve weeks’ gestation almost every organ and tissue has formed in a preborn baby⁴⁰ and the baby has arms, legs, fingers,

³⁴ Kathryn R. Grauerholz et al. *Uncovering Prolonged Grief Reactions Subsequent to a Reproductive Loss: Implications for the Primary Care Provider*, 12 FRONTIERS IN PSYCH. 1, 2 (2021).

³⁵ *Id.*

³⁶ James Studnicki et al., *A Cohort Study of Mental Health Services Utilization Following a First Pregnancy Abortion or Birth*, 15 INT’L J. WOMEN’S HEALTH 955, 959 (2023).

³⁷ Grauerholz, *supra* note 21; see, e.g., Louis Jacob et al., *Association Between Induced Abortion, Spontaneous Abortion, and Infertility Respectively and the Risk of Psychiatric Disorders in 57,770 Women Followed in Gynecological Practices in Germany*, 251 J. AFFECTIVE DISORDERS 107, 111 (2019) (finding “[a] positive relationship between induced abortion . . . and psychiatric disorders”).

³⁸ Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 J. MED. ETHICS 3 (2020).

³⁹ *12 Facts at 12 Weeks*, CHARLOTTE LOZIER INST. (Apr. 25, 2023), <https://lozierinstitute.org/12-facts-at-12-weeks/>.

⁴⁰ Thomas Sadler, *MEDICAL EMBRYOLOGY* 14th ed. (2019).

toes, a face, and eyelids.⁴¹ The preborn baby is also beginning to form unique fingerprints,⁴² is able to suck his or her thumb,⁴³ and has a fully developed heart.⁴⁴

Additionally, a 2010 study found that “the earlier infants are delivered, the stronger their response to pain”⁴⁵ 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.”⁴⁶ As a result, preborn children display a “hyperresponsiveness” to pain.⁴⁷ According to one group of fetal surgery experts, “[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures.”⁴⁸

Given the medical advancements in fetal medicine and the evidence of fetal pain early in a pregnancy, it is well within the state’s legitimate interests to enact laws that preserve prenatal life as well as minimize fetal pain as much as possible.⁴⁹ If the amendment is passed Maryland will not be able to enact or maintain any gestational limit on abortion whatsoever. Abortion activists may argue that such laws interfere with a women’s “right” to abortion under the state constitution, even though the laws further the state’s legitimate interest to preserve prenatal life and mitigate fetal pain. This rhetoric disregards the humanity of preborn children and subjects them to painful abortion procedures.

II. The Maryland Right to Reproductive Freedom Amendment Leads to the Elimination of Protections for Women, Minor Girls, and Preborn Children, and Makes it Difficult for the State to Enact Future Safeguards.

The passage of the Maryland Right to Reproductive Freedom Amendment places pro-life protections for women, adolescent girls, and their preborn child at risk of being challenged in court, as shown by current activist litigation against pro-life laws, or being removed by the legislature. Maryland has a few life-affirming laws:

⁴¹ *Carnegie Stage 23 Introduction*, VIRTUAL HUM. EMBRYO: DIGITALLY REPRODUCED EMBRYONIC MORPHOLOGY, <https://www.ehd.org/virtual-human-embryo/intro.php?stage=23> (last visited Apr. 25, 2024).

⁴² J. W. Babler, *Embryologic Development of Epidermal Ridges and Their Configurations*, 27 BIRTH DEFECTS ORIGINAL ARTICLE SERIES 95, 95-112 (1991).

⁴³ See Peter Hepper et al., *Prenatal Thumb Sucking Is Related to Postnatal Handedness*, 43 NEUROPSYCHOLOGIA 313 (JAN. 2005).

⁴⁴ See M. A. Hill, *Cardiovascular System Development*, EMBRYOLOGY (Apr. 26, 2024), https://embryology.med.unsw.edu.au/embryology/index.php/Cardiovascular_System_Development.

⁴⁵ Lina K. Badr et al., *Determinants of Premature Infant Pain Responses to Heel Sticks*, 36 PEDIATRIC NURSING 129 (2010).

⁴⁶ *Fact Sheet: Science of Fetal Pain*, CHARLOTTE LOZIER INST. (Sept. 2022), https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#_ednref14.

⁴⁷ Christine Greco & Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES PAIN MGMT. 379 (2014).

⁴⁸ Maria J. Mayorga-Buiza et al., *Management of Fetal Pain During Invasive Fetal Procedures. Lessons Learned from a Sentinel Event*, 31 EUROPEAN J. ANAESTHESIOLOGY 188 (2014).

⁴⁹ See *Dobbs*, 142 S. Ct. at 2284.

- parental notice laws;⁵⁰
- protection and means for mothers to safely surrender their newborns;⁵¹ and
- conscience protections for health care professionals and public and private hospitals that object to abortion based on their beliefs and convictions;⁵²

These laws serve to protect women and adolescent girls from the inherent harms of abortion, as well as protect preborn children. However, these laws are subject to attack if the amendment passes. Abortion activists may argue these safeguards “burden” a woman’s “right to reproductive freedom” pursuant to the constitutional amendment, leading to legislative repeal or judicial injunction.

In addition to the elimination of current pro-life laws, Maryland will face difficulty in passing any future protections for women, adolescent girls, and preborn children if voters approve the amendment. The amendment appears to impose a strict scrutiny standard on abortion regulations, similar to the Supreme Court in *Roe*. Specifically, the Maryland Right to Reproductive Freedom Amendment prohibits the state from regulating all matters related to pregnancy unless the state demonstrates that the law is “justified by a compelling state interest achieved by the least restrictive means”.⁵³ Strict scrutiny is the highest and strictest standard a court uses when reviewing the constitutionality of a challenged law. Courts apply strict scrutiny when analyzing laws that restrict constitutionally guaranteed rights. Under this standard, courts require states to demonstrate that they have a compelling governmental interest to restrict the constitutional right and did so through the least restrictive means possible. In *Roe*, the Supreme Court found that restrictions on abortion require strict scrutiny review because abortion was a purported fundamental right.⁵⁴ The Supreme Court quickly found strict scrutiny was unworkable in the abortion context, and discarded this litigation in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, although it implemented the equally unworkable undue burden standard.⁵⁵ Later, the Supreme Court in *Dobbs* overturned *Roe* entirely, holding that there is no right to abortion in the U.S. Constitution.⁵⁶

Accordingly, the *Dobbs* Court applied the lowest standard of review, known as “rational basis review.” Under this standard, if the law is rationally related to a legitimate governmental interest, the law is permissible. *Dobbs* acknowledges that states have legitimate governmental interests in regulating abortion and all matters related to pregnancy in order to protect maternal health and safety, to preserve prenatal life, to mitigate fetal pain, to prohibit barbaric medical procedures, to preserve the integrity of the medical profession, and prevent discrimination on the basis of race, sex, or

⁵⁰ Md. Code Ann., Health-Gen. § 20-103 (West 2024).

⁵¹ Md. Code Regs. 07.02.27.01 (2024).

⁵² Md. Code Ann., Health-Gen. § 20-214.

⁵³ The Maryland Right to Reproductive Freedom Amendment (Maryland 2024).

⁵⁴ *Roe v. Wade*, 410 U.S. 113 (1973).

⁵⁵ 505 U.S. 833 (1992).

⁵⁶ *Dobbs*, 142 S. Ct. at 2284.

disability.⁵⁷ However, despite the Supreme Court overturn of *Roe*, the use of the phrases, “compelling state interest” and “least restrictive means,” in the amendment implicate strict scrutiny review. In doing so, the amendment imposes the highest standard of review on laws regulating abortion in Maryland that the Supreme Court has disavowed twice—first in *Casey*, then in *Dobbs*. This makes it difficult for Maryland to pass any protections for women and preborn children even though these laws further the state’s legitimate interests to do so.

Michigan residents faced a similar challenge. Only one year after the residents voted to amend their constitution to enshrine a right to abortion, the legislature repealed several pro-life policies in the state, such as licensing requirements for abortion clinics, abortion reporting requirements, prohibitions on gruesome partial-birth abortions, etc. Some of the language in Michigan’s abortion amendment is similar to the language in the Maryland Right to Reproductive Freedom Amendment. Michigan’s abortion amendment allows for an establishment of an “individual right to reproductive freedom,” and prohibits the state from regulating abortion unless “justified by a compelling state interest achieved by the least restrictive means.”⁵⁸ Given the similar nature between Michigan’s newly amended constitution and Maryland’s amendment the ramifications of Maryland passing the amendment may be just as devastating or more than those seen in Michigan.

Ultimately, the amendment will make it practically impossible to enact any pro-life laws in the future. The amendment will instill these dangerous practices into the state’s constitution, making reform an even more difficult mountain to climb.

III. The Maryland Right to Reproductive Freedom Amendment Threatens Maryland’s Parental Involvement Laws.

The elimination of Maryland’s pro-life policies is particularly hazardous for minor girls. The passage of the Maryland Right to Reproductive Freedom Amendment may lead to the elimination of Maryland’s parental notification law, which requires abortionists to notify one of the minor’s parents prior to the abortion.⁵⁹ Parental involvement laws recognize the fundamental rights of parents to make healthcare decisions for and with their children. These laws also protect children’s physiological and emotional wellbeing who, with developing decision-making capabilities and facing the stress and uncertainty of an unexpected pregnancy, need love and guidance from the people who care about them most, not the “quick fix” of a secret or coerced abortion.

Parents can help their daughters understand the physical and psychological risks of undergoing an abortion, and they usually possess information essential to a physician’s exercise of his or best medical judgement concerning the minor. Additionally, if parents are aware that their daughter has obtained an abortion, they

⁵⁷ *Id.*

⁵⁸ MICH. CONST. art. I, § 28.

⁵⁹ Md. Code Ann., Health-Gen. § 20-103 (West 2024).

may better ensure she receives the best post-abortion medical attention, especially if the minor suffers post-abortive complications. Due to their developing bodies, minor girls have a “biological predisposition for high-risk pregnancies.”⁶⁰ The high-risk nature of adolescent pregnancy is compounded by the fact that pregnant adolescent patients often delay care.⁶¹ Pregnant adolescent girls delay care for multiple reasons, such as “lack of knowledge about the importance of prenatal care and lack of understanding of the consequences of its absence; history as a victim of violence, desire to hide pregnancy, fear of potential apprehension of the baby, contemplation of abortion services . . .”.⁶² Delay of care may also lead minors to seek an abortion when they are farther along in their pregnancies, which subjects them to increased risks of health complications.

Maryland’s current parental notification law responds to the need to protect the welfare and safety of minors by ensuring that abortionists notify parents of a minor daughter’s desire to obtain an abortion. This ensures pregnant minors receive proper and prompt care. Further, Maryland’s parental notification law is one of the only life-affirming laws in the state. If Maryland voters approve the amendment, this law will be at risk of challenges by abortion activists seeking to eliminate it.

IV. The Maryland Right to Reproductive Freedom Amendment Gives Abortionists Free Rein to Operate Without Any Health and Safety Restrictions.

Passing the amendment opens the door for the elimination of important laws regulating abortion clinics. Just like in Michigan, abortion activists may seek to challenge Maryland’s laws regulating abortion clinics. Currently, Maryland has a regulatory framework in place for the inspection and monitoring of abortion businesses.⁶³ However, even with these safeguards, the state has cited several abortion facilities for employing “staff missing documentation of certification in Basic Life Support, or Advanced Cardiac Life Support, failure to test autoclave machines, failure to document patient discharge diagnosis, failure to train staff in emergency patient transfers to emergency departments, and failure to screen staff for tuberculosis.”⁶⁴ There have also been instances where women were injured, baby parts were left in utero, and surgery occurred after late-term abortions.⁶⁵ Unfortunately, if the amendment passes, Maryland will be restricted from guarding against these occurrences, endangering more women and adolescent girls. It is evident from the numerous health and safety citations that

⁶⁰ 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.

⁶¹ Nathalie Fleming et al., *Adolescent Pregnancy Guidelines*, 37 J. OBSTETRICS & GYNAECOLOGY CAN. 740, 743 (2015).

⁶² *Id.*

⁶³ Md. Code Regs. 10.05.05.01-.13 (2024).

⁶⁴ *Unsafe: America’s Abortion Industry Endangers Women*, AMS. UNITED FOR LIFE, 2021, at 66.

⁶⁵ *Id.*

abortion facilities do not have women’s best interest in mind. Abortion already subjects women to physical and psychological harm. Unregulated abortion clinics will only exacerbate these harms. Women deserve dignified treatment and quality care, not forced abortions in a facility that will subject them to additional health risks and emotional trauma.

V. The Maryland Right to Reproductive Freedom Amendment Enables Sex-traffickers and Abusers to Coerce Victims into Having Abortions Against their Will.

The amendment subjects women to coerced abortions while protecting their abusers. The amendment states that “[t]he state may not, directly or indirectly, deny, burden, or abridge the right unless justified by a compelling state interest.”⁶⁶ Therefore, under the amendment, Maryland cannot prohibit a sex trafficker or abusive partner from bringing their victim to an abortion clinic to have an abortion since it is the woman’s constitutionally protected “right.” Consequently, the amendment hamstring the state from enacting necessary safeguards for authentic choice, which will increase the number of coerced abortions.

Sadly, many women have coerced abortions. For example, a woman seeking an abortion may be facing intimate partner violence (IPV). There are “[h]igh rates of physical, sexual, and emotional IPV . . . among women seeking a[n abortion].”⁶⁷ For women seeking abortion, the prevalence of IPV is nearly three times greater than women continuing a pregnancy.⁶⁸ Post-abortive IPV victims also have a “significant association” with “psychosocial problems including depression, suicidal ideation, stress, and disturbing thoughts.”⁶⁹

Similarly, intimate partners, family members, and sex traffickers may be asserting reproductive control over the woman, which are “actions that interfere with a woman’s reproductive intentions.”⁷⁰ In the context of abortion, reproductive control not only produces coerced abortions or continued pregnancies, but it also affects whether the pregnancy was intended in the first place.⁷¹ Reproductive control is a prevalent issue for women. “As many as one-quarter of women of reproductive age attending for sexual and reproductive health services give a history of ever having suffered [reproductive control].”⁷²

There are several studies that highlight the prevalence of coerced abortions. A recent peer-reviewed study showed that 43% of post-abortive women described their

⁶⁶ The Maryland Right to Reproductive Freedom Amendment (Maryland 2024).

⁶⁷ 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).

⁶⁸ COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (Feb. 2013).

⁶⁹ Hall, *supra* note 71, at 11.

⁷⁰ Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 BMJ SEXUAL & REPROD. HEALTH 61, 62, 65 (2019).

⁷¹ *Id.* at 62–63.

⁷² *Id.* at 62.

abortion as “accepted but inconsistent with their values and preferences,” while 24% indicated their abortion was “unwanted or coerced.”⁷³ Similarly, another study found that 61% of women reported experiencing “high levels of pressure” to abort from “male partners, family members, other persons, financial concerns, and other circumstances.”⁷⁴ This study found that:

These pressures [to abort] . . . are strongly associated with more negative emotions about [a woman’s] abortion; more disruptions of their daily life, work, or relationships; more frequent . . . intrusive thoughts about their abortions; more frequent feelings of loss, grief, or sadness about their abortion; . . . [and] a perceived decline in their overall mental health that they attribute to their abortions⁷⁵

Furthermore, victims of sex-trafficking are among the number of women who experience reproductive control. A 2014 study on the health consequences for sex-trafficking victims found that 66 sex-trafficking victims had a total of 114 abortions, “[w]ithout accounting for possible underreporting.”⁷⁶ “The [sex-trafficking] survivors in this study [] reported that they often did not freely choose the abortions they had while being trafficked.”⁷⁷ A majority of the 66 sex-trafficking victims “indicated that one or more of their abortions was at least partly forced upon them.”⁷⁸ Given the prevalence of coerced abortions among sex-trafficking victims, the authors of the study note how “[h]ealthcare providers can play a crucial role in the trafficking rescue process by identifying possible victims and following up on those suspicions with careful, strategic questions, and actions that catalyze rescue or help create exist strategies.”⁷⁹

Despite the prevalence of coercive abuse among women seeking abortions, the amendment prohibits Maryland from enacting necessary safeguards. For example, if the state wants to enact a law to protect women against coerced abortions, it can only do so by demonstrating that it is using “the least restrictive means” and that the law is “justified by a compelling state interest.”⁸⁰ As stated above in Section II, Maryland will have a hard time meeting this standard.

In 2023, Michigan’s legislature sought to repeal a Michigan law that requires doctors to screen for coercion and provide victims of coercive abuse with helpful resources. Proponents of the repeal argued that the law creates barriers to women’s access to abortion. Thus, because abortion activists see any law that limits abortions as

⁷³ David C. Reardon et al., *The Effects of Abortion Decision Rightness and Decision Type on Women’s Satisfaction and Mental Health*, CUREUS, May 11, 2023, at 1.

⁷⁴ David C. Reardon & Tessa Longbons, *Effects of Pressure to Abort on Women’s Emotional Responses and Mental Health*, CUREUS, Jan. 31, 2023, at 1.

⁷⁵ *Id.* at 1.

⁷⁶ Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 ANNALS HEALTH L. 61, 73 (2014).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 84.

⁸⁰ The Maryland Right to Reproductive Freedom Amendment (Maryland 2024).

a burden on women, Maryland will likely not meet the amendment's standard to enact laws that would protect against coercive abuse.

In other words, if the amendment is passed, abortion activists may challenge any attempt to enact new laws to protect against coercive abuse, arguing that such laws create “barriers” to abortion. Prohibiting protections against coerced abortions incentivizes abusers to continue forcing women to obtain abortions in order to cover up their violent acts, leaving women unprotected, victimized, and silenced.

VI. The Maryland Right to Reproductive Freedom Amendment Furthers the False Narrative that Abortion is Necessary for Women's Equality in American Society.

By purporting that there should be and is a “right” to all reproductive health issues on demand, the Maryland Right to Reproductive Freedom Amendment furthers the narrative that women need abortion in order to obtain success and equality in American society. This belief is unfounded and harms women.

First, as stated above, the language used in the Maryland Right to Reproductive Freedom Amendment is deceptive and does not describe the reality of what abortion is. Abortion is not healthcare. It is the intentional destruction of innocent preborn human life. According to the American Association of Pro-life Obstetricians and Gynecologists (“AAPLOG”), “elective abortion is defined as those drugs or procedures used with the primary intent to end the life of the human being in the womb.”⁸¹ Elective abortions are not medically required, as AAPLOG explains, “[e]lective’ . . . refers to inductions done in the absence of some condition of the mother or the fetus which requires separation of the two in order to protect the life of one or the other (or both).”⁸² Indeed, “there is no medical indication for elective induced abortion, since it cures no medical disease.”⁸³

Additionally, abortion activists often imply that pregnancy is some sort of illness or disability, rather than a natural process that many women experience. As AAPLOG notes, “[p]regnancy is not a disease, and the killing of human beings in utero is not medical care.”⁸⁴ Further, “[t]o date, the medical literature offers no support for the claim that abortion improves mental health or offers protection to mental health. In fact, there is evidence to the contrary.”⁸⁵ Despite these evident truths, abortion activists continue to push forth false narratives about pregnancy and women’s alleged “need” for abortion. However, the evidence abortion activists rely upon, which “claim[s] to show that abortion has facilitated women’s health and equality is feeble and/or scientifically

⁸¹ AAPLOG Statement: Clarification of Abortion Restrictions, AM. ASS’N PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS (July 14, 2022), <https://aaplog.org/aaplog-statement-clarification-of-abortion-restrictions/>.

⁸² Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10, at 5 (Aug. 2022).

⁸³ Pro. Ethics Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Hippocratic Objection to Killing Human Beings in Medical Practice*, Comm. Op. No. 1, at 8 (May 8, 2017).

⁸⁴ *Id.*

⁸⁵ Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *supra* note 87, at 5.

invalid.”⁸⁶ Indeed, “the repetition and acceptance of the ‘equality’ argument for favoring legal abortion,” harms women because it “easily communicates that women’s pregnancy and parenting is a disability most females suffer. It explicitly or implicitly assumes that the male body and reproductive model is the norm, to which women should conform in order to achieve ‘agreed’ measures of success.”⁸⁷

Pregnancy is neither an illness nor a disability and to imply that it is such results in discriminatory treatment towards women. “A system that undervalues both mothering and fathering severely disadvantages women as well as men and children, and interferes with children receiving the care they require.”⁸⁸ Additionally, this leads to both a “public and private resistance to accommodating motherhood in employment,” which “leads to additional disadvantages for women.”⁸⁹ “For example, discrimination on the basis of pregnancy and motherhood has succeeded outright discrimination on the basis of sex.”⁹⁰ Women deserve better than to have the abortion industry subject them to deceptive language surrounding abortion, which is a life-altering—and at times, life-threatening—decision. The amendment furthers the abortion industry’s lies and efforts to mask the realities of abortion, which is to the detriment of women’s health, safety, and success and equality in America.

Conclusion

Enshrining a “right” to abortion in Maryland’s constitution will negatively impact the welfare of women and preborn children in Maryland. The Maryland Right to Reproductive Freedom Amendment targets and undermines the life-affirming policies that were fought so hard to implement, potentially leading to the elimination of such laws. Maryland’s few pro-life policies will be at risk of being replaced with an anti-life culture that threatens the health and safety of Maryland residents both inside and outside the womb. Further, having a constitutionally protected “right” to all reproductive matters will make it difficult for Maryland to enact any future protections for women and girls seeking abortion, which subjects women to an unregulated, dangerous abortion industry. This amendment does not give “freedom” to women but hands control to self-interested abortionists who financially benefit from abortion-on-demand as well as to sex-traffickers and abusers who seek to cover up their crimes by forcing their victims to obtain abortions. Abortion is not healthcare, and contriving a state constitutional right to abortion will be disastrous for Maryland.

⁸⁶ Helen M. Alvare, *Nearly 50 Years Post-Roe v. Wade and Nearing its End: What is the Evidence that Abortion Advances Women’s Health and Equality*, 35 Regent L. R. 165, 216 (Feb, 2022).

⁸⁷ *Id.* at 213.

⁸⁸ *Id.* at 214.

⁸⁹ *Id.* at 214.

⁹⁰ *Id.* at 216.