



Testimony for the House Health and Government Operations Committee
March 9, 2018

HB 1355 - Unborn Child Protection From Dismemberment Abortion Act of
2018

JOANNA DIAMOND
ADVOCACY CONSULTANT

OPPOSE

The ACLU of Maryland opposes HB 1355, which bans dilation and evacuation abortions (also known as “D&E abortions”), the safest and most common method of second-trimester abortion, and imposes an undue burden on a woman seeking an abortion before viability. This bill is therefore unconstitutional.

By banning a safe method of abortion, this bill inappropriately interferes with the practice of medicine and a woman’s access to abortion. Medical professionals must be able to provide each woman with the highest quality medical care, based on their training and expertise and each woman’s individual circumstances. Instead, HB 1355 legislates the manner in which doctors may provide safe, appropriate care to a woman in need of an abortion. That’s why medical experts like the American Congress of Obstetricians and Gynecologists oppose this bill.

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

WWW.ACLU-MD.ORG

COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

Furthermore, HB 1355 is unconstitutional under longstanding U.S. Supreme Court precedent. The Supreme Court has long held that states may not impose an undue burden on a woman’s access to abortion before viability.¹ And it has repeatedly made clear that banning a common method of abortion poses an undue burden, thereby violating the Constitution’s protections.² Nationwide, the D&E method accounts for 95% of second-trimester abortions.³ The Supreme Court has never upheld a method ban that would have such a serious impact on access.

The ACLU of Maryland strongly discourages this committee from passing an unconstitutional bill that could invite costly litigation. Similar method bans have been passed in 8 states.⁴ There have been challenges to the bans in 6 of those states.⁵ In those 6 challenges, Texas and Alabama have permanent injunctions and the rest are enjoined.⁶

¹ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

² See *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976); *Stenberg v. Carhart*, 530 U.S. 914 (2000); *Gonzales v. Carhart*, 550 U.S. 124 (2007).

³ See *Hodes & Nauser, MDs, P.A. v. Schmidt*, No. 114, 153, 2016 WL 275297, at *14 (Kan. Ct. App. Jan. 22, 2016).

⁴ Bans on D&E abortion were passed in 2015 in Kansas and Oklahoma, in 2016 in Alabama, Louisiana, Mississippi, and West Virginia, and in Texas and Arkansas in 2017.

⁵ Kansas ban was challenged in state court, where it was blocked temporarily while litigation proceeds. *Hodes & Nauser, MDs, P.A. v. Schmidt*, No. 114, 153, 2016 WL 275297 (Kan. Ct. App. Jan. 22, 2016); Oklahoma ban was also challenged in state court, where it was blocked temporarily while litigation proceeds. *Nova Health Systems v. Pruitt*, No. CV-2015-1838 (Okla. Cty. Dist. Ct. 2015); Alabama’s ban was declared unconstitutional, and is now on appeal. *West Alabama Women’s Center v. Miller*, -- F.Supp.3d ----, 2017 WL 4843230 (M.D. Ala. 2017); Louisiana’s ban was challenged in federal court, and is not in effect while litigation proceeds. Complaint for Declaratory and Injunctive Relief, *June Medical Services, LLC v. Gee*, No. 3:16-cv-00444-BAJ-

It is necessary for the health and well-being of women in this state that doctors be able to provide the safest, most appropriate medical care for each patient. We urge you to oppose HB 1355 – not only because it’s unconstitutional, but because it bans a safe method of abortion for women who need to end their pregnancy.

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

RLB (M.D. La. July 1, 2016); Texas’s ban was declared unconstitutional and permanently enjoined. *Whole Woman's Health v. Paxton*, No. A-17-CV-690-LY, 2017 WL 5641585 (W.D. Tex. Nov. 22, 2017); Arkansas’ ban was blocked temporarily while litigation proceeds. *Hopkins v. Jegley*, No. 4:17-CV-00404-KGB F.Supp. 3d _____, 2017 WL 3220445 (E.D. Ark. July 28, 2017), appeal docketed, No. 17-2879 (8th Cir. Aug. 28, 2017).

⁶ *See id.*